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PREVENTION OF DECEPTIVE PRACTICES AND VOTER INTIMIDATION IN FEDERAL ELECTIONS: S. 453

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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PREVENTION OF DECEPTIVE PRACTICES AND VOTER INTIMIDATION IN FEDERAL ELECTIONS: S. 453

THURSDAY, JUNE 7, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 2:05 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, presiding.

Present: Senators Cardin, Feingold, and Hatch.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. The Judiciary Committee will come to order.

First, I want to thank Chairman Leahy for holding these hearings today in regards to the "Prevention of Deceptive Practices and Voter Intimidation in Federal Elections, S. 453" and thank him for his leadership on this issue and allowing me to chair the hearing today.

After having served in elective office in Annapolis for 20 years and in Washington for 20 years, I understand that campaigns are a rough and tumble business. I expect that candidates will question and criticize my record and judgment, and voters ultimately have the right to choose their candidate.

What goes beyond the pale is when campaigns use deceptive tactics to deliberately marginalize and disenfranchise minority voters. Sadly, this tactic was seen in the 2006 elections. These tactics seem to be deliberately targeted to minority neighborhoods and are blatant attempts to reduce minority turnout.

In previous elections we have seen deceptive literature distributed which gave the wrong date for the election, the wrong times when polling places were open, and even suggested that people could be arrested if they had unpaid parking tickets or unpaid taxes and tried to vote. Other literature purported to give a different general election day for Republicans and Democrats.

So I want to start the hearing today by going through a few examples of actual literature that was distributed in recent elections. These fliers will be made part of our record of our Committee, without objection. And, in particular, I want to thank the Lawyers Committee for Civil Rights Under Law and its Executive Director Barbara Arnwine and Jonah Goldman, the Director of the National

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Campaign for Fair Elections for categorizing and documenting these practices.

Let me first show you Exhibit 1, which is from Jefferson County, Alabama, which gives the wrong day for the election.

Exhibit 2 is one that I am very familiar with, which was used in the Maryland elections and purports to have the endorsement of prominent African-Americans. The person who was running on the Republican ticket, when two of these prominent African-Americans, was, in fact, the Democratic candidate. These types of deceptive literature are despicable and outrageous. It is clearly designed to mislead African-American voters. Maryland voters have a legal right to vote and pick the candidate of their choice. I was also upset to learn from the Washington Post that the Republican Party had instructed their poll watchers to challenge voters in an effort, I believe, to suppress minority vote.

Exhibit 3 is from Franklin County, Ohio, in the 2004 election campaign. It said that due to "confusion caused by unexpected heavy voter registrations" that Republicans should vote on Tuesday and Democrats should vote on Wednesday.

Exhibit 4 is from Allegheny County, Pennsylvania, in the 2004 general election. It stated that "due to immense voter turnout" that Republicans should vote on—I am sorry. I think I mixed up the two. This is the one that has on Tuesdays and Republicans should vote—Democrats should vote on Wednesday.

Let me go to Exhibit 5, which is from Orange County, California, in the 2006 general election. The distinguished President and General Counsel of the Mexican American Legal Defense and Education Fund John Trasviña, who will be testifying later—the original version is in Spanish and we have a translation in English. The letter was sent to individuals who had recently registered to vote. Paragraph 2 warns the individual, in part, that if they are immigrants that "voting in a Federal election is a crime that can result in incarceration and possible deportation for voting without the right to do so."

Exhibit 6, I return to Maryland and Baltimore City, in the 2002 elections. It gives the wrong date—November 6th—for the election. It was distributed in minority communities, and it warns voters to pay parking tickets, motor vehicle tickets, overdue rent "before you come to vote." It also warns them about "any warrants."

And, last, Exhibit 7 is from Milwaukee, Wisconsin, in the 2004 general elections. The flier contains "some warnings for election time" and states that you can only vote once a year; and if you are found guilty of anything, even a traffic ticket, that you cannot vote in the Presidential election; and that it you "violate any of these laws you can get 10 years in prison and your children can be taken away from you."

Now, what is in common with all seven of these exhibits is that they were targeted to minority communities in an effort to suppress minority vote. It has been 137 years since Congress and the States ratified the 15th Amendment to the Constitution in 1870, which states that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race [or] color." The amendment also gave Congress power to enforce articles by "appropriate legislation." African-

Americans suffered through nearly another 100 years of discrimination at the hands of Jim Crow laws and regulations, designed to make it difficult if not impossible for African-American to register to vote due to literacy tests, poll taxes, and outright harassment and violence. It took Congress and the States nearly another century until we adopted the 24th Amendment to the Constitution in 1964, which prohibited poll taxes or any tax on the right to vote. In 1965 Congress finally enacted the Voting Rights Act, which once and for all was supposed to end discriminatory actions against voters based upon race.

It is time for Congress to once again take action to stop the latest reprehensible tactics that are being used against African-American, Latino, and other minority voters to interfere with their right to vote. I particularly want to thank my colleagues Senator Obama and Senator Schumer, and I am pleased to join them with S. 453, a bill that would allow the Federal Government to say clearly that these are illegal tactics and to use our influence to make sure that they are not part of any elections.

In the House I understand that similar legislation, H.R. 1281, has been approved by the House Judiciary Committee and is awaiting action in the full House.

I also want to thank one of my predecessors in the Senate, the Honorable Mac Mathias, a Republican from the State of Maryland, for his thoughtful letter of June 4, 2007. Senator Mathias is with us today, and I thank you very much for gracing our Committee room, one of the really outstanding Members of the U.S. Senate. And, Senator Mathias, if I might, I would like to just quote from part of your letter:

"While the methods employed to deter voting differ today from those in vogue 40 years ago, the deplorable objective remains the same: to help destroy the integrity of the election process by suppressing participation, especially by minorities. Because these more modern methods of coercion and intimidation do not fall neatly within the gambit of current law, legislation amending Section 1971(b) is needed. I believe S. 453 fills that gap admirably."

Recently we celebrated the 42nd anniversary of the voting rights march of Selma, Alabama. Our own House colleague, Congressman John Lewis from Georgia, was savagely beaten and tear-gassed by police for peacefully marching and protesting on what is now known as "Bloody Sunday." He and so many others, including Dr. Martin Luther King, Jr., ultimately led a peaceful march into Montgomery to help their fellow citizens register to vote. Media coverage of the mistreatment of our own American citizens garnered worldwide attention and led President Johnson to introduce the Voting Rights Act. Congress passed this historic Act in less than 5 months.

Today we have the obligation and the duty to fulfill the promises made by Congress and the States nearly 140 years ago, after the end of the Civil War, and over 40 years after the enactment of the Voting Rights Act.

[The prepared statement of Senator Cardin appears as a submission for the record.]

At this time I would recognize Senator Feingold for opening comments.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you, Mr. Chairman, for holding this hearing. I have to leave shortly for a hearing of the Intelligence Committee, but I want to thank you for recognizing me to say a couple of words, and I am honored to be in the presence of Senator Mathias as well and my colleagues on this panel.

I strongly support this bill, and I am pleased to join you as an original cosponsor. S. 453 targets the deceptive practices and voter suppression tactics that have become endemic in American elections since the enactment of the Voting Rights Act. This bill would have been timely 20 years ago. Today, Mr. Chairman, it is essential. Voter suppression tactics poison the democratic process, especially because they are frequently used against the most vulnerable segments of the electorate. Young people, racial and ethnic minorities, and the elderly are too often subjected to misleading phone calls, threatening fliers and intimidating so-called ballot security programs designed to keep them from exercising their right to vote. These tactics strike at the heart of our democracy. They are nothing less than an attempt to undermine the hard-won gains of the civil rights movement. Every anonymous flier, every thug at a polling place, every caging list is a reminder that Jim Crow was not that long ago.

This bill represents a renewed commitment to protecting and strengthening the right to vote for all Americans. We have a responsibility to fight back against those who commit these acts, to protect the people they victimize, and to preserve the integrity of the electoral process.

Mr. Chairman, some people have questioned whether this bill is necessary and even whether voter suppression actually occurs. I submit there is ample evidence—a shameful amount of evidence—of these deceptive practices accumulated over a 25-year period. Let me discuss just a couple examples, some of which may be familiar to my colleagues and our witnesses today.

In 1986, the RNC implemented a caging program in Louisiana designed to, in the words of one RNC operative, "eliminate 60,000 to 80,000 folks from the rolls and keep the black vote down considerably." For the record, I have a Washington Post article which details that caging program.

In 1990, 150,000 North Carolina voters, most of them African-American, received postcards which falsely claimed that a voter was ineligible unless he or she had lived in the same voting precinct for 30 days before the election. I will submit a New York Times article about that incident for the record.

In 2000, a Federal judge found "there was intimidation particularly targeted at Native Americans in Charles Mix County, South Dakota, by persons who were acting on behalf of the Republican candidate for the U.S. Senate. The judge issued a temporary restraining order prohibiting Republican campaign workers from following Native Americans from the polls and taking down their license plate numbers. I have a copy of that temporary restraining order for the record.

Finally, I want to comment on the flier that Senator Cardin mentioned which appeared in certain African-American neighborhoods

in Milwaukee in 2004. It provides a series of blatantly false statements, including a warning to voters that, "If you have ever been found guilty of anything, even a traffic violation, you can't vote in the Presidential election." The flier states that, "If you violate any of these laws, you can get 10 years in prison and your children will get taken away from you."

Unfortunately, this kind of flier is not unique to Wisconsin or to the 2004 election. Attorney General Gansler refers to a very similar flier in his testimony which appeared in Baltimore in 2004. Indeed, this kind of flier, which represents one of the worst kinds of voter suppression, has been endemic to American elections for the last 50 years.

I will place in the record the text of a flier distributed in Texas in 1964, a year before the Voting Rights Act. The flier says that a list of voters has been drawn up to be arrested after the vote for committing any of a list of offenses, including unpaid traffic and parking tickets, having been questioned by the police, and delinquent child support payments.

Some may think these kinds of tactics are humorous or just run-of-the-mill political dirty tricks. I disagree. People who create and distribute these kinds of fliers are attempting to intimidate their fellow citizens into not exercising the franchise that is guaranteed to all of us. This bill is the Senate's opportunity to fight back on behalf of citizens and voters, and I again thank the Chair for the hearing and for letting me make my remarks.

[The prepared statement of Senator Feingold appears as a submission for the record.]

Senator CARDIN. Thank you very much, Senator Feingold.

Our first panel are two of our colleagues who have been leaders in regards to strengthening our laws against crime and ensuring the integrity of our system for all of our citizens. I am pleased to recognize the Honorable Charles Schumer and the Honorable Barack Obama. It is a pleasure to have you on our panel.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman, and first I want to thank you, Senator Cardin, for the incredibly good work you have done on this issue. Your experiences in Maryland have proved to be a starting point for your getting involved in making sure we do something nationally as it affects all the States, and I thank you for it.

And, of course, I want to thank my colleague and the lead sponsor on this legislation, Senator Obama, who, again, felt just as we did, when hearing about these things, they make your blood boil. And he has worked very carefully and thoughtfully, as is usual, on putting together both a strong but effective and balanced piece of legislation.

I also want to thank Chairman Leahy for allowing us to hold this hearing.

The right to vote is the wellspring of our democracy. It is the most cherished right of citizenship. Yet far too often, our elections are marred by a troubling pattern of disenfranchisement by deception.

We are seeing—and it is more frequent now than before—a host of cynical and concerted efforts to keep voters away from the polls and to interfere with their choice of candidates. All too frequently, these dirty tricks target minority or disadvantaged communities. Make no mistake about it: These deceptive and intimidating practices are a form of disenfranchisement just as surely as poll taxes were. And we have seen the examples. I am not going to repeat them because you held them up, Mr. Chairman.

These deliberate lies and all the deceptive practices we have seen in recent elections are, in a word, repugnant. They are despicable. I call them disgusting. They are an affront to the civil rights and intelligence of the voters, and they insult our democracy. They go beyond—you know, we all know that, as Boss Plunkett said back in the 1870s, "Politics ain't bean bag." And people respect that, and campaigns these days are very tough. But this goes way beyond that. This goes to the health, the vitality of a democracy. And when things like this are allowed to happen, it really says something about the status of democracy in America.

And yet when these dirty tricks, these poisons occur, they are not prosecuted, and that is because it is not a Federal crime to disenfranchise voters by deception. The literature that you experienced in your election, Senator Cardin, well, I was furious, and even before you were actually sworn into office, I was pushing the Justice Department to investigate these fliers. They told me there was no legal basis to do so. If there was ever an evidence that spoke overwhelmingly in favor of the law we are pushing, it is that statement from the Justice Department that they cannot do anything about it.

So we have the power and responsibility to give the Department of Justice the tools to investigate and punish acts of voter deception and intimidation. Our bill recognizes that voter disenfranchisement by deception is just as serious as voter intimidation, which has long been criminalized. And the penalties are tough—up to 5 years in jail. Somebody who does this, Mr. Chairman, does not deserve a slap on the wrist or even a fine. They deserve to go to jail just like a bank robber does because they are robbing people of their democracy. And I think the penalties are tough but deserved. I mean, the people who do these things make my blood boil far more than people who do hard-hitting campaign ads, even ads that might be below the belt.

So our bill is tough, but at the same time it is narrowly tailored to protect both free speech and the right to vote. It does not just cover any information communicated during an election. It focuses on voter access to basic and verifiable facts that are essential to exercising the right to vote. The basic facts are where, when, and how you can cast a vote, whether you are eligible to vote, and whether an organization or person you trust has endorsed a particular candidate. So it is very limited, but very focused.

With our bill, the Justice Department's tools will not be limited to punishing wrongdoers after the fact. The Department will have a responsibility to communicate corrected information in order to undo the damage by deceptive practices before the polls open so that the damage can be undone.

Let me be clear about what this bill will not do. It will not criminalize honest mistakes. Only deliberate lies that have no place in our democracy will be prosecuted. It will not impede legitimate political speech. It is narrowly tailored, as I mentioned.

And let me say, Mr. Chairman, this should not be a partisan issue. We should have people on both sides of the aisle supporting this because we all care equally about our wonderful, long-lived, and cherished democracy.

Opponents of this legislation may claim that it is unnecessary or flawed. I could not disagree more. The bill is urgently needed, it is carefully crafted, and it is no more than what we owe the voters across America.

I would ask unanimous consent my entire statement be placed in the record, and thank you for having this hearing.

[The prepared statement of Senator Schumer appears as a submission for the record.]

Senator CARDIN. Without objection, the statements of all the witnesses will be included in the record.

Senator Obama, the principal sponsor of S. 453, we thank you very much for your leadership on this issue and so many other issues of concern to enfranchise the people of our country.

STATEMENT OF HON. BARACK OBAMA, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator OBAMA. Thank you very much, Senator Cardin, and I want to thank Senator Feingold for being here and Committee Chairman Leahy for holding this hearing. I want to express my thanks to Senator Mathias for coming in and for his statement.

The essence of this is how can we bolster the integrity of our electoral system. In January, I was pleased to reintroduce the Deceptive Practices Act and the Voter Intimidation Poverty Act along with my colleague Senator Schumer. And he has shown outstanding leadership on this issue, and I am very grateful for all his help.

Several other members of this Committee, such as Chairman Leahy, Senators Feingold and Kennedy, and, of course, yourself, Mr. Chairman, have joined this bill. I am also honored that there is a companion bill in the House that is supported by Judiciary Committee Chairman John Conyers.

I also want to thank the many groups that have endorsed this legislation for their support. A number of them are here today, especially the People for the American Way, the Lawyers Committee for Civil Rights under the Law, the Mexican American Legal Defense and Education Fund, the NAACP, and Common Cause.

It is hard to imagine that we should need a bill like this, but, unfortunately, there are people who will stop at nothing to try to deceive voters and keep them away from the polls. And what is worse, these practices often target and exploit vulnerable populations such as minorities, the disabled, the elderly, and the poor. While these practices have a long history, we saw some high-profile examples of this in the 2006 election cycle. You, Mr. Chairman, experienced some egregious examples of it, and you have mentioned, as have Senator Schumer and Senator Feingold, some of those other examples.

Of course, most of these pieces of literature that are distributed have no basis in fact. They are made with only one goal in mind: to keep Americans away from the polls. We see these problems year after year in election after election, and my hope is that this bill will finally stop these practices in time for the next election.

The Deceptive Practices and Voter Intimidation Prevention Act makes voter intimidation and deception punishable by law, and it contains strong penalties so that people who commit these crimes suffer more than just a slap on the wrist. The bill also seeks to address the real harm of these crimes—people who are prevented from voting by misinformation—by establishing a process for reaching out to those misinformed voters with accurate information before the time is completed for them to be able to vote so that they can actually cast their votes in time.

Now, there are some issues in this country that are inherently difficult and inherently political. We are dealing with one right now on the floor with immigration. There are a lot of conflicting interests and conflicting values at stake there. But making sure that every American is able to cast a ballot should not be one of those difficult issues. There is no place for politics in this debate, no room for those who feel that they should be able to gain partisan advantage by keeping away people from the polls.

As members of this Committee know all too well, politics have colored some of the recent actions of the Department of Justice, so our bill includes a private right of action to ensure that individuals who are victims of deceptive information have legal recourse if an Attorney General turns a blind eye to these types of practices.

The New York Times stated in its January 31st editorial on this issue that our bill "is an important step toward making elections more honest and fair. There is no reason it should not be passed by Congress unanimously."

I would ask, Mr. Chairman, that this editorial be placed into the record.

Senator CARDIN. Without objection, it will be.

Senator OBAMA. In conclusion, I think it is time to deal with this problem in a bipartisan fashion. I look forward to working with you, Mr. Chairman, Chairman Leahy, Ranking Member Specter, my outstanding colleague Senator Schumer, and those on the House Committee who are also interested, to make sure that we pass this legislation this year.

Thank you very much.

Senator CARDIN. Well, let me thank both of you for your testimony.

Let me just make an observation and try to get your response to it. I saw this type of literature in 2002 and in 2004 and was outraged by it. It was difficult to trace who was putting out the literature. Sometimes it appears with no real responsible individual willing to claim that they put out the material. But in 2006, it was blatant. In my State, it was a major political party's candidate for Governor and the U.S. Senate that just put that literature out the night before the election without any hesitation whatsoever and thought it was a good campaign strategy, that one of the strategies that we all use in campaign is get out the vote. We try to get out our vote. We spend a lot of resources knocking on doors and mak-

ing phone calls and sending literature to communities in which we are trying to get people out to vote.

So I expect their attitude was, well, if getting out the vote is OK, what is wrong with trying to suppress the vote? What is wrong with that tactic as part of a way to win elections? It is pretty effective. If I can keep the minority vote numbers down, it has an impact on who is going to win the election.

I find that just unacceptable, as I know you two also believe. But it seems to me we have to set the ground rules because if you do not set the ground rules, what happened in 2006 is only going to accelerate, and you will see more and more of these blatant efforts to affect the outcome of elections.

So I just really want to get your observations on that. How far can we go in this area? And how does the First Amendment play into making sure that we get it done right?

Senator OBAMA. Well, look, political speech is the most valuable and most protected speech, and we are very careful to make sure that that speech is not impacted by this bill. Political speech does not encompass the right to deliberately lie or provide misinformation to voters in order to suppress the vote. And so that is the line that we draw on this bill. We are very careful to make sure that it is not impacting political speech that says Senator Obama voted against such-and-such or has failed his constituents on this issue or that issue. That obviously is appropriate—not always comfortable but appropriate.

Senator SCHUMER. Blatantly false.

[Laughter.]

Senator OBAMA. Absolutely. So I think that you make the broad point properly, Mr. Chairman, and that is that there is a great difference between trying to increase your own vote and suppressing somebody else's vote. And those are tactics that are not acceptable.

We think that this is a useful baseline, as you put it. There are still going to be some areas that are not reached by this bill. The New York Times noted that one of the most egregious tactics that was used were these robo-calls that were used under the guise of one candidate trying to get the vote out, essentially irritating people so badly that it suppressed potential voters in certain areas.

You know, there are always going to be some dirty tricks out there that are employed. What we do not want to do, though, is to permit some of these tactics that we can deal with from preventing people from exercising their franchise and maintaining a robust democracy.

Senator SCHUMER. Senator Obama said it all.

Senator CARDIN. I think it is a healthy message. It makes it clear what we are attempting to do, and if this bill becomes law—and I certainly hope it will be—it puts political parties and candidates on notice.

Senator OBAMA. And I think you make a very important point, Mr. Chairman. Some of this is prophylactic. If people know that the law takes this seriously, they will not do it. The reason that a lot of these practices are engaged in right now is because people feel as if there are no consequences to these actions.

Senator SCHUMER. We did debate whether there should just be a fine or jail time, which obviously is far more serious, taking away

someone's freedom. And I think the consensus not only among ourselves as the sponsors but among many people and experts we talked to is that jail time is perfectly appropriate and necessary so that people do not think it is just a slap on the wrist or you pay a price for doing this.

Senator CARDIN. Well, and I applaud you for that. I think you made the bill tough, but you have also focused it. You have erred on the side of making it a narrowly focused bill so that it does meet the constitutional test, and I think you needed to do that. But I also do think it is a clear message that, yes, we understand you may be able to figure out ways to try to get around this bill, but that is not what we should be doing. We should be, as Americans, trying to figure out ways to win elections clearly on the issues and on legitimate campaign strategies and not trying to suppress minority vote.

Let me thank both of you for your leadership on this issue and for being here. I appreciate it.

Senator CARDIN. Our second panel, I am very pleased to have the Attorney General of the State of Maryland, the Honorable Doug Gansler. Attorney General Gansler is the former State's Attorney of Montgomery County, and he has broad experience in the criminal justice system and has a distinguished career in our State and is the new Attorney General for the State of Maryland.

We also have the County Executive from Prince George's County, Maryland, Jack Johnson. Jack is also a former prosecutor, former State's Attorney from Prince George's County and has a very distinguished record as the State's Attorney significantly reducing crime in Prince George's County, which is, of course, our neighboring county. It borders the District of Columbia. He has done a super job as our leader in Prince George's County.

It is a pleasure to have both of you before our Committee, and we will start off with General Gansler.

STATEMENT OF HON. DOUGLAS F. GANSLER, ATTORNEY GENERAL, STATE OF MARYLAND, BALTIMORE, MARYLAND

Mr. GANSLER. Thank you, Senator, and thank you for your leadership on this issue. Immediately after the election, Senator Cardin, you called our office and we got together. While we have put together a task force to look at voter irregularities on the State level, your leadership here on the Federal level has clearly been exemplary. And I want to also think the principal sponsor, Senator Obama, and Jack Johnson for being here today. He is going to focus on the issues in Prince George's County. And I would like to mention the Director of our Civil Rights Department of the Attorney General's Office, Carl Snowden, is here as well.

I would like to focus my comments—my testimony is in the record, but I would like to focus my comments on the question you asked, Senator, regarding the juxtaposition of the First Amendment with this bill. It seems to me there are three categories of deceptive communications at issue here in elections.

The first is the mischaracterization of a candidate's viewpoint. One of the most classic examples would be the Willie Horton ads of days gone by, where you take a situation out of context. It is fair game, it is protected by the First Amendment, it is somewhat insid-

ious and adds cynicism to the process, but it is protected by the First Amendment.

The second category would be the category that is addressed by this bill and one that Mr. Johnson is going to be talking about, which is the flier in Prince George's County, which is really akin to libel; that is, it is knowingly making a false statement in an effort to sway a particular voter or voters. The Prince George's County flier would be the classic example of that when these three people clearly endorsed somebody else and then on election day all of a sudden they are purported to have endorsed a different candidate.

My comments would focus and I think the bill properly focuses on the third category, and the third category is statements, deception that is not focused on swaying a particular candidate—or a particular voter to vote for a particular candidate; that is, it is not aimed at persuasion but aimed at suppression. And that is the problem, and that is what this bill addresses. It may or may not be motivated by wanting to sway voters toward a particular candidate or away from a particular candidate. But the motives are irrelevant, and that obviously is the case in the Baltimore City case where it says, "Urgent Notice. Come out to vote on November 6th." The election was not on November 6th.

"Before you come to vote, make sure you pay your parking tickets, motor vehicle tickets, overdue rent, and, most important, any warrants." Now, that does not talk about any candidate at all. What that is aimed at is voter suppression, keeping people away from the polls, which is precisely why the 1965 Voting Rights Act was passed in the first place.

This legislation that is put forward takes a measured approach to addressing the important issue, imposing penalties for deceptive communications where the communication does two things: first, the person who puts it out knows the information to be false; and, second, acts with the intent to prevent another person from exercising the right to vote in an election. The legislation properly, in my view, respects the First Amendment's guarantee of freedom of speech while recognizing the strong Federal interest in safeguarding the right to vote and prohibiting tactics that have frequently been employed in racially discriminatory ways.

The examples of such tactics that have been discussed today illustrate that shame has proved to be an insufficient deterrent in this area for those who would engage in such practices. Senate Bill 453 is an important component of what has to be a comprehensive approach, at both the Federal and State levels, to ensuring that voter rights are protected.

So I strongly endorse the bill and its passage. I commend you, Senator, for your leadership and thank you for the opportunity to testify today.

[The prepared statement of Mr. Gansler appears as a submission for the record.]

Senator CARDIN. Mr. Johnson?

STATEMENT OF HON. JACK B. JOHNSON, COUNTY EXECUTIVE, PRINCE GEORGE'S COUNTY, MARYLAND, UPPER MARLBORO, MARYLAND

Mr. JOHNSON. Mr. Chairman, I am very pleased to be here and actually honored to be here. Let me begin by offering my support for S. 453. It is absolutely critical that this bill is passed.

Let me talk about two things. On the evening of the election, as I traveled the county, I saw thousands of signs that said, "We are not slave to the Democrats." Interestingly, the signs were in the very same colors of this sign—red, black and green. And what it referenced is the dark period in our history, and it dealt with the whole substance of slavery. And, in essence, what it said was that the Democrats were treating African-Americans as slaves.

Interestingly, our county is a very large African-American community, and I believe that that literature was designed to suppress the African-American vote on the next day of the election.

Now, I am not sure whether that is illegal, and I am not sure that that is not protected. But the point is that it is so egregious and designed to suppress the vote.

Now, the African-American tie to slavery and the Democratic Party issue pales in terms of what I saw the next morning. As I said, this slavery signage paled by comparison with what I encountered on election day. I woke up and went to the polls early to gauge what was going on, as I often do. I went to my polling place and saw someone I did not know handing out literature saying that I was supporting the candidate for U.S. Senate who was a Republican. The literature said, "These are Our Choices." On the cover was my picture, the leader of the Democratic Party allegedly endorsing not only the Governor, who is a Republican, but also the candidate for the U.S. Senate. This was a falsehood. I do not believe—it is deceptive, it was a hoax, and I do not believe at all that it is free speech protected by the First Amendment.

Phone calls came early and often that election day. Angry citizens wanted to know why I was a turncoat and why I had abandoned the Democratic Party. I was simply flabbergasted that my name and likeness could be appropriated in such a manner. Rather than using my time to visit with voters and discuss issues that were of concern to me and the county, I spent the entire day, Mr. Chairman, as you know, trying to inform citizens that this was a hoax and that it was not true.

The outrage continued all day as we learned that the people that were distributing this literature came in early that morning from Philadelphia, all of them homeless, having been promised a ride back home as well as $100. Many of them were later abandoned at the polling places, and many of them, when they found out the truth, decided that they would not pass out this literature. Delegate JoAnne Benson and others had to reach into their own pockets and pay many of the homeless people rides back to Philadelphia. Of course, everyone denied that they had anything to do with these fliers. No one had no way of knowing how it happened, and nobody knew anything.

Many citizens told me they saw my face on the literature and voted accordingly. Voters should not expect to see signs posted about being slaves, and voters should not be handed a false ballot

with pictures of people they have come to trust and respect purportedly supporting candidates they have never endorsed. And let me say I found it just so offensive that, again, my likeness and my name would be associated with the Republican Party endorsing these candidates.

I want to make clear, though, that as a Democrat, I do vote for various people, and I saw Mac Mathias, Senator Mathias here, and that was the first vote that I cast when I was a young person and first moved to the State of Maryland, voting for Mathias because I knew the record he had on civil rights, justice, liberty, and the things that are important.

I have seen firsthand the lingering vestiges of slavery and Jim Crow laws. The memories pain me, and those who live in our county and throughout America. There are those who seek to exploit this sad history, but I have confidence that this and other practices I described here today can be curtailed with the adoption of S. 453. I urge you to support and I urge that the Congress will support this piece of legislation. It is absolutely important.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Johnson appears as a submission for the record.]

Senator CARDIN. Let me thank both of you for your testimony. Senator Mathias wanted to be here today. He knew what the hearing was about and wanted to be here, and it was not easy for him to physically get here. And, without objection, we are going to put his letter into the Committee record. I appreciate both of you acknowledging that.

Jack, you are rather calm today, but I remember talking to you the day before the election, and you were not quite as calm. There was a pattern in Maryland. You mentioned the slavery posters that were up, that we do not know for sure who put up those posters because they were not identified. But it was part of a pattern to try to anger African-American voters so perhaps they would not show up to vote. They knew that a large number would not vote Republican. If they could just keep the numbers down, it would help the Republican candidates.

But then we did see this brochure that you refer to that came out the night before the election, and that has the authority line of the Republican candidate. So we know who put that out, and that is clearly, as you put it, a hoax. "Misleading" is, I think, kind to it. But once again, it was an effort to try to confuse minority voters in the largest jurisdiction in Maryland of minority voters, Prince George's County, a critical county in the election.

And then we also know about the busing in—by the way, we know that that was paid for by the Republicans because it was acknowledged, bringing in homeless people from Philadelphia who had no idea what they were doing. They thought they were getting a job in Maryland handing out the literature on election day so they could have an African-American face handing out the literature in the polling places—again, to try to adversely affect the minority vote.

But it goes beyond that. The Republicans had control of the election process because we had a Republican Governor, and as I have talked to the Attorney General about, in Prince George's County

and in Baltimore City, the two large jurisdictions of African-American voters, there were more voting machines that did not function and the lines to vote were the longest. I visited Prince George's County late on election day and was shocked to find out that the average wait to vote in many of the precincts in Prince George's County was 2 hours to cast a vote.

Now, that was not true in other jurisdictions in our State. Where I voted, it took me 10 minutes to vote during a pretty busy time.

So you put all this together, and you see where there were instructions that the Republicans had at one point to start challenging—have their poll watchers challenge voters indiscriminately, again, in order to, we think, make the lines longer.

This is a pattern to try to win an election by diminishing a vote, not increasing a vote. And it has got to be dealt with because it is the poll tax of our time.

I know the bill that is before us is narrowly focused because we need to do that constitutionally. I do not think we could outlaw the slavery-type poster. I would like to do it. I would hope that people would be outraged by it and it will not have the intended effect, and that the robo-call that you referred to was pretty clever, because it was somewhat of an obnoxious robo-call mentioning the opponent's name over and over again hoping that people would hang up and think that he was the person that was calling in order to aggravate voters.

But it seems to me, Attorney General Gansler, that we need to look at strengthening not only the Federal laws but State laws in order to make these types of patterns illegal and to give both parties due notice that we will not tolerate that type of conduct by our political parties or by our candidates.

Mr. GANSLER. I agree with that, Mr. Chairman, and I think this bill deals with the speech conduct, the deceptive speech, and that ought to be Federal because it should not—this type of conduct, just like poll taxes and literacy tests were outlawed by the Voting Rights Act of 1965, this is really an extension of that, and that ought to be pervasive throughout the country.

On the State level, each State, unfortunately, or fortunately, has a different method by which they vote, different machines, actually different technology, and so forth. In Maryland, we have assembled a task force, and your office and you have been instrumental in looking at those issues as well. And I was the same way. I was absolutely disgusted at what I saw in a placed called Evangel Cathedral in Prince George's County. I was there at 11 o'clock, and people literally took 3 hours to vote. Of course, what was heartening was how many people stayed there to exercise their franchise. What was discouraging were the people who had 1 hour for lunch and had to leave.

We are going to look at it on the State level as to why that happened, how it happened, and, most importantly, to make sure it does not happen again—without really casting blame and going back, because there is no law, there is nothing to enforce there, but just to make sure it does not happen and make sure we have the laws on the books so that we can enforce it if, in fact, it happens again next time, because it is hard enough to get people to go out and vote. There is a lot of cynicism involved in politics and whether

somebody's vote counts. Much of that is because of the nature of the political ads we have, and what this bill does is make sure that the political ads at least stop at a particular line, a line protected by the First Amendment, and does not cross that line into libel or into content that is specifically designed to suppress the vote. But on the State level, we also have to take measures as well.

Senator CARDIN. Right.

Mr. JOHNSON. Senator, if I could just say that I wanted to put the entire concept of what happened in Prince George's County in context. You are absolutely right, I am calm today, but on election night it is probably the most important election we have had in 25 years in Prince George's County. The U.S. Senate was on the line. It is not one sign that said the Democrats in a sense enslave black people. The roads were paved with it, just for miles along at 10 feet apart at the most. "We are not slaves to the Democrats." The Democrats are enslaving African-Americans in essence.

Then the next morning you get up and you see a total hoax, falsehood, in the terms of a literature that says—and everyone knew that being the leader of the Democratic Party and that many of the Democrats in the county follow my advice on where we should go in the election. So my likeness is crucial in the election. It is appropriated, it is stolen, it is taken, and it is false.

Then the other thing is that we go to the polls on election day. I walked to my polling place. Not only at my polling place I am getting this literature, but, more importantly, the polls are not open. It is raining, as you recall. At 7 o'clock, none of the machines are open. At 7:30, none of the machines are open. At 8 o'clock, the machines are not open. I said, "What is the problem?" "Oh, it is a technical problem with a computer."

I got on the telephone and called our computer experts, said, "Get down here because the polls are not open, and they are telling me it is a technology issue. You need to come and fix it."

My technology chief called everybody—because the Government is closed. You have to come in and help fix the problem. Many people left because they intended to vote before going to work. When they came back in the evening, the lines are 2 hours long and they cannot vote. We missed many votes on election day. And as you know, this was a critical election. The experts said it could go any way. And we lost many votes, and they knew that the votes would turn in Prince George's County in one election.

We understand that S. 453 deals with the issue of falsehoods, which the First Amendment appropriately protects—or will allow, but the other issue was designed to show the problem that we confront and that I think is confronted all over America in having a fair and honest and open election, which is the essence of our democracy.

Senator CARDIN. I need to put in the record that I agree with you that hundreds, if not thousands, of potential voters were denied the opportunity to vote in this past election in Prince George's County as a result of the cumulative impact of all the methods that we have talked about.

Having said that, to the credit of the people of Prince George's County, you had record turnouts, you had large turnouts of voters that stayed and cast their votes. And the margin that I received

in that election was larger than the margin in Baltimore City, which is my base.

I point that out because the voters of Prince George's County I think saw through a lot that was happening.

Mr. JOHNSON. They did.

Senator CARDIN. That is not to say that there were not a lot of people disenfranchised. There were, no question about it. They could not wait 3 hours, as the Attorney General said. They could not come back when the polls were not open in the morning. They were disgusted by what they saw, and they said, you know, "Forget it. I am not going to show up to vote." There is no question that it had an impact on the number of voters in the county. But I do really congratulate the people of Prince George's County, many of whom just said—to wait 3 hours to vote is quite a commitment, and thousands did that.

Mr. JOHNSON. Many people voted after midnight. That is how long the polls were—

Senator CARDIN. I know. I was waiting for those precincts to come in.

[Laughter.]

Senator CARDIN. Let me thank both of you again for being here today. This is an important subject. I think we can learn a lot from the local governments. We are trying to get this right. I know that in Maryland we are trying to figure out what is the best voting system. There has been a lot of debate here in Washington as to the verifiable voting machines, et cetera. In Maryland, we changed ours in the last elections, and it has been somewhat confusing. But we need to make sure that voters can get their votes recorded properly and that tactics that are aimed at minority communities are not tolerated. And I know that the two of you will be continuing to work with us to make sure in our State we handle it correctly. But it is very important that you have a Federal partner. And the Justice Department has told us, as they told Senator Schumer, that they do not believe they have the laws necessary in order to deal with this today. That is why Senator Obama has introduced his bill, and if we can get that bill through Congress, then I think we can give you a Federal partner to try to make sure what happened in Maryland does not happen again or does not happen any place else in our country.

Thank you.

Mr. GANSLER. Thank you, Mr. Chairman.

Mr. JOHNSON. Thank you.

Senator CARDIN. We will now have panel three: Hilary Shelton, the Director of the Washington Bureau, National Association for the Advancement of Colored People; John Trasviña, President and General Counsel, Mexican American Legal Defense and Educational Fund; Richard Briffault, the Joseph Chamberlain Professor of Legislation, the Columbia Law School; William Canfield, a principal at Williams & Jensen; and Peter Kirsanow, Commissioner, United States Commission on Civil Rights.

If I could ask you all to please stand in order to be sworn in. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SHELTON. I do.
Mr. TRASVIÑA. I do.
Mr. BRIFFAULT. I do.
Mr. CANFIELD. I do.
Mr. KIRSANOW. I do.

Senator CARDIN. Please be seated. We will start with Mr. Hilary Shelton.

STATEMENT OF HILARY O. SHELTON, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP), WASHINGTON, D.C.

Mr. SHELTON. Thank you, Senator. Good afternoon. As you said, my name is Hilary Shelton, and I am the Director of the NAACP's Washington Bureau, the Federal legislative and national public policy arm of our Nation's oldest, largest. and most widely recognized grassroots civil rights organization, with membership units literally in every State in our country.

The right to vote has always been an ultimate priority for the NAACP. For almost a century, the NAACP has fought against those who wish to suppress the votes of African-Americans and other racial or ethnic minority Americans through unfair or unjust laws, deception and/or intimidation.

With the enactment of the Voting Rights Act of 1965, it became illegal for States or local municipalities to pass laws that in any way infringed on a person's constitutional right to register and cast an unfettered vote. Subsequent laws and reauthorizations of the Voting Rights Act have further addressed these tactics and made it harder for a State or a local government to infringe on a citizen's right and ability to cast an unfettered vote.

Unfortunately, some people are still so desperate to win elections—elections that they fear they cannot rightfully win—that they resort to deceptive practices, misinformation, and lies to try to keep legitimate voters away from the polls or to support candidates whom they might not otherwise vote for. It is even more unfortunate that these practices often target and exploit many of the same populations that have historically been excluded from the ballot box. Specifically, vulnerable populations, such as racial and ethnic minorities, the disabled and/or poor and senior citizens are often targeted by those perpetuating these deceptive practices.

To put it bluntly, it is now against the law to use official means to prevent whole communities of American citizens from casting a free and unfettered ballot. Yet there are still people and organizations in our country who are so afraid of the outcome of our democratic process that they must stoop to lies, duplicitous behavior, and intimidation to try to keep certain segments of our population and communities away from the voting poll.

That is why the NAACP so ardently supports the Deceptive Practices and Voter Intimidation Prevention Act, S. 453, introduced by Senators Obama, Cardin, Schumer, Feingold, and others. This legislation seeks to address the real harm of these crimes—people who are prevented from voting by misinformation or intimidation—by establishing a process for reaching out to those voters with accurate information so they can cast their votes in time and ensure a

more genuine outcome of the election. The bill also makes voter intimidation and deception punishable by law, and it contains strong penalties so that people are deterred from committing these crimes, knowing that they will suffer more than just a slap on the wrist if caught and convicted.

The fact of the matter is that if an individual wins an election by a few votes, even when it can be proven that many potential voters were kept away from the voting booth by deceptive or intimidating behavior, the winner remains in office for the duration of the term. That is why it is so important to correct the misinformation before the election is over and the damage has been done.

As we have heard and will hear today, examples of malicious deceptive practices, almost all of which targeted racial or ethnic minority populations, were rampant as recently as the general election in 2006. In Ingham County, Michigan, a partisan poll challenger confronted every African-American attempting to vote that day. There were no reports of any Caucasian voters even being questioned.

In Orange County, California, 14,000 Latino voters got letters in Spanish saying it was a crime for immigrants to vote in a Federal election. It did not state or even clarify that immigrants who are citizens have the right to vote and indeed should.

In Baltimore, Maryland, misleading fliers were placed on cars in predominantly African-American neighborhoods giving the wrong date for the upcoming election day.

In Virginia, registered voters received recorded (robotic) calls that falsely stated that the recipient of the call was registered in another State and would face criminal charges if they came to the polls to vote that day. It was also in Virginia that voters received phone calls stating that because they were such regular voters they could vote this time by telephone, by simply pressing a number at that time for the candidate of their choice. The call ended by repeating that they had now voted and did not need to go to the polls. The disenfranchisement strategies continue.

In all of these cases, a quick response to expose the lies that were told and provide corrected information to get legitimate voters to the polls in time to have their vote counted was clearly warranted. Unfortunately, nothing was done by the Federal Government to aid the clearing-up of these lies. It was, therefore, up to the local and national media, as well as advocacy groups like ours, to scramble to try to undo the damage. While it is difficult to conclusively demonstrate that these specific misdeeds had an impact on an election, it is the position of the NAACP that if even one lawful voter was deceived or intimidated and, therefore, did not cast a legitimate vote, that is one too many in a Federal election, and the Government must do something.

When Presidential elections can be won or lost by a few hundred votes, it is up to the Federal Government to do all it can to ensure that every eligible person who wants to vote can and that every vote legitimately cast will be counted.

It is unfortunate yet necessary that the Deceptive Practices and Voter Intimidation Prevention Act needs to be passed now, before

another election comes, more lies are told, and more voters are locked out of our system of democratic process.

The NAACP would like to thank the sponsors and cosponsors of S. 453 and H.R. 1281, the companion bill in the House, as well as Chairman Cardin and Senators Schumer and Obama for their leadership and their demonstrated commitment to this crucial issue. The NAACP stands ready to offer the assistance of our members, staff, and leadership to do all we can to encourage the quick enactment of the Deceptive Practices and Voter Intimidation Prevention Act.

Thank you so much.

[The prepared statement of Mr. Shelton appears as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony.

Mr. Trasviña?

STATEMENT OF JOHN TRASVIÑA, PRESIDENT AND GENERAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (MALDEF), LOS ANGELES, CALIFORNIA

Mr. TRASVIÑA. Chairman Cardin, Senator Hatch, thank you for the opportunity to testify on MALDEF's behalf in support of the Deceptive Practices and Voter Intimidation Prevention Act, cosponsored by 15 Senators, including 7 members of this Committee.

My colleague Hilary Shelton puts it very, very well. Voter intimidation and deceptive practices present serious threats to the integrity of the American democratic system. Since our founding in 1968, MALDEF has used every legal and policy mechanism at our disposal to protect Latino voters from election practices that limit our ability to fully participate in American democracy. When voters are targeted for intimidation, and especially when they are targeted because of their race or national origin, all Americans suffer.

We have recently witnessed serious incidents of voter suppression, intimidation, and deceptive practices aimed at Latino voters. When a community organizes politically and begins to make new political gains, it often becomes subject to deliberate attempts to halt its electoral advancement by any available means, including the use of deceptive practices and voter intimidation. For example, on November 7, 2006, MALDEF attorneys witnessed an extreme act of voter intimidation in Tucson, Arizona. Vigilantes, one of whom was armed, approached Latino voters before they entered the 49th Precinct polling place in an apparent attempt to suppress the Latino vote in the congressional midterm elections. One man carried a camcorder, another held a clipboard, and a third wore a law enforcement emblem and a holstered gun as they approached only Latino voters. The vigilantes asked Latino voters pointed questions about their political views, wrote down Latino voters' personal information, and videotaped them as they went to cast their vote. The vigilantes' website indicated that they were videotaping Latino voters in order to confirm that all Latino voters were properly registered to vote.

You have heard about this letter in Orange County, California, sent to approximately 14,000 Spanish-surname voters. An outrage, this letter, solely meant to intimidate foreign-born voters. A list was bought by one of the candidates and used to send out on a

third-party organization's letter head a letter written in Spanish that appeared on the letterhead of an organization well known for its views on immigration. It was signed by a fictitious person and contained numerous deceptive and intimidating statements.

First, the Orange County letter falsely advised prospective voters that immigrants who vote in Federal elections are committing a crime that can result in incarceration and possible deportation. This is a false and deceptive statement. Naturalized immigrants, including our own Governor of California, who are otherwise eligible to vote are free to vote in Federal elections without fear of penalties.

Second, the letter stated that "the U.S. Government is installing a new computerized system to verify names of all newly registered voters who participate in the elections... Organizations against emigration will be able to request information from this new computerized system," according to the letter. Clearly not true, but clearly intended in an intimidating tone using false information to undermine voter confidence within the targeted group of voters.

Finally, the letter stated that "[n]ot like in Mexico, here there is no benefit to voting." This letter, representing a coordinated and extensive effort to suppress the Latino vote in the days leading up to a congressional election, was traced by State election officials to a candidate running for the congressional seat. And, in particular, foreign-born voters new to our process are more susceptible to these types of letters because they often have a system to fall back on, a system different than our American democracy. They are new to our American democracy, and it is easier to use these type of letters to intimidate them. That is why they are so wrong.

S. 453 will provide critical tools to address the types of voter suppression and intimidation that MALDEF has combated in previous elections and expect to continue to combat as the Latino vote grows in strength over the coming years. S. 453 will provide administrative and judicial remedies for voters targeted for intentionally deceptive practices, and it will provide security to all voters by providing for increased Federal protections in the elections process.

If S. 453 had been in place during the 2006 election cycle, the deceptive practices of voter intimidation described would have resulted in different outcomes. MALDEF notified the United States Department of Justice, which had senior staff monitoring the election in Arizona, but we are unaware of any resulting Federal investigation or prosecution that has resulted from our notice that day. If S. 453 were Federal law at the time, DOJ would have been charged with conducting an investigation and prosecuting the offending parties if they engaged in intentional deceptive practices.

The Orange County voter suppression letter described also would have triggered Federal action. We wrote to the Attorney General, who initiated an investigation but instituted no corrective actions to remedy the receipt of the misinformation contained in the letter. Instead, MALDEF worked with the California Secretary of State to distribute corrective action letters to all affected voters that contained the correct voter eligibility information.

MALDEF supports this legislation as a remedy against voter intimidation and deceptive practices that limit Americans' ability to freely participate in the democratic process. Prevention of the rep-

rehensible practices barred under S. 453 strengthens our democracy.

Thank you.

[The prepared statement of Mr. Trasviña appears as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony.

Mr. Briffault?

STATEMENT OF RICHARD BRIFFAULT, JOSEPH P. CHAMBERLAIN PROFESSOR OF LEGISLATION, COLUMBIA LAW SCHOOL, NEW YORK, NEW YORK

Mr. BRIFFAULT. Senator Cardin, Senator Hatch, thank you for the honor of inviting me here to testify today. My name is Richard Briffault. I am a professor of law at Columbia Law School, specializing in election law issues.

Congress plainly has the authority to adopt laws vindicating the integrity of Federal elections and protecting the rights of Federal voters. Moreover, S. 453 is entirely consistent with the First Amendment's protection of freedom of speech. My comments today will focus on the First Amendment question.

S. 453 is aimed solely at preventing the knowing dissemination of falsehoods with the intent to interfere with the right to vote. The Supreme Court has repeatedly held that the First Amendment does not protect intentionally false statements of fact. In the Court's words, "there is no constitutional value in false statements of facts." Moreover, S. 453 promotes the compelling governmental interest in electoral integrity. The Supreme Court has repeatedly indicated that the States may restrict even constitutionally protected speech when protecting the right of its citizens to vote freely for the candidates of their choice. Congress has a compelling interest in protecting voters from confusion and undue influence and in ensuring that an individual's right to vote is not undermined by fraud in the election process.

S. 453 satisfies the Supreme Court's requirement that a law regulating false statements be narrowly tailored to avoid impinging on or chilling constitutionally protected speech. S. 453 is narrowly tailored in three ways.

First, S. 453 is limited to the communication of falsehoods that the speaker knows to be false and which the speaker communicates in order to prevent another person from voting. This is actually significantly tighter than the so-called "actual malice" test adopted by Supreme Court in *New York Times* v. *Sullivan*, which permits the prohibition of both knowing falsehoods and statements made with reckless disregard for truth or falsity. Innocent, merely negligent, or even reckless mistakes are not penalized under the bill.

Second, S. 453 is limited to a very constrained set of false statements of fact—statements dealing with the time, place, or manner of voting; with eligibility to vote; and with explicit endorsements by persons or organizations. These involve simple statements of fact that do not remotely deal with matters of opinion, or the issues, ideas, or political views that make up an election campaign. Such false statements can serve only to confuse or mislead voters, deceiving some to vote against their own political preferences and leading others not to vote at all. To the extent that such false state-

ments are aimed at lower-income groups, the less educated, or racial minorities, they will tend to systematically undermine the ability of the election to represent the views of the entire community.

Third, the bill provides a tight temporal limit for its restrictions. The prohibitions on knowing communication of false information apply only during the 60 days before an election. As a result, S. 453 is narrowly tailored, which is the Supreme Court's standard, to promote the compelling governmental interest in electoral integrity and in the protection of the rights of voters.

Approximately 18 States have adopted some laws prohibiting false campaign statements. Courts have generally upheld in principle bans on intentionally false election statements as constitutional, although some specific statutes have fallen. S. 453 is actually more narrowly tailored than virtually all existing State false campaign statement laws and, thus, should have no problem in passing a constitutional challenge.

In short, by protecting voters from false statements intended to deceive them or prevent them from voting, S. 453 is not only constitutional but actually promotes the values of political participation and personal autonomy that are at the heart of the First Amendment.

Thank you again for inviting me to testify today.

[The prepared statement of Mr. Briffault appears as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony.

Mr. Canfield?

STATEMENT OF WILLIAM B. CANFIELD, PRINCIPAL, WILLIAMS & JENSEN PLLC, WASHINGTON, D.C.

Mr. CANFIELD. Good afternoon, Mr. Cardin and Senator Hatch. Thank you for inviting me to appear before you today. My name is Bill Canfield. I am a partner in the Washington, D.C., law firm of Williams & Jensen. You have my prepared statement, and I will not bother to go through it. I will make a few observations based on my unique experience. I think I am the only member of this panel and any of the other panels that actually practices in this area of the law. Therefore, I have a sort of fundamental understanding of how the courts look at these issues and how these issues get resolved in real-time setting in the head of a difficult and sometimes tendacious campaign.

No one here, least of all myself, is arguing for or on behalf of voter intimidation or any other kinds of vile things that have been presented before the Committee today. What I urge you to do is look at the four issues that I outlined in my prepared remarks and focus your attention on those four issues. This bill is well meaning, I believe, but it is subject to some criticism based on its scope and the definitions that it uses.

As a person who practices in this area of the law, I have to counsel my clients, which are campaigns and campaign committee managers and those kinds of professionals, as to the status of current law. It is a very difficult situation to do when the law that you have before you is open to various levels of interpretation.

I would remind you that the Supreme Court has said in many, many instances that speech is the most highly protected of our val-

ues as American citizens, and of all kinds of speech, I would say political speech is probably the most singularly protected. And the courts have unanimously or regularly upheld that general principle, so I would urge the Congress in moving forward into an area that addresses, at least marginally or tangentially, the First Amendment's application to a bill such as this that we tread carefully and tread narrowly. Otherwise, the courts are going to have to, you know, interpret what you say and work their will.

The other observation I would generally make is I have seen a tendency in the last 25 or 30 years to begin criminalizing various aspects of Federal election law. I think this is a terrible, terrible, terrible way to go. The Federal Election Commission exists for the sole purpose of overseeing the Federal Election Campaign Act. You have many agencies of the executive branch of Government who also have a role in this. To criminalize activities that have never been criminalized before within the electoral setting is a challenge, I think, in and of itself.

The bill's provision for a private right of action by a person who is aggrieved by some form of intimidation also troubles me. I think it will lead to the opening of Pandora's Box. If it is easy now in the course of a campaign to file a spurious campaign complaint with the Federal Election Commission and hold a press conference and get the attention of the local press alleging that your opponent has engaged in some violation of Federal election law without any real interest in seeing how the FEC deals with the matter, which is always after the fact, think how easy it is going to be for some campaign manager who is aggrieved by the campaign tactics of the other side to get someone, either himself or some supporter, to file a private right of action, to go to the U.S. Attorney, to go to the Attorney General, to file a private right of action to try and suppress whatever that campaign manager does not like the other side doing to his campaign.

So I just encourage you to look at the practical aspects of the bill's such as this that you are looking for because the difficulty we have as practitioners is actually implementing them after they have been agreed to by the Congress.

[The prepared statement of Mr. Canfield appears as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony.

Mr. Kirsanow?

STATEMENT OF PETER N. KIRSANOW, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C.

Mr. KIRSANOW. Thank you, Mr. Chairman, Senator Hatch. I am Peter Kirsanow, a member of the U.S. Commission on Civil Rights, also a member—

Senator CARDIN. Would you turn your microphone one?

Mr. KIRSANOW. Thank you. I am a member of the U.S. Commission on Civil Rights and also the National Labor Relations Board. I am here in my personal capacity.

The U.S. Commission on Civil Rights was established pursuant to the 1957 Civil Rights Act to, among other things, act as a national clearinghouse for matters pertaining to equal protection and voting rights.

In furtherance of the clearinghouse function, the Commission on a regular basis conducts hearings on voter suppression, intimidation, and harassment. And the last such hearing was in October of 2006, just before the midterm elections.

Based on the evidence adduced at that Commission hearing, I would urge the Committee in its deliberations of Senate bill 453 to consider at least three deceptive practices not currently covered by the bill; that is, false registrations, multiple registration, and compromised absentee ballots.

The evidence adduced shows that at least two prongs to the problem of deceptive practices that deal with election integrity: first is voter suppression, broadly defined; second is voter fraud.

The empirical shows that the first prong is generally a function of provisional ballots and also of election disinformation. Sections 3(a)(2)(A)(ii) and 3(b)(1)(A)(ii) cover at least certain elements of the first prong, that is, preventing eligible voters from voting, but leave wholly unaddressed the second prong of affirmative voter fraud, and deceptive practice at least as consequential as voter suppression and intimidation, and possibly more so.

For example, in the 2000 Presidential election, there were voluminous claims of rampant voter intimidation, harassment, and suppression. The Civil Rights Commission conducted a 6-month investigation immediately after the election. The Civil Rights Division of the Department of Justice also conducted an investigation.

Despite the widespread claims of intimidation, harassment, and suppression, the investigation yielded just two ostensible cases of perceived voter intimidation, and the Civil Rights Division's investigation concluded that there was no credible evidence of any Floridians having their votes intentionally denied.

Now, in contrast, a subsequent media investigation showed that there were at least 2,000 ballots cast illegally in Florida, and since the vote margin was 537 votes, the fraudulent votes were sufficient to affect the outcome of the election.

This is not an isolated occurrence. The evidence adduced at Commission hearings, particularly from Mark Hearne, who is an adviser to the Carter-Baker Commission on Federal Election Reform, shows that there are numerous instances, suggesting numerous instances of significant voter fraud. The allegations include individuals and organizations that aid and abet ineligible voters to vote.

Now, there are numerous cases that have been reported of people paid to register those ineligible to vote and fictitious characters. The infamous case in Ohio during the 2004 Presidential election campaign of a canvasser paid with crack cocaine to register Dick Tracy, Mary Poppins, and scores of other equally notable voters is fairly well known.

Again, these are not isolated circumstances. In 2001, a major voter registration drive in the black community of St. Louis produced 3,800 new voter registration cards. When some of the names appeared suspicious, elections officials reviewed all of the cards and determined that nearly every single one was fraudulent. Dogs, the dead, and people who simply did not want to register to vote were among the new registrants.

Now, the problem is not simply that canvassers are being paid to register manifestly fraudulent voters. It is also that voting rolls

throughout the country are being padded with perhaps hundreds of thousands of false and fraudulent names. Testimony before the Senate Rules Committee by John Sample showed that Alaska, for example, had 503,000 people on the voting rolls, yet there are only 437,000 people of voting age in Alaska.

The problem is magnified by those who solicit and aid individuals to vote in multiple jurisdictions. One hundred and forty thousand Floridians are registered in multiple jurisdictions; 60,000 voters are registered in both North Carolina and South Carolina; 8,000 Kentuckians are registered in Tennessee. The bill is silent with respect to these deceptive practices, and multiple registrations and fraudulent registrations are compounded by the problem of compromised absentee ballot integrity. The practice of misleadingly assisting individuals to cast an absentee ballot can lead to wholesale disenfranchisement. This is a potentially troublesome problem, particularly with respect to bilingual ballots.

This is not a minor concern. The 1998 Miami mayoral election was actually set aside because of rampant absentee ballot forgeries.

These deceptive practices have the capacity to affect the outcome of an election. They undermine public confidence in the electoral process. And the bill is silent on these. These are significant omissions.

So I would urge this Committee to consider including these deceptive practices in the bill's prohibitions.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kirsanow appears as a submission for the record.]

Senator CARDIN. Well, thank you for your testimony, and I thank the entire panel for their testimony here today.

Mr. Kirsanow, let me start with you, if I might. You were here during the testimony of what happened in my State of Maryland in 2006. Does that trouble you? Does that concern you that there were efforts made to provide the minority community with deceitful information during the course of the campaign and that minority voters had a much more difficult time in casting their votes in the State of Maryland?

Mr. KIRSANOW. Absolutely, Mr. Chairman. As a member of the Civil Rights Commission, we address these issues on a regular basis. These matters are brought before us quite often, and they are not simply relegated to your State. They are not a partisan issue. They go on both sides.

During the 2000 Presidential campaign, there were radio ads in my community, Cleveland, Ohio—I live in a majority black neighborhood—that would talk about the fact that casting a vote for a Republican is casting a vote for lynching, that casting a vote for a Republican means another church is going to be burned down. Those kinds of things are reprehensible, despicable. We deplore those things.

My testimony is focused on the fact that this bill can be significantly enhanced by addressing some significant issues with respect to election integrity, and those deal with voter fraud. These are things that are not simply matters of recent import. They go back throughout our history where we have had thousands, perhaps tens

of thousands of cases in which, again, the dead or others have been registered to vote and people voting in their names.

Senator CARDIN. Let me agree with you on the first point that you made. I find that despicable, the statements made that voting for a particular candidate is equivalent to the circumstances you said. That is why I agree completely. I think it was Senator Obama or Senator Schumer who said this is not a partisan issue. We are going to fight very hard in elections to get our vote out, but we should not be fighting to suppress the vote or mislead the vote. And that is wrong, and anything that we do that tries to mislead the vote in that regard, whether it is a Democratic candidate trying to get minority votes away from a Republican or a Republican from a Democrat, that is wrong.

We have seen these practices now—it is not isolated. We have seen these practices in many States, and the practices appear to be growing. I do not know whether your Commission has investigated what happened in Maryland in 2006 or what happened in Virginia or what happened in California. I hope that you are doing that because in each of these cases it was clear that the intention of the individuals who were responsible for this material was to diminish minority voters. And that is something that should have no place in American politics.

So I am just somewhat interested as to how your Commission is looking at this. You have indicated you have done some studies, and I would love—I think our Committee would welcome the review on the circumstances that have been brought out at this hearing. We had this hearing, and there has been now significant testimony, and I have not seen any investigations by your Commission in regards to those issues. So I would welcome your review of that.

You do mention the 2000 election and at least 2,000 voters who cast votes illegally according to the Media Analysis. Is that the group that you—

Mr. KIRSANOW. Yes.

Senator CARDIN. Now, has your Commission or any law enforcement agency or any academic research borne out these numbers?

Mr. KIRSANOW. No law enforcement agency has done so, and very often it is difficult to prove the negative. But there have been some academic studies with respect to matters such as this. If you look at the—

Senator CARDIN. Could you make that available to our Committee?

Mr. KIRSANOW. I sure could.

Senator CARDIN. So we could see what basis—

Mr. KIRSANOW. Our civil rights—

Senator CARDIN. You made a pretty strong statement.

Mr. KIRSANOW. Yes.

Senator CARDIN. I could tell you that I heard a similar statement made about fraudulent voting in a California congressional election when I was a Member of the House, and we investigated that in the House committee because the election was contested, and it bore out that there were no demonstrated fraudulent votes. So I know statements are often made, but we like to see the facts behind those statements. So I would appreciate it if you could make available to us the specifics that would bear out those numbers.

Mr. KIRSANOW. Absolutely, Mr. Chairman. I would just offer that, as you know, in Florida in 2000 there was a significant problem with respect to purging the voter rolls of felons who at that time at least were barred from voting in Florida. And when matching the names of those felons to those who vote or at least checked off—who were checked off by registrars as voting, there was a correlative that showed that individuals not entitled to vote were actually voting. And this is not something that is unusual.

Senator CARDIN. I will just give you my own observations. I have been at polling places a lot in my lifetime. There are more eligible voters who were not able to cast votes, even though provisional ballots are required, than any documented cases that I know of, of people who were ineligible to vote who cast their votes.

So I am all for making sure that people who are eligible to vote are only the ones that vote. But I worry about what happened in Prince George's County, Maryland, in which the county executive I think pretty clearly pointed out that hundreds, if not thousands, of voters in that one county were denied an opportunity to vote because of the practices in this past election. And I would hope that your Commission would take a look at that type of activity, because I think it has a much stronger impact on the system than the other issues.

I am going to come back on a second round, but let me recognize Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman.

Let me just ask the panel this question, and any or all of you can answer it, as far as I am concerned. This legislation proposes to create a new crime for communicating false information that has the intent to prevent another person from voting in an election. What about communicating false information that encourages another person to illegally vote in an election? Should that be part of this bill? If I encouraged, say, an illegal alien to vote in an upcoming election, knowing that this type of activity is illegal, shouldn't that also be a crime under this legislation? Now, to me it would not appear to be so under this bill.

I would also like to ask every member of the panel to say whether they would support the inclusion of this type of illegal activity. We can start over there with you, Mr. Shelton.

Mr. SHELTON. Senator Hatch, good afternoon, sir. Let me first say that it is already a crime for one who is not a U.S. citizen to vote in an election, and certainly if one conspires with someone to commit a crime, they are also committing a crime. I think this particular piece of legislation needs to address those concerns.

But may I also say on a different note that was raised earlier, the NAACP would love the opportunity to submit transcripts from hearings that were held in Florida after the 2000 election that showed a number of things, including every African-American male going to certain polling sites actually being intimidated away from the polls by being asked if indeed they had a felony on their records. That was the outcome of many of the problems that were raised by my colleague at the other end of the table.

We would love to provide that kind of information, and certainly we would also love to provide information about the outcome of the St. Louis election as well in which only on the north side of St.

Louis, the predominantly African-American community, where polling sites opened late and were not allowed to stay open late until lawsuits were filed by the NAACP to do such.

So in answer to your first question, I do not think this legislation needs to cover an issue that is already covered by law, and certainly we look forward to seeing that particular law being further enforced. As a matter of fact, as we talked about the issue of the crimes that were committed, it is also interesting to the NAACP, and I think to others in this room, that the Justice Department actually convicted no one of crimes of fraud in the election process.

Senator HATCH. Do you all agree that this is presently covered?

Mr. TRASVIÑA. Senator, I believe that over the years you have closed those loopholes. You have closed those loopholes about if there is any perception of unauthorized immigrants being able to be persuaded to vote. In the 1996 Act on immigration, that is already taken care of. I would be surprised if that continued to be a problem to the extent it even was a problem before. And the Chairman alluded to the 46th Congressional District investigations back in the mid-1990s.

I think Commissioner Kirsanow talks about the problem particularly with bilingual voting, and you recall from the 1992 hearings on the Voting Rights Act extension, and even back to 1982, we always hear about bilingual ballots or causing undocumented immigrants to vote. And every time somebody comes up with a list, they go back and registrars look at the list, and they find the problem was not with the voters. The problem was with the incomplete and not up-to-date INS records that do not show the naturalization date of the person so that the person was properly registered, properly voted, and that there have not been cases of unauthorized immigrants voting in elections. We made it a deportable offense, made it a bar to naturalization. Those are the types of things that are already in place that mean that this law does not need to be amended for that purpose.

Mr. BRIFFAULT. It was my impression that at least since the motor-voter law, the National Voter Registration Act of 1993, that false voting and false registration are already penalized, and I would imagine that conspiracy, which is the situation you are describing of somebody encouraging a false voting or false registration, would fall within the general penalization of false registration and false voting. So I suspect that the situation you are describing already violates Federal law.

Mr. CANFIELD. I would just like to pick up on something that Mr. Shelton said a minute ago about the voters in Florida who were being challenged at the polling station and asked whether they were felons or not. You know, I do not think anybody can countenance that kind of activity. But at the same time, I think that there has to be some sort of recognition given to the fact that Federal and State law allows certain people to vote and bars other people from voting.

One of the reasons you might be barred from voting in a particular State is that you have a felony conviction on your record. We do not want to go so far to the extreme that all past convictions for felonies are no longer subject or could be challenged when a person goes to a voting place. I do not think you can single out peo-

ple in a particular precinct based on race or ethnicity, obviously, but it is still a legitimate question in a larger context to make sure that felons are not voting.

Mr. KIRSANOW. Senator Hatch, I said in my remarks that there are two prongs to the problem of deceptive voting practices. This bill addresses one of the prongs, and that is, preventing the eligible voters—or trying to prevent eligible voters from voting. The other prong is getting ineligible voters to vote, and there are a number of mechanisms by which this happens.

There is an example, for example, that I have in my written testimony of a non-citizen from Barbados who is told that, well, if you are in the United States for 7 years, you can vote. So she registered. She did not vote, but was later told by election officials that somebody had voted in her name.

Now, it is difficult to know how frequently that happens. It usually only happens when someone who is registered says, hey, wait a minute, I did not vote; or someone who is not registered finds out—this would hardly ever happen—finds out that somebody voted in their name or their name was placed on a roll illegitimately.

So there are these mechanisms that occur, and some of these are addressed in State statutes, some of it you can look at—as Mr. Trasviña indicated, you look would at other statutes that are not discrete to this particular bill. But I think the intent of this particular bill was to place in one discrete bill the issue of deceptive practices. In that regard, the bill has certain omissions that I think inclusion of which would strengthen the bill.

Senator HATCH. Thank you all for that.

Mr. Canfield, your testimony mentions the problems that could be encountered under the legislation by providing authority to Federal agents to make, you know, in the days leading up to the election, instantaneous judgments as to who and what types of voter campaign deceptive practices should be brought before a grand jury.

Now, do you worry that this type of grand jury activity could presumably negatively affect the very election it is trying to protect?

Mr. CANFIELD. Well, of course I do, Senator, because, you know, the existence of a grand jury's meeting on election law problems are not very closely held in this country. It soon becomes evident to the press and other people that a grand jury is meeting.

The problem I see is that giving a role, as the legislation purports to do, to officers of the Federal Government to draw conclusions or make observations in the immediate days before an election sends, I think, a bad signal because it empowers agents of the Federal Government to draw distinctions in the context of an election which in theory should be separate and apart from the Federal Government's role at all, I would say. And to empower Federal agents to have some sort of role in making determinations as to whether certain publications or certain announcements are fraudulent or intended to suppress the vote tends, I think, in the abstract to give a role to the Federal Government that I do not think is appropriate.

Senator HATCH. Well, another problem with the legislation, at least as I view it in your opinion, Mr. Canfield, is the definition of

"deceptive practices." Given how hard it is for people to define what is considered deceptive, I worry about these subjective views. Could they lead to a great deal of confusion and problems with political campaigns from both political parties? And how would you address the definitions that are utilized in this bill?

Mr. CANFIELD. I pointed out in my testimony that I thought that was a problematic area as well. You know, I represented the Senate Rules Committee in the contested election in Louisiana in 1996 when Mary Landrieu was first elected to the Senate. And one of the accusations by her opponent, of course, was that there were all kinds of shenanigans going on in Louisiana before and during election day. And I remember turning to my Democratic colleague and dear, dear friend, Bob Bauer, who is at Perkins Coie. Bob said to me, "Well, you know, this probably does not matter and does not amount to much." And I said to him, "Bob, this is Louisiana. Whether we like it or not, we are going to have to look into this."

There are some areas of the country that are prone to problems on election day. There are other parts of the country which have never had a history of election day problems. So to create a national standard is going to be, I think, somewhat difficult to enforce across the country. But that is just my experience.

Senator HATCH. Well, you highlight a portion of the bill that would provide a private right of action for individuals who believe that they themselves were subject of some loosely drafted—or loosely defined, I guess, election deceptive practice. Now, given that the Civil Rights Division, the U.S. Attorney's Office, and the local law enforcement are available for complaints from citizens, could this new private right of action create, you know, an innumerable number, let's say, of Federal cases based upon the whims of individuals?

Mr. CANFIELD. If I had to single out one part of the bill that ought to be really, really closely examined, I think it is the private right to action. I understand the intent of the authors, and I think the intent is not a bad one. But I think the unintended consequence of creating a private right of action will be to cause lawyers to have even more roles in the elections than they currently do. I think every Federal candidate is going to have to have one or more lawyers with him or her at almost all occasions. And I think that the campaign managers are going to understand that one of the great attributes that they have to take a shot at their opponent is to file a private cause of action against some agent or friend of their opponent for publishing a scurrilous document like this, or whatever, and having the press conference announcing the fact that the private right of action is being taken.

I think it is just the law of unintended consequences, and from my experience in the Federal Election Campaign Act realm for 30 years, it is by definition the law of unintended consequences.

Senator HATCH. My time is up, Mr. Chairman.

Senator CARDIN. Thank you very much.

Mr. Briffault, let me bring you into this discussion, because I was impressed by your testimony as to how this bill has been drafted, particularly in light—I was not aware that there were 18 States that have passed laws in this area that, according to your testi-

mony, this law, the Federal bill that is being suggested is one of the more tightly drawn and focused of the bills that are out there.

