

**REPUBLICAN BALLOT SECURITY PROGRAMS: VOTE
PROTECTION OR MINORITY VOTE SUPPRESSION—OR BOTH?**

A REPORT TO THE CENTER FOR VOTING RIGHTS & PROTECTION

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By

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EXECUTIVE SUMMARY

Police brutality in the spring of 1965 against civil rights marchers on the Edmund Pettus Bridge in Selma, Alabama was a watershed event in American history. The beating of the defenseless, unarmed marchers protesting the disfranchisement of blacks in the South was captured by TV cameras and the images were quickly beamed around the world. The event served as a catalyst for passage of the Voting Rights Act that same year. The act was widely perceived as the climax of the post-World War II black civil rights movement. It gave the U.S. Department of Justice broad new powers to enforce the voting rights of African Americans (and, in subsequent amendments, various other minority groups as well), particularly in the South where those rights had been most seriously curtailed throughout the Twentieth Century.

Yet, despite the reach of the new act, despite the aggressive enforcement of it early on by the Justice Department and the courts, and despite the extension and expansion of the non-permanent features of the act in 1970, 1975, and 1982, efforts to disfranchise people of color, not only in the South but throughout the nation, continues into the Twenty-first Century.

This Report focuses on vote suppression connected with what the authors call *ballot security programs gone bad*. These are programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot. In some cases, these programs have been found by courts to be illegal. Still, they continue to exist in spite of strong criticism by leaders of minority communities, their allies, and voting rights lawyers.

Until the mid-1960s the political entity most closely associated with efforts to disfranchise people of color was the southern wing of the Democratic Party. However, as explained in Chapter 2 of this Report, a sea change in American politics occurred in the decade of the 1960s. Both the presidential campaigns of Barry Goldwater in 1964 and Richard Nixon in 1968 employed the so-called “southern strategy,” in which conservatives in the GOP, long identified as the Party of Lincoln, began making racial appeals to whites in the states of the former Confederacy who were angry at the federal government for its abolition of the Jim Crow system in the 1950s and 1960s. Such appeals have continued to be a Republican stock-in-trade, even though they have become attenuated with the passing of the rabid white segregationists of an earlier era.

Until the 1960s, Republican presidential candidates stood a reasonable chance of gaining as much as a third of the African-American vote and, with a progressive racial platform, it seems reasonable to suppose they could have gotten even more in the future. However, once the conservative wing of the GOP began to court white southerners by appealing to “states’ rights,” a code word of the day for white supremacy, blacks began to vote heavily for Democrats—as did Latinos in the Southwest, albeit to a lesser extent.

In the 1960s, then, a party realignment occurred in American politics, with race as the cleavage plane. The Republican Party became worried by the potential for high

turnout in black and Latino precincts, which would add disproportionately to the Democratic vote. The GOP also publicly expressed concern that vote fraud in these same minority precincts would shift even more votes into the Democratic column.

These concerns gave rise to the widespread phenomenon of the Republican ballot security program, implemented ostensibly to guard against Democratic and minority vote fraud. But, as became obvious from the first major nationwide GOP ballot security program in 1964, named “Operation Eagle Eye,” such programs had the potential for discouraging legitimate minority citizens from voting at least as much as for discouraging vote fraud.

Indeed, efforts that discouraged minority voting were carried out in such southwestern states as Arizona even before Goldwater campaign adopted the southern strategy in 1964. The Senate confirmation hearings of William Rehnquist, when he was nominated to the U.S. Supreme Court in 1971 and again when he was nominated as Chief Justice in 1986, brought to light his involvement in ballot security programs in the 1950s and early 1960s that, according to a number of credible witnesses, employed tactics that could very well have depressed the votes of registered minority citizens in Phoenix. There is reason to believe that programs in states such as Arizona provided a model for Operation Eagle Eye in 1964 and were precursors of similar programs in New Jersey, Louisiana, Texas, and California, among others, in the 1980s. Some of these programs drew national attention not only because of their egregious tactics but because of the Republican National Committee’s involvement in them, and the scrutiny the programs received by state and federal courts.

There are several noteworthy characteristics of these programs. They focus on minority precincts almost exclusively. There is often only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts. In addition to encouraging the presence of sometimes intimidating Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration. In addition, warning signs may be posted near the polls, or radio ads may be targeted to minority listeners containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive. Sometimes false information about voting qualifications is sent to minority voters through the mail.

The purpose of this Report is to provide a brief history of some of the most indefensible Republican ballot security programs from the 1950s on, but particularly, in Chapter 6, from 1981 through 2002. These case studies, along with the description of events in Louisville, Kentucky in 2003, presented in Chapter 1, are intended to give the reader a sense of the nature of Republican ballot security excesses, and why they continue to pose a threat to minority voters some forty years after the Voting Rights Act was passed.

In the concluding chapter, the authors address the question of how to abolish these “ballot security programs gone bad.” In so doing, the authors stress that not all ballot security programs are illegitimate. There is undoubtedly some voter fraud in the U.S., engaged in not only by Democrats but by Republicans. How to accommodate the need for voting integrity with the rights of legitimate minority voters not to be harassed in the

name of ballot security is a challenging problem, especially in a time of highly polarized partisanship such as the present. The authors discuss legal remedies as well as political ones. Among the latter, the authors suggest that the newly created Election Assistance Commission, created by the Help America Vote Act of 2002, might be able to play a useful role.

CHAPTER I

INTRODUCTION

Marie Foster, an African-American dental technician, died on September 6, 2003 at the age of 85. She received national attention when she, along with others, was brutally beaten by state troopers at the foot of the Edmund Pettus Bridge in Selma, Alabama, on March 7, 1965 in the first of three attempts by voting rights activists to march to Montgomery, the state capital, to demand voting rights for African Americans. The unprovoked violence of the troopers was captured in sickening detail on television and the images were quickly beamed around the world. The event came to be called “Bloody Sunday” in the annals of the Civil Rights Movement. The second attempt occurred two days later, and it was stopped without violence. Mrs. Foster attempted to hobble in that march as well.

Four days after that, President Lyndon Johnson announced on national television that he would send a voting rights bill to Congress. Dr. Martin Luther King, Jr. watched the president's speech in Mrs. Foster's living room, and famously wept—something his close friends and aides had never seen him do before. The march to Montgomery was finally allowed to proceed two weeks later. Despite injuries to both her knees from the earlier beating by state troopers, Marie Foster, then forty-six years old and a mother of three, walked fifty miles in five days.

Like many participants in the civil rights movement, Mrs. Foster had humble origins. She had dropped out of high school to marry, and when her husband died, leaving her with three young children, she went to work. Years later she finished high school, went to junior college, and became a dental hygienist. She worked for her brother, a dentist, and was therefore not dependent on a white employer and the pressure that could be exerted through such a relationship. She became involved in voting rights activities, passing out leaflets door to door and urging ministers to announce voter registration drives from their pulpits. She was threatened several times by the Ku Klux Klan. Mrs. Foster was herself able to register to vote only after having tried eight times. By then she had already begun coaching other blacks on how to pass "the deliberately bewildering voter registration tests," as one writer described them.

According to friends, Mrs. Foster's efforts on behalf of social justice continued to her death. In recent years she led a successful effort to obtain public housing for poor people in Selma. She helped remove a statue of the founder of the Klan from a public park. She taught reading to poor children, and took them to Sunday school. "She never quit," a friend told the *New York Times* after her death.¹

¹ This account of Marie Foster's life is taken from Douglas Martin, "Marie Foster, Early fighter for Voting Rights, Dies at 85," *The New York Times*, 12 Sept. 2003, C18. See also David Halberstam, *The Children* (New York: Random House 1998), 421, 516-17; and Taylor Branch, *Pillar of Fire: America in the King Years 1963-65* (New York: Simon & Schuster, 1998), 64, 391, 553. On King's weeping in Foster's home, see David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: Vintage Books, 1988, 2d ed.), 408-9.

Louisville 2003

The summer Marie Foster died, almost forty years after passage of the Voting Rights Act, an event unfolded in Louisville, Kentucky, which to many blacks in that city was redolent of the Jim Crow institutions Mrs. Foster had fought to abolish. A gubernatorial campaign was in progress, pitting Republican Ernie Fletcher against incumbent attorney general Ben Chandler, a Democrat. Mike Czerwonka, who had lost a race for state representative the previous year, circulated a one-page handbill to fellow Louisville Republicans entitled "Gubernatorial Election Integrity Call to Arms." Following his defeat in 2002, Czerwonka had alleged there were a number of voting irregularities in the election, although Jefferson County (Louisville) voting officials said they found none. Local Republicans also believed there was vote fraud in some minority precincts in 1995, but subsequent investigations were indeterminate.²

His handbill asserted that various previous GOP candidacies in the area and in Louisiana had been

adversely impacted by the presence and influence of the Democratic National Committee, the A. Phillip Randolph Institute (the black militant division of the AFL-CIO and funded in part by the DNC); and the NAACP and their efforts to marshal the Get Out To Vote [sic] efforts targeted toward the black, poor voters in selected communities and selected targeted races of national impact.³

Czerwonka alleged that the tactics of these organizations included encouraging the unregistered to vote and to engage in other illegal practices, "(i.e., vote buying, etc.), all for the sole singular intent of getting the Democratic nominee in Gubernatorial, and National Congressional and Senatorial races elected."⁴

Czerwonka's flier said he had "been asked by the Fletcher campaign for Governor to serve in the capacity of insuring the integrity of the election process in the [predominantly black] West End/Portland areas of Louisville. We will require approximately Three Hundred (300) Republican Precinct Poll Workers to achieve this goal." He urged readers to "join Ernie Fletcher and me for an informational meeting at the ABC Office's [sic]" in Louisville on July 21.⁵

What happened at the July meeting was not reported in the news media at the time. However, as the gubernatorial campaign heated up in the fall and it became public knowledge that the Fletcher campaign in cooperation with the state Republican party would be fielding poll-watchers at voter precincts around the state, the county GOP in Louisville announced it planned on placing Election-Day challengers at fifty-nine of the city's voting precincts. Kentucky law allows a political party to assign one challenger per precinct on Election Day to question the credentials of voters who the challengers have reason to believe are not legitimate. All but four of the fifty-nine precincts named by the

²Sheldon S. Shafer, "GOP to put challengers in black voting precincts; Critics call strategy intimidation," *The Courier-Journal* (Louisville), 23 Oct. 2003, A1; "Targeting black voters," *The Courier-Journal* (Louisville), 24 Oct. 2003, 6A.

³ Copy of handbill in senior author's possession.

⁴ Ibid.

⁵ Ibid.

Republicans were in the predominantly black West End of the city, and the other four were in a low-income, racially mixed area.⁶

African-American leaders in the community expressed outrage, as did Democratic Party officials. Raoul Cunningham, a Louisville resident and former Kentucky NAACP Voter Empowerment Coordinator, asserted in an op-ed in the local daily, *The Courier-Journal*, that the purpose of the challengers was to "question and intimidate voters and suppress the African-American vote." He pointed out that there were 483 precincts in the county, yet virtually the only ones targeted by challengers were African-American. He noted that the Republican party had not been able to fill a complete slate of election officials in the county, yet they had no trouble coming up with almost sixty Republicans whose job it would be to monitor the voting of blacks. Moreover, of the fifty-eight challengers whose names he had seen, "only five have zip codes in or near the targeted areas." Cunningham added:

The vast majority of the challengers will need detailed directions from the Internet to even find their assigned precinct. How will a challenger who lives in the East End know who is a resident of a particular precinct in the West End or who is a convicted felon? What criteria will the challengers use to object to a voter? The color of one's shoes? Whether one's hair is braided? Sculptured nails? Or the color or size of one's earring? There is absolutely no way possible for these challengers to properly execute their responsibilities under the law.⁷

Cunningham's questions were particularly apt inasmuch as Kentucky law states that voters cannot be challenged indiscriminately; challengers must have "a reason to believe" a potential voter has dubious qualifications.

The GOP stoutly defended their ballot security effort. Ellen Williams, chairwoman of the Kentucky Republican party, said she was "saddened that some have chosen to brand our efforts as an attempt to intimidate voters. If anything, we believe our efforts actually encourage voter turnout because people are more likely to participate in an election if they believe their vote is counted fairly and not diluted by a flood of illegitimate votes."⁸ However, she could not give a reporter specific reasons for the statewide "Kentucky Ballot Security Taskforce" which the Republicans had put in place. "We're like Boy Scouts and Girl Scouts," Williams said; "we want to be prepared. We want to make sure that people are comfortable on Election Day, that they feel confident."⁹

The county GOP chairman, Jack Richardson IV, at first denied the precincts were chosen on the basis of race or voting patterns. They were chosen either at random or because Republicans had had difficulty finding qualified voters in those precincts to serve as election workers, he said.¹⁰ A few days later he was quoted as saying the GOP strategy was not to target minority precincts but rather Democratic ones, and he

⁶ Shafer, "GOP to put challengers in black voting precincts"; Raoul Cunningham, interview with senior author, 8 Aug. 2004; Raoul Cunningham, "Action targets African-American participation," *The Courier-Journal* (Louisville), 26 Oct. 2003, D1.

⁷ Cunningham, "Action targets African-American participation."

⁸ Ellen Williams, "'Perfectly legal' practice will ensure fair results," *The Courier-Journal* (Louisville), 26 Oct. 2003, D1.

⁹ Joe Biesk, "State Parties Field Legal Teams for Election Day," Associated Press (Frankfort, Kentucky), 28 Oct. 2003.

¹⁰ Shafer, "GOP to put challengers in black voting precincts."

estimated that about a third of the fifty-nine precincts with Republican challengers were predominantly white—an assertion disputed by Cunningham, the former NAACP official.¹¹ (Richardson's latter reason for choosing the black precincts was the one used by the Republicans' defense lawyer when a suit against the challenger program was subsequently heard in court.)¹²

A Fletcher campaign representative was contacted by a reporter who asked whether Fletcher had attended the July 21 meeting at the ABC offices in Louisville which Czerwonka had urged his fellow Republicans to attend. The representative said that to the best of his knowledge Fletcher had not attended the meeting. In addition, he said he thought Czerwonka was not connected to Fletcher's campaign but to the state party. Later, another Fletcher campaign spokesman said the candidate had indeed attended a meeting on July 21 at the Associated Building Contractors (ABC) offices mentioned in Czerwonka's flier, but that it was a normal meeting with supporters, and the candidate did not discuss ballot security.¹³ A few days later county GOP chairman Richardson added that while he had asked Czerwonka to help recruit volunteers, he wasn't authorized to speak for the party. Some, though not all, Republican officials seemed anxious to disavow Czerwonka's earlier recruiting flier charging black organizations with vote fraud.¹⁴

As Election Day approached, African Americans and Democrats rallied potential black voters. Leaders held a forum that included Democratic candidate Ben Chandler at a black Baptist church. All nine major presidential candidates in the Democratic primaries signed a letter deploring the Louisville ballot security program. The Kentucky Democratic party published a flier titled "Know Your Rights—You Can Vote," which it planned to distribute in the fifty-nine targeted precincts. Included on the flier were directions on how to respond to a challenger, and a toll-free telephone number for obtaining legal advice. The ACLU of Kentucky filed suit in state and federal courts claiming that the Republican challenger program in Louisville was intended to intimidate black voters and slow the voting process in black precincts. The U.S. Department of Justice announced it was sending staff to Louisville to monitor the election.¹⁵

Some days before the election, a cross-section of African-American, Democratic, and labor leaders held an intense meeting at the local Urban League Office. Also attending were eight members of the Louisville Metro Council, some present and former members of the legislature, and a smattering of students and residents—about one hundred in all. In an atmosphere one reporter likened to a religious tent meeting, a

¹¹ Al Cross, "Presidential hopefuls urge halt to poll challenges," *The Courier-Journal* (Louisville), 26 Oct. 2003, B3.

¹² Joseph Gerth and Sheldon S. Shafer, "Judge allows vote challengers," *The Courier-Journal* (Louisville), 4 Nov. 2003, A1.

¹³ "There They Go Again," *Talking Points Memo*, 27 Oct. 2003, http://www.talkingpointsmemo.com/archives/week_2003_10_26.php.

¹⁴ Andrew Wolfson, "GOP defends vote challenge; activists call flier to recruit poll workers racially biased," *The Courier-Journal* (Louisville), 31 Oct. 2003, B1.

¹⁵ Cross, "Presidential hopefuls urge halt to poll challenges"; Tom Loftus, "Parties add lawyers to handle queries on wrongdoing at polls," *The Courier-Journal* (Louisville), Kentucky State Edition, 28 Oct. 2003, B1; "State News," *Democracy Dispatches* No. 38, 11 Nov. 2003, 1-2, <http://www.demos-usa.org/pub78.cfm>.

series of rallies in black neighborhoods was planned, a goal of 60-percent turnout in those same areas was adopted, and the president of the local Urban League announced a fund drive to raise \$30,000 to \$40,000 to support turnout efforts, including printed materials and radio ads. Amidst the excitement, former state senator Georgia Powers, 80, the first African-American (and the first woman) elected to Kentucky's upper house, addressed the absent Republicans: "We won't let you roll back the clock. I marched at Selma in 1965. . . . We will go to the polls with our armor of dignity," she vowed. The chairman of the county GOP, interviewed after the meeting and obviously under pressure from Fletcher's campaign, said the local party had decided on its challenger program without consulting Fletcher or the state party.¹⁶

On Election Day the Louisville *Courier-Journal* reported that instead of the original fifty-nine challengers announced earlier by the local GOP, only eighteen would go to polling locations. The remainder had either been reassigned as poll workers or had not attended training sessions for challengers.¹⁷ This occurred after a judge refused to prevent the challengers from going into Democratic precincts but remarked, "It's a shame that you can't get people to work in all these precincts but you can get people to volunteer as challengers."¹⁸

The reduced number of challengers did not, however, mollify black leaders, who had led motorcades, rallies, and a door-to-door canvassing drive to get out the vote in their neighborhoods. "If they [the GOP] had one challenger in one precinct, we would be up in arms," averred a black minister. "It would still send the message that black voters are not honest when they go to the polls, and that they are untrustworthy."¹⁹

In response to the white challengers, the NAACP on Election Day sent volunteer monitors to polling sites to keep an eye on the behavior of the eighteen challengers. A Democratic attorney told a reporter he didn't expect the Republicans to try to suppress the minority vote at that point. "I think some of the advance publicity made it impossible for them to do anything. . . . What they have done is, they have gotten people out to vote."²⁰

In fact, virtually nothing out of the ordinary was observed either by the challengers or their monitors as the election took place. One of the challengers who lived elsewhere in the city arrived around 5:15 a.m. at the polling site, a senior citizen housing complex on Muhammad Ali Boulevard—a street named for the famous Louisville native. For most of the day he sat quietly near a voting registration table as black people filed in to vote. A photo of him in the newspaper depicted an older white man with black women on either side of him, looking rather out of place. He admitted to a reporter that he didn't know any of the voters. His being there, he allowed, didn't "make much sense."²¹

Shortly after the polls closed that night, Republican Fletcher was declared the winner of the gubernatorial contest by a ten-point margin statewide, although Chandler

¹⁶ Sheldon S. Shafer, "Group aims for higher turnout in black areas," *The Courier-Journal* (Louisville), 31 Oct. 2003, B1.

¹⁷ Gerth and Shafer, "Judge allows vote challengers," A1.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Joseph Gerth and Sheldon S. Shafer, "Precincts see no trouble with monitors; some think GOP plan encouraged blacks to vote," *The Courier-Journal* (Louisville), 5 Nov. 2003, A9.

narrowly carried Jefferson County.²² In a post-election analysis, a University of Louisville political scientist compared turnout in the city with that in the 2002 mid-term elections the year before. In predominantly white precincts, turnout fell 7 percent. In predominantly black precincts as a whole, however, it was nearly identical with the previous year's. The only precincts in which turnout actually rose were twenty-one among the fifty-nine which the Republicans had originally targeted for challengers—a pattern the political scientist attributed to a backlash against the Republicans' ballot security program. However, Jack Richardson, the Jefferson County GOP chairman, said he thought the party's program, along with the Democrats' response to it, spurred Republican voters "in other parts of the county" to vote, and he vowed to send more poll-watchers out the next year—a vow perhaps influenced by the fact that voters in the targeted black precincts voted 8-1 in favor of Chandler and helped him carry the county. True to his word, Richardson announced in July 2004 that the party planned to place challengers "in predominantly Democratic precincts" in November.²³

Ballot Security Programs Gone Bad: A Model

Ballot security programs have played a salient role in American politics over the past half-century, as this Report will show. They sometimes are nothing more than legitimate efforts to prevent vote fraud. But at other times they clearly involve attempts to suppress minority votes. Virtually nothing has been written about either function of these programs in the scholarly literature, however. *Elections A to Z*, John L. Moore's excellent encyclopedic guide to American elections, doesn't contain an entry on them, or refer to them in its index.²⁴ Moore's work is not alone in this respect.²⁵

A list of key aspects of the events in Louisville might serve as a rough model for a phenomenon that is the focus of this Report—excesses of ballot security programs, or what might be called "ballot security programs gone bad."

First, a group of Republicans planned and organized what they hoped would be a well-publicized effort to place white Republicans primarily at black Democratic polling places, ostensibly to protect against vote fraud through challenging anyone not qualified to cast a ballot.

Second, while some of the Republican leaders first denied to reporters any rationale for choosing the precincts in which to place challengers, and others insisted they were not focusing on black precincts *per se* but on heavily Democratic ones, the ballot security effort was clearly aimed at black neighborhoods far removed from the overwhelmingly white Republican ones., as well as from white precincts in which many Democratic votes were typically cast.

²² Michael Janofsky, "Kentucky Elects a Republican Governor," *The New York Times*, 5 Nov. 2003, A22; Joseph Gerth, "Jefferson Turnout: Challengers likely raised black vote, observers say," *The Courier-Journal* (Louisville), 6 Nov. 2003, A6.

²³ Gerth, "Jefferson Turnout: Challengers likely raised black vote, observers say," A6; Rebecca Neal and Joseph Gerth, "Some critics call plan intimidation," *The Courier-Journal* (Louisville), 30 July 2004, 8B.

²⁴ John L. Moore, *Elections A to Z* (2d ed.) (Washington, D.C.: CQ Press, 2003). There is an entry, however, on election fraud, a portion of which briefly mentions efforts by Republican or conservative groups to monitor—and in some cases target disinformation to—minority voters. See 151-2.

²⁵ See, for example, Peter G. Renstrom and Chester B. Rogers, *The Electoral Political Dictionary* (Santa Barbara, California and Oxford, England: ABC-CLIO, 1989).

Third, some of the Republicans claimed they were concerned with ballot security because of recent voting fraud in the same black precincts, although county officials denied it. Perhaps more to the point, even Mr. Czerwonka, the Republican candidate who made the allegation of fraud and who played a key role in getting Republican party officials involved in ballot security efforts, had not claimed that all fifty-nine precincts that his group hoped to blanket with challengers had engaged in vote fraud.

Fourth, although the Republican party's legal right to place challengers in the black precincts was not at issue, none of the Republicans had an answer to the question posed by a black leader as to how a white Republican challenger living on the other side of town would be able to determine—simply by watching blacks march up to the polling place, sign in, and cast a ballot—whether these voters, whom they had presumably never seen before and would probably never see again, were qualified to vote.

Fifth, the leadership in the black community was outraged to the point of holding rallies, conducting a spirited get-out-the-vote drive, and denouncing the Republicans' ballot security program as nothing more than a means of harassing black voters. Some of the leadership found particularly galling the fact that what appeared to them as harassment directed solely at their community was being organized by whites against a racial minority many of whose members could vividly recall the disfranchisement of their race during the era of Jim Crow, when southern Democrats were responsible for preventing blacks from voting.

These features of the events in Louisville in the summer and fall of 2003 were by no means unique to that time and place. On the contrary, forays by white, affluent poll-watchers or challengers into minority neighborhoods that the same whites would almost never go into otherwise, in the name of "ballot security," has been a prominent feature of Republican political strategy for at least fifty years. On many occasions these forays on Election Day have also been accompanied by other measures, such as posting at the polls uniformed men, sometimes with badges or guns, who are intended to look like law enforcement officers; posting off-duty police officers at the polls; photographing or videotaping voters; aggressive, hostile questioning of potential voters or polling officials in ways that can embarrass or humiliate; spreading false information about voting requirements, candidates, and the election date in the days before the election; challenging voters on the basis of inaccurate registration lists that disproportionately winnow out low-income people; or a combination of these tactics. When successful, these measures are a form of vote suppression, which is a polite term for the disfranchisement of eligible minority voters.²⁶

Moreover, ballot-security programs gone bad are often not simply the work of a few renegades who are out of touch with the GOP leadership structure. On the contrary, as this Report will demonstrate, evidence indicates that some of the unsavory practices of ballot security efforts are approved or winked at by the top echelons of the party hierarchy and conducted by well-educated professionals, particularly lawyers, and sometimes paid for by the Republican National Committee.

It is not the contention of this Report that all Republican efforts to protect against vote fraud are intended to suppress minority votes. Vote fraud occurs with some

²⁶ For an investigation of other forms of vote suppression in use today, see Stephen Donziger, *America's Modern Poll Tax: How Structural Disfranchisement Erodes Democracy* (Washington, D.C.: The Advancement Project, 2001).

frequency in the United States today, although there have been almost no systematic efforts to ascertain its incidence nationally or within states, or whether certain populations or political parties are more likely to engage in it than others.²⁷

Over the past half century there have been well-documented instances of fraudulent practices in black and Latino precincts. There are also equally well-documented instances of voter fraud in white Anglo precincts, as well. In the words of a Republican state election official addressing lawyers for a Latino voting rights organization, “although there is probably a larger number of problems regarding minorities and the election process, fraud in Texas knows no race.”²⁸ And there are, to be sure, numerous Republican as well as Democratic perpetrators of fraud.²⁹ Moreover, even if vote fraud across the nation is gradually declining, as two political scientists have recently argued, the fact remains that it still exists, and in close elections it can determine the outcome.³⁰ The purpose of this Report, therefore, is not to argue against members of any political party taking reasonable steps to prevent ballot fraud. Rather, it is simply to highlight efforts that appear to be designed primarily to intimidate, misinform, stigmatize, and ultimately suppress the vote of minority citizens who are eligible to vote.

²⁷ The most systematic efforts to tabulate and analyze vote fraud focus on other nations. See Fabrice Lehoucq, “Electoral Fraud: Causes, Types, and Consequences,” *American Review of Political Science* 6 (2003):233-56.

²⁸ Testimony of Shadrick Jefferies, Texas Secretary of State’s Office, *An Inquiry into Texas Voting Irregularities in Texas*, Southwest Voter Education Project, 22 Oct. 1980, Austin, Texas, 44. For examples of white vote fraud in South Texas aimed at minority voters, see, in the same document, the testimony of voting rights lawyer George Korbel, 188-206.

²⁹ For a more extended discussion of fraud, see Chap. VI below.

³⁰ Lori Mennite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (New York: Demos, 2003), 10.

CHAPTER II

RACE AND PARTY REALIGNMENT IN THE UNITED STATES

To appreciate the outrage of minority voters at the sort of programs exemplified by events in Louisville, it is useful to understand the tremendous sea change that has gradually taken place in American politics—one that has fundamentally restructured partisan alignments and played an important role in the Republican ascendancy during the last third of the Twentieth Century.

What happened, in essence, was a reversal of the roles the two major parties had played from the end of the Civil War to the New Deal. During that period of roughly eighty years, the Republican Party was identified as “the party of Lincoln.” Particularly in the eyes of African Americans, the GOP was seen as responsible not only for emancipation but also for Reconstruction, events in which Republicans had provided the leadership necessary to pass the Civil War Amendments giving civil rights—including voting rights—to blacks. The Democratic Party, particularly in the South, took the lead in curtailing those same rights for many African Americans. In consequence, most blacks who could still vote, from the Nineteenth Century on, gave strong support to the national Republican Party until the election of Franklin Roosevelt presaged the rising influence of a northern faction of the Democratic Party concerned with the needs of the poor, the working class, and ethnic and racial minorities. By the 1940s a racially and economically liberal wing of the Democratic Party began to emerge even in the South—one that was concerned with securing the right of blacks (and in Texas, Latinos) to be treated as equal citizens.¹

As the post-World War II civil rights movement gathered momentum, liberal factions of both parties gradually joined in common cause to attack the barriers blacks faced nationwide. This bipartisan coalition—encouraged by the monumental 1954 *Brown* decision (handed down by a unanimous Supreme Court whose chief justice was a Republican); by two Congressional civil rights acts in 1957 and 1960 passed by Congress with bipartisan support and signed by a Republican president; and by the growing mass protest movement—gradually set its sights on abolishing the southern Jim Crow institutions that, under state law, continued both to prevent blacks from receiving equal treatment in public accommodations and to prevent blacks from voting. Put differently, by the late 1950s racial progressives of both parties were sufficiently numerous and sufficiently concerned with racial justice to collaborate more and more effectively in efforts to achieve it.²

This bipartisanship on civil rights continued with passage of the Civil Rights Act of 1964—which outlawed the southern Jim Crow laws—and the Voting Rights Act of 1965, a tough new law guaranteeing the right to vote through effective, wide-ranging enforcement mechanisms overseen by the U.S. Department of Justice. The most cohesive bloc of Democrats voting against both laws consisted of southern white

¹ For a description of the racial realignment described here and in the paragraphs below, see Edward G. Carmines and James A. Stimson, *Issue Evolution: Race and the Transformation of American Politics* (Princeton: Princeton University Press, 1989), Chapter 2.

² *Ibid.*, 37.

legislators—a fact that was deeply troubling to Lyndon Johnson, the southern Democratic president whose superb leadership on racial matters at that crucial point in American history was in large measure responsible for the so-called “Second Reconstruction.”³

Reversing the Democrats’ successful efforts during and after the first Reconstruction to wall blacks out of public life, these two laws presented tantalizing possibilities to the two parties, both of which consisted of a liberal and conservative wing. The conservative Democrats were based disproportionately in the South, and the whites in that region, led by such figures as Mississippi Senator James Eastland, Alabama Governor George Wallace, and South Carolina Senator Strom Thurmond—the latter of whom had headed a “Dixiecrat” third-party presidential ticket in 1948 to protest civil rights planks in the national Democratic Party’s platform—fought hard to maintain racial segregation and black disfranchisement. Their rallying cry was “states’ rights,” shorthand for the maintenance of the Jim Crow system. Liberal Republicans, such as New York Governor Nelson Rockefeller, Pennsylvania Senator Hugh Scott and Governor William Scranton, and Connecticut Senator Prescott Bush (father and grandfather of men who as presidential candidates would actively court southern whites, sometimes with racial appeals), were concentrated in the Northeast. Many in the progressive Republican leadership ranks belonged to the wealthy Eastern Seaboard establishment. There were, of course, sections of the nation in which conservative Republicans were gaining strength, such as the southwestern states—particularly Texas, Arizona, and California—areas where “Anglos,” or non-Hispanic whites, were worried by the potential growth of the Hispanic population, which tended to vote Democratic.

Republicans nationally were at a crossroads with regard to party ideology generally and racial strategy in particular. While blacks had gradually begun to desert the party of Lincoln from the New Deal on, their voting patterns in the 1950s had demonstrated that they were not securely in the Democratic camp. In 1956 Dwight Eisenhower, whose Democratic opponent Adlai Stevenson had soft-pedaled civil rights to pacify southern whites, received 40 percent of the black vote (and as much as 60 percent in many southern black communities).⁴ And while Kennedy won about 70 percent of the black vote in 1960, that support could not be attributed to a significantly stronger civil rights posture than Nixon’s—there was little distinction between them on that score—but primarily to Kennedy’s having sent a letter expressing concern to Coretta Scott King when her husband had been sentenced, on a technicality, to four months in a backwater Georgia prison for participating in a sit-in at an Atlanta restaurant. (Neither Nixon nor President Eisenhower expressed concern.)⁵

The racially liberal wing of the GOP saw that the black vote was not firmly Democratic and estimated that, in close elections such as the one in 1960, a unified black vote could provide the margin of victory in certain key northern states. Republican advocates of civil rights therefore urged it to remain true to its tradition as the party of Lincoln. They argued that the best course of action, not only for narrow partisan purposes but for the sake of racial justice, was to support the civil rights struggle, destroy the Jim Crow system, and not cede this important voting bloc to the Democrats.

³ Ibid., 40-42.

⁴ Ibid., 35-36, 46.

⁵ Ibid., 46; Theodore H. White, *The Making of the President 1960* (New York: Atheneum Publishers, 1961), 315, 321–23.

Republican conservatives, on the other hand, saw a great opportunity to entice into their party the southern white Democrats who had so desperately—and sometimes murderously—tried to maintain Jim Crow. The whites in the eleven states of the old Confederacy were more numerous than those of the nation’s blacks, and—even more important—southern whites greatly outnumbered blacks in the southern states, although blacks were disproportionately concentrated there. The Republican national convention in 1964 would become a referendum of sorts on which strategy the party would pursue—not only in that year’s presidential campaign but, as it turned out, in succeeding campaigns right into the Twenty-first Century. The top contenders for the nomination were New York Governor Nelson Rockefeller and Pennsylvania Governor William Scranton, representing the civil rights wing of the party, and Arizona Senator Barry Goldwater, whose hard-right positions on a host of issues gave the convention a dramatic choice.

Goldwater and the Republican Southern Strategy

Goldwater, a native Arizonan and heir to a department store fortune in Phoenix, was a libertarian conservative, deeply suspicious of the federal government except for purposes of national defense. On racial matters, however, he had liberal instincts, supporting local integration efforts in Phoenix, a city which in the 1950s had a small black and Latino population.⁶ Even so, he was on record by 1960 as favoring a “states’ rights” solution to school desegregation and opposing on that basis the U.S. Supreme Court’s recently decided *Brown v. Board of Education* decision. The tenor of his speeches to southerners in the presidential election that year caused presidential candidate Kennedy on one occasion to refer to Goldwater’s “Confederate uniform that he has been using in the South.”⁷

The following year, 1961, Goldwater went a step further, blaming Nixon’s defeat on his progressive civil rights plank, which Nixon had adopted at the urging of Governor Rockefeller.⁸ Also in 1961, speaking to the Republican Southern States Regional Conference in Atlanta, Goldwater said, “I wouldn’t like to see my party assume that it is the role of the Federal Government to enforce integration in the schools.” This statement occurred four years after President Eisenhower, by mobilizing federal troops to ensure the desegregation of Little Rock High School in Arkansas, had done just that—an action Goldwater had criticized.⁹ The senator then went on to tell the same audience, “We’re not going to get the Negro vote as a bloc in 1964 and 1968, so we ought to go hunting where the ducks are.”¹⁰ In short, Goldwater seemed ready to point his party in a very different direction on civil rights policy from the one it had traditionally taken.

In the wake of events in Birmingham in the summer of 1963, when the city’s Commissioner of Public Safety, Bull Connor, directed that dogs, fire hoses, and club-wielding policemen be used to quell peaceful civil rights protests in that Alabama city, President Kennedy delivered what has been called “the most memorable speech of his

⁶ Fred J. Cook, *Barry Goldwater: Extremist of the Right* (New York: Grove Press, Inc., 1964), 52.

⁷ Barry Goldwater, *The Conscience of a Conservative* (Sheperdsville, Kentucky: Victor Publishing Company, Inc., 1960), 31-37; White, *The Making of the President 1960*, 327.

⁸ White, *Ibid.*, 203.

⁹ Cook, *Barry Goldwater*, 155.

¹⁰ *Ibid.*, 155-6.

presidency,” defending the civil rights of African Americans.¹¹ A few days later, on June 19, Kennedy sent a comprehensive civil rights bill to Congress—one much stronger than the bill he had initially sent the previous February. However, civil rights advocates feared that Goldwater’s rise to national prominence would cause Kennedy to proceed cautiously and perhaps compromise key provisions. That fall Andrew Young, an aide to the Rev. Martin Luther King, Jr., told him that Kennedy’s moderation on civil rights—and that of his brother Robert—reflected their fear that Goldwater would be the Republican presidential candidate in 1964. The Kennedys’ effort “to maintain a more moderate image,” Young told King, “could do us a great deal of harm between now and the ’64 elections.”¹²

Shortly thereafter, President Kennedy was assassinated, and Lyndon Johnson, his successor, made passage of the Civil Rights Act of 1964 a top legislative priority. He made it clear that he would use his formidable knowledge and skills developed as a U.S. Senator to shepherd it through Congress intact. As summarized by political scientists Edward Carmines and James Stimson, the bill

Barred discrimination in public facilities and accommodations, granted the attorney general the power to initiate suits against public schools that practiced segregation, forbade job discrimination by employers or unions, extended efforts to assure the right to vote, allowed the Justice Department to sue to desegregate state and local facilities, and provided that federal funds would be withheld from any federally funded program or activity that practiced discrimination.¹³

The historical context in which the bill was debated was extraordinary. That summer Mississippi Klansmen “were responsible for at least 35 shooting incidents and 6 murders, the burnings of 65 homes and churches, and the beatings of at least 80 [civil rights] volunteers,” according to the historian Joshua Zeitz.¹⁴ It was the summer young civil rights workers Andrew Goodman, Michael Schwerner, and James Cheney, two whites and a black, were murdered in Neshoba County, Mississippi. The House of Representatives voted by a margin of 290 to 130 in favor of the bill. A larger proportion of Republican representatives (78 percent) than Democrats (61 percent) supported it. The strongest opposition in both parties came from southerners. In the Senate, southern senators led the longest filibuster in history against it. Finally, in June a vote for cloture—then requiring a two-thirds majority—brought the filibuster to an end. In this vote, too, a higher proportion of Republicans than Democrats voted affirmatively. Only 6 of the 33 Republicans voted against cloture and thus for continuing the southerners’ filibuster. Goldwater was one of them. Then a final roll-call vote on the bill was taken on June 19, and it passed 73 to 27, with Goldwater again voting no. His was one of only eight no votes from outside the South.¹⁵ Why did he do so? The Republican southern “duck hunting” strategy undoubtedly played a part. But perhaps there were other causes

¹¹ Carmines and Stimson, *Issue Evolution*, 40.

¹² David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: Random House, Vintage edition, 1988), 303.

¹³ Carmines and Stimson, *Issue Evolution*, 43.

¹⁴ Joshua Zeitz, “Democratic Debacle,” *AmericanHeritage.com* (June-July 2004) http://www.americanheritage.com/xml/2004/3/2004_3_feat_0.xml.

¹⁵ Carmines and Stimson, *Issue Evolution*, 42-43.

as well. A friend of the senator told President Nixon's counsel, John Dean, that Goldwater had explained his vote this way:

[H]e said he had sought the best legal advice he could get, at the time, as to whether the law was constitutional. He said he was advised that it was unconstitutional, and likely would be so found by the Supreme Court. His advice came from the most conservative lawyer he'd ever met—Bill Rehnquist.¹⁶

It is almost impossible to convey, in 2004, how important the passage of the 1964 Civil Rights Act was perceived to be at the time—both by advocates of civil rights and by segregationists. It was one of those defining watershed moments in American history—“a time to stand and be counted,” in the words of presidential campaign historian Theodore H. White. “Barry Goldwater stood in Washington to be counted. And he voted against cloture, in effect voting against the Civil Rights Bill (which he was to do nine days later); and also, in effect, declaring that the apparent Republican nominee for the Presidency was unalterably opposed to intervention by the Federal Government to secure the human liberties and civil rights of all its citizens, black or white, in any state where such fundamental rights might have been denied by previous Constitutional interpretation of states' rights.”¹⁷

“Almost overnight,” historian Adam Fairclough writes, “the South's elaborate structure of racial segregation collapsed. Jim Crow had finally expired.”¹⁸ When Goldwater was nominated as the Republican standard-bearer on July 15, less than two weeks after Johnson had signed the Act, the Rev. King denounced the event as “unfortunate and disastrous.” Goldwater, King said, “articulates a philosophy which gives aid and comfort to the racist.”¹⁹ As if to bear him out, the only states in addition to Arizona to give their electoral votes to Goldwater in November were the five Deep South states of Mississippi, Alabama, South Carolina, Louisiana, and Georgia, in which a relatively small proportion of African Americans were able to vote. (Less than 1 percent of voting-age blacks in Mississippi were registered to vote in 1964, a state in which Goldwater received 87 percent of the total vote.)²⁰

The Southern Strategy Endures

LBJ's landslide victory in November appeared initially to be an overwhelming repudiation of Goldwater's racial conservatism, as did the strong bipartisan support the next year for the Voting Rights Act. But appearances were deceiving. Gradually, the influence of the civil rights wing of the Republican Party began to shrivel, partly because the Democrats continued to champion civil rights (thus maintaining strong black

¹⁶ John W. Dean, *The Rehnquist Choice: The Untold Story of the Nixon Appointment That Redefined the Supreme Court* (New York and other cities: The Free Press, 2001), 129. The friend of Goldwater's quoted by Dean is Richard Moore. Goldwater also asked the advice of Yale Law Professor Robert Bork, who concurred with Rehnquist. See Rick Perlstein, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (New York: Hill and Wang, 2001), 363.

