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VOTING IN 2010: LESSONS LEARNED

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From the standpoint of voter access and effective administration, the 2010 elections were in many ways a mixed bag. There were a number of troubling incidents that occurred including voter intimidation and threats of vote suppression, and the structural barriers to voting that keep participation rates down were as apparent as ever. Yet at the same time it was clear that much of the worst that might have happened was avoided. While the lower turnout in mid-term elections clearly presents less of a challenge to election administration, we also may be seeing the fruits of close scrutiny of election processes in past years. Voting advocates, election administrators, law enforcement, federal agencies and voters themselves seem to be getting better at dealing with problems in advance of Election Day and in responding to them more swiftly and effectively on Election Day itself. Yet make no mistake: we still have a long way to go when it comes to improving our electoral system.

One theme permeating the election that unfortunately interfered in our having a smoother and more successful voting process is one that presents a greater ongoing challenge to all Americans: the politics of anger and the mistrust of government and all institutions, and the increasingly uncivil discourse that permeates any political discussion these days. Our pre-election report on ten [Swing States](#) flagged this as an issue to watch. As is described below, these sentiments led to activities among some groups and individuals in the lead-up to the election and at the polls that were very damaging to the electoral process.

Below are the major themes to emerge in the 2010 vote, including the continuing baseless allegations of vote fraud; the unfortunate emergence of the Tea Party groups inserting themselves into the voting process in counterproductive ways, often at the urging of voter fraud mythologists; the role of anti-immigrant sentiment; voter registration barriers; confusion over provisional ballots; the continuation of deceptive practices meant to confuse voters about the system; progress for military and overseas voters; and major strides forward by election administrators and the Department of Justice in being proactive in responding to allegations of vote fraud and monitoring voter intimidation.

BASELESS FRAUD CLAIMS SPAWN REAL VOTER INTIMIDATION

Every election year, politicians and citizen activists stridently charge that voter fraud is permeating the system. It went as mainstream as Republican presidential candidate Senator John McCain himself in 2008. This year it was tea partiers at their meetings and in the blogosphere, egged on by senior Republican officials. Former House Majority Leader turned tea party leader Dick Arney told Fox News more Democrats were voting early because that's when it's easier to cheat more. David Norcross, the Chair of the Republican National Lawyers Association called vote fraud "an epidemic". Fox News played its role, with its anchors constantly trumpeting reports of "voter fraud" on a massive scale with the intention of keeping Democrats in office."

None of these assertions had the slightest bit of substantiation. It is well established through academic research, reports from elections officials and law enforcement statistics that voter fraud at the polling place is almost non-existent. The motivation for ginning up this bogeyman is to encourage activities such as vote caging and challenges designed to intimidate certain groups of voters and ultimately enact policies such as proof of citizenship and voter ID laws that will make it harder for disadvantaged groups to exercise their right to vote. Such efforts must continue to be combated as weapons of disenfranchisement rather than fraud fighting.

The fraud allegation frenzy had its intended effect in 2010. It encouraged certain activist groups and individuals to take up the bogus anti-fraud cause. As has been well documented, Tea Party groups across the nation set up "poll watch" operations where they planned to engage in activities that would interfere with the voters at the polling places, perhaps to the point of crossing the line into illegality. Some members of these groups may not have always been aware of the allowed parameters of behavior. True the Vote in Texas formed the blue print during early voting when many of its members allegedly started confrontations and harassed voters in Houston. Activists in multiple states then took on the cause. Groups encouraged members to undertake blatantly intimidating activities like photographing and videotaping voters and following them around. Unprecedented numbers of poll watchers showed up at polling sites in communities of color. One group even offered a \$500 reward for vote fraud tips.

Fortunately, on Election Day itself the Tea Party groups' threats turned out to be little more than empty. There were scattered occasions of overly aggressive poll watchers, including in Minnesota, but the situations were dealt with firmly and efficiently by Election Protection workers and election administrators. Yet the climate of anxiety and antagonism the groups created in the days leading up to the election had its effect -- one that was not good for voters, elections officers, or democracy, and were completely unnecessary.