If I understand the Obama bill, it only involves communications within 60 days of an election. We heard the concern of grand juries being out there. My understanding is it takes a little bit of time for those types of issues. I think the real purpose of this bill is to prevent activities, not to prosecute, and that prosecution would take more than 60 days under the most expedited process, so that the likelihood of these matters reaching the courts would be well after the elections themselves. That is not the main purpose of the bill. The purpose of the bill is to put people on record as to what we are trying to achieve.

So let me try to get your view as to how this is drafted relative to the other bills that you have seen around the Nation and whether we are on safe ground in the way that we have dealt with it.

Mr. BRIFFAULT. Sure. Thank you, Senator. I think it is considerably tighter in two ways. One is in the requirement of an intentional falsehood intended to affect an election. Many of the State laws are drafted somewhat more broadly and pick up falsehoods or negligent or reckless falsehoods and do not always have the specific addition of an intent to influence an election. So to begin with, it is really more tightly focused on intentional falsehood.

My second point relates to Mr. Canfield's reference a few minutes ago about the breadth of the idea of deceptive. Although the bill is titled "deceptive," it actually only targets three very specifically defined types of actions, and that I think is also unusual. Instead of a general prohibition of false, deceptive, or misleading statements, which is the kind of language you see in some of the State laws, it targets these three specific types of factual misstatements: the time, place, and manner of the election. Is the election going to be on Tuesday or on Wednesday? Is it on November 2nd or November 3rd, which is an area where it is easy to get the facts right. If you can prove that such a statement is intentionally—it is also easy to make it an error, so you can prove that it is intentionally wrong—the only effect of that kind of intentional falsehood is to confuse people. False statement concerning eligibility to vote, the kinds that were mentioned earlier, you cannot vote if you have not paid your parking tickets, which, again, if that is knowingly false and that can be proven on the part of the speaker, again, the only effect of that is to induce people who have the right to vote not to vote. As for false statements concerning endorsements, the only effect of that is to persuade people to vote against their preferences, to mislead the voters.

None of this really addresses statements about issues or hyperbole, nasty comments, exaggerations of a candidate's record or anything like that, which would be obviously far more problematic and probably un constitutional to try and regulate statements like that.

Senator CARDIN. I thank you.

Mr. Shelton and Mr. Trasviña, let me try to get your response to the need for Federal legislation. One of the reasons that this bill has been—we are trying to move it is the view from Justice that they do not have the authority currently to go after these practices. Senator Schumer contacted the Justice Department, as he testified, after the 2006 elections, and the Attorney General responded and

even before our Committee responded that he did not believe that he had the legal authority to look into these types of issues because there is no Federal law that makes these practices illegal.

Now, there are some State laws, I am finding out, so I would just like to find out from you how important you believe it is to have Federal law enforcement in order to try to combat these types of practices.

Mr. SHELTON. Why don't I begin by saying that the most important provisions in this bill from the NAACP's standpoint is the preventative provisions; that is, indeed what the bill does is engage the Federal Government to utilize, for instance, its CRS division to be able to provide the correct information to the local constituencies so that they can actually know when the elections are being held and they will not lose the opportunity to cast that vote. They will not indeed be disenfranchised.

Indeed, that is an extremely important provision in this bill that will help make sure that after the fact, too often as we see when there is fraud in an election, the votes are lost, the decisions are made, and, quite frankly, the candidate that a majority of those living in that particular precinct, State, or otherwise is not the person that wins the election.

So, indeed, engaging the Federal Government, giving the Federal Government the authority to actually utilize the local media, to utilize other entities to be able to get the information out so that people indeed can cast that vote in due time.

Mr. TRASVIÑA. And I would just add that having the Federal Government involved in this gives it the outside independence that is particularly important on these issues, and with candidates who are often involved in local parties, have it one step removed from the State. The Federal Government is the appropriate place for this authority to be rested.

Senator CARDIN. Historically, of course, it has been the Federal actions that have brought about the greatest advancements as far as removing barriers.

Senator Hatch?

Senator HATCH. Let me just ask the panel—I have been sitting here thinking. In the 2000 Presidential elections, news organizations erroneously announced that the polls in Florida had closed and that Gore had won at that particular point. Couldn't this proposed legislation be used to prosecute members of these news organizations? Or could it? I would at least like to have your viewpoint on it. We will start with you, Mr. Shelton.

Mr. SHELTON. If it can be proven that it was intentional to—

Senator HATCH. You think that is what the pivotal question would be. Do you agree, Mr. Trasviña?

Mr. TRASVIÑA. I do not believe that this legislation would cover that type of situation.

Senator HATCH. OK. Mr. Briffault?

Mr. BRIFFAULT. If the reporter knew that the polls were open and said they were closed and did that in order to persuade people not to vote when they were still eligible to vote, then I could it might fall within this. I would have to think about whether there is a broader press exemption. But I think in a situation of a reporter abusing a reporter's position to intentionally disseminate

false information with the intention of getting people not to vote, that could fall within this.

Senator HATCH. Well, we have never seen that around here, of course.

Mr. Canfield?

Mr. CANFIELD. Senator Hatch, I would just say that your question, I think, points out one shortcoming, and that is, there are many ways of getting out false and disseminating false information in a campaign setting that can never be attributed to anybody in the campaign itself. More often than not, in my experience, the problems that occur at the local grassroots precinct level are caused by people acting at that level not in connection with some higher authority at the State party or the Federal national party committees or that kind of thing.

State and Federal elections tend to be very result oriented, and if you are a local campaign operative or supporter of a candidate, you may not have a position in the campaign, but if you are sufficiently motivated to support that candidate, you will in some instances do whatever you think is necessary to achieve that end.

That is what strikes me about so much of this anecdotal information that we see here. With the exception of the one that was allegedly attributed to the gubernatorial and senatorial Republican candidates in Maryland, the rest of this looks like it is done by somebody in their basement. It does not look very professional. It does not look like a campaign would put it out.

So what I think is you have in most instances where stuff like this comes across the transom, you have people who are operating independently of anybody, whose intentions are to help or hurt one party, but are not acting in concert or as an agent of that party.

Senator HATCH. OK. Mr. Kirsanow?

Mr. KIRSANOW. Senator, Section 3(b)(1)(A)(ii) talks about intent and the information that is conveyed in terms of time and place of the election. I agree with Professor Briffault that if there was some showing of intent on the part of the media agencies, it could possibly fall within that.

In my day job on the National Labor Relations Board, we conduct elections. Now, electing Senators may not be as important as electing a union, but, nonetheless, we have got all kinds of manners of structures to protect that right to vote. And one of the things we are concerned about is having a buffer during the election campaign that recognizes that even if, you know, it may be unlawful, we have got to be very careful to make sure that that buffer does not somehow intrude upon legitimate speech. You have got to be very careful in taking a scalpel in how you carve out what is prohibited speech.

Now, I do not think that there is—I am not a First Amendment scholar, so I will not address the First Amendment concerns at all. And I think these kinds of acts are despicable and need to be addressed. But, nonetheless, I think it would probably be a fairly high hurdle to show that media is intentionally trying to defraud or mislead voters. In Tallahassee and the Panhandle of Florida, there were allegations that came to our attention that there were hundreds of people who were in line ready to vote, and then there was a report that, in fact, you know, one of the candidates had, in fact,

won. And a lot of people went home, and it turned out to be that that was false. Then there were reports that certain polling stations were closed and people go home. Mr. Shelton talked about that in St. Louis, and that occurs in a lot of areas.

The question is: Can you show intent? The question is: How broadly is intent defined?

Senator HATCH. Thank you.

Professor Briffault, we are honored to have all of you here, and I have enjoyed your testimony, but in his testimony, Mr. Johnson testified or cited several examples of "false and deceptive" practices that he believes should be prohibited and criminalized by this legislation.

Now, one of the examples, as I understand it, that Mr. Johnson provided was a political sign saying, "We are not slaves to the Democrats." Do you agree with Mr. Johnson's assessment that these signs were "false and deceptive" and were a "deliberate effort to confuse, to mislead, and to suppress African-American votes"? And, furthermore, would these signs fall into the purview of this legislation? And the last question would be: Where do you draw the line?

Mr. BRIFFAULT. Those statements would not fall within this legislation. They do not deal with any of the three specific things this legislation addresses—time, place, and manner, qualifications to vote, or false statement of endorsements.

More generally, no, I would not consider them to be the kinds of "false statements" that you could regulate. They are hyperbole. They are the kinds of strong statements that are, you know, the heart of politics. I mean, like it or not, these things are the kinds of strong, exaggerated, often negative statements, the harsh rhetoric that have been part of American politics since the founding. And these kinds of statements would not be picked up by this bill. They should be challenged by people on the other side. They should be decried for the kinds of images that they use, but the response to these kinds of statements is more counter statements. I do not think they—I believe they are not regulated by this bill. I do not believe they could be regulated by any bill constitutionally, and I think that is the right result.

I think the kind of line that has been drawn is the line that the Supreme Court has drawn, which is about statements of fact and things which will be perceived as statements of fact. I think in a situation like that, no one would believe that anyone was being treated as a slave in a literal sense. It is being used in a metaphoric sense, and I think that is the way any person seeing the billboard would react to it.

Senator HATCH. Mr. Canfield, do you agree with that?

Mr. CANFIELD. Mr. Chairman, I would give you an example of the kind of problem that is addressed in the legislation, the false endorsement right up before the general election. In my experience, there is a mechanism currently in Federal law to deal with a situation like that, and I give you as an example the campaign of Congresswoman Ellen Tauscher a few years ago in California, I would say now about 8 or 10 years ago. I think it was her first term. She ran against a Republican, and during the heart of the campaign, within probably a month of the general election, a flier went out

to all of the registered Democrats in her district. It was allegedly signed by George Miller of California, I think the dean of the California House delegation—obviously, it was not his signature, but it was a facsimile of his signature—saying that Ellen Tauscher was wrong on several fronts. She had voted with the Bush administration on certain legislation and was not supported by rank-and-file Democrats.

It caused a big stir in that district. It was never proven where the source of the flier came from. It was never proven that it came from her Republican opponent. But a Federal grand jury in Washington met on that allegation. The Federal Election Commission got a whole of it first because there was a complaint by the Tauscher campaign against her opponent. After the Federal Election Commission was involved, there was a Federal grand jury seated in Washington, and I had a client who testified before that grand jury.

So to say that the Federal Government or the Justice Department does not regularly oversee or prosecute in this area is not correct. They did in that instance. They got a criminal conviction, the Justice Department, in that instance.

Senator HATCH. Thank you, Mr. Chairman.

Senator CARDIN. Mr. Canfield, I should have taken you to the Justice Department when I met with them to see whether they would pursue the Maryland circumstances, because they told me they had no authority to do it. We had some discussions about that.

I would just point, again, I agree with Senator Hatch. I thank all of you for your testimony. I found this panel to be extremely helpful. We know we are dealing with tough subjects. Whenever you are dealing with First Amendment issues, you have a difficult issue to deal with, and election laws make it even more complicated. I do not mean to minimize that, but I would just make an observation. I was not on this Committee when the Voting Rights Act was passed in the 1960's, but I imagine some of the points that were made that these are just local issues and they are isolated and they are not really part of a pattern of a political party were made back then. And the Congress did right when they passed the Voting Rights Act and made it clear that we would not tolerate as a Nation practices that try to infringe upon the rights of individuals to vote.

Mr. Canfield, I would just point out that I think this is somewhat evolutionary. Yes, the fliers that I first saw, I had no idea who put them out. They were hard to figure out who was identifying these fliers. But then we saw in California and Virginia and Maryland organized efforts. These were not individual independent operators. These were sophisticated operations using targeted lists, using robo-calls, and in Maryland using literature under the authority of the Governor and candidate for U.S. Senate.

So this was not something that was without a great deal of thought, and unless we clarify this situation, I expect that you will see bolder actions and the acceptability that it is fair game to win an election to try to suppress vote.

Now, the fact that they do it the night before the election tells you just how proud they are of the tactics they are using, and I think you will see a lot of that continue to happen.

This bill is very narrowly drawn. When Mr. Johnson was testifying about the slavery posters, I pointed out that that would not be affected by this bill. As despicable as those ballots were, this bill is not aimed at that, nor should it be aimed at that. There is a lot of information put out in campaigns I have been involved with against me that were absolutely wrong. But that is part of the political process, and people put spins on different things, and I have got to be prepared to respond to it. And I am prepared to respond to it, even if it comes at the 11th hour.

But what I should not have been to be dealing with and no candidate should be subjected to is tactics used to suppress minority vote. And this bill, I think, is very narrowly drawn. I would argue that perhaps we should consider broadening it, but I think we have the right support group now, and I hope that we can move it the way it has been negotiated.

But I would just urge all of you to take a look at this, look at what we are trying to achieve and send a clear message of what we think is right and wrong in the election process, and to look at the purpose of this legislation. I am pleased that the House committee has already acted on it. I was talking to Congressman Hoyer earlier, and I am hopeful that the House will act on this bill. And I hope that our Committee and the Senate will act on this legislation. I think it is an important issue. I do not know of anything that is more important than making sure that our elections are fair, open, and available to all of our eligible voters and we try to get the highest possible participation. That is not a partisan issue and one in which Democrats and Republicans need to come together on and the Federal Government needs to play a critical role in that.

The record will be held open for 1 week for written testimony from other groups that wish to submit it. Again, I thank all of you for participating, and the Committee will stand in recess.

[Whereupon, at 4 p.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

VOTE FRAUD, INTIMIDATION & SUPPRESSION IN THE 2004 PRESIDENTIAL ELECTION

July 21, 2005

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"Free and honest elections are the very foundation of our republican form of government. Hence any attempt to defile the sanctity of the ballot cannot be viewed with equanimity."

United States v. Classic, 313 U.S. 299 at 329 (1941).

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Legislative Fund

July 2005

Dear Fellow Americans:

The American Center for Voting Rights Legislative Fund ("ACVR Legislative Fund") is proud to present the following report as the most comprehensive and authoritative review of the facts surrounding allegations of vote fraud, intimidation and suppression made during the 2004 presidential election. Using court records, police reports and news articles, ACVR Legislative Fund presents this "after action report" which documents hundreds of incidents and allegations from around the country, notes whether a factual basis for the charge exists and assesses what actions, if any, were taken by the responsible party, law enforcement or the courts. Most importantly, ACVR Legislative Fund makes eight key recommendations that, if implemented, will secure the American election system so that all voters will have the ability to participate free of intimidation and harassment and no legitimate voter will be disenfranchised by an illegal vote. These recommendations also call for accountability for the political parties and activist groups engaged in the political process by holding them responsible for the actions of their operatives seeking to cast illegal votes or to intimidate or harass voters.

ACVR Legislative Fund found that thousands of Americans were disenfranchised by illegal votes cast on Election Day 2004. For every illegal vote cast and counted on Election Day, a legitimate voter is disenfranchised. This report documents 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.

ACVR Legislative Fund further found that, despite their heated rhetoric, paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election. Whether it was slashing tires on GOP get-out-the-vote vans in Milwaukee or court orders stopping the DNC from intimidating Republican volunteers in Florida, the evidence presented in this report shows that paid Democrat operatives were responsible for using the same tactics in 2004 that they routinely accuse Republicans of engaging in.

Based on the findings of this report, it is clear that legislative reforms alone will not restore the public's trust in the American election system. ***Thus ACVR Legislative Fund's central recommendation is for both national political parties to formally adopt a zero-tolerance fraud and intimidation policy that commits them to repudiate any effort to intimidate voters or volunteers or commit vote fraud and to cooperate in the prosecution of any individual or allied organization that commits vote fraud or that seeks to intimidate any eligible voter from participating in the election.*** By its very nature, vote fraud is not a crime which an individual has an incentive to commit. The only object of vote fraud – or voter

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intimidation – is to achieve a political result. As such, legislation reform and enforcement should focus on the political stakeholders who are the beneficiaries of any vote fraud or voter intimidation. ACVR Legislative Fund also makes specific recommendations for legislative reform that will help stop vote fraud before it happens. ACVR Legislative Fund was founded on the belief that it should be easy to vote but tough to cheat. These common-sense recommendations – such as requiring government-issued photo ID at the polls and accurate statewide voter registration databases – will help assure that all legitimate voters are able to cast a ballot and that no American is disenfranchised by illegal votes.

In addition to recommended changes and a zero-tolerance commitment by the political parties, ACVR Legislative Fund has identified five cities as "hot spots" which require additional immediate attention. These cities were identified based on the findings of this report and the cities' documented history of fraud and intimidation. ACVR Legislative Fund will work with national and state political parties, state legislators and local officials to create a process that supports local election officials in these cities and ensures that any effort to continue the historic pattern of fraud and intimidation in the 2006 election is exposed and stopped.

1. Philadelphia, PA
2. Milwaukee, WI
3. Seattle, WA
4. St. Louis/East St. Louis, MO/IL
5. Cleveland, OH

ACVR Legislative Fund believes that public confidence in our electoral system is the cornerstone of our democracy. Punishing those who engaged in acts of vote fraud and voter intimidation in 2004 and strengthening the legislative safeguards against such activity in future elections makes clear to the American public that such activities are not tolerated at any level by any party and serves as a warning to deter those who may consider illegal activities for future elections. In the coming weeks and months, ACVR Legislative Fund will work with national and local leaders from both political parties as well as election officials and grassroots activists to restore citizens' faith in the American electoral process.

As General Counsel and Chairman of the Board of the American Center for Voting Rights Legislative Fund, we are pleased to present this report to the public.

Mark F. "Thor" Hearne
Counsel

Brian A. Lunde
ACVR Legislative Fund Board Member

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Executive Summary

The 2004 presidential election was unlike any other. A closely divided but highly passionate American electorate achieved the highest percentage of voter turnout since 1968, as 122 million voters went to the polls on Election Day. President George W. Bush was reelected with the most votes for any presidential candidate in history, while his challenger Senator John Kerry received the second most votes ever. However, despite huge voter turnout on November 2, recent studies have shown that public confidence in the American election system is low. As has been pointed out by election law expert Professor Richard L. Hasen, a post-election NBC News/*Wall Street Journal* poll found that more than a quarter of Americans worried that the vote count for president in 2004 was unfair. Moreover, a Rasmussen Reports poll found that 59 percent of Americans believed that there was "a lot" or "some" fraud in American elections.[1]

The American Center For Voting Rights Legislative Fund ("ACVR Legislative Fund") was founded on the belief that public confidence in our electoral system is the cornerstone of our democracy. ACVR Legislative Fund was established primarily to further the common good and general welfare of the citizens of the United States of America by educating the public about vote fraud, intimidation and discrimination which impacts the Constitutional right of all citizens to participate in the electoral process. This important task requires an honest accounting of activity during the 2004 election, so that we may move forward with a common set of facts to address the issues that undermine public confidence in American elections. ACVR Legislative Fund presents the following report as the most comprehensive and authoritative look at the facts surrounding allegations of vote fraud, intimidation and suppression leveled by both parties during the 2004 election. This investigation found the following:

- While Democrats routinely accuse Republicans of voter intimidation and suppression, neither party has a clean record on the issue. Instead, the evidence shows that Democrats waged aggressive intimidation and suppression campaigns against Republican voters and volunteers in 2004. Republicans have not been exempt from similar criticism in this area, as alleged voter intimidation and suppression activity by GOP operatives led the Republican National Committee to sign a consent decree repudiating such tactics in 1982. However, a careful review of the facts shows that in 2004, paid Democrat operatives were far more involved in voter intimidation and suppression efforts than their Republican counterparts. Examples include:

  - Paid Democrat operatives charged with slashing tires of 25 Republican get-out-the-vote vans in Milwaukee on the morning of Election Day.

  - Misleading telephone calls made by Democrat operatives targeting Republican voters in Ohio with the wrong date for the election and faulty polling place information.

[1] Professor Richard L. Hasen, Testimony Before The Commission On Federal Election Reform (Carter-Baker Commission), Washington, DC, April 18, 2005

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- Intimidating and deceiving mailings and telephone calls paid for by the DNC threatening Republican volunteers in Florida with legal action.

- Union-coordinated intimidation and violence campaign targeting Republican campaign offices and volunteers resulting in a broken arm for a GOP volunteer in Florida.

➢ Vote fraud and voter registration fraud were significant problems in at least a dozen states around the country. Vote fraud is a reality in America that occurred not only in large battleground states like Wisconsin but in places like Alabama and Kentucky. The record indicates that in 2004, voter registration fraud was mainly the work of so-called "nonpartisan" groups such as Association of Community Organizations for Reform Now (ACORN) and NAACP National Voter Fund. Examples include:

- Joint task force in Wisconsin found "clear evidence of fraud in the Nov. 2 election in Milwaukee," including more than 200 felon voters, more than 100 double voters and thousands more ballots cast than voters recorded as having voted in the city.

- NAACP National Voter Fund worker in Ohio paid crack cocaine in exchange for a large number of fraudulent voter registration cards in names of Dick Tracy, Mary Poppins and other fictional characters.

- Former ACORN worker said there was "a lot of fraud committed" by group in Florida, as ACORN workers submitted thousands of fraudulent registrations in a dozen states across the country, resulting in a statewide investigation of the group in Florida and multiple indictments and convictions of ACORN/Project Vote workers for voter registration fraud in several states.

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I. ACVR Legislative Fund's Recommendations For Future Action

No amount of legislative reform will effectively deter those who commit vote fraud and intimidation if there is no punishment of those individuals and organizations that commit vote fraud or who intimidate voters. By its very nature, vote fraud is not a crime which an individual has an incentive to commit. The only object of vote fraud – or voter intimidation – is a political result. As such, legislation reform and enforcement should focus on the political stakeholders who are the beneficiaries of any vote fraud or voter intimidation. Past prosecutions of vote fraud tend to limit the prosecution to the individual operatives who are caught and not address the organizations sponsoring the illegal activity. Voters will not have confidence in legislative reforms unless individuals and organizations seeking to illegally influence the outcome of elections are held accountable. Those organizations whose workers commit vote fraud need to be held just as responsible as the individual operatives engaged in the fraud. Organizations often create conditions under which vote fraud is not only possible, but encouraged. Punishing those who engaged in vote fraud and intimidation makes clear to the American public that such activities are not tolerated at any level by any party and serves as a warning to deter those who may consider illegal activities in future elections.

ACVR Legislative Fund's central recommendation is for both political parties to adopt a zero-tolerance fraud and intimidation policy that commits them to reporting and cooperating in the prosecution of any individual and organization involved in fraud and intimidation during the 2004 election. Leaders of both political parties can take immediate steps to boost confidence in the electoral process by calling on law enforcement officials to punish the individuals and organizations that engaged in documented vote fraud and intimidation last year.

This report also makes specific recommendations for legislative reform that will help stop vote fraud before it happens and will assure citizens of the opportunity to participate in elections free of intimidation. ACVR Legislative Fund was founded on the belief that it should be easy to vote but tough to cheat. These recommendations – such as government-issued photo ID at the polls and accurate statewide voter registration databases – will help assure that all legitimate voters are able to cast a ballot and that no American is disenfranchised by illegal votes or being wrongly excluded from the voter roll.

ACVR Legislative Fund is committed to working with national and local leaders from both major political parties as well as election officials and grassroots activists to restore citizens' faith in the American electoral process. ACVR Legislative Fund presents the following recommendations for future action:

1. 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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2. 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.

3. States should adopt legislation requiring that all polling places be fully aceessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.

4. 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.

5. 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..

6. 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.

7. 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.

8. States should adopt legislation prohibiting "bounty" payment to voter registration solicitors based on the number of registration cards they collect.

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II. Voter Intimidation & Suppression Introduction

Allegations of voter intimidation and suppression have been leveled by both political parties and across the political spectrum. This section of the report details the most serious of the allegations, notes the factual basis for the charges and what actions, if any, were taken by the responsible party, law enforcement or the courts. While some reference to past incidents and allegations are made in order to provide context to the study, this report focuses exclusively on the 2004 presidential election and assesses each allegation equally without regard to the political party against which the charge was made.

Democrats have traditionally alleged that Republicans engage in voter intimidation and voter suppression campaigns targeting minority communities. The 2004 presidential campaign was marked by aggressive, repeated and coordinated charges by Democrats that the GOP was engaged in a massive campaign to intimidate and harass minority voters, effectively keeping them away from the polls. These charges did not end on Election Day. After the election, in April 2005, Senator Kerry charged that "too many people were denied their right to vote, too many who tried to vote were intimidated."[2] In June 2005, Democratic National Committee Chairman Howard Dean said "the Republicans are all about suppressing votes."[3]

The following section addresses allegations of voter intimidation and suppression leveled by both parties in the 2004 election.

[2] *Kerry: Trickery Kept Voters From Polls*, Michael Kunzelman, THE ASSOCIATED PRESS, April 10, 2005
[3] DNC Chairman Howard Dean, Remarks To The Campaign For America's Future "Take Back America" Conference, Washington, DC, June 2, 2005

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III. Charges Of Voter Intimidation & Suppression Made Against Republican Supporters

3.1 Overview

Democrats have traditionally alleged that Republicans engage in voter intimidation and voter suppression campaigns targeting minority voters. The 2004 presidential campaign was no different.

Charges of voter intimidation and suppression against Republicans typically refer back to allegations of such activity in New Jersey in the 1980s. In 1982, the Republican National Committee and New Jersey Republican Party signed a Consent Decree in federal court pledging that they would not condone any tactics that would intimidate Democrat voters. The Consent Decree was part of a settlement in a civil lawsuit brought by Democrats alleging that a Republican "ballot-security task force" frightened some minority voters from polling places during the 1981 general election in New Jersey. Democrats alleged that the Republican task force hired off-duty police officers to monitor polls and posted signs in minority areas warning against vote fraud. The RNC denied these allegations and agreed to a "Consent Decree." Under the terms of the Consent Decree the RNC agreed to "refrain from undertaking any ballot security activities in polling places or election districts where the racial composition of such districts is a factor."[4]

The New Jersey consent decree, and the events leading to the RNC's agreement to sign it, has provided Democrats with a platform from which to charge Republicans with voter intimidation in elections since 1982. While a review of the consent decree provides historical context to charges of voter intimidation and suppression made against Republicans today, this report evaluates such activity occurring during the 2004 campaign. Of course, allegations mean little if not supported by facts. An internal Kerry-Edwards/DNC manual obtained by the press in October 2004 urged Democrat operatives to launch "pre-emptive strikes" alleging Republican voter intimidation against minority voters, regardless of whether evidence of such intimidation actually existed. The Kerry-Edwards/DNC "Colorado Election Day Manual" stated: "If no signs of intimidation techniques have emerged yet, launch 'pre-emptive strike.'"[5] Though titled "Colorado Election Day Manual" this document and its recommendations were reportedly part of the campaign plan used by Democrats in Florida and other battleground states.[6]

Any effort to suppress or intimidate any voter from freely participating in our election process is reprehensible. All credible allegations of such activity should be seriously investigated by the appropriate law enforcement authority and, where found to have occurred, prosecuted. It is, however, equally reprehensible to use false charges of voter suppression or harassment to motivate some segment of the electorate.

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[4] *GOP Agrees Not To "Intimidate" Democratic Voters*, THE ASSOCIATED PRESS, November 4, 1982; *GOP Agrees to Settle "Ballot Security" Suit*, Bill Peterson, THE WASHINGTON POST, July 24, 1987

[5] Kerry-Edwards/DNC "Colorado Election Day Manual: A Detailed Guide To Voting In Colorado," November 2004 (Exhibit A)

[6] *Manual Reveals Voting Tactics*, Lucy Morgan, ST. PETERSBURG TIMES, October 15, 2004

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The following section seeks to analyze the relative merits of the Democrats' allegations.

3.2 Incidents Of Voter Intimidation & Suppression

(a) Charges Of Long Lines Orchestrated By Republicans To Suppress The Minority Vote

On June 2, 2005, Democratic National Committee Chairman Howard Dean charged that Republicans caused long lines at polling places on Election Day to suppress the minority vote. Dean stated:

> "The Republicans are all about suppressing votes: two voting machines if you live in a black district, 10 voting machines if you live in a white district. ... You know, the idea that you have to wait on line for eight hours to cast your ballot in Florida there's something the matter with that. ... Well, Republicans, I guess, can do that because a lot of them never made an honest living in their lives."[7]

Dean was just the latest Democrat leader to make this charge. In January 2005, the Rev. Jesse Jackson charged that "blatant discrimination in the distribution of voting machines ensured long lines in inner-city and working-class precincts that favored John Kerry, while the exurban districts that favored President Bush had no similar problems."[8] The Democrat staff of the House Judiciary Committee, led by Ranking Member Rep. John Conyers (D-MI), alleged in a January 2005 report that "the misallocation of voting machines [in Ohio] led to unprecedented lines that disenfranchised scores, if not hundreds of thousands, of predominantly minority and Democratic voters." The Conyers report specifically cited Franklin County, Ohio, as an area in which Republicans intentionally misallocated voting machines in order to cause long lines and disenfranchise minority voters.[9]

However, Democrat election officials in Franklin County and the U.S. Department of Justice have refuted this allegation. During the recent U.S. House Administration Committee hearing held in Columbus, William Anthony, Chairman of the Franklin County Democratic Party and County Board of Elections, flatly rejected the allegation that long lines were part of some effort to disenfranchise minorities and/or Democrat voters. Anthony further testified that long lines were not limited to minority and Democrat communities. Anthony stated under oath:

> "Some have alleged that precincts in predominantly African American or Democratic precincts were deliberately targeted for a reduction in voting machines, thus creating the only lines in the county. I can assure you Mr. Chairman and members of the committee, both as a leader in the black community and Chairman of the local Democratic Party and

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[7] DNC Chairman Howard Dean, Remarks To The Campaign For America's Future "Take Back America" Conference, Washington, DC, June 2, 2005

[8] *Senators Should Object To Ohio Vote*, Rev. Jesse Jackson, Op-Ed, CHICAGO SUN-TIMES, January 4, 2005

[9] *Preserving Democracy: What Went Wrong In Ohio*, Report Of The House Judiciary Committee Democratic Staff, January 5, 2005

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a labor leader and Chairman of the Board of Elections, that these accusations are simply not true."[10]

Anthony stated that "on Election Day I spent several hours driving around the county in the rain and observed long lines in every part of our county, in urban and suburban neighborhoods, black and white communities, Democrat and Republican precincts." He referred to those who made claims about long lines and disenfranchisement as "conspiracy theorists" and "Internet bloggers."[11]

Anthony noted that the entire process for allocating voting machines in the county was controlled by a Democratic supervisor.[12] He cited three reasons for the long lines in Franklin County on Election Day 2004: increased voter turnout, static resources and an exceptionally long ballot.[13] Finally, Anthony was "personally offended" by these allegations. As he told *The Columbus Dispatch*, "I am a black man. Why would I sit there and disenfranchise voters in my own community? ... I feel like they're accusing me of suppressing the black vote. I've fought my whole life for people's right to vote."[14]

In July 2005, the U.S. Department of Justice reported that its investigation of Franklin County found that the county "assigned voting machines in a non-discriminatory manner." As to charges of racial disparities in voting machine allocation, the Justice Department found that "the allocation of voting machines actually favored black voters because more white voters were voting on each voting machine than black voters." The Department reported that white precincts averaged 172 voters per machine, while black precincts averaged 159 voters per machine. Noting that elections in Franklin County – and everywhere in Ohio – are run by a six-member Board of Elections equally divided between Republicans and Democrats, the Department concluded that "long lines were attributable not to the allocation of machines, but to the lack of sufficient machines to serve a dramatically enlarged electorate under any allocation."[15]

(b) State Rep. John Pappageorge's Statement That Republicans Needed To "Suppress" The Detroit Vote

In the 2004 campaign, Democrats repeatedly cited a quote by 73-year-old Michigan state Rep. John Pappageorge as evidence of Republican plans to suppress the minority vote. In July 2004, Pappageorge was quoted by the *Detroit Free Press* as saying, "If we do not suppress the

[10] Testimony Of William Anthony At U.S. House Committee On House Administration Hearing, Columbus, OH, March 21, 2005
[11] *Id.*
[12] *Jackson Will Join Call For Vote Probe*, Jon Craig and Robert Vitale, THE COLUMBUS DISPATCH, November 27, 2004
[13] Testimony Of William Anthony At U.S. House Committee On House Administration Hearing, Columbus, OH, March 21, 2005
[14] *Jackson Will Join Call For Vote Probe*, Jon Craig and Robert Vitale, THE COLUMBUS DISPATCH, November 27, 2004
[15] Letter From John Tanner, Chief Of Voting Section Of U.S. Department Of Justice's Civil Rights Division, To Franklin County Assistant Prosecuting Attorney Nick A. Soulas, Jr., June 29, 2005 (Exhibit B)

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Detroit vote, we're going to have a tough time in this election." Detroit is 83 percent African American.[16]

When questioned about his statement, Pappageorge said the quote was misunderstood and then apologized to every Detroit legislator in the state House of Representatives. Pappageorge stated, "In the context that we were talking about, I said we've got to get the vote up in Oakland (County) and the vote down in Detroit. You get it down with a good message."[17] Pappageorge immediately resigned from his position as a chairman of Michigan Veterans for Bush-Cheney.[18]

We have found no evidence of any plan by Pappageorge or others to suppress the minority vote in Detroit. In fact, minority voter participation in the presidential election in Michigan was up in 2004.[19] Voter turnout in Detroit increased in 2004 from 2000, and African American voters reportedly voted 95 percent for John Kerry.[20] Statements such as those by Pappageorge are highly inflammatory, even in the absence of any corresponding effort to suppress voter turnout. No political party, candidate or campaign should premise its success on a strategy of suppressing the participation of any class or group of voters, whatever that group of voters' racial or demographic characteristics. Rather, the political process works best when the parties, candidates and their campaigns focus on delivering a message that encourages their support and seeks to persuade voters to support their position.

(c) **Charges That Republicans Spread Misinformation On Date of Election And Polling Places**

In the weeks leading up to Election Day 2004, there were scattered reports of misinformation being spread about where and when the vote would take place. In Ohio, there were reports of fliers being distributed that said Republicans were to vote on Tuesday (November 2) and Democrats on Wednesday (November 3). Callers to nursing homes reportedly told senior citizens that the elderly were not allowed to vote and other callers directed people to the wrong polling places in African American neighborhoods or said voters who owed back child support or had unpaid parking tickets would be arrested if they came to the polls.[21]

No paid Republican operative has been linked to these misinformation efforts. A review of such incidents linked to paid Democrat operatives appears in the next section of this report. While we found no evidence that GOP operatives were responsible for these heinous acts, both the Republican and Democrat parties and law enforcement should be fully committed to investigating and prosecuting all reported efforts to misinform voters, or any effort to

[16] *Democrats Blast GOP Lawmaker's 'Suppress The Detroit Vote' Remark*, THE ASSOCIATED PRESS, July 21, 2004
[17] *Id.*
[18] *Remark Sets Off Election Fervor*, Kathleen Gray, DETROIT FREE PRESS, October 13, 2004
[19] *Blacks, Hispanics Vote For Kerry But Energize Both Campaigns*, Gromer Jeffers Jr., THE DALLAS MORNING NEWS, November 3, 2004
[20] *Voters Brave Rains, Long Lines In Michigan To Cast Votes On Election Day*, THE ASSOCIATED PRESS, November 3, 2004; *Kerry Holds Narrow Lead In Divided Michigan*, Charlie Cain and Mark Hornbeck, THE DETROIT NEWS, November 3, 2004
[21] *Analysis: Ohio Voters Wait And Vote*, Al Swanson, UNITED PRESS INTERNATIONAL, November 2, 2004

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intentionally misdirect a voter so the voter will be denied the opportunity to participate in the election. What follows is a review of incidents in which it was charged that Republicans misinformed Democrat voters in 2004.

News reports indicate that in Franklin County, Ohio, a bogus flier was distributed telling Democrats to vote on Wednesday, November 3, the day after Election Day. The flier falsely claimed to be from the Franklin County Board of Elections. Republican operatives were never linked its distribution, and the Chairman of the Franklin County Democratic Party "didn't think it was a ploy by his Republican counterparts." Election officials took action to counteract this false information.[22] Franklin County Elections Director Matthew Damschroder, a Republican, held a press conference to warn voters about the fraudulent flier and reemphasize that the election was indeed on November 2. The county Elections Board also mailed a post card to each of the more than 800,000 registered voters in the county informing them of their correct precinct and voting location at a cost of over $250,000 to the county.[23] These efforts by election officials to respond quickly to reports of voter misinformation are commendable and illustrate responsible action in response to this issue.

In Lake County, Ohio, some voters reportedly received letters on fake election board letterhead telling them that if they were registered by certain Democrat groups they would be unable to vote on Election Day.[24] The letter, headlined "Urgent Advisory," said that no one registered by NAACP, America Coming Together (ACT), or the John Kerry and Capri Cafaro campaigns would be able to vote because the groups had registered voters illegally.[25] ACT spokesman Jess Goode charged that the letter was "proof positive that the Republicans are trying to steal the election in Ohio. They know they can't win if all legitimate Ohio voters cast their ballots, so they're kicking up a storm of voter intimidation and suppression."[26] The Cleveland *Plain Dealer* reported that Lake County Sheriff Dan Dunlap was investigating the matter. We could find no evidence that any paid Republican operative was linked to these letters in Lake County.

In Milwaukee, a flier from the fictional group "Milwaukee Black Voters League" was reportedly distributed in African American neighborhoods inaccurately telling voters they were ineligible if they voted previously in the year or if they had been convicted of any offense, no matter how minor.[27] The flier also warned, "If you violate any of these laws, you can get ten years in prison and your children will get taken away from you."[28] A spokesman for the Wisconsin Republican Party denounced the flier as "appalling," and a Bush-Cheney '04

[22] *As Election Draws Near, Beware Of Dirty Tricks*, Suzanne Hoholik, THE COLUMBUS DISPATCH, November 2, 2004
[23] Testimony Of William Anthony At U.S. House Committee On House Administration Hearing, Columbus, OH, March 21, 2005; *As Election Draws Near, Beware Of Dirty Tricks*, Suzanne Hoholik, THE COLUMBUS DISPATCH, November 2, 2004
[24] *Charges Of Dirty Tricks, Fraud And Voter Suppression Already Flying In Several States*, Kate Zernike and William Yardley, THE NEW YORK TIMES, November 1, 2004
[25] *Voters Told To Ignore Hoax*, Grant Segall, [Cleveland] PLAIN DEALER, October 29, 2004; *Court Actions Piling Up On Ohio Voter Eligibility*, John Nolan, THE ASSOCIATED PRESS, October 28, 2004
[26] *Voters Told To Ignore Hoax*, Grant Segall, [Cleveland] PLAIN DEALER, October 29, 2004
[27] *Campaigns Condemn Political Flier*, Steve Schultze, Milwaukee Journal Sentinel, October 30, 2004
[28] *Now They're Registered, Now They're Not*, Jo Becker and David Finkel, THE WASHINGTON POST, October 31, 2004

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spokesman said the campaign would "not tolerate any effort to suppress or intimidate voters."[29] We were unable to find any reports of Republican operatives linked to the Milwaukee fliers.

At least some of the misleading information on voting locations came from the Kerry campaign itself. On Election Day, *The Columbus Dispatch* reported that hundreds of Columbus voters received directions to the wrong polling places after Kerry campaign canvassers "mixed up the precincts in several Columbus neighborhoods." While the *Dispatch* reported that the affected neighborhoods were "predominantly pro-Kerry," some residents were extremely unhappy after receiving directions to the wrong polling place. Dawn M. McCombs, 37, "who complained to the Ohio Democratic Party about the error," said "This just really makes me mad ... It's just stupid." Columbus resident Yolanda Tolliver, who received one of the Kerry campaign fliers, was concerned about how the mistake might affect the area's elderly and poor residents. "We have people who have to work, and people who don't work at all. They're used to being discouraged. What happens is when they get frustrated, they won't vote at all," Tolliver said. Franklin County Board of Elections Director Matthew Damschroder said that while he didn't think the distribution of the incorrect poll information was "malicious," it "could disenfranchise a voter."[30]

(d) McAuliffe Letter Alleging RNC-Funded Disenfranchisement

On October 13, DNC Chairman Terry McAuliffe sent a letter to RNC Chairman Ed Gillespie accusing Republicans of "systematic efforts to disenfranchise voters – to impose unlawful ID requirements in New Mexico, to throw eligible voters off the rolls in Clark County Nevada and to deprive voters of their rights to vote a provisional ballot in Ohio, among other examples." The letter argued that while Republicans claimed to combat vote fraud, "it is actually the Republicans who are engaging in vote fraud in Nevada, Oregon and potentially other states." McAuliffe cited the example of a voter registration organization paid by the RNC that was accused of "ripping up Democratic voter registration forms" in Nevada.[31]

McAuliffe's reference to "ripping up Democrat voter registration forms" was a reference to the charges leveled by a former employee of the voter registration firm Sproul & Associates. These charges were, however, later found to be without merit. In October 2004, former Sproul & Associates employee Eric Russell claimed to have witnessed his supervisors tearing up Democrat registration forms. Russell, who admitted to being a disgruntled employee upset about not being paid for work he claimed to have done, said he witnessed his supervisor shred eight to ten Democratic registration forms from prospective voters.[32]

On the basis of these allegations, the Nevada Democratic Party sued the state of Nevada to reopen voter registration only in Clark County. A state court judge rejected the suit, saying

[29] *Campaigns Condemn Political Flier*, Steve Schultze, Milwaukee Journal Sentinel, October 30, 2004
[30] *Kerry Crew Gives Some Voters Wrong Poll Site*, Matthew Marx and Dean Narciso, THE COLUMBUS DISPATCH, November 2, 2004
[31] Democratic National Committee, *McAuliffe Letter Demands Answers From Gillespie On RNC Funded Vote Fraud*, Press Release, October 13, 2005
[32] *Executive Denies Voter Registration Forms Destroyed In Nevada*, Adam Goldman, THE ASSOCIATED PRESS, October 13, 2004

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that Democrats' thin evidence of registration forms actually being destroyed did not justify reopening the registration process.[33]

In late October, Nevada Secretary of State Dean Heller announced that a state investigation of Eric Russell's claims against Sproul found "no evidence of an organized or concerted effort which would influence or impact the result of the elections in Clark County based on these allegations."[34]

Allegations were also made that Sproul & Associates was registering Republicans exclusively and tearing up registration cards in Minnesota, Oregon, Pennsylvania and West Virginia.[35] While the Secretary of State and Attorney General launched investigations of Sproul's activities in Oregon, there are no reports indicating any indictments or other legal actions taken against Sproul or its workers in these states.[36] The mere fact of these allegations and the other documented abuses of the voter registration process and incidents of voter registration fraud detailed in this report support reforming the process by which third-party groups participate in voter registration efforts and call for more accountability and oversight of third party voter registration efforts by election officials.

(e) Charges That Republicans Targeted Minority Precincts For Polling Place Challengers In Jefferson County, Kentucky

Prior to and since the 2003 elections, Democrats and their allies alleged that the Jefferson County, Kentucky, Republican Party's placement of challengers in Democrat precincts was an attempt to suppress the African American vote by illegally targeting precincts in the county based on race.[37] Days before the 2003 gubernatorial election, the American Civil Liberties Union filed a lawsuit accusing the county Republican Party of singling out minority Democrat precincts for intimidation through vote challengers.[38]

On November 4, Jefferson County Circuit Judge Thomas Wine denied the ACLU's effort to ban GOP challengers from the polls and determined that their allegations of racial targeting were not supported by the evidence. Judge Wine found that Republicans placed challengers in county precincts without regard to any racial criteria. The judge ruled that the county Republican Party used a "racially neutral" method of placing challengers, choosing those precincts "with the highest percentage of registered Democratic voters vis-à-vis Republican." Judge Wine noted that "speculation alone" by the ACLU and Democrats about the challengers' placement was "not sufficient" to merit a restraining order. According to Judge Wine's order,

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[33] *Nevada Judge Declines To Reopen Voter Registration In Vegas Area*, Ken Ritter, THE ASSOCIATED PRESS, October 15, 2004

[34] Nevada Secretary Of State, *Alleged Vote Fraud Investigations Ongoing*, Press Release, October 28, 2004

[35] *Voter Registration Drive Funded By GOP Accused Of Deception, Destroying Registration Cards*, Deborah Hastings, THE ASSOCIATED PRESS, October 22, 2004; *3 Former Workers: Firm Paid Pro-Bush Bonuses*, Mark Brunswick and Pat Doyle, STAR TRIBUNE, October 27, 2004

[36] *Vote Fraud Report Draws State Inquiry*, Jeff Mapes, THE OREGONIAN, October 14, 2004

[37] *The Long Shadow Of Jim Crow: Voter Intimidation And Suppression In America Today*, People For The American Way/NAACP Special Report, www.pfaw.org, Accessed April 12, 2005

[38] *GOP Vote Challengers Intended To Discourage Kentucky Democrats, Lawsuit Claims*, Mike Torralba, THE ASSOCIATED PRESS, November 1, 2003

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state law entitled Republicans to have challengers at the polls on Election Day and barred such challengers from disrupting the election process by "intimidating or harassing verbally" any voter, under penalty of being removed from the polling place.[39]

Despite the charge that Republicans were seeking to suppress the African American vote through their poll watcher program, the results of elections in 2003 and 2004 showed the opposite effect. In 2003, African American turnout actually increased in key county precincts targeted by Republicans for monitoring, and elections officials reported "no problems" with the Republican poll watchers.[40] President Bush actually lost Jefferson County by a larger margin in 2004 than he did in 2000. John Kerry won the county by 5,592 votes in 2004, while Al Gore won it in 2000 by 4,849 votes.[41]

(f) **Ohio Challenger Allegations**

In the weeks leading up to the 2004 election, the issue of partisan challengers at polling places in Ohio became a lightning rod for charges voter intimidation and suppression. Ohio law allows observers who have been properly registered and credentialed by boards of election to be present at polling locations to observe the conduct of election. The observers are supervised by election officials and have a narrowly defined role. Ohio law allows each party, as well as candidates and issue campaigns, to appoint these observers, denominated as "challengers" in the statutes. Both Republicans and Democrats applied to have thousands of challengers monitor the vote across Ohio on November 2.[42]

Republicans said they wanted challengers in polling places because of concerns about fraudulently registered voters in Ohio.[43] Democrats said they registered challengers only to watch the GOP observers, who they accused of trying to intimidate minority voters. The Rev. Jesse Jackson called the Republican challenger effort "Old South politics, a type of intimidation."[44]

Democrats "filed lawsuits accusing the GOP of trying to suppress turnout and intimidate black voters" through their challenger program. One lawsuit, filed by civil rights activists Marian and Don Spencer, asked U.S. District Judge Susan J. Dlott of Cincinnati "for an emergency restraining order barring partisan challengers from polling stations" in Ohio on the grounds that such challengers would "intimidate black voters."[45] Another lawsuit brought by Summit County Democrats asked U.S. District Judge John Adams of Akron to "to declare unconstitutional a decades-old Ohio law that allows challengers to sit in polling places and

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[39] See *Curington v. Richardson*, Jefferson Circuit Court, Case No. 03CI9552 (November 4, 2003 Order). (Exhibit C)
[40] *Jefferson Turnout*, Joseph Gerth, THE COURIER-JOURNAL, November 6, 2003; *Precincts See No Trouble With Monitors*, THE COURIER-JOURNAL, November 5, 2003
[41] CNN Website, www.cnn.com, Accessed May 4, 2005; CBS News Website, www.cbsnews.com, Accessed May 4, 2005
[42] *Challenges At The Polls Tuesday Are Limited*, Mark Niquette, THE COLUMBUS DISPATCH, October 31, 2004
[43] *Two Big Legal Wins For Ohio GOP*, CBS NEWS, November 2, 2004
[44] *Jackson: Republican Voter Challenges Reminiscent Of Old South*, THE ASSOCIATED PRESS, November 1, 2004
[45] *Judge To Decide If GOP Can Challenge Voters*, Bill Sloat and Jesse Tinsley, [Cleveland] PLAIN DEALER, November 1, 2004

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challenge voters."[46] Both Judge Dlott and Judge Adams held that the Ohio statute providing for challengers was unconstitutional and barred challengers from the polls on Election Day.[47] Neither Dlott or Adams ruled that the Republican challengers were intended to suppress minority voter participation. During the hearing before Judge Dlott Republicans were questioned extensively about the Republican challengers and the evidence established that the determination of which polling places Republican challengers observed was made without regard to any racial characteristic of the precincts in which challengers participated.

However, early on the morning of Election Day, a three-judge panel from the 6th U.S. Circuit Court of Appeals in Cincinnati overturned the lower courts' rulings to allow challengers in Ohio polling places. The court ruled that the presence of Election Day challengers was allowed under state law, and that while registered voters should be able to cast ballots freely, there is also a "strong public interest in permitting legitimate statutory processes to operate to preclude voting by those who are not entitled to vote."[48] The Plaintiffs appealed the 6th Circuit's ruling to the U.S. Supreme Court, but Associate Justice John Paul Stevens declined to hear the case, and thus refused to block the election challengers. Justice Stevens wrote that while the accusations leveled by the Plaintiffs were "undoubtedly serious" time was too short for the court to render a proper decision. Stevens also expressed faith in local election officials in declining to hear the case by writing, "I have faith that the elected officials and numerous election volunteers on the ground will carry out their responsibilities in a way that will enable qualified voters to cast their ballots."[49]

Allegations that Republican challengers in the polls would "intimidate and suppress the black vote" in Ohio in 2004, were spectacularly unfounded. African American turnout was up in predominantly black precincts in Ohio. In Cleveland, "turnout was up nearly 22 percent [from 2000] and it went higher in some black wards." In 2004, President Bush doubled his support from Ohio's black voters from 2000. According to the Cleveland *Plain Dealer*, "Black voters may have given President Bush the edge in Ohio."[50] The paper also reported that the "most feared delays of the election – from Republican challengers questioning the validity of voters at the polls – never materialized."[51] According to the *New York Times*, "there were no reports that large numbers of voters were being challenged or denied a ballot [in Ohio]."[52]

On April 28, 2005, U.S. District Judge Susan J. Dlott issued an order denying a second motion for preliminary injunction against Republicans, holding that no voter's due process rights

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[46] *Poll Rulings Monday*, Stephen Dyer, AKRON BEACON JOURNAL, October 30, 2004
[47] *G.O.P. In Ohio Can Challenge Voters At Polls*, James Dao and Adam Liptak, THE NEW YORK TIMES, November 2, 2004
[48] *G.O.P. In Ohio Can Challenge Voters At Polls*, James Dao and Adam Liptak, THE NEW YORK TIMES, November 2, 2004; *Federal Court Clears The Way For GOP Representatives To Challenge Voters' Eligibility In Ohio*, Lisa Cornwell, THE ASSOCIATED PRESS, November 2, 2004
[49] *Justice Lets Ohio Ruling On Monitors At Polls Stand*, Adam Liptak, THE NEW YORK TIMES, November 3, 2004
[50] *Both Parties Take Heart From Black Voters' Turnout*, Olivera Perkins and Margaret Bernstein, [Cleveland] PLAIN DEALER, November 7, 2004
[51] *Long Waits Biggest Problem At Most Polling Places*, Scott Hiaasen et al., [Cleveland] PLAIN DEALER, November 3, 2004
[52] *Voters Find Long Lines And Short Tempers, But Little Chaos At Polls*, Robert D. McFadden, THE NEW YORK TIMES, November 3, 2004

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are violated by Ohio's polling place challenger rules. Judge Dlott ruled that there was no evidence to support giving the plaintiffs any relief on any of their claims.[53]

The plaintiffs in the case had claimed that the procedures established by the Republican Secretary of State would deprive properly registered voters of the opportunity to vote. They asserted that a voter whose qualifications to vote were challenged would be denied rights because they might fail to fully answer questions put to them by the precinct judges. According to Judge Dlott, the plaintiffs "failed to establish a likelihood of success on the merits of claims and have not shown that any irreparable injury has resulted or will result from the [challenge] procedures." Judge Dlott held that the plaintiffs "produced no evidence at the hearing that any eligible voter was wrongfully denied a ballot under [the Ohio challenger rules] in the November 2004 election or that such a voter would be denied a ballot in any future election." Judge Dlott reasoned that "while the magnitude of the burden of having one's properly registered right to vote revoked is great, there is no evidence that it has happened or will happen in May's primary."[54]

It has been noted that it is not difficult to convince the winner of an election that the result was proper and the election was fair and honest. The difficulty is to assure the losing candidate and party that the election was legitimate. Providing openness and transparency in the conduct of elections is an important means to assure that voters and the participants in the election (the candidates and political parties) – especially those who sought a different outcome - have confidence that the election has been conducted in a fair and honest manner and that the result is a legitimate expression of the will of the voters. The presence of observers in polling places deters attempts at vote fraud and also provides assurance that there was no misconduct by election officials. All political parties and candidates should have appropriate means to have observers in polling places. State law should allow a role for observers and should provide them a meaningful opportunity to monitor the conduct of the election without interfering with the lawful conduct of the election. As the Ohio and Kentucky litigation illustrate, the mere presence of observers in polling places also invites legal challenge that such a presence is in some manner discriminatory. The outcome of the Ohio and Kentucky litigation and the actual participation in the respective elections by minority voters suggests that claims of observers lawfully monitoring the conduct of the election does not deter participation by minority or other voters.

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[53] See *Spencer v. Blackwell, et al.*, United States District Court for the Southern District of Ohio, Case No. C-1-04-738 (April 28, 2005 Order). (Exhibit D)
[54] *Id.*

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IV. Charges Of Voter Intimidation & Suppression Made Against Democratic Supporters

4.1 Overview

In June 2004, as each campaign traded charges of intimidation, suppression and fraud, RNC Chairman Ed Gillespie sent a letter to DNC Chairman Terry McAuliffe proposing that the two parties work together to place election lawyers and embedded reporters at key polling places to monitor the vote on Election Day. McAuliffe did not respond to this suggestion but sent a letter to Gillespie in October charging the GOP with "systematic efforts to disenfranchise voters."[55]

Into late October, this charge of voter suppression became a common talking point for Democrat politicians and their supporters. The Rev. Jesse Jackson said on CNN, "The big issue in Florida is not whether we vote, the big issue is vote suppressing."[56] Greg Moore, Executive Director of the NAACP National Voter Fund, said, "There are forces across [Ohio], very powerful people, trying to suppress and intimidate the minority community from voting."[57] Sen. Hillary Clinton (D-NY) warned Democrats to watch out for GOP-orchestrated "shenanigans" on Election Day, saying, "For an administration and a president who likes [sic] to go around talking about exporting democracy, it ought to start here at home, and they ought to protect the right to vote in America."[58] Vice Presidential candidate Sen. John Edwards (D-NC) stated that Republicans were "up to their old tricks ... trying to keep people from voting."[59]

The following is a summary of all documented cases of voter suppression, harassment and intimidation during the 2004 general election. The following incidents are derived from court pleadings and press coverage concerning the activity of both parties.

4.2 Incidents Of Voter Intimidation & Suppression

(a) Five Democrat Operatives In Milwaukee Charged With Slashing Tires Of Republican Vans On Morning Of Election Day[60]

On Monday, January 24, 2005, five Democrat operatives were charged with felony counts of "criminal damage to property" for slashing the tires of 25 get-out-the-vote vans rented by Republicans early on the morning of Election Day. The vans had been rented by Republicans to help transport observers and voters to the polls on Election Day. The five individuals charged in the case were all paid Democrat operatives. Two defendants in the case are the sons of

[55] Democratic National Committee, *McAuliffe Letter Demands Answers From Gillespie On RNC Funded Vote Fraud*, Press Release, October 13, 2005
[56] CNN's "Late Edition," October 24, 2003
[57] NAACP National Voter Fund, *NAACP Chairman Julian Bond Headlines Get-Out-The-Vote Rally/Town Hall Meeting*, Press Release, October 29, 2004
[58] *Sen. Clinton In S.F.*, Mary Anne Ostrom, SAN JOSE MERCURY NEWS, October 16, 2004
[59] *Edwards: Republicans Will Be 'Up To Their Old Tricks,'* Liz Sidoti, THE ASSOCIATED PRESS, October 16, 2004
[60] Milwaukee Criminal Complaint attached as Exhibit E

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prominent Milwaukee Democrats: U.S. Rep. Gwen Moore and former Acting Mayor Marvin Pratt, Chairman of the Kerry-Edwards campaign in Milwaukee.[61] The following is a list of the individuals charged with slashing tires on the morning of November 2, 2004, and their connections to the Democrat campaign in 2004:

- **Michael J. Pratt**
  - ✓ Paid $7,965.53 by the Democratic Party of Wisconsin in 2004
  - ✓ Pratt's father is former Acting Mayor Marvin Pratt, who chaired the Kerry-Edwards campaign in Milwaukee

- **Sowande Ajumoke Omodunde (a.k.a "Supreme Solar Allah")**
  - ✓ Paid $6,059.83 by Gwen Moore for Congress and the Democratic Party of Wisconsin in 2004
  - ✓ Son of U.S. Rep. Gwen Moore (D-WI)

- **Lewis Gibson Caldwell, III**
  - ✓ Paid $4,639.09 by Gwen Moore for Congress and the Democratic Party of Wisconsin in 2004

- **Lavelle Mohammad**
  - ✓ Paid $8,858.50 by the Democratic Party of Wisconsin and America Coming Together ($966 for canvassing work in June and July) in 2004

- **Justin J. Howell**
  - ✓ Paid $2,550.29 in 2004 by the Democratic Party of Wisconsin[62]

According to the criminal complaint filed in the case, on the day before the election, DNC consultant Opel Simmons witnessed individuals at the Democratic headquarters in Milwaukee discussing a plan to go to the Republican campaign office and cover it with yard signs, placards and bumper stickers. They referred to their plan as "Operation Elephant Takeover." However, upon learning that there were security guards at the Republican headquarters, they called off the operation.[63]

According to the complaint, at about 3 a.m. on Election Day, several people at the Democratic headquarters were gearing up for another project. Some of them dressed in what was described as "Mission Impossible" type gear – black outfits and knit caps. Simmons asked them what they were up to and warned them about the security guard. One of them told Simmons, "Oh, man, you don't want to know, you don't want to know." They were laughing and joking and continued to tell Simmons that he did not want to know what they were going to do.[64]

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[61] *5 Charged In GOP Tire Slashings*, Derrick Nunnally, MILWAUKEE JOURNAL SENTINEL, January 25, 2005
[62] Federal Election Commission Website, www.fec.gov, Accessed April 6, 2005
[63] Milwaukee Criminal Complaint
[64] *Id.*

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About 20 minutes later, the group returned to Democrat headquarters very excited, saying things like:

- "They won't go anywhere now, man, we got 'em, we got 'em"
- "Man, I walked right past the security guard. He didn't even know anything was going on."
- "That's 'cause, you know, I was acting all crazy, you know, I was acting crazy. I even let him watch me piss."[65]

The group went on talking about the affair and described the sound of the air escaping the tires. There was apparently much bragging as they described their various roles in the escapade. Mohammad was the "deception guy" who walked around acting drunk. According to the criminal complaint, when Simmons asked them what was going on, defendant Michael Pratt told him, "We got 'em. We hit the tires." Simmons told investigators that at some point on Election Day a staffer at Democrat headquarters pulled an article on the tire-slashing incident from the *Milwaukee Journal Sentinel*'s website. Simmons said that upon seeing the article, defendant Lavelle Mohammad said he wanted to frame it and put it on his wall. Simmons said he did not talk to any of the other defendants about the tire slashing incident over the course of Election Day.[66]

While the Kerry-Edwards campaign and state Democrats denied knowledge of the plan to vandalize the Republican get-out-the-vote vehicles, the vehicle used by the defendants was rented by Simmons, a political consultant from Virginia working for the DNC in Wisconsin. According to the criminal complaint filed in the case, Simmons told police that he had rented the vehicle "to be used by his workers for their campaign activities." When questioned by police on the night of November 2, Simmons said he knew that five of his workers were involved in slashing tires at Republican headquarters early that morning, and identified all five defendants to police.[67]

In all, forty tires on 25 separate vehicles were slashed in the incident causing $4,192.35 of damage to the tires, plus $1,125 in towing charges. Since the damage exceeded the $2,500 threshold for a felony, the five were charged with felony "criminal damage to property," which carries a maximum punishment of 3 1/2 years in prison and a $10,000 fine. The five defendants pleaded not guilty at their March 4 arraignments.[68] A trial was originally scheduled for mid-July, but has since been postponed until January 2006.[69]

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[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Trial Set In Tire Slashings*, Derrick Nunnally, MILWAUKEE JOURNAL SENTINEL, March 5, 2005
[69] *5 To Be Tried Early Next Year In Election Day Tire-Slashing*, MILWAUKEE JOURNAL SENTINEL, July 18, 2005

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(b) Court Issues Injunction Against Democrat Operatives Targeting Ohio Voters With Phone Calls Providing Deceptive Information to Voters

During the U.S. House Administration Committee hearings in March 2005, a common point of inquiry was the issue of phone calls made in an apparent effort to misdirect voters. The committee's Ranking Member, Rep. Juanita Millender-McDonald (D-CA), stated that Ohio voters were "disenfranchised" when "voters were told ... that the presidential election would be on Wednesday the 3rd of November as opposed to November 2nd."[70]

Ohio voters who had identified themselves as Republicans received telephone calls telling them that the election was to be held a day later than Election Day, that their polling locations had been changed and that they could only vote if they brought four separate pieces of identification to the poll. This information was intentionally deceptive and intended to direct voters to a polling place where they would not be able to cast a ballot.

The Marion County Common Pleas Court issued a temporary restraining order against the Marion and Greene County Democratic Parties, the Ohio Democratic Party and America Coming Together (ACT) enjoining them from making inaccurate and deceptive phone calls to targeted voters.[71] The judge originally assigned to the case recused himself because he had "personally received a phone call" like the one described by the plaintiff in which incorrect information about date of the election and polling place was given, a point he noted in the Judgment Entry he signed effectuating his recusal. The Ohio Supreme Court appointed a visiting judge to hear the case who then issued a temporary restraining order against the county and state Democrat parties and against ACT.[72]

Judge David C. Faulkner ordered state and local Democrats and ACT to stop their calls "misstating the date of the November 2, 2004 election" and "directing [voters] to the wrong location to which they should report to vote."[73] Faulkner's restraining order specifically stopped the Democrats from the following activities:

> "Any acts of interfering in any way with the rights of Ohio registered voters to vote in the November 2, 2004 election, including, but not limited to, telephoning or contacting in any way any such registered voters and misstating the date of the November 2, 2004 election, directing them to the wrong location to which they should report to vote, telling such voters that they must bring certain documentation to the polls in order to vote and suggesting to, telling or implying to said voters that there are procedural and/or documentary hurdles they must overcome in order to vote in the November 2, 2004 election."[74]

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[70] Rep. Juanita Millender-McDonald (D-CA), U.S. House Committee On House Administration Hearing, Columbus, OH, March 21, 2005

[71] See *Ohio Republican Party v. Marion County Democratic Party et al.*, Marion County Court of Common Pleas, Case No. 04 CV 0791. (Exhibit F)

[72] *Id.*

[73] *Id.*

[74] *Id.*

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The Marion County Democratic Party provided an affidavit in the case that explained its role in the matter. The affidavit, as completed by Cathy Chaffin, Chair of the Marion County Democratic Party, explained that Kerry-Edwards campaign staffers made the misleading phone calls blocked by Judge Faulker's order. Chaffin stated in the affidavit that once she became aware that Kerry-Edwards staffers were using her office space to make calls giving "the wrong polling location" to voters, she tried multiple times to get them to stop the calls, to the point of threatening to kick them out of the office if the calls did not stop. Below are the key points from Chaffin's affidavit.[75]

- The Marion County Democratic Party provided space to the Kerry-Edwards campaign for use as its campaign headquarters.
- Ms. Chaffin became aware that Kerry-Edwards staffers were placing telephone calls to voters and giving out voting locations and "that the wrong polling location was being given."
- Ms. Chaffin called Kerry-Edwards campaign staffer Jim Secreto and told him the activity must stop. She was assured that it would stop.
- A few days later, Ms. Chaffin learned that the phone calls were continuing. She again told Mr. Secreto to stop and again was told that the activity would cease.
- Finally, on Election Day, Ms. Chaffin learned that the telephone calls were still being made. At that time, she told Mr. Secreto that if the calls did not stop, he would have to leave Marion County Democratic Headquarters.[76]

The case is still pending before the Marion County Court of Common Pleas.

(c) Court Issues Injunction Against Democratic National Committee Ordering It To Stop Distributing Intimidating Materials To Republican Volunteers In Florida

On Election Day 2004, a Seminole County, Florida, court stopped the DNC and state Democratic Party from "further intimidation" and dissemination of materials that were "designed or intended to intimidate or unduly threaten the activities of poll watchers" organized by the Florida Republican Party.[77]

Florida law allows all candidates and political parties to have observers in polling places to monitor the conduct of the election. Both the Florida Republican Party and the state

[75] *Id.*
[76] *Id.*
[77] *See* November 2, 2004, Order on Motion for Temporary Injunction, *J. Thomas Monk, and All Those Persons Similarly Situated Throughout the State of Florida v. Democratic National Committee, Democratic Executive Committee of Seminole County, and the Florida Democratic Party*, 04-CA-2312-16-L. (Exhibit G)

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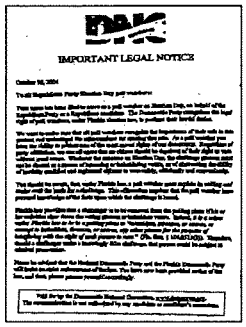
Democratic Party organized thousands of volunteers to participate in the election observers in polling locations across Florida.[78]

Under Florida law, the names and addresses of volunteer poll observers are filed with election officials in advance of the election. The DNC and Florida Democrat Partyic obtained these records on the identity of Republican poll observers and sought to prevent them from volunteering by sending them a letter threatening legal action against them personally. The letter, entitled "IMPORTANT LEGAL NOTICE," stated that each poll watcher receiving the document had "now been provided notice of the law."[79]


IMPORTANT LEGAL NOTICE

Individual volunteers who received the letter threatening legal action by the DNC went to court in Seminole County and obtained an injunction against the DNC and the Florida Democratic Party.[80] Seminole Circuit Judge Nancy Alley ordered the DNC, Florida Democratic Party and Democratic Executive Committee of Seminole County to stop "further intimidation, further dissemination of these materials ... designed or intended to intimidate or unduly threaten the activities of poll watchers who are duly carrying out their responsibilities" granted under Florida law. The court ruled that the flyer constituted a "misrepresentation of [poll observers'] legal rights and obligations."[81] The DNC sought an emergency appeal of the trial court's order to the Florida Appeals Court but was rebuffed.[82]

(d) <u>Intimidating And Misleading Phone Calls To GOP Volunteers Made By President Bill Clinton And DNC General Counsel Joe Sandler In Florida</u>

In addition to the intimidating letters sent by the DNC to Republican volunteers, the DNC paid for recorded phone calls to Republican poll observers' homes in Florida featuring the same message that the court in Seminole County found to be intimidating and misleading.

These phone calls were recorded by former President Bill Clinton and DNC General Counsel Joe Sandler. The call from Sandler said, "Please be advised that any challenge to a voter must be stated in writing, under oath, and that you must have direct and first-hand knowledge of the voter's ineligibility. Interfering with a citizen's right to vote is a serious offense and swearing out a false statement is a felony. Violations will be referred to federal and

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[78] *Poll Watchers Will Keep Their Eyes On Florida*, Jeff Kunerth, ORLANDO SENTINEL, October 30, 2004

[79] DNC's "IMPORTANT LEGAL NOTICE" Distributed To Republican Poll Observers In Florida (Exhibit H)

[80] See November 2, 2004, Order on Motion for Temporary Injunction, *J. Thomas Monk, and All Those Persons Similarly Situated Throughout the State of Florida v. Democratic National Committee, Democratic Executive Committee of Seminole County, and the Florida Democratic Party*, 04-CA-2312-16-L.

[81] *Id.*

[82] See *Democratic National Committee, et al. v. J. Thomas Monk*, District Court of Appeal of the State of Florida Fifth District, Case No. 5D04-3642. (Exhibit I)

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state prosecutors." The recording finished by noting, "This call is paid for by the Democratic National Committee, www.democrats.org, not authorized by any candidate."[83]

(e) Court Orders MoveOn.org To Cease Voter Intimidation And Harassment In Ohio

On Election Day, individuals in Franklin County, Ohio, were threatened and harassed at their polling places by agents of MoveOn.org after being asked about their voting preference and revealing their intention to vote Republican. Similar situations are alleged to have occurred elsewhere around the state and prompted a lawsuit filed in the Franklin County Common Pleas Court. Voters were intimidated by MoveOn.org in an attempt to dissuade them from voting for George W. Bush or in an attempt to harass them after they voted.[84]

Examples of such intimidation include one plaintiff who arrived at his polling place and was called over to a table operated by MoveOn.org that promised "Free Coffee." The plaintiff asked for a cup of coffee, was asked if he would voter for Kerry, and responded that he would not. The person at the table refused him a cup of coffee. The plaintiff then noticed that particular individual and others standing near the plaintiff's car. When he exited the polling place, the MoveOn.org table was placed in front of his car, blocking his exit. When he asked them to move, the individuals harassed him, took his picture and recorded his license plate.[85]

Another voter noticed a loud and boisterous gentleman at her polling place wearing a "Voting Rights Staff" badge and standing well within 100 feet of the polling place. In fact, he stood right outside one plaintiff's voting booth and told her that she only had a few seconds left and needed to make her final vote. These plaintiffs sought, and received, a temporary restraining order against MoveOn.org. The complaint has subsequently been amended to include allegations of similar acts by agents of MoveOn.org that occurred elsewhere in the state.[86]

(f) Ohio Court Ordered Democrat Polling Place Challengers To Remove Deceptive Arm Bands and Badges

On Election Day, several Lucas County voters brought suit against the Lucas County Board of Elections and Democratic challengers in the polling place who were wearing armbands and/or badges identifying them as "Voter Protection Staff," "Voting Rights Staff," and other similar terms. The Lucas County Court of Common Pleas granted the temporary restraining order prohibiting the use of such intimidating insignia.[87]

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[83] Full transcript of Sandler call attached as Exhibit J

[84] See *Timms et al. v. MoveOn.org*, Franklin County Court of Common Pleas, Case No. 04 CVH11 011533. (Exhibit K)

[85] *Id.*

[86] *Id.*

[87] See *Metzger v. Doe*, Lucas County Common Pleas Court, Case No. 04-1540. (Exhibit L)

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(g) Violence Against Republican Volunteers In Philadelphia On Election Day

Philadelphia has a long history of vote fraud and intimidation.[88] According to press and police reports filed on November 2, this past election was no different. Reports indicate that Republican volunteers in Philadelphia were violently intimidated by Democrat activists on Election Day 2004.

