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Election Fraud in the 2008 Indiana Presidential Campaign: A Case Study in Corruption

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Abstract

*Opponents of electoral reform continue to insist that, despite all evidence to the contrary, election and voter fraud are a nonexistent problem in America. This myopic view is wrong not only because numerous cases show that these problems do exist, but also because of the deep implications that unchecked election fraud can have for American politics. As the Supreme Court of the United States said in *Crawford v. Marion County Election Board*, “not only is the risk of voter fraud real but ... it could affect the outcome of a close election.” Marred by fraud, the 2008 Indiana Democratic presidential primary offers a frightening example of how such fraud can potentially alter the course of history.*

Opponents of electoral reform continue to insist that, despite all evidence to the contrary, election and voter fraud are a nonexistent problem in America.¹ This myopic view is wrong not only because numerous cases show that these problems do exist, but also because of the deep implications that unchecked election fraud can have for American politics. As the Supreme Court of the United States said in *Crawford v. Marion County Election Board*, “not only is the risk of voter fraud real but ... it could affect the outcome of a close election.”²

In fact, the conviction of local party officials and election workers involved with the 2008 Indiana Democratic primary provides a recent example of the warning sounded in *Crawford*. This fraud was not uncovered until well after the 2008 presidential election,

KEY POINTS

- As illustrated by numerous cases, electoral fraud is a real problem in America.
- Such fraud can have a tremendous impact on American politics, undermining the health of U.S. democracy.
- The 2008 Indiana Democratic presidential primary offers a frightening example of how such fraud can potentially alter the course of history.
- The Indiana ballot petition fraud shows that there are individuals who are willing to commit fraud and break the law in order to subvert the electoral process to achieve their own goals.
- The lesson to be learned from these scandals is that when the proper oversight and structural safeguards are applied as happened in Virginia—but not Indiana—abuse of the election system can be stopped.
- Only by improving security throughout the entire voting and election process can Americans negate the influence of those fraudsters and protect the integrity of this nation’s democracy.

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so Americans will never know what impact it might have had on the heated contest between Barack Obama and Hillary Clinton for the Democratic nomination for President if it had been discovered at the time.

One thing, however, is certain: Had this fraud been discovered, Barack Obama would have been disqualified from the primary ballot in a major state, and Hillary Clinton would have won all of the Democratic Party delegates in Indiana.

2008 Indiana Democratic Primary

In the spring of 2008, the Democratic primary season was in full swing. Then-Senators Hillary Clinton and Barack Obama were relatively even in the number of delegates each had received.³ Going into the May 6 primaries, Senator Obama had a slight lead over Senator Clinton.⁴ According to a *New York Times* calculation, Senator Obama had 1,474 delegates to Senator Clinton's 1,377—a difference of less than a hundred delegates.⁵

However, Senator Clinton had an edge in superdelegates,⁶ a special category of additional Democratic Party delegates who are not elected through the normal primary and caucus process. Instead, these delegates are automatically designated as delegates by party rules and include elected officials and party committee members. As of May 2, Clinton had 260 pledged superdelegates, while Obama had only 241. Thus, Obama was ahead of Clinton by only 78 delegates.

On May 6, Indiana and North Carolina held their primaries. Clinton won Indiana by 50.6 percent to 49.4 percent, and Obama won North Carolina by 56.1 percent to 41.6 percent.⁷ The two candidates were fighting over 187 delegates—72 in Indiana and 117 in North Carolina.⁸

Under Democrat Party rules for these two states, Clinton and Obama split the delegates according to the proportion of their vote totals. As a result, Clinton walked away with 37 delegates from Indiana and 48 from North Carolina.⁹ Obama fared better, winning 34 delegates in Indiana and 67 in North Carolina.¹⁰ Obama's thin victory was a disappointment for the Clinton campaign, which had hoped to use a big victory in those two states to mount a successful comeback.¹¹ At the conclusion of the Indiana and North Carolina primaries, Obama had captured a total of 1,575 regular delegates to Clinton's 1,422, increasing his lead to 153 in regular delegates.¹²

If Barack Obama had been disqualified from the Indiana ballot, however, Clinton would have won all 72 of the delegates in Indiana instead of just 34. She also would have had a new total of 1,497 regular delegates, compared to Obama's new total of 1,541—a difference of only 44 delegates¹³—and with the addition of the superdelegates, her deficit would have been reduced to a mere 25 delegates.

With six primaries left totaling 217 delegates, Obama's lead would have been in dire jeopardy.¹⁴ Instead, on May 10, Obama took the lead in superdelegates with 275 to Clinton's 271,¹⁵ and he never relinquished it.¹⁶ Obama won the Democratic nomination for President soon thereafter and went on to win the presidency.

The above narrative is typical of American politics: two candidates vying for the nomination (and campaign funds) in a very close race. Yet the story did not end with President Obama's election. Rather, revelations of election fraud and abuse by election and local political party officials continue to cast a pall over the nomination process in Indiana.

