The Place of Perceptions in the Debate over Election Fraud and Voter Identification

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Abstract
In the current debate over the constitutionality of voter identification laws, both the Supreme Court and defenders of such laws have justified them, in part, as counteracting a widespread fear of voter fraud that leads citizens to disengage from the democracy. Because actual evidence of voter impersonation fraud is rare and difficult to come by if fraud is successful, reliance on public opinion as to the prevalence of fraud threatens to allow courts to evade the difficult task of balancing the actual constitutional risks involved. In this short Article we employ a unique survey to evaluate the causes and effects of public opinion regarding voter fraud. We find that perceptions of fraud have no relationship to an individual's likelihood of turning out to vote. We also find that voters who were subject to stricter identification requirements believe fraud is just as widespread as do voters subject to less restrictive identification requirements.

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> *Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government.* Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.[1]

The current debate over the constitutionality of laws mandating photo identification for voters presents a series of largely unanswered, and in some respects, unanswerable, empirical questions. For the most part, the parties to the litigation culminating in the case currently before the Court, *Crawford v. Marion County Elections Board*,[2] have speculated about the number of illegal votes cast and the number of legal voters who would be prevented from voting were voting conditioned on the production of a driver's license or some other form of state-issued voter identification. When critics point to the lack of prosecutions or reported incidences of voter impersonation fraud, defenders of such laws reply, in part, that successful fraud goes undetected. When defenders of voter ID argue that such laws lead to very few people being turned away from the polls or having their votes uncounted, critics respond that even a violation of the voting rights of a few is constitutionally impermissible, and that precious little data exist to assess both the impact of such laws on the currently voting population or the deterrent effect it might have on future voters. With the scarcity of empirical findings to settle some of the factual issues central to this debate, there is great risk that the Court will resign itself, as it hinted it might in *Purcell v. Gonzalez*, quoted above, to its intuition that "fear" of election fraud "drives honest citizens out of the democratic process." This intuition, however, presents a testable empirical proposition, which this Article attempts to evaluate based on new survey data that assess the popular perception of election fraud and the likelihood that such beliefs lead to voter disengagement.

We begin this Article in Part I by situating the argument as to fears of fraud into the debate over voter identification requirements and election law more generally. The argument follows a path familiar to campaign finance law, in which the Court elided difficult questions about the empirics of campaign contributions and corruption by relying on the appearance of corruption as a state interest sufficient to justify restrictions on campaign

[1] Purcell v. Gonzalez, 127 S. Ct. 5, 7 (2006) (per curiam) (emphasis added).
[2] 484 F.3d 436 (7th Cir. 2007), cert. granted, 2007 WL 1999963 (Sept. 25, 2007) (upholding Indiana photo identification law).

contributions and expenditures.[3] Part II describes the unique national survey we conducted to assess how widespread popular fear of two different types of election fraud is and the relationship between such fear and the likelihood of voters turning out to vote. In Part III, we present findings suggesting that such fears of fraud, while held by a sizable minority of the population, do not have any relationship to a respondent's likelihood of intending to vote or turning out to vote. Part IV then assesses whether voter identification laws might make a difference in quelling such fears of fraud. We find that voters who have been forced to show identification are also no less likely to perceive fraud then those not similarly subject to an ID requirement. Part V presents our conclusions, which can be simply summarized here. In this Article, we do not endeavor to assess the extent of actual fraud or the likelihood of vote denial under a photo identification regime,[4] but we consider those to be the central empirical questions that should guide the decision over the constitutionality of voter ID laws. The Court should not seek refuge in this field, as it has others, in putative conventional wisdom as to the alleged harms caused by widespread perceptions of a defect in American democracy or the likelihood of voter ID laws to address them. That conventional wisdom is wrong, we argue, and should not substitute for the admittedly challenging predictive judgments as to the greater constitutional threat posed by actual fraud or by attempts to prevent it.[5]

I. The Familiar Place of Perceptions in the Debate over Election Fraud

The dictum in *Purcell* concerning fears of election fraud may simply be an innocent attempt at armchair social science, but the parties to the *Crawford* litigation have not treated it as such. A dozen briefs filed in the case have taken the Court at its word that combating perceptions of fraud and

[3] *See* Nathaniel Persily and Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 119 (2004).