One Republican activist, working as a Bush campaign legal volunteer to monitor the vote in Philadelphia, was "cornered in a parking lot by roughly 10 large men, whom the police later identified as 'union goons.'" The men tried to tip over the minivan the Republican attorneys were sharing, "punching it relentlessly, breaking parts off and failing to drag us out, they chased us in and out of the dense urban traffic." It took "a frantic 911 call and a police roadblock" to stop the assault, and the GOP volunteers "had to be secreted out of town to safety by a police escort."[89]

According to police reports filed after the incident, the union members' SUV was a rental vehicle.[90] On Election Day, rental vehicles were used all over the city "primarily by the parties ... for transporting voters and election monitors."[91]

(h) Union-Coordinated Violence And Intimidation Against Republican Campaign Offices And Volunteers

On October 5, a Bush-Cheney campaign volunteer in Orlando had his arm broken when trying to stop union activists from storming the campaign office. This incident was part of a series of simultaneous demonstrations coordinated by the AFL-CIO against Bush-Cheney campaign offices in 20 cities, intimidating campaign volunteers with violence and vandalism. In Orlando, AFL-CIO members stormed and ransacked the Bush-Cheney field office as part of what one local newscaster called a "coordinated attack against the Bush-Cheney campaign." Protesters also defaced posters of President Bush and dumped piles of letters on to the floor of the office. Several protesters in Orlando faced possible assault charges as a result of the incident.[92]

As part of the 20-city anti-Bush protest, more than 100 AFL-CIO members "stormed" the Bush-Cheney campaign's Miami office and "pushed volunteers" inside. Three dozen union members rushed a campaign office in Tampa, shaking up elderly volunteers.[93] Union members staged an "invasion" of the Republican campaign office in West Allis, Wisconsin, where police

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[88] *Dead Men Can Vote*, Scott Farmelant, PHILADELPHIA CITY PAPER, October 12-15, 1995
[89] *The Reality Of Intimidation*, Eric Wang, Op-Ed, THE [UVA] CAVALIER DAILY, http://www.cavalierdaily.com/CVarticle.asp?ID=21349&pid=1216, November 10, 2004 (Exhibit M)
[90] Police Reports, Philadelphia Police Department, November 2, 2004 (Exhibit N)
[91] *The Reality Of Intimidation*, Eric Wang, Op-Ed, THE [UVA] CAVALIER DAILY, http://www.cavalierdaily.com/CVarticle.asp?ID=21349&pid=1216, November 10, 2004
[92] *Protestors Storm, Ransack Bush-Cheney Headquarters In Orlando*, LOCAL 6 NEWS, www.local6.com, October 5, 2004; *Second Break-In Hits A Bush Office In State*, David Postman, THE SEATTLE TIMES, October 12, 2004
[93] *Florida GOP Workers Claim Intimidation By Labor Protesters*, Mike Schneider, THE ASSOCIATED PRESS, October 5, 2004

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were called after 50 activists "marched right in" and "took over the place for about 30 minutes" with bullhorns and chanting.[94]

(i) **Violence And Other Incidents of Intimidation**

In 2004, Republicans were subject to an aggressive and sometimes violent campaign of harassment and intimidation orchestrated by Kerry supporters. At least three Bush-Cheney offices were shot at during the election season. A swastika was burned into the front yard of a Bush-Cheney supporter in Madison, Wisconsin. Other incidents included offices burglarized, windows smashed, tires slashed and other property damage. The following is a timeline of documented election-related violence and intimidation against the Bush-Cheney '04 campaign and Republicans in 2004.

September 2, 2004: Gun Shot Fired Into Huntington, WV, Republican Headquarters.[95]

September 3, 2004: Windows Broken, Anti-Bush Messages Scrawled At Gallatin County, MT, Republican Headquarters.[96]

September 6, 2004: Huntington, WV, Republican Headquarters Egged.[97]

September 13, 2004: Swastika Drawn On Duluth, MN, Resident's Lawn, Signs Also Defaced With Words "Nazi" And "Liar."[98]

September 16, 2004: Community College Professor In Florida Punched Republican County Chairman In Face.[99]

September 22, 2004: West Elmira, NY, Resident Found Swastika Drawn On Bush Campaign Sign In His Yard.[100]

September 23, 2004: Office Ransacked During Break-In At Vilas County, WI, Republican Headquarters, Obscene Words And Graphic Pictures Sprayed On Campaign Signs.[101]

September 26, 2004: Windows Smashed And Signs Stolen At Oxford, MS, Bush-Cheney '04 Headquarters.[102]

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[94] *Anti-Bush Crowd Needs To Calm Down*, Patrick McIlheran, MILWAUKEE JOURNAL SENTINEL, October 9, 2004
[95] *Few Leads In Shooting At GOP HQ*, www.wowktv.com, September 2, 2004
[96] *GOP Headquarters Vandalized In Political Protest*, Walt Williams, BOZEMAN DAILY CHRONICLE, September 4, 2004
[97] *Bush Rally Planned For Arena*, Bob Withers and Bryan Chambers, THE [Huntington, WV] HERALD-DISPATCH, September 8, 2004
[98] *Campaign Vandalism Increases*, Mark Stodghill, DULUTH NEWS-TRIBUNE, September 14, 2004
[99] *Fight Breaks Out At Republican Headquarters*, WCJB NEWS, www.wcjb.com, September 20, 2004
[100] *Swastika On Bush Sign Troubles Resident*, John P. Cleary, [Elmira, NY] STAR-GAZETTE, September 23, 2004
[101] *Vilas County Republican Headquarters Vandalized*, WAOW NEWSLINE 9, September 23, 2004
[102] *Vandals Hit Local Bush Campaign Office*, Martin Bartlett, THE DAILY MISSISSIPPIAN, September 28, 2004

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October 1, 2004: Laptops Of Executive And Field Director Stolen From Bush-Cheney '04 Headquarters In Seattle, WA.[103]

October 1, 2004: Swastika Burned Into Front Yard Of Bush-Cheney '04 Supporter In Madison, WI.[104]

October 2, 2004: Collinsville, OH, Resident Chains Down Bush-Cheney '04 Signs After Several Signs Stolen And One Was Replaced With Kerry Sign.[105]

October 3, 2004: Burglary At Thousand Oaks, CA, Victory 2004 Headquarters Where Bush-Cheney '04 Banner Was Stolen From Outside Premises.[106]

October 5, 2004: Gun Shots Fired Into Knoxville, TN, Bush-Cheney '04 Office, Shattering Office's Glass Front Doors.[107]

October 8, 2004: Two Men Were Caught On A Hidden Camera Tearing Down And Urinating On Bush-Cheney '04 Sign In Akron, OH.[108]

October 9, 2004: Oxnard, CA, Supporter Placing Bush-Cheney '04 In Yards Verbally Abused, Knocked Down And Had Signs Stolen.[109]

October 9, 2004: Bush-Cheney Signs Near Vail, CO, Cut In Half And Burned In "Ransacking."[110]

October 10, 2004: Office Windows Broken And Field Director's Laptop Bag and Purse Stolen In Burglary At Canton, OH, Victory Office.[111]

October 11, 2004: Windows Broken, Petty Cash Stolen And Computers Tampered With In Burglary At Spokane, WA, Victory 2004 Headquarters.[112]

October 13, 2004: Walls And Windows Of York, PA, Victory 2004 Headquarters Vandalized With Pro-Kerry Spray-Paint And Signs Outside Destroyed.[113]

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[103] *3 Computers Are Stolen From Bush Campaign Office*, David Postman and Ashley Bach, THE SEATTLE TIMES, October 7, 2004
[104] *Swastika Burned Into Grass On Bush-Cheney Supporter's Lawn*, WISC-TV Website, www.channel3000.com, Accessed October 12, 2004
[105] *Bush-Cheney Signs Going Missing In Collinsville*, THE ASSOCIATED PRESS, October 2, 2004
[106] *Republicans Claim Democrats Are Behind Office Attacks*, David D. Kirkpatrick, THE NEW YORK TIMES, October 26, 2004
[107] *Shots Fired At Knoxville Bush-Cheney Office*, Duncan Mansfield, THE ASSOCIATED PRESS, October 5, 2004
[108] *Men Videotaped Vandalizing Sign*, Marilyn Miller and Andale Gross, AKRON BEACON JOURNAL, October 8, 2004
[109] *Letter To The Editor*, VENTURA COUNTY STAR, October 13, 2004
[110] *Welcome To The Tea Party*, Matt Zalaznick, Op-Ed, VAIL DAILY, October 9, 2004
[111] *Campaign Office Burgled Sunday*, Edd Pritchard, CANTON REPOSITORY, October 12, 2004
[112] *President Bush's Campaign Office In Spokane Burglarized, Vandalized*, David Postman, THE SEATTLE TIMES, October 11, 2004
[113] *News In Brief From Central Pennsylvania*, THE ASSSOCIATED PRESS, October 15, 2005

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October 13, 2004: Window Smashed At Laconia, NH, Victory 2004 Headquarters.[114]

October 13, 2004: Kerry Supporter Caught Stealing Bush Sign In Cape Girardeau, MO, Pulled Knife On Sign's Owner And Was Arrested.[115]

October 15, 2004: Someone Destroyed Large Plywood Bush-Cheney '04 Sign, Then Tried To Smash Debris Though Glass Door Of Santa Fe, NM, Republican Party Headquarters.[116]

October 15, 2004: Someone Lined Window Sill With Bullet Casings At Littleton, NH, Republican Headquarters.[117]

October 16, 2004: Unknown Suspects Vandalized Large Bush-Cheney Campaign Sign In Hollister, CA, With Obscenities.[118]

October 17, 2004: Stickers Placed Over Windows Of Gettysburg, PA, Victory 2004 Headquarters.[119]

October 18, 2004: Eggs Thrown At Keene, NH, Victory 2004 Headquarters.[120]

October 18, 2004: 21 Protesters Arrested At Bush-Cheney '04 Campaign Headquarters In Arlington, VA.[121]

October 20, 2004: Rocks Thrown Through Windows At Multnomah County, OR, Republican Party Headquarters.[122]

October 21, 2004: Bomb Threat Made Against Lake Havasu, AZ, Republican Party Headquarters.[123]

October 21, 2004: Windows Smashed At Multnomah County Republican Party Headquarters In Portland, OR.[124]

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[114] *Missing Campaign Signs Signal Statewide Trend*, Kathleen D. Bailey, EXETER NEWS-LETTER, October 19, 2004
[115] *Cape Man Claims He Was Threatened At Political Rally*, Linda Redeffer, SOUTHEAST MISSOURIAN, October 16, 2004
[116] *Political Differences Causing Vandalism In City Different*, Steve Terrell, THE SANTA FE NEW MEXICAN, October 19, 2004
[117] *Democrats Push Students Online To Register To Vote*, John DiStaso, THE UNION LEADER, October 21, 2004
[118] *Partisan Tension In SBC*, Erin Musgrave, HOLLISTER [CA] FREE LANCE, October 24, 2004
[119] *Suspect In Gettysburg Vandalism To Enter Plea In District Court*, 1320 WGET Website, www.wget.com, Accessed October 20, 2004
[120] *Democrats Push Students Online To Register To Vote*, John DiStaso, THE UNION LEADER, October 21, 2004
[121] *21 Arrested In Arlington Protest Of Bush Administration AIDS Policy*, Elaine Rivera, THE WASHINGTON POST, October 19, 2004
[122] *Someone Hurled Rocks*, THE OREGONIAN, October 22, 2004
[123] *Bomb Threat Made Against Lake Havasu Republican HQ*, TRI-STATE NEWS NETWORK, October 22, 2004
[124] *Oregon Political Fight Getting Rough*, Janie Har, THE OREGONIAN, October 22, 2004

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October 22, 2004: Break-In Discovered At Cincinnati, OH, Victory 2004 Headquarters.[125]

October 22, 2004: Break-In Discovered At Flagstaff, AZ, Victory 2004 Headquarters. Perpetrators gained entry by throwing a cinder block through a plate glass window.[126]

October 22, 2004: Chunk Of Concrete Tossed Through Glass Door Of Republican Headquarters In Santa Cruz, CA.[127]

October 23, 2004: Two Kerry Supporters Arrested After Stealing Pro-Bush Signs From Activist And Pushing Poliee Officer At Edwards Rally In St. Petersburg, FL.[128]

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[125] *Local Bush/Cheney Headquarters Robbed*, THE CINCINNATI ENQUIRER, October 23, 2004
[126] *Flag GOP Office Vandalized*, Seth Muller, ARIZONA DAILY SUN, October 23, 2004
[127] *Vandals Strike At GOP Office, Yes On J Business*, Jondi Gumz and Cathy Redfern, SANTA CRUZ SENTINEL, October 26, 2004
[128] *Florida In Candidates ' Crossfire*, Jamie Thompson, ST. PETERSBURG TIMES, October 24, 2004

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V. Vote Fraud & Illegal Voting Introduction

Vote fraud and illegal voting occurred in multiple states around the country on Election Day 2004. This section of the report catalogs the many and varied instances of vote fraud, votes illegally cast and voter registration fraud committed in the 2004 election cycle. Legislative reforms have been proposed to address the past history of vote fraud. See, Texas Review of Law and Politics, *Securing the Integrity of American Elections: The Need for Change*, Publius, Fall 2005, discussing specific proposed legislative reforms.

While this section points out where fraud occurred last year, it is also important to dispel one of the more pervasive urban legends stemming from 2004 vote: that the election in Ohio was "stolen." A bipartisan consensus has now emerged confirming that the 2004 election in Ohio was fairly decided. In the weeks and months immediately following the November 2 vote, some alleged that the election was stolen. In January 2005, the Democrat staff of the House Judiciary Committee, led by Ranking Member Rep. John Conyers (D-MI), alleged in a report that "exit polls bolster claims of irregularities and fraud" and that "hundreds of thousands" of Democrat voters in Ohio may have been disenfranchised.[129] A lawsuit drafted by a lawyer associated with Conyers alleged that Republicans changed the election results in Ohio by "inserting unauthorized and so far undetected operating instructions into the [voting machine] software." The suit stated that "the confederate of defendants-contestees Bush, Cheney, and Rove who was actually changing the vote totals did not need physical access to the computer," and that a "further part of the plan to steal the election" was for White House Chief of Staff Andrew Card "to make a very nervous and shaky claim to victory in Ohio" on the morning of November 3.[130] In March 2005, Teresa Heinz Kerry echoed this charge, saying "two brothers own 80 percent of the [voting] machines used in the United States ... [it is] very easy to hack into the mother machines."[131]

The DNC Voting Rights Institute's report on the election in Ohio, released on June 22, 2005, rejected these claims that the election was stolen. According to the report, the DNC's own "statistical study of precinct-level data does not suggest the occurrence of widespread fraud that systematically misallocated votes from Kerry to Bush." The DNC's experts found that the similarity between the vote patterns for Kerry in 2004 and the Democrat gubernatorial candidate in 2002 was "strong evidence against the claim that widespread fraud systematically misallocated votes from Kerry to Bush." The DNC report further stated that long lines at the polls on Election Day did not affect the election's final result: "[T]he difficulties experienced by African American and other voters at the polls did not, in and of themselves, cost John Kerry the election in Ohio."[132]

Just as it is clear that the outcome of the election in Ohio was decided fairly, it is also clear that thousands of Americans were disenfranchised by illegal votes cast on November 2.

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[129] *Preserving Democracy: What Went Wrong In Ohio*, Report Of The House Judiciary Committee Democratic Staff, January 5, 2005

[130] See *Moss v. Bush*, Ohio Supreme Court, Case No. 04-2088. (Exhibit O)

[131] *Teresa Heinz Kerry Hasn't Lost Her Outspoken Way*, Joel Connelly, THE SEATTLE POST-INTELLIGENCER, March 7, 2005

[132] *Democracy At Risk: The 2004 Election In Ohio*, Report Of The Democratic National Committee's Voting Rights Institute, June 22, 2005

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For every illegal vote cast and counted on Election Day, a ballot cast by a legitimate voter is cancelled out, effectively disenfranchising the properly registered voter. In Wisconsin, a joint federal-local law enforcement task force found "clear evidence of fraud in the Nov. 2 election in Milwaukee," including hundreds of illegal votes by double voters and felons.[133] In Washington, a state judge found that more than 1,600 illegal and fraudulent votes were cast in an election decided by a mere 133 votes.[134] In both Wisconsin and Washington, illegal votes may have decided statewide elections in 2004.

In addition to actual illegal votes, there appears to have been a coordinated effort by members of some organizations to rig the election system through voter registration fraud. Criminal investigations and news reports suggest that thousands of fictional voters such as the now infamous Jive F. Turkey, Sr., Dick Tracy and Mary Poppins were registered to vote. This widespread voter registration fraud was accompanied by an apparently coordinated national litigation strategy to manipulate election laws in battleground states and, specifically, to eliminate the provisions of election law that would prevent vote fraud. If successful, this litigation may have allowed Dick Tracy to vote not once, but twice.

[133] *Inquiry Finds Evidence Of Fraud In Election*, Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, May 11, 2005; *Preliminary Findings Of Joint Task Force Investigating Possible Election Fraud*, May 10, 2005
[134] Transcript Of The Decision By Chelan County Superior Court Judge John Bridges, June 6, 2005

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VI. Vote Fraud, Voter Registration Fraud & Election Irregularities Around The Country

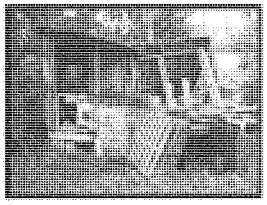
6.1 Alabama

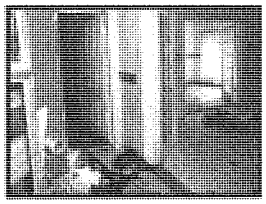
(a) Vote Fraud Under Investigation In Alabama

According to the *Montgomery Advertiser*, "vote fraud has been a fact-of-life in Alabama elections for many years."[135] The 2004 election cycle appears to have been no exception, as the state Attorney General's office is reportedly investigating vote fraud allegations in West Alabama.[136]

The Tuscaloosa News reported finding "blatant" vote fraud in a closely contested mayoral runoff in Greensboro.[137] Candidate Johnnie Washington won that election by 90 votes, but included in the tally were 251 absentee votes for Washington, compared to only 51 for his opponent, Vanessa Hill. Hill is contesting the election's results "on the basis of a number of suspicious absentee ballots cast in the days leading up to the election."[138]

After the initial August election, the *News* reported finding multiple absentee ballots cast from addresses of vacant houses and people submitting ballots from addresses that were not their homes. Five people claimed the apparently vacant mobile home pictured at right as their residence in casting absentee ballots in the August election. The *News* further reported that a man at the center of the absentee ballot controversy spent two years in prison after being convicted of 15 counts of vote fraud in 1998.[139]





The *News* reported finding voting irregularities in Marion similar to those discovered in Greensboro. The paper's findings in Marion included absentee ballots cast from empty homes, a "mysterious influx of voters, described as suspicious by one official" and allegations of "intimidation and bribery to secure votes and voters who may be long dead." The vacant house pictured at left was listed as the residence of five absentee voters, though according to a neighbor, "nobody has lived there in years."[140]

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[135] *Group Aims To End Vote Fraud In Region*, Al Benn, Op-Ed, THE MONTGOMERY ADVERTISER, April 8, 2005
[136] *AG's Office Investigates Black Belt Ballot Issue*, Johnny Kampis, TUSCALOOSA NEWS, January 29, 2005
[137] *Absentee Ballots Raise Questions In Greensboro*, Johnny Kampis, TUSCALOOSA NEWS, September 5, 2004
[138] *Judge Won't Rule Yet In Greensboro Mayor Case*, Johnny Kampis, TUSCALOOSA NEWS, March 9, 2005
[139] *Absentee Ballots Raise Questions In Greensboro*, Johnny Kampis, TUSCALOOSA NEWS, September 5, 2004
[140] *Fraud Grips Black Belt*, Johnny Kampis, TUSCALOOSA NEWS, September 12, 2004

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According to the *News*, the irregularities in Greensboro and Marion "appear to be part of a trend that may have twisted Election Day results throughout Alabama's Black Belt, one of the poorest regions in the United States, and one with a long history of vote fraud."[141] However, this most recent string of vote fraud allegations moved some community activists to speak out on the issue. In early 2005, a new citizen advocacy group called Democracy Defense League (DDL) was formed in the state to "focus attention on fraudulent voter activities and to push legislators to pass more stringent laws to stop them."[142] As DDL's chairman, former Alabama Bureau of Investigation agent Perry Beasley, recently said, "Vote fraud is a crime against democracy ... Every time it's committed, someone is disenfranchised. It encourages apathy. It makes a mockery of the democratic process. It puts corrupt people in the place of public trust."[143]

6.2 Colorado

(a) Vote Fraud & Irregularities In Colorado

According to *The Denver Post*, prosecutors in at least 47 Colorado counties investigated cases "involving accusations of forged signatures, felons voting or people who attempted to vote twice."[144] The paper reported the following numbers on vote fraud and irregularities during the November 2004 election:

- ✓ 122 people voted twice statewide, easting absentee ballots through the mail, then showing up in person to vote on Election Day;
- ✓ 120 felons cast illegal ballots statewide;
- ✓ In Denver, 81 residents voted twice and 52 felons cast ballots;
- ✓ In Jefferson County, elections officials requested that prosecutors investigate 30 cases of people attempting to vote twice and 256 cases of suspicious signatures on absentee ballots;
- ✓ In El Paso County, officials reported 23 cases or prisoners or parolees who voted.[145]

Less than one month before Election Day, *The Denver Post* reported that Colorado's voter rolls contained as many as 6,000 felons ineligible to vote, enough to "tip the outcome of the election" or "force the outcome of any close race into the courts." The *Post* reported that felons had illegally voted as recently as the August 2004 primary, and that many of the 536 felons who registered to vote in 2004 did so through voter registration drives run by third-party groups. Workers in those groups reportedly "eager to sign up new voters assured them they

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[141] *Id.*
[142] *Group Aims To End Vote Fraud In Region*, Al Benn, Op-Ed, THE MONTGOMERY ADVERTISER, April 8, 2005
[143] *AG's Office Investigates Black Belt Ballot Issue*, Johnny Kampis, TUSCALOOSA NEWS, January 29, 2005
[144] *Vote Fraud Probed In State*, Susan Greene and Karen E. Crummy, THE DENVER POST, March 24, 2005
[145] *Id.*

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could lawfully register and vote." One group, the Colorado Voting Project, reportedly signed up 77 voters on a single day in the Denver County Jail.[146]

(b) Voter Registration Fraud Indictments In Colorado

At least 7 Colorado residents working for voter registration drives have been indicted and/or pleaded guilty to vote fraud charges stemming from the 2004 election.

- ✓ ACORN worker's girlfriend who admitted to signing up three friends to vote 40 times and registering herself 25 times was charged with 15 counts of felony forgery;[147]
- ✓ ACORN worker plead guilty to filling out false voter registration forms for the November election, sentenced to a year probation and 150 hours of community service;[148]
- ✓ ACORN worker charged in October with falsely filling out multiple voter forms;[149]
- ✓ Man charged with five counts of perjury for filling out several phony registration forms for ACORN workers;[150]
- ✓ Two men indicted on 19 and 29 counts of forgery, respectively, related to voter-registration drives;[151]
- ✓ Man charged with forging 48 voter-registration applications.[152]

(c) ACORN And Other Third-Party Groups Linked To Hundreds Of Fraudulent Voter Registrations In Colorado

In the months leading up to Election Day 2004, ACORN and other third-party voter registration groups were linked to hundreds of fraudulent registration submitted to elections officials across the state. In October, Denver's 9 News reported "widespread voter registration fraud" committed by groups such as ACORN that "could affect thousands of Colorado votes and cause chaos at the polls on November 2nd."[153]

> "A review of voter registration forms in five counties has revealed hundreds of potentially fraudulent forms. KUSA-TV reported Monday that it found 719 forms in

[146] *6,000 Felons On Voter Lists*, Susan Greene and Jeffrey A. Roberts, THE DENVER POST, October 10, 2004
[147] *Briefing*, ROCKY MOUNTAIN NEWS, November 10, 2004; Investigation Reveals Potentially Fraudulent Voter Forms, THE ASSOCIATED PRESS, October 12, 2004
[148] *Briefing*, ROCKY MOUNTAIN NEWS, January 4, 2005
[149] *2 Charged In Vote Fraud*, Gary Gerhardt, ROCKY MOUNTAIN NEWS, October 28, 2004
[150] *Prosecutors Charge Another Man In Registration Fraud*, Sue Lindsay, ROCKY MOUNTAIN NEWS, November 2, 2004
[151] *Vote Fraud Probed In State*, Susan Greene and Karen E. Crummy, THE DENVER POST, March 24, 2005
[152] *Partisan Fingers Point On Voter-Fraud Issue*, Peggy Lowe, ROCKY MOUNTAIN NEWS, October 14, 2004
[153] *I-Team Investigation Uncovers Voter Registration Fraud*, KUSA-TV 9 News Website, www.9news.com, Accessed May 26, 2005

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> Denver, Douglas, Adams, Boulder and Lake counties that had the wrong names, social security numbers and dates of births for voters. Many of the forms were turned in by voter registration drives which pay their workers based on the number of people they sign up."[154]

The 9 News report stated that "most of the fraud has come from registration drives," and identified ACORN, New Voters Project and Colorado Progressive Coalition as among the groups whose employees submitted the bogus forms.[155]

The 9 News report indicated that some of the fraudulent forms it discovered were "completely bogus" and filled in with fake "names, addresses, social security numbers or dates of birth." Other fraudulent forms were submitted in the names of legitimate voters, with "one or two facts changed that could affect their registration when they show up at the polls November 2nd." For example, Colorado resident Tom Stanislawski had registered six months prior to being fraudulently re-registered and having his party identification changed. "My concern would be I'd walk in November 2nd and be unable to vote," Stanislawski said.[156]

Other examples of voter registration fraud cited by the 9 News report included Kym Cason, who told a reporter that in order to help her boyfriend, who worked for ACORN, she "registered herself 25 times and her friends 40 times."[157] Cason was charged with 15 counts of felony forgery and five counts of misdemeanor procuring false registrations in November 2004.[158] Gerald Obi told 9 News that voter registration drive workers "pressured him to keep registering to vote," and he ultimately registered 35 times. The report found that several prisoners, including alleged child molester John Turner, registered from behind bars in Douglas and Adams counties. Meanwhile, in Boulder County, more than 2,000 people have had eight or more changes to their voter registration forms.[159]

Denver District Attorney Bill Ritter said that the people admitting to voter registration fraud in 9 News' report needed to be prosecuted. "People are trying to corrupt the election process. People should be prosecuted," Ritter said.[160]

ACORN and other groups were implicated in fraudulent registration activity around Colorado. In August, after three prosecutors joined a criminal probe by the state Attorney General's office into potentially fraudulent registrations in three counties, ACORN said that it "might be responsible" for some of the activity.[161] In October, ACORN admitted that its

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[154] *Investigation Reveals Potentially Fraudulent Voter Forms*, THE ASSOCIATED PRESS, October 12, 2004
[155] *I-Team Investigation Uncovers Voter Registration Fraud*, KUSA-TV 9 News Website, www.9news.com, Accessed May 26, 2005; *I-Team: Officials From Across The State Say Registration Workers Who Appeared In 9NEWS Stories Should Go To Jail*, KUSA-TV 9 News Website, www.9news.com, Accessed May 26, 2005
[156] *I-Team Investigation Uncovers Voter Registration Fraud*, KUSA-TV 9 News Website, www.9news.com, Accessed May 26, 2005
[157] *Id.*
[158] *Briefing*, ROCKY MOUNTAIN NEWS, November 10, 2004
[159] *I-Team Investigation Uncovers Voter Registration Fraud*, KUSA-TV 9 News Website, www.9news.com, Accessed May 26, 2005
[160] *I-Team: Officials From Across The State Say Registration Workers Who Appeared In 9NEWS Stories Should Go To Jail*, KUSA-TV 9 News Website, www.9news.com, Accessed May 26, 2005
[161] *3 Prosecutors Join Vote Fraud Probe*, John Sanko, ROCKY MOUNTAIN NEWS, August 7, 2004

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employees had submitted hundreds of fake registration forms in Colorado.[162] However, as ACORN admitted its culpability in the registration fraud the group also lashed out at the press. According to one report, ACORN's Western regional director, Jim Fleischmann, "downplayed the severity of the problem," saying, "Just because you register someone 35 times doesn't mean they get to vote 35 times ... The local press is having a feeding frenzy on this."[163]

9 News reported that there was a "record number of fraudulent registrations across" Colorado in 2004.[164] Election officials agreed that the level of fraudulent voter registration activity was unprecedented in Colorado history. "Everyone here at the commission has never seen anything like this. In the state we've never seen anything like this before," said Denver clerk and recorder Karon Hatchett.[165]

Kerry campaign officials in Colorado dismissed concerns about voter registration fraud in the state, calling it a "tired tactic" by the Republicans to suppress votes. After Secretary of State Donetta Davidson warned voter registration drive leaders about fraud, Sue Casey, Colorado state director for the Kerry-Edwards campaign, responded by saying Davidson's comments were aimed at creating "an environment of fear" to discourage voters from showing up on Election Day.

> "'This is the classic move by Republican tacticians: create an environment of fear that discourages voters from showing up on Election Day, for this is the only way they know how to win,' said Sue Casey, Kerry-Edwards 2004 Colorado state director. Casey said the tactic had worked for Republicans in Florida in 2000. 'And now that they see Colorado slipping out of their previously firm grasp, they are bringing this tired tactic to the Centennial State.'"[166]

(d) <u>Partisan Tactics In Colorado Voter Registration Drives</u>

According to a 9 News report, a voter registration group operating in Colorado under the name "Choose 2 Vote" paid workers $3 for each Democrat or independent voter they registered and nothing for Republican applications.[167] The group admitted to only being interested in Democrat registrations:

> "Company spokesman Derrick Lee admitted to 9NEWS he was only interested in registering Democrats. 'Yeah, what do you want me to say? It's true,' said Lee. 'The Republicans weren't paying money for voter registrations.'"[168]

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[162] *Faulty Voter Applications Are Blamed On Workers*, Gabrielle Crist, ROCKY MOUNTAIN NEWS, October 15, 2004
[163] *Colorado To Tackle Voter-Fraud Fears*, Valerie Richardson, THE WASHINGTON TIMES, October 14, 2004
[164] *I-Team Investigation Uncovers Voter Registration Fraud*, KUSA-TV 9 News Website, www.9news.com, Accessed May 26, 2005
[165] *Investigation Reveals Potentially Fraudulent Voter Forms*, THE ASSOCIATED PRESS, October 12, 2004
[166] *Partisan Fingers Point On Voter-Fraud Issue*, Peggy Lowe, ROCKY MOUNTAIN NEWS, October 14, 2004
[167] *I-Team Uncovers Partisan Tactics In Colorado Voter Registration Drives*, KUSA-TV 9 News Website, www.9news.com, Accessed May 26, 2005
[168] *Id.*

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However, one Colorado county received so many questionable registration forms from "Choose 2 Vote" that it turned them over to the Secretary of State for investigation. And in August, "Choose 2 Vote" worker John McCarthy was charged with forgery and procuring false registrations for nearly 50 voters.[169]

Canvassers for Moving America Forward, a voter registration group active in Colorado and other states in 2004, were reportedly instructed to re-register people who indicated that they were supporters of Democrat Senate candidate Ken Salazar and "walk away" from backers of Republican Senate candidate Pete Coors.[170] Moving America Forward is a political committee affiliated with New Mexico Governor Bill Richardson.[171]

6.3 Florida

(a) ACORN Linked To Voter Registration Fraud In Florida

In October 2004, after a series of high-profile voter registration fraud incidents involving ACORN employees, the Florida Department of Law Enforcement (FDLE) announced that ACORN was the target of a statewide vote fraud investigation. FDLE Spokesman Tom Berlinger confirmed that ACORN was the main target when he told the South Florida *Sun-Sentinel*, "So far the only group we've identified with certainty in North and South Florida as having connections to some of the vote fraud issues is ACORN."[172]

The following is a summation of the top voter registration fraud incidents involving ACORN:

- ✓ **Mac Stuart, Former Miami-Dade Field Director For ACORN, Said There Was "A Lot Of Fraud Committed" And Republican Voter Registrations Were "Routinely Kicked Back."** Stuart alleged that ACORN violated a slew of election laws, including "illegally copying voter registration applications and selling them to labor union groups, allowing people to sign petitions who were not registered voters and suppressing Republican voter registration applications." Stuart said it was common for ACORN to hold on to hundreds if not thousands of registration cards for weeks at a time and photocopy them for money.[173]

  Only a week before the election – and after the registration deadline – Stuart turned in to election officials a box of nearly 180 ACORN voter registration forms that he said the group had been holding on to. Stuart, who was fired from his position with ACORN in August after being accused of trying to cash a paycheck that wasn't his, claims he was

[169] *Id.*
[170] *Election Tactics Push Envelope*, Michael Riley, THE DENVER POST, October 24, 2004
[171] *Gov. Richardson: Kerry Did What He Could But Bush Ran Strong And Smart*, THE ASSOCIATED PRESS, November 3, 2004
[172] *Voter Registration Drive A Subterfuge, Lawsuit Claims*, Brittany Wallman, [South Florida] SUN-SENTINEL, October 30, 2004
[173] *Ex-Worker Sues Activist Group*, Jeremy Milarsky, [South Florida] SUN-SENTINEL, October 21, 2004

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actually fired just days after voicing his concerns about ACORN's practices at a group meeting in late July.[174]

- ✓ **Florida Residents Suing ACORN For Disenfranchising Them By Mishandling Voter Registration Forms.** Eleven South Florida residents who were disenfranchised by ACORN's apparent mishandling of their registration cards sued the group in late October 2005. According the their attorneys, the eleven individuals – one from Broward and ten from Miami-Dade – filled out voter registration forms that were never turned in by ACORN. According to the *Sun-Sentinel*, 19-year-old Miami resident Jude Daniel was among those whose voter registration forms were found after the registration deadline in ACORN's Miami office. Daniel was not on the voter rolls even though he filled out the form in August. "It was important to me ... It would have been my first time," Daniel told the *Sun-Sentinel*.[175]

- ✓ **Former St. Petersburg Mayor Charles Schuh, A 68-Year-Old Democrat, Was Fraudulently Registered By ACORN As A 30-Year-Old Female Republican.** Schuh, whose registration information was changed by an ACORN employee, said, "It was a blatant case of vote fraud and forgery, and someone ought to be taken to task for that ... [W]hen things like this happen, it further degrades the people's trust in the election process."[176]

- ✓ **ACORN Investigated In St. Petersburg For Changing Party Affiliations On Voter Registration Forms.** The state attorney's office investigated allegations that ACORN fraudulently changed party affiliations on voter-registration forms in St. Petersburg.[177]

- ✓ **Thousands Of Pinellas And Hillsborough County Residents Were Unable To Vote In August Primary Because ACORN And Other Groups Failed To Submit Their Voter Registration Applications On Time.** According to the *St. Petersburg Times*, more than 2,500 Pinellas County residents and another 1,500 Hillsborough residents who thought they had registered for the Aug. 31 primary were told they couldn't vote because the groups that helped them register failed to turn in their applications on time. The majority of the late registration forms, including more than 2,100 in Pinellas, reportedly came from ACORN. Hillsborough Supervisor of Elections Buddy Johnson called ACORN's actions in this manner "absolutely unacceptable."[178]

- ✓ **ACORN Consultant Hired To Run Florida Minimum Wage Campaign Left Group After "He Grew Increasingly Uncomfortable With ACORN's Methods."** Veteran St. Petersburg political consultant Joe Johnson left ACORN after becoming concerned about

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[174] *Filled-In Voter Forms Surface*, Brittany Wallman and Alva James-Johnson, [South Florida] SUN-SENTINEL, October 27, 2004; *Ex-Worker Sues Activist Group*, Jeremy Milarsky, [South Florida] SUN-SENTINEL, October 21, 2004

[175] *Voter Registration Drive A Subterfuge, Lawsuit Claims*, Brittany Wallman, [South Florida] SUN-SENTINEL, October 30, 2004

[176] *Signup Mistakes Blamed On Group*, Tom Zucco, ST. PETERSBURG TIMES, October 4, 2004

[177] *Voter Registration Process Causes Concern*, Dara Kam, THE PALM BEACH POST, October 7, 2004

[178] *Signup Mistakes Blamed On Group*, Tom Zucco, ST. PETERSBURG TIMES, October 4, 2004; *Activist Group Blamed For Voter Roll Goofs*, Tom Zucco, ST. PETERSBURG TIMES, October 4, 2004

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some of its practices, including its failure to turn in complete voter registration cards. Johnson told CNN, "I saw some things I was very uncomfortable with."[179]

(b) ACORN's Minimum Wage Hike Campaign Aimed To Increase Democrat Turnout

While ACORN's activities were increasingly reported in the media toward the end of the campaign, its start in Florida during the 2004 cycle has been less well documented. In August 2003, ACORN announced that it would spearhead a campaign to put a ballot initiative before Florida voters to raise the minimum wage in the state to $6.15 an hour. However, according to the *St. Petersburg Times*, the real goal behind the minimum wage amendment was to defeat President Bush and increase Democrat turnout in the November 2004 election.[180] According to a 2003 internal ACORN plan:

> "A Florida constitutional amendment initiative to create a minimum wage of $6.15 with indexing will help defeat George W. Bush and other Republicans by increasing Democratic turnout in a close election ..."[181]

The minimum wage amendment was "aimed at influencing the presidential election" right "from the start" and its "top two donors [were] Democratic-base groups: $225,000 from MoveOn.org and $499,000 from the National Education Association."[182]

ACORN and its various subsidiary groups have 501(c) 3 and 501(c) 4 tax designations.[183] As such under federal tax law, its 501(c) 3 organizations are barred from engaging in partisan political activity. Similarly, the federal Bipartisan Campaign Reform Act (BCRA) is an effort to limit the role of "soft money" in federal political activity with a strict prohibition against coordinated activity between a federal campaign and outside organizations. The purpose of this report is not to address violations of tax law or campaign finance law. However, it is clear from the documents that we have received that ACORN was acting in Florida and a number of other battleground states in a clearly partisan manner in coordination with Democrat organizations and candidates.[184] The effect is to have tax deductible funds which are undisclosed and unlimited being used to influence a federal election in a clearly partisan manner. This may have even involved federal grants, as an ACORN subsidiary nonprofit, ACORN Housing Corporation, reported receiving more than $1.7 million in government grants in 2002 and 2003.[185]

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[179] *Group Faces Accusations Of Broken Voting Laws*, Lucy Morgan, ST. PETERSBURG TIMES, October 22, 2004; CNN's "Newsnight With Aaron Brown," October 27, 2004
[180] *Group Accused Of Voter Registration Violations*, Lucy Morgan, ST. PETERSBURG TIMES, October 22, 2004
[181] Florida ACORN, "Floridians For All: Campaign Plan For A November 2004 Minimum Wage Constitutional Amendment Initiative," October 1, 2003 (Exhibit P)
[182] *Wage Initiative Tied To Kerry Voters*, Paige St. John, THE [Fort Myers] NEWS-PRESS, October 25, 2004
[183] *ACORN & The Money Tree*, Meghan Clyne, NATIONAL REVIEW ONLINE, October 31, 2004
[184] Florida ACORN, "Floridians For All: Campaign Plan For A November 2004 Minimum Wage Constitutional Amendment Initiative," October 1, 2003
[185] *ACORN & The Money Tree*, Meghan Clyne, NATIONAL REVIEW ONLINE, October 31, 2004

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(c) **ACORN, MoveOn.org And Mac Stuart**

ACORN hired Mac Stuart as coordinator for minority voter outreach for its voter registration effort in Miami-Dade County. In this position, Stuart supervised the voter registration forms that were collected, copied and sent to ACORN's voter registration arm Project Vote in New York and also filed with the election officials for registration. Mr. Stuart became increasingly concerned about the operation ACORN conducted, especially after he was told by an election official that it was illegal to copy voter registration forms. He told his supervisor of this concern about illegal activity and was told not to talk about it. Stuart also learned that 1,200 Republican voter registration forms had been segregated from the other voter registrations into a separate box and understood that ACORN was not going to turn them in. He secretly spoke with an official at the Florida Chamber of Commerce, which was opposing ACORN's minimum wage initiative in 2004, and this individual said that he should turn in the 1,200 Republican voter registrations before the deadline. Stuart did turn them in. However, Mr. Stuart found another box of 181 forms that he was told would be destroyed. He took these and reported ACORN's activities to election officials and the press. ACORN then fired Stuart. After being fired, Stuart filed suit against ACORN alleging that he was wrongly terminated because he reported its illegal acts. ACORN has countersued for libel and slander.[186]

Various e-mails document that MoveOn.org, Project Vote and American Families United were assisting in the funding of this effort. ACORN would send Project Vote and American Families United (to their Brooklyn NY office) copies of completed voter registration cards. It is illegal under Florida law to copy and sell voter registrations cards. MoveOn.org, Project Vote and American Families would then pay ACORN $4.00 per registration card (payment for registrations is illegal under Florida law). The payment for the voter registration cards was sent to the ACORN subsidiary Citizens Consulting, Inc, (CCI) a 501(c)(3) Louisiana corporation. There is also evidence of cash transfers of at least $25,000 by MoveOn.org to Florida ACORN to fund this effort. Under this campaign, which was coordinated with Project Vote/Voting for America, Inc., ACORN was to provide the staffing for the field canvassers involved in the voter registration and get-out-the-vote effort, who would be paid by CCI.[187]

(d) **Other Voter Registration Fraud Issues In Florida**

✓ **Duval Voter Registrations Included Addresses Of Parking Lot, Public Park, And Utilities Building.** In early October 2004, Duval County elections officials asked prosecutors to investigate "possible vote fraud involving 25 registration forms with apparently bogus addresses, including some that match a public park, a parking lot and a utilities building." *The Associated Press* checked each address and found only one that matched an occupied house, and found that most of the addresses didn't exist.[188]

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[186] Depositions of ACORN-Associated Individuals In Mac Stuart Case (Exhibit Q, Q1 and Q2)
[187] Victory 2004 Florida Coordinated Campaign Plan, "Florida Victory 2004," September 3, 2004 (Exhibit R); Depositions of ACORN-Associated Individuals In Mac Stuart Case; Florida ACORN, "Floridians For All: Campaign Plan For A November 2004 Minimum Wage Constitutional Amendment Initiative," October 1, 2003
[188] *Fla. Officials Asked To Probe Vote Fraud*, Brendan Farrington, THE ASSOCIATED PRESS, October 7, 2004

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- ✓ **New Jersey Man Whose "Tactics Have Generated Well-Publicized Suspicions And Accusations Of Election Fraud" Canvassed Florida Neighborhoods For Kerry Campaign.** Craig Callaway, a part-time city council president in Atlantic City, worked as a canvasser for Kerry in Pinellas County for a few weeks before being asked to leave the campaign. According to the *St. Petersburg Times*, a judge voided Callaway's city council election in 2003, concluding that more than 200 votes he received came from forged or fraudulent absentee ballots. The judge reportedly said that Callaway's election "was so contaminated by fraud and misconduct that the mathematical result must be rendered in doubt."[189]

- ✓ **"Howard The F. Duck" Of Coconut Creek Registered To Vote In Broward County.**[190]

(e) Double-Voting And Inaccurate Voter Rolls In Florida

Nearly 100 voters in at least five Florida counties voted more than once in the 2004 election. It was reported in January that the FBI and U.S. Attorney's office were investigating 59 cases of double voting in Duval County. According to the *Florida Times-Union*, at least 41 of these double votes counted while another 18 involving provisional ballots were not part of the final tally.[191] Broward County officials referred to the Florida Department of Law Enforcement (FDLE) at least 30 cases of people voting at early-voting locations and also voting at the polls on Election Day.[192] In Palm Beach County, three voters reportedly voted twice by casting absentee ballots and also showing up at the polls.[193] There were also reports of double voting in Volusia and Sumter counties.[194]

Despite election reforms enacted after the 2000 recount, problems with Florida's voter rolls, and the potential for massive double-voting, persisted in 2004. The *Chicago Tribune* published an analysis in December 2004 finding that Florida had more than 64,000 dead people on its voter rolls, the most of six battleground states analyzed by the paper.[195] The New York *Daily News* reported in August that some 46,000 people were illegally registered to vote in both Florida and New York City. The paper found that between 400 and 1,000 registered voters actually voted twice in at least one election.[196] In September, the Cleveland *Plain Dealer* reported that more than 27,000 people were listed as active voters in Ohio and Florida, and as many as 400 people voted in both states in the same election in the last four years.[197] In October,

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[189] *Fraud Issues Haunt Canvasser*, Adam C. Smith, ST. PETERSBURG TIMES, October 26, 2004
[190] *Broward Mailing New Ballots*, Tim Reynolds, THE ASSOCIATED PRESS, October 28, 2004
[191] *Double Voting Being Investigated*, David DeCamp, FLORIDA TIMES-UNION, January 25, 2005
[192] *Double-Voters' Names Going To Prosecutors*, Amy Sherman, THE MIAMI HERALD, November 14, 2004; *Absentee-Ballot Glitches Prompt Request For Inquiry*, Erika Bolstad, THE MIAMI HERALD, November 17, 2004
[193] *Possible Attempts To Double Vote Eyed*, George Bennett, THE PALM BEACH POST, November 5, 2004
[194] *Volusia Canvassers Examine 3 In Vote Fraud*, Ludmilla Lelis and Jeff Libby, ORLANDO SENTINEL, November 4, 2004; *Area Voters Encounter Few Snags*, Lindsay Jones and John Pacenti, THE PALM BEACH POST, November 3, 2004
[195] *Dead Voters On Rolls, Other Glitches Found In 6 Key States*, Geoff Dougherty, CHICAGO TRIBUNE, December 4, 2004
[196] *Exposed: Scandal Of Double Voters*, Russ Buettner, [New York] DAILY NEWS, August 22, 2004
[197] *Voters Double-Dip In Ohio, Fla.*, Scott Hiaasen, Dave Davis and Julie Carr Smyth, [Cleveland] PLAIN DEALER, October 31, 2004

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the *Orlando Sentinel* found that over 68,000 people were registered to vote in Florida and either Georgia or North Carolina. The paper also found 1,650 cases in which voters cast ballots in Florida and also in another state in the 2000 and 2002 elections.[198]

6.4 Illinois

(a) Nine Democrats Found Guilty Of Vote-Buying In East St. Louis

On June 29, 2005, a federal jury convicted Charles Powell, Chairman of the East St. Louis Democratic Party, and four others of felony conspiracy to commit vote fraud. The jury deliberated for more than five hours before convicting the five "of scheming to buy votes with cash, cigarettes and liquor last November to try to get key Democrats elected." Prosecutors alleged that money for the vote-buying "flowed from the Belleville-based St. Clair County Democrats to their East St. Louis counterparts in a bid to elect certain Democratic candidates, including Mark Kern as St. Clair County Board chairman." Each count carries up to five years in prison and $250,000 in fines.[199]

The five convictions on June 29 brought the total number of East St. Louis Democrats found guilty of vote-buying in the last four months to nine. On March 22, 2005, four Democrat activists in East St. Louis pleaded guilty to paying voters $5 to $10 to vote for the "Democratic ticket" in the November 2004 election. Those pleading guilty included three precinct committeemen and one precinct worker. According to the *Belleville News-Democrat*, the money used to buy votes came from the St. Clair County Democratic Central Committee, which paid $73,326 to East St. Louis Democratic precinct committeemen days before the election.[200]

Powell, then an East St. Louis City Councilman, was indicted in March 2005 along with four others on charges of "paying residents to vote in the Nov. 2 election to try to influence the races for Supreme Court, County Board chairman and president." Powell and three of the others charged served as Democrat precinct committeemen. At the time, all five pleaded innocent to the charges.[201] Powell subsequently lost his bid for re-election to the City Council in April 2005.[202]

Among those convicted with Powell was Kelvin Ellis, the city's Director of Regulatory Affairs and a Democratic precinct committeeman.[203] Ellis was already in jail at the time of his indictment charged in January 2005 with plotting the murder of a witness to a federal vote fraud investigation. According to the indictment, Ellis plotted to kill a witness who told the FBI that

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[198] *Double Votes Taint Florida, Records Show*, Roger Roy and Beth Kassab, ORLANDO SENTINEL, October 23, 2004
[199] *Federal Jury Convicts Five People In Federal Vote Fraud Trial*, THE ASSOCIATED PRESS, June 29, 2005
[200] *Four Plead Guilty To Vote-Buying*, Beth Hundsdorfer, BELLEVILLE NEWS-DEMOCRAT, March 23, 2005
[201] *ESL Party Chairman Is Indicted*, Mike Fitzgerald and Beth Hundsdorfer, BELLEVILLE NEWS-DEMOCRAT, March 24, 2005; *Five Are Charged With Election Fraud*, Michael Shaw and Doug Moore, ST. LOUIS POST-DISPATCH, March 24, 2005
[202] *Powell Loses Race For Council*, Mike Fitzgerald, BELLEVILLE NEWS-DEMOCRAT, April 6, 2005
[203] *Five Are Charged With Election Fraud*, Michael Shaw and Doug Moore, ST. LOUIS POST-DISPATCH, March 24, 2005

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he had committed election fraud and other offenses.[204] "[W]hen voters are paid for their votes, our democracy is corrupted, and corrupted for all," said U.S. Attorney Ronald Tenpas after announcing the indictments.[205]

6.5 Kentucky

(a) Kentucky State Senator Indicted On Vote-Buying Charges

On May 5, 2005, Kentucky state Senator Johnny Ray Turner (D) was indicted on charges of accepting illegal campaign contributions and buying votes in his 2000 primary election campaign. Turner's campaign treasurer and cousin, Loren Glenn Turner, and businessman Ross Harris were also indicted for their participation in the scheme. According to the Louisville *Courier-Journal*, the indictments were the "latest in a broader federal investigation into allegations of voting fraud in several Eastern Kentucky elections." Loren Glenn Turner and Ross Harris were convicted of similar charges in a separate case involving a 2002 judicial election in Pike County in September 2004. All three have claimed innocence in this latest case.[206]

The federal indictment alleged that the defendants conspired to funnel money from Ross Harris to Johnny Ray Turner's campaign through straw donors. In addition, the three allegedly bought votes by delivering checks with the payee information left blank. While the defendants claimed that the funds were for "vote hauling," a legal activity in Kentucky, the U.S. Attorney alleges that they never intended it for such lawful purposes.[207]

U.S. Attorney Gregory Van Tatenhove stated that the point of the indictments was to make sure that "the vast majority of votes that are cast honestly" are "not diluted" by illegal actions.[208] Meanwhile, the *Lexington Herald Leader* editorialized against the practice of paid vote hauling. Noting that Turner paid "more than 650 people a total of about $34,000 to haul votes" during his 2000 campaign, the *Herald Leader* stated that while campaigns helping citizens get to the polls is good, "paid vote hauling all too often is no more than thinly disguised vote buying."[209] A trial is slated to begin on July 25 for Johnny Ray Turner and Loren Glenn Turner, while Ross Harris' trial has been separated from the others due to his poor health.[210]

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[204] *Murder Plot Charge Stems From Voting Probe*, Michael Shaw and Douglas Moore, ST. LOUIS POST-DISPATCH, January 22, 2005
[205] *ESL Party Chairman Is Indicted*, Mike Fitzgerald and Beth Hundsdorfer, BELLEVILLE NEWS-DEMOCRAT, March 24, 2005.
[206] *Senator, 2 Other Men Are Indicted*, Elisabeth J. Beardsley, THE [Louisville] COURIER-JOURNAL, May 6, 2005
[207] *Id.*
[208] *Id.*
[209] *End Vote Hauling*, Editorial, LEXINGTON HERALD LEADER, May 5, 2005
[210] *Federal Vote-Fraud Trials To Be Separate*, Lee Mueller, LEXINGTON HERALD LEADER, May 18, 2005

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6.6 Michigan

(a) ACORN Linked To Voter Registration Fraud In Michigan

In late September 2004, the *Detroit Free Press* reported that campaign workers in several Michigan counties were under investigation for submitting thousands of fraudulent voter registrations to elections officials in the state. The fraud appeared to be an outgrowth of "unprecedented" voter registration campaigns conducted in Michigan by third-party groups aiming to influence the November election. The *Free Press* named two such groups as having "submitted apparently-fraudulent applications," Public Interest Research Group in Michigan (PIRGIM) and ACORN/Project Vote.[211]

The voter registration fraud in Michigan included efforts to "register nonexistent people or forging applications for already-registered voters" in Wayne, Oakland, Ingham and Eaton counties, according to the report. Ingham County Clerk Mike Bryanton said some of the fraud included "names taken out of the phone book and as many as eight people registered from a single apartment address." The voter registration drives "produced thousands of registration applications from voters already on the rolls" in Detroit. State Elections Director Christopher Thomas said the "irregularities were like nothing he had seen before." Thomas said that voter registration fraud "undermines confidence in the system and burdens local elected officials." Officials from PIRGIM and ACORN/Project Vote "downplayed the issue" of voter registration fraud in the state, saying that there were a limited number of fraudulent registrations that were generally the work of inexperienced workers.[212]

A *Free Press* editorial took on PIRGIM and ACORN/Project Vote, calling fraudulent voter registrations "yet another blow" to the election system. The paper wrote that voter registration fraud puts the integrity of the entire system "at stake." The *Free Press* further noted that the "last thing" election workers needed was "a flood of new voter applications of dubious origin," as they were already under pressure to get things exactly right after the Florida recount debacle.[213]

6.7 Minnesota

(a) ACORN Worker Caught With Hundreds Of Voter Registration Forms In Trunk Of His Car

When police pulled a man over for running a stop sign at Minneapolis-St. Paul International Airport in late September 2004, they made a startling discovery in his trunk: more than 300 voter registration forms that had been filled out but never delivered to the Secretary of State's Office. The car's driver, Joshua Reed of St. Louis Park, identified himself as a former employee of ACORN's voter registration drive in the Twin Cities.[214]

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[211] *Campaign Workers Suspected Of Fraud*, Dawson Bell, DETROIT FREE PRESS, September 23, 2004
[212] *Id.*
[213] *Vote Fraud: Phony Registrations Are Yet Another Blow To System*, Editorial, DETROIT FREE PRESS, September 27, 2004
[214] *Stash Of Voter Cards Probed*, Patrick Sweeney, [St. Paul] PIONEER PRESS, October 8, 2004

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Minnesota law requires registration forms to be turned in within ten days of being filled out and signed, but the forms found in Reed's car were weeks or months old. Police took the forms to the Secretary of State's office where workers photocopied them. Secretary of State Mary Kiffmeyer asked metro-area county election officials to accept the photocopies as valid registrations, which they did. However, a handful of voters were unable to have their registrations processed as water damage caused some of the forms to be illegible. Since the forms contained sensitive personal data, like signatures, driver's license numbers and full dates of birth, there was significant potential for identity theft. Reed reportedly told authorities he had been fired from ACORN for making copies of the forms, though ACORN denied that assertion.[215]

Reed, who faced an unrelated felony drug case when he was pulled over in September, pleaded guilty on December 4 to two felony counts and admitted to failing to promptly turn over the voter registration forms and forging signatures on 18 other voter registration forms. Hennepin County Attorney Amy Klobuchar said of the case, "It was very important for the public integrity of our electoral system that somebody, if they do something like this, gets charged, gets convicted and gets consequences."[216]

6.8 Missouri

(a) ACORN Linked To Voter Registration Fraud In Missouri

In September 2003, St. Louis Election Board workers discovered more than 1,000 suspicious new voter registration forms among a batch of 5,000 submitted by ACORN. Keena Carter, the election board's deputy Democratic director, first became suspicious after discovering a blatantly fraudulent form attempting to re-register her brother, Alderman Greg Carter (D-27th Ward), under the name "Alderman Gregory" and listing his office address as his home. Election Board workers called one of the names listed on the suspicious forms only to find that the name listed on the form was that of a baby. Many of the bogus forms listed addresses in Illinois and elsewhere in Missouri outside of St. Louis. ACORN blamed most of the group's fraudulent registrations on four temporary workers that ACORN said it fired after the workers admitted filling out forms with fake names, addresses and Social Security numbers.[217]

ACORN employees submitted fraudulent voter registration forms in Kansas City as well, according to news reports. Andrew Ginsberg, ACORN's head organizer in Kansas City, admitted to firing "five or six employees" for submitting fraudulent registrations to election officials, and turned their names over to police. These cases reportedly included ACORN workers making up names as well as submitting duplicate registrations.[218]

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[215] *Stash Of Voter Cards Probed*, Patrick Sweeney, [St. Paul] PIONEER PRESS, October 8, 2004
[216] *Man Pleads Guilty In Voter Registration Scam*, THE ASSOCIATED PRESS, December 7, 2004
[217] *Voter Registration Fraud Dogs City*, Jo Mannies, ST. LOUIS POST-DISPATCH, September 19, 2003
[218] *Political Groups Using Incentives To Encourage Voter Registration*, David A. Lieb, THE ASSOCIATED PRESS, June 27, 2004

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Less than a month before the November election, workers at the St. Louis County Board of Election were still finding fraudulent registrations. KMOV News 4 reported in early October that election officials were "trashing hundreds of faulty voter registrations, most of them collected by voter drive groups like Pro-Vote and America Coming Together." KMOV's report indicated that 10,000 new voter registration forms were submitted to the county elections office in the days before the registration deadline and asked, "[C]an all of them be checked before November 2?"[219]

(b) Operation Big Vote And Voter Registration Fraud In St. Louis

In February 2005, a St. Louis jury convicted Nonaresa Montgomery, the head of Operation Big Vote, of lying to a grand jury investigating thousands of fraudulent voter registration forms turned in to the city elections board before the 2001 mayoral primary. Montgomery's perjury stemmed from her statement that she could not track the cards that she turned into the board when in fact she could.[220] Testimony in the case indicated that destroying copies of the fraudulent forms was discussed at a meeting attended by Montgomery, St. Louis Comptroller Darlene Green, assistant Democratic election board director Keena Carter and longtime political activist Pearlie Evans.[221]

Six Operation Big Vote volunteers pled guilty in December 2004 to dozens of election law violations for filling out the fraudulent forms.[222] Prosecutors had alleged that Operation Big Vote used names of dead people (including that of longtime Alderman Albert "Red" Villa, who died in 1990), prepared multiple registration forms for the same person, filled out forms on behalf of others with or without their permission and simply made up people to register.[223]

(c) Fraudulent Voter Registration Activity In Missouri By America Coming Together (ACT) And Missouri Pro-Vote

In June 2004, the St. Louis-based nonpartisan nonprofit Center for Ethics and the Free Market reported that thousands of duplicative and fraudulent voter registration forms were filed in the county by America Coming Together (ACT) and Missouri Pro-Vote. The Center found that more than a quarter of the voter registration applications turned in to St. Louis officials by these two groups were "deemed duplicative," and hundreds were rejected by election officials as they came from ineligible voters.[224]

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[219] *Investigation Reveals Phony Registration Cards*, Jamie Allman, KMOV Website, www.kmov.com, October 7, 2004

[220] *Jury Finds Montgomery Guilty In Vote Fraud Case*, Robert Patrick, ST. LOUIS POST-DISPATCH, February 11, 2005

[221] *Darlene Green Testifies In City Vote Fraud Trial*, Robert Patrick, ST. LOUIS POST-DISPATCH, February 10, 2005

[222] *Jury Finds Montgomery Guilty In Vote Fraud Case*, Robert Patrick, ST. LOUIS POST-DISPATCH, February 11, 2005

[223] *Head Of 2001 Voter-Registration Drive Convicted Of Perjury*, THE ASSOCIATED PRESS, February 10, 2005

[224] The Center For Ethics And The Free Market, *Laying The Groundwork: A Study Of Voter Registration In Missouri*, www.centerforethics.org, June 2004 (Exhibit S)

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(d) Corrupted Voter Rolls And Double-Voting In Missouri

In May 2004, Democrat State Auditor Claire McCaskill released an audit finding that the St. Louis Election Board's voter files included dead people, felons and Illinois residents. McCaskill's audit found that "nearly 10 percent, or 24,000, of the city's registered voters are either dead, been convicted of a felony, registered in another jurisdiction or otherwise questionable."[225]

In September 2004, the *Kansas City Star* reported that more than 300 people may have voted twice in the same election in Missouri in 2000 and 2002, though the number "could be even higher." The *Star* found about 150 potential double-voters in St. Louis or St. Louis County, 60 in the Kansas City area and the rest spread around the state.[226]

6.9 Nevada

(a) Voter Registration Fraud In Nevada

Voter registration fraud "plagued Clark County" in 2004. After the fictional horror movie character Freddy Krueger registered to vote in Clark County, top elections official Larry Lomax began to sound the alarm bell about voter registration fraud in the Las Vegas area. "We've never seen anything close to this," Lomax told the *Las Vegas Review-Journal*. His office flagged several hundred suspicious voter registration forms and Lomax said he had a stack of "obviously fraudulent" forms. Some of the fraudulent forms included the names of clearly fictitious people, while others had names of illegal immigrants or names of registered voters with party affiliations suspiciously switched.[227]

Lomax believed that it was money, and not necessarily partisan interest, that fueled much of the voter registration fraud in the Las Vegas area. One voter registration worker reportedly left his pay stub in a stack of forms, which showed him being paid by the form, not the hour, a violation of state law. Another worker flatly told Lomax that he was being paid by the form. More than 100 nonprofit groups requested voter registration forms from Lomax's office, and though he declined to say which ones submitted the fraudulent registrations, he did indicate they were smaller, less well-known groups.[228]

(b) Charges Of Partisan Voter Registration Fraud In Nevada

In October 2004, Sproul & Associates, a Republican National Committee vendor paid to do voter registration work, came under intense scrutiny for its activity in Nevada. Eric Russell, a former employee of the Sproul & Associates' voter registration effort Voters Outreach of

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[225] *Audit Critical Of City Election Board*, THE ASSOCIATED PRESS, May 26, 2004
[226] *One Person, One Vote? Not Always*, Greg Reeves, THE KANSAS CITY STAR, September 5, 2004
[227] *Vote Fraud Allegations: Judge Denies Request*, Adrienne Packer and J.M. Kalil, LAS VEGAS REVIEW-JOURNAL, October 16, 2004; *Fake Voter Sign-Ups Increasing*, Erin Neff and Brian Haynes, LAS VEGAS REVIEW-JOURNAL, July 9, 2004; *County Battling Vote Fraud*, Adrienne Packer, LAS VEGAS REVIEW-JOURNAL, July 17, 2004
[228] *County Battling Vote Fraud*, Adrienne Packer, LAS VEGAS REVIEW-JOURNAL, July 17, 2004

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America, claimed to have witnessed his supervisors tearing up Democrat registration forms. Russell, who admitted to being a disgruntled employee upset about not being paid for work he claimed to have done, said he witnessed his supervisor shred eight to 10 Democratic registration forms from prospective voters.[229]

Sproul & Associates denied Russell's allegations. DNC Chairman Terry McAuliffe cited the Nevada allegations as evidence of the GOP's "systematic efforts to disenfranchise voters all over the country." Republicans said Democrats were using "selective outrage" in seizing on the Russell allegations and pointed to similar charges against Democrat-aligned voter registration groups in Nevada. Republicans presented to the press three registration forms submitted by Moving America Forward, a group linked to Democrat Gov. Bill Richardson of New Mexico that listed addresses that do not exist or are empty lots. The NAACP was also contacted by Clark County elections officials in regard to "problems with voter registration cards."[230]

On the basis of Russell's allegations, the Nevada Democratic Party sued the state of Nevada to reopen voter registration only in Clark County. A state court judge rejected the suit, saying that Democrats' thin evidence of registration forms actually being destroyed did not justify reopening the registration process.[231]

In late October, Nevada Secretary of State Dean Heller announced that a state investigation of Eric Russell's allegations against Sproul & Associates found "no evidence of an organized or concerted effort which would influence or impact the result of the elections in Clark County based on these allegations."[232]

(c) Felons Registered To Vote In Nevada

In October 2004, the *Chicago Tribune* reported finding more than 700 felons illegally registered to vote in Clark County. The *Tribune*'s list included people "serving time in prison, those on parole, and those who have committed violent crimes and sex offenses," all of whom were banned from voting, according to state law. According to the local Board of Elections, the county did not "have the staff" to check the felon registrant names.[233]

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[229] *Executive Denies Voter Registration Forms Destroyed In Nevada*, Adam Goldman, THE ASSOCIATED PRESS, October 13, 2004

[230] *Registering Voters: Add One, Take Away Two*, Jo Becker and Thomas B. Edsall, THE WASHINGTON POST, October 14, 2004; *Vote Fraud Allegations: Judge Denies Request*, Adrienne Packer and J.M. Kalil, LAS VEGAS REVIEW-JOURNAL, October 16, 2004; *Extent Of Vote Fraud In County Unknown*, Kirsten Searer, LAS VEGAS SUN, July 21, 2004

[231] *Nevada Judge Declines To Reopen Voter Registration In Vegas Area*, Ken Ritter, THE ASSOCIATED PRESS, October 15, 2004

[232] Nevada Secretary Of State, "Alleged Vote Fraud Investigations Ongoing," Press Release, October 28, 2004

[233] *Felons Slip Through The Net Of Voter Registration Rules*, Michael Martinez and Geoff Dougherty, CHICAGO TRIBUNE, October 31, 2004

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6.10 New Mexico

(a) Voter Registration Fraud In New Mexico

It was clear in August 2004 that New Mexico would have a significant problem with voter registration fraud. That month, Bernalillo County Clerk Mary Herrera estimated that she had some 3,000 registration forms with one problem or another making them invalid. "We have a mess here. ... I'd rather say it now, so we have time to straighten it out," Herrera said. The problems included forms with faulty addresses, signatures and Social Security numbers.[234]

Many incidents of voter registration fraud were reported throughout the Summer and Fall of 2004. The general surge in fraud complaints led local U.S. Attorney David Iglesias to form a special task force on vote fraud in September 2004.[235]

- ✓ **Two Albuquerque Teenagers – Aged 13 And 15 – Were Registered To Vote.** In August 2004, Albuquerque resident Glen Stout received voter registration cards in the mail for his 13-year-old son and their 15-year-old neighbor across the street. Stout told the *Albuquerque Journal* that the registration card listed a Social Security number that didn't match his son's, and the date of birth made him appear old enough to vote.[236]

- ✓ **Dead Man Registered To Vote In Albuquerque Area.** Bernalillo County resident Patricia Laven reportedly received a voter registration card for her father, who had passed away two and a half years earlier.[237]

- ✓ **Voter Registration Cards Listed False Addresses, Including Empty Lot, Shopping Center And Parking Lot.**[238]

- ✓ **Just Before The Election, Bernalillo County Clerk Asked Prosecutors To Review Two Dozen Suspicious Voter Registration Cards.** As Election Day approached, complaints of fraudulent registrations "rolled in," with "people claiming that they're getting cards they didn't request with incorrect names, Social Security numbers and birthdates."[239]

- ✓ **One Voter "Registered – And Reregistered – Four Times In A 60-Day Period, Although None Of His Key Information Had Changed."**[240]

- ✓ **"In One Instance, A Woman Registered In March With A Last Name Of Maestas-Perea. In May, She Put Down Perea-Maestas."**[241]

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[234] *Clerk: Voter Forms 'A Mess,'* Shea Andersen, ALBUQUERQUE TRIBUNE, August 17, 2004
[235] *Election 'Mischief' Under Scrutiny*, Dan McKay, ALBUQUERQUE JOURNAL, September 10, 2004
[236] *Too Young To Vote*, Dan McKay, ALBUQUERQUE JOURNAL, August 20, 2004
[237] *Dead Man Registered To Vote Again*, KRQE Website, www.krqe.com
[238] KRQE News 13 Report, August 16, 2004
[239] *Clerk Seeks Vote-Fraud Review*, Dan McKay, ALBUQUERQUE JOURNAL, October 29, 2004
[240] *Probe Irregularities In Voter Registration*, Editorial, ALBUQUERQUE JOURNAL, August 9, 2004
[241] *Id.*

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(b) **ACORN Linked To Voter Registration Fraud In New Mexico**

According to Bernalillo County Clerk Mary Herrera and Sheriff Darren White, the numerous voter registration groups active in New Mexico "could be to blame" for the wave of fraudulent registrations.[242] ACORN was linked by press reports to much of the voter registration fraud that occurred in New Mexico in the weeks and months leading up to the November election.