Also noteworthy after Election Day had come and gone was the sudden silence from the fraud-mongers and Tea Party poll watch groups. Not a peep of one case of substantiated fraud at the polling place. Even Fox News decided to cancel a special report on voter fraud it had planned on Nevada because there was no fraud.

This latest iteration of challenges to voters at the polls may require us to revisit the rules guiding poll watchers. Poll watchers can play a constructive role in the process, but not if they are creating a climate of intimidation and subjecting voters to baseless suspicion and scrutiny. We may need to examine state laws on what poll watchers are permitted to do, penalties for violations, training for poll watchers, and the number of poll watchers that are permitted per polling place.

ANTI-IMMIGRANT RHETORIC COMES TO THE VOTE

The die was cast early that the heated climate of anti-immigrant sentiment in some places, aimed particularly at Latinos, would lead to unsubstantiated and occasionally outrageous claims about non-citizens voting. The candidates themselves got into this act, airing truly ugly anti-immigrant campaign ads that portrayed Latinos as menacing predators, particularly in **Nevada and Louisiana**. That certainly did not help if you care about nondiscrimination in the voting process. People of color have repeatedly been subjected to discriminatory practices at the polls, and creating this environment of fear about immigrants seemed likely to lead to more.

In another example, Jesse Kelly, a Republican candidate for the U.S. House from Arizona, cited “rumors” to slanderously accuse opponents of busing Mexicans over the border to vote. The Arizona Secretary of State’s office dismissed the allegations by calling it an “**urban legend**.”

Also in Arizona, an anti-immigrant group sent an email to over one million members that repeatedly said, “STOP Illegals from Stealing The Election!” It said thousands of illegal immigrants were working to turn out voters who are sympathetic to them. “Our grassroots army of VOTER FRAUD PREVENTION VOLUNTEERS will stand vigilant across the nation. We will be the first and strongest line of defense to ensure that only legal citizens vote on November 2nd, but to do this, we need your help **today!**” . When it was announced that the Department of Justice would be sending people to watch the elections in Arizona, William Gheen, executive director of Americans for Legal Immigration, said “They’re sending them out because the Obama administration is doing everything it can to make sure as many illegal aliens vote in **2010....**”. The truth is that voting by non-citizens is exceedingly rare, and where it does take place it is usually because the individual has been advised incorrectly that he or she can **vote**.

Fortunately, it appears that this kind of fear-mongering and unfounded charges backfired in this election. **Latino voter** share of the electorate rose in comparison to 2006 and 2008, especially in places where the anti-immigrant rhetoric was the worst. For example, exit polls reveal that Latinos represented 16% of the electorate in Nevada, surpassing even the presidential election in 2008, when the percentage was 15%. In Colorado, where longtime virulently anti-immigrant Representative Tom Tancredo was running for governor, Latino turnout was up from **9% of the electorate in 2006** to **13% in 2010**. In Arizona, Latinos represented 14% of the electorate this year as compared to 11.7% in 2008.

VOTER REGISTRATION ISSUES

Like most other midterm elections, only about 40% of voter-age Americans showed up to the polls on Tuesday. Talk about the “enthusiasm gap” all you want, but political apathy isn’t the only culprit. Restrictive voter registration requirements, such as 30-day deadlines, **prevent** many Americans from casting a ballot. Thousands of potential voters contacted **Election Protection**, the national hot line for voting-related information and complaints, with questions about registration status or where to register – right before and on Election Day. Much of the confusion involved voters who had moved recently but did not update their registration information in time. The United States is indeed already a **highly mobile society**, especially among minority, low-income, and young Americans, but millions more have been displaced due to unemployment,

foreclosures and evictions during the Great Recession. Early voter registration deadlines, therefore, keep already marginalized groups from being a part of the political process.

