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Democracy in Danger

Case Studies of Election Fraud

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Democracy in Danger

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INTRODUCTION

There is no question that America is the most successful experiment in democracy that the world has ever known. Under our Constitution, we have the ability to pick our political leaders and our legislative representatives at all levels of government, in the federal government and in state, county, and local governments.

While we are a great republic, we also have an unfortunate and long history of ballot fraud. Examples abound, from an election in New York in 1844 in which 135 percent of the eligible voters turned out to Lyndon Johnson's infamous Ballot Box 13 in his 1948 Senate election. More recently, in 2003 a mayoral election in East Chicago, Indiana, and in 2005 a state senate race in Tennessee were both overturned due to voter fraud. As the Supreme Court noted in its decision in 2008 upholding Indiana's photo identification requirement, flagrant examples of voter fraud "have been documented throughout this Nation's history by respected historians and journalists." Those examples "demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election."

Despite such extensive evidence, however, many partisan activists, liberal academics, and media elites deny that voter fraud exists or that any steps need to be taken to protect the integrity of our election process. The Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James A. Baker III profoundly disagreed. The eminent and non-partisan Commission found that our "electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters."

The best way of determining the proper safeguards to "deter and detect" voter fraud that endangers our democratic process is to examine actual reported cases. By reviewing how this fraud was discovered, investigated, and prosecuted, we can determine the best legislative and regulatory measures to ensure our elections will not be stolen. The studies that follow examine extensive voter fraud in Chicago in the 1982 governor's race, a successful 14-year conspiracy in New York that affected primary elections, the outright theft of local elections in Greene County, Alabama, in 1994 through absentee ballot fraud, and the growing problem of illegal voting by noncitizens.

Elections decide not only who leads our country, but as a consequence of that vote, the future public policies that will be implemented by our government. The right to vote in a free and fair election is the most basic civil right, on which depends all of the other rights of the American people protected by the Bill of Rights. These case studies hold lessons that can help us preserve our democracy for another two hundred years.

CHAPTER 1

Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation

On January 9, 2008, the Supreme Court of the United States heard oral arguments in *Crawford v. Marion County Election Board*, a case challenging the constitutionality of an Indiana law that requires most individuals who vote in person to present a government-issued photo identification.¹ Indiana's law was upheld by a federal district court² and by the Seventh Circuit Court of Appeals.³

Critics contend that such laws are unnecessary because “impersonation fraud” at the polling place simply does not exist. It is true that direct evidence of such fraud is hard to come by, but this is for a simple reason: Election officials cannot discover an impersonation if they are denied the very tool needed to detect it—an identification requirement. The Seventh Circuit noted “the extreme difficulty of apprehending a voter impersonator” unless the impersonator and the voter being impersonated (if living) arrive at the polls at the same time, which is a very unlikely occurrence.

Ignoring this point, the editorial page of *The New York Times*, among others, asserts that “[i]n-person voter fraud is extremely rare.”⁴ To support this claim, *The Times* cites the attorney for the petitioners in the Indiana case, Paul M. Smith, who told the Justices that “[n]o one has been punished for this kind of fraud in living memory in this country.”⁵ *The New York Times's* position is ironic, since the best-documented case of widespread and continuing voter identity or impersonation fraud comes out of the newspaper's own City of New York.

A 14-Year Vote-Fraud Conspiracy

A striking example of identity fraud at polling places, well within living memory, is described in a grand jury report publicly released in 1984 by the Kings County District Attorney and former Democratic Congresswoman Elizabeth Holtzman.⁶ Had it checked its own archives, *The New York Times* would have found a story from 1984, “Boss Tweed Is Gone, But Not His Vote,” that detailed the findings of the grand jury.⁷ As that article reported, the

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1. *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25 (U.S. Supreme Court, cert. granted Sept. 25, 2007); 2005 IND. LEGIS. SERV. PL. 109; see IND. CODE §§ 3-11-8-25.1(c), 3-5-2-40.5. This voter ID law does not apply to those who are over 65, disabled, or confined by illness or injury, all of whom may cast absentee ballots. See IND. CODE §§ 3-11-10-24(a)(3)-(5). The law also does not apply to individuals “who vote in person at a precinct polling place that is located at a state licensed care facility where the voter resides.” *Id.* at § 3-11-8-25.1(e).
 2. *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775 (S.D. Ind. 2006).
 3. *Crawford v. Marion County Election Bd.*, 472 F.3d 949 (7th Cir. 2007).
 4. *The Court and Voter ID's*, N.Y. TIMES, Jan. 9, 2008.
 5. Linda Greenhouse, *Justices Indicate They May Uphold Voter ID Rules*, N.Y. TIMES, Jan. 10, 2008. According to Mr. Smith, “there's not a single recorded example of voter impersonation fraud.... It's not happening and, indeed, every single indication in this record is that the evidence of this kind of fraud occurring, to call it scant is to overstate it.” Transcript at 19–20, *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25 (U.S. Supreme Court, cert. granted Sept. 25, 2007), available at http://www.supremecourtus.gov/oral_arguments/argument_transcripts/07-21.pdf.
 6. Press Release, Brooklyn, New York, District Attorney's Office, D.A. Holtzman Announces Grand Jury Report Disclosing Systematic Voting Fraud in Brooklyn (Sept. 5, 1984); In the Matter of Confidential Investigation, No. R84-11 (N.Y. Supreme Court 1984) [hereinafter Grand Jury Report].
 7. Frank Lynn, *Boss Tweed Is Gone, But Not His Vote*, N.Y. TIMES, Sept. 9, 1984.

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grand jury report “disclosed that cemetery voting and other forms of stuffing the ballot box were not buried with Tammany Hall.”⁸

The grand jury report revealed extensive voter registration and voter impersonation fraud in primary elections in Brooklyn between 1968 and 1982 that affected races for the U.S. Congress and the New York State Senate and Assembly. According to Holtzman, “[t]he grand jury investigation has uncovered a systematic attack on the integrity of elections in Brooklyn.” Holtzman warned that unless there were immediate changes in procedures, there was “a danger that serious fraud could occur in connection with the upcoming election.”⁹

This 14-year conspiracy was detailed by witnesses who participated in the fraud and were able to describe in great detail how it was accomplished. The grand jury found evidence of fraudulent and illegal practices in “two primary elections for Congress held in 1976 and 1982, four primary elections for the Assembly in three different assembly districts, three primary elections for the State Senate in one senatorial district and two elections for state committee in two different districts.”¹⁰ For 14 years, the conspirators engaged in practices that included:

the forgery of voter registration cards with the names of fictitious persons, the filing of these cards with the Board of Elections, [and] the recruitment of people to cast multiple votes on behalf of specified candidates using these forged cards or the cards of deceased and other persons.¹¹

The grand jury explained that “the ease and boldness with which these fraudulent schemes were carried out shows the vulnerability of our entire electoral process to unscrupulous and fraudulent manipulation.”¹²

The Tools of Vote Fraud

One of the key factors in the success of this scheme was the “advent of mail-in registration [in New York] in 1976 [which] made the creation of bogus registration cards even easier and less subject to detection.”¹³ Congress mandated the same type of New York-style mail-in registration nationwide in 1993 with the passage of the National Voter Registration Act, thus ensuring that the security problems caused by unsupervised mail-in registration in New York were spread nationwide. In fact, according to the grand jury, “mail-in registration has become the principal means of perpetrating election fraud” in New York.¹⁴

Another change in the law that increased fraud was the new practice that allowed any organization to obtain bulk quantities of voter registration forms from the Board of Elections that “contain no identifying serial number at the time they are given out.”¹⁵ The conspirators obtained blank voter registration cards and then filled them out with fictitious first names and real last names taken from party enrollment books within the targeted voting precinct:

For example, if a John Brown actually lived at 1 Park Place, Brooklyn, New York, the application would be completed in the name of Mary Brown, 1 Park Place, Brooklyn, New York. It was anticipated that when the mail for the fictitious Mary Brown was delivered to John Brown at his address, John Brown would discard the notice rather than return it to the post office. This plan reduced the likelihood that the voter registration notice card would be returned to the Board of Elections, thereby minimizing the possibility that the fraud would be detected.¹⁶

8. *Id.*

9. District Attorney’s Office, *supra* n. 6, at 1–2.

10. Grand Jury Report, *supra* n. 6, at 2. Although the grand jury could not determine whether these illegal activities had altered the outcome of those elections, it did find that the outcome of at least one State Committee election in 1978 was changed by fraudulent voting. *Id.*

11. *Id.*

12. *Id.* at 3.

13. *Id.* at 11.

14. *Id.*

15. *Id.* Without serial numbers, an election jurisdiction cannot determine which organization may be responsible for problematic or fraudulent registration forms that are received.

16. *Id.* at 12.

This process was also successful because of the way the Postal Service handled the mail. The normal procedure of all election jurisdictions in the United States is to mail a voter registration card to a newly registered voter after the registration application form has been received and processed. Although the primary purpose of the mailing is to provide the new voter with the voter registration card, it is also intended to ensure that a real person has registered and provided an accurate address. The New York Board of Elections thus relied on the Postal Service to return any registration cards that were undeliverable because the registrant was fictitious or did not live at the address on the application form. Election jurisdictions today still rely on the Postal Service for this validation.

However, the grand jury found that “mail carriers did not return these cards particularly where the address on the card was that of a large multiple dwelling...[and] would frequently leave the undeliverable voter registration cards in a common area of the building.” To take advantage of this, the conspirators used the addresses of multiple dwellings in which members of their crews lived, which gave them the ability to collect the bogus registration cards.¹⁷ The Executive Director of the State Board of Elections at the time, Thomas W. Wallace, commented that the handling of voter registration cards by the Postal Service varied greatly throughout the state and was a continuing problem for election officials.¹⁸

In addition to a voter’s signature, New York’s voter registration application forms at that time included a physical description of the voter—something that is nonexistent on the mail-in voter registration applications used today. Even so, the vote-fraud conspirators avoided detection either by using their own physical descriptions or by providing general descriptions that could be met by numerous people engaged in the scheme.

The fraudulent forms were either mailed or delivered to the Board of Elections, often with a group of legitimate registrations. The grand jury reported that in one 1978 legislative race alone, 1,000 bogus voter registration forms were successfully filed without detection by the Board of Elections.¹⁹ Although New York law required a check at the polling place of the voter’s signature, this proved to be no obstacle to this fraud because the persons creating the fictitious voter registration application forms would later vote under the same names, so their signatures at the polling place would match their signatures on the original registration forms.

These attempts to steal elections through the use of fraudulent voter registrations culminated each election day with votes cast using the fictitious cards. One witness testified that he first participated as a fraudulent voter when he was only 17, voting in a legislative primary in 1968 “using a registration card prepared under a different name by a member of the local Democratic club.”²⁰

- In 1970, the witness voted at least 10 times, at 10 different polling places, using bogus registration cards. He was part of a crew of five persons, each of whom was paid \$40 for the day’s activities.
- In the 1972 Democratic primary election, he received a promotion to crew chief, running a crew of five members.
- By 1974, his crew had grown to eight members, each of whom voted in excess of 20 times, and there were approximately 20 other crews operating during that election.
- In 1976, the grand jury witness led a crew of five people who cast at least 100 fraudulent votes.
- Moreover, the same witness had been present at a meeting prior to election day that was “attended by twenty crew chiefs.”²¹ If the other crews averaged as many fraudulent votes, then there would have been at least 2,000 phony votes cast in that election without detection by precinct poll workers or election officials.
- By 1982, the witness “was to have provided twenty-five workers to vote in a Congressional primary election again using bogus voter registration cards.”²²

17. *Id.* at 10–11.

18. *Lynn, supra* n. 7.

19. Grand Jury Report, *supra* n. 6, at 13.

20. *Id.* at 14.

21. *Id.* at 14–15.

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In addition to voting in the names of fictitious voters who had been successfully registered, the crews used several other methods of casting fraudulent votes. One method involved voting under the names of legitimate voters. By reviewing the voter registration records at the Board of Elections prior to election day, the conspirators were able to find the names of newly registered voters. Using the names of these voters, the crews would go to the appropriate polling places as soon as the polls opened in the morning to vote under those names:

The reasoning behind this method, according to the experience of one witness, was that newly registered voters often do not vote. By arriving at the polling sites early, the bogus voter would not need to worry about the possibility that the real voter had actually voted.²³

Another method entailed collecting, during nominating petition drives, the names of registered voters who had died or moved. Members of the various crews were then sent to polling places on election day to vote in the names of those voters. The signature requirement did not prevent such fraudulent voting either, which points out the inadequacy of signature matching (a highly trained skill that cannot be taught in a matter of hours to the average poll worker) to prevent this type of fraud. Credit cards present a similar problem, since the signature requirement on credit cards does not prevent the significant volume of credit card fraud that occurs in the United States.

Database technology is another tool of the trade that was not available then but is widespread now. Voter registration lists are public information in most states, and databases containing detailed information on voters are available from a wide variety of commercial vendors.

The databases of such commercial vendors are usually much more up-to-date than the information contained in the voter registration databases maintained by election officials. This makes it very easy for anyone with access to such information to determine the names of voters who are still registered but who have died or moved out of a jurisdiction. As Justice Roberts pointed out in the Indiana voter ID case, the record in the litigation showed that 41.4 percent of the names on Indiana's voter registration rolls were bad entries, representing tens of thousands of ineligible voters—a trove of potential fraudulent votes.²⁴

A Widespread Problem

The widespread impersonation fraud that occurred in Brooklyn raises the question of whether such fraud is a problem elsewhere in the country today. More recent cases provide evidence of what may be a wider problem that is very difficult to detect in jurisdictions that do not require voter identification.

For example, Dr. Robert Pastor, Executive Director of the Baker–Carter Commission on Federal Election Reform and Director of the Center for Democracy and Election Management at American University, testified before the U.S. Commission on Civil Rights in 2006 that he was once unable to vote because someone had already cast a ballot in his name at his polling place. He had no recourse at the poll to find out “why this had occurred, whether there was some error or whatever else, and the polling station itself didn’t keep any record of it.”²⁵

In a 2007 city council election in Hoboken, New Jersey, the former zoning board president noticed a group of men near his polling place being given index cards by two people shortly before the June election. One of those men later entered the polling place and tried to vote in the name of another registered voter who, it turned out, no longer lived in the ward. The imposter was caught only because he happened to be challenged by the zoning board president. He admitted to the police that the group of men from a homeless shelter had been paid \$10 each to vote using others’ names.²⁶

22. *Id.* at 15.

23. *Id.* at 15.

24. Transcript in *Crawford*, *supra* n. 5, at 18.

25. Transcript of Briefing on Voter Fraud and Voter Intimidation, United States Commission on Civil Rights, Oct. 13, 2006, at 185.

26. See Madeline Friedman, *Anatomy of Voter Fraud: Will Officials Follow Up on Alleged \$10 Vote Payoff?* HUDSON REPORTER, July 1, 2007; *Unclear Which Agency Will Investigate Voter Fraud: Prosecutor’s Office Waiting for Referral*, HUDSON REPORTER, July 8, 2007.

Chapter I - Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation

Last year, in a case reminiscent of Boss Tweed and the Brooklyn grand jury report, the U.S. Department of Justice won a voting rights lawsuit in Noxubee, Mississippi, against a defendant named Ike Brown, as well as the county election board.²⁷ Brown, a convicted felon, was the head of the local Democratic Party. He had set up a political machine that worked to guarantee the election of his approved candidates to local office—essentially his version of Tammany Hall. One of the contentions in the litigation was that the local election board’s “failure to purge the voter registration roll to eliminate persons who have moved or died and who are thus no longer eligible voters” increased the opportunity for voter fraud by creating “the potential for persons to vote under others’ names.” The court cited the testimony of one of the government’s witnesses, a former deputy sheriff, who said that “he saw Ike Brown outside the door of the precinct talking to a young black lady...and heard him tell her to go in there and vote, to use any name, and that no one was going to say anything.”²⁸

Mississippi does not require a photo ID for in-person voting, but it is now under court order to implement such a requirement due to a federal case filed by the Mississippi Democratic Party over its concern that the state’s open primary system and lack of party registration makes it unable to identify non-Democrats and prevent them from voting in its primaries.²⁹ This effort by the Mississippi Democratic Party is instructive because it discloses that threats to free, fair, and open elections concern not only elective offices and those who eventually hold them, but also the political parties as they recruit and organize voters and nominate their candidates. Political parties merit protection as much as individual voters whose franchise is diluted and denied by the commission of fraud.

The Indiana voter ID case itself also demonstrates the problem of double voting by individuals who are illegally registered to vote in more than one state. Because different states do not generally run database matching comparisons between their voter registration lists, there is no national process by which to detect multiple registrations. One of the Indiana voters highlighted by the League of Women Voters who supposedly could not vote due to the voter ID law turned out to be registered to vote not just in Indiana, but also in Florida, where she owns a home and claimed a homestead exemption (which requires an individual to assert residency). She was not allowed to vote in Indiana because she tried to use a Florida driver’s license as her ID—clear evidence that the law worked as intended to prevent a fraudulent vote by an individual who not only had claimed to be a resident of a state other than Indiana, but also had actually registered to vote there as well.³⁰

Unfortunately, attempts by neighboring states such as Kentucky and Tennessee to compare their voter registration lists for individuals registered in both states have been met with lawsuits contesting their right to do so.³¹ A federal court even issued an injunction barring the State of Washington from refusing to register individuals whose application information (such as their residence address) does not match information on that individual that is contained in other state databases, such as the Department of Licensing’s (driver’s licenses), thereby making it extremely difficult for a state to verify the accuracy and validity of information being provided by an individual in an attempt to register to vote.³²

One of the changes recommended by the New York grand jury to prevent problems caused by outside organizations filing fraudulent voter registration forms was “serializing and recording the serial numbers of all voter registration cards distributed in bulk and insisting on greater accountability by organizations engaged in voter

27. *U.S. v. Brown*, 494 F. SUPP. 2d 440 (S.D. Miss. 2007). The lawsuit was filed under Sections 2 and 11 of the Voting Rights Act and led to the first judgment in the U.S. finding racial discrimination in voting by black officials against white voters. The court said that it had “not had to look far to find ample direct and circumstantial evidence of an intent to discriminate against white voters which has manifested itself through practices designed to deny and/or dilute the voting rights of white voters in Noxubee.” *Id.* at 449.