[4] For such an assessment, see Stephen Ansolabehere, *Access versus Integrity in Voter Identification Requirements*, NYU ANNUAL SURVEY OF AMERICAN LAW (forthcoming 2008).

[5] *See* Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631 (2007) (arguing that some disenfranchisement due to voter ID requirements is certain while voter impersonation fraud is a hypothetical problem).

concomitant declines in citizen engagement can justify voter identification laws.[6]

The state Respondents' brief was most emphatic in its advocacy of a state interest to restore confidence in elections. Citing Gallup and Rasmussen polls attesting to the widespread lack of confidence Americans have in the integrity of elections, the state's brief contained an entire subsection titled, "The need to preserve public confidence in elections justifies the Voter ID Law."[7] Because opportunities for abuse exist, this state interest in restoring confidence is compelling, the brief argued, "[r]egardless whether particular instances of fraud are well documented."[8]

The state's brief and several others viewed the governmental interest here as analogous to the state's interest in using campaign finance regulations to combat the perception of corruption. In a series of cases beginning with *Buckley v. Valeo*[9] and extending through *McConnell v. FEC*,[10] the Court has said "of almost equal concern as the danger of actual *quid pro quo*

[6] Briefs supporting the photo ID law and restating the *Purcell* argument include: Brief of Respondent States at 21, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 3, 2007); Brief for United States as Amicus Curiae for Respondents at 18, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 10, 2007); Brief for Lawyers Democracy Fund as Amicus Curiae for Respondents at 27, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 10, 2007); Brief for Mountain States Legal Foundation as Amicus Curiae for Respondents at 24, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 6, 2007); Brief for Texas et al. as Amici Curiae for Respondents at 27, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 10, 2007); Brief for Democratic and Republican Election Officials as Amici Curiae for Respondents at 5, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 7, 2007); Brief for American Unity Legal Defense Fund as Amicus Curiae for Respondents at 23, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec.10, 2007); Brief of Republican National Committee as Amicus Curiae for Respondents at 20, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 10, 2007); Brief of McConnell et al. as Amici Curiae for Respondents at 9, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 10, 2007). Briefs opposing the photo ID law that address the argument in Purcell include: Brief of Petitioner ACLU at 53, Crawford v. Marion County Election Board, No. 07-21 (U.S., filed Nov. 5, 2007); Brief for Brennan Center et al. as Amici Curiae Supporting Petitioner at 30, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Nov. 13, 2007); Brief for Hasen as Amicus Curiae Supporting Petitioner at 36, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Nov. 9, 2007).

[7] Brief of Respondent States at 21, 53, Crawford v. Marion County Election Board, Nos. 07-21 & 07-25 (U.S., filed Dec. 3, 2007).

[8] *Id.*

[9] 424 U.S. 1 (1976).

[10] 540 U.S. 93 (2003).

arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large financial contributions."[11] In cases challenging the constitutionality of such laws, the defenders of campaign finance reforms point to news reports, testimony and even public opinion polls suggesting that people view campaign contributors as having undue influence over government policy.[12]

As is the risk with the voter ID inquiry, this backup state interest founded on appearances and perceptions allows defendants (and judges) to escape from the more difficult task of proving that actual corruption exists. In other words, it is much easier to prove that people believe campaign contributions often buy political favors than it is to demonstrate that such a dynamic, in fact, exists. Because politicians can almost always say "they would have voted that way anyway" and contributors can almost always say "we direct money to candidates who already share our beliefs" it will be very difficult to prove that a given contribution's recipient would have behaved differently in its absence. Indeed, such perceptions and appearances do not even really depend on the existence of actual corruption, because awareness of the "opportunities for abuse" is sufficient to establish the state's interest. Nor does an analysis based on such perceptions necessarily imply that a particular remedy will be successful in removing them.

