

# CLEAN HOUSE

Exposing Our Government's Secrets and Lies

TOM FITTON



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## VOTER FRAUD

### Stealing Elections—The Danger of Voter Fraud and the Fight for Election Integrity

**W**e have all heard about voter fraud and the attempts by liberal media organs like the *New York Times* and Ivory Tower academics to dismiss it as a nonexistent problem. But it is real, widespread, and substantial to the point that it can decide elections. It also drives honest citizens out of the democratic process and breeds distrust of our government.

The danger lies not only in the results of the fraud itself, but also in the reality that voters who fear their legitimate votes will be outweighed by fraudulent ones are likely to feel disenfranchised and may not even show up at the polls to vote. The sad truth is that our nation's recent history consists of far too many elections that have been called into question due to voter fraud.

Many elections, particularly local elections, are decided by slim margins. In January 2014, Ohio Secretary of State Jon Husted released remarkable statistics showing that thirty-five local races and eight local issues were decided in the Buckeye State in 2013 by

one vote or by using the state's designated procedure, such as coin-flipping, to break a tie. Often, it doesn't take much fraud to affect an election.

### The Election Integrity Project

Because of our concern over election integrity, Judicial Watch organized an Election Integrity Project designed to help ensure clean elections. This is especially important because of the lack of interest of the Obama Justice Department in investigating and prosecuting voter fraud, such as noncitizens registering and voting in elections. The American public certainly agrees that this is a serious problem. A Rasmussen poll from August 2013 reported that only 39 percent of Americans believe elections are fair. In 2012, a Monmouth University Poll reported that more than two-thirds of registered voters thought voter fraud was a problem. In 2008, when a Gallup Poll asked respondents around the world whether they had "confidence in the honesty of election," 53 percent of Americans said that they did not.

There are, unfortunately, numerous examples of voter fraud and even other, admittedly rarer, threats to election integrity, such as intimidation at the polls. We outlined just a few of those examples in *The Corruption Chronicles*, Judicial Watch's 2012 book on corruption in Washington.<sup>1</sup> Former FEC (Federal Election Commission) Commissioner Hans von Spakovsky and *National Review* columnist John Fund detailed numerous cases of voter fraud in their 2012 book, *Who's Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk*.<sup>2</sup> The Heritage Foundation maintains a database listing over four hundred recent cases of convictions for voter

fraud, and the Republican National Lawyers Association also catalogues recent cases.<sup>3</sup>

Instead, as our Senior Counsel, Robert Popper, the head of our Election Integrity Project, explained in a commentary in the *Wall Street Journal*, opponents of election integrity like Barack Obama cite faulty statistics to claim there is almost no voter fraud. For example, in a speech to Al Sharpton's National Action Network on April 11, 2014, Obama cited a 2012 report issued by News21, an Arizona State University project. But that project acknowledged significant gaps in the data it had requested from state and federal officials. Several states did not even respond to News21's request for information about voter fraud cases. Election officials and state attorneys general "admitted they did not track voter fraud." The US Justice Department "referred News21 to its 93 local U.S. attorneys" but many of those officers "referred News21 back to the department." Even when News21 received responses, they lacked "important details about each case." As Popper says, "it is hard to believe any valid conclusions about voter fraud can be drawn from this study."<sup>4</sup>

Furthermore, "judging voter fraud by counting criminal proceedings is," according to Popper, "misguided." For any crime, including voter fraud, "convictions are a fraction of prosecutions, which are a fraction of investigations, which are a fraction of known offense, which are, in turn, a fraction of committed crimes." As Popper says, "this is even more likely to be true of voter fraud, which is often a low enforcement priority." Moreover, such "fraud may be all but impossible to investigate or prove if it is carried out successfully."

That includes odd occurrences that seem to defy common sense where it is very hard to determine if they were due to fraud.

Such as Hillary Clinton winning coin tosses in six different precincts in Iowa in the hotly contested 2016 Democratic caucus where the votes for Bernie Sanders and Clinton were otherwise tied.<sup>5</sup> The odds against winning six out of six coin flips are 64 to 1, or 1.56 percent.

A prime example of intimidation at the polls that reveals the Obama administration's disappointing attitude toward election crimes occurred in the 2008 federal election when two members of the New Black Panther Party stood in a doorway of a polling place in Philadelphia. They were in black paramilitary uniforms and one of them carried and brandished a nightstick. They argued with passersby and shouted racial insults at poll watchers. They attempted to block a poll watcher from entering the polling place and were recorded by a poll watcher with his video camera.

At the time, Robert Popper was a deputy chief in the Voting Section of the Civil Rights Division of the US Justice Department. He was assigned to prosecute a civil action against these men for intimidation and attempted intimidation under the relevant federal statute, Section 11(b) of the Voting Rights Act. The case against the defendants was strong, and they subsequently defaulted by refusing even to answer the charges against them.

But the case was abruptly curtailed and all but shut down by the newly appointed officials of the Obama administration. In the end, they ordered Popper to settle the case for a short, limited, and toothless injunction against only one of the four defendants. There was never a convincing explanation from Eric Holder or the administration as to why the case was cut short. Popper believes that it was a partisan abuse of what are supposed to be neutral law enforcement efforts to enforce the Voting Rights Act. This was only the beginning of the Obama administration's abuse of its power

over elections. The damage to the reputation of the Justice Department was enormous and enduring, and the damage to the public's perception of the integrity of elections was incalculable.

