

READ ALL

THE MYTH OF VOTER FRAUD

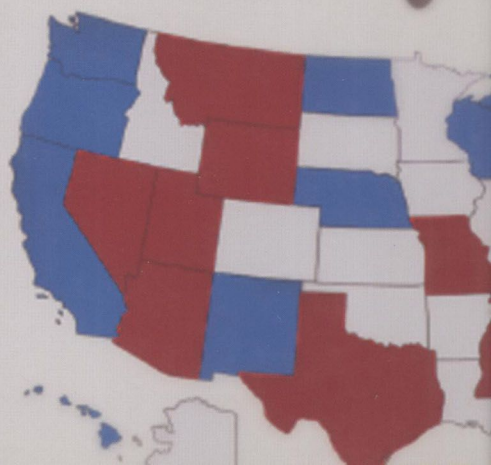
LORRAINE C. MINNITE

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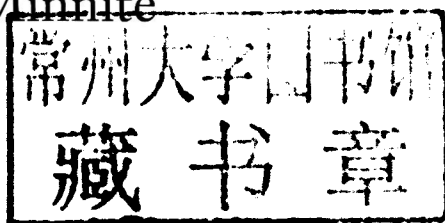
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The Myth of Voter Fraud

Lorraine C. Minnite



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Ithaca and London

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The Myth of Voter Fraud

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Chapter 1

Introduction

Voter Fraud and the Dynamics of Electoral Mobilization

The 2000 presidential election was a watershed event. The candidate with the most votes lost and the Supreme Court decided the winner. Interest in the deadening minutiae of election administration, never before a subject deserving of so much spilled ink, captured the attention of the public, the press, and academia—and remarkably continues to do so. Blue-ribbon commissions to study the challenges of election administration were convened and reports issued. Thousands of pages of congressional testimony were generated by the hearings and floor debates that led to the passage of the landmark Help America Vote Act of 2002 (HAVA) dealing with the national electoral infrastructure. Thousands more were added with hearings on a panoply of election administration topics such as “what went wrong in Ohio’s 2004 election,” “election contingency plans,” “military and overseas voting problems,” “noncitizen voting,” and the National Voter Registration Act. Interest in election law, a subject once about as sexy as patent law, has exploded and the field has suddenly earned some respectability, with academic centers, institutes, and journals all its own. Ideas percolate and debaters hold forth in chatrooms, Internet communities, blogs, and listservs that populate this arcane field with thousands of amateurs and experts of every stripe, computer whizzes and cyber sleuths, retired government employees and “velvet glove revolutionaries.” Millions of dollars in foundation money have been poured into think tanks to fund studies on things such as residual ballots and lost votes, voting technology and software code, and Internet voting and absentee ballots, but also “a modular voting architecture (‘FROGS’),” “vertical proximity effects in the California recall election,” “security vulnerabilities and problems with VVPT [Voter Verifiable Paper Trail],” and “rational and pluralistic models of HAVA implementation.”

And there has been another curious development. With so much public, media and scholarly interest in election administration, the issue of election fraud, an obsession of reformers and muckrakers in a bygone era, returned to the fore. How could it not? On the one hand, many watching the theater of the Florida recount, with the “Brooks Brothers Riot” of Republican congressional staffers shutting down the count in Miami and Republican lawyers shutting down the count in the hallowed chambers of the Supreme Court, concluded that the election had been “stolen.” For others, there were plenty of examples of the rules not being followed or perhaps not being bent in the right direction. Concerns ranged from felons’ illegally voting, to Democratic ballot count observers’ eating chads,¹ and Al Gore operatives among Florida canvassing boards double-punching Palm Beach ballots to invalidate votes for George W. Bush or Pat Buchanan.² In the case of overseas military absentee ballots that lacked postmarks or did not comply with the rules in other ways, Bush operatives wanted the ballots counted anyway. To not do so would disfranchise patriotic soldiers and sailors.