The argument is similar when it comes to vote fraud. It is difficult to prove its existence, because, if successful, fraud goes undetected.[13] It is much easier to look at a system's potential for abuse and to point to public opinion that suggests such abuse occurs with great frequency. In both contexts, one cannot quibble with the democratic value of such feelings of legitimacy in the abstract. That is, few would prefer a state of affairs in which people see government as corrupt or elections as rigged. However, if such opinions are insensitive to regulatory regime changes – *i.e.*, campaign contribution restrictions or photo ID laws – then something else must be responsible for these general feelings of a lack of distrust.[14] Finally, if the importance of these beliefs is their relationship to citizen engagement, then such a relationship could easily be established by showing a correlation between such opinions and the likelihood of voting.

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[11] Buckley, 424 U.S. at 27. *See also* Nixon v. Shrink Missouri Gov't PAC, 528 U.S. 377, 389 (2000).

[12] *See* Persily & Lammie, *supra* note __, at 128-134.

[13] *See* Crawford v. Marion County Elections Board, 484 F.3d 436 (7th Cir. 2007), cert. granted, 2007 WL 1999963 (Sept. 25, 2007) (discussing the reasons why states would not enforce bans on voter impersonation).

[14] For a review of the literature on trust in government, see Margaret Levi & Laura Stoker, *Political Trust and Trustworthiness*, 3 ANN. REV. POL. SCI. 475, 476-85 (2000) (reviewing survey data both in the United States and in other countries).

II. Survey Methodology

Our study examines survey data from 2006 and 2007 to calculate how pervasive Americans believe voter fraud to be and to understand whether such beliefs affect the likelihood of a voter turning out. A national matched-random sample survey of American adults was conducted as part of the 2007 Cooperative Congressional Election Survey, or CCES, for short.[15] Polimetrix, of Palo Alto, CA, selected a matched-random sample of 2,000 adults, designed to reflect the national population.[16] Although respondents were selected through various internet-based methods, the resulting sample mirrored the main demographic characteristics – gender, age, education, race, region, and income – and the political characteristics of other surveys – especially party identification and ideological orientation.[17] Comparison of the sample with the observed vote in 2006 provides a validity check on the sample methodology. The predicted division of the 2006 vote from the CCES sample forecast the election outcomes in the U. S. Senate and governor elections quite well.[18]

The survey was designed primarily to study the 2006 election and public opinion of legislative politics. The overall study consists of a 36,500 person survey conducted through the collaborative efforts of 37 universities organized into 35 teams. Each of the teams designed their own content that consists of a 1,000 person sample. Questions common to all of the teams (such as vote and various demographics) are pooled into a common survey conducted under the same sampling frame and resulting in the large 36,500 person sample. A further sample of 10,000 respondents from the original 36,500 was drawn for a follow up survey conducted in November 2007. The MIT team designed the content for one subset of this follow up study. The MIT CCES 2007 survey, then, consists of 1,000 interviews of respondents in

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[15] The 2005 survey contained 1,200 subjects and was fielded between October 31, 2005, and November 10, 2005. The 2006 survey consists of the MIT Team Module for the 2006 CCES, which contains questions asked on the Common Content module. The Common Content was administered to 36,000 respondents; the MIT Team content to 1,000 respondents. These data are available at http://web.mit.edu/polisci/portl/index.html.

[16] Douglas Rivers, *Representative Sample Matching from Internet Surveys*, *available at* http://web.mit.edu/polisci/portl/cces/material/sample_matching.pdf.

[17] Because very low income minorities and non-voters were underrepresented, we weight the sample to offer some correction for this. In regression analyses, we control for information and education to compensate for possible biases.

[18] *See* Stephen Ansolabehere, Samantha Luks, and Douglas Rivers, *Handicapping the 2006 Election*, *available at* http://www.pollster.com/Polimetrix%20CCES%20Press%20Release%20110606.pdf.

the original 2006 CCES. In addition, 1,000 new cases were drawn for the 2007 MIT survey. That design resulted in a 2,000 person national sample survey, which we analyze in this Article.

