



STATE OF TEXAS
HOUSE OF REPRESENTATIVES
DISTRICT 103

RAFAEL ANCHIA
MEMBER

March 11, 2008

The Honorable Dianne Feinstein
Chairman
Senate Committee on Rules and Administration
Russell Senate Office Building, Room 305
Washington, D.C. 20510

Dear Chairman Feinstein:

Thank you for the opportunity to submit testimony to the Senate Committee on Rules and Administration on the issue of voter photo ID in Texas. As a Democratic member of the Texas House Committee on Elections, I have had a front row seat to the debate that has ensued in Texas on that issue. Despite the voter photo ID proponents' claims that voter photo ID is necessary to address problems of voter impersonation and non-citizen voting, I have seen no substantive evidence to back up their assertions. The fact that these bills continue to resurface in the legislature despite their lack of public policy imperative indicates that they are proposed for partisan gain and not for purposes of creating sound public policy.

Over the course of the last two legislative cycles, the Republican leadership in Texas has pursued a voter disenfranchisement agenda, introducing bills that would require a voter photo ID in order to vote and proof of citizenship in order to register to vote. In response, Texas civil rights advocates representing minority groups, the disabled and senior citizens made regular visits to the capitol to testify that those pieces of legislation would have detrimental effects on the ability of their constituencies to vote. Despite those concerns, the Republican leadership has used the strength of their majority to push voter photo ID legislation through the Texas House.

Thankfully, our Democratic minority in the Texas Senate has maintained enough opposition to voter photo ID legislation to procedurally prevent the legislation from passing through the upper chamber in each of the last two sessions. During the last session specifically, the pressure on the leadership to pass some form of a voter photo ID bill became evident when Lt. Governor David Dewhurst (who chairs the Texas Senate)

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circumvented the traditional standards of Senate decorum when he used the opportunity of an absent Senate member (who was sick with the flu) to attempt to bring the voter photo ID measure to the floor. Luckily, the members of the Democratic minority were able to call for a recount, giving the sick Senator just enough time to run to the capitol and cast his vote in opposition to the measure just as his name was being called on the roll.

The pressure to pass voter photo ID came to bear disproportionately on **one Senator's** shoulders in particular - Senator Gallegos - who, despite being severely ill following **a liver transplant**, put his health at risk in order to make himself constantly available to block the **legislation**. By exerting that much pressure on a sick colleague, the Lt. Governor and truly demonstrated the real sense of **urgency** with which the Republicans have pursued this partisan policy.

The Texas Republican Party has real reasons to pursue changes in the manner in which we conduct elections. Texas is **undergoing** a dramatic demographic shift which will ultimately have a tremendous **impact** on the **political landscape**. The growth of the state's Hispanic population since 2000 (**25.8%**) has doubled **the growth rate of the entire state population in that same time period (12.7%)**. **The state has also seen tremendous growth of its urban population: Houston, Dallas, Fort Worth, San Antonio and Austin have growth rates over the past seven years ranging from 15 to 24%**. The growth of these traditionally Democratic-voting **constituencies** and the **rancorous tenor of Republicans on immigration** are unsettling to **many Republican strategists** and are stoking fears in the conservative community that Texas will **once again become a Democratic-leaning** state within the next decade, if not sooner.

The Republican **strategy** of using voter photo ID to overcome this state's **demographic hurdles** should be placed in the context of the Congressional redistricting battle that **took place in** the state in 2003. **At that time**, the exact same Republican leadership in the **Texas House, Senate and Governor's office** used their influence to produce a new Congressional **district map only two years** after the **first map** based on the 2000 census had been passed. **Democrats in both the Texas House and Senate fled the state to avoid a quorum at the end of that session and during** subsequent **special sessions** in order to kill the measure supported by **Congressman Tom Delay**. Ultimately, the **Republican leadership's strong-arm tactics** succeeded in producing a **gerrymandered map**, which was later amended by order of the U.S. Supreme Court in order to bring it into compliance with the Voting Rights Act.

The same leadership which has routinely placed their partisan interests above the public's interest is now continuing to pursue voter photo ID in Texas. Following the failure of photo ID to pass

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last session, the House Elections Committee has once again placed the issue as one of its interim charges, despite the fact that the issue has been well-studied by the Committee over the last four years. Both the Texas Secretary of State and the Texas Attorney General's offices have testified that neither voter impersonation nor non-citizen voting have amounted to a problem of any significance in either of their offices.

The bulk of the data which is used to support the voter ID debate has originated from the Harris County Tax Assessor-Collector, Paul Bettencourt, who is a Republican who supports voter ID. He has used cross-referenced voter registration cards and jury summons forms in which individuals have checked that they are not citizens to make the claim that thousands of non-citizens are on the voter rolls. Actually, only 23 individuals who have checked "non-citizen" on a jury summons have voted in the last 5 years. After some preliminary research into those 23 individuals, my staff has found that some of those individuals are U.S.-born citizens, while others are naturalized citizens. Regardless, a voter photo ID would have little to no impact on voting by non-citizens, since Texas allows permanent residents to have driver's licenses and state ID's.

Demonstrating the vacuous rationale for voter photo ID, the issue's proponents can only cite examples of voter fraud which themselves cannot be prevented through the implementation of voter photo ID. The Texas Attorney General, Greg Abbott, recently filed an amicus brief to the Supreme Court laying out the state of Texas' support of voter photo ID. In that brief, the Attorney General did not cite one example of voter fraud which would be prevented by implementation of voter photo ID legislation. The brief even cited data from a voluntary, online poll to demonstrate that everyone has the ID necessary to comply with a voter photo ID law. If the evidence in support of voter photo ID is so overwhelming, the proponents for voter photo ID are certainly not providing it.

Given the amount of attention that voter photo ID has been given following last session's failed attempt to pass it, I fully anticipate that we will once again face another round of voter photo ID legislation in the upcoming legislative session in 2009. The Texas Republican Party even placed a voter photo ID question on their party's primary ballot this year, certainly to build additional justification for continuing their pursuit of these types of legal disenfranchisements in the future. (The voter photo ID question received 94.88% support for the measure.)

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Given the fact that no reasonable justification has been asserted in favor of voter photo ID, and the fact that up to 150,000 Texans could possibly be disenfranchised, including many senior citizens, people with disabilities and many in minority communities, I remain steadfast in my opposition to voter photo ID. If you or your committee require further information about the status of the voter photo ID debate in the State of Texas, my staff and I will gladly make ourselves available to you at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Rafael Anchia". The signature is written in a cursive style with a large, sweeping initial "R".

Rafael Anchia
State Representative
District 103

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The Honorable Dianne Feinstein
Chairman, Senate Committee on Rules and Administration
Russell Senate Office Building, Room 305
Washington, D.C. 20510

Dear Chairman Feinstein:

I respectfully request that this letter be submitted as written testimony for the Committee on Rules and Administration's March 12, 2008, hearing, titled, "In-Person Voter Fraud: Myth and Trigger for Disenfranchisement?"

It is my view, based on my record of academic research on the subject, that "in-person" or polling place voter fraud is rare in contemporary American elections. As a problem or threat to electoral integrity, it cannot compare in seriousness or magnitude to other resource, technology, and personnel problems currently facing state and local elections officials.

Instead, partisans and the media have grossly exaggerated both the incidence of voters committing fraud by intentionally and illegally registering and voting, and the vulnerability of existing election procedures to this kind of fraud. The focus on voter fraud is a distraction intended to drive up support for overly restrictive electoral rules that suppress voting, especially among the poorest and least educated Americans. On this and related issues, partisan politics is colliding with voting rights, and partisan politics is winning.

Since the contested 2000 election, we have seen a renewed upsurge in the use of party and campaign tactics and techniques to make it harder for some Americans, at least, to vote. This activity appears to be motivated less by racial animus, as in the past, and more by the imperatives of electoral and party competition in a two-party, winner-take-all system. Extremely close elections where there is much to win or lose create robust incentives for parties and campaigns to engage in vote suppression to win. Racial minorities, however, are more likely to be targeted by Republican operatives because they are also more likely to be Democrats, and they are vulnerable to the suppressive effects of new restrictions on registration and voting because they are disproportionately represented among the groups (i.e., the elderly, the young, new citizens and the poor) for whom new barriers like photo identification requirements are the highest. There is a long history in the U.S. of rationalizing rules that make it difficult to vote as solutions to the problem of voter fraud. For how else can restrictions on access to the vote be justified in a democracy?

The foregoing testimony, with only minor revisions to reflect the context of the Rules Committee's inquiry, was submitted to the U.S. House Judiciary's Subcommittee on the Constitution, Civil Rights and Civil Liberties' at their February 26th, 2008, Oversight Hearing on Voter Suppression. I was called as a witness at that hearing. My written testimony pertains to my analysis of federal prosecution records for voter fraud over a recent three-year period, 2002 to 2005, and is drawn from research for an academic book on the subject. The analysis supports my judgment, arrived at after years of research, that voter fraud is very rare in American elections today. The views expressed are my own.

I am an Assistant Professor in the Department of Political Science at Barnard College in New York City. I teach courses on American government, including a course on Participation and Democracy, as well as courses on urban politics and policy. I am a fellow at Demos, a national public policy and advocacy organization that works on issues of economic inequality, democratic renewal and social justice; and I have worked with other organizations like Project Vote that are dedicated to expanding electoral participation, especially among the poor.

These are my interests and they explain my research project which I report on here. For the last six years I have conducted research on the prominence of voter fraud in much of the discourse on American electoral arrangements. I wanted to know, is voter fraud a threat to the integrity of American elections? how much fraud is there? how many cases of voter fraud occur in any given state and local or federal election? what are the types of fraud and how does it occur? My concern is access to the ballot. From my study of American history and politics, I could see how political responses to voter fraud have led to campaigns to change election law and administration in ways that narrow access. As I am committed to widening access, I wanted to know: was voter fraud a real problem, does it justify restricting access to the ballot?

The short answer is that voter fraud is rare, and the cure is worse than the disease. Stepped up federal prosecution efforts over a recent three year period resulted in the conviction or guilty pleas of only 26 voters, many of them people who appeared to have made honest mistakes, and many of them racial minorities in need of court-appointed attorneys. There is also evidence suggesting that the federal government's new programs to prosecute isolated, individual cases of voter fraud having no impact on the outcome of an election could have a deterrent effect – not on fraud, but on voting. To explain to you how I've arrived at my conclusions, I will discuss my research effort, methodology and findings.

The first stage of the research was to define my terms. When I speak of 'voter fraud,' I mean corruption of the electoral process by voters. If American elections are being regularly corrupted by this kind of fraud, it would be important to know how it is being committed. Solutions to the problem of fraud are best framed by analyses which illuminate where the integrity of the electoral process is breaking down and where the system is vulnerable. In my research, therefore, I make distinctions among types of fraud, for example, vote-buying,

ballot box stuffing, registration fraud, and illegal voting; and types of perpetrators of fraud where the most important distinction is between voters and officials.

The next stage of the research was to collect the data. Neither the federal nor state governments routinely collect and publish data on voter fraud, so I conducted original research to compile statistics. In July 2005, I submitted a Freedom of Information Act request to four different units of the Justice Department for records related to the Department's Ballot Access and Voting Integrity Initiative. This program was initiated by the Attorney General in 2001 to combat voter fraud and voter intimidation.

In addition to looking for data at the federal level, I made an effort to collect data from the states. I wrote letters under states' open records laws to every Attorney General and Secretary of State in the country, and to every county or district attorney – all 2,700 of them – requesting records or statistics on voter fraud.

My research has involved a qualitative dimension, as well. I've conducted interviews in Seattle, Milwaukee, St. Louis, New Orleans and Washington, D.C., and read thousands of newspaper articles. I've reviewed the election codes of all of the states – in addition to reviewing all the scholarly literature on this subject, of which there is little.

Neither the Justice Department nor all of the states have been especially helpful to my research, though some have gone out of their way to cooperate and provide information. In fact, after a two-and-a-half-year wait, I was only able to obtain the bulk of Justice Department records requested through a Freedom of Information Act filing after the intervention of Senator Schumer. A document summarizing federal law enforcement activity with respect to election crimes was produced by the Justice Department's Criminal Division for a congressional field hearing on the issue of "Non-citizen Voting," conducted in New Mexico by the House Administration Committee on June 22, 2006. It consists of all cases – 95 indictments – brought by the federal government under the Ballot Access and Voting Integrity Initiative between October 2002 and September 2005.

I researched the outcomes of these indictments and compiled the results presented in table 1 (see appendix).