The clamor over “epidemics” of voter fraud “breaking out all over” began to build. In 2002, the razor-thin majority control of the U.S. Senate by the Democrats was at stake. Heading into election day, at least eight Senate races—in Arkansas, Colorado, Georgia, Louisiana, Minnesota, New Hampshire, North Carolina, and South Dakota—were considered too close to call. In a number of these states, minority voters possessed the potential to determine electoral outcomes. The perceived Democratic advantage among these voters led to a pattern of campaign practices in key races in which the Democrats attempted to turn out their vote through registration drives, bounty programs, and transportation schemes to get voters to the polls, whereas the Republicans prepared task forces—teams of lawyers and volunteer poll watchers—to root out what they were convinced was fraud endemic to the Democrats’ efforts and the electoral process itself.

In several places, Republican antifraud campaigns appeared to be directed at suppressing the minority vote and tipping the election to the Republican candidate.³ For example, in Jefferson County, Arkansas, at the core of a Democratic district where there were highly competitive races for governor, the U.S. House, and the U.S. Senate, and where African Americans were forty percent of the population, a group of predominantly black voters who went to the County Court House to cast their votes at the beginning of the early voting period were confronted by Republican poll watchers who photographed them and demanded to see identification. One poll watcher circulated behind the counter in the clerk’s office and photographed voter information on the clerk’s computer screen. Democratic Party officials accused Republicans of “Gestapo” tactics to intimidate and harass likely Democratic voters; Republican Party officials accused the Democrats of committing egregious acts of voter fraud in their desperation to win and claimed Repub-

licans were only trying to secure a free and fair election by ensuring voters were who they said they were and eligible to vote.⁴

In South Dakota, the hotly contested race between a surging Republican challenger hand-picked by President Bush to run for the Senate and a one-term incumbent Democrat mentored by Senate Majority Leader Tom Daschle (D-S.D.) focused national media attention on what was billed as a proxy race between the national parties. Between the June 4 primary and late October, 24,000 new voters registered in South Dakota, a sizable increase.⁵ Approximately 4,000 of these new registrants were Native Americans, nearly all of whom registered as Democrats following efforts by the South Dakota Democratic Party, the United Sioux, and other tribes to boost registration levels on the reservations. The incumbent, Senator Tim Johnson, won his seat in 1996 by just 8,579 votes out of 324,487 cast and the Democrats believed Native American voters could be the key to his reelection in 2002.⁶

About a month before the election, local election auditors in counties on or near reservations reported irregularities in the voter registration and absentee ballot processes. The investigation centered on one woman, a paid contractor working to register new voters for the South Dakota Democratic Party. She was immediately fired by the party, which claimed it was not involved in the irregularities. The party then brought the matter to the attention of the U.S. attorney, and state and federal probes uncovered several hundred questionable voter registration and absentee ballot application forms tied to just two people.⁷ Meanwhile, because of the presence of the national news media, the affair caught the attention of conservative commentators such as blogger Michelle Malkin, John Fund of the *Wall Street Journal*, and radio personality Rush Limbaugh, all of whom wrote or spoke of efforts to steal elections, “skullduggery on the Democrat side,” and “a massive voter-fraud scandal” unfolding in South Dakota.⁸ According to local news accounts, however, Mark Barnett, the Republican state attorney general, “bristle[d] at the idea that the two investigations are evidence of widespread voter fraud in the state. . . . ‘I’m still only aware of two cases where criminal law may have been violated,’” he said, “‘I just don’t want the suggestion out there that there is widespread fraud when we don’t have any evidence of that.’”⁹ Johnson went on to win reelection in another squeaker, by just 524 votes out of 337,508 cast. Two people were arrested for alleged forgery of absentee ballot applications, but there was no fraud found in the balloting.

What happened next reveals the power of the perception of voter fraud to justify electoral and law enforcement policies that strategically advantage one political party over the other. The grip of the Republican Party on national power tightened with the 2000 election, but their majorities in Congress remained tenuously slim. Despite the Republican bluster about a

mandate and a permanent majority, party operatives knew that close elections in key states were likely in elections to come and that, without real attention to key states and races, the electoral balance could tip toward the Democrats. One way Republicans tried to deal with this possibility was by embedding a campaign strategy in the voting rights enforcement routines of the U.S. Justice Department. That strategy was to aggressively investigate Democrats and their allies for voter fraud on the barest of evidence, to use the media to promote the investigations while ginning up media coverage of alleged “fraud,” and to strategically time and keep those investigations open to influence elections. This later came to light in the scandal that erupted over the Bush Administration’s unprecedented firing of at least nine of its own U.S. attorneys, seven of them on the same day¹⁰ and at least two for refusing to pursue specious voter fraud allegations.