Popper left the Justice Department in 2013 to come to work for Judicial Watch, where he leads the Election Integrity Project. He says it was a “liberating moment,” reminding him of the movie *The Shawshank Redemption*, when the main character finally breaks out of prison. DOJ lawyers like him (what few there were) who did not agree with the Obama administration's radical voting and civil rights agenda and wanted to enforce the law on a nonpartisan, nonpolitical basis “were sidelined and ignored.” In fact, other lawyers allied with the administration “would almost talk in code at management meetings to make sure that dissenters like me wouldn't know what the Voting Section was actually doing.” Popper says it was like a scene from *Goodfellas*.<sup>6</sup>

Chris Coates, the chief of the Voting Section, before the administration exiled him to South Carolina, was another lawyer who didn't go along with the administration's radical agenda and wanted to enforce voting laws in a racially-neutral, nonpartisan manner.<sup>7</sup> The Obama administration was particularly angry at him because he had approved the filing of the voter intimidation lawsuit against the New Black Panther Party at the end of the Bush administration. Popper says that the Obama administration set up an entire structure to bypass Coates, with left-wing subordinates who were “trusted” by Obama political officials being used to get around him. There was in essence “a shadow Justice Department with subordinates making recommendations regarding Chris Coates and the cases on which Coates should have been consulted.” According to Popper, he and Coates were both “treated as if they were wearing a wire” inside a Mob operation and they

might as well “have been pieces of furniture” in the way they were ignored even though they were managers of the Voting Section.

### **Voter ID—Rhetoric vs. Reality**

The intimidation by the New Black Panther Party sheds light on another independent electoral issue, whether it is necessary to require photo identification in order to vote. The need for legislation forbidding violence or the threat of violence and intimidation at a polling place is obvious even if evidence shows that it is rare, that few voters actually fail to vote because of it, or that it has not swayed the outcome of a particular, recent election. Similarly, the value of laws against electioneering or partisan displays inside a polling place is clear even if there is proof that such activities did not change anyone’s vote. The laws forbidding these activities provide some of the necessary legal safeguards that should protect the electoral process.

Voter ID laws provide the same basic kind of protection. Allegations of fraud are a regular feature of every election cycle, and fraud does sway elections. For those who care to look, there is a steady stream of stories concerning electoral fraud of various kinds. But the justification for voter ID does not depend on establishing the existence of fraud. It is enough that fraud should not be permitted, and that the opportunity to commit such fraud exists.

That there is an opportunity is clear. To begin with, vote fraud is both hard to spot and hard to prove. Particularly where it is successful, vote fraud may never be detected. For example, without an ID requirement the authorities are unlikely to discover that someone has voted on the still-valid registration of his friend who has



moved out of state. Even where vote fraud is detected, successful prosecution remains unlikely. There may be no way to track down a perpetrator where, for example, authorities often have nothing but a bogus signature on a poll book or a bogus registration or absentee ballot form. Too many prosecutors are not interested in pursuing these types of cases because they represent a low priority compared to other crimes or will incur political costs.

The typical argument we hear from the Obama administration and other leftists is that voter ID laws discourage minorities, young people, and the elderly from voting. Yet, we know from reputable surveys that the common sense use of photo ID is supported by every demographic group in America. Two-thirds of African Americans support it; two-thirds of Hispanics; two-thirds of liberals; and even two-thirds of those who consider themselves to be Democrats.

There is simply no evidence to support the contention that the requirement to show a photo ID (which are provided for free in every state with such a requirement) discourages legitimate voters from voting. In fact, in states such as Indiana and Georgia where photo ID requirements have been in place for almost a decade, studies show that voter turnout has actually increased. Photo IDs are part and parcel of living in a modern society. We have to show a photo ID to fly on a plane, cash a check, purchase prescription drugs, and to enter federal and private office buildings—including the US Department of Justice in Washington, where the Obama administration has directed its mostly unsuccessful attacks on voter ID laws. South Carolina beat the Justice Department in a court fight, when former Attorney General Eric Holder tried to stop the state from implementing its law.

That is why Judicial Watch has worked hard to defend states

that have implemented voter ID laws. For example, we filed an amicus brief (a “friend of the court” brief) in Pennsylvania on behalf of state legislators like Rep. Daryl Metcalfe, who was the author and driving force behind that state’s voter ID bill. Nearly half of the members of the legislature who supported the bill were signed on to the Judicial Watch brief. Pennsylvania’s law was typical of the type of law passed by most states. It allowed voters to use a Pennsylvania driver’s license or other government-issued photo ID, such as a passport, military ID, or government employee ID. It provided a free ID at no cost and it allowed an individual without identification to cast a “provisional” ballot that would be counted if the identity of the voter could be confirmed within six days of the election. As we argued in our brief, the “legislature did no more than exercise its sound discretion and create a common sense regulatory scheme to secure free and equal elections.” Although the law was upheld in the lower state courts, it was overturned in a clearly politically biased decision by a higher court.