¹⁷ Theodore H. White, *The Making of the President 1964* (New York: Atheneum Publishers, 1965), 155.

¹⁸ Adam Fairclough, *Better Day Coming: Blacks and Equality, 1890-2000* (New York: Viking 2001), 282.

¹⁹ Garrow, *Bearing the Cross*, 340.

²⁰ Carmines and Stimson, *Issue Evolution*, 45, 49.

support), partly because many succeeding Republican candidates and almost all Republican presidents made racial appeals—some subtle, some otherwise—to southern whites still angry at federal abolition of the Jim Crow system, the re-enfranchisement of African Americans, and various federal policies supported by Democrats seen as giving special consideration to blacks.²¹

One of the least subtle of these appeals was presidential candidate Ronald Reagan’s decision to launch his post-convention campaign in 1980 by appearing at the Neshoba, Mississippi, County fair—the county still notorious for the murders of Goodman, Schwerner, and Cheney.²² The fair, first organized in 1889, had a long tradition of featuring segregationist politicians as speakers. Reagan, who was well-known for having voiced opposition to both the 1964 Civil Rights Act and the 1965 Voting Rights Act, gave a speech advocating “states’ rights” to the almost all-white audience of 10,000, which responded with thunderous applause.²³

In summary, the election of 1964 is crucial to understanding the dynamics of partisan politics in the forty subsequent years. The American party system, observe Carmines and Stimson, “was fundamentally transformed during the mid-1960s. The progressive racial tradition in the Republican Party gave way to racial conservatism, and the Democratic Party firmly embraced racial liberalism. These changes unleashed political forces that permanently reshaped the contours of American politics.”²⁴

The national black and Latino leadership, as well as many of the rank-and-file in minority communities across the nation, are still poignantly aware of the role race has played in transforming the American party structure over the past generation. The efforts of some Republicans to focus ballot security programs primarily in black and Latino neighborhoods thus rubs salt in old wounds. To many minority voters, it is as though the historic animus towards their racial and ethnic groups harbored by segregationist white Democrats of yore has been passed on to modern white Republicans, and finds dramatic expression in the behavior of “ballot security activists” in minority precincts at election time. Acting on an unproven stereotype of minority precincts as rife with fraud and chicanery, such Republicans eagerly send teams into these precincts to “observe,” to challenge—and sometimes to misinform and to intimidate—racial and ethnic minority voters, who still live in the shadow of massive historical disfranchisement.

²¹ For a discussion of these post-1964 trends, see *ibid.*, 47-58.

²² Andrew Jacobs, “Southern Town Struggles With a Violent Legacy; Impact of Killings Lingers After 40 Years,” *The New York Times*, 29 May 2004, A9.

²³ Douglas E. Kneeland, “Reagan Campaigns at Mississippi Fair,” *The New York Times*, 4 Aug. 1980, A11; Kneeland, “Reagan Urges Blacks to Look Past Labels and to Vote for Him,” *The New York Times*, 6 Aug. 1980, A1.

²⁴ Carmines and Stimson, *Issue Evolution*, 58.

CHAPTER III

THE REHNQUIST CONFIRMATION HEARINGS: SHEDDING LIGHT ON BALLOT SECURITY PROGRAMS IN ARIZONA

GOP ballot security programs gained national attention in the fall of 1971, after President Richard Nixon nominated William H. Rehnquist to the U.S. Supreme Court. The nomination surprised observers. Nixon and his staff had kept their consideration of Rehnquist quiet, and Nixon, in fact, had decided on him only the day before the public announcement.¹ His hesitation and secrecy was a consequence of previous confirmation battles. Opposition in 1969 to Nixon's Supreme Court nominees, conservative southerners Clement Haynsworth and G. Harrold Carswell, forced the president to withdraw their names. A weary Senate later confirmed Harry Blackmun and Warren Burger.² In 1971 few senators opposed Nixon's nomination of Lewis Powell, but public concern about Rehnquist's stance on civil rights arose soon after the surprise announcement. Opponents believed he had worked against civil rights, and part of the evidence they offered was information about his involvement in the Arizona Republican Party and GOP ballot security programs.

Rehnquist became active in the Arizona Republican Party after completing his clerkship for Supreme Court Justice Robert H. Jackson in June 1953.³ It was an exciting time to join the Arizona GOP. The state had become a Democratic stronghold in the 1930s, with the number of Republican registered voters declining to an all-time low of 12 percent by 1940.⁴ The narrow victories of Republicans Barry Goldwater to the U.S. Senate and John Rhodes to the U.S. House of Representatives (the first Arizona

¹Justices Hugo Black and John Harlan had fallen ill and left two vacancies on the court in September 1971. Nixon wanted a southerner, a conservative, and a relatively young candidate. After considering several candidates, he finally settled on Lewis Powell and Rehnquist. The latter had been responsible for vetting the candidates in the Department of Justice until his name was taken seriously into consideration. For detailed information on the nominating process see John Dean, *The Rehnquist Choice: The Untold Story of the Nixon Appointment that Redefined the Supreme Court* (New York: The Free Press, 2001).

²Dean argues that Nixon intended to significantly reshape the court when he became president, even intimidating Supreme Court justices to try to secure their resignations. Dean, *The Rehnquist Choice*, 1-9.

³William Hubbs Rehnquist was born on October 1, 1924 in Milwaukee, Wisconsin. He graduated Phi Beta Kappa with a degree in political science from Stanford in 1948. He later earned an M.A. in political science from Stanford and an M.A. in government from Harvard. In 1952 he graduated from Stanford Law School and then clerked for Justice Jackson for eighteen months. In 1953 Rehnquist moved to Phoenix where he practiced law with four different firms until he moved to Washington, D.C. in 1969 to work as Assistant Attorney General in the Office of Legal Counsel, Department of Justice. Richard Kleindienst had recommended Rehnquist to head the Office of Legal Counsel after he took the No. 2 position in the Justice Department. (Rehnquist had become a trusted friend and adviser to then-Arizona state party chairman Kleindienst in the 1950s.) In 1971 Rehnquist was 47 years old. Derek Davis, *Original Intent: Chief Justice Rehnquist and the Course of American Church/State Relations* (Buffalo, New York: Prometheus Books, 1991), 3-6. On Rehnquist's relationship with Kleindienst, see David G. Savage, *Turning Right: The Making of the Rehnquist Supreme Court* (New York: John Wiley & Sons, Inc., 1993), 39.

⁴Republican voter registration dropped from 33 percent of the total in 1928 to just 12 percent in 1940. Between 1933 and 1951, the GOP did not elect a single representative to the Arizona senate. In the Arizona house during those same years, "Republican representation reached a high of 11 out of 72 seats." David R. Berman, *Arizona Politics and Government: The Quest for Autonomy, Democracy, and Development* (Lincoln: University of Nebraska Press, 1998), 48-50.

Republican ever elected to the U.S. House) in 1952 revived the state's competitive two-party system. Particularly noteworthy was the fact that Goldwater defeated Ernest McFarland, the Democratic majority leader of the Senate. Republicans also made sharp inroads in the state legislature that year, and the GOP was suddenly a force to be reckoned with in Arizona. Goldwater won a landslide victory in 1958, although Arizona's black precincts voted heavily against him.⁵ He won this election, in part, with the help of volunteers like Rehnquist and Sandra Day O'Connor—bright, aspiring white professionals who wanted to build a national Republican party reflecting their conservative values.⁶

Several factors aided the Republicans. Conservative newcomers from other states, hardworking volunteers, a pro-GOP press, and popular candidates like Barry Goldwater contributed to their success. They also benefited from a split in the Democratic Party between liberal activists, many of whom had moved to Arizona after 1945, and the so-called Pinto Democrats, traditional conservatives who were alienated by the national Democratic Party's increasing support for black civil rights.⁷

Nonetheless, while Republicans made steady progress after 1952, electoral contests in the state remained highly competitive.⁸ In this context, blacks and Latinos played an important role. Both groups on the whole were desperately poor. Their situation—as measured by the degree of residential and school segregation, exclusion from public accommodations by an informal Jim Crow system, and exclusion as well from the local political system—was not all that different from that of blacks in the South.⁹ Barry Goldwater's butler, Otis Burns, told an interviewer many years later that the city “wasn't any better than a southern town.”¹⁰

Blacks in 1960 made up 4.8 percent of Phoenix's residents, having declined from 6.5 percent in 1940. Residents with Hispanic surnames, while growing in numbers along with the general population, composed 8.2 percent in 1960.¹¹ For various reasons, including their low socioeconomic status and their younger average age, these two groups composed a much smaller percentage of the city's actual voters—probably less than 10 percent combined.

⁵ Robert Alan Goldberg, *Barry Goldwater* (New Haven: Yale University Press, 1995), 132; Sheryl Gay Stolberg, “Daschle Has Race on His Hands and Interloper on His Turf,” *The New York Times*, 23 May 2004, 20.

⁶ Goldberg, *Barry Goldwater*, 127.

⁷ Berman, *Arizona Politics and Government*, 52-53, 63. According to Berman, many conservative Democrats retained their registration in the Democratic Party to influence politics in their counties but often voted for Republicans. “Pinto” is Spanish for a horse of two colors.

⁸ Republican gains increased faster in the 1966 election because that year a federal court instituted a new population-based apportionment system for the Arizona senate and house. The previous geographically based system favored farmers, ranchers, and miners. The new plan gave significant weight to the Republican stronghold in Phoenix (Maricopa County). For the first time in Arizona history, Republicans captured the state house and senate. Berman, *Arizona Politics and Government*, 54-56.

⁹ Bradford Luckingham, *Phoenix: The History of a Southwestern Metropolis* (Tucson: The University of Arizona Press, 1989), 171-76; Calvin Goode interview with Mary Melcher on January 24, 1990 (Arizona Historical Foundation, Hayden Library, Arizona State University). See also Melcher's article, “Blacks and Whites Together: Interracial Leadership in the Phoenix Civil Rights Movement,” *Journal of Arizona History* 32 (Summer 1991): 196-216.

¹⁰ Goldberg, *Barry Goldwater*, 88. See also 37-38, 88-89.

¹¹ Leonard E. Goodall, “Phoenix: Reformers at Work” in Goodall, ed., *Urban Politics in the Southwest* (Tempe: Institute of Public Administration, Arizona State University, 1967), 111.

Still, in spite of their small proportion of the electorate, Republicans took minority voters seriously—not as a group to be won over, but as one that could frustrate their aims, particularly when elections were tight. Historical memory also came into play. Democrats, after all, had taken over the state in the 1930s with the support of new voters and Latinos. And blacks had demonstrated they were not Goldwater fans.¹²

It is in this context that ballot security measures in Phoenix and elsewhere in Maricopa County, made famous by the Rehnquist hearings, can best be understood. The Republicans were especially blessed at this time with a perfect rationale for focusing on minority, low-income precincts that just happened to vote Democratic: a state law requiring that voters be literate in English. This law had been enacted shortly after statehood, as one historian described it, “to limit ‘the ignorant Mexican vote’ As recently as the 1960s, registrars applied the test to reduce the ability of blacks, Indians, and Hispanics to register to vote.” The literacy test would continue in use until prohibited by the Voting Rights Act of 1965. However, the state of Arizona went to court and succeeded in getting it reinstated. Amendments to the Voting Rights Act in 1970 imposed a temporary nationwide ban on literacy tests, and this became permanent as a result of a 1971 court decision. The Arizona legislature did not officially repeal the test until 1972—the year Rehnquist became a member of the Supreme Court. But during the Republican ascendancy in Arizona, the literacy test was a key tool of minority vote suppression. As Arizona political historian David Berman describes it:

Anglos sometimes challenged minorities at the polls and asked them to read and explain “literacy” cards. Intimidators hoped to discourage minorities from standing in line to vote.¹³

Challenging Voters in Phoenix Minority Precincts

Experiments with ballot security in Phoenix began at least as early as 1954, but the first large-scale ballot security drive took place in 1958 when the Arizona Republican Party sent volunteers and party leaders to 90 percent of Maricopa county’s 220 polling places in order to turn out the Republican vote and to challenge Democratic voters’ qualifications. The first basis for challenge was residency. Republicans had mailed campaign literature to 18,000 Democrats marked “Do not forward” and “Return postage guaranteed,” a tactic that the GOP would continue to use in various states for many years. The returned mail was collected to form challenge lists. Equipped with these lists of voters whose current address apparently did not correspond to their address of registration, GOP challengers tried to disqualify the Democratic voters if they showed up at the polls.¹⁴ In terms of minority voting rights, a serious problem with this tactic was

¹² Berman, *Arizona Politics and Government*, 48-49.

¹³ *Ibid.*, 75. See also Venita Hawthorne James, “Arizona’s legacy of prejudice,” *Arizona Republic*, 12 Jan. 1991, A2; *Apache County v. United States*, 256 F. Supp. 903 (D.D.C. 1966); and *Ely v. Klahr*, 403 U.S. 108 (1971). For more on the relationship between minority voters and the political parties, see Berman, 64-65, 74-80.

¹⁴ “Some GOP Vote Challengers Face Criminal Charges For Holding Posts,” *Arizona Republic*, 5 Nov. 1958, 4. The pro-GOP paper reported that Democrats were “obviously surprised by the Republican program.” Some Democrats retaliated in 1960 with postcards to 349 Republican voters in District 15 warning them of “punishment” if they moved and voted in their former precinct. The unspecified punishment included the loss of vote and perjury penalties for making false affidavits. The Democratic list

that, in general, there are many reasons why a “Do Not Forward” letter can be returned: it might have been delivered to the wrong address, for example; or the registration list the challengers worked with might have been out of date or inaccurate. Moreover, partisan activists can make mistakes—unintentional or otherwise—in matching the names on the returned letters with the names on the registration lists they are using.

Voting rights lawyer Dayna Cunningham has marshaled evidence to raise serious questions about the fairness of challenges or purges based on address verification. Among the most important of these is simply poor mail delivery in such areas. Both Internal Revenue Service and census data “suggest that a major contributor to low response rates in minority communities may be ineffective mail delivery,” she writes.¹⁵ Yet once a voter’s name is on the Republicans’ challenge list, he or she is the target of a challenge on Election Day, even if qualified to vote. Each voter confronted by a challenge slows down the line. And, depending on how self-confident the voter (and how knowledgeable about the voting process), and how aggressive the challenger, the voter will either persevere or give up.

The second basis for challenge in 1958 was literacy: voters had to be able to read from the U.S. Constitution, if challenged. On Election Day, Republicans sent challengers to confront potential voters with passages from this document. According to witnesses, the challengers (described as Anglos) flanked voters (described as blacks or Latinos, and often elderly) and asked them to read aloud a passage from the Constitution printed out on a note card. If the voter refused or could not read satisfactorily, the challengers often asked the person to leave the voting line, although the law stipulated that the challenger could not harass or intimidate the voter.¹⁶ To make matters even more confusing in this particular election, contrary to the law, the Maricopa Republican county chairman assigned poll-watchers and challengers to selected precincts, when the official precinct committee had sole legal jurisdiction to do so.¹⁷

Opponents of these practices argued that the GOP ballot security programs attempted to disfranchise qualified minority voters. Richard G. Kleindienst, Arizona GOP chairman in the late 1950s and later Attorney General under President Nixon, denied it, and claimed in 1962 that Republicans “challenge in precincts where it has been demonstrated in the past that some parts of the Democratic organization in Maricopa County try to crowd into the polls at the last minute people who are not qualified to vote.” *The Arizona Republic* only mentioned southside minority precincts, however, as

was compiled on the basis of returned mailings to registered Republicans. See Bill King, “Postcards Threaten GOP Voters,” *Arizona Republic*, 5 Nov. 1960, 8.

¹⁵Dayna L. Cunningham, “Who Are to be the Electors? A Reflection on the History of Voter Registration in the United States,” *Yale Law and Policy Review* 9 (1991): 393-4.

¹⁶ For descriptions of such challenges, see *Nominations of William H. Rehnquist and Lewis F. Powell, Jr.: Hearings Before the Committee on the Judiciary, United States Senate, Ninety-Second Congress, First Session on Nominations of William H. Rehnquist, of Arizona, and Lewis F. Powell, Jr., of Virginia, to be Associate Justices of the Supreme Court of the United States* (Washington D.C.: U.S. Government Printing Office, 1971), 295-6. (Hereinafter *Nominations 1971*.) This text describes challengers using the Arizona State Constitution. Under Arizona law, it was legal to use the U.S. Constitution to challenge voters. The Rev. George B. Brooks of Phoenix also described these kinds of challenges in an interview with Mary Melcher on January 31, 1990, (Arizona Historical Foundation, Hayden Library, Arizona State University). See also Melcher, “Blacks and Whites Together,” 208-9.

¹⁷ “Some GOP Vote Challengers Face Criminal Charges For Holding Posts,” *Arizona Republic*, 5 Nov. 1958, 4.

the ones in which Republican challengers were active that year. County Democratic chairman Vince Maggiore claimed that some of the challengers were arrogating authority reserved for precinct election officials. “There should be no place in Arizona for deliberate attempts to impede the voting of groups which have fought so hard for their rights,” he said. Other Democrats claimed some Republican challengers were asking voters to read sections of the Constitution “containing a lot of big and difficult words.”¹⁸ This interparty dispute over the focus and rationale of GOP ballot security efforts continues into the present century.

Events at a Polling Place in 1962: The 1971 Hearings

Rehnquist’s involvement in these disputed ballot security programs came to light near the end of the 1971 Judiciary Committee hearings when five witnesses sent sworn affidavits accusing him of challenging and harassing voters with literacy tests in the predominantly black Bethune precinct in 1964.¹⁹ Although they seem to have confused Rehnquist with Wayne Bentson, a Republican who challenged voters to read from his note card at the Bethune precinct in 1962 and was involved in a scuffle with a Democratic Party representative that year, accurate information that Rehnquist had trained GOP challengers prevented the Senate from ignoring the charges.²⁰ The fact that the FBI had investigated voting interference in Arizona in the 1960s; relevant testimony from Clarence Mitchell, director of the NAACP Washington Bureau and legislative

¹⁸ Gene McLain, “Fight Erupts At South Side Precinct,” *Arizona Republic*, 7 Nov. 1962, 11. The fight here involved Republican challenger Wayne Bentson and Democratic Party representative Pat Marino. Several witnesses in Rehnquist’s 1971 confirmation hearings apparently confused Rehnquist with Bentson. Poll-watchers were active in seven minority south side precincts plus Sky Harbor, Parkview, and Okemah. *Ibid.* The 1962 Phoenix ballot security campaign also included turning out the Republican vote. In this non-presidential election, more than 70 percent of registered voters made the trip to the polls. The *Arizona Republic* credited the turnout to Republican organization. “Election Puzzles Experts,” *Arizona Republic*, 8 Nov. 1962, 11.

¹⁹ GOP ballot security programs were not the only reason for opposition to Rehnquist. After his 1971 nomination, a memo came to light which Rehnquist wrote during his clerkship for then-deceased Justice Robert Jackson in support of the 1896 *Plessy v. Ferguson* decision upholding the segregationist doctrine of “separate but equal.” Rehnquist claimed that the views were those of Jackson, not his—a contention strongly denied by Jackson’s long-time secretary, who called Rehnquist’s account “incredible on its face” and adding that Rehnquist has “smeared the reputation of a great justice.” See Tinsley E. Yarbrough, *The Rehnquist Court and the Constitution* (Oxford and New York: Oxford University Press, 2000), 1-5. A very strong case that the memo expressed Rehnquist’s views and not Jackson’s is found in Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality* (New York: Alfred A. Knopf, 1975), Vol. II, 765-82. Other issues that opponents raised included Rehnquist’s opposition to a public accommodations ordinance in Phoenix in 1964, to a civil rights march in Arizona during the spring of 1964, and to desegregation in Arizona high schools in 1967. Opponents also questioned his opposition to the publication of the Pentagon papers and his support for government powers of surveillance. *Nominations 1971*, 289-361, 483-92.

²⁰ The five witnesses were Democratic poll-watchers Robert Tate and Jordan Harris, the Rev. George B. Brooks, and the Rev. and Mrs. Snelson W. McGriff. Fred P. Graham, “2 Negroes From Phoenix, Ariz., Say Rehnquist Harassed Blacks at Polls in 1964,” *The New York Times*, 16 Nov. 1971, 32; Donald Janson, “Rights Aide Calls Rehnquist Racist,” *The New York Times*, 28 Nov. 1971, 46. For the information on Wayne Bentson, see McLain, “Fight Erupts At South Side Precinct,” 1, 11. Rehnquist denied ever being in the Bethune Precinct on Election Day 1964, which sheds little light on his role in this situation since the event took place in 1962. *Nominations 1971*, 492.

chairman for the Leadership Conference on Civil Rights; and a letter from Superior Court Judge Charles L. Hardy explaining in general terms how some of the state's voters were intimidated in 1962, prompted the Senate to submit written questions to Rehnquist.²¹ Judge Hardy's letter shed a harsh light on the GOP ballot security activities:

In each precinct [with overwhelmingly Democratic registrants] *every* black or Mexican person was being challenged on this latter ground [that he or she was unable to read the Constitution of the United States in the English language] and it was quite clear that this type of challenging was a deliberate effort to slow down the voting so as to cause people awaiting their turn to vote to grow tired of waiting and leave without voting. In addition, there was a well organized campaign of outright harassment and intimidation to discourage persons from attempting to vote. In the black and brown areas, handbills were distributed warning persons that if they were not properly qualified to vote they would be prosecuted. There were squads of people taking photographs of voters standing in line waiting to vote and asking for their names[.] There is no doubt in my mind that these tactics of harassment, intimidation and indiscriminate challenging were highly improper and violative of the spirit of free elections."²²

The Senate committee's questions on ballot security issues concerned Rehnquist's involvement in elections from 1958 to 1968. Rehnquist was asked if he had ever personally challenged voters; if he had trained or counseled poll-watchers or challengers; if he had explained the bases on which proper challenges could be made; if he had ever prepared, selected, or advised on the use of printed passages from the Constitution for literacy challenges; when such practices came to his attention; and if he thought the practices lawful or took action to curb them. Rehnquist responded: "In none of these years did I personally engage in challenging the qualifications of any voters." He denied recruiting challengers but admitted that he had spoken at a challengers' school to train them.²³ He also distanced himself from the practice of literacy challenges, which he asserted he never prepared, selected, or advised on. "No such practice came to my attention until sometime on Election Day, 1962," Rehnquist claimed. "The manner in which I saw this type of challenge being used, when I visited one precinct, struck me as amounting to harassment and intimidation, and I advised the Republican challenger to stop using these tactics."²⁴

Rehnquist also claimed that when he saw one Republican challenger "going down the line and requiring prospective voters to read some passage of the Constitution, rather than presenting his challenge to the Election Board in an orderly way," that he "advised him to stop this practice, and to make any challenges in the manner provided by the law."²⁵ In response to Judge Hardy's description of GOP challengers in 1962 deliberately slowing down voting lines to discourage people from voting, and intimidating and

²¹ For Mitchell's testimony see *Nominations 1971*, 289-98.

²² Letter from Hardy to Mississippi Senator James Eastland, Chairman of the Committee on the Judiciary, as quoted in *Nominations 1971*, 486.

²³ *Nominations 1971*, 491. "The purpose of my talk [he wrote] was to advise the various persons who were to act as challengers as to what authorization was required in order to enable them to be present in a polling place during the time the election was being conducted, and also as to the various legal grounds for challenging as provided by applicable Arizona law. My recollection is that I simply recited the grounds set forth in the Arizona Revised Statutes as to the basis for challenge, the method of making the challenge, and the manner in which the challenge was to be decided by the Election Board of the precinct in question."

²⁴ *Ibid.*

²⁵ *Ibid.*

harassing voters by photographing them and recording their names, Rehnquist explained that before 1962 Republican challengers concerned themselves with preventing unregistered persons or persons who had moved from voting. “I did not realize the change in emphasis of some of the Republican challengers in 1962 until sometime during Election Day of that year. I therefore feel that there was no connection between my role and the circumstances related by Judge Hardy.”²⁶

Rehnquist’s sworn response forced senators to decide whether they believed the nominee—who stated he had neither intimidated and harassed voters nor supported such ballot security measures—or whether they believed his opponents, who linked him to GOP ballot security efforts but who could not prove that Rehnquist himself had harassed and intimidated voters. (Affidavits from witnesses in the 1971 hearings confused Rehnquist with Bentson and the year 1964 with 1962.) John P. Frank, “a leading constitutional and Supreme Court expert” in Phoenix, wrote in the *Washington Post* that Rehnquist “has been an intellectual force for reaction. . . . He honestly doesn’t believe in civil rights and will oppose them.”²⁷ The American Civil Liberties Union joined the debate, breaking a fifty-two year position of never opposing a nominee for public office, when it publicly called for the defeat of Rehnquist as “a dedicated opponent of individual civil liberties.”²⁸

The Court had been in session since early October with two vacancies. And a national debate on Rehnquist’s resistance to civil rights brought attention and controversy to the hearings. The senators were under pressure, and a vote was finally taken. It was not an easy confirmation for Rehnquist: 68 senators sided with him and 26 with his opponents. Lewis Powell’s simultaneous confirmation was much more decisive at 89-1.²⁹

Events at a Polling Place in 1962: 1986 Hearings

Publicity about ballot security programs in Arizona resurfaced in 1986 when President Reagan nominated Rehnquist for Chief Justice. Ironically, 1986 was the same year the GOP was involved in a major scandal regarding efforts to disfranchise blacks in Louisiana using a type of return-mail registration verification Arizona Republicans had used in the 1950s.³⁰ This time Rehnquist’s opponents were better organized and more credible. During his confirmation hearings, Senator Edward Kennedy of Massachusetts charged that Rehnquist “led a Republican Party ballot security program designed to disenfranchise minority voters” in the early 1960s.

In accord with a 1971 *New York Times* article stating that Rehnquist was co-chairman of the GOP ballot security program in 1960, as well as chairman of the lawyer’s committee of the Maricopa County Republican Party who also trained challengers in 1962, and chairman of the ballot security program in 1964, Kennedy asserted that Rehnquist “held a high and responsible position in the election day apparatus from at

²⁶ *Ibid.*, 492.

²⁷ Quoted in Donald E. Boles, *Mr. Justice Rehnquist, Judicial Activist* (Ames, Iowa: Iowa State University Press, 1987), 77.

²⁸ *Ibid.*, 11.

²⁹ Davis, *Original Intent*, 7.

³⁰ See Chapter VI below, Case 4.

least 1960 to 1964, a period that saw very substantial harassment and intimidation of voters in minority group precincts.”³¹

New and credible witnesses also testified or submitted sworn affidavits about Rehnquist’s roles in ballot security programs. James Brosnahan, an Assistant U.S. Attorney in Arizona in 1962, later a U.S. Attorney, and in 1986 senior partner in a San Francisco law firm (with cases before the Supreme Court), provided the strongest refutation of Rehnquist’s sworn statements. During the Judiciary Committee hearings, he explained that he had not come forward in 1971 because he had not known that events in south Phoenix in 1962 were a focus of the hearings.³²

Unlike previous witnesses at the earlier hearings who mistook Rehnquist for another challenger, Brosnahan knew Rehnquist personally. He had attended bar association functions with him and had introduced his wife to him.³³ Brosnahan testified that he did not personally see Rehnquist challenge voters. However, in his official capacity as an Assistant U.S. Attorney, he was called to a polling place in 1962 in order to investigate claims of harassment. “At that polling place, I saw William Rehnquist, who was known to me as an attorney in the city of Phoenix,” Brosnahan asserted.³⁴ Rehnquist, he said, was the only challenger present when he arrived. The atmosphere was very tense, and the voters waiting in line told him that Rehnquist was challenging, and they complained about the aggressiveness of the challenging. Brosnahan talked with Rehnquist who “did not deny he was a challenger. At that time in 1962, he did not raise any question about credentials or any of that. He did not deny that.”³⁵

Brosnahan further testified that while talking to Rehnquist about the complaints against him, Rehnquist’s comments indicated that he had been challenging voters.³⁶ Brosnahan stated his views on events in south Phoenix in 1962. “Based on interviews with voters, polling officials, and my fellow assistant U.S. attorneys, it was my opinion in 1962 that the challenging effort was designed to reduce the number of black and Hispanic

³¹ *Nomination of William H. Rehnquist to be Chief Justice of the United States*, 99th Cong., 2nd sess., *Congressional Record*, 132, no. 118, daily ed. (11 September 1986): S12387; Fred P. Graham, “Rehnquist Role in Election Confirmed,” *The New York Times*, 13 Nov. 1971, 37. Rehnquist’s responsibilities, according to Kennedy, included the following: In 1960, Rehnquist supervised and assisted in the preparation of envelopes mailed to Democrats—largely in black and Mexican-American districts—which were the foundation of residency challenges; he recruited lawyers to serve on a lawyer’s committee; he advised challengers on the law; and he supervised in assembling returns of the mailings for challenging purposes. In 1962, Rehnquist again taught challengers the procedures they were to use. And, as in 1960, “he served as a troubleshooter, going to precincts at which disputes had arisen in order to help resolve them. In 1964, Rehnquist had overall responsibility for mailing out envelopes, recruiting challengers and members of the lawyer’s committee, and speaking, or seeing that someone spoke, at a training session of challengers.” (*Congressional Record*, S12387.) For more information on other contentious issues during the 1986 hearings, see Yarbrough, *The Rehnquist Court and the Constitution*, 1-11.

³² He came forward in 1986 because he received a call ten days prior to his appearance before the committee requesting his testimony. He claimed he would have had misgivings if he had not come forward. *Nomination of Justice William Hubbs Rehnquist, Hearings Before the Committee on the Judiciary, United States Senate, Ninety-Ninth Congress, Second Session*, Serial No. J-99-118 (Washington, D.C.: U.S. Government Printing Office, 1987), 1007.

³³ *Ibid.*, 1001, 1012. For Brosnahan’s entire testimony, see 984-1040.

³⁴ *Ibid.*, 985.

³⁵ *Ibid.*, 994.

³⁶ *Ibid.*, 1008-1009, 1011-12, 1038-39. For descriptions of voters identifying Rehnquist as an aggressive challenger see *Ibid.*, 1024-1026.

voters by confrontation and intimidation.”³⁷ “The thrust of the effort,” he continued later, “was to confront voters, to challenge them, in hope that they would be intimidated, that they would not stand in line, that they would be fearful that maybe they would be embarrassed.”³⁸

Other witnesses corroborated Brosnahan’s testimony that the nominee challenged minority voters in Phoenix and that the effects of those challenges were intimidating. Dr. Sydney Smith, a professor of psychology and former professor at Arizona State University, was not certain if it was Election Day in 1960 or 1962, but he was certain he heard Rehnquist tell two black voters in line, after asking them to read, “You have no business in this line trying to vote. I would ask you to leave.”³⁹ Melvin Mirkin, an attorney in Phoenix who supported Rehnquist’s nomination, testified that he saw Rehnquist intimidate voters by encouraging them to leave the line at a minority polling place and by instructing Republican challengers loudly enough for voters to hear that unregistered or illiterate people would not be allowed to vote.⁴⁰

These charges became a central obstacle to Rehnquist’s confirmation as Chief Justice. He again denied them and claimed that his recollection was not good enough to give more detailed information.⁴¹ When Kennedy asked Rehnquist if he challenged individuals, Rehnquist replied: “I don’t think you—I think it was simply watching the vote being counted.” Kennedy bore in: “Well you’d remember whether you challenged them now, Mr. Justice, wouldn’t you. Did you at any time challenge any individual?” Rehnquist tried to explain that a challenger was authorized by law to go to a polling place most often to watch the vote being counted. Kennedy then read aloud from Rehnquist’s 1971 affidavit in which the nominee swore that he did not intimidate or harass voters or encourage such behavior in 1964 or at any other time from 1958-1968. “So you might have challenged them,” Kennedy queried, “but you didn’t intimidate or harass them, I guess is the way I should conclude.” Rehnquist responded: “Well, I’ve answered all of your questions the best I can, I think.” Kennedy did not press further for an answer.⁴²

Senators again faced the choice of siding with Rehnquist or his opponents, only this time they had to decide whether a sitting Supreme Court Justice rather than a mere nominee to the court was lying. In making their decision, senators had to sort through confusing aspects of Rehnquist’s testimony. In 1986 Kennedy pressed Rehnquist on his 1971 affidavit in which Rehnquist wrote: “In none of these years [1958-1968] did I personally engage in challenging the qualifications of any voters.”⁴³ This carefully crafted statement did not mean that Rehnquist denied ever having been involved in the process of challenging voters at the polls. It seemed to mean that he did not personally confront or question them during those years. He could have presented a challenge to the

³⁷ Ibid., 989.

³⁸ Ibid., 1007.

³⁹ Ibid., 1054. For the entire testimony of Dr. Smith, see 1054-65.

⁴⁰ Ibid., 1040-48. See also Stuart Taylor Jr., “Rehnquist Says He Didn’t Deter Voters in 1960’s,” *The New York Times* 31 July 1986, A1, A15; and Robert Lindsey, “Rehnquist in Arizona: A Militant Conservative in 60’s Politics,” *The New York Times*, 4 Aug. 1986, A7.

⁴¹ Rehnquist had to refute testimony from several witnesses, including Arizona State Senator Manuel Peña. For an overview of the charges against Rehnquist, see “Excerpts from Questioning of Rehnquist in the Senate Judiciary Committee,” *The New York Times*, 31 July 1986, A14.

⁴² “Excerpts from Questioning of Rehnquist in the Senate Judiciary Committee,” A14.

⁴³ *Nominations 1971*, 491.

election board official “in the manner provided by the law,” and the official would have personally challenged the voter.⁴⁴ This, of course, contradicted the testimony of Brosnahan and Smith. There was also a question of chronology. Rehnquist denied “personally challenging” voters between 1958 and 1968, but according to a *New York Times* article, he admitted that he may have personally questioned voters’ literacy in 1954.⁴⁵

Senators also had to decide what defined harassment and intimidation in the context of legal literacy challenges to Arizona voters before 1964. Stuart Taylor, a journalist for *The New York Times*, opined that Rehnquist may not have equated challenging with stopping people in line at polling places and asking them to demonstrate their qualifications.⁴⁶ John Dean, former counsel to President Nixon, who claims he was the first to suggest Rehnquist as a candidate for the court in 1971, believes “that Rehnquist was not truthful about his activities in challenging voters.” But he added, contrary to the testimony of Brosnahan and others, “I don’t believe Rehnquist ‘harassed’ black voters ever, for that is not his style or nature. Yet I have no doubt he challenged black voters at a time when it was perfectly legal in Arizona to do so.”⁴⁷ Rehnquist’s careful language and his status as a sitting Supreme Court Justice were persuasive in the end. He was confirmed as Chief Justice.

Yet while the 1986 hearings did not prevent his elevation to Chief Justice, they dramatically brought attention to the Republican Party’s practice of purposefully targeting and intimidating minority voters under the guise of ballot security in the 1950s and 1960s. And they raised the question of how common that practice was a quarter century later, when Rehnquist was being grilled about it. To get a historical grasp of ballot security and vote suppression by the GOP since Rehnquist’s days as an activist lawyer, it is useful to examine the 1964 presidential election and the momentum the Republican ballot security program provided to such efforts in later years.

⁴⁴ “in the manner provided by the law” is the advice Rehnquist reportedly gave to a Republican challenger whom Rehnquist claimed he reprimanded in 1962 for personally questioning voters as they stood in line to vote. See above, 20.

⁴⁵ “Justice Rehnquist . . . also said he did not recall approaching any voters in those years [1958-1968] to question them about their qualifications or to ask them to prove their ability to read, as several people have alleged. But he said it was possible he had taken such an action in 1954.” Stuart Taylor, Jr., “Rehnquist Says He Didn’t Deter Voters in 1960’s,” *The New York Times*, 31 July 1986, A1.

⁴⁶ Stuart Taylor, Jr., “Rehnquist Says He Didn’t Deter voters in 1960’s,” A15.

⁴⁷ Dean, *The Rehnquist Choice*, 273.

CHAPTER IV

BALLOT SECURITY IN THE GOLDWATER CAMPAIGN: OPERATION EAGLE EYE

Near the time of the controversial events in which Justice Rehnquist figured in 1962, the Republican National Committee (RNC) incorporated a new, nationwide ballot security program called “Operation Eagle Eye” into its national strategy to win elections after Nixon’s narrow defeat in 1960. Republican leaders were convinced that voting irregularities in Texas and Illinois cost Nixon the election, the most closely decided presidential contest in history in terms of popular votes, and they were determined that fraud would not defeat their candidate in the future. (Evidence suggests the Daley machine in Chicago probably did steal the vote for Kennedy in Illinois. In Texas, however, irregularities favoring Democrats appeared to be counterbalanced by those favoring Republicans. Nixon needed both states to win in the electoral college.)¹ Operation Eagle Eye, outlined in the RNC’s 1964 ballot security handbook for party officials and volunteers, surpassed all previous attempts to organize and coordinate Republican efforts to monitor and win elections.²

Prior to 1964, regional and local GOP officials like those in Arizona had experimented with ballot security measures. Their success encouraged national GOP leaders to launch nationwide programs.³ The RNC first organized Operation Eagle Eye in 1962 to watch for vote fraud in the large cities.⁴ It was a trial run for the 1964 election,

¹ Nixon, who lost by 118,574 votes out of 68,838,219 cast, claimed he was defeated because Republicans failed to have enough poll-watchers. John H. Kessler, *The Goldwater Coalition: Republican Strategies in 1964* (Indianapolis: The Bobbs-Merrill Company, Inc., 1968), 171. References to voting irregularities in 1960 to justify the nationwide ballot security program are scattered throughout the Ballot Security Program folder of box 3H513 from the Barry Goldwater Collection, The Center for American History, The University of Texas at Austin. For examples see the unnumbered pages at the beginning of the handbook, 1, 34, 44, and the unnumbered pages near the end of the handbook entitled “Protect Our Victory.” Allen J. Matusow discusses the Republican charge that the 1960 election was stolen from them in *The Unravelling of America: A History of Liberalism in the 1960s* (New York: Harper and Row, 1986), 25-29.

² Harlington Wood, *Ballot Security: “Why not Victory?” for . . . The Republican Party in 1964*, “Republican National Committee—Special Projects 1964: Operation ‘Eagle Eye’ (copy of kit given key party workers),” Papers of the Democratic National Committee, Series I, Box 55, LBJ Library. (Hereinafter, “RNC 1964 Special Projects, LBJ Library.”)

³ The extent to which the RNC actually relied on Arizona ballot security experiments is not clearly established in documents, but several factors indicate that the Arizona experiments did capture the attention of Republican leaders. 1) Many Arizona Republicans held top positions in the highly centralized 1964 campaign, including candidate Barry Goldwater’s legislative assistant and campaign official, Dean Burch (who was also the 1964 RNC chairman). 2) Goldwater’s successful 1958 senatorial campaign, which used ballot security measures, received widespread attention because of his landslide victory. 3) RNC directions to use challenge lists based on returned mail closely resemble the Arizona pattern, although other state GOP parties employed this method to establish challenge lists too. Other tactics, like publicly announcing FBI interest in the election procedures, precede the 1964 handbook. For information on FBI and law enforcement attention to Arizona elections, see “U.S. to Scan Arizona Vote,” *Arizona Republic*, 3 Nov. 1960, 11; Gene McLain, “Fight Erupts at South Side Precinct,” *Arizona Republic*, 7 Nov. 1962, 1.

⁴ The 1962 ballot security plan developed out of a study on “big-city politics” that the RNC began in 1961 under the directorship of Ray C. Bliss, a national committeeman from Ohio. Cabell Phillips, “G.O.P. Opens Drive to Prevent Fraud,” *The New York Times*, 30 Oct. 1964, 25; James MacNees, “Republicans Set Up Program To Check Ballots In Coming Election,” *The Sun* (Baltimore), 13 Oct. 1964. MacNees’ article

when Republican strategists pushed to have poll-watchers in every precinct in the country (of which there were 176,500 in 1964).