One month before the 2002 midterm elections, U.S. Attorney General John Ashcroft established a Voting Access and Integrity Initiative directed at “enhanc[ing the Department of Justice’s] ability to deter discrimination and election fraud, and . . . to prosecute violators vigorously whenever and wherever these offenses occur.”¹¹ The initiative involved the creation of task forces composed of district election officers (DEOs), who are assistant U.S. attorneys appointed by each of the ninety-four U.S. attorneys to serve in this new capacity, and Federal Bureau of Investigation (FBI) officials, whose job is to oversee “on-the-ground investigative and prosecutorial coordination” with state and local elections and law enforcement personnel, “deter and detect discrimination, prevent electoral corruption, and bring violators to justice.”¹²

Federal monitoring of elections has been around since the Reconstruction period, but most often it has been directed toward defending the constitutionally protected voting rights of minority groups at the polls. What is significant about the Bush Justice Department initiative is the interpreting of voting rights as protection from corruption of the electoral process through voter fraud, despite a lack of evidence that voter fraud deserves the same level of scrutiny as racial discrimination in voting. This new understanding of voting rights is in keeping with an evolving pattern of conservative thinking and political strategy: conservatives are victimized by the liberal agenda, whites suffer discrimination more than blacks, and the rich unfairly get less from government than the poor. Nevertheless, during that first month of October 2002, DEOs implementing the Justice Department ballot security program opened just sixteen investigations into allegations of voter fraud.¹³ In South Dakota, where the biggest story of alleged voter fraud of the 2002 election cycle would take place, the statewide phone number set up by federal officials to report any voting irregularities received only one call.¹⁴

The second way that the idea of voter fraud mattered in the wake of the 2000 election was that it was invoked as a deterrent to democratizing re-

form of the electoral process. Voter fraud has been the justification for the erection of much of the convoluted electoral apparatus that plagues the U.S. electoral process today. More than a century ago, the threat of voter fraud was the rhetorical rationale for the very invention of voter registration rules, and each of the major national efforts at election reform since then—from the Voting Rights Act of 1965, to the National Voter Registration Act of 1993, to the Help America Vote Act of 2002—has been seriously compromised by an organized party-based opposition warning of the dangers of voter fraud.

In 2002, arguments that the adoption of election day registration (EDR) reforms would increase fraud were crucial in defeating EDR ballot initiatives in California and Colorado.¹⁵ In both states, antireform forces coalesced around the issue of voter fraud, arguing that eliminating the waiting period that election officials claimed they needed to verify voter eligibility would only open up the voting process to ineligible people and fraud schemes, abrogating the voting rights of legitimate voters by diluting their votes. Elections officials in California worried that the state electoral administration was not technologically advanced enough to instantaneously check for duplicate registrations.¹⁶ In Colorado, EDR opponents warned that setting up the program would cost millions of dollars in new equipment and training, and worried that election judges, wary of lawsuits, would be chastened from vigorously questioning the authenticity of voters' identification documents.¹⁷ Despite substantial funding to promote EDR in both states and despite early public support, opponents were able to persuade voters that the price to pay for making voting easier and more accessible was still too high.

The Myth of Voter Fraud

In this book, I show that for the vast majority of Americans committing an act of voter fraud—forging a voter registration card, stealing an identity to vote more than once, or knowingly voting illegally—is even more irrational than the individual act of voting. What would an individual voter on their own get out of committing an election crime? The incentives to cast an illegal ballot need to be pretty high to risk a felony conviction and five years in jail. This logic holds even for undocumented immigrants—the new blacks in America. Take the most likely scenario painted by those who fear a surge of illegal immigrant voters. Why would an undocumented immigrant who may have obtained a fake Social Security number in order to be paid for the low-wage labor he or she provides a U.S. employer come out from the shadows to cast a ballot that could deport that individual forever? The data revealed in the pages that follow are consistent with a logic that works against the fear that individual voters are corrupting elections. The best facts we

can gather to assess the magnitude of the alleged problem of voter fraud show that, although millions of people cast ballots every year, almost no one knowingly and willfully casts an illegal vote in the United States today.

