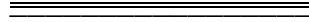


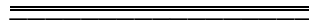
**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Election Fraud Investigation by Local Jurisdictions



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



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ABSTRACT

Election fraud is the systematic involvement of individuals using voter apathy and limited voter knowledge, to engage in a concentrated effort to force a known outcome for an election. This conduct is viewed under a non-sinister belief that the perpetrators are involved in a civic duty to educate and inform voters about elections and election processes. However, the role of the individuals may have a biased agenda, be intent on a calculated outcome, and may sometimes act in concert with the election candidates. These types of efforts are meant to erode the confidence and secrecy of a fair election and focuses only on winning by any means.

This is important to local law enforcement leaders for the main reason that if an election outcome is a result of illegal activity, then the essence of an election has been compromised. If the flawed election results are actions by individuals outside of the election authority, then the true civic intent of the elected official and those who worked to support the campaign come into question. Additionally, this could lead to a deeper corruption issue and escalate from election fraud to public corruption. Some state and federal investigators are intimately familiar with high profile election fraud and public integrity investigations and have mechanisms in place, such as vetted ethical and knowledgeable individuals, to facilitate a successful investigative outcome. To aid in this success, if these investigations were supplemented by entrusted local law enforcement leaders and investigators familiar with the cultural, demographic, linguistic nature of the communities they serve in, this will greatly aid the investigative manpower and would created a force multiplier effect to quickly and thoroughly identify and resolve election

fraud concerns. This will undoubtedly lead to community trust in the local law enforcement and confidence in the election process.

This is intended to energize local law enforcement leaders to consider the positive aspects of undertaking a proactive stance in the investigation of election fraud within their jurisdictional boundaries. Information was obtained through news articles, news releases, books, criminal justice journals, and testimony before the U.S. Commission on Civil Rights. The research showed that there is limited involvement by local law enforcement leaders or local policing agencies to take a proactive role in conducting investigation of alleged election fraud. These types of fraud can include, but are not limited to, mail-in ballot fraud, illegal voting, poll place violations, and voter registration fraud. Notwithstanding these particular offenses, these types of investigations are extremely difficult to undertake. Local law enforcement must deal with various issues, such as political conflicts, lack of offense knowledge, and reluctance by prosecutors. However, the role law enforcement leaders must take is to overcome these adversities and take a solid ethical stance on protecting a basic right of the citizens they serve. The freedom to vote is a core value of this society and must be protected from fraud.

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INTRODUCTION

The United States of America has experienced an ever-changing demographic with voting and election processes. Over the history of this issue, many, various viewpoints and opinions have been expressed. Voting fraud initially entered into the United States in the late 1780s in Georgia and involved allegations of voters who did not vote but showed to have voted and more votes counted in one county than the county had voters. Corruption and voting fraud flourished in cities, such as New York, Cincinnati, and Chicago, with the practice continuing and newly formed phrases being created to describe the various types of voting fraud. Some of these terms are “Floaters,” “Pipe-layers,” “Repeaters,” and “ghost voters,” and these phrases left impressions on Americans’ lexicon (Gumbel, 2008, p. 1118).

Since that era, the United States has seen voting and elections expand with newly created laws, such as the Voting Rights Act of 1965, the Voting Accessibility for Elderly and Handicap Act of 1984, The Uniform and Overseas Citizen Absentee Voting Act of 1986, The National Voter Registration Act of 1993, and The Help America Vote Act of 2002 (Overton, 2006). The United States Department of Justice Civil Rights Division is another notable agency that protects the civil rights of citizens, focusing on the rights of American citizens as established by the constitution. The Division has investigative and prosecutorial abilities to enforce federal laws against discrimination (United States Department of Justice, n.d.).

Voting is an important and necessary part of the United States government. The elections conducted for local, state, and federal candidates fuel the productivity of citizen programs, laws, and basic governmental functions. Through this medium,

citizens express their satisfaction and commitment to elected leaders. In return, those leaders are meant to inspire their constituents and express the majorities' stance on any given topic.