28. *Brown*, 494 F. SUPP. 2d at 486, n. 73. According to news accounts and sources in the Justice Department, in an apparent attempt to intimidate this witness, a Noxubee deputy sheriff and political ally of Brown arrested the witness for disorderly conduct and reckless driving only days after the government named him as a witness in a filing with the federal court. In an unprecedented move, the federal judge stayed the county prosecution. See John Mott Coffey, *Noxubee Voting Rights Trial to Begin Tuesday*, COMMERCIAL DISPATCH, Jan. 13, 2007; Bill Nichols, *Voting Rights Act Pointed in a New Direction*, USA TODAY, April 3, 2006.

29. See *Mississippi State Democratic Party v. Barbour*, 491 F. SUPP. 2d 641 (N.D. Miss. 2007).

30. Cindy Bevington, *Voter Cited by Opponents of Indiana’s ID Law Registered in Two States*, EVENING STAR, January 9, 2008.

31. See *Stumbo v. Kentucky State Board of Elections*, No. 06-CI-610 (Franklin Cir., Ky. Oct. 2, 2006).

32. See *Washington Association of Churches v. Reed*, 492 F. SUPP. 2d 1264 (W.D. Wash. 2006); see also *Florida State Conf. of NAACP v. Browning*, No. 4:07CV-402 (N.D. Fla. Dec. 18, 2007), appeal filed Dec. 19, 2007.

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registration.”³³ A number of states have recently attempted to implement such requirements after they received large numbers of fraudulent voter registration forms, or received legitimate forms too late to be effective for an upcoming election, from third parties such as the Association of Community Organizations for Reform Now (ACORN). These fraud-prevention efforts, however, were halted by lawsuits filed by organizations such as Project Vote and the League of Women Voters that claimed that such requirements would impede their voter registration drives.³⁴

Similarly, Ohio’s attempt to improve third-party voter registration was also struck down. The law mandated training for individuals who assist applicants in voter registration; required them to provide their name, signature, address, and employer on the voter registration form of each individual they assist; and required them to return the forms directly to election officials rather than entrust them to a third party for delivery. These provisions were all enjoined as violations of the National Voter Registration Act and the First and Fourteenth Amendments to the Constitution.³⁵ Even if the court rulings were legally correct (a questionable conclusion), that is all the more reason for a state to correct for potential fraud by requiring some form of reasonable voter ID at the polls.

Lessons Learned

There were no indictments issued by the New York grand jury as a result of its investigation “because the statute of limitations had run out in some cases and because several of those involved were given immunity in return for testimony.”³⁶ Remarkably, the fraud was apparently discovered only because of the actions of a former state senator, Vander L. Beatty, who was convicted of voter fraud and conspiracy. After Beatty lost the 1982 Democratic congressional primary election, some of his “supporters hid in the Brooklyn Board of Elections office until after business hours and then made some obvious forgeries of registration cards to create the appearance of irregularities” in order to give Beatty the ability to challenge (unsuccessfully) the winner of the primary election.³⁷

Even though it led to no indictments, the New York investigation still serves a valuable purpose. Most clearly, it demonstrates that voter impersonation is a real problem and one that is nearly impossible for election officials to detect given the weak tools usually at their disposal. Further, the investigation provides good reason to believe that this 14-year-long conspiracy to submit thousands (if not tens of thousands) of fraudulent votes in New York City could not have occurred if voters had been required to present photo identification when they voted.

New York’s experience also demonstrates the fallacy of several arguments and assertions made by the petitioners’ attorney, Paul Smith, in the Indiana case and by critics of voter ID in general. For example, Smith told Chief Justice Roberts that impersonation fraud is unlikely because it is not hard to detect: “When you’re going into the polls and saying, I’m Joe Smith, you’re dealing with a neighborhood person who knows a lot of people who are there, you have to match that person’s signature.”³⁸

The idea that, in our mobile society today, all of the poll workers in a precinct will be “neighborhood” workers who know everyone in their precinct (even a small precinct) does not match reality. The poll worker manual for the Board of Elections for the City of New York states that polling places have only 750 registered voters,³⁹ yet the impersonation fraud that occurred in Brooklyn involving thousands of fraudulent votes went undetected for 14 years even in such relatively small precincts. Many jurisdictions in other states and counties have much larger precincts, some of them containing thousands of registered voters.

33. Grand Jury Report, *supra* n. 6, at 22.

34. See *Project Vote v. Blackwell*, 455 F. SUPP. 2d 694 (N.D. Ohio 2006); *League of Women Voters of Florida v. Cobb*, 447 F. SUPP. 2d 1314 (S.D. Fla. 2006).

35. *Project Vote v. Blackwell*, No. 1:06CV-1628 (N.D. Ohio Feb. 11, 2008).

36. *Lynn*, *supra* n. 7.

37. *Id.*

38. Transcript in *Crawford*, *supra* n. 5, at 19.

39. N.Y. Bd. Of Elections, POLL WORKER’S MANUAL 2007 15, at <http://vote.nyc.ny.us/pdf/documents/boe/pollworkers/pollworkersmanual.pdf>, page 15.

Contrary to Mr. Smith's claims, New York's signature requirement also did nothing to stop this successful voter fraud conspiracy from casting bogus votes in person at polling places. The participants in the Brooklyn case impersonated newly registered, deceased, and moved voters by voting in their place for years without detection.

Voter ID: A Sensible Solution

In recent elections, thousands of fraudulent voter registration forms have been detected by election officials all over the country. Given the minimal to nonexistent screening efforts engaged in by most election jurisdictions, there is no way to know how many others slipped through. In states without identification requirements, election officials have no way to prevent bogus votes from being cast by unscrupulous individuals based on fictitious voter registrations, by impersonators, or by non-citizens who are registered to vote—another growing problem.⁴⁰ This is a security problem that requires a solution.

As the New York voter fraud investigation and other cases illustrate, impersonation fraud does occur and can be difficult or impossible to detect. States such as Indiana and Georgia have a legitimate and entirely reasonable interest in requiring voters to identify themselves when they vote in order to prevent impersonation fraud and voting through the use of fraudulent voter registration forms. The Indiana case also demonstrates that voter identification can detect unlawful multiple voter registrations by individuals in different states.

Finally, requiring a government-issued photo ID can prevent illegal aliens from voting (except in states that issue driver's licenses to noncitizens). A simple requirement that a voter demonstrate his authentic identity assures that free elections remain untainted by fraud that undermines their fairness and, in turn, disappoints the expectations of the voting public.

In 1984, the New York grand jury recommended that the governor and state legislature examine as a possible remedy “requiring identification from voters at the time of voting or registration.”⁴¹ In 2005, the bipartisan Baker–Carter Commission on Federal Election Reform also recommended requiring photo ID for in-person voting because “[i]n close or disputed elections, and there are many, a small amount of fraud could make the margin of difference. And second, the perception of possible fraud contributes to low confidence in the system.”⁴²

Voters in nearly 100 democracies are required to present photo identification to ensure the integrity of elections.⁴³ Our southern neighbor, Mexico, requires both a photo ID and a thumbprint, and turnout has increased in its elections since this requirement was implemented.⁴⁴ If Mexico can implement a successful photo ID program for its voters, there is no valid reason the United States cannot do the same.

As the grand jury in New York properly concluded at the end of its investigation of a vote-fraud conspiracy that had been successfully carried out without detection for 14 years, “The core of the democratic process is the right of the people to choose their representatives in fair elections. Fraud in the election process is intolerable.”⁴⁵

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40. In just one Texas county, jury summonses led to the discovery that at least 330 illegal aliens were registered to vote and that 41 had voted repeatedly “in more than a dozen local, state and federal elections between 2001 and [2007].” Guillermo X. Garcia, *Vote Fraud Probed in Bexar*, EXPRESS NEWS, June 8, 2007.

41. Grand Jury Report, *supra* n. 6, at 21–22.

42. Commission on Federal Election Reform, BUILDING CONFIDENCE IN U.S. ELECTIONS 18, Sept. 2005.

43. *Id.* at 5.

44. John R. Lott, Jr., *Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates*, August 18, 2006, pp. 2–3, at <http://www.vote.caltech.edu/VoterID/ssrn-id925611.pdf>.

45. Grand Jury Report, *supra* n. 6, at 3.

CHAPTER 2

Where There's Smoke, There's Fire: 100,000 Stolen Votes in Chicago

Where Chairman Mao believed that all power comes from the barrel of the gun, the late Mayor Richard J. Daley believed that all power comes from the barrel into which precinct totals have been tossed.

—David Nyhan, *The Boston Globe*, December 16, 1982

The “Truth About Voter Fraud,” according to activist groups like the Brennan Center, is that “many of the claims of voter fraud amount to a great deal of smoke without much fire.... The allegations simply do not pan out.”¹

Chicago, however, is known for its fires, and there was a roaring one there in 1982 that resulted in one of the largest voter fraud prosecutions ever conducted by the U.S. Department of Justice. The telltale smoke arose out of one of the closest governor’s races in Illinois history; and as for the fire, the U.S. Attorney in Chicago at the time, Daniel Webb, estimated that *at least 100,000 fraudulent votes* (10 percent of all votes in the city) had been cast.² Sixty-five individuals were indicted for federal election crimes, and all but two (one found incompetent to stand trial and another who died) were convicted.³

This case of voter fraud is worth studying today because it illustrates the techniques that political machines and organized political groups use to steal elections. Even in the present day, this threat is not hypothetical: Tactics similar to those documented in the Chicago case have come to light in recent elections in Philadelphia and in the states of Wisconsin and Tennessee. The Daley machine may be legendary in modern times for its election fraud prowess, but these recent cases show that the incentives and opportunities for fraud have not lessened. Guarding against these tactics can make the difference between a fair election and a stolen election, particularly where the margins of victory are narrow and just a few fraudulent votes can change the outcome.

Background

In 1982, Illinois was the setting for “a hotly contested” gubernatorial race between Democratic Senator Adlai Stevenson III, son of former governor and presidential hopeful Adlai Stevenson II, and Republican James Thompson.⁴ “Big Jim” Thompson, the incumbent, was “a 15-point favorite going into the voting”;⁵ and yet on election day,

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1. JUSTIN LEVITT, *THE TRUTH ABOUT VOTER FRAUD* 3 (Brennan Center for Justice 2007).
 2. Douglas Frantz, *Vote Fraud in City Outlined at Hearing*, CHI. TRIB., Sept. 20, 1983, at A1; Mark Eissman, *U.S. to Probe Primary Vote Fraud—Federal Laws May Have Been Broken*, CHI. TRIB., Mar. 11, 1987. See also Ken Bode, *The Vote Thieves*, NBC Evening News, Jan. 31, 1984.
 3. See IN RE REPORT OF THE SPECIAL JANUARY 1982 GRAND JURY 1, No. 82 GJ 1909 (N.D. Ill. Dec. 14, 1984) (hereinafter GRAND JURY REPORT); *U.S. v. Howard*, 774 F.2d 838 (7th Cir. 1985); *U.S. v. Olinger*, 759 F.2d 1293 (7th Cir. 1985); Interview with Ernest Locker, Jr. (Mar. 18, 2008). One of the young federal prosecutors in the case at the time was Craig Donsanto, who now heads the Election Crimes Unit in the Public Integrity Section of the Criminal Division at the Department of Justice. Today, he has more than 30 years of experience as a career prosecutor and is recognized as the foremost expert in the United States on the prosecution of election crimes. He is the author of the Justice Department handbook on the prosecution of election crimes used by all of the Offices of United States Attorneys, *Federal Prosecution of Election Offenses*, which is in its seventh edition. Ernest Locker, Jr., now retired, was the FBI agent in Chicago in charge of this investigation.
 4. GRAND JURY REPORT, *supra* note 3, at 3.

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Adlai Stevenson came within 5,074 votes of capturing the governorship out of 3.67 million votes cast statewide—a 0.14 percent margin.⁶ Stevenson had carried Chicago by 3 to 1, with a winning margin of 469,000 votes, although Thompson won 60 percent of the vote in the rest of the state.⁷

After the results were in, Stevenson immediately filed suit, contesting the results of the election and asking for a recount. He conceded defeat only when the Illinois Supreme Court two months later rejected his request for a statewide recount.⁸

Stevenson claimed there was evidence of voter fraud in areas of the state outside of Chicago. Although those claims “did not pan out,” it was clear that “the prospect of a close [judicial] look at the conduct of voting in Chicago did not please many of Chicago’s Democratic kingpins, already under pressure because of the federal [criminal] investigation of charges of vote fraud in the [1982] election...” For that reason, “many committeemen privately had expressed a hope that Stevenson would lose his bid for a recount.”⁹

Both campaigns had complained to the FBI, but the federal investigation was really sparked by a party worker from Chicago’s 39th Ward who was upset by his precinct captain’s broken promise to award him a city job for his participation in the vote fraud. The worker told a Chicago newspaper, and then the FBI and the U.S. Attorney’s Office, “what he knew about vote fraud in that precinct.”¹⁰

Good reporting by the local media helped fuel the investigation. One wire story concerned “a man listed as voting at a Skid Row precinct in the 27th Ward [who] had been dead for more than two years.” He was listed as living at the Arcade Hotel, and his signature was among those of 47 other voters listed as living at the hotel. However, the “[o]perators and residents of the hotel told the Sun-Times that 41 of the 47 people did not reside at the Arcade.”¹¹

In its reporting, the *Chicago Tribune* discovered that the supposed home address of three voters in the 17th Precinct of the 27th Ward was a vacant lot. The paper also discovered that votes had been cast for seven residents of a nursing home who denied having voted—their signatures on the ballot applications were all forgeries. In fact, one resident had no fingers or thumbs with which to write a signature.¹² The fraud was so blatant that the resident without fingers or thumbs “was counted as having voted twice by the end of the day.”¹³ Not surprisingly, Stevenson easily won the 17th Precinct, by a margin of 282 to 30.¹⁴

These stories illustrated what was to be a recurring theme in the grand jury investigation: the theft of identities and the casting of fraudulent votes on behalf of dead voters, prison inmates, and people who had moved, as well as forged ballots cast on behalf of the elderly and the handicapped. Even fictitious voters were invented and ballots cast in their names.

Grand Jury Findings

On December 14, 1984, Chief Judge Frank McGarr of the U.S. District Court for the Northern District of Illinois publicly released the federal grand jury’s report on the 1982 election—only the third time in the history

5. David Nyhan, *Ballot Counting, Chicago Style*, BOSTON GLOBE, Dec. 16, 1982.

6. Associated Press, *U.S. Probes Ghost-Voting in Illinois on Nov. 2*, BOSTON GLOBE, Dec. 30, 1982.

7. Nyhan, *supra* note 5.

8. Daniel Egler and Michael Arndt, *Adlai Concedes Defeat—Bid for Recount Loses by 4–3 in Supreme Court*, CHI. TRIB., Jan. 8, 1983; *In re Contest of the Election for the Offices of Governor and Lieutenant Governor Held at the General Election on Nov. 2, 1982*, 444 N.E.2d 170, 93 Ill. 2d 463 (Ill. 1983).

9. Egler and Arndt, *supra* note 8.

10. GRAND JURY REPORT, *supra* note 3, at 3.

11. Associated Press, *supra* note 6.

12. Tim Franklin and Andy Knott, *More Election Fraud Uncovered—3 Voters Listed Vacant Lot as Their Home Address*, CHI. TRIB., Dec. 31, 1982, at A15.

13. William B. Crawford, Jr., and Tim Franklin, *U.S. Grand Jury Indicts 10 in Chicago Vote Fraud Probe*, CHI. TRIB., April 8, 1983, at B1.