The information in table 1 is classified using the Justice Department's own characterization of the type of crime involved, and my analysis of the type of person charged with the crime. The government won convictions or guilty pleas against 70 of the 95 defendants, a 76 percent conviction rate. However, if we dig into the data, we find that only 40 of these people were voters, the others were government officials, party or campaign workers, or election workers. Of the 40 voters charged, only 26 were convicted or pleaded guilty, yielding an average of eight to nine people a year, and a conviction rate of 65 percent. The convicted included: one person for registration fraud, resulting in the defendant's deportation to Pakistan; five people for double voting; and 20 people for voting while ineligible to vote, including 15 non-citizens and five citizens with felony convictions who had not yet had their civil rights restored.

According to the U.S. Election Commission's 2006 report, *Election Crimes: An Initial Review and Recommendations for Future Study*, under the Ballot Access and Voting Integrity Initiative, the Justice Department initiated three pilot programs "to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions." The pilot projects reflect the implementation of a policy change initiated by Attorney General Ashcroft in 2001 to pursue cases of voter fraud involving individual incidents. Again, according to the EAC's election crimes report,

"Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. Prior to this, the Department did not go after individual isolated instances of fraud or cases which would not have a big impact and therefore, a deterrent effect."

The head of the Elections Crime Branch of the Criminal Division's Public Integrity Section told the researchers for the EAC report that the pilot projects focused on: 1) felon voters in Milwaukee; 2) alien voters in the Southern District of Florida; and 3) and double voters in a variety of jurisdictions. The Department's record of indictments fits this description: 35 of the 40 voters indicted between October 2002 and September 2005 are among the three groups targeted by the pilot projects: 1) 10 alleged felon voters in Milwaukee; 2) 16 alleged alien voters in the Southern District of Florida; and 3) and nine alleged double voters, including four people in Milwaukee, and five in Missouri and Kansas.

There is another pattern evident in the prosecution records which I find troubling. According to press releases and statements by the Attorney General, the Ballot Access and Voting Integrity Initiative to which I've referred was put in place to respond to the complaints of voting irregularities made to the Justice Department by thousands of citizens experiencing problems in the 2000 election. It was to have two components focusing on prevention and prosecution, and a dual approach to prosecuting both fraud and voter intimidation.

In at least two important ways, the prosecution record for the first three years of this new program raises serious questions about its effectiveness. First, although the program was trumpeted as a balanced approach to preventing election crime, only two of the 95 indictments I studied involved what the Department labeled "intimidation." My research into these cases suggests to me that, in fact, they were not cases of voter intimidation – they involved public corruption in the Western District of Pennsylvania where a public official sought to compel employees to donate to a political campaign. Another three indictments were for what the Department called "civil rights" violations in what is now a well-known case of phone-jamming during the 2002 New Hampshire midterm elections by operatives of the Republican Party.

The second troubling issue raised by the record concerns the effectiveness and value of pursuing cases of individual voter fraud in which there is no conspiracy to steal an election or

corrupt the process. First of all, a third of the 40 people indicted for felon voting, alien voting and double voting were not guilty of the charges, and some of those convicted have maintained that their convictions were for actions they did not know were illegal. This raises the question of what purpose the program is serving. It has turned up very little individual voter fraud, and one wonders whether generating publicity for a federal government crackdown on fraud in order to create the appearance of a problem, in fact, might have been the real motive.

I'd like to close with the stories of two people indicted in Milwaukee that illustrate the way in which the aggressive prosecution of individuals for isolated instances of "fraud" have the effect of suppressing voting. These stories are excerpted from my forthcoming book, tentatively titled, *The Politics of Voter Fraud*:

Derek Little

Derek Little sat on the couch in his aunt's tiny wooden frame house in Milwaukee. It was November and cold. Derek was 44 years old, an intelligent man but with only a tenth grade education, life had been hard on him. He looked much older than his 44 years. That day, Election Day, November 2, 2004, he'd come back a little tired from his job hauling junk at a junkyard and was resting when his aunt returned from voting wearing a big yellow sticker that said, "I Voted!" "You better get yourself on over there, Derek, and vote," she told him, "they're about to close the polls. Take an ID and something showing you're living here now and hurry up." Derek was a regular voter, having cast his first ballot at the age of 18 and voting in every presidential election since until a felony conviction on a state drug charge interrupted his life and sent him to prison. Serving out the end of his sentence on probation, this was the first presidential election he thought he could vote in since he'd gotten out of jail.

'OK, I'll go,' he said to himself, 'but what kind of ID can I use?' He didn't drive so he couldn't use a driver's license because he didn't have one. He remembered that he kept the ID card they gave him while he was in prison. 'I'll use that.' He rifled through his things and fished out the plastic card he had to wear while in jail. It was issued by the Wisconsin Department of Corrections, it had his picture on it, his name and date of birth, and indicated his height, weight, eye and hair color. 'That ought to do,' he thought. It also said 'OFFENDER' in big, bold, black lettering. In fact, no text on the card was larger or stood out more than that word, 'OFFENDER,' which appeared above his prison ID number and his name. He grabbed a letter from his state probation officer addressed to him at his aunt's house as further proof of who he was and where he lived and walked over to a local school to vote.

When Derek got there he had to wait in line. The poll worker asked him if he was registered to vote. Because he had moved since the last time he voted, she told him they'd fill out a new registration card for him. The poll worker asked him a couple of questions -- name? address? -- which she filled in for him on a green "City of Milwaukee On-Site Registration Card," checking off "New Voter in Milwaukee" and writing in his district and ward. Derek handed her his prison ID card and the clerk filled in the prison ID number on the line marked,

“WI Dept. of Transportation–issued driver’s license or identification card number.” She then filled in the last four-digits of Derek’s Social Security number even though the instruction on the card said it was required only if the person did not have a Wisconsin driver’s license or ID. Derek attested to being a U.S. citizen and that he was at least 18 years of age by signing his name on the bottom of the card. No one told him that as a probationer he was ineligible to vote in Wisconsin, and nowhere on the voter registration card did it indicate that a person still under state supervision for a felony conviction was prohibited from voting. Derek saw no sign on the wall of the polling site with this information and says in his entanglement with the prison and criminal justice systems, if anybody ever told him that he couldn’t vote while he was on probation, he didn’t remember it.

Derek cast his ballot and went home.

On a morning in July, seven months later, Derek was eating his breakfast when two detectives approached the house and knocked on the door. A family member answered the door and yelled the police were there for him. ‘What? What’d I do now? Oh, no.’ Derek looked up from his pancakes and saw the two law enforcement officers standing there. “My appetite was shot,” he later recalled, “them pancakes was done.” The detectives told him he was facing five years in the federal penitentiary for voting. ‘For voting?’ He was going to get a summons in the mail and he had better pay attention to it. Then they left. Derek couldn’t eat for three days. When he finally got the summons in the mail he went down to the courthouse for his arraignment. That’s when he met Nancy Joseph.

Nancy Joseph is a tall, striking young woman with an open face, an easy smile and a determined, quiet confidence you can feel as she walks toward you. She’d been an attorney for fourteen years when she first met Mr. Little (which is how she always addresses him) as his court-appointed attorney.

For the past eight years Nancy has worked for Federal Defender Services, Inc. of Wisconsin, a non-profit legal organization providing legal services to people accused of federal crimes who lack the means to hire a private defense attorney. On the eve of Derek Little’s trial, Nancy discovered that Derek had registered to vote using his Wisconsin prison ID and a letter from his state probation officer addressed to him at his current residence. And yet Derek was being charged by the federal government for having “knowingly and willfully deprived, defrauded, and attempted to deprive and defraud the residents of the State of Wisconsin of a fair and impartially conducted election process by casting a ballot that he knew to be materially false and fraudulent under Wisconsin law.”

Once the fact became known that Derek Little registered to vote presenting an ID card that should have raised questions about his eligibility, the charges against him were dropped. But in my interview with Mr. Little and his attorney, he asserted that because of this experience he plans to never vote again. Nancy Joseph has told me that she was completely surprised by Mr. Little’s statement, and in fact, when he made the statement to me in her presence, Nancy reminded him that it was his right to vote. But Mr. Little remained firm, he said he would not put himself in this situation ever again, distrustful that the government was going to “change the rules” on him one more time.

Ethel Anderson

Ethel Anderson was indicted by the federal government for voter fraud in the fall of 2005. She had been charged with the same crime as Derek Little, a violation of Title 42 United States code Section 1973gg-10(2)(B) – an amendment of the Voting Rights Act of 1965; and Title 18, United States Code, Section 2, for voting while on probation for a felony battery charge. “That [battery charge] was my first case,” she told me when I interviewed her last summer. “I’d never been arrested before. I was with a guy. We were in a car and coming from a party when we got into a fight. He was choking me, so I grabbed a bottle and hit him over the head. I’m the one who called the police.” When the police arrived they found Ethel with the man’s blood on her hands and clothes. They arrested her for battery and took her to jail where she stayed for about a week before she was released. Upon her release she was processed and sent to see a probation officer, given some papers to sign, then sent to another office where she signed the same papers again. She then met with a probation officer.

Ethel had decided not to contest the battery charge. She didn’t hide the fact that she struck the man, but she knew she was the victim and she hit him in self-defense. An evaluation by a domestic violence counselor later found this to be true. Nevertheless, she pleaded guilty. She didn’t want to go to trial because she couldn’t afford to lose anymore time from her job as a machine operator. She’d already lost enough time over the week she’d been detained. For the last seven years she’s worked at a factory that makes electrical parts for all kinds of machines, engines, elevators, “you name it, we make it,” she said. It’s a good job and she needs the money because she is single mother of four with two teenagers still at home to look after.

On Election Day, November 2, 2004, a friend of Ethel’s picked her up at the factory at the end her shift. The friend was wearing a bright yellow “I Voted!” sticker and asked Ethel if she wanted to be dropped off at the polls so that she could vote. Ethel was tired, she really didn’t feel like standing in that line, but she usually voted in presidential elections and she thought, well, OK, I’ll vote. She walked into her polling place, waited in line and when it was her turn, the poll worker behind the table helped her fill out a new voter registration card. The worker asked her her name and address, whether she was a citizen and then pushed the card toward her for her signature. She didn’t read the card, she figured the poll worker knew what she was doing. Ethel signed the card, the poll worker wrote a ballot number on it and handed Ethel the ballot. She voted and went home.

Months passed. Ethel made every appointment with her probation officer. She violated none of the many rules she agreed to abide by every time she met her probation officer and signed another set of forms. Then one day in September 2005, her probation officer came to see her at home. He had a copy of the newspaper in his hand. He asked her if she had something she wanted to tell him. Ethel wondered why he was standing in front of her asking her such a strange question. “No,” she said, she didn’t have anything she wanted to tell him. “Are you sure?” he asked again, “You don’t have anything you want to tell me,” he reiterated. “No, no I don’t have anything I want to tell you.” The probation officer handed Ethel the newspaper.

"Look," he said, "look there," and pointed to a story about people being indicted for voter fraud in the City of Milwaukee. In big black letters was her name.

"I was blown away," Ethel remembered. "I mean, wow. I looked at my probation officer, and I asked him, is this serious? Do I have something to worry about?" He told her yes, this is serious, this is very serious and you do have something to worry about. He wanted her side of the story and he wanted it in writing. So Ethel wrote out a short statement saying that she did vote, but that she didn't know that she was not permitted to vote. She didn't know she'd done anything wrong. The probation officer told her that some time soon the police would come to take her down to the station to fill out papers. Two or three weeks later, the sheriff delivered a letter to her door. One of her kids answered the door and gave Ethel the letter. It informed her that she had been indicted and that she was to call a number for more information. She called and was told when and where to show up for her arraignment.

The trial lasted two days. Ethel testified repeating what she told her probation officer: that she voted, but that she did not know that she was not permitted to vote while on probation for the battery charge. The jury convicted her. "I was blown away, I was just kinda shocked when they came back guilty. I don't sugar-coat things. I don't have any reason to lie about voting. I wasn't going to pretend I didn't vote, I just didn't know I was doing anything wrong. I didn't see any sign saying if you are on probation you are not eligible to vote, but even if I did I still would have voted because I didn't classify myself as a felon. I never went to jail so I didn't think of myself as a felon."

Ethel was sentenced to four months of house arrest and fourteen months of probation for casting a fraudulent vote. She used her real name, her real address and she only voted once, but because of the felony battery charge, in Wisconsin, Ethel Anderson had committed voter fraud. House arrest meant she could only leave her house to go to work, except for four hours every Saturday when she was allowed out of the house to do her shopping and errands. Throughout the four months of house arrest Ethel wore an ankle bracelet that monitored her whereabouts. "That part was nerve-wracking," she later said, "I had to get everything I needed to get done in those four hours." But otherwise, she didn't let the confinement bother her too much. "It's not like I ever went out to bars or hung out anyway. My time was always limited because I'm a mother and I have to work."

