

Hypothetical fraud: Behind the firing of David Iglesias

by [Meg Murphy-Sweeney](#) in the [April 17, 2007](#) issue

The Justice Department has made stamping out fraud by individual voters a priority. Since the 2002 launch of its Ballot Access and Voting Integrity Initiative, 86 individuals had been convicted of ballot fraud, the department boasted in a press release last year. Federal prosecutor David Iglesias of New Mexico, one of the eight U.S. attorneys recently fired by the Bush administration, had twice been invited to be a trainer at the Justice Department's annual symposium on voter fraud because he created a task force to investigate allegations of fraud in the 2004 election season.

But Iglesias's investigation did not lead him to make any indictments, so state GOP leaders complained to the White House and the Justice Department that he wasn't being aggressive enough. By December 2006 Iglesias, who was also under fire for failing to seek indictments in a local corruption case, was out of a job.

What were the GOP leaders hoping would come from Iglesias's investigation? A look into the *Larrañaga* voter fraud case, which concluded just before Iglesias convened his task force, provides clues about the tactics and politics involved in voter fraud cases. It also suggests why Iglesias didn't find any cases of fraud in New Mexico, despite Republicans' complaints.

Attorney John Boyd, who defended the county clerk of Bernalillo County and the secretary of state of New Mexico in the *Larrañaga* case, recounted the events leading to the lawsuit: In the summer of 2004, when new registrations were running heavily in favor of Democrats (thanks to successful third-party registration drives), Republicans walked into the county clerk's office and asked if there were any problem registrations. Yes, they were told, about 10 percent had been set aside. Some registrations were illegible, some listed a post office box instead of a street address—"the typical gamut of what can be wrong when people are hurriedly filling out forms," said Boyd. Republican leaders then called a press conference to

announce that some 3,000 fraudulent registrations had been submitted, and they filed a lawsuit, with state legislator Larry Larrañaga as the lead plaintiff.

Even though the 3,000 applications were ones that had already been rejected by the clerk—many of them for innocuous problems like missing information—the phrase “3,000 fraudulent registrations” became a mantra for the plaintiffs’ supporters and appeared in media reports throughout the controversy.

When filing the suit, the plaintiffs attached registration forms for six people as examples of the alleged fraud. One form lacked a signature; several other registrants had filed duplicate cards with nonmatching signatures. (Sometimes people fill out a second form if they forget that they’ve already registered or aren’t sure whether their first application went through.) The defense wanted to know why the signatures didn’t match, so it contacted the people who had filled out the duplicate cards. In one case a college student rushing to class had signed the second card without setting it on a flat surface. In another case a husband had signed for his wife after a worker at a voter registration table told him it was OK to do so. According to the defense, none of the attached forms had made it past the clerk’s office, so none would have resulted in a fraudulent vote. “These were their best cases,” said Boyd.

What the plaintiffs wanted from the judge was a new interpretation of New Mexico’s voter identification statute. The federal Help America Vote Act, passed in 2002, says that anyone who will be voting for the first time in a particular jurisdiction and who registered by mail must present identification either by sending it in the mail with their registration form or by presenting it at the polls. Several types of identification are acceptable—a driver’s license, utility bill or government check will work—but the ID must be current and must contain the voter’s address. In 2003, New Mexico modified its law to accommodate this requirement. New voters who do not register in person have to present ID as required by HAVA.

At issue in the *Larrañaga* case was the interpretation of “register in person.” The plaintiffs contended that registering in person means registering at the office of the county clerk or the secretary of state. Filling out a card as part of a third-party registration drive doesn’t count, they said. Echoing HAVA’s language, the defense countered that someone who registers in person is simply someone who does not register by mail, in which case the new ID requirement doesn’t apply to people who sign up as part of a third-party registration drive.

The defense pointed out that many people do not have a driver's license, and many do not receive government checks, utility bills, or bank statements in their own name. And because students and people with low income are the most likely to move often, they are least likely to have ID with a current address. The defense contended that "an unknown, but significant number of New Mexicans who are newly registered and who would otherwise be lawful voters" would be turned away at the polls if the plaintiffs had their way. If the case went to the state Supreme Court, as some speculated that it would, the result would be magnified beyond Bernalillo County and might set the stage for a new interpretation of HAVA nationwide.

The plaintiffs also said that if their interpretation of the statute was not upheld, "all voters" would have their votes "diluted." This argument is noteworthy in light of a unanimous Supreme Court dictum in a 2006 voter ID case in Arizona: the justices declared that "voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised" and that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." In pushing the view that their interpretation of voter ID laws was necessary to avoid "diluting" votes, the plaintiffs may have been paving the way for the Court to expand its definition of *disenfranchisement* to the point where feeling as if one's vote could be canceled by a fraudulent one is deemed as grievous as actually being denied the right to vote.

When the *Larrañaga* plaintiffs lost, their supporters pushed Iglesias to start an investigation. And when Iglesias's investigation failed to launch new cases into the judicial pipeline, they complained to the White House and the Justice Department.

While Iglesias was under the gun for failing to act against individual voters in November 2006, some Democratic voters lodged a more concrete complaint. They said they had received calls directing them to the wrong polling place. A number of the complainants testified under oath that their caller ID revealed the source of the calls to be Republican Party headquarters. A judge determined that it was too close to the election to take action. After the election that case, now moot, was dropped.