14. Franklin and Knott, *supra* note 12.

of the court that a grand jury report had been made public.¹⁵ The evidence revealed substantial vote fraud in Chicago during the November 2, 1982, election and found “that similar fraudulent activities have occurred prior to 1982.”¹⁶

What particularly struck FBI agent Ernest Locker was how routine vote fraud was for the precinct captains, election judges, poll watchers, and political party workers he interviewed. They had been taught how to steal votes (and elections) by their predecessors, who had in turn been taught by their predecessors. Based on his investigation, Locker came to believe the claims, hotly debated among historians, that Mayor Daley threw the 1960 presidential election for John Kennedy with massive ballot stuffing in Chicago.¹⁷ This type of voter fraud, stated Locker, “was an accepted way of life in Chicago.”¹⁸

Soon after the investigation started, it became evident that this was not a case of isolated wrongdoing, but rather a case of extensive, substantial, and widespread fraud in precincts and wards throughout Chicago. The FBI investigators concluded that their regular tools—interviewing witnesses, obtaining documents, and using handwriting experts to analyze signatures on documents—would not be up to the task. After all, to conduct a complete investigation, they would have to review “virtually all of the 1,000,000 ballot applications submitted in the City of Chicago in the November election” as well as the voter lists maintained by the election board for all of Chicago’s 2,910 precincts (comprising approximately 1.6 million voters) to check for the names of voters registered in more than one precinct, as well as registered voters who were dead.¹⁹

So the FBI employed a new and unique tool in vote fraud investigation: a computer. Because this had never been done before, the FBI had to write a computer program that would match data between the list of registered voters, the list of individuals who had voted, and other databases. To that end, the FBI and federal prosecutors obtained death records from the Bureau of Vital Statistics; local, state, and federal prison records; the national Social Security list; Immigration and Naturalization Service records on aliens; driver’s license records; and even utility (gas, electric, water, and telephone) records.²⁰

Locker was shocked at the sheer magnitude of the number of fraudulent votes and the fact that fraud occurred in every single Chicago precinct.²¹ More than 3,000 votes had been cast in the names of individuals who were dead, and more than 31,000 individuals had voted twice in different locations in the city.²² Thousands of individuals had supposedly voted despite being incarcerated at the time of the election, and utility records showed that some individuals who voted were registered as living on vacant lots.

Armed with that information, Locker did something unprecedented: He convinced his supervisors to dedicate all of the agents in the FBI field office in Chicago for an entire week to nothing but reviewing all of Chicago’s voter registration cards and ballot applications.²³ So many signature comparisons were needed that the FBI flew in handwriting experts from its headquarters in Washington.²⁴ The Justice Department and the FBI have never concentrated that much manpower and resources, before or since, on investigating a voter fraud case.

Teams of FBI agents were paired with Assistant United States Attorneys and assigned to investigate specific precincts, locating and talking to voters who had supposedly cast votes in the polling place.²⁵ They quickly learned that voters’ signatures on ballot applications “had been forged wholesale in many precincts.”²⁶ The investigation also

15. William B. Crawford, Jr., *Report Says Polls, Pols Don't Mix—Grand Jury Report Links Patronage, Vote Fraud*, CHI. TRIB., Dec. 18, 1984, at A1.

16. GRAND JURY REPORT, *supra* note 3, at 1.

17. See, e.g., TRACY CAMPBELL, *DELIVER THE VOTE, A HISTORY OF ELECTION FRAUD, AND AMERICAN POLITICAL TRADITION 1742–2004* 242–249 (Carroll & Graf Publishers 2005).

18. Interview with Ernest Locker, Jr. (Mar. 18, 2008).

19. GRAND JURY REPORT, *supra* note 3, at 5; Barbara Mahany, *FBI Examines Voting Lists*, CHI. TRIB., Feb. 9, 1983, at NW2; William B. Crawford, Jr., and Jerry Crimmins, *Huge Vote-Fraud Probe—FBI to Check Every Voter, All Precincts*, CHI. TRIB., Jan. 20, 1983, at 1.

20. Interview with Ernest Locker, Jr. (Mar. 18, 2008).

21. According to Locker, they could have prosecuted thousands of cases in every single Chicago precinct, something they did not have the manpower to do, so instead they concentrated on identifying the precincts and wards with the highest volume of fraudulent activity. *Id.*

22. *Bode*, *supra* note 2.

23. Interview with Ernest Locker, Jr. (Mar. 18, 2008).

24. GRAND JURY REPORT, *supra* note 3, at 5.

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“revealed that there were an extremely large number of transients, incapacitated people, and senior citizens in whose names votes had been fraudulently cast” when they did not themselves vote.²⁷

The investigation uncovered a variety of voter-fraud techniques.

Preying on the Disabled and Elderly. The evidence showed that the conspirators evaded detection by casting ballots for those persons who would be the most unlikely to challenge the theft of their franchise. In the Seventh Circuit’s *Olinger* decision, for example, the court described how the votes of elderly and handicapped voters who lived at a residential facility were stolen in a special absentee election:

Hicks [the Democratic Party precinct captain] told the election judges that the residents of Monroe Pavillion were “crazy.” He instructed appellant and the other election judges to ignore the wishes of the residents. Instead, the election judges were told to “punch 10” on the computerized ballot for every resident. Punching 10 on the ballot resulted in a vote for each of the Democratic candidates on the ballot. On October 30, 1982, appellant and the other election judges, with Hicks in attendance, conducted the special election at Monroe Pavillion. In over two hours of voting, approximately 52 residents voted. Appellant and the other election judges cast nearly all of those votes for the straight Democratic Party ticket by punching 10.²⁸

As described in the *Olinger* decision, votes of the elderly and disabled were regularly stolen at the residences where they lived. Their wishes were ignored, and the judges of election, under instructions from the precinct captain, punched a straight Democratic ticket. Most significantly, several Assistant State’s Attorneys served as election observers but did not detect the fraud because they “believed it was the job of the judges of election to assist the voters and accurately register their choices for candidates.” They failed to realize, however, that these “assistors” were actually ignoring the voters’ preferences.²⁹

Impersonating Absent Voters. The dominant form of vote fraud was accomplished with ballots cast for absent voters.³⁰ The fraud often began with the legally required canvasses conducted in many precincts prior to the election:

Although the canvass disclosed that a number of persons who were registered to vote in the precinct had died, moved away, or for some other reason had become ineligible to vote, these persons were not struck from the list of eligible voters. Finally on election day the defendants, either personally or by acting through others, caused numerous false ballots to be cast for the straight Democratic ticket.³¹

On the day of the general election, dishonest precinct captains kept careful track of who came to the polls to vote. Runners working for the precinct captains not only supplied rides for voters, but also noted “who would not be coming to the polls because they were too sick, were too drunk, had recently moved away, or had died.”

Precinct captains supplied the names of those absent voters to other participants in the fraud, and “ballots either were punched on the voting machines by people posing as the voter, or were punched with ball point pens or other similar objects in a private place outside the polling areas by the precinct captain or his workers.”³² Some of the

25. Interviewing voters is, unfortunately, something that the FBI and the Justice Department are extremely reluctant to do today because, even in the face of obvious voter fraud, they are likely to be accused by the media and certain advocacy organizations of trying to intimidate voters. The political leadership of both agencies is not usually willing to risk incurring such accusations.

26. GRAND JURY REPORT, *supra* note 3, at 5.

27. *Id.* at 5–6.

28. *Olinger*, 759 F.2d at 1297. On election day, Hicks also distributed the names of registered voters who had moved away or died so that fraudulent ballots could be cast in “the names of the phantom voters.” *Id.*

29. GRAND JURY REPORT, *supra* note 3, at 12. This is a recurring problem. In 1998, former Congressman Austin Murphy of Pennsylvania was convicted of absentee ballot fraud in a nursing home. JOHN FUND, STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY 44 (Encounter Books 2004).

30. GRAND JURY REPORT, *supra* note 3, at 7.

31. *Howard*, 774 F.2d at 840. The type of massive investigation undertaken by the FBI and the U.S. Attorney’s Office to review in detail a jurisdiction’s voter registration list to check it for the names of voters who have moved, died, or registered in more than one location has also not been undertaken since the Chicago case.

32. GRAND JURY REPORT, *supra* note 3, at 8.

defendants even “went into washrooms, where they practiced forging the signatures” of those whom they believed would not vote.³³

Registering Aliens. Aliens who were illegally registered were another source of potential votes “for the unscrupulous precinct captain.” The grand jury found that many aliens “register to vote so that they can obtain documents identifying them as U.S. citizens” and had “used their voters’ cards to obtain a myriad of benefits, from social security to jobs with the Defense Department.”³⁴ In fact, three aliens were charged “with attempting to get U.S. passports by using their voter registration cards.”³⁵

U.S. Attorney Dan Webb estimated that 80,000 illegal aliens were registered to vote in Chicago.³⁶ Dozens of aliens were indicted and convicted for registering and voting,³⁷ and one individual was indicted for recruiting an illegal alien to register to vote.³⁸

False Registrations. Another way to obtain names that could be voted on election day was to have people falsely register to vote in a precinct. One party precinct captain, for example, had two city workers who were seeking to transfer their job locations register in his precinct even though they did not live there. Even the assistant precinct captain was falsely registered.³⁹ In some instances, the conspirators asked actual residents at the addresses where voters falsely claimed to reside to “place name-tags on their doors that bore the names of the non-resident registrants.”⁴⁰ Other canvassers were indicted and charged with certifying the addresses of voters when no such address existed.⁴¹

Casting Fraudulent Absentee Ballots. Precinct captains would ask their workers “to encourage voters to apply for absentee ballots whether or not they had a valid reason to do so and to turn the blank ballots over” so that the captains could vote the ballots. One worker noticed that two of the absentee ballots he delivered to a precinct captain had already been filled out: One “was straight Democratic, but...the other contained some Republican entries. The precinct captain caused the second absentee ballot containing Republican entries to be torn up.”⁴²

Buying Votes. The going rate for a vote in one particular Chicago ward was two dollars, and some precinct captains kept a supply of dollar bills ready on election day solely for buying votes. Alcohol was also used as an incentive to get people to the polls, with one hotel manager ordering “the liquor in advance from the precinct captain.”⁴³

Altering the Vote Count. Changing the actual vote count was another method of fraud. For example, one precinct captain and his son held their own fraudulent election after the polls closed by repeatedly running two ballots through the voting machine. At that time, Chicago was using punch cards for ballots, and punch card counting machines in the precincts totaled the votes cast (similar to the way optical-scan paper ballots are totaled today by computer scanners in the precincts). One ballot was a straight Democratic “punch 10,” and the precinct captain ran it through the counting machine 198 times. In order to avoid suspicion, he also ran a ballot containing some Republican votes through the machine six times.⁴⁴ All of the votes in that precinct were fraudulent except for those two original ballots.⁴⁵

33. *Crawford and Franklin*, *supra* note 13.

34. GRAND JURY REPORT, *supra* note 3, at 8–9.

35. *Crawford and Franklin*, *supra* note 13.

36. *Frantz*, *supra* note 2.

37. Marianne Taylor, 28 *Indicted on Charges of Vote Fraud*, CHI. TRIB., Apr. 7, 1983, at B13. Eighteen of the aliens were from Mexico, three from Belize, two from Costa Rica, two from Nigeria, and one from Haiti.

38. Barbara Brotman and William Recktenwald, 5 *Indicted in Vote Fraud*, CHI. TRIB., Feb. 18, 1983, at 1. One alien who was born in Belize and voted in the 1982 election testified in 1985 before a state senate task force about the ease with which he and his two sisters registered to vote. None of them were ever required to show any identification when they registered, and they simply listed false birthplace information. Desiree F. Hicks, *Foreigners Landing on Voter Rolls*, CHI. TRIB., Oct. 2, 1985.

39. GRAND JURY REPORT, *supra* note 3, at 9.

40. *Howard*, 774 F.2d at 840.

41. *Taylor*, *supra* note 37.

42. GRAND JURY REPORT, *supra* note 3, at 10.

43. *Id.* One runner testified that “he was driving two winos back from the polling place when they got into a fist fight in the back seat of his car over whether to spend their pooled dollars on hamburgers or a bottle of wine.” *Id.* at 11.

Lessons Learned

Three factors, in particular, contributed to the successful electoral fraud of former Mayor Daley's political machine.

Interference by Party Officials. Precinct captains in Chicago did not work for the Chicago Board of Election Commissioners. They were political appointees of the ward committeemen and therefore answered only to the committeemen and their political party. A precinct captain's loyalty was not to running a clean and fair election but to the political party that controlled his ward. Despite not working for the election board, precinct captains often opened and supervised the polls on election day and directed or influenced the door-to-door canvasses "required by law in order to determine the accuracy of voter registration."⁴⁶

Because the election board approved all of the individuals submitted by the precinct captains and their political party to serve as official election judges, the precinct captains controlled the polling places even though it was the election judges who were legally responsible for the administration of each polling place. This patronage system tied the administration of elections into the political system that ran the city and dispensed jobs. This structure, in turn, created the means and the incentive to "steal votes on Election Day."⁴⁷

Lack of a Bipartisan Election System. Chicago witnessed the complete failure of its "bipartisan system [that] is meant to protect the election process from vote fraud."⁴⁸ This system assumes that there are two active political parties, each watching the other and overseeing all activities that occur during the election process, from voter registration to the administration of polling places on election day, to ensure that the law is followed and no fraud occurs.

For example, the canvasses that occurred before the election to check the accuracy of the voter registration list would provide "the intended bipartisan checks and balances only if it is conducted by two people representing opposite parties."⁴⁹ But in Chicago, the Republican Party was not strong enough in many sections of the city to function as a counterbalance to the Democratic Party. As a result, Chicago's voter registration list did not receive bipartisan scrutiny and contained many ineligible persons, including voters who had moved, were deceased, were not U.S. citizens, did not reside where they were registered, or were registered in more than one location.

Similarly, there were supposed to be both Democratic and Republican judges of election in the Chicago polling places, but many of the "Republican" slots were actually filled by Democrats masquerading as Republicans who had been chosen by the Democratic precinct captains. As a result, the "Republican" canvassers and election judges actually assisted their Democratic counterparts in committing fraud.⁵⁰

Biased or Inexperienced Poll Watchers. Poll watchers are intended to be the guardians of a clean election "by participating as critical observers."⁵¹ A well-trained and vigilant poll watcher should have been able to spot some of the types of voter fraud that occurred in the polling places in the 1982 Chicago election. However, many of the poll watchers in the worst Chicago precincts were individuals who had been appointed by precinct captains and were often part of the voter fraud conspiracy, even helping to cast fraudulent ballots.

There were also truly neutral poll watchers in Chicago during that election, but their lack of training and their inexperience in conducting elections allowed fraud to go on without detection. In one particular precinct where a legitimate poll watcher was present the entire day, the grand jury found that:

The precinct captain passed slips of paper to a cooperating judge of election who filled out ballot applications when the pollwatcher was not observing her. Various precinct workers

44. The only Republican votes on the ballot were for Governor James Thompson and former Attorney General Tyrone Fahner. *Brotman and Recktenwald, supra* note 38.

45. GRAND JURY REPORT, *supra* note 3, at 11.

46. *Id.* at 13.

47. *Id.* at 17.

48. *Id.* at 18.

49. *Id.*

50. *Id.* at 18–19.

51. *Id.* at 19.

surreptitiously went through the line multiple times. Ballots were punched outside of the polling area.⁵²

The grand jury commented that the subsequent mayoral election in 1983 appeared to have occurred without substantial evidence of voter fraud and that each of the “candidate[s] had a squadron of poll watchers who observed polling place activities with an eagle eye.”⁵³ Of course, that mayoral election may also have been free of fraud because U.S. Attorney Dan Webb enlisted U.S. marshals, agents from the Immigration and Naturalization Service, FBI agents, and more than 80 Assistant U.S. Attorneys to “patrol polling places and investigate vote fraud complaints on Election Day.”⁵⁴

According to one of the federal prosecutors in the case, the major reason that Harold Washington was elected the first black mayor of Chicago in 1983 was because the Daley machine’s grip on the electoral process was broken by the federal prosecutions stemming from the grand jury investigation.⁵⁵

Grand Jury Recommendations

In commenting on the voter fraud that occurred in Chicago, the grand jury expressed its disgust at “the flagrant disregard for our democratic system which is the hallmark of this crime.” It was “shocked and dismayed at the boldness and the cavalier attitude with which these offenses have been carried out.” It urged all citizens to watch for vote fraud and report irregular activities in their polling places and to “step forward and participate in the election process by becoming precinct captains, judges of election, and pollwatchers.”⁵⁶

To reduce the incidence of voter fraud, the grand jury made three concrete recommendations:

- **Sever the relationship between party precinct captains and election judges.** Judges hired by the election board to conduct canvasses and administer polling places on election day should be paid professionals whose loyalty and responsibility are to the election board, not to the local political party or elected city officials.
- **Require all voters to provide a thumbprint when registering and when voting.** Voters would place a thumbprint on a small pretreated box on the ballot application (not the ballot itself) when they vote. According to the grand jury, this was the only way to counter the widespread forgery of voters’ signatures that occurred in this voter fraud conspiracy. The grand jury pointed out the virtues of this protection:

No fingerprint would be placed on the actual ballot; therefore, the ballot would still be totally secret as it is now. The voter would not be required to put his finger in ink in order to register his print. The process is totally clean and is not intrusive. Many banks already use this identifying process on check cashing cards to verify the identity of the card user.

Requiring a print on every ballot application would be a tremendous deterrent to vote fraud and no more of an invasion of privacy than a handwritten signature. It is impossible to forge a print. Fingerprint experts cannot be fooled. If the precinct captain voted for absent voters using the prints of paid volunteers, for example, the print

52. *Id.* at 20. One of the federal prosecutors provided an amusing example of how another legitimate poll watcher was fooled. Some of the defendants supplied him with coffee all day, and every time he went to the bathroom, the defendants stuffed the ballot box with phony votes.

53. *Id.* at 21.

54. *Brotman and Recktenwald, supra* note 38.

55. Unfortunately, that effect may have been short-lived. By the 1987 mayoral election, there were already new claims of widespread voter fraud and allegations that Washington and his allies had opposed efforts to reform the system “by blocking legislation to hire professional [election] judges and cleanse voting rolls of illegal registration.” See Mark Eissman, *U.S. to Probe Primary Vote Fraud—Federal Laws May Have Been Broken*, CHI. TRIB., Mar. 11, 1987.

