

Testimony of Cleta Mitchell, Esq.

House Judiciary Committee

**Subcommittee on the Constitution, Civil Rights &
Civil Liberties**

**“Lessons Learned from the 2004
Presidential Election”**

July 24, 2008

Testimony of Cleta Mitchell, Esq.

My name is Cleta Mitchell. I am an attorney, specializing in the area of political law – the business and regulation of politics, lobbying, public policy and elections.

I have been involved in law and politics for more than thirty years. It is a privilege for me to appear here today to discuss with the Committee the integrity of America’s elections and voting process.

The goal of every organization, campaign and entity with which I am involved is assuring that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy. From the Republican National Lawyers Association to the American Conservative Union to the informal groups of lawyers who practice political law as I do for Republican candidates and conservative organizations...we all are dedicated to that principle.

The question posed today is “Lessons Learned from the 2004 Presidential Election.”

However, the primary argument seemingly at the heart of this hearing and every discussion of these voting issues is a fundamental disagreement on the following questions:

Is there, or is there not, voter fraud?

Is voter fraud a myth or a fact?

Are there people in America today who will deliberately register non-citizens to vote, pay people to vote for certain candidates, seek to vote multiple times, improperly influence the voting decisions and processes of the elderly, handicapped or others to essentially overtake the independent decisions of the vulnerable in order to increase the votes cast for a particular candidate and commit other illegal acts for political purposes? Are there such people in America today?

My answer to those questions is yes. There *is* voter fraud. It is *not* a myth. There *are* people who deliberately calculate ways to enhance the votes cast for their candidates and who violate federal and state laws in the process.

The public record is **full** of the examples of illegal activities surrounding our voter registration and vote casting systems.

There are well-organized forces furiously at work even as we speak, seeking to block the principle of assuring that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy. These are the people and the groups who contend that there is no voter fraud and no people who try to illegally influence the election process – and that any of us who believe otherwise are and must be racists.

Political scientist Larry Sabato and reporter Glenn Simpson, in their book *Dirty Little Secrets: The Persistence of Corruption in American Politics*,¹ write that “Voting fraud is back [and] becoming more serious with each passing election cycle.”² They also write that “The fact that fraud is generally not recognized as a serious problem by

¹ Larry J. Sabato and Glenn R. Simpson, *Dirty Little Secrets: The Persistence of Corruption in American Politics* (1996).

² *Id.* at 275.

[the press] creates the perfect environment for it to flourish. The role played by the news media deserves a special comment. Many of the stories we have just reviewed received little or no national press attention, even when the local media carried news accounts ... Partly, as noted at the outset, this results from the mistaken belief that among journalists that vote fraud is no longer a serious problem.”³ The authors also write that “Our strong suspicion ... is that some degree of vote fraud can be found almost everywhere, and serious outbreaks can and do occur in every region of the country.”⁴ The authors recommendations, based on extensive research, is that “At the very least, a photo identification card (of any sort) ought to be produced by each voter at the polls.”⁵

Mr. Chairman, you have labeled this hearing “Lessons Learned From the 2004 Presidential Election”. I would like to discuss the 2004 election and lessons learned – and not to confine it to the presidential election only. And I would also point to examples of election fraud in 2000, 2002 and 2006. Because all of these elections offer some lessons to be learned: namely, that vote fraud is alive and well in the United States – and getting worse because too many officials, partisans, and the media do not take it seriously.

In 2004, I co-chaired an effort to mobilize volunteers in US Senate races. These volunteers were recruited and sent to several states to work with state Republican parties which were not targeted presidential states, but were places where competitive US Senate races existed. Two of those states were Oklahoma and South Dakota.

³ *Id.* at 297.

⁴ *Id.* at 300.

⁵ *Id.* at 323.

I went to my home state of Oklahoma as a volunteer the last ten days before the election and coordinated an effort to assure that there were sufficient teams of volunteers at the polls on election day. A few days before the election, I received a phone call from a reporter in Muskogee, Oklahoma, asking if I was aware of a 'situation' in that area regarding the potential illegal election activities of the Cherokee tribe. As it turned out, the facts were these: Certain Tribal leaders had been sending campaign materials for Democratic Senate candidate Brad Carson enclosed in the paychecks of tribal employees, a violation of tribal and federal law. Those same leaders had been using tribal resources to travel to the federally funded Indian Health Service clinics and other government and tribal locations holding meetings with employees and patients or other consumers, campaigning against then Senate candidate Tom Coburn, in favor of congressman Carson. Persons attending the mandatory meetings were told that if Tom Coburn were to be elected, that facility would be closed. And there were plans in place by the Tribe for an election day operation to transport people to the polls using tribal and federal government offices and vehicles to do so.