- ✓ **ACORN Worker Registered 13-Year-Old To Vote, Father Joined Lawsuit Asking Secretary Of State To Require IDs At Polls.** An ACORN worker fraudulently registered a 13-year-old to vote in Albuquerque, according to press reports. A copy of the boy's registration form reportedly indicated that a former ACORN employee turned in the form to election officials. ACORN spokesman Matthew Henderson said the group fired the worker in question in May "for what he called 'dishonest practices' unrelated to voter registration forms."[243]

  The 13-year-old's father, Glen Stout, joined a lawsuit to require first-time voters to show IDs before casting their ballots. Stout said this incident underscored the need for ID at the polls, as someone may have voted in his son's name.[244]

- ✓ **ACORN Voter Registration Forms Found In Apartment During Drug Bust.** About a dozen voter registration forms were discovered during a search of an Albuquerque apartment that was part of a drug investigation. The occupant of the apartment, who was arrested on drug charges, reportedly told police that he obtained the forms while working for ACORN.[245]

- ✓ **Woman Unable To Vote At Polls, Blamed ACORN Workers Who "Joked" When She Said She Wanted To Register As Republican.** Albuquerque resident Ingrid Bober was reportedly unable to vote because poll workers said she was not on list of registered voters. Bober said she registered in February with ACORN, but she suspected her registration was not turned in, as the ACORN worker "joked" about her being a Republican.[246]

- ✓ **ACORN Worker Took The Fifth Amendment During Testimony On The Group's Handling Of Registration Forms.**[247]

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[242] *Too Young To Vote*, Dan McKay, ALBUQUERQUE JOURNAL, August 20, 2004
[243] *More Glare On Voter Sign-Ups*, Shea Andersen, ALBUQUERQUE TRIBUNE, August 25, 2004
[244] *Dad of 'Voter' Joins Suit To Require IDs*, Dan McKay, ALBUQUERQUE JOURNAL, August 25, 2004
[245] *Albuquerque Police Find Voter Registration Forms At Albuquerque Apartment*, THE ASSOCIATED PRESS, October 16, 2004
[246] *County's Early-Polling Places 'Slammed' With Voters, Calls*, Dan McKay and Andy Lenderman, ALBUQUERQUE JOURNAL, October 19, 2004
[247] *Fight Over Voter ID Heats Up*, Andy Lenderman, ALBUQUERQUE JOURNAL, September 19, 2004

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(c) **Other Voter Registration And Election Fraud Issues In New Mexico**

Other issues related to election fraud and questionable voter registration activities in New Mexico included:

- ✓ **Man "Working For Governor Richardson" Reportedly Attempted To Collect Woman's Absentee Ballot.** According to the *Albuquerque Journal*, a woman said that a man claiming to be "working for Governor Richardson" came to her door and tried to collect her absentee ballot, an illegal practice in New Mexico. The director of Richardson's political organization, Moving America Forward, said that the man did not work for the governor, and that the group did not collect absentee ballots.[248]

- ✓ **College Student Said He Was Fired From Moving America Forward, The "527" Group Affiliated With Governor Richardson, For Registering Too Many Republicans.** New Mexico State University student Joshua Pena told the *Albuquerque Journal*, "They said I was registering too many Republicans ... We (the group) were pushing for the Democratic vote." Moving America Forward's director denied the charge, saying "We would never, ever fire somebody because of that."[249]

- ✓ **Republican Voter Registration Forms Stolen From New Voters Project Office In Albuquerque.** According to *The Associated Press*, 100 to 200 mostly Republican forms were stolen during the night of September 12.[250]

6.11 Ohio

(a) **Charges That Exit Poll Results Exposed Republican Election Fraud & Confirmed Democrat Victory On Election Day**

Shortly after the election, theories began circulating on the Internet about the gap between the vote count and the results of the exit polls, which on Election Day showed Kerry leading nationally and in key battleground states. Only a week after the election, University of Pennsylvania professor Steven Freeman caused a stir on the Internet when he released a paper raising the specter of election fraud based on this exit poll discrepancy.[251] By late November, the Rev. Jesse Jackson was citing a "suspicious" gap between exit poll results and the vote count.[252] In January 2005, Democrats used this claim as a key rationale for their challenge of the Ohio election results in Congress. Democrat Rep. John Conyers' Judiciary Committee staff report, which formed the basis of the challenge, charged that "exit polls bolster claims of irregularities and fraud" and "provide important evidence that something was amiss in the Ohio election."[253] More recently, a study by the "left-leaning non-profit" U.S. Count Votes found that exit polls

[248] *Woman Reports Ballot Ruse*, Andy Lenderman, ALBUQUERQUE JOURNAL, October 23, 2004
[249] *Fight Over Voter ID Heats Up*, Andy Lenderman, ALBUQUERQUE JOURNAL, September 19, 2004
[250] *Activist Reports Theft Of Voter Forms*, THE ASSOCIATED PRESS, September 23, 2004
[251] *Election Numbers Still Leave Questions For Some*, Larry Eichel, THE PHILADELPHIA INQUIRER, November 23, 2004
[252] *Jackson Rallies For Ohio Vote Probe*, Stephanie Zimmermann, CHICAGO SUN-TIMES, November 28, 2004
[253] *Preserving Democracy: What Went Wrong In Ohio*, Report Of The House Judiciary Committee Democratic Staff, January 5, 2005

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results showed "corruption of the official vote count occurred most freely in districts that were overwhelmingly Bush strongholds."[254] *The Washington Post* reported that the U.S. Count Votes study "clearly leaves the impression that the authors believe there was wholesale fraud in the 2004 presidential election."[255]

Yet as these theories circulated around the Internet, a bipartisan consensus emerged that the flaws in the exit polls did not support the conclusion that President Bush's victory in Ohio was the result of election fraud. In January 2005, the firms that performed the exit polls – Edison Media Research and Mitofsky International – released a report stating that the exit polls' flaws were caused primarily by an oversampling of Kerry supporters, as Kerry voters were more likely to participate in the exit poll interviews than Bush voters. The report cited the inexperience and youth of its interviewers as another problem with their poll.[256]

Democrat pollster Mark Blumenthal agreed that the faulty exit polls did not indicate fraud in the 2004 election for President. He said that some of the studies on the Internet come from people who "really want to find that the exit polls are evidence of some fraud." As Blumenthal told ABC's "Nightline,"

> "There is a bit of a statistical food fight here if you go on the Internet, between those who really want to find that the exit polls are evidence of some fraud, and some of us who are more skeptical. And what I've said before is I think it's a lot of sound and fury signifying not very much. Because – at the end of the day, Warren Mitofsky agrees, I agree, everyone agrees that there was a small and probably significant error across the whole country."[257]

Warren Mitofsky, considered the "father of the exit poll," leads one of the firms that produced the flawed exit polls in 2004.[258] Mitofsky criticized the Internet theories and the U.S. Count Votes study, noting that polling is not its authors' area of expertise. "The trouble is they make their case very passionately and not very scholarly ... I don't get the impression that any of these people have conducted surveys on a large scale," Mitofsky said. According to Mitofsky, the theory that the exit poll results are some indication of fraud is "totally implausible."[259]

In May 2005, the nonpartisan Election Science Institute (ESI) dealt another blow to the exit poll fraud theory when it released a study confirming "pollster Warren Mitofsky's assertion that the exit polls that put John Kerry ahead of George Bush in Ohio on Election Day 2004 do not necessarily indicate that there was fraud in the Ohio election." The ESI study was presented at the annual conference of the American Association of Public Opinion Research and conducted by a research team led by Dr. Fritz Scheuren, president of the American Statistical Association

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[254] *Analysis Of The 2004 Presidential Election Exit Poll Discrepancies*, U.S. Vote Counts, March 31, 2005, Updated April 12, 2005; *Vote Fraud Theorists Battle Over Plausibility*, Terry M. Neal, THE WASHINGTON POST, April 24, 2005

[255] *Vote Fraud Theorists Battle Over Plausibility*, Terry M. Neal, THE WASHINGTON POST, April 24, 2005

[256] *Evaluation Of Edison/Mitofsky Election System 2004*, Edison Media Research and Mitofsky International, January 19, 2005

[257] ABC's "Nightline," January 19, 2005

[258] *Id.*

[259] *Vote Fraud Theorists Battle Over Plausibility*, Terry M. Neal, THE WASHINGTON POST, April 24, 2005

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and Vice President for Statistics at NORC, a research institute based at the University of Chicago. ESI "used more detailed information from the exit polls than previous studies." Dr. Scheuren confirmed Mitofsky's finding, stating that "it looks more like Bush voters were refusing to participate and less like systematic fraud."[260]

The liberal online newsmagazine Salon.com recently reported that a "consensus among experienced pollsters" now favors Mitofsky's view it was the overrepresentation of Kerry voters in the exit polls – not election fraud – that caused them to differ from the official vote count. Several key individuals "who once suspected that the exit polls pointed to election fraud, have begun to change their minds." Bruce O'Dell, one of the founders of U.S. Count Votes, "the group that has been leading the charge to show that exit polls prove Kerry won," now believes "it's impossible to say whether the exit polls suggest that Bush stole the election," and calls Mitofsky's explanation of what went wrong "plausible." Salon.com reported that one researcher found a math error in U.S. Count Votes' analysis that "basically stuck the final nail in the coffin of any theories purporting to show that the exit polls proved the election was stolen."[261]

Finally, the DNC Voting Rights Institute's report on the election in Ohio, released on June 22, 2005, rejected claims that widespread fraud cost Kerry the election in Ohio. The DNC's "statistical study of precinct-level data does not suggest the occurrence of widespread fraud that systematically misallocated votes from Kerry to Bush." The DNC's experts found that the similarity between the vote patterns for Kerry in 2004 and the Democrat gubernatorial candidate in 2002 was "strong evidence against the claim that widespread fraud systematically misallocated votes from Kerry to Bush."[262]

Back in Ohio, editorial boards around the state panned the exit poll fraud theories. The *Akron Beacon Journal* called them "frivolous," saying that "early exit polls were inaccurate and never intended as predictors of the final vote."[263] The Cleveland *Plain Dealer* opined that the "die-hard band of zealots" pushing the exit poll fraud theory need to realize that "the only poll that counts is the one conducted by ballot." Even Conyers' hometown paper, the *Detroit Free Press*, accused him of "grasping at straws" in an effort to overturn the election. The *Free Press* suggested that if Conyers was truly interested in election reform he might turn his attention back home to Detroit:

> "If Conyers really wants to get to the bottom of problematic balloting, he ought to come back home. Few places in America have as inept an election system as Detroit. Voters stand in lines that are needlessly long, show up to find balloting places closed, lose their votes to incompetent election officials, and have no confidence that the other people standing in line with them are really eligible to vote. Detroit would be fertile ground for congressional investigators. Conyers should turn his attention homeward and leave the media alone."[264]

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[260] Election Science Institute, *Ohio Exit Polls 'Not a Smoking Gun' For Fraud, Study Says*, Press Release, May 14, 2005
[261] *No Exit*, Farhad Manjoo, SALON.COM, June 15, 2005
[262] *Democracy At Risk: The 2004 Election In Ohio*, Report Of The Democratic National Committee's Voting Rights Institute, June 22, 2005
[263] *Do The Math*, Editorial, AKRON BEACON JOURNAL, December 5, 2004
[264] *Conyers Has No Right To Polling Data*, Editorial, DETROIT FREE PRESS, December 27, 2004

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(b) **Voter Registration Fraud In Ohio**

A number of organizations seeking to influence the outcome of the presidential election were very active in Ohio in 2004. Election authorities received almost one million new voter registrations and a total of 5.7 million votes in Ohio were cast in the 2004 General Election, a historic high for Ohio.[265] This unprecedented voter participation should be celebrated. However, not every organization involved in voter registrations efforts is to be commended. The unfortunate fact is that Ohio election authorities experienced an unprecedented number of fraudulent voter registrations and some organizations appear to have been engaged in efforts to facilitate and pay for the submission of fraudulent voter registration forms.

This point was noted by Keith Cunningham, President of the Ohio Association of Election Officials, when he testified about the election in Ohio before the House Administration Committee in March 2005. During his testimony, Cunningham remarked that "disruptive" and "distracting" political activists on the ground in Ohio made it increasingly difficult for elections officials to do their jobs.

> Cunningham: "[T]he November 2004 election was probably the single most difficult thing I have ever tried to manage in my life. ... For instance, the card we send out to voters that tell them where they're registered, what your precinct is. I spent the better part of an afternoon arguing with somebody that the type on that card was too small, when it's the same card we've been sending out for some time and it's the default setting on the printer. My belief is that not everyone in November 2004 was dealing in good faith. And there were people on the ground and present in Ohio who ... were attempting to create chaos and confusion in hopes that out of it could come something that could be exploited."[266]

Part of the "chaos and confusion" referenced by Cunningham stemmed from the thousands of fraudulent voter registrations submitted to elections officials in every corner of Ohio.

A state investigation of voter registration fraud in the Buckeye State in 2004 was one of the "biggest of its kind in reeent years."[267] Perhaps as a result of registration fraud, it was reported that according to the 2003 Census numbers, voter registration exceeded the number of voting-age people in four Ohio counties: Franklin, Delaware, Fayette and Mercer.[268] Further, the Cleveland *Plain Dealer* reported that 27,000 voters were eligible to cast ballots in both Ohio and Florida last year.[269]

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[265] *One Last Knock And A Plea: Volunteers Scratch For Votes*, Jack Torry, THE COLUMBUS DISPATCH, October 31, 2004; *Republicans Beat Democrats In Ohio Ground Game*, Sam Howe Verhovek and Elizabeth Shogren, LOS ANGELES TIMES, November 4, 2004

[266] Testimony Of Keith Cunningham At U.S. House Committee On House Administration Hearing, Columbus, OH, March 21, 2005

[267] *Voter Registration Investigation One Of Largest In Recent Years*, THE ASSOCIATED PRESS, September 23, 2004

[268] *Figures Don't Add Up*, Dennis J. Willard and Doug Oplinger, AKRON BEACON JOURNAL, October 2, 2004

[269] *Voters Double-Dip In Ohio, Fla*, Scott Hiaasen, Dave Davis and Julie Carr Smyth, [Cleveland] PLAIN DEALER, October 31, 2004

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(c) **NAACP, ACORN And Other Third-Party Groups Linked To Thousands Of Fraudulent And Suspicious Voter Registrations In Ohio**

NAACP National Voter Fund

✓ **NAACP National Voter Fund Worker Paid Crack Cocaine In Exchange For Fraudulent Registrations.** Perhaps the most outrageous example of voter registration fraud occurred in Defiance County, where Chad Staton pled guilty to submitting hundreds of fraudulent voter registration forms for the NAACP National Voter Fund in exchange for crack cocaine. Mr. Staton filled out and submitted voter registration forms in the name of cartoon characters, action figures, celebrities and other fictitious residents of Lucas, Cuyahoga and other counties.

Elections officials throughout northern Ohio received registration forms from Mary Poppins, Jeffrey Dahmer, George Foreman, Michael Jordan, Dick Tracy and a host of other individuals. After an investigation of the matter, Defiance County Sheriff David Westrick learned that Mr. Staton was responsible for completing some of these forms and arrested him.

Mr. Staton provided a taped admission regarding these crimes, was indicted and subsequently pled guilty. Mr. Staton admitted being paid for his efforts in crack cocaine by an NAACP National Voter Fund employee, Georgianna Pitts. Ms. Pitts, a Toledo native, was reported to be an employee of the NAACP and paid Mr. Staton with crack cocaine for the falsified forms. Ms. Pitts died suddenly of a drug overdose before being prosecuted. Sheriff Westrick was able to trace the falsified registration forms and learned that they were submitted to the Cuyahoga County Board by NAACP Voter Protection Project, located in Cleveland, Ohio.[270]

✓ **NAACP National Voter Fund Registers Man Dead For Two Decades.** In Lake County, a man who had been dead for more than two decades was registered on a card submitted by the NAACP.[271]

✓ **48 Forged Voter Registration Cards Submitted by NAACP.** In Mahoning County, 48 voter registration cards were flagged as part of a group of cards submitted by the NAACP in Cleveland. The registration cards were originally misfiled by the NAACP with the Cuyahoga County Board of Elections which forwarded them to Mahoning County. Many appeared to be in the same handwriting, and as the Board attempted to verify them, voters repeatedly told the board that they did not sign new registration cards.[272]

✓ **NAACP National Voter Fund Investigated In Cleveland.** County Board of Election officials flagged 17 registration cards submitted by NAACP National Voter Fund state director Thaddeus Jackson, which all bore signatures that looked alike. The Board of

[270] See *State v. Staton*, Defiance County Court Case No. 04-CR-09070. (Exhibit T); *Man Arrested After Voter Forms Turned In For Mary Poppins, Michael Jordan, Ohio Officials Say*, THE ASSOCIATED PRESS, October 19, 2004
[271] *Dead Man On Voter Rolls Sparks Inquiry*, Michael Scott, [Cleveland] PLAIN DEALER, September 23, 2004
[272] *Suspicious Voter Cards Are Piling Up*, Lisa A. Abraham, AKRON BEACON JOURNAL, September 29, 2004

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Elections asked the Cuyahoga County Prosecutors Office to investigate the potential forged signatures arising from a registration drive where volunteers were paid $2.00 per signature collected. Most of these registrations contained fake addresses, fictitious names and vulgarities.[273]

ACORN – Association of Community Organizations for Reform Now

- ✓ **ACORN Submits "Blatantly False" Voter Registration Cards In Franklin County.** In June 2004, ACORN fired two employees for filing false registration forms and forging signatures. The two ACORN employees claimed to be registering voters in Franklin County. Board of Election officials reviewed the forms and determined that the registrations contained "blatantly false" information. Election officials referred the matter to the Franklin County Sheriff's Office for investigation. Registration cards submitted by ACORN and its partner group, Project Vote, contained fake first names, incorrect birth dates and Social Security numbers, forged voter signatures when compared to information on file with the Franklin County Board of Elections.[274]

- ✓ **ACORN Registrations Include Dead Person, 25 Addresses For The Same Man, And Suspected Terrorist.** In Franklin County, hundreds of cases of suspected election fraud were reviewed. Among the applications reviewed were: One application signed in the name of a man who passed away February 25; applications showing different addresses for the same man; one registration purportedly from Nuradin Abdi, an illegal alien and suspected terrorist charged with plotting to blow up a Columbus mall. The Franklin County Prosecutor reviewed hundreds of cases of suspected election fraud in the days leading up to the November 2004 Presidential election. Prosecutor Ron O'Brien stated that, "what causes some of this to happen is that people are being paid to register new voters." Some of the suspected cases of fraud were submitted by the Columbus Urban League, while others came from ACORN.[275]

- ✓ **Similar Handwriting And False Addresses Found On ACORN Cards In Hamilton County.** In October 2004, the Hamilton County Board of Elections requested that the head organizer for ACORN appear before the Board to discuss fraudulent registrations submitted by a paid ACORN staffer. The employee submitted approximately 19 registration cards for individuals who did not exist after Board of Election officials noticed that the registration cards all had similar handwriting and false addresses. The Hamilton County Sheriff's Department could not find the individuals, and the Board of Elections subpoenaed the individuals.[276]

- ✓ **ACORN Turned In Hundreds Of Registration Cards Past Deadline.** Other improprieties by ACORN workers were investigated in Franklin County when ACORN

[273] *Voter Registration Drive Raises Some Questions*, Mark Naymik, [Cleveland] PLAIN DEALER, March 18, 2004.
[274] *Made-Up People*, Robert Vitale, THE COLUMBUS DISPATCH, June 2, 2004; *Two Fired Over Bogus Voter Registration Forms*, Robert Vitale, THE COLUMBUS DISPATCH, June 3, 2004
[275] *Suspected Terrorist Registered To Vote In Franklin County*, WBNS-TV, www.10tv.com, Accessed October 23, 2004; *Election Fraud Cases Under Review*, WBNS-TV, October 22, 2004
[276] *Alleged Fraudulent Voter Cards Scrutinized*, Cindi Andrews, THE CINCINNATI ENQUIRER, October 8, 2004; *Voting Organizer Discusses Fraud*, Mark Hansel, CINCINNATI POST, October 16, 2004

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delivered 526 new voter registrations to the board of elections three days after the statutory deadline. ACORN explained that the registrations were found "in a mismarked box."[277]

- ✓ **Warrant Issued For ACORN Employee Who Forged Signature On Voter Registration Card.** A Franklin County Grand Jury issued a warrant for a parolee accused of forging a signature on a voter registration form on behalf of ACORN. Kevin Dooley, a Columbus resident working for ACORN, was indicted on felony counts of false election registration and submitting false election signatures.[278]

- ✓ **ACORN/Project Vote Employee Indicted In Lucas County.** A Toledo woman employed by Project Vote and paid $5 per registration card was charged with submitting a fraudulent registration card to the Lucas County Board of Elections. The election board received a registration card for a woman who was already registered with a different birth date and signature. The woman advised authorities she had not filled out a registration card.[279]

ACT – America Coming Together

- ✓ **1,000 Registration Cards Investigated In Summit and Lake Counties.** Election officials in Lake and Summit Counties investigated irregularities in some 1,000 voter registration forms and absentee ballot requests. In Lake County, one group attempted to register a dead person. Other potentially fraudulent documents were referred to the Lake County Sheriff's Office by the Board of Elections. The investigation centered on registration efforts by the NAACP National Voter Fund and America Coming Together (ACT).[280]

- ✓ **Jive Turkey, Sr., Registers To Vote.** The Cuyahoga County Board of Elections received some 1,284 suspicious voter applications that were turned over to prosecutors to investigate for potential fraud. Among those registered was a Jive Turkey, Sr., who included an off-color middle name on the form. Most forms were submitted by America Coming Together (ACT) and ACORN/Project Vote.[281]

- ✓ **ACT Accused Of Falsified Registration From Nursing Home Resident.** In Lake County, a woman in a nursing home was registered by ACT and purportedly signed the card in a firm cursive signature. Upon investigation, it was learned that the registrant was not able to sign her name, but used a shaky "X" as her signature.[282]

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[277] *Alleged Fraudulent Voter Cards Scrutinized*, Cindi Andrews, THE CINCINNATI ENQUIRER, October 8, 2004
[278] *Warrant Issued For False Registration*, THE ASSOCIATED PRESS, September 7, 2004
[279] *Voter Aide Indicted In Fake Registration*, TOLEDO BLADE, January 6, 2005
[280] *1,000 Cases of Suspicious Voter Registrations*, Steve Luttner and Michael Scott, [Cleveland] PLAIN DEALER, September 24, 2004; *Possible Election Fraud is Probed*, John Arthur Hutchinson, LAKE COUNTY NEW HERALD, September 22, 2004
[281] *Fowl Play*, Scott Hiaasen, [Cleveland] PLAIN DEALER, October 22, 2004
[282] *Dead Man On Voter Rolls Sparks Inquiry*, Michael Scott, [Cleveland] PLAIN DEALER, September 23, 2004

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✓ **Trumbull County Investigated Possible ACT Voter Registration Fraud.** The Trumbull County Board of Elections asked its county prosecutor to investigate possible fraud on a registration card submitted by ACT. Upon investigation, the Board found that the voter did not fill out a voter registration card, the address, birth date and telephone number on the card were wrong and the signature was not his.[283]

AFL-CIO

✓ **Forged Signatures, Duplicate Registrations, And Nonexistent Addresses Found On Registrations Submitted By AFL-CIO.** Over 50 registration cards submitted by the Ohio AFL-CIO to the Summit County Board of Elections turned out to be illegitimate, as some were for individuals who were already registered, and many appeared to have the same handwriting.[284]

6.12 Pennsylvania

(a) Third-Party Groups And Voter Registration In Pennsylvania

Given its status as a major battleground state in the 2004 election, Pennsylvania was a key target for third-party groups seeking to influence the outcome of the presidential race last year. The state was such a high priority that the George Soros-funded get-out-the-vote group America Coming Together (ACT) actually had its start in Philadelphia in 2003. ACT waged an aggressive voter identification and turnout campaign for the 2003 Philadelphia mayoral race that became the model for its widely expanded national activities during the 2004 election, in which ACT had a budget of $8.5 million for Pennsylvania alone.[285]

As a result of this third-party investment, Pennsylvania's voter rolls surged to almost inexplicable dimensions. Philadelphia's voter rolls nearly matched census estimates of the voting-age population.[286] In all, the state's voter rolls surged by 535,000 new voters.[287]

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[283] *Elections Chief Fears Scheme*, Lisa A. Abraham, AKRON BEACON JOURNAL, August 19, 2004
[284] *Prosecutor To Probe Vote Fraud*, Lisa A. Abraham, AKRON BEACON JOURNAL, August 25, 2004
[285] *Focusing On Face Time In Battleground States*, Thomas Fitzgerald, THE PHILADELPHIA INQUIRER, July 18, 2004
[286] *Election-Eve Song: Republicans Charge Fraud, Democrats Intimidation*, Mary Claire Dale, THE ASSOCIATED PRESS, October 26, 2004
[287] *Voters: Newly Registered Pose New Variables*, Matthew P. Blanchard and Alletta Emeno, THE PHILADELPHIA INQUIRER, October 31, 2004

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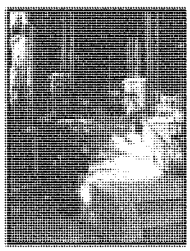
(b) Suspicious Voter Registrations And Illegal Polling Places In Pennsylvania

In September 2004, the Pennsylvania Republican Party sent a letter to 130,000 newly registered voters in Philadelphia urging them to vote Republican. However, about 10,000 of these cards came back as returned mail as the address did not exist and/or no one by the voter's name lived at the address on the envelope. Republicans soon discovered that many of the addresses listed for new registrants were in fact vacant lots and boarded-up buildings. In one sample of 100 registrants, 15 turned out to be dead.[288] At least some of these faulty registrations may have come from voter registration drives, as some Pennsylvania residents complained that ACORN was deliberately putting inaccurate information on their registration forms.[289]



The location of polling places in Philadelphia also became an issue as Election Day 2004 approached. In October, Republican ward leaders challenged the location of 63 polling places, which included local bars, unsafe abandoned buildings, a private home decorated with a Kerry sign in the window (pictured at left) and a district office of Democrat state Sen. Vincent Fumo. Of the 63 locations challenged by Republicans, 43 were inaccessible to the handicapped and 17 were in businesses or homes where voters could be intimidated, according to the request.[290] About 900 polling places in Philadelphia's 1,681 precincts were in private buildings.[291] Some Democrats charged that Republicans were attempting to "suppress" the minority and low-income vote by questioning the location of polling places, even though some of the ward leaders challenging the polling locations were African Americans.[292] Philadelphia's city commissioners eventually refused the request to move the polling locations, saying the petitions were turned in too late to be considered.[293]

(c) Illegal Felon Voting In Pennsylvania

There is evidence that some third-party groups such as MoveOn.org and America Coming Together (ACT) illegally distributed and collected absentee ballots from prison inmates in at least one Philadelphia prison. In October 2004, CBS 3 reported that Rep. Curt Weldon (R-PA) confronted college students walking out of the Curran-Fromhold Prison in Northeast Philadelphia with absentee ballots collected from inmates. CBS 3 noted that "it is illegal in Pennsylvania for a third party to distribute or collect absentee ballots." The news report asserted

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[288] *Both Parties Complain Of Vote Fraud*, Tom Infield, THE PHILADELPHIA INQUIRER, October 25, 2004
[289] *Vote Fraud Suspected In Registration Deluge*, Sharon Spohn, THE MERCURY, October 8, 2004
[290] *A Tally Of Election Semi-Dirty Tricks*, William Bunch, PHILADELPHIA DAILY NEWS, October 19, 2004; *GOP Fails In Effort To Move Polls*, Chris Brennan, PHILADELPHIA DAILY NEWS, October 18, 2004
[291] *Americans Vote Among Kegs, Caskets, Home-Cooking*, Mary Claire Dale, THE ASSOCIATED PRESS, December 4, 2003
[292] *GOP Fails In Effort To Move Polls*, Chris Brennan, PHILADELPHIA DAILY NEWS, October 18, 2004
[293] *GOP Bid For Poll Shifts Rejected*, Michael Currie Schaffer, THE PHILADELPHIA INQUIRER, October 21, 2004

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that no one was checking to see if these inmates were serving time for felonies, as anyone in prison on a felony conviction is not permitted to vote.[294]

(d) Vote-Buying In Philadelphia

Recently *Business Week* reported that a Deputy City Commissioner requested that the District Attorney's office investigate a scheme to trade cheese for votes. Flyers were distributed on primary election day – May 17 – promising free cheese to voters who cast ballots for particular candidates. The woman who wrote the flyers, Hill Creek tenant council President Gerri Robinson, doesn't think she did anything wrong. "The people around here, you can't get them to come out and do nothing unless you're giving them something," she says. Besides, she adds, the flyers worked: The two cases of cottage cheese were gone by day's end.[295]

6.13 Virginia

(a) Nader Campaign Staffer Guilty Of Election Fraud

On June 28, 2005, James Polk, Virginia state coordinator for Ralph Nader's 2004 presidential campaign, pleaded guilty to felony election fraud. Polk admitted to signing candidate petitions before a notary that he did not personally circulate, a violation of state law. According to court documents, Polk illegally signed the petitions just days before the August 2004 deadline for Nader to get on the Virginia presidential ballot. Polk was sentenced to 30 days in prison, fined $2,500 and must avoid political activity ten years.[296]

In court, Polk apologized for his actions, "saying he had spent much of his career in politics trying to get people to trust the election system and to believe that their vote counted for something." Polk told the judge before sentencing, "Now people will doubt even more that their vote matters. For that, I am very much ashamed."[297]

6.14 Washington

(a) Vote Fraud And Irregularities In Washington

After losing both the original count and a subsequent machine recount to Republican Dino Rossi, Democrat Christine Gregoire won a hand recount and was certified as winner of the 2004 Washington gubernatorial election by 129 votes out of more than 2.8 million cast.[298] The ensuing litigation to determine the actual result of the election uncovered clear evidence of vote fraud and irregularities that cast serious doubt upon the validity of a number of votes far

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[294] *Lawmaker Threatens Political Lawsuit*, KYW CBS 3, http://kyw.com, October 29, 2004; *Whose Vote Fraud?*, Editorial, THE NEW YORK POST, February 27, 2005
[295] *Cheesy Way To Lure Voters*, Eamon Javers, BUSINESS WEEK, August 1, 2005
[296] *State Leader Of Nader's Campaign Pleads Guilty*, Jon Frank, THE [Norfolk] VIRGINIAN-PILOT, June 29, 2005
[297] *Id.*
[298] *Washington Governor's Election Certified, Showing Democrat Win*, David Ammons, THE ASSOCIATED PRESS, December 30, 2005

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exceeding Gregoire's margin of victory. Illegal votes and election irregularities may have determined the winner of the 2004 gubernatorial race in the state of Washington.

In the months leading up to the election contest trial brought by Rossi, election management problems in Washington continued to come to light. In March, 95 uncounted absentee ballots were found in King County's election warehouse.[299] Pierce County officials found another 64 such uncounted absentees.[300] King County Elections Director Dean Logan said under oath that he couldn't be sure if the election results were accurate within 129 votes – Gregoire's margin of victory:

> "'The question is, do you know whether the returns in King County were accurate within 129 votes?' GOP attorney Rob Maguire asked Logan on page 225 of the 476-page deposition transcript, released Monday night by Rossi's office. 'No, I do not,' Logan replied."[301]

The debate in Washington after the November election and recounts was not about whether illegal votes were cast on Election Day. Both sides agreed that they were, as Democrats and Republicans submitted competing lists of hundreds of illegal felon voters.[302] The debate instead centered on whether an equitable method of determining if such illegal votes adversely affected one candidate over the other existed, and if so, whether a new election was in order.

In his June 6 decision to uphold Gregoire's election as governor, Chelan County Superior Court Judge John Bridges recognized that more than 1,000 illegal and fraudulent votes were cast in an election decided by a mere 133 votes (the judge deducted four felon votes from Rossi's total). Judge Bridges found the following illegal and fraudulent votes in the 2004 Washington gubernatorial race:

- ✓ A total of 1,678 illegal votes cast in the 2004 general election.
- ✓ 1,401 votes cast by felons whose voting rights had not been restored.
- ✓ 19 votes cast by deceased voters.
- ✓ 6 votes cast by people voting more than once.
- ✓ 252 votes cast in King and Pierce counties for which "there could not be found a registered voter through crediting."[303]

While Judge Bridges' decision recognized the presence of large-scale illegal and fraudulent voting in the November election, he rejected the method by which Rossi's expert

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[299] *Higher-Up Linked To Flawed Report*, Keith Ervin, THE SEATTLE TIMES, May 21, 2005
[300] *Prosecutors To Challenge 110 Voters*, Keith Ervin, THE SEATTLE TIMES, April 29, 2005
[301] *King County Election Director Answers Questions Under Oath*, Rebecca Cook, THE ASSOCIATED PRESS, April 25, 2005
[302] *Dems Flag 743 Votes They Say Felons Cast*, David Postman, THE SEATTLE TIMES, May 7, 2005
[303] Transcript Of Decision By Chelan County Superior Court Judge John Bridges, June 6, 2005

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witnesses proposed to account for the illegal votes. Judge Bridges further ruled that the "judiciary should exercise restraint in interfering with the elective process," and that "unless an election is clearly invalid, when the people have spoken their verdict should not be disturbed by the courts." Thus Bridges upheld the election not because there was no significant illegal and fraudulent voting, but because he did not believe it was the judiciary's role to overturn the election, given the evidence before him.[304]

6.15 West Virginia

(a) Five Indicted On Vote-Buying Charges In West Virginia

In May 2005, five Lincoln County, West Virginia, Democrats were indicted by a federal grand jury on charges of participating in a conspiracy to buy votes dating back to 1990. The indictment charges that the five conspired to buy votes in elections held in 1990, 1992, 1994, 1996, 1998, 2000, 2002 and 2004 "for the purpose of selecting and electing candidates for the United States House of Representatives and in some instances, for the presidency and vice-presidency of the United States."[305] Those indicted include Lincoln County Circuit Clerk Greg Stowers, Wandell "Rocky" Adkins, Clifford Odell "Groundhog" Vance, Toney "Zeke" Dingess and Jackie Adkins.[306] All five pleaded not guilty to the charges and a trial is set for August 15, 2005.[307]

The indictment alleges that voters were paid in liquor and cash, typically $20 per vote, and handed slates listing the preferred candidates.[308] The five defendants also laid gravel on roads for supporters and fixed traffic tickets as part of the conspiracy, the indictment says.[309] Lawyers for the defendants have argued that investigators intimidated local residents and violated their political rights by videotaping voters at polling places, dispatching undercover informants with hidden cameras and microphones to ask questions and, in one case, following voters home and questioning them about vote-buying. Assistant U.S. Attorney Karen George argued that surveillance "conducted by investigators was successful enough that the defendants were unaware of it until it became evidence in the pending case."[310]

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[304] *Id.*
[305] *Lincoln Circuit Clerk Accused Of Vote Buying*, Jennifer Bundy, THE ASSOCIATED PRESS, May 5, 2005
[306] *Election Fraud Charges Seem Like Old News In Lincoln County*, Lawrence Messina, THE ASSOCIATED PRESS, May 10, 2005
[307] *In W.Va. County, Vote-Buying Indictments Turn Few Heads*, Lawrence Messina, THE ASSOCIATED PRESS, June 20, 2005; *Motions Shed Light On Vote Fraud Probe*, Tom Searls, CHARLESTON GAZETTE, June 24, 2005
[308] *Election Fraud Charges Seem Like Old News In Lincoln County*, Lawrence Messina, THE ASSOCIATED PRESS, May 10, 2005; *Motions Shed Light On Vote Fraud Probe*, Tom Searls, CHARLESTON GAZETTE, June 24, 2005
[309] *Motions Shed Light On Vote Fraud Probe*, Tom Searls, CHARLESTON GAZETTE, June 24, 2005
[310] *Men Accused Of Election Fraud Want Evidence, Charges Dismissed*, Lawrence Messina, THE ASSOCIATED PRESS, June 23 ,2005

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The recent vote-buying case in Lincoln County is an offshoot of a 2004 federal election fraud probe in neighboring Logan County that resulted in several convictions. A dozen people have been charged overall and five pleaded guilty.[311] Those pleading guilty included:

- ✓ Former Logan County Police Chief Alvin R. "Chipper" Porter pleaded guilty to buying votes for a slate of Democratic candidates during the county's May 2002 primary election. Porter was sentenced to three years probation, fined $1,000 and ordered to give "monthly speeches about his experience with political corruption to eighth grade civics classes, parent-teacher organizations and other groups" for three years.[312]

- ✓ Former Logan County Sheriff Johnny "Big John" Mendez pleaded guilty to conspiring to buy votes during the 2002 and 2004 primaries. Mendez was sentenced to a year of home confinement and five years probation.[313]

- ✓ Millionaire Charleston lawyer Mark O. Hrutkay pleaded guilty to mail fraud for failing to report $10,000 in cash he gave Mendez to buy support for his wife's campaign for the state House of Delegates. Mendez admitted paying residents $10 to $100 for their vote. Hrutkay was sentenced to a year in prison and fined $20,000.[314]

- ✓ Former Logan County Veterans Of Foreign Wars post President and Commander Ernest J. Stapleton pleaded guilty to mail fraud for taking $35,000 in VFW money and using some of it to make political contributions. Stapleton was sentenced to five years probation, the first ten months of which on home confinement, fined $10,000 and ordered to pay $35,000 in restitution to the VFW post.[315]

- ✓ Lincoln County resident Jojena Adkins was sentenced to a year in prison for lying to a federal grand jury investigating vote-buying in southern West Virginia.[316]

A recent *Charleston Gazette* editorial called the crackdown on vote fraud "good for West Virginia." "Hard-up rural counties need clean local government. They can't conquer their economic obstacles if local politicos care only about grabbing petty power and putting factional flunkies into public jobs," the *Gazette* opined.[317]

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[311] *Agents Secretly Filmed, Recorded Election Activities*, Lawrence Messina, THE ASSOCIATED PRESS, June 1, 2005; *Election Fraud Probe Fuels Partisan Rancor*, Lawrence Messina, THE ASSOCIATED PRESS, May 15, 2005

[312] *Logan Lawyer Pleads Guilty To Mail Fraud Charge*, Jennifer Bundy, THE ASSOCIATED PRESS, January 7, 2005; *Ex-Police Chief Gets Lesson In Civics*, Toby Coleman, CHARLESTON GAZETTE, February 16, 2005

[313] *Logan Lawyer Pleads Guilty To Mail Fraud Charge*, Jennifer Bundy, THE ASSOCIATED PRESS, January 7, 2005; *Ex-Sheriff Given Home Confinement, Probation For Vote Buying*, Allison Barker, THE ASSOCIATED PRESS, January 21, 2005

[314] *Logan Lawyer Gets Year In Prison*, Toby Coleman, CHARLESTON GAZETTE, April 5, 2005

[315] *Former VFW Post Leader Sentenced To Home Confinement*, Jennifer Bundy, THE ASSOCIATED PRESS, January 14, 2005

[316] *Woman Gets One-Year Sentence In Vote Fraud Investigation*, THE ASSOCIATED PRESS, January 27, 2005

[317] *Politicos Courthouse Machines*, Editorial, CHARLESTON GAZETTE, May 9, 2005

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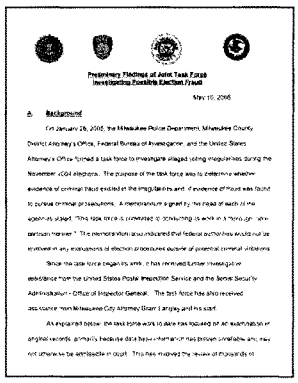
6.16 Wisconsin

(a) Vote Fraud And Illegal Voting In Wisconsin

Shortly after the November 2 vote in which John Kerry carried Wisconsin's 10 electoral votes by 11,384 votes, the *Milwaukee Journal Sentinel* began an investigation into vote fraud and irregularities in the city. The *Journal Sentinel* soon revealed that thousands more ballots were cast than people identified as voting and thousands of ballots were cast from invalid addresses around the city. In late January, the U.S. Attorney and Milwaukee County D.A. responded to the paper's reports by announcing a joint investigation of vote fraud in the city.[318]

In the months since, the *Journal Sentinel* uncovered thousands of fraudulent and suspicious votes cast in Wisconsin on Election Day 2004. The paper revealed that at least 278 felons cast illegal ballots in the November election. However, the actual number of illegal felon voters was "likely far higher" than that, as the paper was able to review information on felons against only about 38 percent of the 2.98 million people who voted on November 2. The *Journal Sentinel* further revealed that 7,000 more ballots were cast than people later recorded as voting, and 1,200 votes were cast from invalid addresses, three-quarters of which came from voters who registered on Election Day. The paper also found 1,300 same-day registration cards that could not be processed for reasons ranging from missing addresses and names to addresses listed outside the city.[319]



Preliminary Findings of Joint Task Force Investigating Possible Election Fraud

May 10, 2005

A. Background

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. A memorandum signed by the head of each of the agencies stated, "The task force is committed to conducting its work in a nonpartisan manner." The memorandum also indicated that federal authorities would not be involved in any investigations of election procedures outside of potential criminal violations.

Since the task force began its work, it has received further investigative assistance from the United States Postal Inspection Service and the Social Security Administration - Office of Inspector General. The task force has also received assistance from Milwaukee City Attorney Grant Langley and his staff.

As explained below, the task force's work to date has focused on an examination of original records, primarily because data base information has proven unreliable and may not otherwise be admissible in court. This has involved the review of thousands of

Exacerbating the problems with illegal and suspicious votes, the city of Milwaukee, in violation of Wisconsin law, failed to submit key materials to the County Elections Board for certification on Election Day (e.g., copies of voter logbooks, voting machine tapes with vote totals and election-day incident logs.). Thus, discrepancies between the number of ballots cast and the count of voters went undiscovered until long after the election results were finalized. Also violating Wisconsin law, the Milwaukee County Elections Board improperly certified the election results without any double-checking of the totals by the city or county panels.[320]

On May 10, the joint task force on election fraud led by U.S. Attorney Steven Biskupic, a Republican appointee, and Milwaukee County D.A. Michael McCann, a Democrat, reported

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[318] *Police, FBI Join Investigation Into Possible Election Fraud*, Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, January 27, 2005

[319] *Review Indicates 278 Felons Cast Ballots Illegally In State*, Greg J. Borowski and Mark Maley, MILWAUKEE JOURNAL SENTINEL, April 1, 2005; *Some Sites Show Huge Vote Gaps*, Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, February 2, 2005

[320] *Nov. 2 Vote Not Properly Verified*, Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, March 25, 2005

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finding "clear evidence of fraud in the Nov. 2 election in Milwaukee."[321] The task force's preliminary findings mirrored many of the *Journal Sentinel*'s revelations, including double-voting, felon voting and large gaps between the number of ballots cast and people identified as voting.

Key findings of the election fraud task force included:

- ✓ More than 100 instances of double-voting, including people voting twice, voting under fictitious names and addresses and voting in names of dead people.
- ✓ More than 200 felons casting illegal ballots.
- ✓ Approximately 65 fake names registered to vote by paid voter registration workers.
- ✓ The number of votes cast in Milwaukee "far exceeds the total number of recorded voters." At least 4,609 more votes were cast than people identified as voting and "multiple wards had discrepancies in excess of 100 votes," a phenomenon the task force continues to investigate.[322]

While the joint task force report indicated that the investigation of vote fraud in Wisconsin was "far from complete," evidence of fraud and irregularities uncovered by both law enforcement and the *Journal Sentinel* made election reform one of the top issues in state politics.[323] Particularly controversial has been a proposal to require photo ID at the polls.

According to the *Journal Sentinel*, at least some of the vote fraud uncovered by its reporters and law enforcement may have been prevented had a photo ID requirement been in place on November 2. As the paper reported:

> "A photo ID requirement might have caught some of the problems highlighted in Tuesday's preliminary report. It notes cases of people voting in the name of a dead person or as someone else. Investigators located some people listed as voting who said they did not vote. In other cases, according to Tuesday's report, people 'registered and voted with identities and addresses that cannot in any way be linked to a real person.'"[324]

The state Assembly and Senate passed a photo ID requirement with bipartisan majorities this past Spring.[325] The bill was vetoed by Governor Jim Doyle, and the state Assembly failed to get the necessary two-thirds majority for an override.[326] Doyle, who vetoed a similar measure in 2003, said the requirement would have "disenfranchised" senior citizens who don't have driver's

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[321] *Inquiry Finds Evidence Of Fraud In Election*, Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, May 11, 2005
[322] *Preliminary Findings Of Joint Task Force Investigating Possible Election Fraud*, May 10, 2005 (Exhibit U).
[323] *Id.*
[324] *Inquiry Finds Evidence Of Fraud In Election*, Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, May 11, 2005
[325] *Assembly Approves Requiring Picture IDs At The Polls*, J.R. Ross, THE ASSOCIATED PRESS, February 24, 2005; *Senate Approves Voter ID Measure*, Steven Walters, MILWAUKEE JOURNAL SENTINEL, April 14, 2005
[326] *No ID Needed At Polls Anytime Soon*, Stacy Forster, MILWAUKEE JOURNAL SENTINEL, May 4, 2005

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licenses and otherwise made Wisconsin's voting laws too strict.[327] As passed, the bill would have provided "free IDs for those who couldn't afford them" and allowed "people in nursing homes and hospitals to do without the ID if someone witnesses their votes."[328]

(b) ACORN/Project Vote Workers Charged With Election Fraud In Wisconsin

To date, four ACORN/Project Vote workers have been charged with felony election fraud in Wisconsin. The *Milwaukee Journal Sentinel* noted that these incidents underscored "how easy it is for an unscrupulous person to get a fake name on the rolls." Further, the newspaper noted that the sheer volume of cards – ACORN/Project Vote turned in some 40,000 voter registrations in Milwaukee County alone – meant that "they get little scrutiny from officials."[329]

In May 2005, Milwaukee ACORN/Project Vote workers Urelene Lilly and Marcus L. Lewis were charged with five felonies apiece for filling out multiple voter-registration cards using fictitious information. According to the *Journal Sentinel*, Lilly was addicted to crack cocaine at the time the voter registration fraud occurred. Lilly reportedly submitted approximately 75 fraudulent voter registration forms to election officials, taking names from the phone book, using made-up birth dates and Social Security numbers, and having her 15-year-old daughter sign each card. Lewis was reportedly fired by ACORN/Project Vote for submitting a registration form for a dead man, but admitted to submitting duplicate registrations on "numerous" occasions prior to being fired. Lilly and Lewis were charged with felony counts of forgery, election fraud and misconduct in public office, since they were sworn in as "deputy voter registrars" for the registration drive.[330]

In October 2004, less than a week before Election Day, ACORN/Project Vote workers Damien Jones and Robert Marquise Blakely were charged with felony election fraud for falsifying voter registration forms in Racine and Kenosha. Jones, a Green Party candidate for state Assembly who led the ACORN/Project Vote voter registration drive in Racine and Kenosha, was reportedly fired by the group in September after irregularities were discovered at the Racine city clerk's office. Jones and Blakely were reportedly charged with four counts of felony election fraud apiece, as well as five misdemeanor counts of misconduct in public office, due to their status as "deputy registrars" in Racine.[331]

Also in late October, the *Journal Sentinel* reported that two men deputized by the city of Milwaukee to register voters for ACORN/Project Vote were felons still serving probation and were not eligible to register people to vote. The report indicated that Milwaukee resident Tonsie L. Wilson was deputized by the city only six days after being convicted of felony burglary and

[327] *Doyle Vetoes School Choice, Voter ID Bills*, Steven Walters and Patrick Marley, MILWAUKEE JOURNAL SENTINEL, April 30, 2005
[328] *No ID Needed At Polls Anytime Soon*, Stacy Forster, MILWAUKEE JOURNAL SENTINEL, May 4, 2005
[329] *A New Push To Repair Elections*, Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, May 15, 2005
[330] *A New Push To Repair Elections*, Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, May 15, 2005; *Arrest Warrants Issued In Alleged Vote Fraud Case*, Derrick Nunnally and Greg J. Borowski, MILWAUKEE JOURNAL SENTINEL, May 12, 2005
[331] *Racine, Kenosha Voter Application Fraud Alleged*, Tom Kertscher, MILWAUKEE JOURNAL SENTINEL, October 29, 2004

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sentenced to 2 ½ years of probation. Wilson was also reportedly convicted of "misdemeanor disorderly conduct and misdemeanor violation of a domestic abuse order" on the same day. Milwaukee resident Corethious Taylor was reportedly deputized by the city in August 2004, despite having been convicted of felony drug charges in June 2003 and sentenced to 2 ½ years of probation.[332]

(c) Charges Filed For Illegal Voting In Wisconsin

To date, federal prosecutors have charged five Wisconsin residents with illegal voting in the November 2 election. Two people have been charged with illegally voting while on felony parole or probation, while three others were charged with voting multiple times on Election Day.

On June 23, the *Milwaukee Journal Sentinel* reported that a man on parole and a woman on probation cast ballots on Election Day, "even though state law forbids felons under state supervision from voting." According to the criminal complaint, Milo Ocasio, who was on parole for a felony conviction of discharging a firearm from a vehicle, admitted to voting. He said he did not read the rules of his supervision carefully enough and did not realize he was unable to vote. Kimberly E. Prude, who was on probation for a Waukesha County forgery conviction and has a string of other felony convictions, was actually working as an election inspector, "even though such workers are required to be qualified to vote, the complaint states." According to the complaint, an unidentified woman told Prude "not to worry about it because felons vote 'all the time.'"[333]

The *Journal Sentinel* also reported in late June 2005 that three Wisconsin residents have been charged with double voting. According to the paper, Enrique Sanders "cast two ballots, registering – and voting – once with his driver's license then repeating the process using his Social Security card as identification, according to a criminal complaint."[334] A pair of cousins – Theresa J. Byas and Brian L. Davis – were also charged. The *Journal Sentinel* reported that they "each filled out on-site registration cards and cast ballots at two separate polling places in the same voting district on election day, the complaints say, adding that both show up in the poll records for the Phillis Wheatley School on N. 20th St. and the Frances Starms Discovery Learning Center on N. 25th St."[335]

(d) Vote-Buying In Milwaukee

Like some other cities, Milwaukee has a history of illegal vote-buying. On Election Day 2000, Democrat workers in Milwaukee gave homeless men packs of cigarettes in exchange for absentee votes. A television station captured the Democrat workers in the act of giving packs of cigarettes to homeless men at City Hall in Milwaukee.[336] One of the individuals involved, wealthy New York socialite and major Democrat donor Connie Milstein, originally told reporters

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[332] *Felons Served As Election Deputies*, Tom Kertscher, MILWAUKEE JOURNAL SENTINEL, October 23, 2004
[333] *Federal Charges Filed Against Three Voters*, Derrick Nunnally, MILWAUKEE JOURNAL SENTINEL, June 23, 2005
[334] *Id.*
[335] *2 More Charged With Voting Twice*, Derrick Nunnally, MILWAUKEE JOURNAL SENTINEL, June 24, 2005
[336] *Effort To Boost Absentee Vote Raises Questions*, Jamaal Abdul-Alim, MILWAUKEE JOURNAL SENTINEL, November 5, 2000

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that she was helping homeless men vote at the behest of the Gore campaign.[337] Milstein later backed away from that statement, saying she regretted her actions and "acted alone" in Milwaukee without the help or direction of Democrat or Gore campaign staffers.[338] In May 2001, Milstein agreed not to contest a civil complaint charging her with 10 violations of state election law and paid a $5,000 fine.[339]

In 2002, Democrat Wisconsin Governor Jim Doyle's campaign held a bingo party at a home for the mentally ill and reportedly used quarters as bingo prizes and kringle and soft drinks to induce residents of the facility to cast absentee ballots.[340] Wisconsin state law forbids candidates and parties from providing anything worth more than $1 to lure someone to vote. While no charges were filed in the case, it was revealed that at least two votes were cast at the bingo and kringle party.[341]

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[337] *Cigarettes Case Involves 15 To 25*, MILWAUKEE JOURNAL SENTINEL, November 14, 2000; *Sheriff Blames Chief's Policy For Prisoners' Escape*, Cary Spivak and Dan Bice, MILWAUKEE JOURNAL SENTINEL, November 15, 2000

[338] *Incentive To Voters Questioned*, Jamaal Abdul-Alim, MILWAUKEE JOURNAL SENTINEL, November 6, 2000

[339] *$5,000 Settles Election Case*, David Doege, MILWAUKEE JOURNAL SENTINEL, May 3, 2001

[340] *Bingo Game Spurs Probe Of Doyle's Campaign*, Steve Schultze and Nahal Toosi, MILWAUKEE JOURNAL SENTINEL, October 24, 2002

[341] *No Charges To Be Filed Over Bingo Party*, STEVE SCHULTZE, MILWAUKEE JOURNAL SENTINEL, November 2, 2002; *At Least 2 Votes Cast At Bingo Event In Kenosha, TV Station Says*, MILWAUKEE JOURNAL SENTINEL, October 29, 2002

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C. *Curington v. Richardson*, Jefferson Circuit Court, Case No. 03CI9552 (November 4, 2003 Order).

D. *Spencer v. Blackwell, et al.*, United States District Court for the Southern District of Ohio, Case No. C-1-04-738 (April 28, 2005 Order).

E. Milwaukee Tire Slashing Criminal Complaint

F. *Ohio Republican Party v. Marion County Democratic Party et al.*, Marion County Court of Common Pleas, Case No. 04 CV 0791.

G. November 2, 2004 Order on Motion for Temporary Injunction, *J. Thomas Monk, and All Those Persons Similarly Situated Throughout the State of Florida v. Democratic National Committee, Democratic Executive Committee of Seminole County, and the Florida Democratic Party*, 04-CA-2312-16-L.

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K. *Timms et al. v. MoveOn.org*, Franklin County Court of Common Pleas, Case No. 04 CVH11 011533.

L. *Metzger v. Doe*, Lucas County Common Pleas Court, Case No. 04-1540.

M. *The Reality Of Intimidation*, Eric Wang, Op-Ed, THE [UVA] CAVALIER DAILY, http://www.cavalierdaily.com/CVarticle.asp?ID=21349&pid=1216, November 10, 2004

N. Police Reports, Philadelphia Police Department, November 2, 2004

O. *Moss v. Bush*, Ohio Supreme Court, Case No. 04-2088.

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P. Florida ACORN, "Floridians For All: Campaign Plan For A November 2004 Minimum Wage Constitutional Amendment Initiative," October 1, 2003

Q. Depositions Of ACORN-Associated Individuals In Mac Stuart Case

R. Democrat Victory 2004 Florida Coordinated Campaign Plan, "Florida Victory 2004," September 3, 2004

S. The Center For Ethics And The Free Market, *Laying The Groundwork: A Study Of Voter Registration In Missouri*, www.centerforethics.org, June 2004

T. *State v. Staton*, Defiance County Court Case No. 04-CR-09070.

U. *Preliminary Findings Of Joint Task Force Investigating Possible Election Fraud*, May 10, 2005

Copyright 2001 Little Rock Newspapers, Inc.
Arkansas Democrat-Gazette (Little Rock, AR)

January 22, 2001, Monday

SECTION: NWANEWS; Pg. A5

LENGTH: 707 words

HEADLINE: Disqualified felons voted Nov. 7, newspaper finds

BYLINE: DAVE UMHOEFER, AND JESSICA McBRIDE, MILWAUKEE JOURNAL SENTINEL

BODY:

NW EDITION

MILWAUKEE -- At least 361 felons who voted illegally in Milwaukee on Nov. 7 broke an often misunderstood Wisconsin law that disqualifies felons from voting until they are off probation and parole.

The votes almost certainly sweetened Al Gore's narrow margin of victory in Wisconsin over George W. Bush but by themselves did not put him over the top, according to the Milwaukee Journal Sentinel's review of 203,000 Milwaukee votes.

If disqualified felons elsewhere in the state voted illegally at the same rate as they did in the Milwaukee votes that were examined, as many as 1,100 votes could have been wrongly cast, according to the newspaper's analysis.

Gore topped Bush statewide by just 5,708 votes, or 0.2 percent, briefly causing Republicans to consider seeking a recount.

Blacks living in central-city neighborhoods cast nearly 90 percent of the illegal votes. Most of the illegal voters were women convicted of welfare fraud and men and women guilty of forgery and other property offenses. But the list also included murderers, child molesters, robbers and other violent criminals. Some also voted illegally in past elections.

Records show that 34 of the felons were considered absconders, offenders whom probation or parole agents couldn't find.

The newspaper analyzed records from 14 of the city's aldermanic districts by using computers to compare the city voting database with records from the state Department of Corrections and criminal courts. City officials are still entering 42,000 votes from the three other districts into their database.

Milwaukee County District Attorney E. Michael McCann vowed to prosecute each case his investigators can prove.

McCann said he would even go so far as to seek fingerprints on voting registration cards. Voting illegally is a felony.

But Milwaukee's top election official, Julietta Henry, said she feared that blacks would be targeted under McCann's plan. "We don't want to get into election profiling," Henry said.

It's impossible to know who all the illegal voters supported or even whether they made a selection for president on their ballots.

But very few Milwaukee voters skipped the presidential race, and Gore won 90 percent or more of the vote in Milwaukee's overwhelmingly black central city, an earlier Journal Sentinel study found.

Wisconsin's felon voting law disqualifies a higher percentage of voting-age black residents than 37 other states -- 10.6 percent, according to the study. Wisconsin's law, which excludes 1.3 percent of its voting-age residents, places the state in the middle nationally.

The National Association for the Advancement of Colored People and other groups helped drive what they are calling the best black and Hispanic turnout in city history. Record numbers of voters registered on Election Day and shortly beforehand. Many of the recruits were young members of minority groups.

Joan Hollingsworth Harrington, Milwaukee coordinator for the NAACP voting drive, said the organizers did not seek out felons to vote.

"There were enough people who haven't voted who weren't felons," she said, adding, "It's insane for anyone to think we'd go around asking people, 'Are you a felon and do you want to vote?' "

The newspaper's review found no evidence that ineligible voters were knowingly steered to the polls by any political party or voter-turnout organization.

The tight presidential election brought a surge of first-time voters in Milwaukee, and the pool of felons has grown in recent years because of fast-rising incarceration rates.

One 20-year-old Milwaukee woman, a first-time voter who cast a ballot illegally for Gore, said she was asked by a poll worker for identification because she looked underage.

She was surprised to learn her vote had been illegal, not because of age but because she is a felon and still under supervision. She said no one ever told her she couldn't vote until she was off probation.

"This is the first time I'm hearing of it," said the woman, who works at a clothing store and is raising a young child. Her forgery conviction is a first-time offense; she is paying restitution. The woman, like other illegal voters interviewed, would comment only if her name was not printed.

LOAD-DATE: January 23, 2001

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The Associated Press State & Local Wire

June 29, 1999, Tuesday, BC cycle

SECTION: State and Regional

LENGTH: 312 words

HEADLINE: Six admit to casting illegal ballots

DATELINE: HONOLULU

BODY:

U.S. immigration officials in Hawaii are seeking deportation orders against three non-citizens who admitted casting illegal ballots in the last election.

Three other people remain under investigation after they admitted voting in the November election during a routine interview with immigration officials.

Some admitted to voting in more than one election, but local immigration district director Donald Radcliffe said most voted in the gubernatorial election.

The information came out during routine interviews of resident noncitizens, Radcliffe said, adding each admitting voting when asked.

Radcliffe said he doesn't think it was a widespread problem that would jeopardize the election results.

"If there were a lot of them I would have been told," he said. "If there would have been a lot, we would have been right on top of it."

The election also was subject to an unprecedented recount after allegations of voter fraud. An audit of the results confirmed some irregularities caused by problems with voter machines.,

The audit maintained the victory margin Gov. Ben Cayetano had over Republican challenger Linda Lingle. Cayetano beat Lingle by some 5,200 votes out of 412,000 cast.

Dwayne Yoshina, the state's chief election officer, said he will meet with Radcliffe to discuss the issue, but said he had been unaware of the issue.

"It might be timely for us to go back and have a discussion with them about this," Yoshina said.

The elections chief said his office considered cross-checking the INS list of noncitizens with the list of registered voters, but dropped the idea because of technical problems.

Lingle said she will cross-check the two lists just to ensure there are no further discrepancies.

"I think anything that would bring more integrity to the system would be great, and it would benefit any system and any candidate," she said.

LOAD-DATE: June 29, 1999

Noncitizens likely voted in Bexar County

DA investigating as many as 330 people in election fraud case

09:27 AM CDT on Sunday, June 10, 2007
Associated Press

SAN ANTONIO – Dozens of non-U.S. citizens may have voted in Bexar County elections, a county elections official reported, prompting an investigation by federal and local authorities.

The names of 330 noncitizens on the voter rolls were reported by Bexar County Elections Administrator Jacque Callanen.

Those named had received jury duty summonses but told the court they weren't eligible to serve because they were not U.S. citizens.

Immigration and Customs Enforcement, part of the Department of Homeland Security, requested Mr. Callanen's report in an administrative subpoena. And the Bexar County district attorney's office is investigating whether as many as 41 of those noncitizens voted in more than a dozen local, state and federal elections since 2001.

"You bet your bottom dollar we'll prosecute ... if we find people voted illegally in violation of the state election code," Bexar County District Attorney Susan Reed said.

The 330 names have since been removed from voter rolls, Mr. Callanen said.

Investigators with customs enforcement are trying to locate and interview those named.

The agency also is looking into false citizenship claims, said spokeswoman Nina Pruneda.

Federal authorities also requested similar voter data from election officials in Harris, Tarrant and El Paso counties, Mr. Callanen said.

But Ms. Pruneda declined to discuss the scope of the federal inquiry.

It wasn't immediately apparent whether questionable voting influenced the outcome of an election, Mr. Callanen said.

A bill to require voters to show photo identification or two other forms of ID before casting ballots died in the state Senate without a vote.

Democrats said the identification requirements would suppress poor and minority voters and vowed to filibuster the bill – and threaten other bills – if it came up.

40581.078

Lt. Gov. David Dewhurst and other Republicans argued the measure is needed to combat voter fraud. It had already passed the House.

June 9, 2007, 10:51AM

Review: Illegal immigrants likely voted in Bexar County

Associated Press

SAN ANTONIO — Federal and local authorities have launched investigations after a Bexar County elections official reported dozens of non-U.S. citizens voted in recent elections.

A report by Bexar County Elections Administrator Jacque Callanen included the names of 330 non-citizens on the voter rolls. Those named had received jury duty summonses but told the court they weren't eligible to serve because they were not U.S. citizens.

Immigration and Customs Enforcement, part of the Department of Homeland Security, requested Callanen's report in an administrative subpoena. And the Bexar County district attorney's office is investigating whether up to 41 of those non-citizens voted in more than a dozen local, state and federal elections since 2001.

"You bet your bottom dollar we'll prosecute ... if we find people voted illegally in violation of the state election code," Bexar County District Attorney Susan Reed said.

The 330 names have since been removed from voter rolls, Callanen said.

Investigators with ICE are trying to locate and interview those named. ICE is looking into false citizenship claims, said agency spokeswoman Nina Pruneda.

Federal authorities also requested similar voter data from election officials in Harris, Tarrant and El Paso counties, Callanen said. But Pruneda, the ICE spokeswoman, declined to discuss the scope of the federal inquiry.

It wasn't immediately apparent if the questionable voting influenced the outcome of an election, Callanen said.

A bill to require voters to show photo identification or two other forms of ID before casting ballots died in the state Senate without a vote.

Democrats claimed the identification requirements would suppress poor and minority voters and vowed to filibuster the bill — and threaten other bills — if it ever came up.

Lt. Gov. David Dewhurst and other Republicans argued the measure is needed to combat voter fraud. It had already passed the House.

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Testimony of
Richard Briffault
Joseph P. Chamberlain Professor of Legislation
Columbia Law School
Hearing on
Prevention of Deceptive Practices and Voter Intimidation in Federal Elections:
S.453
Senate Judiciary Committee
June 7, 2007

Senator Cardin and distinguished members of the Committee, My name is Richard Briffault, and I am a professor of law at Columbia Law School, specializing in election law issues. I am honored to have the opportunity to testify today about S. 453, the Deceptive Practices and Voter Intimidation Prevention Act of 2007.

In my testimony, I will make two points. First, Congress plainly has the authority to adopt laws vindicating the integrity of federal elections and the rights of federal voters. Second, the bill is entirely consistent with the First Amendment's protection of freedom of speech. Indeed, by protecting voters from false statements intended to deceive voters or prevent voters from voting, the bill actually promotes the values of political participation and personal autonomy that are at the heart of the First Amendment.

On the first point, I can be brief. The Constitution gives Congress broad authority to regulate federal elections and protect the rights of federal voters. The "time, place, and manner" clause of Article I, Section 4 specifically provides that power with respect to elections for Senators and Representatives. The Supreme Court has found in Article II an inherent Congressional power to act to "preserve the purity of presidential and vice presidential elections." Burroughs & Cannon v. United States, 290 U.S. 534 (1934). Federal laws intended to prevent fraud, intimidation, and corruption in federal elections date back almost a century and a half to the years after the Civil War. More modern laws, such as the Voting Rights Act of 1965 and its amendments, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002, continue to demonstrate federal power to protect voting rights in federal elections.

The second point requires a little more discussion. Although the First Amendment provides its greatest protection to political speech, S. 453 is entirely consistent with the First Amendment. S. 453 is aimed solely at the intentional dissemination of falsehoods – false statements of fact concerning the time, place or manner of a federal elections; false statements of fact concerning the qualifications for or restrictions on voter eligibility in federal elections; and false statements of fact concerning the endorsement of a candidate running in a

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federal election. The Supreme Court has repeatedly held that the First Amendment simply does not protect intentionally false statements of fact.

As the Court has explained, "there is no constitutional value in false statements of fact." Gertz v. Robert Welch, Inc., 418 U.S. 323, 340 (1974). This is the case even when the false statement concerns a political matter. "That speech is used as a tool for political ends does not automatically bring it under the protective mantel of the Constitution. For the use of the known lie is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected." Garrison v. Louisiana, 379 U.S. 64, 75 (1964). *Accord*, Time, Inc. v. Hill, 385 U.S. 374, 390 (1967) ("calculated falsehood should enjoy no immunity"); Herbert v. Lando, 441 U.S. 153, 171 (1979) ("[s]preading false information in and of itself carries no First Amendment credentials").

Moreover, S. 453 promotes the compelling governmental interest in electoral integrity. The Supreme Court has repeatedly indicated that the state may restrict even constitutionally protected speech when "protecting the right of its citizens to vote freely for the candidates of their choice." Burson v. Freeman, 504 U.S. 191, 198 (1992). Congress has a "compelling interest in protecting voters from confusion and undue influence" and in "ensuring that an individual's right to vote is not undermined by fraud in the election process." Id. at 199. In Burson, the Court relied on these interests to uphold the constitutionality of a state law prohibiting electioneering activity near polling places. Similarly, in McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995), the Court in dictum indicated that the state had a compelling interest in preventing "the making of false statements by unscrupulous prevaricators" in the context of an election. Id. at 351. As the McIntyre Court observed, the general public interest in preventing false statements "carries special weight during election campaigns when false statements, if credited, may have serious adverse consequences for the public at large." Id. at 349.

The only significant constitutional issue in the regulation of false election communications is the requirement that the law be narrowly tailored to avoid impinging on or chilling constitutionally protected speech. S. 453 clearly satisfies the narrow tailoring requirement. First, S. 453 is limited to the communication of falsehoods that the speaker knows to be false and which the speaker communicates in order to prevent another person from voting. This is actually significantly tighter than the constitutional test for the regulation of false statements adopted by the Supreme Court. In New York Times v. Sullivan, 376 U.S. 254 (1964), the Court held that a defamation action against a public official is constitutionally permissible when the speaker knows his statement is false or he speaks in reckless disregard of the statement's truth or falsity. This is the so-called "actual malice" standard which the Court has applied to other areas dealing with the regulation of false statements. By limiting liability to knowing falsehoods intended to influence an election, S. 453 is even more narrowly

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tailored than New York Times requires. Innocent, negligent, and even reckless mistakes are not restricted.

Second, S.453 is limited to a very constrained set of false statements of fact – statements dealing with the time, place, or manner of voting; with eligibility to vote; and with explicit endorsements by persons or organizations. These involve simple statements of fact that do not remotely deal with matters of opinion, or the issues, ideas, or political views that make up an election campaign. By targeting very specific set of facts that deal primarily with the mechanics of an election, the bill would not affect the ability of any person to discuss the actions, statements, official decisions, voting record, policies, or personalities of any candidate. The targeted statements "are no essential part of any exposition ideas." Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942). The bill would have no impact on the constitutionally protected elements of an election campaign.

Indeed, the particular statements targeted by the bill are especially pernicious in the electoral context. False statements concerning the time, place, or manner of an election can serve only to confuse a voter as to the date of an election, the hours a polling place is open, or the location of the polling place, with the effect of denying the voter the opportunity to vote. The dissemination of false statements concerning eligibility to vote can have the effect only of confusing the voter as to whether he or she is entitled to vote, again with the result of discouraging the voter from exercising his or her rights. The communication of false statements concerning endorsements can only undermine the ability of the voter to cast a ballot in accord with his or her political preferences. Such a false statement concerning an endorsement necessarily interferes with the "right to vote freely for the candidate of one's choice [which] is of the essence of a democratic society." Reynolds v. Sims, 377 U.S. 533, 555 (1964). To the extent that these communications are aimed at lower income groups, the less educated, or racial minorities, they will tend to systematically undermine the ability of the election to represent the views of the entire community.

Moreover, given that their goal is to sow confusion among the voters, the effects of these statements are unlikely to be corrected by the usual First Amendment remedy – more speech. If an organization hands out flyers asserting a false election day or polling place, and another organization counters with flyers providing the right information the result may be only to confirm voter uncertainty about the most basic facts about the election, with the predictable effect of discouraging voting.