I asked Ethel how this episode made her feel about voting. "I'll never vote again," she replied, "never. Because going through this trial, my name being in the paper for everybody to see – not once, but twice – first with the indictment, and then when they convicted me, another article with my name in bold print, it was humiliating. I had never heard of anybody who's ever been prosecuted for voting. It was a shock to me to read my name in the paper. I had no say so. No reporter ever called me up for my side of the story. I felt like scum, like I was a really bad person when I thought what I was doing was my God-given, constitutional right. No, I'll never vote again."

On the day I interviewed Ethel, her probation had finally come to an end. "If you hadn't called," she told me, "this being my last day of probation, I never would have thought about all this again." She was just happy to be free. "Yes, I'm happy now because I can leave

town. All my family is in Chicago. I might just go there this weekend, just to get out of here."

We are all committed to making our democracy better by incorporating more of our citizens into the electorate. We know from political science that our election administration could be better, but also, that it has always been impeded by the mythic threat of voter fraud. I believe my research supports the conclusion that in the United States today, voter fraud – that is, fraud committed by voters – is very rare. The federal government's needless pursuit of individuals who have technically violated laws they didn't know existed and who in no way intended to deprive the American people of their right to a fair and impartially conducted election is causing more harm than good. As Nancy Joseph asked the jury in Ethel Anderson's trial, "Is that what Ethel Anderson was doing when she got up at five in the morning to get on a bus to go to her factory job, and then left her job, and instead of going home after a long day, to be like everybody else, she went to cast a ballot?" The Justice Department's Ballot Access and Voting Integrity Initiative is suppressing the votes of people who in trying to be good citizens may have done nothing more than violate a rule they didn't know existed. And it could be suppressing the votes of others who hear about their cases and decide that voting just isn't worth it.

Moreover, there are real questions about whether the Justice Department's pilot programs to test what would work with juries in individual cases of fraud have the appearance of being biased against poor and working class people and minorities living in swing states important to the outcome of recent elections. I have not been able to determine the race and party affiliation of all 40 of the voters indicted by the federal government for voter fraud over the 2002 to 2005 period covered by my research. However, when I asked Nancy Joseph about the race and party affiliation of the 14 people indicted in Milwaukee, she told me: "Let me put it this way, by my unscientific accounting – of the 14 people charged, all were African Americans, and all lived in Milwaukee where 90 percent of the vote went for [John] Kerry." It is difficult to overstate the appalling symbolism of bringing the weight of the federal government down on unsuspecting working class African American voters for violations of the Voting Rights Act (as amended). As a problem, the alleged epidemic of voter fraud sweeping the country is a fabricated myth. It can not compare to the massive challenges the states face in administering elections in ways that open up the process and make voting easier for all Americans, but especially for our most vulnerable citizens for whom the barriers to access to the vote are still too high.

Sincerely yours,



Lorraine C. Minnite
Assistant Professor

APPENDIX

TABLE 1
 FEDERAL ELECTION CRIME PROSECUTIONS
 BALLOT ACCESS AND VOTING INTEGRITY INITIATIVE

FINAL DISPOSITION OF INDICTMENTS OBTAINED BETWEEN OCTOBER 2002 AND SEPTEMBER 2005

Type of Election Crime	Voters	Convictions			Acquittals	Case Dismissed	Total
		Government Officials	Party/Campaign Workers	Election Workers			
Registration Fraud	1	1	1				3
Voting by Ineligibles	20				2	8	30
Multiple Voting	5				1	3	9
Vote Buying		8	27	2	5	5	47
Ballot Forgery				1			1
Civil Rights Violations			2		1		3
Voter Intimidation		2					2
Total	26	11	30	3	9	16	95

Source: U.S. Department of Justice



March 11, 2008

Chairwoman Dianne Feinstein
Committee on Rules and Administration
United States Senate
Washington, DC 20510

Ranking Member Robert Bennett
Committee on Rules and Administration
United States Senate
Washington, DC 20510

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TREASURER

Re: Senate Committee on Rules and Administration Hearing: "Is the Myth of In-Person Voter Fraud Leading to Voter Disenfranchisement?"

Dear Chairwoman Feinstein and Ranking Member Bennett:

On behalf of the American Civil Liberties Union (ACLU), and its hundreds of thousands of members, activists, and fifty-three affiliates nationwide, we commend the Committee for examining how the myth of in-person voter fraud is being used to disenfranchise American citizens. We wish to submit this letter as written testimony for the Committee hearing record on March 12, 2008.

The "problem" of in-person voter fraud is posited as the rationale for proposals that would require voters to present a government-issued photo ID in order to vote. Instead, these photo ID requirements impose an unnecessary and undue burden on the exercise of the fundamental right to vote for millions of Americans who are eligible, registered, and qualified to vote.

Photo ID requirements amount to a solution in search of a problem. As the Supreme Court has noted, the right to vote is fundamental because it is "preservative of all rights."¹ Any burden on this fundamental right must be examined closely. Therefore, when speaking about the "need" for voter photo IDs, it is important to start with the premise that the only type of voting fraud photo IDs could possibly address is in-person voter impersonation at the polling place on Election Day. While supporters of ID requirements argue that it is necessary to require photo IDs in order to combat efforts to skew elections, recent studies clearly establish there is no evidence to support

¹ *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

claims that in-person voter fraud is a threat to the integrity of elections.² In fact, in-person impersonation fraud at the polls is more rare than getting struck by lightning.³ In part, this is because in-person fraud by individual voters is an ineffective and foolhardy way to influence an election. Each act of voter fraud in connection with a federal election carries with it severe criminal penalties, and in return, yields at most one additional vote.⁴

At bottom, proponents of photo ID requirements are praying on unfounded fears and political partisanship to create a problem of voter fraud where no problem exists. Where restrictions impinge upon a fundamental right, it is critical that policymakers separate fact from fiction before instituting policies that disfranchise legitimate voters. For example, in Indiana, where the ACLU is currently challenging before the Supreme Court one of the most restrictive voter photo ID requirements in the country, there was no evidence of in-person impersonation fraud,⁵ nor was any evidence of otherwise undetected fraud presented to the Indiana State Legislature, although it is estimated that thousands of legitimate voters would be turned away at the polls.⁶ While there are incidents of election misconduct for which government action is needed, including, for example, improper purges of voters, voter harassment, incompetent management of voting, and distributing false information about when and where to vote, none of these issues are addressed or can be resolved by a photo ID requirement.

Photo ID laws will disfranchise millions of citizens. A recent study estimated that more than 21 million American citizens of voting age lack a government-issued photo ID, and poor, elderly, and minority citizens are disproportionately impacted.⁷ Moreover, until the well-documented, recent politicization of the Department of Justice (DOJ), DOJ has consistently raised objections to imposing photo identification as a prerequisite for voting because such requirements are likely to disfranchise African American voters and will lessen their political participation. In 1994, DOJ found that African Americans in Louisiana were four to five times less likely than whites to have driver's licenses or other picture identification cards.⁸ A recent New York Times article noted that imposition of identification requirements on voters had reduced turnout in the 2004 election by about 3%, but disproportionately reduced turnout for minorities by two to three times as much.⁹ Specifically, in relation to the state Indiana voter ID law challenged in *Crawford*, a recent

² Eric Lipton and Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N. Y. TIMES, Apr. 12, 2007, at A1; JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW 3 (2007).

³ LEVITT, *supra* note 2, at 6.

⁴ LEVITT, *supra* note 2, at 7.

⁵ Brief for Petitioners at 7-8, *Crawford v. Marion County Election Bd.*, No. 07-21 (U.S. Nov. 5, 2007).

⁶ Reply Brief for Petitioners at 12-13, *Crawford v. Marion County Election Bd.*, No. 07-21 (U.S. Dec. 20, 2007).

⁷ *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice at New York University School of Law, at 3 (Nov. 2006), http://www.brennancenter.org/page/-id/download_file_39242.pdf

⁸ Letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division of the U.S. Department of Justice, to Sheri Morris, Assistant Attorney General for the State of Louisiana (Nov. 21, 1994).

⁹ Christopher Drew, *Lower Voter Turnout Is Seen in States That Require ID*, N. Y. TIMES, Feb. 21, 2007, at A16.

study of the Indiana electorate found that 86% of white eligible voters had a current valid photo identification while only 73% of black eligible voters had such an ID.¹⁰ The study concluded: "minority, low-income and less educated Indiana residents are less likely to have access to valid photo identification. This strongly implies that the Indiana voting laws significantly reduce the opportunity to vote for these segments of the state electorate."¹¹

Photo ID requirements pose a substantial hardship for some citizens. While the cost of identification documents may seem negligible to some, it represents a significant cost to many Americans. As with the other methods of disfranchisement in American history, such as literacy tests and poll taxes, a photo ID requirement presents substantial **barriers** to voting and has a chilling effect on voter participation. **Because a significant number of** racial and ethnic minorities, the elderly, low-income, and **homeless** people do not have photo identification, the burden of obtaining a government-issued photo ID would fall disproportionately and unfairly upon them. The Federal Elections Commission noted in its 1997 report to Congress that photo identification entails **major expenses**, both initially and in maintenance, and presents an undue and potentially **discriminatory** burden on citizens in exercising their basic right to vote.¹² Requiring voters to purchase photo identification, or the supporting documents needed to obtain a photo ID, would be tantamount to a poll tax, and therefore be suspect under the Voting Rights Act.

Even if the **state laws** provide for "free" photo ID cards **for the indigent**, the documents required to **get an ID** are not. Many U.S. citizens either **do not have** or cannot easily access the back-up documents that prove their identity such as a passport or birth certificate. There are many **practical considerations which pose significant hardships** for voters – such as lost wages, **travel time, transportation expenses, locations of photo ID facilities, hours of operation, and costs for the back-up documentation** necessary to receive a photo ID. In addition, it was not uncommon in many parts of the country for children to be born at home without an official birth certificate.

Finally, while many argue that IDs are required to drive a car or board an airplane and, therefore, producing an ID for voting is not much of a burden, such **comparisons are** misplaced. Driving and flying are privileges, not constitutional rights. **Rather than** erecting hurdles that prevent Americans from exercising their rights, lawmakers must ensure the laws **encourage** civic participation.

Photo ID laws build in too much discretion and uncertainty into the voting process. Reducing the opportunity for poll workers to exercise inappropriate discretion with voters was a goal of the Voting Rights Act. Any requirement that citizens show **photo ID** at the polls reintroduces an **enormous** amount of discretion **into the balloting process**, thus

¹⁰ **MATT A. BARRETO, STEPHEN A. NUÑO & GABRIEL R. SANCHEZ, THE DISPROPORTIONATE IMPACT OF INDIANA VOTER ID REQUIREMENTS ON THE ELECTORATE** 19 (2007), *available at* http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf.

¹¹ *Id.* at 16.

¹² Letter from L. Anthony Sutin, Acting Assistant Attorney General, Department of Justice to Congress on amendments to the Bi-partisan Campaign Integrity Act of 1997.

creating opportunities for discrimination at the polls against racial, ethnic, and language minority voters. Deciding whether a voter matches the photo in an ID card is a subjective process – one that is easily prone to mistake or much worse. In addition, if an ID does not contain the voter's current address or name, which is true of countless Americans who move or marry, he or she will likely be turned away from the polls. The government should not be recreating opportunities for unnecessary mistake or bias to slip back into our election system.

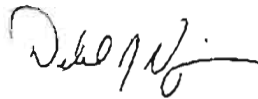
Proposals that seek to require voters to show photo ID in order to vote are one of the greatest threats to fair and equal voting rights today. We applaud the Committee for scrutinizing the unfounded allegations of in-person voter fraud and hope Congress will continue to discourage schemes that seek to limit the right to vote.

If you have any questions, please contact Deborah J. Vagins at (202) 715-0816 or dvagins@dcaclu.org.

Sincerely,



Caroline Fredrickson
Director



Deborah J. Vagins
Policy Counsel for Civil Rights and Civil Liberties

cc: Members of the Senate Committee on Rules and Administration



March 11, 2008

The Honorable Dianne Feinstein
Chair, Senate Committee on Rules and Administration
Russell Senate Office Building, Room 305
Washington, D.C. 20510

Dear Chairwoman Feinstein:

Demos: A Network for Ideas & Action is a national, non-partisan organization committed to expanding democratic participation and economic opportunity. Our work on democratic reform has in part aimed to remove various barriers to the vote. One such barrier, strict photo identification requirements for voter registration and voting, has been increasingly proposed in recent years to combat purported voter impersonation. Demos has commissioned various studies to gauge the actual incidence of voter fraud in contemporary elections. We respectfully submit our most recent report, *An Analysis of Voter Fraud in The United States*, for consideration by the Senate Committee on Rules and Administration and inclusion in the record of its March 12, 2007 hearing. The report was produced for Demos by Barnard College Professor and Demos Senior Fellow Lorraine C. Minnite.