Upon learning of the illegal activities already committed and the plans for even more to take place on election day, I contacted the US Attorney's office in Muskogee, Oklahoma and discussed the situation with him. I was referred to the FBI's offices in Muskogee. The FBI agent in charge essentially told me that such matters were not serious to that office.

So I contacted the Office of Public Integrity in the Department of Justice because I knew that the office maintained a 24-hour hotline in the days leading up to the election to handle election related matters. The DOJ attorneys contacted the local FBI office and let those individuals know that voting integrity *is* serious and that the allegations had to be investigated immediately. Because the Office of Public Integrity *did* take these matters seriously, the FBI *did* investigate and the illegal election-day plans were stopped.

In South Dakota, GOP attorneys were determined not to allow the 2004 election to be stolen by illegal voting as it had been in 2002, where candidate John Thune lost a United States Senate race against Sen. Tim Johnson by a mere 524 votes. Following the election, the facts began to emerge of numerous irregularities that undoubtedly changed the outcome of the election.

Take the example of the county auditor in Shannon County, where Pine Ridge Reservation is located. Finding that some addresses were incorrect, birth dates were not accurate, signatures looked similar and some cards were returned with an incomplete address, the auditor sent more than 100 registration cards to be investigated.

The investigation in South Dakota was prompted by reports that one Democrat operative, Becky Red Earth-Villeda, who was paid more than \$12,000 in three months by the Democratic Party, had turned in 1750 applications for absentee ballots, many of which she apparently signed herself. She was later charged with illegal voting activity.

In the 2000 election, only 1068 people voted in predominately Republican Jackson County South Dakota. In the 2002 election, 1202 people voted in Jackson county, an increase of 134 votes or a 12.4% increase in voting over the Presidential race.

Jackson County Auditor Vickie Wilson said she turned over seven absentee ballot requests to local authorities. "I was fairly certain that someone other than the voter could have signed them," Wilson said. She said she also provided the FBI with a total of 20 absentee ballot requests for investigation. Jackson County Sheriff Bruce Madsen said three people have advised him that they did not sign the requests, and two others didn't remember signing them. Madsen said he only found one person so far who had confirmed signing a request.

In a repeat of a technique used in 2000 in heavily Democrat precincts in St. Louis, Missouri, some polling places in Todd and Mellette counties in South Dakota were kept open an extra hour. In predominately Democrat Todd County, where Rosebud Indian Reservation is located, in the 2000 Presidential election,

1546 people voted. In 2002, on the other hand, 2529 people voted, an increase of 983 or 63.5% over the Presidential race⁶.

A FoxNews report on October 16, 2002 disclosed that “(f)ederal officials confirmed that a vote fraud investigation is unfolding on Indian reservations in South Dakota, home of one of the tightest U.S. Senate races in the nation:

“Federal officials in Washington told Fox News that so far, the alleged fraud is said to have occurred on the Cheyenne River Reservation and the Pine River Reservation, and an investigation has been ongoing in six counties, including Dewey, Ziebach and Fall River.

According to officials, the FBI has uncovered the registration of minors, dead people, and people who do not exist. Many of the registrations have included bogus names and invalid addresses. Investigators said in one case a woman was registered to vote a week after her death.

They have also found multiple absentee ballots distributed to the same registered voter but returned with different signatures, the officials said.

The case was brought to the attention of the South Dakota attorney general's office when county auditors began discovering problems with absentee ballot requests and votes. State Attorney General Mark Barnett said the investigation has been ongoing for two weeks.

Barnett said that he hoped invalid absentee ballots haven't been filed. Absentee voting began Sept. 24 and the registration deadline is Oct. 21. "I don't even want to think about it," Barnett said. "A lot of absentee ballots are going to get looked at."

Federal sources said the key suspect in the investigation is a former staffer of the state Democratic Party, whom is alleged to have falsified voter forms. The party itself has not been implicated. Officials said that because of the size of the alleged fraud, they expect to find accomplices.

