

Testimony of Jeffrey Milyo

United State Senate Committee on Rules and Administration
Hearing on “In-Person Voter Fraud: Myth and Trigger for Disenfranchisement?”
March 12, 2008

Summary of Remarks:

The public debate over illegal voting is not well-informed by relevant social science studies.

All illegal voting (not just voter fraud) disenfranchises legal voters.

There are no datasets suited to the analysis of the frequency of illegal voting or the effects of reforms intended to deter illegal voting. Existing claims about the prevalence of in-person illegal voting are not based on scientifically evaluation studies. However, the absence of systematic evidence for want of appropriate data or analysis does not imply that illegal voting is a myth.

I present novel evidence from the Census Bureau’s Current Population Survey (CPS) that suggests that illegal in-person voting is more commonplace than is typically understood. For example, in 2002, about 13% of eligible voters self-report casting an illegal ballot; further, about 90% of these self-reported illegal votes were made in-person.

Voter ID laws are intended to deter illegal in-person voting and to give the public greater confidence in the integrity of the electoral process.

The fear that voter ID laws will dramatically lower voter turnout is not supported by evidence from political science research. The small and incremental hassle cost of presenting a valid ID at the polls is unlikely to have any substantive impact on voter turnout.

In 2006, only 0.6% of eligible voters report not voting for reasons related to registration problems; this figure is not disproportionately higher in Indiana, despite that state’s controversial photo identification law.

Several recent empirical studies demonstrate that voter identification laws have only modest effects on voter turnout; there is little consistent evidence that voter turnout disproportionately affects vulnerable or disadvantaged citizens

To the extent that voter ID laws deter illegal voting, turnout is expected to decline.

The public debate on illegal voting and voter ID reforms has been ill-served by inflammatory claims of a coming disenfranchisement. The weight of evidence suggests that voter ID reforms are a means to administer elections more effectively and fairly.

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Written Testimony for the Record:

The public debate over illegal voting is highly contentious, but not well-informed by relevant social science studies. Below, I briefly describe several lessons that emerge from scholarly studies of voting behavior and electoral institutions.

First, policymakers should be concerned about illegal or improper voting in general, not just voter fraud. This is because illegal voting, whether it rises to the level of fraud or not, still disenfranchises legal voters by “canceling” out their proper ballots.

Second, while all political corruption is difficult to observe and study, the institution of the secret ballot makes illegal voting all the more difficult to measure. For this reason, there are no datasets well-suited to the statistical analysis of either the frequency of illegal voting or the efficacy of reforms intended to deter illegal voting. Consequently, existing claims about the prevalence of in-person illegal voting are not based on scientific evaluation studies.

While journalistic accounts and widespread popular concern about illegal voting are suggestive regarding the frequency of illegal voting, they are not perfect substitutes for more systematic evidence. However, the absence of systematic evidence for want of appropriate data or analysis does not imply that illegal voting is a myth (see Appendix A).

In order to get an indication of the extent of illegal voting, I present novel and suggestive evidence from the Census Bureau’s Current Population Survey (CPS). Consider that from 1996-2002, the CPS asked a series of questions about changes in residence and voter registration that caused some respondents to reveal (presumably inadvertently) that they had cast illegal ballots in the general election. For example, in 2002, about 13% of eligible voters self-report casting an illegal ballot; further, about 90% of these self-reported illegal votes were made in-person (See Appendix B). Of course, some of these survey responses may be the result of error or confusion, but the sheer number of these self-reports strongly suggests that illegal in-person voting is more commonplace than is typically understood.

Voter ID laws are intended to deter illegal in-person voting and to give the public greater confidence in the integrity of the electoral process. However, such laws may also reduce voter turnout by increasing the hassle costs of voting. But on this point, several decades of political science theory and evidence should alleviate most such fears.