III. Beliefs in the Frequency of Vote Fraud and Vote Theft

The survey questions concerning the frequency of election fraud attempted to gauge respondents' opinions on two distinct phenomena. The first, which represents a subset of the type of fraud at issue in the voter ID controversy, concerns the illegal casting of votes by noncitizens or the casting of more than one ballot by a voter. We term this voter fraud. The second, which concerns stealing or tampering with votes once cast, is what we call vote theft. We recognize that these questions together do not exhaust all possible types of election fraud. We also acknowledge that the measure of voter fraud does not perfectly capture the category of voter impersonation fraud, which has become central and controversial in *Crawford, Purcell* and other voter ID cases.[19] Nevertheless, the data begin to give a sense of how widespread the public considers certain election irregularities to be. The distribution of responses is also consistent with that found in other surveys on election fraud.[20] The precise wording of the survey items appears below:

> Question 29. It is illegal to vote more than once in an election or to vote if not a U. S. citizen. How frequently do you think such vote fraud occurs?
>
> It is very common
> It occurs occasionally
> It occurs infrequently
> It almost never occurs
> Not Sure
>
> Question 30. Another form of fraud occurs when votes are stolen or tampered with. How frequently do you think such vote fraud occurs?

[19] These questions were not developed specifically to test attitudes toward voter impersonation fraud or the opinions directly relevant to *Purcell* and *Crawford*. In a future survey we will ask the following question: "It is illegal for a person to attempt to vote by claiming he is someone else who is registered. How frequently do you think such vote fraud occurs?"

[20] *See* Rasmussen Reports, National Survey of 800 Likely Voters, January 2-3, 2008, http://www.rasmussenreports.com/public_content/politics/current_events/general_current_events/general_current_events_toplines/toplines_voter_id_january_2_3_2008.

It is very common
It occurs occasionally
It occurs infrequently
It almost never occurs
Not Sure

The results from the survey appear in Table 1. The findings with respect to each type of fraud are quite similar. About a quarter of respondents believe vote fraud (26%) and vote theft (23%) are very common. Another 36% and 37%, respectively, believe fraud and theft occur occasionally. About a fifth say vote fraud (20%) and vote theft (21%) occur infrequently, and only 8% say fraud and theft almost never occur. These numbers are consistent with a recent Rasmussen poll which found that 23% of likely voters agreed that "[i]n most elections, large numbers of people [are] allowed to vote who are not eligible to vote."[21]

Table 1. Beliefs in the Frequency of Voter Fraud and Vote Theft

	Voter Fraud	Vote Theft
It is Very Common	26%	23%
It Occurs Occasionally	36	37
It Occurs Infrequently	20	21
It Almost Never Occurs	8	8
Not Sure	11	10
Number	1986	1935

Political debate over identification requirements and voter fraud has exposed a partisan difference. Democrats tend to express greater worries about vote theft and Republicans express greater concerns about voter fraud. The CCES survey data bear out the partisan orientation of beliefs about vote fraud. Democrats are somewhat more likely (by only three percentage points) than Republicans to state that Vote Theft is very common. The partisan gap with respect to fraud is a bit more pronounced, as portrayed in Appendix A. 35

[21] *See id*.

percent of Republicans say that Vote Fraud is very common, whereas only 15 percent of Democrats give the same response.

Other demographic and political variables also help explain which people believe fraud is more common. Ideology (an individual's self-placement on a liberal to conservative continuum) does a better job than partisanship in explaining attitudes to fraud. Whereas 46% of those who describe themselves as very conservative believe fraud is very common, only 16% of those who describe themselves as very liberal hold a similar view. Ideology remains significant in multivariate analysis. The racial gap in opinion is smaller than the ideological divide: 16% of Blacks, 21% of Hispanics, and 27% of Whites think fraud is very common.[22] These racial differences cannot be entirely explained by socioeconomic status, given that lower educated and poorer respondents are somewhat *more* likely to say that fraud is very common, a relationship that remains statistically significant in regressions.[23]

Partisan and demographic differences, however, distract from a more important commonality running through the data. Those who believe that one form of vote fraud occurs frequently are very likely to believe that the other form occurs frequently. As Table 2 describes, belief in one form of fraud is strongly, positively correlated (r=.51) with belief in the other form of fraud. Of those who think voter fraud is very common, for example, 59 percent think vote theft is very common. Partisan differences at least among the public as a whole are of secondary importance.[24] People who have low levels of confidence in the integrity of elections tend to be consistent in their beliefs across different metrics of election mischief.