56. GRAND JURY REPORT, *supra* note 3, at 2.

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of the absent voter could be compared with the print on the ballot application. If people in the polling place participated in the fraud by placing their prints in the boxes, they would be readily identifiable.⁵⁷

The advantages of this system are obvious, particularly since it would eliminate the difficulty of trying to determine who forged a signature and thus cast a fraudulent ballot on election day or a fraudulent absentee ballot through the mail.

- **Void ballots after counting them.** In the Chicago fraud, ballot outcomes were altered by running the same Democratic punch card ballot through a precinct tally machine multiple times. The grand jury suggested that counting machines be altered to “irrevocably mark each counted ballot” to prevent it from being run through the machine again.

Although most jurisdictions have moved away from punch card voting machines since the 2000 presidential election, the paper ballots and precinct-based optical scanners used in many states today are subject to the same type of abuse.

National Implications

The Chicago voter-fraud conspiracy and the grand jury’s report on it offer lessons that are relevant today in understanding how voter fraud works and how to combat it effectively.

Partisan Election Boards. The importance of a truly bipartisan system of checks and balances in which members of both major political parties (and minor parties to the extent that they have available membership) have representatives at every polling place is key to guaranteeing the integrity of elections. Equal representation on the boards of elections that oversee the administration of elections is just as important. In a 1993 case in Philadelphia, for example, Democratic members of the county board of elections “applied the election code in a discriminatory manner designed to favor one candidate.”⁵⁸

Unfortunately, there are still many jurisdictions—particularly large cities like Philadelphia—that are controlled by one political party and have too few members of the other party involved in the administration of elections. Transparency, as accomplished by bipartisan oversight and the work of well-trained election observers, is the hallmark of election integrity.

Voter Misidentification. While the grand jury’s thumbprint recommendation has not been adopted in the United States, it has shown great success in reducing voter fraud in Mexico:

To obtain voter credentials, the citizen must present a photo, write a signature and give a thumbprint. The voter card includes a picture with a hologram covering it, a magnetic strip and a serial number to guard against tampering. To cast a ballot, voters must present the card and be certified by a thumbprint scanner. This system was instrumental in allowing the 2000 election of Vicente Fox, the first opposition party candidate to be elected president in seventy years.⁵⁹

This system was essential to stopping the massive voter fraud that had occurred in Mexico’s elections for much of its history. Whether such a requirement could overcome civil liberties and privacy concerns in America is uncertain; however, such a requirement combined with a photo ID would eliminate many forms of voter fraud that continue to occur across the country.

Unreliable Registration Lists. The Chicago voter fraud also demonstrates the importance of maintaining voter registration lists by regularly deleting the names of voters who have died or moved away. Otherwise, the lists will contain a large pool of names that can be used to steal an election by the casting of fraudulent votes.

57. *Id.* at 23–24.

58. *Marks v. Stinson*, 19 F3d 873 (3d Cir. 1994); see generally LARRY SABATO AND GLENN R. SIMPSON, *DIRTY LITTLE SECRETS: THE PERSISTENCE OF CORRUPTION IN AMERICAN POLITICS* 278–283 (Times Books 1996).

59. FUND, *supra* note 29, at 5–6.

Many states, such as Indiana and Missouri, have neglected the maintenance of their voter registration lists for years.

For the first decade that the National Voter Registration Act (NVRA) was in effect, the Justice Department never filed a single enforcement action against any state for failing to maintain its list and purge ineligible voters. Recent lawsuits by the Civil Rights Division of the Department of Justice against jurisdictions that had failed to purge ineligible voters as required by the NVRA have been sharply criticized as attempts to “disenfranchise” voters.⁶⁰

New technology and readily available Internet databases could resolve another persistent problem found by the grand jury in 1982 that still exists in registration lists all over the country today: phony voter registration addresses. Election jurisdictions do not routinely run comparisons between their voter registration lists and the information that is available in tax or utility records or through geolocation services such as Google Earth.

As was demonstrated by the FBI in the Chicago case, such data matching can quickly turn up registration addresses that are vacant lots or businesses—evidence of possible registration fraud. Similarly, if 100 individuals are registered at an address that is a single-family residence, that is clear evidence of fraud. The techniques developed by the FBI in 1982 should be incorporated into the processes used by states today to verify the accuracy of the information in their voter registration lists.

Recent cases in Wisconsin and Tennessee show that the tactics used in Chicago to steal votes have not been forgotten and are still in use today, despite the election “reforms” of recent years.

In Wisconsin—a state that John Kerry won by only 11,000 votes—the technique of running comparisons between the voter registration list and other databases was employed in a 2004 investigation of possible voter fraud in Milwaukee.⁶¹ The Milwaukee Police Department’s Special Investigations Unit, working with the U.S. Attorney’s Office, the local district attorney, and the FBI, used Google databases, motor vehicle records, telephone directories, Assessor’s Office records, and U.S. Postal Service records to investigate allegations of voter fraud. They uncovered a variety of problems:

- 5,217 “students” who were registered to vote at a polling place located within the University of Wisconsin–Milwaukee who listed as their residence an on-campus dormitory that housed only 2,600 students;
- At least 220 ineligible felons who had voted;
- 370 addresses that were not legal residences in the city;
- Residents of other states (such as a voter from Chicago) who registered and voted in Milwaukee;
- Numerous staffers from out of state who were working for the Kerry campaign or the Environmental Victory Campaign, a political action committee, and who illegally registered and voted in Milwaukee; and
- Hundreds of homeless individuals registered as living at office buildings, at store fronts, and in multiple locations who were “able to vote in different districts and, by sheer number, *could* have an impact on a closely contested local election.”⁶²

In Tennessee, a state senate race in 2005 that was decided by only 13 votes led to the expulsion of the winner from the legislature after it was found that votes had been cast by individuals who were dead at the time of the election, felons whose voting rights had not been restored, voters whose residences were vacant lots, and voters who actually lived outside of the district. Three election workers in one precinct were convicted of 12 felonies for faking

60. See, e.g., Greg Gordon, *Justice Department Actions Expected to Draw Congressional Scrutiny*, McClatchy, Jan. 9, 2008.

61. See SPECIAL INVESTIGATIONS UNIT, MILWAUKEE POLICE DEPARTMENT, REPORT OF THE INVESTIGATION INTO THE NOVEMBER 2, 2004, GENERAL ELECTION IN THE CITY OF MILWAUKEE.

62. *Id.* at 16–17, 21, 25, 27, 31, 41, and 49 (emphasis added). Although the *Milwaukee Report* does not identify which political campaign was involved, information in the report describing the individuals makes it clear that it was the Kerry campaign. For example, the description of campaign worker 6 on page 49 matches Andy Gordon, who was the Kerry campaign’s Deputy Political Director in Wisconsin. See also Democracy in Action, Kerry General Election Wisconsin Campaign Organization, at www.gwu.edu/~action/2004/kerry/kerrgenwi.html (last visited May 11, 2008). Similarly, though the report does not identify the 527 organization involved, it cites a press release from the Environmental Victory Campaign that makes the connection.

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votes by making false entries on election documents and other misconduct, including forging the signatures of deceased voters on ballot forms and falsely certifying vote totals.⁶³

These election workers engaged in the same type of fraud that was used in Chicago in 1982, and, again, this fraud could have been avoided if deceased voters had been deleted from the registration lists and registration addresses had been checked. Having bipartisan election workers and poll watchers in the polling place might have also prevented such actions.

Conclusion

Voter fraud in Chicago, in just one election, led to 100,000 phony votes,⁶⁴ bringing the defendants in this case within 5,000 votes of stealing the governorship of Illinois. This case of widespread fraud was broken wide open only because of the failed promise of a city job to one of the participants and the dogged determination of a United States Attorney who was willing to commit the time, resources, and manpower required for a massive investigation and multiple prosecutions. The Justice Department has never engaged in such an intense investigation since then, to the detriment of the electoral system.

We will never know whether, when Mayor Daley was still alive and in full control of Chicago's election machinery, he manufactured the 8,858 votes that won Illinois for John Kennedy in 1960.⁶⁵ The 1984 grand jury report certainly shows that it could easily have been done, and the fact that the indicted defendants told investigators that their predecessors had taught them how to commit fraud makes it seem likely. As retired FBI agent Ernest Locker, Jr., observed, massive voter fraud was a way of life for the city's political machine and shows that "what happens in a small area can sometimes change history."⁶⁶

Worth quoting in full is the final comment of the Chicago grand jury's report on its voter fraud investigation:

Every vote that is fraudulently manufactured disenfranchises the legitimate voter and makes a mockery of our political process. Vote fraud is like a cancer, and it must be treated so that it will not destroy our constitutional right to vote, the basis of our American heritage.⁶⁷

That observation is no less true today than it was in 1982.

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63. Marc Perrusquia, *Judge: Let's Air Details of Fraud—Public Has Right, Colton Says in Ophelia Ford Election Case*, COM. APPEAL, May 22, 2007; Marc Perrusquia, *Thirteen More Votes May Be Illegal—Senate Republican Gets Data on Dist. 29 from Private Eye*, COM. APPEAL, Feb. 7, 2006; Marc Perrusquia, *Poll Boss Had Felony on Record—Not an Eligible Voter; Works for Ford Family*, COM. APPEAL, Feb. 1, 2006; *Report of Ad Hoc Comm. on Senate District No. 29, Election Contest, April 17, 2006*, Minutes of Wednesday, April 19, 2006, Seventy-Second Legislative Day, Tennessee Senate, at 2997–3001.

64. Ernest Locker says that the 100,000 fraudulent-vote estimate was actually very conservative, based on the detailed analysis and review conducted by the investigators and handwriting experts in different precincts. He believes a much larger number of phony votes was likely cast. Interview with Ernest Locker, Jr. (Mar. 18, 2008).

65. SABATO AND SIMPSON, *supra* note 58, at 277.

66. Interview with Ernest Locker, Jr. (Mar. 18, 2008).

67. GRAND JURY REPORT, *supra* note 3, at 26.

CHAPTER 3

The Threat of Non-Citizen Voting

In 2005, the U.S. Government Accountability Office found that up to 3 percent of the 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district court were not U.S. citizens.¹ While that may not seem like many, just 3 percent of registered voters would have been more than enough to provide the winning presidential vote margin in Florida in 2000. Indeed, the Census Bureau estimates that there are over a million illegal aliens in Florida,² and the U.S. Department of Justice (DOJ) has prosecuted more non-citizen voting cases in Florida than in any other state.³

Florida is not unique. Thousands of non-citizens are registered to vote in some states, and tens if not hundreds of thousands in total may be present on the voter rolls nationwide. These numbers are significant: Local elections are often decided by only a handful of votes, and even national elections have likely been within the margin of the number of non-citizens illegally registered to vote.

Yet there is no reliable method to determine the number of non-citizens registered or actually voting because most laws to ensure that only citizens vote are ignored, are inadequate, or are systematically undermined by government officials. Those who ignore the implications of non-citizen registration and voting either are willfully blind to the problem or may actually favor this form of illegal voting.

Americans may disagree on many areas of immigration policy, but not on the basic principle that only citizens—and not non-citizens, whether legally present or not—should be able to vote in elections. Unless and until immigrants become citizens, they must respect the laws that bar non-citizen voting. To keep non-citizens from diluting citizens' votes, immigration and election officials must cooperate far more effectively than they have to date, and state and federal officials must increase their efforts to enforce the laws against non-citizen voting that are already on the books.

An Enduring Problem

Illegal voting by immigrants in America is nothing new. Almost as long as there have been elections, there have been Tammany Halls trying to game the ballot box. Well into the 20th century, the political machines asserted their ascendancy on Election Day, stealing elections in the boroughs of New York and the wards of Chicago. Quite regularly, Irish immigrants were lined up and counted in canvasses long before the term “citizen” ever applied to them—and today it is little different. Yet in the debates over what to do about the 8 million to 12 million illegal aliens estimated to be in the United States, there has been virtually no discussion of how to ensure that they (and millions of legal aliens) do not register and vote in elections.

Citizenship is and should be a basic requirement for voting. Citizenship is a legal requirement to vote in federal and state elections,⁴ except for a small number of local elections in a few jurisdictions.⁵

1. GOV'T ACCOUNTABILITY OFFICE, ELECTIONS: ADDITIONAL DATA COULD HELP STATE AND LOCAL ELECTION OFFICIALS MAINTAIN ACCURATE VOTER REGISTRATION LISTS 42 (2005).

2. STEVEN CAMAROTA, CTR. FOR IMMIGR. STUD., IMMIGRANTS IN THE UNITED STATES, 2007: A PROFILE OF AMERICA'S FOREIGN-BORN POPULATION 31 (2007).

3. CRIM. DIV., PUB. INTEGRITY SECTION, U.S. DEP'T OF JUST., ELECTION FRAUD PROSECUTIONS & CONVICTIONS: OCTOBER 2002–SEPTEMBER 2005 (2006).

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Some Americans argue that alien voting is a nonexistent problem or dismiss reported cases of non-citizen voting as unimportant because, they claim, there are no cases in which non-citizens “intentionally” registered to vote or voted “while knowing that they were ineligible.”⁶ Even if this latter claim were true—which it is not—every vote cast by a non-citizen, whether an illegal alien or a resident alien legally in the country, dilutes or cancels the vote of a citizen and thus disenfranchises him or her. To dismiss such stolen votes because the non-citizens supposedly did not know they were acting illegally when they cast a vote debases one of the most important rights of citizens.⁷

The evidence is indisputable that aliens, both legal and illegal, are registering and voting in federal, state, and local elections. Following a mayor’s race in Compton, California, for example, aliens testified under oath in court that they voted in the election.⁸ In that case, a candidate who was elected to the city council was permanently disqualified from holding public office in California for soliciting non-citizens to register and vote.⁹ The fact that non-citizens registered and voted in the election would never have been discovered except for the fact that it was a very close election and the incumbent mayor, who lost by less than 300 votes, contested it.¹⁰

Similarly, a 1996 congressional race in California may have been stolen by non-citizen voting.¹¹ Republican incumbent Bob Dornan was defending himself against a spirited challenger, Democrat Loretta Sanchez. Sanchez won the election by just 979 votes, and Dornan contested the election in the U.S. House of Representatives. His challenge was dismissed after an investigation by the House Committee on Oversight and Government Reform turned up only 624 invalid votes by non-citizens who were present in the U.S. Immigration and Naturalization Service (INS) database because they had applied for citizenship, as well as another 124 improper absentee ballots.¹² The investigation, however, could not detect *illegal* aliens, who were not in the INS records.

The Oversight Committee pointed out the elephant in the room: “[I]f there is a significant number of ‘documented aliens,’ aliens in INS records, on the Orange County voter registration rolls, how many illegal or undocumented aliens may be registered to vote in Orange County?”¹³ There is a strong possibility that, with only about 200 votes determining the winner,¹⁴ enough undetected aliens registered and voted to change the outcome of the election. This is particularly true since the California Secretary of State complained that the INS refused his request to check the entire Orange County voter registration file, and no complete check of all of the individuals who voted in the congressional race was ever made.¹⁵

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4. See U.S. DEPT. OF JUST., FEDERAL PROSECUTION OF ELECTION OFFENSES 66 (7th ed. 2007), available at <http://www.justice.gov/criminal/pin/docs/electbook-0507.pdf>; 18 U.S.C. § 611 (2008).
 5. For example, non-citizens can vote in local elections in Chevy Chase and Takoma Park, Maryland. See Robert Redding, Jr., *Purging Illegal Aliens from Voter Rolls Not Easy; Maryland Thwarted in Tries So Far*, WASH. TIMES, Aug. 23, 2004.
 6. JUSTIN LEVITT, BRENNAN CTR. FOR JUST., THE TRUTH ABOUT VOTER FRAUD 18 (2007), available at <http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>.
 7. Another problem not discussed in this paper is the inclusion by the Census of non-citizens, legal and illegal, in apportionment, which leads to the misallocation of congressional seats in the U.S. House of Representatives. This causes states such as Indiana, Michigan, Montana, Oklahoma, Pennsylvania, Wisconsin, Kentucky, and Mississippi to have one less seat than they should and states such as Texas, New York, California, and Florida to gain seats they would not have if only citizens were counted. This represents an obvious and clear Equal Protection problem—a violation of the principle of “one man, one vote”—since it takes fewer votes to be elected to Congress in districts with large numbers of non-citizens. See DUDLEY L. POSTON, JR., STEVEN A. CAMAROTA, & AMANDA K. BAUMLE, CTR. FOR IMMIGR. STUD., REMAKING THE POLITICAL LANDSCAPE: THE IMPACT OF ILLEGAL AND LEGAL IMMIGRATION ON CONGRESSIONAL APPORTIONMENT 1 (2003).
 8. Daren Briscoe, *Non-citizens Testify They Voted in Compton Elections*, L.A. TIMES, Jan. 23, 2002, at B5.
 9. A judge’s removal of the mayor from office was later overturned, but the removal of a councilwoman who participated in non-citizen voter fraud was upheld. See *Bradley v. Perrodin*, 106 Cal. App. 4th 1153 (2003), review denied, 2003 Cal. LEXIS 3586 (Cal. 2003); Robert Greene, *Court of Appeal Upholds Perrodin Victory Over Bradley in Compton*, METRO NEWS-ENTER., March 11, 2003; Daren Briscoe, Bob Pool & Nancy Wride, *Judge Voids Compton Vote, Reinstalls Defeated Mayor*, L.A. TIMES, Feb. 9, 2002.
 10. *Judge Voids Compton Vote, Reinstalls Defeated Mayor*, supra note 9.
 11. See H.R. Doc. No. 105-416 (1998).
 12. The Committee found “clear and convincing” evidence of 624 non-citizens voting but only “circumstantial” evidence of another 196 non-citizens voting. Thus, the Committee did not include the 196 in its tally of invalid votes. *Id.* at 15.
 13. *Id.*
 14. The margin is just 35 votes if one includes the 196 non-citizens found by the Committee based on “circumstantial” evidence.

