

**FEDERAL, STATE, AND LOCAL EFFORTS
TO PREPARE FOR THE 2008 ELECTION**

JOINT HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES
OF THE
COMMITTEE ON THE JUDICIARY
AND THE
SUBCOMMITTEE ON ELECTIONS
OF THE
COMMITTEE ON HOUSE
ADMINISTRATION
HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS

SECOND SESSION

SEPTEMBER 24, 2008

Serial No. 110-148
(Committee on the Judiciary)

Printed for the use of the Committee on the Judiciary and the
Committee on House Administration



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FEDERAL, STATE, AND LOCAL EFFORTS TO PREPARE FOR THE 2008 ELECTION

WEDNESDAY, SEPTEMBER 24, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES,
COMMITTEE ON THE JUDICIARY, AND THE
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The Subcommittees met, pursuant to notice, at 10:20 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee on the Judiciary) presiding.

Present from the Subcommittee on the Constitution, Civil Rights, and Civil Liberties: Representatives Conyers, Nadler, Lofgren, Davis of Alabama, Ellison, Watt, Cohen, Franks, Issa, King, and Jordan.

Present from the Subcommittee on Elections: Lofgren, Gonzalez, Davis of Alabama, Davis of California, McCarthy, and Ehlers.

Also present: Representatives Waters and Delahunt.

Staff present from the Subcommittee on the Constitution, Civil Rights, and Civil Liberties: LaShawn Warren, Majority Counsel; and Paul Taylor, Minority Counsel.

Staff present from the Subcommittee on Elections: Tom Hicks, Majority Counsel; and Gineen Beach, Minority Counsel.

Mr. CONYERS. Good morning. The Subcommittees will come to order.

I have asked the Chairwoman of the Subcommittee on Elections, Zoe Lofgren from California, to begin the proceedings.

Ms. LOFGREN. Thank you, Chairman Conyers.

I think this is an important, and really unprecedented, joint hearing between the Elections Subcommittee of the House Administration Committee and of course, the Constitution Subcommittee of the Judiciary Committee.

I am honored to serve on both the Judiciary Committee and Chair the Elections Subcommittee allowing us to focus on really one of the most important issues that faces our country, which is to make sure that we have an election that makes sure that individuals who are eligible to vote are able to vote, that our American citizens come to the polls and are not disenfranchised.

The election 4 years ago and 8 years ago left a very bad taste in the mouths of Americans because there were people who were

not able to vote. They were disenfranchised. And if that happens again—if half of America thinks that the election was not fair, that people who had a right to vote were denied that right—we are going to be in a real pickle in this country.

And so this hearing is to hear from election officials, but also to make sure that we have the proper proactive effort to make sure that people are not disenfranchised again.

Now, how can you be disenfranchised? In many different ways. I actually personally spoke to people who waited 8 hours to vote in a precinct in Ohio. If you have to wait 8 hours to vote, you are disenfranchised.

Now, for students, their classes were canceled, so they could stand in line. But if you are an employed person, you can't take off 8 hours from work to vote. And you shouldn't have to.

And so we know that if that happens again, Americans are going to feel that something funny was going on with the electoral process. And I expect that we will identify those areas where problems are likely and proactively step forward and say, this is the emergency effort you need to make. If you need to have backup paper ballots so you can have your registration people go along the line and check in those voters and vote so they don't have to wait 8 hours, we need to plan for that.

Equipment failures, voter registration lists, and I want to talk about vote caging. When Monica Goodling appeared before this Committee and talked about the Justice Department people who took time off to do vote caging, and I remember saying, "What is it?" And I turned to another Member of the Judiciary Committee, I said, "What is that?" And he didn't know, either.

Well, it turns out, I have now learned, that it is a very racist and I think illegal activity that is intended to disenfranchise voters. What has happened around the country is that registered letters have been sent in African-American or other minority communities, and if they are not responded to, then that person is identified as not a real voter.

Well, there is a lot of reasons why people might not want to go down to the post office and pick up a registered letter. And to allow for that kind of systematic suppression of minority voting, I think, is a civil rights violation and I think ought to be proactively prohibited.

Not only does it disenfranchise the American citizen who is a voter, but the fight over this disenfranchises everybody else who is waiting in line—so creating tremendous delay so that people have to give up and go back to work.

This is so important for our country, that we get this right. But I want to hear from the witnesses what they are doing. This is not the end of what we are going to do. Tomorrow the Elections Subcommittee is having a hearing on the suppression of student votes that we have learned about, where students have been told that if they actually register at their campus, which they are permitted to, that they will have their student aid removed. That is false. What are we doing as a government to prevent that disenfranchisement?

So this is an important hearing, Mr. Chairman. I am glad to participate in it, and I hope that the efforts that we will make will have a positive impact on having a fair vote this November.

And I yield back.

Mr. CONYERS. Thank you so much for starting us off.

I am pleased to recognize Trent Franks, an outstanding Member of House Judiciary Committee and Ranking Member on the Constitution Subcommittee, from Arizona.

Mr. FRANKS. Well, thank you so much, Mr. Chairman.

Mr. Chairman, it has been said so often that voting is the lifeblood of a democracy. And certainly there are no legitimate leaders in a democracy without legitimate elections. And I indeed look forward to hearing from our witnesses here today regarding the good work that the voting section of the Civil Rights Division has done and will do to protect voting rights.

And I am told they may have their hands rather full this year. I say that because in recent years, one particular organization has become increasingly embroiled in illegal voting activity. That organization is called ACORN, which stands for Association of Community Organizations for Reform Now. Let me read that again: Association of Community Organizations for Reform Now.

It seems that one very famous community organizer got that in his resume by being an organizer for an association of community organizations for reform now. Presidential candidate Barack Obama is highlighted in this regard. ACORN is one of the organizations he helped organize, as Senator Obama served as a lawyer for Association of Community Organizations for Reform Now.

Now, I think it is important to take a look at ACORN's resume directly. And as you will hear, it almost sounds more like a rap sheet these days. As John Fund of the *Wall Street Journal* has reported, in Seattle local prosecutors indicted seven workers for ACORN. Washington Secretary of State Sam Reed once said, ACORN's campaign of phony registration forms is "the worst case of voter registration fraud in history." And of course he is speaking of Washington State.

But of the 2,000 names submitted by ACORN, only nine were confirmed as valid. Out of 2,000, nine were confirmed as valid. The rest, over 97 percent, were fake.

In Missouri, officials found that over 1,000 addresses listed on voter registration lists resulting from ACORN's efforts didn't exist. Eight ACORN employees pleaded guilty to Federal election fraud there. In Ohio, a worker for one ACORN affiliate was given crack cocaine in exchange for fraudulent registrations that included underage voters and dead people.

And just a few weeks ago, ACORN curtailed more of its voter registration activities in Ohio after election officials announced that they were investigating its suspicious activities there. ACORN workers repeatedly handed in the same names on a number of voter registration cards that show that person living at different addresses. Other times, cards have the same name listed, but a different date of birth. Still others showed a number of people living at an address that turned out to be a restaurant.

In March of this year, Philadelphia officials accused ACORN of filing fraudulent voter registrations in advance of the April Pennsylvania primary. Also in Pennsylvania, another ACORN worker recently questioned by Dauphin County investigators about bogus voter registration forms, is now a wanted man with regard for in-

formation leading to his capture. He is accused by authorities of submitting more than 100 fraudulent voter registration forms he collected and is charged with 19 counts of perjury, making false statements, forgery and identity theft in connection with the voter registration forms.

In February, the special investigations unit of Milwaukee, Wisconsin, police department issued a report that concluded 18 people were sworn in as deputy registrars that were convicted felons and under the department of corrections supervision. Of the 15 felons who listed a sponsoring organization, eight named ACORN—that is, Association of Community Organizations for Reform Now—as their sponsoring agency.

And last month, the Milwaukee election commission announced that criminal investigations could be launched against at least six voter registration workers for ACORN who tried to add dead, imprisoned or imaginary people to voter rolls.

And the *Detroit Free Press* just reported last week that, “several municipal clerks across the state are reporting fraudulent and duplicate voter registration applications, most of them from ACORN.” According to the Michigan Secretary of State’s office, “there appears to be a sizable number of duplicate and fraudulent applications and it appears to be widespread.”

As one county clerk points out, trying to weed out all these fraudulent registration cases causes a huge slowdown in voting preparations and operations in general. As you can see, Senator Obama could probably filibuster a bill to allow more offshore drilling by simply reading ACORN’s extensive rap sheet on the Senate floor.

A recent article in *The New York Times* also revealed just how shady ACORN’s financial operations can be, as well. As *The New York Times* reported, ACORN chose to treat the embezzlement of nearly \$1 million as an internal matter and did not even notify its board. A whistleblower forced ACORN to disclose the embezzlement, which involved the brother of the organization’s founder, who embezzled nearly \$1 million from ACORN and affiliated charitable organizations. But a small group of executives decided not to alert law enforcement.

Senator Obama is still involved with ACORN, despite its vast history of corrupting the election process and even its own finances. As recently was reported in the *Pittsburgh Tribune Review*: Senator Barack Obama’s presidential campaign paid more than \$800,000 to an offshoot of ACORN for services that the Democrat’s campaign said they mistakenly misrepresented in Federal reports. The Obama campaign initially reported that the ACORN affiliate that received the \$800,000 used all money for polling, advance work, and event staging. But what did the ACORN affiliate really use the money for? It used it for the same, “get out the vote projects,” that has mired ACORN in criminal investigations in at least 12 states.

Now, I commend the voting section act of the Civil Rights Division for the work its done to date. And I fully expect it will prosecute voting violations that may occur before and during the upcoming election. And with groups like ACORN involved in this

year's election, the Department of Justice may well have to work overtime.

And Mr. Chairman, with that happy thought, I—

Ms. LOFGREN. Would the gentleman yield—

Mr. FRANKS [continuing]. Our witnesses, and—

Ms. LOFGREN. Would the gentleman yield for a question?

Mr. FRANKS. Certainly.

Ms. LOFGREN. Because I would like to know, these 12 states, what are the 12 states, and what—because this is news to me.

Mr. FRANKS. Well, I would be glad to follow up with you and put that in writing. Would that be all right?

Ms. LOFGREN. Well, I think you have made a rather inflammatory statement that I believe is false.

Mr. FRANKS. We will—

Ms. LOFGREN [continuing]. And I think you should be prepared to—

Mr. FRANKS. We will follow that up and if I—

Ms. LOFGREN. No. You can say the statement—

Mr. FRANKS. If I have made any statement that is false, I will certainly be glad to correct it.

Ms. LOFGREN. You just made a statement indicating—I would ask unanimous consent that we place in the record a communication from ACORN refuting all of your points. But it is a defamatory statement to accuse a person of a crime. And if you can't back it up—

Mr. FRANKS. Well, I quoted the *Wall Street Journal* and the Pittsburgh newspapers. Perhaps we should call them in here and see if they can straighten this out.

Ms. LOFGREN. Well, I—I am appalled that you would make a statement that you are unable to actually back up. And I thank the gentleman for yielding.

Mr. CONYERS. Does the gentlelady wish to put the statement—article in the record, the ACORN?

Without objection, so ordered.

[The information referred to follows:]



Association of Community Organizations for Reform Now

Dear Friends,

With just under two months left until Election Day, I want to take this opportunity to update you on everything ACORN is doing to turn the unprecedented excitement of this election season into a powerful and lasting grassroots movement for change.

Nationwide, ACORN has already helped register over 1,150,000 voters—most of them from low-income, African-American, and Latino communities. This is already the largest and most successful drive in our history, with over 130,000 registrations in Pennsylvania, and more than 200,000 each in Michigan and Ohio. We're not only helping them register, but working to educate, mobilize, and get them involved in local issues. Roughly half of these voters are under thirty, and for many of them this will be the first vote they have ever cast.

You may have seen coverage of this historic registration drive on the front page of the *Wall Street Journal*, which profiled the tireless efforts of Denver ACORN member Stephanie Willis, who has personally helped register upwards of 2,000 people this election season. ("I wasn't going to vote," one of her registrants is quoted as saying, "but that lady right there, she can make anybody vote.") Or you may have seen the story on voter registration in *The Nation* this month, where Christopher Hayes discusses how difficult—and how important—voter registration drives really are.

As the *Nation* article also points out, ACORN's success in registering millions of low-income and minority voters has made it "something of a right-wing bogeyman," so you may have also seen a few stories recently (in Michigan, Ohio, and Wisconsin, for example) about investigation of former ACORN workers for turning in incomplete, erroneous, or fraudulent voter registration applications. Predictably, partisan forces have tried to use these isolated incidents to incite fear of the "bogeyman" of "widespread voter fraud." But we want to take this opportunity to set the record straight and tell you how these incidents really illustrate everything that ACORN is doing right.

In Milwaukee and Cleveland, for example, election officials are examining a few hundred bad applications, less than 1% of the tens of thousands of ACORN staff have collected in those cities. While partisans try to spin even this tiny margin of error to spread the myth of "voter fraud" and justify further barriers to voting like strict voter-ID laws, the truth is that many of these "bad" applications represent nothing more sinister than duplications (the primary source of the

recent complaints in Michigan) or commonplace errors by voters. ACORN has developed the most sophisticated quality-control and voter-verification system in the business.

Every single application collected is examined by independent staff for completeness, and tagged and bundled to associate it with the crew member who gathered it. Registrations are entered into a database by an outside vendor, and Organizing Call Centers make several attempts to call each registrant to verify information. ACORN also attempts to “cure” incomplete registrations by contacting voters and verifying missing or inaccurate entries—such as incorrect county or zip-code information—that could get a registration rejected.

ACORN turns applications in to election officials in three stacks: those we have verified, those we were unable to independently verify, and those we know are problematic. In most states we are required to turn in every signed application, including the ones we know have problems. In a few cases some applications have turned out to be phony, the result of part-time employees trying to get paid for doing work they didn’t do. (Contrary to rumor, ACORN canvassers are paid by the hour, not by the application, and there are no quotas.) ACORN has a strict zero-tolerance policy for this kind of intentional misconduct, and immediately fires any workers involved.

Despite the media attention, however, and contrary to partisan claims, there is no evidence that anyone involved in these rare cases intended to cast a “fraudulent” vote, and almost no chance that anyone would be able to do so. This is not election fraud; this is employee fraud, and in the rare instances when it has happened ACORN has been credited with catching the bad applications, firing the workers involved, and alerting election officials to the problem. Neither in this year nor in any other year have charges ever been filed against ACORN; we cooperate fully and enthusiastically with any investigation and prosecution of former canvassers. The system works, and, as most election officials have recognized, ACORN is part of the solution, not part of the problem.

Partisan attacks on ACORN from those invested in maintaining the status quo of an unbalanced electorate are nothing new, and just reinforce the old saying: if they’re coming after you, you must be doing something right. With over 1.1 million registrations this season alone, we’re proud of everything ACORN is doing right to ensure that traditionally underrepresented voters are heard on issues such as jobs, health care, and education.

In the *New York Times* [Peter Applebome](#) called ACORN’s brand of community organizing “a peculiarly American sort of activism: a job defined not by advocating for others but teaching them to advocate for themselves.” We couldn’t have said it better ourselves.

At ACORN we're listening to the voices of our neighbors and the concerns of our communities, and working to make sure that our politicians are listening too. Republicans may be dismissive of "community organizing," but we all know that our constituencies will not be dismissed, and that when they work together they can not be ignored.

We'll keep working to make sure that their voices are heard, and that on this Election Day and beyond, the call for change will ring out loud and clear.

Sincerely,

Steve Kest
Executive Director

Mr. CONYERS. The Chair is pleased to call on the Chairman of the Constitution Subcommittee in the Judiciary Committee, Jerry Nadler of New York.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, the right to vote is the bulwark of all our other rights. Without an effective franchise, all our other rights are vulnerable. For that reason, the history of our country has been one of fulfilling the promise of the Declaration of Independence and the Constitution by progressively extending the right to vote to all citizens.

That struggle has gone on for generations, but the struggle to ensure that the legal right to vote translates into an actual right to cast a ballot and have it counted remains far from fulfilled, as we know. We know that people waited in Ohio, for example, and probably in other places, 8, 9 hours to vote. And they had their votes taken away from them.

We know that in 2000, the governor and the secretary of state of Florida conspired to hire a private firm to purge the voter lists, knowing that the error rate of that private firm was 20 percent—meaning that they knew that 20 percent of the voters whose names would be purged were perfectly legitimate voters. And that even if they were purging people who had no right to vote, they were also purging 20 percent—that is, 20 percent of those they were purging had a right to vote and would be illegally disenfranchised by the deliberate acts of the governor and secretary of state of Florida, and they got away with it.

We know that these kinds of things go on all over the time. We know that certain politicians engaging in inflammatory campaign rhetoric of questionable relevancy, such as we just heard about ACORN, in order to cover up the deprivation of the right to vote of many people.

Now, let's take the case of ACORN for a moment. I am not going to talk about any specifics, because I don't know about any of the specifics. But let's assume that everything that was said was true. What does that indicate? It indicates that law enforcement ought to be looking into them and prosecuting, perhaps and to—whatever.

It does not indicate, assuming that there is a group out there that is deliberately or because they hired people who don't know what they are doing, inadvertently improperly registering voters—it means that the registrars of elections, the boards of election, the department, whoever, should be carefully monitoring that and checking the validity.

It does not mean that it justifies in any way all the vote caging and the voter suppression practices and the purging of legitimate voters that we know has gone on and that we are here to deal with. And it is really a red herring to distract attention from them. Certainly no one will justify anybody deliberately or even inadvertently registering people who should not be allowed to register—although most people should be allowed to register, obviously, and a lot of this is simply a problem with proper identification, especially with recent laws.

But the fact is, the overwhelming problem is that legitimate voters are being denied the right to register or being denied the right

to vote because of vote caging or because of improper purging or because of inadequate resources at the polls, or because of improper clerical procedures so that your name isn't there when you get there to vote.

We saw, when the late congresswoman, our late colleague Julia Carson went to vote, she was denied the right to vote because her congressional ID was not sufficient voter ID under Indiana's laws, which was absurd, obviously. We saw that the 12 nuns didn't have their identification because they didn't drive. And we know that much of the effect of a lot of these new laws is to deprive legitimate voters of their right to vote.

So the question before us is how to make sure that everyone's right to vote is secured and to minimize any fraud or punitive fraud. And let me say one other thing here. We have seen—and I am sure it will be—I shouldn't say I am sure, perhaps it will be mentioned at this hearing—I have seen it in New York, I have seen it alleged in New York, I have seen it other places: if someone is registered in two places—they are registered in New York and Florida, they are registered in two different counties in New York, whatever—and this is evidence of massive fraud. No, it isn't.

What it is, is evidence of is 20th century or 19th century technology. That when you registered, let's say in New York City, and you move to Miami, they don't necessarily remove your voting card until a couple of years go by in New York. It doesn't mean that you are voting in both places. That we have not seen demonstrated. We have heard a lot of loose rhetoric about people registered in two places. We have not seen a lot of facts about people voting in two places, which is a very different question.

So I hope that we will concentrate on how to make sure that people are enabled to cast their vote and have it counted when they are entitled to do so. And that, it seems to me, we have fallen badly down on the job. And when you can have a governor and a secretary of state knowingly, deliberately, and admittedly purge 20 percent of—that is, use a purge list which they know and don't deny and freely admit is inaccurate 20 percent—and no one says, why don't we impeach the governor? No one criticizes the governor, we just let it go by the board—it shows that we do not regard voting rights with as much care as we ought to.

I hope this hearing will go a long way towards—will go some way toward changing that. I must apologize at this point. I am going to have to leave fairly soon for a markup of the Transportation Committee. In Congress they expect you to be in two or three places at the same time. It is still difficult, despite modern physics.

But I congratulate the Chairman of the Committee for calling this hearing, because it is a necessary step in a necessary battle.

I thank you, and I yield back.

Mr. CONYERS. Thank you very much.

I am pleased now to recognize Kevin McCarthy, the Ranking Member of the Elections Subcommittee of the House Administration Committee. And we would like to invite you for any opening remarks, sir.

Mr. MCCARTHY. Thank you, Mr. Chairman.

I appreciate you having this joint hearing today. You know, we are like 41 days away from the election. And if I could start, Mr.

Chairman, I would ask unanimous consent to submit some material to include in today's proceedings, and—
Mr. CONYERS. Without objection, so ordered.
[The information referred to follows:]

List of Items Included

Letter from Chris Thomas, Director of Elections, State of Michigan, to ACORN

Letter from ACORN to Thomas in response

Attachment 1

Applicant is deceased.

Attachment 2

Applicant is deceased

Attachment 3

Three applications use three different addresses and two different dates of births for same individual.

Attachment 4

Applicant is seven years old.

Attachment 5

Applicant is 15 years old.

Attachment 6

Applicant apparently lives in Canada.

Attachment 7

Applicant is noncitizen.

Attachment 8

Applicant misspells name of city and places it in the wrong county, and ZIP is wrong

Attachment 9

Two applications for one person have two different signatures and addresses.

Attachment 10

Applications for two individuals. Three applications for first individual use three different dates of birth. Three applications for second individual use two different birth dates and apparently three different signatures.

Attachment 11

Application uses incorrect date of birth and incorrect Social Security numbers.

Attachment 12

Two applications dated 20 days apart for same individual appear to have different handwriting styles and signatures. The applications were received by the clerk's office the same day.



STATE OF MICHIGAN
 TERRI LYNN LAND, SECRETARY OF STATE
 DEPARTMENT OF STATE
 LANSING

July 29, 2008

Mr. Keith Cliette
 ACORN State Field Director
 600 West Lafayette, Suite L-133
 Detroit, MI 48826

Dear Mr. Cliette:

Thank you for meeting with us on Friday. As discussed, a significant number of local clerks throughout the state are reporting that they are encountering the following problems with the voter registration applications being submitted through your organization:

- **Fraudulent registration forms:** In such cases, the signature on the form does not resemble the signature on file for the voter. In addition, the forms also frequently contain fictitious birthdates, addresses and/or Social Security Numbers (last four digits).
- **Incomplete registration forms:** Common omissions include the voter's street address, citizenship confirmation "checkbox" and signature.
- **Delayed submission of registration forms:** Clerks report that they have received large batches of applications that include forms dated weeks and at times, even months prior to the date they received the forms for processing. In some cases, forms dated prior to the "close of registration" for the May 6, 2008 election were submitted after the deadline.
- **Duplicate registration forms:** Typically, such cases involve the submission of a series of forms that contain identical voter information, but carry different dates. In some instances, the dates are only days apart.

The issues identified above are of serious concern as they hold the potential for disenfranchising voters, altering voter registration and driver license records that should not be changed, creating legal problems for voters who have had their records improperly updated, and engendering confusion and delays at the polls on election day. In addition, the handling of fraudulent, incomplete and duplicate registration forms wastes public resources.

I trust that you share our concern over this matter as Bureau staff members who met with you in March reported that ACORN had developed a seemingly comprehensive program for curbing the identified abuses. I was further informed that ACORN planned to modify the way it compensated those registering voters on the organization's behalf to eliminate any and all monetary incentives for such abuses.

Mr. Keith Clette
July 29 2008
Page 2

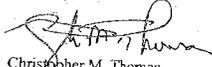
As you are aware, examples of forms which show the problems described above were supplied during Friday's meeting. After reviewing the forms, we ask that you provide this office with a written statement describing the actions ACORN will take to address this matter. As we view the individuals soliciting the voter registration applications as agents of ACORN, we hold ACORN responsible for their actions. The most important action that you must take is to implement a plan for submitting the applications gathered by your agents to the appropriate city and township clerks in a timely manner. In all cases, completed applications should be submitted on a biweekly basis. In no case should an application completed prior to a registration deadline be submitted after the deadline.

As an additional point, voter registration application forms which your organization identifies as fraudulent should not be submitted to Michigan's city and township clerks. As discussed, such forms should be referred to the local prosecutor's office for investigation and any legal action the prosecutor deems warranted.

If the problems discussed during our meeting and referenced in this letter persist, we will have no alternative but to seek redress through appropriate legal channels as the protection of Michigan's election system against fraud and abuse is central to the Department's mission.

Please do not hesitate to contact this office if you have any questions.

Sincerely,



Christopher M. Thomas
Director of Elections



2008 AUG 18 AM 10:20

✓ Copies
 Filed
 8-11-08

August 12, 2008

Christopher Thomas
 Director of Elections
 Michigan Bureau of Elections
 Richard H. Austin Building, 1st Floor
 430 W. Allegan
 Lansing MI 48918

Re: ACORN Voter Drive

Dear Mr. Thomas:

I appreciate your willingness to work with the Association of Community Organizations for Reform Now (ACORN) to assist us in our efforts to add eligible voters to the voter list, particularly from communities that have historically found it more difficult to participate in the electoral process. As you are probably aware, ACORN has submitted over 175,000 applications to local election officials in Michigan since we began the drive in the fall of 2007. We believe that most of these applications will lead to first time voters in the next election.

However, as ACORN stressed when it began the drive, it needs cooperation from election officials in order to make sure that it can identify and address problems that large drives inevitably run into over the course of collecting 175,000 applications. While ACORN has a comprehensive quality control system, reports all the suspicious applications it catches to election officials and terminates canvassers based on the results of its internal investigations, we cannot catch all the problematic applications. That is one reason we appreciate your working with us to identify issues that are caught by election officials.

I would like to address each of the concerns you raise in your letter one by one.

- **Fraudulent applications:** All ACORN canvassers are trained about the law and the consequences of turning in applications that have not been signed by the person named in the application. They all have to sign statements affirming that they understand what fraud is and the consequences of committing fraud.

ACORN has set up a comprehensive quality control procedure in each Michigan office. All our offices have quality control staff. In Detroit, approximately 15 part time staff spends 6 hours a day reviewing the applications collected by canvassers before they are turned into election officials. The review includes making phone calls to applicants who have provided phone numbers to confirm the accuracy of the information on the applications. The results of the calls are recorded and applications or batches of applications collected by canvassers

Michigan ACORN
 600 W. Lafayette Boulevard, Suite L-133, Detroit, MI 48226
 313-963-1840 • Fax 313-963-4788 • polnat41@acorn.org • www.acorn.org



that appear suspicious are set aside and investigated. Canvassers that cannot provide valid explanations for suspicious applications are terminated. ACORN then reports these applications with a problematic card package sheet to election officials.

However, unless the similar handwriting or signatures are in the same batch or the applicant answers the phone and disputes the application, it is next to impossible for ACORN to detect if a person's signature, date of birth, address or identification number matches the records election officials maintain. That is why it is very important that if an election official discovers these types of problems they report them back to ACORN immediately. ACORN gives the election official the ability to identify the canvasser that collected the application and report it back to us so that we can terminate the canvasser if the application is fraudulent.

In a letter from our counsel at the beginning of the voter registration drive, we asked that election officials do this. We are glad to see that it is beginning to happen, though it appears that some of the information is old and ACORN has already terminated all the canvassers on the applications you submitted to ACORN. I hope that you encourage local board's to report concerns they have with specific applications to me or the local ACORN office as soon as they are detected so that ACORN can address the problem expeditiously.

- Incomplete applications: I have retrained all supervisors about the need to complete all required fields on the applications. We will now hold canvassers accountable for 97% completion rates. Our quality control staff has been retrained to identify which supervisors are not holding canvassers accountable and which canvassers need to be retrained or terminated for failing to collect complete applications.
- Delayed submissions: I have instituted a system where all applications are sent to all election offices twice a week.
- Duplicate registrations: This has proven to be our most difficult problem. ACORN understands the waste of resources, both its and the election officials, in handling multiple registrations from the same person. We have attempted to determine when registration sites get overworked and are now sending canvassers farther and farther afield to collect applications. We have an imperfect system to detect duplicates but because of delays in turning our data around, it usually does not detect the problem until it is a month old. Again, to the extent election officials can give ACORN notice of duplicates as soon as they detect it, it would help us resolve this problem.
- Compensation: As we have stated before, ACORN does not pay its Community Outreach workers on a per signature basis. Our workers earn an hourly rate which starts at 8 dollars an hour. We do not offer bonuses or incentives for this work.



I would also like to clarify what your office has asked ACORN to do with respect to turning in incomplete or fraudulent applications. ACORN agrees that it will not turn in applications that are:

- Useless: do not have enough information on them to allow the election official to send a notice of disposition to the person named on the application;
- Clearly not signed by the person named on the application (ACORN needs to be 100% sure the applications meets this criteria. It will still turn in applications that are suspicious but not known to be signed by another person with a problematic card package);
- Completed by ineligible applicants (underage, not citizens).

ACORN will also not turn in applications if the applicant asks ACORN not to do so.

ACORN will note the number of applications that meet these criteria on the bottom of the drop off sheet we use when turning applications into election officials

Finally, ACORN would greatly appreciate it if your office could provide us data or a spread sheet that includes the name, address, phone number and signature date of any applicant that was rejected because of a fictitious address. ACORN conducted studies in numerous cities where election officials have provided ACORN with information about applications that result in returned disposition letters or voter cards. ACORN has been able to locate 15 and 25% of the applicants whose mailing is returned to election officials at the address on the application. There may be considerably more that ACORN could not reach during the time it conducted the studies. Often the applicant put the wrong zip code on the application. In other cases the address is an apartment building with no names on the mail boxes. In some cases there is no apparent reason for the failure to deliver the mail.

Please feel to call me if you have any questions or follow-up.

Sincerely,

Dave Lagstein

Dave Lagstein
ACORN Head Organizer
313.963.1840 Ext. 227 - Office

Shirley Smith

Shirley Smith
ACORN Political Director
313.963-1840 Ext. 225 - Office

Cc: Brian Mellor

Attachment 1

Applicant is deceased.

8107667480

Performance Investigation Sheet

(attach copies of cards that were investigated if investigation does not resolve issue. Maintain copy in employees local file and in a folder of all investigations)

Date Investigation Sheet opened 6/3
 Name of person initiating Investigation Doris Jones
 Name of employee under investigation Marilyn Allen

Attachment 1

Reason for investigation (check all that apply):
 Visual inspection of VR Cards
 Signatures looked the same
 Names looked false
 Other
 Unsatisfactory contact information (could not verify)
 Applicant claimed they did not complete VR Card
 Not following work procedures
 Not at work location
 VR Cards not complete
 Low number of good VR Cards
 Other Deceased for some time now

Conduct of investigation. (i.e.: 2/1/06 - Called Field Director - Informed him of facts
 2/2/06 - Interviewed QC Specialist - QC Specialist confirms facts
 2/2/06 - Requested Authority to terminate - HO approved termination)

Date	Action	Results/Findings
6/3	While talking on telephone to verify application	I was told by Mr. Rowzee wife that he has be deceased for some time now.
6/6	P.O. was told about applicant	

Use back if necessary

Name of person who completed the Investigation: Doris Jones
 Signature Doris Jones Date Concluded 6/6
 Findings and Actions Taken: Marilyn Allen no longer works for Acorn

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

MA5305

1 answer Deceased

Are you a citizen of the United States of America? Yes No Will you be 18 years of age on or before election day? Yes No

If you responded No to either of these questions, do NOT complete this form.

2 complete application

Last Name First Name Middle Name Address where you live City Zip Code Telephone optional

If you do not have a house or street address, describe location where you live - cross streets or roads, landmarks, etc.

City or Township where you live County where you live School District if known

Mailing Address if different For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only

Date of Birth Male Female

ID Number check applicable box and provide appropriate number I have a state issued driver license or personal ID card I do not have a state issued driver license or personal ID card

Are you still registered to vote at your last address? Yes No Don't Know

Previous Street Address City or Township of County

State Zip Code Registered under name of if different than above

3 read, sign and date

- I certify that: I am a citizen of the United States. I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day. I will be at least 18 years of age by election day. I authorize cancellation of any previous registration. The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature of applicant Date Signature of applicant Date

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED

Attachment 1

Attachment 2

Applicant is deceased

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

1 answer Are you a citizen of the United States of America? Yes No
Will you be 18 years of age on or before election day? Yes No

➤ If you checked "NO" in response to either of these questions, do NOT complete this form.

2 complete application

Last Name ANDERSON First Name Andrew Middle Name _____
 Address where you live—house number and street/road 529 CRAWFORD SE Apt. No./Lot No. _____
 City GIR Zip Code 49507 Telephone optional _____
 If you do not have a house or street address, describe location: where you live—cross streets or roads, landmarks, etc. _____

City or Township where you live County where you live KENT School District if known _____
 Mailing Address if different For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only

Date of Birth 7-23-59 Male Female
 ID Number check applicable box and provide appropriate number. _____
 I have a state issued driver license or personal ID card # _____ State: _____
 I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are _____
 I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
An ID number will be assigned to you for voter registration purposes.

Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter previous address _____
 Previous Street Address _____ City or Township of _____ County _____
 State _____ Zip Code _____ Registered under name of if different than above _____

3 read, sign and date

- I certify that:
- I am a citizen of the United States.
 - I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
 - I will be at least 18 years of age by election day.
 - I authorize cancellation of any previous registration.
 - The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Andrew Anderson 7-23-08
 Signature of Applicant Date
Andrew Anderson 7-23-08
 Signature of Applicant Date

Sign and date both spaces provided above.

R.A.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED.

Attachment 2

Attachment 2

506/11/06

CHANGE HISTORY FOR

ANDREW ANDERSON

529 CRAWFORD ST SE APT 2, GRAND RAPIDS MI 49507

Description

Date / Time

User Code

HISTORY STARTED WITH A REC. DATE OF 10/03/1998 FOR ANDREW ANDERSON OF 529 CRAWFORD ST SE APT 2, GRAND RAPIDS MI 49507 (GRAND RAPIDS CITY) WITH A STATUS OF CANCEL - DECEASED

Total

1

Attachment 2

ANDERSON, ANDREW		529	APT 2 CRAWFORD ST SE		07	3	24			
LAST NAME, FIRST AND MIDDLE INITIALS		STREET NO.	STREET NAME		ZIP	WARD	PCT.			
SEX: MALE BIRTHPLACE: PREVIOUS REGISTRATION ADDRESS: <i>Grand Rapids</i> DATE OF BIRTH: 07/23/59 STATE OF MICHIGAN COUNTY OF KENT GRAND RAPIDS		I am a citizen of the United States. I am a resident of the State of Michigan and will be at least a 30 day resident of the State of Michigan on the election day. I will be at least 18 years of age by election day. 120174789 I authorize completion of this form to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both, under federal or state law. SIGNATURE OF APPLICANT: <i>Andrew Anderson</i> DATE: 10.13.16								
CANCELLATION DATE: 4.28.01 NUMBER FOR CANCELLATION: <i>Ward</i> VOTER IDENTIFICATION NUMBER: 120174789		REGISTRATION STATEMENT DATE: <i>10/13/16</i> DRIVER'S LICENSE OR PERSONAL ID NO.: A-536-067-204-579 TELEPHONE NUMBER: 652-6325		RESIDENT FOR REGISTRATION: <input type="checkbox"/> SECRETARY/CLERK						
STREET NO.	STREET NAME	ZIP	DATE OF TRANS.	WARD	PCT.	COLORADO	ST/FE	ST/BEK	CONS.	SCHOOL
				17	30		03		9	

Attachment 3

Three applications use three different addresses and two different dates of births for same individual.

State of Michigan Voter Registration Application
and Michigan Driver License/Personal Identification Card Address Change Form

1 answer Are you a citizen of the United States of America? Yes No
Will you be 18 years of age on or before election day? Yes No

> If you checked "NO" in response to either of these questions, do NOT complete this form.

2 complete application

Last Name Brown First Name Steven Middle Name Elgie
Address where you live—house number and street/road 747 Union Apt. No./Lot No. DOB
City Grand Rapids MI Zip Code 49507 Telephone optional 6167245993
If you do not have a house or street address, describe location where you live—cross streets or roads, landmarks, etc.

City or Township where you live County where you live West School District if known West
Mailing Address if different For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only

Date of Birth 9-21-63 Male Female

ID Number check applicable box and provide appropriate number

I have a state issued driver license or personal ID card # _____ State: _____
 I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are 9834
 I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
An ID number will be assigned to you for voter registration purposes.

Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter previous address

Previous Street Address None City or Township of _____ County _____
State _____ Zip Code _____ Registered under name of if different than above.

3 read, sign and date

I certify that:
- I am a citizen of the United States.
- I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
- I will be at least 18 years of age by election day.
- I authorize cancellation of any previous registration.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Steven Brown 7-23-08
Signature of Applicant Date
Steven Brown 7-23-08
Signature of Applicant Date

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED.

Attachment 3

Michigan Voter Registration Application Michigan Driver License/Personal Identification Card Address Change Form

1 answer Are you a citizen of the United States of America? Yes No
Will you be 18 years of age on or before election day? Yes No
➤ If you checked "NO" in response to either of these questions, do NOT complete this form.

Attachment 3

2 complete application

Last Name: Brown First Name: Steven Middle Name: Elgin
 Address where you live — house number and street: 139 Union St Apt. No./Lot/Fl.:
 City: Grand Rapids MI Zip Code: 49501 Telephone (optional):
 If you do not have a house or street address, describe location where you live — cross streets or roads, landmarks, etc.
 City or Township where you live County where you live: Kent School District # known:
 Mailing Address if different For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only
 Date of Birth: 9-21-65 Male Female
 ID Number check applicable box and provide appropriate number
 I have a state issued driver license or personal ID card # _____ State: _____
 I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are 6054
 I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
 An ID number will be assigned to you for voter registration purposes.
 Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter previous address
 Previous Street Address: None City or Township of _____ County _____
 State _____ Zip Code _____ Registered under name of if different than above _____

3 read, sign and date

I certify that:
 - I am a citizen of the United States.
 - I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
 - I will be at least 18 years of age by election day.
 - I authorize cancellation of any previous registration.
 - The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

X	<u>Steven Brown</u>	<u>7-28-08</u>
	Signature of Applicant	Date
X	<u>Steven Brown</u>	<u>7-28-08</u>
	Signature of Applicant	Date

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED.

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change

Attachment 3

1 answer Are you a citizen of the United States of America? Will you be 18 years of age on or before election day?

2 complete application Last Name: Steven, First Name: Brock, Middle Name: Elgin, Address: 734 Union SE, City: Grand Rapids, MI, Zip Code: 49507

City or Township where you live: Grand Rapids, MI, County where you live: Kent, School District if known: Kent

Date of Birth: 9-21-67, Male

ID Number check applicable box and provide appropriate number. I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are 6836.

Are you still registered to vote at your last address? No

Previous Street Address: None, State: MI, Zip Code: 49507

3 read, sign and date

- I certify that: I am a citizen of the United States, I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day, I will be at least 18 years of age by election day, I authorize cancellation of any previous registration, The information I have provided is true to the best of my knowledge under penalty of perjury.

Signature of Applicant: Steven Brock, Date: 7-24-03

Sign and date both spaces provided above.

DUB

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED.

Attachment 4

Applicant is seven years old.

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

1 answer Are you a citizen of the United States of America? Yes No
 Will you be 18 years of age on or before election day? Yes No
 > If you checked "NO" in response to either of these questions, do NOT complete this form.

2 complete application

Last Name Thornburg First Name James Middle Name William
 Address where you live—house number and street/road 640 Union SE Apt. No./Lot No. _____
 City Grand Rapids MI Zip Code 49503 Telephone optional _____
 If you do not have a house or street address, describe location where you live—cross streets or roads, landmarks, etc.

City or Township where you live Grand Rapids County where you live Kent School District if known GRPS
 Mailing Address if different For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only

Date of Birth 10/23/01 Male Female

ID Number: check applicable box and provide appropriate number
 I have a state issued driver license or personal ID card # _____ State: _____
 I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are 1096
 I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
 An ID number will be assigned to you for voter registration purposes.

Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter previous address

Previous Street Address 5560 Edgeland City or Township of Grand Rapids County Kent
 State MI Zip Code 49508 Registered under name of if different than above

3 read, sign and date

- I certify that:
- I am a citizen of the United States.
 - I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
 - I will be at least 18 years of age by election day.
 - I authorize cancellation of any previous registration.
 - The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

James W Thornburg 7/3/08
 Signature of Applicant Date
James W Thornburg 7/3/08
 Signature of Applicant Date

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED.

Attachment 4

Attachment 5

Applicant is 15 years old.

07/22/2008 16:03 8107667488 FLINT CITY CLERK OFC PAGE 24
State of Michigan Voter Registration Application
and Michigan Driver License/Personal Identification Card Address Change Form

1 answer *DU*
18 years old
Are you a citizen of the United States of America? Yes No
Will you be 18 years of age on or before election day? Yes No
If you responded No to either of these questions, do NOT complete this form.

2 complete application
Last Name *Smith* First Name *Victor* Middle Name *Lee*
Address where you live — house number and street/road Apt. No./Lot No.
City *Flint* Zip Code *48507* Telephone *optional* *744-10361*
MI
If you do not have a house or street address, describe location where you live — cross streets or roads, landmarks, etc.
City or Township where you live County where you live School District if known
Genesee

Mailing Address if different For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only
Date of Birth *2/27/93*
Male Female
ID Number check applicable box and provide appropriate number
 I have a state issued driver license or personal ID card # _____ State *MI*
 I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are _____
 I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
An ID number will be assigned to you for voter registration purposes.
Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter previous address
Previous Street Address _____ City or Township of _____ County _____
State _____ Zip Code _____ Registered under name of if different than above _____

3 read, sign and date
I certify that:
- I am a citizen of the United States.
- I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
- I will be at least 18 years of age by election day.
- I authorize cancellation of any previous registration.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

x *Victor Smith* *5/15/08*
Signature of Applicant Date
x *Victor Smith* *5/15/08*
Signature of Applicant Date

Sign and date both spaces provided above.
BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED.

Attachment 5

Attachment 6

Applicant apparently lives in Canada.

State of Michigan Voter Registration Application
and Michigan Driver License/Personal Identification Card Address Change Form

WG

Attachment 6

1 answer Are you a citizen of the United States of America? Yes No
Will you be 18 years of age on or before election day? Yes No

> If you responded No to either of these questions, do NOT complete this form.

N/R

2 complete application

Last Name: Taylor First Name: Jeff Middle Name: J
 Address where you live — house number and street/road: 1000 HACING CROSS RD Apt. No./Lot No.: #49
 City: Clayton Ont Mich? MI: N7M5Y8 Telephone: 519 354-1665
 If you do not have a house or street address, describe location where you live — cross streets or roads, landmarks, etc.: Epc H&BHG
 City or Township where you live: Kent County where you live: Kent School District if known:
 Mailing Address if different: For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only
 Date of Birth: 2/17/68 Male Female
 ID Number: check applicable box and provide appropriate number
 I have a state issued driver license or personal ID card #
 I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are 5028
 I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
 An ID number will be assigned to you for voter registration purposes.
 Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter on previous address
 Previous Street Address: City or Township of: County:
 State: Zip Code: Registered under name of: If different than above:

3 read, sign and date

- I certify that:**
- I am a citizen of the United States.
 - I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
 - I will be at least 18 years of age by election day.
 - I authorize cancellation of any previous registration.
 - The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

X *J Taylor* 3/17/08
 Signature of Applicant Date
 X *J Taylor* 3/17/08
 Signature of Applicant Date

Sign and date both spaces provided above.
 BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL

Attachment 7

Applicant is noncitizen.

07/22/2003 15:03 8107667480 FLINT CITY CLERK OFC FIVE 28
Michigan Voter Registration Application
and Michigan Driver License Registration Card Address Change Form

1 answer
Are you a citizen of the United States of America? Yes No
Will you be 18 years of age on or before election day? Yes No
> If you responded No to either of these questions, do NOT complete this form.

2 complete application *not citizen*

Last Name: GREY First Name: SAKELIA Middle Name: S
Address where you live -- house number and street/road: 912 Church Street, Flint MI 48902 Apc. No./Lot No.:
City: Flint Zip Code: MI 48902 Telephone optional: 516-984-1588
If you do not have a house or street address, describe location where you live -- cross streets or roads, landmarks, etc.

County where you live: Genesee School District if known:
Mailing Address if different: For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only

Date of Birth: 11/01/88 Male Female

ID Number check applicable box and provide appropriate number
 I have a state issued driver license or personal ID card # _____ State: *from Jamaica*
 I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are _____
 I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
An ID number will be assigned to you for voter registration purposes.

Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter previous address
Previous Street Address: _____
City or Township of: _____ County: _____
State: _____ Zip Code: _____ Registered under name of if different than above: _____

3 read, sign and date
I certify that:
- I am a citizen of the United States
- I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
- I will be at least 18 years of age by election day.
- I authorize cancellation of any previous registration.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature of Applicant: *S. Grey* Date: *4-25-08*
Signature of Applicant: *S. Grey* Date: *4-25-08*

Sign and date both spaces provided above.
BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED.

Attachment 7

Attachment 8

Applicant misspells name of city of residence and places it in the wrong county. The ZIP code given does not exist in the city.

State of Michigan Voter Registration Application
and Michigan Driver License/Personal Identification Card Address Change Form

CT

Attachment 8

1 answer Are you a citizen of the United States of America? Yes No
Will you be 18 years of age on or before election day? Yes No
If you responded No to either of these questions, do NOT complete this form.

2 complete application

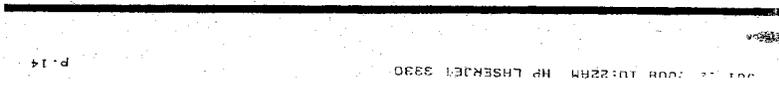
Last Name: Mullen First Name: Marvin Middle Name: _____
Address where you live — house number and street/road: East 12 mile 2000 Apt. No./Lot No.: _____
Polary Oak MI 48670 Telephone (optional): _____
If you do not have a house or street address, describe location where you live — cross streets or roads, landmarks, etc.: _____
City or Township where you live: Wayne County where you live: Wayne School District: NO SUCH ZIP IN Royal Oak
Mailing Address (if different): _____ For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only
Date of Birth: 11/20/66 Male Female

3 Number check applicable tax and provide appropriate number _____ State _____
I have a state issued driver license or personal ID card # _____ State _____
I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are _____
I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
An ID number will be assigned to you for voter registration purposes.
Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter previous address _____
Previous Street Address _____ City or Township of _____ County _____
State _____ Zip Code _____ Registered under name of (if different than above) _____

3 read, sign and date
certify that:
- I am a citizen of the United States.
- I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
- I will be at least 18 years of age by election day.
- I authorize cancellation of any previous registration.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

x Marvin Mullen 6-16-08
Signature of Applicant Date
x Marvin Mullen 6-16-08
Signature of Applicant Date

Sign and date both spaces provided above.
BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED



Attachment 9

Two applications for one person dated one day apart have two different signatures, phone numbers and addresses.



MACOMB TOWNSHIP

3111 Broughton Road • Macomb, Michigan 48043 • 734-931-1111

JUL 17 PM 3:02

RECEIVED
JUL 17 2008
Terri Lynn Land
Secretary of State

Attachment 9

July 16, 2008

Mr. Eric J. Smith, Prosecuting Attorney
Macomb County
One South Main St., 3rd Floor
Mount Clemens, MI. 48043

Dear Mr. Smith:

The Michigan Secretary of State, Bureau of Elections, in a memorandum dated July 8, 2008 (a copy of which is enclosed for your reference), warned the various city and township clerks throughout the State of Michigan of the possibility of receiving suspicious voter registration applications for the upcoming Primary and General Elections.

The memorandum advises the clerk(s) to contact the Prosecuting Attorney's office if we have good reason to believe that a mail-in voter registration form has been falsified.

I am therefore enclosing two (2) voter registration applications for Selena Powell dated one day apart, showing the same date of birth (3-29-1990), different social security numbers and perhaps, although we are not claiming to be handwriting experts, different cursive signatures.

These mail-in applications were forwarded to this office from the Macomb County Clerk's office who received them from Michigan ACORN, a copy of their cover letter is also enclosed for your review.

We will continue to monitor the registration applications received and will notify you if any additional suspicious forms are received.

Please do not hesitate to contact me if further information is required.

Very truly yours,

Michael D. Koehs, CMC
Macomb Township Clerk

Cc: Hon. Terri Lynn Land, Michigan Secretary of State
Enclosures



FILED
JUL 15 2008

RECEIVED

JUL 15 2008

Macomb Township
Clerk's Office

Attachment 9

Dear Sir or Madam:

Enclosed please find Voter Registration documents for your jurisdiction collected by ACORN. If you find any problems or have any questions please do not hesitate to contact Keith Cliette, State Field Director at 313-963-1840 or macomb@acorn.org

Thanking you in advance for your time and cooperation.

Sincerely,


Keith Cliette
ACORN State Field Director
600 W. Lafayette
Suite L-133
Detroit, Michigan 48226
313-963-1840

The Following
Voter Registration Applications
Were Received at the
Macomb County Clerk's Office
from the "ACORN" Group
07/07/2008

Enclosures:

1371 Total Voter Registration Forms

_____ Incomplete Voter Registration Forms (stacked on top)

KC/sw

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

Attachment 9

1 answer Are you a citizen of the United States of America? Will you be 18 years of age on or before election day?

2 complete application

Last Name: Powell, First Name: Selena, Middle Name: Address where you live: 5782 Nestingridge, City: Macomb County, MI, Zip Code: 48048, Telephone: 248-633-4973

Mailing Address: For use on Driver License/Personal ID and Voter Registration

Date of Birth: 3/29/90, 12 20-90, Male/Female

ID Number: I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are 2724

Are you still registered to vote at your last address? Previous Street Address, City or Township of, County, State, Zip Code, Registered under name of

3 read, sign and date

- I certify that: I am a citizen of the United States. I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day. I will be at least 18 years of age by election day. I authorize cancellation of any previous registration. The information I have provided is true to the best of my knowledge under penalty of perjury.

Signature of Applicant: Selena Powell, Date: 6/26/07

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSELY

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

16

Attachment 9

1 answer Are you a citizen of the United States of America? Yes No Will you be 18 years of age on or before election day? Yes No

If you responded No to either of these questions, do NOT complete this form.

2 complete application

Last Name First Name Middle Name Address where you live City State Zip Code Telephone Apt. No./Flat No. If you do not have a house or street address, describe location where you live

County where you live School District of answer Mailing Address if different For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only

Date of Birth Male Female ID Number check applicable box and provide appropriate number

I have a state issued driver license or personal ID card. I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are

Are you still registered to vote at your last address? Previous Street Address City or Township of County State Zip Code Registered under name of if different than above

3 read, sign and date

I certify that: I am a citizen of the United States. I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day. I will be at least 18 years of age by election day. I authorize cancellation of any previous registration. The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature of Applicant Date Signature of Applicant Date

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED

Attachment 10

Applications for two individuals.

Three applications for first individual use three different dates of birth.

Three applications for second individual use two different birth dates and apparently three different signatures.

Police report is attached.



City Clerk

161 W. Michigan Ave. • Jackson, MI 49201-1300
(517) 788-4025 • Facsimile (517) 788-46

Lynn Fessel, City Clerk

Attachment 10

July 16, 2008

TO: Chris Thomas, Director of Elections
FROM: Lynn Fessel, Jackson City Clerk *LF*
SUBJECT: Multiple and Questionable Voter Registration Applications

In response to your previous e-mail, I am faxing you information on what I consider to be very questionable voter registration applications for two people.

(1) Monique Battle is registered in the QVF at 505 Randolph, with a birth date of 2/25/88. The 2 applications show an address of 132 W. Addison, with birth dates of 4/8/88 and 12/13/88. The signature in the QVF seems very close to the signatures on these applications.

(2) Arikkah Autumn Jimenez is registered in the QVF at 132 W. Addison, with a birth date of 11/18/83. The 3 applications show the 132 W. Addison address, but with a birth year of '84 on 2 applications and '82 on the third application. I believe the signatures to be quite different also.

Please note the initials A J in the upper right hand corner of each application.

Your input on these will be appreciated. I may be contacted at 517.768.6366 or at lfessel@cityofjackson.org.

Thank you.

** A third application was located for Monica Battle. I am faxing a copy for your input.*

FAXED

DATE 7/16/08

517. 241. 2784

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

AG

Attachment 10

1 answer Are you a citizen of the United States of America? Yes No Will you be 18 years of age on or before election day? Yes No

If you responded No to either of these questions, do NOT complete this form.

2 complete application

Last Name, First Name, Middle Name, Address, City, Zip Code, Telephone, County, Date of Birth, ID Number, Social Security Number, Previous Street Address, State, Zip Code, Registered under name of

Are you still registered to vote at your last address?, Previous Street Address, State, Zip Code, Registered under name of

3 read, sign and date

- I certify that: - I am a citizen of the United States. - I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day. - I will be at least 18 years of age by election day. - I authorize cancellation of any previous registration. - The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature of Applicant, Date, Signature of Applicant, Date

Sign and date both spaces provided above. BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED

I want to find out more about ACORN's work in my community

CHANGE HISTORY FOR
 MONIQUE ODESSA BATTLE
 505 RANDOLPH ST, JACKSON MI 49203

07/16/2008

Description	Date / Time	User Code
REGISTERED 09/12/2007 AS MONIQUE ODESSA BATTLE AT 505 RANDOLPH ST, JACKSON MI 49203 (JACKSON CITY)	09/14/2007 2:08:45 PM	JACKSON DOWNTOWN BRANCH (221)
Total	ONE	2/25/88

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

Attachment 10

1 answer Are you a citizen of the United States of America? [X] Yes [] No Will you be 18 years of age on or before election day? [X] Yes [] No

> If you responded No to either of these questions, do NOT complete this form.

2 complete application

Last Name: Battie, First Name: Monique, Middle Name: Address: 132 W Madison St, City: Jackson, MI, Zip Code: 48202, Telephone: 517-612-7168

Mailing Address if different [] For use on Driver License/Personal ID and Voter Registration [] For use on Voter Registration only

Date of Birth: 12-13-88

[X] Male [] Female

ID Number check applicable box and provide appropriate number

- I have a state issued driver license or personal ID card # State
I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are
I do not have a state issued driver license, a state issued personal ID card or a Social Security Number. An ID number will be assigned to you for voter registration purposes.

Are you still registered to vote at your last address? [] Yes [] No [] Don't Know If "Yes" or "Don't Know" enter previous address

Previous Street Address: City or Township of County

State Zip Code Registered under name of if different than above

3 read, sign and date

- I certify that:
- I am a citizen of the United States.
- I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
- I will be at least 18 years of age by election day.
- I authorize cancellation of any previous registration.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature of Applicant: Monique Battie, Date: 5-28-08

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSE

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

AJ

Attachment 10

1 answer Are you a citizen of the United States of America? [X] Yes [] No Will you be 18 years of age on or before election day? [X] Yes [] No

If you do not have a house or street address, describe location where you live - cross streets or roads, landmarks, etc.

2 complete application

Form fields for personal information: Last Name (Battle), First Name (Montique), Middle Name, Address (132 W Addison), City (Jackson), MI, Zip Code (49201), Telephone (517-612-7169), Date of Birth (4-8-88), Gender (Male).

Form fields for ID and address: ID Number, State, Driver License/ID Card status, Mailing Address, Previous Street Address, City or Township, County, State, Zip Code, Registered under name of.

3 read, sign and date

I certify that: - I am a citizen of the United States. - I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day. - I will be at least 18 years of age by election day. - I authorize cancellation of any previous registration. - The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature and Date fields with handwritten signatures and dates (5-20-08).

Sign and date both spaces provided above. BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED

CHANGE HISTORY FOR

ARIKAI AUTUMN JIMENEZ

132 W ADDISON ST, JACKSON MI 49203

07/16/2008

Description	Date / Time	User Code
LICENSE NUM CHANGED FROM NONE TO 455071074883	10/16/2008 7:44:55 PM	JACKSONCITY @ JACKSONCITY (41420)
REGISTERED (08/20/08) AS ARIKAI AUTUMN JIMENEZ AT 132 W ADDISON ST JACKSON MI 49203 (JACKSON CITY)	10/16/2008 8:41:14 AM	JACKSONCITY @ JACKSONCITY (41420)
Total	2	003 11/18/08

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

A, J

1 answer

Are you a citizen of the United States of America? [X] Yes [X] No
Will you be 18 years of age on or before election day? [X] Yes [] No

If you responded No to either of these questions, do NOT complete this form.

Attachment 10

2 complete application

Last Name: Jimenez, First Name: Anni Arickah, Middle Name: Autumn, Address: 132 W Addison St, City: Jackson, MI, Zip Code: 49201, Telephone: 517-612-7169

City or Township where you live: Jackson, County where you live: Jackson, School District: if known

Date of Birth: 11-18-82, Male [] Female [X]

ID Number: check applicable box and provide appropriate number. I do not have a state issued driver license or personal ID card. State: MI, Social Security Number: 0000 0178

Are you still registered to vote at your last address? [] Yes [] No [] Don't Know. Previous Street Address, City or Township of, County, State, Zip Code, Registered under name of if different than above

3 read, sign and date

- I certify that:
- I am a citizen of the United States.
- I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
- I will be at least 18 years of age by election day.
- I authorize cancellation of any previous registration.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature of Applicant: Anni Arickah Jimenez, Date: 5-20-08
Signature of Applicant: Anni Arickah Jimenez, Date: 5-20-08

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSE.

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

1 answer

Are you a citizen of the United States of America? [X] Yes [] No
Will you be 18 years of age on or before election day? [X] Yes [] No

If you responded No to either of these questions, do NOT complete this form.

2 complete application

Form fields for personal information: Last Name (Tinsney), First Name (Amrikah), Middle Name, Address (132 W Adams), City (Jackson), MI, Zip Code (47201), Telephone (517-412-7147), County (Jackson), School District (if known).

Mailing Address (if different), Date of Birth (11-15-84), Gender (Male/Female).

ID Number section with options: I have a state issued driver license or personal ID card #, I do not have a state issued driver license or personal ID card, etc.

Are you still registered to vote at your last address? Previous Street Address, State, Zip Code, Registered under name of.

3 read, sign and date

- I certify that:
- I am a citizen of the United States.
- I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
- I will be at least 18 years of age by election day.
- I authorize cancellation of any previous registration.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature and date fields for two applicants, with handwritten signatures and dates (5-20-08).

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED

Attachment 10

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

J

Attachment 10

1 answer Are you a citizen of the United States of America? Yes No Will you be 18 years of age on or before election day? Yes No

2 complete application

Last Name First Name Middle Name Address where you live house number and street/road Apt. No./Lot No. City State Zip Code Telephone (optional) County where you live School District if known

3 read, sign and date

I certify that: I am a citizen of the United States. I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day. I will be at least 18 years of age by election day. I authorize cancellation of any previous registration. The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature of Applicant Date Signature of Applicant Date

Sign and date both spaces provided above. BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED

ADMINISTRATION		OFFENSE	
JACKSON POLICE DEPARTMENT			
Officer / ID #: <u>D. SCHWARTZ JR 5022</u>		Incident #: <u>M13849700</u>	
Location Incident Occurred (Address or Block No.): <u>132 W. POLK ST</u>		Date(s) of Incident: <u>09/15/08</u>	
Complainant (Last, First, Middle, Suffix): <u>STEVE LYNN</u>		Reported Time / Date: <u>09/15 222105</u>	
Address (Street, City, State, Zip): <u>212 W. POLK ST JACKSON MS</u>		D.O.B.: <u>11/15/50</u>	
Offense: <u>1.212 (FWD) 2.699</u>		Employer: <u>City of Jackson</u>	
Offense Status (Check only one per offense) (Check as many as apply)		Suspect(s) Used	
<input type="checkbox"/> Attempted <input type="checkbox"/> Completed <input type="checkbox"/> Attempted <input type="checkbox"/> Completed <input type="checkbox"/> Completed <input type="checkbox"/> Completed		<input type="checkbox"/> Alcohol <input type="checkbox"/> Computer Equip <input type="checkbox"/> Drugs <input type="checkbox"/> Not Applicable	
Case Status		Incident Status	
<input type="checkbox"/> Open <input type="checkbox"/> Inactive <input type="checkbox"/> Unfounded <input type="checkbox"/> Closed <input type="checkbox"/> Exceptional Clearance <input type="checkbox"/> Turned over to other department		<input type="checkbox"/> Death of Suspect <input type="checkbox"/> Refused to cooperate <input type="checkbox"/> Prosecution Declined <input type="checkbox"/> Juvenile, no custody <input type="checkbox"/> Extradition Declined Clearance <input type="checkbox"/> Not applicable	
Location of Offense (Check only one)		Type Criminal Activity (Check Up to Three)	
Enter Code No. for Offense #2: <u>43</u> 01 Air/Bus/Train Terminal 02 Bank/Savings & Loan 03 Bar/Night Club 04 Church/Synagogue 05 Commercial Office Bldg 06 Construction Site 07 Convenience Store 08 Department/Discount Store 09 Drug Store/Phy's-Off/Hosp 10 Field/Woods 11 Government/Public Bldg 12 Grocery/Supermarket 13 Highway/Road/Alley 14 Hotel/Motel/Etc. 15 Jail/Prison 16 Lake/Water 17 Liquor Store 18 Parking Lot/Garage 19 Rental/Storage Facility 20 Residence/Home 21 Restaurant 22 Service/Gas Sta. 23 Specialty Store 24 School 25 College 26 Rest Area/Roadside Park 27 Seale 28 Other 29 Unknown		<input type="checkbox"/> Buying/Receiving <input type="checkbox"/> Cultivating/Manufacturing/Publishing <input type="checkbox"/> Distributing/Selling <input type="checkbox"/> Exploiting Children <input checked="" type="checkbox"/> Operating/Promoting/Assisting <input type="checkbox"/> Possessing/Concealing <input type="checkbox"/> Transporting/Transmitting/Importing <input type="checkbox"/> Using/Consuming	
Type Weapon / Force Involved:		RECORDS USE ONLY	
<input type="checkbox"/> Firearm (type not stated) <input type="checkbox"/> Handgun <input type="checkbox"/> Rifle <input type="checkbox"/> Shotgun <input type="checkbox"/> Other Firearm <input type="checkbox"/> Knife/Cutting Instru.		# of Adults Involved: _____ # of Juveniles Involved: _____ <input type="checkbox"/> Blunt Object <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Personal Weapons <input type="checkbox"/> Poison <input type="checkbox"/> Explosives <input type="checkbox"/> Fire/Incendary <input type="checkbox"/> Narcotics/Drugs <input type="checkbox"/> Asphyxiation <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input checked="" type="checkbox"/> None	
Suspected Bias Motivation		Aggravated Assault/Homicide Circumstances / Agg. Injury	
11 = Anti-White 12 = Anti-Black 13 = Anti-American Indian / Alaskan Native 14 = Anti-Asian/Pacific Islander 15 = Anti-Multi-Racial Group 21 = Anti-Jewish 22 = Anti-Catholic 23 = Anti-Protestant 24 = Anti-Islamic 25 = Anti-Other Religion 26 = Anti-Multi-Religion Grp 27 = Anti-Atheism/Agnostic 31 = Anti-Arab 32 = Anti-Hispanic 33 = Anti-Other Ethnicity National Origin 41 = Anti-Male Homosexual 42 = Anti-Female Homosexual 43 = Anti-Homosexual 44 = Anti-Heterosexual 45 = Anti-Bi-Sexual 51 = Anti-Female 52 = Anti-Male 88 = Other Bias 99 = Unknown		<input type="checkbox"/> Argument <input type="checkbox"/> Assault on Law Officers <input type="checkbox"/> Drug Dealing <input type="checkbox"/> Gangland <input type="checkbox"/> Juvenile Gang <input type="checkbox"/> Lover's Quarrel <input type="checkbox"/> Mercy Killing <input type="checkbox"/> Other Felony Involved <input type="checkbox"/> Other Circumstances <input type="checkbox"/> Unk. Circumstances <input type="checkbox"/> Criminal Killed by Private Citizen <input type="checkbox"/> Criminal Killed by Police Officer <input type="checkbox"/> Child Playing w/Weapon <input type="checkbox"/> Gun-Cleaning Accident <input type="checkbox"/> Hunting Accident <input type="checkbox"/> Other Negligent Weapon <input type="checkbox"/> Other Negligent Killing	
Justifiable Homicide Circumstances		INCIDENT # <u>08-0788-00</u>	
<input type="checkbox"/> Criminal Attacked Police Officer & That Officer Killed the Criminal <input type="checkbox"/> Criminal Attacked Police Officer & Criminal Killed by other Police Officer <input type="checkbox"/> Criminal Attacked by a Civilian <input type="checkbox"/> Criminal Attempted Flight From a Crime <input type="checkbox"/> Criminal Killed in Commission of Crime <input type="checkbox"/> Criminal Resisted Arrest <input type="checkbox"/> Unable to Determine - Not Enough Info			

Attachment 10 (PAGE 1)

08/18/2008 08:16 FAX 517 7884651 CITY OF JACKSON 003

Arrestee Suspect Suspect Connected to Offense Number: 1. 2. 3.

#1: (Last, First, Middle, Suffix) JOHNSON, RONALD, DWAYNE Address: (Street, City, State, Zip) 1001 PINE BLVD JACKSON, MS 39201

D.O.B. 6/21/65 Male Female White Black Asian American Indian Hispanic Unknown

Arrested Was Armed With: (Check up to two) (Enter A in Box if Automatic)
 01 Unarmed 14 Shotgun 15 Other Firearm 20 Lethal Cutting Instrument (e.g. Switchblade, Knife, Etc.)
 11 Firearm 12 Handgun 13 Rifle 30 Club/Black Jack/Brass Knuckles

Type of Arrest: On View Summons/Cited Taken into Custody

Arrest Charge: _____
 Clothing/Other Description: _____

Nickname: _____ Height: 6'2" Weight: 150 Hair: BLK Eyes: BRN

Disposition of Arrestee under 18: Handled With Department Referred to Other Authority (1) (2)

Arrestee Suspect Suspect Connected to Offense Number: 1. 2. 3.

#1: (Last, First, Middle, Suffix) _____ Address: (Street, City, State, Zip) _____

D.O.B. _____ Male Female White Black Asian American Indian Hispanic Unknown

Arrested Was Armed With: (Check up to two) (Enter A in Box if Automatic)
 01 Unarmed 14 Shotgun 15 Other Firearm 20 Lethal Cutting Instrument (e.g. Switchblade, Knife, Etc.)
 11 Firearm 12 Handgun 13 Rifle 30 Club/Black Jack/Brass Knuckles

Type of Arrest: On View Summons/Cited Taken into Custody

Arrest Charge: _____
 Clothing/Other Description: _____

Nickname: _____ Height: _____ Weight: _____ Hair: _____ Eyes: _____

Victims: (Last, First, Middle, Suffix) _____ Phone (Home) _____ Phone (Work) _____

Address: (Street, City, State, Zip) _____ D.O.B. _____ Male Female White Black Asian American Indian Hispanic Unknown

Type of Victim: (Check Only One)
 Individual Government Business Religious Financial Society/Public Police Unknown

Victim Connected To Offense Number: 1. 2. 3.

Injury Type: None Broken Foss. Int. Injuries Severe Laceration Fatal Minor Injury #2 Major Injury Loss of Teeth Unconscious #3

Relationship of Victim to Suspect (for multiple suspect relationships enter suspect number(s) in space beside choice.)

01 Spouse 06 Grandparent 11 Step-Sibling 22 Baby-Sister (baby) 28 Employer Community Resident
 02 Common Law 07 Grandchild 12 Other Family 23 Boy/Girlfriend 29 Employer Resides In the County
 03 Parent 08 In-Law 20 Acquaintance 24 Child of "BOF" Above 30 Otherwise Resides in the State
 04 Sibling 09 Stepparent 21 Friend 25 Homosexual Rel. 31 Victim/Suspect Out of State
 05 Child 10 Stepchild 22 Neighbor 27 Ex-Spouse 99 Rel. Unkn. Unknown

Name (Last, First, MI, Suffix)	R/S	Address (Street, City, State, Zip)	D.O.B.	Home/Work Phone
<u>SMITH, ADRIAN, D</u>	<u>V</u>	<u>1601 PINE BLVD</u>	<u>03</u>	<u>662-5012</u>
<u>SMITH, MONICA, D</u>	<u>V</u>	<u>505 RANDOLPH ST</u>	<u>03</u>	<u>662-7102</u>

Type/Code	Qty	Drugs	Property Description - Include Make Model, Size, Type, Serial #, Etc. Drugs - Include Type, Quantity, Measurement	Value	Mo/Da/Yr Recovered

Inv	Make	Model	Style	Year	Color	V.I.N.	Lic. St.	Lic. Yr.	License #

SUPERVISOR / ID # _____ DATE / / Lein Entry Ent Remove By _____

Attachment 10 SUPPLEMENT (PAGE 2) INCIDENT #

08/15/2008 08:18 FAX 317 7834651

CITY OF JACKSON

004

Attachment 10

08-018080
 REPORTING OFFICER: DETECTIVE DEAN SCHUETTE JR./022
 INCIDENT TYPE: VOTER FRAUD
 INCIDENT LOCATION: 132 W. ADDISON ST.
 CIRCUMSTANCES:

On 07/23/08 I was given this incident by Detective Sergeant Stadelman requiring me to investigate a possible voter fraud complaint. The complaint stemmed from two letters that were provided to me one being from the office of the City Attorney Jackson Michigan from Susan Murphy and a second letter from a Lynn Fessel from the Jackson City Clerks Office.

The letters referred to the multiple and questionable voter registration applications which were provided to me along with the letters and in total there were six State of Michigan voter registration applications. Each voter registration application had the initials of AJ in the upper right hand corner. Three of the applications had the name of Arikkah Jimenez and the other three had the name of Monique Battle. The address of all six were the same of 132 W. Addison St. However reviewing the information on each application the dates of birth were not the same for the same names.

Prior to tracking down both Jimenez and Battle I attempted to contact Lynn Fessel and Susan Murphy with negative results. I was informed Murphy was on vacation and I then left a message for Fessel.

I then reviewed both names in the AS400 where I did find Jimenez and Battle. The address for Jimenez was in fact 132 W. Addison St. through the City Police computer system. The address for Battle was 505 Randolph St and both of these addresses were provided under the voter details sheets provided for both names which is also attached to this report.

I attempted to contact individuals at 132 W. Addison St. however was unable to. It did appear that someone was home however no one would answer the door. I then checked with the neighbors where I was informed that a Arikkah Jimenez no longer lives on Addison St. and she does not know who the new occupants are and Arrikah has been gone for the last couple of weeks. I then made contact with a resident at 505 Randolph St. identified as Monique Battle.

I informed Battle why I was at her residence which she stated she still did not understand. I asked her if she had filled out any voter registration forms which she said the only thing she filled out was voter card in 2007 where she signed a form when she obtained a Michigan ID card at the Secretary of State. I then showed her the voter registration application form being all three of them with her name and she said that those are false that she has never seen those before and certainly has not filled those out. She then pointed out that that is not her writing, the phone number is not hers, that

08/15/2008 08:16 FAX 517 7884851

CITY OF JACKSON

0003

Attachment 10

belongs to her cousin Arikkah Jimenez and also the dates of birth are all wrong.

Battle told me that she has no idea who would have filled her information out but once again has never filled out a form like this and that the signatures are not hers. She then provided me with 10 signatures that she did in front of me on a piece of paper which was obviously not the same that was on the application forms.

Battle told me that she was just with her cousin Jimenez on the day before and Jimenez never told her about anything like this and has no idea who could have done this. Battle told me that she would assist us in this investigation if anything else is needed and prior to departing she told me that she has never lived at 112 W. Addison St. that she has always been at 505 Randolph St.

Battle was able to provide me with a location of Jimenez as she has recently moved from W. Addison St. to Pringle Ave in the City of Jackson. I then responded over to Pringle where I did in fact make contact with Jimenez.

Jimenez was informed about the voter registration applications that I was investigating which she told me that she doesn't know what I am talking about. I then provided her with the three registration application forms which she immediately pointed out that the names are spelled incorrectly for her name and without asking her questions she told me the hand writing that is on all these forms is that of her babies father who she identified as Antonio Johnson a parolee. She told me that she has never seen these registration applications nor has she filled them out and that is without a doubt the handwriting of Johnson.

I asked how sure she was and she told me 200% sure. I asked her how she was so sure that he would have done this and she said not only is it his handwriting but when he got out of prison he was working at a place in Detroit where he was getting paid to register people to vote. Jimenez said that she cannot remember the name of the place he was working however his parole officer would know this and he is currently locked up on a parole violation. She told me that back in May or June he did call her from Detroit and wanted her social security number which she refused to give him and now with me bringing this to her believed that it may have something to do with this. She further said that if she found anything with his handwriting on it she would call me as that would also prove who did this.

I did speak with Lynn Fessel who did return my call at approximately 4pm on this same date which she inquired about the investigation I told her of my findings and would keep her notified.

08-018080
DETECTIVE D. SCHUETTE, JR.:ljk
07/25/08, 1242 hours

08/15/2008 08:17 FAX 517 7884651

CITY OF JACKSON

0006

Attachment 10

Supplement: 08-018060
 Case: Voter Fraud

Reporting: Det. Dean Schuette Jr.

Circumstances: Antonio Djuan Johnson is currently incarcerated at the Chanter Road Facility which is the Jackson County Jail. On 7/23/08 I did make contact with A. Johnson where an interview was completed.

Prior to interviewing A. Johnson I completed a Statement of Rights form with him. Mr. Johnson can read/write, he obtained his GED, is not under the influence, and does feel in control of himself. I went through Mr. Johnson's rights with him which he did indicate that he understands and signed the form to speak with me.

Interview Antonio Johnson: I told him why I was there at which point I showed him the voter registration applications with the initials of AJ in the upper corner. A. Johnson said that those are his initials and he is the one who put them there.

A. Johnson said that during the time frame of May 2008 through June 13th, 2008 he was working for a group called Acorn out of Detroit Michigan. A. Johnson said that through his position, he was to register voters and to keep his job he needed anywhere from 10-15 registrations each work day.

I asked A. Johnson why he would fill out three forms for both A. Jimenez and M. Battle. A. Johnson told me that in certain circumstances this would be alright if Jimenez and Battle did not receive a voter card through the first form completed. Johnson said that the writing on each form is his which I asked why he would sign Battle's and Jimenez's names. Johnson once again told me that if the person he is registering is not available he could sign their name. I pointed out that the dates of births for the two are different. A. Johnson told me that each forms completed he was on the phone with Battle and Jimenez and they would be the source of the information that he wrote down.

I asked A. Johnson who was his supervisor at Acorn which he identified as Latoya Anderson, African-American, approximately 24 years of age. He did not have a contact number for her or for the company. I asked A. Johnson if his supervisor had him create forms which he said no.

ACTION: Supplement completed.
 Case Closed 7/29/08
 #022djs

09/15/2008 08:17 FAX 517 7884651
Pd - 105
EB - Completed 10/12
21 in Control
25 under no force

CITY OF JACKSON

007

City of Jackson, Michigan
Police Department

Attachment 10

STATEMENT OF RIGHTS

To: Antonio Djuan Johnson Incident No.: 08014050

- Before you answer any questions or make any statement, you must fully understand your rights:
- You have a right to remain silent.
- Anything you say can and will be used against you in a court of law.
- You have a right to consult with a lawyer before you answer any questions or make any statement and to have him present during questioning or while making a statement.
- If you cannot afford a lawyer, one will be appointed for you before questioning or at any time during questioning, if you so desire.
- If you answer questions or make any statement without consulting a lawyer or having a lawyer present, you will still have the absolute right to stop at any time you wish and to answer no further questions or make no further statement, or you may at any time you wish stop answering questions or making any statement until you consult with a lawyer or have a lawyer present during the questioning.

(Signed) [Signature] Date 7-25-08
Officer

ACKNOWLEDGEMENT AND WAIVER

The above statement of my rights has been read and explained to me, I have had an opportunity to ask questions concerning my rights, and I now fully understand what my rights are. I wish to answer questions or to make a statement without first consulting with a lawyer and without having a lawyer present during questioning. I waive my rights to remain silent and to the presence of a lawyer at this time, and I wish to state that no promises or threats have been made to me or against me or any others.