⁶ <http://www.conservativetruth.org/archives/marystert/11-11-02.shtml>

Bret Healy, executive director of the state Democratic Party, said the worker was fired as soon as the party learned of the allegations. Healy said party officials notified the U.S. attorney. South Dakota does not require a photo ID to register to vote and absentee ballots can be obtained without appearing personally.”⁷

Because now-Sen. Thune did not request a recount following the 2002 election, a full record was not made of the likely theft of the 2002 US Senate race in South Dakota.

But the 2004 Thune campaign and GOP committees were prepared. Dozens of volunteer GOP lawyers travelled to South Dakota and went toe-to-toe with the well-organized vote fraud perpetrators in South Dakota. Former Sen. Tom Daschle and Democratic operatives filed numerous court actions *prior* to the election seeking to interrupt GOP efforts to watch the voting in the 2004 elections. One tribal court even issued an order to prevent GOP poll watchers from observing voting and ballot counting at polling places located on the reservation. That order was declared unenforceable by the US Attorney.

John Fund in the Wall Street Journal's Political Diary (November 1, 2004) had the following observations about a restraining order issued by a tribal court purporting to exclude Republicans from poll-watching on the reservation in 2004:

“Two years ago, a suspicious surge in votes from South Dakota's Shannon County, home of the Pine Ridge Indian Reservation, gave Democratic Senator Tim Johnson a second term by 524 votes over Republican John Thune. Now Mr. Thune is running again, this time against Tom Daschle, the Senate Minority Leader. And once again, allegations are surfacing about shenanigans in Shannon County.”

⁷ <http://www.foxnews.com/story/0,2933,65437,00.html>

“State's Attorney Lance Russell has now launched an investigation into suspicions that some residents have already cast multiple ballots. "We do have a few people who have voted more than once," he told reporters. Meanwhile, U.S. Attorney James McMahon isn't amused by a tribal judge's order aimed at preventing the state Republican Party from having any contact with Four Directions, a get-out-the-vote group financed by Democrats. The Democratic group has accused Republican monitors of videotaping them on private property; Oglala Sioux tribal Judge Marina Fast Horse duly issued a restraining order to stop the GOP efforts. But Mr. McMahon, the federal prosecutor, calls that action illegal and told the Associated Press that law enforcement officials "should not be enforcing any order on the reservation which purports to keep the Republican Party away from the polls."

“There may be good reason why Democrats and tribal officials want to avoid scrutiny. Paul Brenner, a lawyer from Virginia who is observing the election on behalf of Republicans, filed an affidavit claiming that on Friday he was sitting with a poll watcher for Senator Daschle when they were approached by two women who asked when they would get paid to vote. In another incident on Thursday, he talked with another woman who was driving people to the polls. "I told (her) I had heard that the Daschle campaign office in Rosebud was offering a better deal to vote haulers than Four Directions, because they paid \$10 a voter, plus a free meal at the Rosebud Casino. She said she already knew that and was also getting paid by the Daschle campaign office," Mr. Brenner wrote.⁸

We are always back at the basic dispute between those of us who want to protect the integrity of the election process and those who claim that there is no voter fraud so we don't need safeguards against something that doesn't exist.

No vote fraud? Really? Then how about more facts...

⁸ November 1, 2004 Wall Street Journal's Political Diary reprinted at http://southdakotapolitics.blogspot.com/south_dakota_politics/voter_fraud_watch/index.html

- **Headline:** *The Seattle Times*, October 30, 2007 “Three plead guilty in fake voter scheme”. The story reads “Three of seven defendants in the biggest voter-registration fraud scheme in Washington history have pleaded guilty and one has been sentenced, prosecutors said Monday. The defendants were all temporary employees of ACORN, the Association of Community Organizations for Reform Now, when they allegedly filled out and submitted more than 1,800 fictitious voter-registration cards during a 2006 registration drive in King and Pierce counties.” Attached to my testimony today is the Settlement Agreement between King County and ACORN, entered into one year ago today by that organization to avoid criminal and civil prosecution.
- Acorn's efforts to register voters have been scandal-prone elsewhere. St. Louis, Mo., officials found that in 2006 over 1,000 addresses listed on its registrations didn't exist. "We met twice with Acorn before their drive, but our requests completely fell by the wayside," said Democrat Matt Potter, the city's deputy elections director. Later, federal authorities indicted eight of the group's local workers. One of the eight pleaded guilty last month.
- ACORN’ s vandalism on electoral integrity is systemic. ACORN has been implicated in similar voter-fraud schemes in Missouri, Ohio, and at least 12 other states. The *Wall Street Journal* noted: “In Ohio in 2004, a worker for one affiliate was given crack cocaine in exchange for fraudulent registrations that included underage voters, dead voters and pillars of the community named Mary Poppins, Dick Tracy and Jive Turkey. During a congressional hearing in Ohio in the aftermath of the 2004 election, officials from several counties in the state explained ACORN’s practice of dumping thousands of registration forms in their lap on the

