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July 24, 2008

Chicken Little in the Voting Booth

*The Heritage Foundation Sounds Alarm
Over Non-Existent Problem of Non-Citizen "Voter Fraud"*

Election experts tend to agree that modern-day voter fraud is a very rare occurrence in the United States, primarily because it is so irrational. The potential payoff (a vote) is not worth the risk of jail time, thousands of dollars in fines, and—in the case of non-citizens—possibly deportation. The Brennan Center for Justice at New York University School of Law succinctly summarizes this point in a [2006 fact sheet](#): “Each act of voter fraud risks five years in prison and a \$10,000 fine—but yields at most one incremental vote. The single vote is simply not worth the price. **Because voter fraud is essentially irrational, it is not surprising that no credible evidence suggests a voter fraud epidemic.**”¹

But lack of evidence is not an obstacle for the Heritage Foundation, which on July 10 issued a rambling “legal memorandum” claiming that an unknowable yet large number of non-citizens are voting illegally and subverting the electoral process. The report, menacingly titled [The Threat of Non-Citizen Voting](#), contradicts its own claims in the opening paragraphs. The author declares that “thousands of non-citizens are registered to vote in some states, and tens if not hundreds of thousands in total may be present on the voter rolls nationwide.” But he then points out, only a few sentences later, that **“there is no reliable method to determine the number of non-citizens registered or actually voting.”**² This undermines the credibility of the entire report.

Fighting Phantoms: No Evidence of Widespread or Systematic Vote Fraud by Non-citizens

- According to a [2007 report](#) by Project Vote, “government records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. This includes 19 people who were ineligible to vote, five because they were still under state supervision for felony convictions, and 14 who were not U.S. citizens; and five people who voted twice in the same election, once in Kansas and again in Missouri.”³ As a [2007 report](#) from the Brennan Center notes, **one is more likely to be struck by lightning than to come across an actual case of voter fraud.**⁴
- Similarly, a [2005 report](#) by the Coalition on Homelessness and Housing in Ohio and the League of Women Voters of Ohio found that a grand total of four votes cast in the state’s 2002 and 2004 general elections were in some way “fraudulent,” amounting to .00000044% of all votes cast.⁵

A DIVISION OF THE AMERICAN IMMIGRATION LAW FOUNDATION

1331 G STREET, NW, SUITE 200 • WASHINGTON, DC 20005-3141 • TEL: (202) 507-7500 • FAX: (202) 742-5619

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- The Heritage report attempts to circumvent the lack of evidence by relying on innuendo. The report intersperses unverified anecdotes about alleged voter fraud with unrelated statistics on the number of undocumented immigrants in the United States in an attempt to justify unsubstantiated statements such as “non-citizen voting is likely growing at the same rate as the alien population in the United States,” and “aliens, both legal and illegal, are registering and voting in federal, state, and local elections.”⁶

Sore Losers, Mistakes, and Mischief Behind Voter Fraud Charges

- The [Project Vote report](#) found that “most voter fraud allegations turn out to be something other than fraud. A review of news stories over a recent two year period found that reports of voter fraud were most often limited to local races and individual acts and fell into three categories: unsubstantiated or false claims by the loser of a close race, mischief, and administrative or voter error.”⁷ The report concludes that “when we probe most allegations of voter fraud we find errors, incompetence and partisanship.”⁸
- Many accusations of voter fraud by non-citizens, such as those contained in the Heritage report, stem from database errors. The [Brennan Center report](#) notes that “government citizenship records—as the government itself acknowledges—are...replete with errors or incomplete information. Naturalization documentation may find its way into the government files slowly, or not at all, leaving outdated or inaccurate information for investigators looking for fraud. And this, in turn, leads to flawed accusations that noncitizens have been voting, when the voters in question have in fact become fully naturalized American citizens.”⁹
- The Heritage report recycles the discredited accusation that the 1996 congressional election in which Democratic challenger Loretta Sanchez defeated Republican incumbent Bob Dornan in California “may have been stolen by non-citizen voting.”¹⁰ However, the [Brennan Center report](#) notes that these allegations “were based largely on attempts to match immigration lists to voter rolls.” At least 372 of the 924 noncitizens who were alleged to have been ineligible to vote actually took their oaths of citizenship *before* the election. As for the remaining 552 voters, “there are no reports of which we are aware that any noncitizens registered or voted knowing that they were ineligible. Even assuming there were no matching errors, and leaving aside the critical question of intent, if all 552 remaining individuals were in fact noncitizens when they cast their votes, the overall noncitizen voting rate would have been 0.017%.”¹¹
- The [Brennan Center report](#) concludes that “allegations of widespread voter fraud...often prove greatly exaggerated. It is easy to grab headlines with a lurid claim (“Tens of thousands may be voting illegally!”); the follow-up—when any exists—is not usually deemed newsworthy. Yet on closer examination, many of the claims of voter fraud amount to a great deal of smoke without much fire. The allegations simply do not pan out.”¹²