(Signed) [Signature] Date 7-25-08
Interviewee

IN THE PRESENCE OF:

Witness

Witness

TIME START 1:45 p.m.
TIME END 1:55 p.m.
Place Chonka Road

Reporting Officer [Signature]

09/15/2008 08:18 FAX 517 7884651

CITY OF JACKSON

0015

PROPERTY REPORT FORM

JACKSON POLICE DEPARTMENT JACKSON COUNTY SHERIFF DEPARTMENT
216 E. WASHINGTON ST. 212 W. WESLEY ST.
JACKSON, MICHIGAN 49201

INCIDENT NO. 2608030
RELATED INCIDENT NO.
REPORTING OFFICER: SA [Name]
EMP #1: 8003 EMP #2: 8003
INCIDENT TIME & DATE: 9/15/08
SUBMITTED TIME & DATE: 9/15/08
INCIDENT ADDRESS: 1116 [Address]
NAME: [Name]
ADDRESS: 1116 [Address]

STATUS: 10 CLASS: 10 VALUE: \$5000
BRAND NAME - MAKE: [Brand]
MODEL: [Model]
SIZE - STYLE - CAL: [Size]
SERIAL NUMBER: [Serial]
COLOR: [Color]

PROPERTY SHOULD BE: [] EVIDENCE [] FORFEITURE [] FOUND [] SAFEKEEPING [] RTD/FINDER [] TO BE DESTROYED
STATUS: 10 CLASS: 10 VALUE: \$5000
BRAND NAME - MAKE: [Brand]
MODEL: [Model]
SIZE - STYLE - CAL: [Size]
SERIAL NUMBER: [Serial]
COLOR: [Color]

PROPERTY SHOULD BE: [] EVIDENCE [] FORFEITURE [] FOUND [] SAFEKEEPING [] RTD/FINDER [] TO BE DESTROYED
STATUS: 10 CLASS: 10 VALUE: \$5000
BRAND NAME - MAKE: [Brand]
MODEL: [Model]
SIZE - STYLE - CAL: [Size]
SERIAL NUMBER: [Serial]
COLOR: [Color]

PROPERTY SHOULD BE: [] EVIDENCE [] FORFEITURE [] FOUND [] SAFEKEEPING [] RTD/FINDER [] TO BE DESTROYED
STATUS: 10 CLASS: 10 VALUE: \$5000
BRAND NAME - MAKE: [Brand]
MODEL: [Model]
SIZE - STYLE - CAL: [Size]
SERIAL NUMBER: [Serial]
COLOR: [Color]

PROPERTY SHOULD BE: [] EVIDENCE [] FORFEITURE [] FOUND [] SAFEKEEPING [] RTD/FINDER [] TO BE DESTROYED
STATUS: 10 CLASS: 10 VALUE: \$5000
BRAND NAME - MAKE: [Brand]
MODEL: [Model]
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SERIAL NUMBER: [Serial]
COLOR: [Color]

PROPERTY SHOULD BE: [] EVIDENCE [] FORFEITURE [] FOUND [] SAFEKEEPING [] RTD/FINDER [] TO BE DESTROYED
VEHICLE CLASS: 10
VEHICLE MAKE: [Make]
VEHICLE MODEL: [Model]
VEHICLE YEAR: [Year]

17. PROPERTY STATUS
0 None
1 Stolen/Recovered (RTC)
2 Damaged
3 Considered for Pledge
4 Destroyed/Damaged/Unrecoverable
5 Recovered Status
6 Seized (Drugs, Paraphernalia)
7 Seized
8 Found
9 Unknown
10 Seized
11 Seized/Seized
12 Other (Describe)
13 Lost

18. PROPERTY CLASS
01 Aircraft
02 Boat
03 Automobile
04 Bicycle
05 Boat
06 Boat/Canoe
07 Computer (w/Software)
08 Consumer Goods
09 Dress/Suit/ATM Equip
10 Drugs/Paraphernalia
11 Fire/Airport Equip.
12 Gun - Voluntary
13 Receipt
14 Carabiner Equip.
15 Heavy Const. Equip.
16 Household Goods
17 Jewelry/Perf. Merch.
18 Luggage
19 Music (w/instr for sale)
20 Currency
21 Investment/Instruments
22 Non-Fragile (w/Instr)
23 Crime Equipment
24 Other Motor Vehicle
25 Prosthetic/Seizure/Walkers
26 Tricycle/Bicycle
27 Recreational (Instr. Soft Air)
28 RV Vehicle
29 Seizure (Other)
30 Structure (w/Instr)
31 Structure (w/Instr)
32 Structure (w/Instr)
33 Structure (w/Instr)
34 Structure (w/Instr)
35 Tools
36 Veh. Parts/Equip
37 Vehicle
38 Vehicle
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Attachment 10

10/15/08

Page

Attachment 11

Application uses incorrect date of birth and incorrect last four digits of the Social Security number.

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

Attachment 1

1 answer Are you a citizen of the United States of America? Yes No Will you be 18 years of age on or before election day? Yes No

If you responded No to either of these questions, do NOT complete this form.

2 complete application

Last Name First Name Middle Name Address where you live City Zip Code Telephone

City or Township where you live County where you live School District

Mailing Address For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only

Date of Birth Male Female JUL 03 1989

ID Number I have a state issued driver license or personal ID card I do not have a state issued driver license or personal ID card

Are you still registered to vote at your last address? Yes No Don't Know

Previous Street Address City or Township of County State Zip Code Registered under name of

3 read, sign and date

I certify that: I am a citizen of the United States. I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.

Signature of Applicant Date Signature of Applicant Date

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSELY

AV

Attachment 12

Two applications dated 20 days apart for same individual appear to have different handwriting styles and signatures. The applications were received by the clerk's office the same day.

SEP-08-2008 14:46 SPRINGFIELD TWP 248 634 2316 F. 02/03
State of Michigan Voter Registration Application
and Michigan Driver License/Personal Identification Card Address Change Form
W 9/4/08
FRAUD

Attachment 12

1 answer. Are you a citizen of the United States of America? Yes No
Will you be 18 years of age on or before election day? Yes No
➤ If you responded **No** to either of these questions, do **NOT** complete this form.

2 complete application

Last Name: Ray First Name: Jarrod Middle Name: Michael
Address where you live -- house number and street/road: 6002 Neilson Apt. No./Lot No.: 48350
City: Davisburg Zip Code: MI Telephone optional: _____
If you do not have a house or street address, describe location where you live -- cross streets or roads, landmarks, etc.
 City or Township where you live County where you live: Oakland School District if known: _____
Mailing Address if different For use on Driver License/Personal ID and Voter Registration For use on Voter Registration only

Date of Birth: 3/16/83 Male Female
ID Number: check applicable box and provide appropriate number
 I have a state issued driver license or personal ID card # _____ State: _____
 I do not have a state issued driver license or personal ID card. The last four digits of my Social Security Number are _____
 I do not have a state issued driver license, a state issued personal ID card or a Social Security Number.
An ID number will be assigned to you for voter registration purposes.
Are you still registered to vote at your last address? Yes No Don't Know If "Yes" or "Don't Know" enter previous address
Previous Street Address: RECEIVED City or Township of _____ County: _____
State: AUG 27 2008 Zip Code: _____ Registered under name of, if different than above: _____

3 read, sign and date

I certify that:
- I am a citizen of the United States.
- I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day.
- I will be at least 18 years of age by election day.
- I authorize cancellation of any previous registration.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Jarrod Ray 7/10/08
Signature of Applicant Date
 Jarrod Ray 7/10/08
Signature of Applicant Date

Sign and date both spaces provided above.
BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED

State of Michigan Voter Registration Application and Michigan Driver License/Personal Identification Card Address Change Form

send to 517 241-2734

9/4/08 fw

1 answer

Are you a citizen of the United States of America? Will you be 18 years of age on or before election day?

Yes No Yes No

If you responded No to either of these questions, do NOT complete this form.

2 complete application

Last Name, First Name, Middle Name, Address where you live, City, Zip Code, Telephone optional

County where you live, School District, Mailing Address, Date of Birth, ID Number

Are you still registered to vote at your last address?, Previous Street Address, State, Zip Code, Registered under name of

3 read, sign and date

- I certify that: I am a citizen of the United States. I am a resident of the State of Michigan and will be at least a 30-day resident of my city or township by election day. I will be at least 18 years of age by election day. I authorize cancellation of any previous registration. The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

Signature of Applicant, Date

Sign and date both spaces provided above.

BEFORE MAILING, REMOVE TAPE AND FOLD IN HALF TO SEAL CLOSED.

Attachment 12

Mr. MCCARTHY. Part of this will probably answer some of the questions of my colleague, Mrs. Lofgren.

This section right here is just from the Department of Elections, State of Michigan—pertaining to ACORN, whereas some of these applicants, 15 years old, 7 years old, lives in Canada, but—could answer a lot of questions you had of my colleague, Mr. Frank, as well.

But today this hearing and these panels really is something House Administration has been looking at over the last 2 years. We have had a contested election we have studied. We have gone through looking at voter fraud.

We have also looked at—which I am very interested in hearing in the second panel, Mr. O’Leary—also those who are being denied their right to vote are Servicemen and women. You will find today, and hopefully many will listen, that a number of those votes are not counted. They arrived too late—these are our brave men and women serving overseas. And I think when you think about defending this country and the right to participate in an election, we can actually do a lot more. We can do a lot better. And we have 41 days to go.

We have had a hearing on a number of bills. One, the MVP Act, I think will solve a lot of the problems as we look forward.

But the hearing today, we will look at the voter fraud. We will also look at the eligibility and making sure all of the votes are counted and that those serving in other parts of this world defending this Nation have the right to vote, as well.

And I thank you, Mr. Chairman. I yield back.

Mr. CONYERS. Thank you very, very much.

We also have our good friend from the Judiciary Committee, Jim Jordan of Ohio. Did you have any comments you would like to make at this time, sir?

Mr. JORDAN. No, thank you, Mr. Chairman. I will have some questions later.

Mr. CONYERS. All right. Very good.

And we also have Charles Gonzalez, distinguished Member from Texas on the Elections Subcommittee. We would like to welcome him here to Judiciary and ask if he has any comment.

Mr. GONZALEZ. [OFF MIKE]

Mr. CONYERS. Thank you very much.

We have some distinguished witnesses in the first panel: Mr. Lewis, Mr. Suleman, Mr. Farrell, and Mr. Cortés.

Pedro Cortés is the current secretary of the Commonwealth of Pennsylvania. He is also the chief election official and president of the National Association of State Secretaries. Before that he was executive director of the Pennsylvania Governors’ Advisory Commission on Latino Affairs and served with the Pennsylvania State Civil Service.

We welcome you. All witnesses’ testimony will be included in the record. And we invite you to begin our discussion today. Welcome to the Committee.

TESTIMONY OF PEDRO A. CORTÉS, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, PRESIDENT, NATIONAL ASSOCIATION OF SECRETARIES OF STATE (NASS)

Mr. CORTÉS. Thank you, Mr. Chairman.

Good morning, Chairman Conyers, Chairwoman Lofgren, Ranking Member Franks, Chairman Nadler, Ranking Member McCarthy. I am honored to be here today to testify in two capacities: as Pennsylvania Secretary of State and chief election official; and as president of the National Association of Secretaries of State, also known as NASS.

I would like to discuss the states' readiness for the November 2008 election, including efforts in Pennsylvania.

The Nation's state chief election officials have been working hard to ensure eligible voters will have a positive voting experience and an election that is fair, accurate, accessible and secure. There has been a dramatic increase in voter registration figures, and predictions of high turnout. Nearly 58 million Americans voted in the 2008 presidential primaries. I am here to report that state election officials take their responsibilities seriously, and that the states will be prepared for a potential record turnout in November.

NASS proactively conducted a survey of all states' chief election officials. Our objective was to gain insight into the states' efforts to inform and prepare voters, increase and facilitate voter participation, ensure that polling places run smoothly on Election Day, and communicate election results to the public. The NASS report, which is being released today, is titled, "Engaging the Energized Electorate: NASS Survey on State Preparations for the 2008 Presidential Election." I have copies of that report available with me.

The survey responses demonstrated the states have concentrated their preparations in three major areas: one, voter participation; two, polling place management; and three, election results reporting.

First, to enhance voter participation, states are conducting vigorous statewide public outreach campaigns to inform voters about everything from registration deadlines to identification requirements and absentee or early voting options. A growing number of states are using the internet and social networking sites such as YouTube and MySpace. Many states, including Pennsylvania, are also offering tools such as polling place locators, voter registration lookups, and provisional ballot trackers.

Others have targeted outreach efforts to mobilize young voters, senior voters, voters with disabilities, military and overseas civilian voters and alternative language voters, among others.

The second area of preparation, polling place management and operations, seeks to ensure the positive experience on Election Day. Efforts in this area include broadening the pool of potential poll workers by seeking students, bilingual citizens, private sector and state employees; maintaining consistency in poll worker training; and establishing standards to provide assurance that poll workers are properly equipped to administer voting, handle emergencies, and use election systems.

Finally, states are enhancing election results reporting features for 2008 while maintaining transparency to boost voter confidence.

This is done via new interactive Web sites and through laws enacted for improving post-election audits and audit procedures.

NASS also created CanIVote.org, the association's nonpartisan Web site that serves as a portal to state and local election sites. In addition to voter registration lookups and polling place locators, voters can use the site to find state-specific information on polling place hours, voter registration deadlines, identification requirements and how to become a poll worker.

In my home state of Pennsylvania, election officials remain committed to eliminating barriers to voting and to conducting fair, accurate, accessible and secure elections. The Department of State, working closely with the Commonwealth's 67 counties, is building upon the lessons of the primary to prepare for November 4.

One way we are preparing in Pennsylvania is through the use of technology. For example, the Commonwealth has benefited from the Statewide Uniform Registry of Electors, more commonly known as SURE. SURE is the centralized voter registration and election management system used by the counties and the department to ensure the accuracy and integrity of the Commonwealth's voter registration records. All 67 counties have used SURE since 2006. The innovative use of technology gives counties increased flexibility for more employees to enter voter registration data.

Pennsylvania also values voter education. The Department is proud of Ready.Set.Vote, an interactive voter education campaign that features television, radio, print, online and out-of-home advertising. The campaign's goal is to ensure that Pennsylvania voters are familiar with voting processes, rights and technology.

An important component of this campaign is VotesPA.com, the Commonwealth's online voting information and resource center. Through VotesPA.com, Pennsylvanians can find information about voting rights and procedures, locate directions to their polling place, and may even sign up for election-related reminders sent directly to their mobile devices.

In August, Pennsylvania adopted an innovative, secure online tool offered by the Federal Voting Assistance Program at the Department of Defense that provides military and overseas citizen voters the option of requesting and/or receiving absentee ballots electronically through the Federal program's Web site. As of today 34 counties, including Philadelphia and Allegheny, have availed themselves of this program.

These are only a few examples of the many election initiatives underway in Pennsylvania and throughout the United States. Based on these preparations, I am confident that the Nation, including Pennsylvania, will be well prepared for the general election and that we will have a well-informed electorate.

On behalf of my colleagues at NASS, thank you for your support in safeguarding our most fundamental right of citizenship. I appreciate your invitation to testify today. Thank you.

[The prepared statement of Mr. Cortés follows:]



HON. PEDRO A. CORTÉS
PENNSYLVANIA SECRETARY OF STATE
AND
PRESIDENT
NATIONAL ASSOCIATION OF
SECRETARIES OF STATE

TESTIMONY FOR THE JOINT
OVERSIGHT HEARING ON
*FEDERAL, STATE AND LOCAL EFFORTS
TO PREPARE FOR THE
2008 GENERAL ELECTION*

SEPTEMBER 24, 2008

National Association of Secretaries of State
444 North Capitol Street, NW – Suite 401
Washington, DC 20001
202-624-3525 Phone
202-624-3527 Fax
www.nass.org



**Testimony of Hon. Pedro A. Cortés, Pennsylvania Secretary of State, and
President, National Association of Secretaries of State
Before the Subcommittee on Elections of the Committee on House Administration and the
Subcommittee on the Constitution, Civil Rights and Civil Liberties of the Committee on the
Judiciary - Joint Oversight Hearing on *Federal, State and Local Efforts to Prepare for the
2008 General Election***

Good morning, Chairwoman Lofgren (D-CA), Ranking Member McCarthy (R-CA), Chairman Nadler (D-NY) and Ranking Member Franks (R-AZ). I am honored to be here today to testify in two capacities: as Pennsylvania Secretary of State and chief election official; and as President of the National Association of Secretaries of State (NASS). I would like to discuss states' readiness for the November 2008 election, including our specific efforts in Pennsylvania. I will begin by discussing national efforts.

The nation's chief state election officials, 39 of whom are represented by NASS, have been working hard to ensure eligible voters will have a positive voting experience and an election that is fair, accurate, accessible and secure. To achieve this in a presidential election year is a challenge given our decentralized electoral system that includes an estimated 7,800 local election jurisdictions, 200,000 polling sites, 2 million poll workers and, for this year, somewhere between 125 and 200 million voters.

Dramatic increases in registration figures and predictions of high turnout are driving state preparations this year. Nearly 58 million Americans voted in the 2008 presidential primaries. Based on the successful outcome, there is every indication that states will be fully prepared for a potential record turnout in November.

Recognizing the widespread interest in what states are doing to prepare for the general election, and the tendency for reports and news stories to focus on what *could* go wrong, NASS conducted a survey of all the chief state election officials. Our objective was to gain insight into the states'



efforts to inform and prepare voters, increase and facilitate voter participation, ensure that polling places run smoothly on Election Day and communicate election results to the public. The NASS report, which is being released today, is titled, *Engaging the Energized Electorate: NASS Survey on State Preparations for the 2008 Presidential Election*.

Here is what the state survey responses demonstrate:

During the last several years, states have overhauled their election systems under the Help America Vote Act of 2002 (HAVA) and successfully introduced major election-administration reforms on everything from voting systems to statewide voter registration databases, provisional voting, poll worker recruitment and training, and more. As part of these efforts, they have introduced innovative election practices that build upon HAVA's requirements while at the same time addressing the unique history, tradition and legal structure in each state.

This year, the states have concentrated preparations in three major areas: voter participation, polling place management and election results

First, since the 2006 midterm elections and the passage of HAVA's deadlines, states have made progress in providing resources and coordinated-messaging designed to enhance voter participation. States are conducting vigorous, statewide public outreach campaigns to inform voters about everything from registration deadlines to identification requirements and absentee or early voting options. A growing number of states are using the Internet and social networking sites to share their message with voters. For example, the Missouri Secretary of State's office has a *3 Minute Guide to Voting in Missouri* that they first featured on their state website, and then also posted to *YouTube* and *MySpace*. Similarly, Arizona plans to address questions on ballot measures and the voting process through statewide town hall meetings.

Due to the use of statewide voter registration databases, states are offering online tools such as polling place locators (in 40 states), voter registration lookups (in 29 states) and provisional ballot trackers (in 18 states). In a number of states, including Delaware, Washington and my



home state of Pennsylvania, voters can use online tools such as polling place locators to get maps, driving directions and parking details.

Many states have further introduced targeted outreach efforts to mobilize young voters, senior voters, voters with disabilities, military and overseas civilian voters and alternative language voters, among others.

For individuals unable to wait in line on Election Day, or for those who do not wish to wait, many states have adopted early or absentee voting. Thirty-one states allow in-person, absentee voting before the election and twenty-eight states allow absentee voting by mail, without the prerequisite of demonstrating a legal excuse. Where available, these options will reduce lines on Election Day.

The second area of preparation, polling place management and operations are largely a function of local government, although states are helping cities and counties prepare to handle the rush of voters at the polls. The goal is to ensure a positive experience on Election Day. This collaboration is aimed at broadening the pool of potential poll workers by seeking students, bilingual citizens, private sector and state employees. It also promotes uniformity in training volunteers through online instruction, video refresher resources and extensive statewide conferences.

For 2008, consistency is the hallmark of state poll worker training efforts. California has established a Task Force on Uniform Poll Worker Training Standards to provide recommendations and to ensure that all of the state's poll workers are properly equipped to administer voting, handle emergencies and use election systems. Minnesota has a detailed procedures guide and training video for all counties. Iowa has a three-day poll worker certification program which is held in each jurisdiction across the state. A number of states also provide online poll worker training.

Increased polling place efficiency measures, such as the adoption of electronic poll books, are also enabling states to improve administration and enhance customer service. These initiatives



complement states' intensive contingency planning, expanding the scope of their efforts beyond natural disaster and security threats to include strategies for dealing with equipment breakdowns, ballot shortages, long lines, poll worker shortages and other election-related scenarios.

In many states, election officials are either increasing the number of ballots they order or encouraging localities to do so in anticipation of high voter turnout in November. For example, precincts in Ohio that use Direct Recording Electronic (DRE) systems must provide backup paper ballots in an amount equal to 25% of the precinct turnout in 2004. Voters waiting in line must also be informed that they can choose to vote using the paper ballot if they do not want to wait for a DRE machine.

Finally, states are offering enhanced election result reporting features for 2008 and shoring up post-election auditing and reporting procedures to maintain transparency and boost confidence in election outcomes. While states like Minnesota and Kentucky have been providing this information for some time, Missouri recently employed new mapping and graphics features on its Election Night Reporting Web site, which aids the media and campaign officials when analyzing the information and results provided. Twenty-three states have existing laws for post-election audits, and other states are seeking to establish or improve audit procedures.

NASS also created CanIVote.org, the association's nonpartisan Web site that serves as a portal to state and local election sites. In addition to the voter registration lookups and polling place locators, voters can use the site to find state-specific information on polling place hours, voter registration deadlines, identification requirements and how to become a poll worker.

In addressing the preparations specific to my home state of Pennsylvania, I can assure you that we remain committed to eliminating barriers to voting and to conducting fair, accurate, accessible and secure elections.



The Department of State, working closely with the Commonwealth's 67 counties, is building upon the lessons of the primary to prepare for November 4th.

One way is through the use of technology. For example, Pennsylvania has benefited from the Statewide Uniform Registry of Electors, more commonly referred to as SURE. SURE is the centralized voter registration and election management system used by the counties and the Department to ensure the accuracy and integrity of the Commonwealth's voter registration records. All 67 counties have used SURE since 2006.

Over the last two years the Department has worked diligently to increase the system's capacity to process records. During the primary, the SURE system performed well and enhancements continue to be implemented. A public portal allows voters to find their own registration and polling place information on the Department's Web site. A separate county portal enables elections staff to view and certify voter registration statistics, enter and track provisional ballots and enter election night returns. The innovative use of technology gives counties increased flexibility for more employees to enter voter registration data. This additional data entry capability is helping counties complete the task of entering new voter applications.

With less than two weeks until the October 6th registration deadline, more than 8.5 million Pennsylvanians are registered to vote in the election and thousands more are submitting their applications. SURE technology has streamlined the registration process and has improved the ability to provide timely confirmation.

Pennsylvania also values voter education. The Department is proud of *Ready.Set.Vote*, an interactive voter education campaign that features television, radio, print, online and out-of-home advertising. *Ready.Set.Vote* has empowered us to communicate with a diverse audience, including military members, college students and persons with disabilities. Specific advertisements were created in Chinese, Korean and Spanish. The campaign's goal is to ensure that Pennsylvania voters are familiar with voting processes, rights and technology.



An important component of this campaign is VotesPA.com, the Commonwealth's online voting information and resource center. Through VotesPA.com, Pennsylvanians can find information about voting rights and procedures, locate directions to their polling place and may even sign up for election-related reminders sent directly to their mobile devices. With ten different voting systems being used throughout the Commonwealth, understanding how to use the specific voting system provided at one's polling place is essential for a voter to efficiently and successfully cast his or her ballot. One of the key features of VotesPA.com is the availability of demonstration videos for each voting system, specific to any given voter's county upon request.

In August, Pennsylvania reviewed an innovative, secure online tool offered by the Federal Voting Assistance Program at the Department of Defense that provides military as well as overseas civilian voters the option of requesting and/or receiving absentee ballots electronically through the federal program's Web site. Pennsylvania counties are encouraged to participate in this initiative, which helps simplify military and overseas voting. As of today 34 counties, including Philadelphia and Allegheny, have availed themselves of this program.

The large volume of voters also magnifies the importance of poll worker training. Historically, issues that have arisen during Election Day have been primarily due to human error. As referenced earlier, adequate poll worker training can minimize this possibility and ensure that the elections are administered smoothly.

This year, the Department of State produced a new DVD titled, *Election Officials Training Program*. This video was made available to all counties to supplement their training efforts and is also available to view online by visiting the Department's Web site, www.dos.state.pa.us, and selecting *Elections*. A second video will be launched next week with emphasis on training election officials to assist voters with disabilities.

Building upon best practices that were implemented in the Pennsylvania primary, the Department continues to communicate to the counties recommendations for handling high voter



turnout. Sufficient staffing throughout the entire process is key, as well as ordering ample supplies of absentee ballots and optical scan ballots in the counties that require them.

Pennsylvania encourages its counties to have sufficient provisional ballots and emergency backup paper ballots on hand each election. In addition, counties are customarily reminded to be prepared to handle unexpected polling place emergencies such as power outages, inclement weather, fires, water damage and flooding.

The Department also continues to improve its reporting of unofficial election results after the close of the polls. For the April primary, a direct interface for electronic reporting using the SURE county portal was employed by 20 counties. More than 50 counties will participate in November.

These are but a few examples of the many initiatives underway in Pennsylvania and throughout the United States. Based on these preparations, I am confident that the nation, including Pennsylvania, will be well prepared for the General Election and that we will have a well-informed electorate. On behalf of my colleagues at NASS, thank you for your support in safeguarding our most fundamental right of citizenship.

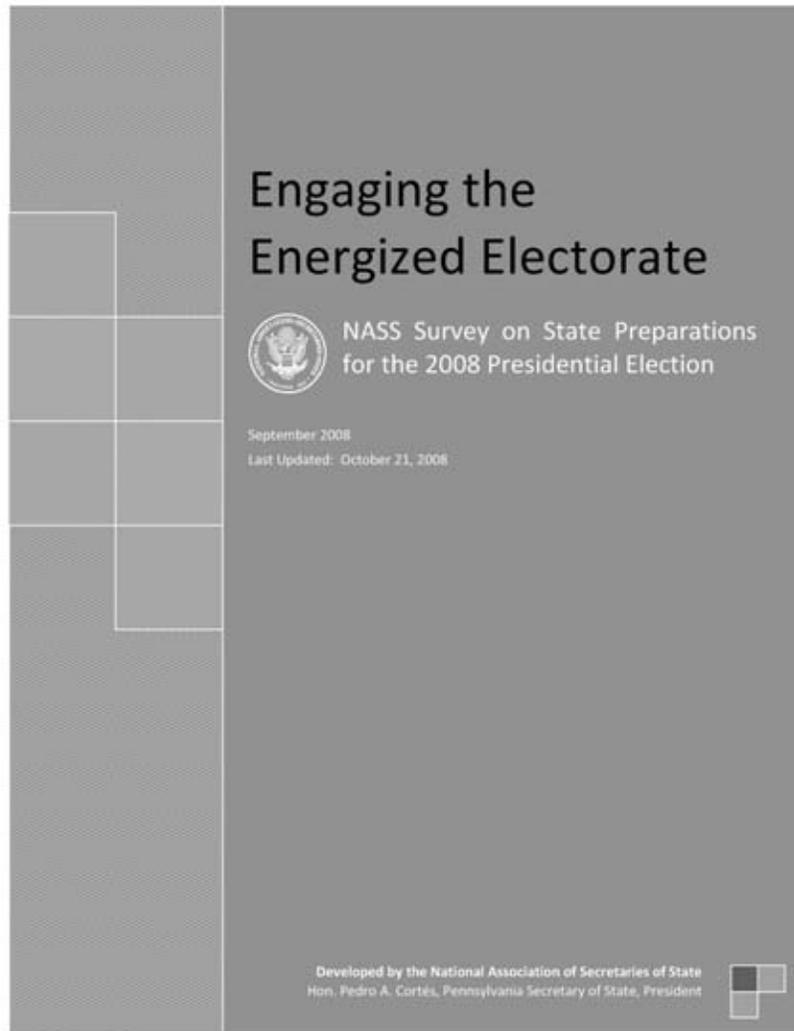
I appreciate your invitation to testify today and welcome your questions at this time.

Mr. CONYERS. Thank you, sir. Did you want to put the report¹ in the record?

Mr. CORTÉS. If I may, I would like to do that, Mr. Chairman.

Mr. CONYERS. All right. Without objection, so ordered.

[The information referred to follows:]



¹The NASS report printed in this hearing record is a revised version of the original report referred to by the witness. The revised version of the report was the electronic version of the file available at the time of the printing of this hearing.



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Introduction by the President of the National Association of Secretaries of State

Since being sworn in as president of the National Association of Secretaries of State (NASS) in July, the question I have most frequently been asked is if states will be ready for the exceptional number of voters anticipated in November. My unwavering response has been that they will be. The nation's chief state election officials (39 of whom are represented by NASS) have been working hard to ensure that eligible voters will have a satisfying and positive voting experience, including a process that is fair, accurate, accessible and secure. To achieve this in a presidential election year will be no small feat, given our decentralized electoral system with an estimated 7,800 local election jurisdictions, 200,000 polling sites, 2 million poll workers and 125 million voters.

It should come as no surprise that dramatic increases in registration figures and predictions of high turnout are driving states' preparations this year. With nearly 58 million Americans having voted in the 2008 presidential primaries, there is every indication that states must be prepared for a big rush in November. Some states could see extraordinarily high—if not record-setting levels—of voter turnout for the general election, based upon the reported numbers of new registrants and the excitement surrounding this historic presidential election race.

NASS recognizes the widespread interest in what states are doing to prepare for November, as well as the tendency some observers may have to focus on what could go wrong. As a result, the association conducted a survey to gain insight into states' efforts to inform and prepare voters, increase and facilitate voter participation, train and recruit poll workers and assist local election officials. The survey also touched upon preparations to ensure polling place operations run smoothly on Election Day and election results are communicated to the public. NASS's goal for this report is that it serve as a resource to help the states avoid or minimize the problems that can arise due to high levels of turnout and to maintain public confidence in the process.

It underscores outreach efforts and preparations being made by the Secretaries of State and other state election officers. Additionally, the report highlights new and innovative programs that tend to be overlooked in the round-the-clock quest to examine and compare state election laws and practices before a big election. Sincere thanks are due to the many busy election officials who took the time to fill out our questionnaire. We could not have produced this document without them.

There is no doubt that the central storyline of this year's presidential election is the highly energized and engaged electorate. We also are indebted to the nation's state and local election officials, who work day in and day out to make the process run smoothly for voters. Given the overall success of election administrators in conducting the presidential primaries, I have every confidence the states are ready for the coming election.

Hon. Pedro A. Cortés

Pennsylvania Secretary of State
2008-2009 NASS President

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Executive Summary

Record turnout in this year's presidential primaries, along with a dramatic tide of new voter registrations and absentee ballot requests in many places, are driving state preparations for the November 2008 presidential election. A number of secretaries of state are predicting that turnout levels in some states could reach as high as eighty-percent.¹

Prompted by the obvious excitement among our energized electorate, state election offices are focusing on three basic areas for the general election: 1) encouraging participation and ensuring that voters are prepared to cast a ballot; 2) providing a smooth and positive voting experience through professional polling place operations and contingency planning; and 3) delivering timely and accurate election results. Much of this work is proactive in nature and designed to make sure that everyone—voters and election workers alike—will be prepared for the historical election that will take place in just a few short weeks.

This report, based upon NASS survey data and state election office information compiled from June through early September, takes a broad-based approach to state preparations for the 2008 general election.² During the last several years, states have overhauled their election systems under the Help America Vote Act of 2002 (HAVA) and successfully introduced major election-administration reforms (with numerous legislative and regulatory changes in some states) on everything from voting equipment to statewide voter registration databases, provisional voting, poll worker recruitment and training, and more. As part of these efforts, they have introduced new and innovative election practices that build upon HAVA's requirements while at the same time addressing the unique history, tradition and legal structure in each state.

To showcase some of these practices and the more general trends among states, this report looks at how states are preparing for another competitive presidential election in the following ways:

First, since the 2006 midterm elections and the passage of HAVA's deadlines, states have made great progress in providing resources and coordinated messaging designed to enhance voter participation. This is particularly true in terms of online tools such as polling place locators, voter registration lookups and provisional ballot trackers. Many states have also introduced targeted outreach efforts designed to reach young voters and other groups, such as disabled and senior voters, military and overseas voters and alternative language voters. The growing popularity of convenience voting options such as same-day registration, vote-by-mail and permanent absentee voting rounds out this work, as the notion of Election Day becomes an increasingly relative term for voters.

Second, although polling place management and operations are largely a function of local government, states are attempting to help cities and counties prepare to handle a rush of voters at the polls. A large part of this outreach work is aimed at broadening the pool of potential poll workers by targeting students, bilingual citizens, private sector employees and state employees while increasing efforts to offer consistency in training volunteers through online training, video refresher resources and monster statewide conferences. Polling place efficiency measures, such as the adoption of electronic poll books and vote centers, are also enabling states to improve administration and enhance customer service at the polls. These initiatives are designed to complement the intensive contingency planning that is taking place this year, as states expand the scope of their efforts beyond natural disaster and security threats to include strategies for dealing with equipment breakdowns, ballot shortages, long lines, poll worker shortages and other election-related scenarios.

Finally, in an effort to maintain transparency and boost confidence in the outcome of the elections, states are offering enhanced election results reporting features for 2008 and shoring up their post-election auditing and reporting procedures.

While the information in the first part of this report is intended to provide an overview of state efforts and activities leading up to the 2008 presidential election, it is neither an exhaustive representation nor a scientific study of these efforts. Readers are urged to check out the state-by-state profiles in order to see what each state is doing for 2008, as well as to get details on state voter hotlines and other resources.

Above all, preparing for a presidential election is a complex and continuous challenge at all levels of administration, with many more elements than what we have included here. Americans should be assured that no matter how many people cast a ballot in this year's general election—especially if there is record turnout among our energized electorate—the nation's election professionals are committed to providing a process that serves voters and democracy well.

Voter Participation

Voter participation was clearly on the rise during this year's presidential primaries, with some states seeing record-setting levels of registration and turnout. Voter turnout levels doubled—or even tripled—in some states, with young voters making a particularly enthusiastic showing.³

As the general election approaches, states and localities are dedicating millions of dollars to vigorous public education efforts designed to increase awareness of voting requirements and deadlines. State officials want to ensure that voters—particularly first-time voters and those who have not cast a ballot in recent elections—are aware of the “tools and the rules” well in advance of Election Day. These efforts, which include new online resources such as polling place locators and voter registration lookups, can prevent voters from being left off of voter registration lists, showing up at the wrong polling place or forgetting to bring proper identification to the polls. Some states are also conducting targeted outreach to encourage participation among young voters, elderly and disabled voters, military and overseas voters and alternative language voters.

The increased availability of convenience voting options—including same-day registration, early voting and vote-by-mail—are impacting state voter participation efforts this year. Officials expect the number of early voters to dramatically increase in the presidential election, and in some places, they are actively encouraging eligible citizens to vote before November 4th.

Public Education Campaigns

According to NASS survey responses, 24 states (see state profiles) are conducting vigorous, statewide public outreach campaigns for the general election. In a year when voter engagement is particularly high, these initiatives are focused intently on assisting the more than 3.5 million estimated new registrants—many of whom are first-time voters—navigate the electoral process and prepare for what to expect on Election Day.⁴ They also want to assist local election officials by increasing the supply of well-trained poll workers who are ready to help provide voters with a positive experience on Election Day.

The large majority (65 percent) of state public outreach campaigns utilize public service announcements (PSAs) designed to provide information on voting procedures and requirements—including election dates and deadlines—as well as identification requirements and absentee or early voting options. In Florida, for example, the secretary of state's office is airing a series of PSAs to familiarize voters with the state's voting

equipment, emphasize the importance of updating voter registration information, and notify them of the kinds of identification that will be accepted at the polls.

Other states are producing more specialized ads. The New Mexico Secretary of State's office held a student film competition to produce a public service announcement aimed at increasing voter turnout among disabled voters. In Maine, the secretary of state's office organizes a Youth Voting PSA Project competition, where students produce public service announcements about voting and the importance of civic participation. The winning entries are aired on television and radio stations and streamed online.⁵

For 2008, three states which require voters to present photo identification—Georgia, Indiana and Michigan—are focusing their statewide voter outreach campaigns on the specifics of their state laws.⁶ The goal is to inform voters about what ID to bring to the polls and to tell eligible citizens who lack a photo ID how they can obtain a free, government-issued photo ID card.

While states generally rely upon traditional media such as print, radio, and local or cable television to spread the word, a growing number of states are looking to the Internet and social networking websites to share their messages with voters. The Missouri Secretary of State's office unveiled its "3 Minute Guide to Voting in Missouri" video on the state website and then posted it to YouTube, MySpace and other popular video-sharing sites. The Arizona Secretary of State's office plans to do something similar with footage of its statewide town hall meetings on ballot measures and the voting process.

Additional methods of state voter outreach include:

Voter Hotlines: Thirty-seven states (see Appendix A) provide toll-free hotlines to collect and respond to voter feedback, questions or complaints during the voting period. Four states (Florida, Kentucky, Louisiana and West Virginia) also have a hotline for reporting suspected incidents of registration and voting fraud.

Equipment Demonstrations: Half of all states are doing something to familiarize voters with the equipment they will encounter at the polling place. Twenty-five states (see state profiles) conduct voting equipment demonstrations at locations which can include state and county fairs, schools, colleges, libraries, community centers and shopping malls. Many of these efforts are focused on giving voters the opportunity to get hands-on experience with DRE and optical scan machines, but some states—such as Oklahoma—also set up preview and practice sessions for the state's vote-by-phone system. However, even viewing a walk-through of voting equipment can help; eighteen

states (see state profiles) provide voting equipment demonstration videos on their state elections website.

Direct Mailings: While all states conduct mailings to voters, seven states (Alaska, Massachusetts, New Mexico, North Carolina, Oregon, Rhode Island and Washington) and the District of Columbia reported mailing voter information guides to every household with a registered voter. In Ohio, Indiana and Kentucky, voter registration forms are included in moving packets for people who change their address with the United States Postal Service.⁷

Outdoor Advertising: Connecticut and Nevada advertise election dates and deadlines using billboards, while Indiana's election office publicizes this information through transit advertising on buses.

Workplace Partnerships: A relatively new undertaking at the state level, five states (California, Indiana, Missouri, Nevada and Rhode Island) reported voter outreach collaborations with the private sector. The California Secretary of State's office partners with businesses through its "MyVote: Democracy at Work" program to encourage the employees of participating companies to vote and serve as poll workers by placing information on paycheck inserts, sending text messages to employees and utilizing company email lists. The Nevada Secretary of State's office provides a toolkit to all state employers for use in educating workers about voter registration and participation, while the Rhode Island Secretary of State's office is hosting voter registration drives at businesses across the state as part of its "Voters in the Workplace" campaign.⁸ Missouri's program is designed to recruit new poll workers, while in Indiana, several companies which have partnered with the secretary of state's office to encourage participation have developed their own PSAs or worked to distribute information to customers, as well as employees.

Online Tools & Resources

Recognizing the power of the Internet to reach voters—particularly younger voters, who tend to be first-time voters as well—all states operate websites featuring election information such as election calendars, voter registration applications, voting instructions, elected official lookups, absentee voting materials and educational videos.

Thanks in large part to the establishment of statewide voter registration databases under HAVA, more

states than ever before are using their websites to communicate registration information to the public. In the majority of states, web users can now look up the status of their voter registration, find their polling place location, contact a local election official with questions or download a sample ballot or a voter registration form.

Two states, Arizona and Washington, allow eligible voters to register to vote online, while Delaware and the District of Columbia offer online registration wizards designed to reduce errors by helping voters fill out their forms for mailing. Still other states, such as Maine, Michigan, Minnesota and West Virginia, offer "candidate finder" features which enable interested visitors to search for information on candidates and elected officials, including searches by voting district.

In general, NASS survey responses show that states are offering the following online tools:

Polling Place Locators: In forty-three states and the District of Columbia (see Appendix B), voters can go online to find out where to vote. Additionally, a number of states such as Delaware, Michigan, Missouri, Pennsylvania and Washington have integrated their online polling place locators with Google or other GPS-based technologies to provide maps to polling place or ballot drop box locations and driving directions.

Voter Registration Lookups: Thirty-two states plus the District of Columbia (see Appendix B)—offer online voter registration lookups designed to help voters check their registration status and update their information, if necessary (North Dakota does not require voter registration). State election officials are paying particular care to urge voters, particularly those who have not voted in recent years, to use these registration lookups to confirm that they are registered at their current address.

Sample Ballots: Twenty-three states (see Appendix B) provide voters with an online sample ballot. This service enables voters to familiarize themselves with the layout of the ballot and to read, study, print—and even mark up a copy—which they can bring to the polls when they vote.

Absentee and Provisional Ballots: Sixteen states and the District of Columbia (see Appendix B) offer an online provisional ballot tracking tool, which enables voters to see if their ballot has been counted. Meanwhile, six states (Alaska⁵, Kansas, New Mexico, North Carolina, North Dakota and Rhode Island) allow voters to check the status of their absentee ballot using the Internet.

Online Voter Registration: As previously mentioned, two states—Arizona and Washington—currently offer online voter registration services. According to officials in those states, these tools provide convenience to voters, reduce paper and cut down on processing time for election officials, who don't have to try and decipher illegible writing or try to process incomplete forms.

Online Election Complaint Forms: Seventeen states now make their standard HAVA-mandated election complaint forms available online.

Targeted Outreach for Young Voters & Other Groups

A number of secretary of state offices and state election boards are choosing to conduct proactive outreach to specific communities of citizens, often with the goal of aiding populations which have been traditionally underrepresented among state voters or those which are guaranteed additional protections under federal and state law. Groups being targeted by state election offices in 2008 include young voters, elderly and disabled voters, military and overseas voters and alternative language voters.

Young Voters

To encourage youth voting and participation in his state for 2008, Washington Secretary of State Sam Reed launched a social media campaign called, "I Will Vote," a photo-sharing initiative which lets people post photos of themselves holding "I Will Vote" signs, rank each others' photos, search for submission by zip code and name or invite friends to participate. So far, it's been very popular with young Washingtonians, who have made such declarations on their bedroom walls, in their workplaces and even underwater.

Reed's program comes at a time when young voter participation rates are surging across the nation. Compared to 2000, turnout among 18-24 year-old voters nearly doubled in the 2008 presidential primaries.¹⁰ Recognizing that this is a particularly mobile demographic with many first-time voters, officials say it's important to educate them on the process from state to state.

In a May 2008 survey, 68 percent of states reported conducting outreach directed specifically at young voters.¹¹ Methods include mock elections, public service announcements, direct mailings, instructional videos, informational pamphlets/brochures, partnerships with nonprofits and state universities, and classroom or campus demonstrations/presentations.

Not surprisingly, states are using the online outreach to reach this Internet-savvy generation. Half of all state websites now contain pages devoted to assisting young voters, while Missouri, Nevada and Vermont offer separate sites for this audience. More than a third of these pages now provide specific guidance for college students who wish to register and vote using a dormitory address as their primary residence (Vermont residents can download a detailed College Voters Guide for help as well).¹²

There has been marked growth in state election office use of social networking and videosharing sites such as MySpace, Facebook, YouTube and Twitter to reach eligible young voters. A dozen states (Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Maryland, Missouri, Nevada, South Carolina, Washington and West Virginia) now provide election information via pages or files posted to one or more of these sites.

Additional state youth voter outreach efforts include:

Birthday Voter Mailings: Five states (Arizona, California, Michigan, Missouri and Washington) mail "Happy 18th Birthday" cards with voter registration applications to 18 year-olds who have registered with the state motor vehicle division.

High School & College Programs: Eighteen states conduct outreach at schools or campuses, with Oregon law now requiring such outreach at state colleges. The Rhode Island Secretary of State's 2008 statewide voter registration initiative is geared towards visiting every high school in the state to register as many eligible voters as possible before November. Ohio's Grads Vote 2008 program includes voter registration packets along with the diplomas awarded to graduating high school seniors. The Arkansas Secretary of State's office annually hosts a young voter education program that includes a mock election, a discussion of civil and voting rights in America and opportunities for eligible students to register and vote at the conclusion of the program.

Michigan's Department of State has its own voter registration van that travels to college campuses throughout the state and offers nonpartisan voter registration services to students, while Nebraska's Secretary of State established a College Student Advisory Board to review and discuss voting issues related to college students. Indiana and Michigan work with colleges to distribute voting information to students through college email systems, while Washington has a College Civics Program, which partners with state colleges and universities to encourage voter registration and participation.

Elderly & Disabled Voters

Under federal laws such as HAVA, the Voting Rights Act and the Americans with Disabilities Act, states are required to provide polling place accessibility and options for all voters who seek to vote privately and independently. Some state offices are involved in a variety of additional efforts designed specifically to assist elderly voters and voters with disabilities with the voting process. Through this outreach work, which includes attempts to focus on residents in senior residential or assisted care facilities, officials can help make such voters aware of accessible routes into polling places, accessible parking areas or transportation offerings, alternative voting options (such as vote-by-mail or permanent absentee voting), large-print ballots and the availability of assistive devices and resources, such as interpreters, auxiliary aids, Braille materials and listening devices.

For 2008, the Vermont Secretary of State's office has introduced a mobile polling project aimed at assisting voters with physical and cognitive impairments. As part of this initiative, trained election workers are bringing ballots to residential care facilities prior to the general election to enable eligible residents to register and vote. Residents who cannot vote independently are being offered assistance from bipartisan pairs of election workers who have been trained to work with elderly voters, and in particular, voters who may have some cognitive impairment. The state hopes to test and measure the success of this pilot program for use in other places.

Other state initiatives for the general election include:

Instructional Materials: Four states (California, Michigan, Minnesota and Washington) provide voting instructions in alternative formats which are designed for senior or disabled voters, while another three states (Michigan, Minnesota and North Dakota) have created and distributed instructional videos for voters with disabilities.

Equipment Demonstrations: Two states (Iowa and Wyoming) have put together voting equipment demonstrations for disability organizations. The New York State Board of Elections unveiled a new online voter education initiative, www.vote-ny.com, to help disabled voters learn more about the ballot marking equipment that is available in their polling place and how it is used.

Statewide Partnerships: Five states (Delaware, Idaho, Iowa, Michigan and New Hampshire) have established special outreach partnerships with advocacy groups for the disabled. Alabama has a new statewide partnership with the Veterans of Foreign Wars (VFW) to help reach voters and recruit poll workers. Virginia's State Board of Elections has partnered with the Virginia State

Hospital Association and the Virginia Nursing Home Association to reach disabled and senior voters who may need to update their registration information or vote absentee.

Vote by Phone: Five states (Connecticut, Maine, Oklahoma, New Hampshire and Vermont) currently offer vote-by-phone systems to permit voters with disabilities, the elderly and others to vote privately and independently at polling places. These systems allow voters to use the telephone keypad to mark a paper ballot, which is then printed out in an election office to be counted with the rest of the ballots on Election Day. Officials say it has great potential for older and disabled voters who cannot privately and independently mark a paper ballot without technological assistance.

In keeping with this idea, Oregon has introduced an alternative format ballot for individuals with disabilities that can be read and marked by voters using their home computers.

Transportation Assistance: Minnesota is publicizing a partnership with Target Corporation to provide special transportation to take voters with disabilities to the polls on Election Day.¹³

Military and Overseas Voters

According to the U.S. Election Assistance Commission, less than a million of the six million eligible U.S. military and overseas voters were able to participate in the 2006 election.¹⁴ For many of those who did not get to vote or have their vote counted, the issue was one of getting the ballot to the voter and then returning it to the proper local election office by the deadline.

As a result, states are focusing on practical ways to engage this voting bloc this year by expediting the delivery and return of their ballots. An overwhelming majority of the states currently accept ballot requests via phone, facsimile or email.¹⁵ While most states still require that a voted ballot must be returned in its original form with a valid signature, twenty states now allow voters to receive a blank ballot by email, and 11 states allow voters to return the voted ballot by email.¹⁶

The majority of states also have a webpage specifically devoted to assisting military and overseas voters with ballot transmission and other issues (including information on requesting an absentee ballot, contacting their local election office, finding candidate information, and getting help with downloading and filling out a Federal Write-In Absentee Ballot), but a few states are doing more. The Alabama Secretary of State's office has created a statewide task force that is studying military and overseas voting issues, including the possibility of implementing Internet voting for Alabama servicemen and women.¹⁷

Additional state outreach initiatives designed to assist military voters include:

Online Voter Registration: Five states (Alabama, Kentucky, Minnesota, Ohio and West Virginia) are partnered with the nonpartisan Overseas Vote Foundation to provide an online tool that helps military and overseas citizens complete a voter registration/absentee ballot request form according to state-specific requirements. The site also minimizes user error and provides instructions for where/how to submit the form.¹⁸

Online Ballot Submission: Six states (Arkansas, Iowa, Kentucky, Pennsylvania, South Dakota and West Virginia) have agreed to participate in a U.S. Federal Voting Assistance Program initiative that provides military and overseas voters with the capability to electronically submit a voter registration/absentee ballot request form to their local election office through a secure server. The program also provides the capability to electronically receive the blank ballot from the local election official through the secure server.¹⁹

Military/Overseas Voters Guides: Georgia, Indiana, Minnesota and Oregon provide a downloadable Military/Overseas Voters' Guide to all eligible voters. These guides are geared towards assisting voters navigate the process of requesting and returning an absentee ballot.

Alternative Language Voters

State efforts to assist voters in this bloc include translating voting materials into alternative languages, providing voting information and assistance at naturalization ceremonies (Connecticut, Michigan and Rhode Island) and targeting announcements to communities of historically underrepresented voters (Florida, Michigan, Minnesota, New Mexico and Pennsylvania).

A number of states have dedicated outreach programs for alternative language speakers. Montana and South Dakota, for example, are working with counties to provide interpreters for Native American voters who seek assistance (New Mexico also conducts extensive outreach to Native American populations). Meanwhile, Connecticut is hoping to register 10,000 new Latino voters for the 2008 general election through its recently-launched ¡Tu Voto Si Cuenta! campaign, which includes ten cities with significant Latino populations. And North Carolina's State Board of Elections has a staffer whose job duties include outreach to Latino voters.

To serve their diverse populations of voters, a number of state election offices have also translated their Web sites and voters' guides into multiple languages. For example, Pennsylvania's voter education Web

site is now available in seven different languages, Washington's elections Web site is available in three languages, and Arizona's elections Web site is available in Spanish. New Mexico and Pennsylvania have made their voters' guides available in both English and Spanish.

Convenience Voting

More than thirty states currently allow some form of early voting, which is defined as any voting that occurs prior to Election Day for which there are no eligibility requirements. Given the potential for high turnout on November 4, voting opportunities that allow eligible voters to avoid crowds at the polls will certainly be attractive to any number of voters.

According to the *Associated Press*, up to a third of all eligible voters could end up casting their vote for president in a non-traditional way this year—using absentee ballots, voting at home by mail or casting votes at a polling place in the weeks leading up to the election²⁰. Some secretaries of state and state election directors are actively encouraging eligible voters to consider using absentee ballots or other convenience options to help curb the potential for rushes at the polls.

State convenience voting options include:

Same-Day-Registration: Eight states now offer same-day registration (Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming), and three states—Alaska, Connecticut and Rhode Island—offer Election Day registration for those who want to vote for president.²¹ North Carolina also has same-day registration during their early voting period, but not on Election Day. North Dakota is the only state with no voter registration requirement altogether.

Vote-by-Mail: Seven states have jurisdictions where mail is the primary method of voting – all voters receive and return their ballots by U.S. mail and there is no use of traditional polling places. Of these states, Oregon is entirely vote-by-mail, and 37 of Washington's 39 counties are entirely vote-by-mail. California, one of several states that have established a "permanent vote by mail" option for some classes of eligible voters, also has two counties using vote-by-mail this year.

Early/In-Person Absentee Voting: Thirty-two states (see Appendix D) allow in-person, absentee voting before the election without an excuse (also called early or advance voting), and twenty eight states allow absentee voting by mail with no excuse.²² These options provide convenience to voters and can help reduce long lines at the polls on Election Day.

A few states are trying to encourage voters to consider this option. At least one state—Tennessee—is urging localities to extend their hours for early voting.²³ And in Ohio, election officials in more than twenty counties are proactively mailing absentee ballot request forms to registered voters, hoping they will take advantage of the state's no-excuse absentee voting law.²⁴

Permanent Absentee Voting: In the name of flexibility and cost-effectiveness for government, voters who are permanently unable to vote in-person on Election Day may apply for permanent absentee voting status (also referred to as "permanent vote by mail" in some states). With the addition of Colorado to the list this year, at least sixteen states now permit this kind of voting.²⁵

Vote Centers: (See Polling Place Efficiency in the next section.)

Polling Place Operations

Given the high turnout in the primaries and the large volume of new voter registrations in many states this year, state and local election officials are focusing on preventing lines with long wait times and improving efficiency measures at polling places on November 4. Although polling place management is largely a function of local government, state officials want to help county clerks and registrars identify and resolve administrative issues that could directly impact voters at the polls well in advance of Election Day. The goal is to focus on sound planning practices that anticipate heavy turnout and related personnel needs.

One of the most critical areas of this process is recruiting and training poll workers. The United States Election Assistance Commission estimates that nearly two million poll workers are needed to staff the nation's 200,000 polling places for the 2008 presidential election.²⁶ To help make the process run smoothly on Election Day, states are turning to new recruiting sources, including high schools, colleges and workplaces. Attracting and retaining bilingual poll workers is a key part of this outreach.

In preparing for this year's election cycle, a number of states have taken steps to enhance the consistency of their poll worker training process. This includes providing localities with additional resources for training and developing new approaches, such as statewide train-the-trainer conferences, online training and video refresher options.

New or updated efficiency measures such as polling place locators, electronic poll books, vote centers and voter feedback forms are being used to enhance the Election Day experience by streamlining polling place

management practices and allowing voters to let state election offices know about the quality of their polling place experience.

Finally, the scope of state contingency planning has been broadened to include a variety of election administration challenges, including ballot shortages and polling place wait times.

Poll Worker Recruitment and Training

States are working to help local jurisdictions meet the need for well-trained poll workers through a variety of initiatives. Five states (Arizona, Arkansas, Florida, Missouri and Montana) are supplying local jurisdictions with significant funding, including grants and reimbursements, to recruit and train poll workers. One of these states, Missouri, is making \$2,000,000 in grants available to local election authorities to pay for approximately 3,600 new poll workers who are being recruited and trained for November.

The District of Columbia has joined five states (Arkansas, Indiana, Missouri, New Jersey and New York) in offering split-shift options for polling place volunteers, which can attract additional workers who might not be interested in or able to work the long hours often required.

Meanwhile, the Arizona Secretary of State's office established its Poll Worker Recruitment (PWR) Teams in July of this year to help avoid a shortfall in volunteers. This grassroots marketing effort deploys poll worker recruitment teams to malls throughout the state with start-of-the-art equipment designed to educate residents on how they can get involved with working at the polls this election season.

Other state poll worker recruitment efforts identified by NASS include:

Student Poll Workers: Eighty-one percent of states that responded to the 2008 NASS New Millennium Survey permit sixteen and seventeen year-olds to serve as poll workers or Election Day volunteers, with many of them offering young people the same pay as regular volunteers.¹⁷ Seven states (see state profiles) have outreach programs specifically designed to recruit high school and college students to serve as poll workers.

For this year, California, Maryland, New York and Ohio have even placed links or poll worker recruitment postings on sites that are popular with young people, such as Craig's List and MySpaceJobs.com.

Bilingual Poll Workers: While bilingual poll workers, ballots and other forms of language assistance are required for certain jurisdictions under federal law, a few states are voluntarily

trying to boost their numbers. Pennsylvania's 2008 voter registration application includes a checkbox for applicants who are willing to serve as bilingual interpreters on Election Day. Other states, such as Connecticut and Colorado, are seeking to recruit multilingual election volunteers by working in consultation with community organizations and ethnic media. Some California counties are even offering additional stipends to those who sign up to serve as bilingual poll workers.

In Texas, a state which is required by law to provide election materials in Spanish, the state elections office has urged local clerks to conduct targeted recruiting drives and contact schools to find eligible high school seniors to volunteer as bilingual election clerks.²⁸

Private Sector Recruitment: A handful of states (see profiles) are finding that corporate and nonprofit organizations can be very responsive to partnerships in recruiting poll workers and nonpartisan phone bank operators. Under Arizona's Corporate Challenge Program, many of the state's major employers—including Arizona State University, Wal-Mart, Target and Qwest—are giving employees a day off (sometimes with pay) to serve as poll workers. California's MyVote Democracy at Work project also works with companies to sign up employees as poll workers, as does Missouri's "It's Your Turn. Be a Poll Worker" initiative. A recent change in North Dakota law is boosting that state's supply of tech-savvy poll workers, due in large part to a recruiting push by local businesses.

State Employee Outreach: Delaware's State Board of Elections and the Indiana Secretary of State's office send out mass emails encouraging state employees to serve as poll workers and Maryland's State Board of Elections posts poll worker announcements on state employment websites. Colorado and West Virginia also encourage state employees to sign up as poll workers.

Training and Materials: For 2008, consistency is a big part of state poll worker training efforts. After all, it is these volunteers who interface with voters and guide them through the voting process. New research shows that positive interactions with poll workers can give voters more confidence in the process and make them feel better about their experience.²⁹

Thirty-two states provide educational assistance in training poll workers. These efforts include conducting train-the-trainer sessions with local election officials, hosting statewide training conferences, producing poll worker training videos, developing poll worker procedure manuals and forging new partnership to enhance procedures.

Examples include:

- The California Secretary of State's office has established a Task Force on Uniform Poll Worker Training Standards to provide recommendations and to ensure that all of the state's poll workers are properly trained in administering voting, handling emergencies and properly using their county's election equipment.
- Minnesota has prepared a detailed procedures guide and a training video for all counties.
- Delaware trains poll workers in a college setting and requires hand-on equipment walkthroughs.
- Iowa hosts a three-day poll worker certification program which is held in each jurisdiction across the state.
- The Vermont Secretary of State's office conducts more than 15 regional training sessions for local election officials throughout the state and conducts additional training upon request.
- Maryland now requires that all returning poll workers receive refresher training prior to the general election.
- Missouri has partnered with the Truman School at the University of Missouri to provide training and educational materials to local election authorities.

Additionally, six states (New Hampshire, New York, North Carolina, Ohio, South Carolina and Texas) and several counties in both California and Florida provide online poll worker training. These supplemental programs provide a uniform and convenient way of training workers on polling place procedures.

Polling Place Efficiency

States are taking steps to help increase polling place efficiency and to minimize the potential for problems and delays. One aspect of this work is ensuring that polling places are adequately staffed and volunteers are well-prepared to assist voters, as mentioned above. Another aspect includes various elements that can impact voter satisfaction, including the time it takes to check in at the polls and cast a ballot. At least one state, California, began encouraging researchers from a state university to conduct research on polling place efficiency and voter wait times during the 2008 presidential primary.³⁰

Technology is once again playing a large role in state efforts. From online polling place locators to electronic poll books, tools which can speed up waiting times at the polls and make the work of local

administrators less challenging. Some examples in this area include:

Polling Place Locators: As previously mentioned (see page 10), forty states offer online polling place locators to assist voters in finding their local polling place.

Electronic Poll Books: Twenty-two states (see Appendix D) currently allow local jurisdictions to use electronic poll books, which substitute for paper voter registration rosters and allow poll workers to more quickly and accurately access voter registration information. With these tools, poll workers can help direct voters to their correct precinct if they happen to end up at the wrong one, and they can use electronic poll books to help voters waiting in line confirm that they are in the right spot.

Vote Centers: Nine states (California, Colorado, Indiana, Iowa, Kansas, New Mexico, North Dakota, Texas, and Washington) are using vote centers in 2008.²¹ This relatively new model for establishing voting sites, pioneered in 2003 by Larimer County, Colorado, does away with traditional polling places and allows voters to receive and cast a ballot in one of a number of locations near their home or workplace. For example, Larimer County's 143 precincts have been consolidated into 22 vote centers, which are located in schools, libraries, hotels, churches, shopping centers and government buildings. Voters have the option of choosing any of these locations for casting their ballot, and there is no need to find an assigned polling place.²²

Voter Feedback Options: In addition to 1-800 hotlines that voters can use to get answers to questions or report suspicious election-related incidents, some states have set up hotlines to collect voter feedback. Ohio and West Virginia provide online feedback mechanisms where voters can submit election questions and provide comments about their voting experience, while Georgia provides an online mechanism for submitting election complaints.

Contingency Planning

With the potential for a tidal wave of voters to literally flood the polls, contingency planning is more important than ever this year. While this is another area where much of the execution is usually done at the local level, secretaries of state are broadening the coordination of weather-related and security response plans to assist with solutions to potential Election Day issues, including ballot shortages, equipment problems, long lines and poll worker shortages.

For example, the Ohio Secretary of State's office recently issued a directive for DRE precincts to provide back-up paper ballots in an amount equal to 25 percent of the precinct turnout in 2004.²³ The state is also producing posters to be displayed in polling sites where DREs are used for the purpose of informing voters that they can choose to vote using paper ballots if they do not want to wait in line to use touch-screen voting machines.²⁴

In general, more than half of all state election offices say they assist with contingency planning by sending election preparedness communications to county election administrators advising them on potential areas of concern, such as establishing alternative polling sites and reviewing ballot supplies. Others have put together contingency plans or planning templates at the state level²⁵, while Maryland is working with local election officials to develop election contingency plans and coordinating conference calls between election officials and emergency management officials to discuss emergency preparedness. Colorado has even prepared a best practices guide designed to assist local officials with contingency planning.

Still others are trying unique approaches to dealing with problems that may arise. In Nevada, for example, a newly-established task force will serve as a centralized Election Day command center for the secretary of state's office, the attorney general's office and various federal and state law enforcement agencies to track polling place issues, share information with local election officials, deploy investigative personnel where necessary, and respond to problems as they occur. For example, if there are long lines or equipment failures in Clark County—where the state's most populous city of Las Vegas is located—officials can easily respond by setting up ADA-accessible, mobile trailers that can be used as temporary or permanent polling sites.

In similar fashion, the New Jersey Secretary of State's office has made plans to deploy a "mobile voting unit" with the assistance of New Jersey Transit, in the event that such a need arises.

In addition to natural disasters and security threats, two of the most common state-focused contingency planning issues include:

Ballot Supplies and Equipment Issues: While most states report they are taking steps to address equipment breakdowns or to provide an adequate supply of ballots at the polls, some are employing new or unique methods for making sure these problems can be addressed quickly and with a minimum of confusion. In the District of Columbia, Kansas, Missouri and Virginia, election officials are either increasing the number of ballots they order or encouraging localities to do so in

anticipation of high voter turnout in November. Virginia is also working on a policy for expedited printing of ballots if shortages arise on Election Day. Delaware keeps Election Day technicians on the road in designated areas so they are never far from a polling place in the event of a voting machine failure, and this year, all polling places will have an immediate backup machine to use until assistance arrives. Meanwhile, 17 states using DRE, touch-screen technology as their primary voting systems provide paper ballots in the event of equipment failure (see Appendix D).

Polling Place Wait Times: In addition to urging voters to be prepared in advance by verifying their registration status, reviewing the ballot and familiarizing themselves with voting equipment, states want to provide assistance to local election offices faced with heavy turnout or poll worker shortages, both of which can exacerbate polling place wait times. Arizona's state election office recently created a Polling Place Wait Time Reduction procedure, which is designed to limit voter waiting times. Electronic poll books (see page 20) and the use of polling place greeters are also helping to streamline polling place waiting times and provide customer service to voters.

Election Results

State responses to the NASS survey on state preparations for the 2008 presidential election highlighted a vigorous effort to harness Internet technologies for providing the public with up-to-the-minute election results on state election office websites. Additionally, states are working to ensure the accuracy and reliability of those results through post-election audits and post-election assessment reports.

Results Reporting

States are making it easier for campaigns, interested citizens and the news media to monitor election night results. Once the polls close, thirty-eight states now provide election night results on the state election Web sites as they come into the state office (see Appendix B).

The most interesting new feature is election mapping, which uses Internet mapping applications to compliment the publication of election results. Using these systems, visitors have the ability to immediately view election results as they are received by the state office and they can more easily view and analyze them with the help of district maps and other visual representations of the formerly text-based data. Missouri's Election Night Reporting website, unveiled for its 2008 presidential primary, is considered

one of the leading examples of this kind of effort.

Post-Election Audits and Reports

Twenty-three states currently have laws in place for post-election audits.²⁶ Election officials in these states add that such practices, in addition to promoting transparency in the process, can lead to greater public confidence that votes are counted accurately and fairly. Post-election verification processes also allow officials to identify errors and set benchmarks for future performance.

The subject of post-election audits has become a major topic in many states this year. California assembled a Post-Election Audit Standards Working Group that has since provided recommendations to improve the state's voting system review process. New Jersey adopted a new law this year with stringent guidelines for post-election audits, while Missouri recently revised its procedures to include more precincts in its process. Kentucky announced plans to conduct a post-election audit of six counties chosen from a random drawing, while Ohio has already piloted a post-election audit project in 11 counties following its March presidential primary.

Nearly half the states that conduct post-election audits do so in randomly selected precincts by comparing a manual hand count of the votes with the machine tabulated results to verify that the machines are accurate. In Minnesota for example, an audit discrepancy of more than .5 percent triggers the review of additional precincts.²⁷

Meanwhile, at least three states (Indiana, Missouri and Ohio) will compile post-election assessment reports to evaluate and summarize the 2008 election experience. Indiana intends to review and analyze administrative issues such as voter ID, voting machines, polling place operations and the statewide voter registration system.²⁸ Likewise, Missouri's post-election examination includes a review of the process with recommendations for future elections.²⁹

Conclusion

State efforts to serve and assist this year's highly-energized and engaged electorate are largely directed at three areas of outreach: voter participation, polling place operations and post-election reporting and assessments. The underlying goal of all initiatives which fall under these facets of election administration is to ensure that eligible voters will have a positive voting experience and a process that is fair, accurate, accessible and secure with reliable results.

This report, based upon responses to a recent NASS survey and other related resources—including state election office websites—gives an overview of what states are doing to prepare voters, local election officials and poll workers for the 2008 presidential election. Voter participation outreach efforts focused on public education campaigns, targeted outreach for young voters and other groups, online tools and resources and convenience voting are all part of the equation.

Assisting localities with polling place operations is another major area of state outreach, including poll worker recruitment and training, polling place efficiency measures and contingency planning. In a year when many states could experience record-setting turnout on Election Day, preparing election officials and poll workers to deal with any problems that arise could be the key to delivering a positive voting experience at the polls.

Finally, the dissemination and review of election results through election night reporting features and post-election assessments are aimed at boosting transparency in the process and maintaining public confidence in the outcome of elections.

While no one truly yet knows what November 4th will bring, state election officials who are making these issues their highest priority between now and Election Day are excited, confident and prepared to make the voting process a success.

State Profiles



Registered Voters:	2,793,100 (as of June 30, 2008)
Voter Registration Deadline:	October 24, 2008
Voter Hotline:	1-800-247-VOTE (8683)
Polling Place Hours:	7:00 AM - 7:00 PM
Online Resources:	State Elections Website: www.AlabamaVotes.gov/ Polling Place Search: https://myinfo.AlabamaVotes.gov/ Provisional Ballot Status: https://myinfo.AlabamaVotes.gov/

VOTER EDUCATION & OUTREACH

- Alabama will air general public service announcements (PSAs) on TV and radio for the November 2008 general election. The PSAs will be geared towards educating the public about registration deadlines and voting machines, as well as encouraging citizens to vote.
- The Alabama Secretary of State website, in partnership with Overseas Vote Foundation, provides an automated tool that assists military and overseas voters in completing a voter registration/ballot request form.

STATE POLL WORKER RECRUITMENT & TRAINING

- Alabama has established a partnership with the state Veterans of Foreign Wars (VFW) organization to encourage veterans to volunteer as poll workers.

VOTING EQUIPMENT

- Alabama polling places use optical scan tabulators and AutoMARK ballot markers.
- In addition to accuracy testing and public demonstrations, voting equipment instructional videos are available on the Alabama elections website.

2008 ELECTION RESULTS

- Election results will be posted to the state Website after the election at: <http://www.sos.alabama.gov/Elections/ElectionResults.aspx>
- Alabama is currently designing a real-time reporting function for future elections.



ALASKA

Registered Voters:	476,472 (as of July 7, 2008)
Voter Registration Deadline:	October 3, 2008
Polling Place Hours:	7:00 AM - 8:00 PM
Early Voting Period:	Eligible voters may vote early without excuse by absentee ballot or in person beginning 15 days before the election
Voter Hotline:	1-888-465-5857 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.elections.alaska.gov Polling Place Locator: www.elections.alaska.gov/polling.php Sample Ballot(s): www.elections.alaska.gov/ Absentee Ballot Status: http://webapp.state.ak.us/elections/voterstatus.jsp

VOTER EDUCATION & OUTREACH

- Alaska provides a voter hotline (see above) for public feedback and input.
- Voting information is translated into Tagalog. A Yup'ik sample ballot is available for election workers to use while providing assistance to voters.
- Voting information is provided in the "Official Election Pamphlet," which is mailed to every registered voter household and posted on the state elections Web site (see above).

STATE POLL WORKER RECRUITMENT & TRAINING

- The elections division has been actively recruiting poll workers since April 2008, with a target goal of 4-6 poll workers per precinct for Election Day in November 2008.
- The state's Youth Vote Ambassador Program is dedicated to recruiting high school students at least 16 years of age to serve as poll workers.

VOTING EQUIPMENT

- Alaska uses optical scan and touch-screen machines with voter verifiable paper trail.
- All precincts will have a touch-screen voting unit. Some precincts will also have optical scan tabulators.

VOTING DEMOS & OUTREACH

- The state conducts logic and accuracy testing prior to each election. The voting equipment is used during election board worker training.
- The state provides demonstrations to disability organizations upon request.

2008 ELECTION RESULTS

- Results posted online every 30 minutes at:
<http://www.elections.alaska.gov/8genr>



Arizona

Registered Voters:	2,734,108 (as of June 1, 2008)
Voter Registration Deadline:	October 6 th , 2008
Polling Place Hours:	6:00AM-7:00PM
Voter Hotline:	1-877-THE-VOTE for feedback, questions & complaints during the voting period
Early Voting Period:	In person, no-excuse early voting begins 33 days before the election
Online Resources:	State Elections Website: www.azsos.gov/election/ Polling Place Lookup: www.azsos.gov/election/polling_place.htm Voter Registration Lookup: servicearizona.com/webapp/evoter Online Voter Registration: servicearizona.com/webapp/evoter Election Complaint Form: http://www.azsos.gov/election/grievance/grievance.htm

VOTER EDUCATION & OUTREACH

- The voter outreach office conducts nonpartisan voter registration drives throughout the state and holds Midnight Voter Registration Drives on the day prior to a registration deadline. The state also offers an extensive "voter ID at the polls" media campaign, which includes TV and radio commercials, as well as news releases emphasizing registration deadlines.
- The Secretary of State's office will host a statewide series of town hall meetings to present ballot measure information and to educate voters for the November 4th General Election. Town hall presentations will be made available for broadcast and on-demand viewing on YouTube and the Secretary of State's website.
- The state mails a Happy 18th Birthday Card that includes an Arizona voter registration form to 18 year-olds who are registered with the Arizona Motor Vehicle Division.
- The state participates in the National Student/Parent Mock Election and Kids Voting programs. The Secretary of State also partners with the World Wrestling Foundation to conduct voter outreach on high school campuses.
- The Secretary of State website provides voting information in Spanish, as well as a live link to county tabulation centers, a direct contact link to county election officials, a dedicated voter information link and information specifically for military and overseas voters.

POLL WORKER RECRUITMENT & TRAINING

- The Secretary of State has a corporate challenge program, where participating companies encourage employees to become poll workers. Promotional venues include company websites, meetings and payroll check inserts. Companies are also asked to accommodate employees who take the day off to serve at the polls.
- A statewide public outreach campaign aimed at recruiting poll workers will be broadcast on the Web, as well as via TV, radio and print media. The Secretary of State's office will also partner with a local cable company to provide on-demand poll worker recruitment videos.
- Poll Worker Recruitment (PWR) Teams will go to shopping malls/centers to educate Arizona residents on how they can get paid and become a part of history by working the polls this election season. PWR Team members will have digital content monitors perched on their backs with information on the qualifications for becoming a poll worker.



Arizona

- The Secretary of State has provided extra funding for counties to create and purchase additional training materials. State and county election offices will team together to add special training classes, presentation tools and equipment, new training videos and other educational materials for poll workers.

VOTING EQUIPMENT & DEMOS

- Arizona uses optical scan tabulators, DRE machines with voter verifiable paper trail and AutoMARK ballot markers.
- Voting equipment logic and accuracy testing performed before all elections and is open to the public.
- Arizona provides online equipment demonstrations on the state elections website.

E-POLL BOOKS

- Arizona allows local jurisdictions to use electronic poll books.

ELECTION DAY CONTINGENCY PLANS

- The Secretary of State's office recently promulgated a Polling Place Wait Time Reduction procedure. The office is also addressing the potential poll worker shortage through a three-pronged poll worker recruitment plan.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at: www.azsos.gov.



Arkansas

Registered Voters:	1,608,533
Voter Registration Deadline:	October 6, 2008
Polling Place Hours:	7:30 AM - 7:30 PM
Early Voting Period:	In person, no-excuse early voting begins 15 days prior to the election and ends at 5:00 PM on the Monday prior to the election.
Voter Hotline:	1-800-247-3312 for feedback, questions & complaints during the voting period
Online Resources:	State Elections Website: www.sosweb.state.ar.us/elections.html Voter Education: www.votenaturally.org Voter Registration Lookup: www.voterview.ar-nova.org/

VOTER EDUCATION & OUTREACH

- Arkansas provides a voter hotline (see above), as well as an online voter education website called "Vote Naturally" (see above), which provides basic, easy-to-understand information on elections.
- The state's outreach coordinator travels the state educating the public on the registration and voting process, candidate information and resources, and the types of county voting systems.
- The Secretary of State hosts a young voter education program in the spring and the fall. It includes a mock election, a review of the history of voting rights in America, information on the state's high school poll worker programs and a discussion on civil rights. Eligible students can register to vote before the end of the program.

POLL WORKER RECRUITMENT & TRAINING

- The Secretary of State's office is developing a brochure of guidelines for recruiting county recruiting of poll workers. Several counties are also working with local civic organizations and colleges in their area to recruit new poll workers, while others are work with local fire departments to get equipment delivered to polling locations and set up properly.
- The state is providing reimbursement to counties for poll worker training expenses. The state also holds annual refresher course trainings for the election officials in each county.

VOTING EQUIPMENT

- Arkansas uses optical scan, DRE with voter verifiable paper trail and DRE without VVPAT.
- Arkansas requires back-up paper ballots to be used in case of emergency (e.g., equipment failure).

VOTING EQUIPMENT DEMOS AND OUTREACH

- Elections staffers travel the state conducting demonstrations of the /Votronic voting system at high schools and college campuses, churches, civic organization meetings, corporate meetings, libraries, political rallies and many other locations.
- Arkansas requires back-up paper ballots in the event of emergency (i.e., equipment failure).

2008 ELECTION RESULTS

- Results will be posted at: www.arselections.org/index.php?l=1 as they come into the state office.



California

Registered Voters:	16,171,772 (as of September 5, 2008)
Voter Registration Deadline:	October 20, 2008
Polling Place Hours:	7:00 AM - 8:00 PM
Early Voting Period:	In person, early voting begins 29 days prior to the election
Voter Hotline:	1-800-345-8683 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Web site: www.sos.ca.gov/elections/ County Polling Place Lookup: www.sos.ca.gov/election/election_ppl.htm State Voter Information Guide: www.voterguide.sos.ca.gov Election Night Results: http://vote.sos.ca.gov

VOTER REGISTRATION EFFORTS

- California provides a voter hotline (see above).
- The California Secretary of State's website provides access to a printable federal voter registration form which voters can fill out, sign, and mail in to the appropriately pre-addressed county elections official. Alternatively, voters may submit information online and receive a pre-printed California Voter Registration Card (VRC) in the mail, which they can sign and send in.
- A Voter Registration Guide is provided for first-time voters and distributed to high schools/colleges.
- 18th birthday cards and a VRC are mailed to citizens celebrating their 18th birthday (and eligible to vote). Similarly, graduation cards with VRCs are provided to high school seniors and new citizens are also sent VRCs.

VOTER EDUCATION & OUTREACH ACTIVITIES

- The state coordinates with counties/localities on voter registration and education efforts. Activities include high school mock elections, citizenship presentations/resources, speakers and civics curriculum materials for schools.
- The state provides services to voters who require assistance in Chinese, Japanese, Korean, Spanish, Tagalog and Vietnamese. Some of these services include multilingual voter registration telephone hotlines and translated election materials.
- The Voter Information Guide is available online and in Chinese, Japanese, Korean, Spanish, Tagalog and Vietnamese as well as in audio and large print format. Additional voter outreach materials are available and sent in mass mailings in the weeks leading up to Election Day.
- The Secretary of State website, http://www.sos.ca.gov/elections/elections_dis.htm, provides information for voters with disabilities, including a Know Your Voting Rights brochure available online or on DVD in Spanish and American Sign Language.
- The Secretary of State is coordinating with the California Department of Veterans Affairs (CDVA) to offer voter registration and education outreach to members of the military and their families. These efforts include providing inserts and materials about voting in CDVA letters and other communications to tens of thousands of Californians. The Secretary of State's website also has a page with resources dedicated to military and overseas voters.
- In 2007, the Secretary of State launched a business outreach program, MyVote Democracy at Work Project, for businesses that want to encourage employees and customers to serve as poll workers, to vote and to get involved in the electoral process.



California

- Social Media/Facebook Group: The Secretary of State engages young people through various outreach efforts including social media networks. The Secretary of State created a Facebook group called MyVoice MyChoice MyVote.
- The Secretary of State created a "MyVote Election Information" button that can be placed on Internet sites that links to the Secretary of State's voter education and information page. Visitors to the page will find a voter registration card, a vote-by-mail application, answers to frequently asked questions about voting, and other useful information. The website button and instructions are on that page, or at <http://www.sos.ca.gov/elections/faq/faq.html>

POLL WORKER RECRUITMENT

- The Secretary of State's website contains a page dedicated to assisting counties with the recruitment of poll workers. <http://www.sos.ca.gov/elections/pollworker.htm> State workers who serve as poll workers receive the county stipend for serving at the polls in addition to their regular pay.
- California's state VRC asks people registering to vote if they would be willing to: 1) serve as a poll worker, or 2) provide a polling place. These questions help counties identify new poll workers and polling places.
- Some counties have an "Adopt a Poll" program, in which organizations furnish the staff for one or more polling places and poll worker stipends are paid to the organization.
- Other recruitment practices include outreach at high schools and colleges to recruit young people, including newsletters or newspaper articles targeting young people.
- California law allows eligible students to be appointed as poll workers on Election Day. In order to be eligible, students must be: A United States citizen; At least 16 years of age at the time of the election in which he or she will be serving; A high school student with a grade point average of at least 2.5 (based on a 4.0 scale); A student in good standing, attending a public or private secondary educational institution.
- The Secretary of State releases statewide media news releases to encourage Californians to participate as poll workers on Election Day.