Although the plan to cover every precinct proved to be overly ambitious, Eagle Eye was highly successful, at least in terms of organization. In 1964 the party enlisted the support of tens of thousands of volunteers to observe the election process. These volunteers concentrated their efforts in thirty-six metropolitan areas where Democratic majorities had overturned or threatened to overturn Republican leads built up in other parts of the state.⁵ Eagle Eye's concentration in Democratic metropolitan strongholds followed the 1962 pattern, but the attempted extension of the program in 1964 to every precinct in the nation was unprecedented. In largely rural Louisiana, for example, the GOP aimed to have 2,000 poll-watchers for the state's 2,219 precincts. In 1960, only 50 poll-watchers had worked Louisiana precincts.⁶

Hierarchies of Command

The RNC initiated the nationwide extension with a clear chain of command. At the head of the Ballot Security Program stood Harlington Wood, deputy director for ballot security, who worked under the director of political education and training Raymond Humphreys and RNC chairman Dean Burch.⁷ Wood's job was to promote the institution of state ballot security programs and to coordinate the efforts of state ballot security officers. Most of the responsibility for Republican ballot security programs fell to these state officers who were appointed by the Republican state chairmen.

Because states have their own voting laws and control their own election machinery, the state ballot security officer tailored the program to the particular

was sent with Wood's "Ballot Security Current Report," No. 4, 21 Oct. 1964. RNC 1964 Special Projects, LBJ Library. The emphasis on "big-city politics" continued after 1962 when RNC analyses of the mid-term elections concluded that Republicans had problems winning in big cities. "Republican National Committee Analysis, 1962," 25. Guide to the Alabama Republican Party Records, RG 545, Campaign and Elections Series, Box 9 – Accession 81-226, Auburn University.

⁵ According to the *Chicago Daily News*, Operation Eagle Eye had 10,000 poll-watchers for Chicago's 3,552 polling places. Most were to be concentrated in "the so-called 'river wards,' areas close to the Loop where the Democratic machine is traditionally strong." Eagle Eye in Chicago worked in conjunction with the Joint Civic Committee on Elections (2,000 watchers), the Citizens Honest Election Foundation (7,500 watchers), and the Non-Partisan Law Student Committee for Honest Elections (200 watchers paid \$15 per day). "250,000 Accredited to Watch City Polls," *Chicago Daily News*, 2 Nov. 1964, 1, 14. In Texas, Republicans had made arrangements for 10,000 Eagle Eye poll-watchers to work "in 5525 precincts, representing 96.8% of Texas registered voters." Stewart Davis, "10,000 Poll-watchers to Saturate State," *Houston Chronicle*, 29 Oct. 1964, 1-3. See also Cabell Phillips, "G.O.P. Begins Drive to Prevent Fraud at the Polls," *The New York Times*, 30 Oct. 1964, C25; "GOP Says Honest Vote Aim of Eagle Eye," *Washington Star*, 2 Nov. 1964. "Republican National Committee—Operation 'Eagle Eye' and Related Anti-vote Fraud Operations, 1964," Papers of the Democratic National Committee, Series I, Box 55, LBJ Library. (Hereinafter, "RNC Operation Eagle Eye, LBJ Library.")

⁶ Stanley Penn, "Policing the Polls," *Wall Street Journal*, 22 Oct. 1964, 1, 16. This article was sent out with Wood's "Ballot Security Current Report," No. 5, 23 Oct. 1964. RNC 1964 Special Projects, LBJ Library.

⁷ Wood reported directly to Burch. In October 1964 he was sending Burch weekly reports about ballot security measures across the country and posting particular information on large charts in the national conference room. "Ballot Security Current Report," No. 1, 7 Oct. 1964, 1. RNC 1964 Special Projects, LBJ Library.

circumstances of the state. After researching past voting irregularities and all state electoral laws and regulations, the state officer was expected to establish training courses for poll-watchers and, where permitted, challengers; to publicize the statewide ballot security program (to deter voting irregularities); to provide for the Election Day security network; and to act as a liaison with the national office. The state officer also divided the state into geographic districts and appointed district ballot security officers with the approval of the state chair. The district officer implemented the statewide program and helped secure the appointment of county or city ballot security officers. These local leaders recruited and trained volunteers in their own jurisdiction, publicized the local program, and oversaw Election Day activities.⁸

The General Outline of the 1964 Ballot Security Program included the following instructions:

- Create in each state an effective Ballot Security Organization under leadership of the State Ballot Security Officer.
 - Research and study State Election Laws, irregularities and errors, and how to combat and correct.
 - Attend national educational conferences for Ballot Security Officers.
 - Observe and report pre-election violations.
 - Recruit and train poll watchers and challengers, where permitted, to secure each precinct.
 - Appoint qualified and true Republicans as election officials in each precinct.
 - Determine that registration is being properly conducted.
 - Strive to improve canvassing methods to identify unqualified, non-existent voters and eliminate them from the lists.
 - Plan, schedule, supervise and teach training courses designed to eliminate fraud and error for Republican election officials, watchers, and challengers.
 - Prepare and distribute materials and check lists for study and reference by precinct officials.
 - Focus press attention on the problem and program.
 - Secure effective cooperation of law enforcement officials.
 - Set up an Election Day security network to advise and act on ballot irregularity matters.
 - Collect information in the event of prosecution or other proceedings following an election.
 - Determine that ballots and machines are safeguarded after the election.
 - Develop new plans and ideas to improve future operations by Ballot Security Officers, considering possible legislative amendments to improve the election laws for future elections.⁹

⁸ Wood, *Ballot Security*, 1-2.

⁹ Wood, *Ballot Security*, 2-3. In practice this outline proved difficult to follow. In the first place the RNC sent out the handbook at the end of September 1964. Oregon state ballot security officer Michael Walsh, for example, began work in mid-October. Yet within two weeks, Walsh accomplished a remarkable amount. See his report to Harlington Wood, 26 Oct. 1964, "Reports," Ballot Security Program folder, box 3H513, Barry Goldwater Collection, The Center for American History, The University of Texas at Austin.

The new ballot security program was basically precinct politics writ large, and its success depended on the precinct officials, poll-watchers, and, where permitted, challengers. RNC leaders knew that the task they turned over to the states presented unparalleled organizational challenges, so they encouraged state ballot security officers to find loyal and energetic volunteers.¹⁰ Wood acknowledged in his *Ballot Security* handbook that “it is obvious that this new effort, organized on such a scale and spreading into and throughout each state will require much effort, thought, initiative, energy, ingenuity, and pioneering which, under other circumstances, might be considered beyond the ‘call of duty.’ This must be borne in mind when selecting officer personnel.” He advised recruiting “physically and mentally capable ‘true’ Republicans,” from citizens’ groups, Young Republicans, Republican Women, Junior Chambers of Commerce, or other civic groups.¹¹

Keeping an Eagle Eye on Precinct Activities

The neighborhood activists and Republican precinct officials had several responsibilities. Before Election Day, they were asked to conduct a thorough canvass to eliminate from the lists all unqualified, deceased, transient, non-existent voters, or voters who had moved. Part of this canvass involved traveling around the precinct to check that vacant lots did not serve as voter addresses and that addresses were in fact residential buildings. Wood recommended using first-class mailings with a return address and instructions not to forward the mail in order to compile voter challenge lists—a tactic likely to discriminate against minority and low-income registered voters, as noted in Chapter III above. Referring to previous regional ballot security programs like those in Arizona, he noted that this method “has been used to advantage . . . to secure revision of voting lists.”¹² Poll-watchers and challengers also had to become familiar with past voting irregularities in their areas and with the state electoral laws. Wood included in his 1964 handbook an informative seven-page list of examples of fraud, irregularities, problems, or errors encountered or alleged in previous elections.¹³

Wood also made clear to his readers that the poll-watchers and challengers “must be encouraged to remain alert, and to immediately challenge whatever or whomever may be suspicious, with politeness but firmness, and with courage and persistence.” They should not be deterred even if others charged them with browbeating voters. As Wood explained, “‘Browbeating’ is a common defense to cover irregularities.” Instructions for watchers and challengers “must cover not only what to look for, but what action is to be

¹⁰ Wood justified these instructions for recruiting “capable and true” Republicans for each precinct with the following information: “Thousands of precincts in 1960 were unmanned by Republicans, and others by ‘Republicans’ in name only.” *Ballot Security*, 31.

¹¹ Ibid. Quotation marks in the original. He stressed to local ballot security officers that “All must be cautioned not to leave prematurely in the late hours of election night when exhaustion sets in, as this is a dangerous time. Replacements or shifts may need to be arranged so that meals or other personal problems do not interfere.” See the second page of the handout entitled “Step 4 in Four Steps to Victory,” RNC 1964 Special Projects, LBJ Library.

¹² Wood, *Ballot Security*, 32. These mailings incurred serious expenses. According to *The New York Times*, Eagle Eye workers sent out “about 1.8 million pieces of first-class mail at five cents each to the entire registration lists in many of the more suspect precincts in 15 key cities such as Chicago, Philadelphia, Detroit, Kansas City and St. Louis.” Cabell Phillips, “G.O.P. Begins Drive to Prevent Fraud at the Polls,” *The New York Times*, 30 Oct. 1964, C25. RNC Operation Eagle Eye, LBJ Library.

¹³ Wood, *Ballot Security*, 24-30.

taken, such as advising the election judge, the police officer on duty, calling election officials, and the [County or City] Ballot Security Officer for help and advice. They must remember to locate phones, and to have change ready in advance.” He also cautioned the volunteers to “check the credentials of the others present, and not to surrender theirs to anyone without proper authority.”¹⁴

Flying Squads, Command Posts, and Deterrence

When poll-watchers and challengers could not get adequate redress from precinct officials or the election judge, they were supposed to call the party’s county or city ballot security officers who had a staff to receive the information and to give advice and assistance. The staff, Wood suggested, could include an influential businessman and “roving teams of ‘inspectors,’ made up of lawyers, or others, or teams available for immediate dispatch.”

The teams of lawyers, or “flying squads,” became quite popular in 1964. Republicans dispatched them from what they called a “command post.” Some squads served a single city; others covered an entire state. Oklahoma, for example, had three command posts. If a command post received a report of flagrant election law violations, the ballot security officer in that county investigated the complaint. If the complaint was meritorious, the command post sent a team of lawyers, by plane if necessary (in which case the squad was literally flying!), to protest or take other necessary action.¹⁵ The flying squads had three main purposes: “to investigate, give first-hand advice and assistance, and produce *psychological deterrent*.”¹⁶

Deterrence was an important part of the RNC program. Wood recognized that roving teams had been used as effective deterrents in the past. He also recommended the following as deterrents:

- Getting local press coverage about Republican organization, personnel, training, and ballot security preparation.
- Calling attention to the law and criminal penalties involved with voter fraud and “[m]aking known that the FBI may be involved in federal violations.”
- Submitting editorials to support ballot security programs.
- Using a camera as a prop.
- Having local press, law enforcement officials, or election officials come to the polling site to investigate events.
- Securing press coverage of early events or incidents in later editions of news media.¹⁷

¹⁴ Wood, *Ballot Security*, 32. The handbook also has a lengthy “Voting Machine Supplement” that includes a sample “Check List for Precinct Election Officials and/or Watchers,” and guidelines for voter education on voting machines, 35-49.

¹⁵ In other states poll-watchers could be sent by plane if there was a shortage in particular areas. Wood, “Ballot Security Current Report,” No. 2, 14 Oct. 1964, 1-2. RNC 1964 Special Projects, LBJ Library.

¹⁶ Wood, *Ballot Security*, 33. Emphasis added.

¹⁷ Wood, *Ballot Security*, 31-33.

Republicans used local press coverage effectively. There were so many newspaper articles covering Eagle Eye in October and November 1964 that the ballot security operation became quite well known before the election. This was intended. The RNC sent suggested press releases to all state ballot security officers to encourage press coverage in a uniform manner. The stated purpose was to publicize ballot security efforts so that potential perpetrators of electoral fraud would be wary.

The Paraphernalia of Deterrence

RNC leaders also believed that the presence of cameras threatened Democratic skulduggery. Like the flying squads, cameras were intended to create a psychological deterrent. Republicans would continue to use cameras—including videocameras—at polling places over the next forty years, although the Justice Department later warned against their use.¹⁸ *The Wall Street Journal* reported that one GOP official in a southern state planned to give cameras to his poll-watchers. In theory, *The Journal* wrote, the poll-watchers “could obtain photographic evidence of flagrant irregularities, but the official notes that even if the poll watchers don’t know how to use the cameras, potential Democratic wrongdoers may be frightened off.”¹⁹ The fact that legitimate Democratic voters might also be frightened off apparently did not concern the leadership. (In Houston, Texas poll-watchers not only used cameras to photograph voters as they entered the polls, but they also used tape recorders to capture conversations between election judges and voters.) In Alice, Texas—deep in the southern, heavily Latino part of the state—Republicans took pictures of voters entering three booths. *The Houston Chronicle* reported that Republican county chairman Harold Wakehouse denied that his group had sanctioned the picture-taking.²⁰ He personally may not have, but the RNC certainly did. In his third report to ballot security officers under the subtitle “Security Network,” Wood simply stated, “Remember cameras.”²¹

The presence of law enforcement officers at election sites was believed to deter electoral fraud too, but law enforcement was not the only reason for having officers on hand. In his first report to ballot security officers across the country, Wood highly recommended the *Ballot Security Book of Louisiana*, prepared by Jim Reeder, an attorney in Shreveport and state ballot security officer. “We think you ought to have a copy as it is an outstanding example of what each state can do to develop such a program to fit its own laws and problems,” Wood wrote.²² According to Stanley Penn of *The Wall Street*

¹⁸ See, for example, letter to the Honorable Constance Slaughter-Harvey, Assistant Secretary of State, Jackson, Mississippi, from John K. Tanner, Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, 14 June 1964, expressing the Justice Department’s view that “the actions of white people in videotaping black voters at or near the polls could constitute a violation of Section 11 (b) of the Voting Rights Act, 42 U.S.C. 1973i(b), and, under the circumstances you described, would constitute a change subject to the preclearance requirement of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.” Letter in possession of senior author.

¹⁹ Penn, “Policing the Polls,” 16. RNC 1964 Special Projects, LBJ Library.

²⁰ “East, South Texas Vote Charges Hurlled,” *Houston Chronicle*, 4 Nov. 1964, 1-23. RNC Operation Eagle Eye, LBJ Library.

²¹ Wood, “Ballot Security Current Report,” No. 3, 19 Oct. 1964, 4. RNC 1964 Special Projects, LBJ Library.

²² Wood, “Ballot Security Current Report,” No. 1, 7 Oct. 1964, 1. RNC 1964 Special Projects, LBJ Library.

Journal, this book emphasized the pivotal role law officers can play in an election. "Police cooperation is essential in efforts to prevent skulduggery and enforce the rules at polling places," Penn wrote.

Politicians are well aware that a police officer who is unfriendly to one party can ignore its poll-watchers' complaints, while they know a party can often count on the help of a sympathetic officer. In Louisiana, GOP poll-watchers and other party officials are urged [here Penn quoted from Reeder's book] "to make every effort to obtain the cooperation of the sheriff and local police and law enforcement officers on Election Day." The book adds, "*We are advised that all sheriffs in the State of Louisiana, except one, are sympathetic with Senator Goldwater's election. We should take full advantage of this situation.*"²³

Louisiana was not the only state to rely on law enforcement officers. According to Wood, the Alabama state ballot security officer "found trouble" with his security program so he offered a reward for the arrest and conviction of persons for certain election violations.²⁴

Election Day deterrents were to be planned carefully. Wood's handbook recommends ballot security officials "consider and plan in advance for the effective use of cameras, radio, telephone, warning signs or posters, press, or other original ideas. Some metropolitan areas have used cars with two way radio communication."²⁵ He also counseled that "certain counties, target counties, in your area may require more attention than others. Please advise which areas these may be."²⁶ The plan to target certain counties required RNC officials to distance themselves from possible charges of discrimination. "This program," the handbook claimed, "is in no way intended to reflect upon the character or reputation of any community, precinct, or individual, but only to better the operation of the electoral process."²⁷ However, the ballot security programs did not always "better the operation of the electoral process." In many of the targeted counties, Democrats complained that Republican poll-watchers and challengers caused intentional delays and disruptions to discourage Democratic voters. Voters most often mentioned as experiencing delays were African Americans, but elderly voters also faced challengers who lengthened the time required to vote.²⁸

The two parties were sharply divided over GOP ballot security drives. Democrats claimed that Operation Eagle Eye was a deliberate attempt to intimidate voters, especially ethnic minority voters. Republicans insisted its sole purpose was to prevent vote theft. But of course ballot security programs were also a partisan effort to win elections, and

²³ Penn, "Policing the Polls," 16. RNC 1964 Special Projects, LBJ Library. Emphasis added.

²⁴ Wood, "Ballot Security Current Report," No. 5, 23 Oct. 1964, 1. RNC 1964 Special Projects, LBJ Library.

²⁵ Wood, *Ballot Security*, 32-33.

²⁶ Wood, "Ballot Security Current Report," No. 1, 7 Oct. 1964, 1. RNC 1964 Special Projects, LBJ Library.

²⁷ Wood, *Ballot Security*, 1. Reference to the community indicates that several individuals of a particular community, not necessarily a precinct, would be singled out and challenged. A similar quote was given in a suggested press release from the RNC. See Enclosure 7 sent with a memorandum from Wood to Republican Ballot Security Officers, 7 Oct. 1964. RNC 1964 Special Projects, LBJ Library.

²⁸ "Dems Say GOP Pollwatchers Kept Some Negroes From Voting," *Houston Chronicle*, 4 Nov. 1964, 1-23; "Eagle Eye' Disrupts the Polls," *New York Herald Tribune*, 4 Nov. 1964, 9. RNC Operation Eagle Eye, LBJ Library.

this partisan motive sometimes conflicted with the stated motive of “good-government.”²⁹

Quotas, Canvasses, and Election Day Tactics

GOP ballot security measures built on three other aspects of the RNC’s precinct-politics strategy: establishing quotas for the number of Republican votes per precinct, conducting a voter canvass, and preparing for Election Day. Like the new, nationwide ballot security program, the precinct quota program was incorporated into the RNC strategy after it proved successful in regional elections. Director of Political Education and Training Ray Humphreys worked out the quota program in several congressional campaigns. His 1962 success in North Carolina’s Eighth District established the pattern for the national campaign in 1964. After assembling basic political data from previous elections in the district, Republicans examined the data and assigned quotas for Republican votes in each precinct, assuming a 10-percent increase over the previous four years in voting population. GOP officials characterized the data the workers would obtain as “direct, specific information so your vote hunt this fall can be with a rifle and not a shotgun.”³⁰

In 1964, vote quotas were assigned for every state, county, and congressional district in the country. State assessment was thorough, based on multiple factors including the expected degree of support from blacks and other minorities.³¹ The general idea behind the program was to concentrate campaign efforts where they would result in the greatest pay-off in Republican votes. When this vote quota program was presented to the state and local leaders at nine regional workshops, the state leaders were encouraged to implement it by selecting target counties and target precincts where they would focus their effort. Generally they were to be guided by the assumption that the greatest potential for increasing the Republican vote would come from increasing the turnout in areas already casting a heavy Republican vote.³²

Once the quotas were established, Republicans canvassed the voters. They recorded names of all known Republican voters on tally lists used on Election Day. Poll-watchers equipped with the lists checked off the names of those Republicans who voted early in the day and telephoned those who had not yet voted to encourage them to get to the polls.³³

A ballot security canvass differed from the quota canvass in two ways. The former targeted Democratic voters in an attempt to challenge and depress Democratic votes. Eagle Eye’s national director Charles Barr said that he expected “1.25 million voters to be *either successfully challenged or discouraged* from going to the polls.”³⁴ A kit organized for Republican poll-watchers in Minnesota explained that the purpose of the ballot security plan was to “safeguard the investment of time, money and effort that the

²⁹ The national field representative of Eagle Eye, Carlyle Steward, described this single purpose in “GOP Says Honest Vote Aim of Eagle Eye Plan,” *Washington Star*, 2 Nov. 1964. RNC Operation Eagle Eye, LBJ Library.

³⁰ Kessler, *The Goldwater Coalition*, 162-63. Quote from Kessler, 163.

³¹ *Ibid.*, 163.

³² *Ibid.*, 166-67.

³³ *Ibid.*, 169, 171.

³⁴ “GOP’s ‘Operation Eagle Eye’ At Polls Stirs Democrats,” *The Evening Star*, Washington, D.C., 2 Nov. 1964, A-4. RNC Operation Eagle Eye, LBJ Library. Emphasis added.

Republican party, its volunteers, its candidates and their volunteers have made in this election. Your job is partisan,” the kit clarified. “*When to our [i.e., the Republican Party’s] benefit insist that all requirements for assisting illiterate or handicapped voters in the voting booth be carried out.*” Similarly the kit directed poll-watchers to insist that procedures be carried out if they advanced the GOP cause. “Raise a challenge,” the kit instructed, “when certain supposedly improper assistance is given to a voter ‘*and you have good reason to believe these are not Republicans.*’”³⁵ When reporters inquired about these instructions at a Minneapolis press conference a week before the election, Minnesota GOP chairman Robert Forsythe acknowledged that the state headquarters distributed the literature and that “each county GOP organization was free to use or disregard all or part of the instructions contained in the poll-watching booklet.” Forsythe told reporters that “someone might have been overzealous in writing this poll-watching instruction” and that particular instructions for watchers to discourage prompt closing of the polls in GOP-dominated precincts and to encourage it in Democratic precincts would not be followed.³⁶

Democratic vote suppression was also a motive for GOP ballot security in Oregon. Poll-watchers there could legally challenge Democratic voters if the voter was not the person listed in the poll book, could not read or write the English language, or did not reside at the address listed in the poll book.³⁷ Democrats could contest some of the challenges, a poll-watching manual instructed. If, for example, the Democratic voter had moved and signed a statement that her residence address had changed, she could re-register but was only allowed to vote a limited ballot, losing her votes for city and county offices.

The success rate in challenging incorrectly registered Democratic voters depended on the thoroughness of pre-election canvasses of the precinct. The Oregon manual for poll-watchers and challengers issued by state ballot security officer Michael Walsh emphasized that a committeeman or woman should conduct a complete canvass in order to challenge all incorrectly registered Democrats. Yet if a complete canvass was impossible, “incomplete efforts are better than nothing, because every Democrat who is challenged for incorrect registration loses his city and county vote; therefore, an attempt should be made to challenge even one or two names if complete checking was not done in the precinct.”³⁸

Chicago . . . and Elsewhere: How Much Fraud?

Republican claims that ballot security was needed to safeguard against pre-election violations and all other irregularities or errors in the 1964 election were particularly credible in places like Chicago, where the Democratic machine had a long history of corruption. Poll-watchers on duty there on election day documented some of the worst abuses in the country, including vote buying, chain voting, illegal voter

³⁵ Frank Wright, “GOP Poll-Watchers Told to Be Partisan When It Helps Party,” *Minneapolis Tribune*, 24 Oct. 1964, 1, 6. RNC Operation Eagle Eye, LBJ Library. Emphases added.

³⁶ Frank Premack, “Part of GOP Poll-Watching Plan Scrapped,” *Minneapolis Tribune*, 27 Oct. 1964, 1. RNC Operation Eagle Eye, LBJ Library.

³⁷ “Instructions for Poll Watching at Receiving Board,” included in Michael Walsh’s 26 Oct. 1964 letter to Harlington Wood, “Reports,” Ballot Security Program folder, box 3H513, Barry Goldwater Collection, The Center for American History, The University of Texas at Austin.

³⁸ *Ibid.*

assistance, failure by election officials to compare signatures, multiple voting, unauthorized persons allowed to count ballots, and alcohol provided for voters and election judges.³⁹ Republicans also complained that persons serving as Republican election judges were really Democrats.⁴⁰

The list of electoral abuses in Chicago played right into Republican fears of massive Democratic Party dirty tricks in the Windy City, but it was questionable whether they were widespread. An editorial in the *Chicago Sun Times* said there was “no particular reason for suspecting the Eagle Eye people of faking their reports, or of making them up out of whole cloth.” But it cited GOP county chairman Timothy P. Sheehan as saying that “many of the comments are from workers who have been in only a single precinct of a ward and they assume the entire ward was the same. It should also be remembered,” he added, “that Eagle Eye teams were sent to the worst possible precincts in the various wards.”⁴¹

Sheehan’s caution is an exception to many reports that encouraged Republican fears. A controversy in Chicago surrounding efforts to update voter registration lists before the November 3 election is suggestive of the complexity of developing accurate registration lists. In Chicago, “Operation Double Check” was the name Republicans gave their ballot security canvass to verify voter registration addresses. On the basis of their canvass, Republican volunteers and party officials challenged 4,000 names on voter registration lists in six traditionally strong Democratic wards, which had been compiled after the election board conducted an official canvass on October 7 and 8. In a bitter partisan dispute that followed the challenges, including a failed Republican attempt to employ a handwriting expert to confirm signatures on pre-election voter affidavits against registration cards, Operation Double Check leader and GOP candidate for circuit judge Reginald Holzer condemned the election board for an incomplete canvass and charged that Democrats intended to perpetrate fraud with padded voter registration lists.⁴²

It is more likely that the election board simply erred. After their early October canvass, but before the Republican allegations, the board had sent challenge notices to 141,000 voters, only 2,000 of whom responded. The board struck the remaining 139,000

³⁹ Chain voting involved stealing a blank ballot, filling it out, and giving it to a voter who returned with a blank ballot for the next voter. This scheme gave more control to those who organized the electoral fraud.

⁴⁰ This was a typical problem in strong Democratic precincts across the country. Locals were supposed to serve as election judges so they would have the best information to make rulings, but in strong Democratic precincts there was no Republican to serve as a judge, and a Democrat was appointed as Republican judge. Hence the RNC handbook’s focus on “true” Republicans recruited for Eagle Eye. For information on the abuses, see Thomas Heagy, “Poll Watcher For Chicago’s GOP Discovers Cheating He Can’t Stop,” *World-Herald*, Omaha, Nebraska, 29 Nov. 1964, 7F; “Machine Politics at the Polls,” *Chicago Tribune*, 13 Nov. 1964, 1-20; George Tagge, “Voting Fraud Data Pours in to G.O.P. Group,” *Chicago Tribune*, 30 Jan. 1965, 1-4. RNC Operation Eagle Eye, LBJ Library.

⁴¹ John Dreiske, “A Look At Operation Eagle-Eye,” *Chicago Sun Times*, 31 Jan. 1965, 2-5. RNC Operation Eagle Eye, LBJ Library.

⁴² “Some [registered voters] had moved away as much as a year ago,” Holzer said. “Yet, the official canvassers of the election board did not strike their names from the registration rolls when they checked October 7-8. I’m confident that if we hadn’t challenged these names, someone would have voted them November 3.” Robert Wiedrich, “G.O.P. Files Challenges Against 2,500 New Voters,” *Chicago Tribune*, 21 Oct. 1964, 1, 2. RNC Operation Eagle Eye, LBJ Library.

voters from the registration lists.⁴³ Board canvass members undoubtedly did miss some names of additional voters who had moved, in the sense of failing to send out even more than 141,000 letters, but the GOP volunteers erred in the other direction. In the eighteenth precinct of the First Ward, for example, twenty of the twenty-five persons challenged by the volunteers appeared before the board and proved their legal residency.⁴⁴ Their names were obviously not part of “padded lists.” In the end Operation Double Check resulted in another 2,963 voters stricken from the rolls.⁴⁵

Charges of Minority Vote Suppression

The late-October Chicago controversy was just one of many partisan disputes that broke out over Eagle Eye across the nation. In Miami, Republican vote challenges at the polls resulted in a circuit court injunction banning “illegal mass challenging without cause, conducted in such manner as to obstruct the orderly conduct of this election.” In St. George, South Carolina, the NAACP asked the FBI to investigate “irregularities being perpetrated against Negroes trying to vote.” An NAACP spokesman alleged that “about every third Negro seeking to vote was being ‘challenged on various grounds,’” and some whites suspected of voting for President Johnson were also being challenged without cause. In Atlanta and Savannah, Georgia, Republican challengers also targeted black voters. Intentional delays caused by Eagle Eye volunteers were reported in Miami, Columbus, Cleveland, and the state of New Jersey.

In San Francisco, Democrats charged that Republicans asked Latino voters for non-existent registration certificates. Voters in California also complained that unidentified telephone callers warned them they would be challenged at the polls and would be subject to prosecution if they had moved since registering to vote. Others said that telephone callers misinformed them that they had to bring a registration stub to the polls. In Texas’ heavily Hispanic Rio Grande Valley, letters were sent to 2,000 residents advising recipients: “It probably would be wiser to simply stay at home and not go near the voting place on election day, rather than get arrested for interfering with the election judge.” In both English and Spanish, the letters claimed to be from the Brownsville office of PASSO (Political Association of Spanish-Speaking Organizations), but PASSO did not have a Brownsville office.⁴⁶ The *Houston Post* reported on Election Day that handbills had been distributed in black and Hispanic neighborhoods falsely informing voters that police would be stationed at polling places to arrest voters who had outstanding traffic tickets, among other offenses. The handbills read as follows:

⁴³ Robert Wiedrich, “Begin Challenging 4,000 on Vote Lists,” *Chicago Tribune*, 20 Oct. 1964, 1, 8. RNC Operation Eagle Eye, LBJ Library.

⁴⁴ Robert Wiedrich, “900 Names Purged in Vote List Hearing,” *Chicago Tribune*, 23 Oct. 1964, 2. RNC Operation Eagle Eye, LBJ Library.

⁴⁵ “2-To-1 Board Ruling Cuts 2,963 Names Off Voting Lists,” *Chicago Sun Times*, 28 Oct. 1964, 18. RNC Operation Eagle Eye, LBJ Library.

⁴⁶ “G.O.P. Watch on Polls Runs into Trouble,” *Chicago Tribune*, 4 Nov. 1964, 1-8; Robert Hentges, “‘Evil Eye’ Doesn’t Work,” *The Democrat*, 6 Nov. 1964, 4; “GOP’s ‘Operation Eagle Eye’ At Polls Stirs Democrats,” *The Evening Star*, 2 Nov. 1964, A-4; “GOP Denies Any Knowledge of Write-In Campaign for Dr King,” *Evening Star*, 3 Nov. 1964, A3; “Keeping Elections Honest,” *The Des Moines Register*, 4 Nov. 1964, 10. RNC Operation Eagle Eye, LBJ Library.

PUBLIC NOTICE

If any voters or members of their family who are planning to vote Tuesday, are wanted by Law Enforcement Officials for the following offenses, information has been received that a list of voters has been drawn to be arrested after voting for the following offenses, committed in the past five years:

- 1. Traffic tickets**
- 2. Speeding or negligent collision tickets**
- 3. Parking Tickets**
- 4. Child Support Payments ordered by the Courts in divorce suits or child desertion**
- 5. Questioning by the Police for any offense**
- 6. Voters who have not appeared in Court as witnesses or Defendants in criminal or civil matters**
- 7. Voters who have not paid fines ordered by the Court**

Please take care of these matters before voting or else contact a Bail Bondsman or Lawyer before voting in order to be sure that you won't miss work or have to spend the night in jail by being arrested.

(Harris County Negro Protective Association)⁴⁷

The Harris County Negro Protective Association did not exist, and Houston's mayor Louis Welch, as well as police chief Herman Short, both condemned the attempt at voter intimidation. While the Democratic county chairman thought that Republicans were behind the handbills, the GOP chairman denied the allegations, saying, "we have a Republican alliance of Negro people working very hard to get out the vote."⁴⁸

The anonymity of those behind the most disturbing tactics—the phone calls, letters, and handbills—makes it difficult to prove that Eagle Eye was responsible. But the partisan thrust of those directed at Democratic voters was clear. In New Jersey a printer identified a person who, he alleged, claimed connections to the RNC as the man who placed an order for 1.4 million leaflets—many later circulated in Harlem—urging black voters to write in the Rev. Martin Luther King's name for president. The RNC denied knowledge of the write-in campaign.⁴⁹ Across the continent, John Luce, a Johnson campaign worker in California who "volunteered" for the Goldwater campaign, charged that a ballot security officer for Eagle Eye in San Francisco tried to enlist his help to frighten voters in heavily Democratic districts with low literacy rates. Luce was asked to represent himself as a "survey reporter" for a non-existent "ministers' union" in an attempt to determine how long voters had resided in the precinct.⁵⁰

When Republicans faced charges of discrimination, they denied it. Eagle Eye National Director Charles Barr argued that "there is nothing discriminatory in Eagle Eye

⁴⁷ "FBI Probe Into Phony Vote Handbills Promised," *Houston Post*, 3 Nov. 1964, 1-1 and 1-13.

⁴⁸ *Ibid.* See also "GOP Denies Any Knowledge of Write-In Campaign for Dr King," *The Evening Star*, 3 Nov. 1964, A3.

⁴⁹ A protest to the Federal Communications Commission was also filed after an unidentified group requested broadcast time from several black-audience radio stations regarding the write-in campaign. "GOP Denies Any Knowledge of Write-In Campaign for Dr King," *The Evening Star*, 3 Nov. 1964, A3.

⁵⁰ Sydney Kossen, "The Political 'Counter-Spy,'" *San Francisco Examiner*, 30 Oct. 1964, 23. RNC Operation Eagle Eye, LBJ Library.

against any race, creed or economic status.” Yet Republicans concentrated their efforts on minority precincts. Don McDaniel, president of the Los Angeles County Young Republicans, told the Los Angeles Registrar of Voters that “his group intends to assign watchers to the predominantly Negro 21st Congressional District, ‘where we have first-hand knowledge of election code violations.’”⁵¹ The city’s registrar of voters did not provide specific information on the alleged violations. In the District of Columbia, GOP chairman Carl Shipley stated that he had three poll-watchers for each precinct and an additional forty private detectives available. The poll-watchers and detectives, he explained, would only challenge ballots when there was “reasonable cause” to suspect a voter. In an attempt to clarify his position, Shipley claimed, in a reporter’s words, that he did not intend “to insult the public generally; well-dressed persons will not be challenged . . . only ‘the kind of guy you can buy for a buck or a bottle of booze.’”⁵² It may be true that some votes were bought for a buck or a bottle of booze, but this statement gave new meaning to “reasonable cause” and clearly contradicted Eagle Eye national director Barr’s statement that the program did not discriminate on the basis of economic status.

Before the election, the Democrats’ plans for ballot security were not as well organized as the Republicans’, to put it mildly, but Democrats quickly mounted a counteroffensive against Eagle Eye. Party officials denounced the operation as often as reporters would listen in an attempt to publicize GOP tactics to their own supporters. They also took counter measures like placing their own poll-watchers to observe Republican poll-watchers. Two attorneys from the Joint Democratic Campaign Committee even issued a public statement “warning of criminal penalties ranging up to five-year jail terms for ‘groundless challenges’ of voters and otherwise interfering with voting.”⁵³ In San Francisco, federal officers kept their eyes open for “organized attempts to intimidate voters.” In Oklahoma, officials alerted challengers that they had to have “a good and bona fide reason” for their challenges. New Jersey officials were also on the lookout for “attempts to interfere with voters’ rights.”⁵⁴

The countermeasures may have had some impact. The DNC’s 1966 registration manual claimed that “due to the vigilance and careful preparation of Democrats to combat these [Eagle Eye] techniques, the Republican effort was largely thwarted in 1964.”⁵⁵ Others attributed Johnson’s landslide victory to an increase in minority voter turnout and a backlash against Eagle Eye efforts. James Sanderlin, a St. Petersburg, Florida attorney and chairman of the nonpartisan Pinellas County Voter Education Committee, claimed that the turnout for Johnson was so heavy because people “were determined to vote for him. I think in the voters’ minds the Republicans became the hostile enemy—someone trying to deprive them of their vote,” Sanderlin explained. “I

⁵¹ “GOP’s ‘Operation Eagle Eye’ At Polls Stirs Democrats,” *The Evening Star*, 2 Nov. 1964, A4.

⁵² Elsie Carper, “GOP Plan to Challenge Voters Called an Attempt to Intimidate,” *Washington Post*, 30 Oct. 1964, A7; “Orderly Voting,” *Washington Post*, 1 Nov. 1964, E6. RNC Operation Eagle Eye, LBJ Library.

⁵³ Laurence Stern, “Democrats Will Watch GOP Watchers at Polls,” *Washington Post*, 31 Oct. 1964, A1, A4. See also Beth Sundquist, “GOP Issues Warning on Unqualifieds,” *Northern Virginia Sun*, 2 Nov. 1964, 1, 3. RNC Operation Eagle Eye, LBJ Library.

⁵⁴ “Law Officers To Keep Eye On Polls, Too,” *Washington Post*, 2 Nov. 1964. RNC Operation Eagle Eye, LBJ Library.

⁵⁵ “Democratic Route to Victory Registration and Get-Out-the-Vote Manual,” 1966, 28. “DNC ‘Get Out the Vote’ Manual,” Office Files of Bill Moyers, Box 115, LBJ Library.

attribute that to the lack of ticket splitting. Our committee voted to endorse both Republicans and Democrats, and some Negroes wanted to split their ticket, but didn't after being upset by challengers.”⁵⁶ Thus, in some cases, well-publicized ballot security efforts heightened voter awareness and, instead of depressing minority votes, may actually have encouraged them—apparently not a unique result of such measures in succeeding decades.

Operation Eagle Eye: A Forty-year Retrospective

Operation Eagle Eye must be understood in the historical context of the GOP's southern strategy. It was a nationwide operation directed by the RNC during a presidential election campaign in which the Republican candidate was on record as endorsing “states' rights” in the special sense that phrase had assumed in the popular mind since Strom Thurmond's 1948 Dixiecrat revolt—opposition to federal laws to destroy legally enforced racial segregation then under attack in the South. “Goldwater showed how Republicans could develop a powerful appeal in the white South without becoming outright segregationists,” observe two leading scholars on racial realignment.⁵⁷ This southern strategy has continued into the Twenty-first Century.

As noted earlier, one of the models for Operation Eagle Eye was the Republicans' ballot security program as it developed in Arizona in the years after Goldwater was elected to the Senate in 1952. An important figure in that program was Rehnquist, Goldwater's friend and counselor, whose regard for states' rights in many of its forms found vigorous expression after he was appointed to the Supreme Court in 1971. An earmark of the Phoenix Republican ballot security program was the effort of some challengers to suppress black and Latino votes at the polling place.

Finally, some of the methods employed by Eagle Eye became part of the *modus operandi* of subsequent Republican campaigns. These include challenging of Democratic voters at polls without cause, humiliation of uneducated voters, efforts to slow down voting in Democratic precincts, special targeting of minority, low-income neighborhoods for challenges, instructions to Republican poll-watchers that encourage unfair treatment, brandishing cameras at polling sites, and developing an attitude among ballot security teams that encourages stereotyping low-income and minority voters as venal and stupid. And while they often cannot be traced to the Republican Party, anonymous disinformation schemes tend to accompany such campaigns.

This approach undoubtedly leaves many Republicans feeling uncomfortable, even when they, like fair-minded Democrats, acknowledge the legitimacy of some forms of monitoring certain Democratic voting precincts. A noteworthy example is Charles Stevens, once head of the Young Republicans in Phoenix, who told a reporter of having gotten a call from Rehnquist to join Operation Eagle Eye in 1964. Stevens, who later became a prosperous lawyer who helped Sandra Day O'Connor get her start in law, was the son of Greek immigrants who had been driven out of Turkey and arrived in the United States speaking broken English. While he knew that challenging voters to read

⁵⁶ Sam Adams, “Vote Challenge May Hurt GOP, Negroes Say,” *St. Petersburg Times*, 5 Nov. 1964, 5B. See also “GOP ‘Poll Watcher’ Probe Hinted,” *St. Petersburg Times*, 20 Nov. 1964. RNC 1964 Special Projects, LBJ Library.

⁵⁷ Edward G. Carmines and James A. Stimson, *Issue Evolution: Race and the Transformation of American Politics* (Princeton: Princeton University Press, 1989), 58.

the Constitution was legal in Arizona, he did not approve of it. “I didn’t think it was proper to challenge my dad or my mother. . . . It just violated my principles,” he said. “I had a poor family. I grew up in the projects in Cleveland, Ohio.” He remembered Rehnquist telling him that if he felt that way about it, he didn’t have to participate.⁵⁸ But many lawyers did, along with other volunteers. And many continued to do so in succeeding election campaigns.

⁵⁸ Dennis Roddy, “Just Our Bill,” *Pittsburgh Post-Gazette*, 2 Dec., 2000, D1.