For example, take the concern that large numbers of otherwise eligible voters currently lack appropriate proof of identification and so will be “disenfranchised” by voter ID reforms. Without disputing the numbers and apart from the unflattering portrait of people as too hapless to obtain ID even if so motivated; this argument ignores the sad fact that these same folks are

already unlikely to be voters for any number of reasons unrelated to voter identification requirements at the polls.

The simple truth is that there are already many impediments to voting, from taking an interest in public affairs to registering to vote and bothering to remember where and when to vote. In fact, almost all non-voting is explained by these factors. For example, in 2006 only 0.6% of eligible voters report not voting for reasons related to registration problems (see Appendix C). For this reason, the small and incremental hassle cost of presenting a valid ID at the polls is unlikely to have any substantive impact on voter turnout.

Several recent empirical studies examine the effects of state voter identification laws on turnout; the more meritorious of these demonstrate that even the most stringent voter identification laws have at most a modest impact on voter turnout. In addition, there is little consistent evidence that voter turnout disproportionately affects vulnerable or disadvantaged citizens.¹

The 2006 CPS also reveals that the percent of respondents not voting due to registration problems is not disproportionately higher in Indiana, despite that state's controversial photo identification law (see Appendix C).

Finally, the policy debate over voter ID laws often ignores the fact that to the extent such reforms deter illegal voting, turnout is expected to decline. Consequently, any finding that voter identification laws reduce turnout does not necessarily imply that legitimate voters have been disenfranchised. Instead, such reforms may put an end to the disenfranchisement that otherwise would occur due to illegal in-person voting.

Given these lessons, it is apparent that the public debate on illegal voting and voter ID reforms has been ill-served by inflammatory claims of a coming disenfranchisement. Rather, the weight of current evidence suggests that voter ID reforms may well be a sensible means to administer elections more effectively and fairly for all.

¹ For a recent review of this literature, see Jeffrey Milyo (2007) "The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis," Institute of Public Policy, Truman School of Public Affairs (University of Missouri: Columbia, MO); the report is available at: <http://truman.missouri.edu/uploads/Publications/10-2007.pdf>.

Appendix A:

Perhaps the best known study that concludes that in-person vote fraud is rare is the ill-fated EAC report titled "Voting Fraud and Voter Intimidation" by Job Serebrov and Tova Wang. In this appendix I examine the quality of the work and the potential value of the proposed research described in the Serebrov and Wang report (this section borrows heavily from my letter to Vernon J. Ehlers, Ranking Member Committee on House Administration, sent on August 2nd, 2007). This review is particularly useful for understanding that the contention that in-person illegal voting is a "myth" is not well-supported by scientific evaluation studies.

A1. Background

I have approached this task as I would when refereeing a professional study or a grant proposal. As a social scientist, I expect certain minimal standards to be met in a research project or research proposal. Specifically, authors should motivate their analysis; the data collection and analytical methods should be clearly and completely described; the strengths and weakness of the data and methods should be acknowledged and conclusions should be well-supported by the analysis. Similarly, proposals for future research should be articulated in detail, describing the motivation for the study, the data to be collected and the analytical methods, as well as strengths and weaknesses and the potential value-added of such endeavors.

The consultants' report fails to meet these criteria. The analyses conducted by the authors are not well-motivated or well-executed, nor are the data, methods and findings described in appropriate detail. Further, the proposals for future research are cursory at best. Given this, the report by the consultants does not allow any conclusions regarding the incidence of voter fraud or intimidation, nor does the report instill confidence that the consultants are competent to lead future empirical research on these questions.

This should not be construed as a criticism of the objectivity of the consultants, nor is it a commentary on their expertise or professionalism within their own bailiwick. Rather it is apparent from their report that the consultants do not have the appropriate expertise to design or conduct a scientific analysis of the extent of voter fraud and intimidation. It is therefore not surprising that when judged by the standards of a scientific report, the consultants work product is deficient in a number of respects.