POLL WORKER TRAINING

- The Secretary of State's Task Force on Uniform Poll Worker Training Standards provided recommendations to ensure that California's poll workers are properly trained in administering voting, handling emergencies and properly using their county's election equipment. The Task Force recommendations are also designed to provide instruction to poll workers in serving voters with a disability, or helping those who do not speak English as their primary language.
- Several counties are using online training to supplement their normal training programs. Inspectors are required to receive training before each election. All of the counties continue to offer their in-person training program, but will allow poll workers to train online if they prefer.
- The Secretary of State observes poll worker training and polling place operations on Election Day throughout the state and provides feedback to counties on how to improve and streamline poll worker training. These efforts help make serving as a poll worker a positive experience, so that poll workers are more likely to volunteer again in the future.



California

VOTING EQUIPMENT

- Most California counties rely on optical scan machines, and also use either one DRE machine with voter verifiable paper trail or one AutoMARK ballot marker per precinct in order to provide accessible voting.
- Results from the Secretary of State's Top-to-Bottom Review of voting systems conducted in 2007 resulted in restrictions on the use of certain DRE voting systems to one per precinct (to meet the requirements of HAVA). Most counties that had used all DREs in polling places have been required to switch to paper-based voting systems.

VOTE-BY-MAIL

- California has two counties (Alpine and Sierra) where all voting is done by mail. Online information and a Guide to Vote-By-Mail voting is available at http://www.sos.ca.gov/elections/elections_m.htm

VOTE CENTERS

- California law allows counties to set up and use Vote Centers for early and Election Day voting.

2008 ELECTION RESULTS

- <http://vote.sos.ca.gov/>
- Results will be posted as they come in to the state office. Before each election, adjustments are made make the election results site more user-friendly.



Colorado

Registered Voters:	2,988,736
Voter Registration Deadline:	October 6, 2008
Polling Place Hours:	7:00 AM - 7:00 PM
Early Voting Period:	In person, no-excuse early voting begins 15 days prior to the election
Online Resources:	State Elections Website: www.elections.colorado.gov Polling Place Lookup: www.sos.state.co.us/Voter Voter Registration Lookup: www.sos.state.co.us/Voter Election Complaint Form: http://www.elections.colorado.gov/DDefault.aspx?tid=1034

VOTER EDUCATION & OUTREACH ACTIVITIES

- The Colorado Secretary of State's office provides a Voter Information Guide, FAQs and laws and regulations on its website. The site also provides information for UOCAVA voters, homeless voters and voters with criminal convictions. The Colorado Secretary of State has formed an advisory task force for both individuals with disabilities and UOCAVA/military voters.
- The office developed a Facebook page as an additional resource for the online community. The office is also in discussions to develop PSAs and other voter outreach efforts to inform voters about the upcoming elections.

POLL WORKER RECRUITMENT & TRAINING

- Colorado encourages state employees to serve as poll workers. In addition, the Secretary of State's website provides information on the requirements for serving as a poll worker.
- Colorado law provides for a student poll worker program. Information is distributed to election officials and the public.

VOTING EQUIPMENT & DEMOS

- Colorado uses optical scan and DRE with voter verifiable paper trail.
- Colorado requires back-up paper ballots, in case of emergency (e.g., equipment failure).
- Voting equipment demonstrations are provided by local election officials. Colorado law also requires each county clerk to conduct public pre-election testing on voting equipment.

VOTE CENTERS

- Sixteen counties will be using vote centers for the 2008 general election.

ELECTION DAY CONTINGENCY PLANS

- The Colorado Secretary of State has developed a best practices guide to assist designated election officials with emergency and disaster planning.

2008 ELECTION RESULTS

- Results are not posted on the state Web site until after the election. However, many local election offices post election night results on their respective Web sites.



Connecticut

Registered Voters:	2,044,511
Voter Registration Deadline:	October 28 th , 2008
Polling Place Hours:	6:00 AM - 8:00 PM
Online Resources:	State Elections Website: www.ct.gov/sots/ute

VOTER EDUCATION & OUTREACH

- The Office of the Secretary of the State registers voters at naturalization ceremonies statewide and takes part each year in swearing in new American citizens. Other public outreach efforts include billboards in English and Spanish with Election Day deadlines as well as public service announcements on the importance of voting.
- The office works to provide training for those who wish to participate in registering voters, including non-profit organizations.
- The office maintains an aggressive voter registration program working with community groups, high schools, universities and others to expand civic involvement among Connecticut residents. In 2007, nearly 3000 high school students registered as part of this effort.
- For 2008, the office has launched the (Tu voto si cuenta) Campaign aimed at registering 10,000 new Latino voters for the 2008 General Election. The campaign is a nonpartisan voter outreach effort with teams of volunteers across ten state cities with significant Latino populations. Since the launch of the campaign, more than 5,800 Latinos have registered to vote.
- Secretary of State Susan Bysiewicz openly defied the Department of Veterans Affairs' nationwide policy prohibiting voter registration drives among veterans living at federally funded nursing homes, rehabilitation centers and shelters for homeless veterans. Secretary Bysiewicz requested permission to visit both inpatient and outpatient facilities to educate veterans, especially veterans with disabilities, about Connecticut's new voting machines. Secretary Bysiewicz plans to visit veterans' facilities across Connecticut this fall to register veterans and make sure they vote this November.

POLL WORKER RECRUITMENT & TRAINING

- The Secretary of State helped secure HAVA College Poll Worker federal grants for several Connecticut colleges and universities. The program encourages students enrolled at institutions of higher education to assist state and local governments by serving as poll workers or assistants.
- The office has delivered voting equipment to every city and town and trained 3,000 election officials and poll workers in over 200 sessions held in 30+ regional training centers in the state.

VOTING EQUIPMENT

- Each polling place is equipped with an optical scan machine and a vote-by-phone machine.

VOTING EQUIPMENT DEMOS AND OUTREACH

- Instructional videos for using optical scan and vote-by-phone systems are available on the Secretary of State's website and can be downloaded, even for iPods.



Connecticut

- The office has also placed the videos on YouTube and is encouraging their circulation via social networking sites. The state office is mailing nearly 800 copies – one for each polling place – to registrars, who are encouraged to play the videos at every polling place in their jurisdiction.
- The state office conducts large-scale voting machine demonstrations at shopping centers, county fairs/festivals, senior centers, town halls and public gatherings across Connecticut. Each demo features a mock polling place so voters know what to expect on Election Day and to help local registrars see how to properly set up and manage such a site. Since 2006, the state has held 300+ voting machine demonstrations, with another 50 planned before November.
- In 2007, the Secretary of State's office launched a public awareness campaign which mailed pocket guides on using optical scan technology to 300,000+ registered voters and distributed how-to instructional videos for using the state's voting technologies to all 169 municipalities.

VOTING SYSTEM AUDITS

- Secretary Bysiewicz won passage of landmark legislation in 2007 that made Connecticut a national leader for verifying election results. This law requires Connecticut to conduct random audits of 10% of all polling districts in statewide elections. Reviews of the audit results by the Office of the Secretary of State indicate that Connecticut's new optical scan voting machines performed accurately in all the elections held since the audit law went into effect.

2008 ELECTION RESULTS

- Results available as they come into the state at:
www.ct.gov/sots/cwp/view.asp?a=31798,Q=392194&SOTSNav_GID=1846



Delaware

Registered Voters:	577,748 (as of June 1, 2008)
Voter Registration Deadline:	October 11, 2008
Polling Place Hours:	7:00 AM - 8:00 PM
Online Resources:	State Elections Website: http://elections.delaware.gov/ Provisional Ballot Status: http://napoli.state.de.us/web_Prov_Vote_Inquiry/MainPage Voter Registration Lookup: http://pollingplace.delaware.gov/ Polling Place Locator: http://pollingplace.delaware.gov/ Online Voter Registration: https://register2vote.elections.delaware.gov/VoterRegistration Election Complaint Form: http://elections.delaware.gov/services/voter/complaints.shtml

VOTER REGISTRATION INITIATIVES

- Delaware has completed a new "electronic signature project," where voters who register at the Department of Motor Vehicles can electronically sign their application and it will be sent in real-time to the Department of Elections. The project will launch after the November 2008 election.

VOTER EDUCATION & OUTREACH

- Delaware partners with disability and advocacy groups to conduct outreach and education.
- Upon request, Delaware hand delivers absentee ballots to nursing homes if there is a question about the voter's ability to return the ballot by mail in time, or if they have difficulty writing.
- Delaware is working on advertisements to show how easy it is to vote.
- Delaware maintains internet contact (if possible) with UOCAVA voters.

POLL WORKER RECRUITMENT & TRAINING

- Delaware hires 16 and 17 year old poll workers.
- Delaware's largest county has a corporate poll worker program.
- Delaware send out mass e-mails to encourage state employees to become poll workers.
- Delaware trains all of its poll workers in a college setting with hands-on machine training.
- Delaware's online polling place locator service has been fully integrated with Google maps to make it easy to find voting locations.

VOTING EQUIPMENT & DEMOS

- Delaware uses optical scan tabulators (for absentee ballots) and DRE machines.
- Delaware schedules opportunities for the public to practice voting and to watch how their vote is counted on both DRE machines and the optical scan systems.
- Delaware provides online equipment demonstrations on the state's elections website.



Delaware

EQUIPMENT CONTINGENCY PLANS

- Delaware keeps technicians on the road in designated areas so they are never far from a polling place. They carry parts, as well as additional voting machines, should there be a failure. No polling place will have only one machine, so there is an immediate back up until help arrives.

2008 ELECTION RESULTS

- Election results are available online as the results come in to the state:
<http://elections.delaware.gov/results/html/umgfrnl.shtml>



District of Columbia

Registered Voters:	388,300
Voter Registration Deadline:	October 6, 2008
Voter Hotline:	1-866-DC-VOTES for feedback, questions, complaints during the voting period
Polling Place Hours:	7:00 AM - 8:00 PM
Online Resources:	Board of Elections Website: www.dcboee.org/ Polling Place Locator: www.dcboee.org/voterreg/ppl_step1.asp Voter Registration Lookup: www.dcboee.org/voterreg/vic_index.shtml Online Voter Registration: www.dcboee.org/voterreg/vic_index.shtml Provisional Ballot Status: www.dcboee.org/voterreg/bnew/ballot_status.asp

VOTER EDUCATION & OUTREACH

- The DC Board of Elections and Ethics has an aggressive voter education and outreach campaign that includes newspaper ads, public service announcements and Internet messaging (including Craig's List). These efforts inform voters of their rights and responsibilities and provide the public with voting information.
- The Board mails a comprehensive voter's guide to each household with a registered voter. It can be viewed or downloaded from their Web site.
- The Board has partnered with various disability rights organizations to ensure that polling places are accessible to voters with disabilities, senior citizens and other voters who need assistance.

POLL WORKER RECRUITMENT & TRAINING

- In addition to outreach with traditional recruiting targets (i.e., businesses, colleges/universities, technical and business schools), the Board has created and added "split shifts" – half-time poll worker positions – to retain/recruit volunteers.
- The Board has also identified and placed "Ward Coordinators" throughout the District of Columbia, who will assist the Board by recruiting at least 200-300 poll workers from each of the City's eight wards.
- The Board's 2008 precinct team will include a technician position, which should reduce the number of calls for machine malfunctions and provide on-the-spot expertise.
- In addition to traditional training methods (hands-on, lecture, handouts, role-playing etc.), the Board has produced a video that will be given to every poll worker at the end of their training. The goal is to assist poll workers with reviewing and retaining training information and procedures once their regular training has ended. The videos will also be available by webcast to provide 24-hour access to them.
- The Board set up a training lab for poll workers who seek additional instruction with the voting equipment or want more help with other issues.

VOTING EQUIPMENT & DEMOS

- Each District of Columbia precinct uses optical scan tabulators and DRE machines.



District of Columbia

- The Board routinely conducts demonstrations of the voting equipment in community centers, senior citizen residences, faith-based institutions, civic association meetings and community group gatherings. Most sessions occur after working hours or on the weekends.
- Online video training on how to use the voting equipment is available on the Board's Web site.
- The Board has always conducted a public test of its voting equipment the weekend before each election. In addition, the Board conducts prelogic & accuracy testing on all of its equipment prior to deployment.

ELECTION DAY PLANNING

- The percentage of paper ballots ordered will be increased for the upcoming election. Both during training and throughout Election Day, poll workers will be reminded to monitor their ballot supply and to notify supervisors about problems.
- To speed up the sign-in process, the Board has reevaluated its check-in process and the alpha listing of registered voters in precinct-by-precinct fashion.

2008 ELECTION RESULTS

- Unofficial election night results are posted online when the ballots are tallied on election night at: http://www.dcboee.org/information/er_index.shtml
- A "subscription/alert" feature is being added to the Board's Web site for interested parties to get the results as soon as the Board releases them.



Florida

Registered Voters:	10, 203, 112 (as of December 31 st , 2007)
Voter Registration Deadline:	October 6, 2008
Polling Place Hours:	7:00 AM - 7:00 PM
Early Voting Period:	In person, no-excuse early voting begins 15 days prior to the election and ends on the second day before the election
Voter Hotline:	1-866-308-6739 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.elections.myflorida.com/

VOTER EDUCATION & OUTREACH ACTIVITIES

- Florida provides a voter hotline in English and Spanish, including voter registration status, precinct polling place look-up, and referral to proper county election officials.
- The Florida Secretary of State has released four public service announcements (PSAs) to explain Florida's optical scan systems, the importance of updating voter registration information, closed primaries and voting in general. These announcements are available in English and Spanish as well as digital formats.
- The Department of State is distributing the PSAs through the cable and public broadcasting channels as well as government, educational, hospital, internet and other channels or venues.
- The PSAs have also been distributed to the local supervisors of elections for use on their websites or local media and can be viewed on the Florida Department of State channel on YouTube: <http://www.youtube.com/FloridaDeptOfState>
- The Division of Elections website has been redesigned to make finding information on Florida elections easier for all of its users. A Media Room Page has been added to put the most frequently accessed information by members of the news media in one area.

POLL WORKER RECRUITMENT & TRAINING

- Florida counties are responsible for recruiting poll workers. Many counties have programs such as Adopt a Precinct and also recruit county workers for use as poll workers on Election Day.
- The state publishes a Polling Place Procedures Manual for use in poll worker training and at the polling place on Election Day.
- Florida has provided more than \$4 million in funding for poll worker training and recruitment efforts.
- The state has developed a poll worker curriculum to be used by poll worker trainers.
- The state has also provided supervisors of elections with videos for training poll workers on issues of sensitivity and etiquette with respect to voters with a disability and for training poll workers on situations which arise at the polling place on Election Day.

VOTING EQUIPMENT

- Each polling place will have at least one optical scan tabulator and at least one device (DRE or AutoMARK) for persons with disabilities.
- Florida provides online equipment demonstrations on the state elections website.



Florida

CONTINGENCY PLANNING

- The state works with counties and encourages them to prepare or update their plans in the event that a hurricane or other emergency disrupts the election.
- The state's Emergency Operations Center routinely conducts emergency operations drills with elections being an integral part of the drill.

E-POLL BOOKS

- Florida allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- Results are posted as they come into the state office at <http://election.dos.state.fl.us/elections/resultsarchive>
- The state is working with vendors and counties to make results reporting more automated by 2010.



Georgia

Registered Voters:	5,410,967 (as of June 30, 2008)
Voter Registration Deadline:	October 6, 2008
Early Voting Period	In person, no excuse early voting is allowed from September 22, 2008 to October 31, 2008
Polling Place Hours:	7:00 AM - 7:00 PM
Online Resources:	State Elections Website: http://sos.georgia.gov/Elections/ Polling Place Locator: www.sos.georgia.gov/elections/polllocator Voter Registration Lookup: www.sos.georgia.gov/elections/polllocator Election Complaint Form: www.sos.ga.gov/cgi-bin/ema/electionscomplaint.asp

VOTER EDUCATION & OUTREACH

- The Secretary of State has conducted an extensive, ongoing outreach and education effort about Georgia's photo ID requirement, including direct mailing, public service announcements, and website information at: www.gaphotoID.com.
- The Secretary of State offers training materials and information updates to designated voter registration agencies via a new website. Each agency has its own web page specifically designed to its specific needs. Train-the-trainer PowerPoint presentations, targeted Q&As, and downloadable forms highlight the program. Voting Assistance Officers have a special page for their specific needs. Nursing home and assisted living caregivers also have a specific page for their needs.
- A new, dedicated, student website contains information regarding registration and voting. Specifically designed for students, this site has materials needed to host a registration drive, register to vote, and get involved in Georgia elections.
- The Secretary of State has designed a new website that contains the 2008 Georgia Military & Overseas Voters' Guide, new brochures, and other links designed to assist Georgia's military and overseas voters.

POLL WORKER RECRUITMENT & TRAINING

- Georgia law requires a minimum of 3 poll workers in each polling location. Counties are encouraged to hire additional poll workers as necessary.
- Recruitment of poll workers is left to local election officials, as they assess their own particular poll worker needs.
- The Secretary of State has updated a standardized poll worker training manual which will be available to all local election officials to use in training poll workers.
- Online training is currently in place for poll workers regarding Georgia's photo ID requirements. The Secretary of State continues to develop and make available online sources of information to assist local elections officials in training their poll workers.

E-POLL BOOKS

- Georgia allows local jurisdictions to use electronic poll books.



Georgia

VOTING EQUIPMENT & DEMOS

- Georgia uses DRE machines in the polling place and optical scan machines for processing absentee ballots.
- State law requires that each local registrar place at least one DRE on public display 30 days before Election Day. Local election officials also must conduct logic and accuracy testing prior to Election Day.
- The Secretary of State has made available online written descriptions and an interactive demonstration of Georgia's electronic voting equipment.
- Georgia law provides for the use of provisional ballots in the event of emergency (i.e., equipment failure).

2008 ELECTION RESULTS

- Election results will be posted to the state elections website as they come into the state office.
- The Elections Division now offers periodic email updates election night to anyone wishing to sign up for them. The update email includes a text file with detailed unofficial results from counties as soon as the data is received.



Idaho

Registered Voters:	710,935
Voter Registration Deadline:	October 10, 2008 (pre-registration) Idaho also allows voters to register on Election Day
Early Voting Period:	In person, no excuse absentee voting begins as soon as ballots are available
Polling Place Hours:	8:00 AM - 8:00 PM
Online Resources:	State Elections Website: www.idahovotes.gov/ Polling Place Locator: www.idahovotes.gov/yourpollingplace/ Election Complaint Form: www.idsos.state.id.us/ELECT/HAVA.htm

VOTER EDUCATION & OUTREACH

- The state partners with the Council on Developmental Disabilities and develops Public Service Announcements for young and first-time voters.
- The Idaho elections website provides videos to educate and motivate voters.

VOTING EQUIPMENT & DEMOS

- Idaho uses optical scan tabulators and punch card machines. Each polling place will have an AutoMARK ballot marker.
- The Idaho elections website provides video demonstrations of voting equipment.

2008 ELECTION RESULTS

- Election results will be available as they come into the state office at:
<http://www.idsos.state.id.us/elect/Results.htm>



Illinois

Registered Voters:	7,304,563 (as of February 5th, 2008)
Voter Registration Deadline:	October 7, 2008 (date could vary in Chicago and Cook County) Illinois allows "grace period" registration and voting from October 8 th – October 21 st
Polling Place Hours:	6:00 AM - 7:00 PM
Early Voting Period:	In person, no-excuse early voting is available from October 14 th to October 30 th
Voter Hotline:	866-513-1121 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.elections.il.gov/ Provisional Ballot Status: www.elections.il.gov/votinginformation/ProvBallotSearch.aspx District Locator: www.elections.il.gov/DistrictLocator/SelectSearchType.aspx

VOTER EDUCATION & OUTREACH ACTIVITIES

- Illinois provides a voter hotline (see above).
- Illinois will be conducting an extensive statewide voter public information/awareness program to provide information on changes in Illinois election law, early voting, and voter registration.

POLL WORKER RECRUITMENT & TRAINING

- Recent additions to Illinois Election Code allow election jurisdictions to recruit high school juniors and seniors to be poll workers. It also allows jurisdictions to establish programs to permit persons not entitled to vote in that precinct or county to be appointed as an poll workers if they meet certain requirements.
- Illinois Election Code allows a person who gives his/her employer proper notice to be absent from work for the purpose of serving as a poll worker.
- The State Board of Elections furnishes each election authority with uniform instructions to use in preparing election judge manuals.
- The Board offers onsite training programs for any election jurisdiction that requests it.

VOTING EQUIPMENT

- Illinois uses optical scan tabulators, DRE with voter verifiable paper trail, and AutoMARK ballot markers.
- Illinois requires back-up paper ballots to be used in case of emergency (e.g., equipment failure).

E-POLL BOOKS

- Illinois allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- The State Board of Elections will provide links to election jurisdiction websites, where election results are posted.
- State Board of Elections does not post unofficial results on its own website until proclaimed by the Board within 31 days following the election.



Indiana

Registered Voters:	4,329,806
Voter Registration Deadline:	October 6 th , 2008
Polling Place Hours:	6:00 AM - 6:00 PM
Early Voting Period:	In person, no-excuse absentee voting begins 29 days before the election
Voter Hotline:	1-866-IN1-VOTE for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.in.gov/sos/elections/ Polling Place Locator: www.Indianavoters.com Voter Registration Lookup: www.Indianavoters.com

VOTER EDUCATION & OUTREACH

- The Office of Secretary of State has produced public service announcements to be aired over the radio and television statewide. The office also engages in transit advertising (interior and exterior of buses) in all of the state's major cities. Also, the office participates in a number of fairs, festivals, and community events providing information to voters about their rights and responsibilities as well as opportunities to register to vote.
- The state office has a variety outreach activities to target special segments of the community and inform voters of the voting process and deadlines. Activities include mailings, direct emails, and newsletter articles to specific audiences and partnerships with a wide variety of community groups and advocacy organizations. For example, the office worked with the state's college campuses to email more than 115,000 college students information about the 2008 Primary election and used its voter registration system to mail post cards to more than 160,000 new voters statewide. Additionally, the office has worked with more than 60 corporations and nonprofits to contact more than 100,000 Hoosiers, as well as sending state employee outreach emails prior to each election.

POLL WORKER RECRUITMENT & TRAINING

- Indiana provides a poll worker information guide on the Secretary of State website.
- Hoosier Scholars Helping Democracy (HSHD) recruits Indiana's college students to participate on Election Day as poll workers. Students can serve in a variety of position, including: inspectors, judges, clerks and sheriffs, earning at least \$70 for their service.
- The Election Day LIVE poll worker recruitment program enables 16 and 17 year old students a "live" experience of democracy in action on Election Day. This program provides an opportunity for students to learn about democracy, to actively participate in their community and work to support free and fair elections in Indiana.
- Donate for Democracy provides an opportunity for individuals to contribute to an organization's charitable goals while playing an important role in the democratic process. Eligible participants earn at least \$70 for their charity and possibly more, depending on the county.
- The Secretary of State's HAVA office has created and distributed uniform training manuals and videos for counties to utilize when training their poll workers. Videos include polling place operations and how to operate voting machines (every type used in the state has been added to the training video).



Indiana

- The HAVA office offers several train-the-trainer sessions to county election administrators during district meetings and in Indianapolis following these meetings. District meetings are held approximately two months prior to each election (primary and general). These sessions help county election administrators' own training of poll workers by emphasizing where poll worker training should provide additional focus (based on complaints or issues received by the Office of Secretary of State following the previous election or changes to the law or election processes).

VOTING EQUIPMENT & DEMOS

- Indiana uses optical scan tabulators, DRE, and AutoMARK ballot markers.
- Indiana provides online equipment demonstrations on the state elections website.
- Indiana requires back-up paper ballots in the event of emergency (i.e., equipment failure).

VOTING CENTERS

- Three Indiana counties (Wayne, Cass and Tippecanoe) are currently participating in Voter Center pilot projects.

E-POLL BOOKS

- Indiana allows local jurisdictions to use electronic poll books.

ELECTION DAY CONTINGENCY PLANNING

- The Secretary of State presents potential areas of concern (poll worker and ballot shortages, polling place emergencies, etc.) and sends an election preparedness communication to each of the county's election administrators, as well as to other community leaders (including county council members, commissioners and party chairmen).

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at:
<http://www.sos.state.in.us/elections/results/index.html>



Registered Voters:	2,000,000 (approximately)
Voter Registration Deadline:	October 25, 2008 Iowa also allows registration on Election Day
Early Voting Period	In person, no excuse absentee voting begins when ballots are available (50 days before the election)
Polling Place Hours:	7:00 AM - 9:00 PM
Online Resources:	State Elections Website: www.sos.state.ia.us/elections/ Polling Place Locator: www.sos.state.ia.us/ Voter Registration Lookup: www.sos.state.ia.us

VOTER REGISTRATION INITIATIVES

- Iowa recently adopted Election Day registration. The Office of Secretary of State is currently putting together a video to post on its website, as well as county sites.

VOTER EDUCATION & OUTREACH

- The Office works with counties that have major colleges and universities to educate students on process of registering to vote and appropriate identification to bring to the polls.
- The Office partners with the Governor's Council on Disabilities and PAVA to provide information to persons with disabilities about voting.

POLL WORKER RECRUITMENT & TRAINING

- New legislation was recently adopted to allow 17 year-olds to work at the polls.
- Iowa has a state certification program for poll workers. More than 2,000 poll workers have been certified through this three-day program in the last two years, with more training sessions planned. The program is offered in each jurisdiction and includes hands-on training with the equipment.
- The Secretary of State's office provided a training video and is presently working on an "online" training program.

VOTE CENTERS

- New legislation was adopted this year allowing vote centers in school and municipal elections.

VOTING EQUIPMENT & DEMOS

- Effective with the November 2008 presidential election, all jurisdictions are required to use an optical scan system with a ballot marking device (AutoMARK). This new law was adopted during the 2008 legislative session and funding was provided by the legislature to cover the cost of replacing DRE in 78 of Iowa's 99 counties. (The other 21 already had optical scan with AutoMARK.)
- The Secretary of State, in conjunction with the Iowa County Auditors Association, is pursuing the possibility of producing an equipment demonstration video that can be posted online and aired on cable television. The state has already produced a PowerPoint presentation for websites.



- The state purchased voting equipment for the Governors Council on Disability to take around the state and demonstrate to disability groups.

E-POLL BOOKS

- Iowa allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- Election results will be posted on the state web site at:
<http://www.sos.state.ia.us/elections/results/index.html>
- The state is currently developing a program for real-time online posting of election results.



Kansas

Registered Voters:	1,643,457
Voter Registration Deadline:	October 20 th , 2008
Polling Place Hours:	6:00 AM to 8:00 PM (varies by county)
Early Voting Period:	In person, no-excuse early voting begins up to 20 days before the election
Voter Hotline:	1-800-262-8683 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.kssos.org/elections/elections.html Polling Place Locator: https://myvoteinfo.voteks.org/ Voter Registration Lookup: https://myvoteinfo.voteks.org/ Absentee Ballot Status: https://myvoteinfo.voteks.org/ Election Complaint Form: www.voteks.org/complaint/complaintprocedure.html

VOTER REGISTRATION INITIATIVE

- Kansas has deployed an electronic motor voter program with the Division of Motor Vehicles. Kansas is working on an on-line voter registration program with the Division of Motor Vehicles that has a launch date of December 2008.

VOTER EDUCATION & OUTREACH

- The Office of Secretary of State has expanded its voter outreach program this year. It will include electronic media, media kits for local newspaper editors, presence at college sporting events, booths at county fairs and other local events around the state, and an outreach program to offices serving voters with disabilities.
- www.voteks.org is the state's primary site for all election and voter information.
- Alternative language assistance for voters with limited English proficiency is currently required in six Kansas counties. Community outreach and public relations programs in these counties are required to notify the public of the assistance available and to identify translators and poll workers.

POLL WORKER RECRUITMENT & TRAINING

- Several Kansas counties are partnering with county governments to supply poll workers and others recruit poll workers through regular election mailings.

VOTING EQUIPMENT & DEMOS

- Kansas uses optical scan tabulators, DRE, and AutoMARK ballot marker
- The Office of Secretary of State and county election administrators demonstrate voting equipment at the State Fair in September and the Office provides online voting equipment demonstration videos on its website.
- Kansas encourages counties to provide back-up paper ballots.

SATELLITE ADVANCE VOTING

- All Kansas counties are authorized to establish satellite advance voting sites this year so voters can go to various sites around the county and vote advance ballots in person. Previously all such voting was done at the county election office.



Kansas

E-POLL BOOKS

- Kansas allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at:
www.kssos.org
- The state is working to complete a module that will allow the electronic reporting of election night and certified election results.



Kentucky

Registered Voters:	2,866,125
Voter Registration Deadline:	October 6, 2008
Polling Place Hours:	6:00 AM - 6:00 PM
Voter Hotline:	502-573-7100
Voter Fraud Hotline:	1-800-328-8683 (operated by the Kentucky Attorney General's Office)
Online Resources:	State Elections Website: http://elect.ky.gov/ Polling Place Locator: https://cdcbp.ky.gov/VICWeb/index.jsp Voter Registration Lookup: https://cdcbp.ky.gov/VICWeb/index.jsp Sample Ballot: http://apps.sos.ky.gov/electionballots/ Provisional Ballot Status: https://cdcbps.ky.gov/ProvWeb/

VOTER EDUCATION & OUTREACH

- The Board of Elections works with local media and interest groups to educate the public on registering to vote and voting in the upcoming general election.
- The Board worked with Overseas Vote Foundation to develop a Kentucky page for military and overseas voters that will be launched soon.
- The Board continues to visit college campuses and conduct mock elections and voter outreach activities.
- The Board will have a booth at the Kentucky State Fair, which includes a mock election.

POLL WORKER RECRUITMENT & TRAINING

- The Board provides a "Precinct Officer's Quick Reference Guide" for use on Election Day and plans to update the precinct officer page on its website.

VOTING EQUIPMENT & DEMOS

- Kentucky uses optical scan tabulators and DRE machines.
- The Board will continue to encourage the county clerks to demonstrate their voting equipment in as many places as possible. The Board also uses the voting equipment in conducting mock elections.
- Kentucky requires back-up paper ballots in the event of emergency (i.e., equipment failure).

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at: <http://elect.ky.gov/results/>
- The Board plans to add a "results by congressional district" feature for use during Presidential Election years.



Louisiana

Registered Voters:	2, 872, 019
Voter Registration Deadline:	October 6, 2008
Polling Place Hours:	6:00 AM to 8:00 PM
Voter Hotline:	1-800-883-2805 for feedback, questions, complaints during the voting period
Elections Fraud Hotline:	800-722-5305
Early Voting Period	In person, no-excuse early voting begins on October 21 st and continues until October 28 th
Online Resources:	State Elections Website: www.geauxvote.com Polling Place Locator: https://pollinglocator.sos.louisiana.gov/ Sample Ballot: www400.sos.louisiana.gov/cgibin/7rqstyp=BLTING&rqstia=start Provisional Ballot Status: http://www.sos.louisiana.gov/tabid/176/Default.aspx

VOTER EDUCATION & OUTREACH

- www.geauxvote.com provides information and resources on the voting process.
- The Secretary of State's office is planning a media campaign to inform voters of the new statewide closed congressional primaries for this fall election cycle. The media campaign will also be used to educate the disability community about accessible voting and to target younger voters.

POLL WORKER RECRUITMENT & TRAINING

- The Louisiana Legislature doubled the pay for poll workers in 2007, which has dramatically increased the number of voters willing to participate.
- The Secretary of State's office produced an online training video for use by all local clerks of court, who provide the hands-on training.
- A "Detailed Informational Pamphlet for Election Day Voting" is provided to each poll worker (also available online).

VOTING EQUIPMENT & DEMOS

- Louisiana uses optical scan tabulators to count mail-in absentee ballots, and DRE machines for early and Election Day voting.
- The state's Outreach Section and the 64 parish registrars of voters participate in numerous private elections and outreach elections for the promotion of voting systems, as well as promotion during the Annual Voter Registration Week held before the fall election cycle.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at: www.geauxvote.com



Maine

Registered Voters:	909, 604 (as of June 20, 2008)
Voter Registration Deadline:	October 14 th for mail-in registration Maine allows voters to register on Election Day
Polling Place Hours:	Polling place hours vary Polls open no earlier than 6:00 AM and close no later than 8:00 PM
Early Voting Period	In person, no-excuse absentee begins 30-45 days before the election
Voter Hotline:	1-207-624-7650 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.maine.gov/sos/cec/elec/ Polling Place Locator: www.maine.gov/portal/government/edemocracy/lookup_polling_place.php Sample Ballot: www.maine.gov/portal/government/edemocracy/lookup_polling_place.php

VOTER EDUCATION & OUTREACH

- Maine employs a variety of methods to educate the public about voter registration requirements, absentee balloting and Election Day voting. The Secretary of State maintains a website with pertinent information, conducts press events and issues press releases, prints and distributes informational brochures, and works with other state government agencies to maintain an e-democracy webpage that serves as a central location for citizens to find information about their elected officials, elections and campaign finance.
- The Division of Elections does an annual mailing to high schools and colleges in the State offering voter registration applications and other instructional materials regarding the upcoming election.

POLL WORKER RECRUITMENT & TRAINING

- The Division of Elections conducts an annual conference for municipal election officials. The division also works with the Maine City and Town Clerks Association to conduct regional trainings for election officials. Although these sessions are not geared towards poll workers, the Division encourages municipal clerks and registrars to reproduce the instructional materials and conduct training sessions for their poll workers.

VOTING EQUIPMENT & DEMOS

- Maine uses optical scan tabulators and vote-by-phone accessible voting systems.
- Each municipality that uses optical scan voting equipment is required to conduct logic and accuracy testing prior to each election. This testing is a public event. Each municipality is also required to conduct logic and accuracy testing for the Accessible Voting System.

2008 ELECTION RESULTS

- Election results are posted online at:
<http://maine.gov/sos/cec/elec/prior1st.htm>
- The results are posted only after they have been certified by the Governor – generally 20 days after the Election.



Maryland

Registered Voters:	3, 243, 660 (as of May 31 st , 2008)
Voter Registration Deadline:	October 14, 2008
Polling Place Hours:	7:00 AM to 8:00 PM
Voter Hotline:	1-800-222-VOTE for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.elections.state.md.us/ Polling Place Locator: www.elections.state.md.us/voting/where.html Voter Registration Lookup: www.elections.state.md.us/voting/where.html Sample Ballot: www.elections.state.md.us/voting/where.html Provisional Ballot Status: www.elections.state.md.us/voting/where.html

VOTER EDUCATION & OUTREACH

- Maryland is conducting outreach to let voters know the best times to vote and try to avoid lines. The outreach efforts include posting information on State Board of Elections and the local boards of elections' websites, press releases, media briefings, information on Craig's List and MySpace, information in specimen ballots, and print, radio and TV Public Service Announcements.

POLL WORKER RECRUITMENT & TRAINING

- Posting information on Craig's List and MySpace has turned out to be a successful and efficient way to recruit poll workers.
- Poll worker "job announcements" were posted on state job web sites and the board requested that state and local governments provide administrative leave for state and county employees who serve as poll workers.
- State Office of Service and Volunteerism resources are used to distribute information about serving as a poll worker and meetings were held with school superintendents in an effort to recruit teachers and support personnel in the school systems.
- The state is required by law to issue a statewide poll worker training manual and curriculum. The state will also be requiring that all returning poll workers receive refresher training on certain topics before the general election. The state also encourages the local boards of elections to use professional trainers (instead of staff) for poll worker training.

VOTING EQUIPMENT & DEMOS

- Maryland uses DREs for polling place voting and optical scan tabulators for absentee and provisional voting.
- Each local board of elections is required to have a public demonstration of the pre-election testing and parallel testing shortly before an election. The state generally demonstrates the voting systems at events which the local board of elections cannot attend, and at statewide conferences. Maryland also provides online equipment demonstrations on the state elections website.
- Maryland requires back-up paper ballots in the event of emergency (i.e., equipment failure).



Maryland

E-POLL BOOKS

- Maryland requires that local jurisdictions use electronic poll books.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at:
<http://www.elections.state.md.us/elections/index.html>



Massachusetts

Registered Voters:	4, 049, 994
Voter Registration Deadline:	October 15 th , 2008
Polling Place Hours:	7:00 AM - 8:00 PM
Voter Hotline:	1-800-462-8683 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.sec.state.ma.us/ele/ Polling Place Lookup: www.wheredoivotema.com/bal/myelectioninfo.php

VOTER EDUCATION & OUTREACH

- The Office of Secretary of State works with local community groups to promote voter registration and voting and has provided grants for these purposes. The office has also been attending community events to conduct voter registration and demonstrate accessible voting equipment.
- The office mails voters guides to each household with a registered voter.

POLL WORKER RECRUITMENT & TRAINING

- The office offers training for municipal poll workers. A training conducted for one municipality was recorded and is available for other local election officials. The office also conducts training at municipal clerk conferences, which are held three times a year.

VOTING EQUIPMENT

- Massachusetts uses optical scan tabulators and AutoMARK ballot markers.
- The office works with community organizations to demonstrate the AutoMARK ballot marker.
- Massachusetts provides online equipment demonstrations on the state elections website.



Michigan

Registered Voters:	7,211,599 (as of July 6, 2008)
Voter Registration Deadline:	October 6 th , 2008
Polling Place Hours:	7:00 AM - 8:00 PM
Absentee Voting:	Absentee ballots for specific reason are available to those eligible prior to the election.
Voter Hotline:	800-292-5973 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.michigan.gov/sos/ Registration Lookup: www.michigan.gov/vote Sample Ballot: https://services2.sos.state.mi.us/mivote/votersearch.aspx Polling Place Lookup: www.michigan.gov/vote

VOTER EDUCATION & OUTREACH

- Michigan has launched a comprehensive informational program to inform Michigan voters on the new voter identification requirement.
- To assist voters with disabilities, Michigan provides voter instructions in alternative formats (Braille and audio) and partners with advocacy groups and state agencies that provide services to the disabled. Additionally, the state worked with disability advocacy groups to produce videos to familiarize voters with disabilities with how to use the AutoMARK Voter Assist Terminal and local election officials and poll workers on how to properly assist voters with disabilities in the polls.
- Voters can take advantage of an online website – Michigan.gov/vote – that allows voters to check their registration status, provides a map to their polling place and preview their actual ballot prior to Election Day. Information is also provided on how to properly complete a ballot or request an absentee ballot.
- For military and overseas (JOCAVA) voters, Michigan accepts voting materials by fax and email, the 30-day voter registration deadline is waived, ballots for state/federal elections are available 45 days prior to the election, and local election officials are regularly instructed on the proper handling of FPCA and FWAB forms.
- Registration forms and instructional information are provided to voter outreach organizations that serve minority voters and Public Service Announcements are produced and distributed to media outlets that serve minority populations.
- Voter registration services provided at new citizen naturalization ceremonies.
- Voter registration reminders are mailed to drivers who turn 18.
- Voter registration services are offered on college campuses through the Secretary of State's mobile branch office.
- An informational video specially designed for young voters is online and distributed throughout state.
- Information specially developed for college voters is distributed via college email systems in cooperation with the Association of Independent College and Universities of Michigan and the Michigan Community College Association.

POLL WORKER RECRUITMENT & TRAINING

- Legislation was enacted to permit appointment of 16 and 17 year old poll workers.
- The city of Detroit worked with a local community college to develop an accredited election preparation and training course with participants earning one college credit.



Michigan

- The state provides "train the trainer" programs and training resources for county and local clerks responsible for instructing poll workers. Partnering with Michigan Virtual University, the state is piloting an online training program to designed help election officials train precinct workers on Election Day issues in the polling place.

E-POLL BOOKS

- Michigan allows local jurisdictions to use electronic poll books to supplement traditional poll books and to help direct voters to the correct polling place.

VOTING EQUIPMENT & DEMOS

- Michigan uses optical scan tabulators and AutoMARK ballot markers.
- Local election officials are teaming with disability advocates to host opportunities for voters with disabilities to become familiar with the Automark ballot marking devices.
- To reduce lines in the polling places, local election officials are adding additional voting stations – with a recommended minimum of 1 voting station per 100 voters.
- Public accuracy tests are conducted in every jurisdiction prior to the election. The state assists with public demonstrations of AutoMARK machines at special events. Instructional videos are distributed throughout the state and available on the Department's website.

2008 ELECTION RESULTS

- Unofficial results are posted on the Department's website as they are received from 83 counties: www.michigan.gov/soe



Minnesota

Registered Voters:	3, 133,000
Voter Registration Deadline:	October 14 th , 2008 (pre-registration) Minnesota also allows registration on Election day
Polling Place Hours:	7:00 AM - 8:00 PM
Voter Hotline:	1-877-600-8683 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: http://www.sos.state.mn.us/home/index.asp?page=4 Polling Place Lookup: http://pollfinder.sos.state.mn.us/ Election Complaint Form: www.sos.state.mn.us/docs/hava_elections_complaint_form.pdf

VOTER REGISTRATION INITIATIVES

- Minnesota recently passed legislation that provides for automatic updating of voter registration. On a monthly basis, the Office of the Secretary of State must obtain a list of registered voters who have filed permanent forwarding orders with the United States Postal Service (USPS). The Office of the Secretary of State will forward this information to the appropriate county auditor. If the USPS data indicates that a voter has submitted a permanent forwarding order to an address within Minnesota, the auditor will update the voter's address in the Statewide Voter Registration System.

VOTER EDUCATION & OUTREACH

- Voter registration applications and other election resources are provided to the state Department of Education, teacher's union, and teacher's associations for high school audiences.
- Voter registration applications and elections brochures are sent to higher education institutions for inclusion in freshman/new student orientation materials. Get Out the Vote materials are distributed to campus communicators in the fall.
- At high-profile venues, the state has outreach partnerships with organizations such as McDonald's, Taco Bell, WWE, Mall of America, MTV, Republican National Convention, professional sports teams, Minnesota History Center and public transportation systems.
- Registration forms and instructional information are provided to voter outreach organizations that serve minority voters and Public Service Announcements are produced and distributed to media outlets that serve minority populations.
- Overseas Vote Foundation developed a website tailored for Minnesota's military and overseas (UOCAVA) voters.
- Additional efforts include targeted media outreach to minorities and non-English speaking voters, on-site presence at community events and venues, production and distribution of voter forms, and posters and voter registration applications in multiple languages and formats.

POLL WORKER RECRUITMENT & TRAINING

- The state reminds local election officials to expect large turnout and encourages more staffing.
- The state has prepared an election judge guide, training video and power point presentation, which are available to county auditors for conducting election judge training.



Minnesota

VOTING EQUIPMENT

- Minnesota uses optical scan tabulators and AutoMARK ballot markers.
- All voting equipment is pre-tested to verify accuracy within two weeks of Election Day.
- Equipment demonstrations are held in jurisdictions using equipment for the first time.
- The state produced a "How Voting Works" video which shows how to use the voting equipment, and has helped produce a video targeted for the disability community that demonstrates the AutoMARK ballot marker.
- Hands on demonstrations of the AutoMARK machines are conducted throughout the state at appropriate venues.

VOTE-BY-MAIL

- Minnesota has jurisdictions where all voting is done by mail.

ELECTION DAY PLANNING

- The head election judge (poll worker) is authorized to appoint eligible individuals as election judges on election day and give them emergency training.
- Election judges are authorized to prepare ballots (i.e. copies) to be used if supply of official ballots is exhausted or additional ballots are delivered.
- Election judges may contact the clerk if polling place becomes unusable and, with their approval, are authorized to move to a place as near as possible to original polling place. They must publicly announce the change and post a notice in a visible location.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at:
www.sos.state.mn.us



Mississippi

Registered Voters:	1, 800, 000
Voter Registration Deadline:	October 4 th , 2008
Polling Place Hours:	7:00 AM - 7:00 PM
Voter Hotline:	800-829-6786 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.sos.state.ms.us/elections/elections.asp Polling Place Lookup: www.sos.state.ms.us/elections/2008/index.asp

VOTER EDUCATION & OUTREACH

- The Office of Secretary of State speaks at events, disseminates information to local election officials and emphasizes the unique nature of UOCAVA rules and regulations.

POLL WORKER RECRUITMENT & TRAINING

- Mississippi's Poll Worker Student Intern Program has proven to be successful and rewarding for students and their counties.
- The state conducts train-the-trainer classes for local election officials and provides instructional materials as well.

VOTING EQUIPMENT

- Mississippi uses optical scan tabulators and DRE machines.
- The Secretary of State's Office provides voting machine demonstrations upon request. The local election officials in charge of the election are required to publicly demonstrate the equipment throughout the county during the month preceding the election.
- Mississippi requires back-up paper ballots in the event of emergency (i.e., equipment failure).

2008 ELECTION RESULTS

- Election results are posted online at:
http://www.sos.state.ms.us/elections/eleresults/select_election.asp



Missouri

Registered Voters:	3,981,338 (as of July 2, 2008)
Voter Registration Deadline:	October 8 th , 2008
Polling Place Hours:	6:00 AM - 7:00 PM
Voter Hotline:	800-669-8683 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.sos.mo.gov/elections/ Polling Place Lookup: http://mcvr.mo.gov/PollingPlaceLookup/

VOTER EDUCATION & OUTREACH

- The Office of Secretary of State is adding additional information on its website to assist voters, including a voter registration/polling place look-up function and videos on how to register and vote.
- The Secretary of State has taken steps to provide for easier voting for military and overseas citizens (i.e. sending their completed ballot by electronic transmission directly to local election authorities), and is preparing a mailer for disabled voters to provide information to make voting easier for them.
- The office provided a voter registration application to 2008 high school graduates and mailed voter registration forms to individuals who have not previously registered upon their 18th birthday.

POLL WORKER RECRUITMENT & TRAINING

- The office has implemented a program to recruit additional poll workers and forward that information to the appropriate local election authorities. The program involves statewide newspaper advertising (paper and online), online poll worker sign-up at the Secretary of State webpage, and partnering with higher education institutions, business organizations, and other community groups.
- In 2006, the Office of Secretary of State launched Missouri's first statewide poll worker recruitment program that has signed up nearly 2,500 potential poll workers to help on Election Day. *It's Your Turn. Be a Poll Worker* is an ongoing partnership between the Secretary of State's Office and Missouri businesses, universities and civic and labor organizations. The program encourages voters from across the state to serve as poll workers.
- The Secretary of State is making \$2 million in grants available to local election authorities to pay for approximately 3,800 new poll workers and to assist with poll worker training.
- The Secretary of State is working with the Truman School at the University of Missouri to provide training and educational materials to local election authorities to assist them in training their poll workers. The Secretary of State is also developing step-by-step manuals to instruct poll workers on the proper way to set up, operate, and close down electronic voting equipment.

VOTING EQUIPMENT & DEMOS

- Missouri uses optical scan tabulators, DRE with voter verifiable paper trail, AutoMARK ballot marker.
- In Missouri, local election authorities conduct testing that is open to the general public and who have provided demonstrations of new voting systems for the general public.
- Many election authorities have conducted "Town Hall" type forums where voters could become familiar with new voting equipment.



Missouri

- The Secretary of State has conducted mock elections at the Missouri State Fair utilizing voting equipment.

ELECTION DAY PLANNING

- The office is providing financial assistance and training to local election authorities to help prevent poll worker shortages.
- Missouri state election officials continually remind local election authorities of the need to ensure an adequate amount of paper ballots are on hand.
- The office has worked with law enforcement agencies and associations, Missouri courts, as well as the Missouri Department of Transportation, to mitigate problems associated with severe weather and natural disasters.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at:
<http://www.sos.mo.gov/enweb/>
- Election Night Reporting progress maps are available at:
<http://www.sos.mo.gov/enmaps/>



Montana

Registered Voters:	648,562 (approximately)
Voter Registration Deadline:	October 6, 2008 - Late Registration: October 7 through noon on November 3, and opens again on November 4 through close of polls
Early Voting Period	In person, no excuse absentee voting begins 30 days before the election
Polling Place Hours:	Open no earlier than 7:00 AM and close no later than 8:00 PM (hours vary)
Online Resources:	State Elections Website: http://sos.mt.gov/elb Voter Registration Lookup: http://sos.mt.gov/elb/

VOTER REGISTRATION INITIATIVES

- Montana is one of the few states in the nation with late registration, which permits electors who miss regular registration to register and vote in person at the county election office up until and during Election Day (with the exception of between noon and 5:00 PM on the day before Election Day).

VOTER EDUCATION & OUTREACH

- The Office of Secretary of State plans to publicize voter registration options through public service announcements broadcast throughout the state.
- The office educates the public throughout the year, conducting statewide outreach on existing and new HAVA provisions.
- Additional outreach efforts include working with counties to provide interpreters for certain Native American populations, training counties and military electors on electronic transmission options, sending HAVA related materials to senior citizen centers, and conducting two statewide outreaches (in 2004 and 2006) on new HAVA provisions. In 2008, the office will specifically publicize late registration options through PSAs.

POLL WORKER RECRUITMENT & TRAINING

- The state has provided funding directly to counties for additional poll workers, especially those that handle provisional voters.
- The state has trained the counties on options for attracting and retaining election judges and has publicized information about grants for college poll workers.
- The office contracted with a seasoned former county election administrator to hold trainings across the state through the spring of 2008. These trainings, held with the assistance of the county election administrator, helped ensure that the information county election judges received was as uniform as possible.

VOTING EQUIPMENT & DEMOS

- Montana uses optical scan tabulators and AutoMARK ballot markers.
- The Office has traveled to events throughout the state to demonstrate the AutoMARK ballot marker.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted on the state website at: <http://sos.mt.gov/elb>



Nebraska

Registered Voters:	1, 128, 899
Voter Registration Deadline:	October 17 th 2008 (by mail) October 24 th 2008 (in person)
Polling Place Hours:	7:00 AM - 7:00 PM (MST) 8:00 AM - 8:00 PM (CST)
Early Voting Period:	In person, no-excuse early voting begins 35 days before the election
Online Resources:	State Elections Website: www.sos.state.ne.us/elec/ Polling Place Lookup: www.votercheck.necvr.ne.gov/ Voter Registration Lookup: www.votercheck.necvr.ne.gov/ Election Complaint Form: www.sos.state.ne.us/elec/hava/

VOTER EDUCATION & OUTREACH

- The state of Nebraska utilizes various forms of documentation, (pamphlets, guides, etc.) and makes resources such as the first-time voter's guide and UOCAVA materials available by request or online.
- The Nebraska Secretary of State has formed a College Student Advisory Board with whom he meets to discuss voting issues relating to the college segment of the voting population. Also, the state makes available: first-time voter guides, Braille instructions and disability handbooks for poll workers.

POLL WORKER RECRUITMENT & TRAINING

- The Nebraska Office of Secretary of State partners with the Nebraska Bankers Association to provide the Youth Election Service program. This program helps recruit high school students to work with and assist election officials on Election Day. Participants are entered into drawings to receive \$50 savings bonds.
- Nebraska provides poll worker training documentation to all counties. Also, the state works with counties to ensure that all poll workers are trained, and that the counties have a sufficient number of poll workers.

VOTING EQUIPMENT & DEMOS

- Nebraska uses optical scan tabulators and AutoMARK ballot markers.
- The state has conducted election workshops in the past where equipment is demonstrated, and has conducted equipment demonstrations at disability conferences, and schools.

VOTE-BY-MAIL

- Nebraska has 16 precincts where all voting is conducted by mail.

2008 ELECTION RESULTS

- Election results are posted online as they come into the state office:
<http://www.sos.ne.gov/elec/2008/index.html>



Nevada

Registered Voters:	1, 319, 195 (as of July 8, 2008)
Voter Registration Deadline:	October 14 th , 2008
Polling Place Hours:	7:00 AM - 7:00 PM
Early Voting Period:	In person, no-excuse early voting takes place October 18 th through October 31 st
Online Resources:	State Elections Website: http://sos.state.nv.us/elections/ Polling Place Lookup: https://nvsos.gov/votersearch/

VOTER EDUCATION & OUTREACH

- The Nevada Secretary of State website provides a "My Voter File" feature that allows a voter to check their registration information, polling place location, voting history since 1998 and the elected officials for their districts.
- The State of Nevada is conducting voter education outreach to inform the public about various aspects of the election process, including: early voting, voter registration requirements, polling precinct location, ADA accessibility and military/absentee voting.
- The State of Nevada will have a new webpage available for college age voters, which will contain information on voter registration, voter eligibility, absentee voting, types of voting, important dates and deadlines, and answers to frequently asked questions pertaining to elections.
- Research is currently underway on how to best incorporate social networking websites, such as MySpace or Facebook, to reach the young voter demographic.
- In conjunction with the Advisory Committee on Participatory Democracy (ACPD), the State of Nevada launched the "Be" campaign for voter education. Included in this initiative is a voter education toolkit for Nevada employers to use in their workplace to help educate workers on voter registration issues. Another part of this campaign is a partnership with ClearChannel communications to include election dates and reminders on billboards in the two larger counties.
- Nevada is using HAVA funds to grant money to local non-profit organizations for the purposes of voter outreach and education.

POLL WORKER RECRUITMENT & TRAINING

- The Clark County Registrar of Voters and the Clark County School District in Las Vegas partnered to on a pilot student poll worker program to encourage youth aged 16 and over to work during the 2008 elections. To date, more than 200 applicants have applied and qualified for the program.
- The State is partnering with Washoe County to produce a poll worker training video that will be available for distribution throughout the state

VOTING EQUIPMENT & DEMOS

- Nevada uses DRE with voter verifiable paper trail, optical scan tabulators (for absentee ballots)
- The state has done voting equipment demonstrations at locations throughout the state, including high schools, colleges, VA hospitals, and for visitors to the Secretary of State's office at the Capitol Complex.
- A voting machine demonstration video will be available to the public for viewing on the www.silverstate08.com website.



Nevada

- Nevada law authorizes the public to observe the pre- and post-logic and accuracy testing (LAT).

ELECTION DAY CONTINGENCY PLANNING

- The Secretary of State's office will be implementing a centralized system to track and address any issues arising before, during, and after the election.

VOTE-BY-MAIL

- Nevada has jurisdictions where all voting is done by mail.

2008 ELECTION RESULTS

- Election results are posted online at :
<http://www.silverstate08.com>
- The State utilizes a "bottom-up" approach, with all county election officials reporting their results at periodic intervals throughout the evening. As soon as the State is able, the results will be posted to the website.



New Hampshire

Registered Voters:	865,000
Voter Registration Deadline:	New Hampshire allows registration on Election Day
Polling Place Hours:	Hours Vary
Voter Hotline:	603-271-3242
Online Resources:	State Elections Website: www.sos.nh.gov/electionsnew.html Polling Place Lookup: www.sos.nh.gov/polling.htm

VOTER EDUCATION & OUTREACH

- The state works with disability groups to educate and help persons with disabilities use the available accessibility aids.

POLL WORKER RECRUITMENT & TRAINING

- The New Hampshire Offices of Attorney General and Secretary of State received a grant from Pew Charitable Trusts to pilot an online education system to train poll workers and educate citizens on their rights and responsibilities as voters.
- Online training offered by the Attorney General and Secretary of State, in cooperation with the University of New Hampshire, funded by Pew/JEHT grant.

VOTING EQUIPMENT & DEMOS

- New Hampshire uses optical scan tabulators and phone/fax systems for individuals with disabilities.

2008 ELECTION RESULTS

- Election results are posted online at <http://www.sos.nh.gov/>



New Jersey

Registered Voters:

Voter Registration Deadline:	October 14 th , 2008
Voter Hotline:	1-877-NVOTER for feedback, questions, complaints during the voting period
Early Voting Period:	In person, no-excuse absentee voting begins 7 days before the election
Polling Place Hours:	6:00 AM - 8:00 PM
Online Resources:	State Elections Website: http://www.state.nj.us/state/elections/ Polling Place Lookup: https://voter.njwrs.com/PublicAccess/jsp/PollPlace/PollPlaceSearch.jsp

VOTER EDUCATION & OUTREACH

- The state is planning to publicize voter information by way of public service announcements through cable television and radio ads. In addition, state law requires that each county board of election publish newspaper notices regarding voter registration requirements, offices and public questions to be voted upon at upcoming elections, and polling place locations.

POLL WORKER RECRUITMENT & TRAINING

- The recruitment and appointment of board workers is the responsibility of each county board of election. There are a variety of recruitment tools that are employed, such as newspaper ads, letters to registered voters in the county, and outreach to community organizations and churches.
- The state has issued a board worker training manual for use by the county boards of election. They will also provide a flip-chart reference guide for use by board workers on Election Day.

VOTING EQUIPMENT & DEMOS

- New Jersey uses DRE machines in polling places and optical scan machines to process absentee ballots. New Jersey requires back-up paper ballots in the event of emergency (i.e., equipment failure).
- Counties provide public demonstrations of voting machines, and in some counties, a machine demonstration is on the county website. The testing of optical scanning equipment is publicly noticed in the local newspaper.

ELECTION DAY CONTINGENCY PLANS

- The state directs each county election office to have a contingency plan regarding office location (and alternate polling place sites) in case of emergencies. The State Office of Emergency Management provides assistance in this regard. A state mobile voting unit plan can be activated, with the assistance of New Jersey Transit, if it is required.
- County clerks, who print the ballots, are being advised to have additional ballots on hand and to ensure that a printing service can quickly respond to the need for additional ballots. The State Attorney General will have hundreds of deputy attorneys general throughout the state to handle all legal matters.

ELECTION RESULTS

- New Jersey will post election results online after the election at: www.njelections.org



New Mexico

Registered Voters:	1,085,854
Voter Registration Deadline:	October 7, 2008
Early Voting Period	In person, no excuse early voting begins the third Saturday before the Election and continues until the Saturday before the election.
Polling Place Hours:	7:00 AM to 7:00 PM
Voter Hotline:	1-800-477-3632
Online Resources:	State Elections Website: http://www.sos.state.nm.us/ Polling Place Locator: https://voterview.state.nm.us/ Voter Registration Lookup: https://voterview.state.nm.us/ Provisional Ballot Status: https://voterview.state.nm.us/ Absentee Ballot Status: https://voterview.state.nm.us/

VOTER EDUCATION & OUTREACH

- The Secretary of State had a Student Film Competition to produce a public service announcement aimed at increasing voter turnout among persons with disabilities. The winning team received a \$750 first prize and their 30 second public service announcement will be offered for broadcast at the state's major television stations.
- PSA's are broadcast for the Native American Population which consists of Navajo, Apache (Jicarilla and Mescalero), Pueblo (Keres, Tewa, Tiwa, Towa and Zuni). This includes information (i.e. candidates, constitutional amendments, general obligation bond questions, and judicial retention. These PSA's also include information on voter registration deadlines, absentee and early voting, and polling place information.
- A voter guide was produced in English and Spanish that includes all constitutional amendments (with the arguments for and against), general obligation bond questions, and candidates for judicial retention. Voter notifications were mailed to all eligible registered voters in New Mexico informing them of their current voter information, precinct number and polling location for Election Day.

POLL WORKER RECRUITMENT & TRAINING

- The office of the Secretary of State provided an election school for all county clerks. The Office has also produced a video to be shown to poll officials during the poll worker training. The Secretary of State will assist in providing additional training for Presiding Judges statewide.

VOTE CENTERS

- The state of New Mexico allows for early voting sites or vote centers during the early voting time frame. A list of statewide early voting sites may be viewed at www.sos.state.nm.us/.

VOTING EQUIPMENT

- New Mexico uses optical scan tabulators and AutoMARK ballot markers.

2008 ELECTION RESULTS

- Election night results will be posted as they come into the state office at www.sos.state.nm.us/.



New York

Registered Voters:	11,363,178
Voter Registration Deadline:	October 10 th , 2008
Voter Hotline:	1-800-458-3453 for feedback, questions, complaints during the voting period
Polling Place Hours:	6:00 AM - 9:00 PM
Online Resources:	State Elections Website: www.elections.state.ny.us/ Polling Place Lookup: https://voterlookup.elections.state.ny.us/votersearch.aspx Voter Registration Lookup: https://voterlookup.elections.state.ny.us/votersearch.aspx

VOTER EDUCATION & OUTREACH

The State Board of Elections has launched an online voter education initiative, www.vote-ny.com, which will inform voters of the use of ballot marking devices in their respective poll sites this year. Ballot marking devices enable voters with a variety of disabilities to vote independently and privately, using features unique to each county device.

POLL WORKER RECRUITMENT & TRAINING

- Mandatory poll worker training is now an annual requirement (as opposed to once every three years). In addition, the State Board of Elections has created a core curriculum for poll worker training, and is developing an interactive webbased training supplement, to enhance required, in-person annual training and certification classes.

VOTING EQUIPMENT & DEMOS

- Lever machines are used throughout the state and are being complemented with ballot marking devices that enable voters with disabilities to vote independently and privately. In three counties, a very small number of electronic voting machines will be used.
- There are two types of ballot marking devices which voters may encounter: ImageCast and AutoMARK. Voters are encouraged to visit the State Board's website, or contact their own county board of elections, for details on systems and devices available to them this year.
- County boards of elections are conducting voter outreach programs with demos. The state provided web-based demonstrations at the New York State Fair in August.



North Carolina

Registered Voters:	5,807, 880 (as of June 30, 2008)
Voter Registration Deadline:	October 10, 2008 Registration is also allowed at "one-stop absentee voting" from October 16 th through November 1 st
Early Voting Period:	In person, no excuse absentee voting begins 30 days before the election
Polling Place Hours:	6:30 AM - 7:30 PM
Voter Hotline:	1-866-522-4723 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.sboe.state.nc.us/ Voter Registration Lookup: www.sboe.state.nc.us/VoterLookup.aspx Sample Ballot: www.sboe.state.nc.us/VoterLookup.aspx Provisional Ballot Status: www.app.sboe.state.nc.us/provisionalvoting/?v=86 Absentee Ballot Status: www.sboe.state.nc.us/VoterLookup.aspx?feature=voterinfo

VOTER EDUCATION & OUTREACH

- A Voter Guide is mailed to 3,700,000 North Carolina households for the May primary and November general election. The guide contains information on registration and voting and highlights new information.
- Media and Internet are used to inform the public on new laws or requirements.
- The State Board of Elections has a staff member whose duties include Latino outreach. There is also a voter registration staffer that handles new voters, UDCAVA matters, and Section 7 NVRA voters.

POLL WORKER RECRUITMENT & TRAINING

- North Carolina provides online poll worker training in addition to its regular training.
- North Carolina law allows for Student Election Assistants to assist poll workers at the polls. These are students who are at least 17 years-old, but not yet 18 years-old.

VOTING EQUIPMENT

- North Carolina uses optical scan tabulators, DRE machines with voter verifiable paper trail, and AutoMARK ballot markers.
- Logic and accuracy testing is performed at county offices with public access available for those who wish to observe.

E-POLL BOOKS

- North Carolina allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted on the state website at: <http://www.sboe.state.nc.us/>



North Dakota

Registered Voters:	North Dakota does not have voter registration
Voter Registration Deadline:	N/A
Voter Hotline:	800-352-0867
Polling Place Hours:	7:00 AM to 7:00 PM (counties can keep polls open until 9:00 PM)
Online Resources:	State Elections Website: www.nd.gov/sos/electvote/ Absentee Voting Status: https://secure.apps.state.nd.us/sos/voterviewer/

VOTER EDUCATION & OUTREACH

- North Dakota has an established voter hotline (see above).
- Twenty-two vote-by-mail counties provide their voters with information on this process.
- The Secretary of State's website has extensive voter information, including seven voter educational videos available for experienced and first-time youth voters, minorities, seniors, persons with disabilities, etc.
- North Dakota media provides extensive election coverage.
- Voters are able to track status of absentee ballot at online resource listed above.

POLL WORKER RECRUITMENT & TRAINING

- State law now allows county election officials to hire election clerks (previously appointed by political parties). As a result, some businesses offer staff to work as election clerks.
- Each county conducts mandatory poll worker training sessions before each election.

VOTING EQUIPMENT & DEMOS

- Each polling location has at least one optical scan vote tabulator and one AutoMARK ballot marker.
- Instructional videos for the voting equipment are available on the Secretary of State's website at www.nd.gov/sos.

VOTE-BY-MAIL

- Twenty-two counties are voting by mail. Each county has at least one polling location open within their county on Election Day for those voters wishing to cast their ballot at a polling location.

VOTE CENTERS, EARLY VOTING & E-POLL BOOKS

- Pilot vote centers will be used in two counties on Election Day. Six counties are using early voting precincts. For the first time, electronic poll books will be used in six counties.

2008 ELECTION RESULTS

- Counties will upload election results directly to the Secretary of State website. The results are then immediately available at www.nd.gov/sos. Media outlets may request direct access to XML feeds and receive precinct results as they arrive at the Secretary of State's office. This allows visual broadcasters to use the XML files for on-screen display of election results.



Ohio

Registered Voters:	7,944,643 (as of July 7, 2008)
Voter Registration Deadline:	October 6 th , 2008
Early Voting Period:	In person, no excuse absentee voting begins 35 days before the election
Polling Place Hours:	6:30 AM - 7:30 PM
Voter Hotline:	866-644-6868
Online Resources:	State Elections Website: www.sos.state.oh.us/ Voter Registration Lookup: www.sos.state.oh.us/SOS/elections/VoterInfoSearches.aspx Online Feedback Mechanism: www2.sos.state.oh.us/pls/voter/T?p=104-1-93001109639196

VOTER EDUCATION & OUTREACH

- The Ohio Secretary of State provides numerous publications to the public them available on the Secretary of State's website.
- The Secretary of State promotes voter registration through all possible media outlets, sends regional liaisons to attend county events throughout the state, and provides outreach at the State Fair.
- Grads Vote 2008 is a statewide program that encourages youth involvement in elections. Voter registration packets will be distributed with high school diplomas to approximately 145,000 graduating high school seniors as part of Grads Vote 2008, to promote voting by young people and encourage early civic involvement by serving as poll workers
- The Secretary of State provides overseas and military voters with an automated tool that assists in completing a voter registration/ballot request form.
- The Voting Rights Institute (VRI), established by the Secretary of State, works to implement programs that enhance the voting experience, acts as a clearinghouse to address voter concerns, and provides leadership on legislative and policy initiatives. VRI has numerous initiatives and activities planned for this summer.
- Ohio provides two voter registration forms in welcome packets for people who change their address with the United States Postal Service.

POLL WORKER RECRUITMENT & TRAINING

- In an effort to improve and standardize the training of poll workers around the state, the Secretary of State has unveiled an online poll-worker training program available to all county boards of elections in the state. The online training program, paid for partly with grant funding through the Pew Charitable Trusts, is free and voluntary for county elections boards and is intended to provide a uniform supplement to elections boards' current poll-worker training program. Boards of elections are required to have meetings to train staff on the online training program.
- In addition to the online poll-worker training program, the state is developing a "Quick Reference Guide" (Flip Chart), a 12 point Quick Reminder List, and a printed poll worker manual for all counties.

VOTING EQUIPMENT

- Ohio uses optical scan tabulators, DRE machines with voter verifiable paper trail, and AutoMARK ballot markers.
- The state partners with local boards of elections to give equipment demonstrations and provides online equipment demonstration videos.



Ohio

- In precincts with DRE machines, Ohio requires back-up paper ballots as an additional option for voters and in case of machine problems.
- Ohio provides online equipment demonstrations on the state elections website.

E-POLL BOOKS

- Ohio allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted on the state website at: <http://www.sos.state.oh.us/>



Oklahoma

Registered Voters:	2, 022, 537 (as of January 15, 2008)
Voter Registration Deadline:	October 10 th , 2008
Polling Place Hours:	7:00 AM - 7:00 PM
Early Voting Period:	In person, no-excuse absentee voting takes place from 8:00 AM to 6:00 PM on October 31 st and November 3 rd , and from 8:00 AM to 1:00 PM on November 1 st
Online Resources:	State Elections Website: www.state.ok.us/~elections/ Polling Place Lookup: www.ok.gov/elections/ppl/index.php

VOTER EDUCATION & OUTREACH

- The State Election Board publishes and distributes voter information brochures in English and Spanish. A brochure with information for voters with special needs is also distributed.

POLL WORKER RECRUITMENT & TRAINING

- The county election boards have already recruited and trained an ample supply of Precinct Officials and substitute Precinct Officials for the 2008 election cycle.
- All training materials (video and written materials) are provided to the county election boards by the State Election Board to ensure that training is uniform statewide. The State Election Board also requires that any person training Precinct Officials first participate in a "train-the-trainer" program provided through the State Election Board. All Precinct Officials are required by law to attend training every two years.
- Precinct officials may utilize an on-line training program specifically addressing the telephone voting procedures. This on-line program is to reinforce (not take the place of) the statutorily required face-to-face training they receive each election year.

VOTING EQUIPMENT & DEMOS

- Oklahoma uses optical scan tabulators and vote-by-phone systems.
- A preview and practice session of the vote-by-phone system is available to the public shortly before each election in which it is used.
- County election board personnel typically provide demonstrations of the voting equipment at the request of school and/or civic organizations. Ballot testing is done prior to every election, and is open to the public and the political parties.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at: www.elections.state.ok.us



Oregon

Registered Voters:	2, 019, 913
Voter Registration Deadline:	October 14 th , 2008
Voter Hotline:	1-866-ORVOTE
Polling Place Hours:	Oregon votes entirely by mail. County election offices are open from 7:00 AM to 8:00 PM on Election Day
Online Resources:	State Elections Website: www.sos.state.or.us/elections/ Ballot Drop-Off Locator: www.sos.state.or.us/elections/may2008/dropites.html Sample Ballot: www.sos.state.or.us/elections/other.info/stelec.htm Election Complaint Form: www.sos.state.or.us/elections/HAVA/hava_complaints.html

VOTER EDUCATION & OUTREACH

- Before each statewide election, the Office of Secretary of State mails each household an Official State Voter's Pamphlet, which includes information about new voter requirements or new voter services.
- The office also publishes a "synopsis" after every legislative session that compiles all of the changes in election law.
- A new state law directs community colleges and institutions of higher education to adopt plans to encourage students to register and vote in elections. The plan must ensure that all students receive voting information, including a campus-wide advertising campaign about ballot delivery deadlines, voting prohibitions, and possible penalties for violations.

VOTE-BY-MAIL

- Oregon conducts elections by mail.

POLL WORKER RECRUITMENT & TRAINING

- Oregon does not have traditional polling sites. Election workers are hired at county elections offices to assist with processing ballots. There is no shortage of election workers.

VOTING EQUIPMENT & DEMOS

- Oregon uses optical scan machines to tabulate ballots. For voters with disabilities the state has implemented an alternate format ballot (AFB) that can be read and marked by voters with disabilities on their home computers.
- Counties are demonstrating the new alternate format ballot at public locations.

2008 ELECTION RESULTS

- Election results will be posted online at: <http://www.sos.state.or.us/elections/>
- Oregon law does not allow for results to be released until after 8:00 PM on election night.



Pennsylvania

Registered Voters:	8,375,000
Voter Registration Deadline:	October 6 th , 2008
Voter Hotline:	1-877-VOTESPA
Polling Place Hours:	7:00 AM - 8:00 PM
Online Resources:	State Elections Website: www.VotesPA.com Voter Registration Lookup: www.pavoterservices.state.pa.us Provisional Ballot Status: www.pavoterservices.state.pa.us Election Complaint Form: www.hava.state.pa.us/hava/sep/www.asp?y=1388&q=442756&havaKey=

VOTER EDUCATION & OUTREACH

- VotesPA.com is an educational website designed to be a resource to Pennsylvania voters on the voter registration and electoral process. This website provides information such as voter registration forms, tips for first time voters, a guide to college student voting, polling place locator, information on accessible and inaccessible polling places and the option to sign up for Election Day reminders.
- The VotesPA.com site also provides information specifically for military and overseas civilian voters, individuals with criminal convictions, and individuals with limited English proficiency (election information is translated into seven different languages).
- Pennsylvania will run TV and radio advertising via its "Ready.Set.Vote" campaign.
- The "Vote With A Vet" program encourages voter participation among the high school voting-age population and teaches students about the sacrifices veterans have made for our democratic society. The "Student Mock Election" program engages school-age youth in the voting process by having them participate in a mock election.

POLL WORKER RECRUITMENT & TRAINING

- The Department of State added an optional check box on the Voter Registration Mail Application (VRMA) for electors who are interested in working as poll workers on Election Day.
- The re-designed VRMA also offers an optional box for applicants who would like to be bilingual interpreters on Election Day.
- The Department of State created a new training video and offers live orientations to any county upon request.

VOTING SYSTEMS & DEMOS

- Pennsylvania uses optical scan tabulators, Direct Recording Electronic (DRE), and AutoMARK ballot markers.
- Online instructional videos are available through the "Ready.Set.Vote" campaign at: <http://www.votingbooth.state.pa.us/>



Pennsylvania

- Pennsylvania counties do a variety of public demonstrations with the voting systems at community homes, malls, etc.
- Pennsylvania requires back-up paper ballots in the event of emergency (i.e., equipment failure).

ELECTION DAY CONTINGENCY PLANNING

- The Department of State distribute a series of memorandums and directives to each county elections office addressing potential Election Day issues such as ballot shortages, power failures, severe weather, etc.

2008 ELECTION RESULTS

- Election results will be posted online at:
<http://www.electionreturns.state.pa.us/>
- The state has added more counties to the real-time updating and expects additional counties to adopt this method of reporting in the near future.



Rhode Island

Registered Voters:	680, 238 (as of July 1, 2008)
Voter Registration Deadline:	October 4 th , 2008 (Rhode Island allows Election Day Registration to vote for Office of President/Vice President)
Polling Place Hours:	7:00 AM - 9:00 PM (Check with Municipality First)
Early Voting Period:	In person, no-excuse absentee voting takes place from 8:00 AM to 6:00 PM on October 31 st and November 3 rd , and from 8:00 AM to 1:00 PM on November 1 st
Voter Hotline:	401-222-2345
Online Resources:	State Elections Website: www.elections.ri.gov/default.htm Polling Place Lookup: www.sec.state.ri.us/vic/ Voter Registration Lookup: www.sec.state.ri.us/vic/ Sample Ballot: www.sec.state.ri.us/vic/ Provisional Ballot Status: www.elections.ri.gov

VOTER EDUCATION & OUTREACH

- Office of the Secretary of State publishes a "How to Register and Vote Guide" and makes copies available online and in audio formats that include both English and Spanish.
- The Office of Secretary of State participated in a citizenship ceremony in Providence and registered 15 of the Rhode Islanders who took their Oath of Allegiance to the United States.
- Rhode launched a statewide voter registration initiative that has registered hundreds of new voters at high schools throughout the state. The initiative is a partnership with the state Board of Elections, school administrators and municipal officials. The plan is to visit every Rhode Island high school leading up to the 2008 elections.

POLL WORKER RECRUITMENT & TRAINING

- A statewide mailing sent out by the Office of Secretary of State included a question asking registered voters if they wanted to serve as poll workers. The question has also been added to the registration form. There is also a movement to recruit high school students as poll workers.
- The State Board of Elections conducts all poll worker training classes and has been developing a new training manual and procedures.

VOTING EQUIPMENT & DEMOS

- Rhode Island uses optical scan tabulators and AutoMARK ballot markers.
- This Office of Secretary of State and the State Board of Elections conduct all voting equipment demonstrations. Locations include high schools, institutions of higher learning, senior centers, and any group upon invitation. Local boards of canvassers each have a demonstration unit on site for daily use as needed.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at: <http://www.elections.ri.gov>



South Carolina

Registered Voters:	2,300,000
Voter Registration Deadline:	October 4 th , 2008
Polling Place Hours:	7:00 AM - 7:00 PM
Online Resources:	State Elections Website: www.scvotes.org/ Polling Place Lookup: www.scvotes.org/ Voter Registration Lookup: www.scvotes.org/check_your_voter_registration Absentee Ballot Status: webprod.cio.sc.gov/SCSECVoterWeb/voterinformationSearch.do Provisional Ballot Status: webprod.cio.sc.gov/SCSECVoterWeb/voterinformationSearch.do

VOTER EDUCATION & OUTREACH

- The State Election Commission (SEC) has been conducting the "Every Vote Matters. Every Vote Counts" voter education and outreach initiative since 2004. This year the initiative will focus on registering young voters and encouraging all voters to update their addresses with their county voter registration offices.
- Voter education and outreach initiatives have a focused on reaching senior citizens and minority voters. The Commission also works closely with disability advocacy groups and has produced videos and other materials for them.
- The SEC has a page on the social networking web site Facebook:
www.facebook.com/profile.php?id=1231168894
- The SEC has contracted with One Call Now to provide a system capable of delivering telephone messages to county officials, poll workers, voting machine technicians, or anyone else who is in the system – all within a matter of minutes. For example, a message can be delivered to all 2,100 polling places in the state within 30 minutes. SEC and county election officials use the service by dialing a 1-800-number, recording a message, and selecting a group (poll clerk, technician, etc.) to receive the message. The system then begins to call each number stored in the phone bank and deliver the message.
- The SEC conducted a Voter Education Month voter education and outreach initiative in September 2007. This included a proclamation by the Governor and a kick-off event at the statehouse. Posters and voter checklists were printed and distributed throughout the state. This initiative has been successful in getting our message out through the media. Voter Education Month focuses on four main points: encouraging citizens to register to vote by the October 4th deadline, encouraging those registered to check to make sure their voter registration information is current, asking voters to educate themselves on the candidates and questions, and encouraging voters to vote either on Election Day, or by absentee if qualified.