Table 2. Belief in Frequency of Vote Theft Given Belief in Frequency of Voter Fraud

Frequency of Vote Theft

[22] Surprisingly, there is no difference between whites and blacks on their beliefs as to the frequency of vote theft.

[23] If one controls for political party and ideology, however, the difference between blacks and whites is not statistically significant, but the difference with Hispanics, who are less likely to say fraud is common, is statistically significant.

[24] The Rasmussen poll concerning vote fraud similarly found modest differences among partisans. 14% of Democrats and 36% of Republicans believe "[i]n most elections, large numbers of people are allowed to vote who are not eligible to vote. *See id.* When we add vote theft into a regression with vote fraud as the dependent variable, only partisanship and perceptions of vote theft, but none of the demographic variables, remain statistically significant.

	Very Common	Occasionally	Infrequently	Never	Not sure
Voter Fraud					
Very Common	59%	29	9	2	5
Occasionally	13%	60	18	5	5
Infrequently	8%	28	51	10	4
Almost Never	17%	18	21	44	0
Not Sure	6%	14	3	1	75

IV. Perceptions of Fraud and the Likelihood of Voting

The central conjecture in the *Purcell* dictum and the *Crawford* briefs holds that the perception that fraud is extensive, weakens public confidence in the electoral process, and, thereby, lowers participation. Requiring voters to show photo identification, it is asserted, will appear to stem illegal voting, thereby, restoring the confidence of legal voters in the process.

These arguments point to a specific empirical prediction. Perceptions of higher rates of voter fraud ought to correlate negatively with participation in the electoral process. This is a novel conjecture within the academic research on voter turnout and has not been subject to empirical study. Past research has found correlations between an individual's sense of political efficacy and his or her reported vote and intentions to vote.[25] Also, researchers have examined the connection between electoral laws, such as the Voting Rights Act or Election Day Registration provisions, and turnout.[26] But we know of no research that examines the connection between beliefs about fraud and the likelihood of voting.

We can test this conjecture directly using the data available through the MIT Content of the 2007 Cooperative Congressional Election Survey. The prediction holds that there should be a negative correlation between the perceived frequency of fraud and the propensity to vote. The survey contains three distinct measures of voting: Reported Vote (in the 2006 general election), Validated Vote (in the 2006 general election), and Intended Vote (in the 2008 presidential primary). The relationship between these different measures is presented in Appendix B.

Reported Vote reflects the respondents' own reports as to whether they voted in the November 2006, general election. Reported vote is the most

[25] *See generally* STEVEN ROSENSTONE AND JOHN MARK HANSEN. PARTICIPATION, MOBILIZATION AND AMERICAN DEMOCRACY (1993).
[26] *Id.*

commonly studied indicator of political participation, even though it is well known to exaggerate actual levels of participation owing to measurement error and misreporting. In the 2004 American National Election Study, 80 percent reported voting in the general election.[27] This has been determined to be a mix of incorrect reporting and sample selection.[28] Our sample, though not as extreme, was no exception: 70 percent reported voting in the 2006 midterm election; actual participation rates were slightly above 40 percent.[29]

Because surveys of voter turnout tend to misrepresent the voting population, achieving a more accurate measure of turnout requires the more labor intensive endeavor of independently verifying which survey respondents, in fact, turned out to vote. Validated Vote indicates all survey respondents who actually voted according to official election records, regardless of how they responded to the questions. Polimetrix, the firm that conducted the survey, attempted to match the survey respondents to the voter registration rolls. This allows us to validate the reported vote using the individual's actual vote history. Validated vote, then, consists of all people who reported that they voted and whose names could be matched to a record on the voter rolls. Non-voters among the validated are those whose names appear on the registration rolls and who did not vote and those who indicated in the survey that they were not registered to vote. Some respondents say they are registered but no record is found. We omit these ambiguous cases. The validated vote rate of those matched to the rolls or identified as not registered equaled 57 percent, still an overestimate as compared to actual returns but much closer to the actual share of the population who turned out to vote.