Law enforcement leaders are in a strong strategic position to adequately address the undercurrent of election fraud. Such a position provides the law enforcement leader with the flexibility and enforcement function to better ensure an uncorrupted electoral process within their jurisdiction. Traditionally, local law enforcement agencies have rarely dealt with these issues and mostly concern themselves with the mire of other person and property crimes committed. Election violation complaints are often referred to other jurisdictions. For instance, the United States Department of Justice has established an election complaint process utilizing the Federal Bureau of Investigation as an investigative body to receive complaints. Along with government attorneys, the department has organized a "ballot access and voter integrity initiative" working with the Civil Rights Division to protect the voting rights of qualified voters and preserve the integrity of the over all election process ("Fact sheet," 2008). Because of that resource, local law enforcement agencies have primarily deferred to state and federal agencies to provide investigative and prosecutorial services. However, it is important for local law enforcement agencies to become more entrenched in dealing with alleged election fraud; their swift action can have a positive impact on combating election fraud and effect public corruption all together.

Election fraud has had a long history in the United States. There is probably no greater example of the history of election fraud than the 1948 Texas primary election in Jim Wells County, Texas. A stuffed ballot box was discovered, known as "Ballot Box

13,” which was used to secure Lyndon Johnson’s U.S. Senate seat (Abbott, 2006).

Secure elections are an important part of securing the government. This process must start locally, and local law enforcement agencies are much more familiar with the cultural, social, and political aspects of their jurisdiction. Combating election fraud will reduce, in some part, the corruption of elected officials. It is for this reason that local law enforcement agencies should implement and engage in the practice of investigating election fraud allegations within their jurisdiction.

POSITION

Election fraud can be committed through a variety of means, such as absentee ballot fraud for voters, forgery, and voter intimidation of elderly or mentally disabled persons. The fraud can occur in the voter registration process and on Election Day (Alt, 2004). Traditionally, local law enforcement agencies, such as municipal police departments and county law enforcement, have not had an aggressive stance on enforcing election fraud allegations. Primarily, state and federal agencies have been tasked with the effort of investigating and presenting cases for prosecution. However, if local law enforcement agencies take a forward-thinking stance on this investigative issue, the impact would be positive; it will affect and detour corruption, and it will ensure fairness in the electoral process.

Notwithstanding the political climate that surrounds elections in general, election and voter fraud is a difficult crime to investigate and prosecute. Dr. Robert A. Pastor stated during testimony to the U.S. Commission of Civil Rights that a focus on election fraud is primarily an issue only during highly contested elections, where the focus draws public scrutiny and investigations are initiated due to the attention. He further remarked

that investigations of election fraud allegations will be the most effective deterrent of fraud and will enhance the integrity of the election (Pastor, 2006). A struggling issue of election fraud is the ability to quantify the crimes. Election fraud is not tracked, such as retail theft crimes, so the understanding of how pervasive it may be is flawed (Overton, 2006). The extent to which modern day election fraud is committed is difficult to determine. According to John Fund, "Election fraud, whether it's phony voter registrations, illegal absentee ballots, shady recounts or old-fashion ballot-box stuffing, can be found in every part of the U.S." ("Voter fraud and voter intimidation," 2008, p. 74). There is no mistake that local law enforcement agencies may be more affected by the existence of election fraud in their community than in any other state or federal agency. Deferring such an important function of government to other agencies can erode a community's trust in their local agencies. Furthermore, it is stated that of the many avenues for voter fraud, absentee ballots are more susceptible to irregularities, such as ballots to an incorrect address, redirected ballots, and intimidation and pressure imposed on elderly voters. These types of techniques make it difficult for crimes to be discovered ("Voter fraud and voter intimidation," 2008).

Aside from the positive effects of conducting investigations, a local law enforcement agency can be affected by the community's reactions and support. An agency that has the community's support is far better off than one that does not. Citizens desire a fair and honest election and one that is free of controversy. In testimony before the U.S Commission on Civil Rights, Mark F Hearne II quoted the findings of a Carter-Baker Commission Report. The report stated, "Americans are losing confidence in the fairness of our elections" (Voter fraud, 2008, p. 40). Mr. Hearne

further added, during his testimony, that there is a direct correlation between citizen confidence and voter involvement (“Voter fraud and voter intimidation,” 2008). It is because of this correlation that election fraud needs to be a primary function of a local law enforcement leader. The implementation of such a practice is further supported by the pure nature of law enforcement duties and responsibilities. The Texas law enforcement code of ethics has some powerful words and places the responsibility to act upon law enforcement officers. Victims of election fraud fall into that category. As stated in the first line of the code, “My fundamental duty is to serve the community; to protect the innocent against deception; the weak against oppression or intimidation” (“Law enforcement code of ethics,” n.d). Additionally, taking a powerful stance such as this would build trust in the community and foster respect towards the policing agency. Election fraud has occurred and will continue to occur unless positive steps are implemented by local policing agencies to aggressively initiate investigations.

