PROTECTING THE RIGHT TO VOTE: ELECTION DECEPTION AND IRREGULARITIES IN RECENT FEDERAL ELECTIONS

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Submission entitled *Report by the Center for Voting Rights & Protection,* submitted by Donna L. Brazile, Chair, Democratic National Committee's Voting Rights Institute, Adjunct Professor, Georgetown University, has been retained in the official Committee hearing record. This report may also be found at http://www.votelaw.com/blog/blogdocs/GOP__Ballot__Security__Programs.pdf.

PROTECTING THE RIGHT TO VOTE: ELECTION DECEPTION AND IRREGULARITIES IN RECENT FEDERAL ELECTIONS

WEDNESDAY, MARCH 7, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 3:06 p.m., in Room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Mr. CONYERS. The Committee will come to order.

Will everyone take their seats? The doors are closed but not locked.

Ladies and gentlemen, there is no more important issue that comes before this Committee, this Congress or this Nation than protecting the right to vote. Our democracy is premised on the notion of one person, one vote. It is the keystone right of our Nation, and without it, all of the other rights and privileges of our people would quickly become meaningless.

And that is why so many of us think that this is a very, very unusually important hearing for the Judiciary Committee, "Protecting the Right to Vote: Election Deception and Irregularities in Recent Federal Elections."

Protecting the precious right does not come easily or cheaply. In a very real sense, we fought a war of independence over our people's right to vote, and the most basic reform that grew out of the Civil War was the 15th amendment's protection of the right to vote. Even then, it was not until we passed the Voting Rights Act in 1965 and those continuations, including the one last year, that we began to give true meaning to that right.

There is a constant ebb and flow in our democracy over this right. We have endured a lot of political abuses in our history: Tammany Hall, Pendergast, the Daley Machines, et cetera. We survived the debacle of the Florida election in 2000. In each case, we, with the best of intentions, have enacted reforms.

While the days of Bull Connor turning fire hoses on young voters may be over, those bent on voter suppression have only turned to more sophisticated devices. These modern-day tools include unfounded threats of arrest or loss of citizenship for failure to follow elaborate and fictitious procedural requirements, as well as deliberate disinformation with regard to correct polling locations, or even the actual date of election itself.

Just ask the voters turned away from the polls in Florida in 2000 because they were illegally purged from the voting rolls. Or the voters who waited in pouring rain for hours in inner city Columbus while their counterparts in the suburbs went speedily through the lines. Or the African-American voters targeted in nearby Prince George's County, Maryland, with false and misleading flyers.

While the notorious voter-suppression practices of the past have been outlawed, I believe it is time that we do the same with those notorious modern-day practices. In history, we responded to the challenges laid down by Susan Anthony, Martin Luther King, Jr., but today's modern-day prophets, like Bobby Kennedy, Jr., and Reverend Jesse Jackson, have clearly and eloquently spoken to the problems we face today.

If we are serious, and I believe this Committee is, about protecting this most fundamental of rights, we have our work cut our for us. And so I am proud to have joined with introducing the very important legislation that will be discussed today.

While this may be one step in our efforts to reform the election process, we not pretend it to be a complete solution. We also need to reduce our reliance on unverifiable electronic voting machines, so that American citizens can have the confidence in the results of our elections that they ought to have.

In each of the last three election cycles, electronic voting machines have literally cost tens of thousands of votes, with no means of accountability for this most cherished constitutional right.

We also need to better ensure fair allocation of voting machines in polling places. There is not a reason in the world we cannot give our citizens the benefit of an election-day holiday.

And we need a fairer, more voter-friendly system for provisional ballots so that innocent confusion on Election Day does not prevent eligible voters from casting a ballot and having it counted in each and every instance. We have seen disturbing instances of State and local officials using hyper technicalities to subvert the intent of the Help America Vote Act.

If we allow the infrastructure of our democracy to decay, our citizens will lose faith in our elections—and, for me, too many already have—and the very legitimacy of our democratic institutions is at risk.

Forty years after the passage of the Voting Rights Act—and I sat in this body and was present in this Committee when it was enacted—voters across the country continue to be the targets of deceptive practices and intimidation aimed at preventing them from voting. It is long past time for Federal legislation to help prevent this from occurring.

And I am 5 seconds over my 5 minutes, for which I will allow Lamar Smith as much time as he may need over the 5 minutes. And I am happy to introduce now my Ranking Member on the House Judiciary Committee from Texas, with whom I have had a very effective and cordial relationship.

Mr. Smith, you are recognized.

Mr. SMITH. Thank you, Mr. Chairman, both for the time and for those cordial comments.

Mr. Chairman, elections are run by human beings, and human beings have flaws. So it is no surprise and voting fraud and other

irregularities occur in each election. And each political party, of course, has their favorite examples. But voting fraud is deplorable, and we must do all we can to prevent it.

What I want to focus on today is something the vast majority of the American people have shown that they are very concerned about, and that is the problem of illegal immigrants voting and the need for photo ID requirements.

A recent *Wall Street Journal*-NBC News poll mirrors every other poll on this subject: Over 81 percent of those surveyed supported a requirement to show a photo ID before voting. This includes two-thirds majorities of African-Americans and Democrats and a majority of Hispanics.

In the 1996 election, that one of our colleagues testifying here today, Representative Loretta Sanchez, a House Administrative Committee investigation found "evidence of 748 improper ballots, 624 by immigrants who were not citizens when they registered to vote." And I am sure Ms. Sanchez and all of us agree that, while we all want to earn as many votes as possible, we only want votes that are legally cast by American citizens.

I am glad to see that the bills introduced by Representative Emanuel and Senator Obama to prevent voting fraud provide for stiff penalties, up to 5 years in jail, for illegal immigrants who vote illegally.

Clearly, under the terms of H.R. 1281 and S. 453, a person who signed the voting registration form that states they are a citizen when they are not a citizen is a false statement. And when that person votes and negates the vote of legally voting citizens, then the illegal immigrant has denied the legal voters right to exercise their vote.

Regarding the need for a photo ID requirement, one needs a photo ID to open a bank account or cash a check, drive a car or board a plane. Because a photo ID is so central to assimilation into American society, civil rights leader Andrew Young, the former U.N. ambassador and mayor of Atlanta, strongly supports a photo ID requirement.

In Mexico, strict anti-fraud regulations and photo ID requirements in voting have actually increased voter turnout. That is because when people have greater confidence in the election process, there is greater voter participation.

Unfortunately, State and local election administrators do not have a means of ensuring that only legal voters are voting. So what is the most practical solution?

In 2005, a prominent group of bipartisan leaders and scholars, led by former President Jimmy Carter and Secretary of State James Baker III, issued a very influential report.

One of the chief recommendations of the bipartisan Carter-Baker Commission on Voting was as follows: "Instead of creating a new card, the commission recommends that States use real ID cards for voting purposes. The Real ID Act, signed into law in May 2005, requires States to verify each individual's full legal name, date of birth, address, Social Security number and U.S. citizenship before the individual is issued a driver's license or personal ID card.

"A real ID is a logical vehicle, because the National Voter Registration Act established a connection between obtaining a driver's

license and registering to vote. The real ID card adds two critical elements for voting: proof of citizenship and verification by using the full Social Security number. The ID Act does not require that the card indicate citizenship, but that would need to be done if the card is to be used for voting purposes."

That is the end of their statement.

Mr. Chairman, requiring photo IDs is not costless, of course, but it is well worth it. As Homeland Security Secretary Chertoff recently stated, "It is a reasonable amount of money that people should pay to prevent people from getting on airplanes or getting in buildings and killing Americans. I think most people would say that $20 per person well spent."

And as the Carter-Baker report concluded, "Voters in nearly 100 democracies use a photo identification card without fear of infringement of their rights." If they can do it, so can we.

Mr. Chairman, like you, I look forward to hearing from our witnesses today, and I yield back the balance of my time.

Mr. CONYERS. Thank you so much, Mr. Smith.

All other opening statements will be included in the record, without objection.

Our second panel that will come after our first will consist of Ralph Neas of the People for the American Way; Donna Brazile, adjunct professor at Georgetown University; *Wall Street Journal* Columnist John Fund; Ms. Eve Sandberg, associate professor of Politics of Oberlin College.

Our first panel will consist of our distinguished junior Senator from Illinois, Barack Obama, who has worked in public service, started out as a community organizer, civil rights attorney, State senate leader.

Our second is a former colleague, now Senator, Ben Cardin, a Member of the Senate Judiciary Committee, who has been a national leader on health care, retirement, security and many other issues. We are delighted that our two Members from the other body can join us.

Then we have Loretta Sanchez of California, known for her work on education, public safety and crime reduction, a very articulate spokeswoman for the Hispanic-American community and in the Congress as well.

Then we have Rahm Emanuel of Illinois, a former White House official, former Chair of the Democratic Congressional Campaign Committee and who currently serves as Chairman of the House Democratic Caucus.

Next is our own colleague on the Judiciary Committee, Steve King, of Iowa. Thank you for joining us.

And, finally, we have Brian Bilbray of California, whose Committee assignments include Oversight and the Government Reform Committee.

Ladies and gentlemen, we welcome you all.

And we would invite Senator Obama to begin our discussion. Welcome to the Judiciary Committee.

TESTIMONY OF THE HONORABLE BARACK OBAMA, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Mr. OBAMA. Thank you very much, Mr. Chairman, to Ranking Member Smith and all the Members of the Committee. Thank you for taking the time to study this issue, and thanks for giving me the opportunity to be here today.

I was pleased to introduce the Deceptive Practices and Voter Intimidation Prevention Act in the Senate, along with my colleague, Senator Chuck Schumer, Senator Cardin, who is beside me today, and others, such as Senator Kennedy and Chairman of the Senate Judiciary Committee, Patrick Leahy.

I am honored that my colleague here in the House include yourself, Mr. Chairman, Congressman Emanuel, Congressman Becerra, Honda and Ellison, as well as Sanchez, introducing the companion legislation last week.

It is hard to imagine that we even need a bill like this. I think most Americans assume that voting is a sacred aspect of citizenship and people are going to meddle with it, that we are past that point. Unfortunately, there are people who will stop at nothing to try to defeat voters and keep them away from the polls. What is worse, these practices often exploit and target the most vulnerable populations: minorities, the disabled, seniors or the poor.

We saw countless examples of this in the past election. Some of us remember the thousands of Latino voters in Orange County, California who received letters warning them in Spanish that, "If you are an immigrant, voting in a Federal election is a crime that can result in incarceration." Or the voters in Maryland who received a "Democratic sample ballot," featuring a Republican candidate for governor and a Republican candidate for U.S. Senator. Or the voters in Virginia who received calls from a so-called "Virginia Elections Commission" informing them falsely that they were ineligible to vote. Or the voters who were told that they couldn't vote if they had family members who had been convicted of a crime. The list goes on.

Of course, these so-called warnings have no basis in fact and are made with only one goal in mind: to keep Americans away from the polls. We see these problems year after year and election after election, and my hope is that this bill will finally stop these practices in time for the next election.

The Deceptive Practices and Voter Intimidation Prevention Act makes voter intimidation and deception punishable by law, and it contains strong penalties so that people who commit these crimes suffer more than just a slap on the wrist.

The bill also seeks to address the real harm of these crimes, people who are prevented from voting by misinformation, by establishing a process for reaching out to those misinformed voters with accurate information so they can still cast their vote in time.

There are some issues in this country that are inherently difficult and political. Making sure that every American who is eligible can cast a ballot should not be one of them. There is no place for politics in this debate, no room for those who feel that they can get a partisan advantage by keeping people away from the polls.

And I think that it is fairly noted that this is not something that restricts itself to one party or another. I think both parties at dif-

ferent periods in our history have been guilty in different regions of preventing people from voting for a tactical advantage. We should be beyond that.

As the *New York Times* stated in its January 31st editorial on this issue, "The bill is an important step toward making elections more honest and fair. There is no reason it should not be passed by Congress, unanimously." I asked that this editorial be placed into the record.

Mr. CONYERS. Without objection, so ordered.

Mr. OBAMA. It is time to get this done in a bipartisan fashion, and I believe this bill can make it happen.

I look forward to working with you, Mr. Chairman, the Ranking Member, the other Members of this Committee, as well as many of the co-sponsors of this bill in both the House and the Senate to pass this legislation so that we can present it to the president for his signature, and I thank you very much for your time and attention.

I apologize, I will probably have to leave before all the other witnesses have completed their testimony. If there were specific questions for me, I would be happy to field them at this time.

[The prepared statement of Mr. Obama follows:]

PREPARED STATEMENT OF THE HONORABLE BARACK OBAMA, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman Conyers, distinguished members of the Committee, thank you so much for the opportunity to be here today and discuss with you legislation that will help restore integrity to our electoral system.

I was pleased to introduce the Deceptive Practices and Voter Intimidation Prevention Act in the Senate and I am honored that my colleagues in the House, including Chairman Conyers, Congressman Emanuel, Congressmen Becerra, Honda, and Ellison, introduced companion legislation last week.

It's hard to imagine that we even need a bill like this. But, unfortunately, there are people who will stop at nothing to try to deceive voters and keep them away from the polls. What's worse, these practices often target and exploit vulnerable populations, such as minorities, the disabled, or the poor.

We saw countless examples in this past election. Some of us remember the thousands of Latino voters in Orange County, California, who received letters warning them in Spanish that, "if you are an immigrant, voting in a federal election is a crime that can result in incarceration."

Or the voters in Maryland who received a "democratic sample ballot" featuring a Republican candidate for Governor and a Republican candidate for U.S. Senator.

Or the voters in Virginia who received calls from a so-called "Virginia Elections Commission" informing them—falsely—that they were ineligible to vote.

Or the voters who were told that they couldn't vote if they had family members who had been convicted of a crime.

Of course, these so-called warnings have no basis in fact, and are made with only one goal in mind—to keep Americans away from the polls. We see these problems year after year and election and after election, and my hope is that this bill will finally stop these practices in time for the next election.

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There are some issues in this country that are inherently difficult and political. Making sure that every American can cast a ballot shouldn't be one of them. There is no place for politics in this debate—no room for those who feel that they can gain a partisan advantage by keeping people away from the polls.

As the New York Times stated in its January 31st editorial on this issue, "the bill . . . is an important step toward making elections more honest and fair. There

is no reason it should not be passed by Congress unanimously." I would ask that this editorial be made part of the record.

It's time to get this done in a bipartisan fashion, and I believe this bill can make it happen. I look forward to working with you, Chairman Conyers, and the other members of the Committee, as well as the many co-sponsors of this bill, to pass this legislation this Congress.

ATTACHMENT

New York Times
January 31, 2007
EDITORIAL
Honesty in Elections

On Election Day last fall in Maryland, fliers were handed out in black neighborhoods with the heading "Democratic Sample Ballot" and photos of black Democratic leaders—and boxes checked off beside the names of the Republican candidates for senator and governor. They were a blatant attempt to fool black voters into thinking the Republican candidates were endorsed by black Democrats. In Orange County, Calif., 14,000 Latino voters got letters in Spanish saying it was a crime for immigrants to vote in a federal election. It didn't say that immigrants who are citizens have the right to vote.

Dirty tricks like these turn up every election season, in large part because they are so rarely punished. But two Democratic senators, Barack Obama of Illinois and Charles Schumer of New York, are introducing a bill today that would make deceiving or intimidating voters a federal crime with substantial penalties.

The bill aims at some of the most commonly used deceptive political tactics. It makes it a crime to knowingly tell voters the wrong day for an election. There have been numerous reports of organized efforts to use telephones, leaflets or posters to tell voters, especially in minority areas, not to vote on Election Day because voting has been postponed.

The bill would also criminalize making false claims to voters about who has endorsed a candidate, or wrongly telling people—like immigrants who are registered voters in Orange County—that they cannot vote.

Along with defining these crimes and providing penalties of up to five years' imprisonment, the bill would require the Justice Department to counteract deceptive election information that has been put out, and to report to Congress after each election on what deceptive practices occurred and what the Justice Department did about them.

The bill would also allow individuals to go to court to stop deceptive practices while they are happening. That is important, given how uninterested the current Justice Department has proved to be in cracking down on election-season dirty tricks.

The bill is careful to avoid infringing on First Amendment rights, and that is the right course. But in steering clear of regulating speech, it is not clear how effective the measure would be in addressing one of the worst dirty tricks of last fall's election: a particular kind of deceptive "robocall" that was used against Democratic Congressional candidates. These calls, paid for by the Republicans, sounded as if they had come from the Democrat; when a recipient hung up, the call was repeated over and over. The intent was clearly to annoy the recipients so they would not vote for the Democrat.

While there are already laws that can be used against this sort of deceptive telephone harassment, a more specific bill aimed directly at these calls is needed. But the bill being introduced today is an important step toward making elections more honest and fair. There is no reason it should not be passed by Congress unanimously.

Mr. CONYERS. Well, Senator Obama, we thank you for your commitment and your support of the legislation. We are happy that you will be with us for as long as you can.

I now recognize the junior Senator from Maryland, Ben Cardin.

TESTIMONY OF THE HONORABLE BENJAMIN CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Mr. CARDIN. Mr. Chairman, thank you very much. Mr. Smith and Members of the Committee, it is a real pleasure to testify before the Committee that I started my congressional service on.

When I was first elected to the House of Representatives, I had the honor of serving on the Judiciary Committee, and now I have the honor of serving on the Judiciary Committee in the Senate, and I look forward to working with you.

I would ask that my entire statement be made part of your record, and let me just try to summarize.

I want to thank you for holding this hearing on protecting the right to vote.

Mr. Chairman, I couldn't agree more with your opening statement. We have just celebrated the 42nd anniversary of the voting rights march in Selma, Alabama. John Lewis, of course, participated in that, our colleague here. It helped to pass the Voting Rights Act, 137 years since the ratification of the 15th amendment to the Constitution.

We have overcome poll taxes, we have overcome literacy tests and violence, and yet intimidation against minority voters still continues in the United States, and we need to do more about it.

I want to thank Senator Obama for taking the leadership in the United States Senate on the Deceptive Practices and Voter Intimidation Prevention Act of 2007. I think it is an extremely important point of legislation to make it clear that we will not tolerate practices by campaigns to try to win an election by marginalizing minority voters.

It happened in 2006 in my own State of Maryland. In that election, I had a hard fought primary election in which I was the Democratic nominee for the United States Senate. We then had an 8-week period between the primary and the general.

During the course of that campaign, I knew it would be very competitive, I knew it would be aggressive, but I must tell you, Mr. Chairman, I was shocked by what I saw come out the day before the election itself. And if I might, I would like to show you, and ask to be part of the record, the pamphlet that was handed out, widely spread, in minority communities in Maryland.

The pamphlet starts off by saying, "Ehrlich-Steele Democrats Official Voter Guide." It then has the photographs of three prominent African-Americans in the State of Maryland, one being Kweisi Mfume, who was my primary opponent on the Democratic side, our former colleague in the Congress, who endorsed my candidacy for the United States Senate after the primary. It has the photograph of Jack Johnson, who is the county exec of Prince George's County, the largest county of African-American voters in the State of Maryland. Jack Johnson endorsed my candidacy for the United States Senate.

The pamphlet then goes on to say, "These are our choices," making it kind of clear that these three prominent African-Americans had endorsed the Ehrlich-Steele Democratic slate. The inside of the brochure says, "Democratic sample ballot," giving the impression that this is the Democratic ballot. All of the candidates listed are

Democrats, except for the governor of our State and the U.S. Senate, in which the Republican candidates are listed.

The authority line on this literature is from the Republican candidate for governor and the Republican candidate for United States Senate.

This literature was widely distributed. The U.S. Senate candidate and the gubernatorial candidate brought in from Pennsylvania from homeless shelters, by bus, large number of workers to work Election Day who had no idea what they were giving out. I had a chance to talk to some of them, and they were giving out this literature, some of them when they found out what it was about, wanted to get back home but had no way of getting back home.

I mention all of this because this was a clear effort by the gubernatorial candidate and U.S. Senate candidate to try to confuse and marginalize minority voters, and it should not be allowed.

The legislation introduced by Senator Obama, which I am proud to be a co-sponsor, would make this type of deceptive practice illegal. It is a narrowly defined bill. To make it clear, it is in compliance with the first amendment of the Constitution. It applies only to communications within 60 days of an election. It deals with the tightly defined false and deceptive information about the time, place, the voter qualification, party affiliation or endorsement. It is narrow, but it does deal with the most blatant forms of deceptive practices that are aimed at suppressing minority votes. That is its effort.

Mr. Chairman, I knew the campaign for the United States Senate would be a rough campaign. I expected to see some things that go beyond the pale. That is all part of politics, and I accept that. But I think it is absolutely essential that we make it clear it is not acceptable to engage in a practice to marginalize minority voters. That should not be permitted in this country, and it is absolutely essential that the Congress go on record and make it clear that campaigns cannot participate in that type of conduct.

And I urge you to consider this legislation. I think it is vitally important.

I, again, thank Senator Obama for taking the leadership in the Senate.

[The prepared statement of Senator Cardin follows:]

PREPARED STATEMENT OF THE HONORABLE BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Chairman Conyers, Ranking Member Smith, thank you for the opportunity to testify today before the House Judiciary Committee on the critical subject of election deception and irregularities in recent federal elections. I am privileged to appear before you with such a distinguished panel of members of Congress, including Senator Obama, Congresswoman Loretta Sanchez, and Congressman Emmanuel.

In the interest of full disclosure, let me begin by stating that I greatly enjoyed my previous service on this committee which began when I was first elected to the House and was appointed to serve on the Judiciary Committee in 1987 under Chairman Peter Rodino of New Jersey. After serving twenty years in the House of Representatives representing the Third Congressional District of Maryland, I was honored to be elected to the United States Senate in 2006. And I find myself privileged to serve again on the Judiciary Committee of the other body, and I look forward to working with this committee in my new capacity.

Today I come before the committee to testify in part as a fact witness to discuss what happened during the 2006 U.S. Senate election in Maryland.

After a lengthy campaign which began shortly after the retirement announcement of former U.S. Senator Paul Sarbanes in the spring of 2005, I was nominated by

the Democratic Party in September 2006 as our U.S. Senate candidate. Former Lt. Governor Michael Steele was the Republican nominee for U.S. Senate. Former Baltimore Mayor Martin O'Malley was the Democratic candidate for Governor challenging the Republican incumbent Robert Ehrlich.

Former Congressman Kweisi Mfume, who is a friend with whom I represented Baltimore City in the U.S. House of Representatives, ran against me for the Democratic nomination and lost. He subsequently endorsed me as the U.S. Senate nominee for the general election, as did Prince George's County Executive Jack Johnson. They both are prominent African-Americans leaders in Maryland and appeared at several campaign events on my behalf as I prepared to face off against Lt. Governor Steele in the November general election.

Imagine my surprise then to discover on Election Day that the Republican campaigns for Governor and Senator in Maryland had distributed this literature. I would ask unanimous consent to have a copy of this literature inserted in the hearing record today.

Let me take a minute to walk through it, since it is one of the tactics that would be prohibited under the pending legislation before this committee.

The title of the piece is "Ehrlich-Steele Democrats" and "Official Voter Guide." The cover page prominently displays three African-American politicians: former Prince George's County Executive Wayne Curry, former Congressman Mfume, and current Prince George's County Executive Jack Johnson. Under their names is the statement "These are OUR choices," implying that all 3 gentlemen had endorsed Mr. Ehrlich for governor and Mr. Steele for senator. That is false. Mr. Mfume and Mr. Johnson endorsed my candidacy over Mr. Steele for the Senate. The flyer concludes with a citation to the general election, on Tuesday, November 7, 2006, and legal authority lines (required under Maryland election law) noting that the literature was "paid and authorized" by both the Ehrlich and Steele campaigns.

On the inside a large sample ballot is printed with the title "Democratic Sample Ballot," with the correct date and times for the elections. The entire sample ballot endorses Democratic candidates for local, county, state, and federal offices, with two exceptions: the "Democratic Sample Ballot" endorses the re-election of the Republican Governor Robert Ehrlich, and the election of Republican U.S. Senate candidate Michael Steele.

Mr. Chairman, this type of deceptive literature is despicable and outrageous. It is clearly designed to mislead African-American voters, who have a legal right to vote and pick the candidate of their choice. I was also upset to learn, according to articles in the *Washington Post* and *Baltimore Sun,* that the Ehrlich and Steele campaigns had bused in homeless African-Americans individuals from Philadelphia to hand out this deceptive literature on Election Day. These individuals from Philadelphia were given $100 and two meals, but many told the newspapers that they were not aware they were working for the Republican Party on that day. Finally, the *Washington Post* reported that a Maryland Republican election worker guide for poll workers stated that their "most important duty as a poll worker is to challenge people" trying to vote. This election guide was rightfully denounced by civil rights groups as a voter suppression and intimidation effort.

After having served in elective office in Annapolis for 20 years and in Washington for 20 years, I understand that campaigns are a rough and tumble business. I expect that candidates will question and criticize my record and judgment, and voters ultimately have a right to choose their candidate.

What goes beyond the pale, Mr. Chairman, is when a campaign uses deceptive tactics to deliberately marginalize minority voters. Sadly, Mr. Chairman, the tactics we saw in Maryland are not new, and in previous years deceptive practices in Baltimore City, the State of Maryland, and throughout the United States involved handing out false and deceptive literature in African-American neighborhoods. In previous elections we have seen deceptive literature distributed which gave the wrong date for the election, the wrong times when polling places were open, and even suggested that people could be arrested if they had unpaid parking tickets or taxes and tried to vote. My colleagues on the panel, I am sure, will discuss other such tactics designed to suppress minority turnout.

I reject that this is the way we do business in 2006 in Maryland and in the United States of America. To me this is clearly an organized pattern and practice of attempting to confuse minority voters and to suppress minority turnout.

It has been 137 years since Congress and the states ratified the Fifteenth Amendment to the Constitution in 1870, which states that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race [or] color?" The Amendment also gave Congress power to enforce the article by "appropriate legislation." African-Americans suffered through nearly another 100 years of discrimination at the hands of Jim Crow laws

and regulations, designed to make it difficult if not impossible for African-American to register to vote due to literacy tests, poll taxes, and outright harassment and violence. It took Congress and the states nearly another century until we adopted the Twenty-Fourth Amendment to the Constitution in 1964, which prohibited poll taxes or any tax on the right to vote. In 1965 Congress finally enacted the Voting Rights Act, which once and for all was supposed to prohibit discrimination against voters on the basis of race or color. The Act also provides that no person, "whether acting under color of law or otherwise," shall:

> "intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of *interfering with the right of such person to vote or to vote as he may choose,* or of causing such other person to vote for, or not vote for, any candidate for [any federal office]." [42 U.S.C. 1971 (b), emphasis supplied].

Mr. Chairman, it is time for Congress to once again take action to stop the latest reprehensible tactics that are being used against African-American voters to interfere with (a) their right to vote or (b) their right to vote for the candidate of their choice, as protected in the Voting Rights Act. These tactics undermine and corrode our very democracy and threaten the very integrity of our electoral process.

After being sworn in to the Senate in January, I was pleased to join with Senator Obama and Senator Schumer to introduce S. 453, the Deceptive Practices and Voter Intimidation Prevention Act of 2007. In sum the legislation provides that, within 60 days before a federal election, it shall be illegal to distribute *false and deceptive* information about an election regarding the time, place or manner of an election. The legislation also bans false and deceptive information about voter's qualifications or restrictions on voter eligibility, as well as false and deceptive information about political party affiliations or explicit endorsements of candidates.

This legislation is narrowly tailored to apply to only a small category of communications that occur during the last 60 days before an election. Under our legislation the categories of the false and deceptive information cited above are only illegal if they are intentionally communicated by a person who: (1) knows such information to be false *and* (2) has the intent to prevent another person from exercising the right to vote in an election. This legislation properly respects the First Amendment's guarantee of freedom of speech while recognizing the power of Congress to prohibit racially discriminatory tactics to be used in elections under the Fifteenth Amendment, Voting Rights Act, and the general power of Congress under Article I, Section 4 of the Constitution to regulate the "times, places, and manner" of federal elections.

This legislation creates tough new criminal and civil penalties for those who create and distribute this type of false and deceptive literature. The bill authorizes a process to distribute accurate information to voters who have been exposed to false and deceptive communications. The bill requires the Attorney General to submit to Congress a report compiling and detailing any allegations of false and deceptive election communications, and authorizes the Attorney General to create a Voting Integrity Task Force to carry out this law. The Senate bill would also create a right of private right of action against the continued distribution of false and deceptive campaign literature and communications, in which a party could seek a temporary injunction, restraining order, or permanent injunction against materials.

In the House I understand that similar legislation, H.R. 1281, has been filed by Congressman Emanuel with Chairman Conyers, and I applaud your efforts.

Let me conclude by thanking the many civil rights groups who helped us with voter protection efforts on Election Day and who have helped us in supporting this legislation, including the NAACP, the Mexican-American Legal Defense and Educational Fund, the Lawyer's Committee for Civil Rights Under Law, and People for the American Way.

This past weekend was the 42 year anniversary of the voting rights march onto Edmund Pettus Bridge outside Selma, Alabama. Our own House colleague, Congressman John Lewis from Georgia, was savagely beaten and tear-gassed by police for peacefully marching and protesting on what we now call "Bloody Sunday." He and so many others, including the Rev. Dr. Martin Luther King, Jr., ultimately led a peaceful march to Montgomery help their fellow citizens register to vote. Media coverage of the mistreatment of our own American citizens garnered worldwide attention, and led to the quick introduction by President Johnson in Congress of the proposed Voting Rights Act. Congress passed this historic act and President Johnson signed it into law less than five months after its introduction.

Today we have the obligation and duty to fulfill the promises made by Congress and the states nearly 140 years after the end of the Civil War, and over 40 years after the enactment of the Voting Rights Act. I urge you to pass this legislation that would stop the use of false and deceptive practices designed to disenfranchise and

suppress minority voter turnout. Let us make it crystal clear that it is illegal to use these types of campaign tactics to deliberately try to suppress and intimidate minority voters from casting their hard-won and precious right to vote in an election.

Thank you for the opportunity to testify today, and I look forward to your questions.

Ehrlich-Steele Democrats

Official Voter Guide

2006

WAYNE CURRY

KWEISI MFUME

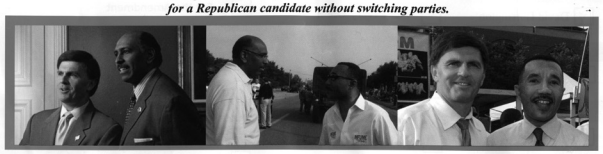
JACK JOHNSON

These are OUR Choices

General Election
Tuesday, November 7th, 2006

Paid and Authorized by Bob Ehrlich for Maryland Committee
Paid and Authorized by Steele for Maryland, Inc.

In a general election, a Democrat can vote for a Republican candidate without switching parties.



Ballot Questions

Question D
County Auditor - Increased Powers
[X] For the Charter Amendment

Question E
Enactment of Legislation - Extension of Time
[X] For the Charter Amendment

Question F
County Council - Required Legislative Approval of Certain Contracts
[X] For the Charter Amendment

Question G
County Council - Required Approval of Certain Intrafund Budget Transfers
[X] For the Charter Amendment

Question H
County Council - Extension of Time for Review of Appointments
[X] For the Charter Amendment

Question I
Charter Required Referendum
Library Facilities Bonds
[X] For the Charter Referendum

Ballot Questions

Question J
Charter Required Referendum
Public Works and Transporation Facilities Bonds
[X] For the Charter Amendment

Question K
Charter Required Referendum
Public Safety Facilities Bonds
[X] For the Charter Amendment

Question L
County Buildings Bonds
Charter Required Referendum
[X] For the Charter Amendment

Question M
Charter Required Referendum
Community College Facilities Bonds
[X] For the Charter Amendment

DEMOCRATIC SAMPLE BALLOT

Election Day
Tuesday, November 7, 2006
Polls Open 7AM to 8 PM

Governor/Lt. Governor
- [X] Robert L. Ehrlich
  Kristen Cox

State Comptroller
- [X] Peter Franchot

Attorney General
- [X] Douglas Gansler

US Senator
- [X] Michael Steele

US Representative District 4
- [X] Albert Wynn

US Representative District 5
- [X] Steny Hoyer

US Representative District 8
- [X] Chris Van Hollen

State Senator - District 21
- [X] John A. Giannetti, Jr.

State Delegates - District 21
- [X] Ben Barnes
- [X] Barbara A. Frush
- [X] Joseline Pena-Melnyk

State Senator - District 22
- [X] Paul Pinsky

State Delegates - District 22
- [X] Tawanna P. Gaines
- [X] Anne Healey
- [X] Justin David Ross

State Senator - District 23
- [X] Doug J.J. Peters

State Delegates - District 23A
- [X] James W. Hubbard
- [X] Gerron Levi

State Delegates - District 23B
- [X] Marvin Holmes Jr.

State Senator - District 24
- [X] Nathaniel Exum

State Delegates - District 24
- [X] Joanne Benson
- [X] Carolyn J.B. Howard
- [X] Michael Vaughn

State Senator - District 25
- [X] Ulysses Currie

State Delegates - District 25
- [X] Aisha Braveboy
- [X] Dereck Davis
- [X] Melony Griffith

State Senator - District 26
- [X] C. Anthony Muse

State Delegates - District 26
- [X] Veronica Turner
- [X] Kris Valderrama
- [X] Jay Walker

State Senator - District 27
- [X] Ron Miller

State Delegates - District 27A
- [X] Kenneth Brown
- [X] Antoinette Jarboe-Duley

State Senator - District 47
- [X] Gwendolyn Britt

State Delegates - District 47
- [X] Jolene Ivey
- [X] Doyle Niemann
- [X] Victor Ramirez

County Executive
- [X] Jack B. Johnson

County Council - District 1
- [X] Thomas E. Dernoga

County Council - District 2
- [X] Will Campos

County Council - District 3
- [X] Eric Olson

County Council - District 4
- [X] Ingrid M. Turner

County Council - District 5
- [X] David Harrington

County Council - District 6
- [X] Samuel H. Dean

County Council - District 7
- [X] Camille Exum

County Council - District 8
- [X] Tony Knotts

County Council - District 9
- [X] Marilynn Bland

State's Attorney
- [X] Glenn Ivey

Sheriff
- [X] Michael Jackson

Clerk of the Court
- [X] Peggy Magee

Register of Wills
- [X] Cereta A. Lee

Judge of Orphans Court
- [X] Wendy Cartwright
- [X] Athena Groves
- [X] Vicky Ivory-Orem

Court of Special Appeals
- [Yes] Ellen L. Hollander
- [Yes] James P. Salmon

School Board At-Large
- [X] Donna Hathaway Beck
- [X] Jeana McCotter-Jacobs
- [X] Nathaniel Thomas
- [X] Ronald Watson

School Board District 1
- [X] Rosalind Johnson

School Board District 2
- [X] Heather Iliff

School Board District 3
- [X] Pat Fletcher

School Board District 4
- [X] Steven E. Morris

School Board District 5
- [X] Owen R. Johnson, Jr

Ballot Questions

Question 1
Constitutional Amendment
Disposition of Park Lands
- [X] For the Amendment

Question 2
Constitutional Amendment
Circuit Court in Banc Decisions
- [X] For the Amendment

Question 3
Constitutional Amendment
Civil Jury Trials
- [X] For the Amendment

Question 4
Statewide Referendum
Election Law Revisions
- [X] Against Referred Law

Question A
Local and Minority Business,
Budget and County Personnel
- [X] For the Charter Amendment

Question B
County Personnel - County Council
Staffing Level Approval
- [X] For the Charter Amendment

Question C
County Council - Authority to Increase
or Decrease Revenue Estimates
- [X] For the Charter Amendment

Mr. CONYERS. Thank you very much.

Before you leave, Senator Obama, there is a question from our distinguished friend from Virginia, Mr. Goodlatte, and we have agreed with Mr. Smith that his side will have 15 minutes to question this distinguished panel, and we will have 15 minutes, but we will allow him to get his question in before you leave.

Mr. GOODLATTE. Well, Mr. Chairman, I thank you very much for taking this out of order.

And, Senator, I thank you also for staying after your testimony.

Mr. OBAMA. No, not a problem. Thank you.

Mr. GOODLATTE. You stated in your testimony, which I welcome, that you introduced your legislation to help restore integrity to our electoral system. You said, I think, in your opening remarks that there are some things that are political; making sure that every American who is eligible to cast a ballot should not be one of them.

Mr. OBAMA. Yes.

Mr. GOODLATTE. We are going to hear later from witnesses who talk about the importance of not allowing illegal aliens and noncitizens to vote in Federal elections So would you agree that that would be an important priority for your legislation?

Mr. OBAMA. I think that as a general—look, one of the principles of any voting system is that people who are eligible to vote get to vote. If you are not eligible, by definition, you don't get to vote. If my 8-year-old daughter shows up at the polls, I hope somebody says, "Young lady, you are going to have to wait for 10 years before you can cast your ballot."

So I have no quarrel with efforts to make sure that voter fraud does not take place.

Mr. GOODLATTE. Excellent.