On the other hand, nine states allow voters to register and vote on the same day, thereby boasting turnout rates **10 to 12 percentage points** higher than those that do not offer Same Day Registration (SDR). **Preliminary data** show an average voter turnout at least five percentage points higher in SDR states than that of non-SDR states in Tuesday's election. One way to boost turnout, then, is to enact this election reform, especially given the increasing number of Americans who move now. But we should take it one step further and encourage states – and indeed the Congress, too – to **modernize** our current voter registration systems. In this election, callers with complaints claimed they had properly registered but had not been listed on the registration rolls. Mistakes happen; clerks err. But, if we require our **state agencies** to automatically register clients as they pass through their offices (with the option, of course, for a client to decline such service), and provide the Same Day Registration as a fail-safe for those people who still slip through the cracks, we're bound to see a surge of registrations. And with a higher registration rate comes a much higher voter turnout.

CONTINUED CONFUSION OVER PROVISIONAL BALLOTS

Problems with provisional ballots arose in at least two states this year, Illinois and Colorado, which both had close races that could have ended up in recounts.

States are given wide discretion over when to count provisional ballots, leading to such voter-unfriendly practices as automatically rejecting a provisional ballot if it is cast in the wrong precinct, even if it was cast in the correct jurisdiction or even the correct polling place. When significant numbers of provisional ballots are not counted – over 20 percent were **rejected** nationwide in 2006, the last midterm election – close races can be greatly affected. That is why provisional ballots should truly be considered a least best option, not some sort of automatic fall-back plan.

In Illinois, **complaints** received by the Election Protection coalition from Chicago indicate that poll workers were requiring individuals on a list of “suspended voters” to cast provisional ballots when they were entitled to a regular ballot if they provided required identification. In 2006, almost 80 percent of Illinois' provisional ballots were **rejected**. Requiring a provisional ballot when the voter is entitled to a regular ballot unnecessarily increases the chances that the individual's ballot will not be counted. **Other reports** from Illinois indicate that voters who requested, but did not vote, an absentee ballot were denied provisional ballots, prompting Attorney General Lisa Madigan to send an advisory to local election officials reminding them of the correct provisional balloting rules. While it's likely impossible to know how many voters were turned away in these circumstances, when the state's gubernatorial race is separated by a margin of 8,000 votes, as it is at the time of this writing, every vote counts.

Colorado reported much higher than usual provisional ballots cast Tuesday, according to Secretary of State **Bernie Buescher**. Many of the ballots seemed to come from Denver. Apparently due to an unexpected influx of voters who requested, but decided not to use mail-in ballots, polling places in **several** Colorado counties ran out of the paperwork required for provisional balloting. A County District judge in **Arapahoe** County issued an emergency order requiring the county to provide additional provisional ballots at its polling places. The shortage also prompted the Secretary to issue a directive to the county clerks telling them to take extra measures to make sure provisional voters are able to cast ballots.

This is just the situation in two states. There is no doubt that thousands of voters needed to cast a provisional ballot on Election Day due to wide range of problems with the process. Those votes must be properly and accurately verified and tallied. States should seek to allow as many provisional ballots as possible and interpret the provisional ballot rules to include votes rather than eliminate them. In the long term, states must make provisional ballot rules clear; elections officials must train poll workers on their proper use more vigilantly; and laws that unnecessarily disenfranchise voters by tossing the votes of eligible voters away for arcane reasons such as voting in the right jurisdiction but the wrong precinct should be reformed.

DECEPTIVE PRACTICES CONTINUE

We see it every election: the dissemination of misinformation about the voting process intended to confuse voters and disenfranchise them. This year was no different. Voters throughout Kansas reported receiving robocalls telling them to “bring their voter registration card and proof of home ownership with them to the polls on **November 3**”. Such documentation is not required to vote in Kansas. And the election of course was on November 2. As predicted, it seems as though Latinos in particular were targeted by deceptive practices: on Election Day, in Los Angeles, Election Protection reported about two dozen California residents who received Spanish-language robocalls and mailers instructing them to vote a day **after Election Day**. Voters in New Hampshire received calls telling them to vote online and directing them to a **website** where they could do so. Of course, no voter anywhere can vote online.

At least one group went the more traditional route: distributing flyers with misinformation in minority neighborhoods. **The fliers**, purporting to be from a nonexistent group called Black Democratic Trust of Texas, say “Republicans are trying to trick us! When you vote straight ticket Democrat, it is actually voting for Republicans and your vote doesn’t count. We are urging everyone to VOTE for BILL WHITE. A VOTE for BILL WHITE is a VOTE for the ENTIRE DEMOCRATIC ticket. We have fought too hard to let Republicans use voting machines to deny us our basic rights. We must guard the change and NOT VOTE STRAIGHT TICKET DEMOCRAT!” None of this true, yet at the time of this writing there were no reports of anything being done about it.