The decentralized nature of our electoral laws and enforcement activity, our national mobility, and the nature of our demographics also create opportunities for voter fraud. In 2012, the Pew Research Center on the States released an astonishing report noting that “[a]pproximately 2.75 million people have active registrations in more than one state.” That same report observed that “20 million—one of every eight—active voter registrations in the United States are no longer valid or are significantly inaccurate,” and that “[m]ore than 1.8 million deceased individuals are listed as active voters.”<sup>8</sup> Those extra registrations are the basic resource needed to steal votes.

It is highly likely that election results in recent years were affected by errors, inaccuracies, and outright crimes. What possible

explanation can there be for the fact that in many US counties there are more registered voters than there are residents? Judicial Watch found this to be the case all across the country, including in Alabama, California, Colorado, Florida, Indiana, Iowa, Mississippi, Ohio, Pennsylvania, Texas, Virginia, and West Virginia. Perhaps election officials who don't maintain clean voter lists share the viewpoint of the chair of the Illinois Board of Elections, who said, "there's nothing we can do about any of this because we don't have any money to stop the fraud."<sup>9</sup>

### **Cleaning Up Voter Rolls**

The federal government's abuse of federal law has made the problem harder to address. In 1993, the National Voter Registration Act (NVRA) or "Motor Voter" was passed. Section 5 of the law requires driver's license offices to offer voter registration, and Section 7 requires all government offices providing public assistance, include welfare, to register welfare recipients to vote. The Obama administration has been vigilant in forcing states to abide by Section 7, because it believes these efforts are more likely to add core Democratic voters to the voter rolls. And it worked closely with Project Vote and ACORN in pursuing states to force increased registration at welfare offices.

Judicial Watch obtained documents detailing meetings and emails between White House officials, the Justice Department, and Estelle Rogers, the director of advocacy for the ACORN-affiliated organization Project Vote (and a former attorney for ACORN before it declared bankruptcy) to discuss suing states under Section 7. This included a meeting on April 30, 2009,

between Rogers, Deputy Assistant Attorney General Sam Hirsch, Deputy Assistant Attorney General Spencer Overton, and two officials from the White House, Cecilia Muñoz, then–Director of Intergovernmental Affairs and subsequently Director of the Domestic Policy Council, and Tino Cuéllar, Special Assistant to the President for Justice and Regulatory Policy.

A February 23, 2011, email showed Rogers saying that she had “received oral assurances from [Assistant Attorney General for Civil Rights Thomas] Perez on several occasions that enforcement action was imminent,” suggesting that Rogers was privy to internal discussions inside the Justice Department regarding pending legal action. One month after this email, on March 18, 2011, DOJ filed its first Section 7 lawsuit against Rhode Island. This lawsuit and others filed by DOJ and Project Vote resulted in increased incidents of voter registration errors. For example, a separate Judicial Watch investigation found that the percentage of invalid voter registration forms from Colorado public assistance agencies was four times the national average after Project Vote successfully forced the state to implement new policies on the registration of welfare recipients during the 2008 and 2010 election seasons.

Judicial Watch obtained a whole series of other documents detailing this partnership between the Obama Justice Department and Project Vote, which once employed Barack Obama. Both Project Vote and ACORN have been linked to massive voter registration fraud. A total of seventy ACORN employees in twelve states have been convicted of voter registration fraud. As documented in a July 2009 report by the House Committee on Oversight and Government Reform, of the 1.3 million registrations Project Vote/ACORN submitted in the 2008 election cycle, more than one-third were invalid. Having Project Vote involved in the

Justice Department's voting rights enforcement was like having the Mafia work with the FBI. And it was clear evidence of the politicization of the Justice Department under Eric Holder.

In spite of all this action to enforce Section 7, the Justice Department refused to enforce Section 8 of Motor Voter, which mandates that states make a reasonable effort to clean up the registration rolls by removing those who have moved or died ("list maintenance"). Obviously, the still-active registration of a voter who has moved away or is deceased provides an opportunity to cast a fraudulent vote. Yet former Justice Department lawyer J. Christian Adams reported to Judicial Watch that the Obama-appointed Deputy Assistant Attorney General for Civil Rights, Julie Fernandes, told the Voting Section staff in 2009 that "they would not be enforcing" this provision of the law during the Obama administration.

According to Adams, Fernandes "plainly said in no uncertain terms that Section 8 of the Motor Voter law was not something they had an interest in, because it had nothing to do with increasing minority turnout." The message here was that the Obama Justice Department decided which aspects of existing voting rights law are to be enforced based on what will make fraud easier to commit. Not a single lawsuit was filed under Section 8 during the entire Obama administration.

So Judicial Watch stepped into the breach left by the Justice Department's refusal to go after election officials who refuse to clean up their voter lists. The Motor Voter law has a private right of action that allows voters to sue to enforce the provisions of the law—a provision that was not used for the first two decades that the law was in force. With the cooperation of True the Vote, a Texas-based, nonpartisan grassroots organization dedicated to

election integrity, we filed a lawsuit in August 2012 against the Ohio Secretary of State, Jon Husted, because Ohio was not removing dead voters and voters who had moved away from the voter registration rolls. This was the first private enforcement action ever filed to clean up voter rolls.