POLL WORKER RECRUITMENT & TRAINING

- An interactive, online poll manager training has been developed and will be available through www.scvotes.org before the 2008 General Election.

VOTING EQUIPMENT & DEMOS

- South Carolina uses DRE machines and optical scan tabulators (for absentee, emergency and provisional ballots).



South Carolina

- One of the main components of the commission's voter education initiative is public demonstration of voting equipment. This will continue through the General Election.
- South Carolina requires back-up paper ballots in the event of emergency (i.e., equipment failure).
- www.scvotes.com provides voting equipment instructions and online video demonstrations.

E-POLL BOOKS

- South Carolina allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted on the state website at: www.scvotes.us/



South Dakota

Registered Voters:	508, 240
Voter Registration Deadline:	October 20 th , 2008
Early Voting Period:	In person, no excuse absentee voting begins six weeks before the election
Polling Place Hours:	7:00 AM - 7:00 PM
Voter Hotline:	888-703-5328
Online Resources:	State Elections Website: www.sdsos.gov/ Polling Place Lookup: http://apps.sd.gov/applications/st25cers/ Voter Registration Lookup: http://apps.sd.gov/applications/st25cers/ Sample Ballot: http://apps.sd.gov/applications/st25cers/

VOTER EDUCATION & OUTREACH ACTIVITIES

- South Dakota provides an online Voter Information Portal, which allows voters to view their voter registration information, polling place location and a sample ballot.

POLL WORKER RECRUITMENT & TRAINING

- The Office of Secretary of State provides training materials (training video, precinct manual, voter key, etc.) and workshops for the county auditors.

VOTING EQUIPMENT & DEMOS

- South Dakota uses optical scan tabulators and AutoMARK ballot markers.
- The Secretary of State speaks to numerous groups and provides demonstrations of the AutoMARK upon request.

E-POLL BOOKS

- South Dakota allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at: <http://apps.sd.gov/applications/ST25CERS/results/resultsMain.aspx>
- Results are updated every five minutes.



Tennessee

Registered Voters:	3,397,402 (as of June 1, 2008)
Voter Registration Deadline:	October 6, 2008
Early Voting Period	In person, no excuse early voting is allowed from October 15, 2008 to October 30, 2008
Polling Place Hours:	7-10:00 AM to 7:00 PM
Online Resources:	State Elections Website: www.state.tn.us/sos/election/index.htm Polling Place Locator: http://trnmap.state.tn.us/voterlookup/ Voter Registration Lookup: http://trnmap.state.tn.us/voterlookup/ Election Complaint Form: http://state.tn.us/sos/election/hava/index.htm

VOTING EQUIPMENT

- Tennessee uses optical scan tabulators and DRE machines.
- Tennessee provides online equipment demonstrations on the state elections website.
- Tennessee requires back-up paper ballots in the event of emergency (i.e., equipment failure).

E-POLL BOOKS

- Tennessee allows local jurisdictions to use electronic poll books.

2008 ELECTION RESULTS

- Election results will be posted at <http://www.state.tn.us/sos/election/results.htm>



Texas

Registered Voters:	12,752,417
Voter Registration Deadline:	October 6 th , 2008
Polling Place Hours:	7:00 AM - 7:00 PM
Early Voting Period	In person, no-excuse early voting takes place October 20 th to October 31 st
Voter Hotline:	1-800-252-8583 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.sos.state.tx.us/elections/index.shtml Voter Registration Lookup: https://voterinfo.sos.state.tx.us/voters/nw/faces/introduction.jsp Sample Ballot: www.sos.state.tx.us/elections/voter/whatsintheballot.shtml Polling Place Lookup: www.sos.state.tx.us/elections/voter/where.shtml Voter Education: www.voteas.org

VOTER EDUCATION & OUTREACH

- www.voteas.org is a comprehensive voter education website with voting information and resources, including information specifically for young and first-time voters.

POLL WORKER RECRUITMENT & TRAINING

- Texas now has online poll worker training: <http://www.texaspollworkertraining.com/>. This is a web-based curriculum designed to teach election judges and clerks about polling place procedures. The training is interactive and includes opening and closing the polling place, voter situations, pop quizzes, a test component, election resources and a certificate of completion. This service is an additional tool to help customize face-to-face training.

E-POLL BOOKS

- Texas allows local jurisdictions to use electronic poll books.

VOTING EQUIPMENT

- Texas uses optical scan tabulators, DRE machines, and AutoMARK ballot markers.
- Texas requires back-up paper ballots in the event of emergency (i.e., equipment failure).

VOTE CENTERS

- Two Texas counties (Lubbock and Erath) will have vote center pilot programs for the 2008 Election.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at: www.sos.state.tx.us



Utah

Registered Voters:	1, 522, 562
Voter Registration Deadline:	October 6 th , 2008
Polling Place Hours:	7:00 AM - 8:00 PM
Voter Hotline:	1-800-995-VOTE for feedback, questions, complaints during the voting period
Early Voting Period:	In person, no-excuse early voting begins 14 days before the election
Online Resources:	State Elections Website: http://elections.utah.gov/ Polling Place Lookup: www.gva1.utah.gov/elections/polling.aspx Voter Registration Lookup: www.gva1.utah.gov/elections/polling.aspx Sample Ballot: www.gva1.utah.gov/elections/polling.aspx Provisional Ballot Status: gva1.utah.gov/elections/provisional.aspx

VOTER EDUCATION & OUTREACH

- Utah's elections website provides information on voter registration, election procedures, absentee voting, and military and overseas voting.
- Utah's Voter Information Website allows voters to find their polling place and view a sample ballot.

VOTING EQUIPMENT & DEMOS

- Utah uses DRE machines with voter verifiable paper trail.
- County clerks must post at a two-day advance notice of when and where the public can view accuracy testing
- Utah provides online equipment demonstrations at www.leaveyourprint.com
- Utah requires back-up paper ballots in the event of emergency (i.e., equipment failure).

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted online at: <http://elections.utah.gov/electionresults.htm>



Vermont

Registered Voters:	426, 202
Voter Registration Deadline:	October 29 th , 2008
Polling Place Hours:	Polls open no earlier than 5:00 AM and close at 7:00 PM
Early Voting Period:	In person, no-excuse early voting begins 30 days before the election
Voter Hotline:	1-800-439-8683 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.sec.state.vt.us/ Sample Ballot: http://vermont-elections.org/elections1/howtovote.html Polling Place Locator: http://vermont-elections.org/elections1/locate_polling.html Election Complaint Form: http://vermont-elections.org/elections1/admincomplaint2.12.pdf

VOTER EDUCATION & OUTREACH

- The Vermont Secretary of state participated in Vermont's High School Voter Registration week by registering 18 year-old students at a Vermont high school and speaking before civics classes.
- The Vermont Secretary of State established the Honor a Vet With Your Vote program to provide citizens with the opportunity to honor those who have served in the military.
- The Secretary of State has a voter information webpage (www.govotevermont.com) that educates voters on voter registration and voting process (including instructional videos). The site also provides information specifically for youth voters, voters with disabilities, and military and overseas voters.
- Vermont's largest county is promoting voter registration and early voting via ads in print and radio, and is extending hours for voter registration.

POLL WORKER RECRUITMENT & TRAINING

- The Office of the Secretary of State conducts more than 15 regional training sessions for local election officials throughout the state and distributes an updated Elections Procedures Guide to all Town Clerks and Presiding Officers. The Office also conducts additional training sessions upon request of town officials.

VOTING EQUIPMENT

- Vermont uses optical scan tabulators and vote-by-phone systems.
- Each town does a public logic and accuracy test at least 10 days prior to the election.



Virginia

Registered Voters:	4,789, 511
Voter Registration Deadline:	October 6 th , 2008
Polling Place Hours:	6:00 AM - 7:00 PM
Voter Hotline:	1-800-522-9745 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: http://www.sbe.virginia.gov/cms/Voter_Information/Index.html Voter Registration Lookup: www.voterinfo.sbe.virginia.gov/PublicSite/ Polling Place Locator: http://www.sbe.virginia.gov/cms/Voter_Information/Index.html Election Complaint Form: www.sbe.virginia.gov/cms/Voter_Information/Voter_Grievance_Process.html

VOTER EDUCATION & OUTREACH

- Through the *Ensure the Vote* campaign, Virginia publicly encourages voters to check their registration status online before the registration deadline, to vote absentee if eligible, and to check their polling place location online prior to Election Day.
- Virginia works with statewide cable TV broadcasters on the *Ensure the Vote* campaign to offer corporate sponsored information segments.
- The state conducted Civic Responsibility Week in May 2008 in cooperation with high schools statewide.
- UOCAVA voters: the state has partnered with Virginia National Guard, Family Support Groups, Military Voting Assistance Officers, Federal Voting Assistance Program and overseas organizations to ensure that these groups are informed and empowered to vote absentee while living and working overseas.
- Young/College voters: the state's *Ensure the Vote* campaign has partnered with Virginia21, a non-partisan, political group which encourages and promotes political activity, including voter registration and absentee voting by college students. We have also worked with the High School Civic Drive, and sent voter registration information to state public high schools through the state Department of Education.
- First-time Voters: Virginia partnered with *The Virginian Pilot* newspaper to produce a voter's guide, and will once again be sending postcards about the HAVA ID requirement to first-time federal election voters who have not yet fulfilled the requirement.
- Minority Voters: The Virginia State Board of Elections has been participating in the "Rolling Radio" program and other efforts to reach and register minority voters.
- Disabled Voters and Senior Voters: Virginia has partnered with the Virginia Hospital Association and the Virginia Nursing Home Association to reach disabled and older voters who may need to update their registration or vote absentee, and in early October will be participating in a conference at the University of Virginia on civic participation in long-term care facilities.



Virginia

POLL WORKER RECRUITMENT & TRAINING

- As part of the "Ensure the Vote" program, Virginia is working with private organizations and local election officials to recruit 10,000 officers of election throughout the state. Virginia is also supporting use of volunteers under the Virginia State Government Volunteers Act when insufficient paid partisan workers are available.
- Workshops in July provide for training of registrars and electoral board members on the successful recruitment, training and retention of poll workers.

E-POLL BOOKS

- Virginia allows local jurisdictions to use electronic poll books.

VOTING EQUIPMENT

- Virginia uses optical scan tabulators, DRE machines, and AutoMARK ballot markers.
- General Registrars offer voting equipment demonstrations to the general public.
- Fairfax County Virginia provides online equipment demonstrations in English, Korean, Spanish and Vietnamese.

ELECTION DAY CONTINGENCY PLANS

- Virginia is encouraging localities to order more ballots than they believe they will need and has adopted a policy for expedited reproduction procedures if ballot shortages do arise.
- The Virginia State Board of Elections is working with the state emergency services department, the State Police, the political parties, and the power and phone companies to prepare for, coordinate and be able to promptly respond to any emergencies that might arise.
- The Virginia National Guard will have generators available if power goes out at the State Board of Elections' building. During annual training, the state will encourage similar emergency preparedness by local election officials.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted on the state web site at: http://www.sbe.virginia.gov/cms/Election_Information/Election_Results/index.html
- Virginia will offer RSS feeds for election results.



Washington

Registered Voters:	3, 418, 207
Voter Registration Deadline:	October 4 th , 2008
Polling Place Hours:	7:00AM-8:00PM
Voter Hotline:	800-448-4881 for feedback, questions, complaints during the voting period
Online Resources:	State Elections Website: www.secstate.wa.gov/ Polling Place Locator: wei.secstate.wa.gov/OSOS/VoterVault/Pages/MyVote.aspx Online Registration: http://wei.secstate.wa.gov/onlinevoterregistration/Registration.aspx

VOTER EDUCATION & OUTREACH

- Washington provides an online, searchable voters guide featuring photos, biographies, candidate statements, and ballot measure information.
- Washington will be mailing more than 3 million Voter's Pamphlets to voters statewide. We print the Voters' Pamphlet in Chinese, Spanish, Braille, and audio versions.
- The Washington Office of the Secretary of State can be found in all sorts of online places. In an effort to capture the attention of younger voters, the agency has ramped up its presence in popular social networking sites as part of its digital media campaign called I Will Vote.
- The agency is using MySpace, Facebook, Twitter and YouTube to encourage Washington voters to take photos of themselves pledging to vote in 2008, and then submit them in a virtual public forum. The agency has built an online photos-sharing tool that allows people to upload their own photos on the agency's official Web site. Through the project, the agency updates the public on news and important deadlines related to election season.
- All of the Office of the Secretary of State's social media networking sites can all be accessed from the I Will Vote page by going to www.secstate.wa.gov and clicking on the "I Will Vote" icon on the main page.
- The Secretary of State College Civics Program utilizes partnerships with state colleges and universities to encourage voter registration and participation in the election process. College Civics has its own Facebook group.
- Printed election materials are available in seven minority languages. The elections website is available in three languages.
- Staff travels to military installations to inform military voters of their voting rights, voter registration deadlines, and options for faxing and emailing ballots.
- The Office of Secretary of State sends pre-filled voter registration forms to Washington residents on their 18th birthday.
- The office holds a K-12 Mock Election so students can learn how to vote and have practice voting before they become eligible when they turn 18.
- The office publishes a large print brochure about accessible voting. The brochure will be available on the web for individuals who use screen readers.

POLL WORKER RECRUITMENT & TRAINING

- King County is recruiting corporations to provide IT staff and regular staff to work the polling locations for the general election.



Washington

VOTING EQUIPMENT

- Washington uses optical scan tabulators, DRE machines with voter verifiable paper trail and AutoMARK ballot markers.
- The state encourages counties to demonstrate voting equipment in public spaces. Also, the state encourages counties to use voting equipment for student body elections (high school and college) when possible to get younger voters accustomed to using the machines and to reach disabled voters in locations that are ADA accessible.

VOTER CENTERS

- Each county elections office is a Voter Service Center that can issue ballots and assist voters. Some counties will make more than one Voter Service Center available for the 2008 General Election.

VOTE-BY-MAIL

- 37 of Washington's 39 counties are entirely vote by mail. In Pierce and King close to 90% of their voters choose to vote by mail. Ballots are mailed out 18 days in advance of each election and can be returned at any time up to and including Election Day.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted on the state website at: <http://www.vote.wa.gov>



West Virginia

Registered Voters:	1,183,496
Voter Registration Deadline:	October 14 th , 2008
Polling Place Hours:	6:30 AM - 7:30 PM
Early Voting Period:	In person, no-excuse early voting begins 20 days before the election until three days before the election
Voter Hotline:	1-866-505-VOTE for feedback, questions, complaints during the voting period
Fraud Hotline:	1-877-FRAUD-WV
Online Resources:	State Elections Website: www.wvsos.com/elections/main.htm Voter Registration Lookup: www.wvotes.com/voters/am-i-registered.php Polling Place Locator: www.wvotes.com/voters/find-polling-place.php Sample Ballot: www.wvotes.com/voters/sample-ballots.php Online Inquiries: www.wvsos.com/service/helpline.htm

VOTER EDUCATION & OUTREACH

- Voter outreach activities include PSAs, radio, TV, and newspaper ads, Facebook site and outreach staff.
- West Virginia worked with Overseas Foundation to develop a web-based tool that assists military and overseas voters in completing a voter registration/ballot request form. West Virginia also allows military and overseas voters to email/fax balloting materials, and participate in Military Voters Week.
- West Virginia provides online instructions for voting paper ballots and electronic voting equipment.

POLL WORKER RECRUITMENT & TRAINING

- The West Virginia Legislature passed a resolution encouraging private employers to give employees time off on Election Day to work in the polling place. The legislature also removed a law prohibiting state employee from serving as poll workers.
- West Virginia holds training for clerks and poll workers, and has revised and streamlined training manuals.
- In conjunction with Marshall University, West Virginia created a new poll worker training program produced and implemented by members of the education, technical and computer programming fields.
- West Virginia provides online poll worker training videos.

VOTING EQUIPMENT

- West Virginia uses optical scan tabulators, DRE machines with voter verifiable paper trail, and AutoMARK ballot markers.

2008 ELECTION RESULTS

- As election results come into the state office, they will be posted on the state web site at: www.wvotes.com/election-results/index.php



Wisconsin

Registered Voters:	3,404,643
Voter Registration Deadline:	N/A (Wisconsin allows Election Day registration)
Polling Place Hours:	7:00AM-8:00PM
Early Voting Period:	In person, no-excuse absentee voting begins three weeks before the election until 5:00pm the day before the election
Voter Hotline:	866-VOTEWIS for feedback, questions, complaints during the voting period
Online Resources:	State Elections Web Site: http://elections.state.wi.us/ Voter Registration Lookup: http://vpa.wi.gov/ Polling Place Locator: http://vpa.wi.gov/ Sample Ballot: http://vpa.wi.gov/ Provisional Ballot Status: http://vpa.wi.gov/

VOTER EDUCATION & OUTREACH

- Special Registration Deputy classes are offered for any eligible elector to learn how to register people to vote and be appointed as a statewide registration deputy.
- The Voter Registration application is translated to Spanish and Hmong.
- Wisconsin works regularly with many advocacy groups and reviews voter information websites maintained by other voter information/registration organizations for accuracy.

POLL WORKER RECRUITMENT & TRAINING

- The voter registration form has a box to check if interested in being a poll worker. Wisconsin encourages special registration deputies to inquire if a person is interested in being a poll worker and to check the box.
- The state provides training for Chief Elections Inspectors.

VOTING EQUIPMENT

- Wisconsin uses optical scan tabulators, DRE machines with voter verifiable paper trail, and AutoMARK ballot markers.
- Public tests of the voting equipment are required by state law. These tests are noticed as a public meeting.

2008 ELECTION RESULTS

- Certified election results will be available after the election at: <http://elections.state.wi.us/section.asp?lenid=155&locid=47>



Wyoming

Registered Voters:	220,863
Voter Registration Deadline:	October 6 th , 2008 Wyoming also allows registration on Election Day
Early Voting Period	In person, no excuse absentee voting begins 40 days prior to the election
Polling Place Hours:	7:00 AM to 7:00 PM (counties can keep polls open until 9:00 PM)
Online Resources:	State Elections Website: http://soswy.state.wy.us/Elections/Elections.aspx Polling Place Locator: http://soswy.state.wy.us/Elections/PollPlaceLookup.aspx Election Complaint Form: http://soswy.state.wy.us/forms/Elections/General/complaint.pdf

VOTER EDUCATION & OUTREACH

- In 2008, most of the voter outreach will be done by county election officials
- The state election web site provides voters with a variety of election resources.

POLL WORKER RECRUITMENT & TRAINING

- The Secretary of State's Office conducted train-the-trainer session with local election officials this year. The state prepares an Election Judges Handbook that is used by some counties.

VOTING EQUIPMENT & DEMOS

- Each polling place will have at least one optical scan tabulator and either a DRE with voter verifiable paper trail or an AutoMARK ballot marker.
- The state website links to demonstrations from voting equipment vendors. Also, the state purchased equipment for the state Protection and Advocacy group and they travel the state providing demonstrations of the equipment to individuals with disabilities. The county election officials also have done a great job taking the equipment to specific places within their counties for public demonstrations.

2008 ELECTION RESULTS

- Election results will be available after the election at:
<http://soswy.state.wy.us/election/results2.htm>
- Wyoming plans to improve the reporting program after this year.

APPENDIX A: STATE REGISTRATION AND ELECTION DATA

STATE	Registered Voters	Registration Deadline	Polling Place Hours	Vote Hotline	Election Day Registration
Alabama	2,791,190	10/24/08	7:00AM-7:00PM	1-800-274-8683	No
Alaska	476,472	10/7/08	7:00AM-8:00PM	1-888-465-5837	Yes ¹
Arizona	2,734,168	10/6/08	6:00AM-7:00PM	1-877-138-VOTE	No
Arkansas	1,808,533	10/6/08	7:30AM-7:30PM	1-800-247-3332	No
California	16,123,787	10/20/08	7:00AM-8:00PM	1-800-345-VOTE	No
Colorado	2,988,736	10/6/08	7:00AM-7:00PM		No
Connecticut	2,084,511	10/24/08	8:00AM-8:00PM		No
Delaware	577,748	10/11/08	7:00AM-8:00PM		No
D.C.	388,300	10/6/08	7:00AM-8:00PM	1-866-DC-VOTES	No
Florida	16,208,112	10/6/08	7:00AM-7:00PM	1-866-308-6739	No
Georgia	5,410,987	10/6/2008	7:00AM-7:00PM		No
Hawaii	402,000 ²	10/6/2008	7:00AM-6:00PM	(800) 442-VOTE	No
Idaho	710,935	10/10/08	8:00AM-8:00PM		Yes
Illinois	7,384,563	10/7/08	6:00AM-7:00PM	866-515-1121	No
Indiana	4,329,806	10/6/08	6:00AM-6:00PM	1-866-IN3-VOTE	No
Iowa	2,800,000	10/25/08	7:00AM-9:00PM		Yes
Kansas	1,643,457	10/20/08	6:00AM-8:00PM	1-800-282-8683	No
Kentucky	2,866,125	10/6/08	6:00AM-6:00PM	502-573-7300	No
Louisiana	2,872,019	10/6/08	6:00AM-8:00PM	1-800-883-2805	No
Maine	909,604	10/14/08	6:00AM-8:00PM	1-207-624-7650	Yes
Maryland	1,205,425	10/14/08	7:00AM-8:00PM	1-800-222-VOTE	No
Massachusetts	4,660,994	10/15/08	7:00AM-8:00PM	1-800-465-8683	No
Michigan	7,211,590	10/6/08	7:00AM-8:00PM	800-292-5973	No
Minnesota	3,106,377	10/14/08	7:00AM-8:00PM	1-877-600-VOTE	Yes
Mississippi	1,800,000	10/4/08	7:00AM-7:00PM	800-829-6786	No
Missouri	1,981,338	10/6/08	6:00AM-7:00PM	800-307F-VOTE	No
Montana	630,633	10/6/08	7:00AM-8:00PM	1-888-884-VOTE	Yes
Nebraska	1,121,273	10/28/08	8:00AM-8:00PM		No
Nevada	1,178,195	10/4/08	7:00AM-7:00PM		No
New Hampshire	865,000	N/A	Varies		Yes
New Jersey	4,952,430	10/14/08	6:00AM-8:00PM	1-877-NJ-VOTE	No
New Mexico	1,083,854	10/7/08	7:00AM-7:00PM	1-800-477-3632	No
New York	11,363,178	10/10/08	6:00AM-9:00PM	1-800-458-3433	No
North Carolina	1,807,880	10/10/08 ³	6:30AM-7:30PM	1-866-322-4723	No
North Dakota	N/A	N/A	7:00AM-7:00PM	1-800-352-0867	N/A
Ohio	7,944,643	10/6/08	6:30AM-7:30PM	877-VOTE-VRI	No
Oklahoma	2,022,537	10/10/08	7:00AM-7:00PM		No
Oregon	2,019,913	10/14/08	7:00AM-8:00PM	1-866-ORE-VOTE	No
Pennsylvania	6,373,000	10/6/08	7:00AM-8:00PM	1-877-VOTE-SPA	No
Rhode Island	680,378	10/4/08 ⁴	6:00AM-9:00PM		Yes
South Carolina	2,300,000	10/4/08	7:00AM-7:00PM		No
South Dakota	598,240	10/20/08	7:00AM-7:00PM	888-703-5328	No
Tennessee	1,397,402	10/6/2008	7:00AM-7:00PM		No
Texas	12,752,417	10/6/08	7:00AM-7:00PM	1-800-252-8683	No
Utah	1,322,562	10/6/08	7:00AM-8:00PM	1-800-095-VOTE	No
Vermont	426,202	10/20/08	5:10:00AM-7:00PM	1-800-439-8683	No
Virginia	4,722,228	10/6/08	6:00AM-7:00PM	1-800-552-9745	No
Washington	3,254,397	10/4/08	7:00AM-8:00PM	800-448-4881	No
West Virginia	1,183,409	10/14/08	6:30AM-7:30PM	1-866-SCVS-VOTE	No
Wisconsin	3,444,643	10/15/2008	7:00AM-8:00PM	866-VOTEWIS	Yes
Wyoming	233,863	10/6/08	7:00AM-7:00PM		Yes

¹ Alaska also allows Election Day Registration for Office of President
² Registration data from 2006 (Source: U.S. Census Bureau)
³ North Carolina also allows same-day registration during the early voting period (10/16/08 - 11/3/08)
⁴ Rhode Island allows Election Day Registration for Office of President

APPENDIX B: STATE ONLINE RESOURCES FOR VOTERS

STATE	Polling Place Location	Voter Registration Lookup	Sample Ballot	Absentee Ballot Status	Online Voter Registration	Election Night Results	Preprocessed Ballot Status
Alabama	Yes	Yes	Yes	No	No	No	Yes
Alaska	Yes	No	Yes	Yes	No	Yes	No
Arizona	Yes	Yes	No	No	Yes	Yes	No
Arkansas	Yes	Yes	No	No	No	Yes	No
California	No	No	Yes	No	No	Yes	No
Colorado	Yes	Yes	No	No	No	No	No
Connecticut	No	No	No	No	No	Yes	No
Delaware	Yes	Yes	No	No	Yes*	Yes	Yes
D.C.	Yes	Yes	No	No	Yes*	No	Yes
Florida	No	No	No	No	No	Yes	No
Georgia	Yes	Yes	No	No	No	Yes	No
Hawaii	Yes	No	No	No	No	-	No
Idaho	Yes	No	No	No	No	Yes	No
Illinois	No	No	No	No	No	No	Yes
Indiana	Yes	Yes	No	No	No	Yes	Yes
Iowa	Yes	Yes	No	No	No	Yes	No
Kansas	Yes	Yes	Yes	Yes	No	Yes	No
Kentucky	Yes	Yes	Yes	No	No	Yes	Yes
Louisiana	Yes	No	Yes	No	No	Yes	No
Maine	Yes	No	Yes	No	No	No	No
Maryland	Yes	Yes	Yes	No	No	Yes	Yes
Massachusetts	Yes	No	Yes	No	No	No	No
Michigan	Yes	Yes	Yes	No	No	Yes	No
Minnesota	Yes	No	Yes	No	No	Yes	No
Mississippi	No	No	Yes	No	No	Yes	No
Missouri	Yes	Yes	Yes	No	No	Yes	Yes
Montana	Yes	Yes	No	No	No	Yes	Yes
Nebraska	Yes	Yes	Yes	No	No	Yes	Yes
Nevada	Yes	Yes	No	No	No	Yes	No
New Hampshire	Yes	No	No	No	No	No	No
New Jersey	Yes	Yes	No	No	No	No	No
New Mexico	Yes	Yes	No	Yes	No	Yes	Yes
New York	Yes	Yes	No	No	No	No	No
North Carolina	Yes	Yes	Yes	Yes	No	Yes	Yes
North Dakota	Yes	No	No	Yes	No	Yes	No
Ohio	Yes	Yes	No	No	No	Yes	No
Oklahoma	Yes	No	No	No	No	Yes	No
Oregon	Yes	No	Yes	No	No	Yes	No
Pennsylvania	Yes	Yes	No	No	No	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	No	Yes	Yes
South Carolina	Yes	Yes	No	No	No	Yes	Yes
South Dakota	Yes	Yes	Yes	No	No	Yes	No
Tennessee	Yes	Yes	No	No	No	Yes	No
Texas	Yes	Yes	Yes	No	No	Yes	No
Utah	Yes	Yes	Yes	No	No	Yes	Yes
Vermont	No	No	Yes	No	No	No	No
Virginia	Yes	Yes	Yes	No	No	Yes	No
Washington	No	Yes	No	No	Yes	Yes	No
West Virginia	Yes	Yes	Yes	No	No	Yes	No
Wisconsin	Yes	Yes	No	No	No	No	Yes
Wyoming	Yes	No	No	No	No	Yes	No

* Delaware and the District of Columbia allow citizens to submit the voter registration application online, however, the registration is not effective until the citizen mails in the signed, hardcopy voter registration application.

APPENDIX C: STATE VOTING EQUIPMENT

STATE	Voting Systems
Alabama	Optical Scan, Auto-MARK
Alaska	Optical Scan, DRE with VVPAT
Arizona	Optical Scan, DRE with VVPAT, Auto-MARK
Arkansas	Optical Scan, DRE with VVPAT, DRE without VVPAT
California	Optical Scan, DRE with VVPAT, Auto-MARK
Colorado	Optical Scan, DRE with VVPAT
Connecticut	Optical Scan, Vote-By-Phone
Delaware	DRE without VVPAT (optical scan for absentee ballots)
D.C.	Optical Scan, DRE without VVPAT
Florida	Optical Scan, DRE without VVPAT, Auto-MARK
Georgia	DRE without VVPAT (optical scan for absentee ballots)
Hawaii	Optical Scan, DRE with VVPAT
Idaho	Optical Scan, Punch Card, Auto-MARK
Illinois	Optical Scan, DRE with VVPAT, Auto-MARK
Indiana	Optical Scan, DRE without VVPAT, Auto-MARK
Iowa	Optical Scan, Auto-MARK
Kansas	Optical Scan, DRE with VVPAT, DRE without VVPAT, Auto-MARK
Kentucky	Optical Scan, DRE without VVPAT
Louisiana	Optical Scan, DRE without VVPAT
Maine	Optical Scan, Vote-By-Phone
Maryland	DRE without VVPAT (optical scan for absentee & provisional ballots)
Massachusetts	Optical Scan, Auto-MARK
Michigan	Optical Scan, Auto-MARK
Minnesota	Optical Scan, Auto-MARK
Mississippi	Optical Scan, DRE with VVPAT, DRE without VVPAT
Missouri	Optical Scan, DRE with VVPAT, Auto-MARK
Montana	Optical Scan, Auto-MARK
Nebraska	Optical Scan, Auto-MARK
Nevada	Optical Scan, DRE with VVPAT
New Hampshire	Optical Scan, Photo/Fax
New Jersey	Optical Scan, DRE without VVPAT (optical scan for absentee ballots)
New Mexico	Optical Scan, Auto-MARK
New York	Lever, ImageCast, Auto-MARK
North Carolina	Optical Scan, DRE with VVPAT, Auto-MARK
North Dakota	Optical Scan, Auto-MARK
Ohio	Optical Scan, DRE with VVPAT, Auto-MARK
Oklahoma	Optical Scan, Vote-By-Phone
Oregon	Optical Scan (for mail ballots), Alternative Format Ballot (for voters with disabilities)
Pennsylvania	Optical Scan, DRE without VVPAT, Auto-MARK
Rhode Island	Optical Scan, Auto-MARK
South Carolina	Optical Scan, DRE without VVPAT (optical scan for absentee & provisional ballots)
South Dakota	Optical Scan, Auto-MARK
Tennessee	Optical Scan, DRE without VVPAT
Texas	Optical Scan, DRE without VVPAT, Auto-MARK
Utah	DRE with VVPAT
Vermont	Optical Scan, Vote-By-Phone
Virginia	Optical Scan, DRE without VVPAT
Washington	Optical Scan, DRE with VVPAT, Auto-MARK
West Virginia	Optical Scan, DRE with VVPAT, Auto-MARK
Wisconsin	Optical Scan, DRE with VVPAT, Auto-MARK
Wyoming	Optical Scan, DRE with VVPAT, Auto-MARK

APPENDIX D: STATE DATA ON CONVENIENCE VOTING, E-POLL BOOKS,
 and BACK-UP PAPER BALLOTS

STATE	Mail Ballot Jurisdiction	Vote Centers	E-Poll Books Allowed	In Person Early Voting ¹	Back Up Paper Ballots
Alabama	No	No	No	No	N/A
Alaska	No	No	No	Yes	N/A
Arizona	No	No	Yes	Yes	N/A
Arkansas	No	No	No	Yes	Yes
California	Yes	Yes	Yes	Yes	Yes
Colorado	No	Yes	Yes	Yes	Yes
Connecticut	No	No	No	No	N/A
Delaware	No	No	No	No	No
D.C.	No	No	No	No	N/A
Florida	No	No	Yes	Yes	N/A
Georgia	No	No	Yes	Yes	Yes
Hawaii	----	----	----	Yes	----
Idaho	No	No	No	Yes	N/A
Illinois	No	No	Yes	Yes	Yes
Indiana	No	Yes	Yes	Yes	Yes
Iowa	No	Yes	Yes	Yes	N/A
Kansas	No	Yes ²	Yes	Yes	Yes
Kentucky	No	No	No	No	Yes
Louisiana	No	No	No	Yes	No
Maine	No	No	No	Yes	N/A
Maryland	No	No	Yes	No	Yes
Massachusetts	No	No	No	No	N/A
Michigan	No	No	Yes	No	N/A
Minnesota	Yes	No	No	No	N/A
Mississippi	No	No	No	No	Yes
Missouri	No	No	No	No	No
Montana	No	No	No	Yes	N/A
Nebraska	Yes	No	No	Yes	N/A
Nevada	Yes	No	No	Yes	No
New Hampshire	No	No	No	No	No
New Jersey	No	No	No	Yes	Yes
New Mexico	No	Yes	No	Yes	N/A
New York	No	No	No	No	No
North Carolina	No	No	Yes	Yes	No
North Dakota	Yes	Yes	Yes	Yes	N/A
Ohio	No	No	Yes	Yes	Yes
Oklahoma	No	No	No	Yes	N/A
Oregon	Yes	No	No	N/A	N/A
Pennsylvania	No	No	No	No	Yes
Rhode Island	No	No	No	No	N/A
South Carolina	No	No	Yes	No	Yes
South Dakota	No	No	Yes	Yes	N/A
Tennessee	No	No	Yes	Yes	Yes
Texas	No	Yes	Yes	Yes	Yes
Utah	No	No	Yes	Yes	Yes
Vermont	No	No	No	Yes	N/A
Virginia	No	No	Yes	No	No
Washington	Yes	Yes	No	N/A	N/A
West Virginia	No	No	Yes	Yes	No
Wisconsin	No	No	No	Yes	N/A
Wyoming	No	No	Yes	Yes	N/A

¹ Defined as in person, no-excuse absentee or early voting

² Kansas offers vote centers in satellite advance voting programs and not on election day

Endnotes

¹Based upon estimates from secretaries of state in Arizona, Minnesota, Ohio and other states which have been provided in published news reports. Available at <http://www.ohio.com/news/28124529.html>; <http://www.startribune.com/politics/state/19197099.htm>; and <http://news.ktar.com/index.php?nid=6&sid=959326>.

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Mr. CONYERS. Now, this is a new report. Did it just come out today or yesterday?

Mr. CORTÉS [continuing]. Today.

Mr. CONYERS. Today. You are——

Mr. CORTÉS. The report is a survey of all the states, the 50 states and the District of Columbia, that reports on the various steps that the states are taking to first, inform voters about their rights and the rules of voting and engaging those voters; second, ensuring that voters have a smooth and fair experience at the polls on Election Day; and third, to ensure a report on increased capabilities to accurately report results on election night.

Mr. CONYERS. Thank you.

The Deputy Assistant Secretary of State and the Director of Elections for Ohio Secretary of State Jennifer Brunner is Mr. David Farrell. We welcome you here today. You oversee the election section, the campaign finance section, and the field staff section. He was formerly a member of the Clark County board of elections for 7 years, and the chairman of the board for 3 years before that.

Welcome to this hearing.

TESTIMONY OF DAVID M. FARRELL, DEPUTY ASSISTANT SECRETARY OF STATE AND DIRECTOR OF ELECTIONS, OFFICE OF THE OHIO SECRETARY OF STATE

Mr. FARRELL. Thank you.

Good morning, and thank you for the opportunity to offer testimony on Ohio's state and local efforts to prepare for the 2008 general election.

The state of election system in Ohio has come a long way since Secretary Brunner took office in January of 2007. Between that time and now, Secretary Brunner has taken substantial efforts to examine, strengthen and continually adjust and make improvements to the elections system. Evidence of our successes can be found by looking at Ohio's March primary election, where we had a 46 percent turnout and over 500,000 absentee voters, despite experiencing severe weather problems and other emergencies.

Chair Lofgren, I would like to offer into the record the March 2008 Ohio primary election report, which fully details the significant advancements Ohio has made in its elections system since Secretary Brunner came into office.¹

Mr. CONYERS. Without objection, so ordered.

Mr. FARRELL. Thank you.

With November 4 approaching, there is great work to do in Ohio in every county, and we are getting that work done. This will be a historic November election, and in Ohio, where we can realistically anticipate a statewide turnout of 80 percent, Secretary Brunner has focused on three objectives: preparation, partnership and success.

Secretary Brunner is focused on strengthening Ohio's voter operations, which is the nuts and bolts of elections administration. She understands that given the technological advances made over the last decade and the implementation of the Help America Vote Act

¹The information referred to, because of its voluminous size, is not being reprinted in this hearing but can be accessed at <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults.aspx>.

of 2002, also known as HAVA, getting voter operations right is crucial. She has made great strides in this respect.

For example, to equitably apply Ohio's elections laws to all voters, Secretary Brunner implemented an aggressive statewide poll worker training program, which includes an interactive, online poll worker training component. She created and made available a quick reference guide for all poll workers to use on Election Day. Secretary Brunner also issued a directive which provides minimum standards for poll worker training for all counties.

In addition, Secretary Brunner made compliance with the Americans with Disabilities Act of 1990 a priority for all Ohioans. While the Act has been law for 28 years, Secretary Brunner was the first chief elections officer of the State of Ohio to provide the 88 county boards of elections with an easy-to-use checklist that permits local boards to confirm their compliance. We thank Congress for providing ADA grant dollars to Ohio and allowing us to make available \$500,000 in funds to address ADA concerns at polling places in 2008.

Secretary Brunner and local boards of elections are also preparing for any problems that may arise on or before Election Day. In 2004, Ohio became the unfortunate poster child for long lines at polls and concerns about voter disenfranchisement. Secretary Brunner has taken a number of steps to address long lines and a host of other issues that cut to the core of voter confidence in our elections.

First, a key "best practice" focus has been backup paper ballots for counties using direct recording electronic voting machines, also known as DREs. In the March primary election, these backup paper ballots made the difference for polling places impacted by severe weather, power outages, and machine problems. Secretary Brunner was very supportive of Chair Lofgren's bill, H.R. 5803, which would have provided funding for states to provide backup paper ballots. Although that bill did not pass, in Ohio we will utilize HAVA funds to reimburse boards of elections for the cost of backup paper ballots equal to 25 percent of the turnout in that precinct in 2004 for this November 4 election.

Second, we have also provided boards of elections with a formula, developed by the Ohio General Assembly and based on HAVA, for the equitable distribution of voting machines on Election Day. This will help us find problems with distribution plans ahead of time and assure a scientific, facts-based approach to allocating voting machines for Ohioans.

Secretary Brunner's preparation efforts also include making sure that voting is secure. This spring, our office brought together a bipartisan working group to craft best practices for election security. From the board of elections office to the ballot box and back again, we have created a suite of directives that provide "best-in-class" security for Ohio's voting systems.

Those directives include security at the polling place and board of elections offices; minimum storage; security access and inventory control requirements for voting systems equipment at boards of elections; voting machine delivery requirements; chain of custody for ballots; and security for voting equipment supplies.

Secretary Brunner also required boards of elections to end the practice of so-called “sleepovers” for voting machines in Ohio, and we are now phasing in secure machine transport for every county in Ohio.

Between now and November 4, we in Ohio will all be focused on preparing for success. We are confident that state and local election officials can address any new set of problems that may arise because we have established a partnership that works to get things done.

Thank you.

[The prepared statement of Mr. Farrell follows:]

PREPARED STATEMENT OF DAVID M. FARRELL

Page 1 of 1
Written Testimony

SECRETARY OF STATE JENNIER BRUNNER

David FarrellDeputy Assistant Secretary of State and Director of Elections
*On Behalf of Ohio Secretary of State Jennifer Brunner**Testimony before the United States House of Representatives Subcommittee on Elections of the Committee on House Administration and the Subcommittee on the Constitution, Civil Rights and Civil of the Committee on the Judiciary*

Good morning Chair Lofgren, Ranking Member McCarthy, and distinguished members of the House Subcommittee on Elections and Chair Nadler, Ranking Member Franks, and distinguished members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the Committee on the Judiciary. Thank you for the opportunity to offer testimony on Ohio's state and local efforts to prepare for the 2008 general election. I am David Farrell, Deputy Assistant Secretary of State and Director of Elections for Ohio Secretary of State Jennifer Brunner.

The state of the elections system in Ohio has come a long way since Secretary Brunner took office in January 2007. Between that time and now, Secretary Brunner has taken substantial efforts to examine, strengthen and continually adjust and make improvements to the elections system. Evidence of our successes can be found by looking at Ohio's March primary election where we had a 46% turnout and over 500,000 absentee voters despite experiencing severe weather problems and other emergencies. Chair Lofgren, I would like to offer into the record the March 2008 Ohio Primary election report, which fully details the significant advancements Ohio has made in its elections system since Secretary Brunner came into office.

With November 4th approaching, there is great work to do in every Ohio county, and we are getting that work done. This will be a historic November election, and in Ohio, where we can realistically anticipate a statewide turnout of 80%, Secretary Brunner has focused on three objectives: Preparation, Partnership and Success.

Secretary Brunner is focused on strengthening Ohio's voter operations, which is the nuts and bolts of elections administration. She understands that given the technological advances made over the last decade and the implementation of the Help America Vote Act of 2002 (HAVA), getting voter operations right is crucial. She has made great strides in this respect. For example, to equitably apply Ohio's elections laws to all voters, Secretary Brunner implemented an aggressive statewide poll worker training program, which includes an interactive, online poll worker training component. She created and made available a quick reference guide for poll workers to use on Election Day. Secretary Brunner also issued a directive (Directive 2008-77), which provides minimum standards for poll worker training.

In addition, Secretary Brunner made compliance with the Americans with Disabilities Act of 1990 (ADA) a priority for all Ohioans. While the Act has been law for 28 years, Secretary Brunner was the first chief elections officer of the State of Ohio to provide to the 88 Ohio county boards of elections an easy-to-use checklist that permits local boards to confirm their compliance. We thank Congress for providing ADA grant dollars to Ohio and allowing us to make available \$500,000 in funds to address ADA concerns at polling places in 2008.

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Between now and November 4th, we in Ohio will all be focused on preparing for success. We are confident that state and local election officials can address any new set of problems that may arise because we have established a partnership that works to get things done.

This partnership is the cornerstone of elections in Ohio. Ohio's voting system was established to recognize the inherent tensions between political parties and to use that tension as a check and balance on the process. I will say that it is refreshing to work for a Secretary of State like Jennifer Brunner who has stated unequivocally that her efforts are focused not on any party, any re-election or other affiliation, but rather, on making Ohio's election system the best it can be. Indeed, our focus is on what we all do in public service – serve people for their greater good.

Success in November is what this is all about. Every meeting we hold, every checklist we prepare, every tough decision we make must be focused on this indisputable fact – Ohioans and our country expect and deserve nothing but the very best from us all.

Success will be measured by a lot of people in a number of different ways this November. Did voting lines move quickly? Were the poll books up-to-date? Were the voting machines working? Did our poll

workers know their jobs? Were absentee ballots handled properly? Did we operate an election people felt confident about? Preparation and partnership will enable Ohioans to say a resounding "yes."

Again, thank you for the opportunity to testify on behalf of Ohio Secretary of State Jennifer Brunner regarding election preparedness.

Mr. CONYERS. Thank you very much.

Mr. Rokey Suleman, recently appointed to be the Fairfax County Registrar—

Mr. SULEMAN. Thank you, Mr. Chair—

Mr. CONYERS [continuing]. In Virginia—I have got a lot more to tell about you.

Mr. SULEMAN. Okay.

Mr. CONYERS [continuing]. Prior to your appointment as deputy director of the board of elections in Trumbell County, Ohio. And while there, Mr. Suleman took part in the Everest Voting System Review, which is an assessment of the security of Ohio's voting systems, and led the transition from punch cards to optical scan and direct record electronic combination systems in Trumbell County.

We are glad to have you here this morning.

**TESTIMONY OF ROKEY W. SULEMAN, GENERAL REGISTRAR,
FAIRFAX COUNTY OFFICE OF ELECTIONS**

Mr. SULEMAN. Thank you, Mr. Chair, and distinguished Members of the Committee.

My name is Rokey Suleman, II. I am the general registrar of the Fairfax County Office of Elections in Fairfax, Virginia. I am pleased to be here this morning to discuss election preparation for the 2008 general election at the local level.

The 2008 general election is not a single national event. Rather, it is the simultaneous occurrence of thousands of smaller, local events. I am here to discuss the preparations of one of those local events.

Fairfax County is the largest election jurisdiction in the Commonwealth of Virginia. We serve one in seven of all of the registered voters in the Commonwealth.

Preparations for an election like this do not happen overnight. Fairfax County has been planning for the 2008 general election for several years. As a matter of fact, we are already making plans toward the governor's race in 2009, redistricting in 2011, and the 2012 presidential election.

Part of the difficulty for preparing for an election such as this is the increase in new voter registrations. Our office has processed nearly 69,000 registration applications since our February presidential primary. We have registered nearly 41,000 new voters and updated or transferred into our county nearly 28,000 registrations.

The office has also transferred over 19,000 voters to other jurisdictions in the state and removed 2,500 deceased voters from the rolls. By the time of the October 6th registration deadline, our office will have handled nearly 20 percent of all of our registration cards in the period between the primary and general election.

Some of this registration activity is taking place by college students. There has been much debate in Virginia as to a student's resident status when they are at a university. It is the opinion of this office that if the student chooses to list their school residence as their primary residence, they may do so. They are attesting to this under penalty of perjury, so we take the application at its face.

If we have reason to believe that someone does not live at the address in which they are registered, we will make an inquiry.

This election will not only see record registration, but record turnout for our county. In the 2004 general election, Fairfax County saw 467,000 out of 633,000 registered voters participate in the process—a 73 percent turnout. This November, we are expecting nearly 80 percent of our expected 665,000 registered voters to cast a ballot.

Increases in registration and participation strain the resources of our system. We are expecting long lines at the polls this November. Fairfax County averages 3,000 voters in a precinct. We are telling folks now to expect the lines. They will exist. We are also taking steps to process voters in an expedited fashion.

Virginia passed a ban against acquiring direct-recording electronics, also known as DRE equipment, in 2007. Knowing that our county had an inadequate number of voting machines and weren't able to acquire more, the decision was made to add optical scan ballots to the polls this November.

Fairfax County purchased optical scan equipment in July. Our county has ordered enough paper ballots to serve over 103 percent of our voter population this November. Voters will be given a paper ballot, but may vote on DRE equipment if they so choose. We believe that we will be able to process voters faster with the optical scan equipment, thus reducing wait times.

This process does not come without significant planning and expense. Solving the pressure of lines is not as easy as adding optical scan machines for jurisdictions. Everything that is crucial to operate an optical scan system needed to be purchased. Our county did not have privacy booths to fill out the ballots, so we purchased as many as we could, and then we purchased clipboards to mark ballots on if voters do not want to wait for a privacy booth.

We had to purchase secrecy sleeves to hold the ballot before insertion in the machine, ballot boxes to hold the expected number of ballots, ink pens to mark the ballots, security seals to secure machines, boxes and locate a storage facility large enough to store the used and unused ballots for the required 22 months. We have backup equipment and batteries in case of machine failure.

Should a polling place become unavailable due to emergency during the day, we have equipment standing by to open up a secondary location within 1 hour. This implementation increased my budget approximately 25 percent this year.

Another policy the county has instituted to complement the optical scan system is the division of poll books. Normally, precincts would have one to three poll books to serve voters, with splits dependent on the precinct's size. This November our precincts will have two to five poll book splits. More splits allow us to divide the incoming groups of voters and process them faster. This, coupled with the paper ballot, should help ease the pressure of turnout.

Dividing the poll books also requires poll workers to man the tables. In 2004 we utilized 2,516 poll workers. This election, we are expecting to use almost 3,100—a 20 percent increase. Recruiting and training these volunteers takes time and money. We are expecting to hold over 70 training classes in 30 days. We have to train our folks on how to use the new equipment, reinforce training on the older equipment, and help them manage the turnout. Our poll workers must learn how to be technicians, legal experts and

customer service specialists—all from a 3-hour class that some people may take 35 days before the election.

Fairfax County is also encouraging the use of absentee voting this election. Although Virginia has one of the most restrictive absentee ballot requirements in the country, we expect a record amount of absentee ballots. In 2004, almost 54,000 people voted absentee. As of this Saturday, we had over 17,000 absentee ballot applications, and nearly 250 people voted on the first day of in-person absentee voting this Friday. We are utilizing email ballots so that our overseas civilian and military voters receive their ballots faster.

Adding to the complexity of the election is the electorate of Fairfax County. There are numerous languages spoken here among our citizens. Although we do not meet the threshold under the Voting Rights Act requiring the availability of a minority language ballot, we are offering several services to our voters. We have native Spanish and Korean speakers on staff, as well as staff trained in American Sign Language. At the polls we offer a telephone translation service with over 100 available languages. Each polling location will have a video demonstration of our new voting equipment and in precincts with a high concentration of Hispanic, Korean or Vietnamese voters, the video will be offered in both languages.

All of this comes at an added expense to our office. Staff are now working 7 days a week processing registrations and absentee applications. Seventy-hour work weeks are not uncommon. As we get closer to November, these days get longer. Voters call to inquire about polling locations, registration issues, ballot problems and general information. Voters will even call our office to find out where to pick up a sign for a candidate. Second shifts are added just to process paperwork that accumulates during the day. Our staff now consists of our normal contingent of 25 full-time employees and 56 temporary-seasonal staff, with more arriving next week.

The long hours are necessary because we do not have the luxury of flexible deadlines. No matter the level of work, it all must be completed in time for November 4. Election officials are expected to be 100 percent accurate in their work, and mistakes have the potential to disenfranchise a voter. We take that responsibility very seriously. Not only that, but it seems that everyone now has teams of lawyers waiting to pounce if the smallest mistake is made. This only adds to the level of stress.

I do want to take this time to thank and commend my staff. The workload grows and grows, yet staffing levels remain stagnant. Laws become more complex and require more service, yet local budgets feel revenue constraints. We do not have everything that I would like to run an election, but we will be successful. Staff know that time spent at home will suffer. We joke that our families should place our pictures on milk cartons. But they still have smiles on their faces. They truly love to serve the voters, and although we are incredibly busy, we are excited to see all of the participation.

All of this effort occurs so that the voter has as little difficulty participating as possible. It is difficult to ask the entire Nation to do the same thing on the same day. It takes months of planning that 1 day so the voter has the ability to arrive at their polling lo-

cation and participate in our most basic and most important part of a democracy.

Thank you for the invitation to speak today.
[The prepared statement of Mr. Suleman follows:]

PREPARED STATEMENT OF ROKEY W. SULEMAN

**UNITED STATES CONGRESS
HOUSE OF REPRESENTATIVES**
**The Committee on House Administration, Subcommittee on Elections and the
Committee on Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil
Liberties**

Wednesday, September 24, 2008

Good morning Madame Chair and distinguished Members of the Committees. I am Rokey W. Suleman, II, General Registrar of the Fairfax County Office of Elections in Fairfax, Virginia. I am pleased to be here this morning to discuss election preparation for the 2008 General Election at the local level.

The 2008 General Election is not a single national event. Rather it is the simultaneous occurrence of thousands of smaller, local events. I am here to discuss the preparations of one of those local events.

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Virginia passed a ban against acquiring direct-recording electronic (DRE) equipment in 2007. Knowing that our county had an inadequate number of voting machines and were unable to acquire more the decision was made to add optical scan ballots to the polls this November.

Fairfax County purchased optical scan equipment in July. Our county has ordered enough paper ballots to serve 103% of our voter population this November. Voters will be given a paper ballot but may vote on DRE equipment if they so choose. We believe that we will be able to process voters faster with the optical scan equipment thus reducing wait times.

This process does not come without significant planning and expense. Solving the pressure of lines is not as easy as "adding optical scan machines" for jurisdictions. Everything that is crucial to operate an optical scan system needed to be purchased. Our county did not have privacy booths to fill out the ballots so we purchased as many as we could and then purchased clipboards to mark ballots on if voters do not want to wait for a privacy booth. We had to purchase secrecy sleeves to hold the ballot before insertion to the machine, ballot boxes to hold the expected number of ballots, ink pens to mark the ballots, security seals to secure machines, boxes and locate a storage facility large enough to store the used and unused ballots for the required twenty-two months. We have back-up equipment and batteries in case of machine failure. Should a polling place become unavailable due to emergency during the day we have equipment standing by to open a secondary location within an hour. This implementation increased my budget approximately 25% this year.

Another policy that the county has instituted to complement the optical scan system is the division of poll books. Normally precincts would have 1-3 poll books to serve the voters with splits dependent on the precinct's size. This November our precincts will have 2-5 poll book splits. More splits allow us to divide the incoming groups of voters and process them faster. This coupled with the paper ballot should help ease the pressure of turnout.

Dividing the poll books also requires poll workers to man the tables. In 2004 we utilized 2516 poll workers. This election we are expecting to use almost 3,100-a 20% increase. Recruiting and training these volunteers takes time and money. We are expecting to hold over 70 training classes in 30 days. We have to train our folks on how to use the new equipment, reinforce training on the older equipment and help them manage the turnout. Our poll workers must learn how to be technicians, legal experts and customer service specialists-all from a three-hour class that some people may take 35 days before the election.

Fairfax County is also encouraging the use of absentee voting this election. Although Virginia has one of the most restrictive absentee ballot requirements in the country we expect a record amount of absentee ballots. In 2004 almost 54,000 people voted absentee. As of Saturday we had over 17,000 absentee ballot applications and nearly 250 people voted on the first day of in-person absentee voting Friday. We are utilizing e-mail ballots so that our overseas civilian and military voters receive their ballots faster.

Adding to the complexity of the election is the electorate of Fairfax County. There are numerous languages spoken here among our citizens. Although we do not meet the threshold under the Voting Rights Act requiring the availability of a minority language ballot, we are offering several services to our voters. We have native Spanish and Korean speakers on staff as well as staff trained in American Sign Language. At the polls we offer a telephone translation service with over 100 available languages. Each polling location will have a video demonstration of our new voting equipment and in precincts with a high concentration of Hispanic, Korean or Vietnamese voters the video will be offered in both languages.

All of this comes at an added expense to our office. Staff are now working seven days a week processing registrations and absentee applications. 70 hour work weeks are not uncommon. As we get closer to November the days get longer. Voters call to inquire about polling locations, registration issues, ballot problems and general information. Voters will even call to find out where to pick up a sign for a candidate. Second shifts are added just to process paperwork that accumulates during the day. Our staff now consists of our normal contingent of 25 and 56 temporary/seasonal staff with more arriving next week.

The long hours are necessary because we do not have the luxury of flexible deadlines. No matter the level of work it all must be completed in time for November 4th. Election officials are expected to be 100% accurate in their work and mistakes have the potential to disenfranchise a voter. We take that responsibility very seriously. Not only that but it seems that everyone now has teams of lawyers waiting to pounce if the smallest mistake is made. That only adds to the level of stress.

I do want to take this time to thank and commend my staff. The workload grows and grows yet staffing levels remain stagnant. Laws become more complex and require more service yet local budgets feel revenue constraints. We do not have everything that I would like to run an election but we will be successful. Staff know that time spent at home will suffer. We joke that our families should place our pictures on milk cartons. But they still have smiles on our faces. They truly love to serve the voters and although we are incredibly busy we are excited to see all of the participation.

All of this effort occurs so that the voter has as little difficulty participating as possible. It is difficult to ask the entire nation to do the same thing on the same day. It takes months of planning that one day so the voter has the ability to arrive at their polling location and participate in our most basic and most important part of our democracy.

Thank you for the invitation to speak today.

Mr. CONYERS. Thank you very much.

The executive director of the Elections Center is Mr. Doug Lewis. It is a non-profit organization of election officials that trains, informs and advocates for the election administration community.

We would love to hear what you make of all of this today, Mr. Lewis. Welcome.

**TESTIMONY OF DOUG LEWIS, DIRECTOR,
NATIONAL ASSOCIATION OF ELECTION OFFICIALS**

Mr. LEWIS. Congressman, thank you.

My name is Doug Lewis. Obviously, I am not going to get through eight pages of testimony in 5 minutes.

Mr. CONYERS. How about you turn on your microphone?

Mr. LEWIS [continuing]. Try to read all of it.

Mr. CONYERS. Okay. Turn on your microphone.

Mr. LEWIS. I will point to some parts of it so that hopefully you all will be able to see the kind of preparation that is going on in America for elections. There isn't an election official anywhere in America that wants voters to have a bad experience. There isn't an election official anywhere in America that wants voters to wait in long lines.

And yet the fact of the matter is, we are going to be hit with a tsunami this time. We are going to have waves of voters that we have not been able to see in our working lifetime.

I guess mine is not on or I am not speaking right into it. Okay.

I come from Texas. We just had a big hurricane blow through there. This is one election year where we don't like Ike. And when you look at what happened to Galveston, who did all kinds of preparations for a big hurricane, expecting 12-foot waves and they got, you know, 15 to 25-foot waves—they were overwhelmed. We may very well be overwhelmed in this election. We are going to try to do the best we can.

We didn't start planning for this election in 2008; we started in 2001, and 2002, and 2004, 2006—with all of the things that we saw happened in each one of those. We have been working on what is—strange as it may seem—is planning for failure. Where are the failure points that can happen in an election? How do we make this a good experience? How do we make this work for voters?

Well, when you look at that—this is a pretty complex system, folks. You know, we are going to have, according to—I just looked up what the Census Bureau says are voting-population—that is 227 million people of voting-age population. In 2004, we had 178 million of those as registered voters. We are expecting a huge increase over that for this time.

In 2004, there were 122 million voters. We were swamped in 2004. We are going to have more voters this time, we think, by a significant number. And so we are looking at that.

You have got roughly 7,500 election jurisdictions in America scattered over counties and townships, depending on how they run elections, in America. There are roughly 800,000 voting devices. There is somewhat less than 200,000 polling places, 1.4 million poll workers, and roughly 19,000 people who at least derive part of their income from running elections for their jurisdiction.

When you look at that, the numbers are just staggering in terms of what we can do. If you look at the average number of voters having to be handled by the full-time employees like Rokey and even Secretary Cortés, you are looking at maybe a ratio of one employee to every 6,200 voters. There is no business that operates like that in America. There is no enterprise that operates like that in America.

On Election Day, we are going to put the equivalent of several divisions of several armies in the field with two to three hours of training who are supposed to make things come off flawlessly. It can't happen. It will sometimes not be perfect. But perfect is not what we are after here. What we are after is an honest, fair, and accurate election.

And we need to remember that—that when all is said and done, the important part is, is the result an accurate reflection of the public will? And we think that is where if folks will focus on what the end objective is and not on the hiccups that may occur, then we will end up with a good election in America.

You know, I have to tell you, I am concerned about this. When you look at the fact that we have, because the economy is doing a dippy-doodle—we have county commissions and we have local budget authorities all over America who are cutting budgets in elections offices when we are expecting the largest election in our lifetime.

So elections officials are having to do more with less. And as I think Rokey pointed out, my goodness—his jurisdiction alone has grown enormously over the last 20 years, and yet I am going to guess that his staffing level is probably the same or less than it was 20 years ago.

This is what we are faced with when you look at this election. We want it to be a good experience. We want it to be a good election. But I am going to say to all of you, we are also at the point where we have had so many allegations made about the process, that I am not sure we are not doing permanent damage to the process. We have to get to the point where we understand the process is more important than partisanship. And we have to remember that. Because we lose partisanship if we lose the process.

I would say to you that we are very concerned that we do this election, that we do it well, that we do it well for voters, that we make it a good experience for the voters, that voters are happy—and we have some suggestions for that.

In terms of what we think can happen this time, we certainly would encourage voters to be at the point of where they check their official registration. Make sure you are on the voter rolls. Make sure you have done what you need to do. Make sure you know where your polling place is. The truth of the matter is, is on Election Day, we are not going to be able to answer all those calls that come in that want to know where their polling place is. Voters need to know beforehand where their polling place is, and this will help this be a good, and smooth, and wonderful election.

Thank you, sir.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF DOUG LEWIS

Testimony for US House Judiciary & House Administration Committees

Doug Lewis, Executive Director, National Association of Election Officials, The Election Center, Houston, TX

Thank you for having me here to discuss the preparations for the Election 2008. My organization represents the men and women who are election professionals. We specialize in voter registration and election administration issues only, so we pay a great deal of attention to the elections process and how it is administered for Americans.

I come here knowing that there is an expectation of perfection in elections. The dedicated men and women who do this work as a profession have that same expectation of themselves and their staff and their poll workers. But before we begin Election 2008, let me state that it is a goal, not a realistic expectation. The complexities of a Presidential election in the United States simply means that we will have an honest election and a fair election, not a *perfect* election. Voters are entitled to have the election be an accurate reflection of the public will, but not an election that goes without any hiccups along the way. If we can have your help to focus on the final work processes, that have built in backup procedures, and self checking procedures, then we and the voters will confident in the final outcomes.

The Challenge: Before we get too far into the discussion let me present the magnitude of the effort required to conduct a presidential election in America. First consider just the overwhelming numbers:

- There are 227.7 million Americans who are 18 and older – this is known to the Census Bureau as the Voting Age Population (also according to the Census bureau that is 75.6 percent of the total population of the United States).
- In election 2004, there were 178 million registered voters: we believe this number will dramatically increase for Election 2008.
- In election 2004, there were 122 million actual voters. We believe the numbers for Election 2008 will produce the highest number of voters in our working lifetime.
- There are roughly 7,500 election jurisdictions in the U.S. [There are slightly more than 3,000 counties and the New England states and Michigan and Wisconsin elections are conducted at the city and/or township levels]
- There are roughly 800,000 voting devices
- There are somewhat less than 200,000 polling sites
- There are 1.4 million poll workers
- There are roughly 19,000 paid county, city and state election officials for whom at least part of their job is to conduct elections.

To make the task more understandable in terms of its complexities, it is equivalent to ordering several divisions of several armies into the field all at once with part-time officers who have each received an average of two hours training and expecting it to come off flawlessly. In a large geographical area such as Los Angeles County, there will be more than 30,000 poll workers on election day. In my hometown of Houston, TX, there will be 7,500 election workers throughout a large geographical county. The logistics of election day alone would strain most large businesses, let alone the smaller ones. And all of this is accomplished with an average of one full-time election employee each serving 6,241 voters on one day (using the numbers of voters from 2004). What other endeavor in society, government or business, has such a ratio?

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Additional Complications

For us to analyze it further, look at the additional complications:

- The election official has little control over voter registration agencies outside of the election official's own office, and this is a continuing source of problems at the polling place. The federal requirement for provisional voting, so that voter eligibility questions can be determined after allowing the voter to cast a provisional ballot, is a major step in the right direction but is unlikely to solve the total problems of multiple agency registration issues.
- Voter registration groups are important contributors to the overall growth of participation in elections. They are also the source of tremendous problems in voting. This problem is discussed more in the *Third Party Registration* section.
- The facilities used for elections are not under the permanent control of the election officials. The school buildings, the churches, the public facilities, and even the private facilities are usually available on the day before the election and election day (with many being available only on election day). In only rare instances are those facilities used exclusively for elections (although a room may be used exclusively), so parking facilities and building access have competing influences beyond the regulation and control of the election official.
- The election official has no control over the candidates, partisan advocacy groups, the campaign volunteers, and the political parties except directly within a boundary established around the polling site. And yet many of those same groups give misinformation to voters that causes problems for the voters – and election officials – at election time.
- The election official has little control over legally mandated “poll watchers,” i.e., partisans who represent their party or their candidate. Voters incorrectly assume that poll *watchers* are official poll *workers* or *election officials* – when they are not.
- The election official has no control over the news media and if the media gets the story wrong about something in the elections process, it is difficult to correct the misinformation.
- The election official has only limited ability to assist the voter and the attempts to identify and educate voters with little or no voting experience has been frustrating. New and inexperienced voters are unlikely to self-identify and whatever methods we use to reach them, to inform them and to keep them from making mistakes which result in uncountable votes, all while inside the polling place, has to be done in three minutes or less...which is a major challenge for anyone.

Those are factual conditions which affect elections. I bring them up simply to indicate why it is so important to have excellent policies, practices and procedures. Without well thought out and well executed policies and procedures, there are simply too many points of failure. Even with the best administration, even with excellent procedures, and even with policies and procedures handled well, it is still possible to have an ugly election – and have it be an accurate reflection of the voters' choices.

What I hope becomes the standard for all policy makers and elected officials is the standard of a *fair, honest and accurate election* – not a “perfect” election.

What you, as Congressional Representatives, need to know is that extraordinary preparations have gone into Election 2008. The election professionals around the nation have been looking for the best way to have backup processes to virtually every part of this process. There is a Plan A, a Plan B and even a Plan C.

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But you also need to know that due to the enormous stress of this profession since Election 2000 and the microscopic examination of even the most innocent of mistakes, almost half of the people conducting elections in this cycle were not in the profession eight years ago. That turnover has brought many positive aspects but it also means that a whole generation of experience has left the elections profession.

The preparation for Election 2008 didn't begin in 2008. It began in 2001, and 2002, and 2004, and 2006. We are applying the lessons learned in each of those elections to this year's election. By dissecting the hiccups of each of those elections, we are continuously striving to improve each succeeding election.

However, the point needs to be made: good elections require stability. We need stable rules and laws from election to election. We need to settle in on stable choices of voting equipment. We need to have training and stability in the elections professionals who do the job. In many areas of the country we have been faced with constant changes in all aspects of the process either from federally mandated changes, or state legislative changes, or court induced changes, or changes ordered by the Chief Election Official of the state. In some of those states the directives issued this year alone exceed the volume of the entire elections code for the state.

Good elections come from knowledge of what to expect, knowledge of the equipment and what voters are likely to do with that equipment, from knowledge and development of good practices and procedures. When the rules keep changing from election to election – or sometimes even sooner than that – then it becomes far more difficult to assure that voters will have a positive experience.

From the time of the passage of HAVA in 2002 through the continuing legislative or executive mandated changes in the last six years, the implementation of new laws, new practices, new procedures and new systems has resulted in more changes in elections in six years than in the previous 30 years. That is the kind of challenge that is facing those in this profession as they prepare for Election 2008.

Budget Woes. What may be the most troubling of all situations in Election 2008 is that county and township governments have reduced election budgets in what may be the largest election conducted in US history. Due to the economy, local governments have ordered cuts in spending at a time when we expect more registrations, more voters, more ballots, more voting equipment. Our needs are greater than at any other period in election history, yet local governmental leadership has ordered – and implemented – budget cuts in election offices throughout America. So when you see shortages of equipment or ballots or poll workers, you will have to remember that the local election officials have been forced to reduce spending to levels below some non-election cycles to comply with budget authority edicts. All while we are expecting a tsunami of voters that can overwhelm even the best of planning and preparation.

Third Party Registration. Well intended groups seeking to expand voter registration are also a source of problems and disenfranchisement of voters. As election officials, we want and encourage third party registrations. We believe they contribute to the growth and outreach of democracy. But we also recognize that there absolutely *must* be some requirements placed on these efforts. The major abuses of 2004 and 2006 were the result of third party voter registration efforts.

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In a review of Election 2004, a task force of the nation's election administrators at local and state levels clearly recognized that abuses have gotten worse.

Voters are being disenfranchised as a result of third party efforts and Congress must act responsibly in this matter. Third party groups are holding onto validly completed voter registrations and turning them in too late to be processed adequately by the election offices. The result is that voters are then offered provisional ballots rather than regular ballots. The latter will be counted whereas provisional ballots may or may not be counted based on whether the voter was actually registered in time and/or appropriately in accordance with law. Where third party groups collect registrations months or weeks in advance, the voter thinks he or she has done all that is necessary to be a qualified voter. Voter groups must be required to turn in registrations no later than three days from the time collected from the voter so that the elections office has time to verify information and to send the voter needed information to facilitate voting.

Please understand that we too appreciate the hard work many of these groups do to make sure voters have an opportunity to participate. But rational policy indicates that fairness to voters ought to be our objective. Our objective must not become the unrestricted right of groups to do whatever they want in relation to voter registration efforts. Congressional and other elected leaders need to support efforts to make sure third party registration groups truly learn the laws and rules of the registration process in each state. Turning in tens of thousands of incomplete voter registration cards does a disservice to the individuals who would like to be voters. And, when those are turned in too close to the voter registration cutoff period for complete processing, because of the lack of proper data, the voter becomes disenfranchised because they no longer meet the requirements of the state to be an eligible voter. That is a tragic consequence not only for the voter but for democracy.

Equitable Allocation of Voting Systems, Poll Workers, and Election Resources. There isn't an election administrator anywhere in America that wants voters to stand in line if there is a way to avoid such an occurrence.

The root causes of problems in election resource allocation is currently difficult to overcome. Here are samples of what causes these kinds of problems:

- State requirements on size of precincts. If a state allows a precinct to grow too large in size then lines result and perhaps too few machines are allocated. If a state mandates precincts that are too small, then poll worker recruitment is more difficult and the number of machines that can be bought and distributed stretches too thin.
- If states allow too many referendum, initiatives, or constitutional amendments to be placed on the general election ballot, then it is inevitable that long lines develop.
- If county or city or state budget authorities don't allow the elections office to purchase enough equipment to take care of peak period voting, then it becomes a problem that simply cannot be resolved during an election. Purchasing voting equipment must occur, at a minimum, one year before an election where you are crystal gazing as to how many voters you believe will show up. Budget authorities have a nasty habit of reducing the numbers of voting equipment to less than the election officials tell them is needed. If 100 machines are required, government has a habit of funding 80 (or less) and then doesn't allow the local elections office to buy spares to use in case some of the equipment malfunctions. Government also likes to take averages such as there are 1,000 voters and

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polls are open 12 hours so you need to be able to vote just over 80 voters an hour, therefore you need only “x” number of machines. But voters don’t show up in averages – they show up at poll opening, during the lunch hour and, typically, the tsunami occurs at the end of the day in the last 2 or 3 hours of the polls.

- Population growth also affects this. In areas where the population is increasing quickly, the local authorities sometimes can’t keep up with it financially in time to take care of the problem by the next election. Look at areas of intense growth in many of the Sunbelt states and this becomes apparent. Usually high growth areas are able to overcome the problems in later elections because the increased tax revenue allows for increased resources.
- Long ballots due to high numbers of offices to be filled. Some locations simply have many more positions to be voted on than others and that variation is hard to address in a benchmark.
- Poll workers don’t show up to open polls. This is the most troubling of all. We know it is likely to occur in urban areas because it usually does. We make provisions to recruit additional poll workers who can be sent to a site once you know you have a problem. But until that problem actually occurs – and you learn about it – there will be a lag time of responding to the problem and overcoming it. In some areas that may not get “fixed” for several hours due to poll worker shortages. We still haven’t been able to employ enough mind readers and sooth-sayers to predict exactly where and when that will happen.

These are but a handful of the considerations that affect this. Clearly, we may also need to learn and to develop better management tools, so we welcome a study of this area. I assure you election officials want to get this right for voters. We want voters to have a good experience. We want voters satisfied with the process even if they are not always satisfied with the choices.

Machine Failure & Long Lines

Probably the most common allegation we hear is that “machine failure” causes voters to be unable to vote. Unless the voter is in a location where only one voting device is located (and this would normally not be in an urban area), the only “machine failure” is if all voting devices in the polling place were to fail at once. This would be a rare occurrence indeed. If one device fails, there are other devices available to the voters within that polling place. Election officials also have done all they can reasonably think of to assure that there are backups available to assure that voters are able to vote in a timely and complete manner. In Guilford County, NC, and Johnson County, KS, and Harris County, TX and hundreds of other locations, they keep spare devices ready to be deployed where either devices don’t work or where long lines develop.

Of course that is for counties that have budgets and budgeting authorities that allow them to buy spares. We have many locations where the local jurisdiction is fortunate to have enough to start the day but they cannot produce more equipment when long lines develop. This is a reality of life and until there is sufficient funding from whatever source, some locations will simply not have enough equipment to handle the tremendous volume of voters. Since most of those buying decisions occur one to two years previous to the election, it would be difficult to have projected that 2008 was likely to have the most voters of any election in history.

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The point here is that we can't just go to the local Best Buy and purchase more equipment when the lines get long. Our more enlightened jurisdictions (from a budget standpoint) will have the spares ready to go for whatever needs occur. But more than half of our jurisdictions will need something other than more equipment to handle the waves of voters we expect in 2008.

The three counties mentioned above in NC, TX and KS are examples of locations where they are planning for almost all eventualities, including backup generators in case of sustained power outage, to battery backup units for voting machines to operate most of the day, to spare units that can be placed into use rather quickly and other such preparations.

The point here is that paper ballots are not the only solution for "emergency" situations. Having repair technicians scattered around the county, and spare machines, can be valuable solutions.

Suggestions for a Good Election Experience:

What can be done *now* to make this a very good election for all concerned?

Here are some of our suggestions:

- Voters need to be checking now to see that they are registered to vote and on the official voting rolls.
- Confirm with the local elections office your *current* address; if it is different from the address that is on your voter registration, you need to assure that you can still vote. In many states, if you vote from the wrong precinct, your vote may not count so it is important to assure that your current residence is up-to-date in the voter registrar's records.
- Know where your polling place is BEFORE election day. Elections offices are swamped with telephone calls on election day and it becomes impossible for the elections office to get back to the voter with the correct information because they don't have the staff to handle the volume of calls. Virtually all jurisdictions now have some electronic means of assisting voters to find their polling place. Some have automated telephone systems, some have internet access to show the voter the polling location and virtually every jurisdiction is mailing the location of the voter's polling site on their voter registration card.
- Vote early if you can. We expect record turnouts – maybe the highest turnout in the history of American elections – so voters will be better served if they can vote an absentee ballot, or vote in person at an early voting site. But don't wait until the last days to request the absentee ballot or to vote early. Take action at the earliest possible time and voters will be better assured of getting their ballot in time to be counted in the election.
- Before going to the polls to vote, either in early voting or election day voting, know exactly who and what you will be voting for on the ballot. This will assure that you vote quickly and efficiently and don't create long lines for the voters who are in line after you.

Lessons Learned and Cautionary Notes

What we have learned over a period of years now is that many of the publicly reported stories have gotten material facts wrong. Perhaps that is not unusual since lawyers and partisans for losing campaigns

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tend to stretch the information to fit circumstances they believe will assist their campaigns. In normal times we could live with some of that and chalk it up to rhetoric. But in recent years there has been a sustained attack on the process itself and the people who administer it. No election official minds when people find fault with genuine problems. We want to correct mistakes and make sure the process works well for voters. But some of the things that get labeled as problems and/or administrative errors could realistically only be labeled as such if we lived in the Twilight Zone.

Remember that all the rules of elections are not the same in each and every state. Applying a story or circumstance from one place without the context of the specifics of the affected state will most often result in a misrepresentation of what has actually occurred. For instance, some states use provisional voting as a true “fail safe” for when government may have made a mistake – for other states, they use provisional voting also as a method for effecting address changes, and so we will see enormous differences in the numbers of provisional votes and the disposition of those.

Pollworkers: We have all heard the complaints about pollworkers, but the reality is that we cannot run this process without them. And for every bad one there are at least four good ones. Complaining about pollworkers is not a solution. Recognition has to sink in: we are expecting far too much from our pollworkers. We expect them to know 80 to 200 page manuals on what to do in the polling place. We expect them to get all the legal provisions correct every time.

We expect them to remain polite and cordial for the 14 to 16-hour day we work them when some voters or some partisans are not cordial in their dealings with pollworkers. We expect them to be able to set up voting equipment and/or to repair it when it doesn't work. We expect them to be able to explain to people how to vote on the equipment even when voters indicate they don't want any assistance. We expect them to know secondary languages to assist voters in their native language. And, we expect them to continue doing this even when some in the society deride their efforts and their capabilities.

We have to recognize that if our pollworker base continues to primarily consist of those 65 and older, then we must be looking at a redesign of the process. We have made this process far more complicated than it was even 20 years ago, and loaded on more and more responsibilities.

Frankly, we have come to the point that we expect too much from pollworkers. The Election Center began a National Task Force on Training in 2007, where we are looking at training of staff, pollworkers, voters, candidates and media. One key element of that Task Force is pollworker training. We have to revisit the ways we train them and how much information can be retained from the kinds of training we do for one to two to three hours. We will be looking for innovative and model pollworker training methods.

Confidence of Voters: We know from national polls now that a substantial majority of Americans and the majority of voters have faith in our processes that elections in this country are run fairly, honestly, and competently. Therefore, should we ignore the groups and individuals who express their fears and concerns as a result of previous elections, simply because we think some of the solutions they offer will do greater harm than good?

I would hope not. We also know that there are some groups of voters who do not trust the process. We know that some racial and ethnic minority populations have less confidence in the electoral process.

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When we look at the data, the affected populations seem to have distrust not only of voting but of all other aspects of society as relates to the quality of goods and services available to them.