Mr. OBAMA. Just to finish, the only thing I do want to point out, because I know you will be debating the issue of photo ID and whether that becomes incorporated in this bill or amended to this bill, my concern, having looked at the literature in terms of how that works, is that it may end up disadvantaging certain groups that are less likely, as a routine matter, to obtain a photo ID.

And although minority groups may be somewhat in that category, I should just point out that seniors are one of the groups that are most likely to be in that category.

And I know that in Georgia where a photo ID requirement was instituted, there was some concern that, for example, there was no access to an office to get the official photo ID in Atlanta, and so people had to drive from Atlanta. I don't remember which one it was, but the point was that there were long travel times and great difficulty in order of obtaining it.

So, in theory, I think we are all in agreement that we want to establish eligibility. We want to make sure that it is not set up in such a way where it is exclusionary or creates extra difficulties for some populations and not others.

Mr. GOODLATTE. Actually, I wanted to ask you about your legislation——

Mr. OBAMA. Sure.

Mr. GOODLATTE [continuing]. With regard to photo IDs. Certainly, I hope we do move in the direction of doing that, but I also hope that as we do it we make it very easy and affordable for peo-

ple of lower economic means or have less access to places to get the photo ID.

But let me ask you, your legislation appears to help with the problem that I mentioned, because, specifically, it prohibits a person from communicating false election-related information, including information regarding a voter's registration status or eligibility when that person knows the information to be false and has the intent to prevent another person from exercising the right to vote in an election described in the subparagraph.

Mr. OBAMA. That is correct.

Mr. GOODLATTE. So is my reading correct that your bill would impose the penalties of up to 5 years in prison on illegal aliens and non-citizens filling out voter registration cards when those cards state that the applicant is a United States citizen?

Mr. OBAMA. Not likely, I don't think so. That I think would be a stretch. The interpretation here would be if there was—if I called your house and said, "You know what, the election has been moved to Wednesday instead of Tuesday," or send a mailer indicating that your polling place had been moved when it had not bee, those are the practices that we are directed towards.

We are not intending in this legislation, and it is not drafted in that way, to set up a situation where we are creating a felony for somebody thinks they may be eligible to vote, an individual, and turns out that maybe they weren't eligible. Because those circumstances could happen in all sorts of conditions.

Mr. GOODLATTE. Well, thank you. I would just think that the intent to vote would be sufficient to show that a non-citizen at least has knowledge that his vote would cancel out a legitimate U.S. citizen's vote, thus preventing another person from exercising their right to vote in an election, which your bill——

Mr. OBAMA. Well, I don't think it would prevent anybody under the scenario that you spoke about, but I appreciate that question so that we can make doubly sure that we are clear in this legislation that that is not the intent.

Mr. GOODLATTE. Well, I would hope it would be, but I thank the gentleman, and I thank the Chairman for yielding the time.

Mr. OBAMA. Thank you very much.

Mr. CONYERS. Thank you very much.

I now recognize Loretta Sanchez, famous sister of Linda Sánchez.

TESTIMONY OF THE HONORABLE LORETTA SANCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. SANCHEZ. Thank you, Mr. Chairman and the Ranking Member and the rest of the Committee Members. It is indeed an honor to be before you today to discuss a little bit about elections here, although I know you all are experts in that.

Before I begin, and before Mr. Smith leaves the room, I would like to make a correction to one of his remarks in his opening statement. He said that in my election, in 1996, the Congress or a paper out of the Congress had determined that there might be 748 improper ballots cast in my election. I would just like to note that that was the majority's report without any access to the files or information, whatsoever, by any Democrat or any of the Democratic

staff on that Committee and that task force, which means that unless you are willing to show it to me today, I am not willing to believe you.

Anyway, getting back to what happened just this past election, in this past election, there was a letter that was sent in our election. I didn't even know it really had reference to my election until my opponent fessed up that it came out of his campaign headquarters.

And the reason I would not have known is that the letterhead of this letter that came out stated that it was from the California Coalition for Immigration Reform, or people who are pretty much anti-immigrant and very, very straightforward about it, very vocal about it, and if you know anything about Orange County, you will also note that aside from these types of anti-immigrant groups, we also were the creators of the Minutemen and other types of groups.

So imagine this letter was sent to 14,000 registered voters, many who had been registered sometimes for over 20 years, all of whom had indicated on their affidavit of registration that they were born in a Latin American country, Central American country or Mexico—only Hispanics.

Now, these people had been naturalized, some for many years. So imagine when you receive a letter from one of these anti-immigrant groups and it goes on to say several things: "Be advised that if your residence in the United States is illegal or if you are an immigrant," which all of these people, by definition, because this is what they looked on to get this list, were, "voting in a Federal election is a crime that can result in incarceration and possible deportation for voting."

So it was, in fact, a voter suppression, a voting suppression letter.

What is very troubling is the next line: "In the same way, be advised that the U.S. government is installing a new computerized system to verify names of all the newly registered voters who participate in the elections in October and November." Just this election, mind you. "And organizations against immigration will be able to request your information from this new computerized system." So intimidation was there, that if you showed up to vote, your name would be available to people like the Minutemen.

This letter, by the way, was sent in Spanish. It was actually sent to only voters in the districts where I represent. When we first started seeing it walk into our offices, we didn't know it was about our election. It could have been about a city election, and we would have never known it was about our election except that our opponent, again, did a press conference to say it had come out of his office.

I have seen many things in Orange County. We have had people, the Republican Party, hire and dress people like INS agents at Latino precincts and turn away people from voting. That was in 1988. But I would have thought that after 10 years of representing Orange County that these types of intimidation and suppression would have gone away, and, unfortunately, they haven't.

And I would just like to say that I believe that H.R. 1281 will strengthen the prohibition and punishment of deceptive practices that aim to keep voters away from polls on Election Day.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Sanchez follows:]

PREPARED STATEMENT OF THE HONORABLE LORETTA SANCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

CHAIRMAN CONYERS, RANKING MEMBER SMITH AND DISTINGUISHED COMMITTEE MEMBERS.

It is with great pleasure that I appear before you today to discuss voter intimidation and modern day violations of the Voting Rights Act.

Finding a solution to this problem is very close to my heart.

When most people think of Voting Rights Act violations they think of the 1960s when African Americans were prevented from voting because of the color of their skin. Many don't realize that voter suppression still occurs today.

And the targets remain the same. This last election, minority and immigrant communities were targets of deception, misinformation and voter intimidation designed to abridge their right to vote.

Constituents in my district, the 47th Congressional District of California, were similarly affected this last November.

Concerns were expressed to my office in Garden Grove, California, when residents received a written letter, in Spanish, from the "California Coalition for Immigration Reform" informing voters that immigrants voting in a federal election were committing a crime "that could result in incarceration and possible deportation . . .".

Its also went on to advise voters that "the U.S. government is installing a new computerized system to verify names of all the newly registered voters who participate in the elections in October and November. Organizations against immigration will be able to request information from this new computerized system."

This letter was sent to about 14,000 registered Hispanic voters. Let me repeat that . . . REGISTERED LEGAL VOTERS.

These are people who are immigrants and have naturalized in this country; many have been citizens for over 20 years.

The letter quickly ignited fear in the Hispanic community.

Families were afraid that their personal information would be shared with anti-immigration groups if they voted. They were afraid of retaliation for casting their vote.

In response, I joined civil rights and Latino organizations in calling for an immediate investigation by the Federal Bureau of Investigations for potential Voting Rights Act violations by the organizations and individuals associated with the distribution of the letter.

The State of California, at the initiative of Attorney General Bill Lockyear, and under the direction of Secretary of State, Mr. Bruce McPherson, issued a letter on October 24, 2006 to the 14,000 registered voters who received the voter intimidation letter, informing them of their voting rights and that the letter was false and misleading.

Unfortunately this is not the only attempt to suppress minority voting in Orange County. In 1994, poll guards were hired by candidates and stationed at voting precincts, with high Latino concentrations, to intimidate voters, harassing them for identification and the like.

During my first campaign in 1996, my opponent ran explicitly anti-Latino rhetoric in automatic "robo-calls", and used other tactics to harass Latino voters in Central Orange County.

Today you'll hear similar testimony of other instances where there was voter intimidation and deception.

This problem is not going away, and the government needs to do something about it.

I am pleased that the State of California has taken steps, for instance, to enact stricter penalties for Voting Rights Act violations.

Now the U.S. federal government must take the lead in protecting the rights of voters and putting an end to deceptive practices.

Revisiting and reforming the voting rights laws will send a clear message to potential violators that deceptive practices are unacceptable and will be prosecuted to the full extend of the law.

I am pleased to see that the Senate has introduced the Deceptive Practices and Voter Intimidation Prevention Act, (S.453) and now the House is following suit. I am a proud original cosponsor of the bill that was introduced by Representative Rahm Emanuel and the distinguished Chairman of this Committee.

H.R. 1281 will strengthen the prohibition and punishment of deceptive practices that aim to keep voters away from the polls on Election Day.

Centrally, the Emanuel/Conyers bill would increase both monetary and criminal penalties and would direct the Attorney General to take swift action against complaints and disseminate corrective election information after an incident occurs.

It would also require the Attorney General, after each federal election, to report to Congress on the allegations of deceptive practices and actions taken to correct them.

I urge my colleagues to support this legislation which will go a long way in preventing future acts of voter intimidation.

We must do EVERYTHING to protect the cornerstone of our democracy; the right of our citizens to vote.

Mr. CONYERS. Just in time, Ms. Sanchez, and I thank you very much.

I am very pleased now to welcome Mr. Rahm Emanuel, whose work in helping get out the vote and encourage the vote is well-known across the country. Welcome to the Committee.

TESTIMONY OF THE HONORABLE RAHM EMANUEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. EMANUEL. Thank you, Mr. Chairman. A number of my colleagues have spoken to the legislation. You obviously did it in your introduction. I also want to thank Mr. Smith. I want to thank you for having this hearing, Congressman Smith and Chairman Conyers.

I would make two or three quick points and then leave time for my colleagues and enough time for them as well.

One is, although in your introduction you spoke eloquently about the Voting Rights Act from 1965 and having just returned from the trip that John Lewis put together for everybody down in Selma and bringing my 10-year-old for his birthday gift to have that trip with John Lewis, at that point—and this may be the abbreviated history I received, having read it, although hearing it from Congressman Lewis, our colleague—at that point, the State was involved in intimidation.

What we are talking about here, although we did exactly the right thing as a country by passing the Voting Rights Act, here it is where parties and the campaigns have taken on the role of intimidation. That baton has passed down to State parties and candidates. The State has backed away from that role because of the Voting Rights Act, but the role of intimidation continues and others have adopted it.

Second, in every process, and we have been through the campaigns, et cetera, there is a recourse if a TV ad falsely accuses an opponent—I have exercised it, Senator Schumer exercised it, Congressman Reynolds exercised it, Senator Dole has exercised it—through the parties to appeal to the TV stations to take that ad down. Sometimes you win, sometimes you lose but there is a recourse.

If in fact, and there is a great, if I can, recommend, if not, I will also then submit into the record, a Sunday front-page story in the *Boston Globe* that looked back on all the ads that were pulled down, and if I could, I would like to submit that into the record.

Mr. CONYERS. We will include it in the record.

Mr. EMANUEL. There is no recourse for a false pamphlet, for a false phone call. There is no recourse.

This raises the penalty for knowingly deceiving a person who wants to vote when they say there is a changed location for your voting booth, that you can't vote unless you do X, Y and Z. This raises the penalty and has a place of recourse so there is a consequence in the same way that during a campaign if somebody runs a false ad, a party, on behalf of a candidate, can have a recourse to that TV station, have the TV station waive that.

This attempts to make people before they do something, whether it is a 3 o'clock in the morning phone call, whether it is literature that Ben, our colleague now in the Senate, showed that it had out there, or all the other literature that has been passed out in mainly minority communities but not limited to that, telling people that their voting place has been changed or the requirements of what they need informationally to vote has been altered, this raises the stakes to doing that and will hopefully have the consequence of actually making folks' campaigns or parties pull back.

Now, we are all taking the action here that is within our purview, which is to deal with making sure that intimidation does not stop people from exercising their rights, that is to vote.

There are two other pieces to this. One of them is leaders and elected officials that inspire people to come out and vote and our citizens who take their responsibility and their right seriously and do it. We are only dealing with one of the three today, an important piece of it, but the other two play a very significant role in increasing the turnout and participation in a democratic process.

Mr. Chairman, I want to thank you again for holding this, and I want to apologize because I have to go to another hearing to ask a question on the AMT tax, which I know holds fair to all our colleagues.

Thank you.

[The prepared statement of Mr. Emanuel follows:]

PREPARED STATEMENT OF THE HONORABLE RAHM EMANUEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, thank you for the opportunity to testify before the Committee today on election deception and voting irregularities. I am honored to have worked with your office, Senator Obama, and several other members of this committee on drafting *Deceptive Practices and Voter Intimidation Act of 2007,* and I hope that we can move forward quickly on this legislation to protect the right to vote.

Honestly, I would prefer if we did not have to have this hearing today. Unfortunately, though, the last election and others before it have seen repeated instances of campaigning tactics that go beyond political competitiveness.

We have seen repeated phone calls at three in the morning with blatant misinformation on a candidate's background; we have seen flyers posted in minority communities lying about the date of the election; we have seen letters sent to legal immigrants threatening them with arrest for trying to vote because they were born outside of this country. We have seen far too many examples of these abuses, and it is time to put an end to these deceptive practices.

I served as Chairman of the Democratic Congressional Campaign Committee during the last election cycle. My job was to elect Democratic candidates to Congress, and I had a firsthand look at the day-to-day of many campaigns. In my role, I saw the specifics of misleading robo-calls, malicious flyers, and misinformation campaigns designed to keep certain groups of voters away from the polls on Election Day. That is why I am committed to making sure that future campaigns are not decided by false information and intimidation that keep Americans from voting when and how they want.

I look forward to passage and implementation of the *Deceptive Practices and Voter Intimidation Act* to prevent repeat occurrences of some of the tactics that hinder voter turnout. I want to thank Chairman Conyers, Congressman Holt, Congressman

Becerra, Congressman Honda, and Congressman Ellison for serving as lead co-sponsors of this important legislation. I would also like to thank Mr. Nadler, Mr. Scott, Ms. Jackson Lee, Ms. Waters, Mr. Delahunt, Mr. Cohen, Mr. Johnson, and Mr. Davis of this committee for signing on as original co-sponsors of the bill.

I am proud to have introduced the *Deceptive Practices and Voter Intimidation Act* last week, and again, I want to thank you, Chairman Conyers, for inviting me to participate in this forum and for leading the charge on addressing this problem. I look forward to continuing to work with you, Senator Obama, and the rest of this panel as we seek to ensure that each American is able to vote free from intimidation and misinformation.

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Ex-GOP candidates turn attacks back on national panel

BYLINE: Rick Klein GLOBE STAFF

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WASHINGTON - One advertisement accused the rival candidate of billing taxpayers for a call to a phone-sex line. One alleged that a candidate "fixed" his daughter's speeding tickets. Still others stated that a candidate endorsed a "coffee talk with the Taliban," and that another was supported by the Communist Party.

Each charge was misleading at best, demonstrably false at worst. Yet the National Republican Congressional Committee paid for each of those ads last year, and its leaders said they could do nothing to pull them, even after some of the Republicans whom the ads were designed to help demanded that they come down.

Now, four months after Republicans lost control of Congress, many of their former candidates are calling for major changes at the NRCC. They depict the committee as a rogue attack-ad shop that shielded party leaders from having to account for the claims in their ads - encouraging over-the-top accusations that often hurt GOP candidates.

"They weren't just attacking my opponent - they were, bit by bit, destroying a reputation that I had spent years and years building," said Ray Meier, a Republican candidate in upstate New York whose Democratic opponent was wrongly accused of making adult fantasy calls.

The NRCC funneled more than $83 million through a special "independent expenditure" arm that made all decisions regarding ads.

The creation of the independent entity meant that when candidates such as Meier called NRCC headquarters to complain about the ads, committee officials said they couldn't discuss them, much less yank them from the air, without violating campaign-finance law.

The law places strict limits on how much help national parties can offer candidates; in 2006, they were limited to about $80,000 in direct support of each House candidate. But court rulings have established the right of independent groups to spend unlimited sums.

Thus, national parties have been funneling their giant war chests into independent committees - putting vast resources behind ads of a type that used to exist only on the political fringes.

The 1988 "Willie Horton" ad aimed at Democratic presidential candidate Michael Dukakis, for instance, was run by an independent group that had no ties to the Bush-Quayle campaign. Likewise, the Swift Boat Veterans for Truth attacked Democrat John F. Kerry in 2004, but was independent of President Bush's campaign.

But now, taking advantage of the latest loophole in the campaign-finance system, the national parties have started putting most of their advertising money into independent groups of their own creation. In 2006, spending by the Democratic and Republican parties' independent expenditure arms jumped 65 percent from 2004, to $202.4 million, according to Federal Election Commission data.

The parties have essentially created their own version of the Swift Boat Veterans - entities that operate outside the normal political apparatus, said Fred Wertheimer, president of the government watchdog group Democracy 21.

"There's no accountability," he said. "When you have unaccountability on this stuff, people start overreaching. And this idea of creating a Chinese wall within the party, where the people who are doing the ads are kept separate from the people who are doing the expenditures, is a fiction."

Though both parties spent heavily on negative ads through their independent expenditure arms, the NRCC was by far the biggest spender last year, spreading around $20 million more than its Democratic counterpart. And watchdog groups have tagged the Republicans - and the NRCC in particular - as the worst offenders in stretching the truth.

Annenberg Political Fact Check, a nonpartisan group that studies campaign advertisements, called the NRCC's ads "the very definition of political mudslinging."

"The National Republican [Congressional] Committee's work stands out this year for the sheer volume of assaults on the personal character of Democratic House challengers," stated the Fact Check report, which also cited one Democratic ad as based on "flimsy evidence at best."

Representative Christopher Shays, a Connecticut Republican who is among the 2006 candidates who feel the NRCC's actions hurt his campaign, said he plans to file a bill that would allow candidates in both parties to prohibit the national parties from advertising on their behalf.

"I would have been better off if they didn't spend one penny on my race," said Shays. "The least we should do is give a candidate the ability to say no."

The NRCC's chairman during the 2006 elections, Representative Thomas M. Reynolds of New York, defended the ads, saying they were well-documented and generally effective. He conceded that his independent expenditure arm "took a lot of liberties," but said Democratic committees also stretched the truth.

NRCC ads saved 10 to 20 Republican-held seats, Reynolds said. "Everybody has an opinion, and hindsight after an election is about 20-20," he said.

Last year, Reynolds put a veteran NRCC operative, Carl Forti, in charge of the party's independent committee. Reynolds said that, in keeping with the law, Forti made all advertising decisions and had no contact with his bosses at the NRCC while working on independent ads.

Forti, who now works as political director of the presidential campaign of former governor Mitt Romney, declined to comment, citing the NRCC's policy of not discussing independent expenditure operations publicly.

The independent expenditure operation spent $77 million attacking Democratic House candidates, while spending $6.6 million in positive ads boosting Republicans, according to FEC disclosures.

Among the attack ads was the television spot in Meier's race against Michael Arcuri, a former county district attorney. Arcuri's hotel bill from a business trip included a one-minute call to an adult talk service, which cost taxpayers $1.25. Immediately thereafter, another call was placed to a number that was identical except for the area code: the number for the state Department of Criminal Justice Services.

It was clearly a wrong number, but the NRCC stood by the ad. Arcuri won the race.

Similar alleged misstatements reverberated in races across the country. In North Carolina, an NRCC ad said that Democrat Heath Shuler was "caught again not paying his taxes on time." But Shuler had sold his majority stake in the business referenced in the ad in 2003. Shuler won his race, defeating an incumbent Republican.

In Indiana, Democrat Brad Ellsworth was accused of "fixing" his daughter's speeding tickets while serving as a county sheriff, though Annenberg Political Fact Check found the ticket was paid in full. Ellsworth also unseated an incumbent Republican.

In Iowa, an NRCC ad suggested that Democrat Bruce Braley was backed by the Communist Party, citing the fact that a party newspaper labeled Braley a "peace candidate." Republican candidate Mike Whalen said he immediately called friends in Washington to pressure the NRCC to take the ad down, but was told that nothing could be done because it was a product of the independent expenditure arm.

"I went ballistic, desperately trying to send the message through back channels," Whalen said. "They didn't care. They said, `We don't have any control over it.' ... That ad in particular I think sullied my reputation, and I will always resent that ad."

Braley beat Whalen by 12 percentage points in a district that had long been a GOP stronghold.

Voters in Connecticut received an NRCC mailing that accused Democrat Diane Farrell of wanting to have a "coffee talk with the Taliban." The NRCC's evidence: Farrell accepted a campaign contribution from a group that included a board member who had once suggested establishing talks with the Taliban.

Farrell's Republican opponent - Shays - said he called allies at the White House and the Republican National Committee to press the NRCC to repudiate the mailing.

But NRCC officials, Shays said, prevented him from speaking directly with Reynolds. Reynolds defended that move, saying the committee would have been violating the law if it permitted candidates to coordinate with the independent expenditure arm.

But some campaign-finance specialists dispute the claim that party committees couldn't stop ads they were paying for. While the law prevents party leaders from coordinating messages with their independent arms, they could have refused to pay for ads they disapproved of, said Paul S. Ryan, associate legal counsel at the Campaign Legal Center, a nonpartisan group.

"The party leadership can close the purse strings when and if they don't like the ad coming out of their independent expenditure arm," Ryan said.

Because the Supreme Court has affirmed parties' rights to set up independent committees, party leaders say, they are likely to continue the practice.

Nonetheless, the NRCC's new leaders say they are listening to candidates' complaints. The new NRCC chairman, Representative Tom Cole of Oklahoma, appointed a task force to reevaluate the party's independent expenditure strategy.

Acknowledging lapses in "political judgment" last year, Cole said he wants assurances that his committee's ads will be factual as well as politically wise.

"When you get a lot of consultants in a hothouse, late in the campaign, and people really aren't responsible [for the message] because you're not working for the candidate, it's really easy to take a flier," Cole said.

Until party leaders take more responsibility for their ads, they are likely to frustrate more candidates. Meier, who gave up his state Senate seat to run for Congress, said he found it maddening to watch the campaign he waged on local issues make a sudden turn to the gutter.

"These scandalous and slanderous ads became the topic of conversation," Meier said. "Never having run for national office before, you know this is a mean business. You have no idea how mean."

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SIDEBAR:

GROWTH IN SPENDING

PLEASE SEE MICROFILM FOR CHART DATA.

LOAD-DATE: March 5, 2007

LANGUAGE: ENGLISH

GRAPHIC: A National Republican Congressional Committee ad suggested Democrat Bruce Braley was backed by the Communist Party.Voters received a mailing that accused Democrat Diane Farrell of wanting to have a "coffee talk with the Taliban."An attack ad falsely accused Democratic congressional candidate Michael Arcuri of calling a sex line. Arcuri won office.

PUBLICATION-TYPE: Newspaper

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Mr. CONYERS. Thanks so much, Congressman Emanuel. We appreciate your presence and your support of the legislation.

I am now happy to recognize an outstanding Member of the Judiciary Committee. Mr. King has worked with us in a bipartisan fashion across the years, and I would like now to acknowledge him.

TESTIMONY OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. KING. Thank you, Mr. Chairman. I am privileged to be recognized by you and also Ranking Member Smith to testify before this Committee, as opposed to being seated upon it.

And I am going to take this to a little bit different tact here in this discussion that we have had and focus on some facts that currently you have numbers between 8 million and 14 million illegal aliens in the United States who are of voting age. That is a level of exposure. There are approximately 23 million legal non-citizens that still live in the United States in addition to that 8 million to 14 million illegals who are of voting age.

But beyond requiring applicants to sign a pledge on a voter registration form affirming that they are U.S. citizens, there are no restraints to prevent the Nation's illegal aliens and lawfully present non-citizens from casting ballots in our local, State and Federal elections.

There are a number of tactics that are being employed by illegal aliens and non-citizens to fraudulently vote in Federal elections. One is to obtain a State driver's license. A lot of States purposely or inadvertently allow illegal aliens to receive a driver's license, but under the motor voter law, the National Voter Registration Act of 1993, information provided by the applicant for a driver's license may also be used for voter registration unless—and this is an important point—unless the applicant specifically indicates that he or she did not want to be registered to vote.

That is an encouragement for a non-citizen, whether they are legal or illegal, to register to vote, and they may not understand the language; they may just simply be complying with the bureaucracy, register to vote and find themselves in violation of Federal law, but it is hard to find anybody that will check. There are large numbers of non-citizens and illegal aliens that are on those kinds of lists.

But to preserve the integrity of the election process, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, a bill that Mr. Smith was well-involved in. It made it a Federal crime for non-citizens to vote in a Federal election and also for non-citizens who knowingly voted illegally to be deported. Non-citizens who fraudulently claim to be U.S. citizens could also be in violation of the act. So that tightened some things up in 1996, but despite the penalties that are there, there are frequent substantiated reports of illegal aliens and non-citizens taking part in elections.

One of the reports is a well-known one that we discussed earlier here that Ms. Sanchez responded to with regard to Mr. Smith's numbers, and I will say that my research comes up with the same numbers, 984 vote difference, and the investigation revealed that there may be as many as—I will say found evidence that there

were 748 improper ballots—624 by individuals who were non-citizens. But the ruling was even though 83 percent of the improper ballots were by non-citizens, there wasn't enough to change the results of the election and the House Oversight Committee found that it would not affect the results of the election, so there was no recommended change.

I think that was good action by this Congress to recognize the flaw in the system but didn't seek to get a political gain by adjusting to that flaw. So I will say that the Oversight Committee had congressional findings there of the highest integrity, as did Mr. Smith of Texas.

And there are also issues within the State of Utah where they found 58,000 illegal aliens had fraudulently obtained driver's licenses. Of those, at least 383 were registered to vote, presumably by motor voter. I narrowed some of that down, took a sample of 135 of these individuals and discovered that five were naturalized citizens, 20 were "deportable" by their measure, one is a permanent legal resident and 109 had no record and were assumed to be in the United States illegally. But at least 14 had voted in a recent election, and we know that people move, so that makes it an even more significant number.

North Carolina ICE agents identified at least four similar cases there, and so there is a very simple solution to this and that is to provide a photo ID. We have talked about the Real ID Act that addresses this, Mr. Chairman and Committee, and the Real ID Act does a number of things that are really effective. It requires a photo ID and it requires a Social Security number to be attached to that, and then we can attach the condition of citizenship to Real ID as well. Those three things there would do more to prevent fraudulent voting than anything else that I can think of.

But as I look across the spectrum of these issues, and I will tell you that I sat in the chair for 37 days in the 2000 election tracing the Internet and my Dish TV and my telephones and I found out a lot about election fraud in this country, much of which I have not addressed in my testimony today. But I believe we need to adopt a Real ID Act for voter registration. We need to also have an integrated voter registration list that eliminates the duplicates, the deceased and where the applies to the felons.

And I would point out that there are certain States that prohibit the electoral workers from challenging a prospective voter, even when they know that prospective voter is not the person that they represent themselves to be.

So, for example, if I were an electoral board worker in a State like New Mexico, for example, and my name being Steve King and I have gone in there to work and decided that when my shift is over then I will vote, if someone comes in and presents themselves as Steve King, I have to let them vote even though I am the individual that is registered on that voter registration list. There are those kinds of prohibitions that are in place that are designed to keep from intimidating voters that disenfranchise real citizens that really have the right to vote.

And I would conclude with that.

And thank you, Mr. Chairman. I yield back the 2 seconds of my time.

[The prepared statement of Mr. King follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND MEMBER, COMMITTEE ON THE JUDICIARY

Thank you Chairman Conyers, Ranking Member Smith, and members of the Judiciary Committee for inviting me to testify today. I appreciate this opportunity to address the Committee about the need to protect the integrity of our democratic process, by guarding against illegal aliens and noncitizens taking part in only the American citizen's right to vote.

Currently, there are approximately 14 million illegal aliens in the United States who are of voting age. There are approximately 23 million legal noncitizens currently residing in the U.S. Beyond requiring applicants to sign a pledge on voter-registration forms affirming that they are U.S. citizens, there are no restraints to prevent the nation's illegal aliens and legally present noncitizens from casting ballots in local, state and federal elections. Our voting system is subject to fraud by noncitizens. Illegal voting by legally residing non-citizens may be more prevalent than voting by illegal aliens. There are no existing structures in place to prevent illegal aliens from voting or to know if noncitizens are illegally voting in federal elections.

Numerous tactics are being employed by illegal aliens and noncitizens to fraudulently vote in federal elections. The first approach begins by obtaining a state drivers' license. States vary greatly in their laws governing the issuance of those licenses. A few states require and verify documentation that an applicant is either a U.S. citizen or a legal resident. However, other states purposely or inadvertently allow aliens to receive a drivers' license. Seven states allow registrants to use an individual taxpayer identification number (ITIN) instead of a Social Security number. The problem with an ITIN, stems from the fact it is available to noncitizens for purposes of tax withholding. On the opposite side of the spectrum, eleven states are lax and negligently permit illegal aliens to obtain drivers' licenses, by refusing to verify the authenticity of the Social Security Number.

Under the National Voter Registration Act of 1993, information provided by the applicant for a driver's license may also be used for voter registration unless the applicant specifically indicates that he did not want to be registered to vote. With many states making driver's licenses available to legal noncitizens and illegal aliens, it is probable voter rolls contain large numbers of non-citizens and illegal aliens.

Another tactic employed by illegal aliens and noncitizens to obtain voting rights involves absentee voting. Absentee voting has become increasingly common, and there are no safeguards in place to ensure the actual voter is voting or for elections officials to challenge the voter in person as a possible illegal voter. In effect, there are no safeguards in place to ensure the person requesting the absentee ballot is actually the person voting. Elections official's hands are tied to protect the integrity of the voting ballot.

To preserve the integrity of the election process, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act in 1996. Under the Act, it became a federal crime for non-citizens to vote in any federal election. Ineligible noncitizens who knowingly voted illegally could also be deported. Furthermore, a noncitizen who fraudulently claimed to be a U.S. citizen would also violate this Act. Despite these penalties, there have been frequent substantiated reports of illegal aliens and non-citizens taking part in elections.

One of these reports is well-known to another witness before the committee today, because it involved Loretta Sanchez's California race in 1996. This is probably the best example of documented illegal voting to date. Loretta Sanchez defeated Republican incumbent Robert Dornan by 984 votes. Dornan called for an investigation of alleged illegal voting by noncitizens. The House Oversight Committee found that while there was insufficient evidence to void Ms. Sanchez's victory, the Committee found evidence of 748 improper ballots, 624 by individuals who were not citizens when they registered to vote. ("Dornan's Election Challenge Dismissed," *Los Angeles Times,* February 13, 1998). This is a striking number because it illustrates in that election, 83% of all the fraudulent votes cast were by noncitizens.

In the 2000 Presidential election, noncitizens may have directly influenced the outcome of this race in eleven different states. Colorado, Florida, Georgia, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Tennessee, Texas, and Virginia, all had small enough winning vote margins that illegal voting could have shifted the balance to Vice President Gore. With only a three vote margin in the Electoral College, if enough noncitizens had voted to reverse the outcome in any one of those eleven states, it would have changed the entire election.

In preparation for the 2004 elections, Iowa and South Dakota issued directives to voter registration officials that voters should be added to the voter rolls even if their application did not affirmatively designate they were United States citizens. These directives were in blatant violation of the National Voter Registration Act, which requires every potential voter to designate citizenship on the voter registration application.

In Utah, it was discovered that more than 58,000 illegal aliens had fraudulently obtained drivers' licenses. A legislative audit bureau determined that possibly 383 illegal aliens were registered to vote. Immigration and Customs Enforcement (ICE) conducted a sample consisting of 135 of these individuals and discovered that five were naturalized citizens, twenty were "deportable", one was a permanent legal resident, and 109 had no record and were assumed to be in the United States illegally. More alarmingly, it was revealed that at least fourteen had voted in a recent Utah election.

In North Carolina, ICE agents inspecting voter registration records last November revealed at least four cases of noncitizens illegally registered to vote. Three of the people were arrested, and officials are looking for the fourth. Tom O'Connell, resident agent in charge of the ICE agency's Cary office, said that "It's a very personal charge to us, it goes to the integrity of the entire democratic system when we have . . . aliens registering to vote." ("Voter rolls risky for aliens," *The News & Observer,* December 7, 2006.)

There is a very simple solution to the problem of illegal aliens and non-citizens voting in our elections. A bipartisan commission headed by former President Jimmy Carter and ex-Secretary of State James Baker announced after their study into Federal Election Reform, that Americans should be required to have photo identification to vote.

"Instead of creating a new card, the Commission recommends that states use 'REAL ID' cards for voting purposes. The REAL ID Act, signed into law in May 2005, requires states to verify each individual's full legal name, date of birth, address, Social Security number, and U.S. citizenship before the individual is issued a driver's license or personal ID card. The REAL ID is a logical vehicle because the National Voter Registration Act established a connection between obtaining a driver's license and registering to vote. The REAL ID cards adds two critical elements for voting—proof of citizenship and verification by using the full Social Security number. The REAL ID Act does not require that the card indicates citizenship, but that would need to be done if the card is to be used for voting purposes. In addition, state bureaus of motor vehicles should automatically send the information to the state's bureau of elections." "Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform," *The Carter-Baker Report* (Sept. 2005).

Allegations that implementing REAL ID will suppress voting participation are unfounded. Every illegal vote by a non-citizen ultimately voids the vote of a U.S. citizen and it is as injurious as not allowing the citizen to vote in the first place.

While advocates for illegal aliens and noncitizens claim such individuals would not take the risk of registering to vote for fear of being discovered, the evidence I have just presented before you suggests otherwise. It is foolishness to believe fraud is absent when efforts are not being made to ensure the integrity of our electoral process. Remember, it only takes one vote to change an election.

Thank you and I would be happy to take questions from the Committee.

Mr. CONYERS. Thank you, Steve King. I am glad you are on this Committee, because we want to inquire into some of the other research and materials you have accumulated.

We welcome Brian Bilbray, California. Welcome to the Judiciary Committee.

TESTIMONY OF THE HONORABLE BRIAN BILBRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BILBRAY. Thank you, Mr. Chairman. I appreciate the privilege to speak here today. I also appreciated the ability to serve as a county supervisor for the 3 million people of San Diego County where I supervised a very large registration vote system in that county.

And I have to tell you, the 10 years that I served there it became obvious to me that though in the past we have been very, very strong about guaranteeing the ability on the franchising of individuals to be able to vote, we have never really looked at the other way that people are disenfranchised.

Now, I remind you that the procedure of voting is not an end into itself; it is a sacred right not only to vote but to have your vote count. And the challenge of the past was making sure the franchise was not violated by denying people the ability to participate in the voting process.

But we have done almost nothing, Mr. Chairman, almost nothing to make sure that the franchise is not being canceled out by allowing those who are not qualified to vote to cancel out the qualified voters. And I think every American citizen has the right, not only to vote, but to have their vote count and not to have their vote canceled out by a disqualified voter. May not seem like it is a big deal but when you have 37-plus-million people that could be out there and could be canceling out votes, I think it is time we check on that.

And I will just tell you, as somebody running the registration system, I could ask you for documentation about your residency and check about where you live, but I wasn't allowed to ask you about your citizenship. I had to go on the honor system that just if you say it, and I would ask you to ask the Ways and Means Committee, do they think that the tax system in this country could function on the honor system where every taxpayer just signed off and nobody ever audited, nobody ever checked? We not only do not have the check, but you specifically have State laws that restrict the ability to do that kind of checking.

I think that the fact is, is that when we get into motor voter, we have got to recognize that these two challenges to the people's franchise is there, and we need to address the other side.

And, Mr. Chairman, as somebody who represented a Committee with a large percentage of foreign nationals and naturalized citizens, the burden of being disenfranchised by illegal votes is not equally distributed across this country. We all know it is the working class American citizens that have the greatest propensity for having their vote not count because this Congress and the Federal Government hasn't done its part to protect their franchise. The wealthy neighborhoods tend not to have that threat. So I just think that we need to be upfront about this.

I think that the Carter commission addressed it appropriately, and over the years I have wondered when we are finally going to get to the issue, that we should make every vote count if it is legal, and that means a lot. And this is not just illegal immigrants, this is all immigrants. And my mother is very proud that she got her citizenship and was franchised. She is also very much upset that she was actually fined in Australia because she didn't vote her first election because she was too young to register but actually turned 21 before the vote. We don't want to create those kind of catch-22s, and we have addressed those in the past.

I just ask you that if you truly believe in the right of franchising, you truly believe, not only in the right for people to vote, but for

their vote to count, we have to address the issue of the identification of the person when they show up to the polls.

And the real problem is the voter registration system, and I will give you just some of the problem. You have paid registrars going out there, people that are being paid by groups and agencies to collect votes. They will tell people almost anything to be able to get them to register. Once these individuals register, many of the foreign nationals who are not proficient in English, when they get the papers from the County of San Diego or from the State, they assume they are legal. And so this is an issue of protecting the innocent from taking a deadly mistake. Because many times, the illegal votes are manipulated and are pushed by people who have something to gain when it is not the immigrant who is perpetuating the fraud intentionally.