During eighteen months of litigation, we learned that the voter registration rolls had been seriously neglected under the prior secretary of state, Jennifer Brunner, a Democrat. Secretary Husted was very cooperative; Judicial Watch's Chief Investigator, Chris Farrell, says that "Husted clearly saw the handwriting on the wall" and took the first steps in years to start clearing the rolls of deadwood. In January 2014, Husted entered into a historic settlement agreement with Judicial Watch and True the Vote. Ohio agreed to take a number of actions to clean up and maintain the accuracy of the list. This was the first settlement of such an NVRA lawsuit by a private party since the NVRA was originally passed in 1993.

Ohio started to use the interstate system known as the State and Territorial Exchange of Vital Events (STEVE) database to identify deceased Ohio voters who had moved or died out of state. Ohio agreed to access the Interstate Voter Registration Crosscheck Program administered by the Kansas secretary of state to identify voters registered in Ohio who are also registered to vote in other states. Ohio also agreed to start automatically using its Bureau of Motor Vehicles driver's license database to automatically update its voter registration rolls whenever a voter changes his address. The NVRA specifically requires states to implement this list maintenance action, but as Secretary Husted admitted, Ohio failed to comply with this requirement for twenty years until Judicial Watch filed suit.

Ohio also agreed to ensure that county election officials did monthly checks for duplicate voter registrations and to coordinate with the state's colleges and universities so that students leaving college are reminded to update their voter registration addresses so outdated information can be removed. Prior to Judicial Watch's lawsuit and the settlement agreement, Ohio had no program in place to share information with election officials on college students who graduated and relocated. Finally, Ohio agreed to have its counties send out yearly vote confirmations to all voters who hadn't voted or updated their registration in two years.

Ohio is a key battleground state, and yet it wasn't taking any of the steps necessary to make sure its voter registration roll was accurately maintained. The Obama administration had no interest in doing anything about this, despite the evidence of inflated rolls with duplicate registrations and voters who had died or moved out of state. It was only Judicial Watch's intervention that acted as a catalyst to begin the cleanup of Ohio's voter registration list, which is a key step in securing the election process.

Judicial Watch was similarly concerned about Indiana. The Bush Justice Department had sued Indiana in 2006 and forced the state to take measures to comply with the voter list maintenance requirement under the NVRA. However, those remedies proved to be temporary. Publicly available information for 2010 showed that the number of people listed on voter registration rolls in twelve Indiana counties exceeded 100 percent of the total number of residents of voting age in those counties. That prompted us to file a lawsuit in 2012 against the state, again with the help of True the Vote. It is a good thing we did—when the registration data became available for 2012, Judicial Watch discovered that sixteen counties had more voters than the US Census showed they had

voting-age population. So the problem had gotten demonstrably worse in two years.

The injury to our Judicial Watch members in Indiana was real—we heard from dozens of members expressing their concerns and asking us to protect their voting rights against Indiana’s neglect and refusal to comply with the NVRA. In fact, according to Chris Farrell, “some of our members independently contacted the secretary of state and local county election officials complaining about their inaction.” It was clear to us that Indiana’s failure to clean up its voter rolls was undermining the confidence of our Indiana members in the integrity of elections, making it less likely they would vote in upcoming elections.

We finally dismissed this lawsuit in June 2014 after two years of tough litigation with the state, after we successfully caused major changes in the Hoosier state. Early in the litigation, the federal judge refused Indiana’s request to dismiss the lawsuit and instead issued a precedent-setting decision when he found that we had established our initial claim that Indiana was violating the voter list maintenance requirement of the NVRA. Through the discovery process, we uncovered evidence showing that the state’s failure to maintain the voter rolls’ accuracy was deep and systemic. We discovered that:

- At times, the Indiana Election Division improperly discouraged local county officials from conducting list maintenance—a lawyer working for the Division even told a county official that conducting public records research into whether registered voters over a hundred years old were deceased was “discriminatory against the elderly!”



- According to deposition testimony, state election officials prohibited county officials from removing deceased voters from the rolls even if they read a voter's obituary in the newspaper or attended a voter's funeral.
- Other deposition testimony indicated that the two co-directors of the Indiana Election Division were deadlocked about whether the state should undertake even the most ordinary list maintenance activities, like using the National Change of Address database from the US Postal Service or the Social Security Death Index, so for years Indiana used neither resource and didn't remove voters who had died or moved out of state.

The Indiana secretary of state and the attorney general were extremely uncooperative, resisting all efforts to clean up the state's voter rolls. But because of our lawsuit and action by Judicial Watch members in Indiana, the state legislature finally got involved and made a number of changes to fix these problems. Our Chief Investigator, Chris Farrell, says that the federal lawsuit plus the individual calls by Judicial Watch members to state officials "telling them to just do their jobs" clearly "got under their skin and finally spurred action."

The legislature then acted to make changes such as giving the secretary of state the ability to break a deadlock between the two election directors; giving local officials the power to remove dead voters based on obituaries and other such notices; and making it mandatory that officials use the various state and federal databases maintained by agencies such as the US Post Office and the Social Security Administration to remove ineligible voters. The legislature

also appropriated several million dollars to help clean up the voter registration list. In essence, the legislature and the governor had to overhaul their election code and restructure Indiana's election administration to ensure that a broken system was repaired and list maintenance was not neglected.