The initial research for this book began as a response to a simple question from Miles Rapoport, the director of Demos, a democracy reform research and advocacy organization in New York City. Rapoport's own efforts to lower barriers to voting when he was secretary of state of Connecticut were routinely opposed with arguments that such reforms would only open the door to more voter fraud. He wanted to know how big the problem was so that Demos could develop an appropriate agenda for electoral reform. Encouraged by Demos, I spent a number of years engaged in painstaking research, aggregating and sifting all of the evidence I could find. The results are reported in the chapters to come, but I can short-circuit the suspense—voter fraud is rare. It cannot compare in magnitude to the multiple problems in *election administration*, which present a far greater threat to the integrity of elections.

But these findings only raise more questions. Why is the specter of voter fraud recurrently conjured in U.S. electoral politics? My second major goal in this book is to explore why these allegations are made when the facts do not support them, and why they succeed in influencing electoral rules. This certainly is not the first time we have heard the warning that voting cannot and should not be made more convenient, that the rules simply cannot be simplified, or that we need to put up roadblocks to the ballot to protect it. If charges of voter fraud are not based on facts, why do we continue to believe them? These are the interesting questions, the important questions. We need a best estimate of the incidence of voter fraud, but more than that, we need to know why the myth of voter fraud can be so successfully rejuvenated in the political culture to the point that all it takes to recall it is a wink and a nod—and maybe a little bullying.

Voter fraud is a politically constructed myth. To begin, I discuss a couple of high-profile voter fraud allegations as examples that have influenced the national election reform debate, and I show how they fall apart when we interrogate them. Voter fraud politics are robust in part because they capitalize on general and widely held folk beliefs that are rooted in facts and real historical experience, notions such as corruption in party politics and government but also stereotypes and class- and racially biased preconceptions of corruption among groups long stigmatized by their marginal or minority status in U.S. society.

Fraud Allegations Examined

At the heart of my inquiry is the question of evidence. I demonstrate that the evidence proffered to support the most newsworthy allegations of voter

fraud today is insubstantial and unconvincing. The United States has a fragmented, inefficient, inequitable, complicated, and overly complex electoral process run on election day essentially by an army of volunteers. It is practically designed to produce irregularities in administration: the numbers of voters signing the poll book do not exactly match the numbers of ballots cast because of the unexpected crush of citizens who wanted to vote and the fact that a poll worker's bathroom break was not covered; confused voters go here and there trying to cast their ballots in their precinct, the one they voted in eight years ago, only to find their wanderings recorded as double votes; absentee ballots do not reach their rightful destination in time, causing anxious voters to show up at the polls where they are again recorded as voting twice; John Smith Sr. on line number twelve in the poll book signs for John Smith Jr. on line thirteen and violá—another voter is ensnared in a fraud; voter registration applications go unacknowledged so voters send in duplicates and triplicates, sometimes adding a middle initial or a new last name. The list of mix-ups, misunderstandings and mistakes goes on and on. Yet the multitude of alternative explanations for any one irregularity are ignored by the media, which gets a story of fraud faxed to them in a press release by a political party and wants to avoid the gigantic public yawn sure to follow a report of simple bureaucratic failure. The press is attracted to the potential scandal, corruption, or a brewing political fight, and reporters avert their eyes from the more reasonable but boring explanation. In so doing, they become part of a party-driven campaign strategy to keep down the vote.

To get a sense of how this works, let us look at an oft-repeated allegation of voter fraud made by John Fund, *Wall Street Journal* columnist and author, who proclaimed in his 2004 book *Stealing Elections* that several of the 9/11 hijackers were registered to vote.¹⁸ Fund asserts, "At least eight of the nineteen hijackers who attacked the World Trade Center and the Pentagon were actually able to register to vote in either Virginia or Florida while they made their deadly preparations for 9/11."¹⁹ Fund's source for this claim is a December 22, 2002, interview he said he conducted with Michael Chertoff, then an assistant attorney general in charge of the Justice Department Criminal Division.²⁰ Fund provides no other corroborating evidence.