So I just ask you, in conclusion, to respect the fact that every voter should count and no voter should have his vote canceled out.

And so enfranchisement, I think, is the challenge before us, Mr. Chairman. Are we willing to protect the vote after it is cast as much as we have been willing in the past to make sure the vote gets cast?

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Bilbray follows:]

PREPARED STATEMENT OF THE HONORABLE BRIAN P. BILBRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, Ranking Member Smith, distinguished colleagues of the Committee, thank you for inviting me to speak before you today on the importance of addressing voting fraud and irregularities. As Chairman of the Immigration Reform Caucus, I am extremely concerned about illegal immigrants violating our nation's election laws by registering and voting in local, state and federal elections. I feel that the American people have been disenfranchised by ballots illegally and fraudulently cast in our increasingly close elections.

Nothing is more important than ensuring the integrity of our election process. Because of this very issue, I am able to sit before you today and represent the people of the 50th District of California. It was during my campaign that the issue of illegal participation in our election process came to light. For a short moment in time, one person's words were heard throughout the entire nation. As reported in the *Wall Street Journal* on June 5, 2006, "Ms. Busby addressed a group of supporters and in response to a question in Spanish about how someone who was an illegal alien could help, she answered: "You don't need papers for voting," she said. "You don't need to be a registered voter to help."

The freedom to vote is one of the most fundamental and sacred rights Americans can exercise. With more than 20 million foreign-born residents in the United States who are not U.S. citizens, including an estimated 12 million illegal immigrants, the potential for non-citizen voting is a growing concern, especially when you consider the relaxed registration requirements and a lax screening process at the time of voting. I feel there is a very real possibility that non-citizens have affected the outcomes of elections in the past and will in the future.

Voting by illegal immigrants is one of the toughest issues to study due to the fact there is no centralized or accessible list of illegal immigrants that can be compared to voter registration lists or lists of persons who actually cast ballots. The most basic requirement for registering to vote is United States citizenship.

Citizenship is clearly defined in both federal and state law. The 14th Amendment to the United States Constitution states, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." A person is not a citizen simply because he or she resides in California or is married to a U.S. citizen. While federal law requires the voter to check a box on the registration form to indicate that he or she is a U.S. citizen, Elections Code § 2111 says that an individual who signs an affidavit of registration under penalty of perjury is assumed, in the absence of contrary information, to be a citizen. Elections Code § 2112 additionally states that an affidavit of registration is proof of citizenship for voting purposes only; it cannot be

used to prove citizenship for any other purpose. In the state of California, those registering to vote must simply check a box affirming they are a U.S. citizen.

Congress enacted the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, making it a federal crime for non-citizens to vote in any federal election unless authorized by state law. All ineligible non-citizens who knowingly vote in violation of the law may be deported. While illegal voting can make the alien ineligible for U.S. citizenship (violation of criminal law), this disqualification has been often waived.

In 1993, President Clinton signed the National Voter Registration Act (NVRA). Usually called the "motor voter" bill, it requires all states to streamline their voter registration laws to make it easier for citizens to sign up. Specifically, it requires states to give voters the option to register to vote simultaneously with an application for a driver's license, by mail, or in person, and at social service and other agencies. The Act made it harder to verify the identity of voters seeking to register. It also considerably complicated the states' task of keeping the registration rolls clean.

In September 2005, the Congressional Research Service reported that more than 25 states failed to require any proof of legal presence in the United States in order to apply for and obtain a driver's license. And, as a consequence of the Motor Voter law, every single person who applies for a driver's license is asked if they want to register to vote. Voter rolls in the United States, particularly in states that allow illegal immigrants to obtain driver's licenses, are inflated by non-citizens who are registered to vote. Despite the clear mandate of the Motor Voter law that any potential voter must affirm citizenship on the voter registration application, some states issued orders to voter registration officials that voters should be added to the roles even if their application did not affirmatively indicate they are United States citizens.

Requiring a person to identify themselves with photo identification before casting a ballot enjoys broad public support. The American Center for Voting Rights-Legislative Fund's polling in Pennsylvania and Missouri found that more than 80 percent of the population favors photo ID requirement in order to vote. Other state specific polls in Wisconsin and Washington have found similar levels of public support for voter identification requirements. Nationally, a Wall Street Journal/NBC poll conducted by in April 2006 found that more than eighty percent of U.S. citizens support the requirement that a person show a photo ID before they are allowed to cast a ballot. Currently, twenty-four states require every voter to provide identification before casting a ballot and seven states currently require photo identification in order to vote.

Many people tend to think that the photo ID requirement would suppress voting but there has never been evidence to support that assertion. Much to the contrary, evidence shows that anti-voter fraud provisions increase voter turnout. When people have greater confidence in the election process, there is greater voting participation. There are more than 100 democracies which require a photo identification card without fear of infringement on individual citizen's rights, including countries such as Mexico, India and Pakistan. In fact, our neighbor to the south, Mexico, issues a voter ID which includes multiple security features, including a hologram, special fluorescent ink, a bar code, and special codes in a magnetic strip.

Not only must we worry about illegal immigrants voting illegally in our elections, we must worry that they are using the voter registration card to seek employment. There is reason to believe that some illegal immigrants applying for driver's licenses deliberately, rather than accidentally, seek voter registration. This is due to the fact that the employer sanctions law adopted in the 1986 amnesty to deter employment of illegal aliens allows a voter registration card to be used as one of the documents that establishes the employee's identity. That document, plus a Social Security card, is all that is necessary to establish work eligibility. Thus, the fact that some non-citizens register to vote is not necessarily a harmless misunderstanding of the rules, as immigrants' rights groups contend.

In 2005, a prominent group of bipartisan leaders and scholars, led by former President Carter and Secretary of State James Baker, III, focused on our nations voting laws and procedures. The Carter-Baker Commission on Voting recommended:

> Instead of creating a new card, the Commission recommends that states use "REAL ID" cards for voting purposes. The REAL ID Act, signed into law in May 2005, requires states to verify each individual's full legal name, date of birth, address, Social Security number, and U.S. citizenship before the individual is issued a driver's license or personal ID card. The REAL ID is a logical vehicle because the National Voter Registration Act established a connection between obtaining a driver's license and registering to vote. The REAL ID card adds two critical elements for voting—proof of citizenship and verification by using the

full Social Security number. The REAL ID Act does not require that the card indicates citizenship, but that would need to be done if the card is to be used for voting purposes.

As the Carter-Baker Report elaborated: "to make sure that a person arriving at a polling site is the same one who is named on the list, we propose a uniform system of voter identification based on the "REAL ID card" or an equivalent for people without a driver's license . . . There is likely to be less discrimination against minorities if there is a single, uniform ID, than if poll workers can apply multiple standards." The Carter-Baker Report also stated that "The right to vote is a vital component of U.S. citizenship, and all states should use their best efforts to obtain proof of citizenship before registering voters." I could not agree more!

The Bush Administration announced the program will cost $23.1 billion over 10 years, require motorists born after 1935 to present birth certificates or passports, and add $28 to the cost of issuing each license. As Homeland Security Secretary Chertoff stated, "Is it a reasonable amount of money that people should pay to prevent people from getting on airplanes or getting in buildings and killing Americans? I think most people would say . . . that's $20 well spent." While people will have to incur an additional cost, it seems absolutely reasonable when putting it in the context of safety and securing our democracy by eliminating voting fraud.

The Administration also announced it would delay implementation of the REAL ID provisions that federalize driver's license standards to allow states more time to comply fully. The deadline will be extended from May 2008 until December 2009, and up to 20 percent of state homeland security grants can be used to implement the program. I am extremely disappointed by the Administration's stance on this issue and will seek to insure REAL ID makes its May 2008 deadline. It is far too important for the safety of our society to delay.

If the United States wants to prevent fraudulent voting, procedures must be adopted to verify the eligibility of individuals when they register, and then to verify the identity of voters when they vote. There must also be a heightened dedication to prosecute those who fraudulently register and vote. If there is no real penalty for illegal voting, it is unreasonable to expect that an 'honor system' to keep ineligible persons from voting will be effective. It is worth noting, that with the passage of Proposition 200, Arizona was the first state to implement such measures. Approximately 32 other states are considering similar legislation.

Unfortunately, special interest groups are pursuing litigation to undermine the ability of election officials to assure that only U.S. citizens are included on voter rolls. Clearly, there has been a much greater movement to lawsuits to settle election administration issues since the 2000 Presidential election. Fundamentally, voters should believe at the end of the day that they decided the election, not a handful of lawyers and judges.

I applaud the House Judiciary Committee for focusing on this very important issue. Thank you for the opportunity to testify today.

Mr. CONYERS. Mr. Bilbray, we are grateful that you came here today.

By previous agreement, I have 15 minutes to divide on my side and so does Mr. Smith.

If I could just recognize Mr. Nadler, Mr. Ellison, Mr. Cohen to present—let's try this—present their questions to whom they want to direct them, and then we will ask the appropriate witnesses to respond.

Starting with Jerry Nadler.

Mr. NADLER. Thank you, Mr. Chairman. And, Mr. Chairman, I thank you for holding this hearing on this extremely important legislation.

My first question is of our colleague, Representative King. Reading your testimony, you say Utah has discovered that more than 58,000 illegal aliens have fraudulently obtained driver's licenses. A legislative audit bureau determined that of these 58,000, possibly 383 illegal aliens were registered to vote.

Immigration and Customs Enforcement conducted a sample consisting of 135, or roughly 40 percent, of these individuals and discovered that five were naturalized citizens, 20 were deportable, one

was a permanent legal resident and 109 had no record and were assumed to be in the United States illegally. And it was revealed that at least 14 had voted in the recent Utah election.

So out of 58,000 people, maybe 14 possibly illegal people had voted. Do you think that is a significant problem, 14 in the State of Utah?

Mr. KING. Thank you, Mr. Nadler. I would say that I did actually give that some reference in my verbal testimony as well and that you really start with that number of 383 illegal aliens.

Mr. NADLER. That would be 58,000 is where you start.

Mr. KING. Correct, but the registered to vote illegal aliens would be 383. So I would say the more——

Mr. NADLER. Possibly illegal.

Mr. KING. And 14 out of that I think is significant, given the small populations of some of these elections that take place and that the State of Florida was down to about 537 votes that made the difference in the leader of the free world.

Mr. NADLER. Fourteen in the State of Utah.

Well, I am glad you referenced the State of Florida. The State of Florida had 537 votes in that election or at least it was before the recount was stopped by the Supreme Court.

Mr. KING. I think it was after every recount.

Mr. NADLER. Before the recount was stopped by the Supreme Court; it was never finished. Some newspaper finished it and they came up with different results depending on the newspaper.

However, it seems to be universally acknowledged that thousands and thousands of alleged felons were purged from the rolls—thousands. In fact, I think it was several tens of thousands were purged from the rolls by the secretary of state's office, with a 20 percent error rate.

Twenty percent of 10,000 is 2,000. So that means that several thousand legal voters were refused the right to vote by the secretary of state's office because of a—the felon provision. How do you react to that?

Mr. KING. I have heard some of those numbers. I have not seen the kind of data that gives me confidence that that is an accurate conclusion that one can draw. I have seen the data that says even so far as the Miami Herald on the recount of the election came up with the same number, the election report, so I can speak to that.

But I will say this: that I think that Democrats believe that Republicans are guilty of election fraud, I believe Republicans think Democrats are guilty of election fraud. I think some exists on both sides. To what magnitude, I don't know, but I believe we all should endeavor to make it as absolutely clean as we possibly could and put those checks and balances in place.

I don't think that a 20 percent error rate in a voter registration list that is going to purge felons is an acceptable result at all. And if that holds up, then I would be a critic of that kind of behavior just as well.

But I want to have the highest level of integrity, because, first of all, I would say I would rather lose the presidency or the majority than lose the integrity of our electoral process. If we lose our confidence in it—and it comes down to confidence beyond the actual numbers in what is real—if we lose our confidence, we lose our

constitutional republic, and I think that is the precious commodity here we are all trying to preserve.

Mr. CONYERS. Well-said.

Mr. Nadler, thanks for just a moment. Let me yield to Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. I will be brief. I know you need to try to get as many Members in here as possible.

Representative Sanchez, I want to ask you about the bill that has been introduced by Senator Obama and Representative Emanuel. You were not an original co-sponsor but you are—I mean, you are not an original sponsor but you are a co-sponsor, so if you are not able to answer, I would understand.

But I would like to ask you about a provision, and I will read it to you. This is on page two of the bill, paragraph 618, deceptive practices in Federal elections. It reads as follows: "Whoever within 60 days before a Federal election knowingly communicates false election-related information about that election with intent to prevent another person from exercising their right to vote in that election or attempts to do so shall be fined under this title or imprisoned for not more than 5 years, or both."

We heard a while ago that Senator Obama said that the intent was not to necessarily penalize illegal immigrants. I just wanted to ask you if you would object if we did penalize illegal immigrants for voting illegally?

Ms. SANCHEZ. Well, again, I believe I would agree with Mr. Obama in the sense that I agree with his intent. I will tell you something, we already penalize people who are here without the right documents who vote in elections. It is called deportation.

Mr. SMITH. I have limited time. I understand but the operative phrase here is anybody communicates false election-related information. If someone registers to vote and professes to be a citizen who is not a citizen and therefore not eligible to vote, clearly, that is a false statement that I think that would apply.

Ms. SANCHEZ. Again, Mr. Smith, I think they run the risk. People who are not citizens run the risk of probably the greatest penalty and that is the penalty of deportation from this Nation for voting without—I think it is not a jail sentence, it is not anything else. It is deportation from our Nation. That is what they are subject to.

Mr. SMITH. Non-citizens should not be voting, right?

Ms. SANCHEZ. Absolutely, non-citizens should not be voting.

Mr. SMITH. And you feel that they should be penalized if they do vote?

Ms. SANCHEZ. I believe they are penalized when they do vote. We tend to deport them. That is what happens to them. I sit on the Homeland Security Committee. I see the deportation. That is what happens.

Mr. SMITH. Okay. And do you think they should be penalized under this bill?

Ms. SANCHEZ. They are not penalized under this bill because it already exists, that if you are not a citizen and you vote——

Mr. SMITH. Just because it already exists doesn't mean they can't be penalized under this bill. I think that they are, and I think a court would find that they are. We can discuss that more later on.

Again, this next question may be a little too technical but this says 60 days before an election. Why wouldn't this bill apply 61 days before an election or 62 days before an election if someone makes a false statement, for example.

Ms. SANCHEZ. You would have to ask Mr. Obama that question——

Mr. SMITH. I will do that.

Ms. SANCHEZ [continuing]. As to why he chose 60 days.

Mr. CONYERS. Thank you, Mr. Smith.

Mr. DELAHUNT. Mr. Chairman?

Mr. CONYERS. Yes? No, I am recognizing—your name is on the list, but it is further down.

Mr. Ellison, briefly.

Mr. ELLISON. My question is directed to our colleague, Representative King.

I am aware that the State of Indiana, in defending a photo ID lawsuit in court, found that it could not cite one single case or instance of voter impersonation, fraud. The State of Missouri had similar results. They couldn't find any cases of the kind of fraud that you are quite concerned about. And I know in my own State of Minnesota there has been much made about immigrants voting or non-citizens voting, but, still, nobody ever has any real cases to produce.

Can you tell me, since 1996, exactly how many convictions have taken place under the law for non-citizens voting as compared to how many actual votes were cast in Federal elections since that time?

Mr. KING. I am sorry, Mr. Ellison, with that buzzer ringing, could you pick up where that buzzer cut in, please?

Mr. ELLISON. Yes. I am curious to know, since the 1996 law was passed that made it a felony for non-citizens to vote, how many convictions, how many Federal convictions have taken place? And could you also——

Mr. KING. I wouldn't have the answer to that question unless it happens to be in my hand in which case we are looking at, for 2002, we have persons charged, 95; convictions, 55; dismissals by the government, eight; and acquittals, five.

Mr. ELLISON. So 55 in that 1 year, sir?

Mr. KING. Fifty-five in the year 2002.

Mr. ELLISON. Any other data for any other year?

Mr. KING. That is the only data I have in my hand right now, thanks to somebody's staff.

Mr. ELLISON. How many votes were cast in 2002?

Mr. KING. I don't know the answer to that question.

Mr. ELLISON. Would you agree with me that probably far less than one-hundredth of 1 percent is represented by that 55 number?

Mr. KING. Would you agree that a single fraudulent vote would be a violation of our integrity?

Mr. ELLISON. I am just going to ask you to see if you could answer my question. What percentage of the total vote would that 55 represent?

Mr. KING. I wouldn't presume to answer that question, and I would state that I don't believe it is relative to the subject before this Committee, but thank you for your inquiry.

Mr. ELLISON. Well, but let me ask you this: How many people do you think have been excluded from their right to vote by voter suppression, which is actually the subject of this bill?

Mr. KING. I didn't testify as to that, but I would believe that there have been—it would be my judgment, and we all—none of us know facts here in this, because there are many things that happen in the election process that are not reported, that are not prosecuted. There are a lot of things that are just given a pass.

So I don't think we can give it an analytical, numerical analysis and take it down to the percentages, although I generally do look at things from that perspective.

I would say that, on the one hand, those people who have voted illegally and been prosecuted as part of it, all of those who have voted illegally have canceled out someone else's legal vote.

Mr. ELLISON. Well, I am asking, sir, what about the people who have had their vote suppressed, such as in Florida, Ohio, well-documented voter suppression. As a matter of fact, I believe Senator Obama cited cases throughout the country about legal citizens who do have the right to vote who are deceived and have their vote taken away.

But how many would you guess that represents?

Mr. KING. I saw numbers by the thousands alleged in Florida. I saw reports that there were police roadblocks that were set up that intimidated. I looked into that further and they were irrelevant roadblocks that were significantly away from the election polls.

So as I look deeper into that, I would have to see other data to convince me that there was a strategy out there that was trying to suppress, but I don't know how some people are maybe more easily intimidated than I might be. So I would like to see some more empirical data on that.

Mr. CONYERS. Mr. Ellison, I am sorry, we are running against the clock here, and we only have a few minutes left for the panel.

So, excuse me, we will have to submit the questions that Mr. Ellison had, and I will recognize Mr. Smith now.

Mr. SMITH. Thank you, Mr. Chairman.

And I would like to encourage Members on this side to be brief. We are trying to conclude this panel before the votes, and in that spirit, I will yield to the gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Smith.

Mr. King, I agree with you: Members of both parties are guilty of irregularity, first of all.

Let me ask you this: What role does your State elections administrator have in addressing efforts to mislead and/or intimidate voters, and what has been done about it, if you know?

Mr. KING. I can, Mr. Coble, speak to the fact that in the 2004 election, even though there were people that showed up at the wrong precinct, he issued a recommendation or issued—actually, our current governor was the governor who was the secretary of state, Chet Culver, and he issued an order that the county auditors and the election poll workers could accept ballots from people who were not registered at that precinct, even though they showed up at the wrong place to vote, which really scrambled the process. And

even though Iowa is the first in the Nation to caucus, we were the last in the Nation to certify the vote because of that confusion.

Mr. COBLE. And if Ms. Sanchez or Mr. Bilbray know about your respective administrator, do you know?

Mr. BILBRAY. In the State of California, you are not allowed to ask citizenship status or place of birth. You are allowed to ask residency questions.

The biggest problem we have, congressman, we are trying to figure out those who are illegally—by definition, if they are on document, there are no documents, so we have no list to check. Where you can have a list to check legal resident aliens and you can go down that list, but you don't have the list of the others.

So the open opportunity, when we talk about being able to prosecute those who are illegal, to try to get to the data to get them is impossible unless you can somehow have it proactive, and that is where you get into this problem here. Only if they are legal resident aliens can you find a list to sort of say, "Wait a minute, you haven't naturalized."

Mr. COBLE. Well, let me hear from Ms. Sanchez, if she knows.

Ms. SANCHEZ. Mr. Coble, in our State of California, when you fill out the affidavit, and it is an affidavit you fill out, you are asked if you are a citizen. If you check the box that you are a citizen, then you continue to fill out the form. If you check the box that you are not a citizen, it says plainly there, "Please don't register to vote. You are not allowed to vote."

So it also says on there with respect to penalties should you fill out the affidavit incorrectly or falsify it.

It also, by the way, does ask for country where you were born—USA or Mexico or Italy or whatever country—in reference to, I think, a misstatement that Mr. Bilbray made.

Mr. COBLE. I yield back, Mr. Chairman.

Mr. CONYERS. Mr. Delahunt and Mr. Cohen will close out our questions. We only have minutes before the vote. And then we will take a short recess and promptly reconvene with the second panel. All other questions to any of the witnesses will be submitted in writing.

Mr. Delahunt?

Mr. DELAHUNT. I see Mr. King is getting prepared to respond to my question.

I hate to disappoint you, Steve, but I am going to just simply point out, in response to a question by the Ranking Member, that the gentlelady from California is absolutely correct. There does exist in the Federal statutes a penalty for unlawful voters and I would refer my colleagues to the U.S. code at section 1227(A)(6), and a capital letter A, and let me read it into the record so there is no doubt as to the accuracy of a statement by Congresswoman Sánchez.

"Any alien who has voted in violation of any Federal, State or local constitutional provision, statute ordinance or regulation is deportable." So there is a sanction on the books today, and there should not be any doubt about that.

With that, I yield to the gentleman from——

Mr. CONYERS. Tennessee.

Mr. DELAHUNT [continuing]. Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

My question really would go to Senator Cardin, and in the interest of time and in honor of Bud Collyer and "Beat the Clock," I will pass.

Mr. SMITH. The Chairman was yielding to me and I was going to yield to Representative Forbes if he has a question, and if not, we will go vote.

Mr. FORBES. I will yield any time.

Mr. CONYERS. Let's have a brief recess.

We thank the panel.

All questions should be submitted that have not been sufficiently asked by our Committee.

And we stand in recess until immediately after the votes on the floor.

[Recess.]

Mr. CONYERS. The Committee will come to order.

We continue our panel, the second one for the afternoon, protecting the right to vote. And we are honored to have Donna Brazile, Eve Sandberg, Ralph Neas and John Fund.

I would like to begin with the president and CEO of the People For the American Way. If you would get our second panel under way.

And I take notice that his mother is in the audience today monitoring his conduct and presentation. [Laughter.]

TESTIMONY OF RALPH G. NEAS, PRESIDENT AND CEO, PEOPLE FOR THE AMERICAN WAY

Mr. NEAS. Actually, Mr. Chairman, after all the times I have had an opportunity to appear before you and Chairman Smith and former Chairman Sensenbrenner, I know from past experience the best thing I could do is to protect myself by bringing my mother with me. So she is here. [Laughter.]

May stop all questions from everybody.

Mr. Chairman, Representative Smith and distinguished Members, thank you for the opportunity to testify today. I am Ralph Neas, president of People For, and I want to commend you, Mr. Chairman, for holding this hearing and for focusing attention on the most important domestic issue facing the Nation.

I make this statement because I believe the right to vote is the bedrock of our democracy. And by the way, I just saw Chairman Watt come in here, and I haven't seen Mr. Sensenbrenner, but the work of you all on the Voting Rights Act extension last year was absolutely spectacular and just want to thank you all.

Indeed, everything in our democracy ultimately depends on the integrity of our election system. With more than 1 million members and supporters, People For the American Way and our sister foundation are committed to ensuring that the right to vote is guaranteed to all eligible voters and that this right is secure.

Allow me to say a word about our comprehensive election reform and protection efforts. People For has established a democracy campaign which comprises all of our voting rights efforts, both on the State and local level, through voter registration, legislative grassroots litigation and GOTV efforts. This campaign also incorporates our leadership efforts in the Election Protection Coalition,

our nonpartisan voter protection effort that our partner organization, our foundation, co-founded with our allies in response to the debacle of the 2000 presidential election.

Mr. Chairman, the need to enact election reform is urgent. In 2008, this Nation will choose a new president, and once again voters will determine control of both chambers of Congress. All Americans deserve open, fair elections in which their votes will be cast and counted as they intended.

In order to give election officials time to implement election reform, Congress must pass the needed legislation in a matter of months and provide adequate funding to put those reforms in place.

In the aftermath of the 2000 elections, Caltech and MIT issued a joint study estimating that some 4 million Americans were disenfranchised in 2000. Citizens were denied the right to cast their vote or to have their vote counted by a range of problems, including faulty equipment, poorly designed ballots and untrained poll workers, as well as voter intimidation and suppression efforts and other illegal action.

These problems have persisted through the past several elections as evidenced in the report that you, Mr. Chairman, prepared regarding the 2004 presidential election in Ohio.

As we know, the complexity and sophistication of voter intimidation and suppression tactics have grown with each election, while problems with faulty voting technology have also proliferated.

In light of these problems, Mr. Chairman, I salute you for taking the leadership with Congressman Rahm Emanuel in the introduction of the Deceptive Practices and Voter Intimidation Prevention Act of 2007, along with Representatives Becerra, Honda, Ellison and Holt. People For is firmly committed to helping you pass this bill in the House and help Senator Barack Obama's bill in the Senate.

I would like to discuss for a minute or two some of the problems that People For Foundation addressed during our election protection campaign in the 2006 elections and demonstrate how your legislation will help us remove such barriers to the ballot box in protecting the voting rights of every citizen.

While current Federal law provides criminal penalties for some voter suppression and intimidation practices, the newest wave of these reprehensible tactics may not be covered, including disinformation campaigns and harassing robo calls. We have previously heard about the letters in Orange County and the robo calls and flyers in Maryland and Virginia, so let me mention a few others.

Through our program, People For responded to additional complaints around the country, including in Pima County, Arizona, where we received several reports that a group of people claiming to be with the United States Constitution Enforcement appeared at various voting locations under the pretext of preventing illegal immigrants from voting fraudulently. In reality, these actions were intended to intimidate Latino voters.

In Dona Ana County, New Mexico, a voter received several campaign phone calls telling them to vote at a polling place that did not exist. Further, in several Virginia counties, Democratic voters

received phone calls from purported election officials advising that they should not vote on Election Day and they would be prosecuted if they showed up at the polls. Unfortunately, these are typical complaints among the thousands that the Election Protection Coalition has received over the past three Federal elections.

We are extremely appreciative of the Chairman's efforts to put an end to such widespread abuse, yet at the same time we must diligently protect voter rights once they get to the voter booth. If voters do not have confidence in the electoral process, how can we encourage voters to show up at the polls.

Lack of voter confidence in the voting process has effectively become another suppression tactic, leading people to stay away from the polls because they do not believe their votes will count. Perhaps last year's most egregious example of voter problems at the polls was the travesty that took place in Florida's 13th Congressional District. In the November election, voters in Sarasota County used paperless, unauditable electronic voting machines in the race to succeed Congresswoman Katherine Harris. The county's voting machines failed to register a vote for approximately 18,000 voters.

Mr. Chairman, I have got only about a minute to go. Would that be okay, about a minute, Mr. Chairman? I can finish in a minute.

Mr. CONYERS. I haven't ever granted anyone a minute overtime.

Mr. NEAS. Even with my mother here? [Laughter.]

Mr. CONYERS. All right, 30 seconds. [Laughter.]

Mr. NEAS. Mr. Chairman, thank you again for the opportunity to testify and for your steadfast commitment to addressing the compelling issue of election reform. While I feel that the momentum for comprehensive election reform is growing, I fear that State election officials may not have the time and money to successfully implement these new laws.

As you know, the Reverend Martin Luther King, Jr., often used the phrase, "the urgency of now." That phrase is so relevant, and we feel the urgency of now with regard to election reform. The clock is ticking. We must not let time run out.

We are firmly committed to working with Members of Congress and our coalition allies to ensure that electoral reform becomes law in time to protect the integrity and fairness of the 2008 elections. Nothing less than the heart and soul of democracy is at stake.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Neas follows:]

PREPARED STATEMENT OF RALPH G. NEAS

Chairman Conyers, Representative Smith and distinguished members, thank you for the opportunity to testify today. My name is Ralph G. Neas, and I am President of People For the American Way and People For the American Way Foundation. I want to commend you, Mr. Chairman, for holding this hearing, and for focusing attention on critically important issues facing the nation.

The right to vote is the bedrock of our democracy. People For the American Way and our sister Foundation are committed to ensuring that this right is guaranteed to all eligible voters and is secure. People For the American Way is a national, nonprofit social justice organization with more than one million members and supporters, and more than two a quarter century of commitment to nonpartisan civic participation efforts. Since our founding by Norman Lear, Barbara Jordan, and other civic, religious, business and civil rights leaders, People For the American Way and its Foundation have urged Americans to engage in civic participation, and we have sought to empower those who have been traditionally underrepresented at the polls, including young voters and people of color.

Allow me to say a word about our comprehensive election reform and protection efforts. PFAW has established the Democracy Campaign, which comprises all of our voting rights efforts both on the state and national level, through voter registration, legislative, grassroots, litigation and GOTV efforts. This campaign also incorporates our leadership efforts in the Election Protection Coalition, a non-partisan voter protection effort that our partner organization, People For the American Way Foundation, co-founded with its allies in response to the debacle of the 2000 Presidential Election. Our efforts encompass advocacy on both state and federal legislation, the protection of voting rights through the judicial system, and year-around work with election officials to protect the rights of voters before, on and after Election Day.

Mr. Chairman, the need to enact election reform is urgent. In 2008, this nation will choose a new president, and once again voters will determine control of both chambers of Congress. Turnout is expected to be strong, and the stakes could not be higher. All Americans deserve open, fair elections in which their votes will be cast and counted as they intended.

Time is short. In order to give election officials time to implement election reform, Congress must pass the needed legislation in a matter of months—and provide adequate funding to put those reforms in place. Political realities would make it all but impossible to pass reform legislation in a presidential election year, and such reform would come too late for timely implementation.

The need is clear. Evidence of persistent problems in our election systems is abundant.

In the aftermath of the election fiasco in Florida in 2000, Caltech and MIT issued a joint study estimating that some four million Americans were disenfranchised. Citizens were denied the right to cast a vote—or to have their vote counted—by a range of problems, including faulty equipment, poorly designed ballots, and untrained poll workers, as well as voter intimidation and suppression efforts and other illegal action.

These problems have persisted through the past several elections, as evidenced in the report that you, Chairman Conyers, prepared regarding the 2004 presidential election in Ohio.

The vast majority of problems during the past six years resulted from faulty election administration. Voter participation, normally lower in midterm elections than in presidential years, was spurred in 2006 by close races that revolved around issues such as the war in Iraq; the exposure of unethical behavior in Congress, and the declining national economy. The unexpectedly strong turnout in some states exposed the lack of preparation by many election officials. The massive voting problems that resulted included failed absentee ballot distribution, failed processing of voter registration applications resulting in inadequate voter registration lists, improper interpretation of registration requirements, a lack of adequate resources and trained staff at polling places, and more.

The complexity and sophistication of voter intimidation and suppression tactics has grown, and problems with faulty voting technology have proliferated. Make no mistake. The threats to democracy are just as real today as they were half a century ago. The bad old days of poll taxes and literacy tests are behind us, but new forms of intimidation and suppression have taken their place. With the enactment and recent reauthorization of the Voting Rights Act of 1965, and with subsequent legal decisions that have clarified and strengthened a citizen's constitutional right to be free from intimidation and unnecessary barriers at the voting booth, it's hard to believe we are here today discussing coordinated suppression campaigns. But there you have it.

Mr. Chairman, I salute you and Representative Emanuel in the introduction of the Deceptive Practices and Voter Intimidation Prevention Act of 2007, along with Representatives Xavier Becerra, Mike Honda, Keith Ellison and Rush Holt. PFAW is firmly committed to helping you pass this bill in the House, along with and Senator Barack Obama's bill in the Senate. I'd like to discuss some of the problems that PFAWF addressed during our Election Protection campaign in the 2006 elections, and demonstrate how your legislation will help us remove such barriers to the ballot box and protect the voting rights of every citizen.

While current federal law provides criminal penalties for some voter suppression and intimidation practices, the newest wave of such tactics may not be covered. Federal law may not currently criminalize all the deceptive practices we saw in the 2006 elections, including disinformation campaigns and harassing robocalls. Such practices try to deceive voters into changing their votes, or voting on the wrong day, or by sending them to the wrong polling place. Some schemes attempt to convince citizens that voting will be difficult or even dangerous, or simply annoy them so much that they stay home from the polls in disgust at the whole process.

The 2006 elections provided prime examples of these new forms of suppression techniques, and dirty tricks were as pervasive and brazen as ever. In Orange County, California, a Congressional candidate sent out letters in Spanish to approximately 14,000 Hispanic registered voters, warning it was a crime for immigrants to vote in federal elections, and threatening voters that their citizenship status would be checked against a federal database. Of course, immigrants who are naturalized citizens have as much right to vote as any other citizen, and no such database is used in elections. The letters were outright lies.

In Maryland, fliers were handed out in Prince Georges County and predominantly African American neighborhoods with the heading "Democratic Sample Ballot." The fliers used unauthorized photos of Democrat Kweise Mfume, along with the names of the Republican candidates for Senator and Governor, falsely implying an endorsement.

In Virginia, voters received recorded "robocalls," sometimes late at night, which falsely stated that the recipient of the call was registered in another state and would face criminal charges if he came to the polls.

People For the American Way responded to additional complaints around the country through our Election Protection coalition. In Pima County, Arizona, we received several reports that a group of people,claiming to be with the "United States Constitution Enforcement (USCE), "appeared at various polling locations under the pretext of preventing illegal immigrants from voting fraudulently. In reality, these actions were intended to intimidate Latino voters.

In Dona Ana County, New Mexico a voter received several campaign phone calls telling her to vote at a polling place that didn't exist. Further, in Accomack and Northampton Counties in Virginia, Democratic voters received phone calls from purported election officials advising that they shouldn't need to vote on Election Day and that they'd be prosecuted if they showed up at the polls. Unfortunately, these are typical complaints that PFAWF and the Election Protection Coalition have received for the past three federal elections.

We are extremely appreciative of the Chairman's efforts to put an end to such widespread abuse. At the same time, we must be diligent about protecting voters' rights once they get to the voting booth. If voters don't have the confidence in the electoral process, how can we encourage voters to show up at the polls? Lack of voter confidence in the voting process has effectively become another suppression tactic, leading people to stay away from the polls because they don't believe their votes will count.

People For the American Way Foundation's Election Protection work exposed many problems related to voter registration, provisional ballots and faulty voting technology. Inadequate statewide voter registration databases and the implementation of burdensome third-party registration requirements led to countless voters being challenged and forced to vote on provisional ballots—or at times, being denied the right to vote to outright. Overly restrictive voter identification and registration laws implemented in states across the country are obstructing Americans' ability to register and to vote. Under the guise of limiting fraud—of which there is little evidence—state legislatures have passed new laws saddling voter registration organizations with regulations that are frivolous, onerous, or both.

Voters are continually denied the right to vote, even by provisional ballot, by inadequately trained poll workers. Election Protection volunteers were usually able to remedy these situations, but it is a continuing problem that must be addressed.

The use of non-secure and unauditable voting technology is also particularly troubling. As a result of the 2006 HAVA deadlines, the widespread replacement of older voter technology meant more voters and poll workers throughout the nation used new voting systems in 2006 than in any previous election. With so many counties using new voting systems for the first time, the number of voting machine problems increased dramatically over 2004. In fact, complaints about voting machines outnumbered all other complaints reported to Election Protection, and voters in more than 35 states reported various problems related to voting machines.

Perhaps the most egregious example was the fiasco that took place in Sarasota County, Florida. In the November election, Sarasota County used paperless, unauditable electronic voting machines in the race to succeed Katherine Harris in Florida's 13th Congressional district. The county's voting machines failed to register a vote for approximately 18,000 voters in that race—more than one out of every seven voters who attempted to vote on the machines. Even though almost 15 percent of the voters in Sarasota County saw their votes disappear in this election, the state certified the winner by a margin of only 369 votes—less than 0.2 percent of the total vote.

These 18,000 Sarasota County citizens whose votes are missing put a human face on the substantial flaws that remain in our election system, and should encourage

Members on both sides of the aisle to pass legislation with adequate funding in time for the upcoming 2008 Presidential Election. PFAW strongly believes that it is paramount for Congress move to pass legislation that will require the use of secure systems that provide verifiable, auditable, and accessible voting. The status quo is not acceptable.

In addition to the legislation already introduced by the chairman, PFAW has supported other election reform legislation in the past, and we look forward to pending re-introductions of these important bills.

PFAW supported the Chairman's Voting Opportunity and Technology Enhancement Rights Act of 2005, which takes a comprehensive approach to addressing election reform problems, and we will continue to support the Chair should he move forward with similar legislation in this Congress.

PFAW also looks forward to supporting an updated version of Congresswoman Stephanie Tubbs Jones's election reform bill, the Count Every Vote Act of 2005 (CEVA), which takes a similar comprehensive approach. While these comprehensive bills address a range of necessary voting reforms, PFAW is equally supportive of more focused proposals such as Congressman Rush Holt's bill, the Voter Confidence and Increased Accessibility Act of 2007, H.R. 811.