Finally, the bill provides a tight temporal limit for its restrictions. The prohibitions on knowing communication of false information apply only during the 60 days before an election. Like the other provisions of the bill, this operates to minimize any potential chilling effect on protected political speech.

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Approximately eighteen states have adopted laws prohibiting false or deceptive campaign statements. *See* Rickert v. State Public Disclosure Commission, 119 P.3d 379 (Wash. App. 2005). *See also* Becky Kruse, "The Truth in Masquerade: Regulating False Ballot Proposition Ads Through State Anti-False Speech Statutes," 89 So. Cal. L. Rev. 129, 132 (2001) (citing seventeen states). State courts have generally had little difficulty enforcing prohibitions on intentional false statements of material fact in elections, *see* Treasurer of the Committee to Elect Gerald D. Lostracco v. Fox, 389 N.W.2d 446 (Mich. App. 1986); McKimm v. Ohio Elections Comm., 729 N.E.2d 364 (Ohio 2000), *cert. denied*, 531 U.S. 1078 (2001), although some statutes have been invalidated because they reach more broadly than the New York Times standard would allow, *see, e.g.*, Vanasco v. Schwartz, 401 F. Supp. 87, 93-95 (S.D.N.Y. 1975), *aff'd mem.*, 423 U.S. 1041 (1976). Although the Supreme Court has never directly ruled on the constitutionality of false statement law that meets the New York Times standard, the Court, as I previously noted, in dictum spoke positively about the anti-false statement provisions of the Ohio Election Code in McIntyre v. Ohio Elections Commission. Only one state supreme court has invalidated an election false statements law that satisfied the New York Times standard, *see* State ex rel Public Disclosure Commission v. 119 Vote No! Committee, 957 P.2d 691 (Wash. 1998). That decision involved a law broader than S. 453; it lacked S. 453's restriction to knowing falsity, its temporal limitation, and its targeting of just three categories of falsehoods. In any event the Washington state decision is out of step with the larger body of First Amendment doctrine which denies protection to knowing falsehoods and permits narrowly tailored restrictions on communications that are justified by the compelling interests in protecting the integrity of elections.

In conclusion, S. 453 is a constitutionally legitimate addition to the arsenal of federal laws which operate to prevent fraud and intimidation, to protect the rights of voters, and to promote the integrity of federal elections. By prohibiting a narrowly defined set of communications that, by their nature, can have as their only intent the confusion of voters -- deceiving some to vote against their political preferences, and leading others not to vote at all -- S. 453 vindicates the right to vote and the ability of voters to make informed decisions. By protecting political participation and voter autonomy, S. 453 is not only consistent with the First Amendment, but it actually advances First Amendment values.

Thank you again for inviting me to testify today.

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WILLIAMS & JENSEN, PLLC
Attorneys at Law

TESTIMONY OF WILLIAM B. CANFIELD
BEFORE THE SENATE JUDICIARY COMMITTEE
REGARDING S. 453 "PREVENTION OF DECEPTIVE PRACTICES AND VOTER INTIMIDATION IN FEDERAL ELECTIONS"
JUNE 7, 2007

Mr. Chairman and Members of the Committee:

My name is William B. Canfield and I am a partner in the Washington, D.C. law firm of Williams & Jensen, PLLC. with a practice specialty in the area of federal election law.

I have practiced in this area of the law since moving to Washington in 1975. During an eighteen-year career as a committee counsel to a number of House and Senate Committees, I had the opportunity to observe the conduct of federal elections from the perspective of both of the Congressional Committees that oversee federal election law. Since entering private practice in 1993, I have represented a number of clients before the Department of Justice and the Federal Election Commission, served as outside counsel to the Senate Committee on Rules during the contested 1996 Senate election in Louisiana and have been outside counsel to three Republican Presidential campaigns. Lastly, for more than a decade I have been a member of the American Bar Association's Standing Committee on Election Law and have twice been appointed by the President of the ABA to serve as Chair of the Standing Committee.

I appear before you today in opposition to the bill S. 453 "Prevention of Deceptive Practices and Voter Intimidation in Federal Elections." My opposition to the bill does not center on a belief that deceptive practices have any place in the conduct of elections or in a belief that voter intimidation should be an acceptable practice in our democracy. Rather my opposition to the bill centers on its overly wide scope and the "remedies" it would employ for statutory violations should this bill become law.

In reviewing this proposal, I would urge the Committee to seek specific evidence of institutionalized deceptive practices and voter intimidation in American elections. Anecdotal stories should not be sufficient. Actual evidence that deceptive election practices and voter intimidation have become systemic in our democracy should be required. It seems to me that the Civil Rights Division of the Justice Department, the Public Integrity Section of the Justice Department, the US Civil Rights Commission, and the Federal Election Commission should be able to provide insight on the extent of the problem for the Committee.

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In my experience, federal elections are free and fair, but they are not perfect. In most instances, local volunteers are utilized to assist city and county election administrators on election day and those volunteers bring with them all of the frailties of the human condition. They make unintended mistakes and sometimes prevent lawful voters from casting an actual as opposed to a challenged ballot. However, the scope of these mistakes and errors is so small in the magnitude of the numbers of votes cast as to be statistically unimportant with respect to the outcome of the election and our ability to deem it be a free and fair result. For all of the anecdotal stories that surface on election day of intimidation and deceptive campaign practices, the actual number of incidents that are prosecuted under current law is quite small. If voter intimidation and/or campaign deception is a systemic problem, the Department of Justice has all the authority it needs to root out such wrong-doing. In my view, S. 453 doesn't provide any greater authority in this area than already exists in statute.

My specific issues with this proposal are many but for the sake of brevity, I will highlight just a few:

(1) The bill would criminalize non-violent behavior where voter intimidation or campaign deception were proven in court. Assuming, as I do, that voter "intimidation" is, on it's face, repugnant, it isn't, by it's nature, a crime that deprives a victim of life or liberty...why then should it be subject to a criminal rather than a civil penalty?

(2) The bill provides authority for agents of the federal government to make, in the days leading up to an election, instantaneous judgments as to who and what types of voter "intimidation" or campaign "deceptive practices" should be brought before a federal grand jury with the great risk that the news of such grand jury activity could taint the outcome of the very election that this bill is trying to uphold.

(3) The bill also provides a private right of action for individuals who believe that they were intimidated with respect to their right o vote or who were the subject of some loosely-defined election deceptive practice. Why the need for a private right of action in this area? The Justice Department's Civil Rights Division and Public Integrity Section, the local United States Attorney's office, and local law enforcement are but a phone call away from any citizen who believes that his or her voting rights have been infringed. I would argue that the last thing the dockets of the various Federal District Courts around the country need is additional layers of litigation filed by individuals, by-passing the federal agencies who are in place to prosecute these very problems.

(4) In my view, the definitional aspect of the bill's attempt to address "deceptive practices" in federal elections is a major problem for the Committee. Unfortunately, the definition of what constitutes a campaign "deceptive practice" is, by it's very nature, subject to subjective standards and tests. Not unlike the so-called "appearance" of a conflict of interest (as opposed to an actual conflict), the

definition of the "appearance" of a "deceptive practice" is subjective rather than objective. A campaign "deceptive practice" may be thought to be improper in one region of the country but acquiesced to in another. To have any meaning at all and to give adequate notice to those who might be impacted by this proposal, the definitions utilized in S. 453 must be tightened though the use of objective not subjective tests. Campaign workers and officials who might be called upon to defend their actions under this proposal must know, with certainty, in advance, that the campaign activities they are performing may well be the subject of litigation brought by the opposing campaign. The Committee must also address the bill's apparent effort to criminalize some types of campaign activity and chill protected 1st Amendment political speech.

Voter intimidation cannot be tolerated in a free society and evidence of such activity must be fully prosecuted by law enforcement. Similarly, voters should be free from deceptive practices that might cause them to be disenfranchised. But I am not at all sure that this legislation is needed.

Thank you and I would be happy to address any questions the Committee might have.

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OPENING STATEMENT OF U.S. SENATOR BENJAMIN L. CARDIN OF MARYLAND AT THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE HEARING ON "PREVENTION OF DECEPTIVE PRACTICES AND VOTER INTIMIDATION IN FEDERAL ELECTIONS: S. 453"

THURSDAY, JUNE 7, 2007

The hearing will come to order.

Today the Senate Judiciary Committee will receive testimony on the subject of "Prevention of Deceptive Practices and Voter Intimidation in Federal Elections: S. 453." Let me thank Chairman Leahy for asking me to chair this hearing.

After having served in elective office in Annapolis for 20 years and in Washington for 20 years, I understand that campaigns are a rough and tumble business. I expect that candidates will question and criticize my record and judgment, and voters ultimately have a right to choose their candidate.

What goes beyond the pale, is when a campaign uses deceptive tactics to deliberately marginalize and disenfranchise minority voters. Sadly, the tactics we saw in the 2006 elections are not new. These tactics seem to deliberately target minority neighborhoods and are blatant attempts to reduce minority turnout.

In previous elections we have seen deceptive literature distributed which gave the wrong date for the election, the wrong times when polling places were open, and even suggested that people could be arrested if they had unpaid parking tickets or unpaid taxes and tried to vote. Other literature purported to give a different general election day for Republicans and Democrats.

So I want to start the hearing today by going through a few examples of actual literature that was distributed in recent elections. These flyers will be made part of the permanent hearing record. In particular I want to thank the Lawyers Committee for Civil Rights Under Law – and its Executive Director Barbara Arnwine – and Jonah Goldman, the Director of the National Campaign for Fair Elections – for cataloguing and documenting these practices. I will place their written testimony in the record.

Exhibit 1 is from Jefferson County, Alabama, which gives the wrong day for the election.

Exhibit 2 is from the 2006 general election for U.S. Senate in Maryland. Our distinguished witnesses on Panel II, the Attorney General of Maryland and the Prince George's County Executive, will discuss this exhibit in more detail. Let me just say that former Congressman Kweisi Mfume, who is a friend with whom I represented Baltimore City in the U.S. House of Representatives, ran against me for the Democratic nomination and lost. He subsequently endorsed me as the U.S. Senate nominee for the general election, as did Prince George's County Executive Jack Johnson. They both are

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prominent African-Americans leaders in Maryland and appeared at several campaign events on my behalf as I prepared to face off against Lt. Governor Steele in the November general election.

Imagine my surprise then to discover on Election Day that the Republican campaigns for Governor and Senator in Maryland had distributed this literature.

The title of the piece is "Ehrlich-Steele Democrats" and "Official Voter Guide." The cover page prominently displays three African-American politicians: former Prince George's County Executive Wayne Curry, former Congressman Mfume, and current Prince George's County Executive Jack Johnson. Under their names is the statement "These are OUR choices," implying that all 3 gentlemen had endorsed Mr. Ehrlich for governor and Mr. Steele for senator. That is false. Mr. Mfume and Mr. Johnson endorsed my candidacy over Mr. Steele for the Senate. The flyer concludes with a citation to the general election, on Tuesday, November 7, 2006, and legal authority lines (required under Maryland election law) noting that the literature was "paid and authorized" by both the Ehrlich and Steele campaigns.

This type of deceptive literature is despicable and outrageous. It is clearly designed to mislead African-American voters about prominent endorsements by well-respected politicians. Maryland voters have a legal right to vote and pick the candidate of their choice. I was also upset to read in the Washington Post that a Maryland Republican election worker guide for poll workers stated that their "most important duty as a poll worker is to challenge people" trying to vote. This election guide was rightfully denounced by civil rights groups as a voter suppression and intimidation effort.

Exhibit 3 is from Franklin County, Ohio, in the 2004 general election. It said that due to "confusion caused by unexpected heavy voter registrations" that Republicans should vote on Tuesday and Democrats should vote on Wednesday.

Exhibit 4 is from Allegheny County, Pennsylvania, in the 2004 general election. It stated that "due to immense voter turnout" that Republicans should vote on Tuesday and Democrats should vote on Wednesday. The flyer also thanked voters for "cooperating with us in this endeavor to create a peaceful voting environment."

Exhibit 5 is from Orange County, California, in the 2006 general election. The distinguished President and General Counsel of the Mexican American Legal Defense and Educational Fund John Trasviña will discuss this exhibit in more detail. We have the original version in Spanish and then an English translation. This letter was sent to individuals who had recently registered to vote. Paragraph two warns the individual, in part, that if they are an immigrant that "voting in a federal election is a crime that can result in incarceration, and possible deportation for voting without the right to do so."

Exhibit 6 is from the Baltimore City, Maryland general election in 2002. It gives the wrong day – November 6th for the election – instead of November 5, and it warns voters to pay parking tickets, motor vehicle tickets, overdue rent "before you come to vote." It

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also warns voters about "any warrants."

Exhibit 7 is from Milwaukee, Wisconsin, in the 2004 General Election. The flyers contains "some warnings for election time," and states that: you can only vote once a year; if you have been found guilty of anything, even a traffic ticket, that you cannot vote in the presidential election; and that it you "violate any of these laws you can get ten years in prison and your children will get taken away from you." This is clearly targeted toward suppressing voter turnout in minority communities.

It has been 137 years since Congress and the states ratified the Fifteenth Amendment to the Constitution in 1870, which states that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race [or] color..." The Amendment also gave Congress power to enforce the article by "appropriate legislation." African-Americans suffered through nearly another 100 years of discrimination at the hands of Jim Crow laws and regulations, designed to make it difficult if not impossible for African-American to register to vote due to literacy tests, poll taxes, and outright harassment and violence. It took Congress and the states nearly another century until we adopted the Twenty-Fourth Amendment to the Constitution in 1964, which prohibited poll taxes or any tax on the right to vote. In 1965 Congress finally enacted the Voting Rights Act, which once and for all was supposed to prohibit discrimination against voters on the basis of race or color.

It is time for Congress to once again take action to stop the latest reprehensible tactics that are being used against African-American, Latino, and other minority voters to interfere with (a) their right to vote or (b) their right to vote for the candidate of their choice, as protected in the Voting Rights Act. These tactics undermine and corrode our very democracy and threaten the very integrity of our electoral process.

After being sworn in to the Senate this January, I was pleased to join with Senator Obama and Senator Schumer to introduce S. 453, the Deceptive Practices and Voter Intimidation Prevention Act of 2007. In sum the legislation provides that, within 60 days before a federal election, it shall be illegal to distribute false and deceptive information about an election regarding the time, place or manner of an election. The legislation also bans false and deceptive information about voter's qualifications or restrictions on voter eligibility, as well as false and deceptive information about explicit endorsements of candidates.

This legislation is narrowly tailored to apply to only a small category of communications that occur during the last 60 days before an election. Under our legislation the categories of the false and deceptive information cited above are only illegal if they are intentionally communicated by a person who: (1) knows such information to be false and (2) has the intent to prevent another person from exercising the right to vote in an election. This legislation properly respects the First Amendment's guarantee of freedom of speech while recognizing the power of Congress to prohibit racially discriminatory tactics to be used in elections under the Fifteenth Amendment, Voting Rights Act, and the general power of Congress under Article I, Section 4 of the Constitution to regulate the "times, places, and manner" of federal elections.

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This legislation creates tough new criminal and civil penalties for those who create and distribute this type of false and deceptive literature. The bill authorizes a process to distribute accurate information to voters who have been exposed to false and deceptive communications. The bill requires the Attorney General to submit to Congress a report compiling and detailing any allegations of false and deceptive election communications.

In the House I understand that similar legislation, H.R. 1281, has been approved by the House Judiciary Committee and it awaiting action in the full House.

Let me also thank one of my predecessors in the Senate, Mac Mathias, a Republican from the State of Maryland, for his thoughtful June 4, 2007 letter which will be made part of the record. Senator Mathias lays out the history of the relevant civil rights and voting rights acts. He writes that "while the methods employed to deter voting differ today from those in vogue forty years ago, the deplorable objective remains the same: to help destroy the integrity of the election process by suppressing participation, especially by minorities. Because these more modern methods of coercion and intimidation do not fall neatly within the ambit of current law, legislation amending Section 1971(b) is needed. I believe S. 453 fills that gap admirably."

Recently we celebrated the 42nd anniversary of the voting rights march outside Selma, Alabama. Our own House colleague, Congressman John Lewis from Georgia, was savagely beaten and tear-gassed by police for peacefully marching and protesting on what we now call "Bloody Sunday." He and so many others, including the Rev. Dr. Martin Luther King, Jr., ultimately led a peaceful march to Montgomery help their fellow citizens register to vote. Media coverage of the mistreatment of our own American citizens garnered worldwide attention, and led to the introduction by President Johnson in Congress of the proposed Voting Rights Act. Congress passed this historic act and President Johnson signed it into law less than five months after its introduction.

Today we have the obligation and duty to fulfill the promises made by Congress and the states nearly 140 years after the end of the Civil War, and over 40 years after the enactment of the Voting Rights Act.

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Feds Probe Voter Fraud in South Dakota

Wednesday, October 16, 2002

FOX NEWS

WASHINGTON —

Federal officials confirm that a vote fraud investigation is unfolding on Indian reservations in South Dakota, home of one of the tightest U.S. Senate races in the nation.

Federal officials in Washington told Fox News that so far, the alleged fraud is said to have occurred on the Cheyenne River Reservation and the Pine River Reservation, and an investigation has been ongoing in six counties, including Dewey, Ziebach and Fall River.

According to officials, the FBI has uncovered the registration of minors, dead people, and people who do not exist. Many of the registrations have included bogus names and invalid addresses.

Investigators said in one case a woman was registered to vote a week after her death.

They have also found multiple absentee ballots distributed to the same registered voter but returned with different signatures, the officials said.

The case was brought to the attention of the South Dakota attorney general's office when county auditors began discovering problems with absentee ballot requests and votes. State Attorney General Mark Barnett said the investigation has been ongoing for two weeks.

Barnett said that he hoped invalid absentee ballots haven't been filed. Absentee voting began Sept. 24 and the registration deadline is Oct. 21.

"I don't even want to think about it," Barnett said. "A lot of absentee ballots are going to get looked at."

Federal sources said the key suspect in the investigation is a former staffer of the state Democratic Party, whom is alleged to have falsified voter forms. The party itself has not been implicated. Officials said that because of the size of the alleged fraud, they expect to find accomplices.

Bret Healy, executive director of the state Democratic Party, said the worker was fired as soon as the party learned of the allegations. Healy said party officials notified the U.S. attorney.

South Dakota does not require a photo ID to register to vote and absentee ballots can be obtained without appearing personally.

Last week, Attorney General John Ashcroft attended a symposium in Washington, D.C., to promote legal voting this year. The national Democratic Party also said that it would monitor elections this year to make sure that those who want to vote are given access to the polls.

On Thursday night, the House gave final approval to an election reform bill that provides $3.8 billion to states to update equipment. The Senate voted 92-2 for the reforms on Wednesday. President Bush has said he would sign the legislation.

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Republicans had insisted that measures also be included to deter fraud, including a provision that those who register by mail bring some form of identification to their polling places.

That earned scorn from some lawmakers who said that the provision would erect barriers to voting.

The South Dakota U.S. Senate race between incumbent Democrat Tim Johnson and Republican Rep. John Thune is one of the hottest in the country.

The race is among the eight tightest in the country which are likely to determine which party controls the Senate majority next year. The latest polls indicate Thune is ahead 48-43.

Thune has said he wouldn't rule out a trip to court if there's evidence of widespread voter registration fraud and he loses by a close margin.

"This race is close and both sides have to be prepared in a race this close. The Republican Party, hopefully, has taken steps to deal with issues in that respect," Thune told the *Sioux Falls Argus Leader* newspaper.

Campaign spokeswoman Christine Iverson said Tuesday that the Thune camp has "no plans to contest this election, and we certainly hope it doesn't come to that."

Because South Dakota is home state to Senate Majority Leader Tom Daschle and because President Bush recruited Thune to run, this contest is seen as a proxy fight between Daschle and Bush.

Fox News' Carl Cameron and The Associated Press contributed to this report.

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HEADLINE: Saving our elections: America's once proud and trustworthy electionsare being undermined, but concerned citizens can take steps to restore the integrity of our electoral process.

BYLINE: Hyde, Kurt

BODY:

The electoral problems that have been simmering in America for a long time and that surfaced in the 2000 Gore/Bush race haven't gone away. Maryland Governor Robert Ehrlich has recently urged scrapping that state's recently-purchased electronic voting machines and replacingthem with paper ballots for this upcoming election because of technical and human "problems" with the machines in the primaries. America's once proud and trustworthy elections are being undermined. Ballots are increasingly being counted behind closed doors or inside electrical circuitry without verification by public scrutiny.

Types of Fraud

Electoral fraud is typically grouped into one of two categories, retail fraud or wholesale fraud. Retail fraud is where each fraudulentvote requires a separate act of fraud. Wholesale fraud occurs when alarge number of fraudulent votes are generated by only one act of fraud.

The best-known and undoubtedly the most frequently used type of retail fraud is "repeat voting." Repeaters are people who vote numeroustimes in an election under assumed names, names taken from people who have died, moved away, never existed, or just names chosen from a phone book. Obviously, repeat voting is built on a foundation of fraudulent voter registrations or sloppy administration of the voter registration lists. Destroy fraudulent voter registrations and repeat voting will collapse like a house of cards.

Another type of repeat voting is accomplished through "early voting." Early voting, supposedly an answer to the problems of long lines on election day, is now helping repeaters to vote early and vote often.

Absentee ballot fraud, which is often done by people who have contact with the elderly, can be done through "assisting" the elderly or the visually impaired to mark a ballot--and then marking the ballot differently than directed. Or correctly marked ballots might be switched with fraudulent ballots while transporting them to a mail center. Of course, there's always the old technique of requesting an absenteeballot under an assumed name, which is essentially just repeat voting using the mail.

Without an investigation we can only guess how many votes can be cast illegally, but the Washington Times reported on October 26, 2002 that Larry Gray, a former sanitation director for Helena, Arkansas, pleaded guilty when charged with submitting more than 25 absentee ballots. The article went on to say that authorities believed he had applied for 200 absentee ballots and submitted 98 ballots in the Democratic primary. U.S. Attorney H.E. Cummins said of the case: "This is just one guy. We believe there were other people engaged in that primaryand other elections that basieally involved the same type of scheme."

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Another retail vote fraud technique, this one used by vote counters, is "the short pencil"--where a vote counter conceals pencil lead under a fingernail to make additional marks on a ballot in order to invalidate one or more votes by causing "over-votes." The term over-vote refers to a ballot that has more votes than the number allowed for a contest. Therefore, none of the votes for that contest will count.

Wholesale fraud, which was almost nonexistent in our Republic prior to the 1890s, erupted when mechanical lever voting machines were first put in use. It was then possible for someone with inside access to commit one act of fraud--such as adjusting the counts on the votingmachines' counter wheels--and change a relatively large number of votes.

Wholesale election fraud became easier when America was blessed with the invention of the punch card voting system. Punch card voting systems enabled wholesale election fraud via numerous security breaches:

* By tampering with the punch card "book." With most punch card systems, the voter is dependent on a book, under which the punch card is inserted to remove the correct chad. If that book page is tampered with by either a voter or an election worker, the voters can be misdirected to punch the wrong chads.

* By tampering with the computers that count the ballots.

* By counting punch cards at a centralized counting center that isnot open to the public--an obvious invitation for something one on the inside to swap boxes of incoming ballot for pre-punched ballots with desired outcomes.

The first direct-recording electronic voting machines (DREs), which are essentially computer-recorded balloting systems, also provide the means to cheat. The system can be rigged by anyone with inside access--whether that be the programmers who write the programs inside, the manufacturers or subcontractors who make the equipment, the caretakers of the equipment between elections, the technicians who install updates to the equipment, or in some cases the election administrators who have the master passwords. And here, too, vote totals are usually transmitted to a central location for consolidating and reporting which is another chance for someone to fraudulently alter the numbersif totals aren't audited.

In a recent experiment conducted at Princeton University, white-hat hackers, people who obtain permission beforehand to hack into computer systems for the honorable purpose of finding security flaws in order that they can be fixed, were able to alter the outcome in a sample election using methods available to voters. In this controlled election with five voters, four of them voted for George Washington and only one for Benedict Arnold. But the machine totals showed a victory for Benedict Arnold by a vote of three to two. Put simply, it is impossible for a voter to ensure his vote was cast and counted correctly with paperless DREs.

The granddaddy of all wholesale fraud systems will come if, like many politicians desire, the United States implements Internet voting.Internet voting was almost forced on our military people for their absentee ballots under the FVAP (Federal Voting Assistance Plan). The project was put on hold following a scathing security analysis of it by a number of highly renowned computer experts.

How Serious Is This Problem?

A problem with estimating how serious the threat of voter fraud istoday is that any investigation of retail vote fraud must start withvoter registration lists, but verifications of such lists, and even the investigations themselves, are frequently blocked by politicians or by courts. Stealing Elections, a book by Wall Street Journal editorial board member John Fund, lists a number of aborted attempts at investigating vote fraud.

One failed attempt happened in 1997 when the U.S. House of Representatives demanded that the Justice Department prosecute Hermandad Mexicana Nacional for allegedly registering hundreds of illegal voters in a close congressional race, but "federal immigration officials refused to cooperate with the probe citing 'privacy' concerns." Another was the 1997 U.S. Senate investigation of a U.S. Senate race in Louisiana that "found more than 1,500 cases in which two voters used the same social security number. But further investigations collapsed afterDemocratic senators walked off the probe, calling it unfair, and then-Attorney General Janet Reno removed FBI agents from the case because it wasn't 'bipartisan.'" And "The ACLU once sued the U.S. Attorney in San Francisco because he matched voting records against lists of legal immigrants who were not yet citizens." In yet another instance of attempted fraud fighting where mail was sent to addresses listed byvoters to verify residency, and personal contact with voters was attempted when mail was returned as undeliverable, the effort was blocked because it allegedly constituted harassment or intimidation of minorities.

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How credible are the allegations that are made in regard to voter registration clean-ups? One example can be found in Stealing Elections by John Fund. Miami City Commissioner Hernandez tried to discredit the charges of absentee ballot fraud in the 1997 mayoral race by using the "racism" card. The Miami Herald reported that a woman who was wearing a bug for a law enforcement agency taped him saying "he could sway public opinion by accusing the paper of racism and trying to suppress Hispanic political power."

How Has the Problem Been "Fixed"?

Our politicians in Washington, far from being a solution to our electoral problems, have been among the worst of the causes. One disastrous piece of legislation in this respect was the National Voter Registration Act. Better known by its nickname, the Motor Voter Act, thisunconstitutional law required, among other things, that states "provide individuals with the opportunity to register to vote at the same time that they apply for a driver's license" and that states allow citizens to "register to vote by mail using mail-in-forms." The requirement to allow mail-in registration forms virtually shut down most states' voting identification requirements.

Worse yet was the so-called Help America Vote Act of 2002 (HAVA). This law, which purportedly was intended to create "minimum standardsfor states to follow in several key areas of election administration," is currently forcing the states, counties, and municipalities to purchase ADA (Americans with Disabilities Act) compliant electronic voting equipment, which as we now know can be susceptible to wholesale voting fraud.

In addition to the required electronic voting machines, HAVA also mandates that states maintain a statewide voter registration databasethat "shall serve as the single system for storing and managing the official list of registered voters throughout the State." This requirement not only forces centralization of the voting process--a bad thing--but in essence establishes a framework for a national ID card. Some say this statewide voter database is necessary to keep voter registration lists honest, but the opposite is true.

One indication that HAVA's centralization of power will be dangerously abused can be found in a USA Today front-page story of August 17. Political action committees are focusing their election efforts on Secretary of State contests in numerous states. Of course, under HAVA, the registration lists would fall under control of the Secretary ofState in each state. The PACs wouldn't be spending their money on these races without very good reason --such as the thought of being able to change the outcomes of future elections.

Of course, because the past "fixes" haven't worked, politicians inWashington are currently submitting numerous bills to help us. Unfortunately, all the bills covering voting currently in Congress will only make things worse. For example, H.R. 4844, sponsored by the supposedly conservative Congressman Henry Hyde (R-Ill.), would require a government-issued picture ID in order to register or vote. This bill isessentially a national ID card in disguise. Also, it assumes that the IDs will be tamper-proof while the continuously improving technology behind making phony ID cards has already made it feasible to equip repeat voters with false photo IDs. Notably, too, this legislation does nothing to break the blockages stopping the cleanup of voter registration lists.

Congressman Rush Holt (D-N.J.) has submitted H.R. 550, a bill thatwould require electronic voting equipment to have a paper trail, something 27 states already require and 23 others are likely to require soon. H.R. 550 would require 2 percent of the precincts to be recounted. At first, that sounds good: recounts, or audits, are important and states need to pass laws authorizing them, but H.R. 550 would centralize the power to decide which precincts get audited in the hands ofa federal agency, the Election Assistance Commission. In addition tobeing unconstitutional, that's too much power to be put into the hands of a few people in Washington, and an open invitation for abuse.

Also, this bill would mandate that if the paper records disagree with the computer counts, the paper records would be correct. Paper ballots can be and have been tampered with in the past. If there's a discrepancy between them, there's something wrong and an investigation should be initiated to determine what happened. A better bill than H.R. 550 would be a resolution informing the states that the U.S. Congress is aware of these types of voting discrepancies and that failure by the states to implement paper trails, some form of auditing, and voter registration clean-up could result in Congress' using its constitutional authority to refuse to seat a member in a questionable election.

The grand prize for worst bill goes to Senator Hillary Rodham Clinton (D-N.Y.). Her bill, S. 450, calls for a study of the possibility of Internet voting as well as Internet voter registration. S. 450 would also mandate "election day" voter registration. Perhaps someone should tell her that election day registration is no different from "same day" registration--a concept that has earned the bad reputation ithas. Senator Clinton also wants a "Study on Encouraging Government Employees to Become Poll Workers." This part of her proposal would be added by making election days federal holidays. If her bill passes, we could find ourselves voting via the Internet in an election controlled and monitored by gov-

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ernment employees who have a vested interest in the outcome. Fortunately, even our current Congress has had enough-sense not to pass this legislation.

What Should the States Do?

The states need to resume their constitutional right and obligation to write effective election laws. Voter registration lists need to be open to verification by the public, and voters should be required to sign-in on election day using consecutive sign-in sheets rather than signing next to their names on voter registration lists. (Consecutive sign-in sheets are numbered, and the voters sign their signaturesone after the other. If additional votes are added, such as with LBJin 1948, the additional voters will be last on the sheets. On the new computerized sign-in forms we use in Texas, I sign next to my name.If someone the ballot box, the additional signatures are next to thenames, and there's no way to see in what order they were signed.)

States and localities must be allowed to use paper ballots, and any paperless computerized voting equipment needs to be upgraded to include a voter-verified paper ballot. Complementing the paper ballots, audits need to be done to ensure honesty--audits initiated in response to local concerns. Current audit advocates want the choices of precincts to be audited to be made in Washington, D.C., or in state capitols using random selection or mathematical variances to determine theprecincts to be audited. These choices should be made by the candidates with the losing candidates getting the lion's share of the choices. Also, instead of just counting the voter-verified ballots and comparing them to the computer totals, the precinct audits should includea mailing to the voters to verify that they exist.

States considering simple laws for requiring paper trails in electronic voting can just copy New Hampshire's law from 1994. That state merely modified two paragraphs in the state's election laws to require voting machines to be of the kind that "reads the voter's choice ona paper ballot." If New Hampshire can afford to implement this law, it's likely that all states can. New Hampshire still doesn't have a state sales tax or a state income tax.

States could also follow the recommendations of a jury that investigated Chicago's 1908 primary elections, recommendations that, unfortunately, have never been passed in any state. They recommended that election judges and clerks should be selected for elections service ina manner similar to jury duty, with no candidates, office holders, nor political patronage job holders allowed to serve. Their recommendations would have allowed for some government employees in the processto add procedural and technical expertise, but not to participate incollecting or counting ballots. They also recommended identificationof voters via signature or thumbprint.

In the long run, state legislatures must reverse a number of long-term trends.

Kurt Hyde is a computer professional and a student of elections.

LOAD-DATE: November 29, 2006

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Statement of Douglas F. Gansler, Attorney General of Maryland
Before the Senate Committee on the Judiciary
S. 453: "Deceptive Practices and Voter Intimidation Prevention Act of 2007"
June 7, 2007

Mr. Chairman and distinguished members of the Committee, thank you for the opportunity to be here today and discuss with you the important legislation that Senator Obama has introduced to prohibit deceptive practices in federal elections.

I strongly endorse the legislation, which builds on the reauthorization last year of the landmark 1965 Voting Rights Act. The health of our democratic system depends on our ability to ensure that all citizens entitled to vote may do so, for the candidates of their choosing. Public confidence in the election process cannot be maintained if voters are kept from the polls by intimidation, misinformation or deceit.

My interest in this legislation comes from personal experience. I have served as a federal prosecutor and, for the previous eight years, I was the elected State's Attorney for Montgomery County, Maryland. I now serve as Attorney General of Maryland, a position to which I was elected in last fall's election. Maryland's experience in that election has underscored the need for concerted state and federal action to build on the legacy of the Voting Rights Act.

The Committee is aware of one incident that took place in Maryland on Election Day in 2006, involving misleading fliers that were distributed in Prince George's County, Maryland. Those brochures were designed to suggest that three prominent and influential political leaders had endorsed candidates for the United States Senate and Governor of Maryland when in fact they had not. One of those leaders, Jack Johnson, the County Executive for Prince George's County, whose image appeared on the cover of that flier, is here today and I'm sure the Committee will be interested to learn more about that incident.

But I would like to discuss for a moment another occurrence that I witnessed that day, also in Prince George's County. After voting at my home polling place, an elementary school in Chevy Chase, Maryland, in Montgomery County, I traveled to a polling place in Prince George's County. There, I witnessed long lines snaking around the building, as voters, predominantly African-American, waited hours to cast their ballots. This stood in stark contrast to my own experience voting at a polling place that served a more affluent community, which took just a few minutes. Television cameras have recorded similar contrasting images in every recent election, across the country: poor and minority voters being subjected to greater obstacles than whites in neighboring jurisdictions. This is unacceptable in America in 2007.

The problem may be the result of unexpectedly high turnout, poor planning in the

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allocation of machines and election workers or glitches in getting the machines up and running, rather than intentional discrimination. But, whatever the cause, the problem cannot be allowed to persist. For while it was heartening to see how many citizens were willing to endure long lines in order to exercise their most fundamental right, the right to vote, it was also distressing to see how many people could not afford to wait any longer and turned away. Beyond the logistical problems of election administration that may impede access to the polls and do so with disparate impacts on poor and minority communities, there are also – unfortunately, even four decades after the Voting Rights Act was enacted – obstacles to access that reflect *intentional* action.

Given our nation's lamentable history of inequality with respect to the most cherished and fundamental of our rights, the right to vote, we cannot allow senseless obstacles to be placed in the way of voting. In Maryland, I have asked a task force, chaired by Professor Sherrilyn Ifill of the University of Maryland School of Law, to examine election irregularities and obstacles to voting experienced by Maryland voters in recent elections and to make proposals for policy changes. The task force has been given a broad charge, but a very important aspect of the issues it is examining concerns the types of practices that Senate Bill 453 addresses.

As I mentioned earlier, Maryland's experience in the 2006 election cycle furnished illustrations of the types of deceptive practices that are addressed by this legislation: communications that are designed to dissuade, mislead and outright suppress votes. It should not escape notice that the deceptive tactics we have seen and that are targeted by this legislation very commonly are focused on traditionally disenfranchised voters – the voters, for instance, who were lined up around the block at the polling place that I visited on Election Day 2006 in Prince George's County. In other words, these tactics are frequently directed at the very Americans the Voting Rights Act is committed to protecting – people whose full participation in the democratic process is being thwarted through cynicism, deceit and misinformation.

As it happens, voters in Prince George's County were the target of the now-notorious deceptive brochures that misleadingly implied that Jack Johnson and others had endorsed candidates for Governor and Senator that they had not. This outlandish attempt to mislead voters, trading on the good names (and images) of three prominent African-American political leaders, is perhaps most notable for its sheer, unabashed brazenness, which may account for the national attention that it has received. But this was not an isolated incident, and in my view, other examples of deceptive practices covered by this bill that we have encountered in Maryland, and that have been documented elsewhere, are in fact more insidious and more corrosive of our democratic process.

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The distribution of these glossy brochures labeled as an "Official Voter Guide" is a straightforward example of the type of irresponsible and deceptive practices that have no place in our political process. As an elected official, I expect my political opponents to challenge my positions on the issues, and I believe the democratic process generally benefits from a vigorous debate between candidates with opposing viewpoints, even where I feel that my stance on the issues has been misrepresented or characterized in a misleading way. But democracy does not benefit from deceptive tactics like the ones targeted by this bill.

The misleading fliers distributed on Election Day in Prince George's County (and similar ones distributed that day in Baltimore County), because they were distributed on Election Day, evaded corrective action. The campaign committees that sponsored those fliers did, however, identify themselves in the "paid for by..." line on the fliers. And, in the case of the Prince George's County fliers, three prominent political leaders whose endorsements of candidates had been misrepresented could be expected to call attention to the tactic. The media did in fact report on the distribution of the Prince George's fliers, by homeless people bused in from Philadelphia, relatively early on Election Day.

Other examples of deceptive practices that this Committee has cited, in my view, present an even greater threat to the principles embodied in the Voting Rights Act and this nation's commitment to civil rights. I have supplied the Committee with an example of another flier that was distributed in predominantly African-American areas of Baltimore City in the 2002 election cycle. This type of deceptive communication is even more insidious than the two examples I have already discussed. Whereas those fliers communicate misleading information in a deceptive effort to *sway* votes, this 2002 flier seeks to outright *suppress* votes by eligible voters.

While the flier invites citizens to "come out to vote on November 6," the election that year was held on November 5. There is of course no requirement under Maryland law that voters pay outstanding parking tickets or motor vehicle citations or unpaid rent in order to be eligible to vote. There is absolutely no place in our democratic society for deceptive communications like this. But, as the Committee is aware, there are abundant examples of similar tactics that have been used around the country in recent elections: communications tbat "remind" voters to vote on Wednesday; or "alert" voters that the day for voting has been postponed; or "inform" voters of spurious eligibility requirements; or attempt to intimidate voters by intimating that their privacy rights cannot be protected or that they may be subject to criminal penalties. There is no justification for such intimidation and vote suppression tactics, and this legislation rightly creates penalties for those who perpetrate these crimes.

We cannot allow another election cycle to go by where we witness deliberate efforts to subvert the will of voters to vote for their candidate of choice. And we cannot allow

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deceptive tactics to be used to disenfranchise voters. These practices seek to deprive Americans of rights guaranteed by the Fifteenth Amendment and vindicated by the civil rights movement of the 1960s. We sully ourselves when we fail to stand up for the values of full and equal access to the franchise, and we undermine public confidence in the electoral process every time tactics like the ones targeted by this legislation are used to mislead or intimidate voters.

This legislation takes a measured approach to addressing an important issue, imposing penalties for deceptive communications where the person (1) knows the information to be false and (2) acts with the intent to prevent another person from exercising the right to vote in an election. This legislation properly respects the First Amendment's guarantee of freedom of speech while recognizing the strong federal interest in safeguarding the right to vote and prohibiting tactics that have frequently been employed in racially discriminatory ways.

The examples of such tactics that I have discussed today illustrate that shame has proved to be an insufficient deterrent to those who would engage in these deceptive practices. Senate Bill 453 is an important component of what must be a comprehensive approach, at both the state and federal levels, to ensuring that voter rights are protected. I strongly endorse the bill and urge its passage.

Thank you for the opportunity to testify today, and I look forward to your questions.

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PUBLIC NOTICE

If any voters or members of their family who are planning to vote Tuesday, are wanted by Law Enforcement Officials for the following offenses, information has been received that a list of voters has been drawn to be arrested after voting for the following offenses, committed in the past five years:

1. **Traffic tickets**
2. **Speeding or negligent collision tickets**
3. **Parking Tickets**
4. **Child Support Payments ordered by the Courts in divorce suits or child desertion**
5. **Questioning by the Police of any offense**
6. **Voters who have not appeared in Court as witnesses or Defendants in criminal or civil matters.**
7. **Voters who have not paid fines ordered by the Court**

*****

Please take care of these matters before voting or else contact a Bail Bondsman or Lawyer before voting in order to be sure that you won't miss work or have to spend the night in jail by being arrested.

(Harris County Negro Protective Association)

Source: "FBI Probe Into Phony Vote Handbills Promised," *Houston Post*, November 3, 1964.

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TESTIMONY OF
JACK B. JOHNSON
COUNTY EXECUTIVE
PRINCE GEORGE'S COUNTY, MARYLAND
BEFORE THE
SENATE JUDICIARY COMMITTEE

June 7, 2007

Good afternoon, Mr. Chairman and members of the Committee. I am Jack Johnson, County Executive for Prince George's County, Maryland. Our county of nearly one million people, located just east of our nation's capital, is the wealthiest African-American majority county in America. I am honored to be asked to testify today before this committee to discuss voter intimidation, as well as false and deceptive campaign practices that occurred in our county during the November 2006 general election.

Let me begin by offering my support for S. 453, the Deceptive Practices and Voter Intimidation Prevention Act. While some technical and substantive changes may follow, it is critical that the United States Congress take the lead in preventing practices that undermine the basic tenets upon which our democracy was founded.

If left unchecked, voter deception threatens the foundation on which our nation was built. Our system serves as a beacon of light to billions across the globe by giving a "voice" in government through the simple act of casting a ballot. Voter intimidation through false and deceptive practices silences that voice.

While seemingly irrelevant to the current legislation and discussion, slavery as an institution created one of the most offensive periods in American history. Part of that legacy was the denial of the basic right to vote for African Americans. Even after

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the adoption of Amendments to the U.S. Constitution, it took the 1965 Voting Rights Act, nearly 100 years after emancipation, to correct this injustice.

References to this dark period in our nation's history were used in a false and deceptive way in November 2006 on the eve of the general election. Slavery was tied directly to the issue of voting and suggested that Democrats were treating people as slaves. This was a deliberate effort to confuse, to mislead and to suppress African American votes. Those who engaged in its practice hoped it would minimize participation or confuse voters into voting for the wrong candidates.

In Maryland, as you know Mr. Chairman, this was an important election. On the line was the U.S. Senate seat being vacated by retiring Senator Paul Sarbanes, as well as a tight race for governor and other offices.

On the evening before the November 2006 general election as I traveled the county for a final wrap-up, I saw thousands of these signs that said "We are not slaves to the Democrats." These signs were the colors of the Black Liberation Movement, red, black and green. I believe these signs were designed to suppress voter turnout in some areas. In essence, the literature suggested that the Democratic Party was suppressing African American's struggle for equality, freedom and justice. And therefore, was treating them like slaves.

I think of my days as a young college student in South Carolina. I was part of the civil rights movement and I came to know these colors as powerful signs of the African American struggle for equality – to remove the shackles and vestiges of slavery. Millions of Americans, black and white, Democrats and Republicans made great sacrifices to achieve justice. I was offended and outraged to see a suggestion that my party was

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enslaving blacks. To say the Democrats or Republicans support slavery is just wrong.

This slavery signage paled by comparison with what I encountered the following morning on Election Day. I woke up and went to the polls early to gauge what was going on. I went to my polling place and saw someone I didn't know handing out literature saying I was supporting the Republican candidate for United States Senate. The literature said "These are Our Choices." On the cover was my photo, the leader of the Democratic Party in our county. The inference was totally false. The First Amendment protects speech, but not false statements such as these.

Phone calls came early and often. Angry citizens wanted to know why I was a turncoat and why I abandoned my party. I was simply flabbergasted that my name and likeness could be appropriated in such a manner. Rather than using my time to visit with voters and talk about issues of mutual concern affecting the county, I spent the entire day using all my energy to inform citizens that the literature was a hoax and that it was false and deceptive.

The outrage continued throughout the day. I have been a public servant for more than 20 years. I know the poll workers because they are my neighbors and activists I have worked with over the years. I did not know a single person distributing this literature. I soon learned that they were homeless people bused in from Philadelphia earlier that morning. They were promised three square meals, $100 and a return ride to Philadelphia. Many of these people who learned about the falsehood stopped handing it out. Many were later abandoned at their polling places where they were dropped off and people like State Delegate JoAnne Benson and others reached into their own pockets to feed them and get them on buses back home. Of course, everyone denied

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responsibility for what had happened, from how they arrived to what they were promised. Nobody knew anything.

Many citizens told me they saw my face on the literature and voted accordingly. Voters should not expect to see signs posted about being slaves. Voters should not be handed a false ballot with pictures of people they have come to trust and respect purportedly supporting candidates they have never endorsed. This is deceptive and must not be tolerated in a free and democratic society.

It is important that both major parties work to promote free and fair elections here in America, just as we do around the globe. The essence of democracy is that people be informed. The First Amendment guarantees the free marketplace of ideas and opinions. Citizens must be informed, but they should not get false and deceptive information that serve to undermine the values that hold our republic together.

I have seen first hand the lingering vestiges of slavery and Jim Crow laws. The memories pain me, and those who live in our county and throughout America. There are those who seek to exploit this sad history, but I have confidence that this and other practices I described here today can be curtailed with the adoption of S. 453. I urge you to support this important bill.

In the past when it came to civil rights and voting rights, the federal government took the lead. Once again, you can lead by ending the practice of false and deceptive practices used to influence or suppress voting in America. I look forward to the day when this Act is passed.

Thank you again for the invitation to speak today. I would be happy to answer any questions.

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Preliminary Findings of Joint Task Force Investigating Possible Election Fraud

May 10, 2005

A. Background

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. A memorandum signed by the head of each of the agencies stated, "This task force is committed to conducting its work in a thorough, non-partisan manner." The memorandum also indicated that federal authorities would not be involved in any evaluations of election procedures outside of potential criminal violations.

Since the task force began its work, it has received further investigative assistance from the United States Postal Inspection Service and the Social Security Administration - Office of Inspector General. The task force has also received assistance from Milwaukee City Attorney Grant Langley and his staff.

As explained below, the task force work to date has focused on an examination of original records, primarily because data base information has proven unreliable and may not otherwise be admissible in court. This has involved the review of thousands of

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registration cards and the information contained on such cards. As a result, the task force, particularly members of the Milwaukee Police Department, has expended well over 1,000 work hours. The work has been slow, painstaking and is far from complete. Still, the task force commends the Milwaukee Police Department for committing these resources and particularly notes the investigative work conducted by Detective Michael Sandvick and Officers Neil Saxton and Michael Perez. We also specifically note the work of Investigator Aaron Weiss of the Milwaukee County District Attorney's Office.

B. Summary of Findings

Based on the investigation to date, the task force has found widespread record keeping failures and separate areas of voter fraud. These findings impact each other. Simply put: it is hard to prove a bank embezzlement if the bank cannot tell how much money was there in the first place. Without accurate records, the task force will have difficulty proving criminal conduct beyond a reasonable doubt in a court of law.

With that caveat, the task force has made the following specific determinations based on evidence examined to date:

1. The task force has developed 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.

2. In addition, the task force has determined that 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.

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3. Also, the task force has found that 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.

4. The number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500.

C. Findings Related to Fraud

Phantom voter identities/addresses/votes. The task force has individually reviewed hundreds of names and addresses associated with the various data bases suggesting that thousands of people registered *and* voted using suspect names and/or addresses. To date, the investigation has concentrated on the 70,000+ same-day registrations. To date, we have 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 has found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

1. Persons with the same name and date of birth recorded as voting more than once.
2. Persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City.
3. Persons who registered and voted with identities and addresses that cannot in any way be linked to a real person.

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4. Persons listed as voting under a name and identity of a person known to be deceased.

5. 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.

Voter-drive fraud. In separate instances, 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.

Felons. The investigation has found more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so. Not all felons are ineligible to vote. In order for such action to constitute a criminal offense, the prosecution must establish, beyond a reasonable doubt, that the felon was ineligible to vote under state law and that the felon knew that he or she was ineligible to vote. As a result of this standard, the task force is proceeding cautiously in its charging decisions and is evaluating each case on the individual facts. We note, however, that we have expanded our investigation to include felons who may have voted in suburban areas as well.

In each of the alleged cases of potential fraud, the task force will not be releasing any further details in order to protect the integrity of the continuing investigation.

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D. Vote Total Discrepancy

An additional finding of the task force to date is that the number of votes cast far exceeds the total number of recorded voters. The day after the November 2, 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.

The task force will continue to investigate this discrepancy. There remains an open question of how certain absentee ballots were handled or recorded. We further note that no geographic pattern exists for these over-votes, and multiple wards had discrepancies in excess of 100 votes. In addition, some wards had the opposite: more voters than votes. We believe that one explanation for this latter circumstance is that individuals were allowed to register and vote from a specific ward even though they were supposed to register and vote in a different ward. When a data base was later compiled, the voter name was moved to the correct ward, but the vote number remained in the incorrect ward.

A further analysis of this situation continues, but the investigation is hampered by widespread record keeping errors with respect to recording the number of voters. At each polling place, the name and number of voters was supposed to be checked by two

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identical poll books, as well as by the voter number (the pink slip). In a preliminary analysis of individual wards, the task force has found: poll books that do not match voter numbers; voter numbers that were skipped; and voter numbers that were used more than once.

E. Additional Record Keeping Problems

As indicated, the task force has been hampered by numerous instances of inadequate record keeping. Any criminal prosecution will depend on access to and the available use of original records accurately recording the names of voters and the corresponding vote numbers. As indicated above, records regarding vote numbers have been inconsistent and conflicting. In addition, for criminal purposes, proof of the identity of the person voting often is best established by the original (green) voter registration card. Yet in the November 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.

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These included cards that listed "West Allis," "Oak Creek," "Ashland," "Reedsburg," and "Hayward."

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. As late as April of this year, an additional box of green registration cards was located by election officials.

F. Future Investigations

Although many hours already have been undertaken, we realize that much more investigation is still to be done. There are many leads and interviews that still must be pursued. If individual members of the public believe that they have information on specific instances of election fraud, they are asked to call the Milwaukee Police Department, Election Task Force at 414-935-7802.

James Finch
Special Agent in Charge
Federal Bureau of Investigation

Nannette Hegerty
Chief, Milwaukee Police Department

E. Michael McCann
Milwaukee County District Attorney

Steven M. Biskupic
United States Attorney

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Testimony of Peter N. Kirsanow before the Senate Judiciary Committee

On

The Prevention of Deceptive Practices

And

Voter Intimidation in Federal Elections: S.453

June 7, 2007

Mr. Chairman, Senator Specter, members of the Committee, I am Peter Kirsanow, a member of the U.S. Commission on Civil Rights ("Commission") and a member of the National Labor Relations Board. I am appearing in my personal capacity.

The Commission was established by the Civil Rights Act of 1957 to, among other things, act as a national clearinghouse for denials of voting rights and equal protection. The Commission played a central role in providing the predicate information and rationale for passage of the Voting Rights Act of 1965 ("Act"). The Commission also provided analyses for the extension and expansion of the Act's temporary provisions in 1970, 1975, 1982 and 2006.

In furtherance of the Commission's clearinghouse function the Commission has, over the years, conducted hearings on voter suppression, intimidation and fraud. The most recent such hearing took place in October 2006, just before the midterm elections.

The purpose of the Commission hearing was to provide Congress and the President with a factual record upon which to consider policies related to voter suppression, intimidation and fraud. The Commission has not yet issued recommendations on these matters.

Nonetheless, based on the evidence presented at the Commission hearings, I respectfully submit that in its deliberations regarding S.453 the Committee address at least three deceptive practices not covered currently by the bill: (1) fraudulent registration; (2) multiple registration; and (3) compromised absentee ballots.

The evidence adduced at the Commission hearings reveals two prongs to the problem of deceptive practices and voter intimidation that affect election integrity: voter suppression (broadly defined) and voter fraud.

The evidence pertaining to the first prong consists primarily of election disinformation, long lines, voting machine malfunctions and problems with provisional ballots. Sections 3(a) (2) (A) (ii) and 3(b) (1) (A) (ii) of the bill address elements of the first prong, i.e., attempts to prevent eligible voters from voting. The bill does not address the second prong of *affirmative* voter fraud, i.e., votes cast by ineligible individuals, a deceptive

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practice just as consequential as voter suppression and intimidation, and arguably more so.

For example, the 2000 Presidential election produced voluminous claims of rampant intimidation and harassment of voters in Florida. The Commission investigated these claims over a six-month period immediately after the election. The Civil Rights Division of the Justice Department also conducted an investigation.

Despite numerous allegations suggesting widespread voter intimidation, suppression and harassment the Commission's investigation yielded just two ostensible instances of perceived voter intimidation. Moreover, the Justice Department found no credible evidence that Floridians were intentionally denied the right to vote.

In contrast, a subsequent media analysis showed that at least 2000 votes were cast illegally in Florida in the 2000 Presidential election. Since the margin of victory was 537 votes, the fraudulent votes were sufficient to affect the outcome of the election.

This is not an isolated example. Evidence adduced at Commission hearings suggests numerous instances of significant voter fraud. The allegations include individuals and/or organizations that aid and abet voting by those ineligible to vote.

Mark Hearne, adviser to the Carter-Baker Commission on Federal Election Reform has noted that ballots cast by ineligible individuals can dilute or cancel out the votes of eligible voters. The bill does not address the deceptive practices that make this possible.

Numerous cases have been reported of paid canvassers who register ineligible individuals or fictional characters. In an infamous Ohio case during the 2004 Presidential election campaign, a canvasser paid with crack cocaine registered Dick Tracy, Mary Poppins and scores of other equally notable voters.

This type of deceptive practice has consequences. Hearne notes that in Philadelphia, a non-citizen from Barbados was told by a voter registration organization that she could vote if she had been in the U.S. for at least seven years. Although she registered, she did not vote. Later, elections officials informed her that someone had cast a ballot in her name nonetheless.

Again, these are not isolated instances. A major 2001 voter registration drive in St. Louis' black community produced 3,800 new voter cards. When some of the names appeared suspicious, elections officials investigated all of the cards and determined that nearly every single one was fraudulent. Dogs, the dead and people who simply did not want to register were among the new registrants.

The problem is not simply that canvassers are being paid to produce manifestly fraudulent voter registrations; it is also that voter rolls throughout the country are being padded with hundreds of thousands of false and fraudulent names. Testimony by John

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Sample before the Senate Rules Committee showed that Alaska had 503,000 people on its voter rolls but only 437,000 people of voting age.

The problem is magnified by those who solicit or aid individuals to register in multiple jurisdictions, especially in states that are not HAVA compliant. Approximately 140,000 Florida voters are registered in multiple jurisdictions; 60,000voters are registered in both North and South Carolina; and 8000 Kentuckians are registered in Tennessee. The bill is silent on this deceptive practice.

The problem of fraudulent voter rolls and multiple registrations is compounded by compromised absentee ballot integrity. The practice of misleadingly "assisting" individuals in casting absentee ballots can lead to wholesale disenfranchisement. This is particularly true in the case of bilingual ballots.

This is not a minor concern. The 1998 Miami mayoral election was set aside due to rampant absentee ballot forgeries.

All of these deceptive practices have the capacity to affect the outcome of an election. They undermine public confidence in the electoral process. They are significant omissions from the bill.

I respectfully urge the Committee to add these deceptive practices to the bill's prohibitions.

Thank you, Mr. Chairman.

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UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425 www.usccr.gov

June 14, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy:

Thank you for the opportunity to appear and testify at the Senate Committee on the Judiciary hearing on "Prevention of Deceptive Practices and Voter Intimidation in Federal Elections: S. 453" on June 7, 2007.

Please find attached some supplemental materials that I would like to include with my testimony for the record.

Sincerely,

Peter N. Kirsanow
Commissioner

cc: Honorable Arlen Specter
Honorable Benjamin Cardin
Jennifer Leathers, Hearing Clerk

Attachments

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September, 1998

SECTION: No. 7, Vol. 86; Pg. 7; ISSN: 0033-6475

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LENGTH: 1665 words

HEADLINE: Miami disproves an election; Herald combines public and non-public resources to show illegal voting in mayoral race; Miami Herald; Freedom of Information 1998 Special Report

BYLINE: Keating, Dan

BODY:

Judy Miller carries herself like a general in perpetual assault mode, so when the Miami Herald deputy city editor summons her team for a strategy session, the commands are no-nonsense in the "war room" atmosphere.

The morning after Miami's palpably strange 1997 mayoral election, Miller launched a two-pronged attack aimed at a single target: prove or disprove allegations that massive vote fraud had swung the election against incumbent Joe Carrollo. Carrollo won an outright majority at the polls, but was overwhelmed by challenger Xavier Suarez's 2-1 margin in absentee votes. The absentee landslide was especially notable because it accounted for an unprecedented 11 percent of the ballots.

Part of Miller's team was assigned to the political front, probing what happened in the camps of Suarez and his political ally, City Commissioner Humberto Hernandez. The other assignment focused on voters themselves, canvassing to sort the good from the bad.

In a series of daily and weekend stories over the next four months, the two prongs came together with proof of hundreds of illegitimate ballots and pointers directly into the campaigns that directed the fraud. The sequence was followed by a non-jury trial that overturned the election. An appeals court then threw out the absentee votes and put Carrollo into office. Hernandez was charged and convicted. The state passed tightened rules on absentee voting and mandated that election supervisors remove illegal voters from the rolls.

The first prong of The Herald's attack relied on dogged work with political sources, led by City Hall reporter Manny Garcia. As more and more fraud was discovered, Garcia and reporters Andres Viglucci and Lisa Getter had to try to tie together strands of illegal activities into a coherent web of fraud run by campaign captains.

The challenge for the other prong was a detective's chore of tracking people and their backgrounds. The essential tool for that group was a laundry list of public records, available in-house at The Herald and online. The power of public records in ferreting out so much fraud serves as a guide for what can be done, and an argument for why closing access to information will hurt more than help the public.

The most important record, though, presented an obstacle that could have stopped the investigation in its tracks. Under Florida law, the full roster of registered voters is not available to the public. In fact, the law expressly forbids releasing the roster except to candidates, incumbents, court administrators summoning jurors and similar officials. Anyone who is allowed to get a copy must sign an affidavit not to release the record to anyone else.

Miller was adamant from the first day that the restriction wouldn't stop The Herald from tackling vote fraud. The paper obtained the list of those who voted in the election and which of those ballots were cast absentee. The Herald fed the list into the computer to sniff out potentially questionable voters.

One tactic was simply to count how many votes had been cast from each home. Merging that tally with the property appraiser's rolls showed which single-family homes showed five, six, seven or more votes. It also showed commercial properties and vacant land from which votes had been cast.

The voter roll was compared to the roster of city employees to find the names of employees who listed a residence outside the city, but voted within it. More than 20 were discovered, even though home addresses of police and some other city employees were not disclosed.

Comparing voters with convicted felons proved more fruitful. The Herald found more than 100 ballots cast by convicted felons who had lost their right to vote. Reporter Sydney Freedberg used the online criminal court docket to confirm convictions and help flesh out the stories of the voting convicts.

The computer, however, could only start the job of finding fake voters. The computer matches and a list of voters who switched registration into the city just before the election were compiled into tip sheets of potentially bad voters, then divvied up precinct-by-precinct. Miller launched the shoe-leather campaign with a combination meeting-pep rally with more than a dozen reporters from various departments. Each reporter was assigned a handful of precincts and told to track down each suspicious voter. The group fanned out across the city to knock on doors.

One lesson learned early was the best question to uncover phony voters registered at a house. Instead of asking for the voters by name, the reporters asked the person who answered the door for the names of the registered voters at the house. When the seemingly simple query drew hemming and hawing, the reporter knew something fishy was going on. The reporters found almost 100 ballots cast by people who lived outside the city but switched registration into Miami.

Proving that someone lied on the voter registration isn't easy. The Herald used driver license and vehicle registration information available online, along with "homestead" tax exemptions and employment records to disprove voter claims. Some of the best evidence came from mothers saying simply, "He doesn't live here anymore."

The door-to-door squad included city reporters Alfonso Chardy, Connie Prater and John Lantigua, Tyler Bridges from the Tallahassee state capital bureau, Marika Lynch from the Key West bureau, and Sandra Marquez Garcia and Rick Jervis from the suburban bureaus.

Another public record offered promise but resulted in frustration. The voter roll was compared with the master list of dead people available from the Social Security Administration, producing several matches of apparently deceased voters. But Garcia and Viglucci quickly developed reputations for bringing voters back from the dead. In fact, while one certifiably dead voter cast an absentee ballot, none of the matches that came from the Social Security Master Death List turned out to be dead. We discovered what other news organization have found, that Social Security has a little problem with jumping to conclusions before folks really have kicked the bucket.

Viglucci and reporter foe Tanfani produced the first major story a month after the election, outlining three dozen phony votes, mostly tied to Hernandez campaign organizers. Karen Branch followed up later that week, interviewing a 96-year-old woman who lives outside the city and swore that the absentee ballots cast in her name, her brother's name and her sister-in-law's name were forged without their knowledge.

Branch and Tanfani also uncovered a votes-for-cash scheme. A voter had made an off-hand comment to Branch about being paid $ 10 to vote. But when Branch tried to track down the story, she found the woman had given a false name. She kept returning to the neighborhood until she found the woman and learned from others about the operation run out of a church parking lot, People were taken by van to the elections office to vote absentee and were paid $ 10 when they got back.

Meanwhile, the shoe-leather squad was piling up bad votes. Miller conducted minitribunals in which reporters had to prove each bad vote they'd found, laying out the public records as proof. Miller divided the stacks into piles: unproven, bad vote tied to a campaign worker, bad vote with no known tie to a campaign - the group dubbed the "innocent fools." The trademark quote came from an ineligible voter who had cast a ballot: "I mean, in the paper and everywhere they were saying, 'Vote. Vote.' So I voted."

Tanfani and Garcia anchored the "fools" story, which pushed the number of suspect votes published by The Herald to 105. The margin that kept Carollo from re-election was 155 votes.

A week later Tanfani, Viglucci and Getter came back with the strongest indictment of intentional fraud, a story laying out scores more bad votes, all traced to campaign workers. The envelope signed by absentee voters and witnesses are public records, one of the only election records that is accessible. A database of the people who witnessed absentee

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ballots proved critical for connecting bad votes to the campaign employees and their families. Campaign contributions that The Herald had computerized for campaign finance stories also helped show relatives of the candidates.

The depth of The Herald's penetration into the fraud was shown when the case went to court. For the non-jury trial on overturning the election, 24 potential witnesses claimed the Fifth Amendment protection against self-incrimination. Viglucci and Getter immediately compiled a sidebar showing how each of them was involved in the vote fraud.

In the main criminal trial of Commissioner Hernandez, the key evidence came from a police sergeant's wife. She and her husband live outside the city and had been named as illegal votes in The Herald's first major story. Without her husband's knowledge, the woman had agreed to let a friend involved in the Hernandez campaign switch the couple's voting addresses into the city. Once exposed by The Herald, the woman went to the state police and pleaded to save her husband's job. She wore a wire and went back to Hernandez and his aides to ask for help. Her taped evidence was the key to the criminal prosecution.

In the first major story, Hernandez was quoted scoffing at The Herald's findings: "I won by 3,000 votes and you have what, 36? Whoop-de-do."

Hernandez also was captured on the tape dismissing the rising accusations of voter fraud and saying he could sway public opinion by saying it was just an effort by The Herald and investigators to quash Cuban political power. He and his allies made that pitch during the controversy.

After Hernandez was convicted, the judge noted the taped comments about Hernandez's ethnic strategy in justifying the imposition of the maximum 1-year sentence.

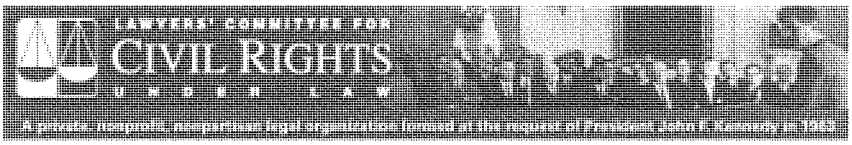
Whoop-de-do.

Herald Research Editor Dan Keating handled computer analysis on the vote fraud project.

GRAPHIC: Illustration; Map

IAC-CREATE-DATE: October 13, 1998

LOAD-DATE: October 14, 1998



BARBARA ARNWINE
EXECUTIVE DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

To the Senate Judiciary Committee regarding the Deceptive Practices and Voter Intimidation Prevention Act

Mr. Chairman, Members of the Committee.

On behalf of the Lawyers' Committee for Civil Rights Under Law I want to thank you for your attention to this critical issue. I want to thank Senator Cardin, Senator Schumer and Senator Obama for their leadership and dedication to bringing the weight of the Senate down on the side of fair elections and by offering real solutions to the problems voters face as the go to ballot box. Passage of the Deceptive Practices and Voter Intimidation Prevention Act will protect voters across the country from the all too common deliberate deception designed to keep eligible voters away from the polls. Just a year after the country celebrated the courage and commitment to our national principles displayed when the Senate overwhelmingly reauthorized the Voting Rights Act, you have an opportunity to continue that courage through swift passage of this key legislation.

Since President Kennedy founded the Lawyers' Committee over forty years ago, we have harnessed the awesome experience, resources and dedication of the private bar to remedy civil rights violations across the country. While we address a broad portfolio of civil rights issues – from housing to environmental justice to employment – we began our work defending the equal rights of all Americans to cast a meaningful ballot. Throughout our history, the Voting Rights Project has been a leader in protecting the participatory rights of minority voters through litigation. Over the past decade we have expanded our leadership in the voting arena to policy development and traditional advocacy.

One the most significant accomplishments of the Lawyers' Committee has been its leadership in the Election Protection Coalition. Election Protection is the largest non-partisan voter protection effort in history. In 2004 alone, our voter services hotline – 1-866-OUR-VOTE – received over 200,000 calls from voters in all 50 states. Over the past six years since the program's founding the Lawyers' Committee has been responsible for administering the hotline, serving as the leader of the robust local legal program, and has developed up to date legal and citizen guides to help voters exercise their rights. Together with the invaluable assistance of our extensive coalition of partners including the NAACP, the National Bar Association and the People for the American Way Foundation, we have recruited over 30,000 volunteers, including more than 10,000 legal volunteers.

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Throughout the course of our advocacy on behalf of voters over the past 40 years, the Lawyers' Committee has fought against overt discrimination and cover discrimination, we have committed ourselves to removing the barriers voters face, particularly voters in minority communities. Over the past 40 years, we have identified and removed attempts to use deception in elections to disenfranchise eligible voters. Regardless of if it is motivated by partisanship or discrimination, these tactics have the same outcome: eligible Americans, disproportionately from traditionally disenfranchised communities – African Americans, Latinos, Students, and Seniors – are targeted in an effort to silence their voice at the ballot box. This is callous, un-ethical and decidedly un-American.

Since we founded Election Protection our eyes have been opened to a recent device used to further these malevolent ends. Across the country, primarily in traditionally disenfranchised communities, voters are deliberately misinformed about the mechanics of elections. From the date or place an election is being held to the qualifications for registration, voters are mislead about how they can exercise their constitutional rights.

In the past voters have endured:

- **Threats of imprisonment.** In 1998, state representative Son Knon's office in South Carolina mailed over 3,000 brochures to black voters, which incorrectly informed that "SLED [State Law Enforcement Division] agents, FBI agents, people from the Justice Department and undercover agents will be in Dillon County working this election. . . . THIS ELECTION IS NOT WORTH GOING TO JAIL!!!!!!"
- **Door-to-door campaigning to "vote at home."** In 1993, campaign workers visited homes in Latino neighborhoods of Philadelphia to convince voters to cast absentee ballots while misleading voters about the documents they were signing and the state's absentee voting laws telling voters that they could vote at home as a "new way of voting."
- **Postcards encouraging voters to discard absentee ballots.** In 1990, elderly voters in Texas, received postcards that urged them to "throw the mail ballot in the trash" and "walk proudly into the voting place . . . in honor of the many who fought and died for your right to walk into the polls," even though those who have requested an absentee ballot in Texas could not vote in person without going through a complicated procedure to cancel the absentee ballot.
- **Videotaping voters at polling places.** In 1998, Republican officials in North Carolina counties planned to videotape voters in some heavily Democratic precincts purportedly to prevent fraud.
- **FBI investigation of voters.** In 1994, purportedly linked to an investigation for church arsons in Alabama, the FBI questioned 1000 voters about possible fraud, asking many to submit handwriting samples. The resulting convictions were few, but the voter turnout was down.

Since 2004, Election Protection collected reports of deceptive practices or voter intimidation from more than 30 states. Specific incidents in 2004 include:

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- **Fraudulently changing party-registrations and addresses.** Over 4,000 potential voters including students at the University of Florida, Florida State, and Florida A&M universities discovered their party registrations switched and their addresses changed. Changed addresses could have barred them from voting because they would have shown up at the wrong polling place.
- **Fliers advertising the wrong election date.** In Pittsburgh, fliers printed on county letterhead stated that "due to immense voter turnout expected on Tuesday," the election had been extended: Republicans vote on November 2, and Democrats vote on November 3. Across the country, voters received similar flyers.
- **Bogus election regulation fliers.** In Milwaukee, Wisconsin, fliers purportedly from the "Milwaukee Black Voters League" were distributed in minority neighborhoods claiming "If you've 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 ten years in prison and your children will get taken away from you."
- **Letters threatening arrests.** In Charleston County, South Carolina, some voters received a letter claiming to be from the NAACP, which falsely threatened voters with arrest if they went to the polls and had outstanding parking tickets and had not paid child support.
- **Fraudulent memos claiming that some registrations would be invalidated.** In Lake County, Ohio, a memo on a bogus Board of Elections letterhead was sent to county residents informing them that registrations obtained through Democratic Party and NAACP registration drives were invalid.
- **Phone calls and visitors with false information.** In the Cleveland area, some voters received phone calls incorrectly informing them that their polling place had changed; Some also had unknown visitors who illegally offered to deliver completed absentee ballots to the election office.