The “Quick Ticket”

Non-citizen voting is likely growing at the same rate as the alien population in the United States; but because of deficiencies in state law and the failure of federal agencies to comply with federal law, there are almost no procedures in place that allow election officials to detect, deter, and prevent non-citizens from registering and voting. Instead, officials are largely dependent on an “honor system” that expects aliens to follow the law. There are numerous cases showing the failure of this honor system.

The frequent claim that illegal aliens do not register in order “to stay below the radar”¹⁶ misses the fact that many aliens apparently believe that the potential benefit of registering far outweighs the chances of being caught and prosecuted. Many district attorneys will not prosecute what they see as a “victimless and non-violent” crime that is not a priority.¹⁷

On the benefit side of the equation, a voter registration card is an easily obtainable document—they are routinely issued without any checking of identification—that an illegal alien can use for many different purposes, including obtaining a driver’s license, qualifying for a job, and even voting.¹⁸ The Immigration Reform and Control Act of 1986, for example, requires employers to verify that all newly hired employees present documentation verifying their identity and legal authorization to work in the United States.¹⁹ In essence, this means that new employees have to present evidence that they are either U.S. citizens or legal aliens with a work permit. The federal I-9 form that employers must complete for all new employees provides a list of documentation that can be used to establish identity—including a voter registration card.²⁰

How aliens view the importance of this benefit was illustrated by the work of a federal grand jury in 1984 that found large numbers of aliens registered to vote in Chicago. As the grand jury reported, many aliens “register to vote so that they can obtain documents identifying them as U.S. citizens” and have “used their voters’ cards to obtain a myriad of benefits, from social security to jobs with the Defense Department.”²¹ The U.S. Attorney at the time estimated that there were at least 80,000 illegal aliens registered to vote in Chicago, and dozens were indicted and convicted for registering and voting.²²

The grand jury’s report resulted in a limited cleanup of the voter registration rolls in Chicago, but just one year later, INS District Director A. D. Moyer testified before a state legislative task force that 25,000 illegal and 40,000 legal aliens remained on the rolls in Chicago. Moyer told the Illinois Senate that non-citizens registered so they could get a voter registration card for identification, adding that the card was “a quick ticket into the unemployment compensation system.”²³ An alien from Belize, for example, testified that he and his two sisters were able to register easily because they were not asked for any identification or proof of citizenship and lied about where they were born. After securing registration, he voted in Chicago.

Once such aliens are registered, of course, they receive the same encouragement to vote from campaigns’ and parties’ get-out-the-vote programs and advertisements that all other registered voters receive. Political actors have no way to distinguish between individuals who are properly registered and non-citizens who are illegally registered.

15. Press Release, California Sec’y of State, Jones Releases Report on Orange County Voter Fraud Investigation (Feb. 3, 1998).

16. Richard Hasen, a professor at Loyola Law School, doubts that illegal aliens register to vote because “committing a felony for no personal gain is not a wise choice.” Jessica Rocha, *Voter Rolls Risky for Aliens: Non-citizens’ Registering Is a Crime; 4 Cases Turn up in N.C.*, NEWS & OBSERVER, Dec. 7, 2006.

17. GOV’T ACCOUNTABILITY OFFICE, *supra* note 1, at 60.

18. In a typical example, voter registration cards are listed as an acceptable secondary source document to prove identity when obtaining a driver’s license in Maryland. See Maryland Motor Vehicle Association, Sources of Proof, <http://www.marylandmva.com/DriverServ/Apply/proof.htm> (last visited July 7, 2008).

19. 8 U.S.C. § 1324a (2008).

20. U.S. Citizenship and Immigr. Serv., Form I-9, Employment Eligibility Verification, <http://www.uscis.gov/files/form/i-9.pdf> (last visited July 7, 2008).

21. See In Re Report of the Special January 1982 Grand Jury 1, No. 82 GJ 1909 (N.D. Ill. Dec. 14, 1984), at 8–9.

22. See Douglas Frantz, *Vote Fraud in City Outlined at Hearing*, CHI. TRIB., Sept. 20, 1983, at A1; HANS VON SPAKOVSKY, THE HERITAGE FOUNDATION, WHERE THERE’S SMOKE, THERE’S FIRE: 100,000 STOLEN VOTES IN CHICAGO (2008), available at <http://www.heritage.org/Research/Legalissues/lm23.cfm>.

23. Desiree F. Hicks, *Foreigners Landing on Voter Rolls*, CHI. TRIB., Oct. 2, 1985.

A Failure to Cooperate

Obtaining an accurate assessment of the size of this problem is difficult. There is no systematic review of voter registration rolls by states to find non-citizens, and the relevant federal agencies—in direct violation of federal law—refuse to cooperate with state election officials seeking to verify the citizenship status of registered voters. Federal immigration law requires these agencies to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information,” regardless of any other provision of federal law, such as the Privacy Act.²⁴ However, examples of refusal to cooperate are legion:

- In declining to cooperate with a request by Maryland to check the citizenship status of individuals registered to vote there, a spokesman for the U.S. Citizenship and Immigration Service (CIS) mistakenly declared that the agency could not release that information because “it is important to safeguard the confidentiality of each legal immigrant, especially in light of the federal Privacy Act and the Immigration and Nationality Act.”²⁵
- One surprising result of this policy: In 2004, a guilty verdict in a murder trial in Maryland was jeopardized because a non-citizen was discovered on the jury—which had been chosen from the voter rolls.²⁶
- In 2005, Sam Reed, the Secretary of State of Washington, asked the CIS to check the immigration status of registered voters in Washington; the agency refused to cooperate.²⁷
- A request from the Fulton County, Georgia, Board of Registration and Elections in 1998 to the old Immigration and Naturalization Service to check the immigration status of 775 registered voters was likewise refused for want of a notarized consent from each voter because of “federal privacy act” concerns.
- In 1997, the FBI and the U.S. Attorney’s office in Dallas were investigating voting by non-citizens. They sent a computerized tape of the names of individuals who had voted to the INS requesting a check against INS records, but the INS refused to cooperate with the criminal investigation.²⁸ An INS official was quoted as saying that the INS bureaucracy did not “want to open a Pandora’s Box.... If word got out that this is a substantial problem, it could tie up all sorts of manpower. There might be a few thousand [illegal voters] in Dallas, for example, but there could be tens of thousands in places like New York, Chicago or Miami.”²⁹

These incidents show that the CIS and U.S. Immigration and Customs Enforcement (ICE),³⁰ the successor agencies to the INS, are either ignorant of federal legal requirements or deliberately ignoring them. An inquiry by a state or local election official regarding voter eligibility based on citizenship falls squarely within their statutory authority.

24. 8 U.S.C. §§ 1373(a), (c). Given the requirements of this statute, the initial refusal of the Justice Department and the INS to comply with “numerous requests from the Committee and California election officials to provide citizenship data on individuals” in the Dornan–Sanchez investigation was inexplicable; the Attorney General either made a basic legal error or decided, for political reasons, not to cooperate in an investigation that could have thrown out the Democratic winner of a congressional race. See H.R. Doc. No. 105-416, at 13 (1998).

25. Robert Redding, *Purging Illegal Aliens from Voter Rolls Not Easy; Maryland Thwarted in Tries So Far*, WASH. TIMES, Aug. 23, 2004.

26. *Id.*

27. See Letter of March 22, 2005, from Sam Reed to Robert S. Coleman, Director, Seattle District Office, USCIS (Mar. 22, 2005).

28. *INS Hampers Probe of Voting by Foreigners, Prosecutor Says*, HOUSTON CHRON., Sept. 20, 1997. The investigation was started when a random check by local INS agents found 10 non-citizens who had voted in just one 400-person precinct, and the case was eventually turned over to the local district attorney for prosecution. The government, however, refused to expand the probe to cover the full country as requested by the agents, who claimed that the probe was halted because of the supervisor’s fear of the potential “political ramifications.” See Frank Trejo, *Internal Strife Embroils Dallas INS Office—Local Agents’ Whistle-Blowing Leads to Far-Flung Controversy*, DALLAS MORNING NEWS, March 8, 1998; Dena Bunis, *Dallas INS’ Probe of Electorate Echoes Here: Fallout from the Dornan–Sanchez Inquiry Sparks an Internal INS Debate Over a Texas Computer-Match Investigation*, ORANGE COUNTY REG., June 5, 1997.

29. Ruth Larson, *Voter-Fraud Probe in Dallas Runs into INS Roadblock: Agency Denies It Should Have Further Aided U.S. Attorney*, WASH. TIMES, Sept. 25, 1997.

30. On March 1, 2003, the Immigration and Naturalization Service was split into two different divisions of the new Department of Homeland Security. USCIS is responsible for legal immigration and naturalization functions, while ICE is responsible for enforcing immigration and customs laws, including against illegal aliens.

To be sure, CIS and ICE databases are not comprehensive; they contain information only about legal immigrants who have applied for the documentation necessary to be in the United States and illegal immigrants who have been detained. But even access to that information would be a big step forward for election officials in their attempts to try to clean up registration lists and find those aliens who are illegally registered and voting in elections.

The Honor System

The refusal of federal agencies to obey the law compels local election officials to rely almost entirely on the “honor system” to keep non-citizens from the polls. As Maryland’s state election administrator has complained, “There is no way of checking.... We have no access to any information about who is in the United States legally or otherwise.”³¹

Most discoveries of non-citizens on the registration rolls are therefore accidental. Though the Department of Justice has no procedures in place for a systematic investigation of these types of criminal violations, in just a three year period, it prosecuted and convicted more than a dozen non-citizens who registered and voted in federal elections in Alaska, Florida, the District of Columbia, and Colorado.³² Among them was an alien in southern Florida, Rafael Velasquez, who not only voted, but even ran for the state legislature.³³ Eight of the 19 September 11 hijackers were registered to vote in either Virginia or Florida—registrations that were probably obtained when they applied for driver’s licenses.³⁴

In 1994, Mario Aburto Martinez, a Mexican national and the assassin of Mexican presidential candidate Luis Donaldo Colosio, was found to have registered twice to vote in California.³⁵ A random sample of just 10 percent of the 3,000 Hispanics registered to vote in California’s 39th Assembly District by an independent group “revealed phony addresses and large numbers of registrants who admitted they were not U.S. citizens.”³⁶ This problem may be partially explained by the testimony of a Hispanic member of the Los Angeles Police Department who had been a volunteer for the California-based Southwest Voter Registration Education Project. When she reported to her supervisor that her fellow volunteers were not asking potential voters whether they were citizens, she was reprimanded “and told that she was not to ask that question...only whether the person wished to register to vote.”³⁷ Similarly, the Dornan–Sanchez investigation produced an affidavit from a non-citizen stating that the Sanchez campaign’s field director, an elected member of the Anaheim Board of Education, told him that it “didn’t matter” that he was not a U.S. citizen—he should register and vote anyway.³⁸

In 2006, Paul Bettencourt, Voter Registrar for Harris County, Texas, testified before the U.S. Committee on House Administration that the extent of illegal voting by foreign citizens in Harris County was impossible to determine but “that it has and will continue to occur.” Twenty-two percent of county residents, he explained, were born outside of the United States, and more than 500,000 were non-citizens. Bettencourt noted that he cancelled the registration of a Brazilian citizen in 1996 after she acknowledged on a jury summons that she was not a U.S. citizen. Despite that cancellation, however, “She then reapplied in 1997, again claiming to be a U.S. citizen, and was again given a voter card, which was again cancelled. Records show she was able to vote at least four times in general and primary elections.”³⁹

31. Christina Bellantoni, *Little to Stop Illegal Aliens from Voting*, WASH. TIMES, Sept. 24, 2004, at A1.

32. CRIMINAL DIV., *supra* note 3.

33. *Id.*

34. JOHN FUND, *STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY I* (2004); *see also* Kathleen Hunter, *States Slow to Give Driver’s Licenses to Illegal Aliens*, Stateline.org, July 1, 2004.

35. Karen Saranita, *The Motor Voter Myth*, NAT’L REV., Nov. 11, 1996, at 42.

36. *Id.*

37. *Id.*

38. Affidavit of Nelson Molina, H.R. Doc. No. 105-416, at 181 (1998). Molina’s wife was in the meeting with the field director and filed a supporting affidavit.

39. *Non-Citizen Voting and ID Requirements in U.S. Elections: Hearing Before the Committee on House Administration*, 109th Cong. (2006) (statement of Paul Bettencourt, Harris County Tax Assessor-Collector and Voter Registrar).

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In 2005, Bettencourt's office turned up at least 35 cases in which foreign nationals applied for or received voter cards, and he pointed out that Harris County regularly had "elections decided by one, two, or just a handful of votes." In fact, a Norwegian citizen was discovered to have voted in a state legislative race in Harris County that was decided by only 33 votes.⁴⁰ Nor is this problem unique to Harris County. Recent reports indicate that hundreds of illegal aliens registered to vote in Bexar County, Texas, and that at least 41 of them have voted, some several times, in a dozen local, state, and federal elections.⁴¹

In 2005, Arizona passed Proposition 200, which requires anyone registering to vote to provide "satisfactory evidence of United States citizenship," such as a driver's license, a birth certificate, a passport, naturalization documents, or any other documents accepted by the federal government to prove citizenship for employment purposes. The state issues a "Type F" driver's license to individuals who are legally present in the United States but are not citizens. Since Proposition 200 took effect, 2,177 non-citizens applying for such licenses have attempted to register to vote.⁴² Another 30,000 have been denied registration because they could not produce evidence of citizenship.⁴³

The constitutionality of Arizona's requirement is currently being litigated in federal court. The district court hearing the case refused to issue a preliminary injunction against enforcement of the law, and the Supreme Court vacated a preliminary injunction issued by the Ninth Circuit Court of Appeals.⁴⁴ Trial is scheduled for July 2008.⁴⁵ The plaintiffs will have to convince the presiding judge that the very same proof of citizenship required by the federal government before an individual can work is somehow unlawful when imposed by a state before a person can vote.

Some non-citizen registrations can be detected through the jury process. The vast majority of state and federal courts draw their jury pools from voter registration lists, and the jury questionnaires used by court clerks ask potential jurors whether they are U.S. citizens. In most states, however, and throughout the federal court system, court clerks rarely notify local election officials that potential jurors have sworn under oath that they are not U.S. citizens. In jurisdictions that share that information, election officials routinely discover non-citizens on the voter rolls. For example, the district attorney in Maricopa County, Arizona, testified that after receiving a list of potential jurors who admitted they were not citizens, he indicted 10 who had registered to vote. (All had sworn on their registration forms that they were U.S. citizens.) Four had actually voted in elections. The district attorney was investigating 149 other cases.⁴⁶

The county recorder in Maricopa County had also received inquiries from aliens seeking verification, for their citizenship applications, that they had not registered or voted. Thirty-seven of those aliens had registered to vote, and 15 of them had actually voted. As the county's district attorney explained, these numbers come "from a relatively small universe of individuals—legal immigrants who seek to become citizens.... These numbers do not tell us how many illegal immigrants have registered and voted."⁴⁷ Even these small numbers, though, could have been enough to sway an election. A 2004 Arizona primary election, explained the district attorney, was determined by just 13 votes. Clearly, non-citizens who illegally registered and voted in Maricopa County could have determined the outcome of the election.⁴⁸

These numbers become more alarming when one considers that only a very small percentage of registered voters are called for jury duty in most jurisdictions. The California Secretary of State reported in 1998 that 2,000 to 3,000

40. Joe Stinebaker, *Loophole Lets Foreigners Illegally Vote; 'Honor System' in Applying Means the County Can't Easily Track Fraud*, HOUSTON CHRON., Jan. 16, 2005.

41. Guillermo Garcia, *Voter Fraud Case Takes a New Twist*, EXPRESS-NEWS, Sept. 12, 2007; Jim Forsyth, *Hundreds of Non Citizens Have Registered to Vote in Bexar County*, 1200 WOAI, May 16, 2007.

42. Interview with Kevin Tyne, Deputy Sec'y of the State of Arizona (May 27, 2008).

43. *AZ to Seek Dismissal of Challenge to Voter ID Law*, KTAR 92.9 FM, May 26, 2008.

44. See *Purcell v. Gonzalez*, 549 U.S. 1, 3 (2006).

45. *AZ to Seek Dismissal of Challenge to Voter ID Law*, *supra* note 43.

46. *Securing the Vote: Arizona: Hearing Before the Committee on House Administration*, 109th Cong. (2006) (statement of Andrew P. Thomas, Maricopa County District Attorney); see also Transcript of Southwest Conference on Illegal Immigration, Border Security and Crime, May 16, 2006.

47. *Id.*

48. *Id.*

of the individuals summoned for jury duty in Orange County each month claimed an exemption from jury service because they were not U.S. citizens, and 85 percent to 90 percent of those individuals were summoned from the voter registration list, rather than Department of Motor Vehicles (DMV) records.⁴⁹ While some of those individuals may have simply committed perjury to avoid jury service, this represents a significant number of potentially illegal voters: 20,400 to 30,600 non-citizens summoned from the voter registration list over a one-year period.