Mr. Chairman, thank you again for the opportunity to testify, and for your steadfast commitment to addressing the urgent issue of election reform. I feel that with the support of congressional leaders such as yourself, the necessary momentum is growing to put reforms in place in time for the 2008 elections.

As you know, the Reverend Martin Luther King, Jr. often used the phrase, "The urgency of now." At People For the American Way, we feel the urgency of now with regard to election reform. The clock is ticking, and we promise we will do all we can to advance the cause of timely election reform. We are firmly committed to working with Members of Congress and its coalition allies to ensuring that electoral reform is a priority.

Thank you.

Mr. CONYERS. Thank you. Thank you very much, sir.

Donna Brazile is well-known for her career on Capitol Hill. She worked for the Congress, she has worked in the civil rights movement. She is now teaching at a college and is writing extensively. And we welcome her for her comments on a subject to which she has been committed across the years.

TESTIMONY OF DONNA L. BRAZILE, CHAIR, DEMOCRATIC NATIONAL COMMITTEE'S VOTING RIGHTS INSTITUTE, ADJUNCT PROFESSOR, GEORGETOWN UNIVERSITY

Ms. BRAZILE. Thank you, Mr. Chairman and Members of this Committee. It is a great honor to be here and to be on this side of the table and not having to prepare all of the materials that I know that goes into the work of the staff.

I am here on behalf of the Democratic National Committee's Voting Rights Institute, which was founded in 2001 following the chaotic election in Florida to help every American participate in the political process.

Like Ralph Neas, I want to thank this Committee for guiding and helping to steer through the Congress the Fannie Lou Hamer, Rosa Parks, Coretta Scott King Voting Rights Reauthorization and Amendments Act of 2006. Forty-two years after the heroic marchers tried to cross the Edmund Pettus Bridge only to be met with ugly violence, we continue to celebrate their courage and honor what they marched for.

That says a lot about our country that we own up to our struggles, that we acknowledge we haven't always done what we should, and that we commit ourselves to press ahead and to move forward to remove any new impediment of vestiges of a previous era that

prevented eligible citizens from participating in the electoral process.

Mr. Chairman, after the 2000 election, we committed ourselves at the Democratic National Committee to eliminate any problems we saw at the ballot box and to recruit lawyers and volunteers to assist us in educating Americans of their right to vote.

In the process, during the last political cycle, we heard from 30,000 Americans who needed our assistance and guidance in locating their polling places, understanding their right to vote by absentee ballot, early voting or provisional ballots. Many voters also called to express their concerns about voting with new technology, identification requirements and knowing whether or not their votes would be counted.

The history of racial discrimination at the ballot box is long and it is appalling. Our electoral system is rife with problems, problems that can be solved and eliminated with proper training of election administrators, proper funding to educate eligible citizens on their right to vote and the elimination of barriers that continue to impede citizens' involvement in the electoral arena.

I fully support H.R. 1281 and its companion bill in the Senate, because I believe this legislation, if enacted and implemented properly, will eliminate both partisan tactics that the press turn out, as well as some of the structural barriers that eliminate people from the voter rolls right before the election.

We learned in our own experience in Ohio, following the 2004 presidential election where we conducted a very comprehensive study, that 23 percent of all citizens in that State (44 percent of African-American voters in Ohio) waited more than 20 minutes to vote; 3 percent had to leave the polling place because of long lines; 2 percent had to go to more than one polling site before finding the correct location; 6 percent of all voters (16 percent of African-Americans) reported experiencing some sort of intimidation at the polls; and 2 percent of all voters (4 percent of African-Americans) had trouble getting their absentee ballot or their registration status challenged at the polls.

Even with the Help America Vote Act, which was supposed to fully eliminate some of our problems, we saw problems across the board in the last electoral cycle. Congressman Cardin, Senator Obama and many others pointed out some of these problems, but let me just also highlight others.

Registered voters in Virginia, Mr. Scott's home State, received automated phone calls falsely claiming that voters in that State were removed from voter registration rolls and should not show up. Citizens were warned that if they showed at the polls, they would be arrested.

In Arizona, Latino voters were confronted by intimidating gunmen who provided false information about the qualifications for voting in an effort to prevent eligible citizens from participating.

And in 2006, we also had voters in Ohio and in Pennsylvania who received flyers telling them to vote on Wednesday, the day after election. Milwaukee voters received flyers from a fictitious Milwaukee Black Voter League warning them if they ever voted before that year, if they hadn't paid their child support or if anyone

in their family had ever been convicted of anything, they should not show up at the polls.

Students at Prairie View College in Texas were threatened with a $10,000 fine or 10 years in prison if they registered to vote at school, despite having the same rights as any other Prairie View resident to participate. Students at colleges and universities across the country complained that they had difficulty in casting their ballots on campus and getting their absentee ballots on time.

These deceptive tactics are not new. They have become part of the political landscape and it is time that we outlaw them. Under the guise of protecting against voter fraud, we now are prepared to wage an even greater fraud by deliberately blocking eligible citizens from voting.

The aggressive proponents of so-called ballot security programs have played a significant role in voter suppression, sending official-looking personnel, some of whom are off duty police officers, to polling places using misinformation and fear campaigns to challenge and intimidate minority voters.

These intimidating and disenfranchising tactics have been employed by a wide range of political operatives, many of whom are prominent in their own political parties, and they, of course, have gotten away with it.

Mr. Chairman, I want to submit for the record my testimony along with some of the reports on some of the ballot security programs and measures that have been instituted across the country and would hope that this Committee look into these problems so that we can eliminate them from further use in future elections.

Mr. CONYERS. Without objection, we will accept those into the record.

[Note: A report entitled *Report by the Center for Voting Rights & Protection,* submitted by Ms. Brazile, is not reprinted here but a copy has been retained in the official Committee hearing record. This report may also be found at http://www.votelaw.com/blog/blogdocs/GOP__Ballot__Security__Programs.pdf.]

Ms. BRAZILE. Mr. Chairman, I don't have my mother with me—she is here with me in spirit—but I just want to say in closing, we have to find ways to clean up our electoral system. We don't have national elections; we have 51 elections managed and operated by 13,000 municipalities, countless local government authorities and volunteers. So our system is rife with problems, rife with misinformation that is often given out.

As you well know, Mr. Chairman, there are 21 so-called swing States with margin of victories that are so narrow that these sort of tactics can change the entire outcome of an election.

So the continuing problems faced by the voters at the polls demand action, they demand results, and I believe H.R. 1281 will address some of these practices and finally help us clean up our electoral cycle so that we can have in this Nation the gold standard of elections that most other nations look to us to provide.

Thank you, Mr. Chairman. I look forward to your questions and your comments later.

[The prepared statement of Ms. Brazile follows:]

PREPARED STATEMENT OF DONNA L. BRAZILE

Mr. Chairman, members of this Committee, my name is Donna Brazile and I am the Chair of the Democratic National Committee's Voting Rights Institute (VRI) and a member of the its Rules and Bylaws Committee. I'm honored to be here on behalf of Governor Howard Dean, Chairman of the Democratic National Committee (DNC).

Many thanks for giving me this opportunity to present my testimony to this Committee and thank you for your leadership in the 109th Congress in guiding the reauthorization of the 1965 Voting Rights Act.

While the right to vote is our most precious right and the cornerstone of our democracy, our government policies often fail to encourage voting, and by failing to adopt the principle that voter participation is encouraged and facilitated, the election process has been left open to discrimination, intimidation of those who are new to the process, fraud and abuse.

Soon after the tragic death of Rev. Dr. Martin Luther King, Jr., I was inspired to service by committing myself to helping others register and vote. Although I was only nine years old at the time, I became excited about the opportunity to help register people in my neighborhood to vote by simply telling them they now had "new rights on the books" that would allow Black people to vote. Day after day, I would ride my bicycle all around Kenner, Louisiana—a suburb of New Orleans to inform people of their moral obligation to vote. I told them that while many of us were too young to march for voting rights, we needed them to register and vote in order to help improve conditions in our neighborhood.

You see, one of the local leaders running for City Council had promised to build a playground in our area and that news gave me hope—hope that one day we could play basketball inside because it rained just about every day.

Today, after seven presidential, over fifty congressional and numerous state and local campaigns later, I am still out here urging people to register to vote, to get involved and to use their new political power to improve conditions in their communities. But, I must tell you, I am worried. I am troubled by what I have seen with my own eyes and what I have witnessed repeatedly in several major national elections—the deliberate attempt to disenfranchise and discourage people from exercising their right to participate in the political process.

The rise in voter harassment and voter intimidation is a direct result of some political operatives—often with the blessing of their political leaders trying to gain an electoral advantage at the ballot box. In fact, they call it ballot security—a practice that according to a report written by Rice University's Professor Chandler Davidson and others on behalf of the Center for Voting Rights and Protection—has its origins in the old "Jim Crow systems."

This practice of discouraging people from voting, from schemes that misinform or challenge the electoral status of eligible citizens to participate should be outlawed in this nation.

There is no place in our democracy for election practices that target citizens based on the color of their skin or their partisan affiliation. It's wrong and it should be outlawed.

There is no place in our democracy for last minute attempts to purge eligible citizens just because they may vote for your opponent. It's wrong and it should be outlawed.

There is no place for off duty, uniformed policemen setting up road blocks near polling sites that could impede the ability of eligible, registered citizens to cast their ballots. It's wrong and it should be outlawed.

There is no place in our democracy for political operatives posing as reporters with cameras outside of polling places in order to intimidate voters prior to entering their precincts. It's wrong and it should be outlawed.

There's no place in our democracy for demanding multiple forms of id when the law only requires one—or none. It's wrong and it should be outlawed.

There is no place in our democracy for political parties to fund third party groups who spend their resources by putting out misinformation on precinct locations—or for sending out threatening information concerning back rent payment, child support or even telling voters that Election Day has been moved to the following Tuesday. It's wrong and should be outlawed.

Throughout my career spanning many political campaigns and numerous elections at all levels, I have advocated the need for meaningful and effective election reform, specifically, the essential need to restore citizens' confidence in the electoral process and the integrity of our voting systems through the adoption of enforceable regulations that will not only reduce fraud, but will also protect the right of all Americans to vote free of harassment and intimidation and to ensure that all votes cast are properly counted.

In signing the original Voting Rights Act, President Lyndon Johnson remarked that "voting is the lifeblood of our democracy." The core of our democracy is premised upon our duty to do everything in our power to make voting secure, open, transparent and easier for citizens to participate. No one should have to pay a fee or incur hardship in order to exercise the right to vote.

The Democratic National Committee's Voting Rights Institute (VRI) was created in the aftermath of the chaotic 2000 Presidential election to educate citizens on their right to vote and to help restore voters' confidence in our electoral system. As Democrats, we believe that every eligible voter should be encouraged to participate in the political process and that their right to vote should be protected. We condemn every act of voter intimidation and voter harassment.

This past weekend, we were reminded of the continued struggle to fulfill the promise of our democracy, when civil rights, community and nationally recognized political leaders gathered in Selma, Alabama to commemorate the 42nd anniversary of Bloody Sunday, a day when hundreds of protesters fighting for civil rights started to march from Selma to Montgomery, but only got as far as the Edmund Pettus Bridge when they were met with the unprovoked brutal force of state and local law enforcement. This march and two others that followed shortly after led to the passage of the single most important piece of civil rights legislation, the Voting Rights Act of 1965.

In the 42 years since the passage of this historic legislation, this country has seen much progress in the expression of our democracy. It is estimated that in the first decade alone, following the Voting Rights Act, more than 20 million new voters were added to the rolls. The number of minority elected officials at the state and federal level has increased significantly. Prior to the passage of the voting rights act, there were only 3 African American members of Congress; today there are 43. In the reauthorization and extensions, the Voting Rights Act was strengthened and expanded to provide language assistance to certain communities. This in turn has helped voters to participate in a meaningful way in our democracy.

When President Bush signed the Fannie Lou Hamer, Rosa Parks, Coretta Scott King Voting Rights Reauthorization and Amendments Act of 2006, surrounded by a bi-partisan group of lawmakers who worked collegially, he pledged that his administration would "vigorously enforce the provisions of this law, and . . . will defend it in court." We intend to hold not only this President and Congress but also future Presidents accountable to ensure that our basic rights are protected and enforced.

Despite considerable efforts and progress in recent decades, it is undeniable that storm clouds of voter intimidation still loom today. This is evidenced by the deliberate strategic efforts to suppress and harass eligible citizens from voting, especially youth and people of color.

In the weeks leading up to the 2004 presidential election, the VRI heard numerous reports from citizens claiming that they no longer were on the voter rolls and had to cast provisional ballots or their voting precinct had changed and they were worried that they could not get to the right polling station. Upon hearing some of these reports, I traveled to numerous states including Michigan, Pennsylvania, Missouri, Florida and Ohio to learn firsthand what was happening and to ensure our voter education and protection program was providing some assistance to those who worried that their eligibility would be questioned or challenged. Still we heard problems and decided to figure out exactly what happened.

We conducted a comprehensive investigative study to determine the nature and prevalence of the widely reported problems surrounding the 2004 Presidential Election in the state of Ohio. Very simply, we wanted to know: what was going on and what did voters experience when they went to cast their ballots? While Ohio may have experienced the most extreme and widespread problems, it can be viewed as a microcosm for what happened in numerous states. The types of problems reported in Ohio were reported in other states across the country. Mr. Chairman, I have attached a copy of this study for your review.

In surveys conducted for the DNC study, over half of all African American voters in Ohio in 2004 reported that they encountered some obstacles to voting at the polls. Statewide, African American voters reported waiting an average of 52 minutes to cast a ballot. White voters waited an average of just 18 minutes. African Americans were 20% more likely than white voters to be required to vote by provisional ballot, accounting for 35% of all provisional ballots in the state. Three-quarters of provisional ballots were counted overall in the state, but officials counted only two-thirds of the provisional ballots cast in Cuyahoga County [the city of Cleveland), a county with one of the highest concentrations of African Americans in the state.

Identification requirements were illegally administered and the effects varied significantly by race. Only voters who registered by mail and voters who did not provide identification on the registration form were legally required to produce ID,

which accounts for less than 7% of the 2004 Ohio electorate. Fully 61% of male African American voters were asked for ID, and overall, African American voters were 47% more likely to be required to show identification than white voters. These racial differences hold even when controlling for residential mobility.

African Americans were four times more likely than white voters to have their registration status changed at the polls, arriving to find that their names had either been purged or never added. African Americans were three times more likely to experience voter intimidation than white voters, including misinformation campaigns that threatened arrest and up to 10 years in jail if a person who had ever been arrested, had a family member arrested, or had an unpaid parking ticket tried to vote.

No one should wait for an hour to vote, or be illegally asked to produce ID, or have to cast a provisional ballot without cause. But those precincts where voters have been forced to wait in line for hours in order to vote have historically been located in neighborhoods occupied by large numbers of poor people, people of color and young people. While many decisions, ranging from where to place polling sites, training election day workers and accessibility to public transportation, are left to local and state officials, it's imperative that we find ways to outlaw all forms of discrimination in the process of making these important decisions.

In 2000, we heard of, and in some cases witnessed, various illegal schemes that prevented tens of thousands from voting and discouraged many more with attempts to disenfranchise citizens from voting.

Prior to Election Day, the former Secretary of State of Florida authorized the purging of citizens—primarily African-American and Latino voters. Up to 30 percent of those purged were located in predominantly Democratic and minority voter precincts. My sister who resided in Seminole county (Orlando, Florida) called me early on Election Day and asked, "How many forms of I.D. do I need to vote?" My simple answer was to tell her only one. Unfortunately on that day, Demetria had to produce not one, nor two, but three forms of ID in order to vote.

In spite of the heightened attention that voter disenfranchisement has received since the 2004 election, we continue to see disturbing illegal voter suppression campaigns. The reality is that voter ID laws that go beyond the requirements of HAVA disenfranchise many lawfully registered voters. And, they do so in a discriminatory fashion, disproportionately undermining the voting rights of seniors, low-income citizens, minorities, young people and people who live in urban and rural areas. Voting laws are unevenly and often improperly enforced by election officials.

According to the Cuyahoga Election Review Panel Interim Report issued on June 14, 2006, there was a disparity in Ohio between those who were asked for identification: 35 percent of Clevelanders said they were asked for ID as opposed to 16 percent of suburban residents, and 31 percent of African American voters were required to present ID in contrast to 18 percent of white voters. These findings mirror those of the DNC's report on the 2004 election in Ohio. The Cuyahoga report can be found at *http://www.cuyahogavoting.org/CERP—Final—Report—20060720.pdf.*

In October of 2006, the campaign of a Republican candidate for the 47th Congressional District of California sent thousands of intimidating letters written in Spanish to voters with Hispanic surnames. These letters advised that immigrants could not vote and could be deported for doing so. The letters deliberately concealed the fact that immigrants who become naturalized citizens can vote just like any other citizen.

In Maryland, just days before the 2006 general election, copies of the Election Day manual for the Maryland Republican Party were obtained; in that manual, Republican Party workers were given false information about voters' rights, were told systematically to challenge voters and were advised to threaten election judges with jail time. On Election Day in Maryland, flyers were distributed in Prince George's County, by the Ehrlich/Steele Republican campaign, falsely stating that African American elected officials had endorsed the Republican candidates for U.S. Senate and for Governor and misleading voters about the party affiliation of those candidates.

Registered voters in Virginia and Colorado received automated phone calls falsely claiming they were removed from the voter registration rolls. Citizens were then warned that if they showed up at the polls they would be arrested. In Arizona, Latino voters were confronted by intimidating gunmen who provided false information about the qualifications for voting in an effort to prevent eligible voters from participating.

These tactics are not new.

In 2004 voters from Ohio to Pennsylvania received fliers telling them to vote on Wednesday, the day after the election. Milwaukee voters received a flier from the fictitious "Milwaukee Black Voters League" warning them that if they had ever voted before that year, if they didn't pay their child support or if "anyone in your

family has ever been convicted of anything" and the voter cast a ballot that voter will lose his/her children and go to jail for 10 years. Students at Prairie View A&M University were threatened with a $10,000 fine or 10 years in prison if they registered to vote at school, despite having the same rights as any other Prairie View resident to participate. Students at colleges and Universities across the country were forced to navigate an already difficult election administration system in the face of similar deliberate deception.

For years, voters in Baltimore and my home state Louisiana have been subject to similar deceit and misinformation. As I mentioned before, nearly all of these tactics are focused on traditionally disenfranchised voters. The very Americans the Voting Rights Act is committed to protecting are being removed from the system through cynicism, deceit and misinformation.

The continuing problems faced by voters at the polls demand additional election reform measures, including steps aimed at addressing the kind of deceptive practices, specifically intended to intimidate voters that we witnessed in the 2006 elections. HR 1281, the proposed Deceptive Practices and Voter Intimidation Prevention Act of 2007, would represent a great step forward in outlawing theses kinds of abhorrent practices while protecting and respecting the rights of free political discourse protected by the First Amendment. We commend you, Mr. Chairman, and the co-sponsors of this important legislation for confronting head on the type of intimidating tactics we witnessed last fall and for carefully crafting these measures to put an end to them.

We cannot allow another election cycle to go by where we witness deliberate efforts to subvert the will of voters to vote for their candidate of choice.

This necessary legislation will not only provide the tools to go after those who want to manipulate election results but will provide the necessary framework to provide voters with the correct information from a trusted source.

The United States has never committed itself to policies of full voter participation. The failure of that commitment has made it easier for discriminatory practices that selectively disenfranchise certain citizens, in order to give a greater voice to remaining citizens. Until participation by all eligible voters is our goal, we will leave ourselves open to manipulation, election scandal and suppression of selected groups because we are not judging those policies against a principle that favors participation.

The United States of America must lead by example. While the US encourages other nations to adopt broad democratic principles and reform, we need to make a basic policy decision that it is in the best interest of our democratic form of government to encourage all eligible citizens to register and vote. We know that election laws, particularly in some states, emphasize voting prevention, rather than encouraging the participation of all citizens who have that right. That is one reason why voter participation in the United States is lower than that in many other leading democracies. By contrast, election participation in six states that provide same-day voter registration—Idaho, Maine, Minnesota, New Hampshire, Wisconsin, Wyoming—have reported higher levels of participation with little or no reported election fraud.

The failure to commit to full participation continues to allow states and localities to abrogate the constitutional guarantees of democracy and selectively decide who has an easier and who has a harder time voting.

Aggressive proponents of "ballot security" programs have played a significant role in voter suppression, sending "official looking" personnel (some of whom are off-duty police officers) to polling places, using misinformation and fear campaigns to challenge and intimidate minority voters. These intimidating and disfranchising tactics have been employed by a wide range of Republicans, many of whom are prominent professionals and high official standing within the Republican Party. Legislation requiring voter ID only assists these reprehensible tactics.

Proposed and existing voter ID laws make voting more difficult for no compelling reason. The fact is that all voters, in all states, have to show identification in order to *register* to vote. Under the federal Help America Vote Act ("HAVA"), all states require first time voters who do not present ID when they register to vote to show it when they come to the polls to vote. Thus, it is given that voters who register by mail and those who are registered in door-to-door voter drives must show ID when they arrive at the polls to vote. The reality is that voter ID laws that go beyond the requirements of HAVA disenfranchise many lawfully registered voters. And, they do so in a discriminatory fashion, disproportionately undermining the voting rights of seniors, low-income citizens, minorities, young people and people who live in urban and rural areas. Voting laws are unevenly and often improperly enforced by election officials.

CLOSING RECOMMENDATIONS ON THE NEED FOR ELECTION REFORM

Let me conclude with some of the recommendations recently adopted at the winter meeting of the DNC to ensure a fair, transparent and error free election. We support legislation and regulation that mandates transparent election administration and that would require voter registration lists mandated under the Help America Vote Act be carefully monitored to ensure they include all voters who are duly registered and that the strongest possible protections are implemented which prevent voters from unlawful purges;

We also support legislation and regulations that entitle any voters who cast provisional ballots in the 2008 federal elections to have these ballots counted in an equitable and inclusive manner, with a presumption in favor of validity and a clear mandate that provisional ballots shall be counted in the most generous possible manner. We believe that adequate funds should be made available under HAVA for states to effectively and equally administer the 2008 general election. Steps toward this goal would include the equitable distribution of voting equipment and supplies to all polling places and brief and equivalent wait times for all voters regardless of where they live, their race or socioeconomic status.

The DNC also believes that ballots timely cast by eligible U.S. voters living overseas should be counted. Further, we call on Congress to allow college students greater access to the polls and ensure that the polls are accessible to all eligible voters, regardless of physical or language limitation.

Lastly, we would like to encourage Secretaries of State and other election officials not to engage in partisan conduct during federal elections. We urge the House to adopt legislation to end voter intimidation and to prevent the harassment of eligible citizens from participating in the political process.

Mr. Chairman, there are several bills pending in the House of Representatives and the U.S. Senate, including HR 1281, which, if adopted, will make great headway in achieving these goals. Let me say specifically that as a District resident, I fully support Congresswoman Eleanor Holmes Norton's bill, H.R. 328, which will provide for the treatment of the District of Columbia as a Congressional District for purposes of representation in the House of Representatives. The call for voting rights to the hundreds of thousand of tax paying American citizens is long overdue. I would hope this Congress, along with the President, will work towards its enactment and to fully embrace the goal of giving all Americans a voice and a vote in the governing of our nation.

Mr. Chairman, I believe we can make our democracy work for all its citizens. In my lifetime, I have seen barriers fall. I witnessed a non-violent revolution to allow all Americans at seat at the political table. In closing, please allow me to pay homage to those who dared to live the dream, who longed for freedom and the right to vote. When those brave Americans gathered at the Edmund Pettus Bridge some 42 years ago today, all they wanted was freedom. They wanted a seat at the table and they wanted to register and participate in the electoral life of our democracy.

Along the way, they were beaten and jailed. But they never faltered in their journey. They continued to fight for justice and the right to vote. Later that summer, they began a massive voter registration effort in places where people didn't even know they could, in theory, vote.

We have come along way since then. One of those who journeyed across that bridge now sits in the House of Representatives. I am here because they marched. Because they knew the day would come for all of us to have a seat at the table.

Mr. Chairman, please act to remove the remaining impediments to the dream of true equality for all. Remove the last vestiges of Jim Crow and allow every eligible citizen the right to vote, to sit at the table and help guide and lead this nation.

African-Americans, Hispanics, Native Americans, Asian Americans, women, gays and lesbians, people with disabilities and people of all backgrounds sit in jobs, live in homes, and hold positions that would have been unthinkable four decades ago.

To honor their legacy and the sacrifice of so many others, to live up to the expectation of the generations of Americans who constantly pushed us to realize America's full promise as a democracy, we must take up this fight to eliminate all barriers to electoral participation.

All Americans—no matter their party—must join us in repairing the machine of our democracy, and the heart of our nation.

Thank you for allowing me to participate and share my observations.

LIST OF SOURCES REFERENCED AND ARTICLES IN THE MEDIA:

- A Report to the Center for Voting Rights & Protection, September 2004 by Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression";

- Associated Press, "Democrats blast GOP lawmaker's 'suppress the Detroit vote' remark," *Detroit Free Press*, 21 July 2004);
- Democratic National Committee, June 2005 "Democracy at Risk: The 2004 Election in Ohio" *http://www.democrats.org/a/2005/06/democracy—at—ri.php;*
- Demos 2003, "Securing the Vote, An Analysis of Election Fraud *http://www.demos.org/pubs/EDR*__-__Securing__the__Vote.pdf";
- Lawyers' Committee for Civil Rights Under Law, Report by The National Commission on the Voting Rights Act, February 2006 "Highlights of Hearings of the National Commission on the Voting Rights Act 2005" *http://www.votingrightsact.org/report/finalreport.pdf;*
- People for the American Way Foundation, August 2006, "The New Face of Jim Crow: Voter Suppression in America". *Crowhttp://www.pfaw.org/pfaw/general/default.aspx?oid=20203#;*
- *Race and Ethnic Ancestry Law Digest 2* (Spring 1996), Rachel E. Berry, "Democratic National Committee v. Edward J. Rollins: "Politics as usual or Unusual Politics?" pp 42–46;
- The Cuyahoga Election Review Panel Interim Report issued June 14, 2006 *http://www.cuyahogavoting.org/CERP*__Final__Report__20060720.pdf.

ATTACHMENT

CONTROVERSY GREETS EARLY VOTING

By Judy Normand/OF THE COMMERCIAL STAFF
Tuesday, October 20, 2002 12:00 AM CDT

Early voters were met Monday at the Jefferson County Courthouse by poll watchers from the Republican Party of Arkansas who demanded identification and challenged voter ballots.

The Democrats' "Team Arkansas" had barely concluded its early vote rally across the street from the Courthouse when the trouble began.

Under the watchers' eyes, both voters and county officials received what they called unexpected—and unnecessary—scrutiny of the election process.

Trey Ashcraft, chairman of the Jefferson County Election Commission, said it was obvious the Republicans' actions were targeting African-Americans.

In a press release, Michael Cook, executive director for the Democratic Party of Arkansas, criticized Sen. Tim Hutchinson and the Republican Party for intimidating and harassing African-American voters in Jefferson County and for giving the poll watchers notarized credentials he said were apparently forged.

"Their papers did not seem to be in order," Ashcraft said.

"Tim Hutchinson and the Republican Party have claimed that they want to reach out to African-American voters, but when election time comes they have nothing to offer but intimidation and harassment," Cook said. "We ask Tim Hutchinson and his party to stop disenfranchising African-American voters and obstructing the democratic process."

During Monday's voting, poll watchers were seen asking voters to either produce identification or risk having their ballots challenged.

"A voter does not have to show an ID as long as it's noted on the ballot," Secretary of State Sharon Priest said. "They (poll watchers) can challenge a ballot, but they cannot ask for an ID or even talk to the voters."

Several voters received pointed requests from poll watcher Allison Johnson to produce identification, and refused—a right, Priest said, that is protected by law.

Voter Bonita McCray also refused the ID request, saying "When she insisted, I put my ID back in my purse. They had no right to do this."

Officials in the clerk's office said several would-be voters became so frustrated and offended by the process that they left without casting a vote. Deputy Clerk Charlotte Munson reported a poll watcher had actually walked behind her counter to photograph voter information on her computer screen.

The watcher, she said, also asked for identification from, and then photographed, a first-time voter who was visibly shaken by the action.

"This woman (a poll watcher) was looking over my shoulder, and this is my business, not hers," the agitated voter said later.

Poll watcher Chris Carnahan admitted a colleague had been using photography to document aspects of the voting process, but said he did advise the person to put away the camera.

"We're here to ensure a clean and fair election," he said.

Johnson also accused a deputy clerk of not requesting IDs from prospective voters and said workers had no challenge ballots prepared.

"They refused to accept challenge ballots," Johnson said.

Ashcraft said this was not true. He was unable to say exactly how many ballots were challenged, but said there had been "several."

Ashcraft said he was disappointed in the Republican "Gestapo" tactics.

"They're trying to intimidate and prevent voters from participating in the Democratic process," Ashcraft said. "The registered voters feel insecure and the photos are inexcusable. They (Republicans) know they can't win, so they're trying to steal this election. This is politics at its worst. They're breaking the law and it's disgusting."

At least twice, Ashcraft summoned a deputy from the Jefferson County Sheriff's Office to escort "watcher" Diane Jones out of the clerk's office for what he said was definite interference with the voting process.

Cook said the tactics used by the Republican workers clearly crossed the line from poll watcher to voter obstruction.

Marty Ryall, director of the Republican Party of Arkansas, said in a telephone interview that different groups of poll watchers will continue to be sent to the Jefferson County Courthouse each voting day until Nov. 5. Ashcraft countered with a promise to produce "watchers" of his own—of the Democratic persuasion.

Mr. CONYERS. Thank you so much, Donna Brazile. We are grateful for your being with us.

And we now turn to Eve Sandberg, associate professor of politics at Oberlin College, a member of the council in her city, and who has carefully observed the election processes in Ohio in 2004 and 2006 as well.

We welcome you. And your statement will be incorporated in its entirety in the record. And we are glad that you are here as well.

TESTIMONY OF EVE SANDBERG, ASSOCIATE PROFESSOR OF POLITICS, OBERLIN COLLEGE

Ms. SANDBERG. Thank you, Mr. Chairman. Good afternoon. My name is Eve Sandberg, and I live in Oberlin, Ohio. I teach in the Politics Department at Oberlin College. I am also an elected official serving as an at-large city council in the city of Oberlin.

Like many Ohioans, I was vitally involved in the election processes in 2004 and 2006. Thank you for the opportunity to offer my perspective and relate what I heard and saw happening in Ohio during the last few elections.

I want to note that my comments today will demonstrate my view that the Republican Party leadership of Ohio involved themselves in practices that undermined a fair and democratic electoral process. However, when these activities were revealed, often we found that many Ohioans who were supporters of the Republican Party cooperated with Democrats to rectify what they recognized to be dishonorable electoral practices.

My remarks today should not be construed as an attack on Republicans but rather on those Ohio Republicans who played leadership in their party's recent election and on those Republicans who continue to deny the irregularities and undermining practices that marked Ohio's recent elections.

Regarding the registration process in Ohio in 2004 and again in 2006, prior to the election, the Ohio secretary of state's office, held by the Republican leadership, sent out mixed messages about vot-

ing rights. The secretary of state office, for example, let it be known that election officials would vigorously challenge out-of-State students who chose to vote in Ohio by requiring a photo identification card with a current voting address on that card. In 2004, such a requirement was not legal in Ohio.

Students were not the only voters adversely affected during the registration process again, in 2006, by the changes of the requirements for voting. Poor people, the elderly who lacked or had given up their driver's licenses, faced disenfranchisement as well from a requirement that they had to produce a photo ID in order to vote. Few voters have photo identifications other than driver's licenses.

Suppression of the vote became a campaign tactic that was debated in Ohio, as the Republican leadership in Ohio made the registration process a circus that prevented Americans who are entitled to vote from exercising their franchise.

The voting processes in Ohio were undermined by manipulating the placement of voting machines and by unlawful challenges of a citizen's right to vote. Despite data on the number of registered voters, heavily Democratic Party areas, particularly precincts with large numbers of African-American voters or student voters, were provided with so few voting machines that Ohioans in these precincts had to wait hours in line to vote; in Oberlin, up to 5 hours. Yet we heard not one report that any precinct in which voters who voted largely for Republicans received too few voting machines or suffered hours of voting in line.

However, we also heard the Republican leadership celebrating the enormous Republican turnout. That is just too curious.

In 2006, my current colleague on the Oberlin City Council, David Ashenhurst became a poll worker. He reports that the rules on provisional ballots that were used during the training of poll workers did not match the manual that the poll workers were given. Further, on the day of the 2006 election, a different set of rules was distributed at polling stations. The obvious observation here is that if there is confusion among poll workers, how is a voter supposed to satisfy the rules?

In 2006, many absentee ballots were printed 2 weeks late and thus delivered late. Individuals had difficulty completing the ballots and returning them on time. At some polling places in 2006, again where residents mainly voted Democratic, in Cuyahoga County, the machine cards were inoperable when inserted into voting machines on the day of the election. It took hours to correct the situation and therefore the voting polls opened late. For many voters who had made arrangements to vote prior to going to work, it was not possible to do so.

If there was any silver lining to the distressing reports of irregular or unlawful practices, it can seen in those voters who were able to devote 4 or more hours to waiting in line, who cherish democracy enough to demand the right to vote, regardless of how inconvenienced they were.

Despite the cynicism and distrust created by the actions of our highest Ohio elected officials, the determination, patience and goodwill of the American citizenry in coping with adversity is admirable. Now, I hope the United States Congress, after hearing our testimony today, will restore our faith in our political leadership

and work to restore free and fair election practices in Ohio and elsewhere throughout our country.

I thank you for the honor of including my testimony today.

[The prepared statement of Ms. Sandberg follows:]

PREPARED STATEMENT OF EVE SANDBERG

INTRODUCTION

Good Afternoon. My name is Eve Sandberg and I live in Oberlin Ohio. I teach in the Politics Department at Oberlin College and I also am an elected official serving as an At-Large City Councilor in the City of Oberlin. Like many Ohioans, I was vitally involved with the election processes in 2000, 2004, and 2006. Thank you for the opportunity to offer my perspective and relate what I heard and saw happening in Ohio during the last few elections. It appears to me, and to thousands like me, that the election process in Ohio was undermined in so many points along the voting process that any fair-minded observer must conclude that the leadership of the party in power, the Ohio Republican Party leadership, used its public offices to influence the outcomes of the elections in Ohio through irregular and unlawful practices.

Before I begin my testimony today I would like to contextualize my remarks with a few preliminary comments. The electoral contests in Ohio over the last six years have been bitterly partisan. I believe, however, that ensuring fair and free elections is a bipartisan responsibility and that addressing the reprehensible flaws in our electoral practices is a task that must be undertaken by the political leaders of all our political parties.

I want to note that my comments today will demonstrate my view that the Republican Party *leadership* of Ohio involved themselves in practices that undermined a fair and democratic electoral process. However, when these activities were revealed, often we found that many Ohioans who were supporters of the Republican Party cooperated with Democrats to try to rectify what they recognized to be dishonorable electoral practices. My remarks today should not be construed as an attack on Republicans, but rather on those Ohio Republicans who played leadership roles in their party's recent elections and on those Republicans who continue to deny the irregularities and undermining practices that marked Ohio's recent elections.

I also would like to note that, while living in Ohio, I am a strong Democratic partisan. Yet, when I first began to vote, I remember casting some of my first votes for Republican Senator Clifford Case of New Jersey and also for Gubernatorial Republican candidate, Richard Cahill, also of New Jersey. Additionally, my mother volunteered in the campaign for, and stuffed envelopes for Mr. Cahill. I come from a family that was comprised of classic swing voters. My brother, Mark, is a thoughtful voter who votes for the best possible candidate. My father voted for Senator John F. Kennedy in 1960, but he later voted for Presidential candidate, Richard Nixon. My father was an immigrant to this country and my mother grew up in an immigrant family. My family has always viewed democracy and democratic practices with the utmost respect.

I also want to note that as a Politics professor and as a political consultant, I sometimes find myself abroad explaining the virtues of multi-party politics and democratic institutions. For example, in 2001 and again in 2002, I had the privilege of traveling to the Muslim Kingdom of Morocco with a team led by Seattle political consultant Cathy Allen. In Morocco we met with the Executive Boards of Morocco's political parties to discuss strategies of targeting and messaging as the Moroccan party leaders prepared to contest their first free and fair elections. Our team also trained about 120 Moroccan women who hoped to run for parliament because Morocco's electoral laws for women had recently changed. It pains me greatly as an American when I encounter foreigners overseas who offer their comments on the reported electoral corruption in the United States. Such reports support cynical anti-Americanism around the world. Over the years, I have learned that one of the best means by which the United States can promote democracy abroad is to lead by example. Acknowledging the flaws in our election processes and fixing our electoral system is a job that is in the interests of all Americans, both Democrat and Republican. My remarks today should be taken by fair-minded Republicans as well as by Democrats to mean that we must put our electoral house in order at home if we wish to model democracy abroad.