For democracy to work, voters have to have faith in the process. If you don't believe the process is fair and that the process is honest, you cannot believe in the government that results from the electoral process. That is why it is critically important that stereotypes and myths about elections need to be dispelled. Those who continue to pander to the distrust ultimately succeed in assuring that some lose complete faith in democracy. Is partisanship so important that the loss of faith in democracy is worth the political strategy of distrust? For those of us who make this our profession, we will tell you that the process *is* more important than partisanship.

Where We Go From Here

Elections administrators throughout America have the same goals you have: to assure that voters are well served, to assure that all properly qualified voters get to cast their ballots and to have their votes counted.

Trust the people who do this job. They are honest and decent Americans who are under appreciated. They truly believe in an honorable and fair democracy. And regardless of political party affiliation and regardless of political philosophy, the Democrats and Republicans and Independents and liberals and conservatives and moderates who make elections their profession serve voters well. Trust them and their abilities. Ask the local election officials from your home state what they think of the men and women who do this job. You will find them confident in and complimentary of their colleagues throughout America.

Give them the tools and training and funds necessary to the job right. But recognize their role: they are the referees of the system. They can't be partisan participants and still engender faith that the process is open, fair, and honest for all. When they implement the election laws as the legislatures of the states intended, it may result in partisans being unhappy. Which probably means that elections are being run just as they should be run.

And, because of them, Election 2008 will be a good election. It may not be perfect. It even may not be pretty. But it ultimately will be an accurate reflection of the public's choices.

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The National Association of Election Officials (The Election Center) has been focused on voter registration and election administration issues since 1985. Its members are the government employees at the township, city, county and state levels whose professional responsibilities are to handle voter registration and election administration. It is the largest elections related organization in America. The association's chief role is to promote and preserve democracy. Election officials can earn the highest designation of the profession as a Certified Election/Registration Administrator (CERA) through The Election Center. The association trains more than 1,000 election officials each year to improve the methods of serving voters. The website is www.electioncenter.org

Mr. CONYERS. Thank you for your sobering comments, Mr. Lewis. Let's begin our discussion with Chairwoman Zoe Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

And I have just a few questions. First, Mr. Farrell, I was pleased to hear of the efforts that Secretary Brunner has made to prepare for this huge election in Ohio, and also let her know how much I appreciated her support of the backup paper ballot bill that failed, really, on the House floor. Which I thought was a shame.

But certainly jurisdictions have the legal ability to spend HAVA money to get additional paper ballots in case of an emergency. And the emergency could be anything from machine failure to you got a huge line—that is really disenfranchise people.

Are you—and I will ask the same of Pennsylvania and Fairfax County—are your jurisdictions prepared with the backup paper ballot if you are overwhelmed just with the sheer numbers of people showing up, do you think?

Mr. FARRELL. Yes, we believe we are. We have issued instructions for polling place layouts which hopefully will guide boards on how to lay out the polling place so that there is clearly two options for voters. So that in a scenario where it just happens to be a huge turnout and folks normally would just have the choice of one line for a touch-screen voting machine, they now clearly have the option of voting a paper ballot.

Ms. LOFGREN. Unless if they want to wait in line, they can do that, but the choice is theirs.

Mr. FARRELL. Exactly.

In addition to that, I had mentioned poll worker training materials, which incorporates this. Most elections are only as good as the people on the front lines. So we have invested a lot of time and technology in preparing them for this particular type of layout in polling places.

And we have given, to local county boards of election, some flexibility on how they lay that out. As I mentioned on the primary, just through fate we had power outages, flooding, ice storms, and some counties in the primary found that paper ballots did save the day in extreme circumstances.

Well, heading into 80 percent turnout for this fall, it could be that even without a power outage, these could be an extreme circumstance when it comes to long lines.

Ms. LOFGREN. What about Pennsylvania?

Mr. CORTÉS. Madame Chair, I am glad to report that Pennsylvania has taken similar steps to prepare our voters.

We find that there are two necessary components to a good election experience. First, you have to have a well informed and prepared voter. As Mr. Lewis noted, you have to confirm that you are registered. Where is your polling place, how do I get there? If I am a first-time voter, is there an ID requirement? Know the rights of provisional ballots and such.

The second component is to make sure that the poll workers are properly prepared. We find that in Pennsylvania many times our issues related to long lines are not related to deficiencies with the equipment. They may have to do with an inefficient way of registering voters or checking them in at the polls. We are encouraging, and we are glad to say that most of our counties are going

to be, splitting their poll books to have a line for, let's say, voters with the last name A through L, and then another one M through Z.

Pennsylvania law, however, does provide that in order for a jurisdiction, a polling place, with direct reporting electronic machines to be able to hand out an emergency paper backup ballots, you have to have—all systems that are present in that jurisdiction to be down or inoperable. Which means that the fact that you have a long line does not give us the legal authority to just simply hand out ballots.

But again, measures are being taken in terms of preparation, in terms of proper training, to minimize the chances that we will have long lines. We are also trying to manage the expectations on the part of the voters, reminding voters that you are usually more likely to find long lines when we open the polling place at 7 a.m., from 7 say until 9, and then when we are closing the polls, between 5 and 8.

And to the extent voters are able to modify their calendars, we encourage them to do so.

Ms. LOFGREN. All right.

And Fairfax County, I think we are going to have just an enormous turnout in Fairfax County, from what I am—you are on the field, but—is 103 percent going to be enough?

Mr. SULEMAN. Yes, we do believe that 103 percent of the paper ballots will certainly be enough. We figured that 103 percent on a number that was 4 percent larger than the actual number of registered voters that we have.

Ms. LOFGREN. What about distribution? Because in the primary in some states—for example, my county in California—we had such a huge turnout in the northern part of the county that I live in that they ran out of ballots. And they had to get ballots in other places, it was chaotic.

The county did their very best, but in retrospect, talking to the county officials, they wished that they had spent a little bit—I mean, I was in local government for 14 years. It is hard financially, but it would have been cheaper for them to actually proactively provide more ballots than what they ended up spending on Election Day, because they were just caught short.

And so moving around within the county, you know, I think there is a level of excitement in your county about this election that is really stunning.

Mr. SULEMAN. There certainly is. And again, we based our 103 percent on a number that was higher than the actual number of registered voters that we have. I recommend that every jurisdiction purchase over 100 percent of ballots, paper ballots, for their—

Ms. LOFGREN. For that—

Mr. SULEMAN [continuing]. For that reason.

Local governments were under serious budget constraints.

Ms. LOFGREN. I know that.

Mr. SULEMAN. And it is odd to—when you are deciding how to purchase paper ballots—well, if you only have 70 percent turnout, why did you buy 100 percent? You wasted that money. If you only had 60 percent turnout, why did you buy 100 percent?

Ms. LOFGREN. I understand.

Mr. SULEMAN. You wasted that money.

Ms. LOFGREN. Been there, done that. But—you can use HAVA money for this.

Mr. SULEMAN. Yes, yes. And, we know, we are going to look into that. But with the local government, we just figure that, it is my opinion that this is one point where you can blame waste on the taxpayer. Because we have to prepare for every voter to show up. And if a voter would call us and say, I am not going to vote on Tuesday, don't buy my ballot, we would be happy to do that. But we have to assume that they are going to show up.

So we have enough ballots if somebody makes a mistake on their ballot, they can get a second ballot. And we believe we are going to be well prepared for this record turnout.

Ms. LOFGREN. Could I just ask one final question. We are going to have a hearing on this tomorrow in the House Administration Committee, but we have all read about problems with voter registration—I think it was Virginia Tech—but I mean, students are reading this, and if you come from a state where you can't do, by right, absentee voting, the only way you are going to be able to vote on Election Day is if you register where you are at college.

What proactive steps are being taken by the registrars in Virginia to correct the misinformation that students whose residence is at their college are going to lose their student loans if they register and vote?

Mr. SULEMAN. I believe the State Board of Elections has put out some press releases to all the universities stating that you are allowed to register from your dorm. If that is your residence, that is your domicile in the state of Virginia, then you are allowed to register from that point.

There was some misinformation being bandied about across the state by some registrars, who I believe were just being well-meaning and trying to be—

Ms. LOFGREN. I am not suggesting there was a—

Mr. SULEMAN. No.

Ms. LOFGREN [continuing]. There was a wrong intention, but—

Ms. LOFGREN [continuing]. Wrong information—

Mr. SULEMAN. There was misinformation. I believe they were just trying to be good moms and dads when they are looking out for the students. And I believe the State Board has taken the lead on that and notified all the colleges so as to rectify that problem.

Ms. LOFGREN. Thank you, Mr. Chairman.

Mr. CONYERS. I see we have been joined by Vern Ehlers from Grand Rapids, MI, the Ranking Member on the House Administration Committee.

Welcome, sir.

I turn now to Trent Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, I know that in election seasons, sometimes there are partisan considerations and comments on both sides, and I certainly don't deny that I am a partisan Republican. But I always want to make sure that everything I say is absolutely accurate. And just to respond to one of the questions earlier related to ACORN, I just wanted to briefly say that in 2008 alone, ACORN's

activities have prompted calls for investigation in Louisiana, Connecticut, New Mexico, Texas, Nevada and North Carolina.

Now, in my opening testimony, I cited public newspaper reports recounting specific ACORN-related criminal activity in Washington, Missouri, Ohio, Pennsylvania, Wisconsin and Michigan. Now, those reports concern the last few years alone. The number of 12 states is cited in the Pittsburgh Tribune Review, specifically adding Colorado to that list. And other examples are cited in John Fund's article in the *Wall Street Journal* and his new book—it is called "Stealing Elections," and it certainly will be discussed in the second panel.

As I say in my opening statement, I simply focused on the public reports in the last—in six states as they occurred in the last few years. But I would be very happy to see a hearing exploring ACORN activities over the last 10 or 20 years across the Nation. And if that hearing suggests that I have overstated anything, I would be more than happy to apologize publicly to the Committee and to Ms. Lofgren. But I am afraid that it would only show that I understated the situation, far more than overstated it.

So with that said, my question is first I guess to Mr. Lewis, and I will give the others an opportunity.

In Seattle, both the prosecutors indicted seven workers for ACORN that in the last year had registered more than 540,000 low income and minority voters nationwide and employed more than 4,000 get-out-the-vote workers. The ACORN defendants stand accused of submitting phony forms in what Secretary of State Sam Reed says is, "the worst case of voter registration fraud in the history of the state.

Given that the state doesn't require the showing of any identification before voting, it is entirely possible people could have illegally voted using those names. Local officials invalidated 1,762 ACORN registrations. Felony charges were filed against seven of its workers, some who already have criminal records. And prosecutors say ACORN's oversight of its workers was virtually non-existent. To avoid prosecution, ACORN agrees to pay \$25,000 of restitution.

Mr. Lewis, I think that you have at least expressed a tone of wanting to make sure that our elections are honest, and I believe that. Do these reports concern you at all, however?

Mr. LEWIS. I don't know specifics about the one that you are talking about. And certainly I know that Sam Reed is one of those who is not prone to overstatement.

But let me say to you—we are concerned from an administrative standpoint about third-party registrations altogether. We like them. We want them. They do a good job in many cases of bringing people into the process, and that is always healthy for democracy.

But this unfettered, unbounded, unregulated use of third-party registrations, the point of where they sit on those registrations right until the end and try to turn them all in at the very last minute—it just screws up the system. It disenfranchises voters. It is one of those things that just is frustrating to us as elections officials.

That voter that was solicited by a third-party registration outfit may have signed up with them 6 weeks ago, 8 weeks ago, 12 weeks

ago, and yet that card hadn't been turned in to the election official. When these kinds of occurrences go on, we hope that they will be turned in within 3 days. If they are turned in within 3 days of contacting the voter, then we have a chance to get them on the roll. And if there is more information that is needed, to be able to get that information back in time so they vote a legitimate ballot, they vote a real ballot, not a provisional ballot.

And so those are our real concerns—

Mr. FRANKS. Let me follow up with one last question. Mr. Obama has sued on behalf of ACORN. ACORN later invited Mr. Obama to help train its staff. Mr. Obama would also sit on the board of the Woods Fund for Chicago, which gives funds to ACORN. And its registration efforts, of course, have been scandal-prone.

In St. Louis, Missouri, officials found that in 2006 over 1,000 addresses listed on its registrations didn't even exist. Later, Federal authorities indicted eight of the group's local workers, and one, of course, has already pleaded guilty. That has got to concern you too, as well—correct?

Mr. LEWIS. We are always concerned, as elections administrators, that elections not only have real integrity, but also have the appearance of integrity. Because for voters, when they begin to perceive that the process is too loose or that it doesn't adequately protect the system altogether, then they lose faith in it, too.

But the truth of the matter is, how do we, as elections officials—other than with our limited resources and the limited amount of time that is allowed to us—how do we find out about most of these? Well, we only find out about them, quite frankly, if they occur in the normal course of business and we have the resources to be able to do that.

Mr. FRANKS. Thank you.

And thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much. Now I would like to recognize Mr. Charles Gonzalez of Texas.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

Let me pose—well first of all, I think the most obvious observation from this side—it is refreshing to hear someone on the other side of the aisle calling for more oversight and regulation. May be too late and it may be the wrong subject, but regardless.

I am going to ask the same question of the individuals that have testified, and that is, so that we walk away with here something that is relevant to the hearing today: what is the number one challenge that you identify as being the greatest to you in conducting a successful election, knowing the increased numbers on November 4 and prior to?

And what are you asking us to do to assist you?

And I will start off with Secretary Cortés.

Mr. CORTÉS. Thank you, Congressman.

The biggest challenge that the states are going to face is the large number of voters who are registering and will participate. In terms of the registration, as it was noted, it is processing those applications in a timely fashion. I know that in Pennsylvania, many of my colleagues have taken the steps necessary to communicate with any group that is doing third-party voter registration to en-

sure those applications are turned into the voter registration offices as quickly as possible.

But the bottom line is preparation, preparation on the part of that voter. One of the main messages that I am taking out to all Pennsylvanians is: if you are registered, no matter which way you do so—third party, online, in person—you should be receiving within 2 weeks, 14 days of that registration, a confirmation from your county that says you are registered, and where you vote. Preparation on the part of the voter alleviates many of the issues that we face on Election Day.

So I would like to take that message of preparation. How can you help us? Financial resources are always needed. It was noted here already, very eloquently, by the registrar from Virginia that we are in a situation where we don't have enough financial resources. And to that you can add human resources, which oftentimes will require money to bring in.

So you can help us with resources. You can also help us by understanding, as Mr. Lewis noted, that it is a complex process, and that we have gone through a number of reforms since 2000, which I support and are very needed. Give us time to work through those reforms before we enact even more on top of those, because that creates frustration on the part of election administrators.

Mr. GONZALEZ. Mr. Farrell?

Mr. FARRELL. Well, this won't be the first time you have heard this, but our number one challenge is funding. And it specifically relates to the machines themselves. The new machines do wear out more quickly than the old-style levers did. In Ohio we conducted a study and found there were some serious deficiencies in the voting machines. But with no funding, there was no way to replace those, which is why we implemented a plethora of security practices and procedures and chain of custody and other items to try and offset that.

But even that required local boards to, unfortunately, spend more of their funds to make sure these machines—that they had enough, that they also were operating properly.

And the other challenge is training. And as you heard, on the front lines are these poll workers with the ID requirements and trying to make sure that everything is followed properly. And training costs money, as well. So funding would be Ohio's number one priority.

Mr. GONZALEZ. Thank you.

Mr. Suleman?

Mr. SULEMAN. To sound like a broken record, it is funding. I have got a litany of issues that I could correct in my office with a much better funding mechanism. We were very proactive with our voters this year and sent each voter a new voter registration card to let them know their polling location and to give them an updated voter ID to bring to the polls so that would ease along the process. And that alone cost \$300,000 that we haven't been able to replace in our budget.

I could have better poll worker training. In Ohio, I had one of the first counties that went online poll worker training. And I don't have the resources to do that in Virginia. I am not an educator, but I am charged with training my poll workers. I don't know how well

they are learning. If I had the software package, I could track their learning, see where their problems are, and change my policies and procedures.

Funding to purchase more privacy booths to allow more voters to vote paper ballots will move the lines along. Funding solves the majority of our problems.

Mr. GONZALEZ. And Mr. Lewis?

Mr. LEWIS. At the risk of earning the enmity of my colleagues here, funding is only a part of this. We are at the point where practices and procedures and training issues are indeed key to this process. But we keep changing the process, faster than we can adapt to it.

And we have had, since the Help America Vote Act, states and locales and administrative decisions, legislative decisions by state legislatures, that we keep changing and changing and changing. You are not going to have good elections as long as we continue to force the pace of change at such a rapid pace that we can never get to the point that it is stable.

And so it seems to me that we have to start taking an attitude that we want a certain kind of end result in the process, without trying to Band-Aid each of the pieces. We need to look at, how do we do this as an overall process to make sure it truly works for voters?

That is indeed probably going to cost more money in some respects. But our concern right now is that if we don't stop the pace of change, if we don't stop this constant assumption that we can manipulate each and every part—of all of the processes, we are going to be in for real trouble. Because this system is close enough now to where we have overwhelmed it. We are at a point now where in my testimony I pointed—we have had about half the people in this business retire, because they have gone through all of this accelerated pace of change.

We need time. We need time and stability and then, obviously, the answer is we also need money. But local jurisdictions—you know, I don't know what the right answer is here. But if you are a county commissioner and you have got too many competing goods for available dollars, what do you do?

And yet at the same time, we are on the receiving end of that as elections administrators. We have got more and more voters coming in every election cycle, and yet we are asked to do with less and less. And this is a recipe for disaster long-term.

Mr. GONZALEZ. Thank you very much.

And each of you, thank you for your service.

Yield back, Mr. Chairman. Thank you.

Mr. CONYERS. Thank you.

Mr. Kevin McCarthy, Ranking on the Elections Subcommittee?

Mr. MCCARTHY. Thank you, Mr. Chairman.

I thank all of you for your service and work you are doing. You have to do a lot of preparation, and I don't know if it is coincidence or on-purpose, but we have Pennsylvania, Ohio, Virginia—you are all battleground states. So you have got a lot of work before you.

I have a few questions. Mr. Cortés, if I could start with you. You are not only secretary of state of Pennsylvania, you are also presi-

dent of the National Association of Secretary of States, is that correct?

And you have 39 states in your association, is that—

Mr. CORTÉS. We have—all jurisdictions are within our membership. Secretaries of state not only oversee elections, but we do corporate filings, we do professional licensures, records management—so our association comprises all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa and Guam. So everybody is covered.

Mr. MCCARTHY. So you wear a big hat. You have got to not only look at your state, but everybody else's. I will tell you, in my home state, I have found that every election, things have kind of changed. That people want to have a greater ability to vote, make it easier to vote. One of our colleagues from California, Mrs. Davis and I, had worked on absentee balloting, which has continued to grow in California. You will find in some districts, more than half the people vote before Election Day.

Now, part of that work and what we have done in working on legislation, it is also the greatest ability to have fraud. Because you are outside and moving through, and then we have heard from our colleagues before here as well, the fraud in voter registration. You have got to be able to prepare, and that takes time, just like preparing for an election. If someone sends in the application, you have got to do the due diligence to make sure that person's lived there, not 7 years old, as we showed that someone before.

What type of work do you do in Pennsylvania for preparation if someone turns in an application or first does a voter registration? Do you check that before someone gets an application by mail to vote? Or can they get it on the same day?

Mr. CORTÉS. In Pennsylvania you must register to vote 30 days prior to Election Day, so there is a requirement of registration. Forgive me, but I am going to ask you to rephrase the question. I am trying to follow it—

Mr. MCCARTHY. If I walk in and I register to vote. So I register to vote with you—could I get an application to vote by mail on that same day? Or do you do any checks and balances to make sure what I say on my voter registration, that I am a citizen, where I say my age—is there any checks and balances on there that—

Mr. CORTÉS. There are, Congressman. Yes, you can submit a request for both, but the voter registration process is handled first. In other words, you don't have to put in an application and come back a week later for an absentee ballot—you can submit them both at the same time. However, the process whereby we verify that there is no duplicate in the registration, that we can verify that you are the person you say you are, is a check that is done first.

And we have the statewide voter registration database that we are mandated to have by HAVA to thank for the ability to have greater transparency and duplicate checks, the checks and balances that I believe you are alluding to. So a jurisdiction will receive an application, will go through their due diligence, check everything, including verification and check up with either Pennsylvania driver's license number, comparing the information on that application

to our Department of Motor Vehicles registration records, or the last four digits of a person with the Social Security Administration.

So those check-ups and verification that the person is not registered elsewhere happen first. Once that is verified, then the application for absentee ballot can be processed. In Pennsylvania we have, however, what is known as excused absentee voting.

Mr. MCCARTHY. He has to have a rationale—

Mr. CORTÉS. Only 14 categories exist for which you can qualify for an absentee ballot. But the process is very transparent—

Mr. MCCARTHY. Well, if I can follow up—I appreciate the work that you have done there. Now, the concern I have, and one thing that we looked at voter fraud and others—but you bring the word “transparency.” On Election Day, you allow people in from the outside to watch, right? Counting the votes and others?

Mr. CORTÉS. Yes.

Mr. MCCARTHY. Well, I am concerned about—I listened to Mr. Farrell, and he talked about, was it preparation, partnership, and one other—success. Secretary of State Jennifer Brunner of Ohio, her new advisory that prohibits observers during the 35-day period where a person votes in person—she doesn’t allow people to observe during that time. So if you are in Ohio, you can’t do what—you can do something that you can’t do in Pennsylvania. I could walk in, I could register to vote, and I could vote in person the exact same day and no transparency where someone could actually view it from the outside, because of this new advisory.

And I am just asking, in all the hats that you wear, what was your opinion on having that activity?

Mr. CORTÉS. Well, I guess my answer to that, Congressman, will be the one that applies to the sometimes-heard suggestion that one size fits all for our country. We recognize that we have a rich history of diversity within our Nation. I am not in a position, nor will I comment, on the decisions of my colleagues in Ohio or other state, for that matter. I believe the decisions made by that state chief election official, I would like to think, is being done with due diligence and with the application of the law.

Many times what creates a difference in the way we approach and we handle elections are constraints that are in law—either Federal, most of the time state—that the chief election officials have to abide by. People have to frequently defend even the Help America Vote Act and the merits of that act, and we are the implementers, not the body that created the law.

But I will say that the processes that I have observed have within them inherent checks and balances that take into account those potentialities. What I will say in terms of voter fraud—most of our states, by the way, have established 1-800 toll-free hotlines that people can call in to report fraud. When we have instances of fraud, we go to those issues and attack them vigorously. In fact, the states of Alabama and West Virginia have created election voter fraud task forces to address that.

So I will say, respectfully, that I believe that the states are operating within their legal constraints and acting in the way that they believe is best fit for their electorate.

Mr. MCCARTHY. I appreciate the time you have given me. And one thing I will say is, we have contested elections here. And we

sit on the panel—there was just three of us that did it. Once someone casts that ballot, and that ballot is then uncounted, you have a hard time going back through finding out which one it is.

I appreciate the due diligence that you do and the transparency that you do. And I do believe maybe one size doesn't fit all. But I also believe that having a checks and balance across the Nation makes a much safer election and a more honest election and a greater partnership—as well.

I yield back.

Mr. CONYERS. Thanks, Mr. McCarthy.

The Chair is pleased to recognize Mrs. Susan Davis of California on the Elections Subcommittee

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman, and thank you all for being here.

I am going to follow up on a topic of importance to me, which is absentee voting. And I appreciate the fact that my colleague has started some of that discussion. One of the reasons that I think it is so important is that so many people in this country are voting absentee today. And in fact, there are areas where it is projected that about a third of the country might vote by mail in this election.

So we need to certainly be very aware of what is happening. And as we know, states vary tremendously in the way they approach this issue.

And I wanted to ask you, Mr. Suleman: Virginia's laws on absentee voting are quite intriguing, really. And there are many excuses that happen to be valid, but it looks like the forms are fairly complex for folks, and certainly there is some invasion of privacy, as well.

I have got that form here. If you are sick or you have a disability, you have to specify the nature of your illness. If you work, you need to indicate your hours and the name and address of your employer. If you have a religious obligation, you need to describe it. If you are taking care of an ailing relative, you need to name that person and describe their illness. If you are on vacation, you need to say where you are going. And you also need to tell the state if you are pregnant.

Now, could you tell me why all that is necessary? What do you do with that information? How much time does it take to verify that? Does it cost more to check these excuses than it would to go to no excuses voting like California or Ohio? Why is all this necessary?

Mr. SULEMAN. I think that is a question for the Virginia legislature. Quite honestly, I don't believe that it is necessary. My personal opinion is that it is not necessary. I have come to Virginia from a state that instituted no-fault absentee voting—Ohio—and I believe no-fault absentee voting works.

The forms are very restrictive. I am denying forms every day for voters that are not filling out the forms properly. I don't like doing it, but I don't have the option to not do that. I don't have the ability—

Mrs. DAVIS OF CALIFORNIA. How much—what does it cost you? What about the personnel required?

Mr. SULEMAN. Oh—personnel. My MT department right now is the largest department that I have, which I probably have about 25 people. And it is probably a quarter of my personnel budget at this time. I can't give you an exact number of expense, but the cost of denying this form, sending the form back to a voter, saying that you missed this part of the form or this wasn't checked properly or you didn't list your employer on the form when you are working—sending that back to the voter and having it sent back in—the cost in time and postage and money is astronomical.

Mrs. DAVIS OF CALIFORNIA. Hmmm. Thank you.

Mr. Farrell, you went to no-excuse voting. And you had some forms that were pretty complex as well, but you have changed that. How has that affected your ability to do this part of your job?

Mr. FARRELL. Well, it is interesting. Even with Ohio's fairly recent no-fault absentee application process—meaning that you really don't have to have a specific reason—there have still been some challenges. Because, under Ohio law, certain information must be provided. What is interesting is Ohio, for absentee ballot applications, does not actually require a form. A citizen—or a voter, I should say—can even hand-write the request as long as it has specific components.

So boards of elections in Ohio face similar challenges, but are very used to someone who requests an absentee ballot maybe not having all the required information. They have a process or procedure where they notify the voter of what is missing and have them turn that in.

Mrs. DAVIS OF CALIFORNIA. So there is a lot of extra time involved in that.

Mr. FARRELL. There is a lot of extra time. And unfortunately some criticism when boards try to adhere to that law and, you know, have to go through that effort.

Mrs. DAVIS OF CALIFORNIA. Thank you.

I just want to turn to Mr. Cortés quickly, because Pennsylvania's form is not as invasive as it is in Virginia. But nevertheless, you have to state your illness and doctor's excuses—what has that done, and how much time do you spend? And I think the other thing that is quite significant, Mr. Suleman, that you cited is that you are turning back a lot of those forms, not because people don't have a valid excuse, but because they somehow read the form incorrectly.

How has it affected your voting?

Mr. CORTÉS. In Pennsylvania, this has been the law for so many years that our administrators are well attuned to handling the applications. So I can say that we do so fairly expediently. The issue of the no-fault or the no-excuse absentee voting was covered in a commission that I chaired back in 2005. It was the unanimous recommendation of our body that we do without the excuse absentee voting. We don't see it—as in the case of Ohio, we don't necessarily see the value as much anymore.

There is a nostalgia about voting in person, but we recognize that with the complexities of today's life, people may want to vote by absentee ballot. In Pennsylvania, you must check off a reason. You don't have to explain it in detail, just check it off. You are swearing that under oath, as an affidavit, and you would be subject

or could be subject to penalties if in fact somebody is found to misrepresent that decision.

But we believe that for the proper administration of elections, there are enough checks and balances and other things that we can do, and we should relax those requirements.

Mrs. DAVIS OF CALIFORNIA. That you should relax them.

Mr. CORTÉS. Yes.

Mrs. DAVIS OF CALIFORNIA. Okay. Thank you very much.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, Mrs. Davis.

The Ranking Member of House Administration, Vern Ehlers.

Mr. EHLERS. I thank my colleague from Michigan, and thank you for holding this hearing.

I will repeat the mantra which I have said numerous times in the House Administration Committee, what I hold dear in voting:

Number one: Every legal voter should be assured of the right to vote and be assured that their vote will be counted accurately and correctly. That is number one.

Number two: Every legal voter should be assured that their vote will not be diluted or negated by other individuals registering or voting illegally.

And I think we have done very well in the past several years—in fact, quite a few years—about ensuring that legal voters are able to cast their votes legally and to be assured that it is counted legally. We know of the few instances throughout the Nation where this has not always happened. But by and large I think we do pretty well there.

I think we are not doing as well on the other part, and that is, stopping the fraud of people who are voting illegally—in other words, negating or diluting the votes of people voting legally.

And there are lots of ways that this can happen. And part of my cynicism comes from having served on contested case hearings in various parts of the country where we observed behavior that was certainly not appropriate.

And some of it is not at all the fault of the voter. The one that disturbed me the most was an organization that was telling undocumented aliens that of course they had the right. And helping them become registered, and telling them how to vote.

Now, first of all, this is not only illegal, but it is of huge danger to the undocumented aliens, because if discovered they are automatically deported. And I think that that is one of the most egregious examples.

I am very bothered by the behavior of ACORN. Mr. Lewis, you gave the example of their dumping everything on you. That may not be particularly egregious, but it certainly makes your work more difficult. And the question is, why would it be done if you are not trying to confuse the process or overload your staff?

There are other examples of ACORN; many of us have heard those. And why do these organizations exist, why are they trying to break the law? And I am delighted to have an organization that is trying to register more voters. That is what we need, that is what we should have. But why do they feel the necessity to resort to irresponsible behavior or perhaps illegal behavior? And I am just

wondering if any of you can enlighten me on that. And are there other organizations that you see attempting to do the same thing?

Let's go down the line. Mr. Cortés?

Mr. CORTÉS. I would say that all state and local election officials share the same views in terms of what you have expressed. Every legal vote should be counted; no legal vote should be diluted. And nobody that I know condones fraudulent activity in any of its manifestations.

Based on personal experience and on what I read and my discussions with the Department of Justice and district attorneys and those that prosecute fraud, most groups that engage in third-party voter registration do so for all the right reasons. They are trying to franchise and make sure that every voice is heard.

There is always a bad apple, so to speak, in every group. And I can tell you that for one, and all my colleagues with me, are always eager to learn of those instances. If information does surface that you have individuals who are acting unbecoming, we want to know about that. And we would work with the proper law enforcement authorities to see that the law is followed.

But my opinion is that by and large, groups that engage in voter registration do so with all good intentions, and that sometimes part of the problem is inadequate training of those individuals who may not even be well suited to assist a potential registered voter to complete the forms. And that creates delays, inconveniences and burdens for the election administrators.

So we share your views as far as that, and I cannot comment more thoroughly with regards to ACORN. Some of this information that is coming to me is news today.

Mr. EHLERS. Yes. Well, what bothers me is they seem to be deliberately trying to subvert the process, and there is no need for it. If they want to register voters, register them properly and honorably.

Mr. Farrell, any comments?

Mr. FARRELL. Well, prior to working at the Secretary of State's office, I was chairman of the Clark County board of elections in Springfield, Ohio. And interestingly enough, we had a fraud case. It was not with ACORN. It was with another group, out of Dayton, Ohio. And a couple of things about that were interesting, because we actually had a hearing and took testimony to try and work with the prosecutor's office in Clark County on this subject.

From what I recall, there was a group that wanted to register voters, and they subcontracted with an agency to do the hiring and the training of these folks that would go out and register what they believed were unregistered voters. Well, they paid these folks based on the number of registrations that would come in.

Well, it didn't take long before one or two employees quickly figured out, gee, we will make more money if we claim we signed up more people as voters. And that, in that particular instance, seemed to be what led to the fraud. If I recall, the prosecutor pursued it and the agency itself. There wasn't any type of conviction for it, but obviously the individuals that did this, were punished.

So it caused me to kind of think about who is really at fault here, where is the real blame, is it folks just trying to make a living that kind of overstepped, or is it the training, as my colleague here

mentioned? Or is it something that we need to do, you know, to work and outreach with groups so that we can prevent it.

Mr. EHLERS. Mr. Lewis, let me just jump to you. You said ACORN has come in and periodically, it seemed to be a habit, just dumped a bunch of registrations on you at the last minute. Why would they do that?

Mr. LEWIS. Well, first let me say, I have seen it happen on both sides of the aisle in terms of dumping in on the last minute. The problem is that these groups I think all think that they are going to surprise the other campaign with how many people they have registered.

And the truth of the matter is, if it is valid registrations that we are after as groups—and we welcome all the groups to do this—but they need to turn those in as they collect them, as they get them from folks. So that there is an orderly process here and so that we can indeed make sure that the voter has done everything the voter needs to do to be on the rolls.

If they will do that, then we have legitimate voters that we are communicating with well in advance of an election. But by dumping all of them in that last 2 or 3 days before registration cutoff, they almost assure that we are going to end up disenfranchising some of those people.

Mr. EHLERS. Thank you very much.

Mr. Suleman, do you have anything you wish to add?

Mr. SULEMAN. Yes, I do. We do see in the elections business registrations that are turned in improperly. Registrations can be termed fraudulent. But I think the system works. The system catches those registrations. They may be turned in, but those fake registrations are never put on the voter books. They are caught through our checks and balances that we have as local officials. We find them and then we say, okay, these are fraudulent. They don't go on the rolls. Those people don't show up to vote.

So in that instance, the system does work. I have personally instigated six cases of elections fraud and gotten four convictions when I was in Ohio. And the fraud occurred at the petition level when, as Mr. Farrell said, organizations pay people to go out and get signatures for referendums or for initiatives or for campaigning. And they will pay \$1 a signature or \$2 a signature. They tend to pick up a phone book and fill out the forms.

And they tend to be the unluckiest human beings in the world, because they pick dead people that we discover that are still in the phone book.

So there is some fraud that exists, but I believe it exists more at the petition level than at the voter registration level. We catch the fraud at the voter registration level. And I think we are doing a pretty good job of preventing fraudulent voters.

Mr. EHLERS. Well, I am from Michigan, and naturally we are very suspicious of fraud in Ohio, particularly in Big 10 football games. [Laughter.]

And so we recognize you have more problems than most states. Thank you very much. I yield back.

Mr. GONZALEZ. [Presiding.] Thank you, Mr. Ehlers.

At this time the Chair is going to recognize the gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I will be very brief, because we have been called for votes, and I am sure Mr. King would like to go, and I want to respect this panel and not hold him.

Let me just, first of all, apologize to the members of this panel for not being here. We have been trying to deal with the financial crisis in which we have found ourselves. But I assure you that it was because of that crisis that I was not here. Because I think we could have an impending crisis around this election, and that would be equally devastating if the world or people in the United States walk away from this election believing that it has not been administered fairly, has not been—you know, the machines have broken down, the people have been standing in line forever.

And, you know—so this is a serious, serious concern, especially given the level of interest in this. Especially given the level of new registrants. And when I walked in, somebody, I don't even know which one of you it was—and I am sure it was innocent, I am certainly not discouraging using the language that you used—but I am always disappointed to hear that we need to lower the expectation of voters.

This is a democracy that, at least until recent years, was the symbol of democracy around the world. And we should have the very highest expectations that we can conduct an election that appears to the world and appears to our citizens to be a fair election. And the last couple of elections, we have really had some serious problems.

Actually, being from North Carolina and knowing the level of under-count that has historically taken place going back—not decisive of outcomes, potentially, but certainly indicative of real serious problems in our election system—we have got to raise our standards. And that is part of the reason that voters have high expectations, because this is America.

So I hope that we can conduct an election this time. And one of the concerns I have is really the allocation of machines and the effectiveness of machines. Allocations—the prior secretary of state in Ohio, Mr. Blackwell, was here in our Committee, and you know, they apparently are using—according to him, he would like to use the same criteria in allocating machines that historically have been used in the past. And I don't think that is going to work in this election. We know that turnout in various communities is going to be higher—much, much higher—than it has been.

And for us to be using the same models that we have used and the allocation of machines based on historical voting patterns, in my opinion, would be irresponsible. And I can't say to my voters, lower your expectations about being to get into the voting booth to cast your vote in some reasonable time.

And I shouldn't be asking my constituents to lower their expectations. I should be doing everything I can to live up to those expectations, because I believe that is what America and our democracy should be expected, and that is what we are expected to do around the world.

So—believe me, I can't even—when I walked in I heard “lower expectations,” and I don't even know which one of you it was that said it. And forgive me if I sound like I am fussing at anybody. I am not. But we can't lower our expectations in this area. This is

central to our democracy. It is central to the way that we perceive ourselves and that way we are perceived around the world.

And I honor and respect everything that you do to live up to those expectations, but please don't ask us to lower our expectations. Not the American people.

Thank you, Mr. Chairman. I yield back. I didn't even ask a question, and forgive me—whichever one of you it was that said it, because I am sure it was said in the best of intentions. And my comments back are said with the best of intentions.

I yield back.

Mr. GONZALEZ. Thank you, Mr. Watt.

The Chair is going to recognize the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thanks. I thank the Chairman.

And I want to thank our witnesses for being here today, for the work you do back in your respective states to help our election process.

I want to focus my comments to my fellow Buckeye from the county just south of the one I live in, Mr. Farrell. And I want to pick up where Congressman McCarthy was just a few minutes ago and talk about this overlap that is going to be there in Ohio law starting next Tuesday, where early voting can start and registration can still be done, you can do it on the same day.

Ohio law, as it was pointed out in Mr. McCarthy's questioning, Ohio's law is like Pennsylvania's law. You have got to be a citizen, you have got to be 18 years old, you have got to live in the state, you have got to vote in the precinct and county you reside in. And you have to be registered to vote for 30 days prior to voting.

Next Tuesday, the absentee ballot voting can start in our state. And it is my understanding that earlier this month, on the 11th, the secretary of state issued a directive saying that in fact, you can do just what Mr. McCarthy described about and the potential problems that are associated with that, in my judgment, and frankly in his judgment. You can come in and—she is going to allow people to come in and register and the same day vote.

Is that the case, Mr. Farrell?

Mr. FARRELL. I believe she advised boards to follow past practice and yes, allow that to happen.

Mr. JORDAN. And explain to me how that complies with Ohio law, which when I read it, says that the citizen of the United States is 18 years old and has been registered to vote for 30 days. How can we allow someone to come in and register and vote on the exact same day? How does that comply with being registered for 30 days?

Mr. FARRELL. Well, first let me point out I am not an attorney, so I will try and tell you what I have heard from some of the election attorneys in our office. I think what this hinges on is the term "vote." Is that when the ballot is turned in, or is it when the ballot is counted? Absentee ballots in Ohio are counted on election night.

So one of the things that can happen in between the ballot actually being counted on election night and when that absentee was cast—regardless of whether it was during the 5-day window or 6 days prior to the election—is for voter registrations, there is a proc-

ess to check and safeguard and detect someone that maybe is not eligible to register.

With an in-person absentee ballot, it goes into an envelope and can be pulled, if you will, by the board, or if someone wants to challenge it and say, we have reason to believe this voter registration wasn't valid.

Mr. JORDAN. What do you do when someone comes in like in this situation? What are you going to do to verify that they are in fact a resident? I mean, what are you going to do to check and make sure they are an eligible voter?

Mr. FARRELL. Well, boards have a couple of things that they usually do to check. One is, as my colleague from Pennsylvania had mentioned, there is a statewide voter registration database—they can instantly look up to see if that person is registered somewhere else.

The other thing is, they do have a window of time to process and mail a notice to this person. If that notice were to come back as undeliverable or there was some sort of flag regarding residency, again, because that ballot is in an envelope and set aside and not to be counted until election night, the board then could have a decision made on that voter registration which would disqualify that ballot from being counted on election night.

Mr. JORDAN. So her whole—the directive is based on her understanding that, because there is going to be 30 days from the time that that individual votes, that is when the clock kind of runs through, because the vote actually counts on Election Day. That is your understanding?

Mr. FARRELL. That is my understanding.

Mr. JORDAN. What if—let me give you a scenario, then. What if I am a poll worker assigned to work at the Republican polling station on a primary Election Day, and knowing that I am going to be busy that day, I get an absentee ballot before the primary election. And I ask for a Democrat ballot, and I vote that and turn that in. Would that disqualify me from being a poll worker for the Republicans on that primary day?

Mr. FARRELL. I would have to check on that. I don't know the answer right off the time of my head, I apologize.

Mr. JORDAN. My guess it would. You know, if I pull a Democrat ballot and I am assigned to work as a Republican poll worker, my guess it would disqualify me for that day. But according to your logic, it shouldn't, because that vote won't be counted until the end of Election Day later and I am not officially a "Democrat" until that is actually counted. That is my concern with the ruling the secretary of state's put on her plate.

It doesn't make sense to me. It doesn't square with the law. But more importantly, it is the issue that Representative McCarthy brought up: can we really do the due diligence, have the transparency that we need to make sure we are having fair elections?

Mr. FARRELL. And now that you have mentioned that, I do believe under Ohio law, a person's party affiliation is determined by the ballot they cast in the primary. And I believe that affiliation—

Mr. JORDAN [continuing]. I would say most, and I would say most Ohioans, most Americans, think you vote when you vote. Not 35

days later or whenever it is counted. When you vote is when you vote, and you should have been—according to Ohio law, an elector registered for 30 days prior to doing that. That is the problem with her ruling.

And if it is my understanding, too, she did this in a directive on September 11th. Ohio law says that directives before Ohio don't have to have public notice, public comment after—excuse me, September 11. After September 12, they do. So she issued this before there could be the public comment and notice and all the things that are required under Ohio law. Is that true?

Mr. FARRELL. I would have to check the dates, sir. And I don't know if this was an advisory, you are referring to, which doesn't—

Mr. JORDAN. My understanding was its directive 2008-91 issued on September 11th regarding this very issue, this overlap in when absentee voting and registration can both take place. And because it occurred before September 12th, there is not the public notice and public comment period that is traditionally there with Ohio law.

Mr. FARRELL. I will accept your word for it, sir.

Mr. JORDAN. All right. I thank the Chairman and yield back.

Mr. GONZALEZ. Thank you very much.

The Chair will recognize Mr. Ellison for 5 minutes of questioning.

Mr. ELLISON. Thank you, Mr. Chair, and thank you for having this important hearing.

I wonder, gentlemen, if you would offer any views on how government-issued photographic ID requirements might impact this upcoming election. I know in Indiana there is a requirement, in Arizona there is, there is a few other states that have them. Could you offer a viewpoint on how these impact this upcoming election, particularly in light of the Supreme Court ruling that upheld the Indiana law?

Mr. CORTÉS. Again, this is an issue of great debate throughout the Nation. I stand by the belief that every state adopts laws and procedures that are suited for their state. In Pennsylvania, we don't have a photo ID requirement. We do want to make sure, though, that we can verify the identities of first-time voters. So we do have an ID requirement that includes not only photo identification, but also forms of non-photo identification, such as a recent bank statement, pay stub, utility bill that shows a person's name and address.

In other states, again, the issue has been debated at length, and the belief is that having the photo ID is a deterrent to fraud, and I respectfully just will comment that those states believe that that is in their best interest, and they believe that they have ways to mitigate the use of the requirement of the photo ID without disenfranchising voters. But again, I think that is a question that is best suited for those states that have that type of requirement. Pennsylvania is not one of them.

Mr. ELLISON. Mr. Lewis, you have a national purview on this. Do you have any views on this, particularly in some of the states that have these requirements?

Mr. LEWIS. Well, obviously, this has been one of those raging battles has gone on for 40 years in terms of elections. There are some who honestly feel that we should indeed have photo ID on everyone. And then there are those who say that by doing that, you really end up disenfranchising folks.

And there is no easy resolution to this. I will say to you, the states that have it—and I think we are at 11 or 12 that are actually doing it—the ones that did it more recently than the ones that had it for a long time are our laboratory, and at this point so far, the allegations that it will slow down the process or cause administrative problems for the process seem not to have proved out.

On the other hand, it still doesn't solve that age-old argument of whether or not it may or may not be unfair to certain elements of society. I think as long as the government of the states that do it actually make sure that they take care of paying for it, if they are going to order it, if they pay for it so that everybody who needs one has got one—then it seems to work okay.

Mr. ELLISON. My thought was that for the states that have those kinds of requirements—and again, I am on record as being very much those requirements—but for the states that have chosen to do that, I think it is important for them to do some public comment and notice so that people don't arrive at the ballot box and not have the proper equipment, the ID.

Mr. LEWIS. I agree with you. You know, you don't want folks showing up not knowing that they needed X, Y, Z in order to be able to vote. And yet at the same time, I am going to tell you one of the hardest things that we ever find in elections—as my colleagues here will tell you—folks don't show up ordinarily with their voter registration card. If they did, we would have a whole lot less likelihood of them being in the wrong place all the time.

But the photo ID thing, at least so far—all I can tell you is just from what the experience has been so far—seems not to have been a major problem yet. That doesn't mean it won't be.

Mr. ELLISON. Except for in Indiana, there was the story about the 98-year-old nun who was turned away from the ballot box. And some of her colleagues were, too, and some of other folks were. Now it is true this is the first time it was implemented, and maybe it won't be as bad at the general election.

But I think it is important for the record to be clear, there were people who were turned away in Indiana who would be otherwise eligible voters.

Mr. LEWIS. What I think we are really confronted with is that first-time voters—inexperienced voters and first-time voters—and those are two distinct categories, because you have some that are occasional voters—because this is not a habit for them, they don't know what to do in each instance. And particularly if they have changed residence of the state they were in. They are going to be the ones that we have the most difficult time explaining to folks, “yes, but you needed this in order to do this.” And so that is always an issue for us.

It is one of the reasons that, I think you heard Secretary Cortés saying, in Pennsylvania he is pushing very hard to make sure that every voter knows what is expected of them before they get to the polls. And that is one of those things that we wish we had tons of

money so that we could advertise. My God, it would give us some great relief just not to see a presidential ad once in a while so that you could see an ad about the voting. You know?

Mr. ELLISON. What about—I mean, elections are public in nature. I mean, yes, I have often thought to myself that it might be a good public service announcement in some of these states to say, hey look, you know, this is what you need in order to vote. And again, you know, in Indiana and other states that have these requirements, my thought is, look: while I am against these requirements, I think they are unnecessary and we shouldn't have them, they are there. I realize that—there needs to be some sort of concerted effort to let the public know.

Particularly in an election like this, where you are going to have this enormous turnout, at least that is what folks are expecting, that we hadn't had in the past.

Mr. LEWIS. What ordinarily happens—and I can't say this in every instance, because I haven't looked, obviously, at all 7,500 jurisdictions—but what ordinarily happens is that the elections officials are indeed, they are trying to tell you publicly in public news announcements, or they are mailing notices with the voter registration card telling you where your polling place is, also what you need to have with you in order to vote. Sometimes that gets there, sometimes it doesn't. Sometimes people read it, sometimes they don't remember getting it. You know, this is where we are.

We try to notify. But the truth of the matter is, is we don't have the funds on the administration side, the election administration side, to do what would really be most effective, which is radio and television advertising to tell folks what they need.

Mr. ELLISON. Well, I will take that as something we need to start thinking about, Mr. Lewis. Thank you.

My next question, and it will be my last one, is: you know, one of the things that also I think is somewhat disturbing is that in the last election, there were a number of jurisdictions in which before the election, people got flyers that were stating improper and actually inaccurate information that was, I think, designed to discourage them from voting.

For example, in Milwaukee there was something, a flyer that had Milwaukee Black Voters League—you cannot vote unless you have, if you have any outstanding child support, if you have any unpaid parking tickets. And then of course, that was just Milwaukee. These flyers were found all over the country. And they were different and tailored to the jurisdiction.

You know, if a voter gets something like this, maybe they are one of these inexperienced voters Mr. Lewis is talking about. Maybe they can be taken in by something like this. Is there any kind of—do your states and your jurisdictions have hotlines where people can call to get that quick voting information? And if you find out there is this sort of voter suppression kind of thing going on, what can you do about it?

Mr. CORTÉS. Congressman, I am happy to address that issue. NASS is releasing today our survey of all the states in terms of our preparedness, and that is one of the issues that we cover. And I am happy to report that 36 states have toll-free hotlines that they

utilize to report not only concerns that they may have, but to have questions answered, as well as to receive general voter information.

There are also a number of groups, such as Common Cause and the League that have those hotlines available. And we encourage people to report and to contact the state election officials or county election officials for clarification.

If I could, and in fairness to our colleagues in Indiana, Michigan, and Georgia that have the photo ID requirements, I just want the record to reflect that those states are making ID requirements central to their voter education and outreach so that it is taking place as we speak.

Mr. ELLISON. Thank you.

Mr. LEWIS. I think the real issue here is one of fairness, always. Fairness is what democracy is about. And any group or organization that seems to me to misdirect folks in terms of their rights as citizens of this country ought to be deplored everywhere. This is just not right. Voting has to be fair. And we cannot fear that folks who we don't like or don't agree with show up at the polls. If they are legitimate voters, they are entitled to be there, and we ought not to have anything that misdirects them.

Mr. FARRELL. In Ohio, the secretary of state's office is working closely with the attorney general's office. If there are situations that occur such as you describe, we would definitely want to work with them, see what the options were in terms of possible prosecution.

Mr. GONZALEZ. Thank you very much, Mr. Ellison.

We are running under some time constraints, and we have seven witnesses on the next panel—but I know that Mr. Jordan has a request for an additional question. And I would just ask my colleague if it is going to be really brief? The reason is we have got to get to the next panel as Members come back.

Mr. JORDAN. I thank the Chairman. The Chairman will maybe note that I was real close to my five limit and no one else was. But I will be real brief.

Mr. Farrell, tell me the difference between the directive and advisory opinion.

Mr. FARRELL. A directive, from what I understand, carries the weight of law and must be followed by boards of elections. An advisory is pretty much just advising them of "here is what the law is."

Mr. JORDAN. And I want to be clear. A directive prior to September 12th doesn't require notice and public comment? A directive after September 12th does, under Ohio law?

Mr. FARRELL. I am sorry, could you repeat that?

Mr. JORDAN. A directive issued prior to September 12th doesn't require public notice, or notice and public comment? A directive issued after September 12th of this year—you know, close to the election—does require notice and public comment, is that true?

Mr. FARRELL. From my understanding, yes, that is correct.

Mr. JORDAN. So the directive on this overlapping voting was issued prior to the requirement that we have notice and public comment.

Mr. FARRELL. If there was indeed a directive issued prior to the 12th, then yes, it would not require—

Mr. JORDAN. Have there been any directives issued by the secretary of state after September 12th up until today?

Mr. FARRELL. I am sorry, could you repeat that?

Mr. JORDAN. Have there been any directives issued after September 12th through today, over the past 2 weeks?

Mr. FARRELL. Not that I am aware of.

Mr. JORDAN. Have there been any advisory opinions issued in that same time frame?

Mr. FARRELL. I believe there have been one or two.

Mr. JORDAN. How come—do you know why the secretary of state would do an advisory opinion after September 12th and thereby—it seems to me a logical conclusion she is trying to avoid any chance for notice and public comment by issuing advisory opinions after that day.

Mr. FARRELL. I am assuming the reason the advisories were issued was in response to additional questions for advice boards had requested from our office.

Mr. JORDAN. Okay.

Thank you, Chairman.

Mr. DAVIS OF ALABAMA. [Presiding.] Thank you.

I believe, unless there are any other Members who are present, I think there are not, that concludes our first panel. And I thank our witnesses for being here. And I excuse the first panel.

And want to welcome our second panel of witnesses and ask them to come forward.

Mr. DAVIS OF ALABAMA. Let me thank our second panel of witnesses, and given the size of the panel, I will introduce each member of the panel separately and then ask them to make their 5-minute statement. But there are a number of you.

Our first witness will be Grace Chung Becker.

Ms. Becker, welcome.

Ms. Becker is the acting assistant attorney general in the Civil Rights Division of the Department of Justice. Prior to her current position, she was the deputy assistant attorney general of the Civil Rights Division as a former prosecutor in the criminal division of the Justice Department.

Are you prepared to proceed, Ms. Becker?

You have to turn on your mic. If you are prepared to proceed, you have 5 minutes.

TESTIMONY OF GRACE CHUNG BECKER, ACTING ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Ms. BECKER. Thank you very much, Mr. Chairman.

Good afternoon, Chairman Davis, and other Members of the Subcommittee and the Committee. I am honored to appear here today to discuss the civil rights division's plans for the 2008 general election.

This is an unprecedented election year. As we have heard from the first panel, voters are registering in record numbers and record turnout is expected at the polls. Although the first panel witnesses and the constituencies they represent have the primary responsibility on Election Day for administering elections, there is an im-

portant role for the Justice Department to play, and we are preparing to do our part.

I am fortunate to have a tremendously talented and hardworking team of about 40 attorneys and 40 non-attorneys in the voting section. I have asked them to vigorously enforce all of the voting statutes in the division based solely upon the facts and the law. I have echoed the words of Attorney General Mukasey and emphasized that politics has no role in our decision making in this election year.

I know that Members of this Committee are particularly concerned about voter intimidation. The division takes a multifaceted approach to combating and preventing voter intimidation. First, we successfully brought lawsuits under section 2 of the Voting Rights Act that have included allegations of voter intimidation based on race, color, or membership in a language-minority group.

We brought cases in New Jersey, Pennsylvania, Georgia, Boston, Florida and Mississippi. For example, we have addressed situations in which voters were subjected to hostile and discriminatory remarks and unfounded and discriminatory challenges; that they have had their ballot choices improperly influenced, coerced or changed; that entrances were blocked to polling places; that attempts were made to prohibit eligible voters from voting; that voters were challenged on the basis of race, and that they were subjected to hostile treatment.

Another way to prevent voter intimidation is to empower vulnerable voters. For example, we brought 10 of the 12 cases ever brought under section 208 of the Voting Rights Act to ensure that voters have the assistor of their choice in the voting booth. In addition, we brought 29 cases under the language minority provisions of that act. Translated voting materials and bilingual poll workers empower nationalized American citizen voters and can prevent intimidation from occurring at the polls.

Third, the division's election monitoring program also helps to ensure that voters are not intimidated. So far during calendar year 2008, we have sent 397 Federal observers and 158 department personnel to monitor 51 elections in 47 jurisdictions in 17 states. On November 4, hundreds of Federal Government employees will be deployed in counties, cities and towns across the country.

The department will have a toll-free hotline with interpretation services. We will have a fax number and internet-based mechanism for reporting problems. As part of our pre-election outreach efforts, we have heard concerns over the longstanding practice of using small numbers of criminal prosecutors as monitors on Election Day. And while we have not heard of any actual intimidation resulting from this practice and have never received complaints from voters about it, we nevertheless take these concerns very seriously. Therefore, out of an abundance of caution, I have determined that no criminal prosecutors will be used as monitors on Election Day.

I know that the Committee has also been concerned about voter ID laws. And while the Supreme Court has decided that Indiana's voter identification law is constitutional on its face, it is important to emphasize that the court also held, consistently with the department's position, that individuals can sue if a voter ID law is applied to them in an unconstitutional manner.

In addition, the Civil Rights Division is prepared to take action if an ID law or any voting law is being enforced in a discriminatory manner. For example, this summer we filed and favorably settled a Voting Rights Act section 2 case in Penns Grove, New Jersey, that included allegations that Hispanic voters were required to show more identification than White voters. And this is even though the state law did not require any voter identification.

In conclusion, the department stands ready to take any appropriate law enforcement action, whether civil or criminal, in response to voter intimidation that implicates the statutes that we enforce. We remain committed to vigorously enforcing all of our statutes where warranted by the facts and the law.

Thank you very much.

[The prepared statement of Ms. Becker follows:]

PREPARED STATEMENT OF GRACE CHUNG BECKER



Department of Justice

GRACE CHUNG BECKER
ACTING ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND
CIVIL LIBERTIES
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

AND THE

SUBCOMMITTEE ON ELECTIONS
HOUSE COMMITTEE ON ADMINISTRATION
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ENTITLED

“THE VOTING SECTION OF THE CIVIL RIGHTS DIVISION OF THE
U.S. DEPARTMENT OF JUSTICE PREPARATION FOR THE 2008
ELECTION”

PRESENTED

SEPTEMBER 24, 2008

**STATEMENT OF GRACE CHUNG BECKER
ACTING ASSISTANT ATTORNEY GENERAL,
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE**

**BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS,
AND CIVIL LIBERTIES
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

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**SUBCOMMITTEE ON ELECTIONS
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**HEARING ENTITLED
“THE VOTING SECTION OF THE CIVIL RIGHTS DIVISION OF THE U.S.
DEPARTMENT OF JUSTICE PREPARATION FOR THE 2008 ELECTION”**

SEPTEMBER 24, 2008

Good morning Chairman Conyers, Ranking Member Smith, Chairwoman Lofgren, Ranking Member McCarthy and Members of the Judiciary and House Administration Committees. I appreciate the opportunity to appear before you this afternoon to discuss the role of the Civil Rights Division in preparing for the 2008 General Election.

For many reasons, this is an unprecedented election year. Voters are registering in record numbers in states across the nation and record numbers of voters are expected at the polls this November 4th. The Civil Rights Division is not only aware of the challenges facing the states—which have primary responsibility for conducting elections—during this voting season, but has been actively engaging with local and state governments, as well as civil rights organizations, doing everything within our authority to ensure that this election is fair and run as smoothly as possible.

Over the past several months, representatives of the Justice Department have frequently met with members of Congress, including this Committee’s staff, with members of civil rights groups, and state and local governments, to discuss concerns and questions about the upcoming election and to address the Civil Rights Division’s efforts in preparing for this election cycle. I have met with dozens of civil rights organizations as well as the National Association of Secretaries of States, the National Association of Attorneys General, the National Conference of State Legislators and the National Governors’ Association to address concerns and answer

questions regarding the Justice Department's role in the upcoming elections. The Department remains committed, in both words and action, to ensuring that we effectively implement these responsibilities not only during this election year but for future elections as well.

The right to vote is the foundation of our democratic system of government. The Department strongly supported the Voting Rights Act Reauthorization and Amendments Act of 2006, named for three heroines of the Civil Rights movement, Fannie Lou Hamer, Rosa Parks, and Coretta Scott King. The Department currently is vigorously defending the statute's constitutionality in federal court. On May 30, 2008, a three-judge district court panel in the District of Columbia unanimously upheld the constitutionality of the statute. *See Northwest Austin Municipal Utility District No. 1 v. Mukasey*, No. 06-1384 (D.D.C. May 30, 2008). The Department is pleased that the three-judge district court agreed with our position in upholding the constitutionality of the reauthorization of the Voting Rights Act. The plaintiff's notice of appeal to the Supreme Court was filed on July 8, and its jurisdictional statement was filed on September 9. We will continue to vigorously enforce all the provisions of federal law.

I. Legal Authority of the Civil Rights Division

Under our nation's federal system of government, the primary responsibility for the method and manner of elections lies with the States. Article I, Section 2, providing for the election of the House of Representatives, specifies that "Electors in each State shall have the Qualifications requisite for Electors for the most numerous Branch of the State Legislature." The Seventeenth Amendment to the Constitution adopted this same language with respect to the popular election of Senators. Article I, Section 4, Clause 1 of the Constitution states, "The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof." However, Article I, Section 4, Clause 2 goes on to provide: "[B]ut the Congress may at any time by Law make or alter such Regulations" with respect to federal elections. The Fourteenth and Fifteenth Amendments likewise authorize congressional action in the elections sphere. The import of the foregoing constitutional provisions is clear: States have the power to determine the qualification of voters subject to various constitutional limits (most notably those imposed by the Fifteenth, Nineteenth and Twenty-Fourth Amendments to the Constitution, prohibiting the States from discriminating based on race or sex and imposing poll taxes), and also to establish election procedures except where Congress exercises its authority to legislate with respect to voting procedures.

The Civil Rights Division is responsible for enforcing several federal laws that protect voting rights, and I will discuss the Division's work under each of those laws. These laws include, among others, the Voting Rights Act of 1965 and subsequent amendments thereto, the National Voter Registration Act of 1993 (Motor Voter or NVRA), the Help America Vote Act of 2002 (HAVA), and the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA). The Voting Section of the Civil Rights Division enforces the civil provisions of these laws. The Voting Section is committed to enforcing vigorously each of the statutes within

its jurisdiction. The 18 new lawsuits we filed in calendar year 2006 is double the average number of lawsuits filed annually in the preceding 30 years.

In 2006, the President signed the Voting Rights Act Reauthorization and Amendments Act of 2006, which renewed for another 25 years certain provisions of the Act that had been set to expire. The Voting Rights Act has proven to be one of the most successful pieces of civil rights legislation ever enacted. We will continue to work to ensure that all citizens have equal access to the polls.

Section 2 of the Voting Rights Act prohibits intentional, purposeful racial discrimination in voting as well as conduct with a racially discriminatory effect. Although most commonly used to address issues of minority vote dilution, Section 2 also has been the basis for other types of legal relief involving voter registration and election day practices, including: the use of dual (state and municipal) voter registration systems, the refusal to recruit or hire minority poll workers, the intentional targeting of voters for challenges based on their race or ethnicity, misconduct by poll officials favoring candidates of a particular race, changes in candidate residency requirements intended to disqualify minority candidates, and actions and failures to act resulting in the denial of equal access to the political process for language minority voters, in the form of hostile poll workers and refusal to permit bilingual assistance.

In 2006, the Division's Voting Section filed and resolved a lawsuit under Section 2 against Long County, Georgia, for improper challenges to Hispanic-American voters – including at least three United States citizens on active duty with the United States Army – based on their perceived race and ethnicity. The Voting Section also filed a Section 2 lawsuit in Ohio in 2006 that challenged the City of Euclid, Ohio's mixed at-large/ward method of electing its city council on the basis that it unlawfully diluted the voting strength of African-American voters. Although African-Americans comprise nearly 30 percent of the city's electorate, and there have been eight recent African-American candidates for the Euclid City Council, not a single African-American candidate has ever been elected to the nine-member city council or to any other city office. In August 2007, the court ruled that the city's method of electing its city council violated the Voting Rights Act. In March 2008, the first election was held under a court-ordered remedial voting plan, and the first African-American was elected to the Euclid City Council from a majority-black voting district. Also among our successes under Section 2 is the Division's lawsuit against Osceola County, Florida, where we brought a challenge to the county's at-large election system. In October 2006, we prevailed at trial. The court held that the at-large election system violated the rights of Hispanic voters under Section 2 and ordered the county to abandon it. In December 2006, the court adopted the remedial election system proposed by the United States and ordered a special election under that election plan that took place in April 2007. In that election a Hispanic representative was elected from a majority-Hispanic voting district to the Osceola County Commission. Further, in April 2008, the Voting Section filed and resolved another suit challenging a district voting plan for the Osceola Board of Education on the grounds that those districts, that were all majority-Anglo, diluted Hispanic voting strength. Just two

weeks ago, voters elected the first Hispanic school board member in Osceola County's history under the single member district system adopted pursuant to our settlement.

In March 2008, the Division filed and resolved a lawsuit under Section 2 that challenged the at-large method of election for the Georgetown County, South Carolina Board of Education on the grounds that the use of at-large voting there diluted Africa-American voting strength. In that county black citizens constitute approximately one-third of the voting-age population, but at the time of the filing of this suit the nine-member local school board was all-white. The remedial plan in the case provides for the use of three majority-black districts in future school board elections.

The United States filed a complaint on December 15, 2006, alleging that Port Chester, New York's at-large system of electing its governing Board of Trustees diluted the voting strength of Port Chester's Hispanic citizens, in violation of Section 2 of the Voting Rights Act of 1965. On March 2, 2007, after an evidentiary hearing, the court enjoined the March 20 elections, holding that the United States was likely to succeed on its claim. On January 17, 2008, the court ruled that the at-large system of election used by Port Chester to elect its trustees violates the Voting Rights Act because it denies Hispanics an equal opportunity to participate in the political process. The court ordered the parties to file proposed remedial plans by February 7, 2008. At present, the court has not ruled on the remedial issues in Port Chester. According to the evidence adduced at trial, and as cited in the court's opinion, the 2000 census shows that almost half of Port Chester's residents, and 22 percent of Port Chester's citizens of voting age, were Hispanic. By July 2006, the number of Hispanic citizens of voting age had increased to about 28 percent. Despite these figures, no Hispanic has ever been elected to Port Chester's municipal legislature, the six-member Board of Trustees. Indeed, no Hispanic has ever been elected to any public office in Port Chester, despite the fact that Hispanic candidates have run for office six times - twice for the Board of Trustees and four times for the Port Chester Board of Education, which manages a school system that is overwhelmingly Hispanic.

Also in 2007, in Fremont County, Wyoming, the Division successfully defended the constitutionality of Section 2 of the Voting Rights Act, for the fourth time in this Administration. In addition, the Division filed and resolved a claim under Section 2 involving discrimination against Hispanic voters at the polls in Philadelphia. In addition, the Voting Section obtained additional relief in an earlier Section 2 suit on behalf of Native American voters in Cibola County, New Mexico. The actions against Philadelphia and Cibola County are noteworthy because both involve claims not only under the Voting Rights Act but also under HAVA and the NVRA. In Cibola County, which initially involved claims under Sections 2 and 203, the Division brought additional claims after the County failed to process voter registration applications of Laguna Pueblo and other Native American voters, removed Native American voters from the rolls without the notice required by the NVRA, and failed to provide provisional ballots to Native American voters in violation of HAVA. In Philadelphia, the Division added to our original Section 203 and 208 claims additional counts under Sections 2 and 4(e) of the Act to protect Hispanic voters, a count under the NVRA pursuant to which the City has agreed to

remove from the rolls the names of numerous ineligible voters, including those who are deceased or have moved, and two counts under HAVA – to assure that accessible machines are available to voters with disabilities and that required signs at the polls also are posted in Spanish. The Division continues to monitor Philadelphia’s compliance with the settlement agreement reached with that City, and attorneys from the Division monitored the presidential primary in Philadelphia in April 2008. In 2007, the Section litigated a case in Mississippi under Sections 2 and 11(b) of the Voting Rights Act. On June 29, 2007, U.S. Senior District Judge Tom S. Lee found the defendants in *United States v. Ike Brown et al.* (S.D. Miss.) liable for violating the Voting Rights Act by discriminating against white voters and white candidates. This case marked the first time that the Division had ever filed a case under the Voting Rights Act alleging that whites had been the victims of racial discrimination in the voting area.

In the Department’s most recent action pursuant to Section 2, the Division on July 28, 2008 simultaneously filed a complaint and proposed consent decree against Salem County and the Borough of Penns Grove, New Jersey alleging that the parties violated the Voting Rights Act against Latino voters with hostile and disparate treatment, attempts to intimidate, lack of Spanish-language materials and the denial of the right to receive assistance from their assistor of their choice. The allegations include claims that the county has never translated the actual ballot into Spanish in any election held in Penns Grove, and numerous voters of Puerto Rican descent who cannot understand the ballot in English have been unable to fully exercise their voting rights. On August 25, the court entered the consent decree.

The Division will continue to closely investigate claims of voter discrimination and vigorously pursue actions on behalf of all Americans wherever violations of federal law are found.

In recent years, the Division has broken records with regard to enforcement of Section 208 of the Voting Rights Act. Section 208 assures all voters who need assistance in marking their ballots the right to choose a person they trust to provide that assistance. Voters may choose any person other than an agent of their employer or union to assist them in the voting booth. During the past six years, we have brought 10 of the 12 such claims brought by the Department since Section 208 was enacted twenty-five years ago, including the first case ever under the Voting Rights Act to protect the rights of Haitian Americans.

During the past seven years, the Civil Rights Division has brought more cases under the minority language provisions than in all other years combined since 1965. Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress in 2006, remains strong, with fourteen lawsuits filed since 2006. In September 2007, we settled the first lawsuit filed under Section 203 on behalf of Korean Americans in the City of Walnut, California. Specifically, we have successfully litigated over 60 percent of all the Department’s language minority cases in the history of the Voting Rights Act. These cases include the first Voting Rights Act cases in history on behalf of Filipino, Korean, and Vietnamese Americans.

Our cases on behalf of language minority voters have made a remarkable difference in the accessibility of the election process to those voters. As a result of our lawsuit, Boston now employs five times more bilingual poll workers than before. As a result of our lawsuit, San Diego added over 1,000 bilingual poll workers, and Hispanic voter registration increased by over 20 percent between our settlement in July 2004 and the November 2004 general election. There was a similar increase among Filipino voters, and Vietnamese voter registration rose 37 percent. Our lawsuits also spur voluntary compliance: after the San Diego lawsuit, Los Angeles County added over 2,200 bilingual poll workers, an increase of over 62 percent. In many cases, violations of Section 203 are accompanied by such overt discrimination by poll workers that Section 2 claims could have been brought as well. However, we have been able to obtain complete and comprehensive relief through our litigation and remedies under Section 203 without the added expense and delay of a Section 2 claim.

Earlier this week, the Justice Department reached a settlement agreement with the Commonwealth of Massachusetts resolving allegations that Massachusetts violated Section 4(e) of the Voting Rights Act, which requires jurisdictions to provide election materials, including ballots, in the required minority language for voters who are limited-English proficient (LEP) and who were educated in an American school in which the predominant classroom language was not English. The Department alleged that the Commonwealth violated the VRA by failing to provide translated ballots and other election materials in Spanish for state and federal elections, thereby violating the voting rights of LEP Puerto Rican voters in the City of Worcester, Mass. The City of Worcester has provided election materials in Spanish, in compliance with the law, during municipal elections since 2001. Under the settlement agreement, whenever Massachusetts provides the City of Worcester with election materials, including ballots, sample ballots and voting instructions, the Commonwealth is required to provide those materials in both Spanish and English to accommodate its voting population.

In 2006, the Voting Section processed the largest number of Section 5 submissions in its history. The Division has interposed eight objections to submissions pursuant to Section 5 since January 2006, in Georgia, Texas, Alabama, North Carolina, South Dakota, and Michigan, and in 2006 filed a Section 5 enforcement action. Additionally, the Division filed an amicus brief in a Mississippi Section 5 case in 2007. The Division also consented to six actions (note the 6th is filed, but not entered by the court yet) since 2006 brought by jurisdictions that satisfied the statutory requirements for obtaining a release, or "bailout," from Section 5 coverage.

The Division also has made a major technological advance in Section 5 with our new e-Submission program. Now, state and local officials can make Section 5 submissions on-line. This will make it easier for jurisdictions to comply, encourage complete submissions, ease our processing of submissions, and allow the Voting Section staff more time to study the changes and identify those that may be discriminatory.

The Division has continued to work diligently to protect the voting rights of our nation's military and overseas citizens. The Division has enforcement responsibility for UOCAVA, which ensures that overseas citizens and members of the military, and their spouses and dependents, are able to request, receive, and cast a ballot for federal offices in a timely manner. Just since January 2008, we have taken legal action in two States to resolve UOCAVA violations for the February 5 federal primary elections. In Illinois, we participated as *amicus curiae* in a case to ensure the State adequately ensured the voting opportunities for UOCAVA voters under their truncated 2008 special election calendar. In Tennessee, a court on January 30 approved a consent decree with Tennessee to resolve our complaint filed over the late mailing of overseas ballots in that state. In calendar year 2006, we filed successful UOCAVA suits in Alabama, Connecticut, and North Carolina and reached a voluntary legislative solution without the need for litigation in South Carolina. In Alabama and North Carolina, we obtained relief for military and overseas voters in the form of State legislation. We also obtained permanent relief in the form of legislation in Pennsylvania to resolve our 2004 suit, and we worked with Mississippi to address a structural issue affecting UOCAVA voters' ability to vote in special elections. Last month, I co-signed (with the Department of Defense) letters to all the chief state election officials reminding them of their UOCAVA responsibilities and urging vigilance in ensuring that overseas voters will not be disenfranchised. The Civil Rights Division will continue to make every effort to ensure that our citizens abroad and the brave men and women of our military are afforded a full opportunity to participate in federal elections.

Since 2001, the Voting Section has filed 10 suits alleging violations of the National Voter Registration Act (NVRA). Since 2006, we filed lawsuits containing NVRA claims in Indiana, Maine, New Jersey, Philadelphia, and Cibola County, New Mexico. Every one of these suits was resolved by agreed orders. In May 2008, the Voting Section entered into a settlement agreement with Arizona regarding that State's compliance with Section 7 of the NVRA, which requires clients of public assistance agencies to be provided the opportunity to register to vote. The Division is presently involved in litigation under Section 7 with the State of New York over allegations that it failed to offer voter registration opportunities at offices serving disabled students at its public universities and colleges.

Aside from lawsuits, we actively investigate the practices of jurisdictions to see whether they are complying with federal law. In the past year, we sent letters to a dozen states inquiring about their list maintenance practices when we learned that there appeared to be significant imbalances between their numbers of registered voters and their citizen populations. Last year, we sent letters to 18 states inquiring about their practices and procedures regarding the provision of voter registration opportunities at state offices that provide public assistance, disability, and other services. Investigations in some of these states are ongoing.

With January 1, 2006, came the first year of full, nationwide implementation of the database and accessible voting machine requirements of HAVA. HAVA requires that each State and territory have a statewide computerized voter registration database in place for federal

elections, and that the voting systems used in federal elections, among other requirements, provide accessible voting for persons with disabilities in each polling place in the nation.

The Division worked hard to help States prepare to meet HAVA's requirements, through speeches and mailings to election officials, responses to requests for our views on various issues, and maintaining a detailed website on HAVA issues as well as cooperative discussions with States aimed at achieving voluntary compliance. A significant example of the success of the Division's cooperative approach in working with States on HAVA compliance came in California. Prior to the 2006 deadline, the Voting Section reached an important memorandum of agreement with California regarding its badly stalled database implementation. California's newly appointed Secretary of State sought the Division's help to work cooperatively on a solution, and the Division put significant time and resources into working with the State to craft a workable agreement providing for both interim and permanent solutions. The agreement has served as a model for other States in their database compliance efforts.

Where cooperative efforts prove unsuccessful, the Division enforces HAVA through litigation. Since January 2006, the Division filed lawsuits against the States of New York, Alabama, Maine, and New Jersey. In New York and Maine, the States had failed to make significant progress on both the accessible voting equipment and the statewide databases. In Alabama and New Jersey, the States had not yet implemented HAVA-compliant statewide databases for voter registration. The Division ultimately obtained a favorable judgment and remedial order in Alabama, a preliminary injunction and the entry of a remedial order in New York, and favorable consent decrees in Maine and New Jersey. The Division recently won a motion for further relief against New York for failure to achieve full compliance with HAVA's voting system requirements, and the court there has entered a supplemental remedial order to cure the continuing violations. In addition, we filed HAVA claims against Galveston County, Texas, for failing to provide provisional ballots to individuals eligible to vote, post required voting information at polling places, and provide adequate instructions for mail-in registrants and first time voters. Similar HAVA litigation has been filed and resolved against Bolivar County, Mississippi. We also filed HAVA claims against an Arizona locality for its failure to follow the voter information posting requirements of the Act, and our recent lawsuits in Cibola County, New Mexico, and Philadelphia, Pennsylvania, discussed above, also included HAVA claims to protect Native American and voters with disabilities, respectively. The Division also has defended three challenges to HAVA in a private suit involving the HAVA accessible machine requirement. A separate Pennsylvania State court judgment barring the use of accessible machines was overturned after the Division gave formal notice of its intent to file a federal lawsuit.

A major component of the Division's work to protect voting rights is its election monitoring program, which is among the most effective means of ensuring that federal voting rights are respected on election day. The Justice Department deploys hundreds of personnel to monitor elections across the country. Thus far during calendar year 2008, 397 federal observers and 158 Department personnel have been sent to monitor 51 elections in 47 jurisdictions in 17 states. For

Mr. DAVIS OF ALABAMA. Thank you, Ms. Becker.

The second witness today on this panel is Paul Hancock, who is a veteran voting rights litigator. He was one of the litigators in *Bush v. Gore* at the Florida Supreme Court and U.S. Supreme Court level, and previously attained the highest-ranking career civil service position in the Civil Rights Division of the Department of Justice.

Mr. Hancock? You have 5 minutes.

**TESTIMONY OF PAUL F. HANCOCK, PARTNER, KIRKPATRICK
AND LOCKHART PRESTON GATES AND ELLIS, LLP**

Mr. HANCOCK. Thank you, Mr. Chairman.

I address this issue as a Department of Justice official. I have worked on complying with the Voting Rights Act as the attorney general for the state of Florida. And I was involved in one of the most contentious voting rights cases in the history of our country.

I think the overall theme that I would like to state to you today is that presidential elections are not re-run. So when we talk about preparing for this election, what we need to do is have a procedure in place, a program in place, for identifying the problems before the day of the election and correcting those problems before the day of the election, or at least promptly as the election is taking place.

That differentiates this election from any other election that is conducted. The voting rights section, the voting section of the Civil Rights Division, also often has had Federal observers in place designed to monitor the election, decide whether problems existed, and worked to correct those problems later. That doesn't work in a presidential election. The problems need to be identified and corrected before the election is held.

The only legal authority for the Department of Justice to observe the election process at the polling place arises from Voting Rights Act. And the sole legal basis provided by the Voting Rights Act for Department of Justice officials or Federal observers to enter the polls to observe the process is if the department believes, has a reasoned basis for believing that there may be denial or abridgement of the right to vote on account of race, color, or in contravention of the language minority guarantees of the Voting Rights Act. That is the only reason for being there.

The Voting Rights Act was passed after a really sorry history in our country of voter intimidation and suppression directed at Blacks. And it was directed under the color of law by law enforcement officials and by state government officials.

We have come a long way since then. The candidates prove that in this election. But the act has been in effect for only 43 years. Many Americans who will turn up to vote at this election—many of them who have been away for many years—have lived through the suppression and intimidation that was effectuated under color of law.