CHAPTER V

BALLOT SECURITY FROM 1968 TO 2004

Republican ballot security campaigns from 1966 onward built on the guidelines developed in 1962 and 1964. The hierarchy of ballot security officers was amended slightly after 1964 with the addition of area ballot security directors. These area directors coordinated GOP efforts within multiple precincts (wards or election districts) of a city or county and reported to county or city ballot security officers. One of their primary functions was to contact precinct workers several times on Election Day to monitor results, and to encourage poll-watchers and offer them support. Many volunteers needed encouragement because they were assigned to precincts outside of their home districts. GOP leadership continued to perceive the most acute need for Republican watchers in “core city areas” where Republicans did not have a core constituency.¹ Volunteers serving in these areas were particularly vulnerable to charges that the Republicans were targeting minorities. The RNC wanted the area director to make sure that the volunteers did not feel “deserted in a strange place.”²

GOP ballot security retained its emphasis on precinct workers from 1966 to 1984, but the demands of recruiting what the leadership deemed enough of them ultimately led to a change in emphasis. The RNC early on had called volunteer poll-watchers the key to successful ballot security and established an ideal of three poll-watchers for every two precincts (the third to circulate between the two). This would have required more than 250,000 volunteers in 1964. By 1972, Republicans were pushing for much more: one poll-watcher for each voting machine and for each paper ballot box.³ Efforts to recruit tens of thousands of people taught Republicans to appeal to business corporations, using an ostensibly bipartisan approach. Even though the law required that the employees who volunteered had to be allowed to work for the party of their choice, experience showed that seven out of ten volunteers from the business community were Republicans.⁴ Ultimately, however, it proved too difficult to identify and train enough volunteers. Voting machines and ballot boxes in many precincts, especially those with Democratic majorities, had little or no Republican oversight.⁵

One way the Republicans confronted this problem was by vigorously publicizing their efforts to keep an eye on elections. As one ballot security organizer put it, “Although we clearly could not cover all precincts, we had one great advantage: no one

¹ “Ballot Security Organizers Guide,” 3. Prepared by the Registration Division of the RNC under the chairmanship of Ray C. Bliss. Box 1, Paul Theis Collection, Gerald R. Ford Library.

² *Ibid.*, 5.

³ Memo, J. Richard Benett and James N. Allison to Alabama GOP county chairmen, 12 Oct. 1972. Guide to the Alabama Republican Party Records, RG 545, “Ballot Security - 1972,” Attorney’s Papers Series 2, Box 4 – Accession 81-226, Auburn University.

⁴ “Ballot Security Organizers Guide,” 3-4.

⁵ “As stated in the precinct judges/officials section[,] we have been woefully inept at having poll watchers and challengers at the targeted precincts.” “1984 Ballot Security” Memorandum from J. Michael Farrell to J. Kenneth Kling, Special Projects Director to the 1984 Reagan-Bush Campaign Committee, July 1984, 4. Guide to the Alabama Republican Party Records, RG 545, National Convention 1984 Dallas Series, Box 14 – Accession 86-078, Auburn University.

could know *where* we would be watching.”⁶ Thus Republicans sometimes announced they were sending poll-watchers with cameras and tape recorders to unnamed target areas.⁷ In Alabama, where Republicans as late as 1980 were still trying to build a state party organization that could compete with Democrats, state GOP leaders sought to remind voters that sheriffs and their deputies were legally required to be present at all precincts on Election Day and that the sheriff could “specially deputize a sufficient force to act at all election precincts on the day of any election.”⁸ For its part, the RNC offered in each state rewards “of \$1,000 to any citizen who gives information leading to the arrest, conviction and punishment of any election official who violates state or federal laws against vote fraud.”⁹ Although the RNC released most of its publicity through official news media, GOP leadership discovered in the 1964 campaign “that ‘leaking’ information to the opposition [was] most effective.” Rumors, according to the *RNC Ballot Security Organizers Guide*, “always get blown up as they circulate.”¹⁰ Accurate information on Republican ballot security efforts clearly was not given a high priority in these cases.

The Merging of Law Enforcement with Ballot Security

The psychological deterrents mentioned in Chapter IV had been an integral part of the 1964 ballot security campaign, but professional law enforcement officers began to play prominent roles after 1964. Louis B. Nichols, an FBI investigator for twenty-three years before joining Nixon’s senior advisory committee in 1968, wrote an article on vote fraud for *The Reader’s Digest* appearing in 1969, in which he stated that his army of 100,000 volunteers had “mounted a powerful ‘psychological warfare’ campaign” as part of GOP ballot security efforts in 1968. With the help of former FBI colleagues, lawyers, Vietnam veterans, students and other volunteers, Nichols’ army “distributed thousands of pamphlets on federal election laws and posted red-letter placards warning that ‘information of violations should be reported IMMEDIATELY TO THE OFFICE OF THE U.S. ATTORNEY.’”¹¹

To justify these actions, the author recounted a wide range of alleged Democratic fraud, including the provision of too few voting machines which caused long lines in Republican precincts, and Democratic poll workers instructing minority voters on which candidates to vote for and even temporarily disabling Republican volunteers by offering

⁶ Louis B. Nichols, “The Battle Against Vote Fraud,” *The Reader’s Digest*, 1969, 3. Box 12, Paul Theis Collection, Gerald R. Ford Library. Emphasis in original.

⁷ Letter from Alabama GOP Ballot Security Chairman, William M. Acker, Jr., to Mr. Al Fox of the *Birmingham News*, 28 Oct. 1980; and Proposed Press Release From William D. Harris, Chairman, Republican Party of Alabama, and William M. Acker, Jr., Chairman of Ballot Security for the Republican Party. Guide to the Alabama Republican Party Records, RG 545, “Ballot Security 1980,” Miscellaneous Files Series, Box 6 – Accession 88-046, Auburn University.

⁸ Proposed Press Release From William D. Harris, Chairman, Republican Party of Alabama, and William M. Acker, Jr., Chairman of Ballot Security for the Republican Party. Guide to the Alabama Republican Party Records, RG 545, “Ballot Security 1980,” Miscellaneous Files Series, Box 6 – Accession 88-046, Auburn University.

⁹ Letter from RNC official Bill Brock to the secretary of state, 20 Oct. 1980. See also the Proposed Press Release from Harris and Acker. Guide to the Alabama Republican Party Records, RG 545, “Ballot Security 1980,” Miscellaneous Files Series, Box 6 – Accession 88-046, Auburn University.

¹⁰ “Ballot Security Organizers Guide,” 2.

¹¹ Nichols, “The Battle Against Vote Fraud,” 3-4.

them tainted drinks to sicken them.¹² These accounts called to mind Vice-president Spiro Agnew's charges that Democrats had "intimidated and abused" GOP poll-watchers in 1968, and that a Democratic precinct captain in Chicago had offered Republican poll-watchers "protection" and then, to frighten them, showed them the pistol he had in his belt.¹³ The *Chicago Tribune* also reported that several Republican poll-watchers were physically abused at their precincts in 1968.¹⁴

Republicans in other cities could also be confrontational. Manyon M. Millican, executive director of the Alabama Republican Party in the late 1960s, offered training seminars for poll-watchers. He reminded them to use cameras and "radio control" cars. He also stressed that it was important for poll-watchers to stand their ground. "*The only sure way to get an honest and accurate count,*" he explained "*is to have a human body who is tough and even mean, at the polls counting the ballots.*" To make his point clear he recounted an incident in Louisville, Kentucky, where Republicans worked hard to elect a Republican mayor. During the election the Republicans "were having problems with a Democrat running over our watchers. They dispatched a 6'6," 275 lb. football player to the polling place; he walked in, cracked the guy on the kisser, and flattened him to the floor, turned around and walked out, and no more problems occurred at that polling place! Use force if needed," Millican advised, "but secure the ballot. No amount of protection and expense is too great to protect our ballot in the election of any Republican candidate. Use any method, that is practical, honest and sound."¹⁵

Millican's approval of violence at the polling place underscores a widespread perception that elections are won or lost through "ballot security" measures in the precincts. Lawyers organized in flying squads or committees continued to play an important role at the local level after 1964, but the volunteer poll-watchers remained the strength and the weakness for the GOP into the 1980s. When they were well trained and posted in sufficient numbers, they met the expectations of Republican leaders; but often, as in 1964, they were inadequately trained and in short supply. In 1966, one southern Republican complained that "our little organization is composed of amateurs and we need all of the information that we can get concerning ballot security."¹⁶ The situation had improved by 1984, but there were still problems for GOP ballot security organizers. According to the national ballot security director for the 1980 Reagan-Bush campaign, J. Michael Farrell, the Republican efforts in 1976 and 1980 were hampered by voter registration lists that had not been purged; insufficient numbers of poll-watchers and election judges, especially in targeted precincts; and unprepared ballot security coordinators. These problems led Farrell to recommend that the party purge voter

¹² Ibid., 4-6.

¹³ Fred P. Graham, "Politics: Agnew charges voting abuses in Chicago," *The New York Times*, 5 Nov. 1968, 28.

¹⁴ "Many incidents mar voting on west side," *Chicago Tribune*, 6 Nov. 1968, 1-3.

¹⁵ Manyon M. Millican, "Election Day Activities: or getting out our vote and counting it!" 5, 11. Guide to the Alabama Republican Party Records, RG 545, "Ballot Security – 1966-70," Attorney's Papers Series 2, Box 4 – Accession 81-226, Auburn University.

¹⁶ Letter from Roy Childers, Chairman of Wilcox County Republican Executive Committee in Alabama to Sam C. Pointer, Jr., State Vice Chairman and Legal Counsel for Alabama Republican Executive Committee, 15 Sept. 1966. Guide to the Alabama Republican Party Records, RG 545, "Ballot Security – 1966-70," Attorney's Papers Series 2, Box 4 – Accession 81-226, Auburn University.

registration lists; hire poll-watchers, election officials, and guards for targeted precincts across the country; and implement a paid regional coordinator system in 1984.¹⁷

As Democrats saw it, the Jesse Jackson presidential campaigns of 1984 and 1988, the increase in black registration as a result, and the Democrats' re-taking control of the Senate in 1986 gave considerable momentum to the Republicans' ballot security efforts in the 1980s and later. Democratic activist Donna Brazile, a Jackson worker and Albert Gore's campaign manager in 2000, said "There were all sorts of groups out there doing voter registration. Some time after the '86 election, massive purging started taking place. It was a wicked practice that took place all over the country, especially in the deep South. Democrats retook the Senate in 1986, and [Republican] groups went on a rampage on the premise they were cleaning up the rolls. The campaign then was targeted toward African-Americans." As in the past, Republicans justified the purges in the name of preventing the unregistered from voting. But Democrats charged vote suppression. "The purges may have picked up in the late '80s, but they have been used consistently, oftentimes right before a major election," according to Ellen Spears, associate director of one of the historically most active organizations on behalf of southern black voting rights, the Southern Regional Council in Atlanta. "I think it's very safe to say this is a major post-Voting Rights Act method of continuing the old South practices of limiting the impact of the black vote."¹⁸

The Republican National Lawyers Association

The Republicans' perceived problems arising from too heavy a reliance on volunteers began to be addressed with a different strategy in the mid-1980s. From Operation Eagle Eye onward, the major Republican ballot security programs had borne the imprimatur of the party high command, overseen by the RNC and implemented at the grassroots by local organizations and commercial political operatives. In the mid-1980s, the situation began to change. GOP ballot-security skulduggery in the city of Newark and environs had led to a consent decree in 1982 presided over by a federal judge in New Jersey, according to which the RNC promised to forego minority vote suppression.¹⁹ In 1985, several months before the RNC was hauled back before the same judge as a result of illegal purging efforts in a 1986 Louisiana senatorial campaign and agreed to submit all future ballot security programs it oversaw to the court for its inspection, a new organization was created—the Republican National Lawyers Association (RNLA).

¹⁷ "1984 Ballot Security," Memorandum from J. Michael Farrell to J. Kenneth Kling, Special Projects Director to the 1984 Reagan-Bush Campaign Committee, July 1984, 1-8, 10. Guide to the Alabama Republican Party Records, RG 545, National Convention 1984 Dallas Series, Box 14 – Accession 86-078, Auburn University. Farrell was not the only Republican leader to lament the weaknesses of volunteer poll-watchers. Leaders of the Alabama Republican Party repeatedly stated that inadequately trained poll-watchers caused confusion and created problems for the Election Board. See the questionnaires to assess electoral practices sent out by the Alabama Secretary of State Don Siegelman on 1 July 1980 to county leaders. Guide to the Alabama Republican Party Records, RG 545, "Ballot Security 1980," Miscellaneous Files Series, Box 6 – Accession 88-046, Auburn University.

¹⁸ Anthony York, "Eliminating fraud – or Democrats?" Salon.com, 8 Dec. 2000. <http://archive.salon.com/politics/feature/2000/12/08/integrity/index.html>.

¹⁹ See Chapter VI, Case 1.

A group of lawyers who had worked on the Reagan-Bush campaign in 1984 were behind its founding, and it was designed “to be a sort of Rotary Club for GOP stalwarts,” according to a contemporary article in *Legal Times* magazine. The RNC helped the association get off the ground with a \$5,000 loan, although today the RNC claims no official connection with it. By 1987 the RNLA had active chapters in several states and the District of Columbia, and planned to hold its first annual convention early the following year. A lure for attendees, the planners hoped, would be continuing legal education credits and a possible appearance by Attorney General Edwin Meese III and President Reagan.²⁰

The RNLA turned out to be much more than a Rotary Club for GOP lawyers, however; it became the predominant Republican organization coordinating ballot security. By its own account, in early 2004 it had grown to “a 1,900-member organization of lawyers and law students in all 50 states.”²¹ Its officers were experienced lawyers who knew their way around Washington as a result of having served in Republican administrations at the national and state levels and in major K Street firms. Michael Thielen, its current executive director, who earlier worked for the RNC, describes the organization as follows:

Since 1985 the RNLA has nurtured and advanced lawyer involvement in public affairs generally and the Republican Party in particular. It is accurately described as a combination of a professional bar association, politically involved law firm and educational institute. . . .

With members now in government, party general counsel positions, law firm management and on law school faculties, the RNLA has for many years been the principal national organization through which lawyers serve the Republican Party and its candidates.²²

“The Age of the Lawyers”

Its prestige in Republican party circles undoubtedly got a boost from its involvement in the Florida ballot recount battles of November-December 2000, when, according to one of its members, Eric Buermann, the RNLA was “extremely helpful . . . by sending lawyers to Florida to work on the recount, providing expertise as needed, and coordinating volunteer lawyer response.” It was this helpfulness which apparently led Buermann, the state’s Republican Party general counsel, to coordinate a collaboration between the RNLA and Florida legal response teams in 2002, so that, in the words of an RNLA newsletter that year, “there will be a permanent structure in place to keep the lawyers active and organized during off-election years.”²³

Actually, the collaboration was even broader, involving the National Republican Campaign Committee and the RNC as well.²⁴ The Democrats, on the other hand, also

²⁰ James Lyons, “CLE Credits, Too,” *Legal Times*, 5 Oct. 1987, 11; Howard Kurtz, “Local TV News and the Elections: Ads Infinitum, but Few Stories,” *The Washington Post*, 2 Nov. 2002 (Final ed.), A7.

²¹ “Richard E. Wiley Named Republican Lawyer of the Year,” press release, Republican National Lawyers Association, 30 Jan. 2004.

²² Michael Thielen, “Invitation to Contribute or Sponsor an Event,” RNLA Website, 2003.

<http://www.rnla.org/Sponsor.asp>.

²³ “RNLA Joins With Republican Party of Florida To Form Florida Chapter,” RNLA Newsletter, 2002.

<http://rnla.org/Newsletter/ViewArticle.asp?ArticleID=8>.

²⁴ Alicemary Leach, “Congressman Shaw Supports Florida Chapter,” RNLA Newsletter.

<http://rnla.org/Newsletter/ViewArticle.asp?ArticleID=50>.

were developing a large network of lawyers that year—10,000, by one estimate—to counter vote suppression efforts. The nationwide deployment of thousands of lawyers in both parties led one journalist to predict “a new era in US politics after the Florida debacle two years ago—the age of the lawyers.”²⁵

Executive Director Thielen gives this account of the organization’s involvement in the 2000 recount: “After election day, RNLA members were dispatched by party organizations and campaigns to multiple locations within several states. When it became clear that the final result in Florida would determine the outcome of the presidential election, members were concentrated there.” Thielen adds, “had it not been for the preeminent litigators retained by the campaign entities and the volunteer attorneys who spent weeks defending the intent of voters before canvassing boards, the will of the nation’s voters would surely have been thwarted.”²⁶ Underlining the organization’s enhanced status among Republicans, White House counsel Albert Gonzales told the group, “You know, I must confess I groaned when I was first asked whether I would be willing to address another group of lawyers. However, when I found out this group included many lawyers that helped secure the election for George W. Bush, I quickly reconsidered.”²⁷

The RNLA’s pride in its Florida efforts is expressed by trophies it presents to honorees at special receptions, consisting of lucite blocks that, as described on the organization’s Web site, “contain a commemorative message in honor of the Florida recount team, and contain actual ‘Chads’ from Florida dispersed throughout the Lucite. They [sic] were only a few hundred created and are not for sale but rather only presented to distinguished members and guests of the RNLA.” Not surprisingly, an RNLA lawyer, Hayden Dempsey, formerly a lawyer for Governor Jeb Bush, is heading Lawyers for Bush, the president’s legal defense team in Florida in 2004.²⁸

Ballot Security Seminars for GOP Lawyers

The organization in 2002 began to offer on a regular basis schools around the nation on election law and ballot security. The first National Summer Election School was held in San Antonio in 2002. A newsletter that year promised its members that the event “will teach you the basics of election law from nationally-preeminent attorneys in this field. You will learn the how-tos of recognizing and preventing vote fraud in registration, absentee balloting, election administration, election day operations and post-election counting procedures. You also will learn how to conduct election recounts and contests. Finally, you will learn how to organize and staff an election day integrity task force in a manner that protects the rights of all our citizens to vote.”

The same article implicitly disavows the kind of dirty tricks aimed at minority precincts that have gotten Republican ballot security programs in trouble over the years.

²⁵ Julian Borger, “Parties deploy armies of lawyers at polling stations,” *The Guardian*, 6 Nov. 2002, 12.

²⁶ Michael Thielen, “Invitation to Contribute or Sponsor an Event,” RNLA Website, 2003.
<http://www.rnla.org/Sponsor.asp>.

²⁷ Michael Thielen, “2002 Report of the Executive Director,” RNLA Newsletter.
<http://www.rnla.org/Newsletter/ViewArticles.asp?ArticleID=52>.

²⁸ Photo gallery, RNLA Web site, <http://www.rnla.org/PhotoGallery.asp>; Dara Kam, “GOP recruiting lawyers for election fallout,” *Palm Beach Post*, 10 Aug. 2004,
http://www.palmbeachpost.com/politics/content/news/epaper/2004/08/10/a4a_gopvote_0810.html.

“Misguided persons who seek to use the upgrading of voting integrity to prevent disadvantaged or other groups of persons from casting their ballots are not welcome in the Republican Party, and certainly not in the RNLA. That said, there are some exciting opportunities for you to learn about how to prevent election fraud.”²⁹

What is unclear about their election-fraud prevention efforts, however, is the criterion for targeting the precincts to which the RNLA sends its operatives. Jonathan Snare, an experienced Texas litigator, said in 2002 that the organization sends its members “to targeted districts where voter fraud is a concern or has historically been a problem.”³⁰ This seems to imply that a history of prior vote fraud is not required. What appears to be at least as important a criterion is how close a race is. When this is the primary criterion, however, the spectacle of Republican lawyers descending on polls where there is no hint of fraud can be ridiculous, and potentially intimidating.

One such instance occurred in Harrisburg, Pennsylvania in 2002, when a team of about a dozen RNLA lawyers suddenly arrived to act as poll-watchers in what one observer called a “highly unusual move.” The contest for the U.S. House of Representatives was between two incumbent congressmen, a Democrat and a Republican, who had ended up opposing each other because redistricting had placed them in the same district. One RNLA lawyer defended her team’s appearance by saying, “We’re all targeting districts where it’s close because that’s where you’re more likely to have people who, in their enthusiasm for their candidate, make mistakes.” But various local citizens were offended. One, a former Federal Elections Commission chairman, said, “That sort of heightened scrutiny is unusual. If you’re sending a whole group of attorneys to watch polls, there’s presumably some particularized concern about those polls.” The Republican candidate himself professed puzzlement at the “attorneys-as-poll-watchers” in his district. “I guess there are enough attorneys in the world to be able to do that,” he said. “I always felt that a lawyer standing by at campaign headquarters was sufficient to respond to anything that seemed unseemly.”³¹ More controversial still was the involvement of an RNLA lawyer in a tight South Dakota senatorial race that same year. He bombarded media with questionable evidence of vote fraud among Indians using as a conduit his roommate, a TV reporter whose employer was initially unaware of the partisan affiliation of her source.³²

With the rise to prominence of the RNLA, the Republican Party’s nationally directed ballot security programs appear to have been transformed. While Operation Eagle Eye was directed from the command posts of the RNC by professionals, the people on the ground—poll-watchers and challengers—were often amateurs, which is to say Election Day volunteers who may have had only cursory training. The RNLA, born in the Reagan era, has gradually assumed the role of the party’s overarching anti-fraud enforcement agency. In the process, the organization has professionalized ballot security

²⁹ Craig Burkhardt, “Upgrading Election Integrity—It’s Your Job,” RNLA Website, 2002. <http://www.rnla.org/Newsletter/ViewArticle.aspx?ArticleID=32>.

³⁰ Jonathan Snare, “The Importance of Ballot Integrity,” RNLA Newsletter. <http://www.rnla.org/Newsletter/ViewArticle.aspx?ArticleID=48>.

³¹ Lara Jakes Jordan, “GOP attorneys to monitor polls in tight race between battling incumbents,” Associated Press, 31 Oct. 2002, http://web.lexis-nexis.com/universe/document?_m=3744f10867d859d6a6c71a2dab33a6c1&_docnum=2&wchp=dGLbVzz-zSkVb&_md5=74f95853a4dde8c1f8c3c8ee1182e19e.

³² See Chapter VI, Case 13.

(its spokespersons seem to prefer the term “ballot integrity”) with a cadre of highly trained, aggressive, and mobile lawyers who can go anywhere in the nation on short notice. Indeed, they don’t even need to be mobile, in many cases. As one of the organization’s newsletters put it: “Ironically, when the Democratic National Committee bragged of sending in a thousand lawyers each to Missouri, Florida, and Texas for election day operations, the [RNLA] Field Operations Committee already had chapters organized in those states and did not need to send out of state lawyers to assist with the elections.”³³

Professionalizing ballot security programs in this sense, however, does not necessarily ensure that GOP minority vote suppression efforts will disappear. One possibility is that they will simply become more sophisticated.

³³ Michael Thielen, “2002 Report of the Executive Director,” RNLA Newsletter. <http://www.rnla.org/Newsletter/ViewArticles.asp?ArticleID=52>.

CHAPTER VI

CASE STUDIES OF BALLOT SECURITY EXCESSES: 1981-2002

How often do GOP ballot security programs result in minority vote-suppression efforts? Unfortunately, there is no systematic, detailed study of this phenomenon. Moreover, there is no central repository of information on the subject, although there must undoubtedly be records of many allegations of such efforts on file with the U.S. Department of Justice—records generally not available to the public. Therefore the question of how often ballot security programs involve vote suppression cannot be answered. However, it is possible to gather information on various known cases and present it in a systematic way.

To obtain the information presented here, the authors scanned a wide array of sources, including newspaper and magazine accounts, the very few law review articles on the subject, and political archives in various libraries. No articles on the subject were found in scholarly journals or monographs. After these initial efforts, a list of over sixty cases that seemed to merit investigation was compiled. From these, once initial research was conducted, a final list of fourteen cases was compiled which were especially instructive regarding the modus operandi of ballot security programs gone bad, spanning the time period from the early 1980s to 2003. One of them, focusing on Louisville in the latter year, was presented in the introductory chapter of this Report. The remaining cases are presented in this chapter in chronological order.

Because there is no way to identify all instances of ballot security excesses, those described below cannot be characterized as either typical or atypical. Nonetheless, the excesses documented are clearly part of a pattern going back at least to the 1950s and continuing today, and as such, they merit the concern of anyone who wishes to see unlimited and fair access to the polls of every qualified voter, whatever their race, ethnicity, or socioeconomic status.

Of the cases presented, a disproportionate number involve Texas. This is perhaps partly a function of the selection bias of the authors of this Report, whose author has observed ballot security programs in the state for years. However, it is also probably due to the fact that Texas, a former Confederate state, has both a large African-American and Latino population. The GOP, having embarked on its race-based southern strategy a generation ago, has especially focused its attentions on these heavily Democratic populations in the Lone Star State.

CASE 1: The New Jersey Gubernatorial Election and the “National Ballot Security Task Force,” 1981

New Jersey has long had a reputation for political corruption within both parties. As one commentator writing in the 1980s noted, “It is hard to know whether it runs in cycles or whether it is simply exposed every once in a while.”¹ U.S. attorneys in the early 1970s, at the insistence of liberal Republican Senator Clifford Case, investigated

¹Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1982* (Washington, D.C.: Barone & Company, 1981), 673.

organized crime figures and public officials leading to the conviction of Democratic bosses in Jersey City, the mayor of Newark, a Republican candidate for U.S. Senate, and top officials in the administrations of both a Republican and Democratic former governor.²

In 1981 the RNC and various state Republican committees created a joint \$1 million venture they called “Commitment ’81.”³ Its purpose was to help elect state and local candidates in six states in which it set up operations: Virginia, Indiana, Hawaii, California, Nevada, and New Jersey.⁴ Its actions in the New Jersey gubernatorial campaign were coordinated by the RNC and the New Jersey Republican State Committee and were ostensibly designed to prevent vote fraud.

The New Jersey ballot security program was headed by a political operative hired by the Republicans, John Kelly, and had two phases: a mass mailing intended to establish a mechanism for challenging the eligibility of potential voters, and efforts to prevent voter fraud on Election Day. Both phases of this program were challenged by Democrats during and after the election. Following an investigation by the Essex County prosecutor, the DNC filed a \$10 million suit in federal court against the Republican organizations and various individuals responsible for the ballot security program, alleging harassment and intimidation of black and Hispanic voters. (The gubernatorial campaign of Thomas Kean, however, was not alleged to have been involved.) In preparation for the suit, the Democrats had gathered affidavits from more than eighty voters claiming they had been harassed by the task force. The outcome had important, if limited, legal ramifications not only in New Jersey but across the nation.⁵

The governor’s race for an open seat featured former New Jersey Assembly speaker Kean, a Republican, and Democratic Congressman James Florio, who lost by a margin of less than 1,700 votes in an election with over 2.3 million votes cast.⁶ The chairman of the RNC, Richard Richards, credited Kean’s victory to the ballot security program. Without the ballot security program, he asserted, the Democrats “would have stolen” the election. “If Kelly had not been up there,” he said, “Florio would be Governor.”⁷

Post Cards, Warning Signs, Guns, and Two-way Radios

The RNC spent between \$75,000 and \$80,000 on the New Jersey Ballot Security Program, mostly on the mailings.⁸ New Jersey law in 1981 allowed election supervisors to send out sample ballots to registered voters in the year of an election. If a sample

² Ibid.

³ “Ballot Security Signs Ruled Illegal in New Jersey,” *The New York Times*, 4 Nov. 1981, B6; Robert Joffe, “Democrats Accuse G.O.P. of Intimidating Minorities in New Jersey Voting,” *The Washington Post*, 7 Nov. 1981, A8.

⁴ Richard J. Meislin, “Jersey Vote Controversy Moves Further in Courts,” *The New York Times*, 8 Nov. 1981, 34.

⁵ Jane Perlez, “Democrats Will Sue G.O.P. Over Voting Patrol in Jersey,” *The New York Times*, 14 Dec. 1981, B5; “GOP Agrees Not To Allow ‘Intimidation’ Tactics,” Associated Press, 4 Nov. 1982.

⁶ David W. Dunlap, “Poll Team Chief in Jersey Leaves his G.O.P. Post,” *The New York Times*, 31 Dec. 1981, B2.

⁷ Selwyn Raab, “G.O.P. Relieves Security Official in Jersey Voting,” 12 Nov. 1991, B1.

⁸ Adam Clymer, “G.O.P. to Expand to other States ‘Ballot Security’ it Used in Jersey,” *The New York Times*, 9 Nov. 1981, B6.

ballot was returned by the postal service, the supervisor could re-send the sample ballot, this time marked “Please Forward” and requesting notification of any address change. If sample ballots in the second wave were not returned, these voters’ names could be placed on a “challenge list” and taken to election officials at the polls.⁹ In contrast, the New Jersey ballot security team, on its own, sent out postcards using outdated voter registration lists, and sent them only to precincts with a majority of black and Hispanic voters. The 45,000 returned mailings were converted immediately into challenge lists without sending a second mailing. However, two weeks before the election was to begin the New Jersey Commissioners of Registration refused to accept the lists when they discovered they had been compiled using outdated voter information. The RNC nonetheless announced they would continue their efforts to ensure ballot security in the state’s election, without the lists.¹⁰

This was primarily done by placing poll-watchers on Election Day (November 3) at voting sites where, according to the chairman of the Republican Committee in Mercer County, “in the past there have been suspicions of voter fraud.”¹¹ Some of the poll-watchers were lawyers; several others were off-duty police officers who carried guns and two-way radios. All of them wore armbands that read, “National Ballot Security Task Force.”¹² They erected signs stating:

WARNING
THIS AREA IS BEING PATROLLED BY THE
NATIONAL BALLOT
SECURITY TASK FORCE

IT IS A CRIME TO FALSIFY A BALLOT OR TO
VIOLATE ELECTION LAWS

- 1. IF YOU ARE REGISTERED YOU CANNOT VOTE**
- 2. YOU MUST VOTE IN YOUR OWN NAME.**
- 3. YOU MAY ONLY VOTE ONE TIME**

\$1,000 Reward for information
leading to arrest and conviction
of person violating New Jersey
election law. Call 800-402-4301.

HONEST VOTE 1981¹³

⁹ Rachel E. Berry, “Democratic National Committee v. Edward J. Rollins: Politics as Usual or Unusual Politics?” in *Race and Ancestry Law Digest* 44 (Spring, 1996): 3.

¹⁰ *Ibid.*

¹¹ Selwyn Raab, “Imperiale Admits G.O.P. ‘Security’ Role,” *The New York Times*, 18 Nov. 1981, B2.

¹² Adam Clymer, “U.S. Inquiry Asked Over Voting Rights in Jersey’s Election,” *The New York Times*, 8 Nov. 1981, 1; Richard J. Meislin, “Jersey Controversy Widens over G.O.P. Patrols at Polls,” *The New York Times*, 7 Nov. 1981, 25; Richard J. Meislin, “Jersey Vote Controversy Moves Further in Courts,” *The New York Times*, 8 Nov. 1981, 34; Jane Perlez, “Coalition in Jersey Seeks Evidence of Voter Fears,” *The New York Times*, 10 Nov. 1981, B1; Jane Perlez, “Democrats Will Sue G.O.P. over Voting Patrol in Jersey,” *The New York Times*, 14 Dec. 1981, B1; Selwyn Raab, “Jersey Inquiry is Planned on Vote Security Force,” *The New York Times*, 14 Nov. 1981, 26; Joffe, “Democrats Accuse G.O.P. of Intimidating Minorities in NJ Voting,” A8.

¹³ Richard J. Meislin, “Jersey Controversy Widens over G.O.P. Patrols at Polls,” A1.

On the morning of Election Day Angelo J. Genova, a lawyer for the Democratic State Committee, charged that the Republican Party was waging a systematic campaign designed to prevent minorities from voting and sought a court order that the signs be removed. At midday Judge Daniel A. O'Donnell of the State Superior Court in Trenton ordered all the signs taken down, saying they were inherently "political" and didn't specify who had paid for them.¹⁴ The signs were removed beginning at 4 p.m. on the same day.¹⁵

One voter, Amy Hammond of Trenton, called the toll-free number repeatedly to ascertain who was in charge of the posters. She was told several times that "we don't divulge our clients. We are an organization that works for an honest vote on Election Day. We've done it in other states. We did it in Indiana, we did Hawaii, we did California, we've worked in Nevada." When Hammond responded that she saw "a guy walking around with a gun" at the polls, she was told that the man "might have been a plainclothes officer assigned there by the county sheriff or something."¹⁶ A later call to directory assistance revealed that the phone number was registered under the RNC.¹⁷

Apart from the established facts that the task force put up signs and that some wore armbands and had guns and radios, there were conflicting reports about the actions of the poll-watchers on Election Day. Democratic city councilman Anthony Carrino, from the North Ward of Newark, reported that the task force operated only in about half the precincts in the North Ward, primarily in minority districts. The task force, he maintained, was "like the Gestapo," and would arrive at polls in groups and demand to examine voter registration books.¹⁸ Kenneth J. Guido, Jr., a lawyer for the DNC, claimed one voter "was physically pulled out of a polling place" by a member of the task force.¹⁹ There were allegations that the task force interrogated voters at the polls, refused to allow certain voters into the polls, removed signs advertising Democratic candidates, and even prevented poll workers from assisting voters. One voter said she did not vote because of the presence and actions of the task force.²⁰ The president of the NAACP in Trenton claimed, "I saw Gestapo armbands in my polling place, and I won't tolerate seeing them here in the future."²¹

On November 7 Charles T. Manatt, DNC chairman, called on the Department of Justice to investigate the New Jersey ballot security program, claiming that it may have violated Section 11(b) of the Voting Rights Act, which makes it illegal to "intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce any person for voting or attempting to vote."²² Manatt stated that "according to the reports we get," the National

¹⁴ "Ballot Security Signs Ruled Illegal in New Jersey," *The New York Times*, 4 Nov. 1981, B6.

¹⁵ Robert Joffe, "Democrats Accuse G.O.P. of Intimidating Minorities in NJ Voting," A8.

¹⁶ Meislin, "Jersey Vote Controversy Moves Further in Courts," A34.

¹⁷ Joffe, "Democrats Accuse G.O.P. of Intimidating Minorities in NJ Voting," A8.

¹⁸ Meislin, "Jersey Controversy Widens over G.O.P. Patrols at Polls," 25.

¹⁹ Perlez, "Democrats will sue G.O.P. Over Voting Patrol in Jersey," B1.

²⁰ Berry, "Democratic National Committee v. Edward J. Rollins," 4. Berry cites this information from Plaintiff's Amended Complaint for Declaratory and Injunctive Relief at 11, *DNC v. RNC* (D.N.J. 1981) (Civ. No. 81-3876).

²¹ Joseph F. Sullivan, "Kean Claims Jersey Victory; 20 County Tallies Certified," *The New York Times*, 11 Nov. 1981, A1.

²² Adam Clymer, "U.S. Inquiry Asked Over Voting Rights in Jersey's Election," *The New York Times*, 8 Nov. 1981, A1.

Ballot Security Task Force operated “all in black precincts” and that “they got overzealous with some of these storm troopers they had parading around the polls.”²³ Manatt claimed that “a cloud now hangs over the New Jersey elections” and demanded to know who paid for the ballot security program, how it was organized, and whether there was a conspiracy to intimidate voters.²⁴ Republican leaders made no attempt to deny that they had funded and organized the program, and argued that it was not an effort to prevent minorities from voting: Manatt’s call for an investigation, they said, was merely the “sour grapes tactics of a man desperate to steal an election.”²⁵

Statewide Investigation

On November 13, New Jersey Attorney General James Zazzali ordered a statewide investigation into the actions of the national task force, and one was begun, headed by Essex County prosecutor George Schneider, a Democrat.²⁶ Schneider’s immediate plan was to interrogate John Kelly, the leader of the New Jersey Ballot Security Task Force, but he was nowhere to be found. Some said he had gone to Oklahoma, some said New York, and one aide to Kean said that Kelly “took off like a big bird right after the election.”²⁷ Word surfaced that Kelly had lied on his résumé, and he was suspended by the Republican Party with pay. He had claimed that he had graduated from Notre Dame and then Fordham law school, held a position in the Fraternal Order of Police, worked for the Federal Drug Enforcement Agency, and held a position in the Reagan campaign of 1980. All of these claims turned out either to be false or misleading. He was forced to resign by late December.²⁸

Another red flag raised during Schneider’s investigation was the dubious behavior of Anthony Imperiale, a Republican assemblyman from Newark who also operated a private security agency. When Newark city councilman Anthony Carrino claimed that reports had been made to him that Imperiale was involved in the ballot security measures, Imperiale branded them “a prefabricated lie.” He said: “I didn’t drop off anyone wearing blue armbands. In no way was my security agency involved. I don’t put up signs and didn’t know anything about them until I saw them.”²⁹ Imperiale added, “If the Democrats are making charges that I knew about this, then tough crap on them. It’s the Democrats who have a reputation of stealing votes.”³⁰ However, when Kelly finally returned to New Jersey for questioning, he named Imperiale, along with the Republican chairmen of Camden, Mercer, and Atlantic counties, as being the point men for “street operations” of

²³ Ibid.

²⁴ Richard J. Meislin, “Official Tallies Show Kean Leading in Jersey,” *The New York Times*, 10 Nov. 1981, A1.

²⁵ Adam Clymer, “U.S. Inquiry Asked Over Voting Rights in Jersey’s Election,” 1.

²⁶ Raab, “Jersey Inquiry is Planned on Vote Security Force,” 26.

²⁷ Meislin, “Jersey Vote Controversy Moves Further in Courts,” 34.

²⁸ Dunlap, “Poll Team Chief in Jersey Leaves his G.O.P. Post,” B2; Selwyn Raab, “Queries Arise on Background of Ballot Task Force Official,” *The New York Times*, 11 Nov. 1981, B1; Selwyn Raab, “G.O.P. Relieves Security Official in Jersey Voting,” *The New York Times*, 12 Nov. 1981, B1; Matthew C. Quinn, “John Kelly: The Key to Jersey Controversy,” *United Press International*, 14 Nov. 1981, AM Cycle.

²⁹ Meislin, “Jersey Controversy Widens Over G.O.P. Patrols at Polls,” 25.

³⁰ Selwyn Raab, “Imperiale Called a Chief In G.O.P. Poll ‘Security,’” *The New York Times*, 17 Nov. 1981, B1.

the program. One of them confirmed that he had assigned fourteen task force members, who were off-duty police officers and sheriffs, to guard polls in his county. He was quoted as saying, “There was no intimidation whatsoever,” and that task force officials were only assigned to areas where “in the past there have been suspicions of voter fraud.”³¹

“Who Did It Intimidate?”

The next day, when Imperiale was questioned, he admitted to assigning about thirty-five people to guard certain Newark voting sites with instructions to report any irregularities to him. But he added, “Who did it intimidate? No one but fraudulent voters in my opinion. This is sour grapes from Democrats. They don’t know how to take defeat.”³² Several years later, Imperiale was chosen to represent New Jersey at the Republican National Convention, and an editorial in the *The New York Times* noted that he had “once publicly referred to Martin Luther King as ‘Martin Luther Coon’ [and] began his demagogic political career as a preacher of armed white self-defense following the 1967 Newark riots.”³³

Despite the suspicious behavior of Kelly and Imperiale, Schneider’s six-week investigation found no evidence that anyone in the four counties concerned had been prevented from voting in the election. While there had been technical violations committed by the RNC, Schneider said, he decided not to bring criminal charges, believing that the widespread publicity regarding the task force “will serve as an effective deterrent to future abusers.” Schneider nonetheless asserted that the ballot security program was “a covert operation that was at the very least intentionally misleading and resulted in technical violations of our election laws.” He added that the RNC “must be considered misfeasant in allowing Kelly and his underlings to operate with little, if any, control.” He concluded, “I believe the facts support the conclusion that there existed a lack of sensitivity on the part of the Ballot Security program to the rights and feelings of the inner-city voter and a lack of straightforwardness in the manner in which the program’s message was expressed to all voters in New Jersey.”³⁴

The same week that Schneider dropped his investigation the DNC announced a lawsuit asking for \$10 million in damages against the RNC. Schneider’s findings, along with those of a newly formed group which called itself “Right to Vote ’81,” led the DNC to take legal action. The group was founded on November 7 by Democratic Congressman Peter W. Rodino, Mayor Kenneth A. Gibson of Newark (the city’s first African-American mayor), and the Rev. S. Howard Woodson, Jr., president of the New Jersey Civil Service Commission. Woodson said of the Ballot Security Task Force that “the entire operation can be termed ‘Big Brother is watching’” and he called for “the eradication of this tactic ever again in the state and the nation.”³⁵ “Right to Vote ’81” organized volunteers from church groups, labor unions, the Democratic Party, and the

³¹ Ibid. The Republican chairmen were John Hansbury (Mercer County), Joseph Forte (Camden County), and William H. Ross (Atlantic County).

³² Selwyn Raab, “Imperiale Admits G.O.P. ‘Security’ Role,” *The New York Times*, 18 Nov. 1981, B2.

³³ “Indelicate Delegate,” *The New York Times*, 18 June 1984, A18.

³⁴ Selwyn Raab, “Inquiry on Ballot Patrols is Dropped,” *The New York Times*, 19 Dec. 1981, 30.

³⁵ Meislin, “Jersey Controversy Widens Over G.O.P. Patrols at Polls,” 25.