As a regular columnist for a national newspaper, Fund writes stories intended to inflame though his language is never partisan or inflammatory. The care he takes in his regular columns to appear reasonable is evident in his book, in which Fund writes that the hijackers "were actually able to register to vote," not that they *did* register to vote or *were* registered to vote. What does it mean to say someone is "able to register to vote"? Fund echoes previous statements by prominent conservatives that the hijackers or their associates *may have been registered to vote*. For example, more than a year before Fund says he interviewed Chertoff, Diane Ravitch, a senior fellow at the Hoover Institute, wrote, "Thus far, no reporter has observed that the hijackers

were eligible to vote in state and federal elections, despite the fact that they were not American citizens.” Of course, foreign nationals are not eligible to vote, only citizens are eligible to vote under state law. Senator Christopher “Kit” Bond (R-Mo.) picked up on the idea that our voter registration procedures are so lax that foreign terrorists can successfully apply when he asserted on the floor of the Senate that a Pakistani citizen in Greensboro, North Carolina, “with links to two of the September 11th hijackers was indicted by a federal grand jury for having illegally registered to vote.”²¹

In person Fund is less careful in parsing his words. He confused what he meant by “able to register to vote” when he appeared on the CNN Lou Dobbs show on October 24, 2004, to promote *Stealing Elections*. Here is the exchange:

DOBBS: You point out in your book that eight—eight, was it?—of the 19 . . .

FUND: Eight of the 19.

DOBBS: . . . 9/11 hijackers *could* have registered to vote?

FUND: No, they *did* register to vote. [emphasis added]

Without explicitly stating it, Ravitch and Fund are referring to the fact, known within weeks of the attacks, that some of the 9/11 hijackers had obtained driver’s licenses.²² Ravitch incorrectly implies this made them “eligible” to vote because the National Voter Registration Act of 1993 (NVRA) requires that applicants for driver’s licenses be presented with an opportunity to register to vote. But being presented with an opportunity to register does not make a person eligible to vote. No state creates a right to vote or establishes voter eligibility through possession of a driver’s license. By linking the 9/11 hijackers to the “motor voter” law, one of the very first bills signed into law by President Bill Clinton, over the objection of congressional conservatives, both Ravitch and Fund are talking in code, reinforcing the idea held fervently by right-wing partisans that the NVRA has corrupted democracy by opening the door to voter fraud.

To register to vote through a driver’s license agency in Virginia or Florida during the time the hijackers were in the United States, any applicant would have had to affirmatively assert citizenship. In Florida in 2000 and 2001, an individual applying for voter registration through a driver’s license agency had to verbally confirm to agency personnel that she was a citizen, and sign her name on a card preprinted with the same information submitted to obtain the driver’s license. In Virginia, applicants were presented with a carbon-copy form; the top part served as the application for a driver’s license, and the bottom half was used for voter registration. More recent efforts to confirm Fund’s allegation that some of the 9/11 hijackers were registered to vote in either Virginia or Florida have failed to turn up any supporting evidence at all. According to Philip L. Edney, a public affairs specialist at the FBI, who

spoke to “someone actively involved in investigating this allegation,” the hijackers were not registered to vote in either state.²³

Fund provides no evidence from Virginia or Florida elections officials confirming the registration status of any of the hijackers, but we may never know for sure.²⁴ Could the 9/11 hijackers have used aliases? In October 2006, the BBC reported that the FBI was confident it had positively identified all nineteen hijackers, but many Arab names are similar and when transliterated into English can be spelled a variety of ways. Arabic naming conventions, which incorporate honorifics and extended family or tribal identifiers, are unfamiliar to non-Arabic speakers. For example, the Palestinian president and leader of the Fatah Party, Mahmoud Abbas, is also known as Abu Mazen, or “father of Mazen,” Abbas’s eldest son.²⁵