Specific incidents in 2006 include:

- **Intimidating and deceiving Latino voters:** In Orange County, California, a congressional campaign sent 14,000 voters with Hispanic surnames a letter advising recipients that "if you're an immigrant, voting in a federal election is a crime that can result in incarceration," or deportation. Voters at a heavily Latino polling place in Tucson, Arizona were greeted by hostile gunmen providing false information about their right to vote.
- **Harassing Robo Calls:** Voters in New York, Virginia, Florida and New Mexico reported receiving harassing robo (automated) calls, sometimes in the middle of the night, claiming to be from one of the candidates running for office in the area. After further investigation, it became clear that the calls were coming from that candidate's opponent.
- **Phone calls providing voters with false polling place information:** In states from New Hampshire to Arizona, voters received phone calls with false information about

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their polling places. Voters were told their polling places had been changed, when they had not, and were told to vote at often inconvenient locations that were not polling places.

- **Lying about party affiliation to confuse the electorate:** In Maryland, materials were distributed primarily in African American neighborhoods, falsely suggesting that Republican candidates were running as Democrats or were endorsed by Democratic leaders, causing widespread confusion.
- **Deliberately providing mis-information about registration status:** Registered voters in Virginia, Colorado, and New Mexico reported receiving phone calls in the days before the election claiming that their registrations were cancelled and that if they tried to vote they would be arrested.
- **Poll workers providing voters with false information:** Poll workers in precincts across the country wrongly informed voters that identification was required in order to vote. While some of these problems were the result of poor poll worker training, in multiple incidents poll workers explained that they were imposing this requirement on their own because it was the only way to keep non-citizens from voting.
- **Student voters wrongly dissuaded from voting:** As in past elections, student voters were dissuaded from voting at their college or university and were told they would be committing a felony or that their parents would lose a tax deduction. The constitution guarantees students an equal right to participate in an election where they go to school.

This crucial piece of legislation targets the necessary problems in the election system by striking a necessary balance between the rights of all Americans to cast an effective ballot and our core first amendment constitutional rights. It also focuses the attention of the Senate on legislating in an area that is uncovered by current federal law. Unlike other fraud on the system that is already covered by federal law, like ineligible voters registering or voting, an exceedingly rare but despicable practice, the Deceptive Practices and Voter Intimidation Protection Act covers ground not already covered by:

- Providing a comprehensive definition of what constitutes a deceptive practice;
- Criminalizing such practices and stating appropriate penalties;
- Outlining an innovative system to help disseminate correct information to voters who have been victims of these practices;
- Creating a reporting structure for incidents that will help citizens to address grievances; and
- Calling on the Department of Justice to work with leading civil rights and voter protection organizations, other Federal agencies, and state officials to develop the most effective way to address this problem.

At a time when America's voters are called to make historic choices, it is our duty as advocates and your duty as legislators to ensure that every opportunity is available to each and every eligible voter to have the tools necessary to make those decisions. It is critical that our fellow Americans can go to the polls without the harassment of deception and the fear of

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intimidation. The Deceptive Practices and Voter Intimidation Prevention Act will go a long way towards accomplishing those goals. The Lawyers' Committee was proud to work with the sponsors throughout this process and we look forward to working with you as the process continues.

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing on the "Prevention of Deceptive Practices and Voter Intimidation in Federal Elections: S. 453"
June 7, 2007

Today, the Committee's hearing addresses one of the most fundamental rights Americans enjoy: the right to vote. The "Deceptive Practices and Voter Intimidation Prevention Act of 2007," (S. 453), would create new protections and expand existing protections against the use of deceptive practices in elections. In January, I joined Senators Obama, Schumer, Cardin, Feinstein, Feingold, Clinton, and Kerry to introduce this bill. I thank Senator Obama for his leadership on this issue and for introducing S. 453. I also thank Senator Cardin for chairing today's hearing. Senator Cardin's own state of Maryland was affected by deceptive tactics in last year's election when misleading flyers were distributed in African- American communities on Election Day suggesting that prominent African-American Democrats supported Republican candidates.

There are few things as critical to the fabric of our Nation, and to American citizenship, as voting. The right to vote and to have your vote count is a foundational right, like our First Amendment rights, because it secures the effectiveness of other protections. The legitimacy of our government is dependent on the access all Americans have to the political process.

We saw last year in nearly 20 hearings in the House and Senate on the reauthorization of the Voting Rights Act that there is a continuing need for the vital voting rights protections that landmark civil rights law provides for all Americans. But our need to protect the effective access of voters to the political process does not stop with those vital protections against discrimination. I am concerned about increasing efforts on behalf of some candidates and political parties to interfere with recent elections and undermine the participation of many voters. So, today we take another step towards protecting the effective exercise of voting rights by ensuring that the access to vote is not undermined by those who would take away that access through deceit and false information.

The Deceptive Practices and Voter Intimidation Prevention Act of 2007 would provide additional tools and criminal penalties to help combat the kinds of practices used during the 2006 mid-term elections in places like Maryland and Virginia. In Virginia, the FBI has investigated calls received by many voters in heavily Democratic precincts directing them to the wrong polling sites, giving incorrect information about their eligibility to vote or encouraging them not to vote on Election Day. I supported a similar bill, S. 1975, in the last Congress and I hope that we can move forward in this Congress.

Regrettably, the problems leading up to and on Election Day last year were not limited to a few isolated incidents. Along with the occurrence in Maryland, in the 9th precinct in Tucson, Arizona, an area with a heavy percentage of Latino voters, it has been reported that three vigilantes armed with a clipboard, a video camera and a visible firearm stopped

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only Latino voters as they entered and exited the polls on Election Day, issuing implied and overt threats. In Orange County, California, Republican congressional candidate Tan Nguyen admitted that his campaign staffer sent letters to 73,000 households, spreading misinformation about voting requirements apparently designed to suppress Latino voter turnout.

In letters to the Attorney General and other officials at the Justice Department, and in oversight hearings last November and two weeks ago, we have asked the Justice Department for more information about what it has been doing to investigate and combat these practices. In the information we have obtained so far, it is apparent that the Justice Department has not done enough and additional tools are needed.

The Deceptive Practices and Voter Intimidation Prevention Act of 2007 would expand the conduct currently prohibited by law to include the dissemination of false information within 60 days of an election about the time, place and manner of the election, the qualifications for voter eligibility, or the sponsor of public communications about an election. In addition, it would provide new means of enforcing these prohibitions and combating such dissemination: it creates a private right of action for persons aggrieved by the dissemination of such false information; it provides criminal penalties for such false dissemination of up to five years and $100,000; and it provides that any person may report such false dissemination to the Attorney General and, if it is determined that such information is false or deliberately misleading, the Justice Department would be required to take action to provide corrective information. In addition, this bill provides an additional tool for effective oversight by requiring the Attorney General to report to Congress on allegations of the dissemination of false information within 90 days of an election.

I welcome all the witnesses here today. I look forward to their testimony.

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Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud have on Voter Participation Rates

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Abstract

The results provide some evidence of vote fraud and that regulations that prevent fraud can actually increase the voter participation rate. It is hard to see any evidence that voting regulations differentially harm either minorities, the elderly, or the poor. While this study examines a broad range of voting regulations, it is still too early to evaluate any possible impact of mandatory photo IDs on U.S. elections. What can be said is that the non-photo ID regulations that are already in place have not had the negative impacts that opponents predicted. The evidence provided here also found that campaign finance regulations generally reduced voter turnout.

[1] The Dean's Visiting Professor. Michael Munger and Clark Bensen provided helpful comments. I would like to thank John Matsusaka for providing me with his Initiative and Referendum Institute's Initiatives Database. The data on voter turnout in general elections; the margin of victories by state for presidential, gubernatorial, and US Senate races; and per capita income by county were provided by Clark Bensen.

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Introduction

The regulations to ensure the integrity of the voting process can reduce the voter participation rate by making it more costly for people to vote. But to the extent that the regulations provide increase people's confidence that their votes will be properly counted, these regulations can actually encourage more people to vote. The trade-offs are everywhere. For example, absentee ballots make voting much more convenient, increasing the rate at which people vote, but some view them as "notorious" sources of voter fraud.[2] There has been some bi-partisan support for stricter registration and ID requirements (e.g., the Carter-Baker commission). Generally, Democrats are concerned that stricter rules will discourage voters, while Republicans think that stricter rules are needed to ensure confidence in the voting process.

Almost 100 countries require photo IDs to vote.[3] Many directly tie voter registration with provision of an ID and only allow an ID that is specifically issued for voting.[4] Some also either do not allow or greatly restrict absentee ballots.[5]

For example, all voters in Mexico must present voter IDs, which include not only a photo but also a thumbprint. The IDs themselves are essentially counterfeit-proof, with special holographic images, imbedded security codes, and a magnetic strip with still more security information. As an extra precaution, voters' fingers are dipped in indelible ink to prevent people from voting multiple times.

Mexican voters cannot register by mail — they have to personally go to their registration office and fill out forms for their voter ID. When a voter card is ready three months later, it is not mailed to the voter as it is in the U.S. Rather, the voter must make a second trip to a registration office to pick it up. The 2006 election was the first since the 1991 reforms in which absentee ballots were available, but only for voters who requested one at least six months before the election.[6]

In the U.S. during 2006, three states -- Georgia, Indiana and Missouri -- have adopted regulations requiring that photo IDs be presented before people can vote. Other states are considering following suit, generating heated debate as well as court cases. Some claim that such a requirement would prevent "many people" from voting,[7] but the evidence so far is scant. The primary evidence presented measures the portions of the population who do not possess driver's licenses (Overton, 2006 and Pawasarat, 2005). National Commission on Electoral Reform (2001, p. 77) claims that about 92 percent of

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[2] Editorial, "Voter Suppression in Missouri," New York Times, August 10, 2006.
[3] Building Confidence in U.S. Elections, p. 5.
[4] Ibid.
[5] For example, as a result of fraud in their 1988 Presidential election, absentee ballots were not allowed in Mexico until (see Associated Press, "Mexican Senate approves mail-in absentee ballots for Mexicans living abroad," AZcentral.com, April 28, 2005 (http://www.azcentral.com/specials/special03/articles/0428mexicovote-ON.html).
[6] The United Kingdom faced claims of widespread vote fraud from "postal votes" during the 2005 election. Zoe Hughes, "Reform call after postal votes row," The Journal (Newcastle, UK), May 21, 2005, p. 4.
[7] Editorial, "Voter Suppression in Missouri," New York Times, August 10, 2006.

the voting age population have driver's licenses and that other photo IDs -- such as student IDs, military IDs, employee IDs, and passports – "probably" only increases this percentage "slightly." Yet, this provides only a very crude measure of whether photo ID requirements will prevent people from voting. Some people without driver's licenses will not vote even when there are no photo ID requirements and others will go out to get a photo ID in order to vote. Just because they don't have a photo ID at some point in time (when they may not have any reason to have such an ID), doesn't imply that they won't get one when they have a good reason to do so.

A better measure of how difficult it is to meet the ID requirement is the percent of registered voters who have driver's licenses (Brace, 2005). But even this measure ignores that people can adjust their behavior and that some of those who currently don't have a photo ID might acquire one once it is required. Others have pointed out that even these estimates are unnecessarily alarmist because the lists of registered voters have not been updated to remove people who have died or moved away, and the statistics thus exaggerate the number of voters who are listed by motor vehicle bureaus as not currently having driver's licenses (Bensen, 2005).

There is also the question of the disparate impact on different groups. Would minorities or the elderly, people who are said to be less able to bear the costs of getting photo IDs be particularly discouraged? The courts, the media, as well as Democratic governors' veto messages have raised concerns over this impact.[8] Again, the existing evidence involves either comparing the percent of adults with photo IDs or the percent of registered voters with driver's licenses.

There is some evidence from other countries, such as Mexico, that strict anti-fraud regulations have actually been associated with increases in voter turnout.[9] Nevertheless, it is difficult to measure the effect of mandatory photo IDs in the United States, and for a simple reason: there has only been one primary election in just one state, Indiana, during 2006 using mandatory photo IDs. The Georgia and Missouri mandatory photo ID laws have not yet gone into effect. Florida, Hawaii, Louisiana, Oklahoma, and South Carolina all had non-mandatory photo ID laws by 2004, with South Dakota joining the group by 2006. In these states, people are asked for photo IDs, but if not available, a wide set of options range from providing non-photo IDs to signing a pledge that the voter is who they say that they are. It remains to be seen whether the mere threat of asking for a photo

[8] Wisconsin Democratic Governor Jim Doyle vetoed attempts at requiring photo IDs for voting three times and argued that "an ID requirement would keep poor people and the elderly who lack identification from the polls" (Associated Press, "Rule allow votes without license," The Capital Times (Madison, Wisconsin, August 5, 2006 http://www.madison.com/tct/mad/topstories//index.php?ntid=93713). See also Editorial, "Judge Blocks Requirement in Georgia for Voter ID," New York Times, July 8, 2006.

[9] Since the 1991 election reforms in Mexico, there have been three presidential and four congressional elections. In the three presidential elections since the 1991 reforms, 68 percent of eligible citizens have voted, compared to only 59 percent in the three elections prior to the rule changes. However, there is only a very trivial increase for congressional elections. Comparing the four congressional elections prior to the reforms with the four afterwards produces only a one percent increase from 56 to 57 percent. See Klesner (2003) for the turnout data up through the 2003 elections.

ID has any effect on voting behavior. So far no one has investigated the impact of these or other laws on voting participation rates.

Similar concerns that have been raised about regulations requiring non-photo IDs. For example, Tova Andrea Wang with The Century Foundation notes that "Furthermore, for those who do not have the kinds of up-to-date non-photo ID necessary—and many minority and urban voters, for example those who live in multiple family dwellings simply will not—getting identification from the government will present costs and burdens for voters who simply want to exercise their constitutional right to vote."[10]

The general question remains to what extent other restrictions affect the voter participation rate and whether the impacts are different across different groups of voters. In the following sections, I will briefly discuss how to test how voting regulations affect turnout and then provide some empirical evidence.

Voter IDs on Voter Participation Rates

Ensuring integrity of the voting process can either increase or decrease voter participation rates. There is an increased cost to voting, decreasing participation, but the increased integrity of the process can also increase the benefits to people voting. Eliminating fraud can also work to reduce the voter participation rate simply because there will be fewer "false" votes.

These three positions are as follows:

1) The Discouraging Voter Hypothesis: With little or no fraud to eliminate, the regulations discourage legitimate voters from voting, this hypothesis predicts that to the extent that regulations have any effect they will reduce the number of people who vote. Critics of stricter regulations argue that minorities, the elderly, and the poor are most affected.
2) The Eliminating Fraud Hypothesis: If there is indeed substantial fraud and that the regulations eliminate it, the measured voter participation rate will decline. Votes that shouldn't have been recorded will now no longer be recorded and voter participation will decline.
3) The Ensuring Integrity Hypothesis: Greater confidence that the election is fair and that votes will be counted accurately encourages additional voter participation.[11] (Similarly, if the regulations reduce confidence, depending on the extent of the

[10] Tova Andrea Wang, "ID and Voting Rights," The Century Foundation, August 29, 2005 (http://www.tcf.org/list.asp?type=TN&pubid=1084).

[11] Sherry Swirsky, co-chair of Philadelphia Mayor Ed Rendell's Election Reform Task Force, noted in 1993 that "[But] the obsessive concern with fraud is what depresses voter turnout and registration in Philadelphia. It contributes to this ultimately destructive view that 'My vote doesn't matter, the whole system is corrupt.' The *Inquirer* has done a grave disservice to democracy to this city. They have exaggerated the pervasiveness of fraud in elections." Scott Farmelant, "Dead Men Can Vote: Voting Fraud is alive and well in Philadelphia," Philadelphia City Paper, October 12-19, 2005 (http://www.citypaper.net/articles/101295/article009.shtml).

drop in participation suggested by the two previous hypotheses, this hypothesis of greater participation may be true even if overall voter participation declines.

Any or all of these effects may be occurring at the same time, and the difficult task is how to disentangle the possible effects that voting regulations can have. Both the Discouraging Voter and Eliminating Fraud hypotheses predict that to the extent that voting regulations have any effect, they will reduce the voter participation rate. While the Ensuring Integrity hypothesis may exist even if voter participation declines after the regulations are enacted, it is the only hypothesis that can explain increased voter participation.

Obviously, the simplest test is whether different voting regulations alter voter participation rates. However, as just noted, this test can only disentangle the hypotheses if voter participation increases.

There are two other possible ways of analyzing the data. The first is whether there are systematic differences in who is affected by the voting regulations. Even if the total voting participation rate does not show a statistically significant change, it is possible that certain groups -- such as minorities, the elderly or the poor -- face declines in participation rates and whether such declines occur systematically. In other words, do African-Americans face reductions in voter participation or is it particular random segments of African-Americans that appear to be more related to randomness than to any type of systematic discrimination.

The second and more powerful test is to examine what happens to voter participation rates in those geographic areas where voter fraud is claimed to be occurring. If the laws have a much bigger impact in areas where fraud is said to be occurring, that would provide evidence for the Eliminating Fraud and/or Ensuring Integrity hypotheses. The point would be that the laws per se were not discouraging African-Americans or the elderly or the poor from participating, but that the change in participation in high fraud areas would indicate that any drop was primarily due to eliminating fraudulent votes rather than the general impact of the voting rules on certain types of citizens.

Over the 1996 to 2006 period studied here, there are a range of different regulations that can affect the cost of voting: photo IDs, non-photo IDs, same day registration, registration by mail, pre-election day in poll voting, absentee ballot obtained without requiring an excuse, whether there is a closed primary, provisional ballots, and voting by mail.[12] The existing ID requirements, while not as strict as the mandatory photo IDs recently enacted by Georgia, Indiana and Missouri, may still make it more difficult for some people to vote.

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[12] Motor Voter was already adopted nationally prior to the 1996 general election. The timing for these laws were primarily obtained from the Republican National Committee's "Summary of State Voting Laws and Procedures" from November 1996 to July 2006. Electionline.org's Election Reform: What's Changed, What Hasn't and Why 2000-2006 (February 2006). Information on in-person absentee voting was obtained from a Nexis/Lexis search.

Other reforms, such as same day voter registration, absentee ballots without an excuse, and voting by mail, make it easier for people to vote and should increase voter participation rates, but they may also make fraud easier. Same day voter registration makes it more difficult to accurately determine whether people are who they claim to be. Both Democrats and Republicans agree that the problems of vote fraud involve absentee ballots and vote by mail are due to the difficulties in monitoring who ordered them and filled them out.[13] Election results have been overturned as a result of this type of fraud.[14] The New York Times has editorialized that "If the Legislature really wanted to deter fraud, it would have focused its efforts on absentee ballots, which are a notorious source of election fraud . . . ."[15]

Likewise, provisional ballots also make voting easier: in theory, they allow voters, who have been the victim of some type of bureaucratic error (where their registration information has been misplaced) to be allowed to vote. Yet, there is the potential for fraud, where provisional ballots are issued to people outside of where they are registered and possibly voting in many different precincts. Some, such as John Fund (2004), claims, "We might have a Florida-style dispute spilling into the courts in several states where the presidential race is close, with one side calling for all provisional ballots to be tabulated ('Count Every Vote') and the other demanding that the law be scrupulously observed."

Again, just as with IDs, all these other rules could either increase or decrease voter participation. For example, lax absentee ballot rules can make it easier for some people to vote, but they can also increase fraud and thus discourage others from participating.

Other factors that determine voter participation rates include the closeness of races, the presence of initiatives and major races on the ballot, and income and demographic characteristics (e.g., Cox and Munger, 1989; Matsusaka, 1992 and 1993; and Gerber and Green, 2002).[16] The closer the races and thus the greater the interest in races, the more

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[13] Signatures are required on these mail-in ballots, but as the bi-partisan National Commission on Election Reform noted "But in fact, for practical reasons, most states do not routinely check signatures either on applications or on returned ballots, just as most states do not verify signatures or require proof of identity at the polls."

[14] "In 1993, a federal judge had to overturn a special state Senate election in which Democratic precinct workers had gone door to door with absentee ballot forms and "helped" voters fill them out." John Fund, "The Voter Integrity Project: How to stop fraud and suppression? Ashcroft showed the way in 2002." *Tuesday, September 30, 2003* (http://www.opinionjournal.com/diary/?id=110004084).

[15] Editorial, "Voter Suppression in Missouri," New York Times, August 10, 2006.

[16] This paper uses Matsusaka's distinction between initiatives and legislative measures. While I only have data on the initiatives on the ballot, presumably legislative measures matter also, though Matsusaka (1992) finds that initiatives are much more important in explaining voter turnout than are legislative measures. Matsusaka states that an "initiative" is a proposed law or constitutional amendment that has been put on the ballot by citizen petition. By contrast, a "legislative measure" or "legislative referendum" or "legislative proposition" is a proposed law or constitutional amendment that has been put on the ballot by the legislature.

The only variable that I did not follow Cox and Munger specification and use was campaign spending. In part I did this because they were examining turnout for only congressional races in a non-presidential election year. It is not clear how one would distribute presidential campaign spending across counties, especially since presidential campaigns target their expenditures. Given that I am using county level

likely people will be to participate. For the general election data, data has been collected on the absolute percentage point differential between the top two finishers of that state's presidential race as well as for any gubernatorial or U.S. senatorial races. The Initiative and Referendum Institute's Initiatives Database is used to identify the number and types of initiatives that have appeared on general and primary election ballots from 1996 through 2004. Twenty-five different types of initiatives are identified ranging from those on abortion to Veteran Affairs.[17]

The Evidence

The data here constitute county level data for general and primary elections. The general election data goes from 1996 to 2004. For the primary election, the data go from 1996 to July 2006 for the Republican and Democratic primaries. However, the data do not go back to 1996 for all states since I relied for the primary data on data supplied by state Secretary of States. Because of this limit on primary data, most of the estimates here will focus on the general election data.

How did these laws impacted voter participation rates? As a first crude measure, I only considered states that had changed their laws over time to compare how the participation rates changed when the laws changed. Obviously this simple comparison ignores that many other factors are changing, but it at least compares only the same states over time. The simple mean voter participation rates, with and without photo IDs, indicate that adopting photo IDs produced a drop in voter participation of 1.5 percentage points, a statistically insignificant change. On the other hand, a similar breakdown for non-photo IDs, absentee ballots with no excuses, provisional ballots, pre-election day in-poll voting, same day registration, registration by mail, and voting by mail all show statistically significant increases in voter participation rates. These other changes are much larger and indicate an increase of at least 4 percentage points. For registration by mail, an increase of 11.5 percentage points. (The raw means for all the data are shown in the

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turnout data, similar concerns exist for gubernatorial and senate campaign expenditures. I hope that the margin of victory that I am using for presidential, gubernatorial, and US Senate campaigns as well as county fixed effects will pick up much of what these expenditures would measure. This is partly true if only because the level of expenditures is related to the margin of victory.

[17] The source of the information related to the Voting Age Population and general elections is the master election files of Polidata (www.polidata.org). Polidata compiles election-related information from state and local election officials around the country, year-by-year, on an ongoing basis, but only for general elections. This information includes registration and turnout statistics when available and election results by party by office, by state and county. In cases in which the election officials do not collect, compile or report the actual number of voters who requested ballots, the turnout is determined by the partisan race in the state that generated the highest number of votes. In a handful of cases this turnout may be the result of non-statewide races, such as those for the U.S. House or the State Legislature. There are several projections and estimates for the Voting Age Population, some released before an election and some released long after the election year. The Voting Age Population numbers used here are estimates based upon methodology developed by Polidata reflecting annual state-level estimates of the population released by the Bureau of the Census.

County level data on per capita income were obtained from the Regional Economic Information System (REIS). Nominal values were converted to real values by using the consumer price index. State level unemployment rates were obtained from the Bureau of Labor Statistics. Poverty rate data was obtained from U.S. Department of Commerce.

appendix.)

Table 2 provides the first regression estimates. They are constructed to account for all the different types of voting regulations mentioned earlier; the closeness of presidential, gubernatorial, and U.S. Senate races; geographic and demographic differences; the number and types of voter initiatives; as well as national changes over time in voter participation rates. Six specifications are reported: three each examining the voter participation rate and the natural log of the voter participation rate. While all the estimates account for geographic and year fixed effects, the estimates report different combination of the other control variables. Specifications (1) and (4) examine only the ID requirements as well as the margin of victory for the presidential, gubernatorial, and U.S. Senate races. Specifications (2) and (5) include all the other variables except for information on the topics of individual initiatives. Finally, because of Matsusaka's (1992) evidence -- that the impact of initiatives on voter turnout vary dramatically with the issues that the initiative deals with -- specifications (3) and (6) include all dummy variables indicating the type of initiative being voted on. The regressions were run using ordinary least squares with clustering of counties by state and robust standard errors.

The results indicate only minimal support for the notion that IDs -- whether photo IDs with substitution or non-photo IDs -- reduce voting participation rates. Indeed, most of voting regulations, in the vast majority of estimates, seem to have no statistically significant effects. In only one of the six specifications does requiring non-photo IDs imply a statistically significant effect. In that one case, specification (4) with the most minimal use of control variables, non-photo IDs are associated with a 3.9 percent reduction in voting rates. Accounting for all the other factors in specification (6) drives this estimate down to about 2.2 percent.

Of the other laws, only one, pre-election day voting, is consistently and significantly related to voting rates is, and it implies about a 1.5 to 1.8 percentage point reduction in voting participation from the law. This result is consistent with the Ensuring Integrity Hypothesis. The Discouraging Voter or Eliminating Fraud Hypotheses would imply that pre-election day voting should increase voting participation rates, either because the cost of voting has been reduced or because there is more fraud. The Ensuring Integrity Hypothesis can explain the drop in voting rates because increased fraud discourages others voting. Only one of the laws implies a statistically significant impact and that is only for one specification. In that one specification same day registration implies a 2.4 percentage point increase in voting rates, and that result is consistent with all three hypotheses.

As to the other results, presidential election margins are most important of any of the races in explaining voter turnouts and that holds for all races. Among the initiatives, topics on abortion, animal rights, campaign finance, education, labor reform, and taxes get voters the most excited. By contrast, initiatives on business regulations almost put people to sleep, reducing voter participation by 12 percentage points. Hispanics vote at about a half of a percentage point lower rate than whites.

A few other specifications were also tried. For example, I included state specific time trends and squared values for the winning margins in presidential, gubernatorial, and senate races.[18] The results showed little change from those already presented.

In addition, I also tried using data that I had available up until 2002 on most campaign finance regulations. Proponents of campaign finance regulations worry that the perception of corruption created by campaign donation discourage people from voting.[19] If so, campaign finance regulations should increase voter participation rates. Yet, the results imply that the regulations reduce voter turnout and their inclusion does not change the estimated effects of voting regulations on voter participation shown in specifications (3) and (6) (see Table 3).[20] Limits on corporate donations to gubernatorial campaigns, political action committees, or political parties as well as limits on total gubernatorial campaign expenditures all reduce voter participation rates. Limits on these types of campaign expenditures by individuals are very highly correlated with the limits on corporations and unions and drop out of the specifications. Only limits on union donations to political parties are associated with high voter participation rates. Given previous work that campaign finance regulations lower the rate that incumbents are defeated, increase their win margins, and decrease the number of candidates running for office (Lott, 2006), it is not particularly surprising that these regulations also discourage people from voting.[21]

Tables 4 and 5 attempt to see whether the different voter regulations have a differential impact across African-Americans, Hispanics and whites. Table 4 shows the coefficient estimates for percentage of the voting age population represented by each of the races interacted with the various voting regulations. Table 5 examines whether the coefficients for any particular regulation are statistically different between the different races. With two exceptions, it is very difficult to see any differential impact across these racial groups. Voting by mail increases African-Americans' voting rates relative to whites and lowers Hispanics' voting rates relative to whites. Absentee ballots also increase the voting rate of African-Americans relative to Hispanics. But none of the other voting regulations impacts these different races differently.

Table 6 tries a similar breakdown by voter age and again it is difficult to see many significant differences between different age groups. The F-tests shown in the last

[18] See for example Cox and Munger (1989) for analogous specifications involving squared winning margins. I did also try including total county population (given that county size remains constant this will measure density as done by Cox and Munger) as well as the state poverty rate, but including these variables in specifications 3 and 6 did not cause any of the voting regulations to change from being significant to not significant nor cause the reverse to happen. The state level poverty rate will again be discussed later.

[19] Allan Cigler (2004) notes that "But the breakdown of the existing system of campaign finance regulation started to attract the attention of a number of additional interests, particularly foundations and think tanks disturbed by voter cynicism and concerned with the lack of voter participation in elections and the erosion of civic responsibility generally. Enhancing democracy through the lessening of the impact of money in politics was typically the goal of these organizations."

[20] See Lott (2006) for a detailed discussion of this data. Using these variables reduces the sample size by 23 percent so they are included separately and were not included in the regressions reported in Table 2.

[21] Matsusaka (1993), Matsusaka and Palda (1993), and Cox and Munger (1989) have recognized that the impact of campaign finance laws on how competitive races are could either increase or decrease turnout.

column compare age groups from 20 to 29, 30 to 39, 40 to 49, and 50 to 64 year olds with the estimates for 65 to 99 year olds. In all these estimates only the differences between 50 to 64 year olds and 65 to 99 year olds are significantly different from each other and that is true for non-photo IDs, absentee ballots without an excuse, provisional ballots, and pre-election day in-poll voting or in-person absentee voting regulations. But all these results are much more a result of 50 to 64 year olds being different from any of the other age groups than it is that 65 to 99 year olds. There is no evidence that any of these rules impact those over 65 years of age relative to voters from 20 to 50 years of age.

Figures 1 and 2 are a result of a regression that breaks down the estimates by both race, age and gender. The regression that generated these figures corresponded to specification (3) in Table 2 that interacts those factors with just photo ID requirements. Again it is hard to see these regulations as differentially harming either the elderly, African-Americans, Hispanics, or women. In Figure 1, the one standout estimate is African-American females 50 to 64 years of age, a group that shows a big drop in their share of the voting age population from photo IDs. But this contrasts sharply with African-American females who are 40 to 49 and 65 to 99 years of age. It does not appear that there is anything systematic about being either African-American, female or elderly that causes one to be adversely impacted by photo IDs. The estimates in Figure 2 similarly show a random pattern by race and age. Interestingly in this case it is white males between 65 and 99 who appear to be most adversely affected by photo IDs.

To test whether poor people are impacted differently from others by these different voting regulations, I tried interacting the voting regulations shown in specification (3) from Table 2 first by county income and then separately by state level poverty rates. In none of these cases were these coefficients statistically significant and implies that none of the regulations neither adversely affected nor improved poor people's voter participation rates.

Table 7 provides interesting results. The American Center for Voting Rights provides what appears to be the only comprehensive national list of voter fraud "hot spots." Their 2005 report lists six major "hot spots": Cuyahoga County, Ohio; St. Clair County, Illinois; St. Louis County, Missouri; Philadelphia, Pennsylvania; King County, Washington; and Milwaukee County, Wisconsin. Again I started with specification (3) in Table 2 but added in variables that interacted the voting regulations with a dummy variable equaling 1 for these six counties. Table 6 reports just the coefficients from this regression for these interactions and the voting regulations by themselves.

As shown earlier, ID requirements have no significant impact on voting participation rates when all the counties for which they are imposed are examined. However, most telling, non-photo IDs increased voting participation in the "hot spots," supporting the Ensuring Integrity hypothesis. Neither of the other theories can explain why requiring IDs increase voter participation. The same also holds true for increasing the length of the registration deadline: It, too, increases voter turnout despite making voting more difficult. The results for pre-election day in-poll voting also imply that vote fraud is occurring. In general, pre-election day in-poll voting is associated with reduced turnout,

consistent with the Ensuring Integrity hypothesis. The fact that turnout increases in the fraud "hot spots" when pre-election day in-polling is allowed implies that the "hot spots" are exploiting this rule for vote fraud.

Finally, Table 8 provides some simple estimates for U.S. Senate primaries by party.[22] The sample here was only a third of the size of the general election estimates. Overall, Democratic primary turnout rates seem to be much more affected by voting regulations than do Republican ones. However, the only results that are related to fraud involve provisional ballots. Both specifications for the Democratic primary produce coefficients that imply the Ensuring Integrity Hypothesis: despite the lower cost of voting from provisional ballots, there is a statistically significant 4.4 percentage point drop in the voting rate. For Republicans the coefficients are of the opposite sign and statistically significant. Thus, the results do not allow us to disentangle the alternative hypotheses.

Conclusion

There is some evidence of vote fraud. Regulations meant to prevent fraud can actually increase the voter participation rate. It is hard to see any evidence that voting regulations differentially harm either minorities, the elderly, or the poor. While this study examines a broad range of voting regulations, it is still too early to evaluate any possible impact of mandatory photo IDs on U.S. elections. What can be said is that the non-photo ID regulations that are already in place have not had the negative impacts that opponents predicted.

One particularly valuable finding is that voting regulations have a different impact on turnout in counties where fraud is alleged to be rampant. These results indicate that while these voting regulations have little impact on turnout generally, certain regulations do significantly impact turnout in these so-called "hot spots."

Contrary to the claims that campaign finance regulations will encourage voter participation by reducing the perception of political corruption, campaign finance regulations reduced voter participation rates.

Following other recent work showing that campaign finance regulations entrench incumbents, reduce the number of candidates running for office, and increase win margins (all factors associated with less exciting campaigns), these results find that campaign finance regulations usually reduce voter turnout.

[22] The county level on votes by U.S. Senate race was obtained by going online at the different Secretary of State websites (http://www.nass.org/sos/sosflags.html). Some states only had this data available back to 2000 and others did not have the data available by race at the county level.

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Table 1: Comparing the Average Voter Turnout Rate for States that have When Their Voting Regulations are and are Not in Effect: Examining General Elections from 1996 to 2004

	Average Voter Turnout Rate During Those Elections that the Regulation is not in Effect	Average Voter Turnout Rate During Those Elections that the Regulation is in Effect	Absolute t-test statistic for whether these Averages are Different from Each Other
Photo ID (Substitutes allowed)	55.31%	53.79%	1.6154
Non-photo ID	51.85%	54.77%	7.5818***
Non-photo ID (Assuming that Photo ID rules are not in effect during the years that Non-photo IDs are not in Effect)	51.92%	54.77%	7.0487***
Absentee Ballot with No Excuse	50.17%	54.53%	10.5333***
Provisional Ballot	49.08%	53.65%	12.9118***
Pre-election day in poll voting/in-person absentee voting	50.14%	47.89%	3.8565***
Same day registration	51.07%	59.89%	7.3496****
Registration by mail	50.74%	62.11%	13.8353***
Vote by Mail	55.21%	61.32%	3.7454***

*** F-statistic statistically significant at the 1 percent level.
** F-statistic statistically significant at the 5 percent level.
* F-statistic statistically significant at the 10 percent level.

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Table 2: Explaining the Percent of the Voting Age Population that Voted in General Elections from 1996 to 2004 (The various control variables are listed below, though the results for the county and year fixed effects are not reported. Ordinary least squares was used Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

	Endogenous Variables					
	Voting Rate			Ln(Voting Rate)		
Control Variables	(1)	(2)	(3)	(4)	(5)	(6)
Photo ID (Substitutes allowed)	-0.012 (0.6)	-0.0009 (0.1)	0.0020 (0.2)	-0.0407 (0.9)	-0.0195 (0.5)	-0.0164 (0.4)
Non-photo ID	-0.011(1.50)	-0.010 (1.3)	-0.0050 (0.6)	-0.039 (2.0)	-0.034 (1.62)	-0.0215 (1.0)
Absentee Ballot with No Excuse		0.0015 (0.2)	-0.0002 (0.0)		0.0063 (0.4)	-0.0003 (0.0)
Provisional Ballot		0.0081 (1.4)	0.0076 (1.2)		0.0139 (0.9)	0.0120 (0.7)
Pre-election day in poll voting/in-person absentee voting		-0.0183 (2.4)	-0.0145 (1.7)		-0.0520 (2.8)	-0.0453 (2.2)
Closed Primary		-0.005 (0.8)	-0.0036 (0.5)		-0.0037 (0.2)	0.0047 (0.2)
Vote by mail		0.0167 (1.7)	-0.0145 (0.4)		0.0107 (0.4)	-0.0803 (0.9)
Same day registration		0.0244 (2.0)	0.0221 (1.6)		-0.0004 (0.0)	-0.0093 (0.2)
Registration by mail		-0.002 (0.1)	0.0122 (0.5)		-0.0333 (1.2)	0.0143 (0.3)
Registration Deadline in Days		-0.0003 (0.3)	-0.0005 (0.5)		-0.0006 (0.3)	-0.0013 (0.5)
Number of Initiatives		0.0002 (0.1)	-0.0054 (1.7)		-0.0022 (0.5)	-0.0195 (2.0)
Real Per Capita Income		-8.60E-07 (0.4)	-9.84E-09 (0.0)		-5.30E-06 (1.3)	-3.68E-06 (1.1)
State unemployment rate		-0.0010 (0.2)	0.0003 (0.1)		-0.0067 (0.6)	0.0000 (0.0)
Margin in Presidential Race in State	-0.0011 (2.2)	-0.0010 (2.1)	-0.001 (1.8)	-0.0022 (1.6)	-0.0020 (1.6)	-0.0023 (1.5)
Margin in Gubernatorial Race	-0.0005 (1.6)	-0.0004 (1.3)	-0.0005 (1.7)	-0.0012 (1.2)	-0.0012 (1.3)	-0.0015 (1.4)
Margin in Senate Race	-0.0001(1.0)	-0.0001(0.8)	-0.0001 (0.7)	-0.0001(0.3)	-0.0001 (0.2)	-0.0001 (0.3)
Initiatives by Subject						
Abortion			0.0552 (1.7)			0.1702 (2.3)
Administration of Gov			0.0090 (0.5)			0.0433 (0.9)
Alien Rights			-0.0088 (0.5)			0.0269 (0.7)
Animal Rights			0.0295 (2.6)			0.0922 (3.0)
Bonds			-0.0039 (0.1)			0.0283 (0.3)
Business Regulations			-0.1202 (3.3)			-0.2925 (3.1)
Campaign Finance			0.0205 (1.7)			0.0559 (1.7)
Civil Rights			-0.0031 (0.2)			-0.0120 (0.4)
Death Penalty			(dropped)			(dropped)
Drug policy			0.0082 (0.3)			0.0258 (0.6)
Education			0.0244 (2.0)			0.0589 (1.8)
Election Reform			0.0234 (1.9)			0.0523 (1.3)
Environmental			0.0090 (0.9)			0.0315 (1.3)
Gaming			-0.0045 (0.3)			0.0030 (0.1)
Gun regulation			-0.0465 (1.6)			-0.0970 (1.2)
Health/medical			-0.0035 (0.3)			0.0250 (0.7)
Housing			(dropped)			(dropped)
Initiatives and Referendum Reform			-0.0018 (0.1)			-0.0142 (0.4)
Labor Reform			0.1890 (2.6)			0.4700 (2.6)

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Legal Reform			0.0094 (0.5)			0.0502 (0.9)
Taxes			0.0649 (2.2)			0.1233 (1.8)
Term Limits			0.0475 (1.5)			0.0563 (0.6)
Tort Reform			0.0339 (1.6)			0.1570 (2.5)
Utility Regulations			0.0115 (0.6)			0.0287 (0.6)
Veterans Affairs			0.0072 (0.7)			0.0189 (0.8)
% population 10 to 19		0.3865 (1.6)	0.1826 (2.3)		1.0608 (1.9)	0.4018 (2.0)
% population 20 to 29		-0.0745 (0.4)	-0.1375 (1.7)		-0.4571 (1.0)	-0.3354 (1.6)
% population 30 to 39		-0.2022 (0.6)	-0.0409 (1.5)		-0.3992 (0.6)	-0.0836 (1.3)
% population 40 to 49		0.2875 (0.8)	-0.0098 (0.5)		0.9769 (1.4)	-0.0149 (0.3)
% population 50 to 64		0.2997 (1.3)	0.5242 (2.5)		0.2354 (0.5)	0.7475 (1.6)
% population 65 to 99		0.1799 (0.8)	0.3475 (1.4)		0.4590 (1.1)	0.7881 (1.7)
% population Black		-0.0057 (1.9)	-0.0033 (1.1)		-0.0166 (2.2)	-0.0117 (1.5)
% population White		-0.0027 (1.1)	-0.0006 (0.2)		-0.0108 (1.7)	-0.0065 (1.0)
% population Hispanic		-0.0081 (5.4)	-0.0075 (5.4)		-0.0189 (6.1)	-0.0185 (6.0)
% population male		-0.2717 (1.2)	-0.3864 (1.7)		-0.5616 (1.2)	-0.7971 (1.8)
Adj R-squared	.8719	.8828	.8890	0.7958	0.8118	0.8189
F-statistic	117.45	260.55	13852387	75.89	164.02	7429623.34
Number of Observations	16028	14962	14962	16028	14962	14962
Fixed County and Year Effects	Yes	Yes	Yes	Yes	Yes	Yes

Table 3: Including information on Campaign Finance Regulations Over General Elections from 1996 to 2002 (The regressions follow specifications (3) and (6) in Table 2 with the inclusion of the various campaign finance regulations reported below. All the variables reported below are dummy variables for whether the laws are in effect. A detailed discussion of these laws is provided in Lott (2006). The other coefficients shown in specifications (3) and (6) are not reported. Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

	Voting Rate		Ln(Voting Rate)	
	Coefficient	Absolute t-statistic	Coefficient	Absolute t-statistic
Photo ID (Substitutes allowed)	0.0170	0.41	0.0414	0.35
Non-photo ID	-0.0028	0.2	-0.0012	0.03
Absentee Ballot with No Excuse	-0.0002	0.02	0.0107	0.51
Provisional Ballot	0.0084	0.99	0.0124	0.56
Pre-election day in poll voting/in-person absentee voting	-0.0112	0.95	-0.0460	1.7
Closed Primary	-0.0051	0.42	-0.0039	0.12
Vote by mail	-0.0510	0.78	-0.0641	0.35
Same day registration	0.0837	3.17	0.1539	2.04
Registration by mail	(dropped)		(dropped)	
Registration Deadline in Days	-0.0004	0.2	-0.0024	0.34
Limits on Individual Donations to Gubernatorial Races	0.0168	0.86	0.0443	0.81
Limits on Corporate Donations to Gubernatorial Races	-0.0409	2.96	-0.0778	2.23
Limits on Union Donations to Gubernatorial Races	-0.0191	1.84	-0.0396	1.48
Limits on Individual Political Action Committee Donations to Gubernatorial Races	(dropped)		(dropped)	
Limits on Corporate Political Action Committee Donations to Gubernatorial Races	-0.0611	2.48	-0.1398	2.14
Limits on Union Political Action Committee Donations to Gubernatorial Races	(dropped)		(dropped)	
Limits on Individual Donations to Political Parties	(dropped)		(dropped)	
Limits on Corporate Donations to Political Parties	-0.0220	0.98	-0.1560	2.25
Limits on Union Donations to Political Parties	0.0558	4.56	0.1971	5.61
Campaign Expenditure Limits on Gubernatorial Races	-0.0786	2.76	-0.1987	2.35
Adj R-squared	0.8803		0.8064	
F-statistic	180253.79		8040.31	
Number of Observations	11630		11630	
Fixed County and Year Effects	Yes		Yes	

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Table 4: Do the voting regulations impact different racial groups differently: Interacting racial composition of the electorate with the different voting regulations using the specification in Table 2, column 1 (Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)

Percent of the Voting Age Population that is African-American times the following regulations	Coefficient	t-statistics
Photo ID (Substitutes allowed)	0.0010	1.22
Non-photo ID	-0.0002	0.93
Absentee Ballot with No Excuse	0.0009	1.74
Provisional Ballot	0.0009	1.46
Pre-election day in poll voting/in-person absentee voting	-0.0008	1.16
Closed Primary	0.0001	0.21
Vote by mail	0.0077	5
Same day registration	0.0024	1.74
Registration by mail	-0.0003	0.24
Registration Deadline in Days	-0.0001	0.99
Percent of the Voting Age Population that is Hispanic times the following regulations		
Photo ID (Substitutes allowed)	-0.0014	0.99
Non-photo ID	0.0007	0.63
Absentee Ballot with No Excuse	-0.0015	1.3
Provisional Ballot	0.0000	0.04
Pre-election day in poll voting	0.0003	0.29
Closed Primary	0.0001	0.14
Vote by mail	-0.0020	2.56
Same day registration	-0.0034	1.35
Registration by mail	0.0001	0.87
Registration Deadline in Days	-0.0097	1.43
Percent of the Voting Age Population that is White times the following regulations		
Photo ID (Substitutes allowed)	0.0000	0.2
Non-photo ID	-0.0001	0.43
Absentee Ballot with No Excuse	0.0000	0.02
Provisional Ballot	0.0000	0.08
Pre-election day in poll voting	-0.0001	0.83
Closed Primary	-0.0001	1.3
Vote by mail	0.0011	2.3
Same day registration	0.0003	1.54
Registration by mail	0.0005	1.59
Registration Deadline in Days	0.0000	0.09

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Table 5: Comparing the Differential Impact of the Shares of the Population that are Black, Hispanic and White and Voting Regulations: Interacting the Population Shares of Different Racial Groups and Voting Regulations (absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)

	Differences between interacting the percent of the voting age population that is African-American and separately the percent of the voting age population that is white with the different voting regulations		Differences between interacting the percent of the voting age population that is Hispanic and separately the percent of the voting age population that is white with the different voting regulations		Differences between interacting the percent of the voting age population that is African-American and separately the percent of the voting age population that is Hispanic with the different voting regulations	
	Coefficient for African-Americans – the coefficient for whites	F-statistic for difference in coefficients for African-Americans and whites	Coefficient for Hispanics – the coefficient for whites	F-statistic for difference in coefficients for Hispanics and whites	Coefficient for African-Americans – the coefficient for Hispanics	F-statistic for difference in coefficients for African-Americans and Hispanics
Photo ID (Substitutes allowed)	0.0010	1.47	-0.0014	0.77	0.0024	2.25
Non-photo IDs	-0.0002	0.51	0.0007	0.43	-0.0009	0.63
Absentee Ballot with No Excuse	0.0009	2.48	-0.0015	1.51	0.0023	3.73*
Provisional Ballot	0.0009	1.91	0.00005741	0	0.0009	0.38
Pre-election day in poll voting/in-person absentee voting	-0.0007	1.03	0.0003	0.14	-0.0010	0.76
Closed Primary	0.0002	0.28	0.0003	0.08	-0.0001	0
Vote by mail	0.0066	20.75***	-0.0031	12.17***	0.0098	34.06***
Same day registration	0.0021	2.41	-0.0037	2.06	0.0059	2.77
Registration by mail	-0.0008	0.43	-0.0004	2.16	-0.0004	1.91
Registration Deadline in Days	-0.00006	0.9	-0.0097	0.74	0.0097	1.54

*** F-statistic statistically significant at the 1 percent level.
** F-statistic statistically significant at the 5 percent level.
* F-statistic statistically significant at the 10 percent level.

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Table 6: Comparing the Differential Impact of the Shares of the Population by Age and Voting Regulations: Interacting the Population Shares of Different Racial Groups and Voting Regulations (absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)

Type of Voting Regulation	Percent of the Population	Coefficient	Absolute t-statistic	F-test comparing the coefficient for the 65 to 99 year old group with the other age groups
Photo ID (Substitutes allowed)	20 to 29 Years of Age	-0.162	0.79	0.37
	30 to 39 Years of Age	0.417	0.81	0.78
	40 to 49 Years of Age	0.123	0.23	0.08
	50 to 64 Years of Age	-0.189	0.51	0.08
	65 to 99 of Age	-0.032	0.15	
Non-photo ID Required	20 to 29 Years of Age	-0.074	0.46	0.26
	30 to 39 Years of Age	-0.334	1.21	1.35
	40 to 49 Years of Age	0.987	1.53	2.13
	50 to 64 Years of Age	-0.672	1.88	2.86*
	65 to 99 of Age	0.015	0.12	
Absentee Ballot with No Excuse	20 to 29 Years of Age	0.112	0.86	2.27
	30 to 39 Years of Age	-0.011	0.04	1.22
	40 to 49 Years of Age	0.211	0.5	0.17
	50 to 64 Years of Age	-0.631	1.86	5.07**
	65 to 99 of Age	0.377	2.6	
Provisional Ballot	20 to 29 Years of Age	0.105	0.85	2.50
	30 to 39 Years of Age	0.162	0.42	2.69
	40 to 49 Years of Age	-0.639	1.55	0.44
	50 to 64 Years of Age	0.657	2.11	4.28**
	65 to 99 of Age	-0.314	1.69	
Pre-election day in-poll voting	20 to 29 Years of Age	-0.007	0.08	1.99
	30 to 39 Years of Age	-0.318	0.83	0.00
	40 to 49 Years of Age	-0.130	0.28	0.13
	50 to 64 Years of Age	0.625	1.95	4.54**
	65 to 99 of Age	-0.324	1.89	
Closed Primary	20 to 29 Years of Age	-0.148	0.66	0.20
	30 to 39 Years of Age	-0.049	0.09	0.15
	40 to 49 Years of Age	0.453	0.95	1.62
	50 to 64 Years of Age	(dropped)		
	65 to 99 of Age	-0.258	1.51	
Vote by mail	20 to 29 Years of Age	-0.069	0.21	0.34
	30 to 39 Years of Age	0.057	0.12	0.28
	40 to 49 Years of Age	0.879	1.24	0.31
	50 to 64 Years of Age	-0.682	0.74	0.47
	65 to 99 of Age	0.417	0.56	
Same day registration	20 to 29 Years of Age	-0.083	0.16	1.16
	30 to 39 Years of Age	-1.086	1.66	2.70
	40 to 49 Years of Age	0.254	0.34	0.49
	50 to 64 Years of Age	0.227	0.24	0.82
	65 to 99 of Age	1.188	1.31	
Registration by mail	20 to 29 Years of Age	-0.234	0.99	0.72
	30 to 39 Years of Age	0.266	0.49	0.04
	40 to 49 Years of Age	0.038	0.05	0.03
	50 to 64 Years of Age	-0.013	0.02	0.04
	65 to 99 of Age	0.157	0.51	

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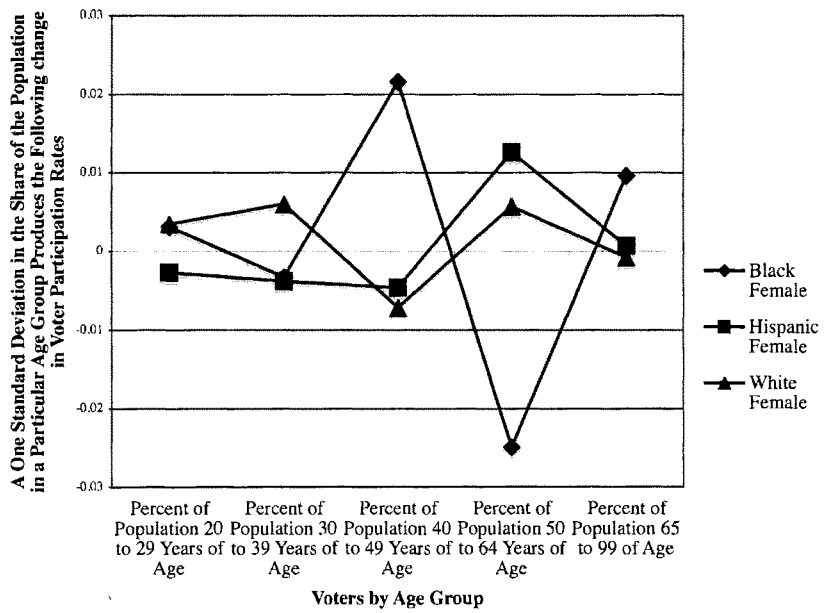
Registration Deadline in Days	20 to 29 Years of Age	0.002	0.16	0.00
	30 to 39 Years of Age	-0.002	0.14	0.06
	40 to 49 Years of Age	-0.007	0.32	0.16
	50 to 64 Years of Age	0.001	0.08	0.00
	65 to 99 of Age	0.002	0.16	

*** F-statistic statistically significant at the 1 percent level.
** F-statistic statistically significant at the 5 percent level.
* F-statistic statistically significant at the 10 percent level.

Figure 1: The Change in Voting Participation Rates from the Adoption of Photo IDs by Race for Women



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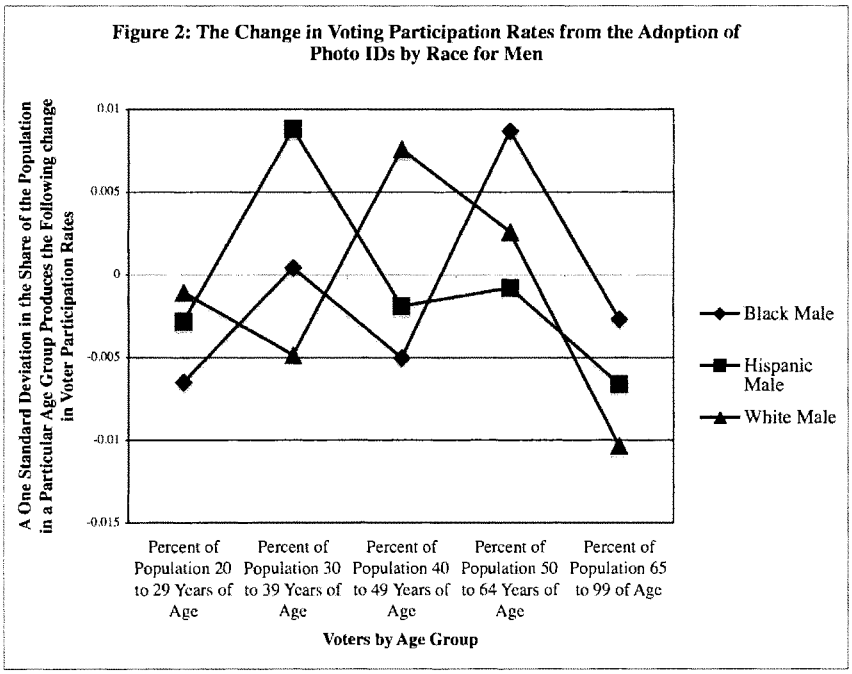
Figure 2: The Change in Voting Participation Rates from the Adoption of Photo IDs by Race for Men
A One Standard Deviation in the Share of the Population in a Particular Age Group Produces the Following change in Voter Participation Rates
0.01
0.005
0
-0.005
-0.01
-0.015
Percent of Population 20 to 29 Years of Age
Percent of Population 30 to 39 Years of Age
Percent of Population 40 to 49 Years of Age
Percent of Population 50 to 64 Years of Age
Percent of Population 65 to 99 of Age
Voters by Age Group
Black Male
Hispanic Male
White Male

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Table 7: Examining Whether the Six "Hot Spots" Counties Identified by the American Center for Voting Rights as Having the Most Fraud: Interacting the Voting Regulations that can affect fraud with the six "Hot Spots" Using Specification 3 in Table 2 as the base (The six "hot spots" are Cuyahoga County, Ohio; St. Clair County, Illinois; St. Louis County, Missouri; Philadelphia, Pennsylvania; King County, Washington; and Milwaukee County, Wisconsin. Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

	Impact of Voting Regulations in "Hot Spots"		Impact of Voting Regulations for All Counties	
Voting Regulations that can Effect Fraud	Coefficient	Absolute t-statistic	Coefficient	Absolute t-statistic
Photo ID (Substitutes allowed)	Dropped		0.002	0.17
Non-photo ID Required	0.031	1.95*	-0.005	0.61
Absentee Ballot with No Excuse	0.003	0.2	0.0002	0.03
Provisional Ballot	0.006	0.4	0.008	1.14
Pre-election day in poll voting/in-person absentee voting	0.033	2.26**	-0.014	1.73*
Closed Primary			-0.004	0.46
Vote by mail	Dropped		-0.014	0.39
Same day registration	-0.005	0.28	0.022	1.57
Registration by mail	Dropped		0.012	0.52
Registration Deadline in Days	0.022	2.03**	-0.001	0.54
Adj R-squared	0.8890			
F-statistic	120907.07			
Number of Observations	14962			
Fixed County and Year Effects	Yes			

*** F-statistic statistically significant at the 1 percent level.
** F-statistic statistically significant at the 5 percent level.
* F-statistic statistically significant at the 10 percent level.

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Table 8: Estimating the Impact of Voting Regulations on Voter Turnout in US Senate Primaries from 1996 to July 15, 2006 (Using specifications 2 and 4 in Table 2. Absolute t-statisics are reported.)

	Vote Difference in Democratic Senate Primaries		Vote Difference in Republican Senate Primaries		ln(Vote Difference in Democratic Senate Primaries)		ln(Vote Difference in Republican Senate Primaries)	
	coefficient	t-statistic	coefficient	t-statistic	coefficient	t-statistic	coefficient	t-statistic
Photo ID (Substitutes allowed)	-0.007	0.13	-0.037	0.42	-0.125	0.37	0.639	0.71
Non-photo ID Required	-0.022	0.73	-0.038	1.6	-0.298	1.06	-0.638	2.22
Absentee Ballot with No Excuse	-0.027	1.59	-0.017	0.59	-0.330	1.89	-0.052	0.14
Provisional Ballot	-0.044	2.69	0.014	0.54	-0.265	1.78	0.467	1.87
Pre-election day in poll voting	0.000	0.01	-0.017	0.77	-0.139	0.65	-0.074	0.23
Closed Primary	-0.093	2.05	-0.013	0.51	-0.631	2.32	-0.213	0.72
Vote by mail	0.006	0.19	-0.009	0.23	0.274	1.49	0.137	0.34
Same day registration	(dropped)		(dropped)		(dropped)		(dropped)	
Registration by mail	-0.005	0.1	-0.102	3.33	0.157	0.57	-0.929	2.18
Registration Deadline in Days	0.001	0.61	0.003	0.72	0.013	0.91	-0.028	0.82
Adj R2	0.8070		0.8172		0.8357		0.8349	
F-statistics	550.84		542.38		155.62		1221.33	
Number of Observations	4807		4517		4803		4508	

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Data Appendix			
Variable	Number of Observations	Mean	Standard Deviation
Voter Turnout Rate	17428	0.5000424	0.1353909
Margin in Presidential Race in State	17428	6.461738	9.33715
Margin in Gubernatorial Race	17428	6.400746	11.24475
Margin in Senate Race	17428	12.88982	17.49234
Photo ID (Substitutes allowed)	16028	0.0505366	0.2190562
Non-photo ID	16028	0.4842151	0.4997664
Absentee Ballot with No Excuse	15782	0.3056647	0.460703
Provisional Ballot	15689	0.7011919	0.4577501
Pre-election day in poll voting/in-person absentee voting	17428	0.4666628	0.4989017
Closed Primary	15660	0.3690294	0.4825573
Vote by mail	16028	0.0067382	0.0818121
Same day registration	16028	0.0560893	0.2301014
Registration by mail	16028	0.9332418	0.2496105
Registration Deadline in Days	16028	24.0544	7.722113
Number of Initiatives	17428	0.9427932	2.186753
Real Per Capita Income	16937	13311	3453.604
State unemployment rate	17428	4.756009	1.139538
State poverty rate	17270	12.63536	3.50314
Types of Initiatives			
Abortion	17428	0.0093528	0.0962591
Administration of Gov	17428	0.0299518	0.1704593
Alien Rights	17428	0.0008607	0.0293256
Animal Rights	17428	0.0617397	0.2406891
Bonds	17428	0.003328	0.0575942
Business Regulations	17428	0.0063691	0.0795541
Campaign Finance	17428	0.0383291	0.1919951
Civil Rights	17428	0.0442392	0.2056319
Death Penalty	17428	0.003328	0.0575942
Drug policy	17428	0.0404521	0.1970228
Education	17428	0.0461327	0.2097784
Election Reform	17428	0.0262796	0.15997
Environmental	17428	0.0591577	0.2359263
Gaming	17428	0.0652972	0.2470567
Gun regulation	17428	0.0055658	0.0743982
Health/medical	17428	0.0527312	0.2235028
Initiatives and Referendum Reform	17428	0.0184186	0.1344635
Judicial Reform	17428	0.0020656	0.0454037
Labor Reform	17428	0.0379275	0.1910264
Legal Reform	17428	0.0245582	0.1547787
Taxes	17428	0.0743631	0.2623684
Term Limits	17428	0.0576658	0.2331171
Tort Reform	17428	0.0071724	0.084388
Transportation	17428	0.0038444	0.0618856
Utility Regulations	17428	0.007115	0.0840522
Veterans Affairs	17428	0.0030411	0.0550637
Demographics			
% population 10 to 19	17345	0.1489322	0.0197387
% population 20 to 29	17345	0.1213164	0.0341395
% population 30 to 39	17345	0.1388913	0.0212235
% population 40 to 49	17345	0.1492473	0.0173433

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% population 50 to 64	17345	0.1597476	0.0253207
% population 65 to 99	17345	0.1471236	0.0407621
% population Black	17333	8.036701	12.63859
% population White	17333	78.76029	13.17825
% population Hispanic	17345	4.681539	9.453796
% population male	17345	0.4254129	0.0315461
Total population by county	58148	93918	29443
Campaign Finance Regulations			
Limits on Individual Donations to Gubernatorial Races	13545	0.5963824	0.4906406
Limits on Corporate Donations to Gubernatorial Races	13545	1.724695	1.251119
Limits on Union Donations to Gubernatorial Races	13545	1.301292	1.128532
Limits on Individual Political Action Committee Donations to Gubernatorial Races	13545	0.560945	0.4962901
Limits on Corporate Political Action Committee Donations to Gubernatorial Races	13545	0.5663344	0.4955985
Limits on Union Political Action Committee Donations to Gubernatorial Races	13545	0.5663344	0.4955985
Limits on Individual Donations to Political Parties	13902	0.2593871	0.4383141
Limits on Corporate Donations to Political Parties	13902	0.2376636	0.4256673
Limits on Union Donations to Political Parties	13902	0.2517623	0.434041
Campaign Expenditure Limits on Gubernatorial Races	13902	0.0845921	0.2782838

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HEADLINE: Urbanities: "How to Steal an Election"

BYLINE: John Fund

BODY:

The 2000 Florida election debacle led many Americans to worry about the integrity of our voting system. They're right to worry: the system is haphazard and sloppy. How sloppy? Well, at least eight of the 19 foreign-national September 11 hijackers had registered to vote in either Florida or Virginia.

Election fraud is expanding. This past March, in just one of many recent cases, Texas representative Ciro Rodriguez, chairman of the congressional Hispanic Caucus, lost a close Democratic primary after a missing ballot box suddenly showed up in South Texas, stuffed with votes for his opponent. Rodriguez charged fraud but could never definitively prove it. The circumstances were eerily similar to those that tipped a 1948 Senate race to Lyndon Johnson. Election officials found ballot box 13 several days after the election. It held 203 votes, all but one for LBJ. Amazingly enough, the voters had cast their ballots in alphabetical order.

With nearly 10 percent of Americans now believing that the election system doesn't count their votes accurately, and with new charges of fraud beginning to swirl around the 2004 presidential election, it's worth taking a look back at the nation's long tradition of electoral shenanigans. It's comic--until you start to wonder just how much of it is still going on.

Nowhere did voter fraud have a more notorious record than in Tammany-era New York. Tammany Hall's ruthless efficiency in manufacturing votes--especially during the zenith of its power in the second half of the nineteenth century--is legendary. At the time, America didn't yet have privacy-protecting voting machines or official government ballots, so Tammany fixers could ensure that voters would cast ballots as promised. Vote riggers would simply give people premarked ballots and watch as they deposited them into the voting box.

Practical Tammany pols preferred to deal with "strikers"--wholesale operatives who would guarantee thick bundles of votes, for a price. One New York candidate who hadn't yet paid his strikers made the mistake of visiting the polls on Election Day. The angry operatives swiftly surrounded him, demanding their cash. Historian Mark Summers recounts that "the politician was nearly torn to pieces . . . and as he fled the pack cursed him for 'a mean cuss' and emptied out the ballot-boxes, tearing up every ticket bearing his name."

The immigrants flooding into New York were easy prey for the Tammany pols. Each state then set its own standards for naturalizing new citizens, and New York's were lax. In 1868, The Nation reported that Tammany Hall had set up a "naturalization mill," instantly certifying folks right off the boat as citizens--and Tammany voters. (In 1996, the Clinton administration similarly sped up the naturalization of up to 1 million new citizens so that they could vote in time for that year's election.)

Tammany was so efficient at election fixing that between 1868 and 1871, the votes cast in the city totaled 8 percent more than the entire voting population--"the dead filling in for the sick," as one contemporary wag put it. Historian Denis Tilden Lynch describes how thugs would go from one polling place to the next, impersonating citizens who hadn't yet voted. One such "repeater" posed as the dignified pastor of a Dutch Reformed church. The election clerks asked him his name.

"Jones," shouted the repeater, startling the poll workers with his scraggly beard, unclean face, and whiskey breath.

"What is the first name, Mr. Jones?" asked the election clerk.

"John," snarled the repeater.

"The Reverend Dr. John Jones, pastor of the Dutch Reformed church around the corner?" asked a clerk.

"Yes, you dirty, lousy @$#%%^^**!" exclaimed the repeater. "Who'n else did you thick I was, eh?"

The officials let "Reverend Jones" vote.

After his fall from power, the infamous Tammany Hall leader William Marcy Tweed--Boss Tweed--candidly assessed the conduct of elections in his city. His 1877 testimony before the New York Board of Aldermen remains fascinating for its matter-of-fact explication of how to corrupt democracy:

Q: "When you were in office, did the [Tweed] Ring control the elections in the city at that time?"

A: "They did sir. Absolutely."

Q: "Please tell me what the modus operandi of that was. How did you control the elections?"

A: "Well, each ward had a representative man, who would control matters in his own ward, and whom the various members of the general committee were to look up to for advice how to control the elections."

Q: "What were they to do, in case you wanted a particular man elected over another?"

A: "Count the ballots in bulk, or without counting them announce the result in bulk, or change from one to the other, as the case may have been."

Q: "Then these elections really were no elections at all? The ballots were made to bring about any result that you determined upon beforehand?"

A: "The ballots made no result; the counters made the result. . . . That was generally done to every ward by the gentleman who had charge of the ward."

Q: "Mr. Tweed, did you ever give any directions to any persons, to falsify or change the result of the actual bona fide ballots cast in any election?"

A. "More in the nature of a request than a directive."

Later in Tweed's testimony, this exchange occurred:

Q: "Can you state now, at this time, whether the election which took place in the City of New York at that time [1868] was a fair and honest election?"

A: "I have not the details in my memory."

Q: "What is your best impression?"

A: "I don't think there was ever a fair or honest election in the City of New York."

Tammany's fraud was so all-encompassing, says historian Mark Summers, that "even men who have passed through history with clean reputations thought little of raising a majority that way." Henry Raymond, co-founder and first editor of the New York Times, railed against corruption. But when he ran for speaker of the New York State Assembly in 1851, he asked Senator Hamilton Fish for $1,000, so that he could buy the election. "Truly a pretty suggestion," Fish confided to his diary, "but corruption in connection with these primary elections has become so prevalent that one loses astonishment at its evidence in any quarter."

Boss Tweed died in disgrace, but Tammany Hall flourished into the twentieth century. In 1905, William Randolph Hearst, owner of the New York Morning Journal, decided to take Tammany on and run for New York mayor on the ticket of his own third party, the Municipal Ownership League. Hearst had already beaten a Tammany-backed candidate in 1902, winning a New York congressional seat with a lavish campaign that would have put New Jersey senator Jon Corzine to shame. Hearst spent the equivalent of $100,000 for fireworks in Madison Square Park and offered free trips to Coney Island for every man, woman, and child in his district.

But Hearst bit off more than he could buy in running for mayor--a key position in the Tammany empire. On election day, notes Hearst biographer David Nasaw, "there were instances of voter fraud, of poll watchers being chased away, of delays in reporting returns, of unopened and uncounted ballot boxes mysteriously turning up in the East River." The New York Independent declared it "the most extraordinary election ever witnessed in New York City"--and that's saying something. The New York Times reported that the challenger's poll watchers, having been beaten up and

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driven off by Tammany goons, "came into the Hearst headquarters last night with bandaged hands. Some carried their arms in slings. At about ten o'clock in the evening a report was received that the returns were being held back from these districts"--presumably as Tammany stuffed the ballot boxes to achieve the desired count. One poll watcher, an R. Little, "had a finger chewed off and his face cut."

While the newspapers deplored the violence, they also expressed relief that incumbent Tammany mayor George Brinton McClellan beat Hearst, by a margin of 3,472 votes out of more than 600,000 "cast." The New York Times congratulated city voters for having "spared the city the humiliation, the trials, and the dangers of a four years' mismanagement of its affairs by a peculiarly reckless, unschooled, and unsteady group of experimenters and adventurers."

Hearst believed that he had won the election as ballots went into the boxes but lost it as they came out. After organizing a blue-ribbon committee to protest the fraud and demand a recount, he held massive demonstrations throughout the city and went to court. But the courts and the state legislature ignored him, and no recount took place.

New York City's corruption, severe as it was, was far from unique. In Baltimore, for instance, vote fixing could get even uglier: a notorious Whig Party organization, the "Fourth Ward Club," hired thugs to seize innocent strangers and foreigners, drug them with bad whiskey and opiates, and send them out to cast multiple votes. (James Harrison, a biographer of Edgar Allan Poe, speculates that when Poe died in 1849, he was a victim of ruthless vote-fraud toughs who kidnapped him and left him drunk and near death on a Baltimore street.) Political scientists estimate that in many urban areas, fixers routinely manipulated 10 to 15 percent of the vote. A 1929 study by the Brookings Institution, looking back on U.S. elections in the nineteenth century, observed: "[I]ndifference, fraud, corruption, and violence have marked the operation of our electoral system."