Professor Minnite is a nationally recognized expert on voter fraud. *An Analysis of Voter Fraud in The United States* and an earlier companion report, *Securing the Vote: A Report on Election Fraud*, are based upon her extensive research on in-person voter impersonation in recent elections (available for download at <http://www.demos.org/page573.cfm>). That research included an analysis of the incidence of voter fraud from 1992 to 2002 in 12 states that collectively represented about one-half of the electorate; a complete Nexis search on voter fraud throughout the United States; a survey of academic literature, a wide variety of government documents, research reports and articles; and an in-depth consideration of several high-profile cases of real or alleged fraud over the past decade. Ultimately, Professor Minnite reached the following conclusions:

- Voter fraud appears to be very rare in the 12 examined states;
- Notable recent election reforms – such as the National Voter Registration Act of 1993, more permissive absentee balloting rules, all mail-in voting in Oregon, and Election Day Registration – have not facilitated voter fraud; and

- Analysis of several cases of election fraud cases that attracted significant public attention in recent years showed that the fraud allegations were baseless.

The available evidence suggests that election fraud is at most a minor problem across the 50 U.S. states, and does not affect election outcomes.

I trust that the Committee will find this research quite illuminating. The empirical record clearly does not support the allegations of widespread voter fraud propagated in recent years. Rather than remedying an actual problem in U.S. elections, the voter fraud myth has instead served to help support unjustified new barriers to the ballot for eligible voters. Demos stands ready to further assist the Committee in its important assessment of the voter fraud and voter disfranchisement.

Respectfully,

A handwritten signature in cursive script, appearing to read "Miles Rapoport".

Miles Rapoport
President

Encl. L. Minnite, *An Analysis of Voter Fraud in the United States* (Demos, 2007).

**AN ANALYSIS OF
VOTER FRAUD IN
THE UNITED STATES**

**BY LORRAINE C. MINNITE,
SENIOR FELLOW, DEMOS**

(Adapted from the 2003 report *Securing The Vote*,
by L. Minnite and D. Callahan, with updates.)

Dēmos: A Network for Ideas & Action

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I. VOTER FRAUD IN THE UNITED STATES: AN OVERVIEW

Since the 2000 election, a historic effort has been underway in the United States to strengthen voting systems across all 50 states and to address obstacles to broader electoral participation. At both the federal and state levels, however, efforts to advance a reform agenda have been frequently complicated by heated debates over the integrity of voting systems—and by allegations of widespread election fraud, and its cohort, voter fraud.

In Congress, and elsewhere in the national arena, fear of fraud in elections has been revived in many policy discussions about our voting system. In 2002, for example, allegations of widespread voter fraud fueled disagreement over voter identification provisions in federal election reform legislation, resulting in an acrimonious legislative process that delayed passage of the Help America Vote Act of 2002 (HAVA). Oddly enough, fraud and election integrity have been implicated in debates over terrorism and security. The September 11, 2001, terrorist attacks spurred a major legislative initiative, the Real ID Act of 2005, which requires states to meet costly minimum security standards for drivers' licenses that many fear will move the country toward a system of national ID—with negative consequences for electoral participation.¹ Voter ID debates currently raging across the states join the disparate issues of voter fraud and election integrity, security against terrorist attacks, and identification requirements. Proponents argue that more stringent ID requirements like those embodied in a "Real ID" driver's license are needed to protect against voter fraud at the polls, and opponents argue that voter ID is a solution in search of a problem.²

Consequently, the specter of fraud has had a major role in the delay or defeat of some election reforms enacted at the state level, and has drawn federal agencies into political controversy. In 2002, ballot initiatives in California and Colorado that would have enacted Election Day Registration (EDR) into law were defeated, with opponents of the initiatives arguing that EDR would increase the potential for fraud.³ Since then, fraud allegations have fueled stringent and contested voter ID proposals in states like Indiana, Georgia and Missouri. In Arizona, where allegations of illegal non-citizen voting have flourished, voters passed a ballot initiative to make voter registration more difficult by requiring proof of citizenship.

Moreover, controversy over research on voter ID, voter fraud and voter intimidation conducted for the Election Assistance Commission, a federal agency created by HAVA, which suggested little evidence of voter fraud and a potentially negative impact of restrictive ID rules on voter turnout, has undermined the agency's credibility, further politicizing the issues.⁴ Finally, as has been uncovered this year, unfounded fraud allegations surrounding the 2004 and 2006 elections are at the center of both a new Justice Department program to increase federal fraud prosecutions, and the dismissal of several U.S. Attorneys who allegedly failed to prosecute voter fraud, embroiling the Bush Administration in scandal.

Debates over election fraud are not new. They have been a staple of discussions about elections and democracy in the United States for more than a century. But in recent years, issues of fraud and voting integrity have increasingly come to the forefront of public policy discussions over the health of America's democracy. Even before the 2000 election, consistently low voter turnout rates and obstacles to participation motivated various efforts to increase voter registration and turnout—efforts that in turn raised questions about voting integrity. Critics of some reforms—such as the institution of mail-in voting in Oregon, the loosening of guidelines for absentee ballot use, and, most notably, the National Voter Registration Act of 1993 (also known as NVRA or the "motor voter" law)—have charged that these reforms increase the potential for voter fraud. Other frequently proposed reforms, such as Election Day Registration, continue to be criticized on the same grounds.

As federal and state officials consider future reform efforts, as well as the merits of existing reforms, there is an acute need for better information and analysis about election and voter fraud issues. While the issue of fraud is raised continually in discussions of election reform, to date there have been few major studies of voter fraud in the United States.⁵ Too often in this area, hearsay and anecdotal information are put forth as fact in important public policy debates.⁶ Many key questions about fraud remain unanswered, including: How often does voter fraud occur? How serious a problem is fraud compared to other problems with the election process, such as those that occurred in Florida in the 2000 election or in Ohio in 2004? What kinds of voting methods are most vulnerable to corruption? What administrative, technological and legal steps can be taken to reduce the chances of voter fraud while also expanding opportunities to register and vote?

WHAT IS FRAUD AND WHY DOES IT MATTER?

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

Generally speaking, election fraud is a crime involving conduct that corrupts the process of “obtaining and marking ballots, the counting and certification of election results, or the registration of voters.”⁷ Election fraud may involve wrongdoing by either individual voters or, as is more often the case, by organized groups such as campaigns or political parties.

Beyond these traditional conceptions of fraud, many people are concerned about official efforts to corrupt the election process or erect barriers to participation. For example, election officials could manipulate registration databases to remove the names of people likely to vote in a certain way so that these people are unable to cast regular ballots when they arrive at polling places. Corruption of this kind was widely alleged to have taken place in Florida and other states during the 2000 election.⁸

Deliberate disfranchisement of voters may also occur because of other kinds of official misconduct: turning away voters already in line when polls close; intimidating or misinforming voters when they arrive at the polls; producing misleading or poorly designed ballots; failing to provide bilingual voting materials, as required by law; failing to upgrade or repair voting systems in specific election districts; and by other means.

Overall, the disfranchisement of voters through antiquated voting systems, errors, mismanagement of registration bases, and intimidation or harassment is a far bigger problem today than traditional forms of election fraud. The problems in Florida in 2000, which determined the outcome of a presidential election, are dramatic evidence of this point.¹⁰ No number of allegations of voter fraud in 2000, let alone substantiated cases of such fraud in that election, came close to rivaling the number of eligible voters who wanted to vote but were unable to do so. This fact is due to a combination of deliberate actions on the part of partisan election officials and gross administrative error or incompetence (and that’s in just one state).

These problems have been analyzed and highlighted in a number of studies and reports over the last several years.¹¹ Civil rights advocates have been particularly active in challenging official forms of election malfeasance as violating various provisions of the Voting Rights Act. This report, however, does not focus on these issues. Rather, it looks exclusively at voter fraud as the problem has commonly been discussed over the past century.

Defining Fraud

Organized Fraud. Fraud is easier to commit for organized groups than it is for individual voters because such groups have direct access to election machinery and the resources necessary to commit the significant amount of fraud it takes to flip election results. Average voters usually lack these things. In all but the most extraordinary of cases—for instance, when an election victory depends on a handful of votes—fraud must be committed through a conspiracy to have an impact on the outcome of an election.

Such fraud can take several forms. For example:

- Political parties, campaign organizations or other groups can perpetrate organized fraud by obtaining and voting fraudulent absentee or mail-in ballots.
- Interested groups can organize large-scale “commercialization of the vote” or vote buying—for example, by providing incentives for otherwise uninterested voters to go to the polls and vote in a certain way or coordinate efforts to help enough voters vote more than once.
- Local election administrators or poll workers can commit clear-cut fraud through vote rigging, by not counting or destroying ballots, allowing votes that should have been barred, and tampering with ballots.

This last example is one of the reasons why partisan control of election administration has historically created the greatest potential for election fraud. In fact, the most comprehensive studies of election fraud conducted when local political machines were strong and controlled the machinery of election administration in the early decades of the 20th century found that, “most election frauds of the period were committed by the precinct officers themselves.”⁹

Individual Fraud. Unlike most other Western democracies, voting in the United States is a two-stage process. In nearly all states, an eligible citizen who wants to vote must first register using his or her permanent home address. After successfully completing a voter registration application, the voter goes to the polls or receives voting materials through the mail, and then casts his or her ballot.

Individual vote fraud would happen, conceivably, in a couple of ways:

- Voters may violate laws governing the registration process by misrepresenting themselves as eligible when they are not, or submitting registration applications for fictitious people, dead people, or real people who may be either eligible or ineligible to vote and who may or may not know of or consent to the fraud.
- Voters may commit fraud at the point of voting. A voter may vote multiple times using the name or names of another voter. In the case of a vote cast using the name of a real person, that person may or may not be eligible to vote and may or may not consent to the fraud. Voters consenting to the appropriation of their vote by another may do so because they do not plan to vote, have little interest in voting, or receive some kind of material benefit.

METHODOLOGY FOR DEMOS' 2003 REPORT, *SECURING THE VOTE*

The administration of elections for all public offices in the United States, from county dogcatcher to the President of the United States, is controlled by state and local election officials. This causes election procedures to vary from state to state and in many places, from county to county. Given the complexity, it is difficult to assess the overall integrity of U.S. election systems. No other aspect of American politics has received as much scrutiny over the last 50 years as the behavior of the American electorate, and yet, election fraud has received very little attention by scholars. Remarkably, there are no definitive academic studies of election fraud in the contemporary period, nor are there focused studies of fraud by government agencies concerned with the administration of elections in this country.¹²

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

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

- First, we conducted an analysis of the incidence of voter fraud from 1992 to 2002 in 12 states that collectively represent about half of the electorate and are drawn from all of the major regions of the country. These states include: Alabama, California, Florida, Georgia, Illinois, Minnesota, Mississippi, New York, Oregon, Pennsylvania, Texas and Wisconsin. For each of these states, we conducted Lexis-Nexis searches of news databases, as well as the statutory and case law for evidence of a record of prosecution of voter fraud. We also contacted selected state officials, including attorneys general and secretaries of state.
- Second, we conducted a complete Nexis search on voter fraud throughout the United States from 2000 to 2002, supplemented by searches related to several high-profile cases of election fraud that occurred before 2000. The search produced thousands of articles and references, each of which was thoroughly examined.
- Third, we surveyed the academic literature, a wide variety of government documents, congressional testimony and research reports, law journal articles, and other sources on election reform from professional, research and reform organizations.
- Finally, we analyzed in considerable depth some of the highest-profile cases of real or alleged fraud in the United States over the past decade, including notable cases in Missouri, California and Florida.

A FRAMEWORK FOR UNDERSTANDING FRAUD

While heated debates over election fraud have arisen episodically for more than a century, the circumstances that surround voting and elections have changed dramatically over that time and continue to evolve rapidly today. Elections can be as contested as ever, but the conditions conducive to election fraud have steadily declined, and the trend is likely to continue in the foreseeable future. Three factors account for it: the declining strength of local political parties and machines; strengthened election administration; and improved voting technology. While some voter fraud may occur with any electoral system, current trends suggest that it is more possible than ever to further open up the electoral process and facilitate voting without bringing about greater fraud. Exaggerated fears of fraud should not stand as an obstacle to reforms aimed at expanding participation.

Declining Local Political Machines. Historically, local political party organizations played an important role in perpetrating election fraud. During the late 19th century and well into the 20th century, a key motive for fraud was the immense local patronage benefits afforded to winning parties. Under these conditions, parties, patronage and fraud were intertwined. Election fraud was perpetrated by partisans acting together to steal elections. Local party organizations competed for voters and controlled votes through patronage. When elections were fully controlled by local party organizations, ballots were easily destroyed, miscounted, or falsely multiplied, and voters could be strongly influenced by bosses or local elites to vote in specific ways. Typically, cases of election fraud involved organized efforts by partisan election officials, party leaders and politicians rather than by the voters themselves.¹³ Today, local party organizations are relatively weak to nonexistent, in part because their access to patronage has all but disappeared. They no longer control lucrative franchises, run police and fire departments, set utility rates, or build large-scale public works. However, in many states key election officials are openly partisan and may also play an active role in partisan political campaigns, a conflict of interest that increases the potential for organized fraud.