Fraud

The allegations of electoral fraud first emerged in 2011 when a Yale University undergraduate student looked through the signatures of the petitions that were filed with Indiana election officials to get Barack Obama qualified for the Indiana Democratic primary ballot.¹⁷ Ryan Nees, a former Obama White House intern, pored through the “byzantine and complicated” petition signatures.¹⁸ Page after page of the voter names and signatures in St. Joseph County turned out to be complete forgeries.¹⁹

Nees said the fraud was easy to detect “because page after page of signatures are all in the same handwriting.” A close inspection also revealed their similarity to signatures from a petition for a previous gubernatorial election. Even worse, some of the names appeared on the list several times.²⁰

Erich Speckin, a forensic document specialist, confirmed the forgeries, concluding that 19 of the ballot petition pages for Obama filed with election officials were illegitimate.²¹ Nees uncovered the fraud while working as an intern for Howey Politics Indiana, a nonpartisan political news website, and later published his findings through the *South Bend Tribune*.²²

In the wake of these revelations, the state chairman of the Indiana Republican Party wrote to the

U.S. Attorney for the Northern District of Indiana, David Capp.²³ Mr. Capp was nominated to serve as the U.S. Attorney by President Obama in 2009.²⁴ The letter requested that federal officials investigate the allegations of election fraud.

Although Mr. Capp refused to act, state officials ultimately charged four people with conspiracy and forgery.²⁵ In an ironic twist, the state trial court had to appoint a special prosecutor, Stanley Levco, because St. Joseph County Prosecutor Michael Dvorak could not press charges since his signature was one of the ones forged, making him a victim of the crime.²⁶ Dvorak was not the only Indiana official with that problem: Former Governor Joe Kernan's name was forged on a petition as well.²⁷

The ringleader of the election fraud was Butch Morgan, chairman of the St. Joseph County Democratic Party.²⁸ Morgan conspired with three other local officials to duplicate signatures from a previous petition for a Democratic gubernatorial candidate, Jim Schellinger.²⁹ In Indiana, the authenticity of the ballot petitions must be reviewed by the Republican and Democratic members of the county Board of Voter Registration, with the signatures of the board members executed on the ballot petitions to evidence their review.³⁰ In this case, Morgan and his coconspirators illegally used a rubber stamp of the signature of a Republican member of the St. Joseph County Board of Voter Registration, Linda Silcott, to forge her approval of the ballot petitions when she was out of the office due to the loss of her husband.³¹

Former Board of Voter Registration worker and Democratic Party volunteer Lucas Burkett revealed the details of the fraud.³² Burkett confessed that “there were meetings at which several people explicitly agreed to forge these petitions” and that his job was to “forge petitions for candidate Barack Obama.”³³ Furthermore, Board of Voter Registration worker Beverly Shelton “was assigned to forge petitions for candidate Hillary Clinton,” while former County Board of Voter Registration worker Dustin Blythe “was assigned to forge petitions for candidate John Edwards.”³⁴ John Edwards dropped out of the race at the end of January 2008, and at that time, Burkett had a change of conscience and refused to participate further in the scheme. Consequently, Morgan instructed Blythe to forge signatures on the remaining Obama petitions.³⁵

In June 2013, the fraud trials concluded,³⁶ and the group's ringleader, Butch Morgan, was convicted of

conspiracy to commit petition fraud and felony forgery.³⁷ Morgan was sentenced to one year behind bars, the only defendant to receive prison time.³⁸ Former St. Joseph County Board of Voter Registration worker and Democratic volunteer Dustin Blythe was also convicted of conspiracy to commit petition fraud and felony forgery, receiving one year of probation.³⁹ Former St. Joseph County Board of Voter Registration Democratic board member Pam Brunette and board worker Beverly Shelton pleaded guilty and testified against Morgan. They received two years of probation.⁴⁰

Following the convictions, St. Joseph Superior Court Judge John Marnocha stated: “The defendants who were saying, ‘I was just following orders,’ or ‘I was just doing my duty,’ that’s no excuse. Through history a lot of evil has been done by those saying they were just following orders.”⁴¹

In this case, the very people meant to be ensuring the fairness of the election were engaged in a scheme to subvert it. For example, Brunette was the Democratic member of the St. Joseph County Board of Voter Registration. Her signature on the petitions was meant to signal that she verified the authenticity of those signatures. According to evidence produced at trial, the officials falsified 90 names for Barack Obama and 130 for Clinton.⁴²

These numbers are critical because, in Indiana, each candidate must obtain 500 signatures from registered voters in each congressional district in order to be placed on the ballot. After the fake names were removed, Obama had only 444 actual voter signatures, falling short of the statutory minimum in St. Joseph County. Hillary Clinton, however, would have remained qualified for the ballot because there were still enough authentic voter signatures on her petitions to meet the 500-voter minimum threshold.⁴³

Had the election officials been doing their job, or had Clinton challenged Obama's ballot petition signatures and the fraud been discovered, then according to prosecutor Stanley Levco, “Barack Obama wouldn't have been on the ballot for the primary.”⁴⁴ Thus, Clinton would have won all 72 of Indiana's delegates. The systemic election fraud on the part of local Democratic Party officials allowed President Obama to appear on a ballot for which he did not legally qualify. As a result, he was awarded 34 delegates to whom he was not entitled.