But the department is under—must apply a difficult balance here of having, monitoring to make sure that there is not a denial or abridgement of the right to vote on account of race, color or language minority status—at the same time making sure that law enforcement isn't used in a way that will have a countervailing effect of intimidating people from voting.

I am pleased with what Ms. Becker said a minute ago, that criminal prosecutors aren't being used to monitor the election process this year. Because that reflects the consideration that needs to be given to the problems that might arise at this election.

We likely, as we said, we will likely have the largest turnout and certainly the largest Black turnout in the history of our country. And we can expect that there will be confusion on the polls on the day of the election. And I suggest that preparations be made to avoid that.

And I would like to just take some disagreement with what Mr. Lewis said in the first panel. And that is, I believe that election officials do have a responsibility to direct voters to the right polling place. And that is important in the context of the way the HAVA provisional ballot law has been implemented by the state. Let me just take a minute to explain that.

When Florida enacted its election reform legislation after the 2000 problems, a provisional ballot provision was in that election reform legislation. And the Florida law, like the law of many states, provided that a provisional ballot would be counted as a valid vote not—it wasn't to be counted merely because a person was properly registered to vote. It was only to be counted if the person was properly registered and actually appeared at the proper precinct. So if the voter was supposed to be at this table and went to that table, and they are given a provisional ballot, that ballot isn't counted in Florida. And it isn't counted in many other states.

Thus, the Department of Justice was very concerned about that provision of Florida law and the course of the section 5 review process, and granted section 5 pre-clearance only on the condition that election officials would, before they gave a provisional ballot to any voter, would first look up the proper precinct for the voter and direct that voter to the proper precinct before they gave them a provisional ballot.

I suggest to you that in many states—and it is not uniform—but in many states, including Florida, provisional ballots are an illusory promise. They most often aren't counted. They most often aren't valid votes. And the reason most frequently those are not valid votes is the person is just voting at the wrong table. They showed up at the wrong schoolhouse.

HAVA now requires that state officials maintain a master list of registered voters, and there should be no issue with election officials, before giving the provisional ballot, first direct voters to the proper precinct. Discrimination under the Voting Rights Act—and let me just emphasize that—provisional balloting is an illusory promise.

Mr. DAVIS OF ALABAMA. Let me also ask you to wrap up quickly, Mr. Hancock, as we have so many panelists. You are over your time limit.

Mr. HANCOCK. Sure. I will stop and leave it for questioning.
[The prepared statement of Mr. Hancock follows:]

PREPARED STATEMENT OF PAUL F. HANCOCK

**STATEMENT OF
PAUL F. HANCOCK**

BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND CIVIL LIBERTIES
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

AND

THE SUBCOMMITTEE ON ELECTIONS
COMMITTEE ON HOUSE ADMINISTRATION
UNITED STATES HOUSE OF REPRESENTATIVES

JOINT OVERSIGHT HEARING

**“FEDERAL, STATE AND LOCAL EFFORTS TO PREPARE
FOR THE 2008 GENERAL ELECTION”**

VOTING SECTION OF THE CIVIL RIGHTS DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

PRESENTED SEPTEMBER 24, 2008

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I am honored to participate in this Joint Oversight Hearing before the Subcommittees to review the plans of the Civil Rights Division's Voting Section in preparation for the 2008 Presidential election.

I was fortunate to serve as the director of the litigation program in the Voting Section of the Civil Rights Division for more than ten years. In my final position in the Department, as Acting Deputy Assistant Attorney General for Civil Rights, I supervised the work of the Voting Section.

I also experienced both enforcement of, and compliance with, the voting rights laws of our country from a state perspective. After leaving the Department in 1997, I served as Deputy Attorney General for the State of Florida. We endured tumultuous issues in Florida with the Presidential election in 2000. Based on that experience, however, we were the first state to enact meaningful voting rights reforms that, in many respects, became a model for the federal Help America Vote Act of 2002 (HAVA). My role in Florida included handling the litigation that ensued in 2000. I directed the State's compliance with Section 5, compliance with the National Voter Registration Act of 1993 (NVRA), and coordination with the Department of Justice over election monitoring.

States have the primary authority for conducting and monitoring elections. The heart of the Department's authority to monitor elections arises from the Voting Rights Act of 1965, which has been amended and extended several times, most recently with the reauthorization and amendments enacted in 2006. The Voting Rights Act was an aggressive response to egregious conduct designed to prevent Black citizens in many areas of our country from participating in the electoral process. It later was amended to address other issues and protect other minority groups, but the design of the original Act was to address race discrimination. The remedial provisions, including the preclearance requirements of Section 5, and the examiner and election observer provisions of Section 6 and 8, were a major intrusion on states' rights that were justified only because of the severe discrimination that led to the enactment.

It is important to emphasize that the sole legal authority for the Department to enter polling places to observe the electoral process arises from the Voting Rights Act, and that authority may be exercised only if the Department has reason to believe that there may be a denial or abridgement of the right to vote **on account of race or color or in contravention of the protections afforded to language minority groups.**

The Voting Rights Act is recognized as the most successful civil rights law enacted by Congress. It led to immediate changes in southern states with dramatic increases in registration of Black citizens. Continued enforcement made the right to vote more meaningful with the development of standards to ensure that votes are properly tabulated and that election structures do not deny minority groups a fair opportunity to participate in the political process and elect candidates of their choice to office.

The change has been remarkable. State governments, which originally were the target of the Act's remedial provisions, now embrace the Act and are major contributors to the protection of the right to vote. At the same time, the battle for equality is not complete, as recognized by the 2006 enactment. In some respects, the issues facing enforcement officials may have changed,

but the structure for addressing the issues remains intact and can be used to continue to effectuate meaningful reform.

The egregious problems that led to the Voting Rights Act are not ancient history. The Act has been in place for only 43 years. Many thousands of Black Americans who will appear at the polls this fall lived through the open suppression and intimidation (and even murders of family and friends) merely because they wanted to vote. That suppression and intimidation was carried out under the color of law, often by law enforcement officials. Even younger Black voters know of the treatment that their elder relatives received.

All of us react to statements and actions in the context of our own life experiences, and it is understandable that Black citizens might react differently to voting related conduct by state and federal officials than would others who have not shared their life experiences. For example, on election day in 2000, law enforcement officers in North Florida set up a driver's license check point in the vicinity of a precinct with a large Black population. The officers may not even have known it was election day, but the conduct caused and spread great fear in the Black community that Blacks were being targeted by law enforcement because they desired to vote. Close coordination between the Civil Rights Division and the Florida Attorney General's office led to a prompt termination of the police checkpoint. Unfortunately, we cannot say that we were able to respond promptly enough to prevent people from returning home out of fear without casting a ballot.¹

Discrimination can be effectuated in subtle ways. For example, a lack of effort to inform newly registered minority voters as to where they should go to vote can preclude them from participation. The problem is exacerbated by the provisional ballot standards of the Help America Vote Act, by which states can require voters to appear at the proper precinct, even to vote for president. When Florida sought Section 5 preclearance of its election reform legislation following the 2000 election, the Department granted preclearance only on the condition that a provisional ballot would not be offered until the voter had been advised of his or her proper precinct and given an opportunity to cast a valid ballot.

As we approach the 2008 Presidential election, the success of the Voting Rights Act is even more obvious. For the first time in the Nation's history, a Black person is the Presidential nominee of one of the two major political parties. Such a result was unthinkable as of 1965. The other major party has nominated a woman for the position of Vice President. Although the Voting Rights Act was not designed to address gender discrimination, the Act's success in tearing down barriers to fair electoral participation obviously contributed to the historically remarkable choice presented to voters this year.

¹ As another example, an older Black American reading an advertisement for housing that describes a neighborhood as "restrictive" might have a different reaction than a White person, or even a younger Black person. That is because older Black Americans lived through the time when the word "restrictive" commonly was used to convey the message that Blacks were not welcomed.

But this achievement also may prove to be the greatest test yet of the Act's ability to address the remaining discrimination in voting, as well as the resolve and ability of the Department of Justice to ensure a fair and non-discriminatory election.

It reasonably can be expected that the 2008 Presidential election will cause the largest turnout of Black voters in the Nation's history. Many of these voters will be elderly, or voting for the first time, or voting after an extended absence from the political process, or otherwise unfamiliar with the voting process.

Of course, such voters will be free to vote for the candidate of their choice. But prognosticators likely will project that an overwhelming majority will support the Black candidate. It is quite common in elections for some persons to attempt to dissuade other persons from voting if it seems likely that they will support an opposing candidate. The present circumstances, however, make Black voters particularly susceptible to voter suppression efforts this year. The mere color of their skin might provide the standard for suppression targeting.

Persons seeking to suppress the vote of Blacks may claim that they are motivated by partisan politics rather than any racial animus, and that may be true. But racial animus is not a necessary element of a violation of the Voting Rights Act. The crucial issue is whether persons are targeted "on account of race or color." This election presents serious risk that prospective voters may be targeted for suppression "on account of race or color" which, in turn, raises grave concerns under the Voting Rights Act.²

It may be difficult to predict what schemes will be attempted this year, but the role of the Department is to carefully study the issues and prepare to address whatever arises. The goal should be to resolve problems prior to election day. An enduring lesson from the 2000 election in Florida is that equal protection violations are much more difficult to repair in a Presidential election than in any other type of election, and may, in some circumstances, be irreparable. **Presidential elections simply are not re-run, even if significant problems are identified.** Thus, the challenge is to prevent the violations from even occurring.

The career women and men of the Voting Section are very familiar with preparation for the monitoring of elections, and I am confident that they will carry out their duties in a professional and thoughtful manner. I offer the following thoughts as to what might be particularly important this year.

² A lawsuit recently filed in federal court in Michigan alleges a scheme to challenge the voting qualifications of persons who have faced a home foreclosure. *Duane Maletski et al. v. Macomb County Republican Party*, Case No. 3:2008cv13982 (E.D. Mich). It is alleged that the foreclosure victims are targeted out of a belief that they likely will vote for an opposing candidate. The legal claim rests on constitutional principles rather than the Voting Rights Act. But a September 18, 2008 letter from twenty-three members of Congress to the Attorney General describes the racial composition of the group of persons who have been subject to foreclosure, thus suggesting that race may be a basis for predicting the candidate for whom the foreclosure victims would vote. This type of proof invokes the protections of the Voting Rights Act. Again, racial animus is not a necessary element of such a claim.

- The key to the avoidance of problems is study, analysis and investigations well in advance of the election. Again, a Presidential election presents unique remedial issues and thus the focus should be on problem-avoidance, rather than merely Department presence to evaluate problems arising on election day. **Potential problems must be identified and resolved prior to election day.**
- Coordination with state and local election officials, as well as state attorneys general and minority community representatives, is important.
- The Section 5 program, as well as HAVA and NVRA enforcement, are important contributors to fair elections. Problems often arise as a result of changes in polling places, or simply because voters do not know where to vote. Through Section 5 enforcement and coordination with election officials in all states, the Department can evaluate whether voters have been informed properly as to where to vote. HAVA and NVRA enforcement can ensure proper registration opportunities as well as the maintenance of accurate voter roles. Ballot layouts should be reviewed carefully to avoid a discriminatory effect.
- In this regard, the Department should not rely merely on the opportunity of a voter to cast a provisional ballot. Provisional balloting has proven to be an illusory promise for many voters since states may provide that the vote will be counted only if the voter was properly registered and complied with all other requirements. A voter may be registered properly, but simply appeared at the wrong precinct to vote; thus the vote may not be counted. It is important for election officials to take effective efforts to tell voters where they need to go to vote. If election officials merely hand a provisional ballot to a person appearing at the wrong precinct, they are, in effect, denying the right to vote. The Department can act to prevent such easily avoidable disenfranchisement.
- The Department has expanded its election monitoring to jurisdictions not covered by the special provisions of the Act. This frequently is done by means of "attorney coverage." In these circumstances, Department officials do not have the authority of law to enter a polling place, but often are permitted to do so. The program is positive and allows the opportunity to promote compliance throughout the country. The factors below should be considered in the course of implementing the program.
- The Department **must** avoid both the reality and perception that political considerations are impacting its election monitoring program. This may present a difficult challenge in light of widespread publicity regarding the politicization of the Department and the Civil Rights Division. Black citizens of the South have regularly relied on the Department to protect their voting rights. But with recent publicity and the expansion of the monitoring program to the entire country, the Department faces great challenges. If the persons that the Act is designed to protect do not trust the Department, the very presence of Department officials can cause more problems than they solve.

- The **number** of persons assigned to monitor the election is not the factor by which the Department's performance should be evaluated. Significantly more important than mere numbers are the standards that are applied to selecting jurisdictions and precincts for monitoring and the operational plans for what is to be accomplished in the program. Again, the sole legal authority arises from the Voting Rights Act, and that same legal standard should be used in selecting jurisdictions for "attorney coverage," *i.e.*, a reasonable basis to believe that the coverage is necessary to avert a denial or abridgment of the right to vote on account of race, color or language minority status. A subsequent report that no problems were observed might mean that the program was successful, or it might mean there was no need for the monitoring in the first place.
- The perception of a political basis for decisions of the Department can be avoided by reliance on the career, non-political staff to effectuate the program. The Department should have memoranda that describe the reasons for selection of states, counties, and cities for election monitoring, and such decisions should be made solely on the basis of the legal standard described above.
- The Department needs to balance carefully its program to prevent voter fraud with its efforts to enforce the Voting Rights Act. During my tenure in the Department, the government refrained from announcing election-related criminal charges shortly before an election out of concern that it might improperly influence the results of an election. For example, announcement of an indictment of persons for allegedly improperly registering voters might deter others from voting even if they are registered properly. The view of the Department, at least in the past, was that the indictment could be held until after the day of the election. It is unclear whether the Department continues that policy.
- In the circumstances that we face today, the assignment of personnel is crucial. Personnel from the Civil Rights Division can be expected to have the most credibility with minority groups. Use of personnel from the Criminal Division and the United States Attorney offices may be necessary from a criminal law enforcement perspective, but the Department should consider whether such visible use has a countervailing impact of discouraging minorities from voting. Again, it is important to evaluate this in the context of the life experience of the voters – law enforcement was regularly used to suppress minority voting. In this regard, the Department also should be mindful of the language it employs in press releases and other communications to advise the public that "federal investigators" may be present at polling places on election day. The wrong wording could have an unintended suppressive effect on protected communities for the reasons stated here.
- Enforcement of civil rights laws is a specialty, requiring legal talent, an understanding of the methods by which discrimination can be effectuated and the continued impact of egregious past discrimination. It is difficult to master this area in a short time.

- This election provides an opportunity to gather information on the impact of voter ID laws that have been implemented in many states. The Indiana law withstood a facial constitutional challenge in *Crawford v. Marion County Election Board*. But the laws remain controversial because of a suspected discriminatory impact on minorities. The impact of the new laws should be monitored carefully.
- The Department should continue its aggressive program to ensure that language minority groups are afforded a meaningful opportunity to cast a ballot.

In conclusion, I again emphasize that this election represents both the overwhelming success of the Voting Rights Act and the problems that remain. I wish the Department much success in achieving a fair, non-discriminatory election.

I would be pleased to answer any questions that the members of the Subcommittees might have.

Mr. DAVIS OF ALABAMA. Thank you, Mr. Hancock.

Our next witness is Karen K. Narasaki, who is the president and executive director of the Asian American Justice Center, has been a long-time advocate for the Asian American community and is a leading expert on immigrant civil liberties and human rights.

Ms. Narasaki, you are recognized for 5 minutes.

**TESTIMONY OF KAREN K. NARASAKI, EXECUTIVE DIRECTOR,
ASIAN AMERICAN JUSTICE CENTER**

Ms. NARASAKI. Thank you, Mr. Chairman. I ask that our longer, written testimony be submitted for the record.

Mr. DAVIS OF ALABAMA. Without objection.

[The prepared statement of Ms. Narasaki follows:]

PREPARED STATEMENT OF KAREN K. NARASAKI



ADVANCING EQUALITY

Statement of
 Karen K. Narasaki
 President and Executive Director, Asian American Justice Center

Before the
 Subcommittee on the Constitution, Civil Rights and Property Rights
 Committee on the Judiciary
 and the
 Subcommittee on Elections
 Committee of the House Administration
 United States House of Representatives

Joint Oversight Hearing
 On Federal, State, and Local Efforts to
 Prepare for the General 2008 Election

September 24, 2008

Introductory Statement

The 2008 presidential election has invigorated voter participation in this country, with heightened levels of interest, excitement and participation. Voter registration and voter turnout have increased during the primaries.¹ In fact, 23 of 34 states that held nominating primaries for both parties recorded voter turnout records, and the overall turnout of the eligible electorate is the highest since 1972.² This increased interest and participation has further exposed the weakness of the election system's ability to handle the dramatic influx of voters. Come November 4, 2008, election officials will likely not be prepared to handle the influx, and even more problems will occur this election than during the last presidential election in 2004.

During the primaries, many complaints were lodged across the nation about problems with voting, including under-trained poll workers misapplying election rules, a lack of poll workers manning sites, election machinery breakdowns, registration roll problems (such as eligible voters

¹ See Martha T. Moore, *States see leap in voter registration*, USA Today, April 6, 2008, available at http://www.usatoday.com/news/politics/election/2008/2008-04-06-voterregistration_N.htm; see also Scott Martelle, *Turnout is campaign's big winner*, LA Times, Feb. 10, 2008, available at <http://articles.latimes.com/2008/feb/10/nation/na-turnout10>.

² Curtis Gans, American University's Center for the Study of the American Electorate, *2008 Primary Turnout Falls Just Short of Record Nationally, Breaks Records in Most States (2008)*, available at <http://domino.american.edu/AU/media/mediaref.nsf/ID265343BDX2189785256B8100711238/C34358140EBD07B88525744E005AC5A6?OpenDocument>.

who submitted timely registration applications failing to appear on the registration rolls), and confusion over voter identification requirements. As in past elections, long lines at polls continued to be a huge problem during this past primary season, as well as ballot irregularities.³

These problems are exacerbated for language minority voters, who have to contend with additional language and cultural barriers when attempting to exercise their right to vote. Without a concentrated effort by DOJ to monitor and correct problems for language minority voters, there is a risk of excluding a significant portion of our voting public in these elections and likely deterring their participation in future elections. AAJC provides this written testimony to help elucidate what problems may confront language minority voters during the general election in November 2008 that DOJ must be vigilant about in the upcoming months.

Organizational Background

The Asian American Justice Center (AAJC), formerly known as the National Asian Pacific American Legal Consortium (NAPALC), is a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation.

AAJC has three affiliates: The Asian American Institute in Chicago; the Asian Law Caucus in San Francisco and; the Asian Pacific American Legal Center of Southern California in Los Angeles, all of which have been engaged in working with their communities to ensure compliance with the Voting Rights Act. AAJC also has over 100 Community Partners serving their communities in 24 states and the District of Columbia.

Together with our Affiliates and our Community Partners, AAJC has been extensively involved in improving the current level of political and civic engagement among Asian American communities and increasing Asian American access to the voting process. One of our top priorities was the reauthorization of the VRA because of the incredible impact it has had on the Asian American community in addressing discriminatory barriers to meaningful voter participation, particularly through Section 203, the language assistance provision. Since then, we have continued to be committed to the enforcement of the VRA and other voting statutes, protecting the vote, and working towards improving election administration.

To that end, AAJC is pleased to provide this written statement and respectfully requests that this written statement be formally entered into the hearing record.

Language Barriers to Voting for Language Minority Voters

According to the census, more than 4,100,000 voting-age citizens who are Latino, Asian American, American Indian and Alaska Native who speak English less than very well lived in

³ David Mark, *2008 Could See Turnout Tsunami*, Politico.com, March 24, 2008 (on file with the author); see also Lawyers' Committee for Civil Rights Under Law, *Election Protection 2008 Primary Report: Looking Ahead to November (2008)*, available at http://eccr.scdn.net/b7d38d90b13908e1c_ijm6byw6b.pdf ("EP 2008 Primary Report").

Section 203-covered jurisdictions in 2000.⁴ Voters who have difficulty speaking English often experience a major barrier when confronted by the daunting election process in America: the inability to speak or read English very well. This is the single greatest hurdle that many language minorities must overcome in exercising their right to vote.

Although many language minorities were born in this country or came here at a very young age, some have trouble speaking English fluently because of a substandard education that did not afford them the opportunity to learn English in school. Other language minorities immigrated to this country and have not had adequate learning opportunities to become fluent in English. Certain persons (such as the elderly who have resided in the United States for a lengthy period of time⁵, the physically or developmentally disabled, and certain Hmong veterans⁶ who helped to save American lives during the Vietnam War and came to the United States as refugees)⁷ are exempt from English literacy requirements when applying for citizenship because the United States encourages civic engagement. Additionally, some come from countries with no democratic systems and find voting to be a very overwhelming experience.

Many language minorities, particularly those who are also racial minorities, face discrimination when attempting to exercise their right to vote. Discrimination at the polls can manifest itself in different ways, including hostile and unwelcoming environments or the outright denial of the right to vote. LEP citizens can have difficulty understanding complex voting materials and procedures and are often denied needed assistance at the polls. While many of these voters understand that voting is the most important tool Americans have to influence government policies that affect every aspect of their lives – from taxes, to education, to health care – these barriers can depress their participation in the process.

Section 203 noncompliance as a barrier to voting

Section 203 overview

In recognizing that certain minority citizens who did not speak English proficiently and who had experienced historical discrimination were also being systematically disenfranchised, Congress broadened the protections of the Voting Rights Act of 1965 (VRA) on their behalf by enacting

⁴ Bruce Adelson, *Minority-Language Election Rules and the Public Lawyer*, *The Public Lawyer*, Vol. 15, N. 2 (Summer 2007), available at <http://electionlawblog.org/archives/adelson.pdf>.

⁵ This exemption recognizes the fact that language acquisition is more difficult for the elderly and has potentially a large impact. According to the Department of Homeland Security records, more than 2.25 million of naturalized citizens between 1986 and 2004 were age 50 or over and thus old enough to qualify for the exemption. Ana Henderson, *English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act (2006)* (on file with the author).

⁶ Up to 45,000 Hmong veterans who fought with special guerrilla units or irregular forces in Laos and their spouses were admitted as refugees and were eligible to be exempt. *Id.*

⁷ These citizens are in particular need of language assistance while voting. For example, Asian American seniors age 65 years and older have the highest rates of LEP among the major racial and ethnic groups. A majority of Asian American seniors (58%) are LEP, including Filipino, Koreans, and Chinese. Five Asian American groups have senior populations that are more than 80% LEP, including Vietnamese, Hmong, Cambodians, Laotians, and Bangladeshi. Asian American Justice Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile 11* (2006).

Section 203 during the 1975 reauthorization of the VRA.⁸ In particular, Congress sought to protect the voting rights of Latinos, Asian Americans, American Indians, and Alaska Natives, finding that:

[T]hrough the use of various practices and procedures, citizens of [the four covered groups] have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation.⁹

In enacting Section 203, Congress intended to remedy racial discrimination in the voting process that results in the disenfranchisement of language minorities from the four covered language groups.¹⁰

Section 203 requires covered jurisdictions to provide language assistance during the electoral process, thereby removing the language barrier to voting for the covered language minorities. A jurisdiction is covered under Section 203 when the number of limited English proficient United States citizens of voting age in a single language group within the jurisdiction who are Asian American, Latino, American Indian or Alaska Native is more than 10,000, more than five percent of all voting-age citizens, *or* exceeds five percent of all reservation residents on an Indian reservation; and has an illiteracy rate higher than the national illiteracy rate.¹¹ Once covered, the jurisdiction is obligated to provide “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” in the covered language as well as in English. Guidelines issued by the U.S. Department of

⁸ H.R. REP. NO. 109-478, at 9-10 (2006) (“In doing so, Congress ‘documented a systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English,’ and “[b]ased on the extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities, the [relevant] Subcommittee acted to broaden its special coverage to new geographic areas in order to ensure protection of the voting rights of language minority citizens.”) (footnote omitted) (quoting H.R. REP. NO. 94-196, at 7, 16 (1975)). In 1975, Congress also enacted Section 4(f)(4) in response to its finding of pervasive voting discrimination against citizens of language minorities that was national in scope. Recognizing that these language minority citizens came from environments with non-English dominant languages and that these citizens have been denied equal educational opportunities, Congress found that English-only elections excluded language minority citizens from participating in the electoral process, which were aggravated by acts of physical, economic, and political intimidation in many areas of the country. Section 4(f)(4) has its own trigger formula that included redefining “test or device” within the Section 5/preclearance context to include English-only elections. This means that Section 4(f)(4) covered jurisdictions must get preclearance, or prior approval, from the Department of Justice or the U.S. District Court of the District of Columbia prior to implementation of any voting changes. Additionally, Section 4(f)(4) jurisdictions are required to provide the same language assistance as required under Section 203 for their covered languages. 42 U.S.C. § 1973b(f) (2006).

⁹ 42 U.S.C. § 1973aa-1a(a).

¹⁰ Congress has limited Section 203 protections to these four language groups because it has continually found that they have faced and continue to face significant voting discrimination because of their race and ethnicity. Other language groups have not been included because Congress has not found evidence that they experienced similar sustained difficulties because of their race and ethnicity in voting.

¹¹ 42 U.S.C. § 1973aa-1a(a); § 1973aa-1a(b)(2). The Director of the Census Bureau makes these determinations, which are effective upon publication in the Federal Register. The Director’s determinations are not subject to review in any court. *Id.* § 1973aa-1a(b)(4).

Justice (DOJ) clarifies that Section 203 compliance requires that materials and assistance be provided in a way “designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities” throughout all stages of the electoral process.

Success of Section 203 with proper implementation

When properly implemented, Section 203 has been successful in breaking down the language barrier and increasing the civic engagement of Latino, Asian American, American Indian, and Alaska Native citizens, with higher voter registration and turnout levels from each previous enactment or reauthorization period.¹² Increases in voter registration and turnout can be directly linked to Section 203 compliance.

For example, the efficacy of Section 203 can be seen in Harris County, Texas. After entering into a Memorandum of Agreement with the DOJ, Harris County saw the doubling of Vietnamese voter turnout, which resulted in the first Vietnamese candidate in history to be elected to the Texas legislature by defeating the incumbent chair of the Appropriations Committee.¹³ In San Diego County, voter registration among Hispanics and Filipinos rose by over 20 percent after one of DOJ’s lawsuits was filed. During that same period, Vietnamese registrations increased by 40 percent.¹⁴ In 2004, over 10,000 Vietnamese American voters registered in Orange County between the primary and general elections, which helped to lead to the election of the first Vietnamese American to California’s state legislature.¹⁵

The increased civic engagement of these groups has also led to increased political representation by candidates of choice. In recent years, more than 5,200 Latinos and almost 350 Asian Americans have been elected to office.¹⁶ Additionally, Native American candidates, who have traditionally been unrepresented, are being elected to local school boards, county commissions and State legislatures in ever-increasing numbers.¹⁷

Impact of Section 203 noncompliance

Unfortunately, Section 203 noncompliance perpetuates the language barrier for language minority voters and is far from uncommon. Through poll monitoring efforts, several organizations have documented evidence of discrimination by poll workers at polling sites throughout the country during the 2004 general election and in subsequent elections. Under the Access to Democracy Project, AAJC and its affiliates monitored polls during the November 2004 presidential election.

¹² H.R. REP. NO. 109-478, at 18-19. For example, the House Committee report notes that the number of registered Latino voters grew from 7.6 million in 2000 to 9 million in 2004 and, in certain cases, Native American voter turnout has increased by more than 50% to 150%. *Id.* at 19-20.

¹³ *Id.* at 19.

¹⁴ Alberto R. Gonzales, U.S. Attorney General, Prepared Remarks at the Anniversary of the Voting Rights Act, Lyndon B. Johnson Presidential Library Austin, Texas (Aug. 2, 2005) (on file with the author).

¹⁵ Calculated from data provided by the Orange County Registrar of Voters (on file with author).

¹⁶ H.R. REP. NO. 109-478, at 19.

¹⁷ *Id.* at 20.

AAJC witnessed various degrees of Section 203 noncompliance in numerous jurisdictions, including the failure to fully translate and provide multilingual materials, as well as the failure to provide bilingual poll workers at polling sites. Even if multilingual materials were available at a polling site, they were frequently placed in such a way that voters were unable to see or reach them. Problems included poorly displayed ballots and other materials hidden in boxes under tables, hidden under other materials, not taken out of their original packaging, or placed behind poll workers where voters could not reach them.

Similarly, bilingual poll workers, even if present where they were actually needed¹⁸, were not always adequately utilized. The lack of signs indicating availability of interpreters, lack of identification of bilingual poll workers in a polling site, inconsistent quality in oral bilingual assistance, and an unwillingness of monolingual poll workers to utilize the bilingual poll workers across polling sites often left LEP voters confused as to who they could turn to for assistance on Election Day.

These types of issues were the basis of the most recent Section 203 enforcement action brought on behalf of Asian Americans by DOJ against the City of Walnut, California.¹⁹ DOJ's complaint alleged that the City of Walnut failed to comply with their Section 203 obligations by failing to translate written election materials and information into Chinese and Korean, including information about voter registration, polling place locations, dates of elections. The City of Walnut also failed to recruit, appoint, train, and assign sufficient bilingual poll workers on Election Day.²⁰ In the resulting consent decree, the City of Walnut has to meet their Section 203 obligations by, among other actions, translating all election related materials into Chinese and Korean and making such materials equally available to the language minority communities; recruiting, hiring and assigning bilingual poll workers in Chinese and Korean; and providing pre-election training to poll workers on the provisions of Section 203 and the requirements of Section 208.²¹

These failures are not limited to the Asian American community but also impact other covered language minority communities. For example, in a recent Section 203 enforcement action on behalf of Latino voters against Kane County, Illinois, DOJ alleged that the city failed to recruit, appoint, train, and assign sufficient bilingual poll workers on Election Day and failed to provide

¹⁸ Because many counties had no system to target where to recruit and place bilingual poll workers, they were often placed in a location that was not accessible or helpful to Asian American/LEP voters. Asian American Justice Center, *Sound Barriers: Asian Americans and Language Access in Election 2004 (2005)*, available at http://65.36.162.215/files/sound_barriers.pdf ("Sound Barriers").

¹⁹ *United States v. City of Walnut*, CA (C.D. Cal. 2007). Other recent Section 203 enforcement action brought on behalf of Asian Americans include *United States v. City of Rosemead*, CA (C.D. Cal. 2005) (DOJ alleged that the city failed to translate most of its election related materials into Spanish, Chinese, and Vietnamese or to provide bilingual assistance at the polls as required under Section 203) and *United States v. San Diego County* (S.D. Cal. 2004) (DOJ alleged Section 203 noncompliance for Spanish and Filipino voters and secured an agreement for Spanish and Tagalog (Filipino language) language election program, as well as a Vietnamese language program to serve a language minority group that narrowly missed the threshold for Section 203 coverage.).

²⁰ *Complaint, United States v. City of Walnut*, CA (C.D. Cal. 2007), available at http://www.usdoj.gov/crt/voting/sec_203/documents/walnut_comp.htm.

²¹ Section 208 is discussed below as another problem language minority voters encounter at the polls. Consent Decree, *United States v. City of Walnut*, CA (C.D. Cal. 2007), available at http://www.usdoj.gov/crt/voting/sec_203/documents/walnut_cd.htm.

certain election related information in a manner that provides LEP Latino citizens an equal and effective opportunity to be informed about election related activities.²² The city and DOJ came to an agreement that will ensure compliance with Sections 203 and 208 of the Voting Rights Act by providing in Spanish any "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that they provide in English and ensuring that all polling place personnel are provided and receive adequate training regarding Kane County's responsibility to comply with Section 203 and Section 208 of the Voting Rights Act.²³

Similarly, in Alaska, a legal challenge was brought by the Native American Rights Fund and the American Civil Liberties Union on behalf of four Alaska Natives and four tribal governments asserting violations of sections 203, 4(f)(4), and 208.²⁴ Evidence was offered that showed that the State had failed to:

provide print and broadcast public service announcements (PSA's) in Yup'ik, or to track whether PSA's originally provided to a Bethel radio station in English were translated and broadcast in Yup'ik; ensure that at least one poll worker at each precinct is fluent in Yup'ik and capable of translating ballot questions from English to Yup'ik; ensure that "on the spot" oral translations of ballot questions are comprehensive and accurate; or require mandatory training of poll workers in the Bethel census area, with specific instructions on translating ballot materials for Yup'ik-speaking voters with limited English proficiency.²⁵

Based on the evidence, the federal court concluded that the Alaska Native voters and tribes were likely to succeed on the merits of the language assistance claims and thus ordered Alaska to provide effective language assistance to citizens who speak Yup'ik, the primary language of a majority of voters in the Bethel region of Alaska.

As the poll monitoring and election protection efforts, as well as enforcement activity of the language minority provisions by the Voting Section, have shown, Section 203 noncompliance is still a significant problem for language minority voters. It is important that DOJ reminds jurisdictions about their obligations under Section 203 with the elections less than two months away, as well as continue to pursue enforcement action when there is noncompliance.

²² Complaint, *United States v. Kane County, II*, (N.D. Ill. 2007), available at http://www.usdoj.gov/crt/voting/sec_203/documents/kane_comp.htm.

²³ Over 25 language minority provisions (Section 203, Section 4(f)(4) and Section 4(c)) enforcement action have been brought by DOJ on behalf of Latino voters since 2000 in several states, including New Jersey, California, Pennsylvania, Massachusetts, Texas, Arizona, New York, Washington, and Florida. See, U.S. Department of Justice Civil Rights Division Voting Section Home Page, Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act, <http://www.usdoj.gov/crt/voting/litigation/recent203.htm>.

²⁴ *Nick v. Bethel*, No. 3:07-cv-0098 TMB (D. Alaska July 30, 2008), available at http://www.aclu.org/pdfs/votingrights/nickvbethel_order_20080730.pdf.

²⁵ *Id.*

Jurisdictions discriminating against language minority voters

Even when a jurisdiction has no Section 203 obligation to provide language assistance at the polls, it does have the general obligation under Section 2 of the Voting Rights Act to avoid implementing any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of race, color, or membership in a language minority group.²⁶ Unfortunately we have seen jurisdictions fail to meet this obligation by denying the right of language minority voters to vote because of their limited English proficiency.

DOJ recently filed a complaint against the Borough of Penns Grove, NJ alleging that it violated Section 2 of the Voting Rights Act against Latino voters. This included disparate treatment, lack of Spanish-language materials and denying voters the right to choose their assistor of choice. This resulted in Latino voters having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. In addition, poll workers directed hostile or discriminatory remarks at, or otherwise acted in a hostile manner toward, Latino voters; failed to communicate effectively with Latino voters regarding necessary information about their eligibility to vote; required more identification from them than Caucasian voters; and failed to protect Latino voters from unfounded or discriminatory challenges.²⁷ Penns Grove and DOJ came to a settlement agreement that requires the borough to ensure that elections are equally open to Latino voters, that Spanish language assistance and materials are available at the polls, and that Spanish-speaking voters be allowed to select the assistor of their choice.²⁸

In 2005, DOJ brought a Section 2 case against the City of Boston on behalf of Chinese and Vietnamese-speaking voters.²⁹ While the City of Boston was required under Section 203 to provide language assistance to Spanish speakers, the Chinese and Vietnamese populations did not meet the Section 203 threshold during the last determination. However, DOJ's investigation found that the city discriminated against Spanish, Chinese and Vietnamese voters and denied them an equal opportunity to participate in the political process and elect candidates of their choice. DOJ found that poll workers treated LEP Latino and Asian American voters disrespectfully; refused to permit them to be assisted by a person of their choice; improperly influenced, coerced or ignored their ballot choices; failed to make available multilingual personnel to provide effective assistance and information; and refused or failed to provide provisional ballots to LEP Latino and Asian American voters.³⁰ DOJ and Boston came to an agreement that included the additional provision of language assistance to Chinese and Vietnamese voters.

²⁶ 42 U.S.C. § 1973.

²⁷ Complaint, *United States v. Salem County and the Borough of Penns Grove, NJ, et al* (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm.

²⁸ Justice Department Announces Agreement Protecting Puerto Rican and Spanish-Speaking Voters in Penns Grove, New Jersey, Webwire, Tuesday, July 29, 2008, <http://www.webwire.com/ViewPressRel.asp?aId=71216>.

²⁹ *United States v. City of Boston, MA* (D. Mass. 2005). DOJ also brought a Section 203 enforcement claim against the City of Boston for noncompliance in providing language assistance in Spanish.

³⁰ Complaint, *United States v. City of Boston, MA* (D. Mass. 2005), available at http://www.usdoj.gov/crt/voting/sec_203/documents/boston_comp.html.

Poll workers Hostile to Language Minority Voters and Language Assistance as barrier

As cases, enforcement action and poll monitoring efforts have found, poll workers are often reluctant to implement Section 203 properly and can exhibit outright hostility towards language minority voters. Based on our poll monitoring in the last presidential election, we found that poll workers were frequently reluctant to help language minority voters, were unaware of how to help, and were suspicious of bilingual poll workers or LEP voters. These poll workers clearly demonstrated that they had no understanding about why language assistance was needed, which often manifested itself in talking down to voters, berating them, or simply treating them generally as lesser voters.³¹

For example, one election judge in Cook County, Illinois, commented during the last presidential election that a voter whom he was unable to understand should “learn to speak English.” In Los Angeles County, CA, during the 2004 elections, a poll worker sent an Asian American voter to the back of the line for “causing too much trouble,” simply because the voter was LEP.³² This also occurred in Koreatown, New York during the 2004 general elections, where a precinct inspector gave certain Asian American voters time limits and sent at least one Asian American voter to the back of the line.³³ This mentality ensures that poll workers not only fail to help language minority voters but often actually create a new barrier for them to overcome.

Even more problematic are poll workers who are openly hostile and discriminate against language minority voters and voters of color. During the last presidential election, a number of disturbing incidents occurred across the country. For example, in West Palm Beach, Florida, an election poll worker told a voter that the city was not handling Latino, Black or Asian voters at that particular polling place.³⁴ In Jackson Heights, Queens, one poll worker said, “You Oriental guys are taking too long to vote.” At another site in Queens, when a poll worker was asked about the availability of translated materials, he replied, “What, are we in China? It’s ridiculous.”³⁵ Additionally, poll workers at a site in Boston segregated voters by race and made minority voters form a separate line to vote. Election officials claimed that creating a separate line for LEP voters would speed up the voting process for monolingual voters.³⁶ These problematic poll workers were not anomalies that only occurred in the last presidential election. In subsequent elections, problematic poll workers continued to discriminate against language minority voters. As previously mentioned, poll workers in Penns Grove, NJ directed hostile or discriminatory remarks at, or otherwise acted in a hostile manner toward, Latino voters, which in many instances made them feel unwelcome at the polls in the recently filed DOJ complaint against Borough of Penns Grove, NJ.³⁷ During the 2008 primary elections, a poll

³¹ Sound Barriers.

³² *Id.*

³³ Tr. 11/8/05 (App.), at 1433 (Written Testimony of Eunsook Lee, Sept. 25, 2005).

³⁴ Lawyers’ Committee for Civil Rights Under Law, 2004 Election Protection Election Incident Reporting System: 1-866-Our-Vote.

³⁵ Asian American Legal Defense & Education Fund, Asian American Access to Democracy in the 2004 Election: Local Compliance with the Voting Rights Act and Help America Vote Act (HAVA) in NY, NJ, MA, RI, MI, PA, VA, (2005), available at http://www.aaldef.org/articles/2005-08-18_189_AasianAmericanA.pdf.

³⁶ *Id.*

³⁷ Complaint, United States v. Salem County and the Borough of Penns Grove, NJ, et al (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/penns_grove_comp.htm.

worker in Los Angeles County in response to overhearing a conversation between two Chinese American voters stated, "Gosh, you'd think they're yelling at each other in their language. So loud." and called the voters "Orientals."³⁸

Poll workers who are hostile to language minority voters and language assistance will not only lead to the disenfranchisement of LEP voters during this election but lead to turning LEP voters off from voting in future elections as well. DOJ must be vigilant about problematic poll workers and hold jurisdictions accountable for them. Jurisdictions should do a better job of screening their potential poll workers for problematic attitudes about language minority voters as well as work with community organizations that serve language minority communities to outreach into those communities for poll workers in order to have a more diverse pool of poll workers. Additionally, jurisdictions must properly train poll workers about language minority voters and how to appropriately assist them on Election Day. Poll workers who prove themselves to be hostile or unwilling to assist language minority voters should not be tolerated or utilized by the jurisdictions.

Under trained poll workers as a barrier to voting

Poll monitoring and election protection efforts also showed that even when poll workers were not outright hostile, problems existed with poll workers who were under trained. During poll monitoring and election protection efforts for the last presidential election, we saw poll workers who were often unaware of what the law required and thus were either unable to help LEP voters outright or simply provided misinformation about the voting process to them. Sources of confusion included how to implement the ID provision under the Help American Vote Act (HAVA) and how to use provisional ballots.

Provisional Ballots

Many poll workers were unaware of the existence of provisional ballots or when to use them. Some who were aware of them were reluctant to let voters vote with them despite the fact that the purpose of provisional ballots is to provide a fail-safe for voters who believed they were eligible and registered to vote but where there were questions about their eligibility at the polling site. As a result, in election after election, voters were at times erroneously forced to vote on provisional ballots or worse, left without being allowed to vote at all.³⁹

Voter Identification

As confused as poll workers were about voter identification under HAVA during the last presidential election, the confusion is sure to intensify this November with 24 states having broader voter identification requirements than what HAVA requires, seven of which require a

³⁸ Letter from Eugene Lee, Voting Rights Project Director, Asian Pacific American Legal Center of Southern California, to Dean Logan, Registrar-Recorder/County Clerk, Los Angeles County (March 26, 2008) (on file with author).

³⁹ See, i.e., *United States v. City of Boston*, MA (D. Mass. 2005). See also, Sound Barriers and FP 2008 Primary Report.

photo ID.⁴⁰ The U.S. Supreme Court's decision this year on the Indiana voter identification case has been much publicized and misunderstood by many in the public. Under training of poll workers will likely leave quite a few poll workers confused as to what the ID requirements are in their polling site. Poll workers are equally likely to erroneously ask people for voter ID across the country. For example, during the 2008 primary election in California, a poll worker in Baldwin Park went down a long line of voters demanding they show identification in order to vote, despite no identification being required.⁴¹

Unfortunately, sometimes the problem is more malicious in nature, whereby poll workers discriminate by only asking LEP voters or other voters of color for their photo identification. This was the case in the recent DOJ enforcement action against Penns Grove, NJ where poll workers required more identification from Latino voters.⁴² During the South Dakota's June 2004 primary, Native American voters were prevented from voting after they were challenged to provide photo IDs, which was not required under state or federal law.⁴³ Such discriminatory targeting of language minority voters can happen because of the false assumption LEP voters are not citizens and the suspicious nature of poll workers against LEP voters. DOJ should be vigilant that poll workers are not discriminatorily asking for photo identification of voters.

Section 208

Section 208 of the Voting Rights Act is the provision for voters requiring assistance to vote by reason of blindness, disability, or inability to read or write. Any such voter may be given assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union.⁴⁴ Section 208 applies nationwide and is particularly important for all language minority voters because it allows them to take the person of their choice into the voting booth with them to assist them in understanding the ballot. Unfortunately, many poll workers refuse to allow language minority voters to take an assistor of choice into the voting booth, often expressing suspicion about the voter. DOJ has brought Section 208 enforcement actions in many of their section 2 and 203 cases regarding language minority voters, such as in the Penns Grove action and the Kane County action discussed previously.⁴⁵ Other Section 208 enforcement actions have been brought against Philadelphia and Berks County, PA; Springfield, MA; Brazos County and Hale County, TX, and Miami-Dade

⁴⁰ National Conference of State Legislatures, Requirements for Voter Identification (updated June 18, 2008), available at <http://www.ncsl.org/programs/legismgt/clct/taskfc/voteridreq.htm>.

⁴¹ TP 2008 Primary Report.

⁴² Complaint, United States v. Salem County and the Borough of Penns Grove, NJ, et al (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm.

⁴³ People For the American Way and National Association for the Advancement of Colored People, The Long Shadow of Jim Crow: Voter Suppression in America (2004), available at http://site.pfaw.org/site/PageServer?pagename=report_the_long_shadow_of_jim_crow.

⁴⁴ 42 U.S.C. 1973aa-6.

⁴⁵ Complaint, United States v. Salem County and the Borough of Penns Grove, NJ, et al (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm. Complaint, United States v. Kane County, IL (N.D. Ill. 2007), available at http://www.usdoj.gov/crt/voting/sec_203/documents/kane_comp.htm.

County and Osceola County, FL.⁴⁶ DOJ should continue to monitor for, and bring enforcement action against, Section 208 noncompliance.

Impact of Anti-Immigrant Rhetoric as Barrier to Voting

Anti-immigrant sentiments and rhetoric have been growing in the United States as of late. In 2006, at the height of the comprehensive immigration debate, “more than 550 bills relating to illegal immigration were introduced in statehouses [that] year, and at least 77 were enacted.”⁴⁷ Anti-immigrant groups, such as the Arizona-based Minuteman Civil Defense Corps and The American Border Patrol (civilian volunteer groups that patrol the border and turn immigrants crossing the U.S.-Mexican border over to authorities), saw a surge in popularity, with growing memberships and donations for their efforts to restrict immigration.⁴⁸ Additionally, hate crimes have been on the rise, particularly those against Latinos, and these crimes have been linked to the national immigration debate.⁴⁹ Despite claims by anti-immigration groups and hate groups that their problem is with “illegal immigrants” (i.e., undocumented persons), actions have proven that such groups have a problem with all immigrants, or all persons who are perceived to be immigrants, or foreigners—as determined by the color of their skin or the accent in their speech.⁵⁰ In a national poll of legal immigrants from Latin America, Asia, Africa, and Europe (who now number around 14 million Americans), a majority felt the anti-immigrant sentiment was growing in America and that anti-immigrant sentiment had detrimentally affected their families.⁵¹

⁴⁶ See, U.S. Department of Justice Civil Rights Division Voting Section Home Page, Cases Raising Claims Under Section 208 of the Voting Rights Act, <http://www.usdoj.gov/crt/voting/litigation/recent203.htm> http://www.usdoj.gov/crt/voting/litigation/recent_208.html.

⁴⁷ Erik Schelzig, *States' Immigration Bills May Be Moot*, *Az. Daily Star*, Aug. 20, 2006, <http://www.azstarnet.com/news/142934>. Nearly thirty municipalities across the nation have proposed or introduced legislation punishing businesses who employ undocumented immigrants and landlords who rent to undocumented immigrants. Daniel Patrick Sheehan & Kevin Penton, *Group Sues Pa. City Over Anti-immigrant Law*, *The Morning Call* (Allentown, Pa.), Aug. 15, 2006, <http://www.montereyherald.com/nld/montereyherald/news/nation/15282611.htm>.

⁴⁸ Rachel Uranga, *Anti-Illegal-Immigrant Groups Multiply*, *Daily News*, Aug. 12, 2006, at N1.
⁴⁹ See Tyler Lewis, *Report: Hate Violence and Rhetoric on the Rise against Latinos*, May 17, 2006, <http://www.civilrights.org/issues/hate/details.cfm?id=43360> (last visited Nov. 2, 2006); Kevin Johnson, *Center Ties Hate Crimes to Border Debate*, *USA Today*, May 17, 2006, at 3A; Anti-Defamation League, *Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence* (2006), http://www.adl.org/main_Ltremism/immigration_extremists.htm (“While white supremacists have for many years attempted to exploit rising anti-immigration sentiments in the U.S., the level and intensity of their attacks against Hispanics has reached dangerous new highs, with right-wing extremists joining anti-immigration groups, distributing anti-immigrant propaganda and holding frequent anti-immigration rallies and protests.”).

⁵⁰ Alonso Heredia, *Op-Ed., Anti-Immigrant Law Codifies Intolerance*, *Courier Post*, Aug. 9, 2006, <http://www.courierpostonline.com/apps/pbcs.dll/article?AID=/20060809/COLUMNISTS27/608090334>. During the public portion of a committee meeting in Riverside, New Jersey, proponents of a law to persecute undocumented persons claimed that they did not reject all immigrants, rather only those who were undocumented. *Id.* However, these same people booed other citizens who attempted to speak at that same meeting in opposition to the law, making it difficult for their views to be heard. *Id.* Worse yet, a Latina citizen was greeted with “[t]hese chairs are for whites only,” when she tried to sit down next to English-speaking women. *Id.* (internal quotation marks omitted).

⁵¹ New America Media, *Legal Immigrants: A Voice of Reason in the Immigration Debate 3* (2006), http://media.newamericamedia.org/images/polls/imm_poll/Immigration_exec_summary.pdf.

This current resurgence in anti-immigrant sentiments occurring at the local, state and federal levels has exacerbated barriers for language minority voters. Not only do language minority voters have to deal with hostile and unfriendly poll workers who equate any voter with limited English proficient as immediately suspect, they also have to deal with others in the community questioning their right to participate and ridiculing their language barriers.

For example, on April 25, 2005, Trenton, New Jersey radio hosts denigrated Asian Americans by using racial slurs and speaking in mock Asian gibberish during an on-air radio show. The hosts demeaned a Korean American mayoral candidate and made various other derogatory remarks. One of the hosts, Craig Carton, made the following remarks:

Would you really vote for someone named Jun Choi [said in fast-paced, high-pitched, squeaky voice]? ... And here's the bottom line. . . no specific minority group or foreign group should ever dictate the outcome of an American election. I don't care if the Chinese population in Edison has quadrupled in the last year, Chinese, should never dictate the outcome of an election. Americans should... And it's offensive to me... not that I have anything against uh Asians... I really don't... I don't like the fact that they crowd the goddamn black jack tables in Atlantic City with their little chain smoking and little pocket protectors.⁵²

The discriminatory attitudes expressed by the hosts in Trenton are by no means unique. In 2005 in Washington state, a citizen named Martin Ringhofer challenged the right to vote of more than one thousand people with "foreign-sounding" names. Mr. Ringhofer targeted voters with names that "have no basis in the English language" and "appear to be from outside the United States" while eliminating from his challenge voters with names "that clearly sounded American-born, like John Smith, or Powell."⁵³ Mr. Ringhofer primarily targeted Asian and Latino voters.⁵⁴

Even worse, these anti-immigrant sentiments have led to harassing and intimidating of language minority voters at polls because of the erroneous assumption that LEP voters could not be citizens. DOJ alleged in its Penns Grove, NJ complaint that political campaigns in Penns Grove, including 2006 and 2007 campaigns for mayor and city council, had been characterized by racial appeals as well as attempts to intimidate Latino voters.⁵⁵ DOJ also brought a Section 2 claim against Long County, Georgia because three candidates running for office in the 2004 primary election in Long County filed 45 challenges against Latino or Spanish-surnamed voters on grounds that they were not citizens based on no credible evidence for calling into question their status.⁵⁶ In South Dakota, Republican poll workers in Lake Andes were intimidating Native

⁵² <http://www.asianmediawatch.net/jerseyguyst/>.

⁵³ Jim Camden, *Man Says Votes from Illegal Immigrants*, March 31, 2005, available at <http://www.spokesmanreview.com/local/story.asp?ID=61944>.

⁵⁴ *Id.*

⁵⁵ Complaint, *United States v. Salem County and the Borough of Penns Grove, NJ, et al* (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm.

⁵⁶ Complaint, *United States v. Long County, GA*, (S.D. Ga. 2006), available at http://www.usdoj.gov/crt/voting/sec_2/long_comp.htm.

American voters by writing down license plate numbers and following Native Americans from polling places on Election Day during the 2004 elections.⁵⁷

In 2004, an Asian American candidate ran for City Council in Bayou La Batre, Alabama, a fishing village of about 2,750 residents, about one-third of who are Asian Americans. In a concerted effort to intimidate supporters of this candidate during the 2004 primary elections, supporters of a white incumbent challenged Asian American voters at the polls. The challenges, which were permitted under state law, included complaints that the voters were not U.S. citizens or city residents, or that they had felony convictions. The challenged voters had to complete a paper ballot and have that ballot vouched for by a registered voter. The DOJ investigated the allegations and found them to be racially motivated.⁵⁸

In another example, a major party congressional candidate's campaign in Orange County, California mailed a letter to 14,000 registered Latino voters that was specifically designed to intimidate them and keep them from voting in the 2006 elections. The letter, written in Spanish, falsely stated that immigrants may not vote (when, in fact, eligible naturalized immigrants may freely participate in U.S. elections). The letter also declared that "there is no benefit to voting" in U.S. elections.⁵⁹

Also during the November 7, 2006 general election, Mexican American Legal Defense and Educational Fund attorneys witnessed anti-immigrant activists aggressively intimidating Latino voters in Tucson, Arizona. One of these activists wore dark clothing with a badge-like emblem and carried a handgun in a holster, giving the false impression that he was a law enforcement official. The men attempted to ask Latino voters questions, write down their personal information, and videotape them as they went to cast their vote. The Arizona Republic has reported that Tucsonan Russell Dove, a local anti-immigrant activist, has proudly acknowledged his participation in this effort to intimidate Latino voters.⁶⁰

It is clear that DOJ must pay special attention to areas where there have been heavy anti-immigrant sentiments or debates occurring to ensure that such animosity is not bleeding over to the voting context. Additionally, DOJ needs to make sure that language minority voters are not being attacked at the polls either through unwarranted challenges or hostile poll workers who assume that they could not be citizens.

⁵⁷ Mike Madden, Judge orders GOP to halt poll tactics, *Argus Leader*, November 2, 2004, at 1A (on file with author).

⁵⁸ As a result, the challengers were prohibited from interfering in the general election, and ultimately the town, for the first time, elected an Asian American to the City Council. DeWayne Wickham, *Why Renew Voting Rights Act? Alabama Town Provides Answer*, USA Today, Feb. 22, 2006, 13A available at http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm.

⁵⁹ Mexican American Legal Defense and Educational Fund and NAACP Legal Defense and Educational Fund, Inc., NAACP LDF and MALDEF Uncover Significant Voter Intimidation Attempts During Recent 2006 Election Cycle (2006), available at

http://www.naacpldf.org/content/pdf/barriers_to_voting/Voter_Intimidation_Statement_MALDEF_LDF.pdf

⁶⁰ *Id.*

Outstanding issues for Asian American voters

Transliteration

AAJC remains concerned about the lack of transliteration in Boston despite the agreement to provide language assistance to Chinese voters under the Section 2 case referenced above. Transliteration is the selection of Chinese characters to represent the phonetic equivalent of the syllables of an English name, or a name in any other language that is not traditionally written using Chinese characters.⁶¹ At issue in Boston is whether the Secretary of the Commonwealth is willing to transliterate candidates' names on their ballots (official and absentee). AAJC believes that the Secretary of the Commonwealth should transliterate candidates' names on their ballots (official and absentee).

Transliteration of candidates' names is critical to providing a fully bilingual ballot. Candidates' names are the most important part of the ballot for voters. Because the Chinese language does not use an alphabet, it is important to utilize a method that allows voter to receive a fully bilingual ballot. A ballot that is translated into Chinese with English candidate names is not fully bilingual.

Without a fully bilingual ballot (that is, one that does not have transliterated candidate names), voters are unable to fully read their ballots and are left to guess which candidates are the ones they want to vote for or give up their right to an independent vote by requiring them to ask for assistance. For example, in Boston a voter tried to memorize the first two letters of the English name of the candidate that he wanted to vote for in order to try and recognize the name on the ballot. Unfortunately, he believes that despite his efforts he may have voted for the wrong candidate when there were several names on the ballot.⁶² Transliterated candidates names provide voters with the ability to vote without assistance, often for the first time in an LEP voter's life. It certainly makes voting much easier for LEP voters.

Transliteration has been utilized far and wide. Many other jurisdictions have utilized transliteration for candidates' name on Chinese bilingual ballots, including in New York City for 13 years.⁶³ It has also been utilized successfully in Los Angeles County, Alameda County, Orange County, San Francisco County, and even in Boston during their municipal elections.⁶⁴ Boston has developed a thoughtful and thorough procedure for transliterating candidates name that take into account feedback from the candidates, the community itself, and the media.⁶⁵ Additionally, transliteration of the candidates' names helps to avoid confusion by creating a single transliterated name for each candidate that is used by the candidates, the media and the community groups.

⁶¹ Statement to the Court at 4, *United States v. City of Boston*, No. 05-11598 (Mass. Dist. Ct. July 10, 2007).

⁶² Response to Opposition to the Unopposed Motion to Clarify at 5, *United States v. City of Boston*, No. 05-11598 (Mass. Dist. Ct. July 23, 2007).

⁶³ See Coalition for Asian American Voting Rights, Protect Asian American Voting Rights, available at <http://www.cpaboston.org/ftp/orgfactsheet%206-20-08.doc>.

⁶⁴ *Id.* Because the City of Boston is willing to transliterate candidates names, the very same LEP voters who can vote independently during municipal elections cannot during the upcoming presidential election.

⁶⁵ Statement to the Court at 5, *United States v. City of Boston*, No. 05-11598 (Mass. Dist. Ct. July 10, 2007).

AAJC believes that transliteration is an important voting rights issue for Asian American voters and urges DOJ to work with the Secretary of the Commonwealth to ensure that Chinese voters receive a fully bilingual ballot in Boston.

Recent Monitoring of Elections

AAJC does, however, commend the Department of Justice for monitoring the primary election in Boston on September 16, 2008 under the federal order entered in 2005 as referenced above. It is particularly important in light of the transliteration issue and the history of problems at the polls for language minority voters that warranted the Section 2 case being brought. For example, numerous voters have experienced coercion and improper influence while voting, including being told who to vote for by poll workers and having poll workers mark voters' ballots without consulting the voters or getting their consent.⁶⁶ As referenced above, poll workers at a site in Boston also segregated voters by race and made minority voters form a separate line to vote.⁶⁷ AAJC recommends that DOJ monitor Boston during the upcoming general election as well.

Outstanding questions raised regarding DOJ plans for upcoming elections on behalf of Asian American voters

AAJC is also concerned about questions raised with DOJ by the Congressional Asian Pacific American Caucus (CAPAC) on behalf of language minority voters and those community-based organizations that serve them⁶⁸, including:

- “How is DOJ collaborating with and providing guidance to state and local election officials to ensure that the rights of language minorities under Section 203, 4(e), 4(f), and 208 of the VRA are enforced? In particular, how is DOJ working with the jurisdictions that proved problematic in the reports listed [in the letter]?”
- How is DOJ collaborating with and providing guidance to state and local election officials to ensure that there is no discrimination under Section 2 of the VRA? In particular, how is DOJ working with the jurisdictions that proved problematic in the reports listed [in the letter]?”
- How is DOJ working with ethnic and language minority advocacy groups and community members to ensure that common problems documented in the last two election cycles for AAPI voters with limited English proficiency are not repeated, particularly in jurisdictions that proved problematic in the reports listed [in the letter]?”
- What is DOJ’s plan to monitor and respond to problems facing AAPI and LEP voters on Election Day? What jurisdictions will be given particular attention? Will there be a

⁶⁶ Response to Opposition to the Unopposed Motion to Clarify at 4-5, *United States v. City of Boston*, No. 05-11598 (Mass. Dist. Ct. July 23, 2007).

⁶⁷ *Id.*

⁶⁸ Letter from the Congressional Asian Pacific American Caucus to the Department of Justice (Aug. 22, 2008) (on file with author)

troubleshooting system to ensure that any problems that arise will be addressed in a timely manner?”

Specific jurisdictions of concern mentioned in CAPAC’s letter to DOJ include⁶⁹:

- New York, NY – Why did DOJ preclear a plan under Section 5 that will reduce the number of Chinese and Korean interpreters at poll sites? What is guiding DOJ’s decision making regarding these plans? Are there other similar plans to reduce interpreters at polling sites currently being reviewed?
- Boston, MA – As mentioned above, what is DOJ’s plan for ensuring full access to the polls for LEP voters through translated Chinese ballots, including the transliteration of candidate names?
- Philadelphia, PA – Poll monitoring results showed problems at polling sites for Asian American voters with slow poll workers, extremely long lines (up to four hours), inadequate signage, denial of provisional ballots, insufficient number of interpreters and improper demands for identification. What is DOJ’s plan for Philadelphia?
- Annandale, VA – In conducting an exit poll it was discovered that “there may have been a partisan campaign worker who steered several unsuspecting Korean American senior citizen voters into applying for absentee ballots without their full consent or understanding... [as well as the campaign worker filling] out some of these absentee ballots in favor of particular candidates without the voters’ knowledge or consent.” As a result, when these voters went to vote, they were turned away as having already voted. Does DOJ plan to send any monitors or observers to Annandale, VA to address this issue?
- Dearborn and Hamtramck, MI – South Asian voters disproportionately experienced inadequate language assistance, hostile and poorly trained poll workers, incomplete voter lists, and improper demands for identification. What is DOJ’s plan to monitor and prevent discrimination against South Asian voters during the upcoming elections (and beyond)?

To date there has been no response from DOJ on these questions. AAJC believes that is important that DOJ respond to CAPAC’s questions to provide some transparency and clarity as to how DOJ intends to protect the rights of language minority voters this upcoming election and that the response be provided within the following weeks as the elections are now less than two months away.

AAJC would also like to call attention to concerns expressed by its Affiliate the Asian Pacific American Legal Center of Southern California and its Community Partner the Asian Law Alliance about the decrease in the number of bilingual poll workers being recruiting for elections in Santa Clara County.

⁶⁹ *Id.* (referencing questions raised with DOJ by the Asian American Legal Defense and Education Fund).

Santa Clara County Bilingual Poll Worker Numbers

	Vietnamese	Chinese	Tagalog
June 2006	264	258	97
November 2005	339	343	226
November 2004	307	309	230
March 2004	250	265	192

AAJC requests that DOJ look into why there has been a decrease, including the Santa Clara County Registrar's methodology for determining how many bilingual poll workers are needed, and whether or not there is Section 203 noncompliance occurring in Santa Clara County.

Finally, AAJC would also like to echo the Subcommittee's concern about recent media reports that the Chairman of the Republican Party in Macomb County, MI, is planning to use a list of foreclosed homes as a basis for challenging voters and blocking their participation in the upcoming election. We support the Subcommittee's call for the DOJ to launch a full scale investigation into these reports.

Conclusion

On behalf of AAJC, I want to thank the Subcommittees for the opportunity to provide a written statement on the problems and barriers facing language minority voters. As the general election gets closer, DOJ must be mindful of how jurisdictions and outside persons are treating language minority voters, as well as how they are dealing with the influx of new voters. AAJC looks forward to working with you as well as the Justice Department to ensure language minority voters do not have their voices stifled at the polls.

Ms. NARASAKI. Thank you.

According to the census, more than four million voting-age citizens who are Latino, Asian American, or American Indian and Alaska Native and who speak English less than very well lived in section 203-covered jurisdictions in 2000, 8 years ago. Many naturalized citizens, as you know, who are also racial minorities face discrimination when voting. And limited English-proficient citizens can have difficulty understanding complex voting materials and procedures. Too often, they face hostile or impatient poll workers or denied needed or lawfully required assistance.

Unfortunately, section 203 non-compliance continues to be a problem. As a result, the Department of Justice has had to bring enforcement actions against cities like the City of Walnut in California on behalf of Asian American voters and in Kane County, Illinois on behalf of Latino voters.

Similarly, the Native American Rights Fund and the ACLU successfully sued Alaska on behalf of Alaskan Natives to provide effective language assistance to citizens who speak Yup'ik, the primary language of minority voters in the Bethel region in Alaska.

With elections less than 2 months away, we are urging that DOJ remind jurisdictions about their obligations under section 2 and 203, offer technical assistance, and continue to pursue the enforcement actions. They must work to ensure that these jurisdictions are ready for the tens and thousands of new Asian, Latino and Native American voters who are being urged to come out this year.

Some poll workers are reluctant to help language minority voters. Maybe they are unaware of how to help, or they are suspicious of the bilingual poll workers or the voters. Incidents include sending limited English-proficient voters to the back of the line because they are taking too long, or segregating them from the English-speaking voters. Even more problematic are poll workers who are openly hostile and discriminate against these voters who are not completely fluent.

DOJ should urge jurisdictions covered by 203 to do a better job of recruiting, screening and supervising poll workers. These poll workers who are hostile or unwilling to assist should not be tolerated, and DOJ must hold jurisdictions accountable for not properly supervising and managing them.

Problems also exist with poll workers who were under-trained. For example, many were aware of section 203 or the existence of provisional ballots in the last election. Polls are also confused as to what ID requirements are required, and this can result in racial and ethnic profiling and wrongly asking minorities for ID that are not required.

Additionally, many poll workers do not know section 208, which allows minority voters to take a person of their choice into the voting booth. DOJ must continue to monitor for such problems and remind jurisdictions to train specifically on these issues.

Anti-immigrant sentiments and rhetoric have been growing, unfortunately, and consequently Asian American and Latino voters face hostility because of the erroneous assumption that they could not be citizens, including unwarranted challenges of their registration or at the polls, or even intimidation. We hope that the DOJ will actively engage and closely monitor areas where there have

been particularly heavy anti-immigrant sentiments or acrimonious policy debates, to ensure that local election officials are doing all they can to prevent that kind of behavior from creeping into the polling place.

Finally, agency requests that the Department of Justice looks into why there has been a decrease in bilingual poll workers in Santa Clara, including the Santa Clara County's registered methodology for determining how many bilingual workers are needed and whether or not there is section 203 non-compliance occurring.

We applaud the Department of Justice for bringing section 203 cases against jurisdictions such as the ones that the assistant attorney general mentioned. DOJ also successfully brought an action against Boston on behalf of Chinese and Vietnamese voters. We urge them to monitor Boston during the upcoming general election, as they did during the recent primary.

We also urge them to continue press the Massachusetts Secretary of State to fully transliterate candidate names in Chinese language ballots and boxes. We believe that a fully bilingual ballot for Chinese American voters includes these transliterated candidate names.

Finally, the Congressional Asian Pacific American Caucus has asked the department about its plan for upcoming election in a letter dated August 22. It raises specific questions about several specific sites, such as: Why did DOJ declare a plan under section 5 that will reduce the number of Chinese and Korean interpreters at poll sites in New York, New York? We are hoping that they answer these quickly, in time for the election, so that corrections can be made.

Thank you.

Mr. DAVIS OF ALABAMA. Thank you.

Our next witness is Bryan O'Leary, who is a graduate of the United States Naval Academy and a former F-18 Hornet pilot. Mr. O'Leary, after he finished his time serving our country, participated in helping investigate the Department of Defense's voting program. He is now a public policy consultant at Crowell and Moring's public policy practice group.

Mr. O'Leary, thank you for your service. You have 5 minutes.

**TESTIMONY OF BRYAN P. O'LEARY, PUBLIC POLICY
CONSULTANT, CROWELL MORING**

Mr. O'LEARY. Mr. Chairman, distinguished Members of the Committee, thank you for inviting me to testify today.

In 1952, President Harry Truman wrote to Congress regarding military absentee voting. He said, "At a time when these young people are defending our country, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve." Over 50 years later, military voting remains a burdensome bureaucratic process that prevents our military men and women from being able to enjoy their rights as citizens.

I experienced this broken system firsthand as a Marine, when I was not able to vote. Despite my lack of success, I was picked to be the voting assistance officer to help all of my Marines vote. My story is not unusual. Voting officers have little or no training; they

are not JAG lawyers. They are front-line officers, oftentimes commanding soldiers, sailors, airmen and Marines in battle.

It is absurd to expect that a young lieutenant who is commanding a platoon of Marines in Hellman Province in Afghanistan or Ramadi in Iraq is going to succeed sifting through local, state and Federal laws and regulations that are all different, deadlines and ballot requirements that are all different, in order to ensure his or her Marines can vote, while at the same time fighting a war in a remote, austere environment.

Clearly, this is almost an impossible task. Even if that lieutenant could figure out all the different deadlines and rules, it is unlikely that those Marines would get their ballots in time to have them returned and be counted. Because of long delays shipping ballots to and from war zones, for the votes of our men and women deployed to Iraq and Afghanistan to count, today is their Election Day. Our military postal system has informed deployed soldiers that they should send in their ballots no later than September 30th in order to be counted on time. However, unfortunately, many states and counties will not even print their ballots and send them until October.

And if those ballots do finally reach their correct local election officials, they are greeted by political party operatives and lawyers who are determined to throw out every military ballot that is not perfect. Throwing out a military ballot that was prepared in a war zone is shameful. Both political parties and both presidential campaigns should condemn any legal attacks or challenges challenging the validity of the ballots of our military men and women.

The evidence continues to stack up that the DOD has failed our military men and women. This last week, the Pew Center on the States released a report that further documents that failure. Although 77 percent of the military said that they were very interested in voting, only 20.4 percent voted in 2006—that is half the rate of the general public. In 2006, for the general public, 85.8 percent of absentee ballots requested were cast, versus only 26.5 percent of military ballots.

If the military rates matched the general public rates, there would be roughly a half a million more military votes cast and counted.

Mr. Chairman, I would like to ask unanimous consent that the Pew report be included in the record.

Mr. DAVIS OF ALABAMA. Without objection.

[The information referred to follows:]



Military and Overseas Citizen Voting Project

Make Voting Work (MVW), a project of the Pew Center on the States (PCS), supports policies, practices and technologies that will improve the accuracy, convenience, efficiency and security of U.S. elections. PCS's Military and Overseas Citizen Voting Project is one of seven MVW initiatives underway to improve U.S. elections. Specifically, the Military and Overseas Citizen Voting Project addresses the complex process facing military and overseas citizens attempting to register to vote and cast their absentee ballots.

Military and Overseas Voting Disenfranchisement is a Problem

By almost every measure, military and overseas voter participation in the 2006 federal elections was substantially lower than the general population's. MVW estimates that voter turnout was only 20.4%¹ for the military population,² compared to the 39.8%³ of the general population which voted (measured as a percentage of the citizen voting age population, the usual measure of voter participation). This is attributable to a fractured system of voting for our military. Our failure to serve military voters is not a new problem. Leading political figures have documented and called for reform for decades.⁴

Service members want to vote, but are forced to navigate a laborious, complex and failure-prone system in order to exercise that right. Surveys show that military personnel have great interest in election results and voting. For example:

- 77% of the military said they were very interested in the 2004 general election, a 12 percentage point increase over 2000.⁵
- Interestingly, of those military personnel that said they did not vote in 2004, 30% did not because their ballots never arrived or arrived too late to their duty stations and 28% did not know how to get an absentee ballot, found the process too complicated, or were unable to register.⁶

This highlights some of the significant problems of the voting system and how it contributes to very low military voter participation rates. Take for example the number of absentee ballots cast as a percentage of those requested. It requires deliberate effort on the part of a voter to request an absentee ballot, and it is not surprising that 85.8%⁷ of absentee ballots requested by the general population in 2006 were cast. But of the absentee ballots requested by military personnel, only 26.5%⁸ were actually cast.

In effect, thousands of military voters are not voting. Simply increasing military voting averages to the historically low general population's averages would afford thousands more military personnel the opportunity to exercise their right to vote. For example:

- If 39.8% of the military had voted in 2006 instead of only 20.4%, an estimated 257,000 more military ballots would have been cast.⁹

- If 85.8% of the military absentee ballots requested had been cast in 2006 instead of only 26.5%, an estimated 391,000 more military ballots would have been cast.¹⁰

Without Assistance, Military and Overseas Voters Fail to Navigate the Voting Process

Military and overseas voters are faced with a daunting voting process that has seven major steps and up to 13 discrete sub-steps, from deciding to participate in the electoral process to actually casting a vote. The diversity of state requirements and limitations of the help provided by the Department of Defense hinders these voters.

For example, the Voting Assistance Guide that the Department of Defense’s Federal Voting Assistance Program (FVAP) produces yearly is a 460-page instruction manual that details the state-by-state procedures for completing and sending in the Federal Post Card Application (FPCA, the combined voter registration and absentee ballot form the Uniformed and Overseas Citizens Absentee Voter Act (UOCAVA) of 1986 directs military and overseas voters to use) and Federal Write-in Absentee Ballots (FWAB—a military/overseas version of a provisional ballot to be used if the requested absentee ballot does not arrive in time). When a service member or overseas citizen gets a copy of the FPCA, he or she must reference his or her state’s five to ten pages of specific instructions to determine which FPCA blocks to fill out.

Not surprisingly, a significant proportion of UOCAVA absentee ballot requests are rejected by local election officials. Despite the training and assistance attempted by unit Voting Assistance Officers (VAOs), and the availability of the Voting Assistance Guide, military voters have considerable difficulty filling out the FPCA correctly. The Federal Voting Assistance Program (FVAP) and Overseas Vote Foundation (OVF) have surveyed local election officials regarding FPCAs, and both surveys show sizeable problems. Table 1 details the findings.

Table 1: Percent of Local Election Officials Reporting Problems with Federal Post Card Applications¹¹

FPCA Problem	FVAP	OVF
Incomplete Forms	-	33%
Invalid Information*	17%	10%
Illegible Information	22%	12%
Received Too Late	11%	-
No Signature	11%	-
No Political Party Preference	11%	-
No Social Security Number	7%	-

*FVAP – 17% of local election officials experienced problems with UOCAVA citizens mailing the FPCA to the wrong jurisdiction.

The result is that at least 6% of military FPCAs in 2004 were not processed due to some error.¹² If that rate held into the 2006 election, almost 40,000 military ballot requests were rejected.¹³

Federal Voting Assistance Program Rated “Not Effective” in Supporting Military and Overseas Voters

Despite personal attention by the highest levels of Department of Defense leadership, and spending of tens of millions of dollars to support military and overseas voters, the Federal Voting Assistance Program consistently fails to make the election system work for these voters. Designated by the President as the executive agent responsible for implementing the protections of UOCAVA, FVAP has been the subject of annual program reviews by the Department of Defense Inspector General since the 2000 election.

Unfortunately, the Department of Defense Inspector General Reports highlight shortcomings of the Voting Assistance Program, particularly at the unit Voting Assistance Officer level, to provide effective assistance to military voters. Those reports show Voting Assistance Officers¹⁴ consistently failing at such basic tasks as providing military voters access to the FPCA and FWAB. Table 2 shows a trend analysis of the Inspector General’s annual report on a number of key elements of the Voting Assistance Program.

Table 2: Performance of Voting Assistance Program in Supporting Military Voters¹⁵

Voting Assistance Program Requirement	2004	2005	2006
FPCAs delivered by Deadline	21%	24%	25%
Aware of FPCA Use and Purpose	55%	25%	33%
Aware of FWAB Use and Purpose	36%	25%	31%
FWAB received	35%	21%	21%

While the Department of Defense has made attempts to strengthen the Voting Assistance Program, the number of personnel who are aware of the FPCA form has dropped significantly. Due to the challenges VAOs confront in fully executing their responsibilities (e.g., lack of training and resources), the Inspector General estimated that during the 2004 election cycle VAOs only reached 40-50% of the military voters.¹⁶ Given these persistent problems, the Inspector General concluded in 2005 that the Voting Assistance Program was “Not Effective” and because “voting assistance will always be a secondary duty, senior leadership can expect significant improvement only if a radically different approach is applied.”¹⁷

The Federal Voting Assistance Program is placed in an untenable position: they are assigned the responsibility but not granted the authority to effect the change necessary to better enfranchise military voters. FVAP officials have little leverage with local election officials to change state and local election laws to protect military voting rights. While federal and state election officials and policy makers are sympathetic to the problems faced by military and overseas voters, they are also attentive to the constitutionally authorized election administration authority granted the states. The states themselves, however, cannot individually clear away the myriad conflicting provisions found in state laws across the country. For coordinated action to succeed, however, the strong bipartisan political support for reform that exists must be sustained and marshaled. Yet, interest too often dissipates after a general election cycle with no headlines and no representatives from

this dispersed population in place to consistently raise the issue when state legislatures are in session.

The Military Postal System Cannot Deliver Absentee Ballots to Military and Overseas Voters in Time

In 2006, 84% of the FPCAs submitted, 96% of the blank absentee ballots received and 95% of the voted ballots returned were sent by postal mail.¹⁸ This is true despite the fact that some states allow transmission by fax, e-mail or FVAP's Electronic Transmission Service (which accepts fax or e-mail transmissions from military and overseas voters and forwards them to LEOs in the format required by state or local rules).

For the military, mail is not handled simply by the United States Postal Service. To reach military units, mail is transferred from the U.S. Postal Service to the Military Postal System Agency and then shipped through military logistics channels. This mail can be placed in a position of competing against military supplies for space. Operational, hostile and remote locations can delay mail delivery further. The military standard for delivering mail to and from military personnel in combat zones is 12 to 18 days.¹⁹

Department of Defense officials claim that mail is transiting smoothly, even to remote operational sites in Iraq and Afghanistan, citing 11-13 day transit times.²⁰ However, the Government Accountability Office determined that the methodology the Military Postal Service Agency used to compute that average mail delivery time was fundamentally flawed, and weighted to underestimate actual average transit times. Because of this weighting error, "the 'weighted average' methodology...significantly understate[s] actual transit time."²¹

The time of mail delivery is critical, especially for blank and voted ballots, because on average, states don't send absentee ballots until 35-40 days before the election. For some states, like Rhode Island and Massachusetts, ballots are sent 21 days prior to the election. With the military postal standard mail delivery time being 24-36 days round-trip, there is little, if any room for delay or error.