A2. Review of Serebrov and Wang

The consultants seek to describe the "quantity and quality" of voter fraud and intimidation in U.S. elections, and to propose future research on this topic; however, the authors note up front that their report is neither comprehensive nor conclusive. The report first describes five avenues of inquiry undertaken by the consultants: interviews, a review of news reports, a review of legal cases, a review of the existing literature, and conversations with political scientists; the consultants then present several recommendations and summarize their interactions with a working group. I discuss each of these sections of the report in turn.

Interviews:

The consultants interviewed several persons with some relevant expertise on voter fraud and intimidation. However, the universe of persons considered for interviews omits political operatives that might have first-hand knowledge of these activities (and might be willing to discuss at least the tactics employed by the opposite party). The selection process from this universe was not random; the interview questions are not described, and there is no indication that the consultants used a scripted set of questions or otherwise conducted the interviews in accordance with any systematic investigative methods. Further, the consultants do not describe the number of persons interviewed in the main text, nor do they make any attempt to control for the background or political leanings of interviewees. So, while these interviews might provide some useful background information for the consultants, they otherwise do not constitute a scientific analysis. It is therefore disconcerting that the authors describe this exercise as one of their research activities and even include a summary of interviewer comments in their report.

In writing up their summary of the interviews, the consultants do not describe their motivation for doing interviews or their reasons for selecting particular persons, nor do the authors provide any breakdown of the number of persons interviewed with particular experience, political leanings, etc. Most importantly, the authors do not offer any cautions about drawing conclusions based upon this non-scientific exercise. In fact, this particular failure has greatly contributed to the public controversy over this report.²

News Reports:

The consultants next conduct a Nexis search of news reports on voter fraud and intimidation over a five year period. Again, the authors do not explain why this exercise would be useful, nor do they provide much detail on the search terms employed, the number of articles uncovered, the distribution of these articles across newspapers, region, type of election, etc. The authors do not describe the number and type of newspapers that Nexis covers over this time period or whether this coverage is constant throughout the time period. Nor do the authors otherwise discuss the representativeness of these news reports, or provide any systematic analysis of these reports.

Moreover, the consultants' description of this exercise is maddeningly vague. For example, the authors state that they compiled an "enormous list of possible Nexis search terms" (how so, how many and what were they?) and that the consultant Wang subsequently chose combinations of these terms that would yield "virtually every article" on each topic of interest (how so, what

²In summarizing the opinions of their interviewees, the consultants state that "there is widespread but not unanimous agreement that there is little polling place fraud ..." While it is clear from the context of the report that this statement in no way represents a conclusion that the authors reached based upon a systematic analysis of evidence, it has been construed as such in several recent press reports. In fact, the only conclusion that the authors make in this respect is in their description of the existing literature on voter fraud and intimidation; in that section of the report, the consultants note that there is "tremendous disagreement about the extent to which polling place fraud ... is a serious problem." So, while it is not fair to blame the consultants for poor reporting by journalists, this confusion might well have been avoided had the authors taken more care in writing the report.

where they and how could she know this with such certainty?). When describing the number of articles and allegations made under each category of voter fraud and intimidation, the authors do not provide any descriptive statistics; instead, they merely relate that “many” or a “few” articles allege such and such. For example, the authors note that there were a “surprising number” of articles about vote buying, “numerous reports” of deceptive practices, and “surprisingly few” articles on noncitizen voting. From such statements, it is impossible to discern how many incidents of voter fraud and intimidation are being reported. Finally, the authors do not explain whether each article is an independent observation or not; for example, do all of the articles on deceptive practices refer to the same incident, or is each describing several unique incidents across the country? This would be very useful information, so it is unfortunate that the consultants did not attempt to quantify the allegations of voter fraud and intimidation in a more sensible and systematic fashion.