Now let me tell you a little bit about what I saw and heard in Ohio's recent elections in 2004 and 2006. Sadly, I report that to someone like me in a small town in Ohio, it appears that *every aspect* of the election process was undermined by a

Republican Secretary of State's office and by many in his employ: the registration process, the actual voting process, and the checks and balance procedures that are supposed to occur with bi-partisan participation after any election.

THE REGISTRATION PROCESS

Let me begin with the registration process. We all know that pollsters have learned that college students on certain campuses, African Americans, and women, tended to vote in greater numbers for Democrats than for Republicans. If elections were being closely contested, it makes sense that if Ohio's Republican leadership could eliminate—or suppress—the vote of these target voting groups by just a percentage point or two, Republicans might be able to squeak out a victory that otherwise they could not earn in a legally and fairly contested race.

We know that the courts had ruled that college students are legally permitted to vote in the states in which they reside while attending college. Obviously, the only rule is that students can only vote once. If they vote in the state in which they are students, they cannot vote absentee in their home states. However in Ohio in 2004 and again in 2006, prior to the election, the Ohio Secretary of State's office held by the Republican leadership sent out mixed messages when our students at Oberlin College inquired about their voting rights. The Secretary of State's office let it be known that election officials would vigorously challenge out-of-state students who chose to vote in Ohio by requiring a photo identification card with a current voting address on that card. In 2004, such a requirement was not legal in Ohio. Yet due to the confusion surrounding that rule, many of our out-of-state students worried as to whether or not their votes would be counted in Ohio. Student college photo identifications lack home addresses because students move around from dorm to dorm or to off-campus housing. In 2004, there was so much confusion about this issue, despite the law clearly stating that students had the right to vote in communities where they lived and attended college, that Oberlin College President Nancy Dye created a task force to discuss how to inform students of their voting rights so they would not be disenfranchised. Eventually, Oberlin College distributed a written guide to Oberlin College students. However, some out-of-state students at Oberlin College and probably many at other colleges throughout Ohio chose not to register in Ohio because they feared their vote would not be counted. Others were so confused that they did not register in Ohio and then learned that the deadline at home had passed for absentee voting in their home states. In 2004, these students were disenfranchised by a Republican Secretary of State.

It is not the responsibility of Presidents of Colleges and Universities to publish documents that clarify and defend the rights of their students to vote in a free nation. Ohio boasts over 130 colleges and universities. How many thousands of students were affected, one can only wonder. Additionally, it seems that the confusion did not just affect students but also affected poll workers who, as I will discuss shortly, tried to enforce rules that did not exist, thus preventing some students, African Americans and other citizens from voting when they were legally entitled to do so.

In 2006, the Republican leadership managed to put a photo identification requirement on the books in the final campaign period, causing enormous confusion prior to the election. Members of the League of Women Voters had trouble finding the rules as they struggled to write and publish their voting guides. One of my student advisees, Colin Koffel, hoped to publish a guide to voting procedures for students in one of our campus newspapers. Despite calling the Secretary of State's office at various times prior to the election, this student had difficulty getting the Secretary of State's office to identify any rules until the very last days before the election.

Students were not the only voters adversely affected during the registration process by changes in the requirements for voting. Poor people and the elderly, who lacked or had given up their driver's licenses, faced disenfranchisement as well from a requirement that they had to produce a photo identification in order to vote. Few voters have photo identifications other than driver's licenses. "Suppression of the vote" became a campaign tactic that was debated in Ohio as the Republican Leadership in Ohio made the registration process a circus that prevented Americans who are entitled to vote from exercising their franchise.

THE VOTING PROCESS ITSELF

The voting processes in Ohio were undermined by manipulating the placement of voting machines and by unlawful challenges of a citizen's right to vote. Despite data on the number of registered voters, heavily Democratic Party areas, particularly precincts with large numbers of African American or student voters, were provided with so few voting machines that Ohioans in these precincts had to wait four, five,

six, seven or more hours in line to vote. Yet, we heard not one report that any precinct in which voters voted largely for Republicans received too few voting machines or suffered hours of waiting on line. However, we also heard the Republican leadership celebrating the enormous Republican turnout. Curious.

The lines for voting in 2004 were so long that, as one of my students, Frances Zlotnick, reported to me, she witnessed women with young children who came up to the line, looked at its length and said, "I can't believe this. I want to vote, but I can't stand here for hours with these kids." We all know that women in a largely Democratic community are likely to vote Democratic. Not providing sufficient voting machines appeared to be a deliberate tactic to disenfranchise Democratic voters, including women with children.

Professor Sandra Zagarell of Oberlin College's English Department was trained as a Kerry for President Democratic Party Challenger and assigned to one polling station in Oberlin for the entire voting day. She observed the voting process from 6:30 A.M. to 10:00 P.M. Professor Zagarell reported that her polling station had lines of over three hundred people and the wait at times lasted five hours. I have included with my written testimony Professor Zagarell's letter to the *Oberlin Review* the week of the 2004 Presidential election as Appendix A.

Early in the morning on election day 2004, when Professor Zagarell realized that there were too few voting machines she attempted to call the Secretary of State's office to request more machines. The line was busy or no one answered. Repeatedly, the line was busy or no one answered. Believing that I might have more information about what to do and how her polling station might secure more voting machines, Professor Zagarell phoned me. I was in a suburban (exurbia) voting location and I, too, had been trained as a Kerry Democratic Party Challenger. When she called she was distressed. Some voters were leaving the polls as they had to go to work or attend classes. Oberlin has a substantial retirement community and people who are in their seventies, eighties or nineties cannot simply stand for four to five hours so that they can vote. She realized that many of the elderly in our community could lose their right to vote. I replied that all I knew was to call the Secretary of State's office, which, of course, was Republican controlled. I said I would try to call on my cell phone on her behalf and we would hope that one of us would get through. In the suburban polling place to which I was assigned, most of the time there were no lines and empty machines. Infrequently, in this suburban polling place, a voter had to wait for another voter or two in front of him or her. I placed a call to the Secretary of State's office. It was busy. I turned to my Republican counterpart, a gentleman who was a Bush Republican Party Challenger. We had been speaking throughout the morning and realized there was no need to demonize one another; we both just wanted a fair election. When I told my counterpart the problem, he said to me, I'll call the Secretary of State's office. I skeptically replied, "I don't think you'll get through." His reply was telling. "They gave us our own number," he told me. He got through on the first try. I was stunned as I realized that the Republicans had a system to assist their party from the Secretary of State's office. American citizens who were Democrats could not expect equal treatment under the law.

Another colleague of mine from Oberlin College, Psychology Professor Karen Sutton, was a Kerry Democratic Party Challenger assigned to Maple Heights, Ohio in the 2004 election. Her polling place had a substantial African American voting population. The poll workers, however, were white. Although Ohio law prohibits campaign signs 100 feet outside of a voting place, signs are often posted just beyond that point. The poll workers at this church forbid any Democratic signs from being posted on church property but allowed Republicans to post their signs beyond the 100 foot mark. Inside the church, these official poll workers were no less biased. There was no legal need for a photo identification until the 2006 election but as Professor Sutton learned in 2004, when she walked away from the voting check-in table, a poll worker would ask any African American potential voter for a photo identification. If Sutton was attending to one voter explaining that it was his or her right to vote without the requested photo identification and looked over and saw a new challenge occurring at the check-in table, when she rushed back to the table, the poll worker pretended he/she had not made such a request. The poll workers were trained by Ohio's Republican Secretary of State.

One incredibly troubling allegation was reported to me the day after the election. A male Oberlin College student came up to me and said that he was told I would know what to do with his information. He had been sent with a few other Oberlin College students to leaflet at Kent State University. The precinct to which he was assigned was using punch card ballots. A punch card has a multitude of holes in it and you place it into a voting booth underneath a ballot that has candidate names listed on the ballot. The voter uses a ballot punch to punch a hole next to the names of each candidate for whom he or she votes. The voter sees the ballot hole and gen-

erally does not pay attention to the punch card below the ballot on which the vote is being cast by making a hole on the punch card when the ballot punch goes through to the card below. Voters generally do not pay attention to their punch cards because the cards have no writing, only holes on them. After punching a ballot, the voter just places the card through the slot of a closed voting can or box.

This young man reported that a number of Kent State students came up to him and claimed that their punch cards were pre-punched for President Bush. If they voted for John Kerry, they would have had two Presidential punches on their card and their ballot would be spoiled; none of their votes would count. If they voted for President Bush, they would just make the hole already punched for Bush on their punch card a bit larger. Their ballot would not be spoiled and all their votes would be counted. I asked the male student if he took down the names of any of the Kent State students with whom he had spoken. He said he had not. I told him I was not certain what he could do. He should call the Secretary of State's office and he should call the Democratic Party. Stupidly, I did not take down his name. It never occurred to me that I might be sitting here today.

Many other troubling occurrences were reported as well. David Ashenhurst, a volunteer on election day in 2004 and currently an elected member of Oberlin City Council, reported that poll workers enforced illegal rules concerning when a person could vote if the voter had moved since the last election. In fact, questions about whether, or if, people were allowed to vote, vote provisionally, or vote in another precinct were contested all day. There were countless reports that in voting places with large numbers of Democratic voters the voting officials misconstrued the rules for provisional voting. Yet, if the rules were not followed as legally stipulated, a citizen's provisional vote was disqualified at the County Board of Elections or wherever else the provisional votes were tallied. Ms. Palli Holubar, another Oberlin volunteer on election day 2004, worked during the election and afterwards helping to trace whether or not an individual's provisional vote was ultimately counted. Across the state of Ohio, it was clear that many provisional votes were not ultimately counted and it was difficult for individuals to determine if they had been given correct information or misinformation that then resulted in their vote being disqualified. Ms. Holubar, who became a bit of an expert on provisional voting, reported that the procedures used by the Secretary of State offered voters with provisional ballots no confidence in our electoral system.

In 2006, David Ashenhurst (noted above) became a poll worker in an effort to be able to offer authoritative and correct information to voters. However, he reports that the rules on provisional ballots that were used during the training of poll workers did not match the manuals that poll workers were given. Furthermore, on the day of the 2006 election, a different set of rules was distributed at polling stations. The obvious observation here is that if there is confusion among the poll workers and the rules are changed in the final hours prior to voting, how is a voter supposed to satisfy the rules and act in a way that protects his or her right to vote. Should a citizen who recently changed an address go to his or her old precinct where that person is on record, or should that person go to the new precinct? How many days prior to an election can a voter have moved without having to re-register? Should a voter with such a question even attempt to vote?

A great number of Ohio voters decided to vote absentee in 2006 in order to avoid lines and also in the hopes that absentee ballots would be less likely than provisional ballots to be disqualified. However in 2006, many absentee ballots were printed (about) two weeks late and thus delivered late. In Oberlin, for example, absentee ballots arrived while students and faculty were on their fall break with many away from campus. These individuals had difficulty completing the ballots and returning them in time so that their ballots could be counted in the election.

In 2006, there were also concerns in Ohio that parts of the state voted electronically with no paper trail to record the voting. In other parts of the state citizens voted electronically and the voting machines kept paper records. Still other Ohioans voted on punch cards. Professor Candace Hoke, a Cleveland State Law Professor and Director of the Center for Election Integrity, is also a member of the Republican Party. Professor Hoke has devoted much time to investigating Ohio's voting alternatives and also its professional staff of poll workers. In addition to worrying about voting machines without proper paper trails, Professor Hoke has worried about finding ways to get younger people to work as poll workers on election days. Professor Hoke's concern is that many poll workers are older, often retired citizens, who may be uncomfortable with assisting voters on electronic machines or with learning how to handle machine cards and other electronic related procedures. The practice in Ohio of hiring unemployed workers without sufficient screening to staff some polling places is also a concern. Ohio Democrats are particularly concerned when we read in the newspapers that such individuals are being assigned largely to polling places

where the residents vote in large numbers for Democrats. If mistakes are made, we know it is likely to be Democratic votes that are disqualified.

At some polling places in 2006 (again it seemed to be polls where residents mainly voted Democratic, such as in Cuyahoga County), the machine's cards were inoperable when inserted into the voting machines on the day of the election. It took hours to correct the situation and therefore the voting polls opened late. For many voters who had made arrangements to vote prior to going to work, it was not possible to do so.

Just as negative advertising has made an unwelcome entry into American campaigns, so "suppression of the opposition's vote" by the leadership of the Ohio Republican Party and perhaps even voter theft now has entered election practices. And in the follow-up to elections, recounts are supposed to be open and transparent, but in Ohio we learned that this was far from the case.

THE CHECKS AND BALANCE PROCEDURES AFTER THE ELECTION

Following the 2004 election of Bush vs. Kerry, I was contacted by so many distraught citizens that I rented a community center room in the City of Oberlin and held a meeting. On short notice, about 85 people attended. That day we heard many accounts of irregularities. We created an informal electronic listserve to report ongoing information concerning election practices. We also swapped information about recount efforts.

A posting by one of our listserve contributors forwarded an email from a Richard Hayes Phillips who reported that in "Warren County, the administrative building was locked down on election night, all in the name of homeland security." No independent persons were allowed to observe the vote count.

Several members of our group of 85 volunteered to be official representatives of the Democratic Party in the recount efforts to see that fair tallies of votes had been reported. They were not always successful in their efforts. An email message from Damen Mroczek reported that: "The meeting (scheduled for 9:00) didn't get underway until 9:35, at which point the Board came out. . . . We were particularly upset that the "random" precinct selection had already been completed . . ."

Which precincts are selected for quality control recounts can be critical for the outcome of a recount. Obstructing openness and transparency in how recount precincts are chosen jeopardizes the legitimacy of an electoral outcome.

Others reported that the poll workers were not allowing those viewing the recounts to be close enough to actually see for themselves each vote and to make certain that each vote was being allocated to the correct party during the recount. If this is true, such recounts cannot provide the information that they are intended to provide. Certainly, such recounts cannot confirm an election outcome or support the legitimacy of our electoral process.

CONCLUSION

For those of us who have lived through Ohio elections over the past six years, it is hard not to conclude that *every step* of the election process was undermined by a Republican Secretary of State's office and by many in his employ: the registration process, the actual voting process, and the checks and balance procedures that are supposed to occur with bi-partisan participation after any election.

As an American who travels abroad and is frequently called upon to testify to the benefits of multi-party politics, it pains me that the leadership of the Ohio Republican Party has systematically found ways to undermine fair and free elections in our state. I know that when average Ohio Republicans are witness to such activities, they do the right thing. But apparently, the Republican leadership has such a stake in governance, that it has not done the right thing in our recent elections.

If there is any silver lining to the distressing reports of irregular and/or unlawful practices at every stage of the voting process, it can be seen in those voters who were able to devote four or more hours to waiting in line and who cherished democracy enough to demand their right to vote regardless of how inconvenienced they were. These citizens could not prevent the suppression of the vote or having the vote taken away from their fellow citizens. What they could and did do, however, was to patiently wait their turn, to move the elderly (those had not seen the enormous lines and driven away) up to the front of the line so the older voters could vote quickly and then sit down or go home. In Oberlin, school children showed up at the polls to walk up and down the lines giving away the Halloween candy that they had collected on October 31. Oberlin College students alerted local merchants concerning the lines and requested assistance. A number of local merchants provided food. Lorenzo's Pizza sent over free donated pizza pies to help those on line to take the edge off their hunger. Our student dining coops donated food from their kitchens.

People walked the long winding lines providing water bottles. Our former Congressman, now Senator Sherrod Brown, visited Oberlin and brought with him water bottles to distribute as well as encouragement and thanks.

I am attaching to this testimony two letters to the editor written by Oberlin poll watcher Sandra Zagarell (whose letter I already noted above as Appendix A) and Oberlin Mayor Daniel Gardner (whose letter constitutes Appendix B) congratulating the citizenry on their dedication and public spirit. As Ms. Zagarell notes, Oberlin College students deserved high commendation. They came as individuals but became an improvised community to help one another through the long hours on line to vote. They allowed the elderly or ill to go to the front of the line. Mayor Gardner's letter also praises Oberlin voters, concluding: "God, I love our town. You have restored my faith."

Despite the cynicism and distrust created by the actions of our highest Ohio election officials, the determination, patience, and good will of the American citizenry in coping with adversity is admirable. Now, I hope that the United States Congress, after hearing our testimony today, will restore our faith in our political leadership and work to restore free and fair election practices in Ohio and elsewhere throughout our country.

I thank you for the honor of including my testimony today.

Appendix A

November 3, 2004

To the Oberlin Community:

I write to express my admiration for Oberlin students. I had plenty of opportunity to observe many of them throughout Election Day. I spent the day at First Church, the location of Precinct 3A, where many students vote. I was there from the time the poll opened at 6:30 a.m. to the casting of the last ballot at 10 p.m., serving as a poll challenger for the Democratic Party. My assignment was to make sure the Republican challenger didn't delay the voting process or unduly prevent people from voting. He did neither, but the situation itself was discouraging. There were often over 300 people on line and some of them had to wait 5 hours and more to vote.

Most of these were Oberlin students, and they deserve the highest commendation. They were determined to exercise their right to vote. Although they may have come as individuals, they became a an improvised community as they waited. They played music, they talked; they played cards. They got to know people they hadn't known before. They shared information. People went out and bought food to share (co-ops, several College offices, townspeople, Congressman Sherrod Brown, some establishments in town and others also provided food; a group of kids too young to vote showed up with their Halloween candy to share with those on line). Sometimes I'd asked if an older person, or someone who had to get to work, or someone who was ill, could get to the front of the line. Uniformly, everyone at the front--almost always students--said, "Absolutely." One student I know who normally has a hard time getting out of bed at 10 a.m. was at the poll just after it opened at 6:30; she wasn't the only one.

As saddened as I am at the election outcome, I take heart from the commitment, savvy, and generosity of Oberlin students.

Sincerely,

Sandra A. Zagarell
Longman Professor of English

Appendix B

To the Editor:

Much has been made by the pundits about how moral issues swayed the outcome of Tuesday's election. Nowhere could this be truer than in Oberlin, Ohio.

Near closing time, I saw hundreds on line at our library and First Church. Here were people with a deep sense of duty to our country. Here were people acting on their convictions despite the inconvenience. Here were the selfless acts -- hot drinks, food, music, lent umbrellas -- of a committed citizenry. In the collective decision to celebrate rather than complain, here was evidenced faith in each other and reverence for our democracy.

God, I love our town. You have restored my faith.

Daniel Gardner, Chairman of Council City of Oberlin

Mr. CONYERS. I thank you so much, Professor Sandberg.

Ladies and gentlemen of the Committee, witnesses, this hearing has been unusual, in my mind, because we have had literally no discussion of the responsibility of the Department of Justice's Civil Rights Division, the voting section, which to me can play such a very huge role in this, Mr. Neas.

And I want to put this on the record that I have had conversations with the Attorney General Gonzalez who has indicated a willingness to consider the issue raised by the House Committee on the Judiciary, and this is the one that I put forward first.

It has been my impression, and I have raised this issue in my visits to the Department of Justice last year, that we have very little oversight and investigation of these complaints that are made. They almost go into a deep hole, never to be really dealt with.

And that it is critical that we have two things coming out of our government and particularly DOJ and that is, one, that we affirmatively encourage everybody to vote and make it as simple as possible; two, that we effectively monitor complaints, violations and allegations that go to the heart of debilitating and crippling the voting process in this country.

And I would like to have on the record your observations of what we should be doing and could be doing to stimulate the Department of Justice in that direction.

And I will start with Ralph Neas.

Mr. NEAS. Mr. Chairman, since my work with Senator Edward W. Brooke, a Republican from Massachusetts, and David Durenberger, a Republican from Minnesota, I have had much experience from the congressional side looking at what Justice has been doing and of course with my years with the Leadership Conference and Civil Rights Office, being now with People For the American Way.

I must tell you, there have been some bad periods of time. I can think of the Brad Reynolds years at the Department of Justice under Ronald Reagan when a Republican-controlled Senate Judiciary Committee would not promote him to associate counsel because the Department of Justice made every effort to undermine the enforcement of our civil rights laws. And I am afraid this Department of Justice over the last 6 years has compiled an astonishingly bad record in virtually every area of civil rights laws.

But of all the areas that they should take most seriously it is the area of voting rights, and I would hope perhaps this legislation can serve as a catalyst for more effective work by the Department of Justice, because with respect to deceptive practices and intimidation of voters, it compels the Department of Justice to do something, to start investigating, to enjoin statements or practices that are intentionally and knowingly committed. It makes them an active participant.

And I have talked before about election protection. We had 35,000 American citizens volunteer to go into 3,500 precincts over the last couple of elections to make sure that we were monitoring what was happening in terms of voter intimidation and mistakes and lack of education. That should not be the responsibility of the non-profit community.

The Department of Justice should be leading on this issue, and, unfortunately, in 2000, it was a whitewash with respect to Florida,

with respect to much of what happened in 2004 in Ohio, what happened in Maryland and Virginia over the last year with the robo calls, the other kinds of deceptive practices.

What did the Department of Justice say: "We are not going to investigate." It pretty much is close to malfeasance, as far as I am concerned, in terms of what they should be responsible for, what they should be doing. And I hope the attorney general will work with you to enact this legislation.

Mr. CONYERS. Well, it may require a more specific hearing from the Committee on Judiciary on these unacted-upon allegations, separate and apart from this legislation, as important as it really is.

Mr. NEAS. I would hope such hearings occur in the very near future. I am sure that both the Democrats and Republicans would like to get the Department of Justice up to address the civil rights issues and many others they have responsibility for, and, quite frankly, I do not think they have been enforcing the law in many areas but especially in the Civil Rights Division.

Mr. CONYERS. Thank you.

Ms. BRAZILE. Mr. Chairman, Ralph mentioned non-profit organizations and organizations such as his, but just imagine the amount of money it costs for both parties to have to deploy thousands of lawyers across the country to train poll watchers to put out correct information when if we had our government and our Justice Department committed to fully enforcing the law, we wouldn't have to appropriate this type of money for political expenditures.

So, it would help us also on the political side if the Justice Department got involved and intervened and ensured that there is no hanky panky at the ballot box.

I mean, it has gotten outrageous. I have been involved in politics since I was 9. I know that is a little younger than most people, but in Louisiana, we got involved early. Right after the assassination of Martin Luther King, I felt compelled to go out there and go bicycle to bicycle urging people to vote. Why? Because we were promised a playground.

Today, many young people don't want to get involved and get out to register people, because the barriers have been set up. They have been told in some cases that if they submit a name and misspell it as incorrect, they could go to jail. So it is becoming harder and harder to get people involved and to get people excited about our electoral process where we have set up all of these impediments.

Mr. CONYERS. Thank you so much.

I turn now to the Ranking Member of the Judiciary Committee, Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, first of all, I would like to ask unanimous consent to put the testimony of Mr. Fund in the record, as well as three other reports.

Mr. CONYERS. Without objection, so ordered.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Neas, out of the utmost respect for your mother who is sitting 10 feet from you, I am not going to ask all the difficult and pointed questions I had in mind. However, I would like to read into

the record a description of what the Department of Justice has been doing in the area that is under discussion today.

Mr. Chairman, in 2002, the Justice Department announced an initiative in which it required that all components of the department to place a high priority on the investigation and prosecution of election fraud. As of last year, 195 election fraud investigations were currently pending throughout the country. As of then, and since the start of the initiative, 119 people were charged with election fraud offenses and 86 individuals have been convicted.

In Missouri, the Justice Department is conducting an investigation because the State's voter rolls, in some cases, have 150 percent of the voting age population listed on the voting rolls.

So the Department of Justice I am sure can do more but at least they are taking good initiatives to try to address the serious problem of voter fraud.

Also, Mr. Neas, you mentioned the robo calls. There are probably enough misused robo calls on both sides of the political aisle to bear investigation. Now, I hear about those where Republicans are being targeted, no doubt you hear about those where the Democrats are being targeted. But, clearly, they are overdone and can be investigated at the appropriate time.

Ms. Brazile, first of all, I want to compliment you. I have enjoyed reading your columns over the years, and I have always found them particularly insightful. There are a lot of people that charge good money for the good advice you give, but I do enjoy reading your perspective on politics.

Let me ask a question and direct it toward you, Ms. Brazile, and this is based upon the Carter-Baker commission report I think that you are familiar with. Among their findings was that Florida has more than 140,000 voters who apparently are registered in four other States.

That is an astronomical figure for duplicate registrations, in my judgment. By the way, that includes 64,000 who are registered not only in Florida but in New York City alone. More than 2,000 people voted in more than one State in the last election, clearly something that we should be concerned about.

The Carter-Baker commission elaborated and said this is what their proposal was and this is what I want to ask you about. They said, "We propose a uniform system of voter identification based on the Real ID card or an equivalent for people without a driver's license. There is likely to be less discrimination against minorities if there is a single uniform ID than if poll workers can apply multiple standards.

Don't you think that a uniform identification requirement would, in fact, reduce discrimination against minorities at the polls?

Ms. BRAZILE. Thank you, sir, for your excellent question.

First of all, let me just say that I support a requirement that forces States to have a uniform statewide voter registration list that can be verified and also, from time to time, cleaned at an appropriate moment, giving citizens the right to appeal if they have been selectively purged. So I support a uniform cleaning.

Look, right now, I think political parties maintain a better voter registration list than State parties, so I support that. And we have duplicates all over the place, because many States, quite frankly,

don't have the resources required to clean up their electoral rolls after election.

In terms of the restricted ID requirements, in my judgment, that is more likely to disenfranchise people of color, the elderly, individuals with disability, rural voters, young people, the homeless, low-income people, frequent movers and persons in large households. I don't support the Real ID requirement, because I do believe that there is a chance that it can discriminate. Twenty million Americans do not have any form of State-issued ID. Most, perhaps a large majority, do not have it because they lack the resources to be able to obtain a State-issued ID.

I also found that the ID requirements that are sometimes called for in some of these States apply differently in different populations. My own sister who resides in Florida, I don't know if she is in Mr. Feeney's district, I think she has moved, but in Florida, in 2000, I will never forget the call. She called me and said, "How many forms of ID do I need to vote?" and I said, "One." I mean, at the time, it was one. She had her driver's license, she had her voter registration card, and she had to produce a utility bill.

So I do not support these restricted ID requirements that often discriminate against people of color.

Mr. SMITH. Ms. Brazile, let me interrupt you and squeeze in one more comment here. You, yourself, admitted, though, that we have problems with voter registration lists. Wouldn't a uniform identification obviate the need to rely upon these very flawed voter registration lists?

Ms. BRAZILE. Well, 42 percent of Americans who registered to vote in 2004 obtained their voter registration status at a government facility, so they had to show a form of ID in order to vote. So this is a duplicate requirement again. In certain States, some people say, "I need your library card," some say, "I need your voter registration card." And as long as we have 20 million Americans, many of them elderly, many of them poor, without any form of State-issued ID, I am opposed to these real ID cards.

Mr. SMITH. Okay. Well, I am not going to convince you otherwise, but it seems to me that all the examples you just gave points exactly to the need for one uniform identification where you don't have all these other types of identification. I think it would simplify the process, and, as individuals have testified, it would also reduce discrimination. I think that is just an honest difference of opinion.

Ms. BRAZILE. If it is not another form of a poll tax, sir, if we can ensure that every American has access to that form of ID and it is not another barrier to participation, maybe we could find common ground.

Mr. SMITH. Good. If we could get past the financial cost.

Ms. BRAZILE. Open up your wallet, I might open up my heart.

Mr. SMITH. I am going to take you up on that common ground comment.

Ms. BRAZILE. All right, sir. Thank you.

Mr. SMITH. Thank you, Ms. Brazile.

I yield back, Mr. Chairman.

Mr. CONYERS. Mr. Robert Scott, Virginia?

Mr. SCOTT. Thank you, Mr. Chairman.

And I thank all of the witnesses for their testimony.

Let me just start with a quick question to Mr. Neas. This bill only prescribes communications that are false and designed with a specific intent to deny someone the right to vote. There is no constitutional right to defraud people. Do you see any free speech implications in this legislation?

Mr. NEAS. Mr. Scott, when we first started working on the bill, this issue came up, of course, immediately, because we are not only a civil rights organization but also a civil liberties organization. But I think this bill has been carefully crafted. For me, there is no doubt that Congress has a compelling interest in protecting the integrity of elections and the right to vote by ending these kinds of deceptive practices.

I think very importantly, the standards that you chose, that Chairman Conyers and Senator Obama chose, that it has to be knowingly and intentionally deceiving the voters, creates a very high standard that has to be met.

Mr. SCOTT. And not only false but with the intent to defraud someone out of their vote.

Mr. NEAS. Exactly.

Mr. SCOTT. Okay. Thank you.

Ms. Brazile, there is an old saying about the cure being worse than the disease. We have heard of a handful of people who might be getting onto the rolls improperly. You kind of alluded to this in your previous testimony and answers.

Comparing the handful that are getting on illegally, do we have any measure of how many people might not vote because their health department didn't complete the paperwork in time for the election to give them a birth certificate or how many people might not vote because they couldn't come up or didn't want to come up with the $20 that it might cost to process all this stuff?

Do we have any estimate of the number of people who may lose their right to vote if we initiate some of these Real ID requirements?

Ms. BRAZILE. Well, you know, there is an old saying that you have a greater chance of being hit by lightning than finding large evidence of voter fraud. The truth of the matter is, is that we know from our study that 3 to 5 percent of Americans were impacted by some of these illegal schemes and tactics used to suppress turnout—fake monitors, assigning off-duty policemen at various polling sites, sending faulty voting machines into certain precincts.

So while I don't have the honest number in terms of the millions of Americans, but we do know that it impacts between 2 to 5 percent of Americans.

Mr. SCOTT. Okay. But there is no question that the number of people who would not be able to vote who should be able to vote would certainly be more than the handful of people nationwide that illegally get onto the polls. So the cure, in fact, would be worse than the disease.

Ms. BRAZILE. Absolutely, sir.

Mr. SCOTT. Now, with this cure being worse than the disease, there are certain groups that would be disproportionately impacted. I think you gave a list of people. Is it clear that this would have a disproportionate impact on certain groups? Obviously, if people

can't vote because they can't come up with $20, obviously that would have a disproportionate impact on low-income Americans.

Could you read that list again of those who, if you enforce all this Real ID, which groups might be adversely affected?

Ms. BRAZILE. In 2001, the National Commission on Federal Election Reform recognized that between 6 and 10 percent of Americans do not have any form of State-issued photo ID driver's license.

And in the State of Georgia—I was listening to one of the earlier questions of Senator Obama—according to the Georgia chapter of AARP, 30 percent of Georgians over 75 do not have a driver's license. So across the country more than 3 million Americans with disabilities do not have a driver's license or State-issued photo ID. And, of course, for minorities and in poor communities and certain rural communities, the numbers are even higher.

Mr. SCOTT. Now, if you don't have identification now, would the number of people who would not be able to complete the paperwork to identify themselves be greater or fewer than the people that might sneak on the rolls illegally?

Ms. BRAZILE. There is no question, it would be greater, sir.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, sir.

Steve Chabot, Cincinnati, Ohio?

Mr. CHABOT. Thank you, Mr. Chairman.

As the Chairman knows, I was tasked with the responsibility in the last Congress as the Chair of the Constitution Subcommittee to help to shepherd the Voting Rights Act through the last Congress, and we worked in a very bipartisan manner and got the job done. So I think my credibility relative to voting rights is well-known, at least among the Members of this Committee.

Some of the allegations relative to Ohio I have to admit, professor, we disagree, and I do thank you for your testimony; however, I believe there is no right more fundamental than the right to vote and that protecting the integrity of the electoral process to ensure fair and free elections is critical to our democratic system of government.

Part of ensuring fair and just elections is conducting non-biased and independent oversight, but I think that some of the allegations that you made relative to Ohio I think are—you know, I think it is real questionable whether they are unbiased or independent or accurate.

As the representative from the first district of Ohio, which is Cincinnati, I spent considerable time at diverse urban and suburban polling locations in both 2000 and 2004 and 2006, and I disagree with your assessment, that there was some type of Republican conspiracy going on.

In fact, it appears that any electoral irregularities in Cuyahoga County, for example, which is the largest county in the State, were in fact caused by the incompetence of a Democrat. And I have with me a number of recent articles reporting the resignation of the executive director of the Cuyahoga County Board of Elections, Michael Vu who, again, is a Democrat, because of a number of electoral irregularities.

And all of these articles confirm that Mr. Vu was hired in 2003 with the support of the Democratic Party to administer the elec-

toral process in Cuyahoga County. The articles go on to describe the electoral irregularities that occurred in that county under Mr. Vu's watch, similar in what you have described in your testimony, such as long lines and complaints over provisional ballots, not only in 2004 but also in 2006.

Professor Sandberg, putting partisan politics aside, can we agree that at least in Cuyahoga County that it was a Democrat appointed with the support of the Democratic Party who was largely responsible for any electoral problems that occurred in 2004 and 2006 there? And if so, how can one say that every step in the election process was undermined by Republicans? And how is this type of biased reporting helpful in correcting the electoral problems that occurred in the past and ensure that they don't happen in the future?

And I also have to say that I heard reports, maybe you didn't, but there were long lines in predominantly Republican areas as well. I heard about them over an over on Election Day that people were waiting in long lines there too. I can see by shaking your head you disagree, but if you could respond, I would appreciate it.

Ms. SANDBERG. Thank you. Thank you for your question.

There were some instances where, frankly, incompetence complicated what was going on.

The reason that I am focusing on the Republican State leadership, part of what is in my written testimony and I wasn't able to present in my oral testimony because we only have 5 minutes—and this is, to me, very telling: In Oberlin, we had 5-hour lines, 300 people waiting, and I was in an exurbia community, as we now call them, we use to call them suburban, but exurban community, where there were many voting booths.

I received a phone call from the poll watcher in Oberlin saying, "Eve, is there anything you can do? What can I do? I can't get through to the secretary of state's office. I can't get through." I tried calling——

Mr. CHABOT. Wrap it up quickly because I have got only a minute left.

Ms. SANDBERG. Okay. I tried to get through to the secretary of state. I turned to my Republican counterpart and said, "This isn't fair." He said, "Oh, they gave us a different number." And he called and got through.

Mr. CHABOT. I read that in your testimony. I saw that. I assume my colleagues did also.

Ms. SANDBERG. Okay. So Republicans had systematically, the Republican leadership——

Mr. CHABOT. Let me just follow up. When you talk about systematically, in the election, the elected official you are talking about, Ken Blackwell, was running for governor. How did that race turn out that Republicans were orchestrating to steal the elections? Who won that election?

Ms. SANDBERG. Wait. This testimony here was from 2004, and he was hoping——

Mr. CHABOT. Okay. Well, I am talking about 2006 now.

Ms. SANDBERG [continuing]. And he was hoping to be a leader of his party.

Mr. CHABOT. I am beyond that. We are talking about 2004 and 2006 in your testimony.

Ms. SANDBERG. In 2006, in this last time, he won.

Mr. CHABOT. Who won the governor's race?

Ms. SANDBERG. Mr. Strickland and——

Mr. CHABOT. And it was a pretty wide margin, right?

Ms. SANDBERG. He did, right.

Mr. CHABOT. He won 60-plus percent to 37 percent that Blackwell got. You had an incumbent Republican Senator who lost by more than 12 points to Sherrod Brown. You had four of the six statewide offices that Democrats won. Yet there is still this contention that there was a Republican attempt to steal the elections. To me, that is just beyond comprehension.

Ms. SANDBERG. One of the reasons that that happened is I believe the second time that—the Democrats had a slew of lawyers all over the State looking for—because people like you, and I believe you, Mr. Chabot, that you are someone who really wants free and fair elections. But because we had shined a light on it and because the Democrats this time—the first time we were taken by surprise, and I say, "we," because now I am a partisan Democrat in Ohio. Otherwise, you know from my testimony previously I was not in other States. We were taken by surprise.

A slew of lawyers came in, we had a slew of people watching who were legally trained, who were experts and the polls—I mean, to have taken the election this time, the polls so demonstrated that there was a tide, a Democratic tide. It would have been incomprehensible.

Mr. CHABOT. Well, I know my time is up, but let me just conclude by saying that I think this is one issue where it really should be bipartisan, that you ought to have Republicans and Democrats agreeing that everybody ought to have the opportunity to vote, every vote ought to count.

We ought to make sure that people, our citizens, I know there is some disagreement on to what extent we go there, but it ought to be—this was a Democratic year, it was a great Democratic year. A lot of Republicans lost. Sometimes it goes one way or the other.

But I really think in my heart of hearts in Ohio that elections aren't stolen. I mean, there are incidences where there are abuses, but, in general, I think we need to do a better job. I think we ought to keep the politics out of it as much as possible.

Thank you.

Ms. SANDBERG. May I say one more thing? I am the one who actually researches and writes in international affairs, and if I can just say this. It has nothing to do with any of the bills that are present. But if we could—one of the things that happens when we go abroad and we are trying to promote democracy, the cynicism abroad about our democracy is painful to me, and I agree with you, we have to get our house in order.

And perhaps we could take a page from some of those late industrializing countries that have taken the election process in States and taken it away from a secretary of state that belongs to one party or another and put it in a bipartisan, independent election council. Because when someone is trying to be a leader of their party in the future and they want to deliver an election and there

is other circumstantial evidence, it is hard not to think that that is what they are doing.

Mr. CHABOT. Thank you very much.