submission deadline, even though the forms had been collected months earlier.”

- In March of this year, Philadelphia elections officials accused ACORN of filing fraudulent voter registrations in advance of the April 22nd Pennsylvania primary. The charges have been forwarded to the city district attorney’s office.⁹
- 2004 – In the State of Washington, in a race for governor in which the difference between the two candidates statewide was less than 2000 votes, the following facts appeared in the Plaintiffs trial brief:

“Subsequent discovery has revealed that the counties, principally but not exclusively King County, counted hundreds of votes cast by persons who were disqualified from voting as felons, and a smaller but significant number of persons who voted twice, or who voted using the voter names and registrations of persons who had died prior to the election. Discovery has also confirmed what the press reports were indicating, that King County’s election processes, and its compliance with its processes, were grossly inadequate. Many felons were permitted to vote. More than a thousand votes were cast by persons whom King County had failed to ensure were qualified and registered voters, and whose identities can not now be determined. These votes, like those of felons, double voters and “deceased” voters, were illegal.

⁹ Michelle Malkin, “The ACORN Obama Knows,” National Review (June 25, 2008).

- 2001 -- The state of Missouri established a bi-partisan commission to review the events of November 7, 2000 in which 1,233 persons who were not legally qualified to vote in the State of Missouri nonetheless cast ballots upon obtaining court orders, falsely claiming to be eligible. The evidence demonstrated that a concerted effort was planned in *advance* of election day to not only illegally extend the hours for voting beyond the statutory period but also to obtain court orders authorizing votes to be cast by persons not legally eligible to vote. Clearly, this was a plan to violate the integrity of the voting system in the state of Missouri – which succeeded. Key findings include votes cast by:
 - * convicted felons
 - * people who voted at least twice, possibly more than twice
 - * deceased persons
 - * persons registered at vacant lots
 - * multiple names registered at the same address – which addresses are not multiple family dwellings, nursing homes, dorms, hospitals or group homes
 - * The primary lawsuit brought by the Democrats in Missouri to keep the polls open beyond the statutory poll closing time had a lead plaintiff who was deceased. When the fact was brought to the attention of the attorney, he responded that it was another person by the same name who had not been allowed to vote – a review of the records revealed that *that* individual had voted earlier in the day without difficulty.

- November 15, 2007 –from The Politico “Twenty percent of students polled by their peers at New York University said they’d exchange their vote in the next presidential election for an iPod touch. Sixty-six percent would exchange it for free tuition. And fifty percent said they'd lose the right

forever for \$1 million. Ninety percent of the students who said they'd give up their vote for the money also said they consider voting "very important" or "somewhat important"; only 10 percent said it was "not important." Also, 70.5 percent said they believe that one vote can make a difference — including 70 percent of the students who said they'd give up their vote for free tuition.

Here is a fact: there ARE people who steal or attempt to steal votes. There ARE people who willingly sell their votes. There are people who break the law to accomplish their political objectives during the voting process.

ACORN is such an organization with a pattern and practice of illegal voter registration and political activities. ACORN should be under scrutiny by the Congress and the Department of Justice for their illegal conduct across state lines. Their federal grants and contracts should be rescinded and they should not be allowed to be involved in further despoiling the voter rolls in state after state.

The lessons learned from 2004...and 2000 and 2002 and 2006 are the same. There are groups and individuals who are intent upon registering persons to vote who are not eligible under the law, or registering non-existent 'people'. There are people who cast more than their own ballots – and literally steal elections. These are illegal acts. They must be taken seriously and prosecuted – and stopped.

It is time to join together to take every possible step to assure that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy.

Thank you.