Strengthened Election Administration. At the same time that local political party organizations have weakened, modern election administration has become more sophisticated. The reforms put in place in the late 19th century and early 20th century required voters to register in advance of elections and election authorities to keep registration records. While some reforms such as voter registration and the secret ballot reduced opportunities for organized fraud, they also had a negative impact on electoral participation, making voting especially more difficult for poor and working-class people.¹⁴ The passage of the National Voter Registration Act of 1993 as well as the advent of Election Day Registration in a number of states have helped to reduce the obstacles to voting that accompanied the imposition of voter registration requirements over a century ago. In the wake of the 2000 election, considerable attention has been focused on ways to improve election administration to strengthen the integrity of the election process; a number of reform measures have already been passed in the states. Particular attention has been given to the need to create accurate statewide computerized registration systems in all states, as now required by the Help America Vote Act of 2002. To the extent that further reforms upgrade accuracy, record-keeping and accountability, professionalize service delivery, and simplify the process for voters, election administration can continue to be strengthened as a bulwark against fraud.

Improved Voting Technology. Mechanization and the application of vote counting technology in the 1960s loosened the control local party workers could exercise over vote counting and significantly reduced opportunities for organized election fraud. In fact, in his research on election administration in the 1920s, the early election reformer Joseph Harris came to believe that most electoral corruption was committed by precinct workers during the vote count. Then, like now in many places around the country, the polls were staffed on Election Day by people chosen by the major political parties which dominated many local

boards of elections. Then, *unlike* now, when the voting was finished, poll workers opened up the ballot boxes and counted the paper ballots at the polling site in back rooms out of the glare of public scrutiny or official supervision. Harris believed that one of the best ways to clean up American elections was to take the vote counting responsibility away from the control of party machines and their poll workers. In the early 1960s, his thinking about the sources of election fraud led him to develop the concept for what became the punch card ballot. Harris reasoned that if poll workers were corrupting the vote count there were at least two ways to address the problem: either get rid of partisan poll workers, or take away their responsibility for counting the votes. He eventually sold his concept for machine-readable ballots to IBM which designed the punch card technology to do just that. Vote counting was physically moved out of the polling site, out of the hands of thousands of unskilled poll workers, and into the high tech world of computers programmed and operated by a smaller cadre of better trained, better educated, supposedly politically neutral bureaucrats.¹⁵ Today, we don't worry so much about poll workers corrupting the vote count because poll workers don't count the votes.

On the other hand, technology itself provides no simple guarantee or solution to fraud, as the current controversy over the reliability and security of electronic voting equipment makes clear. An ideal voting system should accurately record and tally the votes of all eligible voters who desire to vote and who cast legal votes, and should provide evidence that the election results reflect their will. Technology can help us achieve these goals if it is part of a larger effort to secure voting rights and a fair count. Since the 2000 election, states have moved to implement major technology upgrades that help prevent voter fraud, computerizing and centralizing their voter files, for example, though much more work in this area remains to be done.

ELECTION FRAUD TODAY

Based on the research and analysis conducted for *Securing the Vote*, we offer several conclusions about election fraud in the United States today:

- Voter fraud appears to be very rare in the 12 states examined in that report. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression.
- Notable election reforms of the past 10 to 15 years—such as the NVRA, more permissive absentee balloting rules, all mail-in voting in Oregon, and the enactment of Election Day Registration in several more states—have not facilitated voter fraud.
- Analysis of several cases of election fraud that have received significant attention in recent years suggests that some of the most notable allegations of fraud have proved to be baseless. While the 1997 mayoral primary election in Miami, Florida, was one of the most egregious election fraud cases in recent memory, there are other noted cases where charges of significant vote fraud have been disproved, such as the 1996 Dornan/Sanchez contest for the U.S. House of Representatives in Orange County, California. There are yet other cases, such as the 2000 election in St. Louis, Missouri, in which politicians have made great hay, but charges of widespread fraud have not been substantiated. A new Demos report on voter fraud in states offering Election Day Registration finds that despite the hundreds of news stories reporting on allegations of voter fraud in Wisconsin in the 2004 presidential election, practically no fraud has ever been proven. An intensive effort on the part of the federal government to uncover and prosecute voter fraud in Wisconsin resulted in only 14 indictments and five convictions or guilty pleas for illegal voting in an election in which over 3 million ballots were cast.¹⁶

The low level of voter fraud in the United States today does not preclude the need for continued vigilance to ensure the integrity of election systems. It does, however, suggest that reforms aimed at simplifying registration and voting can be implemented without risking corruption of elections by fraud. Even if only partly implemented, some of the many technological and administrative reforms recommended by national and state commissions since the 2000 election, as well as other “best practices,” can go a long way toward enhancing election integrity.¹⁷ These are reforms such as continued upgrading of the accuracy of voter registration lists, once-in-a-lifetime registration, better notice and opportunity to voters to correct their records, improved use of communications technology to better inform voters and resolve administrative problems on Election Day, automatic notification to election officials upon the restoration of voting rights of convicted felons, improved efficiency in the transmittal to elections officials of voter registration forms collected at NVRA-designated state agencies, and increased recruitment, pay and training of poll workers. These same reforms can facilitate programs, such as Election Day Registration, that are intended to make voting easier and more convenient for eligible voters.

II. VOTER FRAUD AND THE LAW

The opportunity to commit voter fraud is constrained by a matrix of state and federal laws. Voter fraud is a serious crime that can be prosecuted at the federal and state levels, where penalties carry fines, lengthy prison terms, and, in the case of illegal voting by non-citizens, deportation.¹⁸ However, the effectiveness of laws depends on their enforcement and implementation.

STATE LAWS AND ENFORCEMENT

The U.S. Constitution grants states broad jurisdiction over the election process, though the authority of the states in these matters is not absolute.¹⁹ The Fifteenth, Nineteenth and Twenty-sixth Amendments prohibit states from restricting the franchise based on race or color, gender or minimum age (18 years) of the voter, respectively. The Supreme Court has found that Congress is within its constitutional authority to pass laws governing the timing of federal elections, voter registration, access to the ballot for the elderly and disabled, and, perhaps most important, in the area of prohibitions against racially discriminatory voting practices.²⁰ However, states are granted wide powers to qualify voters and establish rules for conducting federal, state and local elections.

Within this complex framework for regulating the electoral process, states have exhibited a full flowering of differences in the manner in which they administer elections. State election laws governing voting vary in their level of specificity, with many states granting localities considerable discretion in the way they run elections. For example, Oklahoma has standard Election Day procedures and a single voter registration and election management system, and it uses only one type of voting machine. In contrast, before the enactment of HAVA, Pennsylvania’s election law provided few statewide guidelines and near-autonomy to the state’s 67 counties in the matter of Election Day procedures. Pennsylvania had 67 different election systems using a variety of voting machines.²¹

Federalism, and the authority over election procedures granted to states, also explains why laws criminalizing fraud differ across the states. All states have laws governing election crime. However, because of the historically parochial manner in which states administer elections, they vary in how they handle the problem of criminal election fraud. All states prohibit voting by non-citizens (although some localities permit such voting in local elections); most states have various restrictions that bar voting by individuals convicted of felonies,²² as well those who have been ruled mentally incompetent by a court. Most states

have prohibitions against falsifying voter registration information, voting more than once in an election, impersonating another voter, intimidating or coercing voters, and bribing voters or buying votes. Most of these crimes are classified as felonies and carry fines and prison sentences. In some states, a person convicted of certain voter fraud crimes can permanently lose his or her right to vote.

State election laws allocate the responsibility for ensuring fair elections to various agencies and officials, and it is their responsibility to administer and monitor the electoral process to ensure that it is free of corruption. Local election and law enforcement officials also play a role in enforcing election laws, although the familiarity of these officials with the ins and outs of election laws and the lines of enforcement authority varies considerably within states. While it is incumbent upon government officials to bring criminal charges where appropriate, all states also empower private citizens and organizations to bring civil suits to contest election results.²³ Likewise, the NVRA provides a private right of action to any person aggrieved by a violation of the Act.²⁴

FEDERAL LAWS AND ENFORCEMENT

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

Historically, the federal role has extended to ensuring elections that are free of corruption and in eliminating discrimination against minority voters protected by the Voting Rights Act of 1965, as amended. The enforcement of the Voting Rights Act concerns civil offenses and is handled by the Justice Department's Civil Rights Division. Election-related crimes are handled by the Public Integrity Section of the Justice Department's Criminal Division.

Federal election law is an amalgamation of statutes. Some of them expressly apply to elections and voting, and others, such as statutes prohibiting mail fraud, have been used to prevent and punish voter fraud. Most federal statutes apply only to federal or mixed federal/state and local elections. In order for election crime to rise to the level of federal prosecution, there must be some "substantive irregularity relating to the voting act ... which has the potential to taint the election itself."²⁵ The Supreme Court has found a constitutionally guaranteed right to vote and Congress has passed legislation to protect this most fundamental of all rights. There remains debate, however, over whether or not the Constitution guarantees a right to vote in purely state and local contests—here the judicial record is inconsistent. Federal prosecutors, therefore, avoid investigating fraud allegedly committed in these elections.

Federal election law can be divided into two categories: anti-intimidation laws and anti-trafficking laws. Anti-intimidation laws make it a felony to conspire to "injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having exercised the same."²⁶ They also provide for criminal punishment of anyone who deprives another of federally secured rights to vote. Anti-trafficking laws, on the other hand, restrict a citizen's right to vote by prohibiting the offering, making, soliciting or receiving of payments in return for voting or withholding a vote. Penalties include a fine of up to \$10,000 and five years imprisonment. Until a policy change instituted in 2002 by the Bush Administration's first Attorney General, John Ashcroft, the Justice Department, as a matter of practice, did not prosecute voters whose only involvement in voter fraud was in compromising their votes. Nor did it advocate the prosecution of isolated instances of illegal registration, vote buying, or fraudulent voting because "isolated incidents do not implicate federal interests sufficiently" to warrant federal interference in what is traditionally a state function.²⁷ It appears that the majority of vote buying schemes that are prosecuted involve small amounts of money and occur in low-income neighborhoods.²⁸

On October 1, 2002, U.S. Attorney General John Ashcroft announced the Ballot Access and Voting Integrity Initiative, aimed at enhancing the Department of Justice's "ability to deter discrimination and election fraud, and ... to prosecute violators vigorously whenever and wherever these offenses occur."²⁹ The initiative involved the creation of task forces of district election officers who are assistant U.S. attorneys appointed by each of the U.S. attorneys to serve in this new capacity for two-year intervals; and FBI officials, whose job it is to participate in "on-the-ground investigative and prosecutorial coordination" with state and local elections and law enforcement personnel to "deter and detect discrimination, prevent electoral corruption, and bring violators to justice."³⁰

Federal monitoring of elections has been around since the Reconstruction period, but most often it has been directed toward protecting the voting rights of minority groups at the polls. What is significant about the Justice Department's involvement in recent elections is the linking of voting rights with protection from corruption of the electoral process by voter fraud, reflecting a new view that voter fraud deserves the same level of scrutiny from federal law enforcement officials as was historically required to guard against racial discrimination in voting. And yet, the Justice Department's new project has still to yield any evidence that contradicts the basic findings of this report on the low incidence of voter fraud in contemporary U.S. elections. Despite the elevated law enforcement priority, the federal government indicted only 40 voters for election crimes related to illegal voting between 2002 and 2005, obtaining 26 convictions or guilty pleas, for a nationwide average of eight to nine illegal voters a year. These were all isolated instances, in some cases, of confusion or voter error, having no impact on electoral outcomes. In Milwaukee where a third of the indictments were handed down, an assistant U.S. attorney who prosecuted a number of the cases was forced to conclude that, "There was nothing that we uncovered that suggested some sort of concerted effort to tilt the [2004] election."³¹

III. MAJOR RECENT CASES OF ALLEGED ELECTION FRAUD

The cases described below illustrate the following conclusions drawn from the analysis presented in this report: 1) the potential for abuse of absentee ballot laws remains a concern; 2) for fraud to threaten electoral integrity, it must be organized; 3) organized fraud that does affect electoral outcomes is not inordinately difficult to detect and punish because it largely occurs in public, involves many players, and leaves a paper trail;³² 4) mistakes by voters and election officials happen, perhaps more regularly than we know, but they are not fraud; nevertheless, under certain conditions partisans will exploit mistakes, errors and incompetence in the administration of elections to create the appearance of fraud and gain competitive electoral advantage.