Existing Research:

The consultants state that there is little scientific research on voter fraud and intimidation and that their review covered the “landscape of available sources.” It is unclear what exactly this phrasing means, but the consultants review of existing research does not include a single academic study (i.e., from a peer-reviewed journal or a university press book). This is stunning, since there is in fact a longstanding political science literature on voter fraud, intimidation and suppression, albeit of a more historical nature. However, a review of these studies would be very valuable in understanding what types of voter fraud and intimidation might still occur in the present, how such activities might be measured or analyzed, and what kinds of policies might prevent such activities in the future. In addition, there is a voluminous literature on voter participation, citizen trust in electoral institutions and public opinion on voter fraud and intimidation that should be reviewed in connection with this study. There is also a fairly well-developed body of theoretical literature on voting that might inform this analysis, although it is difficult to know how much so absent an actual review of the academic literature. The failure to review any of the relevant scholarly literature is a major shortcoming of the Serebrov and Wang report.

Not only do the consultants ignore the relevant social science literature, their review of the reports of advocacy groups is cursory and not even-handed. For example, the consultants dismiss most of the popular accounts of voter fraud and intimidation as being based upon anecdotes, but then praise anecdotal and non-scholarly work by Lorie Minnite and Laughlin McDonald as systematic analyses of voter fraud and intimidation, respectively.³ The consultants may have some rational basis for evaluating the various non-academic studies in this manner, but if so, they do not describe it. For example, it might have been useful had the authors conducted a meta-analysis of the existing literature, or otherwise made some attempt at a consistent analysis of these existing studies. Absent this, it is impossible to discern how the consultants evaluated popular accounts and advocacy reports, and whether this was done in a coherent manner.

³ The consultants refer to a study by Lori Minnite, but do not cite any sole-authored work by Minnite in their references; I assume that the authors intended to cite the report by Minnite and Callahan that is included in the reference list.

Review of Legal Cases:

The consultants conducted a Westlaw search for cases relating to voter fraud and intimidation; this exercise exhibits very similar flaws as does the Nexis search described above. The authors do not describe their search terms, the time period examined, or the coverage of Westlaw during the time period examined. The authors do not provide details on the types of cases reviewed, only that “few applicable cases were found.” Also, the authors did not conduct a systematic analysis of state trials.

Again, the authors do not discuss the motivation for this exercise, or offer any cautions about the representativeness of trials versus underlying crimes. For example, in legal research it is well-understood that only a small fraction of cases ever go to trial and that these cases are not representative of those filed; the extent to which this might be true for cases relating to voter fraud and intimidation and what this might mean for this type of analysis is left unexplored.

Methodologies:

In this section of their report the consultants summarize the content of conversations with an unknown number of political scientists. This is potentially the most useful aspect of this report, but the proposed research projects described in this section are so sketchy as to be of little value. The consultants should have gone into much greater detail about the proposed studies, describing the exact data collection procedures and expected costs, the definition and measurement of key dependent and independent variables, the statistical methods to be employed, and the equations to be estimated. As things stand, it is impossible to evaluate the feasibility, cost and potential value-added of the proposed studies.

Recommendations:

The consultants make a number of recommendations regarding future research. Some of these focus on additional interviews, case studies, and reviews of press reports. Such activities may hold some limited value, but most likely only if conducted by well-trained social scientists. Additional efforts by the consultants along these lines would probably not be fruitful. However, the final two recommendations made by the consultants do merit further comments.

First, “Recommendation 8” is that the EAC should employ an “academic or individual to conduct statistical research”; this recommendation is an understatement. The numerous shortcomings of the Serebrov and Wang report demonstrate quite clearly that the EAC should seek out several scholars with substantial technical expertise in designing and conducting empirical studies.

Second, “Recommendation 9” is a statement by Wang that legislation should be adopted that expands the set of activities that can be prosecuted as voter intimidation. This policy recommendation is out of place, given that the report is incomplete and inconclusive. Rational public policy should be based on an objective evaluation of the relevant scientific evidence; since this report is not a scientific study, it is quite inappropriate and irresponsible to include any policy recommendations. Further, even taking the evidence presented in this report at face value,

it is unclear by what logic such a reform would be warranted for the purpose of preventing voter intimidation, but not voter fraud.