These delays are exacerbated by the fact that most military personnel transfer units every two to three years, and temporarily deploy overseas every 18-24 months. Because of this, the addresses on FPCAs submitted in one election cycle are likely to be obsolete come the next. Local election officials cite this as one of their biggest concerns with military voting.

In 2006, these factors resulted in more than 35,000 military and overseas citizen absentee ballots being returned to local election officials as undeliverable,²² and 20% of responding UOCAVA voters either never receiving requested absentee ballots or receiving them too late to cast.²³ This is the primary reason that military and overseas voters are 70% more likely than voters in the general population to have their ballots rejected from the voting process as either undeliverable or cast too late.²⁴

Progress Requires New Approaches

Real progress requires new approaches to this problem, both in terms of the scope and breadth of the solutions considered. It is time to expand national efforts in support of military and overseas voting across multiple fronts, including:

- More consistent and simplified state laws that reduce barriers for military and overseas voters while preserving the system's integrity;
- The employment of tested technologies to simplify the military and overseas citizen voting process by enabling voters to take greater advantage of the FWAB, updating registration rolls through database matching, expanding state online registration and verification programs and facilitating the transmission of ballots; and
- New partnerships with those committed to ensuring the franchise of military and overseas citizens.

Through Make Voting Work, the Pew Center on the States is launching a multi-year initiative to advance a set of short and long-term solutions. Initial steps include the:

Adoption of a Uniform State Law on Military and Overseas Voting: The Uniform Commercial Code is widely hailed as an example of states working together, without federal action, to implement uniform laws for the improvement of commerce and civil law. It was developed and is maintained by the Uniform Law Commission (ULC, formerly known as the National Conference of Commissioners of Uniform State Laws).

ULC is trusted by state policymakers across the political spectrum and has a long track record of success. Further, when a draft uniform law is adopted by ULC, they then apply their lobbying resources to seek enactment throughout all states and territories. Such an initiative by ULC would provide the leadership around which state government organizations and leading stakeholders from the business, military, university and other civilian communities could rally.

The ultimate goal would be a Uniform UOCAVA Implementation Act with consistent timelines, requirements, and standards for UOCAVA registration, absentee ballot distribution and ballot voting and the adoption of that law by 10 states in 2011, and a majority of states by 2013, including those with major populations of military and overseas voters.

Creation of an Online Federal Write-In Absentee Ballot Tool: The 484,000 military personnel that requested military ballots in 2006 but did not get to cast them did have other options to vote; they could have submitted a Federal Write-In Absentee Ballot for at least the federal election. But lack of knowledge about FWABs, and the difficulty of complying with the individual states' requirements sharply limit their use—only 31% of military voters surveyed in the 2006 DoD IG Report were even aware of the FWAB's existence (see Table 2), and 34% of the FWABs cast were rejected.²⁵

Pew has already engaged OVF to build upon its FPCA tool and develop an online FWAB tool. This tool will convert the FWAB to a PDF form file and provide a race-by-race choice of candidates as they appear on the regular absentee ballots. As the UOCAVA voter makes his or her choices, the PDF form will be filled out. After all races are voted or intentionally skipped, the FWAB tool will double-check all entries to ensure the form is complete and create a PDF that can be printed out with the address of the local election official and instructions the voter needs to satisfy their jurisdiction's unique requirements.

This project will provide federal voter services in all 54 states and U.S. territories and is expected to be initially operational in September 2008. With the uniform law and added technical capacity, the Write-In Absentee Ballot application could be expanded to all state offices in future election cycles.

Testing of a Military Voter Address Verification System: At least 35,000 military ballots were returned as undeliverable in 2006 and untold numbers of the more than 70% of absentee ballots that were never returned likely ended up in dead-letter piles due to out-dated addresses, despite the fact that the Department of Defense's Defense Enrollment Eligibility Reporting System (DEERS) has all military personnel's current assignment and address. However, force protection and privacy concerns do not allow for the public dissemination of this information.

The Help America Vote Act's requirement for states to develop centralized statewide voter registration system databases provides the opportunity to capitalize on each state and territory's National Guard access to the DEERS database. As a state agency with periodic federal responsibilities, the National Guard combines the unique capability of access to federal systems with the ability to accept non-governmental funding and assistance.

MVW, therefore, is exploring whether a limited two or three state pilot could be undertaken this election cycle under which the state election official in charge of the statewide database could have that state's National Guard compare the two databases for correct military personnel addresses before absentee ballots are sent. Since the National Guard would conduct the review, privacy and force protection concerns would be avoided. Further, only military personnel that had already registered to vote would appear in the states' databases, and only those personnel requesting an absentee ballot would have their military address updated with the state. Results from this pilot could then be used to inform further expansion.

Next Steps: In September, the Pew Center on the States' Make Voting Work will host a national conference. Make Voting Work partners and those concerned about military and overseas voting will gather to discuss research to date, raise the visibility of this issue with the public and policy leaders, and announce strategic partnerships and progress to date on the initiatives.

We welcome your advice and participation. For further information, please contact:

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End Notes

¹ The total military Citizen Voting Age Population is 1,325,229 (total military population of 1,356,201 (David Chu, *2006 Population Representation in the Military Services* (Washington, D.C.: Office of the Under Secretary of Defense, Personnel and Readiness, February 1, 2008), tables B-22 and B-30, (from http://www.defenseink.mil/prhome/PopRep_FY06/ (accessed March 4, 2008))), minus 30,972 non-citizen personnel (Valerie Alvord, "Non-citizens fight and die for adopted country," *USA Today* (April 8, 2003), http://www.usatoday.com/news/world/iraq/2003-04-08-noncitizen-usat_x.htm, accessed March 10, 2008).

The total UOCAVA absentee ballots cast in 2006 was 263,793 of which 66.4% of those ballots cast that were categorized were categorized as military ((U.S. Election Assistance Commission (EAC), *UOCAVA Survey Report Findings* (Washington, D.C., September 2007) table 19). Extrapolating that percentage into the uncategorized UOCAVA ballots cast as well comes to 175,091 military absentee ballots cast.

Additionally, the Defense Manpower Data Center calculates that 7% of the total military population voted in person in 2006 (Defense Manpower Data Center, Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010 (Washington, D.C.: May 7, 2007), Table 1), or 94,934 military ballots cast in person.

Therefore, a total of 270,093 military ballots were cast by absentee ballots or in person. This divided by 1,325,229 military Citizen Voting Age Population is 20.38% military voter participation.

² One of the key problems with the current data on military voting, in this case the EAC 2006 Survey data, is the inconsistency of the data across the states. A particular problem with the states' collection of UOCAVA voter data in 2006 is the large proportion of uncategorized data, neither categorized as military or overseas citizen voters. For example, nearly two thirds of the total 992,034 UOCAVA ballots requested are uncategorized and about one-third of the 263,793 UOCAVA ballots cast are uncategorized.

But in the aggregate, the proportions are remarkably consistent, especially in the percent of voting actions categorized as military or overseas citizen. Of the UOCAVA absentee ballots requested, cast, cast or counted, advance ballots transmitted, and Federal Write-in Absentee Ballots received, the percent of the data that was categorized was consistently about two-thirds military, ranging from a low of 64.7% (Advance Ballots Transmitted, Table 23) to a high of 70.6% (FWABs received, Table 24). The two standard deviation range was only plus-or-minus four percentage points, and the mean was 67%. Given this remarkable consistency, it appears reasonable to draw from the statistical aggregation of this data as indicative of the entire population.

³ $82,121,411$ (General Population Turn-out) / $206,286,000$ (General Population CVAP) = 39.8% of the nation's citizen voting age population participated in the 2006 election. (U.S. Election Assistance Commission, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings* (Washington, D.C., December 2007), p. 12.)

⁴ Letter from President Harry Truman in Congressional hearings on "H.R. 7571 and S. 3061: Bills to permit and assist Federal personnel, including members of the Armed Forces, and their families, to exercise their voting franchise," 82d Cong., 2d Sess. (June 26 and July 1, 1952), pp. 35-37.

⁵ Polli Brunelli, *The Federal Voting Assistance Program, 17th Report* (Washington, D.C.: Department of Defense, Federal Voting Assistance Program, October 2005), chart 1, p. 1.

⁶ *Ibid.*, chart 10, p. 12

⁷ $11,183,486$ (Domestic Citizen Absentee Ballots Cast – Table 26) ÷ $13,039,008$ (Domestic Citizen Absentee Ballots Requested – Table 30b) = 85.8%. See U.S. Election Assistance Commission, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings* (Washington, D.C.: December 2007), tables 26 and 30b.

⁸ Using the same analysis as the military absentee ballots cast, in 2006, 992,034 total UOCAVA absentee ballots were requested, of which 66.5% of those ballots requested that were categorized were categorized as military. ((U.S. Election Assistance Commission, *UOCAVA Survey Report Findings* (Washington, D.C., September 2007) table 22). Extrapolating that percentage into the uncategorized UOCAVA ballots requested as well comes to 659,703 military absentee ballots requested.

A total of 175,091 military absentee ballots were cast (see note 1) ÷ 659,703 military absentee ballots requested = 26.54% absentee ballot cast rate.

⁹ 39.79% (general population voting participation rate, see note 5) x 1,325,229 military citizen voting age population = 527,255 military votes that would have been cast if the military had voted at the same rate as the general population. Subtracting the 270,093 military votes actually cast in 2006 comes to 257,162.

¹⁰ 659,703 total military absentee ballots requested x 85.77% general population absentee ballot cast rate = 565,823 military absentee ballots that would have been cast if the military absentee ballots requested had been cast at the same rate as the general population. Subtracting the 175,091 military absentee ballots actually cast comes to 390,732 additional military ballots that would have been cast.

¹¹ EYAP: Brunelli, *The Federal Voting Assistance Program, 17th Report*, Chart 11, p. 14; OVF: Susan Dzieduszycka-Suinat and Thad Hall, *2006 Post Midterm Local Election Official Survey Report* (Arlington, VA: Overseas Vote Foundation, 8 May 2007), p. 4.

¹² Brunelli, *The Federal Voting Assistance Program, 17th Report*, p. 21.

¹³ 659,703 military absentee ballots requested x 6% military FPCA rejection rate = 39,582 military absentee ballots rejected.

¹⁴ The Department of Defense mandates that at least one voting assistance officer be designated for each 50 members of a unit. In addition to their non-voting related primary responsibilities, VAO's are asked to provide a range of services to help members of the unit vote.

¹⁵ 2004 data: U.S. Department of Defense Inspector General (DoD IG), *Evaluation of the Voting Assistance Program*, Report No. IE-2005-001 (Washington, D.C., March 31, 2005); 2005 data: DoD IG, *Evaluation of the Voting Assistance Program*, Report No. IE-2006-001 (Washington, D.C., March 31, 2006); 2006 data: DoD IG, *2006 Evaluation of the Federal Voting Assistance Program in the Department of Defense*, Report No. IE-2007-004 (Washington, D.C., March 31, 2007). Note that all the DoD IG reports have an identical caveat saying that "the summarized data cannot be generalized beyond the [selected] locations evaluated because the locations were selected judgmentally, and the data are too few to support any possible generalizations beyond those of the participants whose responses were recorded."

¹⁶ DoD IG, *2004 Evaluation of the Voting Assistance Program*, p. 22.

¹⁷ *Ibid.*, pp. 17, 26.

¹⁸ Defense Manpower Data Center, Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010 (Washington, D.C.: May 7, 2007), pp. 36, 38, 40.

¹⁹ Army Field Manual 12-6 states, "[t]he standard of service for first class mail is 12 to 18 days from the point of origin to individual soldiers worldwide." Chapter 6, "Doctrinal Requirements and Standards of Support" section, available at <http://www.globalsecurity.org/military/library/policy/army/fm/12-6/Ch6.htm#top> (accessed February 29, 2008).

²⁰ Barbara Barrett et. al., *Military Postal Service Task Group, Report to the Secretary of Defense*, Report FY05-5 (Washington, D.C.: Defense Business Board, December 2005), Part I, p. 5.

²¹ Neal P. Curtin, *OPERATION IRAQI FREEDOM: Long-standing Problems Hampering Mail Delivery Need to Be Resolved*, GAO Report 04-484 (Washington, D.C.: Government Accountability Office, Defense Capabilities and Management, April 14, 2004), p. 12.

²² EAC, *UOCAVA Survey Report Findings*, p. 3. Due to the mobile nature of this population, expired change of address orders and reliance on international mail suggest this figure significantly understates the number of misdirected absentee ballots.

²³ Overseas Vote Foundation, *OVF 2006 Post Election Survey Results* (Arlington, VA: February 8, 2007), p. 18, available at https://www.overseasvotefoundation.org/files/2006_OVF_Post_Election_Survey_Report.pdf, (accessed March 6, 2008).

²⁴ EAC, *UOCAWA Survey Report Findings*, p19. “The biggest reason (over 70 percent) reported by States and local jurisdictions for not counting the ballots was that they were returned as undeliverable. As a result, the ballots were not even eligible to be cast.”

²⁵ 63.7% of FWABs cast were counted, or conversely, 36.3% of FWABs cast were not counted. (EAC, *UOCAWA Survey Report Findings*, Table 21a, p. 32.)

Mr. O'LEARY. Sadly, the Election Assistance Commission results were even worse. Of the estimated six million military personnel dependents and citizens eligible, only 992,000 requested a ballot. Only 330,000 of those were cast. And we also know that 48,628 were rejected. This is a shocking rate of only 5.5 percent voter participation from military and overseas citizens.

This problem could have and should have been solved years ago. Yet our Industrial Age bureaucracy has failed to embrace the Information Age. Technology is available today to securely encrypt and electronically transmit blank ballots to military men and women around the world. Congress directed the DOD to execute such a program in 2006, and the DOD failed to execute it.

The Administration, the DOD, and the DOJ need to stop making excuses for their failure. Instead, Congress and the DOJ should stop accepting those excuses and force action to fix this problem.

Thank you for allowing me to testify today. I look forward to your questions.

[The prepared statement of Mr. O'Leary follows:]

PREPARED STATEMENT OF BRYAN P. O'LEARY

Mr. Bryan O'Leary

Testimony Before the House Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Civil Liberties and
Subcommittee on Elections

Sep 24, 2008

Mr. Chairman, distinguished members of the Committee thank you for inviting me to testify today.

In 1952 President Harry Truman wrote to Congress regarding military absentee voting. He said, *"At a time when these young people are defending our country...the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve."*

Over fifty years later military voting remains a burdensome bureaucratic process that in 2006 resulted in only 22% of service members successfully voting.¹ War fighters are often on-the-move. More often than not ballots are sent to a previous address and are never received by the men and women in the field.² A significant percentage are sent out without enough time to be completed, returned and counted before the state deadline.³ Even when ballots reach members of the Armed Services at their correct address and the ballots make it back to the local election official on time military votes still must overcome legalistic challenges by lawyers dispatched by both political parties and candidates. In short, our military men and women and their families overseas are being systematically disenfranchised by a broken system.

Military Voter Participation

- 2006 military voter participation was roughly half that of the general population, 22% (24% domestic military and only 17% overseas military personnel)⁴ for military voters as compared to 39% to 40%⁵ for the general population.
- 992,000 Uniformed and Overseas citizens ballots were requested for the 2006 general election, but only one-third of that number (330,000) were cast, and even less were counted.⁶
- 330,000 uniformed and overseas votes *cast or counted* out of a population of roughly 6 million citizens of voting age (1.3 million military, 1.1 million dependents, an estimated 3.6 million overseas citizens), for an estimated turnout of only 5.5%.⁷
- 48,628 uniformed and overseas ballots were rejected in 2006.⁸

In summary, the current military voting system has failed our military men and women and their families.

During my service in the Marines I was assigned as the voting officer for a 200 man squadron. I was given the DoD 400 page "Voting Assistance Guide" that detailed the different rules, regulations and deadlines for voting in each state, along with a stack of posters, Federal Postcard Applications (FPCA's) and Federal Write in Absentee Ballots (FWAB's). My instructions were to provide information for Marines who approached me wanting to register to vote and to get the squadron through our upcoming Commanding General's Inspection successfully.

Success on the inspection, however, was not measured by ensuring that a certain percentage of Marines registered to vote, or that the local

election officials had the correct addresses of Marines in the unit. Instead the only metrics involved displaying the required number of voting posters, having on hand enough post card applications, and letting the Marines know that if they were interested in voting they should see an officer.

Like thousands of other junior officers, I didn't understand the confusing multi-step process and could barely vote myself, let alone help my Marines. I was focused first on my warfighting mission, not on this additional administrative duty. It should not be surprising that our warriors' top priority is keeping their soldiers, sailors, airmen, and Marines alive, not navigating a mess of federal, state, and local laws and regulations.

The Voting Assistance program is executed in a haphazard and inconsistent way and seems most effective when the military unit is not deployed. In 2001 the GAO reported, "voting assistance by the DoD and DoS varied due to incomplete service guidance, lack of oversight, and insufficient command support." In 2004 GAO reported that, "Absentee voting assistance continued to vary because of the collateral nature of the VAO role."⁹ Further, in 2004 the DoD Inspector General concluded that 58% of personnel did not even know who their voting assistance officer was let alone know how to register to vote.¹⁰

Recommendations

1. With forty-one days left before election day, members of the military and their families should get on-line today or seek out their voting assistance officer (if they can find them) to register and/or request their absentee balloting materials, even if they believe they are already registered (<http://www.overseasvotefoundation.org/> has the most user friendly web application). In all likelihood, their registration will indicate an old address and if not updated their ballot will be returned undeliverable after going to that address. Given the delays involved, even though the election is 6 weeks away, for our military men and women, *today is your election day*.

2. Congress should rapidly fund and execute expedited ballot delivery from overseas locations using express delivery with full tracking capability.

3. The Justice Department should aggressively investigate the DoD Federal Voting Assistance Program and States that do not allow for adequate time to send, complete, and receive ballots from remote overseas locations. 45 days is the absolute minimum.

4. Congress should establish for all future elections a means for electronic transmission of a blank ballot to service members and other government employees overseas and their families.

5. The Secretary of Defense should place responsibility for military voting under a single House confirmed Presidential nominee, an Assistant Secretary of Defense for Voting.

Background

This is not a new problem. It has been clear for a number of years that the military and overseas voting process has been broken. Instead of fixing the problem, there has been a tendency to shift the blame. The DoD claims that the problem lies with each State and local jurisdiction, the States claim that is the DoD's problem, and the Department of Justice has allowed the DoD to take the blame.

As a House staff member I was briefed by the DoD in 2005 on this issue, and I was shocked that nothing had changed since I was a Captain in the Marines. A number of House offices vigorously investigated the program and found that the FVAP was living in complete denial that there even was a problem. Even today the Federal Voting Assistance Program office clings to their false claims of increased voter participation in the 2004 election. By their accounts an astounding 79% of military voters participated, they claim a significant improvement over the 2000 election, and a voting rate 15% higher than the general public. They continue to make this claim long after the GAO questioned their survey methodology as being unreliable, "The low survey response rates raise concerns about FVAP's ability to project increased voter participation rates."¹¹ The GAO goes on to criticize the overall methodology, overseas citizens sampled, the sample size, lack of sampling error, and lack of any analysis of respondents vs. non-respondents. In short, the Federal Voting Assistance Program claims are unscientifically arrived at and are questionable at best.

In contrast, the Election Assistance Commission, Defense Manpower Data Center, National Defense Committee, Overseas Vote Foundation, and Pew Military Voting Project have provided significant data that counters their claim and provides ample data to demonstrate that only about one in every five military voters cast a vote that is counted.

In 2006 Congress directed the DoD to execute an electronic ballot delivery pilot program. A step short of "electronic voting" this system simply set up a secure connection between the military voter and the local election official which allowed them to receive a blank ballot over the internet, which they would then print, sign and mail back. This system eliminated the problem of ballots being sent to the wrong address. The Pentagon failed to execute the program until the last minute, and didn't tell the local election officials of its existence. It is interesting to note, that this solution that relied on hardened banking system encryption took three weeks and less than a million dollars to execute. In contrast the Voting Program office in the DoD claims that it would take them between 1,000 and 1,700 days to execute a voting over the internet program. If past performance is any measure, I would suggest that no amount of money or time could generate success out of the existing office.

As the "Presidential Designee" for military and overseas voters the Secretary of Defense should shoulder the majority of blame for the failure of his Voting Assistance Program. However, the Department of Justice, Civil Rights Division, has the legal authority to ensure that military and overseas voters have the right to vote. The DoJ has used this authority to initiate legal action with states that have not allowed enough time to ensure

that military and overseas votes could be sent and returned from overseas and counted before the deadline. Recently most of the legal actions have revolved around special and run-off elections that have a compressed time table.

While the DoJ Civil Rights Division should be applauded for attempting to hold the states accountable, they could do much more. For years it has been made plain to every state that a minimum of 45 days is required to ensure that ballots can make it overseas, have time to reach the voter and be filled out and returned prior to the election. According to Brenda Farrell of the GAO it takes on average 18 days for a ballot to travel one way to a deployed service member.¹² That's at best 36 days for the round trip, plus nine days on the ground (it can be assumed that in a remote location a ballot would be dropped off, completed, and then sent out in the following week's mail).

Given the fact that our Armed Forces are deployed around the world in combat zones, and given the difficulty of getting mail to remote locations in Iraq, Afghanistan, and the Horn of Africa it stands to reason that the DoJ should expand their legal effort to ensure that every state provides the minimum recommended 45 day window to ensure that our soldiers have enough time to allow their votes to be returned on time. Further, if there is a close election – and a single vote may make the difference, for these ballots already cast, due to circumstances outside the control of the war fighter, these “in transit” ballots should be given the opportunity to be counted should they arrive before an election certification. This is certainly within the purview of the Judicial system to offer this short term remedy.

Conclusion

Our military men and women serve around the world and risk their lives in defense of freedom, and yet their own ability to exercise their fundamental right to vote is being obstructed.

This problem could have and should have been solved years ago, yet our industrial age government has failed to embrace the information age. Technology is available today to securely encrypt and electronically transmit blank ballots to military men and women around the world.

If there is a silver lining it is that private non-profit groups like the Pew Military Voting Project, the Overseas Vote Foundation, Operation Bravo, Everyone Counts, and the National Defense Committee have all stepped up to provide innovative solutions that could be rapidly executed within the existing budget.

For this coming election in November it is critical that the Department of Justice press the Department of Defense and State election officials to ensure that our service men and women are given the time required to receive their ballots and return them on time. These military men and women are citizens first, and as citizens they deserve the full attention of the Department of Justice to protect their right to vote.

Thank you for allowing me to testify today, I look forward to your questions from the members of the Committee.

¹ Defense Manpower Data Center, Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010.

² EAC. *U.S. Election Assistance Commission, UOCAVA Survey Report Findings*. Sep 2007.

³ Paul DeGregorio. *Testimony before the U.S. House Committee on Armed Services*. U.S. Election Assistance Commission. Sep 28, 2006.

⁴ Defense Manpower Data Center, Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010.

⁵ The American National Election Studies. *Voter Turnout 1948-2004*. Dec 21, 2005.

⁶ Defense Manpower Data Center.

⁷ EAC. *The 2006 Election Administration and Voting Survey: Highlights from the 2006 UOCAVA survey*.

⁸ Ibid.

⁹ Derek Stewart. GAO Report. *Absentee Voting Assistance to Military and Overseas Citizens Increased for the 2004 General Election, but Challenges Remain*. GAO-06-521. Apr 2006.

¹⁰ DoD IG Report. *DoD Implementation of the Voting Assistance Program*. Report No. D-2004-065. Mar 31, 2004

¹¹ Derek Stewart. GAO-06-521.

¹² Captain Chas Henry. *Lots of Bullets, Not Enough Ballots*. Naval Institute Proceedings. 2008.

Mr. DAVIS OF ALABAMA. Thank you, Mr. O'Leary.

Our next witness is James Terry, who is the chief public advocate for the Consumer Rights League. And he and his organization have a long history of not only helping Americans register to vote, but also facilitating the participation in the political process.

Mr. Terry, you have 5 minutes.

**TESTIMONY OF JAMES TERRY, CHIEF PUBLIC ADVOCATE,
CONSUMERS RIGHTS LEAGUE**

Mr. TERRY. Thank you, Mr. Chairman, Members of the Committee.

I appreciate the opportunity to be with you today, and I ask that my extended remarks be entered into the record.

Mr. DAVIS OF ALABAMA. Without objection.

[The prepared statement of Mr. Terry follows:]

Ensuring the Integrity of the U.S. Electoral System
By
James Terry
Chief Public Advocate
Consumers Rights League

Thank you, Chairman Conyers, Chairwoman Lofgren, Ranking Member Franks and Ranking Member McCarthy.

My name is James Terry and I am the chief public advocate at the Consumers Rights League, a non-profit education and advocacy organization dedicated to preserving consumer choice in a broad array of issue areas.

I appreciate the opportunity to lend some perspective to a problem that gets far too little attention, but one that poses a great risk to the integrity of our electoral system.

The Consumers Rights League provides an alternative voice from those organizations that argue for reduced consumer choice or increased government intervention as a policy of first choice. CRL supports all aggressive efforts to educate, motivate, register, and assist all citizens in voting so long as those efforts are legal. Unfortunately, there are some groups that do not seem to share this concern.

As part of CRL's mandate, we monitor policy debates, news trends and the activities of organizations that style themselves as consumer advocates. Unfortunately, due to their long track record of questionable or corrupt

practices with respect to housing and electoral activities, we are constantly forced to act as a watchdog for abuses by the Association of Community Organizations for Reform Now, or ACORN.

To be sure, there are some well-meaning individuals who are a part of ACORN. Unfortunately, they do not appear to be the ones in control. Firsthand accounts from current and former ACORN employees, major news stories, and court cases across the country, expose corruption at every level of ACORN including embezzlement, cover-ups, misuse of taxpayer funds and voter fraud.

While all of the reported allegations noted in my statement are found in the public domain, such reports often go unnoticed by the national media. I therefore thank the Committee up front for focusing on these important issues confronting our country.

Understanding ACORN's Structure

To properly understand the potential impact that ACORN's activities may have on the upcoming and future elections, it is important to understand their structure. In all, ACORN's massive enterprise includes as many as 150 subsidiary organizations, according to a recent legal filing by members of its board of directors.¹ This list includes two affiliated labor union locals, TV and radio broadcast operations, immense housing counseling operations, and

¹ See suit referenced in: Strom, Stephanie. "Lawsuit adds to turmoil for community group." New York Times. September 10, 2008.

a number of lobbying and political entities. In all, ACORN's total operation this year has an estimated budget of \$110 million.² That is big business.

Thanks to what appears to be a carefully executed plan, the disparate parts of ACORN are often not recognized as being part of one large enterprise. However there is evidence that these organizations are operated as a single enterprise, which is controlled from the top down.

Their practice of juggling funds and blame between entities has often created good deal of confusion as to which crimes are allegedly committed by ACORN and which activities are those of subsidiaries such as the "non-partisan" 501(c)(3) Project Vote. But, it should be noted at the outset of this discussion that evidence indicates that the non-profit organization known as Project Vote and the political operative organization known as Citizens Services Inc. are wholly owned subsidiaries of the ACORN web of organizations.³ There should be no distinction between crimes or alleged crimes perpetrated by personnel from Project Vote and those from ACORN.

Comments the Consumers Rights League has received from current and past ACORN employees demonstrates that command and control of ACORN's political operations is based in its national headquarters. While many view voter registration problems in different states as a series of random events, it is important that observers not lose sight of the fact that ACORN is a giant

² Projection by ACORN founder Wade Rathke in June 2008.

³ Tax returns for "Voting for America/Project Vote" are filed from ACORN headquarters and the groups share leadership. Citizens Services Inc. corporate filings show it is housed in ACORN's head office in Louisiana. See also: Brown, David M. "Obama to amend report on \$800,000 in spending." Pittsburgh Tribune-Review. August 22, 2008.

corporation potentially responsible for massive fraud across the United States.

A careful observer will note a ten-year record of voter registration fraud that spans the contiguous United States. Ten years and five election cycles is not a series of mistakes; it is a pattern.

A Troubling and Long Pattern of Voter Registration Fraud

While any number of small organizations -- on both the right and the left -- run afoul of elections law each year, there is little reason to believe most engaged citizens mean any harm. However, only ACORN stands out for its pattern of voter registration fraud stretching back a decade. Rather than showing any signs of improvement, all signs point to increased lawbreaking.

Ten years ago, an Arkansas contractor hired by ACORN's non-profit affiliate Project Vote was arrested for falsifying hundreds of voter registration cards. In the last few election cycles the problem has spiked dramatically.⁴

- In 2003, ACORN employees in Missouri turned in more than a thousand suspicious voter registration cards, with one woman saying a card was turned in under the name of her infant.⁵

⁴ For reference, see: <http://www.rottenacorn.com/activityMap.html>

⁵ "Voter registration fraud dogs St. Louis." Association Press. September 19, 2003.

- Following Colorado's 2004 election, two ex-ACORN employees were convicted of perjury for submitting false voter registration forms⁶; one ex-ACORN employee admitted to registering her friends 40 times.⁷
- In 2004, police arrested a former ACORN employee who had more than 300 completed voter registration cards in the trunk of his car, many of which had not been turned in within the legal time limit.⁸
- In 2005, Virginia authorities found that of a sample of Project Vote-gathered registrations, 83% were rejected for using false or questionable information.⁹
- In 2007, King County, Washington officials announced the indictment of seven workers ACORN had hired to register voters, calling the episode the "worst case of voter registration fraud in the history of the state."¹⁰ At least three of those individuals have pleaded guilty and ACORN was forced to pay a \$25,000 settlement.¹¹
- In April 2008, federal prosecutors announced guilty pleas for federal election fraud by eight former ACORN employees in Missouri, based on their activities in the 2006 election. They submitted false addresses and names, as well as forged signatures. At least one former ACORN employee was sentenced to 15 months in prison.¹²

⁶ "Briefing." Rocky Mountain News. January 4, 2005.

⁷ "Investigation reveals potentially fraudulent voter forms." Associated Press. October 12, 2004.

⁸ Sweeney, Patrick. "Voter registration cards bring felony charge." Saint Paul Pioneer Press. October 16, 2004.

⁹ Jones, Matthew. "State: Voter registrar did no wrong." The Virginian-Pilot." October 22, 2005.

¹⁰ Ervin, Keith. "Felony charges filed against 7 in state's biggest case of voter-registration fraud." Seattle Times. July 26, 2007.

¹¹ "Ervin, Keith. "Three plead guilty in fake voter scheme." Seattle Times. October 30, 2007.

¹² Associated Press. "Guilty pleas in election fraud." April 3, 2008.

Each time ACORN is accused of faulty registrations, the organization blames a handful of its supposedly “rogue” low-paid, low-skilled workers. It promises to clean up its act and impose tighter restrictions. Yet, after ten years, they have not been able to do so, as this year’s cavalcade of corruption proves.

2008 Has Been A Banner Year For Bogus Registrations

In 2008 alone, ACORN’s activities have prompted calls for investigations in nearly a dozen states: Louisiana, Pennsylvania, Connecticut, New Mexico, Texas, Nevada, Ohio, Wisconsin, Michigan and North Carolina, with new investigations developing regularly.

In June, the New York Times reported that **Louisiana** “Election officials have expressed concern that large numbers of people who believe they are registered will show up at the polls in November, only to find that they cannot vote because their application had been improperly submitted.” An ACORN spokesman said that it’s typical for 30 percent of their cards to be duplicates or incomplete.¹³ That is a troublingly high rate of error.

In July, **Pennsylvania** officials charged a former ACORN employee with 19 counts of perjury, making false statements, forgery and identity theft in

¹³ Dewan, Shaila. “A Vote Drive By Democrats In Louisiana Stirs Concern.” New York Times. June 15, 2008.

connection with the voter registration forms in connection with more than 100 suspect cards.¹⁴

In August, the **Connecticut** Post reported that state officials began asking for an investigation into ACORN's registration activities, in which there were errors in 20 percent of the thousands of registration forms the group turned in. Noting the hefty amount of incomplete, incorrect, or improperly filed forms, one registrar said, "Some of my staff has been here for 15 years and when they see ACORN come in, they start crying."¹⁵

In August, ACORN was forced to announce that it would begin running background checks on its signature gatherers in **New Mexico** after it was learned that nine employees had felony criminal records¹⁶ ranging from forgery to identity theft to child rape.¹⁷ It is unclear how many of the thousands of voter registration cards containing personal information were handled by the nine felons. Bernalillo County officials are investigating 1,100 possibly fraudulent cards. In one case, a series of nine cards appear to have been filled out using the phone book.¹⁸

ACORN's voter registration fraud in New Mexico has been a recurring theme since 2003, including its 2004 attempt to register a 13-year-old boy.

¹⁴ Sheffield, Reggie. "Former temp worker accused of bogus voter registrations." The Patriot-News. July 24, 2008.

¹⁵ Dixon, Ken. "ACORN voter signups questioned." Connecticut Post. August 16, 2008.

¹⁶ Associated Press. "ACORN starts background checks for NM registrars." August 9, 2008.

¹⁷ See report from KRQE: <http://www.youtube.com/watch?v=EvJE3SMHRTs>

¹⁸ Associated Press. "NM's county has suspect voter registration cards." September 17, 2008.

In 2005 the organizations employees were accused of filing as many as 3,000 false signatures on a ballot initiative.¹⁹

In **Texas**, where ACORN's affiliate, Citizens Services Inc., has provided contract work on behalf of Senator Obama's campaign, its record of voter registration has been lacking hope. The *Houston Chronicle* reported on August 17 that "About 40 percent of the 27,000 registration cards gathered by ACORN from January through July have been rejected or placed in limbo pending the gathering of more information, according to the county" while "about 6,600 were filled out by people already registered, and many others contained insufficient information."²⁰

Nevada and federal officials announced in August that they would form a task force to aggressively pursue allegations of election fraud, with the Las Vegas Review-Journal specifically noting "Clark County officials have said they suspect fraud is occurring in the thousands of voter registrations being submitted by" ACORN.²¹

In **Ohio**, ACORN's continuing pattern of voter registration fraud apparently includes the 73 registration cards turned in this year for just one individual. WKYC has reported: "ACORN has already submitted more than 75,000

¹⁹ For reference, see: <http://www.rottenacorn.com/activityMap.html>

²⁰ Bernstein, Alan. "ACORN planting voter registrars in certain areas." *Houston Chronicle*. August 17, 2008.

²¹ Ball, Molly. "Election fraud task force formed; Investigators already looking into voter registration issues." *Las Vegas Review-Journal*. August 1, 2008.

voter registration cards this year in Cuyahoga County. And now employees at the Board of Elections are triple checking every one."²²

A *Cleveland Plain Dealer* reporter noted at the end of August:

"Board employees are unsure how many of the cards are fraudulent. But the voter registration department received so many suspicious cards that it began compiling a binder with evidence. The binder grew to be an inch-thick."²³

The same reporter noted why ACORN is allowed to get away with such activity election after election:

"In August 2006, elections boards in Franklin and Summit counties investigated potentially bogus registration cards submitted by ACORN. The Franklin board turned over 500 cards to its county prosecutor, but the board's Deputy Director Matthew Damschroder said the prosecutor could not file charges because it was impossible to nail down who filled out the fake cards."²⁴

The citizens of **Wisconsin** are among the greatest victims of ACORN's fraud in 2008. There ACORN allegedly offered to bribe citizens with pre-paid gasoline cards or restaurant gift cards to induce them to register. Further voter registration problems include apparently falsified drivers license

²² O'Mara, Michael. "Voter registration problems investigated in Cleveland." WKYC. August 28, 2008.

²³ Guillen, Joe. Cuyahoga board probes voter registration drive." August 27, 2008.

²⁴ *Ibid.*

numbers, Social Security numbers, and similar personal information. By the end of August, Milwaukee's Election Commission Executive Director had referred over 49 individuals to prosecutors for suspected voter registration fraud — of them, 37 were ACORN employees.²⁵

An August 20 report from the *Milwaukee Journal-Sentinel* noted that of the 35 ACORN employees referred for investigation at the time:

- Seventeen apparently filled out voter applications and then signed the cards themselves. That involved two to four cards in each case.
- Twelve submitted cards for individuals who later told ACORN they never filled out an application. That involved one card in each case.
- One submitted a card for a dead voter. That was the second such case; a Voters Project worker previously submitted a card for a deceased voter.
- One was apparently making up driver's license numbers for an unknown number of voters.
- One submitted about a half-dozen applications for already-registered voters.

One woman reportedly complained that a voter registration card was submitted for her husband, who had been dead for 10 years.²⁶

²⁵ Sandler, Larry. "10 more voter registration workers face investigation." *Milwaukee Journal-Sentinel*. August 29, 2008.

²⁶ Sandler, Larry. "More voter registration workers under scrutiny." *Milwaukee Journal-Sentinel*. August 20, 2008.

In **Michigan**, elections officials across the state have been noticing a high volume of problems associated with ACORN's work. A Secretary of State spokesperson recently said "There appears to be a sizeable number of duplicate and fraudulent applications ... And it appears to be widespread." In Pontiac, the clerk's office has found numerous applications filed for a given name. In Oak Park, the clerk has been seeing "lots of duplication" from ACORN in recent months.²⁷

Even in the course of preparing this testimony, officials in yet another state announced an investigation into potentially fraudulent activity. Durham County, **North Carolina**'s elections officials have asked for an investigation of dozens of cards submitted by ACORN. One was for a fourteen-year-old boy.²⁸

Conclusion: Local, State, and Federal Investigations Needed To Watch ACORN's Pattern of Fraud

ACORN routinely says it will clean up its act.²⁹ Yet, given its decade-long history of voter fraud, embezzlement, and misuses of taxpayer funds, ACORN's pattern of fraud can no longer be dismissed as a series of "unfortunate events."

²⁷ Brasier, L.L. "Bad voter applications found." Detroit Free Press. September 14, 2008.

²⁸ Milliken, Mathew. "Elections chief asks for voter fraud probe." Durham Herald-Sun. September 19, 2008.

²⁹ See for example: Mannies, Jo. "ACORN launches new voter-registration drives, with tighter controls." March 20, 2008.

The problem of voter registration fraud raises serious questions for this committee, and the Consumers Rights League appreciates that the right questions are being asked.

Here are the most important questions right now: We know about the thousands of potentially fraudulent voter registration cards turned in by ACORN and caught by officials. But given the size of ACORN's efforts and the fact that the abuses appear to be systemic, we believe it is fair to question how many more fraudulent registrations have not been discovered, Furthermore, as this mega organization with a decades long history of violating the law is turned to get out the vote efforts, we believe it is fair to question how many fraudulent registrations may lead to fraudulent votes or what other activities they are willing to undertake to influence the election.

These are serious questions, especially in light of recent election results which show that a just few votes can change the outcome of an election, the course of our country and the course of history.

While we do not presume to tell this committee how to address this problem, we respectfully submit that our nation's election system is facing a concerted campaign that raises serious issues that merit the committee's oversight and attention.

Thank you for the opportunity to speak today, and I would be happy to answer any questions that you may have.

Mr. TERRY. The Consumers Rights League supports aggressive efforts to educate, motivate, register and assist all citizens in voting, so long as those efforts are legal. Unfortunately, there are some groups that don't seem to share that concern.

First-hand accounts from current and former employees, major news stories, and court cases across the country expose corruption at every level of the Association of Community Organizations for Reform Now, or ACORN. To truly grasp the potential impact that ACORN's activities may have on the upcoming elections and future elections, it is important to understand their structure.

ACORN is a massive organization with 150 subsidiary organizations and an estimated \$110 million budget this year that is centrally controlled from the top down. Thus, there should be no distinction between crimes or alleged crimes perpetrated by personnel from affiliates, like Project Vote, or those from ACORN.

A careful observer will note a 10-year record of voter registration fraud on the part of ACORN and Project Vote. Ten years and five election cycles is not a series of mistakes: it is a pattern. In fact, rather than showing any signs of improvement, all signs point to increased lawbreaking.

A quick snapshot of ACORN's record from 1998 to 2007 alone includes thousands of false or fraudulent registrations in Missouri; at least two convictions of ex-ACORN employees following Colorado's 2004 election; the 2004 arrest of a former ACORN employee in Minnesota with 300 voter registration cards in his trunk; the 2000 indictment of several workers in Washington State, which has been cited earlier as the worst case of voter registration fraud in the history of the state.

In April 2008, eight former ACORN employees in Missouri pled guilty to voter fraud in the 2006 election.

Each time ACORN is accused of faulty registrations, the organization blames a handful of its supposedly rogue workers. It promises to clean up its act and impose tighter restrictions. Yet after 10 years, they have not been able to do so. In 2000 alone, ACORN's activities have prompted calls for investigations in nearly a dozen states: Louisiana, Pennsylvania, Connecticut, New Mexico, Texas, Nevada, Ohio, Wisconsin, Michigan, North Carolina, and just as recently as yesterday you can add Florida to the list.

In July, Pennsylvania officials charged a former ACORN employee with 19 counts of perjury, making false statements, forgery and identity theft. In New Mexico, Bernalillo County officials are currently investigating 1,100 possibly fraudulent cards. In Texas, about 40 percent of the 27,000 registration cards gathered by ACORN from January to July have been rejected or placed in limbo. In Michigan, a case that was cited earlier, the secretary of state said problems appear to be sizable. Duplicate fraudulent applications is widespread.

In Ohio, ACORN's pattern of voter registration fraud apparently includes the 73 registration cards turned in this year for just one individual. Cuyahoga County election boards officials have compiled a binder of evidence of suspicious activity. That binder is more than an inch thick.

In Wisconsin, by the end of August, Milwaukee's election commission executive director had referred over 49 individuals to pros-

ecutors for suspected voter registration fraud. Of them, 37 were ACORN employees. And just last week, Durham County, North Carolina's election officials asked for an investigation of dozens of cards submitted by ACORN. One was for a 14-year-old boy.

ACORN routinely says it will clean up its act. Yet given its decade-long history of voter fraud, embezzlement, and misuses of taxpayer funds, ACORN's pattern of fraud can no longer be dismissed as a series of unfortunate events. We know about the thousands of fraudulent voter registration cards turned in by ACORN and caught by officials. But given the size of ACORN's efforts and the fact that the abuses appear to be systemic, we believe it is fair to question how many more fraudulent registrations have not been discovered.

And furthermore, as this mega-organization with a decade's-long history of violating the law has turned to get-out-the-vote efforts, we believe it is fair to question how many fraudulent registrations may lead to fraudulent votes, or what other activities they may be willing to undertake to influence the election.

These are serious questions, especially in light of recent election results which show that just a few votes can change the outcome of an election. While we do not presume to tell this Committee how to address this problem, we respectfully submit that our Nation's election system is facing a concerted campaign that raises serious issues that merit the Committee's oversight and intervention.

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

Mr. DAVIS OF ALABAMA. Thank you, Mr. Terry.

Our next witness is Jocelyn Benson, who is an assistant professor of law at Wayne State University Law School. She is also the founder and director of the Richard Austin Center on Election Law and Administration and is a member of the ABA's standing committee on election law.

Professor Benson, welcome. You have 5 minutes.

**TESTIMONY OF JOCELYN BENSON, ASSISTANT PROFESSOR,
WAYNE STATE UNIVERSITY LAW SCHOOL**

Ms. BENSON. Thank you.

Several years ago I served as a law clerk to the Honorable Damon J. Keith, a Federal judge on the U.S. Court of Appeals. Judge Keith famously cautioned us that "Democracies die behind closed doors." Democracies also die, I believe, when the doors that lead to political participation and enfranchisement are pushed closed. They die when Americans lawfully seeking to cast a legal ballot are deterred or disenfranchised, and they die when government actors fail to ensure that pathways to democracy are free from the congestion of challengers who block lawful voters from participating in an election.

This role of election challengers, whether they be representatives from political parties or other groups in the polls on Election Day, has increased in prominence in recent elections. Today I would like to detail a recent controversy in Michigan over the use of foreclosure lists to challenge the residency, and thus eligibility, of voters on Election Day.

Two weeks ago, a Web site called Michigan Messenger reported allegations that Republican Party challengers may be using lists of foreclosed to challenge the eligibility of voters when they arrive to vote. Michigan demographics may suggest that voters on these lists may be disproportionately African American. Now these allegations, importantly, were forcefully denied, and I am not here today to challenge those denials. I instead wish to highlight the resulting confusion in Michigan over whether voters facing foreclosure wonder now whether they will still be entitled to vote in November.

The fact is that under Michigan law, voters cannot be challenged without good cause. And under Michigan law, only residents who have moved outside of their city or township to another county prior to September 4 are required to re-register at their new address. Voters who move within a county, according to the Michigan secretary of state, are permitted to vote one last time at their old address.

Thus, the listing of a voter's residence on a list of foreclosed homes does not, in and of itself, provide sufficient information to indicate that that voter has moved to a new home outside of that county prior to September 4, 2008.

Nor should any list acquired from mailings sent to those foreclosed homes that bounced back as undeliverable lead to similar conclusions. The voter confusion that I have observed in Michigan since these stories emerged has been, in my view, compounded by a lack of clear and thorough clarification of the law from election officials in the state.

For that reason, my first recommendation today is that in Michigan and in any other state dealing with voter confusion, the state's chief election authority issue clear directives to local election officials and the public on the law that ensures that voters and election officials are empowered with a full understanding of the law.

My second recommendation is similarly, that election officials engage in extensive public education efforts and outreach that are focused on explaining the hows and mechanics of voting. In addition to press releases, public service announcements, mailings, phone calls, and also posters in the polling place that simply state the law in its entirety are, I believe, required to ensure that this education campaign is successful.

In addition, I believe an education campaign is best coupled with my third recommendation, the development of collaborative relationships with community-based organizations. These organizations, I believe, know best what the needs of their communities are, and collaborative relationships between election officials and these organizations can help ensure that both are proceeding in the best interests of the voter.

My last two recommendations deal with training and regulating challengers and poll workers. I believe that mandating training for challengers in Michigan and in other states and also improving training for poll workers will ensure that both are equipped with the knowledge of the law and ensure that the law is followed on Election Day.

I also recommend the use of comment cards in the polling places on Election Day that would empower voters to interact with poll workers and evaluate and offer feedback on their experience.

Thank you for the opportunity to testify today.
[The prepared statement of Ms. Benson follows:]

PREPARED STATEMENT OF JOCELYN BENSON

TESTIMONY OF PROFESSOR JOCELYN FRIEDRICHS BENSON
ASSISTANT PROFESSOR OF LAW, WAYNE STATE UNIVERSITY LAW SCHOOL
DIRECTOR, RICHARD AUSTIN CENTER FOR ELECTION LAW AND ADMINISTRATION

FOR A JOINT OVERSIGHT HEARING ON
“FEDERAL, STATE, AND LOCAL EFFORTS TO PREPARE FOR THE GENERAL 2008 ELECTION”
BEFORE THE HOUSE JUDICIARY COMMITTEE’S SUBCOMMITTEE ON THE CONSTITUTION
AND THE HOUSE ADMINISTRATION COMMITTEE’S SUBCOMMITTEE ON ELECTIONS
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 24, 2008

Several years ago, I served as a law clerk to the Honorable Damon J. Keith, a federal judge on the United States Sixth Circuit of Appeals. Judge Keith famously cautioned us that “Democracies die behind closed doors.” Democracies also die when the doors that lead to political participation and enfranchisement – hallmarks of democracy - are pushed closed. When Americans lawfully seeking to cast a ballot are deterred or disenfranchised; when eligible voters are wrongfully turned away at the polls; or when government actors fail to ensure that pathways to democracy are free from the congestion of “challengers” who block lawful voters from participating in an election – our democracy suffers.

This latter issue, the role of “election challengers,” or the presence of representatives of political parties or other groups in the polls on Election Day, has increased in prominence in recent elections.¹ My testimony today will detail a recent controversy in Michigan over election challengers’ potential use of foreclosure lists to challenge the residency, and thus eligibility, of voters on Election Day. I also offer five recommended actions state and local election officials can take to address this and similar controversies that may surface in the final days before the November 2008 General Election.

THE MICHIGAN “FORECLOSE THE VOTE” CONTROVERSY

On Wednesday, Sept 10, 2008, the website www.michiganmessenger.com² posted a story entitled “Lose Your House, Lose Your Vote” that announced “Michigan Republicans plan to foreclose African-American voters.”³ The article alleged, among other things, that “[T]he

¹ See, e.g., *Summit County Democratic Central And Executive Committee v. Blackwell*, 2004 U.S. Dist. LEXIS 22539 (N.D. Ohio October 31, 2004) (granting a temporary restraining order prohibiting the state from allowing challengers in the polls during the November 2004 election, out of a concern that challengers would unfairly impede the voting process through acts of intimidation and harassment); *Spencer v. Pugh/Summit County v. Blackwell* (combined) 347 F Supp 2d 528 (6th Cir. 2004) (overturning the lower court’s temporary restraining order); *Spencer v. Pugh*, 543 U.S. 1301 (2004) (affirming the Sixth Circuit’s opinion). See also “Preserving Democracy: What Went Wrong in Ohio,” Status Report of the House Judiciary Committee Democratic Staff, Jan. 4, 2005 at 40-47 (describing problems associated with challengers in Ohio during the 2004 election).

² The Michigan Messenger is located at www.michiganmessenger.com, and is self-described as “an independently-produced political news daily featuring original and investigative reporting,” comprised of “a coalition of long-time progressive bloggers, freelance writers and professional journalists” with a focus on “enhance[ing] and expand[ing] the political dialog in Michigan.”

³ Eartha Jane Melzer, “Lose Your House, Lose Your Vote,” Michigan Messenger, 9/10/08. The entire text of the article, as amended to reflect clarifications of statements from Douglas J. Preisse, chairman of the Franklin County

chairman of the Republican Party in Macomb County, Michigan, a key swing county in a key swing state, is planning to use a list of foreclosed homes to block people from voting in the upcoming election as part of the state GOP's effort to challenge some voters on Election Day."⁴ It also stated, perhaps incorrectly,⁵ that "voters who have defaulted on their house payments" were "disproportionately ... African-Americans," indicating that over 60% of all sub-prime loans in Michigan were made to African-Americans, according to a 2007 report from the Michigan Department of Labor and Economic Growth.⁶

Compounding the confusion was a statement in the *Michigan Messenger* story in which Joe Rozell, Director of Elections for Oakland County Clerk Ruth Johnson, appeared to "acknowledge" that challenges based on the presence of a voter's residence on a list of foreclosed homes were "allowed by law" and "have the potential to create long lines and disrupt the voting process."⁷ The story quoted Rozell as stating that "poll workers are not allowed to ask the reason" for challenges to voters. Based on Rozell's statement and an excerpt of a directive from Michigan Secretary of State Terri Lynn Land indicating that challenges to voters' eligibility "need only be 'based on information obtained through a reliable source or means,'" the *Messenger* article concluded, "vote challengers are free to use foreclosure lists as a basis for disqualifying otherwise eligible voters."⁸

In the 48 hours that followed the posting of the Messenger article, the Michigan Republican Party and the Republican Party of Macomb County swiftly and strongly denounced the allegations that they were planning to use foreclosure lists to challenge voters' eligibility via a press release and interviews with several major news outlets.⁹ The *Detroit Free Press* quoted Jim Carabelli, the Chairman of the Macomb Republican Party saying "[t]he GOP is 'absolutely

Republican Party in Columbus Ohio, is available at <http://michiganmessenger.com/4076/lose-your-house-lose-your-vote> (last accessed: Sept. 23, 2008).

⁴ Id.

⁵ A subsequent article in the Detroit News contained a statement from a pastor and president of the Macomb County Ministerial Alliance that questioned the racial demographics of individuals facing foreclosures in Macomb County. See Jim Lynch and Gordon Trowbridge, "Foreclosures won't hinder voters", Detroit News, 9/12/08, available at: <http://www.detroitnews.com/apps/pbcs.dll/article?AID=2008809120380> (last accessed: Sept. 23, 2008);

⁶ See Melzer, note 2, *supra*.

⁷ Quotation is from the Michigan Messenger article, paraphrasing statements from Rozell to the author of the article. See Melzer, note 2, *supra*.

⁸ Id.

⁹ See, e.g., Chad Schweski, "GOP denies Web report on vote blocking," Macomb Daily, 9/11/08, available at: http://www.macombcountymi.gov/clerksoffice/news/pdf/2008_09_11_Macomb_Daily_GOP_Denies_Web_Report.pdf (last accessed: Sept. 23, 2008); Jim Lynch and Gordon Trowbridge, "Foreclosures won't hinder voters", Detroit News, 9/12/08, available at: <http://www.detroitnews.com/apps/pbcs.dll/article?AID=2008809120380> (last accessed: Sept. 23, 2008); Kathleen Gray and Amber Hunt, "GOP won't use foreclosure list to block voters," Detroit Free Press, 9/12/08, available at: <http://www.freep.com/apps/pbcs.dll/article?AID=20080912/NEWS15/809120346> (last accessed: Sept. 23, 2008); Matthew Miller, "Macomb County GOP leader denies plan to block votes," Lansing State Journal, 9/12/08, available at: <http://www.lansingstatejournal.com/apps/pbcs.dll/article?AID=20080912/NEWS01/809120338/1002/NEWS01> (last accessed: Sept. 23, 2008).

not' gathering foreclosed home addresses for poll challenges."¹⁰ Carabelli also issued a statement to the *Lansing State Journal* in which he said there was "no such plan."¹¹

However, the damage was already done. The implication of the articles was that there may be members of a political party acquiring a list of foreclosed homes with plans to challenge the eligibility of voters in those homes when they arrived at the polls to vote on Election Day. The story, allegations, and subsequent denials, created confusion over a key question: is it legal under Michigan law for individuals to challenge the eligibility of voters facing or experiencing foreclosure when they arrived at the polls to vote on Election Day?

The short answer is no. Michigan law does not allow for voters to be challenged based solely on the fact that their home appears on a list of foreclosed properties. Michigan Election Law does not allow for challenges to a voter's eligibility "without good cause or for the purposes of harassment."¹² Under Michigan law, only Michigan residents who moved outside of their city or township to another county prior to September 4, 2008 are required to re-register and vote from their new address.¹³ Existing federal and state law allows for voters who have moved from one Michigan county to another Michigan county within 60 days of election day to vote in the precinct associated with their previous address.¹⁴ Voters who move within their county but fail to change their address prior to Election Day, are permitted to vote "one last time in the precinct where registered" provided they complete an Election Day change of address form.¹⁵ Thus under state and federal law, the listing of a voter's residence on a list of foreclosed homes does not, in and of itself, provide sufficient information to indicate or even suggest that a voter has moved to a new location outside of their county prior to that date.

Nevertheless, incidents during the week after the Michigan Messenger story revealed a great deal of voter confusion as a result of the controversy. For example, Macomb County Clerk Carmella Sabaugh reported that her office received approximately 15 phone calls over the course of the two days following the publication of the article from people who were concerned that they may be unable to vote because their homes had been foreclosed. Clerk Sabaugh indicated that in her experience "if my office receives phone calls about a particular issue, there are often many, many more citizens ... who are concerned about the issue that have not called." In addition, in a

¹⁰ See Kathleen Gray and Amber Hunt, note 9, *supra*.

¹¹ See Matthew Miller, note 9, *supra*. The Lansing Journal also included statements from Bill Nowling, spokesman for the Michigan Republican Party, denying that the state party had plans to target voters facing foreclosure.

¹² See MCL § 168.512 (2008). The Michigan Secretary of State has interpreted this provision of the law governing voter challenges to indicate that it is "permissible for a challenger to challenge a voter" when a "challenger has good reason to believe that a person who offers to vote 1) is not a true resident of the city or township 2) has not yet attained 18 years of age 3) is not a United States citizen or 4) did not register to vote on or before the 'close of registration' for the election at hand." See The Challenge Process, Questions and Answers, available at: http://www.michigan.gov/documents/sos/Challenger_QA_177165_7.pdf (last accessed: Sept. 23, 2008). The document also states that a "challenger has the right to challenge any voter issued an absentee ballot who appears at the polls to vote on election day claiming that he or she never received the absentee ballot, lost the absentee ballot or destroyed the absentee ballot" and that "a challenger has the right to challenge a voter in any instance where the precinct board fails to prepare a 'challenged ballot' for a voter when required."

¹³ See MCL § 168.509a (2008).

¹⁴ *Id.*

¹⁵ The Michigan Bureau of Election has issued such clarifications to clerks in the past; a May 2006 publication from the Bureau sufficiently clarifies the law in this regard.

radio interview for “Detroit Today” on Michigan Public Radio that I participated in on September 16, 2008, nearly a full week after the Michigan Messenger story surfaced, numerous individuals called into the radio station with concerned questions about whether they would be able to vote if their home was in foreclosure.

This confusion has been compounded by a lack of explicit and vociferous clarification from relevant government authorities and election officials, including the Michigan Secretary of State. In particular, none of the major news outlets that covered the Michigan Republican Party’s immediate denials of the allegations included a direct statement from the Michigan Secretary of State indicating that the presence of a voter’s residence on a foreclosure list was not sufficient “good cause” for challenging a voters’ eligibility on Election Day under Michigan Law.

Several articles did offer some clarification on the law, but none specifically and unequivocally addressed the issue of foreclosure lists:

- *The Daily Tribune*, a newspaper for Southern Oakland County, Michigan, and the *Flint Journal*, a newspaper servicing Flint, Michigan, carried an article in which Kelly Chesney, spokeswoman for the Michigan Secretary of State, offered a partial explanation that “If you change your residency within 60 days of an election, voters may vote using their former address and polling place for one more election.”¹⁶
- *The Macomb Daily* cited a Macomb County election officials who said “those who are in default on their mortgage but still living in their home on Election Day” and “those who were forced out of their homes” after September 4, 2008, “can vote without facing any restrictions.” The article also stated that “a foreclosure victim who moves to a new address within the same [city or township] can vote one last time at their previous precinct without facing a challenge.”¹⁷
- *The Detroit News* noted that, under state law, challengers can “[c]hallenge a person’s right to vote if the challenger has a good reason to believe that person is not eligible to vote in the precinct,” and can “[c]hallenge the actions of the election inspectors serving in the precinct if the challenger believes that election law is not being followed.”¹⁸

¹⁶ Charles Crumm, “Dems File Suit Against GOP Over Challenge to Voters,” *The Daily Tribune*, 9/17/08. Available at: <http://www.dailytribune.com/articles/2008/09/17/news/doc48d11aa8c2830413965535.txt> (last accessed: Sept. 23, 2008). See also David Eggert, “Web story has both parties crying foul,” *Flint Journal* (Michigan), 9/13/08, page A01. (noting that “Secretary of State spokeswoman Kelly Chesney said voters who move within 60 days of an election can vote at their old polling place. If they move and change their address 30 or more days before an election, they must vote in their new precinct. If they change their address within 30 days of an election, they must vote in the old precinct.”)

¹⁷ Chad Selweski, “Lawsuit targets voter suppression: GOP says it never considered blocking voters facing foreclosure,” *The Macomb Daily*, 9/17/08. Available at: <http://www.macombdaily.com/articles/2008/09/17/news/srv0000003531839.txt> (last accessed: Sept. 23, 2008).

¹⁸ See Jim Lynch and Gordon Trowbridge, note 9, *supra*.

RECOMMENDATIONS FOR PREPARATIONS FOR THE NOVEMBER 2008 ELECTION

Based on my experience and knowledge of the so-called “Foreclose the Vote” controversy in the state of Michigan, and my understanding of the role of the State Secretary of State and local election officials in Michigan and other states,¹⁹ I make the following five recommendations regarding state and local preparations for the November 2008 elections..

RECOMMENDATION 1

THE STATE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD, WHERE WITHIN THE REALM OF THEIR AUTHORITY, QUICKLY, EXPLICITLY, AND REPEATEDLY CLARIFY THE LAW REGARDING VALID AND INVALID CHALLENGES TO A VOTER’S ELIGIBILITY.

In Michigan, the Secretary of State has the authority to issue instructions to all local election officials on the county, city, and township level regarding the administration of existing election laws. On November 1, 2006, for example, Secretary Terri Lynn Land issued an important directive to clerks in the 40th issue of the Department’s “Election News,” indicating that challengers were not permitted to “approach voters or talk to voters for any reason” or “use video cameras or recording devices in the polling place.”²⁰ In addition, in late 2007 the Secretary issued instructions to Election officials on the administration of Michigan’s new voter identification requirements, which explicitly state that “no voter may be challenged just because he or she is not in possession of picture identification or did not bring picture identification to the polls and signs an affidavit in order to vote.”²¹

More recently, in August 2008, Ohio Secretary of State Jennifer Brunner issued a directive to local election officials indicating that 60-day notices sent by boards of election to voters that are returned as undeliverable cannot be used as the sole reason for challenging an Ohioan’s voter registration as cancelable.²² Secretary Brunner has also called on the General Assembly to amend Ohio’s 2006 voter registration challenge law.

These directives provide a laudable example of an important step that State election officials can take to protect voters from wrongful challenges, harassment and intimidation at the polls on Election Day.

¹⁹ In addition to my work as a law professor and Election Law scholar and Director of a new nonpartisan nonprofit Election Law Center, my recommendations are informed by my ongoing research for my forthcoming book entitled “Democracy and the Secretary: The Crucial Role of State Secretaries of State in Promoting an Honest and Accountable Democracy.”

²⁰ See “Election News: Issue 40,” November 1, 2006. Available at: http://www.michigan.gov/documents/sos/Issue_40_177190_7.pdf (last accessed: Sept. 23, 2008).

²¹ See Question 12, “Picture Identification in the Polls: Questions and Answers,” a publication of the Michigan Department of State, available at: http://www.michigan.gov/documents/sos/090507_Voter_Id_QA5_209294_7.pdf (last accessed: Sept. 23, 2008).

²² Press Release: “Secretary Brunner Clarifies Challenge Laws to Protect Voters,” 8/5/08, available at: <http://www.sos.state.oh.us/SOS/News/UI/Default.aspx?page=9757&AspxAutoDetectCookieSupport=1> (last accessed: Sept. 23, 2008).

It is my hope that the Michigan Secretary of State will issue a similarly clear and enforceable²³ directive to clerks prior to the election that clearly and explicitly states that it is not “good cause” under Michigan law to challenge a voter based solely on the fact that their home is facing foreclosure. The directive should also reiterate existing federal and state law governing voters who have moved between elections, clarifying that voters who have moved from one Michigan county to another Michigan county within 60 days of election day are permitted to vote in the precinct associated with their previous address.²⁴ Also, voters who move within their county but fail to change their address prior to Election Day, are permitted to vote “one last time in the precinct where registered” provided they complete an Election Day change of address form.²⁵

It is also my hope that Secretary Land will issue such a directive prior to Michigan’s October 6 voter registration deadline, given the current public confusion surrounding this issue. The directive will both assure voters that they will not lose their right to vote based only upon the matching of their home address with a list of foreclosed properties, while ensuring that all local election officials, poll workers, and other relevant parties have a clear, consistent statement on the boundaries of legal challenges to voters on Election Day.

RECOMMENDATION 2

THE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD ENGAGE IN EXTENSIVE PUBLIC EDUCATION ON THE RULES AND PROCEDURES GOVERNING THE VOTING PROCESS.

In addition to issuing a clear and explicit directive barring the use of foreclosure lists as the sole basis for challenging a voter’s eligibility to vote, the State Secretary of State and local clerks on the county, city, and township level must publicize the fact that challenges to voters’ eligibility based solely on the fact that their home is being foreclosed will not succeed. This public education campaign should include, but cannot be limited to, direct statements to the press and information posted to the Secretary’s or a clerk’s website. For example, in Michigan, Macomb County Clerk Carmella Sabaugh acted quickly in response to the *Michigan Messenger* allegations to issue a press statement with the headline: “You Do Not Have to Own Property in Order to Vote, At Least Since 1850.”²⁶ Importantly, the statement included a quote from Clerk Sabaugh, clearly and explicitly stating that “[c]itizens whose homes are foreclosed still have the right to vote!”²⁷

However, press releases and statements to reporters alone will not reach many voters,²⁸ It is important for election officials to develop public service announcements for local and cable

²³ There is also precedent in Michigan law to indicate that these directives carry the enforceability of law, and a private cause of action. See, e.g., Amber Hunt and John Wisely, *Turnout High, With Some Glitches, Workers Say*, DETROIT FREE PRESS, Nov. 8, 2006, at 11 (describing lawsuits filed by political parties on Election Day in Detroit, Michigan over compliance with the Secretary of State’s ban on challengers talking to voters).

²⁴ See MCL § 168.509a (2008).

²⁵ The Michigan Bureau of Election has issued such clarifications to clerks in the past; a May 2006 publication from the Bureau sufficiently clarifies the law in this regard.

²⁶ The Press Release is available at:

<http://www.macombcountrymi.gov/CLERKS/OFFICE/news/htm/YouDontHaveToOwnProperty.htm> (last accessed: Sept. 23, 2008).

²⁷ Id.

²⁸ For example, Heaster Wheeler, Executive Director of the Detroit Branch NAACP, estimates that 50% of residents in the city of Detroit, Michigan do not have regular access to the internet.

television, and traditional and community-based radio stations. In addition, to address the foreclosure confusion in Michigan, the Michigan Secretary of State should develop and distribute materials to be posted in every one of Michigan's over 5200 polling places, including posters and other visible and easily accessible resources, that explicitly state the rules for valid challenges and eliminate any confusion about rules for voters who have moved or changes residences prior to the election. This information should also be posted prior to Election Day in every local Secretary of State office, and the office of every county and local clerk.

Finally, where possible, election officials should go beyond traditional means of information dissemination and directly contact voters through mailings or phone calls to ensure that voters have access to all relevant information prior to Election Day. Recent actions by the Georgia Secretary of State Karen Handel provide a bold example of this sort of direct and thorough voter education. After a federal court mandated that she engage in an extensive voter education effort to inform Georgia citizens about the state's new voter photo identification requirements, Secretary Handel sent several mailings explaining the law directly to over 166,000 registered Georgia voters who, according to state records, did not possess a Georgia driver's license or state identification card.²⁹ The mailings were designed to ensure that voters in Georgia who were most likely to be adversely affected by the state's photo identification requirement for voters had access to information about how to comply with the new law.

RECOMMENDATION 3

THE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD BUILD COLLABORATIVE WORKING RELATIONSHIPS WITH COMMUNITY BASED ORGANIZATIONS TO PROMOTE VOTER EDUCATION ABOUT VOTING REQUIREMENTS AND DISPEL MYTHS ABOUT VOTING ELIGIBILITY.

In conjunction with an extensive public information campaign, state and local election officials in Michigan should work closely with nonpartisan community based organizations to, specifically, discuss the best methods to reach constituencies and individuals facing foreclosure who may be confused about the law and, more generally, to ensure that the government's education efforts are tailored to the needs of various constituencies. For example, in Michigan, Heaster Wheeler, Executive Director of the Detroit Branch NAACP, has indicated that his organization hopes to hold a press conference with the Michigan Secretary of State and local election officials in Detroit to reiterate and reassure all voters that they will not lose their right to vote just because they are facing foreclosure. Wheeler believes that the Michigan Secretary of State in particular needs to engage in an "aggressive" public information campaign that involves "bold" statements to assure voters that their right to vote will not be affected by the foreclosure crisis. Such relationships can also ensure the development and availability of, where necessary, translations of voter education materials for English Learning citizens, and relevant and accessible information for voters with physical disabilities.

RECOMMENDATION 4

THE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD, WHERE WITHIN THE REALM OF THEIR AUTHORITY, DEVELOP REGULATIONS AND SET PARAMETERS FOR ELECTION

²⁹ See Secretary Handel Begins Phase Two of Photo ID Outreach, Press Statement available at: <http://www.karenhandel.com/default.asp?pt=newsdescr&RI=285> (last accessed: Sept. 23, 2008).

CHALLENGERS AND ENSURE THE CONSISTENT ENFORCEMENT OF THESE PARAMETERS ON ELECTION DAY.

It is crucial that the Secretary of State develop, within the confines of state and federal law, explicit regulations and parameters for election challengers.

The Michigan Bureau of Elections has taken clear steps in this regard, as exemplified in the Bureau's enforceable directive from 2006, also described above, which bars challengers from approaching or talking to voters or using "video cameras or recording devices in the polling place." The Michigan Bureau of Elections has also in the past issued clarifications to clerks on the proper role of election challengers under Michigan law, and has published both a guide entitled "The Appointment, Rights, and Duties of Election Challengers and Poll Watchers"³⁰ and a document that provides "Questions and Answers" on the "Challenge Process."³¹

In addition to the development and dissemination of these materials via the education efforts and community partnerships described in recommendations 2 and 3, it is my hope that in the future, the laws in Michigan and other states will mandate trainings for all challengers who seek to work in the polls on Election Day. Currently, there are no mandates under Michigan law that challengers partake in any election law training, nor is there any requirement that challengers demonstrate any sufficient or accurate understanding of the laws governing the limitations on their role prior to entering the polling place on Election Day.

RECOMMENDATION 5

THE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD, WHERE WITHIN THE REALM OF THEIR AUTHORITY, ENSURE THAT ALL POLL WORKERS ARE WELL TRAINED AND FULLY AWARE OF THE LAWS GOVERNING THE RIGHTS AND LIMITATIONS OF CHALLENGERS.

Poll worker training responsibility and requirements vary from state to state, but in general the parameters are governed by either state or local election officials. In Michigan, the Bureau of Elections is currently developing a poll worker training program that will instruct individuals who train poll worker on clear rules on dealing with election challengers and any challenges they issue on Election Day.

It is crucial that these programs, particularly when developed at the statewide level, include methods of evaluating the extent to which the information is clearly, consistently, and accurately reaching the individual poll worker and poll worker supervisor. These methods can include the development of video trainings at the state level for use in local trainings, and the use of statewide tests and evaluations for individual poll workers. Another useful Election Day evaluation tool can include "comment cards" that empower voters who interact with the poll

³⁰ As of September 23, 2008, the most recently updated version of this document was published in September 2003, and is available on the Michigan Secretary of State's website at: http://www.michigan.gov/documents/SOS_ED_2_CHALLENGERS_77017_7.pdf. (last accessed: Sept. 23, 2008). The document states that it is "not intended as a complete interpretation of the law" governing challengers on Election Day.

³¹ The document is available at: http://www.michigan.gov/documents/sos/Challenger_QA_177165_7.pdf (last accessed: Sept. 23, 2008).

worker to evaluate and offer positive or negative feedback on the helpfulness of the poll worker to the state and local election officials.³²

CONCLUSION

The above narrative describing the recent controversy over the use of foreclosure lists to challenge voters' eligibility in Michigan illustrates what could be a brewing storm in advance of this November's election. It is not beyond the realm of possibility that such lists could be used to challenge voters in other states, nor is it unthinkable that other nefarious means of blocking voters from the polls could be developed prior to Election Day. As such, it is crucial that state and local election officials make it a priority to engage in deep and systematic legal and grassroots education efforts – aimed at other election administrators, poll workers, challengers, and most importantly, voters – in these final weeks leading up to the November election. My recommendations offer some suggestions to further that goal, based on my experience and belief that election officials are the “guardians” of our American democracy.³³ Their primary responsibility is to ensure that our democracy is alive and well, and that the doorways to democracy are opened wide, and that every eligible voter who wishes to vote on Election Day is able to do so.

Thank you for the opportunity to present this testimony.

³² It is also worth noting, as this Committee is no doubt aware, of several other reforms beyond trainings are required to support the development of a strong poll worker force throughout the country on Election Day. Such reforms, including an increase in pay for poll workers and extensive recruitment efforts, are necessary but may go beyond the scope of my current testimony.

³³ As stated by NASS President, Pennsylvania Secretary of State Pedro Cortes at the July 2008 meeting of the National Association of Secretaries of State (NASS).

Mr. DAVIS OF ALABAMA. Thank you, Professor Benson.

Our last witness for this panel is Kristen Clarke Avery, who is an expert on voting rights and election law. She is the co-director of the Political Participation Group at the NAACP Legal Defense and Educational Fund and has a long, extensive history of voting rights litigation.

Ms. Clarke, you are recognized for 5 minutes.

TESTIMONY OF KRISTEN CLARKE AVERY, CO-DIRECTOR, POLITICAL PARTICIPATION GROUP, NAACP LEGAL DEFENSE FUND

Ms. CLARKE. Thank you.

Founded under the direction of Thurgood Marshall, the NAACP Legal Defense Fund is the Nation's oldest, and we believe finest, civil rights firm that has served as legal counsel for African Americans over the course of the last several decades. LDF has provided testimony in support of the Voting Rights Act of 1965 and other Federal voting rights laws and core voting protections.

The last two presidential elections have significantly undermined public confidence in our political system. So what I would like to do today is take my time to identify some specific actions that the Department of Justice can and must take to help restore that lost faith and confidence and help ensure that this election is a smooth one.

First, DOJ must deploy Federal observers to protect minority voters in those areas of the country where we are hearing complaints of potential voter intimidation and suppression tactics that might rear their head on Election Day.

Second, DOJ should terminate its use of criminal prosecutors as poll monitors. And I want to take a moment to recognize Acting Assistant Attorney General Becker's recent decision to cease this practice. But let me take a moment just to provide some context about why this has been a very important issue for us at the Legal Defense Fund.

Criminal prosecutors at U.S. attorneys' offices have been at the front lines of aggressive vote fraud investigations that have been taking place around the country in recent years. And there certainly is a very long history that has shown that law enforcement officials and prosecutors who lie at the heart of their efforts can have the effect of intimidating minority voters at the polls.

We are pleased that the Department of Justice has decided to reconsider its practice and shift course here, and we hope that this will become a permanent policy on the part of the Justice Department.

Third, the Justice Department should develop an action plan for Election Day, an action plan to respond to the serious problems that might emerge both on or immediately prior to the election. We want DOJ to be proactive, and we are in a position where we can foresee and anticipate some of the problems that are likely to arise. We know that there will be high turnout. We know that there may be long lines. We know that we face the potential of seeing situations that we have seen during the 2000 and 2004 presidential elections.

Emergency Election Day litigation may be necessary to ensure that all voters receive a fair and equal opportunity to cast their ballots. Although the relief that would be sought in any emergency litigation will vary depending on the facts at hand, we certainly know that an extension of poll hours may be appropriate in those jurisdictions that are not equipped or prepared to handle high turnout, or in areas where machines malfunction or where polling sites open late.

By way of another example, a court's order may add value where poll officials are failing to offer provisional ballots to voters pursuant to the Help America Vote Act. In recent elections it has been the advocacy community and the civil rights organizations that have largely borne the burden here. DOJ should construct and publicize its own plan for turning to the courts on Election Day where local and state officials prove unwilling to voluntarily to take steps necessary to quickly resolve the problems that might emerge.

Fourth, the Justice Department's goal should be our goal: making sure that everyone who wants to vote in this election cycle gets to do so. And what does that mean? That is making sure right now that there is compliance across the board with the mandates of the National Voter Registration Act. Making sure that DMVs and other state agencies are offering registration opportunities as mandated by state law. Making sure that those agencies are timely transmitting those forms to election officials so that the forms can be processed.

But above and beyond DOJ's statutory enforcement responsibilities, I also think that DOJ can use its leverage to encourage state and local officials to make every effort to go above and beyond their ability to reach historically disenfranchised populations. In the state of Alabama, a local activist by the name of Reverend Kenneth Glasgow recently initiated a non-partisan voter registration drive aimed at reaching eligible, but not yet registered voters inside of local jails. Although the registration drive was initially supported by the Alabama prison commissioner, the drive was terminated after receiving complaints from the state's Republican Party leadership.

To the extent that these eligible voters, a disproportionate number of whom are African American, may already encounter significant barriers in their efforts to register and vote, voter registration drives such as these should be encouraged.

Mr. DAVIS OF ALABAMA. Ms. Clarke, let me encourage you to wrap up, since you are over the time limit.

Ms. CLARKE. I will wrap up. I urge Congress and this Committee to consider a post-election oversight hearing that measures the success in the administration and conduct of the November election against the series of very good recommendations that have been offered during today's hearing.

Thank you.

[The prepared statement of Ms. Clarke follows:]

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**Testimony of Kristen Clarke
Co-Director, Political Participation Group
NAACP Legal Defense and Educational Fund, Inc.**

**U.S. House Committee on the Judiciary
Subcommittee of the Constitution, Civil Rights, and Civil Liberties
&
U.S. House Committee on House Administration
Subcommittee on Elections**

**Joint Oversight Hearing on the
Federal, State and Local Efforts to Prepare for the General 2008
Election**

September 24, 2008

The Role of the Voting Section of the Civil Rights Division of the U.S. Department of Justice in Preparation for the 2008 Election

Founded under the direction of Thurgood Marshall, the NAACP Legal Defense and Educational Fund (LDF) is the nation's oldest and, we believe, finest civil rights law firm that has served as legal counsel for African Americans in a significant number of important federal voting rights cases over the course of the last several decades. LDF has also provided testimony in support of the Voting Rights Act of 1965 and other federal voting rights laws and core voting protections. Through extensive litigation, advocacy, public education and election monitoring efforts, particularly in the Deep South, LDF has developed significant expertise regarding barriers to political participation and has focused much attention on the role of the Department of Justice in carrying out the objectives of the Voting Rights Act in order to ensure minority voters' access to the polls.

I currently serve as the Co-Director of LDF's Political Participation Group. Prior to joining LDF, I served for several years in the Civil Rights Division of the U.S. Department of Justice, handling matters arising under the Voting Rights Act of 1965 and other federal voting rights statutes. I have also coordinated a number of federal observer monitoring efforts in various jurisdictions around the country. On behalf of LDF, I submit the following written testimony to offer our observations regarding the efforts that must be made now to prepare for the upcoming November general election. My testimony will focus, in large part, on the substantial role that the Department of Justice must play in both the weeks leading up to November 4th and on Election Day itself.