THE 1997 PRIMARY MAYORAL ELECTION, MIAMI, FLORIDA

Perhaps the best-known contemporary case of uncontroverted absentee ballot fraud is the disputed 1997 primary mayoral election in Miami, Florida.³³ Running for reelection as mayor, Joe Carollo received 51.4 percent of the ballots cast at the polls, while his opponent, former Mayor Xavier Suarez, received 61.5 percent of the absentee ballots, giving Suarez a slim lead of 155 votes over Carollo in total balloting. Because neither candidate received more than 50 percent of the vote, a run-off election was held, and Suarez narrowly won both the precinct and absentee ballots.³⁴

Carollo immediately challenged the initial November 4th election results, claiming fraud in the absentee ballot vote that had swung that election to Suarez, denying Carollo the majority support he received at the polls and forcing him into a run-off. A week after the first election, the Florida Department of Law En-

forcement had arrested two Suarez supporters for buying absentee ballots and falsely witnessing absentee ballots. Once Carollo lost the run-off to Suarez, he petitioned the Circuit Court for the Eleventh Judicial Circuit of Florida to overturn the results of the November 4th primary on grounds of fraud.

The trial was held in February 1998. For two and a half weeks, the court heard evidence and read depositions from 87 witnesses and examined 195 exhibits.³⁵ Its March 3rd decision noted “a pattern of fraudulent, intentional and criminal conduct” in the extensive abuse of absentee ballot laws.³⁶ An expert documents examiner testified that 225 absentee ballots cast had forged signatures; there was evidence of 14 stolen ballots and 140 improperly witnessed ballots. Another 480 ballots were procured or witnessed by 29 “ballot brokers,” 27 of whom invoked their Fifth Amendment privilege against self-incrimination instead of testifying at trial. One such ballot broker was 92-year-old Alberto Russi, a campaign volunteer for Humberto Hernandez, a Suarez ally on the five-member City Commission. Within days of the primary election, Russi was arrested and charged with three counts of election fraud. Police traced Russi to the absentee ballot of a dead man whose ballot he witnessed. When police searched Russi’s home they seized 75 absentee ballots already filled out and intended for the November 13 run-off, many of which were addressed to Russi’s home in the names of other voters. A separate grand jury, convened to investigate the fraud allegations and make recommendations for improvements in the absentee ballot process, found that absentee ballots were stolen from mailboxes, that “unscrupulous individuals” had secured ballots for people under the guise of “helping the voter,” and that voters had been coerced into voting for particular candidates in return for past favors done for them.³⁷

At the center of what the trial court subsequently found to be “a massive, well-conceived and well-orchestrated absentee ballot voter fraud scheme” were a large number of absentee ballots—nearly 70 percent of the total—cast from Little Havana. Little Havana voters reinstated Commissioner Hernandez, the embattled Suarez ally who won reelection to the City Commission by a large majority after being removed from office by the governor following a 23-count indictment for bank fraud and money laundering.³⁸ An expert in statistical analysis testified at trial that the large number of absentee ballots from Little Havana was a statistical “outlier,” the Little Havana absentee ballot rate was an “aberrant case” so unlikely that it was “literally off the [statistical probability] charts.”

The trial judge, Thomas S. Wilson Jr., concluded that “the evidence shows a pattern of fraudulent, intentional and criminal conduct that resulted in such an extensive abuse of the absentee ballot laws that it can fairly be said that the intent of these laws was totally frustrated.... This scheme to defraud, literally and figuratively stole the ballot from the hands of every honest voter in the city of Miami.”³⁹ Judge Wilson overturned the results of the November 4 election and ordered a new election, but his remedy was overturned on appeal. The appellate court affirmed the finding of fraud but voided the remedy of a new election and remanded the case to the lower court with instructions to enter a final judgment that voided all of the absentee ballots, determining the outcome of the election by the machine total alone. This decision took victory out of Xavier Suarez’s hands and gave it to Miami’s new mayor, Joe Carollo.

The 1997 Miami mayor’s race presents one of the more egregious cases of election fraud in recent memory. As an outlier, it is nevertheless instructive. To affect the outcome of an election, fraud needs to be “massive,” as the trial judge found. This requires organization and coordination among multiple actors willing to break the law and risk significant punishment; in other words, a conspiracy. The need for organization to orchestrate enough fraud to flip the results of an election is the hook to detection. Here, Florida’s civil election contest procedures worked as they should have, providing the candidate—and by extension, the voters—harmed by the fraud a means of challenging the distorted results. The fraud was immediately discovered through conventional criminal investigation.

News coverage of the fraud scheme and trial was extensive and national and local leaders and residents loudly bemoaned the further tarnishing of the city's image as one steeped in political corruption. The state legislature acted quickly to pass a \$4 million election law reform package to root out voter fraud. Unfortunately, the law did much more than that and had a perverse effect on election administration. In its zeal to address the embarrassing behavior of politicians in Miami, the Republican-controlled legislature passed a law that paved the way for one of the scandals of the 2000 election in Florida: the massive disfranchisement of Florida voters—most of them African American—whose names erroneously appeared on felony lists.⁴⁰

In May 1998, the legislature added Section 98.0975 to Title IX, Chapter 98 of Florida's statutes. Section 98.0975 required the Division of Elections in the secretary of state's office to contract with a private company to compare the central voter file with databases of persons deceased, those with felony convictions, and those adjudicated mentally incompetent and to provide lists of matching names to the division. The rules for matching names were developed by state officials, against the advice of the company hired to produce the lists, requiring a "match" based on only the first four letters of the first name, 90 percent of the last name and an approximate date of birth.⁴¹ The elections division was required to provide the information to the county supervisors of elections who were to undertake their own verification process on local voter registration databases. The lists were highly inaccurate, for example, one list contained the names of 8,000 Florida residents who had committed misdemeanors, not felonies, in Texas.⁴² There is little doubt that thousands of legal Florida voters were erroneously purged from the rolls and prevented from voting in Florida in 2000. Florida was the only state in the United States to require its local election officials to verify their voter rolls using data processed by a private firm.⁴³ Those arrangements were easily manipulated by partisan election officials to shape electoral outcomes.

THE 1996 DORNAN/SANCHEZ CONTEST FOR THE U.S. HOUSE OF REPRESENTATIVES, ORANGE COUNTY, CALIFORNIA

Orange County, California, is the fourth largest county in the United States, with 2.8 million people counted in the 2000 census, more than one-quarter of them Latino. The 46th Congressional District is nestled in the heart of Orange County and includes centers of Latino concentration, Santa Ana, the county seat, and most of Garden Grove and Anaheim, giving the 46th district a population that is nearly two-thirds Latino. Vast growth and demographic change, along with careful redistricting by Democrats in California's state legislature, have facilitated political change in Orange County. Orange County was once a Republican stronghold, a core constituency for the Republican party in presidential elections because it could swing California to the party.⁴⁴ As late as 1988, voters in the 46th district gave 62 percent of their votes to George H.W. Bush. By 2000, however, a 24 percent Republican margin in presidential elections had been replaced by a 12 percent Democratic margin when Al Gore won the 46th with 54 percent of the vote to 42 percent for George W. Bush. The increasing ability of new immigrant and Latino voters to define Orange County politics and the transformation in party dominance toward the Democrats set the stage for an explosive case of alleged voter fraud in 1996.

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

One day after the November 5, 1996, election, Dornan led Sanchez by 233 votes, but 12,000 absentee and provisional ballots had yet to be counted. A week later, when about 3,000 ballots were still left to tally, the Associated Press called the election for Sanchez, who had moved into the lead with a 929-vote margin. As the count proceeded, Dornan repeatedly raised the issue of “non-citizen” voter fraud and vowed to take his re-election fight to the floor of the House of Representatives if he lost. He added that his Republican colleagues were looking for a case to use in challenging the recently implemented National Voter Registration Act, signaling the likely entry of national political forces into the fray.⁴⁵ Dornan specifically charged that a well-known Latino rights group and the Democratic Party signed up illegal voters in a drive he argued may have led to “the first case in history where a congressional election was decided by non-citizens.”⁴⁶ His lawyer later called the case “what we think is the single largest example of voter fraud in a federal election in the last 50 years, and, yes, maybe in this century.”⁴⁷

On November 22, 1996, the Orange County Registrar of Voters certified Loretta Sanchez the winner by 984 votes,⁴⁸ and a 14-month battle to deny Sanchez a seat in the House was joined. State electoral and law enforcement agencies were the first to open investigations into the alleged election irregularities. Then, on December 26, 1996, Dornan filed a three-page Notice of Electoral Contest in the House of Representatives requesting an investigation of the election. This was within keeping of his prerogative and the constitutional authority of the House under Article I, Section 5, Clause 1, which provides that each House of Congress shall be the judge of the “elections, returns and qualifications” of its members. Under the rules of the federal Electoral Count Act, the contest is first heard by the Committee on House Oversight, which conducts its own investigation, and then by the whole House, which disposes of the contest by resolution or majority vote. In the 105th Congress, the eight-member committee was chaired by Rep. William M. Thomas, a Republican from Bakersfield, California, and dominated five-to-three by Republican members. Thomas created a three-person task force comprised of Rep. Vernon Ehlers (R-Mich.) and Rep. Robert Ney (R-Ohio), and, later, Rep. Steny Hoyer (D-Md.) to conduct the investigation and recommend a course of action to the full committee. Along with the Orange County D.A. and secretary of state investigations, the House committee’s investigation took a year to complete and produced, in the end, a disputed finding of fraud that was too insubstantial to convince the Republican dominated House to upset or reverse Sanchez’s victory.⁴⁹ On February 12, 1998, the House voted 378-33 to dismiss Dornan’s contest.

The Dornan-Sanchez electoral dispute fits squarely with what political scientists Benjamin Ginsberg and Martin Shefter call “politics by other means.” Politics by other means involves the use of legal strategies and the courts, revelation, prosecution and investigation, and the media to win.⁵⁰ The fraud allegations and subsequent 14-month investigations by state, county and federal government agencies cost American taxpayers well over \$1.4 million.⁵¹ In the end, very little voter fraud was convincingly substantiated. On April 29, 1998, California’s Republican secretary of state announced that the people identified by the task force as illegal, non-citizen voters in the 46th Congressional District election of 1996 would not be prosecuted for voter fraud, the secretary deciding that they had registered in error and not from criminal intent.⁵²

THE 2000 ELECTION, ST. LOUIS, MISSOURI

Like most big cities, St. Louis has had its share of election fraud investigations in the past.⁵³ In the wake of the 2000 election, allegations of voter fraud in St. Louis were raised that included illegal registration; voting by deceased people, felons, and people whose addresses appeared to be vacant lots; multiple voting; and unqualified election judges permitting unqualified voters to cast illegal ballots. Before the facts were known, wild accusations of a vast conspiracy on the part of the Democrats to undertake “a major criminal enterprise designed to defraud voters” captured national media attention.⁵⁴

The St. Louis case gained national notoriety because the partisan conflict between a senior Missouri Republican senator and a newly elected St. Louis Democratic representative underlying it erupted in congressional hearings and other public venues, giving the story a wider national audience than it would have had otherwise. It also received attention in the wake of the Florida 2000 debacle and then again going forward as Congress struggled with election reform over the next year and a half. As will be explained, the contemporary St. Louis case is a good example of how the forces promoting expanded access to the franchise are forced to compromise under the cloud of fraud—sometimes real, but more often conjured up—to achieve electoral “reform.”

In the months leading up to the election, African-American leaders in St. Louis became concerned that the recent removal of more than 30,000 names from the registration rolls to an “inactive” list would create problems at the polls on Election Day. State Senator William Lacy Clay Jr., a candidate for a seat in the U.S. House of Representatives, gave a speech the day before the election in which he warned that if eligible voters were prohibited from voting at the polls because of inaccurate registration records, lawsuits would be brought to keep the polls open past their legal closing time of 7 p.m.⁵⁵ In fact, that is exactly what happened. Hundreds of eligible voters were unable to vote because their names had been put on “inactive” lists which were not distributed to St. Louis’s more than 250 polling places. Poll workers were told to call headquarters to verify the eligibility of voters whose names were not on their lists, but the problem was so extensive, the phone lines were jammed for most of the day. When poll workers were unable to get through, they told voters to go down to the Board’s main office to plead their case. Hundreds of people tried to cram into the Board’s office at 300 North Tucker Boulevard. Many were still standing in line at 10 p.m., demanding their right to vote.