Helping Aliens Vote

Under the Constitution, an individual's eligibility to vote is left mostly to the states. Article I and the 17th Amendment provide that the electors for Members of Congress shall have the qualifications for electors of the most numerous branch of the state legislatures.⁵⁰ Article II provides that presidential electors shall be chosen in the manner directed by state legislatures.⁵¹ All of the states require voters to be U.S. citizens to vote in state elections,⁵² and 18 U.S.C. § 611 makes it a crime 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," or Congress.⁵³

Other federal laws authorize the Justice Department to prosecute non-citizens for registering and voting in elections. The National Voter Registration Act of 1993 (NVRA) requires individuals registering to vote to affirm eligibility requirements, including citizenship.⁵⁴ The Help America Vote Act of 2002 (HAVA) added a specific citizenship question to the federal voter registration form.⁵⁵ Since citizenship is clearly material to a voter's eligibility, aliens can be prosecuted for providing false registration information and voting under the NVRA.⁵⁶ They can also be prosecuted under 18 U.S.C. § 1015(f), which criminalizes making a false statement or claim about citizenship "in order to register to vote or to vote in any Federal, State, or local election (including an initiative, recall, or referendum)," and under 18 U.S.C. § 911, which prohibits making a false claim of citizenship.

The NVRA has contributed to the problem of aliens registering to vote. The largest source of voter registrations are state programs created under Section 5 of the NVRA, known as "Motor Voter," which requires all states to allow individuals who apply for a driver's license to register to vote at the same time.⁵⁷ States such as Maryland, Hawaii, Maine, Michigan, New Mexico, Oregon, Utah, and Washington allow illegal aliens to obtain driver's licenses, and other states, such as Tennessee, provide licenses to resident aliens.⁵⁸

To comply with Motor Voter, states automatically offer voter registration to all applicants for a driver's license. Most government employees do so even when they know the applicants are not citizens because these employees do not want to face claims that they discriminated based on ethnicity, and they believe it is the responsibility of election officials, not state DMVs, to determine the eligibility of voter registration applicants. Yet when license bureaus submit completed registration forms to state election officials, they often omit the citizenship status of the applicants.

Savvy politicians may already have taken advantage of this state of affairs. During the Clinton Administration, for example, the Justice Department allegedly forced states to offer voter registration to non-citizens. In response, the Texas Secretary of State reportedly asked his attorney general to sue the department.⁵⁹

49. Press Release, California Sec'y of State, Official Status Report on Orange County Voter Fraud Investigation (Feb. 3, 1998).

50. U.S. CONST., art. I, § 2, amend. XVII.

51. U.S. CONST., art. II, § 1, cl. 2.

52. See U.S. DEPT OF JUST., *supra* note 4, at 66.

53. An exception exists if the election is held partly for some other purpose, the alien is authorized to vote for such other purpose under a state or local law, and that voting is conducted "independently of voting" for candidates for federal offices. 18 U.S.C. § 611 (2008).

54. 42 U.S.C. §§ 1973gg-3(c)(2)(C), 1973gg-5(a)(6)(A)(i), 1973gg-7(b)(2) (2008).

55. 42 U.S.C. § 15483(b)(4)(A)(i) (2008).

56. 42 U.S.C. § 1973gg-10(2) (2008).

57. 42 U.S.C. § 1973gg-3 (2008).

58. Daniel Vock, *Tighter License Rules Hit Illegal Immigrants*, Stateline.org, Aug. 24, 2007; Kathleen Hunter, *States Slow to Give Driver's Licenses to Illegal Aliens*, Stateline.org, July 1, 2004.

59. Juan Elizondo, Jr., *Agency Accused of Misusing Law*, AUSTIN AM.-STATESMAN, June 27, 1997.

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Confusion still reigns in the states. In 2004, a Maryland state legislator contacted the DOJ to express his concern that the Maryland Department of Motor Vehicles was allowing non-citizens applying for driver's licenses to register to vote. When he asked the DMV to stop, he was told that it was required by the NVRA to offer all driver's license applicants the opportunity to register to vote. The Justice Department quickly sent the Maryland delegate a letter pointing out that the NVRA had no such requirement and that federal law makes it a crime for a non-citizen to register. The letter went on to say that a state that issues licenses to non-citizens should not offer such an individual the right to register to vote.⁶⁰ Nonetheless, there is no evidence that the Maryland DMV has changed its procedures to deter non-citizens from registering, and Maryland officials recently testified that they were issuing 2,000 driver's licenses per week to undocumented aliens.⁶¹

Utah, which issues licenses to illegal aliens, switched to a two-tiered system that issues a visibly different "driving privilege" card to illegal aliens after a limited 2005 audit by the state's Legislative Auditor General. The audit found that hundreds of illegal aliens had registered to vote when they obtained their Utah driver's licenses—and at least 14 of them had voted.⁶² The audit used a small sample; Utah State Senator Mark Madsen said that an extrapolation of the audit numbers suggested that 5,000 to 7,000 aliens were registered to vote.⁶³

This problem has been exacerbated by many states' interpretation of a HAVA provision that requires a citizenship question on the federal mail-in voter registration form. The provision, in 42 U.S.C. § 15483, requires the following question: "Are you a citizen of the United States of America?" If an applicant fails to answer this question, HAVA provides that the local election official must notify the applicant of the failure and "provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form" prior to the election.⁶⁴ Under the threat of lawsuits by organizations like the American Civil Liberties Union, states such as Ohio, Iowa, and South Dakota will register an individual even if he fails to answer the citizenship question. The Justice Department so far has failed to sue these states to force compliance with HAVA.⁶⁵

HAVA also imposes an identification requirement for first-time voters who register by mail.⁶⁶ Many states, including California, have interpreted this provision to apply only to registration forms received through the U.S. mail, so the requirement is easily avoided by turning in the registration form directly to election officials. Additionally, documents named in the law as acceptable forms of identification for voter registration, such as utility bills and bank statements, are easily obtained by non-citizens. HAVA also requires applicants to provide a driver's license number or the last four digits of their Social Security number but allows an individual to register even if he has neither number.⁶⁷

Practical Solutions

There are several changes that states and the federal government can and should make to prevent non-citizens from registering and voting illegally in state and federal elections:

- Congress and state legislatures should require all federal and state courts to notify local election officials when individuals summoned for jury duty from voter registration rolls are excused because they are not

60. Letter from Joseph D. Rich, Chief, Voting Section, Civ. Rts. Div., U.S. Dep't of Just., to Donald H. Dwyer, Jr. (Aug. 24, 2004), available at http://www.usdoj.gov/crt/voting/hava/MD_ltr2.htm. In my discussions with election officials when I was at the Justice Department, it seemed that they were very concerned about being sued by the Department of Justice under the NVRA for not fully complying with the driver's license voter registration provisions. Most state officials found it easier and less risky to register all driver's license applicants regardless of their citizenship status.

61. Interview with Don Dwyer, Maryland Delegate (June 23, 2008).

62. Off. of the Legis. Auditor Gen., State of Utah, ILR 2005-B, February 8, 2005; Deborah Bulkeley, *State Says 14 Illegals May Have Cast Ballots*, DESERET MORNING NEWS, Aug. 8, 2005. At least 20 of the registered voters were under deportation orders.

63. *Bill Would Change Voter Registration Rolls*, Associated Press, Feb. 7, 2006.

64. 42 U.S.C. § 15483(b)(4)(A) (2008).

65. See Ohio Sec'y of State, Directive No. 2004-31, Sept. 7, 2004; Letter from Chris Nelson, South Dakota Sec'y of State, to County Auditors (Oct. 25, 2004); Letter from Thomas J. Miller, Iowa Att'y Gen., to Chester J. Culver, Iowa Sec'y of State (Oct. 20, 2004).

66. 42 U.S.C. § 15483(b) (2008).

67. 42 U.S.C. § 15483(a)(5) (2008).

United States citizens. United States Attorneys are already under a similar obligation: Under the NVRA, they must send information on felony convictions to local election officials so that the felons can be removed from voter registration rolls.⁶⁸

- All states should require anyone who registers to vote to provide proof of U.S. citizenship. This requirement should be identical to the federal requirement of proof for employment.
- ICE and CIS should comply with federal law and confirm the citizenship status of registered voters when they receive requests for such information from state and local election officials. If the agencies decline to do so, they should be investigated by Congress and the Inspector General of the Department of Homeland Security (DHS) for their failure to follow the law.
- The database, known as E-Verify, that is being used by U.S. employers to check the citizenship status of prospective employees should be made available to election officials and administrators of the statewide registration databases required by HAVA so that election officials can run database comparisons to identify registered voters who are not citizens.
- The DOJ should file enforcement actions against all states that allow an individual to register to vote when he or she has not answered the citizenship question on the voter registration form required by HAVA.
- Local district attorneys must be made to realize that registration and voting by non-citizens are offenses against the basic principles of our democratic system and that such cases must be prosecuted. CIS and ICE should also realize that all information they have on non-citizen voting—such as when immigrants applying for citizenship admit they have registered and voted or when illegal aliens who are detained are found to possess voter registration cards or other documents indicating they are registered to vote—must be referred to the DHS for institution of removal proceedings, to the DOJ for prosecution, and to the relevant election officials so that the individual can be struck from the registration rolls.
- The DOJ should conduct a survey of all state DMVs to determine which ones have rules and procedures in place that prevent non-citizens who apply for driver's licenses from registering to vote and then file enforcement actions against any state that refuses to comply with this requirement.
- A voter registration card should not be a valid identifying document to obtain a driver's license or employment.

Conclusion

America has always been a nation of immigrants, and we remain today the most welcoming nation in the world. Newly minted citizens assimilate and become part of the American culture very quickly. Requiring that our laws—all of our laws—be complied with requires no more of an alien than it does of a citizen. It is a violation of both state and federal law for immigrants who are not citizens to vote in state and federal elections. These violations effectively disenfranchise legitimate voters whose votes are diluted, and they must be curtailed.

Election officials have an obligation not only to enforce those laws, but also to implement registration and election procedures that do not allow those laws to be bypassed or ignored. Anything less encourages contempt for the law and our election process. Lax enforcement of election laws permits individuals who have not entered the American social compact or made a commitment to the U.S. Constitution, U.S. laws, and the U.S. cultural and political heritage to participate in elections and potentially change the outcome of closely contested races that affect how all Americans are governed.

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68. 42 U.S.C. § 1973gg-6(g) (2008).

CHAPTER 4

Absentee Ballot Fraud: A Stolen Election in Greene County, Alabama

Voter fraud is about keeping poor people poor. It does not give them the opportunity to get an education, to get a job, to have a place to raise your family.

—Mississippi Secretary of State Delbert Hosemann¹

In the 1990s in Greene County, Alabama, citizens, local political candidates, federal and state prosecutors, and a local newspaper joined together to fight absentee ballot fraud in the county, one of the poorest in Alabama. Unfortunately, liberal groups like the NAACP and the Southern Christian Leadership Conference worked equally hard to undermine the effort.

Even as the investigation uncovered massive wrongdoing, so-called civil rights groups objected at every turn, alleging a plot to disenfranchise poor and minority voters. But in the end, justice prevailed with the convictions of 11 conspirators who had fixed local elections for years. The Greene County case is proof that absentee ballot fraud is real and not a cover story for an imagined voter-disenfranchisement conspiracy.

The most important lesson of Greene County is that absentee ballots are extremely vulnerable to voter fraud. The case shows how absentee ballot fraud really works, and it is a reality very different from the claims of partisans and advocacy groups. More broadly, the case shows how voter fraud threatens the right to free and fair elections and how those most often harmed are poor and minorities. This directly rebuts the usual partisan conspiracy theories about voter fraud.

According to the self-appointed liberal guardians of the poor, practically every effort to legislate against or prosecute voter fraud is intended to keep minorities and the poor from voting at all. Concern over voter fraud, say some partisans, is simply Republicans' cover to intimidate voters and raise obstacles to minority voting. Indeed, groups like the NAACP argue that racism and intimidation are the motivation for voter fraud prosecutions, and some prominent Democrats dismiss voter fraud as virtually nonexistent. As a result, prosecutors are intimidated from fighting vote fraud for fear of the political consequences, and elections continue to be stolen.

Greene County shows that these groups have it backwards. Voter fraud prosecutions do not intimidate voters; what does intimidate them is the knowledge that voter fraud is routine and goes unpunished. Too often, not only is no one willing to take action against it, but the organizations that victims expect to help them instead take the side of the vote thieves. In contrast to the views of such organizations, an overwhelming majority of citizens support such common-sense and nonpartisan reforms as requiring voter identification when an individual votes.

Further, the Greene County case demonstrates that voter fraud need not be partisan in nature. Partisan conspiracy theories about election reform just do not apply to intra-party voter fraud in primary elections in heavily Democratic or Republican jurisdictions where primary results determine who wins in the general election. The perpetrators of voter fraud, particularly in small rural counties, are often political incumbents whose control of local government is threatened by challengers from the same political party. In Greene County, almost all of the candidates, incumbents and challengers alike, were both Democrats and African-Americans.

1. Emily Wagster Pettus, *Miss. Secretary of State Says Voter Fraud Hurts Poor People*, Assoc. Press, Apr. 7, 2008.

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Although some partisans will cling to their debunked conspiracy theories, those who honestly seek to protect voters' rights must study the methods and means of voter fraud in order to combat it. Absentee ballot fraud in particular is difficult to control. It is "the 'tool of choice' for those who are engaging in election fraud,"² as the Florida Department of Law Enforcement concluded in its investigation of the 1997 Miami mayoral election. The results of that election were thrown out because of massive fraud involving over 5,000 absentee ballots.³ With the growth of no-fault absentee voting and all-mail elections, there is the real risk that fraud will affect more election results and even wipe out voting rights hard won by the Civil Rights movement.

The Greene County case is important, then, because it demonstrates the ease with which fraudulent absentee ballots can be used to steal elections, the tactics used to steal those votes, the complete failure of liberal advocacy groups to protect the interests of vulnerable voters who have been disenfranchised by fraud, and the value of vigorous law enforcement to protect legitimate voters' rights. It also points the way toward common-sense solutions to make voting more secure and increase public confidence in the electoral process.

The Setting

Greene County is located in the west-central portion of Alabama between the Tombigbee and Black Warrior Rivers in a region known as the Black Belt for its dark, rich soil.⁴ Eutaw is the county seat. It was the first Alabama county in which political power shifted entirely to blacks after passage of the Voting Rights Act in 1965.⁵ By all measures, Greene County is an extremely poor, rural county. In 2006, its population was just 9,374, making it the least populated county in Alabama, and its citizenry is 80 percent black. Slightly more than 10 percent of residents have a college degree, and the median household income is just \$22,439, a hair above the U.S. poverty line.⁶

The county is governed by a powerful five-member board of commissioners. The commissioners are responsible for dispensing much of the \$83,876,000 in federal funds—\$8,606 per person—that flows to the county.⁷ Indeed, the county government is the leading source of employment, contracts, and grants.

This kind of spoils system tempts politicians to misbehave. In 1996, Greene County declared bankruptcy because a bloated county payroll, extensive debt, and "improper and illegal spending" had exhausted county revenue. The commission's financial management was so bad "that state auditors said they couldn't even audit the county's finances."⁸

The promise of spoils also led to stiff competition for seats on the commission and to voter fraud. The Birmingham Office of the U.S. Attorney and the Alabama Attorney General conducted an extensive joint investigation of absentee ballot fraud allegations in the November 8, 1994, election.⁹ By the end of the investigation, nine defendants had pled guilty to voter fraud, and two were found guilty by a jury. The defendants included Greene County com-

2. FLA. DEPT. OF LAW ENFORCEMENT, FLORIDA VOTER FRAUD ISSUES: REPORT AND OBSERVATIONS 7 (1998).

3. The Miami Herald won a Pulitzer Prize in 1999 for its investigation of the voter fraud in the Miami mayoral election and in doing so used innovative computer technology from SAS to assist its reporters in tracking down illegal votes through software comparisons of voter rolls with property records, city personnel files, absentee witness lists, death certificates, and felony conviction records. This is a lesson for election officials on how they should be using technology and software to maintain clean voter rolls, deter fraud, and check the validity and authenticity of voter registration applications. See Miami Herald Wins Pulitzer Prize, <http://www.sas.com/news/success/miamiherald.html> (last visited Sept. 2, 2008).

4. Black Belt (Alabama), Microsoft Encarta Online Encyclopedia, [http://encarta.msn.com/text_761564430__0/Black_Belt_\(Alabama\).html](http://encarta.msn.com/text_761564430__0/Black_Belt_(Alabama).html) (last visited Sept. 2, 2008).

5. Roger Thurow, *Southern Cross: A Place Much Revered in Civil-Rights Lore Is Still Much Divided*, WALL ST. J., July 20, 1998.

6. U.S. Census Bureau, Greene County MapStats, <http://www.fedstats.gov/qf/states/01/01063.html> (last visited Sept. 2, 2008). See Magistrate Judge's Report and Recommendation, *U.S. v. Smith*, No. CR-97-S-45-W, at 1, 2 (N.D. Ala. 1997) (stating that Greene county had "a 92% African-American population") [hereinafter Magistrate's Report].