Ms. SANDBERG. Thank you.

Mr. CONYERS. Thank you, witness and Mr. Chabot.

We now turn to the gentleman from North Carolina, Mr. Mel Watt.

Mr. WATT. Thank you, Mr. Chairman, and thank you for holding this important hearing. I apologize for being unable to be here for the first panel, but I wanted to certainly be here to hear these experts.

Let me ask a question that probably has little to do with either the bill that we are considering or much else.

There seems to be people dropping bills now who would like to do away with robo calls, and I noticed, Mr. Neas, you mentioned that in your testimony, not doing away with them completely but erroneous information robo calls.

As a general proposition, do you think it would be constitutional to do away with all robo calls?

Mr. NEAS. I don't think it would be. Mr. Scott asked a somewhat similar question before, and before we were trying to strike that balance between the right to vote and other kinds of civil rights and civil liberties. And I think this bill has been carefully crafted to strike that balance.

Mr. WATT. Yes. I am not suggesting that this bill goes near that issue.

Mr. NEAS. Right. And the intent test about knowingly and intentionally deceiving the voters, I think, helps with the constitutional issue.

Mr. WATT. Professor Sandberg closed her last statement here talking about a Federal commission of some kind that would oversee elections. One of the impediments to that notion seems to have been this whole notion of federalism. I am wondering whether anybody has done any expensive research on the interplay between article 1, section 2, and article 1, section 4, of the Constitution to try to more precisely define the outer limits of what we can do at the Federal level and what is protected at the State level.

Are you aware, Mr. Neas or Ms. Brazile or Dr. Sandberg, of anybody who has really gone at that issue aggressively and tried to define what the outer limits of Federal authority is in setting the qualifications for elections?

Mr. NEAS. Mr. Watt, I personally am not knowledgeable in this area. I am sure that my excellent legislative and legal counsels might have something to report back to you and that we could share with you.

Mr. WATT. They are helping you back there behind you——[Laughter.]

Mr. NEAS. I am sure they are.

Mr. WATT [continuing]. Wanting to get to the table to answer the question.

Mr. NEAS. If there is anything out there, we would gladly share it with you and the other Members of the Committee.

Mr. WATT. Okay. That would be great, because I often hear people raising that as an issue. It doesn't seem to be that difficult

reading the language of the two sections of article 1. I will just read them into the record, just quickly.

Article 1, section 2, says, "The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors," I assume that is the voters, "in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature."

So I guess whatever qualifications that a State put on to be eligible to be a voter for the State legislature under that provision would be applicable to Federal elections.

Section 4 says, "The times, places and manner of holding elections for Senators and representatives shall be prescribed in each State by the legislature thereof," and that sounds like a way-out statement, but then it goes on to just whack the legs from under it by saying, "But the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators."

So it seems to me, I have guess I have heard too much legal speculation, classroom academic speculation about this. The language seems pretty clear to me, but if you all have any additional research, I am sure these brilliant lawyers who are seated behind you will provide it to me.

So I appreciate you being here and appreciate your testimony.

I yield back, Mr. Chairman.

Mr. CONYERS. Thank you, Mr. Watt.

We now call on our distinguished Member—oh, Steve King is here, former witness on panel one is now back in his more normal role in panel two and is recognized.

Mr. KING. Thank you, Mr. Chairman. Sitting here next to you is not quite my normal role, but I appreciate that, and I appreciate this hearing here today and the tone and the tenor of this hearing and the serious nature of how we approach the election process in America.

And I made some statements earlier about how important I believe the integrity of our system is. I sincerely and fervently believe that it goes beyond even the facts. Every vote should be legitimate, no one should be intimidated to keep them from voting.

I don't know how you actually get that written into law, but I want all our electoral process to be as absolutely clean as it can be with a max amount of integrity in the system. And if we can do that, I said earlier that I would be willing to sacrifice, in a level playing field, I would be willing to put a majority at risk, a presidency at risk because the people ought to make that decision, and then the political parties then can adjust their politics to go back and compete for their majority or their presidency.

That is the way it is designed to be, and if we lose the integrity, it isn't just if it doesn't work right, but if the American people lose their faith in it, even if it works right, then we have lost our constitutional republic. So this is a very, very important hearing.

I regret that I wasn't able to listen to all the testimony of the second panel of witnesses, the nature of this Hill being what it is. And so I am going a little bit at maybe a haphazard fashion here, but I am very interested in Ms. Brazile's approach to this, because

you have a long and active and a fairly public involvement in these things.

As I read through your testimony here, I see on page four, and I am going to tell you, I agree with this statement, "There is no place in our democracy for last minute attempts," and I would add to that, any attempts, "to purge eligible citizens just because they may vote for your opponent." Just exactly right, well-said, and I support that statement.

I would ask, though, Ms. Brazile, and here is a philosophical question, in a way, is where I am getting to. I am going to just ask you, were you a supporter of the reauthorization of the Voting Rights Act we did last year?

Ms. BRAZILE. Yes, sir. Not only was I a supporter, when the White House called to invite members of the community to come over to the White House, they called me to ensure that they had all of the great champions of civil rights. So, absolutely, sir.

Mr. KING. Okay. And I didn't want to make that presumption, but I did want to give you an opportunity to say so on the record.

Ms. BRAZILE. Thank you.

Mr. KING. And the motive behind that, and I believe, for the most part, is pure, but I call into question this statement right above that on the same page where it says, and it is a quote from your testimony, "There is no place in our democracy for election practices that target citizens based on the color of their skin or their partisan affiliation."

Ms. BRAZILE. That is correct.

Mr. KING. And right on its face, I agree with that, but I would point out that in the Voting Rights Act, and as objected to substantially by Georgia, that there are practices in the redistricting process that certainly affect the integrity of an individual's vote that are based upon race.

And my question to you is then, there have been a couple circumstances, Justice O'Connor essentially suspended the 14th amendment for 25 years and the affirmative action cases until such time as we can put racism behind us. And this reauthorization for 25 years sentences the people in the covered States and the districts within those States to the label of racism for 25 years.

It occurs to me that a lot of the people that were labeled such in the original passage of the Voting Rights Act have passed into the next life and maybe their children are there voting or their children have moved out, and so it looks to me like racism is heredity like skin color by the analysis of this.

Is there a time that you think we can get to this point where we can erase these divisions and then not have classifications and not be redistricting based upon race?

Ms. BRAZILE. Well, sir, I hope in my lifetime we do arrive at that day, but, unfortunately, we are not there today. I know of too many instances, even in my own home State of Louisiana, where people are still selectively purged because of the color of their skin.

I could tell you and attest, even if you go back and look in Florida in 2000 when there was a young man, well, Wallace McDonald, 64, he was purged from the Florida voter rolls because of a conviction. Now, Mr. McDonald's crime was not a felony for which Floridians forfeit their voting rights forever but merely a misdemeanor,

which should not affect voting rights at all. Mr. McDonald had been convicted for falling asleep on a bench. One-third of eligible Black men have lost their voting rights.

Mr. KING. Ms. Brazile, you know I am with you on that. I am with you on that. That is a deplorable thing to see happen. And there was earlier testimony that said that perhaps of the purging of the votes there were maybe 20 percent error rate, or at least the comment was made, I believe, by Mr. Nadler.

Do we have any numbers that tell about how many felons are actually allowed to vote by mistake. If we are going to have errors on one side of the database, did we have them on the other side, that you are aware?

Ms. BRAZILE. Very few, sir. I mean, the fact is less than 100 cases. And I can submit all of this for the testimony. The Brennan Center for Justice has done an outstanding job of putting forward information on felony disenfranchisement in this country, and I think this is one of the most egregious errors that we have made.

And I just recently saw the governor of Florida in the green room at CNN, and we have agreed to begin to work together on this issue so that we can get rid of the backlog in the State of Florida. Many citizens in that State are eligible to vote but because of the law that tells them that they have to go back and reapply and then they have to get a status report, so we need to find ways to ensure that every eligible citizen can vote.

Mr. KING. Would it occur to you, as it has to me, that with the computer databases that we have, that we could actually have an interconnected computer database of all voter registration in America for Federal elections so that we could crunch that database and eliminate the duplicates, the deceased, the felons where it is appropriate, according to law, and also get that all cleaned up so that we don't have mistakes for Federal elections? Would that be something that you could support?

Ms. BRAZILE. I would, but Congress, first, must properly fund the Help America Vote Act so we can ensure we have the funds. As you well know, many States when they are looking for extra dollars, the one area that they are not trying to put those extra dollars is in election administration, and I would hope that you would fund it.

Mr. KING. And we did that for the first time to reach into that, but I understand what you are saying.

I have another concern and you brought up the 2000 election in Florida, and as I watched that, and I watched it closely, as many Americans did, probably more closely than most, though, and I see that there were issues with people had difficulty managing the ballot, understanding how to vote, how to get to their polling place.

And the thing that seemed to be a common denominator that we all agreed on, whether we are Republicans, Independents, Democrats or the media, was that the people that intended to vote for Al Gore had more difficulty getting the ballot figured out than those that were intending to vote for George Bush.

Could you speak to that as to why that would be the case?

Ms. BRAZILE. Well, sir, we still have a problem of literacy in this country, we still have a problem where some Americans don't have the transportation required to get to their ballot box. Look, in some

communities in this country, especially in rural areas, the polling site is often five, ten miles away, and when Americans, as you well know, are stressed out, working two, three jobs, so we try in our political party to make it easier for people to vote. That is why we suggest and recommend early voting, what we call no excuse absentee voting. So we try to ensure that people can get to the ballot box.

I think of those residents in Palm Beach County who voted mistakenly for Pat Buchanan, knowing that they wanted to vote for Al Gore. That was the butterfly ballot. So I think we need to eliminate some of these structural barriers, the ballot errors and other things, and make it easier for people to exercise their right to vote.

I hope one day that we cannot just clean up our computer systems but we can allow for, and some of my friends will not like this, but I hope one day that we can allow for Internet voting. As you know, many of our military personnel overseas were allowed to either fax in their ballot or vote by Internet, and hopefully one day we can clean up the system and have a fail-proof system so that we can make voting easier for all eligible citizens.

Mr. KING. I thank the gentlelady, and I yield back.

Mr. CONYERS. Thank you for your questions, Mr. King.

The gentlelady from Houston, Texas, Sheila Jackson Lee?

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Obviously, the set of hearings that we have already had in this Committee has set a new tone and a new day for justice in America, and I thank the Chairman. I don't know if we would have had a hearing as quickly as this on the questions of issues of great concern that I believe need addressing.

I would like to define this hearing for what I think it is, and I hope the witnesses will help me and correct me if I am wrong. I believe this is about voter suppression and voter intimidation.

And as I have listened to the witnesses and also my colleagues who have asked questions, let the record be clear that none of us adhere to voter fraud. I think each of you at the table would speak vigorously against it, probably join in in helping to find any legal basis to overcome or eliminate voter fraud.

I have seen fraudulent activities happen, whether it is stuffing the ballot, whether it is manipulating the count. That is fraudulent, and I don't believe that we would counter to that.

But let me go back to the 2000 election, and I have to talk very quickly, because I think intimidation is clear.

And let me associate myself with Chairman Conyers, this is a great bill, and I am looking forward to possibly the germaneness of an amendment dealing with an election. I filed a holiday bill for Election Day. I file that bill frequently. It has a lot of entanglements to it, but I hope that we have finally give Americans a day to vote, particularly in Federal elections, and I join the Chairman in that.

And I also want to mention, as I give examples of voter suppression, two distinct examples, Prairie View A&M and Florida A&M, Florida A&M in particular.

And, Mr. Chairman, if you had Kareem Brown in this room, I don't think we could contain still the kind of degree of upsetness, but I recall distinctly suppression of college voters. There was a

specific desire to suppress that vote in Prairie View A&M, legitimately registered student voters who have been suppressed. And let me remind you that they were suppressed again in 2006 when we marched again.

And so I hope, as we look at this bill, 1281, that is a very fine framework, that there will be some germaneness to provide some specific prohibitions against suppressing college vote. Now, that would include individuals of all colors and creeds who happen to have a jurisdictional right to claim a residency and vote in that area, and I am going to pose a question.

The other one was the felon question in Florida—and I am going back again to 2000, maybe because the spirit is still in my heart—of the thousands, as I understand it, a Texas company who had on the list felons who were not felons.

And I would vote, Mr. Chairman, an amendment might be germane in terms of some sort of credentialing of so-called voter companies, whatever they may be, whether they be a felon list or a purged list. I want some kind of criteria for them to exist in this arena.

Because it is not a business, Mr. Chairman, it is an infringement of a constitutional right.

And let me finish this so I can pose a question. I, frankly, think the 13th, 14th and 15th amendment—somebody can rise up and challenge me—gave rights to White Americans as well and other Americans. Let me just say it gave rights to Americans. It had some specific historical criteria, but they gave rights. They gave a due process right to Americans, equality rights, a non-enslavement right, if you will, so that we cannot hold anyone as a slave here in this country and deprive them of their rights.

Might I quickly ask each of the persons, as the light goes, to tell me whether suppression is the key element of what we are saying here, which wraps in deceptive practices, that we want what is provided, the constitutional right or the right to vote, and that is what we are trying to get at in this bill and that we can, in all manner, deal with fraud if it is documented. But it is the question of fraud.

Why don't I start with you, Mr. Neas, in terms of your work.

Mr. NEAS. There is no question that there is extensive evidence from the last three elections of voter intimidation and deceptive practices. People For the American Way Foundation along with the NAACP and the Lawyers Committee for Civil Rights has put out three separate studies that go into hundreds of incidents in many parts of the country.

Of course we are against fraud. I think the fraud issue is a red herring. There was just a report by Columbia University this week, "Voter fraud of any type is extremely rare with only 24 people convicted nationwide between 2002 and 2005." And I can cite you report after report, statistic after statistic. It is a red herring to give justification for some of these voter ID bills.

Where some of these voter ID bills have occurred, like Indiana, Missouri and Arizona, in all three States, the governor, the secretary of state or the State has testified in court there is no voter fraud in these States. There is no documentation that would justify these kinds of voter ID bills.

So we are totally in agreement, and anything that makes it easier to vote, that brings down the barriers that prohibit people from voting and making sure that votes are counted and counted accurately, we are behind. I think this bill will be a significant move in that direction.

Mr. King, by the way, I do applaud you for your work on the voting machines thatou demonstrated in the last Congress, and I hope you will join Rush Holt and others, if you haven't already. I take very seriously a number of things that you said about how you want to remedy that situation.

I think you looked at the machines and the disenfranchisement by voting machines, not just the DREs but different kinds of voting machines, and the issue of voter intimidation and suppression, provisional ballots, the equitable distribution of resources, especially machines that we heard in the testimony regarding Ohio in 2004. And Mr. Chabot is not here to talk about Ken Blackwell, but what he did with the paperweight of the voter registrations and the purging and the challenges——

Ms. JACKSON LEE. I was there.

Mr. NEAS [continuing]. Was quite reprehensible.

Ms. JACKSON LEE. And I thank you. Mr. King has been bipartisan on many issues.

Can I get the last two witnesses, please, to quickly—particularly this college suppression that I think you experienced, Ms. Brazile, directly in the State of Florida.

Mr. NEAS. We were co-counsel on that issue, by the way, and I thank you for all the efforts.

Ms. JACKSON LEE. Thank you.

Ms. BRAZILE. Madam Congresswoman, I mentioned in my testimony the students at Prairie View and also I know about the students at Florida A&M, and I know of many other cases where students had particular problems in getting their absentee ballots, even voting on campus, so even having the facilities available to them.

At Dartmouth College in New Hampshire, the students there wanted to put in a polling site, and they went to the town council. New Hampshire is one of the States that has same-day registration. The students had problems actually getting the polling site closer to campus, because many of them did not have access to public transportation that would take them to the town hall place.

So, I think we have to find ways to ensure that our young people have opportunities to cast their ballots, and when they request their absentee ballots, they get them in a timely fashion. Every semester, at Georgetown, after an election, I try to get a show of hands of how many students voted, and many of them raise their hands. To the two or three that fail to raise their hands, I say, "What is the problem?" They say, "Didn't get the ballot. We requested it in time but it didn't come."

So this is a problem. We need to focus on students, the elderly, the poor, racial minorities, language minorities, people with disabilities.

You know, as these elections become more and more polarized, the Nation is divided. We have 29 so-called safe States, 21 so-called battleground or swing States. If you look at these incidents of voter

deception, voter intimidation, voter harassment, illegal voter purges, they are taking place in these so-called swing States where there has been a deliberate attempt to try to suppress the vote.

Just recently, in Michigan, there was a State representative, I believe his name was Mr. Papageorge, who said that in order to win in Michigan, we have to suppress the votes in Detroit. Now, that is wrong. You should win outright, lose outright. I have won many elections, I have lost some, but I think for people to put illegal barriers in front of voters, that should be outlawed.

One thing on these robo calls, once upon a time, I thought robo calls were the sexiest thing in politics, because you can get celebrities and others to tape a 15-second, 20-second message and then put it on right before the election, and people got really excited and say, I heard from Bill Clinton, I heard from Bill Cosby, whoever on the Republican side.

Now, those calls are placed in the middle of the night, they don't identify who the caller is, and it is a form of harassment. And many voters called us last year to DNC and said, "Stop the phone calls." Well, we were not making phone calls at those hours. I am sure you heard in Missouri there were even live phone calls, push calls, as they are commonly referred to.

So we need to clean up, and I have committed myself. I have talked to Ken Mehlman, the outgoing chairman of RNC, I have talked to Ed Gillespie, the former chairman. I have committed myself to working across the partisan lines, because I think we need to clean up our system. If we want to have the best democracy in the world, if we want to march for freedom in Iraq and Afghanistan, it should begin here at home.

Ms. JACKSON LEE. Did you want to comment quickly?

I thank the Chairman for his indulgence.

Ms. SANDBERG. I would comment quickly. And this is where I had a good-faith disagreement with the congressman from Cincinnati, from Ohio.

And the reason that I said that it looked like it was an organized suppression, not just incompetencies, even there were instances of incompetence, was that in addition to the fact that there was a double track for poll workers to get to the secretary of state, we could not get correct identification from the secretary of state in the 2004 election to the point that the president of our college, Nancy Dye, had to create a task force to figure out how to record and inform students of their voting rights so they wouldn't be disenfranchised.

In 2006, when the League of Women Voters were trying to get the rules to publicize them, and one of my students, who was writing for one our local newspapers, called the secretary of state's office regularly to try to get clarification. No one there could give him clarification, which means that if you are a student trying to vote and you are trying to find out how you can do that and under what conditions and if you are a student who moves from dorm to dorm and you don't have an address on your photo identification card and that is what they said they were going to want, then in the end they didn't, it means that you have missed the opportunity to register to vote because you don't know the rules and you can't even vote absentee if you happen to be from another State.

So that is why I said there was something going on that seemed more than just mild incompetence, and it was in the secretary of state's office. And that is my perception. I was invited here to talk about my perception from where I was and what I viewed, and that is what I saw.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I think what we are hearing is that voter fraud is something that we all will stand unified against but that the chief culprit of races of past and maybe in the future is suppression of voters of all kinds, elderly, as well as students, as well as others, and as well as legal immigrants who may be categorized as undocumented just by the nature of their name. And I hope that we can move forward on this legislation.

I yield back to the gentleman. I thank him very much, and thank you.

Mr. CONYERS. And thank you for the interesting questions.

From Ohio, we have yet another Member of Congress, Mr. Jordan. Would you ring in with your perspective on this with our three witnesses?

Mr. JORDAN. Thank you, Mr. Chairman. I am going to pick up where Congressman Chabot was.

Professor, in 2006, which party did better in Ohio?

Ms. SANDBERG. In 2006, certainly the Democrats did better.

Mr. JORDAN. Which party controlled the secretary of state's office in 2006?

Ms. SANDBERG. The secretary of state's office was controlled by Republicans and——

Mr. JORDAN. Who controlled the secretary of state's office in 2004?

Ms. SANDBERG. The Republican Party.

Mr. JORDAN. Who controlled it in 2002?

Ms. SANDBERG. Republican Party.

Mr. JORDAN. Who controlled it in 2000?

Ms. SANDBERG. I can't remember that far back, sir.

Mr. JORDAN. The Republican Party. What was the name of Ohio secretary of state during those last four elections?

Ms. SANDBERG. It was Ken Blackwell.

Mr. JORDAN. And what office did he run for in 2006?

Ms. SANDBERG. He ran for governor.

Mr. JORDAN. And what was the result?

Ms. SANDBERG. The result was that there were——

Mr. JORDAN. What was the result, who won?

Ms. SANDBERG. The result was he lost, and I think that the context as to why is as important as the question——

Mr. JORDAN. Let me ask you this——

Ms. SANDBERG [continuing]. As the answer.

Mr. JORDAN. But your point is, you come with this grand conspiracy that is going on in the State of Ohio that you have laid out. In fact, you said, over the 6-year timeframe it is hard not to conclude that every step of the election process was undermined by the Republican secretary of state's office and the many in his employ.

So you have got this grand conspiracy. How in the heck—I mean, the secretary of state for 8 years now running for governor, still controlling the secretary of state's office, if there is some grand con-

spiracy, helicopterscircling the State house, how in the heck could he lose that bad in 2006?

Ms. SANDBERG. No helicopters circling the State house, sir.

Mr. JORDAN. Let me point to one thing in your testimony.

Ms. SANDBERG. Okay. I would love to answer.

Mr. JORDAN. Then I will let you respond.

Ms. SANDBERG. All right.

Mr. JORDAN. You say this: "A young man"—this is in your testimony, page five—"A young man reported that a number of Kent State students came to him and claimed that their punch cards"—this is in the 2004 election——

Ms. SANDBERG. Right.

Mr. JORDAN [continuing]. "Their punch cards were pre-punched for President Bush. I asked the male student if he took down the names of any Kent State students with whom he had spoken, he said he had not. I told him I was not certain what he could do, he should call the secretary of state's office and he should call the Democratic Party. Stupidly, I did not take down his name. It never occurred to me that I might be sitting here today."

So you had the foresight to ask him did he take down their names, you didn't take down his name, and yet you come in front of the Judiciary Committee in Congress, some nameless guy, with nameless students who had pre-punched cards for President Bush in 2004 and cite that in your testimony, and yet if it is that grand a conspiracy, how in the heck did Ken Blackwell lose so bad in 2006?

Ms. SANDBERG. There are two answers to that. The first is that I was invited here to talk about what it looked like to me on the ground, what did I see, what did I hear. I didn't conduct an investigation, I wasn't invited to do research as to what happened in the election. I am invited here as someone who is on the ground and who is able to report what I saw and heard so that you folks can do that investigation.

I put that in there and I put that it was an allegation, and I put that it was an allegation because I hadn't substantiated it, but it certainly is troubling and somebody should be investigating that.

Mr. JORDAN. A nameless guy, with nameless students, in front of the Judiciary Committee.

Ms. SANDBERG. I am sorry. If I am oversees and I am an election observer and someone wants their election certified, I know the people are trained to say, "If there are reports, give us reports, we will look into it, and we will see whether or not the election procedures need fixing." In that same spirit, I come to you today and say, we heard enormously disturbing things. And my testimony today, again, is not the result of research on my part but to raise as issues that were troubling that we heard.

As far as how the secretary of state do so poorly in this election, it was the same question I had previously, is the polls overwhelmingly showed that he was going to do poorly, and this time the Democrats were a little more prepared. They had lawyers all over the State.

You folks, blessedly, and I have to say from both sides of the aisle, and as you know in my testimony, I said I am not saying all Republicans, I am talking about particular individuals who did

your party, I believe, no honor, that there were folks all over the State who had shined a light on what was going on in Ohio. The difference in the polls was so great and people were prepared this time in a way they weren't before so they could counter some of the tactics that had been used before so that the election went forward in a more accurate way.

Mr. JORDAN. It couldn't have been that maybe the people who won in 2004 got more votes than the other individual on the ballot, and those in 2006 who won got more votes than the other. It couldn't have been that simple, could it?

Ms. SANDBERG. It could have been that simple, except that there were so many irregularities, and I am someone who was invited here to inform you of all those irregularities so that if you investigate them and you find this is a pattern in other places where there are swing States or where there has been closely contested elections, that it is your job to figure out a way to prevent those irregularities.

Mr. JORDAN. Thank you.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you. We have heard from about three Members of Congress from Ohio, so I am so happy that Professor Sandberg was here this afternoon.

Our final but certainly one of our most important contributors is the gentleman from Alabama, Mr. Artur Davis, who is recognized.

Mr. DAVIS. Thank you, Mr. Chairman.

Before I ask my questions, I just want to respond to my friend from Iowa's comments. Earlier, Mr. King made an argument that you hear every now and then that we have had 42 years of improving conduct under the Voting Rights Act, so perhaps we no longer need it.

A proposition, obviously we are a less racist country than we used to be, people don't discriminate as much. Does anyone on the panel think that we don't need title 7 because of that?

Okay. I think that makes my point.

Let me ask you all several questions regarding the scope of this hearing. Voter ID, we have a number of people who believe that voter ID is important. I think the Ranking Member of the Committee made some observations about the number of enforcement actions brought by the Civil Rights Division.

Let me ask this question: Do any of you on the panel know how many prosecutions have been brought anywhere in the country, in the last 5 years, based on people walking into a polling place, claiming to be someone they are not?

Ms. BRAZILE. I believe the Justice Department put out figures of 11.

Mr. DAVIS. And that would be 11, Ms. Brazile——

Ms. BRAZILE. Yes.

Mr. DAVIS [continuing]. In a span of 7 years, which is an average of a little bit more than one a year. And, of course, normally, this institution doesn't try to pass or typically we don't try to regulate conduct that yields one known violation a year, as I recall. We try to be more conservative than that.

Let me ask you another set of questions, and maybe I am just uninformed about this, so I will just ask the whole panel. We know

of all of the issues raised around election irregularities in Florida in the year 2000, we know of the 179,855 ballots that weren't validated.

Looking at established democracies, I don't mean countries having their first election, but looking at the countries around the world that are established democracies, do we know of another country in the last 6 or 7 years where the presidency or the leadership of that country has resulted from an election with so many questions around contamination of ballots?

Anyone on the panel know of another? Maybe I am just not informed.

Mr. NEAS. I certainly cannot recall one, and I think Donna, quite eloquently, a few minutes ago was talking about how we want to be a model to the rest of the world and we say we are a model to the rest of the world, but over the last 25 years, in particular, and it is certainly not just Republican versus Democrat, because I certainly am old enough to remember what it was like in the 1950's and 1960's with voter intimidation in the South and suppression, and we still have that in Georgia and elsewhere, and that is why we need the Voting Rights Act.

But when you look at our reports that we did with the Lawyers Committee for Civil Rights Under Law and the NAACP and People For, they are entitled, the long shadow of Jim Crow or the new face of Jim Crow or Shattering the Myth, which is in large measure about Ohio in 2004. This is a disgrace——

Mr. DAVIS. Well, let me stop you there, because——

Mr. NEAS [continuing]. Mr. Davis, and we should reform it, and I hope this Committee will move forward on it.

Ms. BRAZILE. But I think Mexico had problems in their last presidential election.

Mr. DAVIS. And the counter to that, though, I thought someone might say Mexico, the only issue is there was an independent electoral commission that was appointed in Mexico that closely scrutinized the process and issued a finding that despite much controversy, there was actually no real evidence of contamination. Does anyone on the panel know of an independent commission that made that kind of assessment around the 2000 election? Because of time, yes or no.

Okay. You all agree——

Ms. SANDBERG. There are many other countries. If you think of the recent Zambian election——

Mr. DAVIS. I am talking about established countries, not countries where they are just learning this process. I am talking about established democracies who have a history of at least 25, 30, 50, 70 years. I don't know of another instance when the election of the president or the chancellor or the prime minister—similar question: Do any of you know of any election in an established democracy where a judicial determination has been the dispositive factor? Again, major established democracy for president, chancellor? I can't recall one.

Let me end on this observation: Normally, what Congress tries to do and what public policy aims to do is to try to find areas where there are major problems and to step in and address those. That is what we try to do with our regulatory reach. It seems to me the

biggest problem that we have with elections in this country is that significant numbers of people who are eligible to vote are still not registered to vote.

In my State of Alabama, in your State, Ms. Brazile, Louisiana, your native State, 58 percent of the Blacks who were eligible to vote are registered. It is consistent across the South. That strikes me as a somewhat important problem from a policymaker's standpoint.

On the flipside of that, I think we have some general agreement in this room that we know of scattered instances where people walk into polling places claiming to be John Jones when they are Mary Smith. We know of scattered instances when people are regularly engaging in that kind of fraud that some people want to regulate with voter ID.

Doesn't it make sense to all of you that we should be aiming our laws and our policy to what appears to be the bigger problem instead of something that appears to be an aberration.

Mr. NEAS. Absolutely.

Ms. BRAZILE. Yes, sir.

Mr. DAVIS. All right. Thanks.

Mr. CONYERS. I think this brings to a conclusion the beginning of a very important inquiry, and it is my hope that we will be able to move on this matter and document some of the very disparate numbers that have been exchanged here today.

Wouldn't it be nice to know accurately, to the best of our ability, the actual numbers of people who have committed fraud or who have been denied to vote or have tried to vote more than once or immigrant attempted voting? All these things do have some numbers behind them, and I think the Department of Justice has a huge responsibility in that area.

And so to Mr. Neas, to Donna Brazile, to Professor Sandberg, we are indebted to you, and all of our witnesses—but wait a minute. I haven't recognized Mr. Ellison, and I apologize for that.

Mr. ELLISON. Mr. Chair, a lot of the questions that I had have already been asked and I have already had a chance to ask the first panel some questions. So I just want to say, quite clearly, I want to thank all the witnesses who have come forward so eloquently, and I want to thank the Chair.

I think this is one of the most fundamental and rudimentary problems in our society, and we have really got to focus our attention on getting more people to participate in our democracy and not straining at a net on who may or may not have voted when they weren't who they said they were. Because I think while that may be a problem, it is relatively small in the greater scheme of things.

So, again, thank you, Mr. Chair, and, certainly, I want to thank all the panelists.

Mr. CONYERS. Well, thank you very much, Keith Ellison.

Your participation on the Judiciary Committee has been welcomed by many. And I think that, although many of our remarks and some of the discussion went beyond the parameters of the bill that we have in front of us, unless we look at this in a larger scope, we tend to just focus on particular issues, singular issues, when I think all of us see that there are a great many things that can be done.

And I intend to maximally involve the Department of Justice who I think that a huge responsibility goes on, not just toward enforcement and protecting the rights of citizenship, but of encouraging and making more simple the balloting process. It has been observed here that actually we have hundreds, if not thousands, of different systems going on because of the Federal-State dichotomy.

What we want to do now is ponder, and I invite our witnesses who are free to continue to contact us, how we proceed next and how most effectively.

This Committee's agenda is so large that being efficient really counts for something here, and so we will include received statements from the NAACP, the Brennan Center for Justice, ACORN, the Project Vote report. And, without objection, they will all be included in the record.

And the record will remain open for 5 legislative days for the submission of other materials.

I thank you all for your devoted commitment to this subject matter and to your active substantive contributions made here at the hearing today.

Thank you, and the hearing is adjourned.

[Whereupon, at 7:04 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

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IMMIGRATION, BORDER SECURITY, AND CLAIMS

HOMELAND SECURITY
SUBCOMMITTEES
INTELLIGENCE, INFORMATION SHARING, AND TERRORISM RISK ASSESMENT
ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION, AND CYBERSECURITY
MANAGEMENT, INTERGRATION, AND OVERSIGHT

SCIENCE
SUBCOMMITTEES:
ENERGY
SPACE AND AERONAUTICS

MEMBER:
DEMOCRATIC CAUCUS POLICY AND STEERING COMMITTEE

CO-CHAIR:
CONGRESSIONAL CHILDREN'S CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

STATEMENT BEFORE THE

JUDICIARY COMMITTEE HEARING ON "PROTECTING THE RIGHT TO VOTE: ELECTION DECEPTION AND IRREGULARITIES IN RECENT FEDERAL ELECTIONS"

MARCH 7, 2007

Thank you, Mr. Chairman for holding this hearing.

Let me also welcome and thank our distinguished panel of witnesses who have so graciously joined us today to discuss the very serious matter of voter intimidation, fraud, and irregularities, especially my colleagues from the House and the Senate.

The purpose of today's hearing is to focus on a variety of election irregularities ties that have arisen in recent elections, including deceptive practices, voter intimidation, voter disenfranchisement, and an overall lack of trust in the electoral process.

Mr. Chairman, protecting the right to vote of all Americans is of paramount importance to me. The most fundamental aspect of American citizenship is the right to vote and to have full confidence that the vote is counted. Thousands of people have bled and died for the right to vote and their sacrifices shall not be in vain. Whenever this body is presented with inquiries to determine whether our voting system has been compromised in any manner, we have a solemn duty to investigate such matters.

As many of you know, election reform became a central issue in the wake of the irregularities identified in Florida in the 2000 Presidential Election. In June 2001, the U.S. Commission on Civil Rights, an independent bipartisan agency charged with monitoring and protecting voting rights, reported that "credible evidence shows many Floridians were denied the right to vote."[1] After analyzing the 179,855 ballots that were invalidated, and finding that fifty-three percent (53%)

[1] *AEI's John Lott falsely claimed Civil Rights Commission '[was]n't able to identify even one person' who was disenfranchised in Florida.* Media Matters, Oct. 25, 2004, available at http://mediamatters.org/items/200410250001.

were cast by black voters, the Commission concluded that in Florida, African-Americans were 10 times as likely to have a vote rejected as a white voters.[2] This concern helped lead to the passage in 2002 of the Help America Vote Act (HAVA). This Committee held hearings on the legislation, and members of our Committee participated in the Conference Committee. Since the enaction of HAVA, concern about deceptive practices and election irregularities have not abated. There have been numerous published reports about these incidents in both the 2004 and 2006 elections. There are also a number of reported incidents that were not addressed by the HAVA legislation. These include the following:

A. Ohio – There were numerous reported irregularities in Ohio in the 2004 election, which led me to conduct a review and issue a much-cited report entitled, "What Went Wrong in Ohio." The irregularities identified included:

- newly registered voters in Lake County received letters informing them that their registrations were illegal and that they would be unable to vote. The letter was sent on falsified Lake County Board of Elections letterhead.[3]

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[2] *Id.*

[3] Jeff Maynor, *Phony letters tell people they cannot vote*, WKYC News, Oct. 28, 2004, available at http:www.wkyc.com/news_print.asp=25556.

- An elderly couple living on the North Side of Columbus received a call informing them that their polling place had changed and that they should vote "on the other side of town." The caller claimed to be a representative of the Franklin County Board of Elections. When the elderly couple called the board to verify the change, they learned that others in the area had received deceptive phone calls, including offers to hand-deliver absentee ballots to the Board of Elections office.[4]

- The misallocation of voting machines led to lines of ten hours or more that disenfranchised scores if not hundreds of thousands of predominantly minority voters. In Franklin County, 27 of the 30 wards with the most machines per registered voter showed majorities for Bush, while six of the seven wards with the fewest machines delivered large margins for Kerry.

- Then Secretary of State Kenneth Blackwell's decision to restrict provisional ballots resulted in the disenfranchisement of tens if not hundreds of thousands of voters. In Hamilton County, this resulted in the result where

[4] Suzanne Hoholik, *Voters Report Fake Calls: Instructions to change polling place don't come from the board of elecitons*, COLUMBUS DISPATCH, Oct. 22, 2004, at A1.

hundreds of voters who showed up at the right polling place, but were directed to the wrong table by election workers, had their ballots thrown out.

- Mr. Blackwell's rejected voter registration applications based on paper weight. Ironically, forms obtained from the Secretary of State's office did not comply with his own paper weight directive.

- Preelection "caging" tactics, selectively targeting 35,000 predominantly minority voters for intimidation. The Third Circuit has previously found these activities to be illegal and indirect violation of consent decrees barring the targeting of minority voters for poll challenges.

B. North Carolina – In 2004, more than 4,500 votes were lost because of a mistake in voting machine capacity. In Carteret County, these votes were lost because officials believed that a computer that stored ballots electronically could hold more data than it did.

C. Louisiana – In 2002, flyers stating voters may cast their ballots 3 days after the election "if the weather is bad," were distributed in public housing complexes in New Orleans.[5]

D. South Dakota – In 2004 in South Dakota, Native American voters were prevented from voting for failing to provide photographic identification upon request, despite the lack of such requirements under state or federal law.[6]

E. Arizona – Latino voters in Pima County, Arizona were reportedly met at multiple polling places with a man who claimed he was "bent on discovering" how many illegal immigrants were voting in the 2004 primary election.[7] Dressed in a black shirt with the image of a badge and the words "U.S. Constitution Enforcement" on his back, the man carried a camera and video recorder holstered in a tool belt as he entered polling places, looking for "anomalies."[8]

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[5] Lee Hockstader and Adam Nossiter, *GOP Outmaneuvered in La. Runoff*, WASHINGTON POST, Dec. 9, 2002, at A4.

[6] S. 453, 110th Cong. § 2 (2007).

[7] Annie-Marie Cusac, *Bullies at the voting booth*, THE PROGRESSIVE, Oct. 1, 2004, at 18.