COUNTER POSITION

The implementation of an effective investigative process by local law enforcement agencies is not without controversy or negative opinion. An argument when dealing with election fraud allegations is typically that local law enforcement agencies exhibit a general lack of knowledge, skill, or familiarity with the election process. This is supported by the Texas Occupations Code 1701.253, which identifies the requirements of training curriculum for licensed peace officers; the code does not require any training in the area of election laws (“School curriculum,” 2010). Without required training in these areas, the effect can be felt by a downward shift of effective policing of election fraud. Law enforcement leaders have a tendency to withdraw from

these potential controversies and refer these investigative matters to other agencies, such as state and federal law enforcement. Of note is the 1998 statement from a Florida Department of Law Enforcement (FDLE) report, titled "Voter Fraud Issues: A Florida Department of Law Enforcement Report and Observations," where FDLE takes the position that its agency is not responsible for proactively investigating election concerns in Florida ("Voter fraud issue," n.d). That statement only supports the argument that law enforcement agencies geographically close to an allegation remain at an arms length distance from the issue. Even if investigations were conducted, prosecutors may be reluctant because of public and political ideology that the only reason that an investigation and prosecution is taking place is because they are attempting to oppress the minority vote. In this circumstance, the prosecutor may not want proceed with a case out of fear of being be labeled as a racist and viewed as trying to bring back racially discriminatory voting laws of the past (Overton, 2006). Bice (2010) reported that the local prosecutor's office was at odds with the Milwaukee Police Department for not taking a swift investigative response to allegations of illegal voting by felons and voters who may have voted twice during the 2008 General Election. It is clear from this article that election fraud is a very divisive issue and can easily be passed down to the responsibility of local police agencies when questions arise (Bice, 2010).

Florida, as does the state of Texas, relies upon a centralized elections division. Florida coordinated any election complaints through the Florida Division of Elections. This is similar to Texas, whose primary election chief is the Texas Secretary of State, and that person is responsible for educating election clerks and workers as well as

monitoring elections. In both instances, Florida and Texas review the complaints submitted to them, and if an allegation has substantive merit, it will be referred to law enforcement agencies for investigation. Many of the complaints are referred to a state agency; for instance, The Texas Attorney General has jurisdiction to investigate and prosecute election complaints throughout the state of Texas, as well as seek assistance from local district attorneys and the Texas Department of Public Safety. ("Texas election code," 2010).

Education and training are two important areas of concern and can only be adequately combated by proactive steps involving state and federal investigators. These agencies would need to educate and pass down their expertise and knowledge of election investigations to local law enforcement leader and agencies. In March of 2006, Texas Attorney General, Gregg Abbott, embarked on such a task. In a press release dated March 1, 2006, General Abbot discussed that his offices are utilizing grant monies for investigators in the Special Investigations Unit to travel around the state of Texas and provide election fraud training to local law enforcement agencies. According to a law enforcement update circulated by General Abbott, investigators conducted training in 44 Texas counties. The goal was to better inform law enforcement officers and prosecutors on the practices, schemes, and trends associated with election fraud. In addition, the outreach training helped to develop a common sense of unity in the prevention and enforcement of election laws (Abbott, 2006). However, even without the aspect of formal training, avenues for knowledge and understanding do exist. Both Florida and Texas have agencies that are chiefly responsible for elections and the reporting of election fraud, and both have enacted

laws that identify criminal misconduct and penalties. Texas has a Texas Elections Code and Florida has enacted Florida Election Laws. These enacted statutes are available for law enforcement to review and become familiarized with applicable statutes and laws.

The introduction of formalized training to local law enforcement is not the only concern. Much of the hesitation by local law enforcement leaders is created by the nature of the organization for which they may be governed. In Texas, the majority of municipal law enforcement agencies must report to elected members of a city council. Furthermore, county law enforcement officers report directly to an elected sheriff. This situation can create a difficult work environment when local law enforcement is asked to initiate an investigation of election fraud that has been alleged against one or more of the election officials. This issue primarily results in views of political conflict, and in most cases, it results in referrals to other law enforcement or request for investigative assistance. Such is the case set forth in the example of eight U.S. Attorneys who were fired for not adequately pursuing alleged voter fraud. A 2007 National Public Radio news article stated that voter fraud allegations often stir up political debate between two political parties, with one party promoting widespread election fraud concerns and the other reporting that there is no such evidence (Fessler, 2007). With all the political dynamite involved with the issue, there are positive reasons for local law enforcement agencies to ask other investigative bodies to investigate.