This was a significant achievement for Judicial Watch and explains why its Election Integrity Project is one of the most important the organization has ever initiated. We helped correct a broken system of bipartisan election maladministration in Indiana. Everyone (except perhaps officials in Indiana before our lawsuit) knows how important it is to remove the names of dead people, and people who have moved, from the voter rolls. Leaving outdated registrations on the rolls leaves our elections wide open to fraud. The problem is that not every state wants to roll up its sleeves and do the work necessary to keep their voter rolls accurate and up to date, even though federal law requires them to do so. And the Justice Department during the Obama administration was not interested in making states live up to their legal obligations under federal law to maintain accurate voter rolls.

With the same goal in mind, Judicial Watch filed an amicus brief in 2012 in conjunction with the Allied Educational Foundation in support of Tennessee's attempts to remove ineligible registrations from the state's voter rolls. A lawsuit had been filed by Rep. Lincoln Davis (D-TN) seeking an injunction to stop the state's effort to clean up its voter registration list. As we told the court, the lawsuit had the "potential to worsen an already significant nationwide problem" since voter rolls in many states remained rife with errors and were often highly inaccurate. It was clear from this lawsuit that the political Left was intent on blocking even the most modest attempts to ensure clean and fair

elections. The state eventually agreed to settle the lawsuit through a consent decree in which it simply agreed that election officials would review the voter histories of individuals who had been removed to make sure they were ineligible.<sup>10</sup>

### **Are Aliens Stealing Our Elections?**

In 2014, a disturbing study was released by political scientists at Old Dominion University. Their work showed that a significant percentage of foreign nationals residing in the United States, whether lawfully or unlawfully present, were registered to vote in US elections—and that a significant number of them actually have voted in recent years—6.4 percent in 2008 and 2.2 percent in 2010. That is enough to have swayed election outcomes in some states: “there is reason to believe non-citizen voting changed one state’s Electoral College votes in 2008, delivering North Carolina to Obama, and that non-citizen votes have also led to Democratic victories in congressional races including a critical 2008 Senate race [in Minnesota] that delivered for Democrats a 60-vote filibuster-proof majority in the Senate.” It is, of course, illegal for noncitizens to vote in federal and state elections. But this study suggests that hundreds of thousands of illegal votes may have been cast in the United States in every federal election.<sup>11</sup>

If this study’s results are accurate, the implications are startling. We have Obamacare because of election fraud. We have the Dodd-Frank Wall Street Reform and Consumer Protection Act because of election fraud. We have Solyndra—the alternative energy company that collapsed leaving taxpayers liable for \$535 million in federal loan guarantees—because of election fraud. Without

the election fraud that helped put Obama and his allies in office, there'd be no lawless amnesty for illegal aliens, no Operation Fast and Furious, no Obama IRS assault on Americans. This shows that no American can take his or her vote for granted. There is a real chance that your vote can be cancelled out by an illegal vote cast by legal or illegal aliens.

The Obama administration's attitude toward the problem of noncitizens voting was demonstrated in Florida, when the Justice Department filed a lawsuit in 2012 to stop the state's efforts to comply with the NVRA by removing 53,000 registered voters who were dead—as well as an additional 2,700 noncitizens. Judicial Watch had sent Florida a warning letter about its bloated registration list in February 2012 as part of its Election Integrity Project. When Justice filed its politically motivated lawsuit, Judicial Watch, on behalf of its client, True the Vote, filed a motion to intervene to help defend what Florida was doing. It was particularly shameful that the US Justice Department was trying to stop Florida from fulfilling its legal obligation to remove noncitizens, who are not just ineligible to register and vote, but who violate federal and state law by registering or voting.

Because of the significant problem we now have of noncitizens illegally registering and voting, Judicial Watch filed an amicus brief with the US Supreme Court in 2012 supporting Arizona's law requiring proof of citizenship in order to register to vote. Judicial Watch was representing Arizona State Sen. Russell Pearce, the driving force behind Proposition 200, the law that Arizona voters overwhelmingly approved in 2004. In *Arizona v. Arizona Inter Tribal Council*, the Ninth Circuit Court of Appeals had ruled that such a requirement violated the Motor Voter law, at least with

regard to the federal voter registration form, a decision that was unfortunately upheld by the US Supreme Court in 2013. This is one of the worst Supreme Court decisions on election issues, a decision that struck a real blow against election integrity.

It should not come as a surprise that the Obama Justice Department intervened in the lawsuit against Arizona. Or that it defended the refusal of the acting executive director of the US Election Assistance Commission (EAC) to approve a request by Kansas with regard to the federal voter registration form. Kansas had also passed a law requiring anyone who registers to vote to provide proof of citizenship, such as a birth certificate or naturalization papers (among other documents). However, the EAC refused to change the instructions for any Kansas residents using the federal form to register to vote telling them about this state requirement. The EAC had refused a similar request from Arizona in 2005, after voters there overwhelmingly passed a similar requirement in a 2004 referendum.

However, in the *Arizona v. Arizona Inter Tribal Council* decision, the majority opinion written by the late Justice Antonin Scalia gave Arizona and Kansas a roadmap to get around the Supreme Court's ruling. They could ask the EAC to reconsider its decision and sue the EAC if it refused, arguing that the decision was "arbitrary" because the EAC had accepted a similar request from Louisiana to change the instructions for any state resident using the federal form. That instruction told Louisiana residents to attach additional documentation to the registration form if they lacked a driver's license, ID card, or Social Security number.