Conclusion:

The question of just how much fraud and intimidation exists in current American elections and how best to deter such activities merits serious study. However, the Serebrov and Wang report does little to advance our understanding of these difficult and contentious issues. Nevertheless, their report does offer one very important lesson for the future: research projects sponsored by the EAC should be selected, conducted and peer-reviewed by teams of well-qualified social scientists.

Appendix B:

In this appendix, I describe evidence about the frequency of illegal voting from the Current Population Survey (CPS). The November supplement to the CPS includes several questions on voting behavior. Beginning in 1996 and ending in 2002, the CPS included a question asking respondents if they had registered to vote since January 1995. In addition, respondents were also asked how long they had lived in their current residence. From these two questions, it is possible to identify several respondents that report moving and not updating their voter registration; of these, over half also report voting.

Of course, self-reports of illegal voting may or may not represent actual instances of illegal voting. It is always possible that some respondents are confused or mistaken in their answers. Further, some respondents may interpret the survey question differently than others. For example, some number of respondents may not understand an update or correction to their voter registration to be “registering.” For these reasons, the number of self-reported illegal votes likely overstates the actual number of illegal votes. Even so, the sheer number of respondents self-reporting illegal votes suggests that illegal voting may be more commonplace than typically understood.

Consider the results described in Table B1. In November 1996, 12% of eligible voters report that they have moved in the last 11 months; of these most also report not updating their voter registration since January 1995 and voting. The implication is that 7% of eligible voters self-report an illegal vote in the 1996 general election. In subsequent years, the window of time for which respondents report moving is not constant. For 1998, voters that moved in the last two years, failed to register and voted are considered to be casting illegal votes. In 2000 and 2002, it is voters that have moved in the last four years 1998, have not registered since 1995 and voted that are considered to be casting illegal votes.

Because the window of time for which respondents may have moved changes from year to year, these data are not directly comparable across years, only within year. Further, because additional respondents may have moved since 1995 beyond those identified by the coded responses to the CPS question, these figures should be considered lower bounds for the percent of eligible voters that have moved and report not registering.

I consider these data strongly suggestive that illegal voting is surprisingly frequent. Consider that even if only 10% of these self-reported illegal votes are actually illegal, the number of illegal votes would still be greater than the number of persons reporting that they did not vote due to registration problems (see Appendix C).

Finally, Table B2 shows the percentage of in-person voting for all voters and for self-reported illegal votes. In all years, about 90% of self-reported illegal voting is in-person; this suggests that illegal in-person voting is not a “myth.”

Table B1: Illegal Voting in the November General Election, 1996-2002:
Evidence from the Current Population Survey

	1996	1998	2000	2002
Eligible voters ^a	57,659	53,989	54,583	62,716
<i>As a % of Eligible Voters:</i>				
Self-reported vote	84%	70%	87%	73%
Moved since November 1995 (or later) ^b	12	22	37	36
Moved but did not update voter registration since January 1995 ^b	7	13	19	19
Self-reported illegal vote ^b	5	7	16	13

^aExcludes responses from North Dakota (no voter registration) or with missing values for questions about registration, voting and moving recently.

^bThese data are not directly comparable from year to year, due to the nature of the coded survey responses; however, they do provide a lower bound for self-reported illegal voting in each year.

Table B2: In-Person Illegal Voting in the November General Election, 1996-2002:
Evidence from the Current Population Survey

	1996	1998	2000	2002
Self-reported vote ^a	48,400	37,893	47,519	45,540
(% in-person versus absentee)	(92%)	(92%)	(90%)	(90%)
Self-reported illegal vote ^b	2,875	4,030	8,926	8,033
(% in-person versus absentee)	(91%)	(92%)	(90%)	(89%)

^aExcludes responses from North Dakota (no voter registration) or with missing values for questions about registration, voting and moving recently.

^bThese data are not directly comparable from year to year, due to the nature of the coded survey responses; however, they do provide a lower bound for self-reported illegal voting in each year.