Implications

Clinton would ultimately win Indiana, but only by a narrow margin. Consequently, Obama received close to half of Indiana's delegates—34 to Clinton's 38.⁴⁵ Four days later, Obama took the lead in superdelegates.

It is not difficult to see how the course of the campaign—and history—could have changed if Obama had been kept off the ballot in Indiana. There is a strong possibility that the momentum of the campaign might have shifted not only because Clinton would have been almost even with Obama in the total delegate count, but also because Obama's campaign would have been enveloped in a major scandal involving his disqualification from the ballot because of election fraud by local Democratic officials.

Such a scandal could have affected Obama's fundraising and his ability to compete effectively in the remaining primaries, as well as the crucial and pending decisions of the on-the-fence superdelegates who had not yet declared which one of the two candidates they were supporting. It is impossible to say with certainty what would have happened, but the results of the 2008 election could have been quite different.

Virginia Primary 2012

For those who would deny the possibility of such events triggering seismic shifts in campaign momentum, one need only look to the curious circumstances of the 2012 Virginia Republican presidential primary. Virginia, like Indiana and many other states, requires a certain number of signatures by registered voters in each congressional district with a total of 10,000 signatures statewide for a candidate to qualify for the ballot.⁴⁶ Four of the Republican presidential candidates had trouble reaching the 10,000 mark, including former Speaker of the House Newt Gingrich, a resident of Virginia.⁴⁷ Just before the deadline, the Gingrich campaign submitted 11,000 signatures.⁴⁸

The Republican Party of Virginia (RPV) reviewed the ballot petitions and the voter signatures to ensure their validity. Unlike what occurred in St. Joseph County, the RPV review was thorough and accurate. It determined that up to 1,500 of the signatures were invalid forgeries, thereby disqualifying Gingrich from the ballot because he had fallen below the 10,000-signature threshold.⁴⁹ The Virginia Attorney General prosecuted the ballot petition signature gatherer responsible for the forged signa-

tures, Adam Ward, who eventually pleaded guilty to 36 counts of voter fraud and perjury.⁵⁰

As a result of the RPV's review, Newt Gingrich was not allowed to run for the Republican nomination for President in his home state. The consequences of being kept off the ballot are seen in Gingrich's performance before and after the scandal. Gingrich carried only two states during the primaries, South Carolina and Georgia, the state he had represented as a Congressman.⁵¹ South Carolina's primary election was well before Virginia's, and the Georgia primary was the same day as Virginia's.⁵² Following his Georgia win, Gingrich did not win another primary, and former Massachusetts Governor Mitt Romney ultimately won the Republican nomination for President.

Speaker Gingrich and his campaign staff spoke out against the Virginia primary system, angry that he had been excluded. Campaign director Michael Krull said, "Only a failed system excludes four out of the six major candidates seeking access to the ballot."⁵³ Gingrich had a large base of support in Virginia and was leading Romney in polls before being kicked off the ballot.⁵⁴ While nothing is certain, had Gingrich been on the ballot in Virginia, and had he won the state, it is possible that his winning both Georgia and Virginia on the same day might have changed the momentum of what was a heated contest among a large number of candidates.

In a challenge to Virginia's ballot qualification requirement, a federal lawsuit was filed, seeking a court order for Gingrich and the other Republican candidates to be placed on the ballot. Although the suit was unsuccessful, the fact that Speaker Gingrich was excluded from the ballot demonstrates how a secure electoral system addresses fraud.

Conclusion

As Ryan Nees, the student who uncovered the Indiana fraud, stated: "What's important to me is that this sort of thing not occur in the future. This happened with impunity because no one thought that they would ever get caught, and in fact it was likely that no one would ever catch them because no structural safeguard existed to ensure that this wouldn't occur."⁵⁵ It is important to note that in both Indiana and Virginia, there is no indication that any of the candidates were involved in or had knowledge of the ballot petition fraud committed by party or local election officials to get them on the primary ballot.

The lesson to be learned from these scandals, however, is that when the proper oversight and structural safeguards are applied as happened in Virginia—but not Indiana—abuse of the election system can be stopped. There will always be nefarious individuals who are willing to subvert the integrity of America’s electoral process, because controlling elections means controlling jobs and money. As U.S. Attorney for Eastern Kentucky Kerry B. Harvey said in 2012 after conducting a number of successful election fraud prosecutions for vote buying, “These folks go out and hijack the local elections for their own purposes and then they use these jobs to enrich themselves and their confederates. It really is a terrible problem and it has to be stopped.”⁵⁶

The fraud in the Indiana case would not have been prevented by a voter ID law; however, supporters of election reform—such as requiring voter ID for in-person and absentee voting, proof of citizenship for voter registration, and verification of the accuracy

of voter registration information by comparing it with other state and federal databases—have never claimed that any single election reform measure by itself can stop all forms of election fraud.

The Indiana ballot petition fraud does show that there are individuals who are willing to commit fraud and break the law in order to subvert the electoral process to achieve their own goals. Only by improving security throughout the entire voting and election process can Americans negate the influence of those fraudsters and protect the integrity of this nation’s democracy.

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