Intent to Vote in the 2008 Presidential Primary provides a third indicator of participation. The survey asked voters in November of 2007 whether they intended to vote in the coming 2008 Presidential Primary elections and, if so, which party and for which candidate. Like reported vote,

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[27] Calculated by the authors from the American National Election Survey http://www.electionstudies.org/studypages/2004prepost/2004prepost.htm

The National Election Studies (www.electionstudies.org). THE 2004 NATIONAL ELECTION STUDY [dataset]. Ann Arbor, MI: University of Michigan, Center for Political Studies [producer and distributor].

[28] *See* Brian D. Silver, Barbara A. Anderson, & Paul R. Abramson, *Who Overreports Voting?*, 80 AMER. POL. SCI. REV. 613-624 (1986) (concluding that educated people overreport turnout).

[29] Election Assistance Commission, 2006 Election Administration and Votiong Survey, http://www.eac.gov/clearinghouse/docs/eds-2006/2006-eds-votes-and-turnout.pdf/attachment_download/file .

vote intentions tend to exaggerate actual behavior. In our sample, 75 percent said they intend to vote in the primary. We view this not as a measure of behavior so much as a measure of psychological attachment to the process and interest in electoral politics.

We examine how each of these measures of electoral participation (reported, validated, and intention) vary with perceptions of the frequency of voter fraud and voter theft. Table 3 presents the percent of survey respondents reporting that they voted, with validated vote, or intending to vote within each level of the two measures of belief in vote fraud. The value of 76% in the first entry, for instance, means that 76 percent of those who think Voter Fraud is very common reported that they voted in the 2006 general election (and 24% reported that they did not). If the *Purcell* theory of citizen engagement were true, voter participation should be lower among those who think fraud occurs very often.

No such correlation emerges, and if anything the data suggest the opposite occurs. Those who are not sure how much fraud occurs in the electoral process exhibit the lowest participation rates across all measures. Among those who had some belief about the extent of fraud the correlation between that belief and turnout proved extremely weak and always statistically insignificant. Inspection of each of the columns in the table shows that reported, validated, and intent to vote are nearly invariant to beliefs about vote fraud or vote theft. If anything, participation tends to be higher among those who perceive fraud to be common and widespread.

We should reiterate that the *Purcell* theory of a relationship between fraud fears and citizen engagement was a perfectly plausible hypothesis. It makes intuitive sense that people who think their valid votes will be diluted by fraudulent ones will be less likely to turn out. At least in the present U. S. context, though, turnout bears no relationship to perceptions of vote fraud. This is not to say that such a connection would not exist if reports of voter fraud were widespread; rather, the assumption behind *Purcell* and the *Crawford* briefs does not fit the current American political reality. As far as we can tell the argument lacks any empirical support.

Table 3. Turnout and Beliefs about the Frequency of Voter Fraud and Vote Theft

	Turnout Indicator		
	Reported Vote In 2006 G.E. % Yes	Validated Vote In 2006 G.E. % Yes	Intent to Vote In 2008 P.E. % Definite
Belief About Voter Fraud			
Very Common	76%	58%	77%
Occasionally	68	57	71
Infrequently	66	56	65
Almost Never	76	57	79
Not Sure	55	38	50
Overall	70%	57%	75%
Number of Cases	1986	1340	1986
Correlation			
Vote & Belief	.07	.02	-.06
Vote & Not sure	.14	.12	-.17
Belief About Vote Theft			
Very Common	76%	62%	79%
Occasionally	69	56	70
Infrequently	69	55	70
Almost Never	66	53	67
Not Sure	56	37	50
Overall	72%	57%	72%
Number of Cases	1935	1307	1935
Correlation			
Vote & Belief	.08	.05	.01
Vote & Not sure	.10	.12	-.15

V. Voter Identification and Fears of Fraud

Not only does *Purcell* posit that fears of voter fraud will lower citizen engagement, but the Court appears to assume that voter identification laws, at

least to some degree, will lessen those fears and bolster voter confidence in elections. Even if such fears do not affect the likelihood of voting, if the remedy bolsters confidence one might still say the policy is worth pursuing. However, the data that exist on the relationship between voter ID laws and fears of fraud do not support even this more modest argument.

We test this argument two ways. First, we can measure the effect of statewide frequency of the use of identification when voting on individual participation rates. Second, we can examine whether those who were asked to show photo identification in 2006 in fact had more confidence in the process in 2007.