Fortunately, after a new executive director was hired at the

EAC, the new director reconsidered the prior decision of the EAC in January 2016 and agreed to change the instructions for Kansas. Common sense finally prevailed at this federal agency.

All of the actions of the Justice Department in these types of voting cases (as well as its abusive behavior on immigration) make it clear that the Obama administration was perfectly happy to allow (and encourage) ineligible aliens—both legal and illegal—to vote in our elections.

### **Obama's Attack on Election Reform**

The White House's close alliance with leftist groups was again shown in the fight over North Carolina's election reforms. In 2013, the North Carolina legislature passed the Voter Information Verification Act (HB 589), popularly known as the "voter ID law." This overhauled that state's election laws, requiring photo ID for in-person voting; eliminating same-day registration during early voting; reducing the number of days of early voting; and requiring that provisional ballots be cast in the precinct where a voter resides.

On July 29, 2013, only four days after the bill passed the North Carolina legislature, political activists from the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People (NAACP), along with Rev. Al Sharpton, attended a meeting at the White House with Attorney General Eric Holder, Labor Secretary (and former Assistant Attorney General for Civil Rights) Thomas Perez, and President Barack Obama. Sharpton subsequently told MSNBC that he was told at the meeting that North Carolina would be sued as soon as "this

governor signs the bill” and that DOJ would attack other states implementing voter ID laws.<sup>12</sup>

Judicial Watch filed a motion to intervene in the subsequent lawsuit filed by the Justice Department on behalf of Christina Kelley Gallegos-Merrill. In 2012, she had run for county commissioner in Buncombe County and lost a very close election due to improperly cast ballots, including by voters who had used same-day registration during early voting.

Although the court refused to allow Judicial Watch to intervene, it did allow us to file an amicus brief in the case that ended up providing a crucial analysis to the judge. Contrary to the dire predictions of the Obama Justice Department, minority turnout in North Carolina actually increased in the 2014 primary election after the state’s contested election reforms had been implemented. As the brief explained, an expert hired by Judicial Watch, Dr. Steven A. Camarota, compared the 2010 primary election to the 2014 primary election.

The result of his analysis showed “that black turnout increased in 2014 by every meaningful measure. Black share of the total electorate increased. The percentage of black registered voters voting increased . . . [there was] an increase in turnout among blacks of voting age. Finally, while turnout increased across the board in May 2014, and while white turnout increased by 13.7%, black turnout increased much faster—by an astonishing 29.5%.” Compare this to the Justice Department’s wrong prediction that these election law changes would disenfranchise up to two million voters. In fact, the court refused the Justice Department’s request to issue an injunction against the law.

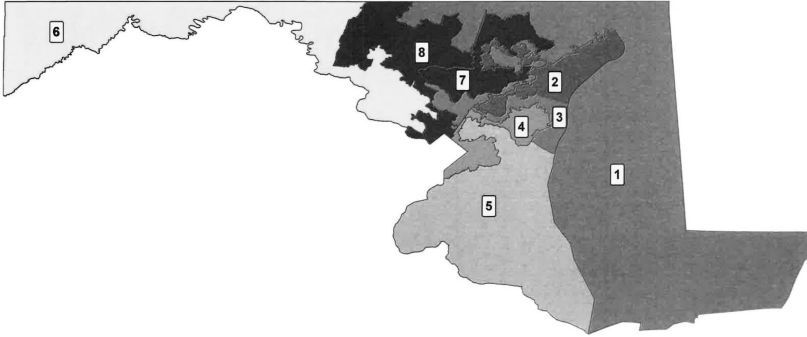
The very same thing happened in the November general election in 2014. Through our briefs, we informed the court that

North Carolina Board of Elections data showed that the percentage of age-eligible black residents who turned out to vote rose to 41.1 percent in November 2014, compared to a turnout of black voters of only 38.5 percent in November 2010. Furthermore, the percentage of black registered voters increased to 42.2 percent in 2014 from 40.3 percent in 2010. The black share of all of the votes cast in the election increased to 21.4 percent from 20.1 percent. And the absolute number of black voters increased 16 percent, to 628,004 from 539,646. Again, the Justice Department “experts” who had predicted that North Carolina’s election reforms would lower turnout, particularly of African Americans, were completely wrong.

### **Caging Gerrymandering**

Judicial Watch also intervened in another area that affects our election process and our democratic structure in a critical way—redistricting. Gerrymandered districts are a way that elected representatives manipulate the election process to their own benefit at the expense of voters and the public. One of the most gerrymandered states in the entire country is Maryland (see map below). The congressional redistricting plan signed into law in October 2011 by then Governor Martin O’Malley (D) was so bad that even the normally liberal *Washington Post* criticized it, saying that the plan “mocks the idea that voting districts should be compact or easily navigable. The eight districts respect neither jurisdictional boundaries nor communities of interest. To protect incumbents and for partisan advantage, the map has been sliced, diced, shuffled, and shattered, making districts resemble studies in Cubism.”<sup>13</sup>





Judicial Watch filed a motion to intervene in the lawsuit against the plan on behalf of MDPetitions.com, which had waged a successful petition drive to place the controversial new congressional redistricting plan on the November 2012 ballot as a referendum. Maryland Democrats has gone to court to stop the referendum from going forward because they did not want voters to have any say in the plan. Not only did the court allow Judicial Watch to intervene, but it ruled against the Democratic attempt to prevent Maryland residents from voting on the redistricting plan.