NAACP; sent out forms to twenty-six black churches in New Jersey asking for witnesses; and came up with eighty affidavits by mid-December.³⁶

These were combined with photographs as evidence in the lawsuit, which charged that the Republican party harassed and intimidated black and Hispanic voters and violated their Fourteenth and Fifteenth Amendment rights as well as Section 11(b) of the Voting Rights Act. It charged that off-duty sheriffs and policemen were hired to patrol minority precincts and were “prominently displaying revolvers, two-way radios and armbands with the words National Ballot Security Task Force” on them. This task force “obstructed and interfered with the operations of the polling places in black and Hispanic precincts.”³⁷ According to Eugene Eisenberg, executive director of the DNC, “the abuses were so grotesque and reprehensible that we had a legal, moral and political responsibility, looking toward 1982, to put a stop to it—even if only one person was harassed.” He added that the program was particularly egregious because “this was not an idiosyncratic event but a larger strategy to reduce the normal Democratic vote by going after people on the basis of race.”³⁸ Plaintiffs were the DNC and various other organizations and individuals. Defendants were the RNC, the New Jersey RSC, and various individuals, including Kelly, the task force director.

Republican leaders vigorously and publicly defended the program as a legal, necessary procedure to prevent vote fraud. “We are delighted to be a partner with the Republican Party in New Jersey in their ballot security program to ensure an honest election,” claimed RNC chairman Richards. “Anyone opposed to ballot security obviously must be supportive of election fraud. We would have been cheated out of that race if we hadn’t been alert.”³⁹ Ronald Kaufman, regional director of the RNC for New Jersey, New York, and New England who had designed the ballot security program and who had hired Kelly, stood by the New Jersey operation. “Ballots security has been a problem nationally for some time,” he claimed, and his New Jersey program was not intended to keep minorities from voting, it was aimed solely at preventing vote fraud.⁴⁰ Furthermore, he thought it was a success, and planned to use the New Jersey program as a model for future campaigns.

Kaufman dismissed charges made against the program, claiming that no one in the RNC had instructed anyone to wear guns, that the armbands were to distinguish the security team from loiterers, and that the choice of precincts was based on voter records and history of vote fraud rather than racial composition.⁴¹ William Greener III, director of communications for the RNC, wholly endorsed the program and vowed that his organization would continue “legal and proper” ballot security measures to prevent vote fraud.⁴² When he learned of the \$10 million lawsuit brought by the DNC, his response was, “We haven’t done anything wrong. We have nothing to fear.”⁴³

³⁶ Perlez, “Coalition in Jersey Seeks Evidence of Voter Fears,” B1; Perlez, “Democrats Will Sue G.O.P. Over Voting Patrol in Jersey,” B1.

³⁷ Perlez, “Democrats Will Sue G.O.P. Over Voting Patrol in Jersey,” B1.

³⁸ Ibid.

³⁹ Robert Joffee, “Democrats Accuse G.O.P. of Intimidating Minorities in N.J. Voting,” A8; Richard J. Meislin, “Jersey Controversy Widens over G.O.P. Patrols at Polls,” 25.

⁴⁰ Clymer, “G.O.P. to Expand to Other States ‘Ballot Security’ it Used in Jersey,” B6.

⁴¹ Ibid.

⁴² Selwyn Raab, “Inquiry on Ballot Patrols is Dropped,” 30.

⁴³ Perlez, “Democrats Will Sue G.O.P. Over Voting Patrol in Jersey,” B1.

1982 Consent Decree

The controversy disappeared from the media for about a year, after which the two parties, neither admitting guilt, reached a consent agreement not to engage in voter intimidation. On November 1, 1982, Judge Dickinson R. Debevoise of the U.S. District Court for the District of New Jersey issued a consent order, signed by all parties to the lawsuit. The most substantial part of the agreement, which would be invoked by the court four years later in a case originating in Louisiana, read as follows:

2. The RNC and RSC (hereinafter collectively referred to as the “party committees”) agree that they will in the future, in all states and territories of the United States:
 - a) comply with all applicable state and federal laws protecting the rights of duly qualified citizens to vote for the candidate(s) of their choice;
 - b) in the event that they produce or place any signs which are part of the ballot security activities, cause said signs to disclose that they are authorized or sponsored by the party committees and any other committees participating with the party committees;
 - c) refrain from giving any directions to or permitting their agents or employees to remove or deface any lawfully printed and placed campaign materials or signs;
 - d) refrain from giving any directions to or permitting their employees to campaign within restricted polling areas or to interrogate prospective voters as to their qualifications to vote prior to their entry into a polling place;
 - e) refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting; and the conduct of such activities disproportionately in or directed toward districts that have a substantial proportion of racial or ethnic populations shall be considered relevant evidence of the existence of such a factor and purpose;
 - f) refrain from attiring or equipping agents, employees or other persons or permitting their agents or employees to be attired or equipped in a manner which creates the appearance that the individuals are performing official or governmental functions, including, but not limited to, refraining from wearing public or private law enforcement or security guard uniforms, using armbands, or carrying or displaying guns or badges except as required by law or regulation, in connection with any ballot security activities; and
 - g) refrain from having private personnel deputized as law enforcement personnel in connection with ballot security activities.⁴⁴

The substance of the agreement, in short, made a distinction between legitimate ballot security measures and those which target minority precincts per se and intimidate voters in them; and it prohibited the RNC and the New Jersey Republican Party from engaging in the latter anywhere in the United States.

CASE 2: Judges and Warning Signs on Dallas’ South Side, 1982

Political scientists writing in 1964, the year that Goldwater’s try for the presidency galvanized the emerging GOP in Texas, observed that Texas Republicans “as indicated by their conduct and pronouncements . . . have virtually written off that one-

⁴⁴ Consent Order, Democratic National Committee, et al. vs Republican National Committee, et al., Civ. No. 81-3876 (D.N.J. Nov. 1, 1982) (Debevoise, U.S.D.J.).

fourth of the electorate composed of Negroes and Latin Americans.”⁴⁵ While that was still true in the 1980s for blacks, it was somewhat less so for Latinos. Slowly the Republicans had begun to reach out to conservative Latinos, and officeholders started appointing some to their administration. The rapid growth of the Latino population through immigration and natural increase helped get the Republicans’ attention. Still, they were keenly aware that most voters in both minority populations were heavily Democratic, and “ballot security” was a major Republican concern.

The 1980 elections had been particularly dramatic in Texas. Ronald Reagan carried the state, which had voted for Jimmy Carter four years before. The Republicans felt their star was rising. Two years earlier, in 1978, they had won two landmark contests. William Clements, Jr., a rich oil man, had become the first Republican governor since Reconstruction, and John Tower, a hard-right conservative and Texas’ first Republican senator since 1870, had been elected to a second term. Tower had been a strong supporter of Goldwater in 1964 and was outspoken in his defense of Goldwater’s refusal to back the Civil Rights Act that year.⁴⁶ Clements’ 1978 victory was an upset, though a narrow one. Turnout was key. Both he and Tower got high voter turnout in the wealthy, urban areas of the state. The working-class and minority voters of the cities, as well as of rural East Texas, largely stayed away from the polls.⁴⁷ These events augured well for Republicanism in Texas, and the party hoped to increase their number of elected officials in Texas while carrying the state for Ronald Reagan, which they did.

In 1982, the same year the consent decree in New Jersey was agreed to by the RNC, Clements was running for a second term, and both Democrats and Republicans had been working hard to get out the vote. Adumbrating events in Florida in 2000, Clements’ secretary of state, David Dean, chief state elections officer, had developed a scheme during the summer of 1982 to purge state voter roles of ineligible felons. A heated controversy followed. The director of the Texas Civil Liberties Union said it “smacks of a politically motivated attempt to intimidate anyone who has ever been arrested into foregoing the right to vote.” A federal injunction forced him to drop the effort when it was revealed that the list of “felons” he proposed to send to county voting officials was highly inaccurate.⁴⁸

A few months later, events in Dallas focused the spotlight again on Democratic allegations of Republican efforts at minority vote suppression and Republican allegations of voter fraud. On Election Day afternoon Democratic poll-watchers noticed that a number of heavily black precincts were running short of ballots. Democratic congressman Martin Frost’s tally after the election revealed that thirty-three precincts had actually run out of ballots during the day, that more ballots were sometimes slow in coming from the county elections office, and that in some precincts they never came at all. People waited up to 4 1/2 hours in the rain as a result of the shortages. Democrats

⁴⁵ James R. Soukup, Clifton McCleskey, and Harry Holloway, *Party and Factional Division in Texas* (Austin: University of Texas Press, 1964), 64.

⁴⁶ “Random Glances at the New Republicans,” *Texas Observer* 56 (21 Aug. 1964), 3-4.

⁴⁷ Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1982* (Washington, D.C.: Barone & Company, 1981), 1049.

⁴⁸ “Dean’s List an Attempt to Intimidate,” *Texas Observer* 74 (15 Oct. 1982), 3. David Richards, *Once Upon a Time in Texas: A Liberal in the Lone Star State* (Austin: University of Texas Press, 2002), 201-3.

attributed the problem to the county election administrator and asked for an investigation by the Justice Department and the county district attorney.⁴⁹

What attracted even more publicity, however, was the appearance of large black and red signs in black precincts. The signs contained a message that began,

**DO NOT REMOVE THIS SIGN
BY ORDER OF THE SHERIFF OF DALLAS COUNTY
You Can Be Imprisoned**

after which were listed six voting fraud offenses. The signs were put up by a state appeals court judge, Patrick Guillot, and a group of at least four other Republican state judges, one of whom later became a federal district judge and another, a Texas Supreme Court judge. Guillot, in a letter soliciting help from his fellow judges, wrote that “Governor Clements’ ballot security chairman requested that all his judicial appointments help out in the effort to keep voting fraud to a minimum. . . . I talked with [secretary of state] David Dean and Sheriff [Don] Byrd Friday and cleared this with them. Remember, when you discourage fraud, you gain votes, too.” The latter three words were underlined.⁵⁰

When questioned later, Dean said that “he had told Guillot that these signs could not be posted without the approval” of the county elections administrator, Conny Drake. Drake, however, denied having received the request for approval. Sheriff Byrd, who had directed some of his deputies to post signs in South Dallas, where many blacks were concentrated, said he understood that Dean had given approval for their posting—which Dean later denied under oath. Indeed, Dean said he had warned against the project.⁵¹ The Department of Justice later found fault with the signs, and Assistant U.S. Attorney General William Bradford Reynolds, a conservative Republican, said he was “concerned that no nonracial justification has been offered for placing most of the signs at minority precincts.”⁵²

One of the sign-posters, state district judge Jack Hampton, asserted he had gotten each election judge’s permission before posting a sign at the precinct—a claim denied by a spokesman for one of the County Commissioners in whose district the postings had occurred. Hampton told a newspaper reporter who had asked him if he believed the signs were intimidating to minority voters, “We have more black defendants in this courthouse than white defendants. If they steal more, I guess they could be intimidated more.”⁵³

Four years later, in 1986, one of the sign posters, Judge Sidney Fitzwater, was nominated to the federal bench under the sponsorship of Texas Senator Phil Gramm. He had first been appointed to his state judgeship by Governor Clements and was running for election to the same post in 1982 when he put up the signs. At his Senate confirmation

⁴⁹ Kay Gunderson, “Plots, Suits, and Mystical Incantations in Dallas County,” *Texas Observer* 74 (10 Dec. 1982): 3-4. The entire contents of the sign are contained in a copy of the sign supplied by George Korbel, Texas Rural Legal Aid, San Antonio, Texas, and in the possession of the senior author.

⁵⁰ Gunderson, “Plots, Suits, and Mystical Incantations in Dallas County,” 4.

⁵¹ *Ibid*; Richards, *Once Upon a Time in Texas*, 203.

⁵² Howard Kurtz, “Two Judicial Choices Assailed; Liberals Say Both Have Tried to Impede Minority Voting,” *The Washington Post*, 5 Feb. 1986, A4; Judy Wiessler, “Judicial nominee defends activities of 1982 election,” *Houston Chronicle*, 6 Feb. 1986, 1-3.

⁵³ Gunderson, “Plots, Suits, and Mystical Incantations in Dallas County,” 3-4.

hearing, he admitted to participating in the Republican ballot security program, but said that “he did not study the signs and drew no conclusion from the fact that he was asked to post them only in black areas of south Dallas.” Indeed, he said that he would not have posted them if he had known they were targeted solely at minority precincts. He also commented that another judge had told him to post the signs, and that it was a part of an officially sanctioned ballot security program.⁵⁴ After apologizing for his actions and taking sharp criticism from various Democrats and from Willie Velasquez, director of the Southwest Voter Education Project in Texas, Fitzwater was confirmed, becoming, at age thirty-two, the youngest judge on the federal bench.⁵⁵

CASE 3: Poll-watcher Controversy in Houston, 1984

The 1984 presidential campaign was contentious in Texas. After Ronald Reagan had narrowly won the South in 1980 (he carried Texas by 55 percent), and Republican governor Clements lost to Democrat Mark White two years later, Democrats and Republicans began to mount massive registration drives. “Voter registration is up in the brand-new, burgeoning suburbs in west and northwest Harris County [surrounding Houston],” wrote political reporter Nene Foxhall. “But registration is also up in those inner-city, predominantly minority neighborhoods, a treasure trove for Democrats, where voters waited in a downpour two years ago to vote a straight ticket.”⁵⁶

Partisan attacks and counterattacks got under way early in the campaign. A member of the Reagan administration in Washington accused Governor White, as well as the governors of Ohio and New York, of breaking federal law by “coercing” state employees to register Democratic voters in welfare offices and state employment agencies, where registrants were more likely to be Democrats. White strongly denied breaking the law and claimed the charges by the Reagan official were part of a “coordinated attack to reduce voter turnout.” He also “voiced concern about aggressive GOP efforts to monitor election procedures . . . including offering \$5,000 rewards to ‘bounty hunters’ who provide information leading to the arrest of state officials for vote fraud.”⁵⁷ And, a few days later, the governor attacked Republican efforts in El Paso to place ads on Spanish-language TV stations warning listeners that “election security officials” had identified illegal voter registration cards, and that illegal voters could face a fine or imprisonment. The station refused the ad. Republican Phil Gramm, campaigning for a Senate seat, said, “I hope the governor has as much commitment to fight vote fraud as I have to fight voter intimidation.”⁵⁸

In 1980 Republicans had offered a \$1,000 reward “for information leading to . . . prosecution for voting fraud.” No one claimed it.⁵⁹ In 1984, the \$1,000 offer still held, and the GOP announced it had budgeted \$250,000 for ballot security in Harris County. What such a huge budget would be used for was not mentioned in newspaper reports, but

⁵⁴ Howard Kurtz, “Two Judicial Choices Assailed,” A4; Judy Wiessler, “Judicial nominee defends activities of 1982 election,” 1-3.

⁵⁵ Judy Wiessler, “Texas GOP readies precinct stakeouts,” *Houston Chronicle*, 8 Oct. 1986, 1-4; Judy Wiessler, “Judicial nominee defends activities of 1982 election,” *Houston Chronicle*, 6 Feb. 1986, 1-3.

⁵⁶ “Voter registration up all over” *Houston Chronicle*, 24 Oct. 1984, 1-1.

⁵⁷ “Ferraro blamed in voter registration row,” *Houston Chronicle*, 25 Oct. 1984, 1-20.

⁵⁸ Anne Marie Kilday, “White says minorities intimidated,” *Houston Chronicle*, 3 Nov. 1984, 1-31.

⁵⁹ Chandler Davidson, *Race and Class in Texas Politics* (Princeton: Princeton University Press, 1990), 236.

the party announced its intention of placing poll-watchers in “heavily Democratic precincts,” which minority leaders took to mean minority precincts. Democratic strategists saw this, too, as an attempt to intimidate voters.⁶⁰ The GOP county chairman dismissed their charges as “hogwash.”⁶¹ Black state senator Craig Washington, representing Houston inner-city neighborhoods, threatened to send out one thousand “big, black and burly” ex-felons to watch the white poll-watchers in black precincts.⁶²

Tensions between the parties were heightened the Saturday before the election, when two Democratic Party offices in Harris County were broken into and vandalized in early-morning raids. “Communist pig” was written on one wall. Texas Democratic Party chairman Bob Slagle attributed them, in part, to the GOP’s ballot security program. “When you create an atmosphere of hatred and racism then you get the kind of terrorist action that happened . . . this weekend,” he charged.⁶³

On Election Day, Senator Washington’s ex-felons failed to show up.⁶⁴ One Republican poll-watcher was ejected from his assigned polling place for repeatedly leaving the premises to make a phone call to Republican headquarters.⁶⁵ A black election judge told reporters that the Republican poll-watchers at her precinct were “just sitting there minding their own business.”⁶⁶ At another polling place, however, the black minister serving as election judge said poll-watchers challenged more than twenty-five voters. “They said that some of them were voting more than once. . . . They said that most blacks look alike so it was hard to tell.”⁶⁷

The black electorate in Harris County turned out to vote in large numbers, apparently unfazed by the ballot security program. Long lines all day were noted at some of their precincts, which went heavily Democratic. But their support for Democrats was not sufficient to prevent the Reagan-Bush ticket from carrying Texas almost two-to-one, in a year that witnessed the election of state legislator and rising GOP star Tom DeLay to Congress.⁶⁸

After the election, Harris County GOP Chairman Russ Mather mentioned what he called several voting inconsistencies in predominantly black Precinct 24—an extremely impoverished neighborhood—where many voters shared the same address or listed the Salvation Army or an empty lot as their residence. The county Republican ballot security chairman added that party officials “thought it highly unusual that so many people would actually live in such crowded conditions.”⁶⁹

⁶⁰ Nene Foxhall, “Race in Texas will likely be closer than polls indicate,” *Houston Chronicle*, 4 Nov. 1984, 1-44.

⁶¹ Mark Sanders, “Democratic chief says Republicans attacked offices,” *Houston Post*, 6 Nov. 1984, 12A.

⁶² William Pack, “Ex-felons will watch polls Tuesday,” *Houston Post*, 5 Nov. 1984, 11A.

⁶³ Mark Sanders, “Democratic chief says Republicans attacked offices,” 12A.

⁶⁴ John Whitmire and Mike Yuen, “Voter turnout heavy, but ‘peaceful, quiet,’” *Houston Post*, 7 Nov. 1984, 6C; Mark Sanders, “Democratic chief says Republicans attacked offices,” *Houston Post*, 6 Nov. 1984, 12A; “Vandalism of Democratic facility in north Harris County is probed,” *Houston Chronicle*, 4 Nov. 1984, 1-34.

⁶⁵ “Poll watcher charged with trespassing,” *Houston Chronicle*, 8 Nov 1984, 1-28.

⁶⁶ Whitmire and Yuen, “Voter turnout heavy, but ‘peaceful, quiet,’” 6C.

⁶⁷ *Ibid.*

⁶⁸ Nene Foxhall, “Sweeping victory in Texas is sweet revenge for GOP,” *Houston Chronicle*, 7 Nov. 1984, 2-3.

⁶⁹ “Vote irregularity reports probed.” *Houston Chronicle*, 8 Nov. 1984, 1-28.

CASE 4: Postcards in Louisiana, 1986

In the mid-term elections of 1986, several state Republican parties pressed aggressively forward with ballot security programs, particularly in states with close races for Senate and House seats in November.⁷⁰ The year 1986 was noteworthy in Louisiana. Russell Long announced his forthcoming retirement from the U.S. Senate. He was the last member of a political dynasty that began in 1928 with the election of his father Huey Long as governor. Republicans felt their time had come to choose a senator. GOP Congressman Henson Moore began his campaign for Long's seat with a huge war chest. He ran an ad saying, "The party's over. It's morning in Louisiana," a slogan that not only invoked President Reagan's "morning in America" theme but was intended to link his Democratic opponent, Congressman John Breaux, to the corruption of the governor, Edwin Edwards. In the nonpartisan primary, Henson bested Breaux 44-37.⁷¹ Louisiana in 1980 had the third largest percentage of African Americans among the fifty states. They were one of the main groups the Breaux campaign appealed to.⁷²

As part of its 1986 ballot security program, the RNC had hired a private contractor to conduct operations nationwide. One such operation focused on Louisiana. Run by Ballot Security Group out of Chicago, it followed a pattern Republicans had used at least since the 1950s, as this Report's account of Arizona politics has shown. Non-forwardable letters were sent to 350,000 registered voters across the state. About 30,000 were returned.⁷³ Most of the returned letters had been addressed to blacks. "They were very selective," the chairman of the State Central Democratic Committee said. The head of Ballot Security Group denied his company was targeting blacks, although he acknowledged the returned envelopes primarily came from their addresses. "That's to be expected," he said, "because more of them are renters and they move more often."⁷⁴ However, the fact later emerged that the letters had been targeted at districts voting over 75 percent for Democratic Presidential candidate Walter F. Mondale in 1984, a pattern that seldom occurred outside heavily black districts.⁷⁵ As the attempted purge began to attract attention, assertions that candidate Moore's money had helped subsidize it were initially denied but later turned out to be true.⁷⁶

Democrats went to court to obtain a restraining order and succeeded. Had the Republicans not been prevented from continuing their program, their next step would have been to send challenged voters a registered letter notifying them of the action. If there was no reply, a notice would be placed in the parish (i.e., county) official journal,

⁷⁰ Judy Wiessler, "Texas GOP readies precinct stakeouts," *Houston Chronicle*, 8 Oct. 1986, 1-4.

⁷¹ Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1988* (Washington, D.C.: National Journal, 1987), 482-84, 487.

⁷² *Ibid.*, 482.

⁷³ Jack Wardlaw and Ed Anderson, "GOP attempts to strike thousands of La. Voters," *New Orleans Times-Picayune/The State's Item*, 13 Sept. 1986, B5.

⁷⁴ *Ibid.*

⁷⁵ Rachel E. Berry, "Democratic Natl. Comm. v. Edward J. Rollins: Politics As Usual or Unusual Politics?," *Race & Ethnic Ancestry Law Digest* 2 (1996): 4. Another source says the letters were targeted at precincts that gave Reagan less than 20 percent of their vote in 1984. See Edward Walsh, "Black voters key to Dem win in at least 4 close Senate races," *Houston Chronicle*, 7 Nov. 1986, 1-9.

⁷⁶ Barone and Ujifusa, *The Almanac of American Politics 1988*, 484.

and if there was still no response, the voter's name would be stricken—purged—from the registration list.⁷⁷

“It Could Keep the Black Vote Down Considerably”

Voters in affected areas brought suit. In the discovery phase, a particularly damning memo came to light, which spelled out clearly the motive behind this ballot-security program and suggested as well the motive behind many other programs which had used this purging tactic. The memo was from Kris Wolfe, the RNC midwest political director, to Lanny Griffith, the RNC southern political director. “I know this race is really important to you,” Wolfe wrote. “I would guess that this program will eliminate at least 60-80,000 folks from the rolls. . . . If it's a close race . . . which I'm assuming it is, this could keep the black vote down considerably.”⁷⁸

After considering the evidence, the trial judge called the Louisiana ballot security program “an insidious scheme by the Republican Party to remove blacks from the voting rolls. . . . The only reasonable conclusion is that they initiated this purge with the specific intent of disfranchising these blacks of their right to vote.” He prohibited use of the tactics in the future.⁷⁹

Based on the facts ascertained in the case, the DNC returned to the federal court in New Jersey that had presided over the 1982 consent decree stemming from the GOP's 1981 vote suppression scheme in Newark and surrounding areas. Judge Debevoise presided over another agreement in late 1986 according to which the RNC would not engage in direct-mail campaigns for the purpose of using undelivered letters to challenge the validity of voter registrations. (The following year, both parties agreed to yet another stipulation in the same court, requiring the RNC to submit all ballot security programs to the court for approval.)⁸⁰

In November, Breaux won by a margin of 53-47, gaining the votes of Blacks, Cajuns, and about half the remaining whites as well, which easily overcame Moore's strong support in affluent white neighborhoods. Breaux would not have won without black votes, a fact he promised to remember.⁸¹ Various commentators attributed Moore's defeat in part to the ballot security scheme. *The Almanac of American Politics* described it as a “thinly disguised attempt to intimidate voters, but [it] succeeded only in infuriating blacks and increasing their turnout while—no one would have believed this two decades ago—making no favorable impression on whites.” Even Clarence Thomas, chairman of the Equal Employment Opportunity Commission at the time and soon to become a Supreme Court justice, blasted the Louisiana program. He portrayed it as having helped the GOP “snatch defeat from the jaws of victory,” by stimulating black

⁷⁷ Wardlaw and Anderson, “GOP attempts to strike thousands of La. Voters,” B-5.

⁷⁸ Thomas B. Edsall, “‘Ballot Security’ Effects Calculated; GOP Aide Said Louisiana Effort ‘Could Keep the Black Vote Down’,” *The Washington Post*, 24 Oct. 1986, A1.

⁷⁹ Laughlin McDonald, “The New Poll Tax,” *The American Prospect*, 30 Dec. 2002, 27-28.

⁸⁰ Sherry Swirsky, “Minority Voter Intimidation: The Problem That Won't Go away,” *Temple Political and Civil Rights Law Review* 11 (Spring 2002): 362.

⁸¹ Barone and Ujifusa, *The Almanac of American Politics 1988*, 487; Linda Williams, “1986 Elections: Major Implications for Black Politics,” *FOCUS* (magazine of the Joint Center for Political Studies), Nov.-Dec. 1986, 6.

turnout in the Breaux race. “Republicans,” he said, “have shown an arrogance that blacks need not be consulted, nor need be approached on campaign issues.”⁸²

CASE 5: Toxic Atmosphere in Houston, 1986

As in neighboring Louisiana that year, Republicans in Texas geared up for an aggressive, highly publicized statewide ballot security program in 1986. Former governor Bill Clements, whom Mark White had unseated in 1982 thanks in part to an extraordinarily high minority turnout, was now hoping to defeat White, and the GOP was eager for revenge. As the campaign heated up, the ballot security programs in Louisiana and some other states were attracting national attention. Paul Kirk, DNC chairman, pointed out that a Louisiana court had recently issued an injunction against the massive “do not forward” mail-out to black voters in the Pelican State, and he said Democrats were trying to stop “what in fact has been not ballot integrity, but black intimidation.” (No such mailing was used in Texas, according to Republican Party officials.) He also noted that the DNC had filed a lawsuit in New Jersey federal court to enforce the 1982 agreement in which the RNC agreed not to target precincts on racial grounds.⁸³

Jane Matheson, executive director of the Texas Republican Party, announced that her party would send volunteers in each county to ensure that signatures on requests for absentee ballots matched those filed on voter registration cards, and to further make sure that absentee ballot applications contained all the required information. Poll-watchers would be sent to many areas, according to Ann Ashy, who headed the state Republican ballot security program. She explained that targeted precincts would be decided “partly” on their being in areas with a history of illegal vote fraud—probably including “all of South Texas,” which she defined as “everything south of San Antonio”—a huge area heavily populated by Latinos. Statewide, Republicans planned to station 2,600 poll-watchers in up to 1,500 polling places.⁸⁴

The national controversy over ballot security programs continued as Election Day approached. In late October a ballot security program in Michigan targeting black and Hispanic precincts came under scrutiny by Judge Debevoise in New Jersey, who would soon hold that programs that year in Louisiana, as well as in Indiana and other states GOP officials refused to identify, violated the terms of the 1982 consent decree. However, the Michigan plan was not run by the RNC but by the National Republican Congressional Committee (NRCC), which had invested \$24,000 in a plan to pay its workers to challenge voters in Pontiac. Debevoise said the Michigan plan was a “matter which raises disturbing questions.” The NRCC, faced with the possibility of a lawsuit, tried to put an end to the program but the man running the ballot security program, a prominent Republican and county prosecutor, called the Democrats’ complaints “a lot of crap,” and argued that, as a local organization, it was not obligated to abide by an

⁸² Barone and Ujifusa, *The Almanac of American Politics 1988*, 484; Nene Foxhall, “GOP’s language, ballot security issues hurting party’s image among minorities,” *Houston Chronicle*, 1-38. See also Walsh, “Black voters key to Dem win in at least 4 close Senate races,” who cites Eddie Williams, president of the Joint Center for Political Studies, an African-American policy institute, as saying the GOP “‘shot themselves in the foot,’ particularly in the South, with their so-called ‘ballot security’ program . . .”

⁸³ Judy Wiessler, “GOP readies precinct stakeouts,” *Houston Chronicle*, 8 Oct. 1986, 1-4.

⁸⁴ *Ibid.*

agreement entered into by the RNC. He promised to place challengers at the polls. Debevoise agreed to hear Democrats' charges that the Michigan program violated the terms of the 1982 agreement, but later rejected them, when lawyers for the RNC convinced him that the program it had funded in that state had been stopped.⁸⁵

As these events were unfolding on the national scene, Houston's Republicans said they were going to put as many as 200 poll-watchers in 50 to 75 predominantly minority precincts in the inner city. County Republican chairman Russ Mather said "about 25 of the 290 minority election judges 'would do anything they could to influence the election'." GOP officials denied that the targeted precincts had anything to do with race. "If you plot these on a map, they are all in the inner city, and that's where the Democratic vote is going to be 90 to 95 percent straight ticket," Mather said. "That's where the abuses are going to happen. They are not going to happen in [the predominantly white areas of] west Harris County, in Clear Lake City or Kingwood."

The local head of GOP ballot security, Preston Goodwin, added that the precincts chosen for poll watching were ones in which alleged violations had occurred in the past. His group was sending letters to the Democratic precinct judges to alert them to the presence of Republican poll-watchers who, the letters said, "are not being assigned to harass or intimidate you, or the voters, or to disrupt the elections process. They are being assigned to observe the conduct of the election, including the assistance of voters . . ." Goodwin asserted that his volunteers would be looking for poll officials allowing people to vote without proper identification or, under the guise of assisting voters, suggesting how they should vote.⁸⁶

With the county chairman's announcement, the political atmosphere became toxic. Black precinct judges, angered by the Republicans' allegations of dishonesty, met with Democratic leaders and then "came out swinging," according to one team of reporters. Houston congressman Mickey Leland called Mather "a racist bastard." He explained: "It's blatantly racist to suggest the problem only exists in black precincts." Ann Covert, executive director of the county GOP, responded that Leland "should be embarrassed by his bad mouth. It's not racist at all." She said voting irregularities habitually occurred in about twenty to twenty-five precincts. The congressman wanted to know how the GOP could determine where the majority of problems occurred when they traditionally focused on black ones. He distinguished between merely sending poll-watchers and Mather's public announcement that they were being deployed to minority precincts. It was the latter action, he said, that was intended to discourage inner-city voters from showing up at the polls. Soon Democratic officials, including Governor White, were likening the poll-watcher program to the Ku Klux Klan.⁸⁷

Adding to the tension as the election neared was a decision by the GOP to equip their poll-watchers with badges that said "Texas Ballot Security Program." The state GOP chairman George Strake defended them as "perfectly legal. They are representing

⁸⁵ "GOP defying order on voter challenges," *Houston Chronicle*, 24 Oct. 1986, 1-4; "State, Not Patterson, to Watch Pontiac Polls," *Detroit Free Press*, 25 Oct. 1986, 3A; Thomas B. Edsall, "'Ballot Security' Effects Calculated; GOP Aide Said Louisiana Effort 'Could Keep the Black Vote Down'," *The Washington Post*, 24 Oct. 1986, A1.

⁸⁶ David Ellison, "GOP to place poll watchers at 100 Democratic precincts," *Houston Post*, 23 Oct. 1986, 4A; Jim Simmon, "Poll watchers on their guard," *Houston Post*, 4 Nov. 1986, 8A.

⁸⁷ Allan C. Kimball and Guy Cantwell, "Democrats plan poll-watcher watchers," *Houston Post*, 26 Oct. 1986, 1A; Simmon, "Poll Watchers on their guard," 8A.

the Texas Republican Party under the Texas Election Code. . . . Nobody is trying to act like a state official,” he said. The afternoon before the election, Attorney General Jim Mattox, a Democrat running for re-election, ruled that the badges could not be worn.⁸⁸

The elections took place apparently without incident on November 4. The results, however, were not as happy for Texas Democrats as they were in Louisiana that year. Clements defeated White statewide, even though White carried Harris County and South Texas.⁸⁹

CASE 6: Problems in Hidalgo County, 1988

Ronald Reagan’s second term as president was coming to an end, and Texas Republicans were eager to replace their icon with his vice-president, George H. W. Bush. The presidential race was especially significant to Texans because Bush, while not a native, had Texas roots, and because Democratic presidential hopeful Michael Dukakis had chosen as his running mate Senator Lloyd Bentsen, who *was* a native—not simply of Texas but of Hidalgo County in South Texas, a heavily Latino part of the state.

Republican Bill Clements had re-taken the Texas governorship from Mark White in 1986 and appointed Jack Rains as secretary of state. Rains was eager to establish an innovative state-run ballot security program. As it turned out, its focus would be on South Texas. Stories of bosses, or *jefes*, engaging in ballot-box stuffing and bringing Mexican nationals across the Rio Grande to vote during the first half of the Twentieth Century were a part of Texas political lore, and vote fraud still occasionally occurred. Latinos, on the other hand, were keenly aware of a long history of Anglo discrimination in the Rio Grande Valley against Mexican-American citizens. Major ethnic upheavals in South Texas during the sixties and seventies were the result of this Anglo domination and Latino rebellion against it. Both Republicans and Democrats worked hard to register Texas voters in 1988, and both parties—for different reasons—were interested in Latinos, who, as the election approached, made up about 13 percent of registered voters and tended to vote Democratic.⁹⁰

Ironically, the first voting controversy in Texas that year involved a discovery, early in January, of fraud by Republican campaign consultants. Various of the party’s presidential candidates had hired local consultants to collect the 5,000 signatures of registered voters necessary to get their name on the March primary ballot. The consultants, in turn, had hired youthful workers paid hourly or by each signature collected. Consultants and workers were caught forging voters’ names. The campaigns of Senator Robert Dole, former Delaware Governor Pierre (Pete) DuPont, and former Secretary of State Alexander Haig were implicated. The names of registered Democrats, including many African-Americans living in North Houston, were written on the petitions. None of those contacted by reporters said they had signed. Some of the

⁸⁸ Ibid.

⁸⁹ Nene Foxhall, “GOP’s language, ballot security issues hurting party’s image among minorities,” *Houston Chronicle*, 23 Nov. 1986, 1-38.

⁹⁰ Peter Applebome, “Battle for Hispanic Voters in Texas Intensifies,” *The New York Times*, 30 Oct. 1988, 1-31; Sam Attlessey, “The Hispanic Factor: Leaders say Dukakis dropped the ball in Texas areas where turnout could be key,” *Dallas Morning News*, 17 Oct. 1988, 1A; Juan R. Palomo, “Candidates running hard,” *Houston Post*, 6 Nov. 1988, A1; Clay Robison, “Candidates strain towards finish line,” *Houston Chronicle*, 6 Nov. 1988, 1A; Clay Robison, “Texas Dems aren’t tossing in the towel,” *Houston Chronicle*, 6 Nov. 1988, 1A.

purported signers were dead. Dole's Texas co-chairman attributed the fraud to the Bush campaign, which denied it.⁹¹

State GOP chairman George Strake first tried to investigate the matter to determine which signatures were fake. However, once the FBI got involved and the scandal began to dominate the local news, people were unwilling to discuss the matter with party officials. "The process has simply become impossible," Strake finally admitted, and declared all the major national GOP candidates eligible to appear on the ballot. "While many observers said they believed it the only reasoned approach to take," one reporter observed, "the line does not play well for the party that has made ballot security a crusade."⁹²

The crusade, however, was undeterred. A few days after Strake allowed all major candidates a place on the ballot, Rains announced a ballot security program whereby his office would station election inspectors at various places in the March 8 "Super Tuesday" primary, and then train and deploy an even larger number in November, mostly in South Texas and East Texas (the latter with a heavy black population). "I think the Valley (South Texas) has a disproportionate amount of complaints, and then East Texas does," he said. Both areas were Democratic strongholds. He assured reporters, however, that it would be a nonpartisan effort. State Democratic chairman Bob Slagle responded that he hoped the ballot security program would be focused more on Houston, given the Republicans' petition fraud scandal, and he threatened a lawsuit to prevent voter intimidation by secretary of state Rains.⁹³

In late February, Rains wrote several state agency heads requesting a list of their employees to work as election inspectors in the party primaries. Rains said the "eyes of the nation" would be on Texas, and he wanted to ensure a clean election. Attorney general Jim Mattox and state treasurer Ann Richards, both Democrats, balked. Richards said she was puzzled, because the parties, not the state, usually monitor elections. Mattox refused to allow the use of his employees, pointing to potential legal problems, and urging extreme caution, given the possibility of voter intimidation. Rains nonetheless sent fifty-eight inspectors to polling places on primary election day.⁹⁴

Democrats charged that Rains was politicizing his office. The secretary of state is the governor's top appointee, and the office is an important one, administering election law and keeping records on corporations and campaign expenses and contributions. There was speculation that, like some of his predecessors in the post, Rains was aiming for higher office. In addition to his unprecedented use of public employees as election monitors, he was criticized for sending partisan op-eds to newspapers at state expense, and putting up billboards with his name on them advertising his "Voter '88" registration drive. Even some Republicans thought his behavior inappropriate.⁹⁵

In the summer, the Houston petition forgery case went to trial. The jury found that Rocky Mountain, vice-president of Southern Political Consulting and a former

⁹¹ Nene Foxhall, "GOP petitions' problems won't go away quietly," *Houston Chronicle*, 24 Jan. 1988, 1-33.

⁹² Ibid.

⁹³ Wayne Slater, "State to Focus Anti-vote Fraud Efforts on E. Texas, Rio Grande Valley," *Dallas Morning News*, 11 Feb. 1988, 19A; "58 election inspectors keep an eye on polling places across Texas," *Houston Chronicle*, 9 Mar. 1988, 1-10.

⁹⁴ R.G. Ratcliffe, "Rains' plan for election inspectors raises ire," *Houston Chronicle*, 2 Mar. 1988, 1-11.

⁹⁵ Clay Robison, "Jack Rains: the man who would like to be governor?" *Houston Chronicle*, 17 Apr. 1988, 1-34.

employee of U.S. Representative Tom DeLay, had been unable the previous December to gain the necessary petition signatures simply by going door-to-door in a Houston neighborhood. Mountain then resorted to what he called “Plan B.” He took his young workers back to the company’s offices, provided them with beer, and oversaw a “forging party.” Mountain and the company were convicted on thirty-eight misdemeanor counts each. He could have been fined \$2,000 for each count and given a year in jail but instead was assessed \$7,600 total, given probation, and required to perform a year’s public service. The company paid a \$38,000 fine.⁹⁶

As the months went by, Dukakis’ campaign faltered, thanks partly to the “Willie Horton” ad that was a central feature of the Bush campaign, and Bentsen’s position on the ballot was not providing the anticipated boost in Texas. But Democrats worked hard in the waning days of the campaign to get a high voter turnout among South Texas Hispanics.

Election Inspectors “Are Officers of the State”

Events in October created a noisy controversy that attracted national attention. Rains sent instructions to election officials around the state to implement his ballot security program, giving unprecedented authority to the election inspectors overseen by his office. As spelled out in a subsequent op-ed Rains sent to state newspapers, “election inspectors are not poll-watchers or other monitors who work for a particular party, candidate or cause . . . [but] are officers of the state . . . [whose] activities will be coordinated with U.S attorneys, the FBI and the Texas Department of Public Safety.” Poll-watchers, under the new rules, would be able to make telephone calls while on the job, require election officers to verify voter registration in some cases, and warn that law enforcement officials would be on the alert to respond to Election Day problems. These were departures from standard poll-watchers’ duties. Attorney general Jim Mattox and other Democrats attacked Rains for engaging in tactics to discourage minority voters. The Mexican American Legal and Educational Fund (MALDEF), a civil rights organization, filed suit, claiming that Rains had overstepped his authority and was illegally using his office to intimidate voters in South Texas. MALDEF attorney Judith Sanders-Castro argued that the new procedures should have been cleared with the Justice Department under the Voting Rights Act—a claim Rains’s office denied. She said Rains had broadened the inspectors’ powers to enable them to be “a mini-police” force appearing at polling places on November 8.⁹⁷

Adding to the controversy was a remarkable press release from Randy Erben, assistant secretary of state, on October 25. Erben announced “a major case of alleged vote fraud was uncovered Tuesday morning in Hidalgo County,” Bentsen’s home county where his father still lived. (Hidalgo County had the eighth largest percentage of Latinos of any county in the U.S.—85.2 percent—and the seven counties with higher proportions were also in South Texas.) At issue were absentee ballots printed in such a way that

⁹⁶ Fred Bonavita, “Political consultant fined \$7,600 gets probation for petition forgery,” *Houston Post*, 1 Mar. 1988, 15A.