The particular structure of the Cooperative Congressional Election study allows us to measure the use of voter identification at the aggregate state-level and the individual level. The 2006 CCES asked individuals whether they were asked to show picture identification when they voted. Approximately half of all voters say that they were asked to show photo identification, with the highest rates in the Southern states and the lowest rates in the New England region.[30] States served as the sampling frame for the 2006 CCES, and the very large 36,500 person sample creates sufficient density of cases in each state that we can aggregate the individual level responses to the state level to estimate the frequency with which voter identification is required in the states. Of course, only a few states actually mandate *photo* identification as the only acceptable form of identification in order to vote.[31] We suspect that most respondents who say they were asked for photo ID, in fact, were merely asked for some form of ID and they produced a photo ID, which is the most likely type of identification voters would have handy. Nevertheless, one might suspect that if more stringent identification requirements produce more confidence in elections that voters that say they needed to produce ID would have lower fears of fraud than those not similarly asked.[32]

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[30] *See* Ansolabeher, *supra* note__.

[31] *See* Electionline, *Voter ID Laws,* available at http://electionline.org/Default.aspx?tabid=364http://electionline.org/Default.aspx?tabid=364

[32] Of course, it is also possible that photo ID is required in areas where a greater fear of fraud precipitated the passage of a photo ID law. If so, then we might expect ID requirements to have the reverse effect and be a symptom of voters' fears of fraud, rather than a remedy. The same might be true if photo ID laws lead people to worry that more fraud is being policed. Just as when a large police presence in a neighborhood might heighten residents' fears of crime, so too stringent voter ID laws might cause them to worry that fraud has made such requirements necessary. Even if one of these theories is true, it still represents counterevidence to the notion that voter ID laws will lead to the mitigation of fears of election fraud. It is also possible that respondents may answer the vote fraud question with respect to the nation as a whole, while not believing that fraud occurs in their state in particular.

How do individual level and aggregate rates of voter identification affect vote rates? The answer is not at all. The correlations between Reported Vote and Beliefs about Voter Fraud and Vote Theft equal .02 and .01 respectively – almost exactly zero. As the regression presented in Table 4 explains, holding constant education, party identification, interest in politics, and other predictors of turnout did not improve matters. Whether the state or local election administration frequently ask for voter identification or not seems to have no relationship to individuals' beliefs about the frequency of fraud.

Table 4. Regression Analysis of the Effects of Voter Identification on Beliefs about Voter Fraud and Vote Theft (Subsample of those interviewed in 2006 and 2007)

Independent Variables	Voter Fraud Coeff (S.E.)	Vote Theft Coeff. (S. E.)
%State ID	.12 (.16)	.12 (.15)
Showed ID in 06	-.01 (.11)	.09 (.10)
Democrat	-.25 (.10)	-.02 (.09)
Republican	.08 (.09)	-.25 (.09)
Education	-.11 (.03)	-.08 (.03)
Interest in Politics	.19 (.06)	-.23 (.06)
Constant	1.84	1.54
N	706	651
R-Square	.05	.05

VI. Conclusions

There is always a risk when judges base their decisions on untested empirical claims about political behavior that a more serious inquiry into the data will prove them wrong. This risk is particularly great when judges attempt to assess American public opinion and its likely consequences.[33] We think the Court made this mistake in *Purcell* and threatens to do so again in *Crawford*. We worry, in particular, that the arena of vote fraud and voter ID is

[33] *See generally* Nathaniel Persily, *Introduction*, in PUBLIC OPINION AND CONSTITUTIONAL CONTROVERSY (N. Persily et al eds., 2008) (discussing the use of public opinion in constitutional cases).

ripe for such conjectures about perceptions because, as with campaign finance, the more relevant empirical claims about the existence of fraud and the potential for disfranchisement are so contested. Our exploration of the data presented here, however, suggests that casual assertions about popular beliefs should not substitute for the difficult balancing of the constitutional risks and probabilities of vote fraud and vote denial.