[8] Garry Duffy and Gary Gaynor, *Polls tighter here after "monitors" enter*, TUCSON CITIZEN, Sept. 9, 2004, at A3.

F. Wisconsin – In the days leading up to the 2004 presidential election, voters in Milwaukee's African American neighborhoods received flyers from the fictional "Milwaukee Black Voters League." The flier falsely claimed that individuals could be found ineligible to vote due to traffic violations, the criminal records of family members and voting in a previous election during the year."[9] Voters were also warned that violations of such "laws" could result in a ten-year prison sentence or forced separation from one's children. [10]

G. Virginia – Voters in eight Virginia counties were apparent victims of attempts at intimidation just before the 2006 election. Some received messages from callers claiming to be from the non-existent "Virginia Elections Commission," telling them of incorrect voter registration information and possible criminal charges for voting. Other callers falsely

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[9] Posting of Chris Clarke to Creek Running North, available at http://faultline.org/index,php/site/comments/more_smirking_liars/ (follow"this pamphlet" hyperlink), Oct. 29, 2004.

[10] Steve Schultz, *Campaigns Condemn Political Flier*, MILWAUKEE JOURNAL SENTINEL, Oct. 29, 2004, available at http://www.jsonline.com/story/index.aspx=270837.)

claimed to represent a federal campaign and told voters that their polling places had changed, sometimes to addresses that did not exist.[11]

H. California – In 2006, Latino voters in Orange County, California received mailings from the "California Coalition for Immigration Reform," falsely warning them in Spanish that "if you are an immigrant, voting in a federal election is a crime that can result in incarceration."[12]

I. Maryland – In 2006 certain candidates distributed fliers in predominantly African-American neighborhoods falsely claiming that the candidates had been endorsed by their opponents' party and by prominent African American figures.[13]

J. Florida – In 2004, over 4,000 potential voters including students at the University of Florida and Florida A&M University discovered their party registrations had been switched and their addresses changed. Changed

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[11] Kelli Arena and Ronni Berke, *FBI launches probe of Virginia pre-election calls*, CNN, Nov. 7, 2006, available at http:www.cnn.com/2006/POLITICS//11/07/deceptivecalls.va/index/html.

[12] S. 453, 110th Cong. § 2 (2007).

[13] *Id.*

addresses could have barred them from voting because they would have shown up at the wrong polling place.

K. Pennsylvania – In Pittsburgh, fliers printed on county letterhead stated that "due to immense voter turnout expected on Tuesday," the election had been extended: Republicans vote on November 2, and Democrats vote on November 3. Across the country, voters received similar fliers in the 2004 presidential election.

L. Pennsylvania and Illinois/ Abusive Robo-Calls – The media also detailed numerous instances of prerecorded phone calls designed to confuse voters. These misleading calls were made late in the evening, or during the night, in an apparent effort to generate anger at particular candidate. According to the *Associated Press*, one individual "received three prerecorded messages in four hours. Each began, 'Hello, I'm calling with information about [candidate] Lois Murphy [in the Philadelphia area].'" The Philadelphia Daily News reported that "[t]he calls, which begin by offering 'important information about Lois Murphy,' are designed to mislead voters into thinking the message is from her." In Illinois, *The Barrington Courier-Review* reported that a resident received the following phone call – "Hi. I'm

calling with information about [Candidate] Melissa Bean." She received the same call a total of 21 times since October 24. Others reported receiving the same calls, none of which were paid for by Ms. Bean's campaign.

I look forward to testimonies of our panelists and I am hopeful that you will provide us with information that will help us to make the necessary changes that will ensure the highest level of voter integrity.

Mr. Chairman, thanks again for convening this hearing, and I yield back my time.

PREPARED STATEMENT OF JOHN FUND, COLUMNIST, *THE WALL STREET JOURNAL*

I want to thank the Commissioners for addressing this important issue because we may be only three weeks away from repeating the 2000 Florida election debacle, although this time not in one but in several states with allegations of voter fraud, intimidation, and manipulation of voting machines added to the generalized chaos we saw in Florida.

It's time to acknowledge the U.S. still has in many places a haphazard election system that is more befitting an emerging nation than the world's leading democracy.

Walter Dean Burnham has called our system the world's sloppiest electoral process. How sloppy? Just ask the residents of Maryland last month who saw their primary election thrown into chaos after electronic voting machines couldn't be activated. Thousands of voters gave up and went home surrendering their right to vote.

Now we have the prospect of both candidates for governor in Maryland, the Republican Governor Bob Ehrlich and the Democratic challenger, Mr. O'Malley, calling on voters to cast their ballots by absentee. This shows a complete lack of confidence in our election system, and this presents us with two possible problems.

If Donna Brazile and others are legitimately worried about voter intimidation, the easiest ballots to intimidate voters over are absentee ballots because they're cast outside of the purview and the authority of election officials, and we have a long history in this country of people being intimidated either by their spouses, their relatives, their employers, union officials, or others into casting an absentee ballot a certain way. More absentee ballots equals more voter intimidation.

In addition, absentee ballots are the most easy method to commit voter fraud, again, because they're cast outside the view and the authority of election officials.

The 2000 Florida recount was more than merely a national embarrassment. It left a lasting scar on the American political psyche. Indeed, the level of suspicion is such that many Americans are convinced that politicians can't be trusted to play by the rules and will either commit fraud or intimidate voters at the slightest opportunity.

Now, the 2000 election did result in some modest reforms at the federal level, such as the Help America Vote Act of 2002, but the implementation has been slow. Although I will say one positive outcome of the HAVA Act is that Donna Brazile's sister, if she did not produce all of the ID that she thought she needed to produce, would have been allowed under HAVA to request a provisional ballot. That provisional ballot would have been counted later after she had established her eligibility.

So under the current system if you don't have the ID, you're allowed a provisional ballot. That provisional ballot will be counted if you are, indeed, an eligible voter.

America's election problems go beyond the strapped budgets of many local election offices. More insidious are flawed voter rolls, voter ignorance, lackadaisical law enforcement, and the shortage of trained volunteers at the polls.

Something like 70 percent of our poll workers are going to be retiring in the next year. It's an old person's occupation. We need to find some way to bring young people, college students, high school students into the process.

All of this adds up to an open invitation for errors, miscount or fraud. Reform is easy to talk about, but difficult to bring about. Many of the suggested improvements, such as requiring voters to show ID at the polls, are bitterly opposed. Others such as improving the security of absentee ballots, which Professor Pastor mentioned, are largely ignored.

And of course, the biggest growth sector of our election industry has been the turning of election day into election month through a new legal quagmire, election by litigation. Every close race now carries with it the prospect of demands for recounts, lawsuits, and seating challenges in Congress. Some people joke that they're waiting for the day that the politicians can just cut out the middle man and settle all elections in court.

That gallows humor may be entirely appropriate given the predicament we face. The 2000 election may have marked a permanent change in how an election can be decided. We need to restore public confidence.

Ironically, Mexico and many other countries have election systems that are more secure than ours. It wouldn't be possible in Mexico to have a situation that we have in many of our American cities where the voter roles have more names on them than the U.S. Census lists as the total number of residents over the age of 18.

Philadelphia's voter roles, for instance, have jumped 24 percent in the last ten years at the same time the city's population has declined by 15 percent. Something is going on there, and it probably does not lead us to greater accuracy at the polls.

In the U.S. at a time of heightened security and rules that require us to show ID to travel and to enter most federal buildings, only about 25 states require some form of documentation in order to vote. A recent Wall Street Journal-NBC News poll

confirms every other poll that I've seen on this subject. It found that over 81 percent of those surveyed supported the requirement to show photo ID. This included two-thirds majorities of African Americans, two-thirds majorities of Democrats, two-thirds majorities of Hispanics. In fact, I will make a stipulation I normally don't. If you can bring me evidence of a major public policy question which has the levels of support that we see on photo ID, 81 percent and greater, I'll make a donation to your favorite charity. There simply, you don't get beyond 81 percent. You simply don't.

Andrew Young, who is the former U.N. Ambassador and the former Mayor of Atlanta, makes a very good point about photo ID. Of course we have to make sure this is accessible. Of course we have to make sure this is accessible. Of course we have to make sure that it's free to anyone who can't afford it. Of course we have to make sure that it's not another barrier.

But there's also an advantage to photo ID. In modern 21st Century America if you don't have photo ID, you are cut out of the mainstream of American life. You can't really travel. You can't really apply for a job. You can't really do a lot of things in life that, frankly, would bring you into the mainstream and make your life more rich.

Andrew Young points out we are helping the poor. We are helping the indigent. We are helping many people out of the mainstream of American life if we get them a photo ID. They need to have it to be fully participatory in America's life.

Election fraud, whether it's phony voter registrations, illegal absentee ballots, shady recounts or old fashioned ballot box stuffing can be found in every part of the U.S. Fraud can be found in rural areas and in major cities. If you want to find some interesting witnesses for voter fraud, I suggest you go to St. Louis and Detroit where we've recently had Democratic primaries for mayor.

In these Democratic primaries, the losing candidates have presented some compelling evidence of either massive voter official incompetence or outright fraud. Freeman Hendrix, the losing candidate for Mayor of Detroit in the Democratic primary in the last election, says that the election was conducted under conditions of massive fraud. There's an ongoing FBI investigation into that, and he has called for photo ID at the polls, and he's a Democrat and a minority.

Investigations of voter fraud are inherently political because they often involve touchy situations which people, frankly, don't want to address fully, conditions that harken back to the great debates we had over the civil rights struggle in the 1960s.

And I want to address that because we fought a great civil rights hurdle in the 1960s to make sure that poll taxes and other barriers to voting would be dropped and would never again stain America's conscience. We need to continue that struggle. It's one of the reasons we just extended the Voting Rights Act for the next 25 years.

But I would remind people that there is another civil right at stake here. When voters are disenfranchised by the counting of improperly cast ballots or outright fraud or, frankly, the incompetence of election officials, their civil rights are violated just as surely as if they had been prevented from voting. The integrity of the ballot box is just as important to the credibility of elections as access to the ballot box is.

Voting irregularities have a long pedigree in America, stretching back to the founding of the nation. Many people thought that those bad, old days had ended, just as many people think that there no longer is any form of voter intimidation.

That's not the case. Voter intimidation does continue. Voter fraud does continue. Let me give you an example of how historical ghosts can come back to haunt us.

In 1948, pistol packing Texas sheriffs helped stuff ballot box 13, stealing a United States Senate seat and sending Lyndon Johnson on his road to the White House. That's been documented in Robert Caro's biography.

Amazingly, 56 years later came the 2004 primary election in that same part of Texas with Representative Sero Rodriguez, a Democrat and chairman of the Hispanic Caucus in the U.S. House, charged that during the recount a missing ballot box once again appeared in south Texas with just enough votes to make his opponent, the Democratic nominee, by 58 votes.

Political bosses, such as Richard J. Daley or George Wallace, may have died, but they do have successors. Even after Florida 2000, the media and others tend to downplay or ignore stories of election incompetence, manipulation or theft. Allowing such abuses to vanish into an informational black hole in effect legitimizes them.

The refusal to insist on simple procedural changes, such as requiring a photo ID, improving absentee ballot procedures, secure technology, and more vigorous oversight, accelerates our drift towards more chaotic and contested elections.

In conclusion, I would remind you that I never expected to live in a country where officials in places like Miami and other cities would hire the Center for Democracy, which normally oversees voting in places such as Guatemala or Albania, to send

election monitors to south Florida and other places in the 2002 and 2004 elections. Scrutinizing our elections the way we have traditionally scrutinized voting in developing countries is unfortunately a necessary step in the right direction.

Before we get the clearer laws and better protections, we need to deal with fraud and voter mishaps. We need to have a sense of the magnitude of the problem we have. I hope and trust that you as Commissioners of this body can help in that process.

RESPONSE TO POST-HEARING QUESTIONS FROM RALPH G. NEAS, PRESIDENT AND CEO, PEOPLE FOR THE AMERICAN WAY

Responses to Member Questions
Submitted on behalf of Ralph G. Neas

1. How Many People have been prosecuted for illegally voting in the past?

Virtually every academic study of voter fraud concludes that it is not close to being a substantial problem, if it exists at all. Study after study reaches the same conclusion. A report recently produced by Political Science Professor Lorraine Minnite of Barnard College at Columbia University, concludes that voter fraud of any type is extremely rare, with only 24 people convicted nationwide between 2002 and 2005, an average of eight people per year. This includes 19 people who were ineligible to vote, five because they were still under state supervision for felony convictions, and 14 who were not U.S. citizens; and five people who voted twice in the same election, once in Kansas and again in Missouri. [1]

The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible.[2] There are no reliable, officially compiled, national or even statewide statistics on voter fraud.[3] Even though many criminal acts associated with "voter fraud" are classified as felonies, voter fraud fails to appear in the F.B.I.'s uniform crime reports. There are no publicly available criminal justice databases that include voter fraud as a category of crime. No states collect and publish statistics on voter fraud.[4]

Bipartisan experts contracted by the Election Assistance Commission made similar findings- that there is simply little evidence of massive voter fraud in a report submitted to the EAC in 2006. The experts concluded that:

- "There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters."

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[1] U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Initiative, October 2002 – September 2005* (n.d.).

[2] Lori Minnite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (New York: De-mos: Network for Ideas and Action, 2003). The author is engaged in a more thorough analysis of state-level voter fraud data and investigations which will be published in her forthcoming book. To-date, the findings only confirm Minnite and Callahan's earlier conclusions.

[3] This is an urgent concern. Law professor Spencer Overton persuasively argues for a more empirical cost-benefit approach to evaluating the value and constitutionality of new restrictive photo identification voting requirements. As notes, this approach is hampered by the lack of systematic data on fraud. See, Overton, "Voter Identification," *Michigan Review* 105(2007), 631-682.

[4] The California Secretary of State's Office compiled information on electoral fraud cases referred to its office from 1994 to 2003. The data were analyzed in an unpublished conference paper (see, R. Michael Alvarez and Frederick J. Boehmke, "Contemporary Election Fraud: Quantitative Analysis of Fraud Cases in California," paper prepared for Conference, Center for Public Policy and Administration, The University of Utah, and the Caltech/MIT Voting Technology Project, Salt Lake City, September 29-30, 2006; available online at www.vote.caltech.edu/events/2006/FraudConf/AlvBmk-paper.pdf), but they are not publicly available.

- "Most [researchers] believe that false registration forms have not resulted in polling place fraud."
- "On balance, more researchers find [polling place fraud] to be less of a problem than is commonly described in the political debate"
- "Voter intimidation continues to be focused on minority communities."
- "There was only one self evident instance of a noncitizen registering to vote."

2. Will some voters who are legally eligible be denied the right to vote because of their inability to get documentation in a timely manner?

Yes. Laws that supposedly exist to prevent voter fraud often **keep poor, students, the elderly and minority voters away from the polls**. In Missouri, as many as 240,000 eligible voters didn't have appropriate identification to vote under a proposed Voter ID law. In Georgia, almost 700,000 voters would have been disenfranchised had a similar law not been struck down.

The financial burden of acquiring underlying documentation to prove citizenship, and to obtain a photo ID is an expensive one. A certified copy of a birth certificate costs from $10 to $45 dollars depending on the state, a passport cost $85 dollars, and certified naturalization papers cost $19.95.

3. Do you agree that many more people legally eligible to vote will be denied the right to vote under legislation than people voting illegally now?

If the question is asking whether voter ID legislation would deny more eligible voters the right to vote than people voting illegally now, then the answer is **yes**. As many as 7% of United States citizens do not have ready access to citizenship documents. Using the 2000 census calculation of the citizen voting-age population, this translates to more than 13 million American adult citizens nationwide who cannot easily produce documentation proving their citizenship. [5] On the other hand, only **24** people between 2002 and 2005 were convicted of voter fraud.[6]

Moreover, according to the 2001 Carter-Ford commission, an estimated 6 to 10 percent of voting age Americans (up to 19 million potential voters) do not possess a driver's license or a state issued non-driver's photo-ID.[7] Photo-ID requirements exclude Americans of all backgrounds but the poor, the disabled, the elderly, students, and people of color would bear the greatest burden.

A recent study by the Georgia Secretary of State found that nearly 700,000 Georgians – 1 in 7 voters – do not have either a driver's license or non-driver state issued ID. Additionally, a

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[5] Brennan Center for Justice *Citizens without Proof: A survey of American possession of documentary proof of citizenship and photo identification.* Voter Rights & Elections Series.. November 2006.

[6] U. S. Department of Justice, Criminal Division, Public Integrity Section, *Election Fraud Prosecutions & Convictions, Ballot Access & Voting Initiative, October 2002 – September 2005* (n.d.).

[7] Overton, Spencer. *Stealing Democracy: The New Politics of Voter Suppression.* W.W. Norton & Company, Inc, 2006, 153.

University of Wisconsin study found that nearly 50% of African American and Latino men in Milwaukee do not have government-issued photo ID.

While there are no nationwide studies documenting the exact number of Americans without documentary proof of citizenship, there is strong evidence that requiring proof of citizenship to vote would lead to disastrous results. In the first primary election after the implementation of a proof of citizenship requirement in Arizona, 75% of new registrants in Arizona's largest county were rejected for failure to provide documentation.[8] Although that rate has fallen after two years of intense public education, 17% of new registrants – almost all of whom are recognized by state officials to be eligible citizens – are still being rejected. At that rate, with restrictive photo ID and proof of citizenship requirements, millions of eligible citizens would be rejected nationwide.

4. If the government were to check citizenship for eligibility to vote, will they check all citizens or only those who are part of a certain ethnic group? And if so, which groups will be adversely affected by this rule (for example, minorities or seniors)?

Burdensome voter ID and proof of citizenship requirements are "unjust" because they yield only one certain result: they disproportionately keep certain classes of people away from the polls – **students, minorities, senior citizens, low-income voters**. That means a more limited electorate and more exclusive elections.

The potential for selective enforcement of the rules and for voter intimidation is a real problem. New ID requirements create several barriers to the ballot box. These voters tend to be senior citizens, students, racial minorities, and the less affluent – and for many of them, the cost of new ID requirements amounts to a 21st century poll tax.

New ID and citizenship requirements impose burdens on voters and poll workers also. Such requirements force poll workers to learn what kinds of identification are acceptable, and to take time explaining why some voters' identification is not acceptable. They also allow unreasonable discretion amongst poll workers to determine who they should or should not request additional ID. Furthermore, this can slow down voting, create long lines, increase voter frustration and depress turnout.

.These laws are overly burdensome and discriminatory in effect, and many organizations such as the PFAW, NAACP, MALDEF, the Asian American Justice Center and others have opposed them. Our democracy requires that all citizens have the opportunity to take part in their government. These rules will hinder the poor and marginalized from voting. That weakens our country and our government.

[8] Brennan, at 2.

RESPONSE TO POST-HEARING QUESTIONS FROM DONNA L. BRAZILE, CHAIR, DEMOCRATIC NATIONAL COMMITTEE'S VOTING RIGHTS INSTITUTE, ADJUNCT PROFESSOR, GEORGETOWN UNIVERSITY

DONNA BRAZILE
Responses to Questions for the Record

1. **How many people have been prosecuted for illegally voting in the recent past?**

At the Federal level, the numbers are very small relative to the number of votes cast. Despite an unprecedented and unexplained focus on individual voter fraud prosecutions by the Bush Administration's Department of Justice, only 120 people have been prosecuted and fewer than 90 have been convicted.

2. **Will some voters who are legally eligible be denied the right to vote because of their inability to get documentation in a timely manner?**

Yes. The magnitude of the impact on eligible voters has not been precisely determined. While there has not yet been a comprehensive report on the impact of restrictive Voter ID requirements, all of the preliminary studies indicate that imposing additional identification requirements has served as an impediment to access to voting.

Arizona's new requirement, which is currently the subject of federal litigation, requires voters to provide proof of citizenship at registration and identification at the polls, and has led to the disenfranchisement of many citizens, including more than 22,000 people whose applications were rejected in 2006 for lack of proof of citizenship. A University of Wisconsin study found that in Milwaukee nearly 50% of African American and Latino men did not have government issued photo identification. Seniors in Georgia are similarly unfairly impacted by these laws. According to the AARP, 36% of voters in Georgia over the age of 75 do not have government issued photo identification.

The American Association of People With Disabilities estimated that nearly 4 million disabled Americans would not be able to cast a ballot under the regime set up by H.R. 4844, the bill introduced in the last (109th) Congress that would require all voters, beginning in 2010, to obtain and show government-issued photo id proving their citizenship in order to vote in federal elections. According to a nationwide survey by the Brennan Center for Justice, eligible citizens with comparatively low incomes are less likely to possess documentation proving their citizenship. Citizens earning less than $25,000 per year are more than twice as likely to lack ready documentation of their citizenship as those earning more than $25,000. Indeed, the survey indicates that at least 12 percent of voting-age American citizens earning less than $25,000 per year do not have a readily available U.S. passport, naturalization document, or birth certificate.

Similarly, a study by the Eagleton Institute at Rutgers University and the Moritz College of Law at the Ohio State University commissioned by the U.S. Election Assistance Commission found that identification laws are likely to depress voter turnout among minority populations.

3. **Do you agree that many more people legally eligible to vote will be denied the right to vote under the legislation than people voting illegally now?**

Assuming the "legislation" being referred to is legislation that would impose photo ID requirements, the answer is "yes." While I am not aware of a definitive report, available data suggests that for every improper vote a photo ID requirement prevents, it could deny voting rights to another 6000 eligible voters. According to a comprehensive study conducted in Ohio http://www.cohhio.org/alerts/Election%20Reform%20Report.pdf, the chances of someone committing polling place fraud, the likes of which would be prevented by imposing a restrictive photo ID requirement, is less than getting hit by lightning. Yet, as many as 12% of Americans do not have a driver's license or other ID that would satisfy many strict voter ID requirements.

4. **If the government were to check citizenship for eligibility to vote, will they check all citizens or only those who are part of a certain ethnic group? And if so, which groups will be adversely affected by this rule (for example, minorities or seniors)?**

Preliminary indications, suggest that there will be discriminatory enforcement. The Asian American Legal Defense Fund conducted an exit poll during the 2006 mid-term elections in Michigan which found that 57% of Asian and Arab Americans surveyed were unlawfully asked for identification at the polling place. Similar studies in previous elections and across the country arrived at similar conclusions. Because our elections rely on a volunteer work force of poll workers, it is impossible to ensure that identification provisions will be enforced equitably.

A study of the 2004 general election in Ohio by the DNC revealed that while only 7 percent of all Ohio voters were newly registered, and only a small percentage of those registered by mail and thus could lawfully have been asked for id at the polls, in fact 37 percent of all voters reported being asked to provide id—meaning large numbers of voters were illegally required to produce id. Statewide, African American voters were 47 percent more likely to be required to show id than white voters. And, although statewide only 22 percent of voters under age 30 were newly registered, 67 percent of those voters reported being required to provide id.

In 2006, the Election Protection Coalition received complaints from voters in over a dozen states reporting that they were asked for identification in violation of state law. It would be difficult for the Federal government to prevent discriminatory enforcement, recognizing that there are over 4,600 election systems, 22,000 election officials, and 1.4 million poll workers in the United States.

NEWSPAPER ARTICLES, FROM *THE WASHINGTON POST* AND *THE WESTSIDE GAZETTE*, SUBMITTED BY DONNA L. BRAZILE, CHAIR, DEMOCRATIC NATIONAL COMMITTEE'S VOTING RIGHTS INSTITUTE, ADJUNCT PROFESSOR, GEORGETOWN UNIVERSITY

Criticism of Voting Law Was Overruled; Justice Dept. Backed Georgia Measure Despite Fears of Discrimination The Washington Post November 17, 2005 Thursday

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HEADLINE: Criticism of Voting Law Was **Overruled**;
Justice Dept. Backed Georgia Measure Despite Fears of Discrimination

BYLINE: Dan Eggen, Washington Post Staff Writer

BODY:

A team of Justice Department **lawyers** and analysts who reviewed a Georgia voter-identification law recommended rejecting it because it was likely to discriminate against black voters, but they were **overruled** the next day by higher-ranking officials at Justice, according to department documents.

The Justice Department has characterized the "pre-clearance" of the controversial Georgia voter-identification program as a joint decision by **career and political appointees** in the Civil Rights Division. Republican proponents in Georgia have cited federal approval of the program as evidence that it would not discriminate against African Americans and other minorities.

But an Aug. 25 staff memo obtained by The Washington Post recommended blocking the program because Georgia failed to show that the measure would not dilute the votes of minority residents, as required under the Voting Rights Act.

The memo, endorsed by four of the team's five members, also said the state had provided flawed and incomplete data. The team found significant evidence that the plan would be "retrogressive," meaning that it would reduce blacks' access to the polls.

A day later, on Aug. 26, the chief of the department's voting rights section, John Tanner, told Georgia officials that the program could go forward. "The Attorney General does not interpose any objection to the specified changes," he said in a letter to them.

Eric Holland, a Justice Department spokesman, said in a statement this week that "disagreements are healthy in a debate" and that voting rights decisions are made "after reviewing both the pros and cons very carefully."

"At the end of the day, the section chief is responsible for tendering a **recommendation**" to the assistant attorney general for civil rights, he said.

The Georgia voter ID program has been the subject of fierce partisan debate since it was approved by the state's Republican-controlled legislature in March. The plan was blocked on constitutional grounds in October by a U.S. District Court judge, who compared the measure to a Jim Crow-era poll tax. A three-judge appellate panel, made up of one Democratic and two Republican **appointees,** upheld the lower court's injunction.

The program requires voters to obtain one of six forms of photo identification before going to the polls, as opposed to 17 types of identification currently allowed. Those without a driver's license or other photo identification are required to obtain a special digital identification card, which would cost $**20** for five years and could be obtained from motor vehicle offices in only 59 of the state's 159 counties.

Proponents said the measure was needed to combat voter fraud, but opponents charged that Republicans were trying to keep black voters, who tend to vote Democratic, away from the polls.

Section 5 of the Voting Rights Act of 1965 requires Georgia and eight other states, mostly in the South, to submit any voting rule changes that might affect minority groups to the Justice Department for review. The department can either halt the proposed changes with an objection or issue a "pre-clearance" letter allowing them to proceed. Portions of the act, including Section 5, are up for renewal in Congress, and Attorney General Alberto R. Gonzales has said that he supports reauthorizing the law.

The Justice Department's decision to approve the Georgia measure was the latest in a series of disputes within the Civil Rights Division, which lost nearly **20 percent of its lawyers** in 2005 and has assigned dozens of those who remain to handle immigration cases instead of civil rights litigation. In the voting rights section, which handles election-related issues such as the Georgia plan, **political appointees also overruled career lawyers** in approving GOP-backed redistricting maps in Mississippi and Texas in recent years, current and former employees have said.

The Voting Rights Act puts the legal burden on Georgia to show that proposed election-related changes would not be retrogressive. According to the Aug. 25 memo from the Justice review team, Georgia lawmakers and state officials made little effort to research the possible racial impact of the proposed program.

The 51-page memo recommended several steps that Georgia could take to make the ID program fairer to minority voters, such as continuing to allow the use of non-photo identification, such as birth certificates and Social Security cards, that have not been shown to pose security problems.

Those in favor of issuing an objection were Robert Berman, deputy chief of the voting rights section; Amy Zubrensky, a trial **lawyer;** Heather Moss, a civil rights

analyst; and Toby Moore, a geographer, according to the memo. A fifth member of the team, trial **lawyer** Joshua Rogers, recommended approval, but the memo does not include his reasoning.

Berman did not return a call made to his office.

A key area of disagreement between the staff and their supervisors appears to be the reliability of data provided by the Georgia Department of Driver Services and other state agencies.

The staff memo noted that the records were riddled with errors, including the unexpired licenses of dead people, and were "of a quality far below what we are accustomed to using in the Voting Section." And other sources, including the U.S. Census Bureau, showed that Georgia blacks were much less likely than whites to own vehicles and also less likely to have photo IDs, the memo said.

"While no single piece of data confirms that blacks will [be] disparately impacted compared to whites, the totality of the evidence points to that conclusion," the memo said. It added later: "The state has failed to meet its burden of demonstrating that the change is not retrogressive."

But Assistant Attorney General William E. Moschella cited the state's data in an Oct. 7 letter to a senator that argues the number of eligible voters without a photo ID is "extremely small."

"All individual data indicates that the state's African-American citizens are, if anything, slightly more likely than white citizens to possess one of the necessary forms of identification," Moschella wrote to Sen. Christopher S. Bond (R-Mo.) in defense of the department's decision.

State Sen. Bill Stephens, a Republican who helped win passage of the legislation, said the Justice Department's approval was vital because of the restrictions faced by Georgia under the Voting Rights Act.

"That is the most crucial part of any elections legislation we pass," said Stephens, who is a candidate for secretary of state. "We know we have to await the Justice Department's pre-clearance of virtually anything we do."

State Rep. Tyrone L. Brooks Sr., a Democrat and president of the Georgia Association of Black Elected Officials, said he was not surprised by the Justice Department's position in the case.

"Some of my colleagues told me early on that, because of politics in the Bush administration, no matter what the staff **recommendation** was, this would be approved by the attorney general," Brooks said. "It's disappointing that the staff **recommendation** was not accepted, because that has been the norm since 1965."

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Politics Alleged In Voting Cases; Justice Officials Are Accused of Influence The Washington Post January 23, 2006 Monday

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HEADLINE: Politics Alleged In Voting Cases;
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BYLINE: Dan Eggen, Washington Post Staff Writer

BODY:

The Justice Department's **voting section,** a small and usually obscure unit that enforces the Voting Rights Act and other federal election laws, has been thrust into the center of a growing debate over recent departures and controversial decisions in the Civil Rights Division as a whole.

Many current and former lawyers in the section charge that senior officials have exerted undue political influence in many of the sensitive voting-rights cases the unit handles. Most of the department's major voting-related actions over the past five years have been beneficial to the GOP, they say, including two in Georgia, one in Mississippi and a Texas redistricting plan orchestrated by Rep. Tom DeLay (R) in 2003.

The section also has lost about a third of its three dozen lawyers over the past nine months. Those who remain have been barred from offering recommendations in major voting-rights cases and have little input in the section's decisions on hiring and policy.

"If the **Department of Justice and the Civil Rights Division** is viewed as political, there is no doubt that credibility is lost," former **voting-section** chief Joe Rich said at a recent panel discussion in Washington. He added: "The **voting section** is always subject to political pressure and tension. But I never thought it would come to this."

Attorney General Alberto R. Gonzales and his aides dispute such criticism and defend the department's actions in voting cases. "We're not going to politicize decisions within the department," he told reporters last month after The Washington Post had

disclosed staff memoranda recommending objections to a Georgia voter-identification plan and to the Texas redistricting.

The 2005 Georgia case has been particularly controversial within the section. Staff members complain that higher-ranking Justice officials ignored serious problems with data supplied by the state in approving the plan, which would have required voters to carry photo identification.

Georgia provided Justice with information on Aug. 26 suggesting that tens of thousands of voters may not have driver's licenses or other identification required to vote, according to officials and records. That added to the concerns of a team of voting-section employees who had concluded that the Georgia plan would hurt black voters.

But higher-ranking officials disagreed, and approved the plan later that day. They said that as many as 200,000 of those without ID cards were felons and illegal immigrants and that they would not be eligible to vote anyway.

One of the officials involved in the decision was Hans von Spakovsky, a former head of the Fulton County GOP in Atlanta, who had long advocated a voter-identification law for the state and oversaw many voting issues at Justice. Justice spokesman Eric W. Holland said von Spakovsky's previous activities did not require a recusal and had no impact on his actions in the Georgia case.

Holland denied a request to interview von Spakovsky, saying that department policy "does not authorize the media to conduct interviews with staff attorneys." Von Spakovsky has since been named to the Federal Election Commission in a recess appointment by President Bush.

In written answers to questions from The Post, Holland called allegations of partisanship in the voting section "categorically untrue." He said the Bush administration has approved the vast majority of the approximately 3,000 redistricting plans it has reviewed, including many drawn up by Democrats.

Holland and other Justice officials also emphasize the Bush administration's aggressive enforcement of laws requiring foreign-language ballot information in districts where minorities make up a significant portion of the population. Since 2001, the division has filed 14 lawsuits to provide comprehensive language programs for minorities, including the first aimed at Filipino and Vietnamese voters, he said.

"We have undertaken the most vigorous enforcement of the language minority provisions of the Voting Rights Act in its history," Holland said.

Some lawyers who have recently left the Civil Rights Division, such as Rich at the Lawyers' Committee for Civil Rights Under Law and William Yeomans at the American Constitution Society, have taken the unusual step of publicly criticizing the way voting matters have been handled. Other former and current employees have discussed the controversy on the condition of anonymity for fear of retribution.

These critics say that the total number of redistricting cases approved under Bush means little because the section has always cleared the vast majority of the hundreds of plans it reviews every year.

The Bush administration has also initiated relatively few cases under Section 2, the main anti-discrimination provision of the Voting Rights Act, filing seven lawsuits over the past five years -- including the department's first reverse-discrimination complaint on behalf of white voters. The only case involving black voters was begun under the previous administration and formally filed by transitional leadership in early 2001.

By comparison, department records show, 14 Section 2 lawsuits were filed during the last two years of Bill Clinton's presidency alone.

Conflicts in the voting-rights arena at Justice are not new, particularly during Republican administrations, when liberal-leaning career lawyers often clash with more conservative political appointees, experts say. The conflicts have been further exacerbated by recent court rulings that have made it more difficult for Justice to challenge redistricting plans.

William Bradford Reynolds, the civil rights chief during the Reagan administration, opposed affirmative-action remedies and court-ordered busing -- and regularly battled with career lawyers in the division as a result. During the administration of George H.W. Bush, the division aggressively pushed for the creation of districts that were more than 60 percent black in a strategy designed to produce more solidly white and Republican districts in the South.

These districts were widely credited with boosting the GOP in the region during the 1994 elections.

Rich, who worked in the Civil Rights Division for 37 years, said the conflicts in the current administration are more severe than in earlier years. "I was there in the Reagan years, and this is worse," he said.

But Michael A. Carvin, a civil rights deputy under Reagan, said such allegations amount to "revisionist history." He contended that the voting section has long tilted to the left politically.

Carvin and other conservatives also say the opinions of career lawyers in the section frequently have been at odds with the courts, including a special panel in Texas that rejected challenges to the Republican-sponsored redistricting plan there. The Supreme Court has since agreed to hear the case.

"The notion that they are somehow neutral or somehow ideologically impartial is simply not supported by the evidence," Carvin said. "It hasn't been the politicos that were departing from the law or normal practice, but the voting-rights section."

In Mississippi in 2002, Justice political appointees rejected a recommendation from career lawyers to approve a redistricting plan favorable to Democrats. While Justice delayed issuing a final decision, a panel of three GOP federal judges approved a plan favorable to a Republican congressman.

The division has also issued unusually detailed legal opinions favoring Republicans in at least two states, contrary to what former staff members describe as a dictum to avoid unnecessary involvement in partisan disputes. The practice ended up embarrassing the department in Arizona in 2005, when Justice officials had to rescind a letter that wrongly endorsed the legality of a GOP bill limiting provisional

ballots.

In Georgia, a federal judge eventually ruled against the voter identification plan on constitutional grounds, likening it to a poll tax from the Jim Crow era. The measure would have required voters to pay $20 for a special card if they did not have photo identification; Georgia Republicans are pushing ahead this year with a bill that does not charge a fee for the card.

Holland called the data in the case "very straightforward," and said it showed statistically that 100 percent of Georgians had identification and that no racial disparities were evident.

But an Aug. 25 staff memo that recommended opposing the plan disparaged the quality of the state's information and said that only limited conclusions could be drawn from it.

"They took all that data and willfully misread it," one source familiar with the case said. "They were only looking for statistics that would back up their view."

Mark Posner, a former longtime Civil Rights Division lawyer who teaches election law at American University, noted that Justice could have taken as many as 60 more days -- rather than seven hours -- to issue an opinion because of the new data.

Staff writer Thomas B. Edsall and researcher Julie Tate contributed to this report.

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Bush said to be in support of renewing 1965 Voting Rights Act, but... Westside Gazette, The January 11, 2006

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HEADLINE: Bush said to be in support of renewing 1965 Voting Rights Act, but...

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BODY:

While the president says he backs renewal of the federal law in public, behind closed doors Justice Dept. officials are accused of scuttling key parts of the Act, including barring civil rights attorneys from making

recommendations in voting rights cases.

In an all too familiar fashion, the Bush Administration appears to be falling back into the same, abysmal pattern of saying one thing, but doing another. At issue this time is the renewal of Section 5 of the 1965 Voting Rights Act. While the president professes to back the reauthorization of the federal law in public, behind closed doors **political appointees** and certain other high ranking officials at the Justice Department are being accused of deliberately attempting to scuttle key aspects of the Act, and in the process, steamrolling over the objections of **career lawyers** within the Civil Rights Division.

The landmark Voting Rights Act of 1965, which was signed into law by President Lyndon Baines Johnson on August 6, 1965, came into existence as a remedy "to break the grip of state disenfranchisement" of Black voters in the South, and "to overcome Southern legislators' resistance" to enforcement of the 15th Amendment."