⁹⁷ Jack M. Rains, “It’s time to stamp out voting fraud in Texas,” *Houston Post*, 30 Oct. 1988, E3; “Suit Accuses secretary of state of using office to intimidate Hispanics,” *Houston Post*, 29 Oct. 1988, A19; Associated Press, “MALDEF suit hits controversial election orders,” *Houston Chronicle*, 29 Oct. 1988, A15.

voters choosing any but the Democratic presidential candidates could have had their ballot invalidated. Erben said he had “asked the Texas Rangers, the F.B.I. and . . . the U.S. Attorney for the Southern District of Texas, to investigate the situation. It appears we have a deliberate conspiracy to deprive voters of their civil rights,” he said. He announced that Rains had ordered the Hidalgo County Clerk, William “Billy” Leo to impound all the unused ballots and those that had been returned by mail. “This type of fraud is a throwback to the old days, when political bosses manipulated the democratic process to favor their own candidate or party,” Erben continued. “We’re checking ballots in all other 253 counties to make sure this fraud is not spreading across the state like wildfire.”

Leo, a Democrat, claimed the flawed ballot resulted from a typographical error which he had not noticed, and agreed to correct the error and send all those who had voted a new ballot. He complained that the secretary of state never contacted him before Erben issued his broadside alleging fraud, and Leo later unsuccessfully sued Erben for libel. A state representative from Hidalgo County would file a bill in 1989 to remove authority for supervising elections from the secretary of state, and establish a six-member bipartisan election commission. It failed.⁹⁸

“Remember: Election Officials Are Watching”

While the battle of absentee ballots was raging, Latinos along the Rio Grande began to hear radio spots in Spanish, paid for by the Hidalgo County Republican Party. The ads warned, in part:

Voting officials will be watching closely. It is illegal to vote in this election if you are not a U.S. citizen. If you have a green card, you cannot vote. If you do vote, you can be subject to up to 10 years in prison, fined up to \$5,000 and lose your opportunity to become a U.S. citizen. If you accept money to vote, you can get up to five years in jail.

Remember, election officials are watching.

The ads caused Texas Congressman Jack Brooks to ask U.S. Attorney General Richard Thornburgh to send federal observers to South Texas, and he agreed to do so. Brooks told Thornburgh that the “election officials are watching” statement was equivalent to a “Big Brother” threat. Congressman Bill Richardson in neighboring New Mexico said the ads were among continuing racist scare tactics used by the Bush campaign and should be removed from the air. He said he was “fed up” with the GOP refusing to admit to “these intimidation and racist tactics aimed at Hispanic and black voters,” referring to the controversial Willie Horton ads the Bush campaign was running. Dukakis would voice his criticism of the ads a few days later, when he appeared at a giant rally outside the Hidalgo County courthouse.⁹⁹

⁹⁸ News release, Office of the Secretary of State, 25 Oct. 1988 (copy in senior author’s possession); Rickey Dailey, “Hidalgo County Ballots Impounded,” *Valley Morning Star* (Harlingen), 26 Oct. 1988, A1; Scott Rothschild, “Secretary of State’s Office Accused of Scaring Hidalgo County Voters,” *Dallas Morning News*, 2 Dec. 1988, 20A; “Political Intelligence,” *The Texas Observer* 81 (24 Feb. 1989): 16. For Latino county percentages, see data from the 1990 Census of the Population at http://fisher.lib.virginia.edu/collections/stats/ccdb/documents/rankings/rank1_08.html.

⁹⁹ G. Robert Hillman, “U.S. To Monitor Voting In S. Texas,” *Dallas Morning News*, 5 Nov. 1988, 11A; Clay Robison and R.G. Ratcliffe, “Candidates strain toward the finish line; ‘We’re surging,’ still-hopeful

In the face of lawsuits challenging his controversial instructions to poll-watchers and inspectors, Rains backed off a week before the election. The Texas Supreme Court presided over a settlement, in which he agreed to rescind the memoranda containing instructions to poll-watchers, and to tell poll inspectors not to contact law enforcement officials regarding polling place disputes but rather the secretary of state's office.

On Election Day, thirty-two federal observers were in place in Hidalgo County, along with two Justice Department attorneys. They reported seeing no voter harassment. Nor did county clerk Leo. Tom Wingate, Republican county chairman, said, "We've had irregularities, but nothing we haven't been able to stop." He mentioned isolated instances of illegal behavior, such as electioneering too close to the polls and marked ballots carried into booths. Bush easily won Texas, defeating Dukakis 56 to 43 percent. Exit polls showed that 82 percent of the Hispanic vote in Texas went to Dukakis and Bentsen, compared to 75 percent for Mondale and Ferraro four years previously. However, turnout in heavily Latino Hidalgo County was 4 points below that in 1984.¹⁰⁰

CASE 7: Uniformed Poll Guards in Orange County, 1988

At twenty polling places on Election Day morning in November 1988, voters in heavily Latino precincts in Orange County, California were confronted with an unusual spectacle: signs in English and Spanish warning non-citizens not to vote, and, more unexpected still, "guards" in blue uniforms with badges who were taking down voters' license plate numbers, asking them about their citizenship, and in at least one voting station, collecting and submitting voters' ballots to poll workers. Some of the guards sat alongside election officials. Both the guards' handling of ballots and questioning of voters were illegal.¹⁰¹

By lunchtime the guards were removed from the polls on order of the chief deputy California secretary of state.¹⁰² But their presence created a firestorm of protest and set in

Dukakis says," *Houston Chronicle*, 6 Nov. 1988, A1; Kevin Merida, "Dukakis Says Bush Should Apologize For S. Texas Ads," *Dallas Morning News*, 6 Nov. 1988, 22A.

¹⁰⁰ Associated Press, "No Harassment found at Hidalgo County polls," *Houston Chronicle*, 9 Nov. 1988, B11; Mark Carreau, "Hispanics in Texas solidly supported Dukakis-Bentsen presidential ticket," *Houston Chronicle*, 9 Nov. 1988, B9; "Political Intelligence," *The Texas Observer* 81 (24 Feb. 1989): 16; David Prince, "Voter Turnout, Registration and Reform in Texas: A County Level Study 1976-1996," paper presented at the Annual Meeting of the Southwestern Political Science Association, San Antonio, March 31-April 3, 1999, Appendix B; Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1990* (Washington, D.C.: National Journal, 1989), 1159.

¹⁰¹ (The guards were never prosecuted because, it was determined, no criminal intent was evident.) Lanie Jones and Steven R. Churm, "Elections '88: State assails GOP's posting of poll guards," *Los Angeles Times*, Orange County ed., 9 Nov. 1988, 2-1; Barbara A. Serrano and Jean O. Pasco, "Woman gave her ballot to poll guard, more calls for Fuentes' resignation," *Orange County Register*, 11 Nov. 1988, B1; "GOP 'observers' ordered from polls," *San Francisco Chronicle*, 9 Nov. 1988, A8; Steven R. Churm, "Candidate says poll guard wanted ID," *Los Angeles Times*, Orange County ed., 24 Nov. 1988, 2-3. (A post-election investigation revealed discrepancies in accounts of when the guards were all gone. See Claudia Luther, "Poll Guard Dispute Heats Up Again: 'I Got Scared . . . Just Came Home'," *Los Angeles Times*, Orange County ed., 14 Dec. 1988, 2-1; Larry Peterson, "No misdemeanors will be charged in poll-guard case; DA's Office says some felony counts are still possible," *The Orange County Register*, 7 Nov. 1989, B1.

¹⁰² Robert B. Gunnison, "Orange County issue, probe of GOP-hired guards at polls," *San Francisco Chronicle*, 11 Nov. 1988, A14.

motion a year-long federal investigation, a civil lawsuit, and new legislation making the hiring of uniformed guards at polling places in California on Election Day a felony punishable by a \$10,000 fine. The events that day were similar in some important respects to previous ballot security programs gone bad, as well as to ones which would come later.

Orange County was (and remains) a nationally recognized base of conservative Republican politics, having become famous for its strong support for Goldwater's presidential bid in 1964 and Ronald Reagan's for governor two years later.¹⁰³ However, within the county the 72nd Assembly district had a sizable component of Latino voters and when the Republican assemblyman died a day after the June 7 GOP primary, Democrat Christian "Rick" Thierbach took on Republican Curt Pringle for the job, and it appeared he had a good shot at winning. Democrats mounted a major get-out-the-vote drive in Latino precincts. That and the expected closeness of the race, among other things, apparently influenced the Republicans to take ballot security measures. The final count revealed that Pringle had won by 867 votes out of 66,831 cast. The two men's campaigns were among the most costly of any California assembly races that year.¹⁰⁴

After the news broke of the guards at polling places, some Republicans tried to justify it by describing rumors they had received in the weeks before the election. One of Pringle's consultants had gotten a tip to watch for "voting irregularities" on Election Day, he explained to reporters. Tom Fuentes, Orange County Republican chairman and himself Hispanic, also told of receiving reports of "door-to-door walkers seeking the registration of non-citizens." (Donald Tanney, Orange County registrar, told of meeting with two members of the GOP county central committee at their request. After listening to their belief that "vanloads of illegal citizens" would be brought in to vote, and to their inquiring if they could challenge their citizenship, Tanney said, "I strongly cautioned them about any form of interference." But he said "there was never any mention of uniformed observers. I never even thought they would go that far." In any case, someone with the county GOP had asked a political consultant to hire guards from a company called Saddleback Security, and it was their employees who showed up at the polls early the next morning.)¹⁰⁵

Democratic leaders immediately expressed outrage. Paul Garza, executive director of the Democratic Party of Orange County, called it a violation of Hispanic voters' civil rights and compared it to the situation in Texas, where Republicans in the

¹⁰³ Bill Saracino, "Well Done, Tom," *CalNews.com*, 29 April 2004, <http://www.calnews.com/archives/saracino04.htm>.

¹⁰⁴ Susan Paterno and Marilyn Kalfus, "Poll guard fallout: will Hispanics bolt GOP?" *Orange County Register*, 14 Nov. 1988, A1; Lanie Jones and Steven R. Churm, "Elections '88: State assails GOP's posting of poll guards"; Claudia Luther, "Pringle, Other Candidates Hold Leads in Final Tally," *Los Angeles Times*, Orange County ed., 17 Nov. 1988, 2-1; Claudia Luther and Steven Churm, "Suit Planned to Void 72nd District Results," 1-1; Larry Peterson, "Poll-guard suit haunts county GOP: Hispanic gains undermined, Santa Ana councilman fears," *The Orange County Register*, 19 Nov. 1989, B1.

¹⁰⁵ Lanie Jones and Steven R. Churm, "Elections '88: State assails GOP's posting of poll guards," 2-1; Associated Press, "GOP 'Observers' Ordered From Polls," *San Francisco Chronicle*, 9 Nov. 1988, A8; Barbara A. Serrano and Jean O. Pasco, "Woman gave her ballot to poll guard, more calls for Fuentes' resignation," B1; Claudia Luther and Steven R. Churm, "GOP Was Warned Against Use of Poll Guards, Registrar Says," *Los Angeles Times*, 11 Nov. 1988, 1-3; Claudia Luther and Steven R. Churm, "Suit Planned to Void 72nd District Results," 1-1; Mark Landsbaum and Steven R. Churm, "FBI Probes GOP's Posting of Guards at Santa Ana Precincts," *Los Angeles Times*, 10 Nov. 1988, 1-3.

days leading up to November 8 had been running TV and radio ads warning undocumented Latinos not to vote: “We’ve heard about this being done along the Rio Grande in Texas,” Garza said, “but it’s unconscionable that it is being done in Orange County.”

“Un-American, Unconstitutional, Despicable”

But Democrats were not alone in denouncing the guards. Santa Ana Councilman John Acosta, a long-time Republican, called positioning the guards “totally, totally un-American. It smacks of Nazism.” Orange County Supervisor Gaddi Vasquez, described by reporters as one of the GOP’s most prominent Latinos in California, said the episode “showed a tremendous lapse in judgment.” Raoul Silva, a member of the California Republican Party Central Committee, said, “It’s un-American, it’s unconstitutional, and it’s despicable.” State GOP chairman Bob Naylor labeled it a “terrible, terribly symbolic insult.” Indeed, very few Republican officials, Anglo or Latino, were quoted as approving it once it became public, although Greg Haskins, a high-ranking county GOP official said, “I can’t imagine anybody who had the right to vote being intimidated by these people.”

Nonetheless, some Republicans, to put the best face on it, seemed eager to make a distinction between the “symbolic insult” Naylor spoke of and the alleged effect of vote suppression. And others seemed to believe that, given the narrow victory by Republican Pringle, the guards’ presence made the difference. Carl Rodriquez, Pringle’s chief consultant, speculated that without the guards Pringle might not have won—implying that they scared off would-be illegal voters. However, Republicans at the time admitted they had no evidence of illegal voting¹⁰⁶

Some Democrats and civil rights advocates also believed that the guards’ presence “made the difference”—not by providing ballot security from the votes of non-citizens but by intimidating some registered voters who came to vote and decided not to. Richard Martinez, executive director of the Southwest Voter Registration and Education Project, announced that a poll was being conducted of Latino voters, and he suggested that posting guards “has a chilling effect on voters, particularly first-time voters who are gingerly taking their first steps in our political process.” And stories began to filter in about voters’ experiences with guards at the polling places. Voter Jerry Castillo said a guard glared at him as he walked up to his polling place. “I felt really intimidated,” he said, “like someone was looking over my shoulder.”¹⁰⁷

Rumaldo Madrid, 62 years old, was a Korean War veteran and strong Reagan supporter who, although a registered Democrat, said he had intended to vote for Pringle. He encountered a man in a business suit as he approached his polling place at St. Joseph’s Church. The man asked him if he was a U.S. citizen and registered to vote.

¹⁰⁶ That evidence would only turn up much later, when a paid Thierbach worker was prosecuted for allegations he registered some non-citizens. See Larry Peterson, “Poll-guard suit haunts county GOP,” B1.) Lanie Jones and Steven R. Churm, “Elections ‘88: State assails GOP’s posting of poll guards,” 2-1; and Susan Paterno and Marilyn Kalfus, “Poll-guard fallout: Will Hispanics bolt GOP?” A1; Mark Landsbaum and Steven R. Churm, “The California Elections: FBI probes GOP’s Posting of Guards at Santa Ana Precincts,” 1-3; Claudia Luther and Steven R. Churm, “GOP Was Warned Against Use of Poll Guards, Registrar Says,” 1-3.

¹⁰⁷ Claudia Luther and Steven R. Churm, “GOP Was Warned Against Use of Poll Guards, Registrar Says,” 1-3; Robert B. Gunnison, “Orange County issue, probe of GOP-hired guards at polls,” A14.

When he said yes, a uniformed poll guard “came up like he was a football player, walking real fast,” in Madrid’s words, and asked him for proof of his citizenship. The guard, he said, told the other man, “Anybody can say they’re an American citizen. Anybody.” Madrid said the guard “was talking like he was letting me know he had some authority.” When Madrid asked the two men who they were, they refused to answer, he said. He decided not to vote. (After Madrid became a plaintiff with others in a lawsuit against the Republican party, however, he was dropped because he could not identify the guard who approached him as one of the men hired by the Republicans.)¹⁰⁸

“He Kind of Scared Me”

Jane Fantuzzi, 74, a Latina, had frequently been a poll worker. When she approached the polling place at the senior citizens’ center to vote on election morning, she saw signs warning non-citizens not to vote. She returned home, and after thinking about it, decided to go back. When she did, a uniformed guard barred her from entering the building and told her to wait outside. “He kind of scared me,” she said. “I was tempted not to vote because I was scared, and I knew there was something going on wrong.” She had never seen guards at a polling place before, and she had been voting since she was twenty-one, she said. Fantuzzi did as she was told, waiting for more than half an hour, reciting the Rosary. Then she got up her courage, went inside, and voted. An election official later explained the event by saying that the voter congestion inside the building was so heavy that he asked the guard to help him direct people to chairs in an outdoor area. He said the guard was well-behaved and helpful. If that was true, the experiences of Madrid and Fantuzzi nonetheless illustrate the impact even relatively non-threatening ballot security personnel may sometimes have on older voters.¹⁰⁹

The Orange County poll guards controversy continued to make news for more than two years. Perhaps the most significant result was passage of a new state law, sponsored by Democratic state senator Milton Marks, ultimately backed by all the Republicans in the Assembly, and signed by Republican governor George Deukmejian in September 1989, making it a felony to post uniformed guards within 100 feet of polling places, punishable by a \$10,000 fine. While there had been some Republican resistance earlier, it ceased when Marks made public an internal memo the RNC sent out during a poll-watching program in 1988 urging its workers not to wear “public or private law enforcement or security guard uniforms, using armbands or carrying or displaying guns or badges,” and denouncing “any methods or tactics which in any way could be viewed as chilling an individual’s intent to exercise his or her right to vote.”¹¹⁰

An attempt by Democrats to recall Pringle because of the guards incident failed. Latino civil rights groups and five voters who had encountered the guards, including Jane Fantuzzi, filed a lawsuit against Orange County Republican leaders, the company

¹⁰⁸Gregg Zoroya, “Lawsuit over polling-place guards widens: Santa Ana resident says he was dissuaded from voting,” *Orange County Register*, 13 Dec. 1988, B1; Claudia Luther, “Poll Guard Dispute Heats Up Again: Claim of Early Exit Challenged,” *Los Angeles Times*, Orange County edition, 14 Dec. 1988, 2-1.

¹⁰⁹Claudia Luther, “Poll Guard Dispute Heats Up Again: ‘I Got Scared . . . Just Came Home,’” *Los Angeles Times*, Orange County edition, 14 Dec. 1988, 2-1.

¹¹⁰Ralph Frammolino, “Bill to Ban Guards at Polls Goes to Governor,” *Los Angeles Times*, Orange County ed., 25 Aug. 1989, 2-1; Ralph Frammolino, “Governor Signs Ban on Armed Guards at Polls,” *Los Angeles Times*, Orange County ed., 9 Sept. 1989, 2-1.

supplying the guards, and the county registrar of voters. It was eventually settled before trial for \$480,000, after the civil rights groups were dropped from the suit. It was reportedly the largest sum ever paid in a voting-rights case at that time. Of the settlement money, the plaintiffs decided to keep \$17,000 each and donate the \$150,000 remaining after lawyers' fees to nonprofit nonpartisan groups working for voter education and registration in Latino areas of Pringle's district.¹¹¹

Perhaps the effects of that donation, combined with continued anger among Democrats and Latinos at the poll-guard incident and the slow pace of the county and federal investigations into continuing voting-rights violations connected with it, explained the defeat of Curt Pringle in his 1990 re-election bid. The following summer, the investigations came to an end, concluding that there was insufficient evidence "that the intent of the people who sent out the guards was to intimidate voters."¹¹²

CASE 8: Racial Politics in North Carolina, 1990

The 1990 North Carolina race for U.S. Senator pitted three-term incumbent Jesse Helms against African American Harvey Gantt, an architect and former mayor of Charlotte. (Gantt, the first black mayor of the city, hoped to become the first, as well, elected to the Senate from the South since Reconstruction.) Gantt had another "first" on his record: he was the first African-American to enter Clemson University in his native South Carolina, from which he graduated with honors. Helms was one of the most obdurate southern hold-outs against a racially inclusive "new South." According to *The Almanac of American Politics*, "more than any other major politician, Helms [seemed] hostile to civil rights measures." He was "a pessimist, with an almost apocalyptic vision, ready to see the downside of almost every development." He had opposed the extension of the non-permanent features of the Voting Rights Act in 1982 and voted against the bill to make the Rev. King's birthday a national holiday.¹¹³

During the campaign, Helms waged a vituperative television, radio and direct-mail war against his opponent. His ads and mailers cast the issues of the election, as Helms saw them—abortion, national defense, crime, homosexuality, and "traditional values"—in dire terms. "The radical homosexuals will escalate their vile, repulsive attacks," read one mailer. "All these radicals need is a few days of television smears, when we cannot answer them, and this election could be over!"¹¹⁴ Many had expected Helms to win easily. But as Election Day drew near polls indicated that the race was close, and some even showed Gantt with as much as an eight-point advantage.¹¹⁵

¹¹¹ Donna Wares, "Polling-guard lawsuit is allowed to proceed: Judge labels allegations 'an outrage'," *The Orange County Register*, 7 Feb. 1989, B1; Catherine Gewertz, "Voters Get \$400,000 in O.C. Poll-Guard Suit," *Los Angeles Times*, Orange County ed., 28 Dec. 1989, A-1.

¹¹² Jean O. Pasco and James V. Grimaldi, "Democrats laud Umberg victory: Anger over use of guards gave him the edge," *The Orange County Register*, 8 Nov., 1990, A8; Dave Leshner, "Charges Won't Be Filed in O.C. Poll Guard Case," *Los Angeles Times*, Orange County ed., 25 May 1991, A-1.

¹¹³ William Douglas, "Campaign 96, The Race for Congress, North Carolina: Same Race, Different Tack; Helms, Gantt Seek the Middle," *Newsday*, 24 Oct. 1996, A49; Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1992* (Washington, D.C.: National Journal, 1991), 914.

¹¹⁴ Peter Applebome, "Pit Bull Politician," *The New York Times*, 28 Oct. 1990, SM35.

¹¹⁵ Robin Toner, "An Underdog Forces Helms Into a Surprisingly Tight Race," *The New York Times*, 31 Oct. 1990, A1; Michael Kelly, "Helms May Be Losing His Conservative Grip; Black Opponent Closing

Newspaper reports in the months and weeks leading up to Election Day tended to focus on Helms's belligerent campaign tactics, his Manichean worldview, and his divisive style in general. But as it became clear that the contest was a close one, the Helms campaign began to inject the subject of race more directly into ads and mailers. A week before Election Day on November 7, a television ad appeared, showing a white hand crumpling a piece of paper while an announcer stated, "You needed that job and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is."¹¹⁶ Another TV advertisement that began running the same day attacked Gantt as the recipient of racial preferences: "How did Harvey Gantt become a millionaire?" the announcer asked. "He used his position as mayor and his minority status to get himself and his friends a free TV station license from the government. Only weeks later, they sold out—to a white-owned corporation for \$3.5 million." The claim, which Helms would use again in another ad six years later in his successful re-match against Gantt, was partly false. While Gantt and his friends had indeed made a quick profit, the Federal Communications Commission said explicitly that race was not a factor in their decision.¹¹⁷

Post Card Misinformation to Black People

The last week of the campaign saw Helms inflate his racial rhetoric to extraordinary levels, and his ads became the subject of comment on national talk shows. "This is the ultimate," Merle Black, a scholar of southern politics at Emory University, asserted. "I've never seen [the racial issue] played to this extent by him, and he's been the master of it ever since George Wallace got out of the business."¹¹⁸

On the same day the racially explosive ads appeared, the North Carolina Republican Party announced a ballot security program for the upcoming election. Over the next few days, the party sent out two waves of postcards, totaling 150,000, in what they called "heavily Democratic" areas that warned, "When you enter the voting enclosure, you will be asked to state your name, residence and period of residence in that precinct. . . . It is a federal crime, punishable by up to five years in jail, to knowingly give false information about your name, residence or period of residence to an election official."¹¹⁹ In addition, the mailers falsely claimed that voter eligibility was contingent upon having lived in the same voting precinct for thirty days prior to the election. Recipients of the cards overwhelmingly were black voters.¹²⁰

Gap," *The Commercial Appeal* (Memphis), 4 Nov. 1990, A1; Peter Applebome, "Helms Kindled Anger in Campaign, And May Have Set Tone for Others," *The New York Times*, 8 Nov. 1990, B1.

¹¹⁶ Thomas B. Edsall, "Helms Makes Race an Issue: Carolina GOP Also Pushes 'Ballot Security,'" *The Washington Post*, 1 Nov. 1990, A1.

¹¹⁷ *Ibid.*; Douglas, "Campaign 96, The Race for Congress, North Carolina: Same Race, Different Tack," A49.

¹¹⁸ Peter Applebome, "Racial Politics in South's Contests: Hot Wind of Hate or a Last Gasp?," *The New York Times*, 5 Nov. 1990, A1.

¹¹⁹ Edsall, "Helms Makes Race an Issue," A1; B. Drummond Ayres, Jr., "Judge Assails G.O.P. Mailing in Carolina," *The New York Times*, 6 Nov. 1990, B9; Thomas B. Edsall, "Bush Takes No Stand on Ballot Plan: Program Targeted N.C. Black Voters," *The Washington Post*, 9 Nov. 1990, A13.

¹²⁰ "The 1990 Campaign: Democrats Accuse G.O.P. of Voter Intimidation in Two States," *The New York Times*, 2 Nov. 1990, A19; Laughlin McDonald, "The New Poll Tax," 28.

The chairman of the North Carolina Democratic Party charged that the Republican program was “clearly not an attempt to educate but rather to intimidate voters.”¹²¹ The next day DNC chairman Ronald Brown called on the Justice Department to investigate possible rights violations, and he wrote a letter to all fifty Republican state chairmen warning them that it was illegal to conduct “ballot intimidation and ballot security activities.”¹²² Speaking a few days later on the CBS news program, “Face The Nation,” Brown said, “What the Republican Party has done is absolutely disgusting. It’s a repeat of what they’ve been doing for the last decade, and that is to try to intimidate the poorest and most vulnerable of voters.”¹²³

In response to a suit by the DNC, Federal Judge Dickinson Debevoise in Newark, N.J., who had presided over the consent decree reached in 1982 between the DNC and the RNC over ballot security practices, scheduled a hearing for Monday, November 5, the day before the election; its purpose was to determine whether the RNC had violated his earlier court order. After reviewing the evidence, the judge concluded that even though Republicans had failed to inform their staff and their state campaigns of the 1982 decree, and although the North Carolina program amounted to “tactics . . . of the kind which were forbidden by the consent decree and settlement agreement,” the prohibition applied only to the RNC and did “not purport to govern the activities of the North Carolina” Republican Party. The case thus fell outside his jurisdiction.¹²⁴

Although Democrats did not have enough time to pursue legal relief in North Carolina before the election, U.S. assistant attorney general for civil rights John Dunne secured a pledge from the chairman of the North Carolina GOP, Jack Hawke, that information gleaned from the postcards, e.g., that the voter’s address was incorrect, would not be used to challenge voters at the polls. Dunne also announced that an investigation was under way into whether the cards, which “falsely misled” voters, violated their civil rights.¹²⁵ Dunne sent a team of lawyers to North Carolina to observe the voting, and set up a telephone hotline to report complaints of intimidation.¹²⁶

Election Day produced no reports of voter intimidation, and Helms defeated Gantt by six percentage points in a racially polarized contest: 60 percent of whites backed Helms, in contrast to 6 percent of blacks.¹²⁷ Post-election analysts attributed Helms’s victory in part to his last-minute barrage of negative campaigning centered on racial themes, which may have influenced undecided white voters.¹²⁸

¹²¹ Thomas B. Edsall, “Helms Makes Race an Issue,” A1.

¹²² “The 1990 Campaign: Democrats Accuse G.O.P. of Voter Intimidation in Two States,” A19.

¹²³ Peter Applebome, “Racial Politics in South’s Contests: Hot Wind of Hate or a Last Gasp?,” A1.

¹²⁴ Peter Applebome, “Racial Politics in South’s Contests,” A1; Associated Press, “National GOP Is Cleared; Not A Part Of N.C. Voter Intimidation,” *The Record* (Newark), 6 Nov. 1990, A3; “Justice Dept Probing GOP Mailers for Bias; Voter Intimidation Charged in North Carolina,” *The San Francisco Chronicle*, 6 Nov. 1990, A13; B. Drummond Ayres, “Judge Assails G.O.P. Mailing in Carolina,” B9; Thomas B. Edsall, “Bush Takes No Stand on Ballot Plan; Program Targeted N.C. Black Voters,” *The Washington Post*, 9 Nov. 1990, A13.

¹²⁵ Michael Isikoff, “Justice Dept. Investigates GOP Mailings to Voters,” *The Washington Post*, 6 Nov. 1990, A6.

¹²⁶ *Ibid.*

¹²⁷ Peter Applebome, “Helms May Have Kindled Anger in Campaign,” B1; Kenneth J. Cooper, “Helms Defeats Gantt; Poll Hours Disputed,” *The Washington Post*, 7 Nov. 1990, A27.

¹²⁸ *Ibid.*; “Race in North Carolina,” *The New York Times*, 8 Nov. 1990, A34.

The state GOP's last-minute implementation of its ballot security program was obviously intended to reduce the number of black voters in the state. In the two rounds of postcard mailings containing both threatening and false information, the first (81,000 cards) was sent to precincts in which 94 percent of the voters were black, and the second (44,000 cards) was sent exclusively to black voters.¹²⁹ The Gantt campaign reported instances in which biracial couples received mailings addressed only to the black member of the family.¹³⁰

Another Consent Decree

Republican leaders reacted to reporters' questions with professions of ignorance. Charles Black, chief spokesman for the RNC who had also served as a media adviser to the Helms campaign, was asked right before the election whether he had an obligation in his official capacity "to examine the legality and legitimacy" of the ballot-security program. "I don't want to judge it either way. . . . It's just not my role," he said. "I can't do everything. It's not my job, I'm a volunteer trying to fill in for [RNC chairman] Lee Atwater," who was quite ill. President Bush, who, thanks in part to Atwater's inspired use of the Willie Horton ad in Bush's campaign two years earlier, occupied the White House, declined to judge the North Carolina ballot security program. He responded to reporters' questions in a manner similar to that of Black. All he knew about it, he averred, was what he had read in the newspapers: "I read a lot of charges and countercharges, and I've heard some people say it's bad and I've heard others say it's not. . . . It depends on how it is done," he explained. "And I just don't know enough about what you're trying to get me into to get into that."¹³¹

After the election, the Justice Department filed suit against the North Carolina Republican Party and the Helms for Senate campaign for violation of the Voting Rights Act by intimidating and interfering with black voters in trying to discourage them from voting. On February 26, 1992, the defendants signed a consent decree that required them to refrain from any future ballot security programs directed at blacks and stipulated that they must secure approval from a federal court before implementing any future ballot security programs. A Helms campaign spokesman denied that the senator had anything to do with the postcards; Helms signed the consent decree, the spokesman explained, to avoid paying lawyers to contest the charges.¹³² Helms remained in the U.S. Senate until 2003.

CASE 9: The Old South Lives on in Charleston, South Carolina, 1980-1990

South Carolina is a state with a long history of racial discrimination in voting, as in every other aspect of public life. The 1895 state constitution mandated a poll tax, a literacy test, disfranchisement for certain crimes, and burdensome residency requirements. The long-term effects of these barriers were obvious when the Voting

¹²⁹ Laughlin McDonald, "The New Poll Tax; Republican-sponsored ballot security programs are being used to keep minorities from voting," *The American Prospect*, 30 Dec. 2002, 26.

¹³⁰ Michael Isikoff, "Justice Dept. Investigates GOP Mailing to Voters," A6.

¹³¹ Thomas B. Edsall, "Bush Takes No Stand on Ballot Plan; Program Targeted N.C. Black Voters," A13.

¹³² C. Mahtesian, "N.C. Republicans Settle Complaint," *Congressional Weekly Report*, 29 Feb. 1992, 487.

Rights Act was passed. Shortly before, in November 1964, 75.7 percent of South Carolina's voting-age whites were registered to vote, as compared to 37.3 percent of voting-age blacks. The gap narrowed significantly once the Act was in effect. Nonetheless, in 2000, white turnout in Charleston County (measured as a proportion of the white voting-age population) still exceeded that of blacks by 13.5 percent.¹³³

As in many parts of the South, there has been a continuing effort by some Republicans in Charleston County to maintain the racial turnout gap, and to harass and intimidate African Americans at the polls. A recent trial involved cases brought by the U.S. Department of Justice and private plaintiffs, who successfully challenged at-large county council elections. Testimony at one point focused on a so-called Republican Ballot Security Group that harassed voters at the polls, sometimes in conjunction with white election officials.¹³⁴ The judge hearing the case, Michael Patrick Duffy, cited testimony from a white attorney, F. Truett Nettles, a Democrat with more than twenty years' experience as a poll-watcher or chairman of the Charleston County Election Commission. Judge Duffy wrote:

[From 1980 until 1992] Nettles served as a poll watcher assigned on most occasions to predominantly African-American polling sites . . . [with a team of lawyers] to help prevent and, when necessary, remedy instances of harassment and intimidation of African-American voters by white poll officials. . . . Nettles testified that, from 1980 through 2000 “[e]very time, every election we would have controversies in African-American precincts about voter assistance, or just the way voters are treated when they vote.” Several white poll managers—including a future chairperson of the Election Commission—were routinely appointed as poll managers by the Election Commission and assigned to predominantly African-American polling places in Charleston County, where they intimidated and harassed African-American voters.¹³⁵

Poll managers are paid officials appointed by the Election Commission to conduct the elections. But Republican poll-watchers, appointed by the party and by candidates, got into the act as well: “African-American voters also endured improper interference from white poll *watchers*, as distinguished from poll managers,” Judge Duffy concluded. They “directly confronted some African-American voters requesting assistance with questions such as: ‘Why do you need assistance, don’t you know how to read? You can vote without assistance, you don’t qualify’.” Nettles claimed that as a result of these kinds of harassing questions, “some of the voters said, ‘Oh, never mind,’ and they just turned around and walked out the door.”¹³⁶

The judge cited testimony by North Charleston Mayor Keith Summey, who also served on the Election Commission from 1978 through 1986. The mayor “testified that controversies involving white poll workers and African-American voters were routine during his time on the Election Commission. . . . And while white poll managers complained that African-American voters sought to vote improperly, Mayor Summey

¹³³ James E. Alt, “The Impact of the Voting Rights Act on Black and White Voter Registration in the South,” in Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton: Princeton University Press, 1994), 374, 376; *United States of America v. Charleston County, S.C., et al.*, C.A. No. 2:01-0155-23; and Lee H. Moultrie, *et al.*, v. Charleston County Council, *et al.*, C.A. No. 2:01-562-23 (Filed 6 March 2003), 31, 37.

¹³⁴ Laughlin McDonald, “The New Poll Tax,” *The American Prospect*, 30 Dec. 2002, 28.

¹³⁵ *United States of America et al. v. Charleston County, S.C., et al.*, 32.

¹³⁶ *Ibid.*, 33, 34 (emphasis in the original); McDonald, “The New Poll Tax,” 28.

never once found merit to any such allegations.”¹³⁷ During this period—in 1980, to be precise—college students, claiming they were federal poll-watchers, intimidated people at a predominantly black precinct, threatening to “lock up” voters.¹³⁸

In 1990 the Ballot Security Group, so-called, was actually linked to the official Election Commission. According to Judge Duffy: “A member of the Charleston County Election Commission and others participated in a Ballot Security Group that sought to prevent African-American voters from seeking assistance in casting their ballots. One of the other members of the Ballot Security Group was . . . [a] particularly problematic poll manager assigned by the Election Commission to work in . . . [a] predominantly black] precinct. He was removed from the . . . precinct because of his efforts to deny African-American voters their right to have election assistance from the person of their choice.”¹³⁹

According to Laughlin McDonald, a lawyer for plaintiffs in the case, “In 1986, Nettles and chairwoman of the county Democratic Party, Joyce Cantrell, got a restraining order from a local judge prohibiting election officials from interfering with the right to vote and requiring them to provide voters with assistance upon request. But in the elections that followed, the Ballot Security Group ignored the restraining order and went back to its old tricks.”¹⁴⁰

CASE 10: Mayoral Politics in New York, 1993

The 1993 New York City mayoral contest was a bitter rematch between incumbent Democrat David Dinkins, the city’s first black mayor, and Republican Rudolph Giuliani. Four years earlier, Dinkins had edged out Giuliani 50-48%. Racial issues, and fears of racial division, loomed large in the 1993 campaign—as did fear of fraud and intimidation. A *New York Times* article summed up the latter worries shortly before the election:

The Dinkins campaign expressed concern that off-duty police officers supporting Giuliani might intimidate Democratic voters, while the Giuliani campaign demanded extra police officers to make sure no fraud occurred in polling places where the Mayor’s supporters outnumber the challenger’s.¹⁴¹

Giuliani representatives earlier had sent a letter to the New York City Police Commissioner, Raymond Kelly, asking for at least 2,700 police officers to be assigned to the polls, in addition to the “thousands” of volunteer poll watchers provided by the Republican Party.¹⁴² Kelly responded by assigning 3,500 officers and creating 52 “captains” to supervise the poll watching.¹⁴³ This decision was a compromise designed to please both sides: the 3,500 poll-watchers were assigned to watch for voter fraud, and

¹³⁷ United States of America *et al.* v. Charleston County, S.C., *et al.*, 34.

¹³⁸ *Ibid.*

¹³⁹ United States of America *et al.* v. Charleston County, S.C., *et al.*, 34.

¹⁴⁰ McDonald, “The New Poll Tax,” 28.

¹⁴¹ Celia W. Dugger, “2 Sides Seek More Police to Stymie Intimidation and Fraud at Polls,” *The New York Times*, 1 Nov. 1993, B5.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

the 52 captains were assigned to ensure the poll-watchers did not intimidate voters. Mayor Dinkins warned that it was improper for poll-watchers (especially officers who supported Giuliani) to “exert their influence and intimidate people” and “to throw their weight around.”¹⁴⁴

Meanwhile, New York State Republican Party Chairman William Powers made it clear that his party’s volunteer poll-watchers would be out in force in majority-Democratic precincts: “We will be manning polls that have never seen a Republican before,” he announced.¹⁴⁵ The Giuliani campaign had been worried for months by rumors that many Democratic voters registered more than once or were illegal immigrants.¹⁴⁶

On Election Day morning, Mayor Dinkins held a news conference stating that “we appear to be seeing an outrageous campaign of voter intimidation and political dirty tricks afoot in today’s election.”¹⁴⁷ This allegation was based on three initially unsubstantiated reports by Dinkins’ poll-watchers, and Giuliani responded, “I can assure you this has nothing to do with my campaign and it is precisely what we expected of them.”¹⁴⁸ The reports were that off-duty police officers physically threatened a Dinkins volunteer and that intimidating posters had been placed in black and Latino neighborhoods.¹⁴⁹ The second report was later confirmed. Posters had been placed at several polling places, and read: “Federal authorities and immigration officials will be at all election sites. . . . Immigration officials will be at locations to arrest and deport undocumented illegal voters.”¹⁵⁰ Dinkins called on the Department of Justice to investigate, and a statement issued by the department advised voters to disregard the posters and pledged “to protect the rights of minority voters.” It also announced that “the Department of Justice and the FBI are conducting an investigation to determine who prepared and posted these notices.”¹⁵¹

The investigation coincided with charges of minority vote suppression in the New Jersey gubernatorial contest and added to the racially charged atmosphere in New York City. In addition to the threatening posters, reports emerged that ten homeless men showed up at a predominantly black and Hispanic voting site in Bedford-Stuyvesant and tried to disturb the voting process; one of the men admitted to having been paid \$60 for the purpose but did not identify the source.¹⁵² Others among the ten told a Democratic poll-watcher they had been promised \$70 and a hot meal by an organization called Together We Stand.¹⁵³ Another person not connected with the homeless men reported

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Michael Rezendes, “Giuliani Projected N.Y. Victor,” *The Boston Globe*, 3 Nov. 1993, 1.

¹⁴⁸ Todd S. Purdum, “Giuliani Ousts Dinkins By A Thin Margin,” *The New York Times*, 3 Nov. 1993, A1.

¹⁴⁹ “Dirty Pool At Polls Alleged; Dinkins, Giuliani Trade Allegations,” *The Record* (New Jersey), 3 Nov. 1993, A14.

¹⁵⁰ Thomas B. Edsall and Malcolm Gladwell, “Vote Probe Targets N.Y. City Turnout; Bid to Deter Minorities Claimed,” *The Buffalo News* (New York), 12 Nov. 1993, A1.

¹⁵¹ “Dirty Pool At Polls Alleged,” A14.

¹⁵² Edsall and Gladwell, “Vote Probe Targets N.Y. City Turnout,” A1.

¹⁵³ James C. McKinley, Jr., “G.O.P. Accused of Disrupting Minority Voting in New York,” *The New York Times*, 1 Dec. 1993, B2.

that Republican poll-watchers asked for the green cards of prospective voters in East Harlem.¹⁵⁴

Giuliani defeated Dinkins by almost the same margin Dinkins had won in their first contest: 51-48%. On November 29 Al Gordon, New York State Democratic Party chairman, claimed he had evidence of over seventy-five instances in which voter intimidation and minority vote suppression had occurred on Election Day, and promised to forward his evidence to the Justice Department in hopes of preventing future Republican ballot security programs.¹⁵⁵ His evidence, he said, revealed a pattern of harassment that seemed to him to be orchestrated not by the Giuliani campaign but by the Republican Party at the state level. “We are not calling for an overturning of the election,” he said. “We are saying that there was a pattern of thought-out harassment by the Republican Party and that they have to stop.”¹⁵⁶

He cited instances in which homeless men disturbed voters by asking for their identity and instances in which poll-watchers tried to slow down the voting process by asking for several forms of identification.¹⁵⁷ He also cited the testimony of Denise Ryan, a Dinkins poll-watcher who reported that in her precinct “four large white men came into the gymnasium and proceeded to stand in the doorway, blocking the door. . . . An elderly gentleman trying to get in couldn’t even see past them.”¹⁵⁸ Gordon concluded, “I think it was an effort to delay, harass and intimidate voters just in the minority communities.”¹⁵⁹ However, Republicans retorted that the same kind of behavior was taking place in predominantly Republican precincts. “There was voter intimidation by them—not by us,” said John Sweeny, a lawyer for the New York Republican Party.¹⁶⁰ State party chairman Powers called Gordon’s accusations “a cheap political stunt.”¹⁶¹ There were no definitive resolutions of these allegations. Charges and countercharges regarding the same issues—vote fraud and vote intimidation—would continue with a vengeance in New York City five years later.