The corruption influenced national as well as local politics. Both major parties stole votes with abandon in the 1876 presidential election between Republican Rutherford Hayes of Ohio and Samuel Tilden of New York. The race ended in a deadlock, resolved only after a congressionally created commission delivered the presidency to Hayes by a single, disputed electoral vote. At least three other presidential elections--in 1880, 1884, and 1888--proved so close that fraud may have played a role in their outcomes, too.

As the century closed, however, fraud gradually began to diminish, as popular disgust with vote rigging spurred reforms. States began to require voters to register before Election Day. In Massachusetts, Richard Henry Dana III, son of the author of the classic Two Years Before the Mast, persuaded the Massachusetts legislature to adopt the "Australian" ballot--a government-printed ballot that would list all candidates and that voters would cast in secret in a booth. It became a model for reformers elsewhere. As changes spread to other states, voter "turnout" fell precipitously. Historians Gary Cox and Morgan Krause point out that turnout in New York State elections dropped some 15 percent after the anti-fraud measures took effect.

Voter fraud didn't vanish from American politics, of course--jokes still circulate about the late Chicago mayor Richard Daley's uncanny ability to get the dead to vote for him. But first prize for twentieth-century electoral corruption goes to Mayor Frank "I Am the Law" Hague, whose political machine controlled gritty Jersey City, New Jersey, across the Hudson River from New York, from 1917 to 1947. His desk had a special drawer that opened in the front, allowing visitors to deposit bribes that then disappeared inside the desk. On a yearly salary of $8,000, he amassed a fortune of at least $10 million.

Hague's career began inauspiciously, as you might expect. Expelled from school after sixth grade as incorrigible, he became a ward heeler for the Jersey City Democratic machine. In 1908, he entered city employment as a janitor. Ten years later, he was mayor, and, through his control of the Hudson County vote, the leader of the state Democratic Party and the man who could dictate who would become governor or a judge. In 1939, so great was Hague's power that he could order his handpicked governor to appoint his son, Frank Hague Jr., to the state supreme court, even though the young man had never graduated from law school.

The Hague machine turned voter fraud into a science. On the Sunday before an election, the mayor would gather his ward heelers into a Jersey City arena (called the Grotto) and give his orders. "Three hundred and sixty-four days a year you come to me wanting favors. . . . Now, one day in the year I come to you." Hague fielded roughly one worker per 100 voters, and boy, did he get results. In 1937, the Democratic candidate in the First District of the First Ward won 433 votes, the Republican only one. This struck some people as odd, since a short time earlier, the district had recorded 103 Republican votes. An investigation found torn ballots, others with unmistakable erasure marks, and yet others altered by pencil. The single Republican ballot, marked with a red pencil, "could not have been erased without doing definite damage to the ballot," investigators noted.

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Reformers were always trying to clean up Jersey City elections, but they faced an uphill fight. In 1935, the Honest Ballot Association sent 245 Princeton students to monitor a city election. Hague's ruffians beat up five of them within an hour of their arrival. Several others, ejected from a polling place, went to see the mayor to protest. "Well, you fellows go back there if you wish, but if you get knocked cold it will be your own hard luck," he told them. Later, Hague explained to Collier's magazine that the roughing-up involved "[a]nimal spirits, that's all. I told my boys to lay off, but it was a pretty dull election, and they couldn't resist the temptation to have a little fun."

In 1937, the Jersey Journal asked in a disgusted editorial: "Where was Election Superintendent Ferguson's 1,300 deputies when the new irregularities now charged occurred last Tuesday?" In response, the superintendent issued a public statement that read, in part: "Where were my deputies? Some of them were locked up in the police stations; some were stuck on corners, with a threat that if they moved from them, a night stick would be wrapped around their necks. . . . The only way to have an honest election in Hudson County under present conditions is with the militia."

Mayor Hague retired from office in 1947, turning over the job of mayor to his nephew. Gradually, his machine lost control of the city, though Jersey's politics remain far from pristine to this day. Nevertheless, Hague's flagrant vote rigging was extreme for post-Tammany American politics.

Yet if Hague's ghost, or Boss Tweed's, took a look at a recent newspaper, he'd smile in recognition. Wholesale vote fraud is on the rise again, almost all of it trying to elect Democratic candidates. The reason that the cheating is happening overwhelmingly among the Dems these days may have something to do with who supports the respective parties, say Larry Sabato and Glenn Simpson in their book Dirty Little Secrets. Republican voters tend to be middle class and not easily tempted to commit fraud, while "the pool of people who appear to be available and more vulnerable to an invitation to participate in vote fraud tend to lean Democratic." Most incidents of wide-scale fraud, agrees Paul Harrison, director of the Center for American Politics at the University of Maryland, "reportedly occur in inner cities."

Barely a day has gone by in the run-up to the 2004 election without another outrageous story hitting the headlines. In Lansing, Michigan, the city clerk's office complained in late September about 5,000 to 8,000 fraudulent voter-registration forms that had recently come in--courtesy, election officials believed, of the Public Interest Research Group, a liberal advocacy outfit. In Racine, Wisconsin, around the same time, election officials discovered that Project Vote, another left-wing advocacy group, had filed scores of applications with phony addresses and other questionable items. The acting city clerk asked the district attorney's office to pursue possible criminal charges. Ohio, Nevada, Iowa--similar stories abounded in states across the country.

Why is such activity proliferating? It flows from the success of Democratic lawmakers in pushing aside clear, orderly, and rigorous voting procedures in favor of elastic and "inclusive" election rules that invite manipulation. A machine for corruption is the 1993 "Motor Voter Act," the first bill that President Clinton signed. The law requires government officials to allow anyone who renews a driver's license or applies for welfare or unemployment to register to vote on the spot, without showing ID or proof of citizenship. It also allows ID-free registration by mail. The law also makes it hard to purge voting lists of those who've died or moved. All this makes vote fraud a cinch, almost as easy as when Tammany Hall handed out pre-marked ballots.

Among the many abuses it has spawned, the Motor Voter law seems to have enabled illegal aliens to vote--for Democrats, evidence suggests. A 1996 INS investigation into alleged Motor Voter fraud in California's 46th congressional district discovered that "4,023 illegal voters possibly cast ballots in the disputed election between Republican Robert Dornan and Democrat Loretta Sanchez." Dornan lost by fewer than 1,000 votes. In 2002, Dean Gardner, a losing GOP candidate for California's state legislature, sent out a survey to 14,000 first-time voters. A total of 1,691 surveys came back. The results were startling: 76 people admitted that they weren't citizens but had voted, while 49 claimed not to have registered at their correct residence, as the law requires. Gardner lost by only 266 votes.

In the 2000 election, as the Missouri secretary of state later discovered, 56,000 St. Louis-area voters held multiple voter registrations. No one knows how much actual fraud took place, but it may have played a role in the Democratic defeats of incumbent Republican senator John Ashcroft, who lost his seat by 49,000 votes, and gubernatorial candidate Jim Talent, who lost by 21,000 votes.

All these stories of potential electoral abuses, Democrats retort, pale beside the Republican shenanigans that helped deliver Florida to George W. Bush in 2000. Media recounts that showed that Bush would have won Florida under any reasonable recount standard are beside the point, they say. Election officials wrongly identified thousands of people as felons, most of them minorities, thus preventing them from voting under the state's election laws. If those votes had counted, Democrats charge, Al Gore would be president today.

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But both the Miami Herald and the Palm Beach Post found that, if anything, election officials were too permissive in whom they allowed to cast ballots. A Post analysis discovered that 5,600 people voted whose names matched those of convicted felons. "These illegal voters almost certainly influenced the down-to-the-wire presidential election," the Post reported. "Of the likely felons identified by the Post, 68 percent were registered Democrats."

Democrats think that the ambiguity in election laws will work to their benefit this fall, allowing them to litigate every single close race. Unfortunately, if "anything goes" continue to be the ballot bywords, the nation may soon wake up to a crisis even bigger than the 2000 Florida nightmare. Perhaps then the public will demand to know who subverted the election laws. But wouldn't it be better if we did something about the problem now--even if it's as simple as requiring everyone who votes to show an ID? In 2004, we should be well past the days of Boss Tweed.

LOAD-DATE: November 19, 2004

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51 LOUISIANA AVENUE, N.W.
WASHINGTON, D.C. 20001-2113

June 4, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to share with you and your colleagues on the Committee on the Judiciary my views on S. 453, the Deceptive Practices and Voter Intimidation Prevention Act of 2007. I ask that this letter be made part of the hearing record on S. 453.

Fifty years ago, Congress passed the Civil Rights Act of 1957—the first civil rights law to be enacted since the aftermath of the Civil War. While that law is perhaps best known for creating the United States Commission on Civil Rights, it also contained a provision aimed at combating the types of blatant and overt acts of intimidation and coercion of potential minority voters that regrettably were all too common in that era. Specifically, section 131 of the 1957 Act (now found at 42 U.S.C. §1971(b)) provided:

> No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

Perhaps the best example of how that language was employed to thwart voter intimidation during the height of the civil rights movement is found in an opinion written by one of the great heroes of that era, the Honorable John Minor Wisdom, of the United States Court of Appeals for the Fifth Circuit. That case, United States v. McLeod, 385 F. 734 (5th Cir. 1967), arose out of the racial unrest in Selma, Alabama in 1963, during the zenith of the efforts to register minority voters in the South. At issue in Mcleod was

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whether the actions of certain local officials—particularly the baseless arrests and prosecutions of civil rights workers and potential voters—violated §1971(b). Among the official acts at issue were:

- Charging, and in some instances prosecuting, volunteer workers and potential voters with such crimes as disturbing the peace, resisting arrest, vagrancy, concealing one's identity, driving with only one headlight, and driving without proper license plate lights; and

- mass arrests of Afro-Americans during large scale demonstrations relating to voter registration and equal access to public accommodations.

The United States unsuccessfully sought an injunction in federal district court to prevent local officials from pursuing their coercive actions. The United States then appealed that ruling to the United States Court of Appeals for the Fifth Circuit. In Judge Wisdom's eloquent and forceful opinion, the appeals court reversed, finding that the challenged actions of local officials (1) had the effect of being coercive and (2) were for the purpose of interfering with the right to register and vote. As to the coercion prong, the appellate tribunal stated that "[i]t is difficult to imagine anything short of physical violence which would have a more chilling effect on a voter registration drive than the pattern of baseless arrests and prosecutions revealed in this record." Next, the court left no doubt that it was convinced these actions were designed to deter voting-related activities.

> Here … every indication is that the police made arrests not to redress violations of the law, but simply to harass voting workers. It is common knowledge that the police often overlook violations of relatively trivial traffic laws. Rarely if ever do police mount massive law enforcement drives to eradicate the sinful practice of driving with burned out license-plate lights. When they do so on the evening of a voter registration meeting and, fortuitously of course, catch twenty-nine Negroes on their way home from that meeting and no one else, the inference of justifiable enforcement … loses much of its force. What little force is left is dissipated by the history of official obstruction of the voting registration process so clearly established in this record. The only purpose was to harass voting workers -- a purpose proscribed by the Act.

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Section1971(b) was enacted and initially enforced in a different era, in a time when acts aimed at coercing individuals from exercising their constitutional right to vote were neither subtle nor restrained. But recent experiences have shown that §1971(b) must be reconfigured to meet more sophisticated, but similarly insidious, means of intimidating voters from exercising the franchise. Rather than arrest individuals on trumped up charges, today, as others have told this Committee in greater detail, we see the dissemination of misinformation about polling times and locations, eligibility for voting and the like. While the methods employed to deter voting differ today from those in vogue forty years ago, the deplorable objective remains the same: to help destroy the integrity of the election process by suppressing participation, especially by minorities.

Because these more modern methods of coercion and intimidation do not fall neatly within the ambit of current law, legislation amending §1971(b) is needed. I believe S. 453 fills that gap admirably. It is a natural complement to current §1971(b), which has been in place for half a century. The time for updating this provision is now.

Mr. Chairman, as you and your colleagues are well aware, "[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others." *United States v. Nixon,* 418 U.S. 603, 703 (1974). In that vein, I will make two concluding comments.

First, whenever a governmental entity seeks to enact a law that has the potential to affect protected speech it must proceed with caution. I am confident that as the Committee considers S. 453 it will ensure that the bill is sculpted in a manner that shows appropriate respect for constitutional considerations, including the importance of providing the necessary protections for expression that in some degree may be political in nature.

Second, it is incumbent upon the Committee to state explicitly in the legislative history the source of its constitutional power to enact S. 453. Unfortunately, at times in the past, Congress has been less than clear in enunciating the constitutional authority for its enactments. While it is true that the Constitution does not require it to do so,[1] it is a far better practice for

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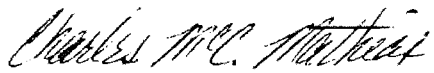
[1] See *Woods v. Cloyd W. Miller Co.,* 333 U.S. 138, 144 (1948) ("The constitutionality of action taken by Congress does not depend on recitals of the power by which it undertakes to exercise.")

The Honorable Patrick Leahy
June 4, 2007
Page 4

Congress to explain the source or sources of its power. Here, that authority lies in Art. I, §4, cl. 1, and Art. I, §8, cl. 18,[2] which together give Congress ample power to enact S. 453 as a means of protecting the integrity of the federal election process.[3]

I urge the Committee to approve this proposal and send it to the full Senate.

Sincerely,



Charles McC. Mathias, Jr.

cc: The Honorable Benjamin Cardin
United States Senator

The Honorable Arlen Specter
United States Senator

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[2] Art, I, §4, cl.1, provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

Art. I, §8, cl. 18, provides:

> The Congress shall have power ...To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

[3] *See e.g., Ex Parte Yarbrough,* 110 U.S. 651 (1884).

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The Miami Herald

December 2, 2000, Saturday

SECTION: NATIONAL POLITICAL NEWS

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LENGTH: 897 words

HEADLINE: Hundreds of Florida felons cast votes illegally

BYLINE: By David Kidwell, Phil Long and Geoff Dougherty

BODY:

MIAMI _ At least 445 Florida felons voted illegally on Nov. 7, casting another cloud over a disputed presidential election already mired in legal challenges, an investigation has found.

The tainted votes _ found in a review of nearly half a million votes cast in 12 Florida counties _ provide evidence that the presidential race was influenced by thousands of ineligible voters. Nearly 6 million voters in Florida's 67 counties cast ballots.

They also point out the failure of Florida's multimillion-dollar effort to prevent election fraud by eliminating dead and illegal voters from the registration rolls.

"This just goes to show that the most expensive voting equipment in the world is worthless when the voting rolls are that filthy," said Deborah Phillips, president of the nonprofit Voting Integrity Project in Arlington, Va. "It's just an invitation to lower the integrity of the election."

The majority of the illegal votes _ 330 _ were cast in Palm Beach and Duval counties, which decided not to participate in the statewide effort this year to purge felons, dead people and double registrants from the rolls.

Elections supervisors in those counties argue the state database compiled by the Florida Division of Elections, at a price of $4 million, was peppered with errors and mismatches.

Even so, most other counties _ including Miami-Dade and Broward _ used it to scrub thousands of ineligible voters from the rolls, as required by state law.

The lapses in Palm Beach and Duval counties could become significant if Democrats win any of their legal challenges and take the narrow lead away from Republican Texas Gov. George W. Bush. Nearly 75 percent of the illegal ballots discovered were cast by registered Democrats.

The votes could be seized upon by the Bush campaign to argue that a large number of illegal votes were probably cast for his opponent, outweighing the effect of any recount.

"It's a very powerful argument," said Robert Jarvis, a law professor at Nova Southeastern University.

Since 1868, it has been illegal for felons to cast ballots in Florida, one of 14 states with an arduous paperwork process for felons to have their rights restored. The provision has prompted a federal lawsuit by civil rights groups who allege it is discriminatory against blacks.

The review found 62 robbers, 56 drug dealers, 45 killers, 16 rapists and seven kidnappers who cast ballots. At least two who voted are pictured on the state's online registry of sexual offenders.

"There are a ton of us out there," said William Herman, 37, of Lake Worth, Fla., sentenced to five years in prison in 1989 for negligent homicide with a motor vehicle. "It shouldn't be that way, but when they give you a voter registration card, hey, what are you supposed to do?

Clarence Eden Williams, 77, of Pahokee, Fla., also voted. His picture is posted on the state registry of sexual offenders for his crimes against children. His son was surprised his father cast a ballot.

"He's got Alzheimer's, and he can't even carry on a conversation anymore," said Clarence Williams III.

The review included counties where voter lists could be obtained _ about 8 percent of the 5.9 million votes cast on Nov. 7. It encompassed all votes cast in Palm Beach and Pasco counties, most votes cast in Duval County, and only absentee votes in Miami-Dade, Broward, Lee, Leon, Hillsborough, Clay and the Panhandle counties of Escambia, Okaloosa and Bay.

To find felony voters, the review compared a list of voters in those counties with a Department of Corrections database listing felons who had served at least a year in prison. If the pattern found in the study is the same statewide, more than 5,000 felons likely cast illegal ballots.

Duval County had the highest turnout among convicted felons with at least 235 voting illegally.

Elections Supervisor John Stafford, like several other elections officials, said he didn't trust a purge list provided by the state Elections Division in Tallahassee, Fla.

"We weren't going to take that chance and delete everybody," said John Stafford, Duval's election supervisor. "We'd have been in a world of trouble. It is almost a joke because there are so many errors in it."

In fact, one of Stafford's employees found her husband's name on the list of felons by mistake, she said.

Stafford said his office sent out a letter to felons identified on the state database, and were inundated by telephone calls from irate residents _ some who said they had been misidentified as felons and others angry they'd been disenfranchised over decades-old crimes.

""We're talking about a crime when I was 19," said Theron McDaniel, of Jacksonville, Fla., convicted of dealing in stolen property in 1977. "I'm 42 years old and they're still holding that over me?

"As a matter of fact I'm a deacon in my church," he said. "I don't know anybody who's perfect in this life."

Palm Beach County Elections Supervisor Theresa LePore ignored the state purge list after a well-publicized error that mistakenly identified thousands of Floridians guilty of misdemeanors as having felony convictions. She declined comment for this article.

(staff writers William Yardley, Sara Olkon, Jason Grotto and Tina Cummings contributed to this report.)

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LENGTH: 1079 words

HEADLINE: 452 BROWARD FELONS VOTED

BYLINE: LISA ARTHUR, GEOFF DOUGHERTY AND WILLIAM YARDLEY,, larthur@herald.com

BODY:

At least 452 felons voted illegally at the polls in Broward County on Nov. 7, casting more doubt on the effectiveness of state laws to protect the integrity of the ballot box, a Herald investigation has found.

The tainted votes - found during a review of 587,928 votes cast in Broward - underscore concerns about the failure of Florida's multimillion-dollar effort to prevent election fraud by eliminating dead and illegal voters from the registration rolls.

An earlier investigation by The Herald found that of 2.3 million votes reviewed in 22 counties, at least 789 Florida felons cast ballots. That investigation found 30 absentee votes cast by felons in Broward.

Joseph Cotter, the assistant supervisor of elections in Broward, said he's surprised the number is that high.

"No felon should be voting," he said. "We try to keep the rolls clean, but I know the problems and limits of the information we're working with."

Like other supervisors around the state, Cotter faulted the "inaccurate" anti-fraud effort the state undertook after the 1997 Miami mayoral race was overturned because it was rife with fraud. The state Division of Elections hired Boca Raton-based Database Technologies Inc. to compare voter registration rolls to criminal databases and lists of dead people. The lists cast a wide net, and thousands who were eligible to vote found themselves on the purge list.

Some counties used the list to clean up their rolls. Broward sent out about 4,000 certified letters to targeted voters. After an outcry here and accusations around the state that the data was unreliable and riddled with bad information, Broward adopted an honor system.

"The state itself said we could not depend on the accuracy of the data," Cotter said. "We got hundreds of calls from people saying they were not felons. So we told people it was their responsibility to have us remove them from the list if they actually were felons who had not had their rights restored."

State records show that the 67 supervisors of elections were told of the lists' limitations, that the matches were graded as "possible" and "probable," and that the responsibility of verifying the accuracy of the matches was theirs.

"We wanted these lists to be fairly broad and encompassing," Emmett "Bucky" Mitchell, a former Florida Division of Elections lawyer who headed the purge effort, told the Herald in December. "It was never intended to be a cure-all."

Some counties such as Duval and Palm Beach essentially ignored the list. Others treated it with great skepticism and did very little with it, interviews with supervisors have shown.

In addition to the difficulty coming up with a way to administer and enforce the laws on felons voting, the laws themselves have been attacked by civil liberties advocates. Several groups have filed a federal lawsuit alleging the proc-

ess, which requires felons to navigate what some call burdensome paperwork, discriminates against blacks. Florida is one of 14 states with such policies.

Deerfield Beach resident Douglas Griffin says the law is unfair.

He has voted regularly since he was released from prison in 1990 after serving time for an aggravated child abuse conviction.

In the 2000 presidential election, the registered Democrat said he voted for Vice President Al Gore.

"I just went [and] my name was on the [rolls] so I just voted. I wasn't supposed to? Well, I didn't know that," Griffin said Thursday.

Griffin, 45, said he has been registered since he turned 18 and votes every chance he gets. He said he believed his voting rights were restored upon his release.

"From my understanding it was after X amount of years without any criminal act, after you're released," he said. "Why should it always slap me in the face? That's like going through a ghost house. It's all behind me. It's over and done."

Charles Bodziak said he was released from prison in 1993 after serving time for several convictions, including burglary and theft.

He said he registered to vote when he applied for a driver's license six years ago.

I told them I was a felon, and I said, 'You sure I can vote?' She said, 'Yes, I don't see any problem with it,' " Bodziak, 55, of Fort Lauderdale, recalled Thursday.

"I was surprised, but then I thought, after I served my time, why shouldn't I be able to vote. I didn't mean nothing wrong by it."

Miriam Oliphant, Broward's newly elected supervisor of elections who took office 14 days ago, says she believes people like Griffin and Bodziak truly don't know they are ineligible to vote.

"They think it is all OK after they serve their time," Oliphant said. "My job now is to educate people, improve communication with the state, intervene and prevent it from happening in the future."

To find felon-voters, The Herald compared a list of all Broward residents who voted Nov. 7 to a Department of Corrections database. The newspaper then checked those names against a database of felons who had been granted clemency and are now allowed to vote. Only those who served at least a year in state prison and have not received clemency are included in the newspaper's tally of felon-voters.

Of the illegal 452 ballots, 343 were cast by Democrats and 62 by Republicans.

Elections records also show that as many as 400 other illegal ballots were cast in Broward County's Nov. 7 election, most of them by unregistered voters.

Time after time across Broward, poll workers violated safeguards intended to thwart voter fraud by allowing people to vote when their names did not appear on precinct voter registers. All the voters had to do was sign statements swearing they were eligible to vote.

Oliphant thinks technology is the answer in both situations. She wants poll workers to have laptops to check the sworn statements against Broward voter databases instead of having to phone elections office workers for confirmation. And she wants the state to come up with a way for Broward and other counties to tap into the state's primary criminal databases so they can spot-check and verify information on the purge list and subsequent updates.

Cotter agrees. And while they've both heard the arguments about such a system being too costly, both wonder if the state can afford not to fix the problem.

"We all need to look at the cost this has to the whole integrity of the election process here in Florida," Cotter said.

Herald staff researcher Tim Henderson contributed to this story.

LOAD-DATE: November 5, 2001

Published Monday, January 22, 2001, in the Miami Herald

2,000 Floridians voted illegally Nov. 7

MANNY GARCIA AND TOM DUBOCQ
magarcia@herald.com

Read the series

Bad ballots

Ninety-year-old Cora Thigpen voted twice in the presidential election -- and would have liked to have voted more.

``If I had voted a half dozen times, I would have voted every time for Al Gore,'' the North Florida resident said.

Joseph Bonner, 21, voted just once -- and he's sorry he did. With a felony drug conviction, the Gulf Coast resident man was prohibited by state law from casting a ballot.

``I wish to apologize for voting,'' he wrote after he got caught. ``Please understand that my error was made in good faith.''

Their votes were among more than 2,000 illegal ballots cast Nov. 7 by Floridians who signed affirmations swearing they were eligible to vote -- but were not, a review of election records in 25 Florida counties shows.

The ballots, which all counted in the election, came from unregistered voters, ineligible felons -- and a handful of senior citizens who voted absentee first, then voted again at their local precinct after swearing they hadn't voted yet.

The voters cast ballots even though their names were not on precinct voter registration lists. All they had to do was sign the affirmations swearing they were eligible to vote. Poll workers never checked, ignoring county rules intended to combat fraud. Elections officials say the workers were overwhelmed by high voter turnout.

NEW RESIDENTS

Another problem: Many of the voters apparently didn't realize that state law required them to register in the counties where they live. Many of the people who signed affirmations were new residents who hadn't yet registered in their home county.

The 2,000 illegal affirmation votes add to an already troubling number of bad ballots cast in the Nov. 7 presidential election, which was decided by only 537 votes.

In previous stories, The Herald has reported that at least 1,200 felons who had lost their voting rights somehow slipped through and cast ballots. Those counted in the razor-thin election, too.

``Numbers like that are very troubling,'' said Kurt Browning, the election supervisor in Pasco County. ``What this does is chip away at the credibility of our whole elections system.''

Browning, who identified 64 illegal affirmation votes in his county, is part of a governor's task force investigating ways to correct problems. While better voting machines could eliminate hanging ballot chads, he wonders what can be done to better train poll workers and inform voters of registration rules.

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One possibility is the use of so-called ``challenge'' ballots issued by poll workers to voters whose registration is in question. Those ballots would be checked before they were tallied rather than afterward, as they were on Nov. 7.

FOUND IN REVIEW

The 2,000 newly discovered illegal votes turned up in a review of affirmations filed in 25 Florida counties where records were available. Because ballots are secret -- and many of the voters failed to identify party affiliation on their affirmations -- it's impossible to know precisely how the votes affected the outcome of the election.

Statewide, the bad ballots were cast by:

- About 1,700 people who were not registered to vote in counties where they cast ballots. This includes people who were removed from the voting roll because they had not voted in several years, had moved out of the county or simply were not registered voters.

Nathaniel Wiseman, 30, said he voted in Orange County although he is not a registered voter. Wiseman, a window tinter, said he moved into the county a year and a half ago from neighboring Seminole County, but never bothered registering.

``I told them I was not registered,'' said Wiseman, a Democrat who said he voted for Al Gore. ``They looked around at each other and asked the precinct deputy for advice and they let me vote.''

- More than 100 additional felons who had been stripped of their civil right to vote.
- Six voters who cast absentee ballots, then voted at their local precincts.

One of them was Cora Thigpen of Madison County, which borders the Georgia state line.

``I do remember something about the absentee ballot, and I do remember going to the polls,'' Thigpen said in a telephone interview.

Elections Supervisor Linda Howell said the signature on Thigpen's absentee ballot matched Thigpen's signature on the voter register at Precinct 3.

Howell said the poll worker ignored the notation on the register showing Thigpen already had voted absentee.

``I was so shocked when I saw it,'' Howell said. ``Why the clerk allowed it, I cannot tell you. I guess we are always going to have mistakes because we are human.''

- About a dozen people who voted in one county but live in another.

In the tiny town of Ocoee, nestled in Orange County, Keith Evans voted for president -- although he told poll workers he lives 90 miles away in Tampa.

``I feel more comfortable voting back home,'' said Evans, 19, a computer technician and college student who said he voted for Gore. ``I was born and raised there. I know the issues. I just didn't know I couldn't vote there. The poll workers didn't say anything.''

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In Lake County, in the heart of central Florida, James K. Rogers voted for president although he admitted he lives in neighboring Sumter County.

``I moved to Sumter, but I've been too busy with work to register there,'' said Rogers, 28, a tree relocator. So I drove back to Lake so I could vote.''

Rogers declined to tell The Herald for whom he voted except to say: ``I was happy with the outcome.''

• Dozens of voters whose registration applications were deemed invalid because they were incomplete or filled out incorrectly. Others submitted applications after the Oct. 10 deadline for the presidential election.

Few counties were spared problems.

In Volusia County, election officials discovered 277 bad votes, almost all from non-registered voters. Some 73 bad votes came from a precinct at Bethune-Cookman College.

``Students were allowed to vote although they were not registered,'' said Denise Hansen, assistant supervisor of elections.

Weldon Blake, a college employee and longtime vote-drive organizer, said the Rev. Jesse Jackson appeared at the predominantly black campus on Oct. 10 -- the state registration deadline for the presidential election -- urging students to register. Many of the registrations were filled out quickly and were missing information, he said.

That day, the Volusia elections office was flooded with boxes filled with applications. Many were rejected.

Hansen said that typically signatures, dates of birth and citizenship information were missing.

Hansen said the election's office could not reach many students who applied at the last minute. As a result, she said, many students went to the polls believing they were registered.

``The poll workers could not get through on the phone so they erred on the side of protecting someone's right to vote,'' Hansen said.

In Jacksonville on Election Day, poll workers allowed 327 unregistered voters to cast ballots, precinct registers show. The tally includes 162 people who filled out voter registration applications at the precincts -- nearly a month after the Oct. 10 registration deadline.

Assistant Elections Supervisor Dick Carlberg said poll workers took matters into their own hands.

Poll workers are supposed to call their elections headquarters to verify registrations when a voter appears without identification or is not listed on the voter roll. But in hundreds of instances, the calls were not made. Other times, poll workers said they tried to call but got a busy signal.

Robert Kurtzke, a retired construction worker, oversaw voting at The Tides at Marsh Landing in Duval County, where 15 non-registered voters cast ballots.

``There are really no safeguards,'' Kurtzke said. ``The system is set up to allow people to vote. Think about it: You don't even need a voter's card to vote anymore, just a picture ID. But what

could you do when someone showed up without a picture? To make things worse, it was impossible to get through on the phones to check if someone was registered, so we let them vote. What could you do?"

Herald staff writers Larry Lebowitz, Jasmine Kripalani, Anabelle DeGale and Lisa Arthur contributed to this report.

40581.171

Inquiry finds evidence of fraud in election

Cast ballots outnumber voters by 4,609

By GREG J. BOROWSKI
gborowski@journalsentinel.com

Investigators said Tuesday they found clear evidence of fraud in the Nov. 2 election in Milwaukee, including more than 200 cases of felons voting illegally and more than 100 people who voted twice, used fake names or false addresses or voted in the name of a dead person.

Officials said charges will be filed in coming weeks, as individual cases are reviewed and more evidence is gathered.

Nonetheless, it is likely that many - perhaps most - of those who committed fraud won't face prosecution because city records are so sloppy that it will be difficult to establish cases that will stand up in court.

And even now, three months after the investigation, officials have not been able to close a gap of 7,000 votes, with more ballots cast than voters listed. Officials said the gap remains at 4,609.

U.S. Attorney Steve Biskupic likened it to trying to prove "a bank embezzlement if the bank cannot tell how much money was there in the first place."

Biskupic announced the preliminary findings at a news conference, along with Milwaukee County District Attorney E. Michael McCann, who is also overseeing the joint inquiry.

Tuesday's announcement comes after a Journal Sentinel investigation that found widespread problems with the election in the city, including that the election totals themselves were not double-checked by city and county panels charged with doing so.

Some of the problems identified by the newspaper, such as spotty compliance with procedures to verify same-day registrants, are broader and are the subject of a statewide audit approved by lawmakers.

Tuesday's announcement could breathe new life into the Republican-backed photo ID debate, which did not survive a veto from Democratic Gov. Jim Doyle and might instead eventually go to voters as a proposed constitutional amendment.

A photo ID requirement might have caught some of the problems highlighted in Tuesday's preliminary report. It notes cases of people voting in the name of a dead person or as someone else. Investigators located some people listed as voting who said they did not vote.

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In other cases, according to Tuesday's report, people "registered and voted with identities and addresses that cannot in any way be linked to a real person."

Officials did not identify how many fit each category.

Investigators have focused only on the City of Milwaukee in reviewing duplicate-voting offenses. Officials said Tuesday, though, that they would expand the review of felons voting illegally to Milwaukee suburbs.

The newspaper found at least 278 felons who voted statewide, though only a partial review could be completed because of a state law that bars public access to birthdates of voters.

Tracking illegal votes

The fraud investigation has focused on the more than 70,000 people who registered to vote on election day, not the other 200,000-plus voters. That is because registration cards provide a paper trail, which officials said would be stronger in court than computerized records.

It is unclear what identification these 100-plus people provided at the polls to register. State law allows utility bills and leases to be used or for one voter to vouch for another.

Biskupic, appointed by a Republican, and McCann, a Democrat, said they had pledged to avoid partisanship in the matter and avoided questions relating to reforms and proposals.

The announcement, though, prompted renewed calls for photo ID from Republicans, while Doyle pushed again for his set of reforms, which he said would do more to tackle specific problems.

For instance, investigators found "deputy registrars" working for registration drives had submitted at least 65 fake names, though no one apparently voted from the addresses. Doyle's plan would prohibit offering financial incentives, such as paying by the signature, in such drives.

In Madison, Doyle said a photo ID requirement is unnecessary. He urged prosecution of any offenders.

"I don't think many people, if they know there are real consequences for voting twice, and that there have been prosecutions for voting twice, are going to do it because the risk of being caught and the penalty far outweighs the advantage of casting one extra vote," Doyle said.

In response to the findings, Sen. Joe Leibham (R-Sheboygan) said as early as next month he would advance a bill similar to the one vetoed by Doyle. It also could be part of the

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recommendations from a Legislative Council task force that has been meeting on reforms.

While Doyle has argued the measure would make Wisconsin one of the strictest states in the nation, very few other states allow same-day registration.

Assembly Speaker John Gard (R-Peshtigo) said if Doyle again vetoes the requirement, he would move to make it part of the state constitution, a two-year process that requires a statewide referendum but does not require the approval of the governor.

"The next presidential election in Wisconsin, I guarantee you'll need a photo ID to vote," said Gard, who is running for the U.S. House. "I'll get this done if it is the last thing I do around here."

U.S. Rep. Mark Green, a Green Bay Republican who has introduced a national photo ID requirement, said: "People are having their faith in the election system shaken. This news will make it much, much worse."

Green is running for governor, as is Milwaukee County Executive Scott Walker, who also backs a photo ID requirement.

"Clearly, there is proof that fraud took place in the November 2 election," Walker said.

Milwaukee Mayor Tom Barrett attended the news conference, an unusual occurrence for an announcement by prosecutors.

From the start, Barrett said he welcomed the inquiry but also noted at several points in recent months that he had seen no hard evidence of fraud in the system.

He acknowledged Tuesday the findings pointed to fraud and said again "any individual who committed fraud (should) be prosecuted."

Asked if a photo ID requirement would have made a difference, he said it would not have prevented felons from voting and would have had little impact on other problems.

Biskupic said there was no indication of a widespread conspiracy to commit voter fraud, or of any knowledge or involvement by poll workers or any other city officials.

The city's record-keeping problems meant investigators from the FBI and Milwaukee Police Department have logged more than 1,000 hours reviewing the 70,000 same-day registration cards, including 1,300 that could not be processed because of missing names, addresses and other information.

Indeed, about 100 cards described as "of interest to investigators" cannot be located, officials said. And within the past few weeks, police found a previously lost box of the cards at the Election Commission offices.

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Biskupic and McCann said they remain troubled that three months after the investigation began that city officials have been unable to account for a gap of about 4,600 votes, with more ballots counted than people listed as voting.

That reflects a new assessment of the 7,000-vote gap first identified by the Journal Sentinel. Although city election officials initially blamed postelection data entry for the flaws, the newspaper found gaps existed at dozens of wards, with more votes counted than people tallied in log books.

The gap has been narrowed to 4,600 by a closer review of election day logs and other records, which authorities placed off-limits to the newspaper during the investigation.

McCann said: "I will not be satisfied if we cannot uncover that - what the explanation is, or a reasonable explanation."

In all, about 277,000 people in Milwaukee voted in the election. Thus, the cases identified in the investigation constitute a small portion of the total vote.

The findings, however, carry extra significance in a state that had an 11,000-vote margin in the presidential contest, one of the closest in the nation.

Democrat John Kerry topped President Bush in Wisconsin, mainly because of Kerry's margin in Milwaukee and Madison.

Had a larger state, such as Ohio, gone the other way, it could have led to a Florida-style recount here that would have turned on many of the issues that instead were left for the newspaper to uncover in its extensive investigation.

The federal-local investigation was launched Jan. 26, a day after the Journal Sentinel reported that some 1,200 votes in the November election came from invalid addresses.

Among other findings, some 1,300 same-day registration cards were processed by poll workers who allowed people to vote even though the cards were incomplete. Some 548 had no address listed and 48 gave no name - yet the person was allowed to vote. Another 141 listed addresses outside the city.

The newspaper was denied access to those cards, on the recommendation of the city attorney's office, citing the inquiry.

Felons voted

Reviewing information it had access to, including a computerized list of people recorded as voting, the newspaper identified at least 278 felons who illegally voted statewide, though the vast majority came from within the city.

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The real number is likely far higher because the newspaper was able to review only about 38% of the 2.98 million people who voted in the state because of the law that bars access to birth dates. The newspaper was able to link various databases and compare them to a state list of felons on probation or parole at the time of the election.

In response to the newspaper's reports, Doyle and many Republican lawmakers said that rule should be rescinded.

In Wisconsin, only felons who have completed probation or parole are allowed to vote.

Biskupic and McCann said these cases can be hard to prosecute, since it must be established that the felon knew he or she was not allowed to vote and voted anyway.

Thus it is unclear how many of the 200 felons investigators had identified will ultimately be charged.

The newspaper also identified numerous cases in Milwaukee where the same person appears to have voted twice, though that analysis was hampered by major computer problems at the city.

Those problems, which city officials labeled a "glitch," meant hundreds upon hundreds of cases where people are incorrectly listed as voting twice. These are in addition to cases of double voting identified by investigators.

The investigators have been focusing on 100-plus cases in this area. The cases take on many forms.

For instance, non-residents used non-existent city addresses to vote in Milwaukee. Officials are checking to see if they also voted elsewhere, such as from their actual address.

Officials indicated some of the fraud cases could be handled at the federal level because the election involved federal candidates, while other cases could involve state charges.

McCann and Biskupic asked anyone with information on possible fraud call the election task force at (414) 935-7802.

In March, Lisa Artison, a Barrett appointee, resigned as executive director of the Election Commission. She had been under fire for her handling of the election.

Sharon Robinson, head of the Department of Administration, has been overseeing the office and is chairing a city task force reviewing the election. Its report could be issued this month.

Patrick Marley of the Journal Sentinel staff contributed to this report.

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MSNBC.com

Felon arrested in Hobe Sound after 16 years of voting

TCPalm.com

A Hobe Sound man, convicted on a felony charge 25 years ago and denied the right to vote ever since, was arrested Saturday for allegedly continuing to cast his ballot in Martin County for every mid-term and presidential election from 1984 to 2000. Benjamin Miller, 75, of Hobe Sound, was arrested and charged with an election code violation, according to a Martin County Sheriff's Office report. The arrest stemmed from a 2005 clemency investigation for the restoration of Miller's civil rights, including his right to vote.

Miller was convicted of second-degree murder in August 1979, but has voted 10 times since 1984, according to a sheriff's complaint affidavit. He was removed from the voter roll in Martin County in 2000 after the Supervisor of Elections Office discovered his voting rights had not been restored, the affidavit stated.

But nothing happened to Miller until 2005, when the Florida Parole Commission began the investigation for the restoration of Miller's civil rights. That investigation eventually led to a Sheriff's Office investigation that revealed the alleged incidences of voter fraud.

Miller posted the $500 bail Saturday and was released from the Martin County Jail.

Comments

URL: http://www.msnbc.msn.com/id/19088443/

82 of 195 DOCUMENTS

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SHOW: All Things Considered (8:00 PM ET) - NPR

July 25, 2002 Thursday

LENGTH: 2259 words

HEADLINE: Absentee ballot fraud is tipping elections in Dallas

ANCHORS: JOHN YDSTIE; SUSAN STAMBERG

REPORTERS: WADE GOODWYN

BODY:

JOHN YDSTIE, host:

From NPR News, this is ALL THINGS CONSIDERED. I'm John Ydstie.

SUSAN STAMBERG, host:

And I'm Susan Stamberg.

In Dallas, allegations of vote fraud surround a special election between two City Council candidates, one white, one black. A Texas judge ruled that absentee ballots from Dallas' minority neighborhoods were forged, and he ordered a new election. NPR's Wade Goodwyn reports law enforcement officials and local politicians say that absentee ballot fraud in South Dallas is now jeopardizing the integrity of the city's elections.

WADE GOODWYN reporting:

In Texas, you don't have to be absent to vote absentee. You just have to be over 65. It's a straightforward law designed to help the elderly vote. But law enforcement officials here say that over the last decade it has become increasingly apparent that absentee voting in Dallas is infused with fraud.

Mr. ERIC MOUNTAIN (Dallas District Attorney's Office): It's not a small problem.

GOODWYN: Eric Mountain is the chief prosecutor of the public integrity section of the Dallas district attorney's office. Mountain says the main problem is by state law the city is obligated to release to the public a list of everyone who's requested an absentee ballot. Not only that, the date when those ballots go out in the mail also must be made public. The assistant DA says the day those absentee ballots get delivered to voters' homes, political campaigns in South Dallas have what are called voter assistants waiting right there at the mailboxes.

Mr. MOUNTAIN: 'You have your ballot? Oh, we'll take care of it,' and, 'Who do you want to vote for? OK, we'll take care of it,' or picking the ballot up and seeing who they had voted for, and if they voted for the right candidate, well, then that ballot would find its way back to the Election Department, but if they voted for the wrong candidate, well, that ballot mysteriously never found its way to be counted at the Elections Department.

GOODWYN: Under Texas law, these voter assistants are allowed to take the absentee ballot from the voter and deliver it themselves. Mountain says in the last few elections, political workers in South Dallas have been getting bolder.

Mr. MOUNTAIN: It's not unusual to find voters who were surprised that a ballot appeared at their home because they didn't ask for it in the first place.

GOODWYN: And some political operatives have now refined the process so that they are able to cut the absentee voter out of the process altogether. Larry Duncan is a four-time city councilman who lost his most recent election by 16

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votes, though he won by more than 3 percentage points among those who actually went to the polls. Duncan says, and a state district judge agreed, that he was beaten by absentee ballot fraud.

Mr. LARRY DUNCAN (Four-time Dallas City Councilman): The election was stolen.

GOODWYN: Larry Duncan is running his rematch campaign for City Council out of his living room.

Mr. DUNCAN: That's number one. Number two is get a hundred first-class stamps--there's the check...

Unidentified Man: OK.

Mr. DUNCAN: ...and take the stamps...

GOODWYN: Duncan is a white liberal Democrat. He's been a thorn in the side of the city's black political establishment for 20 years. His predominantly poor and working-class black district elected him four straight times to the City Council. Though downtown Dallas glimmers just five miles away, swaths of South Dallas look like a scene from a Faulkner novel--streets unpaved, no curbs or sidewalks, the storm sewage still collecting in open ditches. Duncan has won here by sticking to grassroots organizing and by not betraying the interest of the poorest voters he represented. But South Dallas' black and Hispanic political leaders have always believed that a minority candidate should hold Duncan's City Council seat. Larry Duncan says that in trying to beat him, South Dallas political workers used what has become a very potent weapon.

Mr. DUNCAN: Dallas' dirty little secret. Vote brokering has been practiced in certain neighborhoods, the poorest neighborhoods, black and Hispanic, for as long as anybody can remember. They only try it in the poorest of the poor, where they find a lot of senior citizens at home, alone. A lot of times the voter is not even involved. They'll just take it right out of their mailbox.

GOODWYN: In South Dallas, political campaigns hire contractors who get paid anywhere from 5 to $25 per ballot. And given voter apathy, it doesn't take thousands and thousands of absentee ballots to swing a Dallas election. More like a few hundred can do it. This expectation that Election Day equals payday is not new in Dallas. Loralee Bartos(ph) is a former political consultant. A liberal Democrat from the Midwest, Bartos says her eyes were opened when she began working in Dallas politics in the '80s.

Ms. LORALEE BARTOS (Former Political Consultant): There was just an expectation that you would pay walking-around money in the minority community, and it was a concept totally foreign to me. I mean, I grew up in squeaky-clean Minnesota, and it's just amazing what happens. I was always kind of taken aback.

GOODWYN: Loralee Bartos refused to pay and suffered the consequences.

Ms. BARTOS: It was during that time that I developed the reputation as a racist because I guess I didn't know how to play the game.

GOODWYN: Bartos is now out of Dallas politics, so she no longer has any reservations talking about the vote fraud in her city.

Ms. BARTOS: The house of the vote broker in my neighborhood--there were 13 people registered there. They outvoted at that house, with early votes, the number of people who actually turned up at the polls, 'cause I was running the election.

GOODWYN: There may be no better guide to the world of absentee voting in South Dallas than 49-year-old Sandra Crenshaw. Crenshaw has been organizing African-American campaigns for 25 years.

Ms. SANDRA CRENSHAW (Campaign Organizer): Well, you had to run two campaigns. You had to run one that was targeted towards 65 or older and then one for those people who usually vote at the polls on Election Day.

GOODWYN: Sandra Crenshaw says things became competitive when the number of minority candidates increased in the 1980s and '90s. Political campaigns began using computers to map out where all the elderly voters lived street by street. You put in an absentee ballot request for them, and then the day the mailman delivers their absentee ballot, you follow the mailman so that you're right there when the ballot goes in the mailbox.

Ms. CRENSHAW: It is not illegal if you signed up people to vote and you're trying to protect that individual from being met with individuals who are campaigning for the other side, and you know that the mail is delivered

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on a certain day at a certain time, then you would go out and campaign. And as soon as the mailman would drop off the mail ballot, then you would be there at the door saying, 'Ma'am, I'd like for you to consider the candidate, you know, of my choice.'

GOODWYN: Working with elderly voters in South Dallas can be very time-consuming. Crenshaw says this older generation of black ladies born of the South still mostly do their own cooking. There's often an expectation that you'll sit down for a piece of cake while you talk about who to vote for. But other operatives expedite this process by cutting out the voter entirely, picking the ballot out of the mailbox before the voter sees it or having the ballot mailed to a different address altogether and simply signing the voter's name.

Ms. CRENSHAW: The senior citizens who are being victimized by some of these unscrupulous people--they don't even know that they're being victimized.

GOODWYN: And Crenshaw says she's embarrassed by the extent of the fraud in South Dallas' nursing homes.

Ms. CRENSHAW: Well, you have people that are comatose. I mean, there are people who are completely out of their minds that are being slipped a piece of paper, they don't know what they're signing, they don't know who they're voting for. And that's where I really saw a lot of abuse.

GOODWYN: Crenshaw says the nursing home owners in South Dallas rarely do anything to stop the voting because it would be seen as being racially disloyal. So the question is: How big an impact is fraud having on the city's elections? Probably nobody has done more research on this question than Jim Shoots(ph), a reporter for the Dallas Observer, the city's alternative newsweekly. Shoots has studied absentee vote patterns precinct by precinct, and he believes that any election that includes South Dallas can no longer be trusted. He says the city's two most important recent elections have been skewed, one a $2 billion project that will transform downtown, called the Trinity River Project, the other a new $500 million basketball and hockey arena.

Mr. JIM SHOOTS (Reporter, Dallas Observer): And those both won by hair's-breadth margins. The Trinity River referendum passed by 1.3 percent, barely 1,600 votes. And I was able to account for almost 90 percent of that margin of victory in the absentee votes in just 11 precincts.

GOODWYN: Both the district attorney's office and state legislators closest to this problem share the perception that election results in Dallas are not what they appear to be. Some black leaders in Dallas have begun talking about the absentee ballot fraud, especially since the judge's ruling in the Duncan/Thornton-Reese case. John Wiley Price is the Dallas county commissioner and one of the city's most powerful black politicians. While Price acknowledges there's a problem, his biggest concern is that any effort to clean up the fraud will be used to try to stop blacks and Hispanics from voting absentee altogether.

Mr. JOHN WILEY PRICE (Dallas County Commissioner): We're not going to let anyone deter us with regards to this being a legitimate avenue for individuals to cast their vote. I hope that the district attorney will not play partisan politics, and those suspects that they can validate will be charged. But he doesn't need to do this from a politically charged environment.

GOODWYN: Price acknowledges that he's heard the stories about vote fraud, like the one where vote brokers will show up at a candidate's office on Election Day with bails of absentee ballots. The brokers demand payment for their expenses or the ballots get dumped uncounted in the Trinity River. John Wiley Price says that kind of behavior has to stop. But he defends the practice of assisting voters from their homes as long as the voter gets to make up his or her own mind. Price says in-home voter assistance is really no different than giving the elderly a ride to the polls.

Mr. PRICE: If I picked those same individuals up and said, 'John Wiley Price, John Wiley Price, John Wiley Price,' all the way to the polls, dropped them at the door, go in there, they do the John Wiley Price or the Democratic Party, it is the same.

GOODWYN: While there have been some successful attempts to prosecute the fraud in Dallas, there's been only one successful conviction. The DA's office and state legislators say that's because Texas law isn't clear enough on the issue of what constitutes legal and illegal voter assistance. Dallas state Representative Steve Wolens says he's writing new legislation. Wolens says that while Dallas is the undisputed vote-brokering capital of Texas, the same problems are beginning to crop up in Houston, too.

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State Representative STEVE WOLENS (Dallas): Right now, the laws in Texas have been tested, and they've been shown to be inadequate on this narrow issue of absentee ballot fraud.

GOODWYN: Under Wolens' proposed legislation, the absentee ballot list would no longer be made public. Definitions of what constitutes proper assistance would be spelled out. It would be a felony, not a misdemeanor, to break the law. Wolens says under his bill, groups of anonymous contractors would no longer be allowed to descend on poor neighborhoods.

Rep. WOLENS: 'Who are you? What's your driver's license, your address? We want to know everything about you. Sign here. You're certified. And every time you touch the ballot, we are going to find your fingerprint on it. We'll be able to track your involvement with the ballot at every stage.'

GOODWYN: Wolens plans to submit his legislation during the upcoming session in January. In the meantime, there's a special election between City Council candidates Larry Duncan and Maxine Thornton-Reese. Thornton-Reese is indignant that she's being forced to run again.

Ms. MAXINE THORNTON-REESE (City Council Candidate): I can't say that there is a racial element in the judgment, but, you know, as African Americans, we have never gotten necessarily our due in courts. This is historical.

GOODWYN: Thornton-Reese doesn't believe that there's widespread absentee ballot fraud in South Dallas, and she certainly does not think that she won her last election because of any fraud.

Ms. THORNTON-REESE: No, I don't believe that any election is perfect, but I don't think that there is wholesale voter fraud in any election. I think that this is one way to disenfranchise African Americans who use this as one of their major ways of voting.

GOODWYN: Election Day is July 27th, and some South Dallas voters are already complaining that their absentee ballots have been stolen. Wade Goodwyn, NPR News, Dallas.

LOAD-DATE: August 19, 2002

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National Review

June 11, 2007

LENGTH: 1311 words

HEADLINE: Messin' with Ballots - No matter what Democrats now say, voter fraud is real.

BYLINE: Byron York

BODY:

On April 15, a New York Times editorial declared that concerns about voter fraud -- concerns that lay behind the Bush administration's firings of some U.S. attorneys -- are a "fantasy." The Justice Department has investigated fraud allegations for five years, the Times wrote, and "has not turned up any evidence that voter fraud is actually a problem." The Bush White House was not only wrong to be worried about some prosecutors' less-than-enthusiastic pursuit of fraud allegations, the paper concluded, it was wrong to be worried at all about such a non-issue.

It was an extraordinary position for the Times, given that, two years earlier, the paper commended a group of Ohio lawyers who went to court alleging that the Bush campaign had engaged in massive voter fraud in the 2004 presidential election. The lawyers accused the Bush team of engaging in a variety of illegal acts, including a scheme in which top political strategist Karl Rove was said to have personally hacked into Ohio's electronic voting system, erasing thousands of Democratic votes. The lawyers had no evidence to support their allegations -- the Times conceded that -- but the paper said they had performed a "public service" by making the charges, because they had raised "concerns that many voters shared."

The Times's change of heart is by no means unique on the left. A few days before the 2004 election, Markos Moulitsas, the influential Democratic blogger/activist, warned about a "nationwide" wave of voter fraud. The day after the election, another influential Democratic blogger/activist, Josh Marshall, advised John Kerry not to concede, because "this whole contest has been too dirty, too marred with voter suppression, dirty tricks and other unspeakable antics not to press every last possibility [of challenging the results]." Lately, however, both Moulitsas and Marshall have railed repeatedly about the "bogus" issue of voter fraud.

What's going on? After all its worries about Ohio in 2004 -- and before that, Florida in 2000 -- why has the Left decided that voter fraud simply doesn't exist? The short answer is: It's useful. In 2000 and 2004, charging voter fraud was a useful way to question the legitimacy of George W. Bush's presidency. Now, in 2007, denying the existence of voter fraud is a useful way to question the legitimacy of George W. Bush's presidency. If the other guys are accused of doing it, they say, it's a scandal; if we're accused of doing it, it's a fantasy.

The only problem is, voter fraud is a problem. It was a problem when Democrats were touting it, and it's a problem now when Democrats are denying it, and it will remain a problem in the future. Three examples from recent years are enough to prove that concerns about voter fraud are not a fantasy, but a distinct reality.

* St. Louis, 2000-2001. It would be an understatement to call conditions at the polls in St. Louis chaotic during the 2000 presidential election. With voters' rolls a shambles, would-be voters crowded polling places, so much so that Democrats convinced a judge to order the polls to stay open three hours after the specified closing time. Republicans dashed to court and got another judge to order them closed after only 45 minutes' additional voting. The extension alone was not evidence of fraud, but a few months later, as the city was gearing up for a mayoral election, the St. Louis Post-Dispatch found that one in ten voters registered in St. Louis were also registered somewhere else. All those registrations made for some eye-popping totals. "The number of registered voters threatens to outnumber the voting age population," wrote Sen. Christopher Bond (R., Mo.) in a Washington Post op-ed. "A total of 247,135 St. Louis residents, dead or alive, are registered to vote compared with the city's voting-age population of 258,532. That translates to a whopping 96 percent registration rate, the envy of even Pyongyang."

Then there were the 3,000 voter-registration cards submitted by Democratic groups on the last day voters could register for the mayoral primary. A number of them turned out to be for dead people. One registered voter was a dog named Ritzy. Mayor Clarence Harmon -- a Democrat -- told the Associated Press that voter fraud is "widespread and

insidious in the body politic." "This is a little river town that's got a very bad history of very bad election fraud," Harmon said. "If we don't straighten out this fundamental issue, what's going to happen to us?"

After the election, Bond produced a thick dossier of irregularities entitled "St. Louis Election Fraud: A Primer." He blamed many of the problems on the Clinton-era "motor voter" law, which loosened requirements for voter registration. But his proposals for reform faced determined opposition from Democratic officials led by Missouri representative William Lacy Clay. In the end, a compromise was reached, with better voting machines and registration standards. But in St. Louis, the next voting scandal is only an election away.

* South Dakota, 2002. The race between Democratic senator Tim Johnson and Republican challenger John Thune was always close, even before we learned that Johnson defeated Thune by just 524 votes. Then we learned that people were allowed to vote without identification; that out-of-state attorneys brought in by the Democratic party coached voters at the polls; and that those lawyers, in effect, engaged in illegal electioneering by setting up get-out-the-vote offices at the polls. Then there was the woman whom the state Democratic party paid $2 for each new voter she signed up on the state's Indian reservations. She made almost $13,000, much of it from suspicious signatures. She was charged with forgery, but the case fell apart when a state expert witness suggested that all the people who said their names had been signed -- not one of them, not two of them, but all of them -- were lying. Baffled state officials dropped the case, and it all ended in a murky mess.

* Washington State, 2004. The governor's race between Democrat Christine Gregoire and Republican Dino Rossi was among the closest ever: Gregoire won by 129 votes out of 2.8 million cast. Various early counts showed Rossi winning by 261 votes, and then by 42 votes, and then, finally, the balance tipping slightly to Gregoire. A race that tight, and that important, was going to receive a lot of scrutiny, and subsequent investigations revealed lots of problems.

For example, in King County alone, officials found 1,800 more votes than people who had signed in at polling stations. They also found hundreds of provisional votes that were counted as regular votes. They also found dozens of examples of that old favorite, dead voters. After the controversy, state officials did a first-ever examination of the voting rolls and in 2006 announced that they had deleted 55,000 registrations.

That figure included 19,579 names of people who were dead and 35,445 otherwise illegal registrations. A little later, state officials purged another 848 names from the voting rolls -- all were felons found to be illegally on lists of eligible voters.

St. Louis, South Dakota, and Washington State. If you want more examples, you can add the phony names that were registered to vote in Ohio, the dead who voted in Milwaukee, and a long list of election tricks in Louisiana. Not all those cases resulted in criminal prosecutions. And not all the prosecutions resulted in guilty verdicts or pleas. But each case was serious enough to warrant investigation. And each revealed significant problems in the voting systems of various states. And, of course, fraud does not have to be terribly widespread to affect elections that are decided by 524 or 129 votes.

In other words, voter fraud is a real concern. It is difficult to pursue, and difficult to prove. But it's not a fantasy. Ritzy the dog could tell you that.

LOAD-DATE: June 1, 2007

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The New York Times
nytimes.com

November 2, 1990

THE 1990 CAMPAIGN; Democrats Accuse G.O.P. of Voter Intimidation in Two States

AP

The Democratic Party charged today that Republican organizations in North Carolina and Texas were trying to intimidate black voters by mailing to residents of predominantly black districts postcards that bear fraudulent information for casting ballots in the elections next Tuesday.

Republican officials dismissed the accusation as "demagogic."

The Democrats leveled their charge in a statement issued by Ronald H. Brown, their national chairman, as he made a campaign appearance in Chicago. At the same time, Mr. Brown sent a hand-delivered letter to the Justice Department in which he asked Attorney General Dick Thornburgh and John R. Dunne, the Assistant Attorney General in charge of the civil rights division, for an immediate investigation into possible rights violations.

The general targets of the Democrats' complaint are "ballot security programs." The stated aim of these programs, which have frequently been undertaken in the past by local political organizations, is to make sure that people who turn up at the polls on Election Day are qualified to vote and that the balloting is therefore free of fraud.

But the programs have been the focus of a decade-long attack by the Democrats' national organization, which charges that in practice they are tools of intimidation. Perhaps the Democrats' most notable success in this attack came in a 1982 case in New Jersey, where, among other steps, local Republicans had hired armed security guards to check voter credentials. Today Mr. Brown wrote to all 50 Republican state chairmen to remind them that as a result of that case, their party had entered into a consent decree barring them, in Mr. Brown's words, from conducting "ballot intimidation and ballot security activities."

Among the evidence of what the Democrats call new Republican misconduct are postcards mailed to voters in heavily black North Carolina precincts. The postcards said in part that to be eligible to vote, a person must have lived in the same precinct for the last 30 days. That assertion was in error, and Mr. Brown called it fraudulent. Black votes will be critical next Tuesday in North Carolina, where Senator Jesse Helms, a Republican incumbent, is in a tough fight against former Mayor Harvey Gantt of Charlotte, who is black.

In East Texas, meanwhile, postcards sent to Gregg County voters who had requested absentee ballots urged them to 'throw that mail ballot in the trash" and "walk proudly into the voting place" to do honor to "the many who fought and died for your right to walk into the polls." Mr. Brown said today that once Texans request absentee ballots, they cannot vote in person without enduring a complicated ballot procedure.

Leslie Goodman, spokeswoman for the Republican National Committee, said in response to the

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Democrats' charges: "The R.N.C. has nothing to do with the ballot security program in North Carolina and Texas or anywhere else. This unsupportable scare tactic by the Democrats is nothing more than part of their annual get-out-the-vote plan, in which they will say anything to make Republicans into devils in the demagogic attempt to increase their turnout."

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October 17, 2006

The Honorable Alberto R. Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Gonzales:

On behalf of the undersigned organizations, we write to strongly request an immediate investigation by the Federal Bureau of Investigation of Barbara Coe, the California Coalition for Immigration Reform, Sergio Ramirez and/or persons acting or purporting to act on their behalf for potential violations of the voter intimidation provisions of the Voting Rights Act and other federal election-related statutes (42 U.S.C. § 1973(i)). Section 1973(i) specifically prohibits intimidation, threats, or coercion for voting or attempting to vote.

The basis of our request for an investigation is a Spanish-language letter received by Latino voters in Orange County, California that, among other things, purports to warn them that only United States citizens are permitted to vote; that voting by non-citizens is a crime and a deportable offense; and that a host of immigration restriction organizations has access to a federal computer database of properly registered voters. Attached is a copy of the letter with an English translation.

The letter is a naked attempt to intimidate duly registered Latino citizens from exercising their right to vote. It is our understanding that the letter is targeted to Spanish-surnamed naturalized United States citizens born in Latin American countries who are registered voters. It does not appear to be limited to new registrants nor sent to voters of other ancestries. Nonetheless, any effort to coerce, threaten or intimidate voters is an offense to the democratic system and deserves your full investigative and prosecutorial authority. While the letter is ostensibly designed to deter fraud, the real purpose and effect is to discourage eligible Latino voters from exercising their right to cast a ballot. In so doing, the letter also contains false information and misleading legal advice. For example, the letter states that voting by immigrants is illegal when, in fact, all naturalized United States citizens are immigrants.

As you may know, the appearance of these letters follows a sporadic pattern of attempts at voter intimidation and suppression in recent years in Orange County. Past incidents investigated by the U.S. Department of Justice involved the stationing of uniformed security guards, posing as FBI special agents, at polling places to intimidate Latino voters. After the 1996 general election, Barbara Coe and the California Coalition for Immigration Reform began circulating letters similar to the one at issue here in subsequent elections.

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We urge the Civil Rights Division to open an investigation and to take other appropriate steps including assigning federal observers or attorney coverage to monitor polling places during the November election in Orange County.

Thank you for your prompt attention to this matter. If you need additional information, please contact Cynthia Valenzuela, MALDEF's Litigation Director, at 213-629-2512.

Sincerely,

American Latino Voter Education Fund
Art Montez, President, Centralia School Board
Asian American Justice Center (AAJC)
Asian Pacific American Legal Center of Southern California (APALC)
Benny Diaz (recipient of letter)
California Utilities Diversity Council
Latino Health Access
Latino Journal
League of United Latin American Citizens, California Council
League of United Latin American Citizens, California District 7
League of United Latin American Citizens Foundation, Orange County
League of United Latin American Citizens, Garden Grove Council
League of United Latin American Citizens, Orange County, District 2
League of United Latin American Citizens, San Benito County Council #2890
Mexican American Legal Defense and Educational Fund (MALDEF)
National Association of Latino Elected and Appointed Officials (NALEO)
National Council of La Raza (NCLR)
National League of United Latin American Citizens
Orange County Asian and Pacific Islander Community Alliance (OCAPICA)
People for the American Way Foundation
Southwest Voter Registration and Education Project (SVREP)
U.S. Representative Loretta Sanchez

cc: Wan Kim, Assistant Attorney General for Civil Rights
John Tanner, Civil Rights Division, Voting Section
J. Stephen Tidwell, Assistant Director in Charge, Federal Bureau of Investigation
Craig Donsanto, DOJ Public Integrity Section

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California Coalition for Immigration Reform
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ALLIANCE FOR BORDER ENFORCEMENT (Imperial Beach, CA)
AMERICAN CITIZENS TOGETHER (Alhambra, CA)
AMERICAN CIVIL RESPOSIBILITIES UNION (Anaheim, CA)
AMERICAN NAT'L COUNCIL for IMMIGRATION REFORM (Washington, D.C.)
ANTI-CRIME TASK FORCE (Anaheim, CA)
ARIZONANS for IMMIGRATION REFORM (Tucson, AZ)
ASIAN-AMERICANS for BORDER CONTROL (Sylmar, CA)
BAY AREA COALITION for IMMIGRATION REFORM (San Francisco, CA)
BLACK AMERICANS for FAMILY VALUES (Huntington Beach, CA)
BORDERS (Austin, TX)
CALIFORNIANS for IMMIGRATION CONTROL (Anderson, CA)
CCIR I - VENTURA CO. (Thousand Oaks, CA)
CITIZENS for ACTION NOW (Orange County, CA)
FLA-187 COMMITTEE (Pompano Beach, FL)
FLORIDIANS for IMMIGRATION CONTROL (Delray Beach, FL)
IMMIGRATION CONTROL ADVOCATES OF NORHTERN CALIFORNIA (San Rafael, CA)
IMMIGRATION REFM NET-WORK OF SILICON VALLEY (Los Gatos, CA)
LATINO-AMERICANS for IMMIGRATION CONTROL (Salinas, CA)
MID-CITIES IMMIGRATION REFORM ADVOCATES (Prescott, AZ)
MONTEREY BAY ACTION COMMITTEE I (Belmont, CA)
MONTEREY BAY ACTION COMMITTEE II (Salinas, CA)
OHIO COALITION for IMMIGRATION REFORM (Columbus, OH)
PATRIOT CITIZENS (Warren, PA)
SAN DIEGO COUNTY TAXPAYERS (Alpine, CA)
TAXPAYER ACTION NETWORK (Fountain Valley, CA)
TEXANS for FAIR IMMIGRATION (Austin, TX)
TEXANS for IMMIGRATION REFORM (Houston, TX)
WE STAND READY (Huntington Beach, CA)

Nellie Diaz
[redacted]

Saludos Nellie Diaz,
Se le envía esta carta debido a que recientemente ud. fue registrado para votar. Si ud. es ciudadano de los Estados Unidos, se le ruega a que participe en el proceso democrático de la votación.

Se le avisa que si su residencia en este país es ilegal o si es emigrado, votar en una eleción federal es un delito que podrá resultar en encarcelamiento, y si será deportado por votar sin tener derecho a ello.

De la misma manera, se le avisa que el gobierno de los Estados Unidos está instalando un nuevo sistema computarizado para verificar los nombres de todos los nuevos registrados que voten en las elecciones de octubre y noviembre. Organizaciones en contra de la emigración podrán pedir infornación de este nuevo sistema computarizado.

No cómo en México, aquí no se aporta ningún incentivo para votar. En los Estados Unidos no hay tarjeta de registro para votar. Por lo tanto, es inútil y peligroso votar en cualquier elección si ud. No es ciudadano de los Estados Unidos.

No le haga caso a ningún político que le diga lo contrario. Éstos sólo velan por sus propios intereses. Sólo quieren ganar las elecciónes, sin importarles en lo más mínimo qué le pase a ud.

Atte.

Sergio Ramirez

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English Translation of letter sent by California Coalition for Immigration Reform

Dear Nellie Diaz,

You are receiving this letter because you have recently registered to vote. If you are a U.S. Citizen, I urge you to participate in the democratic process of voting.

Be advised that if your residence in the United States is illegal or if you are an emigrant, voting in a federal election is a crime that can result in incarceration, and possible deportation for voting without the right to do so.

In the same way, be advised that the U.S. government is installing a new computerized system to verify names of all the newly registered voters who participate in the elections in October and November. Organizations against emigration will be able to request information from this new computerized system.

Not like in Mexico, here there is no benefit to voting. In the United States there is no registration card to vote. Therefore, it is useless and dangerous to vote in any election if you are not a citizen of the United States.

Do not pay attention to a politician who may try to tell you otherwise. They only care about their own interests. They just want to win elections and it doesn't matter to them what happens to you.

Sincerely,

Sergio Ramirez

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McCandless Township
Allegheny County, PA

-Attention voters-

Due to the immense voter turnout that is expected on Tuesday, November 2 the state of Pennsylvania has requested an extended voting period.

Voters will be able to vote on both November 2 and November 3. In an attempt to limit voter conflict Allegheny County is requesting that the following actions be made.

Party	Voting date
Republican	November 2
Democrat	November 3

Thank you for cooperating with us in this endeavor to create a peaceful voting environment. We are sorry for any inconveniences that these changes may cause.

Your local representative,

Anne Ryan

In the event of an emergency, voting stations may not be opened. Stations are opened or closed on an as-needed basis. In an emergency, please stay tuned to local media or call the Emergency Operations Center at (813) 272-5900 to confirm which voting stations are open.

Attention: Jefferson County!!!!!

See You At The Poles
November 4th, 2004.

To Find your local polling place, call Jefferson County Voter's Registration Commission.

ARP

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Franklin County Board of Elections

Election Bulletin

Because the confusion caused by unexpected heavy voter registration, voters are asked to apply to the following schedule:

Republican voters are asked to vote at your assigned location on **Tuesday**.

Democratic voters are asked to vote at your assigned location on **Wednesday**.

Thank you for your cooperation, and remember voting is a privilege.

Franklin County, Where Government Works

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MILWAUKEE BLACK VOTERS LEAGUE

SOME WARNINGS FOR ELECTION TIME

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

IF YOU'VE EVER BEEN FOUND GUILTY OF ANYTHING, EVEN A TRAFFIC VIOLATION YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

IF ANYBODY IN YOUR FAMILY HAS EVER BEEN FOUND GUIULTY OF ANYTHING YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

THE TIME TO REGISTER FOR VOTING HAS EXPIRED. IF YOU HAVEN'T REGISTERED YOU CAN'T ANYMORE.