In the late afternoon of Election Day, Lacy Clay’s campaign, the Gore-Lieberman campaign, and the Missouri State Democratic Committee filed suit in St. Louis City Circuit Court to keep the polls open late so that registered voters whose records had been mishandled by the Board could vote. A sympathetic judge issued an order to extend voting hours, but the Missouri Court of Appeals quickly overruled her. The polls in St. Louis shut down at 7:45 p.m., with only about a hundred additional votes cast after the official 7 p.m. poll closing time.⁵⁶

As expected, the Democrats did very well in St. Louis, a heavily Democratic city, but they also did well statewide where Republicans had long held power, electing a Democrat to the U.S. Senate and as governor. These were troubling signs to Missouri Republican leaders. Within two days of the election, the state’s senior U.S. Senator, Republican Christopher “Kit” Bond, called for a federal investigation of voting in St. Louis, hinting at a conspiracy behind the Democrats’ efforts to extend polling place hours. “What I saw and heard on Tuesday night is an outrage,” he screamed on national television as he pounded a lectern at a local Republican party event, adding that the St. Louis Election Board and the Democratic Party should be investigated for “orchestrat[ing] a concerted scheme to deny all Missouri voters a valid count by keeping the polls open.”⁵⁷

Post-election investigations conducted within weeks of the election by the newly elected Republican secretary of state, Matt Blunt, and the *St. Louis Post-Dispatch* suggested only a marginal amount of voter fraud may have been committed in 2000. Voter and election worker error which later would prove to be the source of the irregularities did not receive the same amount of attention, at least at first. The extent of St. Louis’ election administration meltdown unfolded slowly, even as the partisan rhetoric heated up. Most of the initial charges about criminal conspiracies and the defrauding of Missouri voters were eventually shown to be overblown. For example, hundreds if not thousands of “ghost voters” were allegedly

registered at vacant lot properties. Bond and others jumped on the allegations to further fuel their fraud charges. The secretary of state's probe significantly reduced the number of vacant lot addresses to 79 voters, and subsequent investigations a year later by reporters at the *St. Louis Post-Dispatch* discovered that "dozens of St. Louis voters are being wrongly accused of casting ballots from fraudulent addresses" in the 2000 election. *The Post-Dispatch* surveyed 1,000 supposedly vacant lots and found that 704 of them had buildings on them, some of them more than 50 years old.⁵⁸ Errors in the city's property records and methods for classifying vacant a multi-parcel address if only one of the parcels at the address is vacant account for the mistakes in the voter records.

With no indictments for fraudulent voter registration and the problem of vacant lot addresses largely solved, Bond and Blunt focused on court orders permitting 1,233 people to vote. Bond again suggested a criminal conspiracy to create chaos on Election Day so that the Democrats could stuff ballot boxes with fraudulent votes procured through illegally obtained court orders. The court orders were issued by St. Louis City and St. Louis County election judges for reasons Blunt argued did not conform to Missouri law. Some of the court orders appeared to be granted to people who acknowledged that they had failed to register by the October 11 deadline, although judges interviewed by the *St. Louis Post-Dispatch* said that they believed their court orders complied with state law.⁵⁹ St. Louis County judge Robert S. Cohen said that election officials first screened voters who believed they were eligible to vote but who were not on voter registration lists; voters then had to wait in long lines to have their cases reviewed by an election judge. Cohen explained to a reporter:

"This process had taken them hours and hours. Some had babies with them; some had wheel-chairs; some had taken off work. We were trying to accommodate people in a long line and get them in and out. We were erring on the side of allowing people to vote. Rejecting an American citizen at the poll who appears to have engaged in no fraud ... it's a difficult thing to turn that person away and say you cannot vote, you cannot participate in the democracy today."⁶⁰

It would take an FBI investigation in which all of the registration and voting records from the St. Louis City Elections Board for the month preceding the election were subpoenaed before the facts could emerge.⁶¹ Once that investigation was completed, to the surprise of many, Bond included, the Justice Department threatened the Board with a lawsuit for abusing the voting rights of thousands of eligible St. Louis voters by illegally purging their registration records in violation of the NVRA. It was these illegal purges that created much of the chaos on Election Day leading to more record-keeping errors and mistakes, and the appearance of election irregularities. The resulting consent decree stipulated how the Board would change its policies and procedures for maintaining accurate registration records and how it would comply with federal requirements for notifying voters of their registration status and handling voter lists on Election Day. Thus, the alleged voter fraud conspiracy in St. Louis was nothing more than a case of managerial ineptitude, administrative under-funding, and poor implementation of the NVRA on the part of St. Louis and Missouri election officials—made worse by partisan rancor and racial politics in a high interest, competitive election.

The politics of voter fraud in St. Louis spilled over into the national debate on election reform that gripped the country after the Florida election debacle of 2000. Bond came to play a key role in the legislative battles over the Help America Vote Act of 2002. At his insistence, the act included a plank that requires voters to cast only provisional ballots if voting occurs after polls have been ordered to stay open beyond their legal closing time by state or federal courts.⁶² Bond was also a leading proponent of federal identification requirements for registration and voting. During the debates over the Senate's initial version of the

bill, intense squabbling over voter ID provisions which were demanded by Bond and other Republicans nearly derailed legislative passage. The House bill included no such provisions and civil rights and electoral reform advocates vowed to work hard against any compromise that included new ID requirements. But during the House and Senate conference on the bill, Bond and Mitch McConnell of Kentucky, the Senate's Republican bill managers, let it be known that Republicans would not back down and that the voter ID issue was a deal-breaker.⁶³ The final bill included ID requirements but limited them to first-time voters registering by mail. The retreat by congressional Democrats on the ID issue split the liberal advocacy community which had waged a long and hard-fought effort to win minimum standards and funding to fix the nation's electoral machinery. They split, with some condemning the final bill and others offering tepid support.⁶⁴ In hindsight, the HAVA ID requirement, limited as it may be, nevertheless paved the way for a partisan movement in the states that uses allegations of voter fraud to impose more and more restrictive identification requirements on voting. The lesson is that the politics of voter fraud matter more for the election rules we get than the actual evidence of voter fraud itself.

NOTES

1. Real ID Act of 2005 (P.L. No. 109-13), Div. B, Title II, Sec. 202(c) requires that a state may not issue a driver's license or non-driver's ID card unless the applicant presents documentary proof of his or her full legal name and date of birth, Social Security number or the fact that the applicant is not eligible for one, address of principal residence and U.S. citizenship.
2. Commission on Federal Election Reform, *Building Confidence in U.S. Elections* (September 2005), http://www.american.edu/ia/cfer/report/full_report.pdf; for a dissent see, Brennan Center for Justice and Spencer Overton, *Response to the Report of the 2005 Commission on Federal Election Reform*, 2005, <http://www.carterbakerdissent.com>.
3. Kevin Fagan and Mark Simou, "Election-Day Registration Loses; Opponents Said Prop. 52 Would Have Opened Door to Fraud," *San Francisco Chronicle*, November 6, 2002, A5.
4. Matthew Murray, "EAC Blasted Again for Burying Study," *Roll Call*, April 9, 2007; Ian Urbina and Eric Lipton, "U.S. Panel Is Said to Alter Finding on Voter Fraud," *The New York Times*, April 11, 2007, A1; Eliza Newlin Carney, "Election Assistance Commission Under Fire," *The National Journal*, April 23, 2007; David Nather, "Election Board Facing Votes of No Confidence," *CQ Weekly*, April 23, 2007. At the time of this report (August 2007), the Election Assistance Commission's research contracting procedures were under investigation by the Commission's Inspector General, a review requested by the Commission's Chair. See U.S. Election Assistance Commission, "EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects," Press Release, April 16, 2007.
5. Demos' 2003 report, *Securing the Vote*, addresses some of these questions. New briefing papers and a book on fraud to be published in 2008 will expand on those findings. The U.S. Election Assistance Commission's controversial report on voter fraud and intimidation, *Election Crimes: An Initial Review and Recommendations for Future Study* identifies some of the major gaps in our understanding of what constitutes fraud and intimidation, but neither this report nor the draft report submitted by the agency's consultants present new empirical findings or even a coherent definition of voter fraud. Both the final report and the consultants' draft report can be found at the EAC's website, <http://www.eac.gov>.
6. See note 5.
7. Craig C. Donsanto and Nancy L. Simmons, *Federal Prosecution of Election Offenses*, 7th Ed. (U.S. Department of Justice, May 2007), pg. 2, www.usdoj.gov/criminal/pin/docs/electbook-rvs0807.pdf.
8. Joseph P. Harris, "Election Reform: The Perspective of Forty Years." In Richard J. Carlson, ed., *Issues of Electoral Reform* (New York: National Municipal League, 1974), pg. 102.
9. See for example "Second Amended Complaint," *N.A.A.C.P. et al. v. Harris, et al.*, U.S. District Court for the Southern District of Florida, Miami Division, Case No. 01-0120-CIV-GOLD/SIMONTON, (March 12, 2002); Greg Palast, *The Best Democracy Money Can Buy* (Virginia: Pluto Press, 2002), pg. 6-43; Andrew Gumbel, *Steal This Vote* (New York: Nation Books, 2005); Lance deHaven-Smith, ed., *The Battle for Florida: An Annotated Compendium of Materials from the 2000 Presidential Election* (Gainesville: University Press of Florida, 2005).
10. U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (June 2001).
11. See for example Caltech/MIT Voting Technology Project, *Voting: What Is, What Could Be* (July 2001); Democratic Investigative Staff, *How to Make a Million Votes Disappear: Electoral Sleight of Hand in the 2000 Presidential Election* (U.S. House Committee on the Judiciary, August 2001); the excellent multi-volume series of studies conducted for Congress since 2000 by the U.S. General Accounting Office (now, The Government Accountability Office), especially *Elections: Perspectives on Activities and Challenges Across the Nation* (October 2001), GAO-02-3; and *The Nation's Evolving Election System As Reflected in the November 2004 General Election* (June 2006), GAO-06-450; see note 10; and Anita Miller, ed., *What Went Wrong in Ohio: The Conyers Report on the 2004 Presidential Election* (Chicago: Academy Chicago Publishers, 2005).
12. Spencer Overton, "Voter Identification," *University of Michigan Law Review* 105(1) (2007), pg. 631-682.
13. Dayna Cunningham, "Who Are to Be Electors? A Reflection on the History of Voter Registration in the U.S.," *Yale Law and Policy Review* 9(2) (1991), pg. 383.
14. *Ibid.* pg. 384, citing Joseph P. Harris, *Election Administration in the United States* (Washington, D.C.: The Brookings Institution, 1934); Frances Fox Piven and Richard A. Cloward, *Why Americans Still Don't Vote and Why Politicians Want It That Way* (Boston: Beacon Press, 2000), pg. 25-6 & 91-2.
15. In the 1920s, Harris conducted detailed studies of election administration for the Brookings Institution. His research led him to conclude that elections were more poorly managed than just about any other area of public administration at the time. "Our elections," he lamented, "have been marked by irregularities, slipshod work, antiquated procedure, obsolete records, inaccuracies, and many varieties of downright fraud." See Joseph P. Harris, *The Registration of Voters in the U.S.* (Baltimore: The Lord Baltimore Press, 1929), pg. 3. He nurtured ideas about how to use technology to reduce election fraud for decades before inventing the Votomatic Vote Recorder (punch card voting machine) toward the end of his academic career. See Interview with Joseph P. Harris by Harriet Nathan, *Oral History* (University of California, 1980), <http://bancroft.berkeley.edu/ROHO/Vote/>. For an enlightening look at the little studied subject of voting technology, see Roy G. Saltman, *The History and Politics of Voting Technology: In Quest of Public Integrity and Public Confidence* (New York: Palgrave, 2006).
16. Demos, *Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security* (August 2007), www.demos.org.
17. The National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process* (August 2001), www.nfc.org/Publications/ElectionReform/99_full_report.pdf.
18. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), perhaps the most radical reform of U.S. immigration laws ever, makes it much easier to deport otherwise lawful non-citizens for illegal voting in federal elections. Title II, Sec. 216 amended Title 18 of the U.S. Criminal Code by adding Sec. 611, "Voting by aliens," which states: "(a) It shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, unless — (1) the election is held partly for some other purpose; (2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and (3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices. (b) Any person who violates this section shall be fined under this title, imprisoned not more than one year, or both."
19. U.S. General Accounting Office, *Elections: The Scope of Congressional Authority in Election Administration*, GAO-01-470 (March 2001).