7. U.S. Census Bureau, Greene County MapStats, *supra* note 6.

8. Robert DeWitt, *Greene County Out of Bankruptcy*, TUSCALOOSA NEWS, Oct. 22, 2006.

9. The Assistant U.S. Attorney assigned to the case was Pat Meadows, a career prosecutor with over 25 years of experience as a federal prosecutor and a local Assistant District Attorney; Alabama Assistant Attorney General Gregory Biggs was designated as a Special Assistant U.S. Attorney to assist with the case. The primary FBI agent leading the investigation was Marshall Riddlehoover. See Magistrate's Report, *supra* note 6, at 9.

missioners, officials, and employees; a racing commissioner; a member of the board of education; a Eutaw city councilman; and other community leaders.

All of these defendants were part of a conspiracy to manipulate the outcome of elections for local offices in Greene County and the town of Eutaw to protect incumbents and their allies from challengers. Notably, almost all of the candidates involved, on both sides, were African–American Democrats—so the usual partisan conspiracy theories do not hold any water. The case is worth studying for that reason and because the methods the conspirators used were typical of absentee ballot fraud.

The Conspiracy

It became clear early in the campaign that the 1994 general election for seats on the Greene County Commission would be a close one. An incumbent commissioner, Nathan Roberson, had lost to challenger William Johnson by just 16 votes in the primary run-off election. After losing in the primary, Roberson requalified as a member of the “Patriot Party” to oppose Johnson in the general election.¹⁰ Absentee ballots had been the key to victory in several of the Democratic primary races.

But even before Election Day 1994, there were signs that something was awry in the absentee ballot process. The local county newspaper, the *Greene County Independent*, reported on November 3, five days before the election, that as the county was “embroiled in one of the most hotly contested political races in many years,” the number of absentee ballots being sent out by the local clerk was so high that they “could very well determine who the next county commissioners” would be. Oddly, many of the absentee ballots were not going to the registered addresses of the voters. Some 60 of the ballots in one district alone were sent to the same post office box.¹¹ Ballots were also sent to candidates’ wives, the Greene County Democratic Executive Committee, and the Greene County Sewer and Water Authority.¹²

Absentee ballot fraud was not new to the area. In 1985, Spiver Gordon, who would emerge as a key player in the 1994 fraud, was convicted by a jury of absentee ballot fraud. Although the Eleventh Circuit Court of Appeals found “that there was sufficient evidence to support Spiver Whitney Gordon’s convictions for mail fraud arising from the mailing of fraudulently marked absentee ballots,” his convictions were reversed after the U.S. Supreme Court ruled that the federal mail fraud statute under which he had been convicted could be used only for schemes involving the deprivation of money or property, not elections.¹³

In 1994, the numbers alone were enough to raise suspicions. Greene County had 7,736 registered voters. Turnout for the November 8 election was heavy at 62 percent, or over 4,800.¹⁴ On the night of the election, over 1,400 absentee ballots flooded in—more than one-third of the total ballots cast.¹⁵ More than 1,000 of the absentee ballots were mailed by just five people “who brought in suitcases of ballots to the Eutaw Post Office the day of election in 1994.”¹⁶ Thus, over one-third of all votes were cast with absentee ballots—far above the state average, which is normally in the single digits, and a red flag for possible voter fraud.

10. Leewanna Parker, *Absentee Ballot the Trump Card*, GREENE COUNTY INDEP., Nov. 3, 1994.

11. *Id.*

12. Leewanna Parker, *Questions Remain About Election*, GREENE COUNTY INDEP., Nov. 10, 1994; Leewanna Parker, *Federal, State Absentee Ballot Probe May Continue Many Months*, GREENE COUNTY INDEP., Apr. 3, 1996. County Tax Assessor John Kennard actually called the FBI in September of 1994 to complain that “a significant number of absentee ballots had been mailed to addresses that were not the voters’ addresses.” Magistrate’s Report, *supra* note 6, at 7, 8.

13. See *U.S. v. Gordon*, 836 F.2d 1312 (11 Cir. 1988), *cert. denied*, 487 U.S. 1265 (1988); *McNally v. U.S.*, 483 U.S. 350 (1987) (holding that 18 U.S.C. § 1341 does not proscribe a scheme or artifice to defraud the citizenry of the intangible right to honest government). In 1988, Congress enacted 18 U.S.C. § 1346 in response to the *McNally* decision to prohibit schemes meant to deprive citizens of the “intangible right of honest services.” See U.S. DEPT OF JUST., CRIM. DIV., PUB. INTEGRITY SEC., FEDERAL PROSECUTION OF ELECTION OFFENSES 74 (2007). Having gotten away with absentee ballot fraud in 1985 on technical grounds, Gordon was clearly not deterred from engaging in fraud once again in the 1994 election.

14. Leewanna Parker, *Election 1994: Hot Local Races Decided at Polls, Absentee Boxes*, GREENE COUNTY INDEP., Nov. 10, 1994.

15. Exactly 1,429 absentee ballots were cast, representing 37 percent of all votes cast in the county. Fewer than 40 absentee ballots were cast by white voters. Magistrate’s Report, *supra* note 6, at 3–4.

16. Leewanna Parker, *Six to Face Voter Fraud Charges in Federal Court*, GREENE COUNTY INDEP., Feb. 18, 1998.

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Absentee ballots tipped several races. Garria Spencer, chairman of the Greene County Commission, had won the Democratic primary with absentee ballots. His opponent, Toice Goodson, was “ahead by about 50 votes until the absentee ballots were tallied and Spencer was declared the victor by two dozen votes.”¹⁷ Absentee ballots cast in the general election helped Frank “Pinto” Smith win the election to be a county commissioner,¹⁸ while William Johnson, who had challenged incumbent Nathan Roberson, lost due to absentee ballots. Johnson received 409 votes at the polls to Roberson’s 376, but just 65 absentee ballots to Robertson’s 182.¹⁹

Tax Assessor John Kennard was the first to sound the alarm that the elections had been stolen. He called for state and federal officials, as well as civil rights leaders, to come to Greene County and ensure a fair election.²⁰ State and federal prosecutors answered that call and moved quickly to arrange interviews with absentee voters.

The backlash—that federal and state investigators were trying to intimidate African–American voters—was immediate. County Commission Chairman Spencer, who later pled guilty to voter fraud, said he was receiving complaints that the agents were trying to frighten voters, who were “tired of being questioned.”²¹ The chorus of criticism would only rise as the investigation began to uncover evidence of fraud.

But those charges rang false within the county. Neither the local probate judge, who was African–American, nor the circuit court clerk received any complaints. Local voters interviewed by the newspaper said that the agents were “very nice” and “polite” and made clear that they did not feel “intimidated, threatened, or targeted.”²²

Indeed, most of the complaints to state and federal agencies that had sparked the investigation had come from African–American citizens in Greene County—not surprising in a county that was 80 percent black—and a local multiracial good-government group called Citizens for a Better Greene County, which had been started to elect fiscally responsible officials.²³ On Election Day, the group challenged the validity of hundreds of absentee ballots that turned out to have been fraudulently cast.²⁴ With absentee ballots being stolen from people’s mail-boxes and voters being threatened with the loss of public assistance, Pam Montgomery, one of the group’s leaders, thought that “[t]hey ought to send [envoys] here” rather than to Haiti.²⁵

Investigators went about their task diligently. They created a computer database and sorted all of the absentee ballots cast according to the names of the individuals who had witnessed the signatures. They quickly found that many of the absentee ballots “contained the same few witnesses’ signatures over and over again” and that some had been cast by voters who were actually dead or no longer lived in the county.²⁶ A decision was made to limit the investigation “to only those ballots on which appeared any witness who had witnessed more than 15 absentee ballots.”²⁷ This resulted in 800 voters who needed to be interviewed, and the investigators employed a standard interview format to determine the circumstances under which the absentee ballot had been applied for and voted. That information was reviewed, as was handwriting analysis of the absentee ballot materials. The investigative procedures did not involve the race or political affiliations of voters or the candidates in any way.

Still, the race-baiting continued. A group called the Alabama Blackbelt Defense Committee was organized to raise money for legal services for all of the defendants charged with voter fraud. Its leaders, including Commission

17. Parker, *Absentee Ballot the Trump Card*, *supra* note 10.

18. Magistrate’s Report, *supra* note 6, at 6.

19. Parker, *Election 1994: Hot Local Races Decided at Polls, Absentee Boxes*, *supra* note 14. Johnson filed suit to contest the results of the election. Leewanna Parker, *Bill Johnson Files Election Contest Against Roberson*, GREENE COUNTY INDEP., Dec. 1, 1994.

20. Parker, *Questions Remain About Election*, *supra* note 12. In 1978, Kennard was the first black elected to be the Tax Assessor. Thurow, *supra* note 5.

21. Leewanna Parker, *Spencer Says He’s Fielding Complaints from Worried Voters*, GREENE COUNTY INDEP., Mar. 13, 1996.

22. *Id.* See also Leewanna Parker, *Voters Calling Agents ‘Polite’*, GREENE COUNTY INDEP., Mar. 13, 1996.

23. Citizens for a Better Greene County had about 600 members, and its bylaws mandated that its Board of Directors be composed of four individuals: a black man and woman and a white man and woman. Magistrate’s Report, *supra* note 6, at 5; DeWitt, *supra* note 8.

24. Leewanna Parker, *More Indictments to Come, Locals Say*, GREENE COUNTY INDEP., Feb. 1, 1997. The Greene County case demonstrates the importance of state challenge laws, which have been attacked (unsuccessfully) in litigation in Ohio as supposedly “unconstitutional.”

25. Rich Lowry, *Early and Often—Absentee Voting Fraud*, NAT’L REV., June 17, 1996.

26. Parker, *Federal, State Absentee Ballot Probe May Continue Many Months*, *supra* note 12.

27. Magistrate’s Report, *supra* note 6, at 11.

Chairman Spencer, claimed that the investigation was intended to “discourage black voters in Greene County and other blackbelt counties.”²⁸ The prosecutions were simply an attempt by federal and state officials to “frame” local black leaders.

The National Association for the Advancement of Colored People (NAACP) and the Southern Christian Leadership Conference (SCLC)—liberal civil rights groups that had not responded to initial concerns about voter fraud—joined in these efforts, helping to defend the individuals who stood accused of stealing the election and leaning on the Justice Department to drop its investigation altogether. According to Spiver Gordon, a Eutaw city councilman and SCLC vice president, “This current case is an extension of the harassment and intimidation carried out by the FBI and state authorities. . . . It’s an attempt to keep Black people from exercising their constitutional rights and voting rights.”²⁹ Gordon later pled guilty to voter fraud.³⁰

Despite all the racially charged rhetoric, it was clear from the start that the defense effort, like the vote fraud, had a political genesis. According to Tax Assessor Kennard, Spencer was part of a local political machine, as was Greene County Director of Planning and Development Booker Cooke, Jr., who also eventually pled guilty to voter fraud. In fact, in 1996, Cooke, as chairman of one of the local Democratic Party’s committees, tried to remove Kennard from the ballot as “disloyal” to the Democratic Party, in addition to three other candidates who were not part of the machine.³¹ One local resident said that the members of the machine were very arrogant and believed they could get away with anything.³²

The indictments issued in January of 1997 charging Commissioner Smith and Connie Tyree, a county employee and Smith supporter, with 13 counts of ballot fraud illustrate how absentee ballots were stolen and used to cast fraudulent votes in the 1994 election.³³ In the two months before the election, Smith and Tyree used registered voters’ names to apply for absentee ballots, used false addresses so that the ballots would be sent directly to them, convinced some voters to sign absentee ballot affidavits without actually filling out the ballots, and forged voters’ signatures on other affidavits.³⁴ The investigation revealed that Smith and others involved in the voter fraud conspiracy actually set up an “assembly line process” at the Eutaw Activity Center the night before the election to fill out and prepare the fraudulent absentee ballots before they were placed in the mail the next day.³⁵

Smith and Tyree claimed on appeal that they were victims of “selective prosecution” because they were black and Democrats, but the Eleventh Circuit Court of Appeals, based in Atlanta, rejected that argument.³⁶

In 1998, six more individuals were indicted on 31 counts of voter fraud for their role in the 1994 elections. Among them were Booker Cooke, Jr., county employee Flephus Hardy, Commissioner Spencer, Althenia Spencer, Racing Commissioner Lester “Bop” Brown, and Spiver Gordon. The charges were similar to those brought against Smith and Tyree, including furnishing false information to election officials, voting more than once, and providing false information on absentee ballot affidavits.³⁷ Despite their protestations of innocence and claims that the prose-

28. Leewanna Parker, *Probe Reactivates Black Belt Committee*, GREENE COUNTY INDEP., Mar. 20, 1996.

29. Susan Lamont, *Black Voting Rights Activists in Alabama Fight Frame-Up by Federal, State Officials*, THE MILITANT, June 8, 1998, available at http://www.themilitant.com/1998/6222/6222_29.html.

30. *Civil Rights Leader Gets Jail Term for Voter Fraud*, N.Y. TIMES, June 6, 1999.

31. Leewanna Parker, *Democrats Appeal to State Party Chairman for Relief*, GREENE COUNTY INDEP., May 1, 1996. One of the candidates had opposed Commission Chairman Garria Spencer in the 1994 election. The Alabama Democratic Party overruled the local Greene County Democratic Party and reinstated the candidates on the ballot. Leewanna Parker, *Ruling Spurs Reordering of Ballots*, GREENE COUNTY INDEP., May 22, 1996.

32. Interview with Pam Montgomery, July 28, 2008. When Commission Chairman Garria Spencer was first indicted, Montgomery overheard Spencer tell a federal prosecutor during court proceedings that “you ain’t going to get us—we are untouchable.” *Id.*

33. Smith was a deputy registrar as well as the mother of one of Smith’s children. Government’s Sentencing Memorandum, *U.S. v. Smith*, No. CR-97-S-0045-W, at 1, 12, 14 (N.D. Ala. 1997).

34. Tyree’s signature appeared as a witness on 166 absentee ballots—more than any other person. Magistrate’s Report at 6. See Indictment, *U.S. v. Smith*, No. CR-97-S-0045-W, at 3–5 (N.D. Ala. 1997); Parker, *More Indictments to Come, Locals Say*, *supra* note 24.

35. Government’s Sentencing Memorandum, *U.S. v. Smith*, No. CR-97-S-0045-W, at 11 (N.D. Ala. 1997). County Commission Chairman Garria Spencer and Eutaw City Councilman Spiver Gordon were among the persons present. Transcript of Trial, *U.S. v. Smith*, No. CR-97-S-0045-W, at 1200 (N.D. Ala. 1997).

36. *U.S. v. Smith*, 231 F3d 800 (11 Cir. 2000), *cert. denied*, 532 U.S. 1019 (2001).

37. Parker, *Election 1994*, *supra* note 19.

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cutions were “politically motivated...to silence those who exercise their political right to elect political office holders of their choice,” all six eventually pled guilty.³⁸

By the end of the investigation, three more were indicted and pled guilty, including a member of the local board of education, for a total of 11 convictions and no acquittals. After the convictions, local black leaders such as Probate Judge Earlean Isaac (the county’s chief election official) and John Kennard expressed their relief. Isaac said that she hoped this meant that in the future, they would only “see clean elections.” Kennard proclaimed it “a victory for the people...because now one vote counts. The era of stolen elections is over for Greene County.”³⁹

Making Race an Issue

The Greene County case illustrates the complete dichotomy between the views of liberal civil rights organizations and those of ordinary citizens, including African-Americans, on voter fraud issues. A spokesman for the SCLC, Randel Osburn, said in 1998 that the absentee ballot investigation and prosecutions in Greene County amounted to “Gestapo tactics” and were a conspiracy to weaken the black vote that was having a “chilling effect” on voters.⁴⁰ Osburn said that the prosecutions “must be seen in the context of a many-pronged attack on voting rights and fair representation in this state.”

But Greene County citizens and candidates, most of them African-American, sharply disagreed. John Kennard held a press conference at which he said that national and state SCLC leaders were misinformed: “There were Gestapo tactics used, but it was blacks terrorizing blacks in 1994. Let me show you one of the victims of Gestapo tactics in 1994.” Kennard then introduced Bill Johnson, the candidate whose office was stolen in the 1994 election. As Kennard said, “Johnson did everything right. He won the election in 1994—but there were those people who decided Bill Johnson was not the black candidate they wanted for commissioner.”⁴¹

Kennard also introduced Toice Goodson, another black candidate who lost in the 1994 primary election because, as Kennard said, Goodson was not the choice of the political machine running the county.⁴² Kennard disputes the charge that the prosecutions were an attack on voting rights. “Justice was perverted here in Greene County” in 1994, he said, by the theft of hundreds of votes using absentee balloting.⁴³ For taking this stand against voter fraud, Kennard was labeled “Chief Uncle Tom” in anonymous leaflets distributed in Eutaw.⁴⁴

Organizations like the NAACP and the SCLC routinely claim that voter fraud investigations and prosecutions intimidate black voters and deter them from the polls, but Greene County citizens and officials also disagree on this point. Commenting on the 1998 election, Judge Earlean Isaac could not understand the view of the SCLC: “What are we saying if we hold up corruption? We can have a fair and clean election in Greene County. [This year] voters are not intimidated, they are not afraid to vote and they are not afraid to vote by absentee ballot.”⁴⁵ She had not heard of a single voter in the county who was fearful of voting because of the federal and state investigation.

Nat Winn, a former member of the school board, said that the only people who were feeling threatened were “the ones that can’t get out there and steal ballots.”⁴⁶ Many black voters shared that sentiment, with one telling the local paper that only “[t]he ones who committed the crimes are afraid.”⁴⁷ According to sources within the inves-

38. *Id.* See also Press Release, G. Douglas Jones, U.S. Att’y, Northern District of Ala., 6 Greene County Residents Plead Guilty to Federal Voter Fraud (Feb. 26, 1999); Leewanna Parker, *Six Admit Guilt in '94 Vote Fraud Conspiracy*, GREENE COUNTY INDEP., Mar. 3, 1999.