However, the Maryland secretary of state, in what we believe was an obvious effort to fool voters and help Maryland Democrats, certified misleading ballot language describing the referendum. As we said in a second lawsuit we filed, the ballot language was “a mere 23 words and omits any reference to the fact that Senate Bill 1 makes material changes to existing congressional districts . . . remov[ing] 1.6 million Marylanders from their previous congressional district.” Unfortunately, the court ruled in favor of the state. In essence, the people of Maryland were effectively denied their constitutional right to choose their own representation in Congress. Voters were purposefully misled by manipulative

ballot language when they voted to approve the gerrymandered redistricting plan in the November election.

When a group of concerned Maryland voters filed a new lawsuit in 2013 against the 2011 congressional redistricting plan, Judicial Watch once again took steps in the litigation to support the Maryland residents. In March 2015, we filed an amicus brief with the US Supreme Court after the Fourth Circuit Court of Appeals upheld a decision by a single federal district court judge dismissing the lawsuit. As we argued, that dismissal violated the Three-Judge Court Act, which requires three-judge panels to hear constitutional challenges to legislative redistricting, and would “allow states to delay judicial review of gerrymandered redistricting plans that disenfranchise voters and violate the Constitution.”

Fortunately, the US Supreme Court agreed unanimously with Judicial Watch and issued a decision in December 2015 in *Shapiro v. McManus* overturning the Fourth Circuit and holding that the Maryland voters were entitled to make their case before a three-judge panel. As I said at the time, “no one is above the law, not even the federal courts.” This decision would also ensure that a separate lawsuit filed by Judicial Watch contesting the constitutionality of this 2011 congressional redistricting plan as the most distorted and confused plan in the country will have a faster path for relief.

In another redistricting case, *Evenwel v. Abbott*, this time out of Texas, Judicial Watch and the Allied Educational Foundation filed an amicus brief with the US Supreme Court in 2015. The brief supported Sue Evenwel, who challenged the 2013 redistricting plan drawn up by the legislature for state senate districts. The plan

was based on total population rather than the number of eligible voters. This gave voters in districts with large numbers of ineligible aliens—legal and illegal—disproportionate power compared to voters in districts with higher numbers of legal residents. As we said in the brief, “Texas is devaluing the votes of certain of its citizens by improperly including noncitizen nonvoters.”

Only citizens can vote in federal and state elections and yet “Texas’ scheme to give weight to nonvoting noncitizens along with lawful voters is contrary to the principles embodied in citizen voting laws.” This policy has resulted in some Texas voters having the equivalent of 1.8 votes while leaving others with only one vote. We argued that the Supreme Court should prevent “state legislators from deliberately disenfranchising their own citizens by . . . strategic placement of noncitizen populations in certain districts in order to dilute the voting power of citizen populations.”

This case has national implications. Citing the extraordinary fact that the noncitizen population of the United States has doubled since 1990, the amicus brief of Judicial Watch and the Allied Educational Foundation requested that the Supreme Court finally settle the issue of whether the US Constitution requires that noncitizens be counted when setting up voting districts. This is an important question because out of a total 2012 population of 311 million, roughly 7 percent of the modern US population lacks citizenship—or about one in fourteen people. Accordingly, the opportunity for legislators to resort to the tactical use of noncitizen populations to dilute the voting power of citizens is greater than ever.

Unfortunately, the Supreme Court ruled unanimously that Texas was constitutionally justified in drawing state electoral districts based on total population. The Supreme Court’s decision

undermines the principle of “one man, one vote.” The decision will encourage politicians to fill their legislative districts with more non-citizens and fewer voting Americans. This abuse could lead to unequal voting power for voters in districts with large numbers of alien residents. Under this decision, 100,000 black American voters in one state legislative district would have the same voting power as 10,000 white American voters in another district with 90,000 noncitizens. Even though total population is the same in both districts, voting power is radically different. These types of abuses, already present in Texas, will spread nationally. This is one reason this political decision by the high court won't stand the test of time.

### **A Jim Crow Election in Hawaii**

As these stories attest, Judicial Watch has been involved in crucial election issues all over the country during the past few years, often substituting as the enforcer for work that should have been done by an absent US Justice Department, and often opposing abusive and unjustified lawsuits by that same politicized Justice Department. That politicization was particularly noticeable in an almost unbelievable situation in Hawaii that arose in 2015—a racially discriminatory election reminiscent of the Jim Crow South of fifty years ago. And in this election, which obviously violates the Voting Rights Act and the Constitution, the Obama administration's Justice Department was not only unwilling to enforce the US Voting Rights Act, it actually filed an amicus brief on the side of the discriminators!

What started as an open records request to the state

government of Hawaii to obtain copies of its “Native Hawaiian” voter registration list, became a lawsuit in August 2015 to stop a discriminatory election. Working with the Grassroot Institute of Hawaii, Judicial Watch filed suit on behalf of six residents of Hawaii. Registration for the election was restricted to “Native Hawaiians,” who are defined as only those whose ancestors lived on the Hawaiian Island prior to 1778—and only to those willing to confirm a statement affirming “the unrelinquished sovereignty of the Native Hawaiian people.” The election was scheduled to run for the entire month of November by absentee ballot, and it would elect delegates to attend a convention to set up a separate Native Hawaiian government.