Appendix C:

In this appendix I describe the frequency with which individuals self-report that they did not vote because of registration problems. The data are from the 2000-2006 Current Population Survey (CPS). The coding for non-voting due to “registration problems” includes persons with invalid registrations, persons that may have valid registrations but did not vote because of some other registration problem (perhaps including insufficient ID), and those that did not receive absentee ballots in time to vote.

The results in Table C1 indicate that very few respondents cite registration problems as a rationale for not voting (consistently less than 1% of eligible voters in each year). However, every previous study of the effects of voter ID laws that employ CPS data ignore this information (e.g. Alvarez et al. 2007). The fact that nearly all non-voters explain their decision not to vote for reasons unrelated to voter ID requirements implies that voter ID laws probably have little impact on non-voting.

As a further demonstration of this, consider the results presented in Table C2. The percent of eligible voters in Indiana citing registration problems as a reason for not voting is similar to that observed nationally. In particular, notice that in 2006, the first general election after the implementation of photo ID requirements in Indiana, the percent of eligible voters citing registration problems as a reason for not voting is lower than it was in 2004 in Indiana. Further the 2006 figure is identical to that for the nation as a whole in 2006 (compare to Table C1).

Indiana’s photo ID law has been called “Draconian” and the most stringent voter ID law in the country. However, in the wake of this reform, there was no increase in the percent of respondents citing registration problems.

Table C1: Registration Problems in the November General Election, 2000-2006:
Evidence from the Current Population Survey

	2000	2002	2004	2006
Eligible voters ^a	74,174	89,184	86,782	84,907
<i>As a % of eligible voters:</i>				
Did not vote	32.6%	46.3%	27.3%	55.0%
Did not vote due to registration problems	0.7	0.8	0.6	0.6
Did not vote for unspecified other reasons ^b	1.1	2.0	1.0	1.9

^aExcludes responses with missing values for questions about voting.

^bOther than reasons such as: not interested, too busy, forgot, etc.

Table C2: Registration Problems in Indiana General Elections, 2000-2006:
Evidence from the Current Population Survey

	2000	2002	2004	2006
Eligible voters ^a	1,087	1,738	1,676	1,252
<i>As a % of Eligible Voters:</i>				
Did not vote	35.3%	54.1%	33.5%	47.7%
Did not vote due to registration problems	0.6	0.6	0.7	0.6
Did not vote for unspecified other reasons ^b	0.8	3.5	1.0	3.0

^aExcludes responses with missing values for questions about voting.

^bOther than reasons such as: not interested, too busy, forgot, etc.

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Biographical Sketch

I am a tenured professor in both the Truman School of Public Affairs and the Department of Economics at the flagship campus of the University of Missouri in Columbia, Missouri; I am also an adjunct professor in the Department of Political Science at the University of Missouri. I have several other professional affiliations; these include: senior fellow at the Cato Institute in Washington, D.C., the Hanna Family Scholar in the Center for Applied Economics at the University of Kansas School of Business; and academic advisor to the Center for Competitive Politics in Arlington, Virginia. Previously, I have been on the faculties of the Harris School of Public Policy at the University of Chicago and Tufts University in Massachusetts. I have also been a visiting scholar at the Massachusetts Institute of Technology, Washington University, Yale University and most recently, Stanford University.

My area of academic expertise is American political economy, including the empirical analysis of the effects of political institutions. My scholarly research has been published in a number of leading peer-reviewed journals, including, the *American Economic Review*, the *Quarterly Journal of Economics*, the *Journal of Law and Economics*, the *Journal of Public Policy Analysis and Management*, *State Politics and Policy Quarterly* and the *Election Law Journal*. I frequently serve as a peer-reviewer for the leading journals in both economics and political science, including the *American Economic Review*, the *American Political Science Review*, the *American Journal of Political Science*, the *Journal of Human Resources*, the *Journal of Law and Economics*, the *Journal of Law, Economics and Organization*, the *Journal of Political Economy*, the *Quarterly Journal of Political Science*, and the *Journal of Politics*, as well as for several national grant-making organizations (e.g., the National Science foundation and the Robert Wood Johnson Foundation).