CASE 11: Implementing Motor Voter in New Jersey, 1996

The National Voter Registration Act (NVRA) or Motor Voter became law in 1993. Its purpose was to make voter registration easier. In one or another form such a law had been advocated by Democrats and opposed by Republicans since Jimmy Carter’s presidency. Both parties generally saw it as having the potential to dramatically increase voter turnout and to disproportionately increase the number of Democratic voters. The Democrat-controlled Congress had passed a motor voter bill that was vetoed in 1992 by President Bush on the ground, among others, that it could encourage voter fraud. The

¹⁵⁴ Edsall and Gladwell, “Vote Probe Targets N.Y. City Turnout,” A1.

¹⁵⁵ “Dirty Tricks in Mayoral Election? Democrats Accuse, GOP Denies,” *The Record* (New Jersey), 1 Dec. 1993, A14.

¹⁵⁶ Seth Faison, “Mayor’s Race Poll Abuse is Charged,” *The New York Times*, 30 Nov. 1993, B3.

¹⁵⁷ *Ibid.*

¹⁵⁸ “Dirty Tricks in Mayoral Election?,” A14.

¹⁵⁹ Marc Humbert, “Authorities Probe Election Charges,” *The Times-Union* (Albany), 30 Nov. 1993, B2.

¹⁶⁰ *Ibid.*

¹⁶¹ “Dirty Tricks in Mayoral Election?,” A14.

next year Congress, still controlled by the Democrats, sent another bill to the White House, and President Clinton signed it into law shortly after taking office.¹⁶²

Motor Voter was particularly aimed at making it easier for lower-income citizens to vote, by providing registration forms at agencies supplying public assistance. Its provision of the opportunity to register when applying for a driver's license, of course, is what gave the NVRA its popular name as Motor Voter.

The state of New Jersey under Governor Christine Todd Whitman changed its election law to comply with Motor Voter in 1995. In the summer of 1996, during the campaigns for the first federal elections held under the revised law, a sharp partisan conflict arose that recalled earlier "ballot security" controversies in the state going back at least to 1981.

The controversy began when the county superintendent of elections in Passaic County, Alice Zona, failed to send sample ballots for the November elections to 20,000 registered voters in the heavily Democratic cities of Paterson and Passaic. When criticized by Democrats, Zona defended this action by saying she had earlier sent out ballots to the same addresses before the previous June's primary elections and the U.S. Postal Service had returned them because the addressee was unknown or there was no forwarding address. She said she had also purged about 5,000 names from the rolls in 1995 for the same reason—although, when questioned in 1996 about the 1995 procedure, Zona said if people whose names were purged that year had shown up at the polls they could have voted, because their names were still in the system.¹⁶³

That the process was intended to work differently in 1996 than it had in 1995 soon became clear. On September 26, the state attorney general sent an 18-page instruction book to all New Jersey election superintendents. Under the new rules, many of the people of the kind whose names had been purged from the voters list by Zona because they had moved without notifying election officials would face a rather daunting process if they showed up at the polls in November. Specifically, the new rules required that any registered voter who had moved within a county from one election district to another without having told the board of elections of their new address would have to verify that address at the municipal clerk's office on Election Day. This would mean going to the polling site, where they would learn of the new requirement, then going to city hall, executing a "transfer affidavit," and then, once their new address was verified, returning to the polling site and voting.¹⁶⁴

On October 1 the New Jersey Democratic Committee, the Passaic County Democratic Committee, and Congressman Robert Torricelli, running for the U.S. Senate, filed a lawsuit requesting a restraining order against the state, claiming the new law violated the Voting Rights Act as well as Motor Voter, one of whose purposes was to make it easier for people who move to vote. After examining voting records, lawyers for the Democrats pointed out that 21,000 voters in Passaic County and 40,000 in Essex

¹⁶² John L. Moore, *Elections A to Z* (2d ed.) (Washington, D.C.: CQ Press, 2003), 276-77.

¹⁶³ Tim O'Brien, "State Forced to Back off on Voter Run-Around," *New Jersey Law Journal*, 7 Oct. 1996,

1.

¹⁶⁴ *Ibid.*

County alone who had moved had not yet reported their new addresses.¹⁶⁵ The State Republican Party, secretary of state Lorna Hooks, and Torricelli's opponent, Republican Congressman Richard Zimmer, responded to the suit by claiming the state was simply taking precautions necessary to prevent voter fraud.

Vote Fraud Deterrence . . . Or Voter deterrence?

Democrats argued the law would disproportionately affect poor, urban, and minority voters because they were more likely to change residence and, if challenged at the polls, they might be less likely to spend the time and money traveling to city hall and then back to the polling site. "New Jersey has a long and sad history of efforts to interfere with voters at the polls," said Cardell Cooper, Mayor of East Orange. "We are taking the steps we need to take to make sure that nobody is improperly denied the right to cast a ballot on November 5."¹⁶⁶

Torricelli, on a campaign stop with the Rev. Jesse Jackson, chided the Republicans and Zimmer for defending the law: "It's unbelievable that Dick Zimmer as a candidate for the U.S. Senate would actually become directly involved in an attempt to keep people from voting. This potentially could disenfranchise a quarter-million people. Most of them are African American or Hispanic background. But indeed any citizen of the state could fall victim."¹⁶⁷ Democratic lawyer Angelo Genova acknowledged the state's need to confirm addresses, but criticized forcing voters who had moved and not reported it to go far out of their way to cast a ballot. "The notion of a confirmation process beyond what the federal law requires is where they cross the line," he asserted.¹⁶⁸

In a preliminary hearing Federal Judge Maryanne Trump Barry agreed in part with both sides and encouraged them to come to a "mutual accommodation" before she had to rule on the case.¹⁶⁹ On the one hand, Barry agreed with the state that the Democrats' charge of racial discrimination was "sheer speculation."¹⁷⁰ But she added, "I don't think it takes a great imagination to say that there will be X number of people who will say, 'What the heck, I have to get back to work'" when they showed up to vote and learned of the hoops the state would force them to jump through. She said the rule appeared to violate Motor Voter.¹⁷¹

Two days later, both parties reached an agreement. Voters would no longer have to travel to municipal court to prove their new residency. On the other hand, poll supervisors could still challenge voters, who would then have to sign a pledge on their ballot swearing to their new address. If questions remained about the voters' residency,

¹⁶⁵ Brett Pulley, "You Don't Need a Poll Tax to Subvert Voting Rights," *New York Times*, 13 Oct. 1996, NJ2; "Democrats, N.J. Settle Lawsuit on Vote Process," *The Press of Atlantic City* (New Jersey), 5 Oct. 1996, A4; O'Brien, "State Forced to Back Off on Voter Run-Around," 1.

¹⁶⁶ Pulley, "You Don't Need a Poll Tax to Subvert Voting Rights," NJ2.

¹⁶⁷ Joe Donohue, "Vote Suppression Issue Emerges in Senate Race," *The Star-Ledger* (Newark), 7 Oct. 1996, 6.

¹⁶⁸ Jerry DeMarco, "Judge Hears Voting-Law Challenge," *The Record* (New Jersey), 3 Oct. 1996, A3.

¹⁶⁹ DeMarco, "Judge Hears Voting-Law Challenge," A3.

¹⁷⁰ O'Brien, "State Forced to Back off on Voter Run-Around," 1.

¹⁷¹ Ibid.

their votes could be challenged after the election.¹⁷² Democratic lawyer Genova said of the agreement, “The design and intent is to encourage voter participation at the polling place with as little . . . burden as possible.”¹⁷³ Donna Kelly, representing the Whitman administration, likewise was positive about the settlement: “Our concern is the integrity of the process. This procedure will ensure us of that.”¹⁷⁴ Implicit in Kelly’s statement was the admission that “ballot integrity” could be achieved without the onerous requirements imposed by the original rule, which would almost certainly have diminished turnout among poorer voters lacking transportation who had moved.

Big Brother Inside the Black Box

In the week before Election Day, a controversy of a different sort arose, also harking back to earlier dirty tricks in the Garden State. Readers of *The Jersey Journal* and *The Hoboken Reporter* began to notice fliers tucked inside the newspapers, warning potential voters of the penalties for voting illegally.¹⁷⁵ Entitled “Technology for the ’96 Election,” the fliers claimed that, “thanks to advances in computer technology, voting machines can now be equipped with computers inside.”¹⁷⁶ These computers could be linked, the fliers claimed, to government agencies that could detect everything from unpaid student loans to traffic fines. The fliers also suggested that “combining this technology with plainclothes detectives at each polling place would be a great way for governments (with limited resources) to solve a lot of these problems as they walk-in to vote, wouldn’t it?”¹⁷⁷

The publication and distribution of this fanciful Orwellian scenario was seen by Democrats as an attempt to suppress the vote of minorities, particularly Latinos who had recently become citizens. New Jersey Congressman Robert Menendez noted, “It’s certainly written by someone who favors suppressing the Latino and minority vote in this election. Most of the places where this flier has surfaced is in Latino areas in Jersey City and North Bergen, but it’s not an isolated incident. They’re all over.”¹⁷⁸

At a news conference Menendez was joined by Democrats Donald Payne, also a congressman; Sharpe James, mayor of Newark; and Cardell Cooper, Mayor of East Orange. They blamed Republicans for the fliers which they portrayed as tools of minority vote suppression.¹⁷⁹ The executive director of the New Jersey Republican State Committee, Tom Wilson, responded to the charges by saying his party “has nothing to do with it, and we condemn anyone who did it.”¹⁸⁰ The perpetrators remained anonymous.

¹⁷² Jerry DeMarco and David Voreacos, “State Agrees to Modify Motor-Voter Procedure,” *The Record* (New Jersey), 5 Oct. 1996, A3; O’Brien, “State Forced to Back off on Voter Run-Around,” 1; “Democrats, N.J. Settle Lawsuit on Vote Process,” A4; Joe Donohue, “Vote Suppression Issue Emerges in Senate Race,” *The Star-Ledger* (Newark, N.J.), 7 Oct. 1996, 6; Terry Pristin, “Accord on a Voting Rule,” *The New York Times*, 5 Oct. 1996, A25.

¹⁷³ “Democrats, N.J. Settle Lawsuit on Vote Process,” A4.

¹⁷⁴ *Ibid.*

¹⁷⁵ “Democrats Say Flier is G.O.P. Scare Tactic,” *The New York Times*, 5 Nov. 1996, B4.

¹⁷⁶ Miguel Perez, “Scaring off New Voters,” *The Record* (New Jersey), 6 Nov. 1996, A3.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ Ron Marsico and David Wald, “Senate Candidates Scour States for Votes,” *The Star-Ledger* (Newark), 5 Nov. 1996, 1.

¹⁸⁰ *Ibid.*

Mary Bustillo Donohue, former member of the Bergen County Board of Freeholders, wrote a letter to the editor of her local newspaper on the night of the election: “It is reprehensible that those who look down on minority citizens and have made ‘character’ such an important campaign issue would resort to this despicable attempt at voter suppression. The distribution of this flier was a cowardly attempt to tamper with a free election. Fortunately, as I listen to the election returns this evening, the attempt backfired.”¹⁸¹ Torricelli defeated Zimmer in the Senate race.

CASE 12: Searching for Fraudulent Voters in New York, 1998

Democrat Charles Schumer challenged incumbent Republican Alphonse D’Amato for New York’s U.S. Senate seat in 1998. It was expected to be a tight race, and while both machine and paper ballots would be cast, it was thought that the election outcome could very well be determined by the paper ballots. Therefore, months before the November 3 election, Democrats and Republicans reached an agreement with a state Supreme Court judge in Albany regarding the treatment of challenged paper ballots. All such ballots would be set aside and the court would then review them and determine their validity.

In fact, Schumer beat D’Amato handily. The cliff-hanger turned out to be the race in which Democrat Eliot Spitzer challenged incumbent Republican Dennis Vacco for the job of New York state attorney general. Surprisingly, it was the outcome of that race which seemed to turn on the counting of paper ballots, at least early on. Before the returns were officially certified in December, however, charges made by Vacco of widespread voter fraud primarily in New York City black and Hispanic neighborhoods led to court battles, a stand-off over certifying the winner (in city precincts) on the New York City Board of Elections, and partisan and racial rancor that sizzled for six weeks after the election. In the end, Spitzer was declared the winner by slightly more than 25,000 votes out of more than 4 million cast, in the closest statewide race since 1954.¹⁸²

As the counting of the paper ballots proceeded in the weeks following the election, it looked as though Spitzer was the winner. On November 19 the State Board of Elections said Spitzer was almost 23,000 votes ahead in the total count and only 15,000 of the 250,000 paper ballots cast remained to be counted. Spitzer declared victory but Vacco failed to concede. In fact, the day before Spitzer’s announcement, Vacco had filed a complaint in the New York Supreme Court alleging widespread vote discrepancies, especially in New York City, where Spitzer had beaten Vacco by a margin of three to one.¹⁸³ And so, taking a leaf from the losing New York mayoral campaign of Rudy Giuliani in 1989, who also alleged widespread voter fraud (an allegation subsequently

¹⁸¹ Mary Bustillo Donohue, “Looking at Election Results ’96, Minority Voters Targeted,” *The Record* (New Jersey), 10 Nov. 1996, O3.

¹⁸² Jonathan P. Hicks, “Ballot Tactics Used by Vacco Are Assailed,” *The New York Times*, 23 Nov. 1998, B1; Carolyn Thompson, “AG Vacco throws in towel; judge throws out lawsuit,” Associated Press, 15 Dec. 1998, <http://web.lexis-nexis.com/universe/printdoc>.

¹⁸³ Jonathan P. Hicks, “Spitzer Declares Victory, but Republicans Question Count,” *The New York Times*, 20 Nov. 1998, B1; Wayne Barrett, “Rudy’s Role Reversal,” *Village Voice*, 22 Dec. 1998, 25; Lara Jakes, “GOP Gets Private Eye To Check On Voters,” *The Times Union* (Albany), 11 Dec. 1998, B2.

unproven), Vacco began a legal and public-relations campaign to have the election results thrown out.¹⁸⁴

Supreme Court Justice Thomas Keegan gave both candidates permission to challenge paper ballots statewide and inspect the 7,000 voting machines again in New York City. Party representatives examining the paper ballots were not allowed to see how the person voted, but they knew the makeup of the district and the results of the machine voting.

Shortly after Vacco's team began inspecting ballots, the pattern of their challenges became obvious: in two heavily black neighborhoods that went for Spitzer, for example, 434 out of 591 and 445 out of 669 paper ballots, respectively, were challenged. By contrast, the Spitzer team challenged 134 out of 10,334 and 10 out of 2,500 absentee ballots upstate, in two areas that went heavily for Vacco. "It is a pattern that brings up the ghost of disfranchisement," said Keith Wright, a Harlem assemblyman. "People have died for the right of people of color to vote. And the pattern of Dennis Vacco's challenges recalls some of the worst of American history."¹⁸⁵ Assemblyman Roberto Ramirez of the Bronx agreed, saying, "There is no question that there is a focus and concentrated effort to challenge ballots in the minority community."¹⁸⁶

Phantom Voters, Sore Loser?

The focus on minority precincts—standard operating procedure in Republican ballot security operations—was not the only basis for criticism of Vacco's approach, however. State election laws required that paper ballots not have any stray markings. But, as *The New York Times* reported, party inspectors went to unusual lengths, challenging "ballots for everything from having a check mark slightly outside the box to having a signature that dips slightly below the line." Some ballots were challenged because voters, when asked their county of residence, listed Brooklyn rather than Kings. One was challenged because when the voter was asked the reason for not being able to vote in person she wrote that she would be "in the Holy Land," but did not name a specific country. A spokesman for the state Board of Elections said "the objections are many, many more than they would normally be. This is a highly unusual situation."¹⁸⁷

On November 23, Thomas Spargo, a lawyer for Vacco, asked Judge Keegan for more time to investigate voting irregularities, alleging that as many as a thousand people listed as voting on November 3 had died before the election. He was vague on the source of this information, but the judge granted his request. The charge was met with widespread ridicule among Democrats. The administrative manager of the New York City office of the Board of Elections asserted that "All of [the Vacco campaign's] charges so far have been unfounded, I believe this will be the same." *A New York Times*

¹⁸⁴ Hicks, "Spitzer Declares Victory," B1; Barrett, "Rudy's Role Reversal," 25.

¹⁸⁵ Hicks, "Ballot Tactics Used by Vacco Are Assailed," B1.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

investigation soon turned up some of the alleged “phantom” voters and interviewed them, quoting one as saying Vacco was a sore loser.¹⁸⁸

Two weeks later, on December 7, Vacco’s claims about dead voters going nowhere, his campaign announced that he had evidence of 103,000 people on the voting rolls “for whom there was no apparent record that they had engaged in routine activity in the community or otherwise existed,” or people with other irregularities such as discrepancies in their address. Vacco’s lawyer, Spargo, said the 103,000 names had been generated by a computer search that compared the names of registered voters in New York City with a list given by a private credit reporting company. More surprising than the allegation, however, was the Vacco campaign’s proposed method by which to ascertain the validity of the registration list. Invoking what was described as an “obscure” state law requiring door-to-door visits from the police when the validity of voters’ registration was in question, a Republican election commissioner asked for such a canvass to verify voters’ eligibility—a canvass that could cover tens of thousands of New York City’s residents.

A Police Department spokeswoman said no such canvass had occurred “in memorable history.” Democratic Party Chairwoman Judith Hope said “the prospect of uniformed police officers with guns knocking on people’s doors questioning their right to vote sends a chill down my spine. I’m just dismayed this is a possibility in the country, and particularly in a state like New York.” Black and Hispanic legislators called for a Justice Department investigation into possible intimidation. Judge Keegan asked lawyers representing both campaigns to meet with the Police Department and other official bodies in order to scale down the number of voters to be canvassed. Spitzer’s campaign said it would not participate, expressing outrage over a tactic aimed at minority and poor voters.¹⁸⁹

By this time some Republicans—including newly re-elected Governor George Pataki—were beginning to back away from Vacco’s efforts to overturn the election results. One person who continued to give him strong support, however, was state Republican Party Chairman William Powers, who was perceived to be in need of reinforcing his leadership at a time when three-term senator D’Amato had been defeated and Pataki had won with a narrower victory than expected.¹⁹⁰ Powers charged that the Democratic challenge to Republican investigations was an attempt to divert the public gaze from voter fraud. “They have sought to divide New Yorkers,” he claimed, “by using tactics designed to scare and mislead people.”¹⁹¹ The Democrats, in turn, charged that scaring and misleading voters was precisely the Republicans’ aim. The Republican project, said Democratic state senator David Patterson, was to ask police to “go and harass people, as if this were Eastern Europe in the 1930s.”¹⁹²

¹⁸⁸ Jonathan P. Hicks, “Vacco’s Claim of Votes Cast by the Dead Is Disputed,” *The New York Times*, 25 Nov. 1998, B5; “Moving On; Finally, Judge’s Ruling Means Attorney General Dennis Vacco Must Give Up His Election Complaints and Make Way For Eliot Spitzer,” *The Post-Standard* (Syracuse, N.Y.), A14.

¹⁸⁹ Jonathan P. Hicks, “Vacco, Suing to Void Election, Wants Police to Check on Voters,” *The New York Times*, 8 Dec. 1998, A1; Lara Jakes, “Vacco Wins Time To Find Evidence Of Voter Fraud,” *The Times Union* (Albany, N.Y.), A1; Michael Blood, “Legislators Say Vacco Staffers Harassed Voters,” *The Record* (New Jersey), 9 Dec. 1998, A4.

¹⁹⁰ Lara Jakes, “Vacco Wins Time To Find Evidence Of Voter Fraud,” A1.

¹⁹¹ Blood, “Legislators Say Vacco Staffers Harassed Voters,” A4.

¹⁹² *Ibid.*

The day after the Vacco camp's startling new allegations, Mayor Giuliani said plans were being made for a canvass, but a much smaller one than had been requested—30,000 voters rather than 103,000. “As you might expect the Republicans are asking us to do too much,” he quipped, “and the Democrats are asking us to do nothing.” Pataki, in turn, expressed concerns about sending police into thousands of homes. “You want people to become a part of the political process. When you look at the low turnout in November, we want to do everything we can do to encourage people to come out and vote and participate in the democratic process” he said, taking a clearly different tack than Powers, the state party chairman.¹⁹³

Giuliani's plans for a canvass, however, came to a halt when he learned that, contrary to his understanding, Justice Keegan had not ordered one but had simply asked the parties to sort the matter out between them. The mayor then announced that in the absence of a court order, he would not deploy police officers. Nonetheless, Vacco's aides said a canvass could be started by the order of a single member of the Board of Elections—a claim Democrats disputed. The board was split 50-50 between Democrats and Republicans, and the Democrats said they would block any move to order a police canvass without a court order. At this point, Giuliani's office set up a conference call with the judge and the two campaigns for the following day; during the call, Keegan refused to issue the order.¹⁹⁴

Vacco Soldiers On

New York government was approaching a stand-still. Although Vacco had not produced any hard evidence of illegality in the November 3 election, his refusal to concede and his continual charges of massive fraud had led the New York City Board of Elections, evenly split in its membership between Democrats and Republicans, to refuse to certify Spitzer as the winner in the city. Moreover, there was speculation that the state Board of Elections, following the city board's lead, would also refuse to certify Spitzer as attorney general at their official meeting the next week—which could lead the Democrats on the same state board, which was also split 50-50 between the two parties, to refuse to certify Pataki as governor.¹⁹⁵

Just when it was thought events had reached the limits of the politically bizarre, word leaked out of the Vacco camp on December 10 that, in the absence of a police canvass of any or all of the 103,000 people suspected of fraud, the Vacco team was hiring a former New York City police detective who ran a private detective agency in Queens. He would presumably oversee a makeshift group of employees in the attorney general's office (still officially under Vacco's authority) to track down fraudulent voters.

The following Monday Justice Keegan threw out Vacco's suit alleging fraud, and Vacco conceded defeat. The state Board of Elections promptly certified Spitzer as the new attorney general. At the end of six weeks of unsubstantiated allegations of widespread voter fraud by New York State's top law enforcement official, Vacco had not presented evidence of a single illegally cast vote. He did not, however, back away from

¹⁹³ Tom Precious, “N.Y. City May Search For Illegal Voters,” *The Buffalo News*, 9 Dec. 1998, A8.

¹⁹⁴ Clifford J. Levy and Jonathan P. Hicks, “Now Involving Mayor and Police, Battle for Attorney General Stalls,” *The New York Times*, 9 Dec. 1998, A1; Tom Precious, “In Blow To Vacco, Giuliani Declines To Have Police Search For Illegal Voters,” *The Buffalo News*, 10 Dec. 1998, A13.

¹⁹⁵ Precious, “In Blow To Vacco, Giuliani Declines To Have Police Search For Illegal Voters,” A13.

his charges. “I have a lot to say about alleged fraud,” he said. “But now is not the time or place.”

An editorial in the *Syracuse Post-Standard* observed that Vacco’s “post-election tactics have left a sour aftertaste.” Another editorial, in the *Times*, mentioned the bitterness the six weeks of turmoil had caused in minority neighborhoods, and called for the replacement of state GOP chairman William Powers, whom it called the “mastermind” of the Vacco “travesty”.¹⁹⁶

CASE 13: Investigating “Massive Fraud” on the Reservations of South Dakota, 2002

In the months leading up to the 2002 mid-term elections, the U.S. Senate race in South Dakota was seen as one of the most important in the nation, and it was certainly one of the most hotly contested. U.S. Rep. John Thune, a Republican, had been personally recruited by President Bush to challenge incumbent Democrat Tim Johnson. South Dakota was considered a battleground state that year, one of those deemed crucial for maintaining Democratic control of the Senate. The state’s other senator, Tom Daschle, was the majority leader of the nation’s narrowly divided upper house, and the Thune-Johnson contest was described in the press as a proxy fight between the president and the majority leader. Bush would make five trips to South Dakota on Thune’s behalf that year—one shortly before the election, accompanied by Vice President Cheney.¹⁹⁷

Essential to the Democrats’ strategy was a get-out-the-vote drive among the state’s Indians, composing 9 percent of the total population and concentrated on nine deeply impoverished reservations. In striking respects, South Dakota Indians resemble blacks in the Deep South a generation or two earlier. They have lived historically segregated lives, and they have been locked out of the political system in many respects.¹⁹⁸ Indian rights activists in 2002 were asking for more polling places on reservations, some of whose inhabitants don’t vote because they must travel thirty miles or more to a polling site.¹⁹⁹ Gerrymandering has made it difficult for them to elect candidates of their choice to office down to the present, as a recent federal court decision has made clear.²⁰⁰ Since 1976 two of the state’s Indian counties have been covered by Section 5 of the Voting Rights Act, which requires all covered jurisdictions to submit

¹⁹⁶ “Mr. Vacco Confronts Reality” (editorial), *The New York Times*, 15 Dec. 1998, A26; Thompson, “AG Vacco throws in towel”; Carolyn Thompson, “Voter Fraud Suit Rebuffed, Vacco Concedes To Spitzer,” *The Record* (Bergen County, N.J.), 15 Dec. 1998, A4; “Moving On,” A14.

¹⁹⁷ Kevin Dobbs, “Margin of 528 votes prompts Republican to weigh challenge,” *Argus Leader* (Sioux Falls, S.D.), 7 Nov. 2002, 1A; “Feds Probe Voter Fraud in South Dakota,” *Fox News*, 16 Oct. 2002, http://www.foxnews.com/printer_friendly_story/0.3566.65437.00.html; Adam Clymer, “The 2002 Campaign: A Close Race; S. Dakota Campaign Razor Thin,” *The New York Times*, 2 Nov. 2002, A13.

¹⁹⁸ For a brief but telling summary of Indian political and social exclusion, see Bone Shirt et al. v. Hazeltine, Civ. 01-3032-KES, 2004 DSD 18 (2004), 76-107. For a succinct account of the political situation of American Indians in general, see Jeanette Wolfley, “Native American Political Participation,” in Karen McGill Arrington and William L. Taylor (eds.), *Voting Rights in America: Continuing the Quest for Full Participation* (Washington, D.C.: Leadership Conference Education Fund and Joint Center for Political and Economic Studies, 1992), 153-73.

¹⁹⁹ David Kranz, “Vote drive worker charged in forgery,” *Argus Leader* (Sioux Falls, S.D.), 19 Oct. 2002, 1A.

²⁰⁰ Bone Shirt v. Hazeltine, (2004), 143.

intended changes in election procedure to the Justice Department for approval before the changes can take effect. A successful lawsuit brought by the American Civil Liberties Union on behalf of the Oglala and Rosebud Sioux tribes, settled shortly after the November 2002 election, charged that over the years the state government had failed to submit approximately 600 election-related laws and regulations in counties covered by Section 5 to the Justice Department for preclearance. Indeed, South Dakota had actually submitted fewer than ten.²⁰¹

The state's Indians vote heavily Democratic, although their turnout rate has historically been much lower than that of their white counterparts. Senator Johnson attributed his 1996 win partly to Indian support, and in 2000 Indians also gave their vote to Al Gore, who lost statewide.²⁰² Once elected to the Senate, Johnson was active on the Indian Affairs Committee. Democrats made a major effort in 2002 to push Indian registration to unprecedented levels, hiring about 100 independent contractors, mostly Indians, to get registration up in the Native American communities. By October, the push appeared to be paying off. Figures released by the secretary of state showed about 17,000 new registrations since the June 4 primary, about 6 percent of the number of voters who typically vote in a statewide Senate race. Roughly 25 percent of those newly registered lived in counties with Indian reservations or near them. Moreover, Democrats were narrowing the edge Republicans usually maintained on absentee ballots.²⁰³

Attorney General Barnett Announces an Investigation

On October 12, less than a month before the election, front-page stories in South Dakota newspapers revealed that a federal and state investigation into vote fraud in six counties was under way. Mark Barnett, Republican state attorney general, announced that the investigation, led by the FBI, had been going on for two weeks. The FBI was involved, Barnett explained, because the six counties either contained Indian reservations or were near to them. Barnett noted that the investigation so far was focusing on a single person, but "it could expand." The next year's legislature, he said, might want to tighten the state's election laws governing absentee voting and voter registration.²⁰⁴

After his announcement, Democratic Party spokeswoman Sarah Feinberg said party officials had been aware of the probe since October 3 after talking to a county auditor about irregularities in absentee ballots. Once party officials had reviewed the ballots they contacted the U.S. attorney. Shortly after Barnett's announcement, the Democratic Party issued a statement saying that Rebecca Red Earth-Villeda—apparently the "one person" Barnett was referring to—had worked for the Democrats as an

²⁰¹ Associated Press, "ACLU, Sioux Settle Election Lawsuit," *The Washington Post*, 9 Nov. 2002, A5.

²⁰² Dave Broyer, "Senator denies Indian reservation fraud: Voter registration becomes an issue," *The Washington Times*, 17 Oct. 2002, A4.

²⁰³ Peter Harriman, "Senator, 'heartened' by voter support, vows to tackle projects," *Argus Leader* (Sioux Falls, S.D.), 10 Nov. 2002, 1A; David Kranz, "State, FBI probing Democratic vote drive," *Argus Leader* (Sioux Falls, S.D.), 12 Oct. 2002, 1A; Boyer, "Senator denies Indian reservation fraud," A4; Adam Clymer, "The 2002 Campaign: A Close Race," A13; "Hundreds of suspicious voter registrations found in S.D.," *The Bismarck Tribune* (N.D.), 21 Oct. 2002, 2B.

²⁰⁴ "Voter Fraud Probe Under Way," *Aberdeen American News* (S.D.), 12 Oct. 2002, 1A; Kranz, "State, FBI probing Democratic vote drive," 1A

independent contractor. Two absentee ballots she submitted were found to be invalid, and her contract was terminated on October 7. The Democrats' statement said, "The South Dakota Democratic Party has a zero-tolerance approach to anything less than full compliance with South Dakota and federal election regulations. If other issues are brought to the attention of the party, we will continue to fully cooperate to ensure that no one is able to undermine the democratic process." On October 22 an indictment was handed down, naming yet another person, a contractor for the United Sioux Tribes Voter Registration and Education Project, who was charged on five counts of forging voter registration cards.²⁰⁵

Attorney General Ashcroft Is Worried About Vote Fraud

Democrats had reason to be worried that Republicans would raise a hue and cry about vote fraud as a rationale for mounting ballot security programs in the South Dakota race. In a major news conference in March 2001, U.S. Attorney General John Ashcroft had announced that regarding voting rights, not only disfranchisement but vote fraud would be a major focus of his administration. He later met with national civil rights leaders on the subject, causing them to express their fear that aggressive fraud investigations in the tradition of past GOP ballot security efforts would suppress minority votes. In October 2002, while the South Dakota investigations were under way, the Justice Department held a daylong "Voting Integrity Symposium" to train approximately 300 FBI and U.S. attorney's offices personnel in order "to prevent election offenses and to bring violators to justice." This was part of what the Justice Department called an "unprecedented" effort to guard against voter discrimination at polling places and to prosecute vote fraud. There was speculation among Democrats that Ashcroft had personal reasons for his concern with vote fraud. In 2000 he had been narrowly defeated as U.S. Senator from Missouri in an election marred by Republican charges of fraud in St. Louis Democratic strongholds.²⁰⁶

Wade Henderson, executive director of the Leadership Conference on Civil Rights, one of the largest and oldest consortiums of civil rights organizations, sent a letter signed by various members of the Conference to Ashcroft on October 25, 2002 expressing concern that "overly aggressive 'voting integrity' efforts, instead of reducing fraud, tend to intimidate lawful voters and ultimately suppress voter turnout. This is especially true when investigations and prosecutions appear to concentrate efforts on or target voters of a particular racial, ethnic, disability or other minority group." The letter also mentioned an earlier meeting with Ashcroft in which various members of the organization had expressed their concerns about Justice Department ballot security efforts, "particularly the planned use of potentially intimidating signs and publicity about these efforts." A spokesman for Ashcroft, Mark Corallo, responded: "The only people

²⁰⁵ Ibid.; Michael Barone with Richard E. Cohen, *The Almanac of American Politics 2004* (Washington, D.C.: National Journal, 2003), 1467.

²⁰⁶ For Ashcroft's 2001 remarks, see Department of Justice Web site at <http://www.usdoj.gov:80/ag/speeches/2001/0307civilrightspresconf.htm>; Jim Drinkard, "Dems blast GOP efforts on voter fraud," *USA Today*, 24 Oct. 2002, 8A; Steve Kraske, "Carnahan defeats Ashcroft in U.S. Senate race as GOP claims voter fraud," *The Kansas City Star* (Missouri), 8 Nov. 2000, <http://search.epnet.com/direct.asp?an=2W71092597036&db=nfh>.

intimidated are the people who were going to cast fraudulent ballots, and that's the point here."²⁰⁷ As earlier case studies in this chapter have revealed, this is a stock defense by Republicans in charge of ballot security programs when accused of intimidating minority voters.

'The Wall Street Journal' Weighs In

The South Dakota investigations were immediately portrayed by Republicans locally and nationally as a scandal of major proportions—so much so that attorney general Barnett took issue with some of the exaggerated claims. Four days after the story broke, John Fund, a columnist for the *Wall Street Journal*, wrote that “a massive vote-fraud scandal broke out in a U.S. Senate race in Tom Daschle’s home state . . .” After quoting various South Dakotans’ claims and speculations, Fund added, “Voter fraud isn’t unknown on reservations. . . . Let’s hope the latest scandal in South Dakota . . . prompts states to examine their own absentee-ballot laws so they will stop being treated as an engraved invitation to fraud.” (Fund did not mention that most of the absentee votes in South Dakota were usually cast by Republicans.) Senator Bill Frist, chairman of the Senate Republicans’ campaign committee, opined that the situation in South Dakota was “shameful.” The day after Fund’s column appeared, Larry Long, the state’s Republican deputy attorney general and a candidate to succeed Barnett, responded by noting that the Democratic Party had in fact reported the incident to the state Department of Criminal Investigation. And Long’s Democratic opponent asserted that he as well supported Barnett in getting to the bottom of the matter.²⁰⁸

The RNC mailed fliers to South Dakotans entitled “Tim Johnson and the Democrats are hiding the truth about voter fraud” and included reproductions of four newspaper headlines seeming to suggest that voter fraud was widespread in the state. The RNC later was forced to apologize because one of the headlines didn’t even relate to charges of vote fraud.²⁰⁹

One news source spotlighting the fraud investigation was Sioux Falls’s KSFY TV, the local ABC affiliate. An inquiry by freelance journalist and editor of *Talking Points Memo* Josh Marshall led to the discovery that the reporter who developed an inaccurate and misleading newscast regarding the fraud charges, Shelley Keohane, had gotten documents that she used for her report from her roommate, Jon Lauck, a Sioux Falls lawyer who was also chairman of the Lawyers for Thune Committee and a member of the Republican National Lawyers Association. Once these facts were revealed, Keohane was pulled off the vote fraud story.²¹⁰

²⁰⁷ Letter to the Honorable John D. Ashcroft from the Leadership Conference on Civil Rights, 25 Oct. 2002, <http://www.citizen.org/documents/VotingIntegrityLetter.pdf>; Jim Drinkard, “Dems blast GOP efforts on voter fraud,” 8A.

²⁰⁸ John Fund, “Dead Men Voting: In Daschle’s home state, fraud wanders off the reservation,” *Opinion Journal*, 16 Oct. 2002 (<http://www.opinionjournal.com/forms/printThis.html?id=110002475>); Boyer, “Senator denies Indian reservation fraud,” A4; David Kranz, “Vote worker denies allegations,” *Argus Leader* (Sioux Falls, S.D.), 18 Oct. 2002, 1A.

²⁰⁹ Reproductions of these ads are found at *Talking Points Memo*, <http://www.talkingpointsmemo.com/docs/rnc.fraud.1.html>. On the apology, see E.J. Dionne Jr., “A nasty fight over who gets to vote,” *The San Diego Union-Tribune*, 5 Nov. 2002, B9.

²¹⁰ http://www.talkingpointsmemo.com/archives/week_2002_10_13.html#001693.

Lauck was active in other ways as well. The Republican Party paid him travel money to go through files of county election officials for evidence of questionable Indian registration cards and applications, which he then distributed to the media. “Some broadcast media were provided with large stacks of material indicating fraud on reservations,” according to one reporter. “One Sioux Falls television station apologized for broadcasting unverifiable information and pulled a lead reporter off the fraud story.”²¹¹ Lauck also wrote an article for the conservative magazine, *National Review*, which appeared a few days before the election, ridiculing the Democratic Party’s statements minimizing the extent of the fraud to date. “The FBI and the attorney general do not generally launch a large-scale investigation for one person and a couple of documents,” he asserted. Lauck likened the scope of the fraud to that in South Texas in 1948 which contributed to the election of Lyndon Johnson to the Senate. “When LBJ’s lawyer (and fixer) Ed Clark needed extra votes . . . he said ‘it meant going into the Mexican country. . . .’ Sen. Tim Johnson’s . . . campaign attempted a similar strategy on Indian reservations. And he, too, will be remembered for his bounty-hunting even if he wins,” wrote Lauck.²¹²

Given the steady stream of Republican claims of massive fraud, one might have expected attorney general Barnett to jump on the party bandwagon and exploit the investigation for Thune’s advantage. However, neither Barnett nor the Republican secretary of state Joyce Hazeltine did so. (*Wall Street Journal* columnist John Fund would later attribute this to their fear of being labeled racists by Democrats.) From the middle of October on, Barnett took sharp issue with allegations that fraud was “widespread,” stressing that while the investigation was continuing, it was focused on a few individuals. “I’m only aware of two cases where criminal law may have been violated, and you’ve heard about those,” he said on October 20. “I just don’t want the suggestion out there that there is widespread fraud when we don’t have any evidence of that.” Hazeltine also did not see massive fraud, and emphasized that the state’s election laws were working. The laws were designed to detect problems before the election, she said, and they were successful in doing so. Barnett also emphasized that the Democrats had cooperated with the investigation and that neither they nor the Johnson campaign were implicated.²¹³

²¹¹ David Melmer, “South Dakota Democratic Senator Accuses Republicans of Voter Harassment,” *Indian Country Today* (distributed by Knight Ridder Tribune Business News), 4 Nov. 2002, 1. This was apparently a reference to the TV reporter who was Lauck’s roommate, mentioned above.

²¹² Jon Lauck, “Dem Ethics? South Dakota Dems don’t acknowledge the importance of their voter-fraud problem,” *National Review Online*, 29 Oct. 2002, <http://www.nationalreview.com/comment/comment-lauck102902.asp>.