39. *Id.* Additional unindicted conspirators aided and abetted the voter fraud, including Cora Stewart, Jennifer Watkins, and Burnette Hutton. See Government’s Sentencing Memorandum, U.S. v. Smith, No. CR-97-S-0045-W, at 3–7 (N.D. Ala. 1997).

40. Leewanna Parker, *Gestapo Was Vote Thieves*, GREENE COUNTY INDEP., June 3, 1998.

41. *Id.*

42. *Id.*

43. *Id.*

44. Thurow, *Southern Cross*, *supra* note 5.

45. Parker, *Gestapo Was Vote Thieves*, *supra* note 40.

46. *Id.*

47. *Id.*

tigation, one of the FBI agents was approached during the investigation by an elderly black woman who took the agent's hand in hers, prayed with him for the investigation to be successful, and thanked him for what he was doing.

Voting in the 1998 election certainly showed that the citizens of Greene County were not deterred from voting. Turnout in the primary election was estimated at 57 percent, compared to turnout of 25 percent to 30 percent elsewhere in the state.⁴⁸ A total of 3,996 voted in the 1998 primary, compared to 3,861 in the 1994 primary.

The difference was in absentee ballots: 147 in 1998 versus 1,143 in 1994.⁴⁹ In 1998, absentee ballots accounted for only 4 percent of the total votes cast, which was more in keeping with levels of absentee voting throughout Alabama. In the general election, turnout was more than 70 percent, considerably higher than in 1994. And this gain came despite a massive drop in absentee ballots: Only around 200 were filed in 1998, more than 1,000 fewer than in 1994. Local election officials said that the turnout proved that the voter fraud prosecutions did not deter voters from the polls.⁵⁰

Remarkable in the Greene County case was the NAACP's defense of the defendants who committed voter fraud.⁵¹ John Kennard, a member of the NAACP, was outraged over the NAACP's intercession on behalf of the voter fraud conspirators instead of on behalf of the black candidates whose offices had been stolen. He wrote a letter to Julian Bond, then Chairman of the NAACP, complaining that NAACP funds were going towards "defending people who knowingly and willingly participated in an organized...effort to steal the 1994 election from other Black candidates in Greene County."⁵² Kennard was very frank:

Personally, I feel that if the NAACP sides with these six people who stole election after election from the people of this county[,] it is tantamount to the organization defending policemen that used the fire hoses and dogs, and Eugene "Bull" Conner in Birmingham, in the early 1960s.⁵³

Probate Judge Earlean Isaac, the county's chief election official, complained that Bond never contacted her before the NAACP launched its protest. She said that she did not "think they want to find out what the facts are... If they did they would have looked at the records, or at least contacted the person in charge of the elections. No one has requested a meeting with me." Kennard said that the indicted commissioners and county employees were hiding behind the racial issue because they "knew that they had a fail-safe way out, when all else fails...cry racism, intimidation and pretend they are the victims when they were the perpetrators of this crime."⁵⁴

Despite the investigation and outreach efforts by local black officials, the NAACP did not change its stance. In fact, Bond responded with a letter to Kennard "basically telling him to mind his own business."⁵⁵ Bond said that "sinister forces" were behind the prosecutions and were "part and parcel of an ongoing attempt to stifle black voting strength." He dismissed Kennard's claim that the prosecutions were a legitimate effort to uncover a criminal conspiracy directed at thwarting black voters' rights to elect candidates of their own choosing. Bond said that the accused were "friends and old colleagues" and that he had to "stand by them in their hour of need." Kennard wondered whether Bond and the NAACP were more interested in defending their friends than in finding out the truth of the crimes that their friends had committed.⁵⁶

The seeming tolerance of some liberal civil rights organizations for voter fraud committed against black candidates and black voters is disappointing. Spiver Gordon, who lost his seat as a Eutaw city councilman after he pled

48. Leewanna Parker, *Voters Showed No Hesitation in Casting Ballots*, GREENE COUNTY INDEP., June 10, 1998. Some officials said the 57 percent figure was too low because they believed the voter registration list had between 600 and 1,000 listed voters who were not eligible to vote in Greene County. *Id.*

49. Gita M. Smith, *Alabama County Votes for Change: Fund Misuse, Fraud Targeted in Election*, ATLANTA J. CONST., June 6, 1998, at C3.

50. Leewanna Parker, *Voter Fraud Trial Begins Mar. 1*, GREENE COUNTY INDEP., Feb. 24, 1999.

51. Frank Smith and Connie Tyree were defended by the NAACP Legal Defense Fund, the NAACP Legal Defense & Educational Fund, and Pamela Karlan of Stanford Law School. *Smith*, 231 F.3d at 804. NAACP officials and other civil rights leaders also met with Attorney General Janet Reno protesting the vote fraud investigation. See Thurow, *Southern Cross*, *supra* note 5.

52. Leewanna Parker, *NAACP to Hear Another Side of County's Voter Fraud Story*, GREENE COUNTY INDEP., July 29, 1998.

53. *Id.*

54. *Id.*

55. Leewanna Parker, *Bond Reaffirms Alignment to Local Voter Fraud Defendants*, GREENE COUNTY INDEP., Aug. 19, 1998.

56. *Id.*

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guilty to felony voter fraud, was, according to the U.S. Attorney and his own plea agreement, one of the “leaders and organizers of voter fraud” in Greene County.⁵⁷ Yet Gordon remains an officer of the SCLC, serving as treasurer of its national board.⁵⁸

Unlike the SCLC, Greene County came out ahead from the vote-fraud investigation and prosecutions. One former resident of Greene County told me that “there was so much corruption in the county government and votes had been stolen in elections for so long that there was general lack of confidence that anything would be done about it or that anyone would actually be prosecuted,” something that was extremely discouraging to county residents.⁵⁹ This corruption led directly to the bankruptcy of the county government, damaging the economy of the county and the welfare of its residents. Pam Montgomery of Citizens for a Better Greene County says that the voter fraud convictions were absolutely essential to cleaning up the county government and setting Greene County on the road to financial recovery.⁶⁰

Lessons from Greene County

One of the most important lessons of the Greene County prosecutions is how vulnerable absentee ballots are to voter fraud. They are voted in unmonitored settings where there is no election official or independent observer present to ensure that the registered voter is actually the person voting and that there is no illegal coercion.

“No-fault” absentee ballot laws—that is, laws that allow any registered voter to use an absentee ballot for any or no reason—and the growing movement toward all-mail elections threaten electoral integrity. Absentee ballots make it much easier for corrupt campaign organizations and candidates (like those in Greene County) to manipulate the vote. They are able to engage in tactics such as requesting absentee ballots in the names of registered voters, particularly poor residents and senior citizens, and either intimidating them into casting votes or fraudulently completing their ballots for them. In addition to the Greene County prosecutions, these practices have been documented in other cases, such as the 2003 Democratic mayoral primary election in East Chicago, Indiana, that was overturned by the Indiana Supreme Court due to absentee ballot fraud.⁶¹

The typical absentee ballot fraud follows this methodology:

- The fraud begins with the vote-fraud conspirator filing an application requesting an absentee ballot for a voter either by forging the voter’s signature on the application or obtaining the voter’s signature through coercion, trickery, or bribery. Applications are freely distributed to anyone who asks for them, so this gives offenders easy and ready access to the forms needed to obtain ballots.
- Upon receipt of the application, the election official mails the absentee ballot and the voter affidavit to the mailing address listed on the application, which is either the true voter’s address or an address controlled by the conspirator.
- Since election officials usually post the names of registered voters who have been sent absentee ballots (and the date on which the ballots were sent), the conspirator knows when the mailed ballots will arrive and can intercept them; in other cases, the absentee ballots are sent to addresses directly controlled by the conspirator.
- The absentee ballot is completed by the conspirator and the voter’s signature forged, or the voter signs and completes the ballot as directed, or some combination thereof.
- The ballot is then either mailed or hand-delivered by the conspirator to the election official.

57. Press Release, G. Douglas Jones, *supra* note 38, at 4.

58. Southern Christian Leadership Conference, National Board of Directors, <http://www.sclcnational.org/net/content/page.aspx?s=3065.0.12.2607> (last visited Sept. 2, 2008).

59. Interview with Elizabeth George, July 19, 2008.

60. Interview with Pam Montgomery, July 28, 2008.

61. *Pabey v. Pastrick*, 816 N.E.2d 1138 (Ind. 2004).

Greene County illustrates one of the key indicators of absentee ballot fraud for election and law enforcement officials: turnout (particularly by absentee ballots) that is dramatically in excess of other jurisdictions. It is true that historical election data show that different states and regions of the country have differing levels of turnout, and certainly local races of interest may spur turnout in, for example, one particular county when compared to other counties in the same state or area. However, an absentee ballot rate in a town or county several times higher than the average rate for the state is an early sign of possible fraud in the absentee balloting process that should be investigated. Another indication of fraud is multiple ballots witnessed by the same person (such as Connie Tyree in Greene County).

The Greene County case also shows how vital it is that prosecutors vigorously investigate the claims of absentee ballot fraud not only to ensure a secure and fair election process, but also to maintain public confidence and root out corruption in local government. According to an experienced federal prosecutor, voter fraud by incumbents is a sure sign that the local government is engaging in corrupt practices.⁶²

Ensuring the Integrity of Elections

These lessons about the means of absentee ballot fraud suggest a number of common-sense measures to ensure the integrity of elections.

- **To reverse the trends of “no-fault” absentee voting and all-mail elections**, absentee ballots should be reserved for individuals who cannot vote in person at their assigned polling place on Election Day or at early voting sites prior to the election. Absentee ballots are appropriate for individuals who are too ill or disabled to vote in person, as well as voters who have legitimate reasons why they cannot vote in person, such as soldiers stationed overseas, but they should not be available just for convenience’s sake, because the risk of fraud is too high. As an alternative, many states have early voting statutes that allow in-person voting at government-run polling places for a certain amount of time prior to Election Day. From an election integrity standpoint, early voting is a much safer alternative to expanded absentee balloting.
- **To increase the difficulty of fraudulent voting with absentee ballots**, individuals submitting absentee ballots should be required to provide a copy of an identification document containing a photograph (e.g., a driver’s license) with their absentee ballots. While it is relatively easy to forge a voter’s signature on an absentee ballot, it is more difficult for a vote-fraud conspirator to provide a photocopy of the voter’s identification. In fact, William Johnson, who narrowly missed out on a seat on the Greene County Commission in 1994 due to fraudulent absentee ballots but won in 1998, threw his support behind a voter-identification bill in the Alabama legislature.⁶³
- **To deter the forgery of voter signatures**, the signatures on absentee ballots should be either notarized or witnessed by at least two other individuals who provide their addresses and telephone numbers, and the number of voter signatures that any single individual is allowed to witness should be limited. For most jurisdictions, though, signature verification will be a last resort because it is too difficult for untrained clerks to perform. In Greene County, for example, FBI handwriting experts were needed to detect the forged signatures.⁶⁴ In many jurisdictions, election officials—overwhelmed by the sheer number of absentee ballots—do not even attempt signature verification. Nonetheless, these steps would make forgery both more difficult and easier to detect in any post-election law-enforcement investigations.

62. This prosecutor requested not to be identified because he is a current government employee.

63. Leewanna Parker, *Locals Among State Voter ID Proponents*, GREENE COUNTY INDEP., Jan. 21, 1998.

64. Oregon has all-mail elections, and officials there claim that signature matching when ballots are received prevents voter fraud. However, signature analysis is a skill that requires extensive training; cannot be taught to the average election worker in the limited time available; and, other than for the most blatant forgeries, cannot be effective in the few seconds that election workers have to compare signatures on each of the hundreds of thousands of ballots they receive.

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- **To help detect fraud**, states that have “no-fault” or relaxed absentee ballot rules should require voters wishing to cast mail-in ballots to provide a sample of their signatures at least every five years. This would ensure that election officials had an up-to-date specimen of the voter’s signature that could be compared with an absentee ballot affidavit signature.
- **To prevent intimidation and fraud**, unrelated third parties, including campaign workers and candidates, should be prohibited from delivering absentee ballots. The appearance of vote brokers at the Eutaw post office with 1,000 fraudulent absentee ballots illustrates why state laws should allow only voters, their immediate family members, or their caregivers to deliver absentee ballots either to the post office or directly to election officials.
- **To avoid deterring prosecutions and damaging public confidence**, civil rights organizations and others should refrain from leaping to the conclusion that voter fraud investigations are politically or racially motivated. The evidence from Greene County demonstrates that voter fraud prosecutions do not deter citizens from voting; in fact, the result was quite the opposite as citizens gained trust in their electoral system.

Absentee Ballot Fraud Today

The Greene County case is relevant today because there is reason to fear that certain features of the vote-fraud conspiracy may play out again in the 2008 elections. Despite the convictions and guilty pleas in Greene County, neither the NAACP nor the SCLC has ever admitted that its claims that the investigations were racist and politically motivated were wrong and, as should have been apparent at the time, completely specious. This gives rise to concern that similar strategies might be employed in the coming election to discourage the investigation and prosecution of schemes to disenfranchise vulnerable voters.

Already this year, strong allegations of absentee ballot fraud, executed just as in Greene County, have been levied in several Alabama counties, with local officials (some of whom are suspects) claiming once again that the “inquiries are motivated by racism and partisanship.”⁶⁵ In the 2008 Perry County primary, for example, a quarter of the county’s citizens voted by absentee ballot, the highest percentage in the state and six times the state average. Turnout exceeded 50 percent, compared to 16 percent in the rest of the state.⁶⁶ Witnesses allege that Perry County absentee ballots were exchanged for cash, crack cocaine, and other inducements (including driveway gravel) and that honest voters appeared at the polling place only to be told that absentee ballots had already been cast in their names.⁶⁷ Both the Alabama Secretary of State and the Alabama Attorney General are investigating.

There is a special historical resonance to these allegations. Perry County was one of the flash points of the voting rights movement. During the Civil Rights–era struggle to register black voters, a protester in Perry County was fatally shot, inspiring the “Bloody Sunday” march over Selma’s Edmund Pettus Bridge. Today, not only do African–Americans vote there; they run for office—and win. Elected African–American officials have controlled local government in Perry County and neighboring counties of the Black Belt for decades. But now the region’s black voters face a new obstacle to self-determination: the threat of disenfranchisement by vote fraud. “A generation ago, civil rights leaders in West Alabama overcame entrenched power structures,” observed the *Tuscaloosa News*. “What a sad irony it would be if that system were simply replaced by another undemocratic process.”⁶⁸

65. Adam Nossiter, *Officials Investigate 3 Alabama Counties in Voter Fraud Accusations*, N.Y. TIMES, July 10, 2008.

66. *Id.*; Chris Rizo, *King Laments Voter Fraud in Alabama*, LegalNewsline.com, June 29, 2008. A former Circuit Clerk in Hale County has been indicted for 13 counts of absentee ballot fraud involving the 2004 and 2005 elections of her ex-husband, a state senator. *Former Hale County Circuit Clerk Arrested on Voter Fraud Charges*, Assoc. Press, Mar. 18, 2008. This latest case seems to be a repeat of prior voter fraud in Hale County that occurred at the same time as the Greene County case when Alabama Assistant Attorney General Greg Biggs obtained convictions of the local chief of police on multiple counts of voter fraud, forgery in the second degree, and possession of forged instruments (absentee ballots). Interview with Greg Biggs, Apr. 22, 2008.

67. Kim Chandler, *Big Absentee Numbers in Small Counties Questioned*, BIRMINGHAM NEWS, June 23, 2008; *Secretary of State: Voter Fraud Allegations Flooding In* (WSFA-12 News broadcast Jun. 12, 2008); *Chapman Receives Complaint of Voter Fraud in Perry*, Assoc. Press, July 17, 2008.

Already, there have been claims that this investigation is simply a plot by Republicans “to suppress the black vote.”⁶⁹ In the same way that honest Greene County officials sought to convince federal law enforcers and liberal civil rights organizations that the investigations of the 1994 election were legitimate and needed, Perry County’s district attorney, Michael W. Jackson, who is a Democrat and the first black to be elected to the post, has called for a federal investigation focusing on absentee ballots because their sheer number was “suspicious” and “we want to make sure candidates and the public have a fair process.”⁷⁰

Conclusion

In the final analysis, the importance of the Greene County investigations and prosecutions to the county’s citizens and civil fabric cannot be overstated. Though the distracting noise of partisan wrangling and race-baiting may have drowned out that point on the national stage, it remains clear to those who live in Greene County. The local paper explained it well:

Bankruptcy and the hopelessness of the people, because of the corruption at high levels, can be reversed now that stealing elections is no longer an accepted way of life and justice has prevailed....

This beautiful county, whose promise was overshadowed by corruption and greed at the hands of those who gained public office and power by theft and deception, can finally set some healthy goals and move toward economic growth and a period of prosperity. The next chapter in Greene County’s history will be what honestly elected men and women make it. It will be what the people of this county make it, without the fear that the ballot brokers will be ringing people’s door bells...when another election rolls around.⁷¹

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68. *Light, Not Heat*, in *Hale County*, TUSCALOOSA NEWS, Oct. 9, 2007.

69. Nossiter, *supra* note 65.

70. *Id.*

71. Editorial, *Turn the Page*, GREENE COUNTY INDEP., Mar. 3, 1999.