This is the second time that Hawaii has tried to conduct such a racially restrictive election, which resembles the whites-only elections held in some parts of the South before the Civil Rights Movement began in the 1950s. And the US Supreme Court had already told Hawaii it could not do this the first time it tried.

In *Rice v. Cayetano*, Hawaii allowed only “Native Hawaiians” to register to vote for trustees for the Office of Hawaiian Affairs, a department of the state government, as well as to vote in a special election that asked whether Hawaiians should elect delegates to propose a native Hawaiian government.

This “Native Hawaiian” definition that the state of Hawaii used “implicates the odious ‘one drop rule’ contained in the racial-segregation codes of the 19th and early 20th centuries,” according to Peter Kirsanow, a member of the US Commission on Civil Rights. Or as former US Supreme Court Justice John Paul Stevens ironically pointed out in his dissent in another case, *Fullilove v. Klutznick*, if a government “is to make a serious effort to define racial classes by criteria that can be administered objectively, it must

study precedents such as the First Regulation to the Reich's Citizenship Law of November 14, 1935," where the Nazis similarly defined Jews based on their ancestry.

The Supreme Court threw out Hawaii's discriminatory registration and voting scheme in 2000 in the *Rice* case as a fundamental violation of the Constitution. It criticized Hawaii for using ancestry as a proxy for race based on "the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters." As the Court said, "Race cannot qualify some and disqualify others from full participation in our democracy."

But in 2015 the state government tried to get around this decision by giving a private nonprofit entity, Na'i Aupuni, \$2.6 million in public funds to conduct the election of delegates to a convention. It also supplied the nonprofit with the voter registry to be used. That registry was implemented under a state law, Act 195, passed in 2011 and run by a state entity, the Native Hawaiian Roll Commission. All of the commission's members were appointed by the governor of Hawaii.

As Judicial Watch discovered and explained in one of its briefs, there was overwhelming evidence showing "outright collusion" between the state Office of Hawaiian Affairs (OHA) and Na'i Aupuni (NA):

*NA was formed, three years after Act 195 was passed, for no other purpose than to hold the election that OHA could not. NA's by-laws refer to OHA's legislative goals. OHA was, at least for a time, a member of NA. NA's vice-president is married to the CEO of the [Native Hawaiian Roll Commission]. NA was given millions of dollars of public money to hold an election described in a state law, Act 195, in a series of contracts with OHA, wherein OHA*

*retains all sorts of special rights and privileges. NA “decided” to use the race-based Roll the NHRC had been developing for years, and that OHA is statutorily required to use[.] . . . Indeed, it is particularly telling that NA gave OHA assurances that it would use the race-based Roll to hold a race-based election before the two parties entered into contracts awarding NA millions of dollars to hold that election.*

As our Senior Counsel, Bob Popper, said, this was an “outrageous circumvention of the law to try to get around the ban on racist state actions.” It was “identity politics to the maximum.”

Despite the fact that state action permeated this biased election, however, both a federal judge in Hawaii and the liberal Ninth Circuit Court of Appeals refused to stop the election. The district judge’s decision was truly awful, ignoring prior Supreme Court precedent as well as the evidence in the case. He actually compared the left-wing outside group running this racist election to the Kiwanis Club.

What was clearly going on was that the Hawaiian state government, knowing that the Supreme Court has barred it from directly conducting this type of racially discriminatory election, was trying to use a private organization as its proxy to conduct the very same type of election.

Of course, this type of organized misbehavior does not occur in a vacuum. In addition to filing an amicus brief supporting the state, on October 1, 2015, the Obama administration’s Department of the Interior published a Notice of Proposed Rulemaking for “re-establishing” a “formal government-to-government relationship” with a new native Hawaiian government if it is established, despite having no legal or constitutional authority for this unilateral action.

But Judicial Watch did not give up. We filed an emergency appeal with the US Supreme Court in November 2015. In a rare move, the Supreme Court overruled the Ninth Circuit, issuing an injunction preventing the defendants from counting the ballots or certifying the results of the election. We were grateful that the Court effectively put a halt to a race-based, state-sponsored, Hawaiians-only election that violates the fundamental constitutional rights of Americans. But it was another prime example of the continuous effort by all too many liberals and the Obama administration to Balkanize America and tear apart the ties that bind us together as one people. In this case, it amounted to a plan to grant secession for certain residents of Hawaii.

### **You Can Make a Difference**

While all of these election cases that Judicial Watch has been involved in could leave Americans depressed about the state of our democracy and the integrity of the election process, they also show the difference that one organization can make. Through the support of our many members and donors, Judicial Watch has been able to mount successful campaigns all over the country to force local governments to clean up their voter rolls, and to support citizens and voters in their efforts to make their voices heard on issues like the rules governing voter registration, common sense voter ID requirements, redistricting, and biased and unfair gerrymandering.

Our Election Integrity Project is an ongoing project that will continue to vigorously fight to secure our most fundamental right—the ability to vote in a fair, nondiscriminatory election without having our votes stolen or diluted.