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

URGENT NOTICE

COME OUT TO VOTE ON NOVEMBER 6TH

BEFORE YOU COME TO VOTE MAKE SURE YOU PAY YOUR

- **PARKING TICKETS**
- **MOTOR VEHICLE TICKETS**
- **OVERDUE RENT**

AND MOST IMPORTANT ANY WARRANTS

40581.194

Statement of
People For the American Way and
People For the American Way Foundation
Senate Judiciary Committee
June 14, 2007

On behalf of the more than one million members and activists of People for the American Way (PFAW), we urge you to stand up for the rights of all citizens to fully participate in our democratic society by supporting the Deceptive Practices and Voter Intimidation Act (S. 453) introduced by Senator Barack Obama on January 31, 2007. The right to vote is the bedrock of our democracy, which thrives on the diversity of our populace and the full participation of its citizenry. People for the American Way and our sister Foundation are committed to ensuring that this right is guaranteed to all eligible voters and is secure.

Senator Obama's bill would criminalize egregious deceptive practices that have kept voters away from the ballot box for too long. People for the American Way Foundation's Election Protection work exposed many problems related to voter registration, provisional ballots and faulty voting technology. In the aftermath of the election fiasco in Florida in 2000, Caltech and MIT issued a joint study estimating that some four million Americans were disenfranchised. Citizens were denied the right to cast a vote – or to have their vote counted – by a range of problems, including faulty equipment, poorly designed ballots and untrained poll workers, as well as voter intimidation and suppression efforts and other illegal action.[1]

The Need for Comprehensive Legislation to End Deceptive Practices

People For the American Way supports the Deceptive Practices and Voter Intimidation Act of 2007 not only because it would criminalize egregious deceptive practices that keep voters away from the ballot box, but also because it would provide immediate accountability before the election and encourage citizen participation by making it easier to report voter intimidation tactics and seek justice through the courts. Furthermore, the bill would require the Attorney General to investigate every reported problem and make the findings public. The bill is an important component of the comprehensive election reform that Americans are demanding after suffering an avalanche of problems in the 2006 elections—most notably the inexplicable disappearance of 18,000 votes in a congressional race in Sarasota County, Florida.

Since our founding, People For the American Way and its Foundation have urged Americans to engage in civic participation, and we have sought to empower those who have been traditionally underrepresented at the polls, including young voters and people of color. Now we must be diligent about protecting voters' rights prior to elections as well as once they get to the voting booth. If voters do not have the confidence in the

[1] CalTech and MIT Voting Technology Project. (2001). *Voting: What Is, What Could Be.* California Institute of Technology and Massachusetts Institute of Technology Corporation. Available at: http://www.hss.caltech.edu/~voting/CalTech_MIT_Report_Version2.pdf.

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electoral process, how can we encourage voters to show up at the polls? Lack of voter confidence in the voting process has effectively become another suppression tactic, leading people to stay away from the polls because they don't believe their votes will count.

In order to provide comprehensive election reform and protection, PFAW has established the Democracy Campaign that comprises all of our voting rights efforts on both the state and national level, through voter registration, legislative, grassroots, litigation and GOTV efforts. This campaign also incorporates our leadership efforts in the Election Protection Coalition, a non-partisan voter protection effort that our partner organization, People For the American Way Foundation, co-founded with its ally, the NAACP, in response to the debacle of the 2000 Presidential Election. Our efforts encompass advocacy on both state and federal legislation, the protection of voting rights through the judicial system, and year-around work with election officials to protect the rights of voters before, on and after Election Day. But this is not enough. Legislation must be put in place to ensure every citizen's constitutional right to vote.

Deceptive Practices in Practice

The complexity and sophistication of voter intimidation and suppression tactics has grown. Make no mistake, the threats to democracy are just as real today as they were half a century ago. The bad old days of poll taxes and literacy tests are behind us, but new forms of intimidation and suppression have taken their place.

While current federal law provides criminal penalties for some voter suppression and intimidation practices, the newest wave of such tactics may not be covered. Federal law may not currently criminalize all the deceptive practices we saw in the 2006 elections, including disinformation campaigns and harassing robocalls. Such practices try to deceive voters into changing their votes, or voting on the wrong day, or by sending them to the wrong polling place. Some schemes attempt to convince citizens that voting will be difficult or even dangerous, or simply annoy them so much that they stay home from the polls in disgust at the whole process. Americans deserve elections that are clean and fair. We may not be able to stop dirty tricks in campaigns, but we can make it harder for them to succeed – and we can make the consequences very serious for those who carry them out. That is why Senator Obama's bill is such an important step forward. His Deceptive Practices and Voter Intimidation Prevention Act proposes strong, effective procedures to prevent deceptive practices in the future, and to ensure that the individuals responsible for such practices are held to account. Senator Obama should be commended for introducing this legislation.

Data collected through the Election Protection Hotline and the Election Incident Reporting System (EIRS) since the 2000 Presidential Election, through our sister organization, People For the American Way Foundation, clearly evidences a need for election officials to address the real problems created by voter harassment and intimidation, the lack of machines at low-income and minority poll sites, improperly trained poll workers and the creation of overly burdensome voter registration procedures

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by partisan election officials. Such problems, however, are not limited to the years after 2000. In 2004, PFAW and its ally, the NAACP, published a special report, entitled *The Long Shadow of Jim Crow: Voter Intimidation and Suppression in America Today,* detailing many incidents of deceptive practices.[2] Following that report, PFAW, the NAACP and the Lawyers' Committee for Civil Rights Under the Law published a separate paper, entitled *Run-up to Election Exposes Widespread Barriers to Voting*, documenting additional activities aimed at keeping people from having their vote count on Election Day.[3] Incidences of such practices span the decades, extending from as early as the 1980s through the present.

As early as 1981, the Republican National Committee's National Ballot Security Task Force (BSTF) hired armed, off-duty police officers wearing armbands to patrol polling sites in black and Hispanic neighborhoods of Newark and Trenton, New Jersey. They also mailed out letters, using an outdated voter registration list, to largely African-American and Latino districts. The letters were to be returned if they were not deliverable and the 45,000 returned letters were converted directly into a list of voters to be challenged. The RNC requested that election supervisors use the list to strike the voter from the rolls, but the Commissioners of Registration refused when they discovered that the RNC had used outdated information.

In California, in 1988, the Orange County Republican Party hired uniformed security guards to be posted at polling places in heavily Latino precincts. The guards displayed bilingual signs warning non-citizens not to vote. Such signs were also posted in Latino neighborhoods days before the election. The guards, wearing blue uniforms and badges, were removed from the polling places after the chief deputy secretary of state said their presence was "unlawful intimidation of voters."

In 2002, in Louisiana, flyers were distributed in African American communities saying, "Vote!!! Bad Weather? No problem!!! If the weather is uncomfortable on election day [Saturday, December 7th], remember you can wait and cast your ballot on Tuesday, December 10th." In the same year, African American voters in Philadelphia were systematically challenged by men carrying clipboards, driving a fleet of some 300 sedans with magnetic signs designed to look like law enforcement insignia.

In South Dakota's 2004 primary, Native American voters were prevented from voting after they were challenged to provide photo IDs, which they were not required to present under state or federal law.

The 2006 elections provided even more examples of new forms of suppression techniques and dirty tricks were as pervasive and brazen as ever. In Orange County,

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[2] People For the American Way Foundation and the NAACP. (2004). *The Long Shadow of Jim Crow: Voter Intimidation and Suppression in America Today*. Available at: http://www.pfaw.org/pfaw/general/default.aspx?oId=16368.

[3] People For the American Way Foundation, Lawyers' Committee for Civil Rights Under the Law and the NAACP. (2004). *Run-up to Election Exposes Widespread Barriers to Voting*. Available at: http://interactive.pfaw.org/pdf/BarriersToVoting.pdf.

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California, a Congressional candidate sent out letters in Spanish to approximately 14,000 Hispanic registered voters, warning it was a crime for immigrants to vote in federal elections, and threatening voters that their citizenship status would be checked against a federal database. Of course, immigrants who are naturalized citizens have as much right to vote as any other citizen, and no such database is used in elections. The letters were outright lies.

In Virginia, voters received recorded "robocalls," sometimes late at night, which falsely stated that the recipient of the call was registered in another state and would face criminal charges if he came to the polls.

People For the American Way responded to additional complaints around the country through our Election Protection coalition. In Pima County, Arizona, we received several reports that a group of people, claiming to be with the "United States Constitution Enforcement (USCE), " appeared at various polling locations under the pretext of preventing illegal immigrants from voting fraudulently. In reality, these actions were intended to intimidate Latino voters.

In Dona Ana County, New Mexico a voter received several campaign phone calls telling her to vote at a polling place that didn't exist. Further, in Accomack and Northampton Counties in Virginia, Democratic voters received phone calls from purported election officials advising that they shouldn't need to vote on Election Day and that they'd be prosecuted if they showed up at the polls. Unfortunately, these are typical complaints that PFAWF and the Election Protection Coalition have received for the past three federal elections.

With the enactment and recent reauthorization of the Voting Rights Act of 1965, and with subsequent legal decisions that have clarified and strengthened a citizen's constitutional right to be free from intimidation and unnecessary barriers at the voting booth, it's hard to believe we are here today discussing coordinated suppression campaigns. Yet, here we are.

The Fraud About Voter Fraud

Even though serious problems exist in our election system, such as voting machine problems, voter registration barriers, deceptive practices and long lines at the polls, right wing groups tend to focus their election reform discussion on a sole red herring: the alleged existence of voter fraud and the supposed need for stricter voter identification requirements to combat this. **There is zero evidence that voter fraud is a serious election problem. Additionally, voter ID requirements intended to respond to voter fraud, in fact, create many more problems than solutions and should be opposed.**

Virtually every academic study of voter fraud concludes that it is not close to being a substantial problem, if it exists at all. Lorraine Minnite, Professor of Political Science at Barnard College at Columbia University, released a report in early March

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2007 concluding that voter fraud of any type is extremely rare and that unsubstantiated allegations of voter fraud have infected policy discussions regarding elections since the time of Reconstruction.[4]

Regarding the existence of both voter fraud in states where it was used as the justification for requiring restrictive voter ID and the impact of those voter ID laws, the *supporters* of voter ID have made the following admissions:

- The Republican Governor of Missouri, who had formerly been the Secretary of State (and run Missouri's elections), admitted that elections in Missouri were "fraud-free," before unsuccessfully defending the restrictive voter ID laws in court. *Weinschenk v. Missouri,* 203 S.W.3d 201 (Mo. 2006). Missouri's Secretary of State agrees, noting in a recent report that "As in previous elections, the absence of reports of voting impersonation or voting fraud in the 2006 election in Missouri was notable."
- The State of Arizona and its counties, in defending their restrictive voter registration laws and voter ID laws, admitted that, of the over 2.7 million registered voters in Arizona, not one had been convicted of registering to vote illegally and there was not one instance of voting by an ineligible non-citizen.

This is the legal testimony of those who have the greatest incentive and the greatest obligation (in order to justify the burdensome restrictions they impose on voters) to prove the existence of real fraud. And yet, they cannot prove it exists. Even bipartisan experts contracted by the Election Assistance Commission (EAC) similarly found, in a report they submitted to the EAC in 2006, that there is no widespread existence of voter fraud.[5]

Restrictive ID requirements are the equivalent of a 21st century poll tax. This was, in fact, reiterated by the federal district court during the debate over Georgia's new Photo ID requirement. By mandating that voters provide photo identification – even if purportedly offered free of charge to voters – these same voters would still have to pay for the necessary documents to obtain this "free" photo ID. Obtaining the required forms of ID, such as drivers' licenses and passports, costs money and time away from work – and transportation is particularly complicated for voters with disabilities. The same is true of getting the supporting documents required to obtain ID.

The reality of implementing an additional photo ID requirement must also not be overlooked. Such requirements place an inordinate amount of discretion in the hands of overworked (and usually unpaid and sometimes poorly trained) poll workers. Deciding whether a voter matches or does not match the photo in an ID card – which can often be

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[4] Minnite, Lorraine C., Ph.D. (2007).. *The Politics of Voter Fraud.* Available at: http://projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_Final.pdf.

[5] U.S. Election Assistance Commission. (2006). *Election Crimes: An Initial Review and Recommendations for Future Study.* Available at: http://www.eac.gov/docs/Voter%20Fraud%20&%20Intimidation%20Report%20-POSTED.pdf

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many years old – is a very subjective process and easily prone to mistakes or worse. Because many voter ID laws do not explain how disputes over the validity of an ID card should be handled, and because they often keep voters who don't have "valid" ID from obtaining provisional ballots, they can easily open the door to widespread racial and ethnic discrimination at polling places. Even under the more lenient requirements of the Help America Vote Act, ID provisions are often implemented in a discriminatory way. According to the nation's largest nonpartisan exit poll of Asian Americans, nearly 70% of Asian voters were asked for ID in states where no ID was required.

Fraud takes many forms. While proponents of voter ID claim to be addressing the existence of massive "voter fraud," particularly by illegal immigrants, to date, there are no credible reports of significant fraud to support the need for such restrictive proposals. For example, the long-time director of the Justice Department's Election Crimes Branch, Craig Donsanto stated that "the number of election fraud related complaints has not gone up since 2002." Even supporters of voter ID, who have the greatest incentive to prove the existence of fraud have admitted that they cannot prove it exists. The State of Indiana, for example, admitted in court documents meant to defend the voter ID law that it could not find one single instance of voter impersonation fraud in the history of the state. *Indiana Democratic Party v. Rokita*, 2006 U.S. Dist. LEXIS 20321 (S.D. Ind. 2006).

While People For the American Way is supportive of measures intended to end deceptive practices, it is also important to ensure that these measures do not in themselves erect barriers to voting, such as the McConnell Amendment (# 1170) to the immigration bill (S. 1348). Voter ID proposals are simply forms of a 21st century poll tax that have no business in our electoral process. Such proposals are likely to be enforced in discriminatory ways against poor and minority voters to intimidate, misinform, stigmatize, and ultimately suppress the vote. The right to vote is fundamental and Congress should be focused on ways to open the franchise to all eligible citizens.

Real Solutions to Real Problems

PFAW urges Congress not to lose sight of the big picture, which is that deceptive practices have become one of the largest barriers to ensuring the equal right to vote to all Americans. As you know, the Reverend Martin Luther King, Jr. often used the phrase, "The urgency of now." At People For the American Way, we feel the urgency of now with regard to election reform. The clock is ticking, and we promise we will do all we can to advance the cause of timely election reform. We are firmly committed to working with Members of Congress and its coalition allies to ensuring that electoral reform is a priority.

Thank you.

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Statement of Patricia M. Roberts
President of Citizens Against Un-American Voter Intimidation
Testimony Submitted to the U.S. Senate Judiciary Committee
Washington, DC
June 7, 2007

Introduction

Mr. Chairman and other distinguished Members of the Committee, thank you for the opportunity to testify about deceptive practices and voter intimidation in past elections. Every Election Day, in communities across the country, thousands of Americans go to the polls to exercise their democratic rights. Unfortunately, shady political operatives show up in our communities and try to deter, mislead and harass these voters.

Election Day dirty tricks and intimidation can take many forms — from harassing phone calls to intimidation at the polls. But all of these tactics are wrong and downright un-American, particularly when we have Americans risking their lives in the Middle East to spread democracy in that region.

I am President of Citizens Against Un-American Voter Intimidation (CAUAVI), a coalition of citizens working to stop un-American tactics of voter intimidation and vote suppression. We believe that tampering with Americans' voting rights is always wrong, especially when some of our citizens are fighting and dying to spread democracy abroad.

I lost my son, Jamaal Addison, in the line of duty in Iraq on March 23, 2003. He was a loyal American, and the most important reason he died was so that people in other countries could enjoy the rights that democracy brings -- rights that we often take for granted here.

That's why I formed CAUAVI back in 2004. With my grandson, Jamaal, Jr., at my side, I campaigned in several states where political operatives were gearing up to stop people from exercising the rights that my son died defending.

We directly confronted elections officials who were behind efforts to suppress voters - such as then-Ohio Secretary of State Ken Blackwell. We also held a news conference in Milwaukee to decry a misleading flier that had been widely circulated in black neighborhoods. The flier carried the heading "Milwaukee Black Voters League," and threatened 10 years in prison and the loss of one's children for those who try to vote and "have ever been found guilty of anything, even a traffic violation," or "have voted in any previous election this year."

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One sympathetic Seattle police chief took the lead by sending requests to fellow city police chiefs nationwide that they combat suppression efforts. A similar letter to the sheriffs' association was signed by the NAACP Legal Defense and Education Fund, the Advancement Project, and People For the American Way.

We investigated voter intimidation efforts in Albuquerque and called out a Milwaukee radio host using an on-air racial slur against Latino voters. The host was reprimanded, suspended, and made to apologize for his remarks.

Our efforts, and those of other important organizations, made a difference in protecting American democracy. But those who want to tamper with our rights for political profit didn't rest in 2006. In contrast to the overt and aggressive voter intimidation by elections officials in 2004, the 2006 election marked the evolution of much more sophisticated and subtle tactics by political operatives to harass and deter voters from the polls. MyVote1, a hotline established to help voters with problems or questions on Election Day, reported that as a percentage of overall election complaints, complaints of coercion more than doubled from 2004 to 2006.

After seeing what happened in 2006, we are taking a different approach than in 2004. We began gathering evidence right after the 2006 elections to document the evolution of these tactics, and Chairman Cardin, I appreciate the opportunity you have given me to share our research here. We have identified three common types of vote suppression that must be stopped: **misinformation about polling locations and voter registration requirements, blatant intimidation at polling locations, and harassing phone calls.**

In 2004, and again in 2006, I was shocked to learn the extent of the organization behind the efforts by some political operatives to deter, intimidate and mislead Americans who just want to vote.

Missouri Secretary of State Robin Carnahan reported earlier this year that there were "two significant dangers to the democratic process in Missouri: long lines or delays at polling places, and **the intimidation or misinformation of voters...**"

These operatives think that if they can get enough of some types of people to give up and stay home, their candidates can win. I don't think anyone wins when that happens.

We have researched and collected the stories of many people who were victims of voter intimidation in 2006. From our work, three themes emerge: polling place misinformation; intimidation at the polls; and harassing phone calls.

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Polling Place Misinformation

For years, Ms. Faye Chavez had voted at the polls in Willard, N.M., a 250-person village east of Albuquerque. So, the pre-Election Day phone call with polling information caught her off-guard.

First, the caller asked Faye to identify which candidate she supported. Then, after Faye said she was voting for the Democrat, the caller told Faye that her polling place had moved — to Moriarty, N.M., a town 30 miles away from her home in Willard.

"They're trying to do away with smaller precincts, and they're trying to combine them," the caller said, explaining why Faye and her 72-year old mother would have to make the 40-minute ride to Moriarty to vote.

Suspicious of the call, Faye checked and found out that the polling place hadn't changed at all. Faye and her mother were still voting in Willard, and the sophisticated-sounding caller was way off — 30 miles off.

But Faye Chavez wasn't alone. A number of other residents of New Mexico's 1st Congressional District just happened to have received deceptive calls with incorrect polling information. Paula Johnson of Albuquerque received multiple calls asking whom she was voting for and telling her to go to the wrong polling place. Meanwhile, Pauline Duran of Albuquerque, who had voted for 11 years at New Life Presbyterian Church, got a call from "Victory America," telling her that her polling place was now La Luz Elementary School. Victory America, it turned out, was run out of the Republican Party headquarters, and Pauline - not surprisingly - was a registered Democrat.

Camille Chavez of Albuquerque received three similar calls from organizations that came up as "N.M. Vict." and "Republican Part." on her caller ID. Two of the calls told Camille to vote at John Adams Middle School, and one call told her to vote at West Mesa High School — but neither told her the correct polling place of Longfellow Elementary School.

Camille, a Green Party member, said she suspected she got the call because she lives in a lower-income neighborhood and has a traditionally Hispanic last name. Furious at this attempt to suppress votes, Camille called around to news stations to help warn the public about these deceptive — and seemingly targeted — phone calls.

This was all part of an increasingly common vote "suppression" strategy: telling voters the wrong polling place in attempt to confuse them or prevent them from voting. Nowadays, it can come in the form of deceptive calls, fliers or even e-mails. And, more often than not, it is targeted at communities of color.

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Intimidation at the polls

Perhaps the most frightening form of voter intimidation involves attempts to threaten people outside the polls. Many times this takes the form of operatives performing unnecessary ID checks, telling people they're not properly registered to vote, posing as law enforcement officers, or recruiting off-duty police and sheriff's deputies to stare down voters at targeted polling places.

In Delaware County, Pa., a councilman reported that African-American Democrats were incorrectly told they were not on the voting rolls. Also in Pennsylvania, an Allegheny County judge had to issue a "cease and desist" order on Election Day and dispatch sheriff's deputies to stop a partisan group that was "interrogating" voters outside polling places in Pittsburgh's North Hills neighborhood.

In other cases, operatives show up at polls with the specific intent of frightening Americans to prevent them from voting. This type of un-American intimidation tends to target minority and low-income citizens.

In Tucson, Ariz., a trio of men — wearing shirts with an ironed-on badge and with a handgun visible — approached Latino voters and videotaped them as they went to vote in the Iglesia Bautista precinct. "As voters are coming out of their cars and walking up towards their polls, one person is videotaping the voter as he walks towards the polling place," said Nina Perales of the Mexican American Legal Defense and Education Fund, as reported by TPM Muckraker. "While the clipboard person is ... talking to [the voter], the cameraperson comes up and starts videotaping their face."

Harassing phone calls

Betty Beatty was sick and tired of getting calls about congressional candidate Christine Jennings. Over and over, she was barraged with calls that said, "I'm calling with information about Christine Jennings," and then proceeded on and on.

"They bugged us with their phone calls something terrible," Beatty told the *Sarasota Herald-Tribune* after the election. "With all her calls, Jennings, Jennings, Jennings, I wouldn't have voted for that woman if she were the only one running."

Thousands of voters like Beatty from Florida's 13th Congressional District were harassed with annoying phone calls that sounded like they were from Christine Jennings' campaign. The problem? Only if you listened to the end of the long call could you find out that the calls were paid for by Jennings' opponents — and made to sound as though they were from Jennings herself. In the days

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before the election, Jennings' opponents made between 388,000 and 1.17 million phone calls to residents of Florida's 13th Congressional District.

But Floridians weren't the only ones who received these harassing calls. Almost identical deceptive calls with slanted "information about" candidates were made in Pennsylvania, New York, Illinois, New Hampshire, California, Ohio, Georgia, New Mexico, Nevada and other states. The calls would sometimes come in the middle of the night and would often repeat over and over.

Conclusion

No matter which party or politician someone supports, everyone can agree that tampering with people's voting rights and trying to intimidate them into not voting is immoral. And, it's an unpatriotic thing to do — especially when Americans are fighting and dying to spread these rights to other nations.

There seems to be a cottage industry of dirty tricksters - consultants, operatives and companies - who are called on every election season to deter people from voting. We need to investigate these people, document who they are, and expose them for what they are: people engaged in activities that violate American values.

When my son died, the Lord sustained me in my faith in this country and our system of government. I feel like I owe it to my son and the others who have died throughout our nation's history to do what I could to protect our freedoms. I want my grandson to grow up confident that his rights are and will be respected and protected.

Thank you for allowing me the opportunity to submit this testimony.

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Senator Charles E. Schumer

"Preventing Deceptive Practices and Voter Intimidation in Federal Elections"
Senate Committee on the Judiciary

June 7, 2007

I am pleased to appear today to talk about the importance of the Deceptive Practices and Voter Intimidation Prevention Act of 2007, which Senator Obama and I introduced in January with numerous co-sponsors. I thank Senator Leahy for holding this hearing and Senator Cardin for chairing today.

The right to vote is the wellspring of our democracy, and it is one of the most cherished attributes of citizenship. Yet far too often, our elections are marred by a troubling pattern of disenfranchisement by deception.

We are seeing a host of cynical and concerted efforts to keep voters away from the polls and to interfere with their choice of candidate. Frequently, these dirty tricks target minority or disadvantaged communities. These deceptive and intimidating practices are a form of disenfranchisement just as surely as poll taxes were.

To give just a few examples: In recent elections, we have seen cases where voters in certain neighborhoods are falsely told that the election is Wednesday, when in fact it is Tuesday. We have seen voters falsely told that they are not eligible to vote, when in fact they are. We have seen voters falsely told that they will face criminal penalties if they attempt to vote, when in fact they will not.

These tactics, and other deceptive practices that have surfaced in recent elections, are simply repugnant. They are an affront to the intelligence and civil rights of the voters they target, and they insult our democracy.

All too often, no one investigates these dirty tricks because it is not yet a federal crime to disenfranchise voters by deception. Congress must act without delay to give the Department of Justice both the tools and the incentive to investigate and punish acts of voter deception and intimidation. The Deceptive Practices and Voter Intimidation Act of 2007 will do just that.

This bill will impose meaningful penalties for deceptive practices, either through civil enforcement or through criminal punishment of up to 5 years imprisonment or $100,000 fine for deceptive practices. I am convinced that criminal penalties are appropriate for wrongdoing that strikes at the core of our democracy, and also that these penalties should be sufficient to deter violations.

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This bill recognizes that voter disenfranchisement by deception is just as serious as voter intimidation, which has long been criminalized. And in cases of voter intimidation, our bill will increase the maximum criminal penalty from 1 year to 5 years in prison, commensurate with the seriousness of this crime.

Our legislation is narrowly crafted to safeguard the right to vote. It doesn't cover just any information communicated during an election. Instead, it protects voters' access to certain basic and verifiable facts that are essential to exercising the right to vote. Those basic facts are: where, when and how you can cast a vote; whether you are eligible to vote; and whether an organization or a person has endorsed a particular candidate.

With our bill, the Justice Department's tools will not be limited to punishing wrongdoers after the fact. The Department will also have a responsibility to communicate corrected information in order to undo the damage caused by deceptive practices and to help voters reach the polls.

Any person can report deceptive practices to the Justice Department, and the bill contains important safeguards to ensure that the Department will assess these reports fairly and will take action swiftly when necessary.

Let me also be clear about what this bill will not do. It will not criminalize honest mistakes. This bill only prohibits the deliberate lies that have no place in our democracy, and only when there is an intent to prevent a person from voting. Moreover, this legislation will not impede legitimate political speech. It is narrowly tailored and constitutionally sound, so those who are engaged in fair and open political debate will have nothing to fear under this bill.

Preventing voter deception and intimidation should not be a partisan issue – we can all agree that candidates should take office through free and fair elections, or not at all.

Opponents of this bill may claim that it is unnecessary or flawed. I could not disagree more. This bill is urgently needed, it is carefully crafted, and it is no more than what we owe to voters all across America.

The House Judiciary Committee has already passed a bill that is a companion to the legislation this Committee discusses today. I am glad that we are holding a hearing to examine this vital measure, and it is my hope that Senator Leahy will take up the Obama-Schumer bill in our Committee shortly after this hearing.

Thank you.

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WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
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STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR
NAACP WASHINGTON BUREAU
on
Prevention of Deceptive Practices and Voter Intimidation in Federal Elections: S. 453

A HEARING BEFORE THE SENATE JUDICIARY COMMITTEE

June 7, 2007

Good afternoon. My name is Hilary Shelton and I am the Director of the NAACP Washington Bureau, the federal legislative and national public policy arm of our Nation's oldest, largest and most widely-recognized grassroots civil rights organization.

The right to vote has always been of the utmost priority to the NAACP. For almost a century, the NAACP has fought against those who wish to suppress the votes of African Americans and other racial or ethnic minority Americans through unfair or unjust laws, deception and/or intimidation.

With the enactment of the *Voting Rights Act* of 1965, it became illegal for states or local municipalities to pass laws that in any way infringed on a person's Constitutional right to register and cast an unfettered vote. Subsequent laws and reauthorizations of the *Voting Rights Act* have further addressed these tactics and made it harder for a state or a local government to infringe on a citizen's right and ability to cast an unfettered vote.

Unfortunately, some people are still so desperate to win elections – elections that they fear they cannot rightfully win – that they resort to deceptive practices, misinformation and lies, to try to keep legitimate voters away from the polls or to support candidates whom they might not otherwise vote for. It is even more unfortunate that these practices often target and exploit many of the same populations that have historically been excluded from the ballot box. Specifically, vulnerable populations, such as racial and ethnic minorities, the disabled and / or the poor and senior citizens are often targeted by those perpetuating these deceptive practices.

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To put it bluntly, it is now against the law to use official means to prevent whole communities of American citizens from casting a free and unfettered ballot. Yet there are still people and organizations in our country who are so afraid of the outcome of our democratic process that they must stoop to lies, duplicitous behavior and intimidation to try to keep certain segments of our community away from the voting booth.

That is why the NAACP so ardently supports the *Deceptive Practices and Voter Intimidation Prevention Act*, S. 453, introduced by Senators Obama, Cardin, Schumer and others. This legislation seeks to address the real harm of these crimes – people who are prevented from voting by misinformation or intimidation – by establishing a process for reaching out to those voters with accurate information so they can cast their votes in time and ensure a more genuine outcome of the election. The bill also makes voter intimidation and deception punishable by law, and it contains strong penalties so that people are deterred from committing these crimes, knowing that they will suffer more than just a slap on the wrist if caught and convicted.

The fact of the matter is that if an individual wins an election by a few votes, even when it can be proven that many potential voters were kept away from the voting booth by deceptive or intimidating behavior, the winner remains in office for the duration of the term. That is why it is so important to correct the misinformation before the election is over, and the damage has been done.

As we have heard today, examples of malicious deceptive practices, almost all of which targeted racial or ethnic minority populations, were rampant as recently as the general election in 2006. In Ingham County, Michigan, a partisan poll challenger confronted every African American attempting to vote that day. There were no reports of any Caucasian voters even being questioned.

In Orange County, California, 14,000 Latino voters got letters in Spanish saying it was a crime for immigrants to vote in a federal election. It did not state or even clarify that immigrants who are citizens have the right to vote and indeed should.

In Baltimore Maryland, misleading fliers were placed on cars in predominantly African American neighborhoods giving the wrong date for the upcoming Election Day.

In Virginia, registered voters received recorded (robotic) calls that falsely stated that the recipient of the call was registered in another State and would face criminal charges if they came to the polls to vote. It was also in Virginia that voters received phone calls stating that because they were such regular voters they could vote this time by telephone, by simply pressing a number at

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that time for the candidate of their choice. The call ended by repeating that they had now voted, and did not need to go to the polls. The disenfranchisement continues.

In all of these cases, a quick response to expose the lies that were told and provide corrected information to get legitimate voters to the polls in time to have their vote counted was clearly warranted. Unfortunately, nothing was done by the federal government to aid clearing-up these lies. It was therefore up to the local and national media, as well as advocacy groups, to scramble to try to undo the damage. While it is difficult to conclusively demonstrate that these specific misdeeds had an impact on an election, it is the position of the NAACP that if even one lawful voter was deceived or intimidated and therefore did not cast a legitimate vote, that is one too many and the federal government must act.

When presidential elections can be won or lost by a few hundred votes, it is up to the federal government to do all it can to ensure that every eligible person who wants to vote can and that every vote legitimately cast, will be counted.

It is unfortunate yet necessary that the *Deceptive Practices and Voter Intimidation Prevention Act* needs to be passed now, before another election comes, more lies are told and more voters are locked out of our democratic process.

The NAACP would like to thank the sponsors and co-sponsors of S. 453 and H.R. 1281, the companion bill in the House, as well as Chairman Cardin and Senators Schumer and Obama for their leadership and demonstrated commitment to this crucial issue. The NAACP stands ready to offer the assistance of our members, staff and leadership to do all we can to encourage the quick enactment of the *Deceptive Practices and Voter Intimidation Prevention Act*.

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Article published October 19, 2004

Voter fraud case traced to Defiance County registrations volunteer
124 registrations falsified, allegedly for crack cocaine
By JOE MAHR
TOLEDO BLADE STAFF WRITER

Mary Poppins. Jeffrey Dahmer. Janet Jackson. Chad Staton.
Defiance County elections officials were confident the first three hadn't moved to their small community. But the fourth one lived there, and - in exchange for crack cocaine - tried to falsely submit the first three names and more than 100 others onto the county's voter registration rolls, police said.

Now Mr. Staton, 22, of Defiance, faces a felony charge of false registration in a case that has quickly gained national attention as part of a hotly contested presidential battle that's attracted a flurry of new voter registrations across the country - and a flurry of complaints of voter registration fraud.

Defiance County Sheriff David Westrick said that Mr. Staton was working on behalf of a Toledo woman, Georgianne Pitts, to register new voters. She, in turn, was working on behalf of the NAACP National Voter Fund, which was formed by the NAACP in 2000 to register new voters.

Sheriff Westrick said that Pitts, 41, of Toledo, admitted she gave Mr. Staton crack cocaine in lieu of cash for supplying her with completed voter registration forms. The sheriff declined to say how much crack cocaine Pitts supplied Mr. Staton, or to say whether Pitts knew that the forms Mr. Staton gave her were falsified.

"That remains under investigation," he said.

Defiance County sheriff's deputies and Toledo police searched Pitts' home on Woodland Avenue and found drug paraphernalia and voter registration forms, the sheriff said.
Pitts, who over the past two decades has been convicted of crimes ranging from domestic violence to resisting arrest, was not arrested this week. She could not be reached for comment. A month ago, she had just finished a year of probation for driving with a suspended license.

Pitts told police that she was recruited by Thaddeus J. Jackson II, who is coordinating the Toledo efforts of the NAACP Voter Fund.

Reached yesterday afternoon in Cleveland, Mr. Jackson described Pitts as a "volunteer" with the group but said he knew of no problems with her and of no voter fraud with her new-voter submissions.

"This is the first I've heard of it," he told The Blade.

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He refused further comment on the case and representatives of the voter fund in Washington declined to elaborate on Pitts' involvement in the campaign.
In a statement issued late yesterday, Gregory Moore, the national executive director, said the group was "shocked" by the allegations, welcomed the investigation, and hoped it didn't hurt the reputation of other "volunteers and canvassers who have worked tirelessly to enfranchise the disenfranchised throughout the year."

Mr. Staton's 130 voter registration forms were among the 80,000 submitted to state officials by The National Voter Fund's Ohio office, based in Cleveland. The fund turned in Mr. Staton's completed forms to the Cuyahoga County Board of Elections, elections officials said.

Of the 130 forms submitted, county elections board director Wayne Olsson said that only six turned out to be legitimate.

Noting that the potentially new voters had listed addresses in Defiance County, Cuyahoga County elections officials sent the forms to Defiance County, where they arrived the afternoon of Oct. 8.

The package came with a small note inside from Cuyahoga County officials: Check the signatures on the cards for fraud.

Within an hour, Defiance County elections workers had deduced that the batch of 130 was mostly faked forms, said Laura Howell, the county elections board's deputy director. "We could tell by the handwriting that many of them were written by the same person," she said. "And of course we know the streets. Defiance being a small town, many of [the forms] had streets not even in Defiance."

And so elections workers immediately began sending out letters, addressed to the people listed at those addresses, as a precaution to ensure that a Mary Poppins, a Jeffrey Dahmer, or a Janet Jackson didn't, in fact, live in Defiance County, she said.

Letters also went out to George Foreman, Brett Favre, Michael Jordan, and Dick Tracy, among others in the bundle to see if the post office would return them as undeliverable. Letters even went out to a handful of people registered on forms with different personal identifiers but the same name: Chad Staton.

None of the Chad Statons made the cut.

In the meantime, elections officials contacted the office of Sheriff Westrick, a Republican, who began an investigation that included the Ohio Bureau of Criminal

Identification & Investigation.

Sheriff's deputies arrested Mr. Staton as he walked along a Defiance street about 8 a.m. yesterday, and issued a press release by noon that soon spread across the Internet.

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The Ohio Republican Party immediately seized on the scandal. In a statement issued hours later, spokesman Jason Mauk cited the case in claiming that "the effort to steal Ohio's election is under way, and it's being driven exclusively by interest groups working to register Democrat voters."

The Ohio Democratic Party responded that they don't condone any registration fraud. Spokesman Dan Trevas argued that, of the 500,000 forms submitted for newly registered voters, "the vast, vast majority are clearly eligible voters who did the right thing."

He called it a "stretch" to link the Democratic Party and the NAACP Voter Fund to fraud because "the volunteer to the volunteer did something fraudulent."
But it's not the first complaint of fraud against the NAACP Voter Fund, which insists it is nonpartisan.

Elections officials in Lake County, just east of Cleveland, last month began investigating the group and an anti-Bush group called Americans Coming Together, or ACT Ohio, for hundreds of suspicious registration forms and absentee ballot requests.
Among them was one, submitted by the NAACP Voter Fund, for a man who'd been dead for more than two decades.

Mr. Staton's arrest is not the first time someone who is paid to collect voter registrations or petition signatures has been accusing of falsifying them - such accusations have been made across the country.

And the NAACP Voter Fund is not the first group to come under fire.

Among the others are a Republican-linked group, Voters Outreach of America, which has been accused of destroying voter-registration forms its workers had collected from Democratic voters in Nevada and Oregon.

Contact Joe Mahr at:
jmahr@theblade.com
or 419-724-6180.

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United States Senate Committee on the Judiciary
Prevention of Deceptive Practices and Voter Intimidation in Federal Elections: S. 453

Testimony of John Trasviña
President and General Counsel
June 7, 2007

Chairman Cardin, Members of the Committee, I am John Trasviña, President and General Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF). I appreciate this opportunity to testify in support of S. 453, the Deceptive Practices and Voter Intimidation Prevention Act of 2007.

Voter intimidation and deceptive practices present serious threats to the integrity of the American democratic system. Since our founding in 1968, MALDEF has used every legal and policy mechanism at our disposal to protect Latino voters from election practices that limit the ability to fully participate in American democracy. When voters are targeted for intimidation, especially when they are targeted because of their race or national origin, all Americans suffer.

We have recently witnessed an increase in voter suppression, intimidation and deceptive practices aimed at Latino voters. When a community organizes and begins to make new political gains, it often becomes subject to deliberate attempts to halt its electoral advancement by any available means, including the use of deceptive practices and voter intimidation. For example, on Election Day 2006, MALDEF attorneys witnessed an extreme act of voter intimidation in Tucson, Arizona. Vigilantes, at least one of whom was armed, approached Latino voters casting their ballots at the 49th Precinct Polling Place in an apparent attempt to suppress the Latino vote in the congressional midterm elections. One man carried a camcorder, another held a clipboard, and a third wore a law enforcement emblem and a holstered gun as they approached Latino voters exclusively. The vigilantes asked Latino voters pointed questions about their political views, wrote down Latino voters' personal information, and videotaped them as they went to cast their vote. The vigilantes' website indicated that they were videotaping Latino voters in order to confirm that all Latino voters who participated in the election were properly registered to vote.

Also in 2006, approximately fourteen thousand Spanish-surname voters in Orange County, California received letters that utilized deceptive practices in an apparent attempt to suppress the Latino vote in the days leading up to the midterm congressional elections. These letters appeared on the letterhead of the California Coalition for Immigration Reform, a local anti-immigrant group notorious for its hostility to local immigrants and

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Latinos. They were signed by the fictitious "Sergio Ramirez" and contained numerous deceptive and intimidating statements.

First, the Orange County letter falsely advised prospective voters that immigrants who vote in federal elections are committing a crime that can result in incarceration and possible deportation. This is a false and deceptive statement: naturalized immigrants who are otherwise eligible to vote are free to vote in federal elections without fear of penalties (including but not limited to incarceration and/or deportation). Second, the letter stated that "the U.S. government is installing a new computerized system to verify names of all newly registered voters who participate in the elections in October and November... Organizations against emigration will be able to request information from this new computerized system." Again, the letter adopts an intimidating tone based upon false information in an apparent attempt to undermine voter confidence within the targeted group of voters. Finally, the letter stated that "[n]ot like in Mexico, here there is no benefit to voting." This letter, representing a coordinated and extensive effort to suppress the Latino vote in the days leading up to a congressional election, has been traced to a candidate running for the congressional seat in the district in which the affected voters live.

S. 453 will provide critical tools to address the types of voter suppression and intimidation that MALDEF has combated in previous elections and expect to continue to combat as the Latino vote grows in strength over the coming years. S. 453 will provide administrative and judicial remedies for voters targeted for intentionally deceptive practices, and it will provide security to all voters by allowing for increased federal protections in the elections process. S. 453 would require the Department of Justice (DOJ) to investigate alleged incidents of the intentional use of deceptive practices, prosecute those who would use prohibited means to suppress the vote, and provide corrective actions to counter the deceptive practices used. MALDEF is particularly supportive of the bill's ban on intentionally false communications regarding 1) the time, place, and manner of elections; and 2) qualifications for or restrictions on voter eligibility (including criminal penalties associated with voting by ineligible voters or information regarding a voter's registration status or eligibility). Most acts of voter suppression through deceptive practices targeting Latinos result from intentionally false communications in these areas.

If S. 453 had been in place during the 2006 election cycle, the deceptive practices of voter intimidation described above would have resulted in different outcomes. MALDEF notified the United States Attorney in Arizona regarding the voter suppression in Tucson on the day that it occurred, but we are unaware of any resulting federal investigation or prosecution that has resulted from this timely notice. If S. 453 were federal law at the time, the Department of Justice would have been charged with conducting an investigation and prosecuting the offending parties if they engaged in intentional deceptive practices prohibited under the statute. Also, DOJ would have been required to enact corrective actions to counter any deceptive information that may have been disseminated by the vigilantes. Finally, MALDEF may engage in private litigation against the vigilantes in question as a result of their having violated Latino voters' civil

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rights; our litigation options may have been strengthened by the private right of action included in S. 453 as introduced, which would provide additional legal bases for the private protection of protected voting rights.

The Orange County voter suppression letter described above also would have triggered federal action under the proposed Deceptive Practices and Voter Intimidation Prevention Act. The letter likely violates S. 453's bar on intentional deception regarding qualifications on voter eligibility (in this case, immigrant status) and voters' registration status or eligibility. In the days following receipt of the letter by Latino voters, MALDEF sent a letter to the United States Attorney General, who initiated an investigation but instituted no corrective actions to remedy the receipt of the misinformation contained in the letter. Instead, MALDEF worked with the California Secretary of State to distribute corrective action letters to all affected voters that contained the correct voter eligibility information. Had the Deceptive Practices and Voter Intimidation Prevention Act been in place at the time, affected voters could have expected the U.S. Attorney General to promptly implement corrective actions, quickly initiate and conclude an investigation, and prosecute individuals who improperly suppressed the vote using tactics barred under the Act. Latino voters were forced to rely upon corrective actions implemented by state officials at MALDEF's request. Voters are still awaiting resolution, over seven months later, of a DOJ investigation of the matter.

My focus upon the two incidents of voter suppression described above should not be taken to indicate that voter suppression through deceptive practices is rare. On the contrary, additional evidence abounds of the use of deceptive practices during recent election cycles to suppress the democratic participation of eligible voters. Voters are frequently provided false information about the time, place & manner of elections. In Virginia, Colorado, New Mexico and Ohio, for example, registered voters have recently been misinformed about their registration status in the days leading up to the elections through phone calls claiming that their registration was cancelled and threatening arrest if they tried to vote. Additionally, voters in New Mexico received phone calls that provided incorrect information about the constituents' voting place after the caller verified the voters' names and addresses. Whether these incidents would rise to the level of intentionally deceptive practices that would violate the Deceptive Practices and Voter Intimidation Prevention Act cannot be known without the investigations that would be required under S. 453.

Additional evidence also exists of recent incidents in which voters were intentionally deceived about voting requirements. In Lake County, Ohio, for example, a fraudulent memo written on fake Board of Elections letterhead was sent to county residents informing them that registration obtained through Democratic Party and NAACP registration drives were invalid. In Charleston County, South Carolina, certain voters received deceptive letters purporting to be from the NAACP that threatened voters with arrest if they had outstanding parking tickets or unpaid child support. In Pittsburgh, Pennsylvania, flyers printed on county letterhead advertised the wrong election date, stating that the voting date had been changed to one day later than the actual voting date. Also, poll workers at precincts across the country have often provided incorrect

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information regarding the identification required to vote. While many of these incidents may have been honest mistakes that would not trigger penalties under S. 453, in several of these incidents poll workers explained that they imposed additional identification requirements in order to keep non-citizens from voting.

MALDEF supports S. 453 as a remedy against voter intimidation and deceptive practices that limit Americans' ability to freely participate in the democratic process. Prevention of the reprehensible practices barred under S.453 strengthens democracy.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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THOMAS A. DASCHLE,	)	
	)	
Plaintiff,	)	Civ. 04-4177
	)	
v.	)	
	)	
JOHN THUNE,	)	
SOUTH DAKOTA REPUBLICAN PARTY,	)	
and JOHN DOES 1-200,	)	
	)	
Defendants.	)	
	)	

COMPLAINT TO ENFORCE COMPLIANCE WITH CONSENT ORDER AND WITH THE LAWS AND CONSTITUTION OF THE UNITED STATES AND FOR EMERGENCY RELIEF

Nature of this Action

1. Thomas A. Daschle seeks a temporary restraining order pursuant to F.R.Civ.P. 65 to compel defendants to comply with the 1982 and 1987 consent orders of the Honorable Dickinson R. Debevoise, United States District Court, District of New Jersey, and to enjoin and remedy defendants' violations of those orders and the laws and Constitution of the United States.

Parties

2. Plaintiff is Thomas A. Daschle, a candidate for re-election to the United

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States Senate. Defendants are John Thune, who is the Republican candidate for United States Senate, the South Dakota Republican Party, and John Does 1-200, who are agents of Thune and the South Dakota Republican Party, and in doing the acts set forth herein have acted in concert with each other.

Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(3), and 28 U.S.C. § 1343(4).

4. Venue exists in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this District.

Facts and Cause of Action

5. This action arises from defendants' attempts unlawfully to harass and intimidate minority voters from voting in elections throughout the United States, now including South Dakota.

6. Minority voters, both nationwide and in South Dakota, vote heavily Democratic. In South Dakota in the 2002 United States Senate election, according to the South Dakota Secretary of State's web site, in Shannon County voters chose the Democratic candidate over the Republican candidate by 2,856 to 248, and in Todd County voters chose the Democratic candidate over the Republican candidate by 2,027 to 464. By comparison, South Dakota as a whole chose the Democratic candidate over the Republican candidate by 49.62% to 49.47%.

7. The Republican National Committee (RNC), acting through local Republican organizations such as the South Dakota Republican Party, has previously engaged in a concerted plan to employ various tactics targeted at minority and heavily Democratic voting areas to harass and intimidate minority voters.

8. In December 1981, the Democratic National Committee (DNC) sued the RNC in the United States District Court for the District of New Jersey, Action No. 81-3876, alleged that Republicans had engaged in illegal so-called "ballot security devices" aimed at preventing African-American and Hispanic voters from participating in the November 1981 election in New Jersey.

9. A consent order was issued in that action in November, 1982 (the "First Consent Order") (attached as Exhibit A). The First Consent Order prohibits the RNC from undertaking any "ballot security" activities anywhere in the United States in polling places or election districts where the racial or ethnic composition of those districts is a factor in the decision to conduct, or the actual conduct of, such activities, and where a purpose or effect of such activities is to deter qualified voters from voting. The First Consent Order also requires the RNC to comply with all state and federal laws protecting the right to vote.

10. The First Consent Order provides that "nothing in this agreement shall prevent plaintiffs from seeking relief, at law or equity, for a violation of the terms of this settlement agreement or of the related consent order incorporating the terms hereof."

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11. In 1986, the RNC conducted "ballot security" activities in Louisiana aimed at deterring African-Americans from voting. In response, the DNC sued the RNC in the United States District Court for the District of New Jersey, Civ. Action No. 86-3972, to enforce compliance with the First Consent Order.

12 The 1986 action resulted in the entry of a second order, denominated "Settlement Stipulation and Order of Dismissal," entered by the Court on July 27, 1987 (copy attached as Exhibit B). It provides:

> "B. To the extent permitted by law and the November 1, 1982 Consent Order, the RNC may deploy persons on election day to perform normal poll watch functions so long as such persons do not use or implement the results of any other ballot security effort, unless the other ballot security effort complies with the provisions of the Consent Order and applicable law and has been so determined by this Court.
>
> "C. Except as provided in paragraph B above, the RNC shall not engage in, and shall not assist or participate in, any ballot security program unless the program (including the method and timing of any challenges resulting from the program) has been determined by this Court to comply with the provisions of the Consent Order and applicable law. Applications by the RNC for determination of ballot security programs by the Court shall be made following 20 days notice to the DNC which notice shall include a description of the programs to be undertaken, the purpose(s) to be served, and the reasons why the program complies with the Consent Order and applicable law."

13. Defendant RNC in a memo issued October 25, 2002, recognized the nature and current applicability of these Consent Orders. Defendant RNC stated:

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> "[T]he Republican National Committee operates consistent with the terms of the consent order entered by the United States District Court for the District of New Jersey as a result of programs conducted in New Jersey and Louisiana in 1981 and 1986, respectively.
>
> "The consent order requires that the Republican National Committee 'refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting.' Further, the consent order states that 'the conduct of such activities disproportionately in or directed toward districts that have a substantial proportion of racial or ethnic populations shall be considered relevant evidence of the existence of such a factor and purpose.'"
>
> (Emphasis added) (Copy attached as Exhibit C).

14. Defendants, in violation of the Second Consent Order, ¶ C, have engaged in and presently are engaging in "ballot security procedures" without having applied to the Court that issued the Second Consent Order (or any other Court) for a determination of compliance with the Second Consent Order, and without having provided notice to the DNC.

15. Defendants have engaged in and are engaging in the following in violation of the First and Second Consent Orders and in violation of the laws and Constitution of the United States with respect to Native American voters:

a. Following Native American voters at the Lake Andes polling place in Charles Mix County, and standing two to three feet behind Native

American voters, and ostentatiously making notes, all intended to intimidate and deter Native American voters, and

b. Following Native American voters out to their cars after they have voted, walking up to their vehicles, and writing down their license plate numbers, all intended to intimidate and deter Native American voters.

c. Having a loud conversation in a polling place, where Native Americans were voting, about Native Americans who were prosecuted for voting illegally in Minnesota.

15. The persons carrying out these activities are part of a large group of Republican Thune supporters who have come to South Dakota from across the country, and who are poised to repeat the same conduct in Native American voting places across South Dakota tomorrow on Election Day.

16. The Daschle-Thune election should be a fair one. The conduct of Republican Thune supporters will make it an unfair one, unless restrained by this Court. Thune and his Republican supporters have targeted the most vulnerable voters they could find.

17. Immediate and irreparable damage to Thomas A. Daschle's candidacy for re-election to United States Senate is occurring because of such conduct, and such damage will increase enormously when voting begins on Tuesday, November 2, unless defendants' illegal conduct is restrained by this Court.. Said damage is immediate and irreparable.

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Immediate and effective relief is essential to ensure that the outcome of tomorrow's election will not be harmed further by defendant's conduct that it already has been harmed.

18. Word travels fast in small-population counties in South Dakota. The above actions will prevent and deter and chill other Native Americans from voting.

19. Thomas A. Daschle has no adequate remedy at law.

20. The public interest in assuring that this election is conducted properly and without harassment, intimidation, or discouragement of Native American voters, as well as the interests of this Court and of the federal judiciary that federal court orders, including the two prior consent orders, be respected and obeyed, requires that defendants, their agents, employees and persons acting in concert be compelled to comply with the First and Second Consent Orders and the laws and Constitution of the United States, and be required to cease the actions set out above.

21. The harm caused by defendants' willful violations of the First and Second Consent Orders and the laws and Constitution of the United States requires immediate remedy to avoid further damage to plaintiff, plaintiff's candidates, the electoral process, and the civil and constitutional rights of the affected voters and prospective voters.

22. Defendants' actions violate the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

23. Defendants' actions violate 42 U.S.C. § 1973i(b), which prohibits any person, whether or not acting under color of law, from acting to intimidate, threaten or

coerce, or attempting to intimidate, threaten or coerce any person from voting or attempting to vote.

24. Defendants' actions violate 42 U.S.C. § 1971(a)(1), which protects the right to vote from discrimination based on race by persons acting under color of law.

25. Defendants' actions violate 42 U.S.C. § 1983, which prohibits persons from acting under color of state law from depriving persons of rights protected by the Constitution and laws of the United States.

26. Defendants' actions violate 42 U.S.C. § 1985(3), which prohibits two or more persons, whether or not acting under color of law, from acting jointly to deprive any person or class of persons of the equal protection of the laws.

27. Defendants' actions violate the Constitution and laws of the State of South Dakota protecting the rights of people to vote.

28. Federal law recognizes the identity of the RNC and state Republican parties such as the South Dakota Republican Party. A "political party" is an organization which nominates a candidate for election to a federal office whose name appears on an election ballot as a candidate of that organization. 2 U.S.C. § 431 (16). A "national committee" (like the RNC) is an organization which is "responsible for the day-to-day operation of a political party at the national level." 2 U.S.C. § 431 (14). A "State committee" (like the South Dakota Republican Party) is "responsible for the day-to-day operation of such political party at the state level." 2 U.S.C. § 431 (15).

29. Likewise, under federal law, contributions to all committees organized by a party candidate for election to Federal office "shall be considered to be made or received by a single political committee." 11 CFR 110.3.

WHEREFORE, Thomas A. Daschle requests this Court enter an order:

1. Enjoining defendants from taking any of the actions alleged herein or any other actions designed to harass, intimidate or discourage voters or having that effect; and

2. Granting such other relief as is just.

Dated: November 1, 2004

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Attorneys for Thomas A. Daschle

By:

VERIFICATION

I verify that the foregoing is true and correct to the best of my knowledge, information, and belief.

VerDate 0ct 09 2002 09:26 Feb 13, 2008 Jkt 040581 PO 00000 Frm 00266 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\40581.TXT SJUD1 PsN: CMORC

40581.226

Dated: November 1, 2004

[ATTACHED ARE TWO CONSENT ORDERS AND RNC MEMO OF OCTOBER 25, 2002]

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
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CLERK

THOMAS A. DASCHLE, Plaintiff, v. JOHN THUNE, SOUTH DAKOTA REPUBLICAN PARTY, and JOHN DOES 1-200, Defendants.	)	Civ. 04-4177

MEMORANDUM IN SUPPORT OF
COMPLAINT TO ENFORCE COMPLIANCE WITH CONSENT ORDER
AND WITH THE LAWS AND CONSTITUTION OF THE UNITED STATES
AND FOR EMERGENCY RELIEF

Native Americans have never voted in the same numbers as non-Native Americans. As a result, Native Americans have less political power than other groups of people have, and many remain mired in poverty. Native Americans in South Dakota and nationally vote heavily Democratic.

Plaintiff's campaign helped many Native Americans register to vote. The day before Election Day, defendants have shown their hand with unlawful efforts to harass, intimidate, and discourage Native American voters. Immediate remedy -- before the polls open tomorrow-- is required to avoid further unlawful damage to plaintiff.

Received Time Nov. 1. 7:07PM

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The background, factual basis, and legal basis for this action, and the need for immediate relief, are set out in the Complaint. The RNC's history of similar conduct over the past 20 years, and this year in other states, is set out in the Appendix. Such efforts are particularly effective against Native Americans, many of whom will withdraw in the face of controversy rather than aggressively challenge it.

F.R.Civ.P. 65 authorizes issuance of a temporary restraining order. "The standard for issuance of an injunction requires consideration of the threat of irreparable harm to the movant, the balance between this harm and the harm created by granting the injunction, the likelihood of success on the merits, and the public interest. The party seeking the injunction has the burden of establishing these factors." Davis v. Francis Howell Sch. Dist., 104 F.3d 204, 205-06 (8th Cir. 1997) (citations omitted). "In balancing the equities no single factor is determinative." Dataphase Systems, Inc. v. C. L. Systems, 640 F.2d 109, 113 (8th Cir. 1981) (en banc).

The threat of irreparable harm is overwhelming. No harm will occur by granting the injunction. The likelihood of success on the merits is overwhelming. The public interest strongly opposes unlawful efforts to discourage Native Americans from voting. Balancing these factors, all require that immediate relief be granted.

The Fourteenth Amendment requires equal protection of the laws. The Fifteenth Amendment provides that "The right of citizens of the United States to vote shall not be denied or abridged by . . . any state on account of race," and provides that Congress may

enforce this provision by legislation.

Title 42 U.S.C. § 1973i(b) provides: "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any persons to vote or attempt to vote, . . ."

Title 42 U.S.C. § 1971(a)(1) provides: "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

Title 42 U.S.C. § 1983 protects against discrimination by persons acting under color of state law. Title 42 U.S.C. § 1985(3) prohibits two or more people, whether or not acting under color of law, from acting jointly to deprive anyone of the equal protection of the laws.

The Court should grant the relief requested, and should do so immediately, in order to preserve these constitutional and statutory guarantees, and the voters they are intended to protect, from further abuse by defendants.

Received Time Nov. 1. 7:07PM

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Dated: November 1, 2004

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

THOMAS A DASCHLE,	*	CIV 04-4177
Plaintiff,	*	
vs.	*	TEMPORARY RESTRAINING ORDER
JOHN THUNE; SOUTH DAKOTA REPUBLICAN PARTY; and JOHN DOES 1-200,	*	
Defendants.	*	

Under the principles of *Bush v. Gore*, 531 U.S. 98 (2000), the Court finds that the Plaintiff Thomas A. Daschle has standing to bring the present action. The action shows that Plaintiff Daschle is suing on his behalf as well as on behalf of persons who are unable to protect their own rights, that being Native Americans, to vote in this South Dakota General Election. See also *Oti Kaga, Inc. v. South Dakota Housing Authority*, 342 F.3d 871, 881-82 (8th Cir. 2003), and cases cited therein.

Oral testimony, photographs, and arguments were presented by the Plaintiff and the Defendants concerning today's events in a hearing from 8:00 P.M. until 11:30 P.M. this evening. Due to the fact that the General Election voting commences at 7:00 A.M. tomorrow morning, the Court cannot prepare a more detailed opinion.

After receiving evidence on behalf of Plaintiff and Defendants in the form of oral testimony as well as photographs, the Court applies the four factor tests from *Dataphase Systems, Inc. v. C L Systems, Inc.*, 540 F.2d 109 (8th Cir. 1981), and concludes that there clearly is the threat of irreparable harm to the Movant in that if Native Americans are improperly dissuaded from voting, those voters normally simply disappear and there is no identifying most of them and even if

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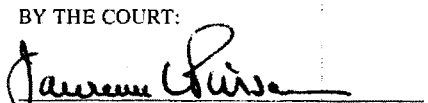
identified, they can't vote later. The harm that will be inflicted upon the Movant is far greater than any injury granting the temporary restraining order will cause Defendants. The Movant and the Native American voters whose rights are asserted by the Movant will suffer the irreparable harm described above while Defendants are only being required to follow the law. The Court does find that the Movant is more likely to succeed on the merits of the equal protection claim and the claims under 42 U.S.C. § 1973i(b) and 42 U.S.C. § 1985(3), as the Court finds that there was intimidation particularly targeted at Native American voters in Charles Mix County by persons who were acting on behalf of John Thune. The Eighth Circuit has ruled that injunctive relief is available under § 1985(3). *See Brewer v. Hoxie School District*, 238 F.2d 91 (8th Cir. 1956). Whether the intimidation was intended or simply the result of excessive zeal is not the issue, as the result was the intimidation of prospective Native American voters in Charles Mix County. This is a small Native American population within which word travels quickly. Finally, the public interest is served by having no minority denied an opportunity to vote. Accordingly,

IT IS ORDERED that a Temporary Restraining Order is entered against Joel C. Mandelman and all other Defendant John Does acting on behalf of John Thune in Charles Mix County prohibiting them from following Native Americans from the polling places and directing that they not copy the license plates of Native Americans driving to the polling places, or being driven to the polling places, and further directing that the license plates of Native Americans driving away from the polling places also not be recorded.

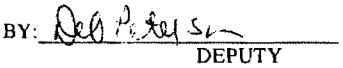
Dated this 2nd day of November, 2004.

BY THE COURT:



Lawrence L. Piersol
Chief Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
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JOHN FUND ON THE TRAIL

Vote-Fraud Demagogues

Americans overwhelmingly support voter ID. Are they all racists?

The Wall Street Journal
Wednesday, June 13, 2007 12:01 a.m.

Appointments to the Federal Election Commission rarely draw attention. But at a confirmation hearing today, there's likely to be some fireworks over Hans von Spakovsky.

Mr. von Spakovsky has already amassed an 18-month long, largely uncontroversial record at the FEC as a recess appointment. But that's not likely to stop Senate Democrats from grilling him about his time at the Justice Department during President Bush's first term. The aim will be to portray him as a partisan who mishandled voting rights cases. Exhibit A will be his support for state voter ID laws.

For months, since the firing of eight U.S. Attorneys sparked a mini scandal, Democrats have insisted that the president has improperly politicized the Justice Department. Specifically, the accusation is that, under Attorney General Alberto Gonzales, DOJ has pursued a political agenda by enforcing laws to curb voter fraud.

Last week, Judiciary Committee Democrats held a hearing aimed in part at discrediting a 2005 Justice lawsuit seeking to force Missouri to cull ineligible voters from its rolls. But while the Missouri case was thrown out by a district judge, similar Justice lawsuits in Indiana and New Jersey led to voter rolls being cleaned up.

There is no limit to the hyperbole directed at Mr. von Spakovsky. He has come under such vitriolic fire from Gerald Hebert, now with the liberal Campaign Legal Center, that even Bob Bauer, the counsel to the Democratic Senatorial and Congressional Campaign Committees, has called his criticism of the nominee's FEC record "an argument boiling over with personal contempt and so short on reasoned argument."

Other critics claim that Mr. von Spakovsky ignored concerns that a Georgia law requiring photo ID at the polls would disenfranchise poor and minority voters who have a hard time obtaining documentation. They note that a federal judge twice blocked the law from going into effect.

But yelling "voter suppression" in a crowded congressional theater should be done with caution. In the Georgia case, the federal judge didn't find evidence that the law was racially discriminatory. He struck it down on other grounds. Also, the Georgia Supreme Court on Monday unanimously threw out a separate challenge to the state's photo ID law.

Indeed, courts have tended to uphold voter ID laws. Last year, the U.S. Supreme Court unanimously overturned a Ninth Circuit ruling that had blocked an Arizona ID law. In doing so, the Court noted that anyone without an ID is permitted to cast a

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provisional ballot that could be verified later. The court also noted that fraud "drives honest citizens out of the democratic process."

Voter ID laws are hardly the second coming of Jim Crow. In 2005, 18 out of 21 members of a federal commission headed by former President Jimmy Carter and former Secretary of State James Baker came out in support of voter ID laws. Andrew Young, Mr. Carter's U.N. ambassador, has said that in an era when people have to show ID to travel or cash a check "requiring ID can help poor people." A Wall Street Journal/NBC News poll last year found that voters favor a photo ID requirement by 80%-7%. The idea had overwhelming support among all races.

One reason for such large public support is that the potential for fraud is real. Many people don't trust electronic voting machines. And in recent years Democratic candidates have leveled credible accusations of voter fraud in mayoral races in Detroit, East Chicago, Ind., and St. Louis.

Last week, election officials in San Antonio, Texas determined that 330 people on their voter rolls weren't citizens and that up to 41 of them may have voted illegally, some repeatedly. In 2004, San Antonio was the scene of a bitter dispute in which Democratic Rep. Ciro Rodriguez charged his primary opponent with voter fraud.

In Florida, a felon named Ben Miller was arrested last week for illegally voting in every state election over a period of 16 years. The Palm Beach Post discovered that in Florida's 2000 infamous presidential recount, 5,643 voters' names perfectly matched the names of convicted felons. They should have been disqualified but were allowed to vote anyway. "These illegal voters almost certainly influenced the down-to-the-wire presidential election," the Post reported. By contrast, only 1,100 people were incorrectly labeled as felons by election officials, the Post estimated.

Everyone has reason to be concerned about a politicized Justice Department. But to set up a cartoon version of reality in which principled career lawyers at Justice were battling Bush political appointees bent on voter suppression is absurd. The Civil Rights shop at Justice has been stuffed with liberal activists for decades. Many of the former career Justice lawyers complaining about Mr. von Spakovsky today now work at liberal groups such as People for the American Way. And their imaginative, hyperaggressive enforcement of the Voting Rights Act hasn't fared well in court. During the Clinton years, when their theories were allowed to be put to a legal test, courts assessed Justice over $4.1 million in penalties in a dozen cases where it was found to have engaged in sloppy, over-reaching legal arguments. In one case, the Supreme Court noted "the considerable influence of ACLU advocacy on the voting rights decisions of the Attorney General is an embarrassment."

Voter suppression and fraud both deserve to be vigorously addressed. But those concerned with the first who would paint those worried about the second as racially discriminatory are engaged in a form of willful blindness.

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'Ballot Security' Effects Calculated
By Thomas B. Edsall Washington Post Staff Writer
The Washington Post (1974-Current file); Oct 25, 1986; ProQuest Historical Newspapers The Washington Post (1877 - 1990)
pg. A1

'Ballot Security' Effects Calculated

GOP Aide Said Louisiana Effort 'Could Keep the Black Vote Down'

By Thomas B. Edsall
Washington Post Staff Writer

NEWARK, Oct. 24—A Republican National Committee (RNC) official had calculated that a so-called ballot security program in Louisiana "could keep the black vote down considerably," according to documents released today in federal court here.

The documents and court hearing were the latest developments in a continuing controversy over the GOP's ballot program, which Democrats maintain is aimed at reducing minority turnout. The Republicans say the program's sole purpose is to purge ineligible voters.

In an Aug. 13 memo the court made public today, Kris Wolfe, the RNC Midwest political director, wrote Lanny Griffith, RNC southern political director, and said of the Louisiana campaigning:

"I know this race is really important to you. I would guess that this program will eliminate at least 60-80,000 folks from the rolls . . . . If it's a close race . . . which I'm assuming it is, this could keep the black vote down considerably."

She said in the memo that the program had been approved by Gregory Graves, deputy political director of the National Republican Senatorial Committee.

The document, called Exhibit 13, was unsealed by U.S. District Court Judge Dickinson R. Debevoise when lawyers for the Democratic National Committee (DNC) said it was needed to question Wolfe.

Wolfe testified that she wrote about the possibility of keeping the black vote down to remind Griffith that there "might be a political situation he might want to consider . . . . I wanted him to be aware of the political considerations."

See BALLOT, A6, Col. 4

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GOP Aide's Memo Cites Effect on Black Turnout

BALLOT, From A1

The Democrats are suing the Republican Party for $10 million, charging that RNC ballot security programs violated a 1981 consent agreement signed here by both political parties.

Under the agreement, the RNC would "refrain from undertaking any ballot security activities in polling places or election districts where the racial composition of such districts is a factor."

Debevoise refused today to issue a restraining order requiring the GOP to stop all similar activity.

The judge said he accepted the word of Republican lawyers who told him that all ballot security programs have been stopped, including an effort the Democrats say singled out predominantly black and Hispanic precincts in Pontiac, Mich.

Under pressure from national GOP officials, who were seeking to avoid a confrontation in the courts, organizers of the Michigan program Thursday night abandoned plans to send in paid workers to challenge certain voters in Pontiac. The Michigan program was financed largely by a $24,000 grant from the National Republican Congressional Committee (NRCC).

For the past month, the RNC has been ensnared in controversy over its ballot security program. In testimony today, Mark Braden, the RNC's chief counsel and the organizer of the ballot security program, said he repeatedly sought to make it clear to subordinates that "race was a factor that could not be used. I would instill the fear of God in them . . . . I'm not an idiot—this is a big press issue and it's a big legal issue."

The RNC's ballot security program was conducted in Louisiana, Indiana and Missouri. Before it became controversial, GOP political strategists said they planned to use it in other states.

On Oct. 14, Louisiana state District Court Judge Richard E. Lee issued an injuction against the program. In his order, Lee said, "This was an insidious scheme by the Republican Party to remove blacks from the voting rolls."

In most of the GOP programs, voters in districts and precincts in which 80 percent or more cast ballots for Walter F. Mondale in the 1984 presidential election were mailed letters marked "Do not forward, return to sender." In many cases, precincts casting Democratic margins this high are black or Hispanic.

Letters that were returned to a Chicago company hired by the GOP, Ballot Integrity Group Inc., were turned over to election officials in an effort to have the names purged from the lists on the grounds that the voters apparently did not reside at their listed addresses.

In addition, the names of all the voters for whom letters were returned were turned over to the Federal Bureau of Investigation and U.S. attorneys' offices. The names also were kept for possible use by Republican poll judges on Nov. 4.

National Republican Party officials have promised the courts that no use of the lists will be made on Election Day.

Wolfe, questioned today by DNC lawyer David R. Boies, testified that she served as a "technical consultant" in the Louisiana ballot security program, and discussed it at length with officials of the Republican Senate campaign of Rep. W. Henson Moore, including Larry Kinlaw, Moore's campaign manager.

Moore and Democratic Rep. John B. Breaux are in one of the tightest races in the country, and party officials for both sides say that turnout will be a key factor.

During his questioning, Boies sought to tie the RNC to the Michigan program by questioning Wolfe about a series of memos that appeared to link her to it. In a memo to RNC officials, Wolfe wrote: "Met with John Maddox [of the NRCC] and agreed to write ballot integrity plans for Indiana 8 and Michigan 6," and "worked on MI6 ballot integrity program." Pontiac is in Michigan's Sixth Congressional District.

Wolfe denied writing the Michigan plan.

In rejecting the Democrats' request for a restraining order, Debevoise said the Democrats had not adequately proved a link between the RNC and the NRCC, which put up the $24,000 for the Michigan program.

[In Washington, Democratic Party Chairman Paul G. Kirk Jr. said, "The GOP's attempt to portray this outrageous assault on voting rights as a public service project to eliminate ghost voters is another classic Republican disinformation campaign—an attempt to make people feel good while masking Republican dirty tricks."]

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