Allegations Put Minorities, Immigrants, and the Poor in the Cross-Hairs

- According to the [Brennan Center report](#), “claims of voter fraud are frequently used to justify policies that do not solve the alleged wrongs, but that could well disenfranchise legitimate voters. Overly restrictive identification requirements for voters at the polls—which address a sort of voter fraud more rare than death by lightning—is only the most prominent example.”¹³

Heritage Recommendations Lead Lawmakers Over a Cliff

- The Heritage report proposes a number of unnecessary, unworkable, and costly measures to address the imaginary problem of non-citizen voter fraud. For example, the report calls upon state election officials to run the records of all registered voters through the federal government’s small E-Verify pilot program—which is intended to indicate whether or not a person is authorized to work, not vote. But as reports by the [Cato Institute](#) and others have pointed out, errors in the databases used by E-Verify have resulted in U.S. citizens being denied work. Efforts to exponentially expand this flawed system, and retrofit it for a purpose unrelated to employment, would only result in additional errors and deprive many U.S. citizens of their right to vote.¹⁴

The phantom menace of noncitizen voter fraud is not a threat to the integrity of the U.S. electoral system. A far more pressing, and real, problem is the immense backlog of applications for naturalization that are now languishing at U.S. Citizenship and Immigration Services for 14 months or more. This backlog represents hundreds of thousands of immigrants who have played by the rules and earned the right to U.S. citizenship, but are being deprived of one of their most fundamental rights—the right to vote—because of bureaucratic delays. Lawmakers should focus their efforts on freeing up the resources needed to eliminate the naturalization backlog, rather than devising new ways to disenfranchise voters under the guise of combating an epidemic of voter fraud that does not exist.

Contact: Walter Ewing
202-507-7507
wewing@ailf.org

Endnotes

¹ Brennan Center for Justice, New York University School of Law, *The Truth About “Voter Fraud”* (New York, NY: September 2006), p. 1.

² Hans A. von Spakovsky, *The Threat of Non-Citizen Voting*, Legal Memorandum No. 28 (Washington, DC: The Heritage Foundation, July 10, 2008), p. 1.

³ Lorraine C. Minnite, *The Politics of Voter Fraud* (Washington, DC: Project Vote, March 2007), p. 8.

⁴ Justin Levitt, *The Truth About Voter Fraud* (New York, NY: Brennan Center for Justice, New York University School of Law, November 2007), p. 4.

⁵ The Coalition on Homelessness and Housing in Ohio and the League of Women Voters of Ohio, *Let the People Vote: A Joint Report on Election Reform Activities in Ohio* (Columbus, OH: June 14, 2005), p. 1.

⁶ Hans A. von Spakovsky, *The Threat of Non-Citizen Voting*, Legal Memorandum No. 28 (Washington, DC: The Heritage Foundation, July 10, 2008), p. 2, 3.

⁷ Lorraine C. Minnite, *The Politics of Voter Fraud* (Washington, DC: Project Vote, March 2007), p. 3.

⁸ Lorraine C. Minnite, *The Politics of Voter Fraud* (Washington, DC: Project Vote, March 2007), p. 5.

⁹ Justin Levitt, *The Truth About Voter Fraud* (New York, NY: Brennan Center for Justice, New York University School of Law, November 2007), p. 18.

¹⁰ Hans A. von Spakovsky, *The Threat of Non-Citizen Voting*, Legal Memorandum No. 28 (Washington, DC: The Heritage Foundation, July 10, 2008), p. 3.

¹¹ Justin Levitt, *The Truth About Voter Fraud* (New York, NY: Brennan Center for Justice, New York University School of Law, November 2007), pp. 19-20.

¹² *Ibid.*, p. 3.

¹³ *Ibid.*

¹⁴ Hans A. von Spakovsky, *The Threat of Non-Citizen Voting*, Legal Memorandum No. 28 (Washington, DC: The Heritage Foundation, July 10, 2008), p. 10.