The 15th Amendment to the Constitution granted. African American men the right to vote, stipulating that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

As put forth in the Introduction to Federal Voting Rights Laws by the U.S. Justice Department's Civil Rights Division, Section 2 of the Voting Rights Act forbad states from denying or preventing Blacks from voting through the discriminatory usage of literacy tests, or other ploys such as poll taxes, on a national basis. Section 5 of the Act "contained special enforcement provisions targeted at those areas of the country where Congress believed the potential for discrimination to be the greatest." Section 5 applies to all or parts of the following states: Alabama, Alaska, Arizona, California, Florida, Georgia, Louisiana Michigan Mississippi, New Hampshire, New York North Carolina, South Carolina, South Dakota Texas and Virginia. Although the voting rights set forth by the Fifteenth Amendment and Section 2 of the Voting Rights Act are permanent, Congress must reauthorize Section 5 by the end of 2007.

As reaffirmed by the U.S. Justice Department's Civil Rights Division (Voting Section), the above mentioned states under Section 5 of the Voting Rights Act are prohibited from enacting any changes to their voting laws unless these proposed changes are first submitted to the Justice Department or a federal court for review to ensure that they would not serve a "discriminatory purpose" or have a retrogressive, "discriminatory effect" on minority voters.

'Pre-clearance' given to Voter ID plan by Justice Dept

In turn, the U.S. Justice Department could enjoin the state from carrying out the proposed voting rule change if it finds it to be discriminatory, or, issue a "pre-clearance" notice essentially giving its 'blessing' to the particular voting rule change, finding it to be in compliance with the provisions and intent of the Voting Rights Act.

For years, a team of Civil Rights **lawyers** as well as other analysts on staff would meticulously examine whether newly proposed state voting laws would abridge the voting rights of minorities. Their **recommendations,** which held considerable sway, were then forwarded on to senior Justice Department officials. But not anymore it appears.

From secret memos uncovered by the Washington Post this past year it was revealed that in two highly controversial voting rights cases involving voter ID cards in Georgia and redistricting in Texas, **recommendations** by **career**

civil rights **lawyers** within the Justice Department were summarily bypassed by **political appointees** of the Bush Administration and a "pre-clearance" to proceed was issued to Georgia and Texas.

In the Georgia voter ID case, a 51-page memo drawn up by a team of Justice Department attorneys and civil rights analysts in the Voting Rights Section recommended rejecting Georgia's new voter identification law. Four out of the five team members endorsed the memo saying that they arrived at their conclusion based on the fact it was more than likely to discriminate against Black voters ultimately diluting their overall vote totals, given that the program mandated that voters produce one of six state-sanctioned photo IDs as proof of identification before being allowed to vote, whereas before voters were allowed to provide any of 17 different forms of identification including Social Security cards and birth certificates.

Now, voters without a driver's license, state ID or other photo identification will be obliged to purchase a $**20** picture ID card that can only be obtained from 59 out of the state's total 159 motor vehicle department offices.

Critics: GOP fears backlash in 2006

Proponents of the Georgia's voter ID law say it will cut down on voter fraud. Opponents vehemently disagree. They assert that voter fraud is not the issue, and instead this is a well-orchestrated ploy by Bush Administration **appointees** and the GOP in conjunction with the Georgia State Legislature to suppress the voting power of Blacks and the poor who are more likely to turn out in large numbers to vote Democratic.

Staff attorneys working in the Civil Rights Division also complained that administration **appointee** and higher-ups at the Justice Department were 'blind-sighted' to the fact that the data proffered by Georgia's Motor Vehicle Department and other state agencies to bolster their arguments favoring voter IDs were full of errors and discrepancies, including active driver's licenses for dead people, thereby falling far short of the standards and qualifications necessary for them to make sound **recommendations.**

Furthermore, they said, other data-mining sources such as the U.S. Census Bureau indicated that African Americans were considerably less likely to own or operate a motor vehicle or be in the possession of a photo ID. As implausible as it may seem to some, it is a documented fact that sizeable numbers of Blacks living in large urban centers or small rural towns primarily cash their checks at the local grocery store or check cashing place, both of which were likely to be within walking distance and to recognize their customers by sight.

U.S. District Judge Harold Murphy in Rome, Ga., who in October of 2005 blocked the program proclaiming it to be a throwback to the era of illegal, Jim-Crow poll taxes, has subsequently enjoined Georgia's voter ID program on constitutional grounds. A three-member appeals court made up of two Republicans and one Democrat upheld the lower court's decision.

Civil Rights attorneys barred from making **recommendations**

That did not stop the Justice Department from putting a positive 'spin' on the 'pre-clearance' granted to Georgia's controversial voter ID program, proclaiming it a mutual decision arrived at by **career** staff attorneys and **political appointees** within the Civil Rights Division.

Democratic State Rep. Tyrone L. Brooks Sr., President of the Georgia Association of Black Elected Officials, responding to the Justice Department's actions, said that he'd been told by colleagues early on that "because of politics in the Bush Administration," the attorney general was going to sign

off on Georgia's voter ID program, irregardless of any staff **recommendations.** His regret was that this marked a shift in policy that had been "the norm" since the time the Voting Rights Act went into effect in 1965 - a regression into the past rather than the future.

A second case stems from Texas's highly controversial re-districting plan; the mastermind of Texas Republican Tom DeLay, the former U.S. House Majority Leader who was forced to step down after being indicted on corruption charges allegedly involving illegal campaign expenditures. Interestingly, the re-mapping plan marks Texas's second redistricting project in a decade.

The Texas redistricting plan 'pulled no punches' and offered no pretenses. As both **political** sides acknowledged it was primarily designed to increase Republican representation in the state's 32-member House delegation and decrease Democratic seats.

At issue was whether or not it diluted minority electoral strength. A team of eight staff employees at the Justice Department concurred that it did, pointing out that while there were once 11 districts in which Blacks and Hispanics essentially held undisputed **political** power, now there were only 9 districts, a significant loss of two entire districts, due to the new redistricting plan. In effect, while Republicans increased their numbers in the U.S. House of Representatives from 15 to 21, the number of minorities in the House delegation increased from eight members to just nine and that individual defeated a Democratic incumbent in the primary election to do so. Nevertheless, U.S. Attorney General Alberto Gonzales ruled that minorities suffered no ill effects from the newly drawn congressional districts.

Compounding the recent turmoil that has arisen in the Justice Department stemming from **overruled recommendations** by **political appointees, 20 percent of career lawyers** got out in 2005, lured by a rather generous buyout program. The program was described by William Yeomans, a veteran of nearly 30 years in the Civil Rights Division (who went along with the buy-out) as a "concerted effort to ride the department" of experienced, long-term staff and replace them with individuals more ideologically "attuned" with the administration. On top of that dozens more **career** attorneys have been reassigned to immigration cases.

Furthermore, it was recently disclosed by The Washington Post and Dallas Morning News that the Justice Department will no longer be soliciting **recommendations** from staff attorneys within the Civil Rights Division (Voting Section). In fact not only will they not be soliciting **recommendations, career** attorneys will actually be barred from making any further **recommendations** regarding voting rights issues. This dramatic shift in policy is causing uproar in **political** circles all over the country and promises to grow as the 2006 elections draw near.

"American citizens have a right to know whether the Justice Department is ignoring the law and bending to the will of politics," stated Rep. John Lewis (D-Ga.), calling into question the neutrality of the department.

Concurring in principle, one former attorney in the Civil Rights Division decried the partiality that was going on in the Justice Department, adding that the key reason he saw for barring **recommendations** from seasoned civil rights attorneys was so that there would no longer be a paper trail to come back and haunt the administration. Article copyright BI-ADs, Inc.

Fixing the Game The New York Times December 5, 2005 Monday

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PREPARED STATEMENT OF HILARY O. SHELTON, DIRECTOR,
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STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR
NAACP WASHINGTON BUREAU
on
"PROTECTING THE RIGHT TO VOTE: ELECTION DECEPTION AND IRREGULARITIES IN RECENT FEDERAL ELECTIONS"

A HEARING BEFORE THE HOUSE JUDICIARY COMMITTEE

March 7, 2007

Good morning. My name is Hilary Shelton and I am the Director of the NAACP Washington Bureau, the federal legislative and national public policy arm of our nation's oldest, largest and most widely-recognized grassroots civil rights organization.

I am respectfully submitting this testimony before the House Judiciary Committee because the right to vote has always been of the utmost concern to the NAACP. For almost a century, the NAACP has fought against those who wish to suppress the votes of African Americans and other racial or ethnic minorities through unfair or unjust laws, deception and/or intimidation.

With the enactment of the Voting Rights Act of 1965, it became illegal for states or local municipalities to pass laws that in any way infringed on a person's Constitutional right to vote. Subsequent laws and reauthorizations of the Voting Rights Act have further addressed these tactics and made it harder for a state or a local government to infringe on a citizen's right and ability to cast an unfettered vote.

Unfortunately, some people are still so desperate to win elections – elections that they fear they cannot rightfully win – that they resort to deceptive practices, misinformation and lies, to try to keep legitimate voters away from the polls or to support candidates whom they might not otherwise vote for. It is even more unfortunate that these practices often target and exploit many of the same populations that have historically been excluded from the ballot box. Specifically, vulnerable populations, such as racial and ethnic minorities, the disabled and / or the poor are often targeted by those perpetuating these deceptive practices.

That is why the NAACP so ardently supports the *Deceptive Practices and Voter Intimidation Prevention Act*, H.R. 1281, introduced by Congressman Rahm Emanuel and John Conyers and others as well as S. 453, introduced by Senators Barak Obama and Charles Schumer and others. This legislation seeks to address the real harm of these crimes -- people who are prevented from voting by misinformation – by establishing a process for reaching out to misinformed voters with accurate information so they can cast their votes in time. The bill also makes voter intimidation and deception punishable by law, and it contains strong penalties so that people who commit these crimes suffer more than just a slap on the wrist.

Examples of malicious deceptive practices were rampant as recently as the general election in 2006. In Orange County, California, 14,000 Latino voters got letters in Spanish saying it was a crime for immigrants to vote in a federal election. It didn't say that immigrants who are citizens have the right to vote. In Maryland, misleading fliers were handed out in predominantly African American neighborhoods with the heading "Democratic Sample Ballot" and photos of black Democratic leaders -- and boxes checked off beside the names of the Republican candidates for Senator and Governor.

In Virginia, registered voters received recorded (robotic) calls that falsely stated that the recipient of the call was registered in another State and would face criminal charges if they came to the polls. It was also in Virginia that voters received phone calls stating that because they were such regular voters they could vote this time by telephone, by simply pressing a number at that time for the candidate of their choice. The call ended by repeating that they had now voted, and did not need to go to the polls.

In all of these cases, a quick response to expose the lies that were told and provide corrected information to get legitimate voters to the polls in time to have there vote counted was clearly warranted. Unfortunately, there was nothing done by the federal government to aid clearing-up this farce. It was therefore up to the local and national media, as well as advocacy groups, to scramble to try to undo the damage. While it is difficult to conclusively demonstrate that these specific misdeeds had an impact on an election, it is the position of the NAACP that if even one lawful voter was deceived or intimidated and therefore did not cast a legitimate vote, that is one too many and the federal government must act. When presidential elections can be won or lost by a few hundred votes, it is up to the federal government to do all it can to ensure that every eligible person who wants to vote can and that every vote legitimately cast, will be counted.

It is unfortunate yet necessary that the *Deceptive Practices and Voter Intimidation Prevention Act* needs to be passed now, before another election

PREPARED STATEMENT OF LILLIE CONEY, ASSOCIATE DIRECTOR, ELECTRONIC PRIVACY INFORMATION CENTER (EPIC), COORDINATOR NATIONAL COMMITTEE FOR VOTING INTEGRITY

Statement

Electronic Privacy Information Center

House Committee on the Judiciary
Hearing
March 7, 2007

"Protecting the Right to Vote: Election Deception and Irregularities in Recent Federal Elections"

The Electronic Privacy Information Center would like to thank Chairman Conyers, and Ranking Member Smith for your attention to our nation's election's process. The Electronic Privacy Information Center ("EPIC") is a public interest research center in Washington, D.C. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values. We have a long standing interest in constitutional values and submit this statement to the committee to further the work of EPIC to educate and inform the public, media, and policy makers on pressing issues that impact the privacy rights of residents.

Protecting the right to cast a secret ballot in public elections is the highest value in our system of self-governance. The notable increase of disinformation and misinformation efforts directed at otherwise eligible voters to impede their decision to vote in public elections is disturbing. Further the idea of voter identity theft raises alarm about the security and integrity of the voter registration and ballot casting process.

The Electronic Privacy Information Center oppose the implementation of proof of citizenship and photo identification requirements for eligible electors in American elections as the means of assuring election integrity. Recently, several proposals have been advanced at both the federal and state level to change existing election administration regulations to require eligible electors to provide proof of citizenship in order to register to vote and/or a form of photo identification in order to cast a ballot. The approved forms of proof of citizenship or photo identification vary across jurisdictions but, in general, the options are limited to a few, government issued documents.

There are two conditions that must be satisfied to have a public election declared democratic – an international norm that the United States helped to establish. All those who are legally eligible to participate in a public election must be allowed to vote, while at the same time those who are not legally allowed to participate are not allowed to vote. The dispassionate and objective application of voting law precludes looking at an individual voter and making a determination of eligibility. The voter registration process should determine eligibility, and on Election Day the role of the poll worker is to

authenticate voters without consideration of their income, language of origin, education, gender, race, or ethnicity.

Initially, Election Day voting poll locations were a good means of authenticating voters because the people within the community are more likely to know the people who are casting ballots. Today, that is more difficult because of the mobility of the American population and the disconnected nature of neighborhoods and communities.

The question before you is whether ineligible voters who are non-citizens are participating in public elections, and if this is the case, whether a strict voter identification requirement would address the problem. Non-citizens voting in public elections present a number of questions: first where is the research that provides some measure of the problem identified, and second is the supposed non-citizen voter participation isolated to certain states, regions or is it a national issue.

EPIC finds the ideas of proof of citizenship and photo identification requirements an extreme approach to a yet undefined problem that has yet to be acknowledged by election administration professionals or state attorneys generals as a pressing issue. For this reason, EPIC finds the proposal to increase the burden for voter participation in public elections to include restricted identification requirements to be objectionable, a barrier to the right to vote, and unnecessary in the encroachments on voters' privacy rights. We advise rejection of the ideas on the basis that the proof of citizenship and photo identification requirements: (1) are unnecessary and possibly unconstitutional; and (2) show a disregard of voters' privacy rights.

The first indication of voter identity theft would be the notice provided by those who are victims. Just as in the cast of financial identity theft the victim is the first to note the victimization and will alert authorities or election assistance efforts of the problem. It is important that the application of limited government resources be directed toward addressing real threats to identity and authentication within the environment where problems are discovered to have the greatest opportunity for effective redress.

Proof of Citizenship Requirements for Voter Registration and Photo Identification Requirements for Voting are Unnecessary and Possibly Unconstitutional

In order to increase voter participation in federal elections, Congress enacted the National Voter Registration Act of 1993 ("NVRA" or "Motor Voter Act").[1] The act was designed to enhance voting opportunities for every American and makes it easier for all Americans to exercise their fundamental right to vote. Recently, in reply to the Presidential Election of 2000, the federal government attempted to clarify and codify voting rights in the United States for federal elections through the enactment of the Help America Vote Act of 2002 ("HAVA").[2] HAVA, for the first time in the nation's history, established a role for the federal government in public elections held to fill federal elected offices.

[1] 42 U.S.C. § 1973gg.
[2] 42 U.S.C. § 15301, *et seq.*

Under NVRA and HAVA, states retain control of the election process, but they must meet minimum standards set by statute and federal agencies including a prohibition on states adopting alternative standards that are "inconsistent with … any law described [herein]."[3] HAVA was generally popular among members of Congress, yet received some criticism because it required more stringent voter identification procedures. Dissenters feared that the new requirements would repress voter participation by millions of Americans who have no driver's license.

Many ideas for increased voter identification requirements allege to further the principle goals of NVRA and HAVA. Yet, most proposals do the very opposite, stripping from the list of acceptable forms of identification several documents HAVA specifically permits, including: a current utility bill, bank statement, government check or paycheck, or other government documents showing the voter's name and address. Moreover, increased voter identification requirements would disproportionately burden minorities, elderly, physically challenged, and the poor by presenting a significant financial and practical hurdle to poll access. Historically, basing such prerequisites on a desire to facilitate the voting process has been merely pretextual, such as was the case with poll taxes.

EPIC has previously explained in the analogous context of voter registration; voter registration was designed to deny suffrage to those groups that were deemed not to be worthy of equal participation in the democratic process.[4] From generation to generation the list of the outcasts of American Democracy included women, new citizens, minorities, young adults, first time voters, poor people, and the homeless.[5] We believe ideas that further increase voter identification requirements, by preventing certain citizens from accessing the polls, will more likely reduce rather than enhance voting integrity. Although we recognize the interest in verifying voter identity, we believe that compelling eligible electors to acquire and present proof of citizenship to register to vote and photo identification to cast a ballot represents an unjustified privacy infringement.

The goal should be to keep the balance of furthering legitimate voter access, while ensuring that only those who may participate in the election do so. The voter access document in the form of voter registration should be the document needed to assure access to the ballot box. The role of that process is to make the necessary checks of identity and assure that those checks are based on real measures that reflect the needs of public election participation. However, the documents that can offer some proof of citizenship could include a birth certificate or a federal government issued passport, however, neither of these documents contain any relevant information for voter registration purposes. A place of birth does not indicate whether someone is a current resident of a community, or answers other questions about eligibility for participating in a public election. The passport is solely for the purpose of identifying citizens are they

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[3] 42 U.S.C. § 15484.

[4] DENNIS R. JUDD & TODD SWANSTROM, CITY POLITICS: PRIVATE POWER AND PUBLIC POLICY 86 (Addison-Westley Education Publishers Inc.) (2d ed. 1998).

[5] See ACLU & Dēmos, Purged! How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote (Oct. 2004), available at http://www.aclu.org/Files/OpenFile.cfm?id=16844.

travel to and from the country and provides even less information that could be used for voter registration purposes.

Nor can ideas for increased voter identification requirements be said to remedy voter fraud, accusations of which have, in recent years, centered on charges of fictitious registration.[6] HAVA was passed partly on the grounds that requiring identification at the time of registration, rather than at the time of voting, would remedy this very problem.[7] Moreover, while multiple registrations have occurred in some instances, these incidents do not necessarily reflect an intention by the voter to cast multiple ballots; lack of understanding and poor administration of the registration process itself may induce honest persons to register multiple times in an effort to try to ensure registration.[8] Another documented reason for multiple registrations is poor governmental recordkeeping.[9] Regardless of the cause of the problem, compelling voters to present state-issued identification at the polls is unlikely to resolve voter fraud.

Each election there is a small percentage of votes that are cast which raise questions about voter fraud. However, many of these ballots probably do not fit the typical profile most people would expect, they may be voters with residences in more than one state i.e. retirement or vacation homes and a permanent residence. They may be people who initially vote absentee and then find that they can vote on Election Day and do so. There are also concerns about people without the capacity to cast an independent, and informed vote i.e. those in assisted living or nursing homes who may have absentee ballots cast in their names. To be truthful the biggest opportunity for rampant voter fraud are absentee ballots, but little attention is placed on that process.[10] In any regard the evidence of rampant illegal vote casting is just not there.

Mandating presentation of state-issued documents as a condition to the exercise of the right to vote – unquestionably the most fundamental of all democratic freedoms[11] – represents a sharp departure from national precedent. Requiring voters to carry such documents could compromise the historic distinction between the United States and those nations requiring citizens to present papers as a condition to free passage. Identity cards have historically been a hallmark of injustice; they were essential to South Africa's apartheid system and proved useful in the Nazi and Rwandan genocides, for which they were powerful tools to identify members of targeted groups.[12] Requiring citizens to present non-voting-related documents, such as a driver's license, at voting polls is akin to

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[6] CNN.com Online News Law Center, Mary Poppins prompts investigation, http://www.cnn.com/2004/LAW/10/18/mary.poppins.registers.to.vote/

[7] See Robert Pear, The 2002 Campaign: Ballot Overhaul: Congress Passes Bill to Clean Up Election System, N.Y. TIMES, Oct. 16, 2002, at A1 (quoting Sen. Bond (MO) as saying, "If your vote is canceled by the vote of a dog or dead person, it's as if you did not have the right to vote.").

[8] Dennis J. Willard & Doug Oplinger, Figures Don't Add Up, AKRON BEACON J., Oct. 2, 2004, at 8A.

[9] Too Close to Election to Purge Voter Rolls, Editorial, INDIANAPOLIS STAR, Aug. 27, 2004, at A12; Brad Schrade & Anne Paine, and Bloated Registration Rolls Might Mean Long Lines at Polls, TENNESSEAN, June 28, 2004, at 1A.

[10] Maria A. Morales, Karen Branch & David Lyons, *Carollo Headed Back to Court, Commissioners Don't Act to Fill Mayor's Seat*, THE MIAMI HERALD, March 6, 1998, at 1A (documenting the confusion caused when a judge calls a new election due to massive absentee voter fraud).

[11] "Other rights – even the most basic – are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 18 (1964).

[12] Daniel J. Steinbock, National Identity Cards: Fourth and Fifth Amendment Issues, 56 FLA. L. REV. 697, 708-09 (Sept. 2004).

demanding citizens to present government-issued food-rationing cards for unrelated purposes, a practice that prompted rebellion in World War II Britain.[13]

Requiring voters to provide the state with information that is unnecessary to verify their identity or citizenship, such as the voter's address and fingerprints, may also raise questions of whether the vote itself is being cast in secret. Such concerns of voters are particularly acute in jurisdictions that use electronic voting machines, such as the State of Georgia.[14] Whenever the state mandates disclosure of personal information, the possibility arises that the data will be collected, stored in a centralized database to which subjects lack direct access and used for unknown purposes. Such a scheme of identification may thus chill rather than enhance popular confidence in election integrity. As one scholar notes, a system of mandatory identification by documentation raises fears that, "[a]ll human behavior would become transparent to the State, and the scope for nonconformism and dissent would be muted to the point envisaged by the dystopian novelists."[15] Innocent voters may feel especially intimidated if their information is checked against a database as they have, "no way of knowing the contents of the database against which their identification is being run, whether these contents are accurate or not, or what further impositions might be triggered by the information linked to their identity card. This uncertainty will turn every identification demand into cause for apprehension."[16]

In *Burson v. Freeman*,[17] the Supreme Court described voter privacy as a means of preventing voter fraud while ensuring against undue coercion. Upholding, under strict scrutiny analysis, a Tennessee statute that prohibited political candidates from campaigning within 100 feet of a polling place entrance, the plurality stated:

> [A]n examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments. We find that this widespread and timetested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interests in preventing voter intimidation and election fraud.[18]

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[13] Id. at 708.
[14] Georgia uses a touch-screen, direct recording electronic (DRE) voting system, which requires an access card to unlock the voting machine. Significantly, the Secretary of State Elections Web site includes the following statement about the card: "It contains no personal information about you or your vote." Georgia Secretary of State Cathy Cox, Elections, Frequently Asked Questions, http://www.sos.state.ga.us/elections/electronic voting/faqs.htm (last visited July 25, 2005). For an overview of security of electronic voting in Georgia, see Britain J. Williams, Security in the Georgia Voting System, Apr. 23, 2003, http://www.votescount.com/georgia.pdf.
[15] Steinbock, supra note 19, at 809 (quoting Roger Clarke, Human Identification in Information Systems: Management Challenges and Public Policy Issues, 7 INFO. TECH. & PEOPLE, (No. 4) 6, 34 (1994), available at http://www.anu.edu.au/people/Roger.Clarke/DV/IHumanID.html).
[16] Steinbock, supra note 19, at 734 (citations omitted).
[17] 504 U.S. 191 (1992).
[18] *Id.* at 206.

Thus, voting and privacy work in tandem: the latter gives meaning to the former. Compelling voters to present photo identification and to reveal more information than is absolutely necessary to affirm identity before allowing them into the restricted zone will chill voters' sense of seclusion and infringe on the sanctity of the private vote.

Judicial precedent advises against giving a state wide latitude in the use of personal information for administrative purposes in elections. In *Greidinger v. Davis*,[19] the Fourth Circuit limited the scope of use of Social Security Numbers in the administration of elections after a Virginia citizen seeking to register to vote challenged the state's publication of the Social Security Numbers in the public voting roles. While allowing the use of Social Security Numbers for the limited purpose of preventing voter fraud, the Fourth Circuit held that publishing Social Security Numbers placed an impermissible burden on the right to vote.[20]

In *Harman v. Forssenius*,[21] the U.S. Supreme Court struck down a Virginia statute requiring voters to submit an affidavit of residence six months before Election Day as an alternative to paying the customary poll tax. Finding that the statute violated the Twenty-Fourth Amendment, the Court rejected the state's argument that the law was necessary to prevent voter fraud: "[C]onstitutional deprivations may not be justified by some remote administrative benefit to the State.... Moreover, ... the State has not demonstrated that the ... requirement is in any sense necessary to the proper administration of its election laws."[22]

The administrative challenge with increased voter identification requirements is the development of lists of approved forms of proof of citizenship. Naturalization papers are clear proof of citizenship but natural born citizens have no equivalent. Birth certificates or passports, under some circumstances, can prove the citizenship of an individual. However, proof of birth at an American hospital may not equate to American citizenship. Every year resident working or student aliens deliver children in American hospitals who will never become citizens of the United States. In addition, members of the American military serving abroad regularly deliver children who are natural born American citizens in foreign hospitals. A passport requires proof of citizenship to obtain but can only be acquired at a cost, a possible violation of the Twenty-Fourth Amendment.

Approved lists of forms of photo identification also have administrative challenges. Although most Americans hold a valid drivers license, many departments of motor vehicles ("DMVs") around the country are no longer issuing new licenses when citizens relocate within a state. Some DMVs do not collect old drivers licenses when a driver changes address. Because of that, many voters may have a photo ID with an outdated address or have several valid drivers licenses with different addresses. In addition, most DMVs charge a processing fee for an individual to obtain a license, to require presentation of a drivers license in order to cast a ballot may be a possible violation of the Twenty-Fourth Amendment.

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[19] 988 F.2d 1344 (4th Cir. 1993).
[20] *Id.* at 1344.
[21] 380 U.S. 528 (1965).
[22] *Id.* at 542-43.

Proof of Citizenship Requirements for Voter Registration and Photo Identification Requirements for Voting Disregard Voters' Privacy Rights

Increased voter identification requirements as proposed are often equally onerous, requiring voters to obtain at least one form of identification for which the state typically collects a monetary charge. Some states allow persons who cannot afford a card to obtain one for free; however, this, requires not only documented proof of identity, state residency, and citizenship but also submission of proof of indigence and income. Moreover, such applicants are often required to apply for such cards well in advance of an election and to have a current mailing address, an impossibility for the indigent.

Consideration of increased voter identification requirements should also be informed by the reasoning in *Hiibel v. Sixth Jud. Dist. Court of Nev., Humboldt County*, in which the Supreme Court declined to hold that law enforcement can mandate that citizens produce documents proving their identity.[23] In that case, the Court upheld a Nevada statute that required a person stopped by police to disclose his or her name when reasonable, articulable suspicion of a crime was present. The Court reasoned that the statute did not violate the Constitution because "[t]he request for identity has an immediate relation to the purpose, rationale, and practical demands of a Terry stop."[24]

No such reasonable relation exists here. Increased voter identification requirements would require all citizens presenting themselves at the poll – the vast majority of whom presumably arouse no suspicion whatsoever – to disclose not only their names but also all information that appears on their identification cards. Further, the requirements would require citizens to present the cards not to police but to poll workers, most of whom are neither professionally licensed in law enforcement nor permanent governmental employees. Furthermore, the requirements would mandate self-identification not in the context of criminal apprehension – a state interest that, although strong, must be balanced vis à vis Fourth Amendment rights[25] – but as a condition to an innocent person's exercise of the constitutional right to vote.[26]

The disclosure of personal information mandated by the increased voter identification requirements could be considerable. The most common form of identification likely to be used – a driver's license – includes not only the voter's name and photographic likeness but also may include such information as the voter's age, height, weight, driver's license number, restrictions owing to disability or impairment (such as for imperfect vision or a prosthetic limb), and fingerprints. Furthermore, the State, and not the voter, would have sole control over the information placed into a state-

[23] 542 U.S. 177 (2004) (upholding Nevada statute because "[a]s we understand it, the statute does not require a suspect to give the officer a driver's license or any other document. Provided that the suspect either states his name or communicates it to the officer by other means a choice, we assume, that the suspect may make the statute is satisfied and no violation occurs.").
[24] Id. at 177.
[25] See, e.g., Muehler v. Mena, 125 S. Ct. 1465, 1470 (2005) (holding that no Fourth Amendment violation occurred where officers handcuffed suspect during lawful search: "Inherent in [the] authorization to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention.").
[26] The U.S. Constitution places no such restriction on the right to vote and specifically excludes several restrictions. See U.S. Const. art. XIV, § 2; U.S. Const. amend. XIV, U.S. Const. amend. XV; U.S. Const. amend. XIX; U.S. Const. amend. XXIV; U.S. Const. amend. XXVI.

issued identification card, and the applicant for such identification cannot choose to withhold certain data. Changes in the design and content of driver's licenses and other state-issued identification are also at the discretion of the government rather than the data subjects.

The cumulative effects of what many would deem a minor burden on voter rights would be substantial over time because checking papers has "an additional subjective effect on a grand scale: the psychic harm to free people of having to 'show your papers'.... Not only would people forced to go through identity checkpoints experience some degree of fear and surprise, but also knowing that this has become a permanent part of the social fabric would diminish their sense of liberty."[27] Such effects are certainly immeasurable, but there can be no question that the effects are compounded where the right at issue – voting – is the very heart of democratic liberty.

We should not assume that all identification requirements would fall equally upon all citizens. One of the largest sources of voter disenfranchisement is poll worker errors, which could be compounded with additional voter identification requirements. In the recent Indiana primary elections Veterans were denied their right to vote because their VA identification cards were not one of few forms of identification approved by the new state law.

REAL ID and Voting

Identity (ID) cards are in use in one form or another in virtually all countries of the world. The type of card, its functions, and integrity vary enormously. While several countries have official, compulsory, national ID cards that are used for a variety of purposes, many countries do not. Nationwide ID systems are established for a variety of reasons. Race, politics and religion often drive the deployment of ID cards.1 The fear of insurgence, religious differences, immigration, or political extremism have been all too common motivators for the establishment of ID systems that aim to force undesirables in a State to register with the government, or make them vulnerable in the open without proper documents.

In recent years technology has rapidly evolved to enable electronic record creation and the construction of large commercial and state databases. A national identifier contained in an ID card enables disparate information about a person that is stored in different databases to be easily linked and analyzed through data mining techniques. ID cards are also becoming "smarter" – the technology to build microprocessors the size of postage stamps and put them on wallet-sized cards has become more affordable. This technology enables multiple applications such as a credit card, library card, health care card, driver's license and government benefit program information to be all stored on the same national ID along with a password or a biometric identifier.

[27] Steinbock, supra note 19, at 740.

Governments in Finland, Malaysia, and Singapore have experimented with such "Smart" ID cards. In July 2002, the Labor government in the United Kingdom launched a six-month public consultation process on whether the United Kingdom should adopt an "entitlement card" with similar features. Critics contend that such cards, especially when combined with information contained in databases, enable intrusive profiling of individuals and create a misplaced reliance on a single document, which enables precisely the type of fraud the cards are meant to eliminate.

The Electronic Privacy Information Center (EPIC) opposes the use of the REAL ID as a voter authentication document. EPIC is on the record as being in opposition to Georgia's use of government-issued photo ID as the sole means of casting a ballot in a state or federal election. EPIC said that the Georgia voting photo identification law encroaches on privacy, would discourage voter turnout, and is inconsistent with the federal Help America Vote Act. Under the 1965 Voting Rights Act, Georgia is required to receive Justice Department approval before making any changes to its voting laws. The list of approved government photo identification documents does not include state and federal identification documents that would otherwise establish eligibility to vote. The State of Georgia does not intend to accept federal or state issued checks, employment identification documents, state college or university identification, utility bills, sworn affidavits, or public assistance identification. EPIC finds the Georgia voting ID law and the Carter-Baker Commission recommendation on REAL ID as the sole voting identification requirement objectionable, a barrier to the right to vote, and unnecessary in its encroachments on voters' privacy rights.

EPIC objects to the proposal by the Carter-Baker Commission proposal to restrict voter participation only to those who can obtain a REAL ID on many of the same grounds that we object to the Georgia voting ID requirement. First, the rules for implementation of the REAL ID have not been provided by the Department of Homeland Security, which has sole legislative authority over this critical area.

The REAL ID will not be a definitive document on citizenship, but a test of the ability of some to successfully navigate the course and receive a document based on the high bar established by the law. The law is lacking in that there is no requirement that local and state agencies receiving requests reply to the state DMVs attempting to verify source documents presented by applicants. Further the language of the law regarding an inability to verify documents will be ripe for abuse:

"(11) In any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card--(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and (B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose."

Second, the requirement that only one document is the only means of authenticating voters makes the penalty for not having a REAL ID too costly for a

popular democracy. Third, states can choose to opt-out of the REAL ID program, but the Act mandates that licenses from opt-out states cannot be used as identification for federal purposes. If Congress follows the Commission's recommendation that voters participating in federal elections can use only the Real ID card as identification, then residents of states that reject the REAL ID program will not have acceptable voter identification.

The record of voting rights in this nation does not support the assumptions made by the Carter-Baker report that if states make the REAL ID available to indigent voters then the issue of access will be address. The history of voting rights in this nation should not be ignored. The adoption of the 15th Amendment prohibited the denial of voting rights based on race.[28] The 19th Amendment prohibits the denial of the right to vote based on gender. [29] The 24th Amendment prohibits the poll tax for federal elections.[30] The 26th Amendment prohibits the denial of voting rights of those 18 and older base on age.[31] Each Amendment is a testament to the Federalists and Antifederalists struggle to define democracy in the United States.

The Carter-Baker Recommendations cite as the reason for a photo ID requirements the curbing of voter fraud is not substantiated by empirical evidence. We believe that the proposed recommendation if acted upon will prevent certain citizens from accessing the polls, will more likely reduce than enhance voting integrity. Although we recognize the Commission's interest in verifying voter identity, we believe that compelling qualified citizens to acquire and present state-issued picture identification cards at voting polls represents an unjustified privacy infringement. We believe that the Georgia experience in noting being able to present evidence of the type of election fraud

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[28] Amendment XV to the Constitution provides:

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
2. The Congress shall have power to enforce this article by appropriate legislation.

[29] Amendment XIX to the Constitution provides:

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
2. Congress shall have power to enforce this article by appropriate legislation

[30] Amendment XXIV to the Constitution provides:

1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.
2. The Congress shall have power to enforce this article by appropriate legislation.

[31] Amendment XXVI to the Constitution provides:

1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.
2. The Congress shall have power to enforce this article by appropriate legislation.

intended to be addressed by the proposed new state ID standard is indicative of the current debate on this issue. The Georgia state legislature has not cited evidence of actual effects of voter identity fraud on outcomes of Georgia elections. Indeed, Georgia's Secretary of State Cathy Cox recently could not recall even "one documented case of voter fraud during [her] tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls."

Provisional Ballots

Congress in passing HAVA placed a resource in the hands of local and state election officials for those instances when the authentication of a voter is in doubt--the Provisional Ballot can be used. However, the rules for the use of this ballot and the inclusion of these ballots in the final results of election need clarification. The goal of preventing voters from participating in public elections when they should not, but allowing a process that includes legal voters in engaging the process is a good approach.

Conclusion

According to the CalTech MIT study, *Voting: What Is, What Could Be*, between 4 and 6 million votes were lost in the 2000 election.[32] The study attributed the loss in part to problems with voter registration and polling place practices. In 2004, EPIC identified two general problem areas with voter registration during the elections: lack of transparency and voter privacy regarding the public administration of voter registration.[33] The solutions to voter registration and Election Day problems lie not in additional legal barriers between American voters and the ballot box but in increased training and funding for local election administration. There is no evidence that local election administrators face drastic challenges to the identification of voters and registering to vote and the act of casting a ballot must, by law, cost nothing to the voter. Therefore, and for the reasons state above, increased voter identification requirements are unnecessary, possibly unconstitutional, and disregard voters' privacy rights.

Thank you,

Lillie Coney
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EPIC
Coordinator National Committee for Voting Integrity

[32] THE CALTECH/MIT VOTING TECHNOLOGY PROJECT, VOTING, WHAT IS, WHAT COULD BE (California Institute of Technology and The Massachusetts Institute of Technology Corporation) (2001) available at http://www.vote.caltech.edu/media/documents/july01/July01_VTP_Voting_Report_Entire.pdf.
[33] Ralph Vartabedian, LOS ANGELES TIMES, *State Laws Unjustly Bar Voters, ACLU Says:* Oct 19, 2004, at A16.