Deceptive practices like these underscore the need for state legislatures and ultimately Congress to pass deceptive practices **laws** that would criminalize such activities and require elections officials to work with others to ensure that accurate information is disseminated to the voting community.

IMPROVEMENTS FOR MILITARY AND OVERSEAS VOTERS

The cornerstone of the MOVE Act of 2009 was that all overseas voters had to be sent an absentee ballot at least 45 days before the election. This was based on repeated findings that overseas voters, including those serving in our military, did not have sufficient time to return their ballots and were thereby disenfranchised. Most states complied with the law, providing overseas voters with a much greater chance of being able to cast a ballot that would be counted. A few states were not able to comply and found themselves in hot water – and very rightly so. The Department of Justice went after these jurisdictions and compelled them to take steps that would ensure that the overseas ballots would be counted. Overall, the Department estimated that 65,000 votes were saved as a result of **their activity**. Also of note, in a case in a federal district court in Maryland, a judge ruled that the state’s failure to send out ballots in time was an unconstitutional burden on the right to **vote**. If upheld, this case would represent a significant stride forward in the protection of voting rights. It is

hoped that by 2012 states will be better prepared and fully comply with all of the provisions of the MOVE Act.

It remains to be seen what the military and overseas voter participation rate was and what percentage of those ballots will be counted this year. What we do know is that overseas voters had a better chance at meaningful participation than they have in the past.

MANY OFFICIALS GET IT

Election officials in many parts of the country were wonderfully proactive in responding to baseless allegations of voter fraud and irregularities, contributing tremendously to a fair election process and voters' faith in the system. For example, in Nevada, Secretary of State Ross Miller, along with Clark County Registrar Larry Lomax, responded swiftly and surely to refute allegations of fraud that had been made, with Miller releasing a 20 page report responding to each allegation in kind, while still vowing to be vigilant in rooting out any real **fraud that might occur**. Secretary of State Ken Bennett of Arizona put out a press release stating "allegations of rampant registration fraud are without merit," and went through point by point the "rumors" and the "reality." **The Yuma County** Recorder also took a public stand to state that the fraud rumors were false. Finally, in Cook County, Illinois, where fraud was also a big issue leading to plans by Republicans and other conservative groups to mount poll watching operations, Clerk David Orr stepped forward to say the potential for **voter fraud in Illinois** is "totally blown out of whack". These officials' actions are to be commended and should be a model for other officials in all elections going forward.

It was also striking to see the **Wisconsin Government Accountability Board**, the agency in charge of elections, post on its own website that "the biggest problem we've had reports of so far is that some local election officials make up rules on their own and require people to show photo IDs before they can vote. Wisconsin law and G.A.B. policy are clear that no photo ID is required to vote." So while improper implementation of voter identification rules continues to be a major problem, we see election administrators in these jurisdictions acknowledging the problem and addressing it head on.

At the same time, the Department of Justice made a subtle but important change in its communications about the election. Rather than focusing almost exclusively on its role monitoring and prosecuting vote fraud as had been the case in prior years, the Department also pointed out that it was equally concerned about **voter intimidation and suppression**.

There are clearly many structural challenges in the voting system that we need to fix. This is particularly true with respect to the voter registration system, rules around poll watchers and challengers, deceptive practices, poll worker training and voter identification laws and implementation. At the same time we can be pleased that those who work on and participate in elections are learning how to resolve what they can in a more constructive manner. Politicians and overly-zealous activists across the spectrum could learn a lesson from them. The polling place is almost non-existent. The motivation for ginning up this bogeyman is to encourage activities such as vote caging and challenges designed to intimidate certain groups of voters and ultimately enact policies such as proof of citizenship and voter ID laws that will make it harder for disadvantaged groups to exercise their right to vote. Such efforts must continue to be combated as weapons of disenfranchisement rather than fraud fighting.