The 9/11 Commission found that some of the hijackers used passports “manipulated in a fraudulent manner,” made detectable false statements on their visa applications, and gave false statements to border officials to gain entry to the United States. So it is possible that some of the hijackers either registered to vote when they obtained driver’s licenses or state ID cards (which some did in four states: California, Florida, Maryland, and Virginia), although the motive for their doing so is not immediately obvious. The point is that those claiming that the hijackers were registered to vote have yet to provide any evidence that they were. In June 2007, Virginia elections officials were unable to confirm or deny that any of the hijackers had registered to vote. None of the hijackers had a Virginia driver’s license, but eight did acquire Virginia ID cards, most of them fraudulently.²⁶ Valarie Jones, acting secretary for the Virginia State Board of Elections, said that the veracity of the claim that any of the hijackers voted could not be investigated because poll books in Virginia are retained for only two years after an election.²⁷ At my request, the Broward County Governmental Center in Fort Lauderdale reviewed the Florida statewide database for all the names and aliases used by the hijackers and found no identical matches on names and addresses.²⁸ Nor was any evidence concerning the voter registration status of the hijackers presented to the National Commission on Terrorist Attacks Upon the United States or unearthed by any of the congressional inquiries that reviewed the FBI investigation of the attacks. I conclude from these findings that, in the absence of any affirmative evidence from state elections or federal law enforcement officials, it is highly unlikely that any of the hijackers was registered to vote.

Fund’s allegation about the 9/11 hijackers was widely circulated and has had a surprisingly long life given that it is poorly documented and very likely false. For example, in protests on the floor of the House over various border security provisions stripped from the Intelligence Reform and Terrorism Prevention Act of 2004, U.S. Representatives Ed Royce (R-Calif.), Steven King (R-Iowa), and Sam Johnson (R-Tex.) all repeated Fund’s allegation that eight of the nineteen hijackers were registered to vote.

The lack of scrutiny of voter fraud charges and the ease with which partisans have been able to insert them into the public discourse means that arguments based on demonstrably false information, or no information at all, are entered into the congressional record, sway lawmakers, and are cited by Supreme Court justices as fact. It means pundits who relish the charges and their whiff of scandal will continue to manipulate public understanding. On the evening of the November 2006 congressional elections, John Fund was a guest on Glenn Beck's CNN syndicated talk show. Two years had passed since the publication of his book, and because he has yet to be upbraided for any of the misleading information he provides there, Fund must have felt it was safe to again repeat the provocative charge that eight of the nineteen 9/11 hijackers were registered to vote:

BECK: OK. To put this into perspective on how bad and out of control our system is—and I don't think the Republicans or the Democrats really want to fix it—explain how many of the 9/11 hijackers were registered to vote.

FUND: Eight out of the nineteen 9/11 hijackers were registered to vote in either Virginia or Florida. They could have easily voted if they'd wanted to.

BECK: And how did they do that?

FUND: Well, we have something called the motor voter law. You can go into any government office building, any transaction you conduct with them, driver's license, unemployment, whatever you get the check off, [sic] do you also want to register to vote?

All the registrations are on a postcard. There's no question as to whether you're a citizen. There's not [a] question as to whether or not you're a real, live human being. You're automatically registered.

Our registration rules have a lot of people on there who are dead, don't exist or registered many times over.²⁹

This is a good example of what I call *voter fraud politics*, the use of spurious or exaggerated voter fraud allegations to persuade the public about the need for more administrative burdens on the vote. I frame my analysis and case studies to explore the politics of fraud allegations—to ask who are the actors, who are the targets, what are the tactics deployed, and what are the factors that account for their success in maintaining barriers to the vote that disproportionately affect certain Americans?

Fraud politics is about the behavior of partisans and their allies and is therefore a different phenomenon than the alleged criminal behavior of the voters that partisans implicate. The levelers of politically motivated allegations have far greater influence on electoral policy than the behavior of the average voter. John Fund is an influential opinion-maker, not a criminal voter. Through his widely circulated, national syndicated newspaper columns, his book, and his many appearances on cable news and radio programs, he has a wide audience and appears to speak with authority when he