Additionally, a common statement made by enforcers is that these allegations are not pursued because they are a victimless crime. Law enforcement agencies are accustomed to having a tangible victim, with crimes against persons and property crime being the majority of police action in local jurisdictions. Election fraud crimes may not

get any attention until there is a politically hot election in which the losing party may allege fraud, even if the election appeared uncorrupted (“Voter fraud and voter intimidation,” 2008).

In order to combat this argument, law enforcement leader must establish strict guidelines and investigative procedures. Local law enforcement officers and agencies are better suited to handle allegations in a quick and effective manner utilizing basic investigative techniques. These techniques will aid in the preservation of evidence and the quick identification of involved parties and witnesses. Law enforcement is already accustomed to engaging in intense and difficult investigations, and election investigations should be no exception.

For instance, local law enforcement agencies routinely conduct investigations of major narcotics organizations, homicide, public theft investigations, money laundering, and other crimes. Although this is merely a short list of potential investigations, each one of them has the potential to involve a public official or elected member. It should not matter the status of an individual, and the focus should be on the particular offense committed. For instance, in 2001, the Mayor of York, Pennsylvania and a retired police officer, Charlie Robertson, was arrested and charged with murder. The local police agency investigated the issued and discovered that Mr. Robertson provided ammunitions to Caucasian gang members who shot and killed a young black female during a heated racial tension (McMenamin, 2001). Additionally, in 2010, a municipal court judge from the small South Texas town of LaJoya was arrested by county law enforcement for allegedly committing a theft from undocumented immigrants and using those funds in his personal account (“LaJoya judge arrested,” 2010).

These examples show that local law enforcement agencies are capable of conducting sensitive investigations of local officials, and there should be no apprehension in conducting election fraud investigations. In conjunction with the ability to conduct these types of investigations, the agency needs to have an adequate investigative policy in order to protect the agency. This policy must include all steps needed to initiate an investigation. This should include intake processes, review processes, investigative processes, and enforcement processes. Additionally, investigators assigned to these types of investigations must be ethically sound, possess good judgment, and possess an enormous amount of tact. These attributes will aid in successful investigations of election fraud and remove the sting of controversy that may be hurled towards the agency.

CONCLUSION

Election fraud is a problem that encompasses a variety of problems and concerns, and the problems manifest in different areas, such as education, enforcement, and political conflict. These problems are not held to one particular agency or group and are problems that cover issues among local, state, and federal demographics. A key problem with election fraud is the understanding of how it occurs and who is responsible for enforcement actions. Traditionally, state and federal agencies have been the primary enforcers of election laws, whether they are criminal or civil actions. But, these agencies are sometimes too far removed from the problem, which primarily occurs at that local level. It is at the city and county level that election fraud occurs because this is the level that is engaged in proactively administering state and federal election laws and rules.

Notably, the best enforcement position is that of a local law enforcement agency taking a formal and positive stance on initiating investigations and deterring corruption. This position does not come without controversy. There is resistance to local law enforcement taking action due to perceived lack of knowledge or training in this area. However, there are alternate avenues that can support education and training to fully develop an investigation plan and policy. Additionally, due to the political nature of this topic, fear of ulterior motives or political in-fighting can cause investigative bodies to decide it is not worth the trouble to investigate. The political power of elected officials, such as city council members, election county officials, sheriffs, police chiefs, and state representatives will apply political pressure to make it difficult for local law enforcement to initiate an investigation. Because of this, locals can become reluctant on taking a forthright stance. However, it is not uncommon for local law enforcement officers to investigate and send prosecution cases involving elected or appointed officials for crimes, such as thefts or murders, so election fraud cases should be treated no differently. Therefore, the argument that local law enforcement are some how tainted or politically influenced, which makes them unable to investigate election fraud, can be overcome with a strong investigative policy and highly ethical and committed law enforcement officers.

The importance of local law enforcement leaders to support the initiation of election fraud case will have three main effects. It will create a positive change in securing local election from corruption. The investigations will build trust and impress upon the community that their elections are fair and secure. Finally, it will establish and encourage a sense of fairness.

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