²¹³ David Kranz, Corrine Olson and Peter Harriman, “Fraud cases cloud S.D. elections,” *Argus Leader* (Sioux Falls, S.D.), 20 Oct. 2002, 1A; Scott Waltman, “Scandal Should Pose No Trouble,” *Aberdeen American News* (S.D.), 3 Nov. 2002, 1A; John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy* (San Francisco: Encounter Books, 2004), 83. In his chapter on South Dakota Fund makes various allegations of vote fraud in 2002, some of which may possibly be true. He continues to cite as evidence *The National Review* article branded as “garbage” by the state’s Republican attorney general in 2002. He relies for some of his important charges on anonymous sources. And his documentation is slim: in a chapter with many dozens of factual statements, only nine sources are listed in the chapter’s endnotes, four of which were interviews he conducted and two of which were from the editorial pages of *The Wall Street Journal*. Given Fund’s longstanding concern with vote fraud as evidenced in his columns in the *Journal* over the years, the hurried quality of his book is disappointing. The general tenor of his book’s

As Election Day approached, a South Dakota poll indicated that 15 percent of those surveyed said they were more likely to vote Republican as a result of the highly publicized investigation, and only 4 percent were swayed toward the Democrats. A few days before voters went to the polls, however, Barnett announced that the investigation—which had spread from six to twenty-five counties—had not turned up any illegally cast votes, although Red Earth-Villeda, the woman who was originally the focus of the inquiry, would probably be charged. State and federal authorities at that point had turned up fifteen absentee ballot applications with allegedly forged signatures.²¹⁴

Late Votes from the Reservation

The senatorial race ended in a photo-finish. Votes were counted throughout the night of November 6. Near the end, Johnson trailed Thune by about 2,000 votes. Then the votes were tallied from Shannon County—in which most of the famous Pine Ridge reservation is located—and Johnson edged ahead of Thune by 524 votes out of over 337,000 cast statewide. Turnout on the reservation was up phenomenally from the 1998 mid-term election. That year, 19 voters had cast ballots in Precinct 3; in 2002, more than 300 did. The six main reservation counties voted 78-21 percent for Johnson. However, his victory was dampened by the fact that the Republicans triumphed in several other battleground states and regained control of the Senate. Although the winning margin was sufficiently narrow to allow Thune under state law to demand a recount, he did not do so; instead, he would challenge Daschle, again with strong support from Bush, in 2004.²¹⁵

Thune's refusal to demand a recount provoked a *Wall Street Journal* editorialist to inveigh once more against the alleged Indian voting fraud in South Dakota. Pointing to the huge increase in Indian turnout as compared to the modest increase statewide, as well as to the late voting returns on the reservation, the *Journal* suspected fraud. "By the way," the editorial added, "we're told that Mr. Thune's lawyers have affidavits from about 50 people attesting to voting irregularities, including from four Indians saying they were each paid \$10 to vote." Attorney General Barnett responded, "Nothing has changed since before the election." His investigators had identified fifteen irregular absentee ballot applications and were reviewing as many as 1,750 that Red Earth-Villeda may

approach is illustrated by his statement that "everyone supports making certain that people's right to vote is fully protected, and that any vestiges of the days of poll taxes or literacy tests are stamped out. But dubious charges of racism or intimidation at the polls make it difficult to police the integrity of elections." (94). Fund would do well to read *Boneshirt v. Hazeltine* (2004) for a lengthy account in a federal court case of present-day political discrimination against Indians in South Dakota, a state whose elections he describes (77) as "usually polite affairs, conducted with the kind of civility one often finds in rural states." A more cautious approach to the 2002 senatorial election from a nonpartisan source is found in Michael Barone (with Richard E. Cohen and Grant Ujifusa), *The Almanac of American Politics 2004* (Washington, D.C.: National Journal Group, 2003), 1467-68. The authors, while mentioning the controversy over vote fraud, leave open the question whether it made the difference in the 2002 election results.

²¹⁴ David Kranz, "Barnett: No illegal ballots found," *Argus Leader* (Sioux Falls, S.D.), 31 Oct. 2002, 1A.

²¹⁵ Kevin Dobbs, "Johnson's narrow win has Thune dangling," *Argus Leader* (Sioux Falls, S.D.), 7 Nov. 2002, 1A; T. R. Reid, "New Indian Voters Turned Race in S.D.; Turnout Key to Democrat Johnson," *The Washington Post*, 8 Nov. 2002, A10; Barone with Cohen, *Almanac of American Politics 2004*, 1468.

have handled. He said he would like to know where the *Journal's* information came from. "We continue to hear rumors, but we do not have the evidence."²¹⁶

Shortly before Christmas the source of the *Journal's* allegations was revealed. It turned out that on Election Day, attorneys who had attended a training session the previous summer on election fraud spread out across South Dakota to gather affidavits demonstrating voting irregularities. They collected fifty. Once Barnett's office had had a chance to examine them, it was determined that only three of the affidavits alleged criminal behavior, and two were proven to be false. The third person was still being sought. Barnett pointed out that two of the affidavits the Republican lawyers had collected were either forgery or perjury, because they contained the same wording. "They are just flat false," Barnett said.²¹⁷

David Norcross, a former general counsel for the RNC and the man directing the affidavit enterprise on Election Day, admitted the lawyers had drawn up identical affidavits and then searched for people to sign them. Before this information came to light *The National Review* published an article, relying on the affidavits. Barnett characterized the story as "shoddy, irresponsible, sensationalistic and garbage." *The National Review* responded by claiming Barnett had not investigated most of the charges in the article.²¹⁸ Rumors of fraud in South Dakota's 2002 election continued to be circulated two years later by conservatives such as nationally syndicated columnist Robert Novak, even as local Republican officials, including Barnett, the new Republican secretary of state Chris Nelson, and local election officials in key Indian counties defended the election results. "I do not agree that the election was stolen," Nelson reiterated in September 2004. "There was no evidence that any illegal ballots were put in the box anywhere," he said.²¹⁹

An O. Henry Ending

The end of the South Dakota voter fraud story could have been written by O. Henry. In December 2002 Barnett brought nineteen counts of forgery on absentee ballot applications against Red Earth-Villeda, each count a felony punishable by a maximum of five years in prison and a \$5,000 fine. Larry Long was elected attorney general in November, and Barnett became his deputy but continued prosecuting the case. The tribal council on a reservation where Barnett wanted to serve subpoenas refused to allow it, saying the alleged crime had occurred off the reservation. In April 2003 Red Earth - Villeda was indicted again, on eight counts of forgery, after the tribe allowed the attorney general to serve subpoenas. The trial was scheduled for February 9, 2004. Less than a month before the trial was to begin, the state's handwriting expert concluded the people who had testified under oath that their votes were forged had actually signed the documents. "In twenty-five years, I've never seen anything like this," Barnett said. "It

²¹⁶ "The Oglala Sioux's Senator," 14 Nov. 2002, A14; David Kranz, "No evidence fraud tainted vote results, Barnett says," *Argus Leader* (Sioux Falls, S.D.), 21 Nov. 2002, 1A.

²¹⁷ David Melmer, "Voter Fraud Charges in South Dakota Prove Fraudulent," *Indian Country Today*, 24 Dec. 2002, <http://www.indiancountry.com/?1041004948>.

²¹⁸ *Ibid.*

²¹⁹ Kevin Woster, "Voter registration charges, denials fly," *Rapid City Journal* (S.D.) 28 April, 2004, <http://www.rapidcityjournal.com/articles/2004/04/24/news/local/top/news01.txt>; David Kranz, "Election should be problem-free, secretary of state says," *Argusleader.com*, 9 Sept. 2004, http://www.argusleader.com/columnists/dkranz/09_20_04.shtml.

automatically shoots our case out of the saddle.” He added that he could not explain how the expert witness “could be so diametrically opposed to what these people swore to,” he said. Barnett described the witness, who had testified for the state in several other cases but whom he refused to identify, as “well-qualified.” Red Earth-Villeda walked free. The only conviction to result from the alleged “massive fraud scandal” of 2002 was that of Lyle Nichols of Rapid City who, in a case apparently unrelated to Red Earth-Villeda, had forged signatures on voter-registration cards while working for the United Sioux Tribes. He pleaded guilty to felony charges and spent fifty-four days in jail.²²⁰

Shortly after the 2002 elections, the Republican-dominated state legislature, invoking ballot security, passed a law requiring notarization of absentee ballot requests—a law generally perceived as making it more difficult for Indians to vote. Of those voting, only 3 of 75 Republicans opposed the bill; 1 Democrat out of 29 supported it.²²¹ One noteworthy bill introduced after the 2002 elections failed to be enacted into law. House Bill 1010 was designed to make registration easier for Indians, many of whom live many miles from the county auditor’s office. The bill would have allowed registration on the internet. During the legislative debate, Republican State Representative Ted Klautt commented: “The way I feel is if you don’t have enough drive to get up and drive to the county auditor . . . maybe you shouldn’t really be voting in the first place.” These comments were made in connection with Indian voters, as were those of another Republican representative, Stanford Adelstein:

Having made many efforts to register people . . . I realize that those people we want to vote will be given adequate opportunity. I, in my heart, feel that this bill . . . will encourage those who we don’t particularly want to have in the system. [Referring to Indian voters, he added] I’m not sure we want that sort of person in the polling place. I think the effort of registration . . . is adequate.²²²

Charges of racial discrimination against Indians continued into the presidential election year. According to an April 2004 *New York Times* editorial on vote suppression masquerading as ballot integrity:

Today, in Bennett County, S.D., Indians say they have to contend with poll workers who make fun of their names, election officials who make it hard for them to register and—most ominously—a wave of false voter fraud charges that have been made against them, which they regard as harassment. Jo Colombe, a Rosebud Sioux tribal council member, said that when she worked as a poll watcher in a recent election she was accused of fraud simply for taking a bathroom break. When she returned, she said, white poll watchers charged her with copying the names of Indians who had not yet voted, and taking them out to Indians waiting in the parking lot.²²³

²²⁰ John-John Williams IV, “Flandreau woman didn’t forge signatures for 2002 elections, expert says,” *Argus-Leader* (Sioux Falls, S.D.), 29 Jan. 2004, 1A; “Vote fraud questions” (editorial), *Argus Leader* (Sioux Falls, S.D.), 11 Feb. 2004, 11B; Kevin Woster, “Voter registration charges, denials fly.”

²²¹ For roll-call vote on the bill, see <http://legis.state.sd.us/sessions/2003/1176.htm>. For party affiliation of legislators, see <http://legis.state.sd.us/sessions/2004/mem.htm>.

²²² Boneshirt v. Hazeltine (2004), 91-2. For a copy of the bill, see <http://legis.state.sd.us/sessions/2003/1010.htm>.

²²³ “Bad New Days for Voting Rights,” *The New York Times*, 18 April 2004, 12WK.

Soon thereafter, Bret Healy, a Democrat and the director of the Four Directions Committee, an organization whose purpose is to register and mobilize Indians, complained that a law passed in the previous session of the Republican-dominated legislature had led in recent elections to the disfranchisement of people in counties with large Indian populations. The new law requires voters either to show photo ID or sign an affidavit verifying their identity. Some poll workers, he claimed, did not tell prospective voters without their ID that signing an affidavit was an option and barred them from voting. The legislature would not have changed the law, Healy said, if the Indian vote had not played such an important role in 2002. “It was a law passed with ill intent,” he said. Chris Nelson, the secretary of state, said the problem was minor and that steps were being taken to fix it.²²⁴

²²⁴ Dennis Gale, “Get-out-the-vote group and former PAC linked,” *Aberdeen News.com*, 15 June 2004, <http://www.aberdeennews.com/mld/aberdeennews/news/8929812.htm?template=contentModules/printstory.jsp>.

CHAPTER VII

SUMMARY AND CONCLUSIONS

The foregoing examination of Republicans ballot security programs since the 1950s can be summarized succinctly. However legitimate the party's desire to guard against Democratic election fraud, these programs have sometimes degenerated into efforts to suppress the votes of blacks and Latinos—often the poorest and most vulnerable among them.

To political operatives this is apparently common knowledge, although Republican officials publicly deny it. In 1993 Republican Christine Todd Whitman narrowly beat the incumbent Democratic New Jersey governor, James Florio. Post-election investigations by the news media indicated that Democratic officials had had difficulty in mobilizing the usual number of recruits for get-out-the-vote efforts in black precincts. Moreover, some members of the Black Ministers Council of New Jersey reported receiving offers of cash from people identifying themselves as Republicans if the ministers would not endorse Florio to their congregations.¹ Daniel Todd, Whitman's brother, appeared on a panel two days after the election. As reported in the *San Francisco Chronicle*, "Explaining his sister's victory . . . Todd said, '[A well-run shoe leather campaign] is where a lot of our effort went and a lot of our planning—getting out the vote on one side and vote sup . . .' breaking off before resuming, 'and keeping the vote light in other areas.'"² Whitman's campaign spokesman was quoted the same day as saying, "We cut the (Democratic) margin in Essex and Hudson (two urban counties with large black and Latino constituencies). Sometimes vote suppression is as important in this business as vote-getting."³ Whitman strongly denied her campaign had engaged in vote suppression.⁴ Eleven years later, in the summer of 2004, Michigan state representative John Pappageorge, discussing election strategy, told a meeting of the suburban Oakland County Republican Party, "If we do not suppress the Detroit vote, we're going to have a tough time in this election." Blacks make up over 80 percent of Detroit's population. When his remarks appeared in the newspapers, Pappageorge denied intending to give offense to his "colleagues in Detroit or anywhere." However, he did

¹ Rachel E. Berry, "Democratic National Committee v. Edward J. Rollins: Politics As Usual or Unusual Politics?," *Race and Ethnic Ancestry Law Digest 2* (Spring 1996): 46.

² "Demos Stalled In New Jersey Election Probe In New Denial That Black Voting Was Suppressed," *San Francisco Chronicle*, 27 Nov. 1993, A2, as quoted in Berry, Footnote 28. The event which drew the most attention in the election's aftermath was the so-called "Rollins affair." Whitman campaign manager Edward J. Rollins claimed to reporters that he had used \$500,000 of Whitman's funds to suppress the black vote. He said he did this by promising black ministers he would donate to their favorite charities if they would not rally their churches behind Florio. As a result of a federal lawsuit brought against him, he later testified under oath that his claim was false. Berry, "Democratic National Committee v. Edward J. Rollins." 44. Whether he was telling the truth under oath was questioned by some. See Sidney Blumenthal, "Letter from Washington: Ed Rollins' Spin Cycle," *The New Yorker*, 13 Dec. 1993, 68. Rollins, in his autobiography, leaves open the question whether someone in Whitman's campaign other than him engaged in the kind of vote suppression he denied. See Ed Rollins with Tom DeFrank, *Bare Knuckles and Back Rooms: My Life in American Politics* (New York: Broadway Books, 1996), 293-94.

³ Berry, "Democratic National Committee v. Edward J. Rollins," Footnote 28.

⁴ *Ibid.*, Footnote 29.

not deny making the comments attributed to him.⁵ It seems reasonable to believe that in private venues, many Republican operatives talk frankly about minority vote suppression as a tactic, and that not a few try to effect it.

Let us now recapitulate some of the features of vote suppression efforts put forth by Republicans under the guise of ballot security programs, as they have been described in this Report:

1. An organized, often widely publicized effort to field poll watchers in what Republicans call “heavily Democratic,” but what are usually minority, precincts;
2. Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;
3. Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;
4. Posting “official-looking” personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;
5. Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;
6. Challenging voters using inaccurate, unofficial lists of registrants derived from “do-not-forward” letters sent to low-income and minority neighborhoods;
7. Photographing, tape recording, or videotaping voters; and
8. Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.

Ballot-security programs employing these techniques, as the above research has shown, are not usually the work of a few renegades out of touch with the leadership structure. The history of such programs from the 1950s to the present reveals that lawyers, judges, election officials, and people high in the state or national command hierarchy of the Republican Party and its campaigns are typically the leaders of the disfranchising efforts.

Finally, ballot security programs employing such tactics are implemented in cities and states across the nation—from California to New York, South Dakota to Louisiana, New Jersey to Texas. Virtually always African Americans or Latinos are the sole or primary targets. Occasionally, Native Americans have been the focus of such programs as well. The reasons for this focus are apparently two-fold. First, there is still a racist stereotype among a good many whites that dishonesty, including tendencies to engage in vote fraud, is especially widespread in minority communities. Second, because minority precincts are far more likely to vote for Democrats than are almost all white precincts, concentrating vote suppression efforts in minority communities is efficient. For example, of ten black voters randomly discouraged or prevented from voting, nine Democratic votes are typically suppressed for every Republican vote. The same is true of Indian votes in, say, South Dakota. In Latino precincts—exclusive of special sub-populations

⁵ Associated Press, “Democrats blast GOP lawmaker’s ‘suppress the Detroit vote’ remark,” *Detroit Free Press*, 21 July 2004, http://www.freep.com/news/statewire/sw101420_20040721.htm.

like Cuban-Americans—the equivalent figures are perhaps seven Democrats prevented for every three Republicans.

Contributing to the efficiency of targeting minority precincts is the sad fact that they are typically still located in highly segregated neighborhoods; therefore, challenging techniques at the polling site that slow down voting or intimidate or misinform the general populace in these areas will primarily affect minority voters.

Impact of Ballot Security Vote-Suppression Efforts

What has been the level of success of these vote-suppression efforts over the last half century? No one knows. Because the full extent of the misinformation and harassment tactics is unknown, it is impossible to estimate how many qualified voters were actually reached, and of those, how many were prevented from voting.

Of course, the turnout in certain minority precincts targeted for vote suppression can be compared with the turnout in the same precincts in a comparable election. Using this measure, the Republican ballot security efforts in Louisville in 2003, for example, if intended to discourage voting, seem to have been counterproductive, as revealed earlier in this Report. What occurred was a “black backlash,” consisting of widespread outrage in the African-American community and several weeks of organized activity to get out the vote. The local Republican leadership, caught in the media spotlight, conveyed the impression, at worst, of dishonesty and racism and, at best, ineptitude in its efforts to explain the reason for its ballot security program. Information from the case studies reported above suggests such a backlash may have occurred in some of the other cities as well.

However, in still other cases the minority vote may have been sufficiently suppressed to change the electoral outcome. This is a strong incentive, other things being equal, for the GOP to follow the advice implicit in Governor Whitman’s campaign spokesman: “Sometimes vote suppression is as important in this business as vote-getting.”

Red States, Blue States and Concern over Ballot Fraud

Over the past half century, America’s two major parties have gradually become ideologically polarized.⁶ Moreover, the close presidential election of 2000, combined with numerous questions surrounding the electoral process and vote recount in Florida that year, have ratcheted up concerns about ballot integrity to perhaps the highest level since 1960 when, as we have seen, Kennedy narrowly edged out Nixon in an election some Republicans claimed was stolen. The most important difference between then and now is that Democrats seem to be more worried about the integrity of the voting process than Republicans as a result of the 2000 election and some of the reforms resulting from it, such as the increased use of electronic voting machines lacking paper audits.⁷ Overall, the percentage of Americans saying they do not believe their votes are counted accurately

⁶ Keith T. Poole and Howard Rosenthal, “The Polarization of American Politics,” *Journal of Politics* 46 (1984): 1061-79. See also Michael MacKuen, Robert Erikson, James Stimson, and Kathleen Knight, “Elections and the Dynamics of Ideological Representation,” in Michael B. MacKuen and George Rabinowitz (eds.), *Electoral Democracy* (Ann Arbor: University of Michigan, 2003), 200-37.

⁷ Dan Keating, “Groups Rally for Voting Receipts,” *The Washington Post*, 14 July 2004, A10.

jumped from 3 to almost 9 between 2000 and 2004. In the summer of 2004, 93.9 percent of Republicans believed their vote would be counted accurately, as compared with 74.9 percent of Democrats. The figure for blacks was 69.5.⁸

The approaching contest between President Bush and Senator John Kerry may be a cliff-hanger as well. Both parties are moving forward with massive fund-raising and get-out-the-vote drives. In addition, Republicans (including U.S. Attorney General John Ashcroft) are planning ballot security measures, and Democrats are developing plans to respond to them, as well as mounting their own security programs. In this context, given the numerous abuses ballot security measures have encouraged, do the Republicans have good reasons to continue to employ them?

How Big A Problem Is Vote Fraud?

Election fraud is an undeniable reality in the American polity. How widespread it is remains unknown, however. Indeed, the terms vote fraud and election fraud are used in a variety of ways, which adds to the problem of ascertaining its incidence. One definition, often implicit in discussions of the subject by Republican anti-vote fraud activists, limits vote fraud to exclude what Dayna Cunningham has called “racially discriminatory abuse of discretion by local officials, particularly in the South, to bar African-American and other minorities.” Drawing on the definition of fraud in *Black’s Law Dictionary*, Cunningham makes a forceful case that such abuses should be included in the definition of voting fraud. Were they so included, the narrowly conceived concerns of anti-fraud activists, which focus on fraud by minority actors and ignore fraud by officials trying to prevent qualified minority persons from voting, would be seen as one-sided and hypocritical.⁹ Extending Cunningham’s logic, vote suppression of qualified minority voters not only by officials but by partisan poll-watchers, challengers, and uniformed guards, justified as ballot security, is also fraudulent activity—perpetrated, ironically, in the name of fraud prevention.

However, discussions of vote fraud implicitly tend to rely on a narrower definition than Cunningham’s, as does this one. How widespread, then, is it? An unscientific nine-month survey of American daily newspapers for this Report revealed allegations of (and occasionally criminal convictions for) election fraud by both major parties at various levels of government across the nation. But there has been no systematic study to date of the incidence of vote fraud in the nation or in individual states. A Republican pamphlet used in the party’s 1964 nationwide ballot security program, Operation Eagle Eye, estimated that 3 million votes a year were lost or stolen in America. In 2002, political scientist Larry Sabato of the University of Virginia was quoted as putting the figure at 4 million, although he did not respond to questions about the basis of his estimate.¹⁰ On the shaky assumption that both estimates were roughly

⁸ Rad Sallee, “Voters lose some faith in election accuracy,” *Houston Chronicle*, 9 July 2004, 25A.

⁹ Dayna Cunningham, “Who Are the Electors? A Reflection on the History of Voter Registration in the United States,” *Yale Law and Policy Review* 9 (1991): 397-99. *Black’s* definition is “intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another.” Cunningham, Footnote 166.

¹⁰ “Are You a ‘Shadow’ Voter?” (Washington, D.C.: Women’s Division, Republican National Committee, 1961). No pagination. The following quotation appears on the first page of the text: “Over three million votes are stolen or lost in every national election. Three million citizens go to the polls and cast ballots in

accurate—one made in the early sixties, the other forty years later—the *rate* of fraudulent votes cast declined from about 3 to 2 percent of the age-eligible voting population, a population that increased from 108 to 209 million between 1960 and 2000.

To repeat, there are no systematic studies of ballot fraud in the United States. Sabato and *Wall Street Journal* writer Glenn Simpson, authors of a 1996 book on political corruption, claimed that vote fraud, committed by both Democrats and Republicans (but in their opinion more often by Democrats) was increasing and was largely ignored by the press.¹¹ While their numerous anecdotes are informative and interesting, they are just that—anecdotes. More recently, John Fund, a columnist with the *Wall Street Journal*, has written a polemical book in which he claims that election fraud “can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and creates so many close elections lately.”¹² No evidence is presented, however, that such fraud is increasing. A front-page *New York Times* article appeared about the time Fund’s book was published, detailing election officials’ concern about the possibility of vote fraud in the 2004 election “as both major political parties intensify their efforts to promote absentee balloting as a way to lock up votes in the presidential race.” But, again, while there is the suggestion that vote fraud may be increasing as a result of the increased popularity of absentee balloting, there is nothing in the article to support it.¹³

Political scientists Lori Minnite and David Callahan systematically surveyed aspects of the American polity to determine the incidence of voter fraud. Their conclusions, *Securing the Vote*, were published in 2003 under the auspices of the policy institute, Demos. They focused on twelve states from all regions of the country, containing about half the American electorate, from 1992 to 2002, conducting LexisNexis searches of news databases and statutory and case law. They contacted “selected state officials, including attorneys general and secretaries of state.” Among their other methods were a LexisNexis search of voter fraud throughout the U.S. since the 2000 election. Their conclusion was that “voter fraud appears to be very rare in the 12 states examined.” However, no data were presented in their report.¹⁴

In light of these conflicting views, a satisfactory answer to the question of how widespread vote fraud is cannot at present be given. However, our discussion of vote fraud was broached in order to judge whether there were legitimate reasons for the Republicans’ ballot security programs. Perhaps another approach is more fruitful. One might argue that the incidence of vote fraud nationwide or even within a state is not

good faith, only to become 'shadow' voters when their ballots are defaced, discarded, not counted, or nullified in other illegal ways. The number of vote frauds, moreover, seems to be on the increase." The source given for the 3 million figure is Honest Ballot Association, New York, N.Y. The latter organization, apparently now defunct, was founded by Theodore Roosevelt. Sabato is quoted in Russell Wild, “Dirty Tricks,” *AARP* (Newsletter), Nov./Dec. 2002, 42, 45.

¹¹ Larry J. Sabato and Glenn R. Simpson, *Dirty Little Secrets: The Persistence of Corruption in American Politics* (New York: Random House, 1996), 275. See especially Chapter 10, “Vote Fraud: Back to the Future.” For their reasoning that Democrats are more likely to commit vote fraud, see 297-300.

¹² John Fund, *Stealing Elections: How Voter Fraud Threatens Democracy* (San Francisco: Encounter Books, 2004), 5.

¹³ Michael Moss, “Absentee Votes Worry Officials As Nov. 2 Nears,” *The New York Times*, 13 Sept. 2004, A1.

¹⁴ Lori Minnite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (New York: Demos, 2003), 17. <http://www.demos-usa.org/pub111.cfm>.

germane to whether a party's ballot security efforts are justified in a particular case. In a tight race in a battleground state such as Florida in the 2004 presidential election, it will not be reassuring to either Democrats or Republicans to be told that the national vote fraud rate is relatively low and declining. The most recent election for the most powerful political position in the world was finally decided by 537 votes in a single state. Both parties, then, have good reason to be concerned with "ballot security" in Florida as well as in the sixteen or so other battleground states this election year.

Republicans should be concerned to ensure, among other things, that no one who is ineligible to vote is allowed to, including non-citizens, unregistered voters, dogs, dead persons, or living persons more than once. Democrats, too, should try to ensure that their votes are not stolen, either through racial discrimination in declaring ballots to be spoiled, inaccurate registration lists, hostile or uncooperative poll workers or challengers, inaccurate felon purge lists, placement of less reliable voting machines, or the traditional intimidation and misinformation tactics associated with GOP ballot security methods documented in this Report. The need for Democrats' concern is underlined by the continuing controversies in Florida over the seriously inaccurate ex-felon purge lists of 2000 and 2004, the unwillingness of Governor Jeb Bush to make the list in the latter year available until forced by a state court to do so, and the overall lack of preparedness of Florida's top voting officials well into the summer of the presidential election year.¹⁵

From this acknowledgement that vote fraud by both parties is a valid concern in tight elections, two propositions follow. First, Republicans should be sympathetic to the legitimate importance this issue has assumed for Democrats. Second, Democrats should not be as dismissive of Republicans' fear of ballot fraud as they sometimes have been. Even if this change in partisan attitude were to occur, however, the problem of how to curtail the excesses of Republican ballot security measures is not easily resolved. The approach suggested in June 2004 by John Fund grows out of election-year excitement which he described:

The level of suspicion between the two parties is greater than ever. John Kerry says he believes Al Gore "won" the 2000 election and has assembled a team of 2,000 lawyers to "challenge any place in America where you cannot trace the vote and count the votes." Republicans have their own legal team to combat fake voter registrations, absentee-ballot fraud and residents of nursing homes being overly "assisted" to cast votes. Maria Cardona of the New Democratic Network dismisses such concerns, saying "ballot security and preventing voter fraud are just code works for voter intimidation and suppression."¹⁶

¹⁵ On the controversy over the purge list, see Associated Press, "Florida says it won't strip 2,500 ex-felons of voting rights," *Sarasota Herald Tribune*, 8 July 2004, <http://votersunite.org/article.asp?id=2060>; and Chris Davis and Matthew Doig, "Voter Purge Ignores Many Hispanic Felons," *The Ledger Online* (Lakeland, Florida), 8 July 2004, <http://www.theledger.com/apps/pbcs.dll/article?Date=20040708&Category=NEWS&ArtNo=407080418&SectionCat>. On the Bush administration's refusal to make public the purge list, see Steve Bousquet, "Felon voters list made public," *St. Petersburg Times*, 2 July 2004 1A, http://www.sptimes.com/2004/07/02/State/Felon_voters_list_mad.shtml. On the questionable behavior of the two Republican secretaries of state serving under Florida Governor Jeb Bush—Katherine Harris in 2000 and Glenda Hood in 2004, see "The Return of Katherine Harris" (editorial), *The New York Times*, 16 Sept. 2004, A32.

¹⁶ John Fund, "This Time, Get It Right," *WSJ.com Opinion Journal*, 21 June 2004, <http://www.opinionjournal.com/forms/printThis.html?id=110005228CK>.

Fund cited approvingly the letter sent by RNC chairman Ed Gillespie to Terry McAuliffe, his Democratic counterpart, suggesting that each party identify precincts in the battleground states where trouble was expected on Election Day, and then that each party send observers, as well as bipartisan teams to cover multiple precincts.

Yet Fund's support of Gillespie's proposal is naïve. While on its face it may have some merit, such a proposal, offered in the middle of a contentious campaign without time for careful planning and the advice and help of nonpartisan outsiders, is impractical in the extreme—a judgment implied in the response to Gillespie by McAuliffe and fellow Democrat Donna Brazile, Al Gore's 2000 campaign manager.¹⁷

The mutual suspicion will undoubtedly remain through 2004, and nothing in the election season will abate it. So the question is what might, in the longer term, discourage vote fraud among both Democrats and Republicans, and also curtail vote suppression efforts that exist under the guise of Republican ballot security programs?

Solutions: Practicable . . . Or Utopian?

Law review articles by Rachel E. Berry in 1996 and by Sherry Swirsky in 2002 address vote suppression techniques under the guise of ballot security programs. Berry examines the consent decrees between the RNC and the DNC adjudicated in New Jersey, growing out of the GOP's vote suppression efforts in New Jersey in 1981 and in Louisiana in 1986. She concludes that

The battle between the RNC and the DNC over the RNC's efforts to 'suppress' black voting does not have clear winners or losers. Although the 1982 consent order proved useful as a tool for curbing RNC ballot security measures on a national level, the instrument ultimately has little utility as a method for curing the unique form of race-based campaign behavior at issue in these elections. The 1982 consent order expressed no judicial opinion of the RNC's race-based efforts to demobilize Democratic voters, and, as a result, the disputes between the RNC and the DNC in the 1980's focused less upon principles of substantive voting rights law and focused more upon the rights of the parties under the terms of the consent order. Thus, not only did the consent order not add to the body of law delimiting unfair election practices, but it allowed contract principles to permeate and control the conduct of the parties. . . . In sum, litigation brought by one party against another does not seem to be the most effective vehicle for protecting the full range of voter interests implicated by race-based political conduct.¹⁸

Berry does, however, believe that the Fifteenth Amendment has applicability to at least some ballot security excesses. She also argues that in an expansive reading of the Voting Rights Act, it, too, might be used as a weapon against racially discriminatory ballot security programs.¹⁹

Swirsky, like Berry, examines widespread GOP ballot security efforts since the early 1980s, and adds to the list of problems that of governmental investigations into alleged ballot fraud, both before and after elections. Such investigations, Swirsky writes, "even when unsuccessful, are perhaps the most insidious form of intimidation, since they not only can discourage voters from participating in a particular election, but

¹⁷ "DNC and Voting Rights Institute Call on RNC to Honor Commitment of Fairness in 2004 Electoral Process," *Democratic News* (DNC Press Office), 2 July 2004.

¹⁸ Berry, "Democratic National Committee v. Edward J. Rollins," 50-51.

¹⁹ *Ibid.*, 57, 60.

can deter them from participating in the future.” This point was brought home dramatically in the summer of 2004 when Florida Department of Law Enforcement agents, contacting black voters door-to-door whose absentee ballots were in question, revealed their side arms to the voters. When a civil rights group charged them with intimidation, a spokesman for the agents denied it, saying it was a hot day and agents needed to take off their jackets.²⁰

Swirsky’s criticism of ballot security programs in general is that even if the tactics employed by them “could be shown to have some role in reducing fraud, they are invariably over-inclusive, and are suspect because of their disparate impact on minorities.”²¹

She examines the Civil Rights Act of 1957, the Voting Rights Act of 1965, and the National Voter Registration Act of 1993 (Motor Voter), and points to shortcomings all three have in prohibiting efforts by private persons to intimidate minority voters under the guise of ballot security programs.²² Given these problems, she urges lawyers both to clarify these laws and liberalize them through litigation, making them more applicable to “ballot security” intimidation than they currently are.

Swirsky also urges a greater degree of preparedness for ballot intimidation than has existed in the past, including establishment of “a network of volunteer lawyers as a component of a campaign.” She points to Democratic party organizations as examples of such networks, and spells out the various kinds of activities they perform far in advance of elections, as well as on Election Day. Effective use of the media and comprehensive voter education also would play an important role.²³ Finally, she stresses what is sometimes overlooked in Democratic accounts of Republican ballot security programs:

[V]oter registration drives must be carefully administered to avoid registration of ineligible persons, such as non-citizens, so as to minimize the accusations of voter fraud that inevitably fuel efforts to impair the rights of minority voters. In short, there should be zero tolerance for incidents of intimidation or fraud, whether committed by whites or blacks, Republicans or Democrats.²⁴

Laughlin McDonald, director of the Voting Rights Project of the American Civil Liberties Union, by implication agrees with both Berry and Swirsky. While “existing federal laws make it a crime to intimidate or harass minority voters,” he writes, their enforcement has been lax. “There is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote,” he writes. McDonald therefore urges that victims of the excesses of ballot security programs bring private damage suits, and he points to a precedent-setting decision by an Arkansas federal appeals court which affirmed damages of from \$500 to \$2,000, payable by poll officials, to seven black voters who had been “unlawfully

²⁰ Sherry Swirsky, “Minority Voter Intimidation: The Problem That Won’t Go Away,” *Temple Political and Civil Rights Law Review* 11 (Spring 2002): 367; Mike Branom, “Vote group says agents were frightening,” *South Florida Sun-Sentinel*, 17 July 2004, 7B.

²¹ Swirsky, “Minority Voter Intimidation,” 368.

²² *Ibid.*, 370-77.

²³ An example of such networks is described early in this Report in the case of Louisville, Kentucky, in 2003.

²⁴ Swirsky, “Minority Voter Intimidation,” 379-82.

challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville.”

In addition, McDonald urges Congress and the states to “adopt nondiscriminatory, evenly applied measures to ensure the integrity of the ballot.”²⁵ In the same spirit, an editorial in *The New York Times* has proposed the following steps be taken:

- The Republican and Democratic Party chairmen should publicly commit not to single out minority voters for intimidation, and to get this message out to party workers at every level.
- The National Association of Secretaries of State, and individual secretaries of state and state election officers, should state publicly that they will be on the lookout for minority vote suppression, and that they will deal with it strictly.
- The Department of Justice, which has lately seemed more focused on voter fraud than minority voter intimidation, should explain how it intends to discharge its legal duty to protect minorities from discrimination in voting.
- Prosecutors should vigorously pursue anyone involved in vote suppression; this is rarely done now. And its victims should bring civil lawsuits, to make those who engage in it pay.²⁶

A Role for the EAC?

In this context, the possibilities offered by the Help America Vote Act (HAVA), and particularly by its Election Assistance Commission (EAC), warrant consideration. Congress passed HAVA in October 2002, purportedly to prevent the kind of problems that brought Florida’s election process international notoriety two years previously. Ironically, the law has come under attack by African-American leaders, by many Democratic officials, and by some voting rights lawyers for, among other things, requiring on Election Day photo identification or various other documents (e.g., a utility bill or bank statement) for those who have not previously voted and who have registered by mail. People who show up at the voting station without such documents will be required to cast a special “provisional” ballot.²⁷

McDonald points to three problems with this requirement. First, blacks are far less likely than whites to carry such documents with them. Second, there is no convincing evidence that this requirement reduces voter fraud. Third, the requirement enables aggressive poll officials to “single out minority voters and interrogate them, asking humiliating questions such as, ‘Where’s your government check?’ and, ‘Don’t you have a bank statement?’”²⁸ It is no surprise, then, that the ID requirement of HAVA, as well as more expansive ID requirements favored by Republicans and recently passed by some state legislatures, have been opposed by many Democrats and civil rights organizations, as well as by the nonpartisan League of Women Voters.²⁹

²⁵ Laughlin McDonald, “The New Poll Tax: Republican-sponsored ballot-security measures are being used to keep minorities from voting,” *The American Prospect*, 30 Dec. 2002, 28.

²⁶ “Bad New Days for Voting Rights,” *The New York Times*, 18 April 2004, WK12.

²⁷ For a sharply framed critique of various aspects of HAVA concerning minority voters, see Anita Earls, “Election Reform and the Right to Vote,” paper prepared for the Right-to-Vote Amendment Roundtable, 21 Nov. 2003, Claim Democracy conference, Washington, D.C.

²⁸ McDonald, “The New Poll Tax,” 27.

²⁹ See, for example, the conflict in the Mississippi legislature where Republicans have pushed to raise the bar significantly higher than that required by HAVA. In 2004 they proposed that by January 2006 all voters—not just first-time voters who have registered by mail—show ID, such as a driver’s license, passport, or work identification card. Andy Kanengiser, “Negotiators unable to reach compromise on voter

On the other hand, numerous organizations and individuals (including the DNC's McAuliffe and Brazile) concerned with securing and expanding the right to vote have seen HAVA as offering many opportunities for reform. One such opportunity is implicit in one of the many legal duties of the four-member bipartisan Election Assistance Commission (EAC), namely, periodically conducting a wide range of studies, whose goal

. . . will be to promote methods of voting and election administration which are the most convenient, accessible and easy to use for all voters (UOCAVA, disabled, limited English); will yield the most accurate, secure, and expeditious system for voting and vote tabulation; will be nondiscriminatory; and will be efficient and cost effective. Among the studies to be conducted under this rubric will be those focusing on:

- Nationwide statistics and methods of identifying, deterring and investigating voter fraud.
- Identifying, deterring and investigating methods of voter intimidation.
- Methods of recruiting, training, and improving the performance of poll workers.
- Methods of educating voters about voter registration, voting, operating voting mechanisms, locating polling places and other aspects of participation.³⁰

The severe underfunding of the EAC in the two years following passage of HAVA does not augur well for its influence—nor does President Bush's requested budget cut for the Commission in the upcoming fiscal year.³¹ Moreover, its statutory role is largely advisory. Still, there is something to be said for the EAC's taking on the task of resolving the problems preventing honest, fair and accessible voting procedures that so exercise both parties. If the RNC and DNC are serious in wanting to work out an accommodation regarding ballot security, they would be advised to jointly approach the Commission once the elections of 2004 are over, and perhaps in conjunction with the Voting Section of the Justice Department, lawyers of both parties, nonpartisan groups such as the League of Women Voters and Election Reform Information Project, interested citizens, and knowledgeable election administrators of both parties, have the EAC devise a set of rules to which Democrats and Republicans would be bound.³²

Such a proposal may sound utopian, given the intensity of the interparty conflict over ballot fraud and ballot security programs, as well as the emotions surrounding the

ID bill," *The Clarion-Ledger* (Jackson), 6 May 2004, 1A. This strategy of raising the bar for voting requirements is specifically opposed by the League of Women Voters. Among the goals enunciated by the League in implementing HAVA is the following: "Oppose efforts by state legislatures or election officials to distort the federal law by requiring *all* voters to show ID at the polls instead of just first-time voters who register by mail." *The National Voter*, May/June 2003, 15 (emphasis in original).

³⁰ Election Assistance Commission: Duties and Responsibilities; General Responsibilities (Title II, Subtitle A, Part 1 Sections 202, 206, 207 & 209), Periodic Studies of Election Administration Issues (Title II, Subtitle C – Section 241). "UOCAVA" is the acronym of Uniformed and Overseas Citizens Absentee Act. See http://www.eac.gov/law_ext.asp for duties of the EAC.

³¹ "DNC and Voting Rights Institute Call on RNC to Honor Commitment of Fairness in 2004 Electoral Process," *Democratic News* (DNC Press Office), 2 July 2004.

³² For a description of the EAC's duties and powers, see Help America Vote Act, Public Law 107-252, 107th Congress, especially Sections 201-210, http://www.eac.gov/law_ext.asp. See also the League of Women Voters, "Helping America Vote: Safeguarding the Vote." This document, available as a PDF, addresses current issues regarding the training of poll workers, voting machine technology, and implementing accurate and complete voter registration lists. The latter, in particular, bears on the issues of both vote fraud and minority vote suppression.

presidential election of 2004 generally. Nonetheless, each side has something to gain from an accommodation. The Republicans are composed overwhelmingly of white non-Hispanics, for reasons going back to the fateful decision made by its leaders in the 1960s to embark on the southern strategy. Some Republicans are no doubt happy to see their party remain overwhelmingly white. Others are uncomfortable, on moral grounds, with that situation, and still others, perhaps on more pragmatic grounds, are worried that with the rapid growth of the Latino population, the GOP will soon become uncompetitive in several states and hence nationally. These latter groups should be deeply concerned about their party's continuing image as unfriendly to minority voters. And the negative publicity garnered by ballot security programs gone bad continues to contribute to that image.

Democrats, on the other hand, express legitimate concern about these programs' ability to disfranchise minority voters. But in opposing all ballot security efforts by Republicans, including legitimate ones, they contribute to a popular stereotype that Democrats are uninterested in preventing voting fraud. Such a stereotype, of course, enables Republicans, in the court of public opinion, to justify their ballot security efforts, including those that seem clearly designed to curtail the minority vote. There is ample reason, therefore, for both parties jointly to seek the advice and assistance of neutral third parties after the 2004 elections to solve their respective problems.