Although a sizable share of the population believes that vote fraud commonly or occasionally occurs, there is little or no relationship between beliefs about the frequency of fraud and electoral participation (reported, validated, or intended). To the extent that any correlation holds it runs counter to expectations. Nor does it appear to be the case that universal voter identification requirements will raise levels of trust in the electoral process. Such fears appear unaffected by stricter voter ID laws, given that individuals asked to produce ID seem to have the same beliefs about the frequency of fraud as those not asked for ID.

We would not fault the Court for its very plausible, even if currently false, intuition. It makes perfect sense to assume that as perceived fraud increases, the share of honest citizens willing to participate in the fraudulent system would decline. Election boycotts in the face of fears of election rigging are commonplace in the developing world.

We are also quite sympathetic to the broad principle that states should act to bolster confidence in elections and their administration. That confidence may be difficult to restore in the post-*Bush v. Gore*[34] era, when any irregularity –real or hypothesized—is perceived as having the potential to decide the fate even of a national election. Nevertheless, states would do well to address real problems with real metrics for success, while weighing favorable effects on public opinion as a considerable side benefit.

[34] 531 U.S. 98 (2000).

APPENDIX A

		Vote Fraud						Vote Theft			
	Very common	Occasionally	Infrequently	Never happens	Not Sure		Very common	occasionally	Infrequently	Never happens	Not Sure
Party											
Democrat	15%	36%	23%	13%	13%		23%	38%	19%	9%	11%
Republican	35%	37%	17%	5%	7%		20%	36%	25%	11%	8%
Independent	29%	36%	15%	7%	7%		27%	31%	21%	4%	7%
Ideology											
Very Liberal	16%	32%	27%	16%	9%		34%	43%	11%	3%	9%
Liberal	12%	34%	32%	14%	9%		23%	38%	22%	7%	10%
Moderate	23%	39%	20%	9%	10%		24%	39%	21%	8%	8%
Conservative	37%	37%	15%	5%	5%		22%	35%	23%	12%	8%
Very Conservative	46%	31%	12%	3%	7%		28%	39%	20%	6%	6%
Race											
White	27%	37%	20%	6%	10%		24%	38%	20%	8%	10%
Black	16%	36%	23%	11%	14%		24%	37%	22%	6%	11%
Hispanic	21%	26%	23%	15%	15%		17%	39%	22%	10%	12%
Education											

No High School	29%	28%	16%	5%	23%		25%	31%	19%	4%	20%
High School	28%	37%	16%	5%	13%		25%	37%	18%	6%	14%
Some College	27%	34%	21%	9%	9%		26%	39%	20%	8%	8%
2-year	21%	35%	21%	12%	11%		23%	38%	20%	10%	10%
4-year	22%	35%	27%	9%	8%		19%	40%	26%	8%	6%
Post grad	17%	38%	24%	17%	4%		17%	34%	26%	17%	5%
Generation											
born before 1928	28%	30%	23%	4%	14%		10%	22%	38%	20%	20%
1928-1945	30%	39%	15%	10%	6%		26%	43%	16%	10%	5%
1946-1960	28%	36%	17%	8%	11%		26%	37%	19%	7%	11%
1961-1973	25%	36%	21%	9%	9%		21%	37%	22%	10%	10%
1974-1990	21%	33%	24%	7%	15%		21%	36%	24%	6%	13%
Income											
1st Quintile	30%	32%	17%	6%	14%		27%	37%	16%	7%	13%
2nd Quintile	20%	36%	20%	7%	18%		22%	36%	18%	7%	17%
3rd Quintile	23%	40%	19%	7%	11%		23%	40%	21%	6%	9%
4th Quintile	29%	35%	22%	75	7%		25%	42%	18%	7%	8%
5th Quintile	22%	36%	24%	11%	6%		20%	34%	29%	12%	6%

Appendix B

Comparison of Reported and Validated Vote
(Percent Valid Given Reported Vote)

	Entire Sample			Matched Sample*		
Reported Vote	Validated Vote			Validated Vote		
In 2006 G. E.	No	Yes	Number	No	Yes	Number
Did Not Vote	91%	9%	541	86%	14%	350
Not Sure	84%	16%	63	75%	25%	41
Did Vote	52%	48%	1386	28%	72%	952
	63%	37%	1990	45%	55%	1,343

*Consists of all people actually matched to voter registration rolls and those survey respondents who said they were not registered.