20. *Ibid.*, 4–7.
21. *Ibid.*, 11.
22. Elizabeth Simson, *Justice Denied: How Felony Disenfranchisement Laws Undermine American Democracy* (Americans for Democratic Action Education Fund, March 2002); Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (New York: Oxford University Press, 2006); Elizabeth A. Hull, *The Disenfranchisement of Ex-Felons* (Philadelphia: Temple University Press, 2006); see also the many reports and publications of The Sentencing Project, www.sentencingproject.org.
23. One critic of the NVRA has suggested in recent testimony before the Senate Committee on Governmental Affairs that the lack of an evidentiary record of voter fraud prosecutions should not be taken as indicative of a lack of voter fraud. This assumes that only the states can pursue fraud claims in court, which is not the case. See the testimony of Deborah Phillips, founder and chair of the Voting Integrity Project, who asserts without evidence that "Prosecutors do not like election fraud cases because they take precious resources from strained budgets needed for more serious crimes." U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Election Administration Reform*, 107th Cong., 2nd sess. (May 3, 2001).
24. 42 U.S.C. Section 1973gg-9(b).
25. Donsanto and Simmons, 24.
26. 18 U.S.C., Section 241 (1988); see also Richard Craswell, "Comments: Federal Prosecution for Local Vote Fraud Under Section 241 of the Federal Criminal Code," *University of Chicago Law Review* 43 (1976), 542–572.
27. The 1995 6th Edition of the Justice Department's *Federal Prosecution of Election Offenses* manual included the following instruction (p. 30): "As a general rule, section 1973(c) [a criminal statute incorporated into the Voting Rights Act] should not be used to prosecute isolated instances of illegal registration, vote buying, or fraudulent voting, because such isolated instances do not implicate federal interests sufficiently to warrant federalization of matters otherwise better left to state election administration and law enforcement. . . . Prosecution of individual and uncoordinated acts should be considered only where they evidence a widespread systemic abuse which jeopardizes the integrity of the voting process in a particular locale." This paragraph was wholly excised in the Department's most recent (May 2007) revision of the manual.
28. See *United States v. Daugherty*, 952 F.2d 969, 971 (8th Cir.1991); *United States v. Saenz*, 747 F.2d 930, 935 (5th Cir. 1984); *United States v. Canales*, 744 F.2d 413, 416 (5th Cir. 1984).
29. Voting Integrity Symposium, "Prepared Remarks of Attorney General John Ashcroft" (U.S. Department of Justice, October 8, 2002), <http://www.usdoj.gov/archives/ag/speeches/2002/100802ballotintegrity.htm>
30. *Ibid.*
31. Eric Lipton and Ian Urbina, "In 5-Year Effort, Scant Evidence of Voter Fraud," *The New York Times*, April 12, 2007, A1.
32. Donsanto and Simmons, 2.
33. The City of Miami is not to be confused with Miami-Dade County government. Approximately 365,000 people live in the City of Miami, one of 30 municipal jurisdictions within Miami-Dade County where consolidated government represents the larger "Miami" community and performs most of the functions of local government.
34. Suarez received 23,598 votes or 53.2 percent to Carollo's 20,739 votes (46.8 percent). See "Former Mayor Wins an Upset in Miami Ballot," *The New York Times*, November 14, 1997, A30.
35. William T. McCauley, "Florida Absentee Voter Fraud: Fashioning an Appropriate Judicial Remedy," *University of Miami Law Review* 54 (2000), 627.
36. *In re Matter of Protest of Election Returns and Absentee Ballots in the November 4, 1997, Elections for the City of Miami, Dade County, Fla.*, No. 97-25596 CA 09 (Fla. Dade County Ct. March 4, 1998).
37. "Outright Fraud' Found in Miami Mayoral Elections," *The Washington Post*, February 3, 1998, A4.
38. Hernandez was eventually convicted of attempting to cover-up the election fraud scheme and sentenced to one year in jail. Governor Lawton Chiles again removed him from office.
39. Mike Clary, "Miami Without Mayor as Judge Voids Election: Voting: 'Massive ... Fraud' in Absentee Forms Cited; New Balloting to Take Place Within 60 Days," *Los Angeles Times*, March 5, 1998, A11; Donald P. Baker, "New Mayoral Election is Ordered for Miami; 'Fraud and Abuse' Prevalent, Judge Says," *The Washington Post*, March 5, 1998, A2.
40. At the time, Florida was one of only seven states that permanently disenfranchise persons convicted of felony crimes. Its felony disenfranchisement laws are still one of the harshest in the country; with about one third of all disenfranchised ex-felons in the U.S. residing in Florida. Human Rights Watch and the Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (1998); <http://www.hrw.org/reports98/vote>.
41. Greg Palast, "Florida's 'Disappeared Voters': Disenfranchised by the GOP," *The Nation* February 5, 2001; and Palast, *The Best Democracy Money Can Buy*, pgs. 6-43.
42. Laleh Ispahani and Nick Williams, *Purged! How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote* (New York: American Civil Liberties Union, Demos, Right to Vote, 2004), pg. 1.
43. Palast, *The Best Democracy Money Can Buy*, pg.16.
44. Lisa McGirr, *Suburban Warriors: The Origins of the New American Right* (Princeton: Princeton University Press, 2001).
45. Peter M. Warren, "Dornan Vows Appeal to House if Lead is Lost," *Los Angeles Times*, November 12, 1996, A1.
46. *Ibid.*
47. Dexter Filkins, Peter M. Warren, and Jean O. Pasco, "Dornan, Sanchez Square Off Before House Task Force," *Los Angeles Times*, April 20, 1997, A1.
48. A recount requested by Dornan reduced the final margin by five votes.
49. U.S. Congress, Committee on House Oversight, Task Force for the Contested Election in the 46th Congressional District of California, *Dismissing the Election Contest Against Loretta Sanchez: Report of the Committee on House Oversight on H.R. 355, Together with Minority Views* (February 12, 1998), H. Rept. 105-416.
50. Benjamin Ginsberg and Martin Shefter, *Politics by Other Means: Politicians, Prosecutors and the Press from Watergate to Whitewater, Revised and Updated*

Edition (New York: W.W. Norton & Company, 1999), pg. 44.

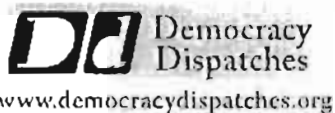
51. Cost estimates are as follows: investigation by the House Oversight Committee (\$300,000); expenditures by the INS to conduct data analysis (\$500,000); reimbursement to Dornan for costs associated with his contest (\$320,000); reimbursement to Sanchez for her defense (\$250,000). These costs do not include the expenditures by the Orange County Registrar of Voters to conduct an internal review and assist the Committee in its investigation, the Orange County District Attorney's Office for its criminal investigation of Hermandad Mexicana Nacional, or the California Secretary of State's Office for its investigation of non-citizen voting in Orange County.
52. "California Won't Prosecute Non-citizen Voters." *The Washington Post*, March 1, 1998, A19.
53. Tracy Campbell, *Deliver the Vote: A History of Election Fraud, an American Political Tradition - 1742-2004* (New York: Carroll & Graf, 2005), pgs. 160-191.
54. Carolyn Tuft, "Bond Wants Federal Investigation of Problems at City Polls; He Accuses Democrats of 'Criminal Enterprise' in Keeping Polls Open Late; Democrats Criticize Election Board," *St. Louis Post-Dispatch*, November 10, 2000, A1.
55. Jo Mannies, "Vote Fraud Charges are Hogwash, Clay Says, But Bond Stands Firm." *St. Louis Post-Dispatch*, February 21, 2001, C2.
56. Safir Ahmed, "Slmin' the City," *Riverfront Times*, November 15, 2000.
57. See Tuft; and Jo Mannies, "City Aimed to Repair Its Image." *St. Louis Post-Dispatch*, August 18, 2002. Bond's charge of criminal intent behind the effort to clear out what all parties agree was a chaotic situation inside many St. Louis polling places, may have had a personal dimension. Speaking of his successful run for governor in Missouri in 1972, Bond said, "They [St. Louis Democrats] tried the same stunt on me. This time was one too many" — referring to his belief that St. Louis Democrats intentionally kept the polls open until midnight in 1972 to prevent his election as the youngest governor in the state's history. See Mannies, February 11, 2001; see also, Bond's statement on the floor of the U.S. Senate, February 13, 2002, in which he linked his own experience in 1972 to the Democrats' efforts to keep the polls open late in the 2000 election: "Same state, same city, same play called from the same fraud play-book." One of the lawyers for the Democrats in 2000 was Douglas Dowd, the son of Ed Dowd Sr., the man Bond defeated in 1972.
58. Jo Mannies and Jennifer LaFleur, "City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear to be in Error, Survey Finds; Just 14 Ballots Are Found Suspect," *St. Louis Post-Dispatch*, November 5, 2001, A1. Further investigation by the *Post-Dispatch* fully debunked the vacant lot claims. According to reporter Jo Mannies, "Basically, we checked every one of the 2,000-plus props [properties] listed as vacant lots with voters, and found virtually all had houses on them — had been misclassified by the assessor's office." (E-mail correspondence with the author, February 25, 2002.)
59. Even Blunt had to admit that communications between local polls and the St. Louis Board of Elections on Election Day was "grossly inadequate." See *Making Every Vote Count: A Report of Secretary of State Matt Blunt to the People of Missouri* (Office of the Secretary of State of Missouri, January 29, 2001). One of his recommendations for improving election administration on Election Day was providing working cell phones to local poll workers and elections judges and the installation of more telephone lines at Board of Elections headquarters so that poll workers could more easily access the inactive voter files by calling in their inquiries. In 2000, many cell phones at the local polls had no batteries and a new telephone system at the Board of Elections malfunctioned, preventing judges from checking whether voters were listed on the inactive file. Under such circumstances, Missouri voters must get a court order to vote, at least part of the explanation for why so many court orders were issued.
60. Jo Mannies, "Secretary of State Says Local Judges Erred in Election; 1,233 People Were Improperly Allowed to Vote, Report Says," *St. Louis Post-Dispatch*, July 25, 2001, A1.
61. Jo Mannies, "FBI Subpoenas Records From Election Board; Action Follows Charges of Vote Fraud in Recent Elections; Federal Grand Jury Will Get Documents." *St. Louis Post-Dispatch*, April 17, 2001, A1.
62. Section 302(c) of the Help America Vote Act of 2002 (P.L. 107-252) states: "(c) VOTERS WHO VOTE AFTER THE POLLS CLOSE.—any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order."
63. The Act requires that applicants for voter registration must supply their state driver's license number, or, if they do not possess a driver's license, the last four digits of their Social Security number on their registration form. This provision was added to gain support of senators from Oregon and Washington who were worried that the bill would inhibit their vote-by-mail systems. For all mail registrants, applications must include a copy of documentary proof of their identity and address. If mail-in registrants fail to provide the documentation, they are required to do so when they vote for the first time in their new jurisdiction. See, generally, Help America Vote Act of 2002 (P.L. 107-252), Sec. 303(a)(5). On voter ID as a deal-breaker for congressional support from Senate Republicans, see Karen Foerstel and Emily Pierce, "Hopes for Quick Accord on Election Standards Bill Face Liberals' Objections," *CQ Weekly*, April 13, 2002; and Derek Willis and David Nather, "Conferees Strike Deal on Election Overhaul," *CQ Monitor News*, October 4, 2002.
64. The civil rights and liberal advocacy groups that came together to press for reform after the 2000 election were split over whether the ID requirements included in the final legislation were reason enough to withdraw support of the bill. The American Civil Liberties Union, Mexican American Legal Defense and Educational Fund, National Council of La Raza, National Association of Latino Elected and Appointed Officials Education Fund, Lawyer's Committee for Civil Rights Under Law all sent letters to Congress opposing the Help America Vote Act in its entirety. The National Association for the Advancement of Colored People and disability groups endorsed the bill. See, Brian Kim, "Recent Developments: Help America Vote Act," 40 (Summer 2003).

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ABOUT THE AUTHOR

Lorraine C. Minnite teaches political science at Barnard College, Columbia University. She is also a Senior Fellow at Demos, and the co-author of the 2003 Demos report, *Securing the Vote: An Analysis of Election Fraud*. Some of the research and analysis presented here are derived from her forthcoming book on voter fraud in contemporary American elections.

ABOUT THE DEMOCRACY PROGRAM

The Democracy Program works to strengthen democracy in the United States by reducing barriers to voter participation and encouraging civic engagement. Dēmos supports state and national reform efforts by conducting research on current and long-range issues; advancing a broad agenda for election reform; providing advocates and policymakers with technical support; and strengthening reform networks. Through our recent alliance with the National Voting Rights Institute, we are now able to utilize complementary channels of policy, advocacy and litigation to achieve our goals.



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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 7, 2008

The Honorable Dianne Feinstein
Chairman
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510

Dear Madam Chairman:

This responds to your letter, dated March 4, 2008, which asked William Welch, Chief of the Public Integrity Section in the Department's Criminal Division, to testify at a hearing next Wednesday, March 12, 2008, entitled "Is the Myth of In-Person Voter Fraud Leading to Voter Disenfranchisement?"

As we have advised your staff, we are not in a position to provide a witness for this hearing at this time, although we recognize the Committee's interest in Voter Fraud and would be pleased to accommodate your information needs in this matter. Should you wish to postpone this hearing, we would make every effort to provide a witness at a later time.

We regret that we cannot accept this particular invitation and look forward to working with you on a future hearing.

Sincerely,

A handwritten signature in black ink that reads "Brian A. Benczkowski".

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Robert Bennett
Ranking Minority Member