The last two presidential elections have significantly undermined public confidence in our political system. Given this reality, the Voting Section of the Civil Rights Division of the Department of Justice (Department) must do its part to help restore confidence in the electoral process. This election cycle has proven to be of historic value. Most significantly, from the political participation perspective, there have been increases in registration and turnout rates in a number of jurisdictions around the country. It is widely anticipated that the high level of voter interest in this election will translate into high turnout at the polls in November. High registration and turnout rates are a sign of an energized electorate – a development that Congress should encourage wherever possible. Many of those who will be voting in November include a significant number of young voters and new voters for whom this will be their first time casting a ballot at the polls.

In our view, there are a number of action steps that the Department of Justice should now take to ensure that all voters, including minority voters, are able to freely and equally access the polls this November. An effective and smooth election cycle requires strong enforcement of federal voting rights statutes on the part of the Department and better leveraging of federal resources, including the Department's federal observer program, to help prevent and deter the problems that might otherwise threaten the integrity of our political process.

I. Federal Observers Should be Deployed to Protect Minority Voters and Not to Serve Partisan or other Impermissible Objectives

The Justice Department's federal observer program serves an important oversight function that can help protect minority voters' access to the ballot box. Generally, federal observers are deployed in response to complaints about discriminatory voting practices, including acts of harassment or intimidation. Federal observers play an important role in elections by documenting the treatment of voters inside polling places and providing a basis for the Department to intervene, when appropriate, to address those problems that may deny minority voters equal access to the polls. Moreover, the mere presence of federal observers can help neutralize racial tensions or other problems that might otherwise obstruct voter access to the polls.

The resources of the Department's federal observer program should be carefully leveraged and appropriately distributed in covered jurisdictions to help discourage and deter the kind of suppression tactics that would likely emerge in the absence of federal oversight. Most importantly, the federal observer program should be used for its long-standing purpose of protecting minority voter access to the polls. Decisions about where to send observers should not be manipulated by partisan or other impermissible objectives.

Recently, questions have arisen around the decision-making process underlying the Department's deployment of federal observers. For example, recent federal monitoring efforts in Perry and Marion Counties, Alabama, have been met with great distrust among African-American voters who feel that their complaints are not being treated equally to those that may be presented by white voters.¹ Incidentally, Perry and Marion Counties, and their neighbors, served as the backdrop for some of the most significant struggles to extend the franchise to African Americans during the Civil Rights Movement. It is in these counties where Black activists, some of whom have been represented by LDF, were targeted by local prosecutors who sought to discourage voter mobilization efforts aimed at encouraging Black political participation.²

It is important that the Department continue to consult with community contacts to ensure that federal observers are deployed to those jurisdictions where tensions may be at their height and where minority voter access is most at risk. Outreach to voters, and to the advocacy organizations serving them, can also help ensure that citizens are aware of the process for lodging a complaint with the Department and the process for formally requesting the deployment of observers. Finally, the Department must be prepared for late requests to deploy observers as history has shown that the most severe problems often do not arise until the eve of an election.

¹ See Dana Bayerle, *Perry County Official Cries Racism in Vote Probe*, Tuscaloosa News (September 1, 2008).

² See Ron Nixon, *Turning the Clock Back on Voting Rights*, The Nation (October 28, 1999), available at <http://www.thenation.com/doc/19991115/nixon/single> (noting that the history of voter-fraud investigations initiated by white citizens and elected officials dating back to the late seventies and that in many of these cases, the charges have been dismissed).

II. The Justice Department Should Terminate Its Policy of Using Criminal Prosecutors as Election Monitors Inside Polling Places

Polling places should be intimidation-free spaces in which all voters are able to freely cast their ballot without interference or obstruction. Both federal law and a number of state laws include provisions that are aimed at ensuring that voters do not face intimidation during elections. Nevertheless, the Department of Justice routinely relies upon federal criminal prosecutors to monitor activity inside of polling sites around the country. This practice places voters on a collision course with prosecutors who lie at the core of federal law enforcement efforts, and can have the effect of discouraging and deterring minority voters at the polls on Election Day. Indeed, in those communities where law enforcement officials have had an Election Day presence, citizens believe that the deployments were made with the knowledge of their intimidating impact.

As many know, the Department of Justice routinely deploys federal observers to certain jurisdictions that are certified for coverage under the Voting Rights Act. However, in some instances, the Department receives complaints from voters in jurisdictions that are not certified for federal observer coverage. In those instances, the Department has moved to deploy “attorney monitors” to carry out a role comparable to that of federal observers. Here, the Department relies on the consent of local or state election officials to access polling sites. Because the Department cannot use federal observers in this capacity, they instead rely on Department attorneys, administrative staff and other personnel to monitor the polls. In recent years, the Department has increasingly turned to local U.S. Attorney’s Offices for help with its attorney monitoring efforts. The Department, however, fails to distinguish between criminal prosecutors and civil litigators in those offices – thus, needlessly entangling criminal prosecutors in the business of monitoring activity inside of polls on Election Day. The mere presence of criminal prosecutors inside polling places may, in many instances, intimidate the very voters that the Voting Rights Act seeks to protect.

Plainly, criminal prosecutors inside the polls can intimidate voters. In fact, this threat is one that has been acknowledged by the current administration. As recently as November 16, 2006, former Assistant Attorney General Wan Kim of the Civil Rights Division observed that “[f]ederal prosecutors being involved in voter access issues would lead to intimidation of voters at the polls.”³ In addition, in recent testimony before the U.S. Commission on Civil Rights, William Welch, Chief of the Public Integrity Section of the Criminal Division acknowledged that “the Civil Rights Division is responsible for protecting the right to vote” while “other Department prosecutors throughout the country ... prosecut[e] those who corrupt elections.”⁴ Moreover, the well-publicized voter fraud prosecutions mounted by various U.S. Attorney’s Offices in recent years, pursuant to former Attorney General John Ashcroft’s Ballot Access and Voter Integrity Initiative,

³ See Hearing Transcript, United States Senate, Committee on the Judiciary, Washington, D.C. (November 16, 2006).

⁴ See Hearing Transcript, U.S. Commission on Civil Rights (June 6, 2008) available at <http://www.usccr.gov/calendar/tmscrpt/060608ccr1.pdf>.

makes the chilling effect that these prosecutors can have inside the polls clear.⁵ Nevertheless, the Voting Section of the Civil Rights Division actively solicits and recruits criminal prosecutors and deploys them to polling sites around the country.

The Department's actions conflict with a number of statutes that specifically seek to prevent intimidating activity inside of and near polling sites during elections. These statutes intend to prevent any form of undue influence or intimidation that may interfere with a citizen's free exercise of her right to vote, with a focus on the need to bar law enforcement presence.⁶ Collectively, these statutes embody the recognition that the mere presence of any law enforcement activity in or around polling places may have a detrimental effect on the free exercise of the right to vote. And this risk has been met with laws which aim "to insure [an] atmosphere at the polling place [that is] free from intimidation of any sort."⁷

Although the above cited election statutes do not explicitly reference criminal prosecutors, the reality is that Criminal Assistant U.S. Attorneys and other federal prosecutors work in tandem with Federal Bureau of Investigation (FBI) agents and other law enforcement personnel to carry out their duties. These factors strongly counsel in favor of the Department abandoning its policy of posting criminal prosecutors inside of polling places. Particularly in small communities, these criminal prosecutors are easily recognizable and well-known and thus, there is no way to neutralize the public's perception that the Department's attorney monitoring efforts are unduly influenced by criminal law enforcement objectives when they should be focused on voter access. Moreover, the Department's use of criminal prosecutors compounds existing problems of suppression and intimidation faced by voters. Terminating the practice of using criminal prosecutors as poll monitors can help ensure that minority voters are less likely to encounter or face intimidation this November.

III. The Justice Department Should Develop Plans for Possible Emergency Litigation on Election Day

As it has done in recent election cycles, we expect that the Justice Department will deploy federal observers and attorney monitors to a number of jurisdictions around the country to ensure minority voter access to the polls. What remains unclear, however, is the Department's action plan for responding to serious problems that may emerge on, or immediately prior to, Election Day. In light of spikes in registration rates in a number

⁵ *Id.* at 16 (describing the Attorney General's 2002 Ballot Access and Voting Integrity Initiative).

⁶ See e.g., La. Rev. Stat. 18:428 (states that "[l]aw enforcement officers shall not be stationed at polling places on election day..." and that such persons are also disqualified from serving as "commissioners-in-charge, commissioners, alternate commissioners, or watchers"); Tenn. Code Ann. § 2-7-103 (states that "[n]o police or other law enforcement officer may come nearer to the entrance to a polling place than ten feet"); Cal. Elec. Code § 18544 (imposes criminal penalties on peace officer, private guard, or security personnel posted at a polling place); 25 Penn. Stat. § 3047 ("[n]o police officer in commission, whether in uniform or in citizen's clothes, shall be within one hundred feet of a polling place . . .")

⁷ La. Att'y. Gen. Op. No. 78-1219 (September 18, 1978).

of places around the country, it is widely anticipated that there will be correspondingly high rates of turnout and participation on November 4th. High rates of turnout may result in long lines as seen during both the 2000 and 2004 presidential elections in places such as St. Louis, Missouri and Cleveland, Ohio.⁸ The risk of long lines may be particularly stark in high-density urban areas with significant numbers of newly registered minority voters. Where these problems bear more heavily on minority voters, there is a role for the Department to play to prevent a disparate impact on the minority community.

Although the Department may have observers or monitors on the ground in these areas to document the problems, in some instances, emergency Election Day litigation may be necessary to ensure that all voters receive a fair and equal opportunity to cast their ballot. Although the relief sought in any litigation would vary depending on the specific factual circumstances, certainly an extension of poll hours may be appropriate in those jurisdictions that are not equipped or prepared to handle the high turnout that is widely anticipated during the November 4th general election.

The Department has not brought emergency Election Day litigation in recent elections and it is unclear whether the Department is prepared to turn to the courts should particularly egregious problems emerge on November 4th. As a complement to its election monitoring efforts, the Department should develop and publicize its action plan for dealing with Election Day problems that impede minority voters' access to the polls and develop an effective plan to mount emergency litigation when warranted by factual circumstances.

IV. At this Critical Stage, the Department Should Ensure that NVRA-Mandated Agencies Are Transferring Voter Registration Applications to Local Registrars and Ensure that Registrars are Processing all Registration Applications in a Timely Manner

The National Voter Registration Act (NVRA) was passed, in large part, to increase electoral participation by making registration opportunities widely available and accessible. Despite this central objective of the NVRA, in recent years, the Department has chosen to focus its efforts on the voter registration list maintenance rules in the NVRA and, as a result, a number of states have aggressively moved to purge voters from their rolls.⁹ Now is the time for the Department to refocus its efforts on the core goals of

⁸ See Jon E. Dougherty, *Judge orders St. Louis polls kept open, But decision, based on heavy turnout, reversed by appeals court*, WorldNetDaily.com (November 7, 2000) (noting that a state circuit court judge who ordered polling centers in St. Louis kept open an extra three hours because of long lines and a shortage of election officials and voting booths had her decision reversed by an appeals court; nevertheless, resulting a total extension of poll hours by 45 minutes). See also Charley Able, *Shortage of voting machines blamed for Douglas County delays*, Rocky Mountain News (November 8, 2006).

⁹ See Gerry Hebert, *FEC Nominee Hans von Spakovsky: A Repeat Offender*, Campaign Legal Center (June 12, 2007) (observing that in January 2005, former DOJ attorney Hans von Spakovsky used the NVRA to launch an anti-voter initiative demanding that officials in Alabama, Georgia, Indiana, Maine, Missouri, New Jersey and New York purge their voter rolls – practice

the NVRA, codified in Sections 5 and 7 of the Act, by ensuring that those agencies required to make registration opportunities available are also transmitting registration forms to election officials in a timely manner. Deadlines for registering to vote in the November 2008 election are fast approaching in many states. It is critical that NVRA-mandated agencies immediately transmit registration forms to allow Registrars sufficient time to receive and process forms.

Similarly, the Department should also ensure that Registrars and local election officials, including those in jurisdictions with significant numbers of minority voters, are processing any new registration forms received in a timely manner to notify voters of their eligibility well in advance of the November election. Some reports indicate that local election officials did not anticipate and have not been prepared for the surge in voter registration applications. However, time is of the essence, and election officials should not stand in the way of voters who have made efforts to be added to the rolls in time to participate in elections this November.

Finally, the Department should find ways to complement its statutory enforcement responsibilities by using its leverage to encourage state and local officials to both comply with the mandates of the NVRA while also making efforts that go above and beyond that statute to reach historically disenfranchised populations. In the State of Alabama, a local activist (Rev. Kenneth Glasgow) recently initiated a non-partisan voter registration drive aimed at reaching eligible but not-yet-registered voters inside of local jails.¹⁰ Although the registration drive was initially supported by Alabama Prison Commissioner Richard Allen, the drive was terminated after receiving complaints from the State's Republican Party leadership.¹¹ To the extent that these eligible voters, a disproportionate number of whom are African-American, may already encounter significant barriers in their efforts to register and vote, voter registration drives such as these should be encouraged. Beyond the scope of its statutory responsibilities, the Department should encourage states and localities to identify ways to reach historically disenfranchised voters in their respective jurisdictions.

that disproportionately burdens minority voters), *available at* http://www.clcblog.org/blog_item-133.html. Von Spakovsky's efforts were often carried out through the issuance of Opinion Letters urging jurisdictions to take a particular course of action. In certain instances, these Objection Letters misstated the law and imposed unreasonable requirements on jurisdictions. Where appropriate, the Department should move to retract these Opinion Letters.

¹⁰ Associated Press, *State GOP pressure ends state prison voter registration*, (September 19, 2008), *available at* http://www.dothanagle.com/dea/news/local/article/state_gop_pressure_ends_state_prison_voter_registration/37199/

¹¹ *Id.*

V. **Section 5 Should be Enforced as a Statutory Tool to Ferret Out Any Eleventh Hour Voting Changes Aimed at Frustrating Minority Voters' Access to the Polls**

The Justice Department must continue to carry out its responsibilities under Section 5 of the Voting Rights Act ensuring that covered jurisdictions do not adopt eleventh-hour voting changes that would worsen the position of minority voters. In particular, the Department should ensure that jurisdictions comply with their obligation to submit voting changes for preclearance and ensure that jurisdictions do not prematurely implement those changes before a final preclearance determination is made. When there is evidence that a jurisdiction has failed to submit a change or evidence that the jurisdiction implemented the change before the Department has rendered a final determination, the Department should file Section 5 enforcement suits to ensure that the change does not impact voters seeking to participate this election cycle. The Department must be expeditious in carrying out its Section 5 responsibilities and should issue objections when jurisdictions have failed to satisfy their burden of proving that a proposed voting change will not worsen the position of minority voters.

In recent times, we have seen jurisdictions submitting voting changes after they have been implemented or prematurely implementing these changes before they have been precleared. Because Section 5 is specifically designed as a prophylactic protection, "post-clearance" directly conflicts with Congress's goal of creating a preapproval process designed to block potentially discriminatory actions *before* they take effect. It is important that the Department emphasize the importance of seeking preclearance and reject efforts that would unravel this core feature of the Section 5 provision.

During this major election cycle, it is equally important that the Justice Department solicit the input of individuals and advocates that live in and work on behalf of minority voters in the covered jurisdictions. Community input and public comment continue to represent a core feature of the preclearance process. The Department should encourage and invite Comment Letters on voting changes that appear to pose a threat to minority voters. In recent years, officials within the Department have encountered difficulty soliciting input from minority voters and the organizations that serve them because the Department has failed to refresh these contacts or allowed their lists of contacts to grow stale. The Department must continue to make efforts to cultivate new relationships and establish new community contacts in the covered jurisdictions who can help ensure that jurisdictions satisfy their burden of proof under the revitalized standards adopted by Congress during the recent 2006 reauthorization of Section 5.

VI. **The Department Should Actively Investigate Allegations Concerning Voter Intimidation and Racial Suppression Tactics Pursuant to its Authority Under Section 11(b) of the Voting Rights Act**

Intimidating acts preceding an election can create an atmosphere that discourages voters, particularly minority voters, from freely participating in the political process. Often, the acts of intimidation take place in the context of close elections between

minority and non-minority candidates or in areas of the country where minority voters are poised to exercise a greater degree of political power as a result of population growth. During recent elections, there have been significant incidents of voter intimidation directed against African-American, Latino, and Asian-American voters. These incidents, occurring in contests at the local, state and federal levels, include cross-burnings; the distribution of misinformation regarding the rules and requirements for voting; deceptive practices aimed at locking targeted voters out of the process; materials aimed at discouraging participation among non-English speakers; and private citizens holding themselves out as law enforcement with the purpose of intimidating voters.¹² These actions make clear that voter intimidation continues to shape the political reality in many covered jurisdictions and stands a tool used to impede minority voters' access to the polls. Accordingly, it is important that the Department use its arsenal of existing laws to reach those who use violence, the threat of violence, or intimidation to suppress the rights of minority voters.

There are two underutilized federal statutes that can reach conduct deemed intimidating or obstructive to voters. The Department has failed, however, to aggressively use these statutes to prevent voter intimidation faced by minority voters. In addition, Section 1971 (b) of the Civil Rights Act of 1957, applicable during federal elections, states that no person "shall intimidate, threaten or coerce ... any other person for the purpose of interfering with the right of such other person to vote." Cases that have been brought under this provision of the Voting Rights Act have been exceedingly rare. It is unclear why the Department has not used this statute to reach the various voter suppression tactics of the type that we have witnessed during recent elections.

Section 11(b) of the Voting Rights Act is another statute which bars conduct deemed intimidating, threatening or coercive to voters. Specifically, Section 11(b) states that "no person [...] shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." Section 11(b) is an important statutory tool available to the Department that can and should be used to address ongoing acts of voter intimidation, particularly those acts that have a racial dimension. Even one or two high-profile prosecutions under this statute would send an important deterrence signal nationwide. Notwithstanding the statutory authorization, since the Act's initial passage in 1965, the Justice Department has brought litigation to enforce Section 11(b) in only three instances.¹³

The Department's litigation in *United States v. Ike Brown, et al.*, 494 F.Supp.2d 440 (S.D. Miss. 2007), represents the first time that the Department has brought a suit under the Voting Rights Act on behalf of white voters. Notably, it also represents one of

¹² See NAACP LDF and MALDEF Uncover Significant Voter Intimidation Attempts During Recent 2006 Election Cycle (November 2006), available at http://www.naacpldf.org/content/pdf/barriers_to_voting/Voter_Intimidation_Statement_MALDEF_LDF.pdf

¹³ Cf. *U.S. v. McLeod*, 385 F.2d 734, 741 (5th Cir. 1967) (trial court erred in failing to find that acts of county officials in arresting and prosecuting various persons intimidated and coerced prospective black voters in violation of Section 11(b) of the Act).

the only instances in which the Department has moved to use Section 11(b) to reach an act of alleged voter intimidation. The Department argued that a Black voter's publication of a list of ostensibly ineligible white voters amounted to an act of racial intimidation. The court rejected the Department's Section 11(b) claim. In a particularly poignant section of the court's opinion, presiding Judge Tom S. Lee acknowledged the ongoing problem of vote discrimination in Mississippi and suggested that the Department may very well be unresponsive to the concerns of minority voters. In particular, Judge Lee observed that "[t]he court does not doubt that similar discrimination against blacks continues to occur throughout this state, perhaps routinely."¹⁴ The Judge also noted that "it may be true, though the court makes no judgment about this, that the Justice Department has not been responsive, or fully responsive, to complaints by black voters."¹⁵ These judicial observations suggest that the Department must take more seriously and conduct more thorough investigations into allegations of voter intimidation against minority voters.

Recent allegations that a political party in Macomb County, Michigan, intends to use foreclosure lists to challenge voters' eligibility at the polls certainly presents a basis for the Department to now invoke its Section 11(b) investigatory powers.¹⁶ The use of foreclosure lists for this purpose is of questionable value as such lists are likely to include persons who still occupy their homes and persons who may have moved but still reside within the boundaries of their assigned precinct location. Additionally, in the State of Michigan alone, it is estimated that over 60 percent of persons who have been victimized by sub-prime loans (the loans most likely to go into default) are African-American. These numbers mirror national trends which show that African Americans and other racial minorities are more likely to find themselves entangled in the national foreclosure crisis. Thus, it would appear that this scheme is one that could have a pronounced racial effect, and may very well have been devised for a racially discriminatory purpose. An aggressive investigation by the Department now could help determine whether the claims are prosecutable under federal civil rights statutes and help prevent any racially-targeted voter suppression tactics that might otherwise unfold in Macomb County on Election Day. Moreover, an investigation accompanied by aggressive outreach to local officials and well-timed publicity reminding the public of the Department's ability to investigate and prosecute racially-driven voter suppression tactics could help discourage and deter similar schemes that might otherwise emerge in the face of the Department's silence.

Conclusion

The 2000 and 2004 presidential elections were both marred by problems ranging from voter suppression, intimidation, long lines and other issues that were particularly stark in minority communities. As a result, the public's confidence in the electoral process has been significantly undermined. The Department of Justice must now take a

¹⁴ *United States v. Ike Brown, et al.*, 494 F.Supp.2d 440 at 486.

¹⁵ *Id.*

¹⁶ See Eartha Jane Metzger, *Lose Your House, Lose Your Vote: Michigan Republicans Plan to Foreclose African American Voters*, Michigan Messenger (September 10, 2008), available at <http://www.michiganmessenger.com/4076/lose-your-house-lose-your-vote>

dramatically different approach to help ensure that states are prepared for the November 2008 election. Ensuring that federal observers are deployed to those regions where there are allegations regarding attempts to limit minority voters' access to the polls; terminating the use of criminal prosecutors as poll monitors; developing a plan for emergency Election Day litigation; aggressively enforcing the voter intimidation prohibitions of the Voting Rights Act; ensuring that states are processing registration applications in a timely manner; and effective enforcement of Section 5 to capture eleventh hour voting changes that may discriminate against minority voters are some of the specific steps that the Department should now take to help restore the public's faith and confidence in the way that we conduct elections in our country.

Mr. DAVIS OF ALABAMA. Thank you, Ms. Clarke.

And let me thank all the witnesses and remind them that their full written statements will be made a part of the record. And I will take up the first round of questions for 5 minutes.

And Ms. Becker, let me begin, if I can, with you and try to dispose of one matter very quickly. During the first panel, there was a lot of conversation about a particular group called ACORN. And Mr. Terry made some statements that were, shall we say, unflattering with respect to that group. So let me consult the record.

To your knowledge, are there any pending Federal indictments regarding ACORN? Towards membership and activities connected with ACORN?

Ms. BECKER. That is a very important issue. That is an issue which is typically handled by criminal prosecutors in the 93 U.S. attorneys' offices around the country—

Mr. DAVIS OF ALABAMA. But do you know of any?

Ms. BECKER [continuing]. Consultation of the election crime unit of the public integrity section of the criminal division. And they would be the ones that would be in the best position to know that. We in the Civil Rights Division are focused primarily on voter access and the voter intimidation and suppression arm of it. But there are other components that handle those issues.

Mr. DAVIS OF ALABAMA. Well, does that mean that you don't know the answer to the question? Do you know if there are any pending indictments or if there have been any pending indictments in, say, the last 4 years against ACORN or its members at the Federal level for registration activities?

Ms. BECKER. I am aware of one guilty plea involving ACORN employees attempting to defraud the ACORN organization.

Mr. DAVIS OF ALABAMA. Was it in connection with voter registration?

Ms. BECKER. Yes.

Mr. DAVIS OF ALABAMA. Now, my understanding is that—I am frankly not familiar with that instance. I know of one instance where there was an indictment that was brought after the 2004 election. My understanding is that it was at the Federal level. My understanding is that that indictment was dismissed; and very unusually, it was dismissed with prejudice, meaning that the government couldn't come back and bring back the claims again.

So I simply want to make that observation, given the consistent references to ACORN today.

But I want to move to another line of questions. Professor Benson talked at some length, Ms. Becker, about allegations regarding, I believe, the state of Michigan. And regarding efforts in Michigan to prevent people who may have been foreclosed from casting a vote. When you hear Professor Benson's testimony, what is your reaction as someone who is in charge of enforcing the voting rights laws? Does that send up a red flag for you, people trying to limit the vote for folks who have been foreclosed?

Ms. BECKER. If those allegations were true, that would be something that would be of concern to us in the Civil Rights Division. I notice that foreclosure doesn't necessarily mean, you know, that somebody is no longer living in their particular home. It doesn't necessarily mean that they have been evicted or the home has been

repossessed. And so that is something that we would want to continue to monitor closely.

We would be focused primarily on two areas in the Civil Rights Division. If that information is being used to challenge voters at the polls in a discriminatory fashion on the basis of race, color, or because they are in a language minority group, that would be something that we would be looking for.

We would also be concerned if they are using those lists to improperly remove voters from the voter registration lists to the extent they may implicate some of the statutes that we enforce here in the civil rights—

Mr. DAVIS OF ALABAMA. You note that you are concerned about it. There have been various newspaper reports, and you have a live witness who is here today who appears to be knowledgeable on the question. What steps is the Department of Justice, your particular division, taken since you have heard about the issues related to foreclosures?

Ms. BECKER. My understanding of the testimony, and Professor Benson probably can confirm this, is that there was media reports expressing an intention that was denied. There is an allegation that a statement of intention was made, and then there is a strong statement of denial—so we are continuing to follow the situation very closely as we approach Election Day. This is a very important issue. But at this point, we are proceeding very carefully and cautiously.

Mr. DAVIS OF ALABAMA. Well, I would certainly, and I think this Committee, or at least this side of the Committee, would encourage your vigilance. The fact that there is denial—I don't spend all of my time reading the newspapers to see what people say when they are accused of a crime, but I think 99 percent of the time the denial is what you hear before the facts are adduced.

The second set of questions: there was extensive reporting in the metro Washington-Virginia area about erroneous information given out by a Virginia registrar which suggested that college students could, if they voted in Virginia, their parents could lose their ability to claim them as a deduction, that they could lose their financial aid. You are aware of those news reports, I assume, Ms. Becker?

Ms. BECKER. I am.

Mr. DAVIS OF ALABAMA. Does that concern you?

Ms. BECKER. That is also something that has been a concern to the Civil Rights Division.

Mr. DAVIS OF ALABAMA. And what steps have been taken based on that concern?

Ms. BECKER. The rules determining when college students can register to vote in their particular jurisdictions vary from state to state. And certainly, as we heard from the first panel, there has been some action taken at the local level or the state level to address this situation. But it is primarily a state law matter as to whether or not those students can register and whether or not they are being improperly—

Mr. DAVIS OF ALABAMA. Well, it is a state law matter—

Ms. BECKER [continuing]. Based upon residency.

Mr. DAVIS OF ALABAMA. It is a state law matter, but the Voting Rights Act obviously covers state law.

Ms. BECKER. Yes. And our concern here would be a law exactly along those lines, Congressman Davis, in that if it implicates one of the statutes that we enforce; if we are seeing that these allegations are resulting, for example, in improper rejections of voter registration lists in violation of one of the Federal statutes that we enforce, that may be something that we would be very interested in looking at closely.

So we are closely monitoring these reports as well to see if there is appropriate jurisdiction and action for us to take in civil rights.

Mr. DAVIS OF ALABAMA. Ms. Becker, we are both over our time, but if I can ask the indulgence of my friend from Arizona, and I will extend him an additional minute as well. What you just said triggers the last question I want to pose to you.

On the DOJ website, there is a question and answer section. The question is, what responsibilities does the Justice Department have with regard to voter fraud or intimidation? And the answer on the website says, "In some exceptional cases where voter fraud or intimidation involving racial basis occurs in local or state elections, Federal criminal charges may be brought by the criminal section of the Civil Rights Division."

I understand that you don't run that division, but help me understand what that means, "some exceptional cases." Because my understanding of the statute is that the statute confers upon the Department of Justice jurisdiction involving voter fraud or intimidation involving racial bias in any local or state election. I don't think it delineates between the exceptional and the garden variety. So tell me what exceptional means.

Ms. BECKER. I don't have the Web site text in front of me. But my understanding is as I have testified, which is that voter fraud prosecutions, criminal prosecutions, are handled by U.S. attorneys' offices around the country in consultation with the criminal division. We have limited criminal jurisdiction in voting matters related to voter intimidation and voter suppression when race, color, national origin or religion are implicated. And that is set forth by regulation in 28 C.F.R. section 0.50 and 0.55.

Mr. DAVIS OF ALABAMA. So your position is that "exceptional cases" refers to cases involving racial bias, and there is not some separate class of cases.

Ms. BECKER. None that I am aware of.

Mr. DAVIS OF ALABAMA. Okay—before drafting.

Let me yield to my friend from Arizona, the Ranking Member.

Mr. FRANKS. Well, thank you, Mr. Chairman.

And Mr. Chairman, in all sincere respect, I want to address one of the questions you had asked related to a Federal indictment pending. Most of the indictments or potential indictments or investigations or pending indictments that I was referring to in my opening statement would probably be pursued or probably are being pursued on the basis of state law. And I think that that is an important consideration.

Ms. Becker, the Pew Center for the states' military and overseas citizen voting project just released a report confirming the fact that military voters cast votes at roughly half that of the general popu-

lation. Eighty-six percent of the general population who request absentee ballots actually cast those ballots. But only 26 percent of military personnel who request an absentee ballot cast their ballots. Very clearly, those members of the Armed Forces who want to vote—they obviously want to vote—but they are not able to due to the tragic shortcomings in the system of ballot delivery.

And that has got to change. It is a tragedy. So how do you suggest that Congress go about changing that injustice?

Ms. BECKER. Congressman, thank you for that question. You are raising a very, very important issue. As someone who has worked in the Pentagon and as a civilian for the United States Army and for the Department of Defense, I think that this is a very important issue. I can tell you that the enforcement of that statute, the Uniform Overseas Absentee Voting Act, UOCAVA, is shared between the Department of Defense and the Department of Justice.

Our role in the Civil Rights Division is to ensure that states are getting adequate time for sending out the absentee ballots to our men and women in uniform overseas, as well as overseas citizens, and providing enough time for it to come back. Just in the last week I have approved two UOCAVA lawsuits, and we are working with the jurisdiction to try to resolve those issues. This is a time period where we work very actively in that area to make sure that there is adequate time well before the election.

Some of the issues that were raised by Mr. O'Leary are very important issues. Those are issues that fall within the jurisdiction of the Department of Defense, and I have shared those concerns with the Department of Defense.

Mr. FRANKS. Thank you very much, Ms. Becker.

Mr. O'Leary, maybe I can turn to you. First of all, thank you for your service. I know that individuals such as yourself don't go out into wars to fight because they hate what is in front of them. They do so because they love what is behind them. And I honor you in every way, sir.

As Election Day approached in 2004, there were stories circulating about parents of Service members calling campaign headquarters on Election Day to complain that their son or daughter wanted to vote in the election, but had not received a requested ballot. In your opinion, is the Department of Justice doing enough to monitor the Defense Department's efforts to make sure that those dedicated servants who are serving our country and their families have every opportunity to vote by absentee ballot in a timely manner to ensure that their votes count?

Mr. O'LEARY. Thank you, Congressman.

First of all, I would be remiss if I didn't applaud the DOJ's work to hold the states accountable. Unfortunately, I mean, you really have a broken system, and we need to hold the Department of Defense accountable. You know, we have made it so that this broken system can be in effect where there are different rules and different requirements in every state.

For years, the Department of Defense has said it is going to take 45 days. Ballots need to be sent 45 days prior in order to get there on time. And we haven't changed anything. The Department of Defense is not facilitating it this year. There were two amendments

on the National Defense Authorization Act on the Senate side that failed to get a vote to expedite ballots coming back.

But you know, when we say over and over again that it takes 45 days, and there are still states that aren't printing and sending their ballots until October, and at the same time the military postal service is saying the ballots need to be sent from Afghanistan or Iraq on September 30th, we have a problem. We have a civil rights issue, and it is a civil rights issue that is worth litigating over.

Mr. FRANKS. Mr. O'Leary, I guess my last question—obviously, this has got to affect everyone on the Committee. I know, and I am just going to be—there is a pink elephant in the room, and that is a lot of the military favor Republican candidates. And certainly that may be part of my motivation here.

But the ultimate, and the deepest motivation here, is to see those people who, rather than talking about freedom as we do on this panel, are going out and giving their lives to defend it. And if they don't have the opportunity to vote, it just seems like it is a disgrace to the entire system. So if you could say any one thing that you could do, to encourage Congress to do or the Department of Defense to do, what would be one thing that you would do to try to solve this issue?

Mr. O'LEARY. Well, I would urge Congress to call on the Secretary of Defense to immediately ensure that military ballots get urgent handling. Now, if that takes contracting with FedEx or UPS to get overnight shipment of those ballots back from theater, you know, then that needs to happen. Whether the—and frankly, one of the problems with that on the Senate side is the postal unions that didn't think that was a good idea. Well, you know what? I think our troops should take a higher priority than the postal unions.

Mr. FRANKS. Well, thank you, sir. Thank you for your service, and thank you, Mr. Chairman.

Mr. DAVIS OF ALABAMA. Thank you, thank you.

Our next questioner will be the distinguished Chair of the full Judiciary Committee. Before I recognize him for questions, I simply want to make one quick addition to my friend from Arizona's comment. I will remind us of Al Gore's excellent example in 2000, when he had an opportunity on a closely contested election to challenge military ballots. He and his running mate declined to do so, and I want to make sure the hearing doesn't conclude without saluting them for that.

Mr. Chairman, I will leave the next question to you. They have just called a vote. If you would like to proceed, or if you would like us to recess now, and we can come back and you can pick up the questions after vote?

Mr. CONYERS. Oh, I will start now.

Mr. DAVIS OF ALABAMA. Okay. The Chairman is recognized.

Mr. CONYERS. Did you say that you commended him for not challenging the ballots?

Mr. FRANKS. I commended him for doing that. There was no insult intended at all.

Mr. DAVIS OF ALABAMA. I certainly meant to commend him, Mr. Chairman.

Mr. CONYERS. Well, I am not so happy that he didn't challenge the ballots. I mean, why are we so—I have to talk to both of you Members after this hearing.

But anyway, we are all here to learn.

This may be one of the most important hearings that our Committees together have ever had. The recent history of voting problems is legendary.

Ms. BECKER, you are in the one place in the Department of Justice where we can take care of that. And you have been before us, I believe this is your third time? Remind me, how long have you been in this position?

Ms. BECKER. I have been with the Civil Rights Division since March of 2006, and I have been acting since December of 2007.

Mr. CONYERS. Yes. Now, have you ever heard of Professor Spencer Overton?

Ms. BECKER. The name doesn't ring a bell.

Mr. CONYERS. Okay. Have you ever heard of Mark Crispin Miller?

Ms. BECKER. No.

Mr. CONYERS. Okay. Well, we don't have much time, because Mr. Overton has written extensively on the subject which brings us here today. I think his most recent book is "Stealing Democracy: The New Politics of Voter Suppression." And just to make sure that you start on it right away, we are going to give you a copy of it. Well, I suppose I should loan you a copy, since we bought it with the government resources. Please.

Ms. BECKER. I would be happy to purchase a copy.

Mr. CONYERS. No, I can loan you a copy, it is all right. I trust you. [Laughter.]

Now, the other book is Mark Crispin Miller's "Fooled Again." And that is about the same subject.

Now, we agreed before the Committee hearing with Congresswoman Zoe Lofgren—and I would like to add any of our colleagues of the two Committees that want to join us—we were going to meet extensively on this subject. We asked to have the Department of Justice staff meet to with the Judiciary Committee staff because there is a certain amount of artificiality about the hearings. They are formal, they are stilted, there is a 5-minute rule, digressions, and votes.

And there is a lot to be said when you have two branches of the Federal Government trying to improve the voting system. We are almost walking distance apart. Why can't we meet more frequently, without the stenographer and television, and all that?

So I would like for us to meet more frequently, especially since we are not happy with only two or three markedly insufficient meetings between staffs.

Now, you are not responsible for all the problems that the Committee has with the Department of Justice. But we are all in this together—that is the way I feel about it. I do not want people after November 4, saying, "Why didn't the Department of Justice do this, that or the other thing?" They are going to say, well, what was the Judiciary Committee doing? And what was the House Administration Committee doing with a whole Subcommittee on Elections?

Everybody on both Committees wants to facilitate the vote. We want to create openness. We want to provide security. We want to improve the Armed Services' participation. We want to preclude fraud. There is a whole range of activities—and I know pro bono groups and non-profits have the same goal.

Now, this is a democratic system. What is to prevent all of us from working very closely together over and above the Committee hearings, of which there are not likely to be any more, to work together toward this great goal of ensuring the integrity of the voting system in perhaps the highest voter participation in the history of the country? In many ways, it is a momentous election.

I understand that Chris Coates is here today.

Ms. BECKER. Yes, sir.

Mr. CONYERS. Is that right? Who is Chris Coates?

Ms. BECKER. Right behind me.

Mr. CONYERS. Dozens and dozens of problems have been raised. Some have been adequately responded to. But I liked what the gentleman in the first panel said: we are not seeking perfection. All we want to do is make it as efficient as reasonably intelligent people can make it.

So I would like to enlist not only Ms. Becker, who has already agreed to this, but all of our panelists. We need to get the election system on track. There are some things we can't do. Unfortunately, we can't increase the funding to the level that it should be. I wish we could.

But given other than that, we will need to work together as well as we can.

In closing, Mr. Chairman, I feel better today than I did after the last hearing we have had about elections. I mean, they were not very pleasant at all. It seems to be that we are up to speed now. So I want to commend you for Chairing the Committee and giving me as much time as I needed to get this off my chest.

Mr. DAVIS OF ALABAMA. Mr. Chairman, you always have as much time as you want.

We are going to kind of figure out our housekeeping a moment, Ms. Becker. But before I do that, I want to make one other observation. I think I asked you about a question of a Web site, and I think you clarified to me what you mean the language to say. I want to ask you if, I will have the staff to give you a copy of this. Because at a minimum, we have a reference to an exception, in front of a clause, in front of a subjunctive reference to "may." And no matter where you are, that can raise confusion. So it is certainly not the most elegantly drafted sentence I have ever seen, and I will ask you to look at changing this section that I reference so it says what you mean it to say.

And we have approximately 7½ minutes left on a vote. Mr. McCarthy, my friend from California, assures me that he will take less than 5 minutes, so I recognize him.

Mr. MCCARTHY. Thank you, Mr. Chairman.

My comment is to Mr. O'Leary. Because what you raise is one to me, very, very important. We had a hearing in House Administration. And I have a bill up and the companion bill over in the Senate side, Senator Cornyn, as well. What it does is exactly what you recommend: that contract out and allow, where it would be

traced delivery back and forth. We send stuff across this country, around the world. You go on the internet and see exactly where it is, you know where it is located. And I believe that would be a very good answer going forward.

And I would like to work with you in the future on how to get this through, because we had a hearing on it. I think there is some opposition on the other side because they are afraid somebody who might win the contract might not be union. And I would rather just see the men and women have the right to vote. But I appreciate your service, and—if the Chairman would indulge, I would just yield any time left to my colleague from Ohio.

Mr. DAVIS OF ALABAMA. Mr. Jordan, you are recognized. I ask you to be mindful of the fact that we have 5 minutes left on the vote. So I assume you intend to be extremely brief so we can all go vote.

Mr. JORDAN. Mr. Chairman, can I come back, then, after the vote?

Mr. DAVIS OF ALABAMA. Yes, certainly.

Mr. JORDAN. I appreciate the gentleman yielding. Thank you.

Mr. DAVIS OF ALABAMA. Thank you.

We are going to recess the hearing. We have approximately 5 minutes left in the vote. The hearing will resume after approximately 25 minutes of real time, as we have about three votes.

Hearing is recessed.

[Recess.]

Mr. GONZALEZ. [Presiding.] Going to call the Committee back. Reconvene at this time. I know we have maybe a couple of witnesses that will be walking back in, so we will wait for their arrival. But I can at least tell you what the afternoon holds for you and that will be just a couple of us here. There may be others that will be filtering in.

But we do appreciate the patience that you have shown, and your testimony is important. And as you are aware, your written statements are made part of the record, as well as your testimony this morning, your responses to the questions.

Mr. GONZALEZ. At this time the Chair is going to recognize my colleague, Mr. Jordan, from the great state of Ohio. And I want you to know that I was pulling for the Buckeyes against USC, it just didn't turn out that day.

Mr. JORDAN. Sure didn't.

Mr. GONZALEZ. And of course, we will welcome back Professor Benson when she arrives. But I have been told that the question being posted by Mr. Jordan is not to Professor Benson. So accordingly, we will proceed at this time.

Mr. JORDAN. I thank you, Chairman. I want to thank our witnesses for coming today and for your service, particularly Mr. O'Leary, for your service to our country.

My question is actually going to go—I am going to go to Mr. Hancock and Mr. Terry.

And I will start with Mr. Terry. I want to just highlight what Ohio is planning on doing, what our secretary of state is planning on doing. And this was raised in the first panel, when we had someone from the Ohio secretary of state's office here. But starting

next Tuesday, you can begin to vote absentee. No-fault absentee we have in Ohio.

And you can also, our law requires you register 30 days prior—be registered, you know, the typical thing to be a qualified elector. So there is going to be a 1-week window of time where our secretary of state has said that she is going to allow registration and voting—same-day registration and voting for this week time period starting next Tuesday and going through October 6th.

I believe there is a real potential for mischief and problems there. I want to get your thoughts, what you think about that possibility. And the ability to make sure that we have fair elections, make sure that we have qualified voters. To make sure it is fair.

And I am actually—I would like to, when I look at Mr. Hancock's testimony, he had a few sentences in bold print. Presidential elections simply are not a re-run, you can't do them over. He talked about the central problems must be identified and resolved prior to Election Day.

And we have heard—we know this is going to be a record turnout election. So with all that in play, I can't figure out why—and I think our law is clear that you shouldn't be able to do this, but nevertheless, that is the decision of our secretary of state. I would like your thoughts on that.

Mr. TERRY. I am certainly not an expert on Ohio elections, but I think any time that you have a loophole or at least an apparent loophole of that size or that kind of an overlap, it should be concerning. But I think from the respect of ACORN and perhaps similar groups, what would be even more concerning is the size of their effort.

If you look at—you sort of asked a question, you know, how much damage can be done in a 1-week time. You are looking at, you know, they have already produced hundreds of thousands of registrations in the state of Ohio. And have, you know, hundreds if not thousands of individuals on the ground. And I think that you would want to look at—you would hope there were certain controls within their organization and controls within the state of Ohio to sort of prevent that overlap. But I think it is a sizable loophole and the size of the operations that are going on out there should be of great concern.

Mr. JORDAN. It seems to me that, you know, once that vote is cast and it is in the form that they keep it at the board of elections, they are going to have this huge turnout, it is going to be tough to really thoroughly check and make sure this individual was in fact a qualified voter.

And we all know what happens on election night. Count the vote, count the vote. We haven't thoroughly checked, count the vote. And I think there are real problems.

Mr. Hancock, I would like your comment.

Mr. HANCOCK. I would just point out that the Voting Rights Act eliminated residency requirements for voting, and the state laws that you talk about were all enacted in accordance with that. And basically the structure is, people who were properly registered and move shouldn't be denied the right to vote. So they can either vote at their new location or their old location, depending on the timing of when they moved. And that 30-day requirement is the Federal

standard that they use. As long as they are there 30 days before the election, they should be entitled to register and vote.

And if it is shorter than that, they can vote where they were before. So it is, there are—I share your concern about what happens on Election Day, and there is going to be a lot of confusion on Election Day. And I reiterate what I said before. I think we best will have a fair election if we try to address these issues before Election Day rather than trying to address them on the day of the election.

But I do think that on the day of election, that it is important under the new Help America Vote Act that there will be a master list of all registered voters and where they should be voting, the precinct that they should be voting at. And a provisional ballot should be a last resort, not the first resort, but only the last resort. The first step that should be made would be to look at that polling list to see if the people are not on the list of the precinct where they showed up, then are they properly registered in another precinct, and they should be directed to that precinct before they are given a provisional ballot.

And I think the Department of Justice can play a role in this, just as it did with us in Florida when I was with the attorney general's office. The department at that time was very active in making sure that as we implemented the new provisional voting procedure, that we would do it in a way that tried to make sure that people were properly registered. But let's not—this is a presidential election, and in many respects it shouldn't matter what table you go to. You are entitled to vote for president if you are properly registered.

But we don't want their vote nullified just because they went to the wrong precinct. And the department was very tough on us in Florida at the time when I was with the state, to make sure that we were going to do that right. And I would hope the department does the same thing with other states.

Mr. JORDAN. Thank you.

Thank you, Chairman.

Mr. GONZALEZ. Thank you very much, Mr. Jordan.

At this time, the Chair is going to recognize the Chairwoman of the Subcommittee on Elections of the House Administration Committee, Zoe Lofgren, of the great state of California. But Zoe I need to remind you all, in the year 2005, the Texas Longhorns beat both Ohio State and USC. Actually, it was 2006 in the Rose Bowl.

Ms. LOFGREN. USC is in a different state—in southern California. [Laughter.]

Actually we no longer have hostilities between north and south in the state of California. Although at one time, that did exist.

I am interested in what the Department of Justice is going to do between now and Election Day. We had a chance to talk briefly informally before this hearing began. There were a number of problems in the 2008 primaries that emerged. We know the problems that occurred in 2004, and I think it is wise for us to assume that some of those problems could present again.

Director Mueller from the FBI was before the Committee, I think it was last week or earlier this week—time flies at this point in the congressional session. And Ms. Waters asked what the FBI was doing to investigate violations of the Voting Rights Act. I mean, we

have—I have a couple of lawyers on the Elections Subcommittee staff. You have the entire FBI to find out about wrongdoing.

He didn't seem to know what they were doing on this. Can you tell us?

Ms. BECKER. Thank you very much for raising that important issue on the Voting Rights Act.

The FBI is certainly an important partner of ours in our criminal investigations, both in the criminal division of the Justice Department and when there are specific civil rights crimes that occur on unrelated voting or on civil rights crimes. The Voting Rights Act is a civil statute where we do not utilize the FBI. Our investigations of the Voting Rights Act are—

Ms. LOFGREN. If there were a RICO conspiracy, wouldn't that be a problem?

Ms. BECKER. If there are criminal—if there are criminal, if we observe any indicia of criminal, we can certainly make a referral. And that is something that is within our jurisdiction to do.

With respect to the Voting Rights Act, we have filed a number of lawsuits which are set forth in the written statement that I have provided to the Committee on the Voting Rights Act. In addition, we have done training to officials in all 93 U.S. attorneys' offices. We will be at their offices on Election Day, so that when they receive calls about potential violations of the Voting Rights Act, they will be able to direct it to the Civil Rights Division.

We have done outreach with both state and local officials and with civil rights organizations to inform them about the statutes that we enforce—

Ms. LOFGREN. But let me just ask you—what about 11(b), isn't that a criminal statute?

Ms. BECKER. 11(b) of the Voting Rights Act is a civil provision that prohibits voter intimidation. There are criminal statutes that also prohibit voter intimidation—for example, 18 U.S.C. section 594 might be one potential statute that would be enforced by the criminal section of the Civil Rights Division.

Ms. LOFGREN. Let me ask you about what we might do before Election Day. I will just recall that in 2005 Hans von Spakovsky wrote to the secretary of state of Arizona, which has a very strict voter ID law, that for those who did not have ID, that they did not have to offer a provisional ballot.

Well, that wasn't true. I mean that was wrong advice that Mr. von Spakovsky volunteered to the department. It later had to be retracted, but it did cause confusion and may have suppressed—you know we don't know what the impact was. It certainly wasn't a positive impact in terms of—

Are opinion letters going to go out unsolicited from your department? And how are you going to make sure that the advice given is correct and nonpartisan?

Ms. BECKER. Congresswoman, I think it is very important for us to inform the jurisdictions of the statutes that we enforce.

I have sent out letters on, for example, the Uniformed and Overseas Citizens Absentee Voting Act, because there are certain timeframes where they need to get those ballots out 45 days before an election. So those letters have already gone out.

I intend to send another letter to state and local election officials to talk about the statutes that we enforce, including the language minority provision of the Voting Rights Act, which has been raised by other panelists here, as well as other issues involving the wide variety of statutes that we enforce in the Civil Rights Division, so that they know what the Federal law requires.

Many of them are very experienced. They have worked with us in the past, or they have been sued by us in the past. And hopefully, that will help inform some of their decision making also.

Ms. LOFGREN. Now, the attorney general has told civil rights groups that having a smoothly running election that did not violate the civil rights of Americans was a very important top priority for him.

And as we have discussed before the hearing, I am concerned that some practices that have been engaged in have had not only the effect, but clearly the intent of suppressing or disenfranchising minority voters, specifically vote caging programs that target neighborhoods that are minority—primarily inhabited by minorities.

What is your department doing to stop that?

Ms. BECKER. There are four different things that we can do in the Civil Rights Division when we hear about allegations of vote caging.

If these vote-caging lists that are compiled are being used to challenge voters at the polls in a fashion that is racially discriminatory, then that is certainly something that we can bring a lawsuit under the Voting Rights Act.

In addition, if those lists are being used to improperly remove voters from the voter registration list, that may be something that we can look at under the National Voter Registration Act, which under the NVRA the way they set forth specific criteria in terms of when voters can be removed.

And if you look at five of the eight cases that we have brought under Section VIII of the NVRA to ensure that voters who should be on the list are on the list either because jurisdictions have allegedly improperly removed them or failed to include them when they should have included them.

Ms. LOFGREN. But let me ask you this. If I don't know what kind of investigative effort is being made by the department. But we have had in past years ample evidence of vote caging efforts that were directed entirely to African American neighborhoods.

Do you think that is proper?

Ms. BECKER. And the other thing that we can—well, what we can do if we find about these allegations before Election Day, we can send monitors and observers out to the polls.

Ms. LOFGREN. But what are you going to do to stop the process, the racially motivated process of suppressing African American votes?

Ms. BECKER. Oftentimes our presence at the polls on Election Day will ensure that those lists are not used at the polls. We work with state and local election officials. Oftentimes they have cured the problem when they hear about allegations of vote caging as well. We—

Ms. LOFGREN. Have you considered suing to enjoin a process that is racially motivated and discriminatory such as that?

Ms. BECKER. If it would come—

Ms. LOFGREN. I mean you are lawyers. You are full of lawyers.

Ms. BECKER. If one of the Federal statutes that we enforce are implicated, we certainly are prepared to take any appropriate action.

Ms. LOFGREN. I see my time has expired, Mr. Chairman. I thank you.

Mr. GONZALEZ. Thank you very much, Ms. Lofgren.

The Chair is going to recognize himself for a couple of questions quickly, and I am going to ask the same question of each of you, but I am going to ask for a yes or no, whether you agree with me or not.

I believe that the greatest impediment or challenge to conducting fair elections, robust elections, and efficient elections in this country would be the following, as far as the hierarchy of concerns.

First and foremost would be the logistics of conducting the election and all that that would entail, from the polling place to the machines to the ballot, including ballot design, and then of course personnel, the proper training and competent personnel.

Next, I imagine a great impediment is going to be voter intimidation and rules and such that make it so hard, so complex, and the misreading of those rules and such that deny people.

And then the ugly kind of disenfranchisement that some of my colleagues have referred to such as the caging, the intimidation that was referred to in the written testimony by Mr. Lewis of the poll watchers appearing to be officials when they are not.

And lastly, but of concern, and which has been brought out prominently in today's hearing, is going to be the potential for fraudulent registering—and I use that word very carefully—registering of votes—not necessarily the casting of the vote, but just voter registration and fraud.

Do you agree with my analysis that that would be the hierarchy of impediments and challenges to the way we conduct elections today in attempting to achieve fair, robust and efficient elections? Simply yes or no.

Obviously, you know this is the lawyer question where you just want a yes or no, and I appreciate your patience with that.

And I will start with Attorney General Becker.

Ms. BECKER. I think they are all very important concerns, Congressman Gonzalez, and I wouldn't be one to categorize any of them, but I think they are all very, very important.

Mr. GONZALEZ. Well, but you are. And let me explain why. You have limited resources. Where would you apply those limited resources?

If you were a doctor and someone came into the emergency room that had a serious head wound, serious chest injury and a hangnail, would you be getting all of your resources to treat the hangnail? No.

And that is our responsibility as elected officials, as well as individuals in the different departments and agencies.

Mr. Hancock, your own experience?

Mr. HANCOCK. Yes, I would say that that is a pretty comprehensive list, and I wouldn't quibble with it.

I would say for this oversight hearing, however, that focuses on the voting section in the Voting Rights Act, that suppression of minority voters is a very important issue in this election. And in the previous talk we hear racial animus is not a necessary element of a claim under the Voting Rights Act.

If people are targeted because of their race, the design may be to achieve a partisan political objective, but it still implicates the Voting Rights Act.

And my friends in the department have always been put in a difficult position of enforcing the act when it might be viewed as having some partisan results.

We heard today about how overseas voters—military voters—might be more apt to vote Republican. That doesn't have any impact on how that law should be enforced.

We have heard how efforts to challenge suppression of Black voters might benefit the Democratic candidate. That is not a factor in deciding whether the case should be brought.

If there are efforts to suppress voters in violation of the Voting Rights Act, the department has an obligation without regard to politics to pursue those violations.

Mr. GONZALEZ. Right.

Mr. HANCOCK. And I think your waterfall of issues is valid.

Mr. GONZALEZ. Thank you.

Ms. Narasaki?

Ms. NARASAKI. I very much agree with your hierarchy of issues. And it strikes me. I am very excited because there is so much excitement among immigrant Americans, who have worked hard to be able to meet the requirements of citizenship and will be voting for the first time.

And anybody who has had the opportunity to see someone be able to exercise for the first time the true mark of being a citizen in the U.S. has to be concerned about whether that person will be able to exercise.

And as you know, as a minority you are never really—you can never really take for granted that you will be welcomed at anywhere you go at the polls.

And I think that the heated debates about immigration are going to make it very challenging for many of these new immigrants to vote. And I am very concerned that their first experience would be one where they are made to feel not welcome.

Whether it is because of intentional intimidation or confusion, lack of training, I think all of those things would be quite a shame for this Nation.

I do find that the allegations of voter fraud are very overblown, and there are some very good studies that I would like to submit to the record, if possible. One is called "The Myth of Widespread Non-Citizen Voting," which was done by Truth in Immigration, which is a project of the Mexican American Legal Defense Education Fund.

And the other is the Brennan Center for Justice, "The Truth About Voter Fraud," which documents, in case after case, that when you are talking about really a handful of votes, a handful of registrations, that really does not impact the election, the issue of minorities who are made to feel unwelcome and unable to really

cast their vote, that will be a legacy that will hurt us for years to come.

Mr. GONZALEZ. Okay. Miss Narasaki, let me clarify something. You have something that you want to submit for the record. Is that correct?

Ms. NARASAKI. Yes, sir.

Mr. GONZALEZ. Okay. Without objection.
[The information referred to follows:]

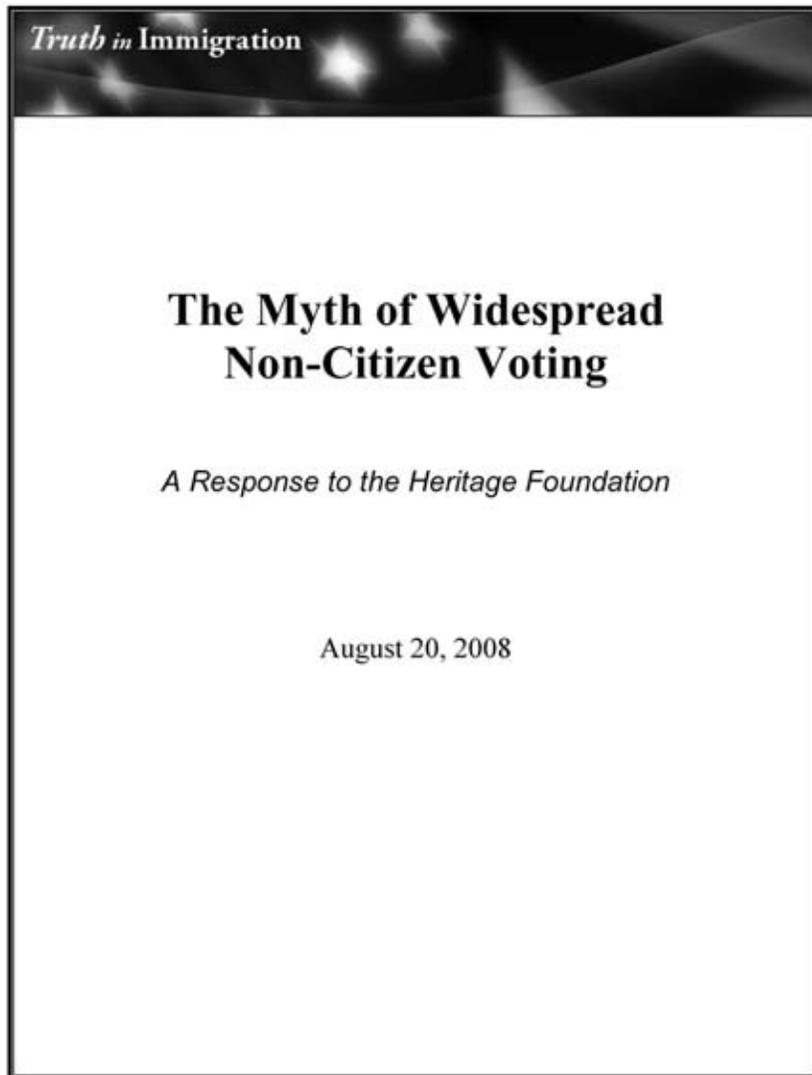


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I. Introduction

In a recent segment, CNN anchor Lou Dobbs told viewers that substantial evidence suggests that large numbers of non-citizens, including undocumented immigrants, are voting in federal elections and could be the deciding factor in November's elections. The story primarily cites a recent report published by the Heritage Foundation. The report is written by former recess-appointed FEC Commissioner Hans von Spakovsky, whose troubling record on voting rights caused him to withdraw his name from consideration for a permanent FEC seat. Von Spakovsky's report contains gross distortions and represents an attempt to support a policy agenda that would disenfranchise many U.S. citizens.

Less than a minute into the CNN report, Lou Dobbs makes a statement that summarizes the prevailing theme of von Spakovsky's report:

There's startling new evidence tonight that our democracy is at risk on a number of fronts, including a new study showing that non-citizens, including illegal aliens, are voting in our elections . . . If this year's presidential election remains as close as it appears to be now, this election could in fact be decided by fraud.¹

Reality, however, does not accord with this analysis. Far from being a problem that could swing elections, non-citizen voting is virtually non-existent and allegations of it are peddled by anti-immigrant groups and others bent on promoting a discriminatory, anti-democratic agenda.

First, this *Truth in Immigration* report will scrutinize von Spakovsky's cited examples of non-citizen voting in order to dispel the notion that non-citizens regularly vote. Second, this report will address how non-citizens have strong incentives not to vote

¹ *Lou Dobbs Tonight* (CNN Broadcast, June 16, 2008) available at <http://www.cnn.com/video/#/video/bestof/2008/07/16/ld.vian.non.citizen.voting.cnn>.

in federal elections. After addressing the virtual non-existence of non-citizen voting, this report will discuss legitimate threats to U.S. voting systems that von Spakovsky ignores. Fourth, we will examine von Spakovsky's harmful policy recommendations. Finally, this report will briefly speculate as to why von Spakovsky would become so preoccupied in the first place with a threat that is virtually non-existent.

II. Von Spakovsky's Argument and Skewed Evidence

Von Spakovsky's claims about widespread non-citizen voting unravel upon close examination. Regarding it as an "enduring problem," von Spakovsky portrays non-citizen voting as endemic to our electoral system:

The evidence is indisputable that aliens, both legal and illegal, are registering and voting in federal, state, and local elections.²

Instead of substantiating this claim with significant and compelling evidence, however, von Spakovsky relies upon speculation and skewed evidence to deliver a message that harms our democracy.

A. Egregious Misreading of GAO Study

Von Spakovsky starts his report by citing a 2005 Government Accountability Office (GAO) report that he suggests finds "that up to 3 percent of 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district were not U.S. citizens."³ Arguing that up to 3 percent of 30,000 voters (900 voters) would be enough to affect election results, von Spakovsky suggests that the GAO study demonstrates a major impact on U.S. elections from widespread non-citizen voting.

² Hans A. von Spakovsky, *The Threat of Non-Citizen Voting*, Legal Memorandum No. 28, The Heritage Foundation, available at <http://www.heritage.org/Research/LegalIssues/lm28.cfm>.

³ *Id.* at 1.

The GAO study as a whole belies von Spakovsky's assertion, however. The 2005 report features data from 14 U.S. district courts. GAO researchers asked staff associated with these courts for information about the number of individuals who were called for jury service and responded that they were non-citizens.⁴ These researchers found that the "AOUSC officials and federal jury administrators we spoke with generally did not have exact data on the number of people called for jury service that responded that they were non-citizens."⁵ Due to the lack of concrete data, 6 of the 14 gave no information to the GAO. Of the remaining 8 jurisdictions, 4 of them had never witnessed non-citizens who had been called to serve on a jury.⁶ Ten of the 14 district courts surveyed, then, could offer no evidence whatsoever of non-citizens in jury pools. Ignoring this, von Spakovsky presents isolated data from just one of these fourteen jurisdictions. Further, 3 of the 4 courts that did report non-citizens in their jury pools estimated that non-citizens comprised, respectively, approximately 1%, 0.158%, and 0.01% of the jury pool.⁷ Von Spakovsky, in his attempt to manufacture concern about a nonexistent crisis, simply ignores key elements of the GAO report that do not support his hypothesis that non-citizens threaten the integrity of U.S. elections.

It should be noted, furthermore, that being called to jury duty is not the same thing as voting fraudulently in an election (despite Von Spakovsky's suggestion that jury pools are proxies for voter participation). As noted in the GAO report, several of the district courts' jury pools contained names drawn from state identification or driver's license records in addition to voter registration lists. Even assuming that non-citizens in

⁴ Government Accountability Office, Report to Congressional Requesters: *Additional Data Could Help State and Local Elections Officials Maintain Voter Registration Lists*, GAO-05-478, at 4 (June 2005).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* Federal jury administrators in the different districts provided monthly or yearly percentages.

jury pools appear on voter registration rolls, that wouldn't establish that a) these voters have ever voted in federal elections or b) that these voters voted while knowing they were ineligible (i.e., voted fraudulently). Even von Spakovsky's skewed evidence is only significant if one makes these unsupported assumptions.

B. Unsubstantiated Examples of Illegitimate Election Results

As one of his primary examples of non-citizen voters influencing U.S. elections, von Spakovsky cites the 1996 Congressional race in California between Republican Bob Dornan and Democrat Loretta Sanchez. Sanchez prevailed in this election by fewer than 1,000 votes, and Dornan contested the results. The House of Representatives then investigated whether invalid voters won the election for Sanchez. Von Spakovsky notes that the House Committee on Oversight and Government Reform ultimately dismissed the case, but suggests that the Committee did so only because it revealed just 624 non-citizen votes and 124 invalid absentee ballots. Von Spakovsky essentially ignores the Committee's conclusion that the Sanchez/Dornan race was not compromised and that non-citizens did not vote in significant numbers. Instead, he speculates, without offering supporting evidence, that votes from undocumented immigrants probably accounted for the remaining votes.⁸ What he fails to note, moreover, is that 372 of the disputed non-citizen votes were cast by individuals who were officially sworn in as U.S. citizens before Election Day.⁹

Most allegations of non-citizen voting, upon closer examination, likewise do not yield evidence of non-citizen voting. In the state of Washington in 2005, for instance, a

⁸ Von Spakovsky, *supra* n. 2, art 3.

⁹ Justin Levitt, *The Truth about Voter Fraud*, Brennan Center for Justice at NYU School of Law, 2007, at 19-20, available at <http://truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>.

private citizen asked county officials to investigate 1,668 registered voters who had seemingly foreign names. To this day, none of these voters have turned out to be non-citizens.¹⁰ In 2001, Milwaukee journalists conducted a review of 370,000 voting records between 1992 to 2000. The journalists found only four cases of possible non-citizen voting, but it has never been established whether even these four voters cast invalid ballots.¹¹

These examples reflect broader trends. Certainly, isolated incidents of non-fraudulent voting by non-citizens do occur, if infrequently. In one well known case, for example, non-citizens engaged in the naturalization process had passed interviews with federal authorities and had received letters that started with the following message: “Congratulations, your application for citizenship has been approved.”¹² After receiving these letters, it appears that the non-citizen voters thought they could then vote even though they had not yet had an official naturalization ceremony.¹³ Isolated incidents such as this, however, are blown out of proportion and then become grist for complaints of widespread non-citizen voting. They do not reflect concerted efforts to improperly influence elections, and they simply do not threaten the integrity of our election systems.

C. Administrative Errors Often Explain Allegations

Concrete data shows that clerical errors and errors in data-collection occur more often than non-citizen voting. Poll books and registration rolls are often riddled with inaccurate information. Sometimes errors are simple, featuring misspelled names

¹⁰ *Id.* at 19.

¹¹ *Id.* at 19.

¹² Michael G. Wagner and Nancy Cleeland, *D.A. Drops Voter Probe after Indictments Rejected*, L.A. Times, Dec. 20, 1997, at A1, available at <http://articles.latimes.com/1997/dec/20/news/mu-526>.

¹³ Justin Levitt, *supra* n. 9, at 18.

resulting in voters on one roll appearing on another roll.¹⁴ Such errors have sometimes fueled unwarranted allegations of non-citizen voting.¹⁵ These kinds of mistakes obviously should not occur, but they do not serve as an appropriate basis for asserting false allegations of illegitimate voting.

Allegations of non-citizen voting also stem from ‘bad matching.’ Matching is the process by which voter registration rolls in different jurisdictions are compared to catch forms of invalid voting. Unfortunately, matching can be inaccurate or inconsequential. In addition to erroneous data compilation, partial matches may be mistaken for complete matches (e.g., equating Joe A. Smith and Joe B. Smith). In addition, even complete matches may be irrelevant when, for example, individuals share the same name and date of birth.¹⁶ As with clerical errors, incorrect matching also accounts for a number of false allegations of non-citizen voting.¹⁷

III. Deterrents to Non-Citizen Voting

A. Criminal Penalties

Von Spakovsky ignores the fact that non-citizens lack a compelling reason to vote and risk severe criminal penalties under current law. Particularly in the case of undocumented immigrants, registering with the federal government to vote simply does not make sense. Federal law mandates strict penalties for those who register while knowing they are ineligible to vote in federal elections.¹⁸ Premeditated attempts to commit voter fraud carry with them serious penalties—including a fine up to \$10,000 and

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 18.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 42 U.S.C. § 1973(gg)-10 (2008).

up to 10 years in prison—that non-citizens do not want to risk. Violation of federal election law, moreover, could lead to the deportation of non-citizens—including legal permanent residents. As will be discussed below, moreover, non-citizen voting is not synonymous with voter fraud, but the point is that non-citizens would be wary of doing anything that could lead to lengthy legal investigations, criminal penalties, and possible deportation.

B. NVRA

Federal law currently mandates ways for election authorities to prevent human error that may lead to charges of non-citizen voting. States are required by the Help America Vote Act of 2002 (HAVA) to create efficient, accurate computerized databases of registered voters.¹⁹ Implementing these improved databases mandated by federal law will help election officials catch many of the errors that currently affect registration rolls.

In addition to HAVA, the National Voter Registration Act of 1993 (NVRA) also provides election authorities with tools to run better elections. By improving the accessibility and ease of voter registration, NVRA ensures that eligible voters have their opportunity to become engaged in the voting process. NVRA also mandates that states improve their registration databases by purging voters who have moved to another jurisdiction or who have otherwise become ineligible to vote within a particular location.²⁰ In his study, von Spakovsky targets NVRA, arguing that the law's mechanisms for improving voter registration help non-citizens vote.²¹ He singles out Section 5 of the Act, known informally as the Motor Voter provision, which allows

¹⁹ 42 U.S.C. § 15483 (2007).

²⁰ 42 U.S.C. § 1973gg (2008).

²¹ Von Spakovsky, *supra* n. 2, at 8-9.

individuals to register to vote at the same time they acquire a driver's license.²² He argues that numerous non-citizens, including undocumented individuals, become registered voters when they get driver's licenses in states that grant them to non-citizens. In the end, however, von Spakovsky's assertion is unsupported by evidence. He merely speculates about the effects upon registration in Maryland and cites a mere 14 non-citizens in Utah who have registered to vote and have obtained a driver's license.²³ As such, von Spakovsky has hardly proven why NVRA's alleged "loopholes" could swing November's elections.

NVRA actually currently includes provisions that, if appropriately implemented, would address any threat presented by any non-citizens who may wish to vote. NVRA, for example, imposes strict penalties for those who commit voter fraud.²⁴ In light of this, it's not surprising that one prominent report has found that states' complaints about NVRA primarily focus on a lack of funding—not specific concerns about voter fraud or non-citizen voting.²⁵

IV. Actual Threats to Our Voting Systems

As discussed above, clerical/typographical errors and inaccurate matching account for a number of false allegations of non-citizen voting. Von Spakovsky does not acknowledge these systematic problems. Indeed, he displayed the narrowness of his focus at a recent hearing about lessons learned from the 2004 elections. Instead of giving actual testimony, von Spakovsky merely provided three articles. One of them, an article

²² 42 U.S.C. § 1973gg-3 (2008).

²³ Von Spakovsky, *supra* n. 2, at 9.

²⁴ 42 U.S.C. § 1973gg-10 (2008).

²⁵ *Securing the Vote*, Demos: A Network for Ideas and Action 2003, at 25, available at http://www.demos.org/pubs/EDR_-_Securing_the_Vote.pdf.

about meeting the needs of military voters, reflects a noble cause but the other two addressed the supposed “threat” of non-citizen voting. Von Spakovsky, consequently, ignored the serious problems with our voting systems discussed below.

A. Voter Caging

Voter caging is a concrete problem, substantiated by actual data that von Spakovsky fails to acknowledge. Voter caging is the “practice of sending non-forwardable direct mail to registered voters and using the returned mail to compile lists of voters, called ‘caging lists,’ for the purpose of challenging their eligibility to vote.”²⁶ Voter caging efforts have occurred in many elections. In recent years, voter caging operations have targeted thousands and, in some cases, hundreds of thousands of voters in various states.²⁷ When individuals who did not return the direct mail eventually voted, opponents asserted that fraud had occurred. Few of these voters, however, turned out to be illegitimate.²⁸ This is not surprising in light of the fact that undelivered mail does not always mean that the intended recipient does not live at a certain address. As one example of this, Postal officials successfully hand-delivered 1.8 million surveys for the 1990 Census that initially got returned as undeliverable.²⁹ A more recent 2007 report found that 84,000 errors marred mailing information Chicago Postal workers used to deliver government records.³⁰ These examples indicate that returned mail may be perfectly deliverable and may not necessarily reflect evidence of ineligible voters.

Furthermore, federal law explicitly prohibits invalidation of voter registration

²⁶ Teresa James, *Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters*, *Project Vote*, Sept. 2007, at 3.

²⁷ *Id.* at 16-25.

²⁸ *Id.*

²⁹ Justin Levitt, *supra* n. 9, at 11.

³⁰ *Id.*

merely because mail has not been returned. Except for certain exceptions,³¹ the National Voter Registration Act (NVRA) states that a voter cannot be removed from a registration roll unless (1) the voter establishes in writing that he or she has moved out of a particular jurisdiction and (2) the voter does not respond to mail from *election officials* and then does not vote in two successive federal elections.³²

As the November elections approach, voter caging presents a greater threat to U.S. democracy than non-citizen voting. Kris Kobach, the current leader of the Kansas Republican Party, wrote in a 2007 e-mail: "To date, the Kansas GOP has identified and caged more voters in the last 11 months than the previous two years!"³³ The fact that the current head of a state political party recently boasted about his success in voter caging is deeply troubling, yet von Spakovsky ignores this in favor of an exclusive focus on unsupported claims of widespread non-citizen voting.³⁴

B. Poll Workers' Perceptions of Latino Voters

Von Spakovsky's misleading study and Dobbs's equally misleading report could cause poll workers to perceive a threat of non-citizen voting. This would be very unfortunate because, overall, the 1.4 million poll workers in the country provide essential assistance to our electoral process. Creating unsubstantiated fears of non-citizen voting could compound current problems poll workers face. Jonah Goldman, Director for the

³¹ These exceptions concern convicted felons, dead individuals, and the mentally challenged.

³² 42 U.S.C. 1973gg-6(d)

³³ Posting of KU Blue to Blue Tide Rising, Kobach admits top coordinated voter suppression, <http://bluetiderising.blogspot.com/2007/12/kobach-admits-to-coordinated-voter.html> (Dec. 20, 2007, 5:43PM).

³⁴ It is worth noting that Kobach is also closely associated with the Immigration Reform Law Institute (IRLI). The IRLI is the legal arm of the DC-based Federation for American Immigration Reform (FAIR), a prominent anti-immigrant organization that has been designated as a "hate group" by the Southern Poverty Law Center, an organization that the FBI cites as a credible source on hate groups and hate crimes. See <http://www.splcenter.org/intel/map/type.jsp?DT=27> (last visited Aug. 8, 2008); <http://www.fbi.gov/hq/cid/civilrights/hate.htm>.

National Campaign for Fair Elections at the Lawyers' Committee for Civil Rights, testified in May, 2008 about such obstacles: "In every state we [the National Campaign] ran a program during this cycle and in every program we have run in the past, [the National Campaign] uncover[ed] voters who were turned away because poll workers did not know the rules."³⁵ Instead of helping poll workers focus on election rules, von Spakovsky fosters unfounded fears in the legitimacy of our elections. Further, if poll workers choose to scrutinize national origin minorities particularly closely and prevent eligible voters from voting, they may violate federal laws against discrimination in elections.

C. Voter Intimidation

Unlike allegations of non-citizen voting, which are largely unsupported, there have been recent concrete cases of extreme voter intimidation of Latinos and others at the polls. Vigilantes and others have systematically targeted voters because of their race, ethnicity or other traits. Thanks to von Spakovsky and Dobbs's hyperbolic reports of non-citizen voting, these groups may now think that they have grounds for a repeat performance of their past discrimination.

The Mexican American Legal Defense and Educational Fund (MALDEF) has chronicled incidents in which voters have been unfairly and unlawfully harassed and threatened on Election Day. In testimony before the Senate Judiciary Committee in June, 2007, MALDEF President John Trasviña recounted such incidents.³⁶ In 2006, for

³⁵ *Protecting the Constitutional Right to Vote for All Americans Before the S. Judiciary Comm.*, 110th Cong. (2008) (statement of Jonah Goldberg, Director, National Campaign for Fair Elections, Lawyers' Committee for Civil Rights) available at <http://judiciary.senate.gov/hearing.cfm?id=3368>.

³⁶ *Prevention of Deceptive Practices and Voter Intimidation in Federal Elections: Hearing on S.453 Before the S. Judiciary Comm.*, 110th Cong. (2008) (statement by John Trasviña, President of MALDEF) available at http://judiciary.senate.gov/testimony.cfm?id=2798&wil_id=6514.

instance, MALDEF attorneys watched vigilantes single-out Latinos in Tucson, Arizona. These vigilantes, one of whom carried a firearm, “asked Latino voters pointed questions about their political views, wrote down Latino voters’ personal information, and videotaped them as they went to cast their vote.”³⁷ MALDEF has also documented intimidating, misleading letters sent by the campaign for a major party congressional candidate to Latinos in Orange County, California in 2006.³⁸ By raising the specter of non-citizen voting, von Spakovsky not only misleads the public about the problems that affect our voting systems. His report could also provide fuel for discrimination and intimidation as we approach the November elections.

D. The Scope of Actual Threats to Democracy

The ramifications of the problems described above—which hardly comprise a complete list of phenomena that may disenfranchise voters—should not be underestimated. One study conducted by the California Institute of Technology (CalTech) and the Massachusetts Institute of Technology (MIT), for instance, has estimated that the problems listed above resulted in *4-6 million* eligible voters being prevented from exercising their right in the 2000 general elections.³⁹ Von Spakovsky’s figures, many of which are purely speculative, pale in comparison to the number of voters who may have their vote lost by problems that have yet to be adequately fixed.

Our flawed voting systems do create substantial challenges to free and fair elections — just not the ones von Spakovsky highlights. From erroneous registration lists to overly restrictive voter identification requirements, America’s voting systems continue

³⁷ *Id.*

³⁸ *Id.*

³⁹ Press Release: *Cal-Tech team finds 4-6 million votes lost in the 2000 election; Nationwide reforms outlined in report*, July 16, 2001, available at http://www.vote.caltech.edu/press/MIT_7-16-01.pdf.

to face a variety of problems more pressing than non-citizen voting.

V. Conflating Non-Citizen Voting with Voter Fraud

Another problem with coverage of von Spakovsky's report is that it conflates non-citizen voting with actual fraud. Dobbs's also does this when he states that "[i]f this year's presidential election remains as close as it appears to be now, this election could in fact be decided by fraud."⁴⁰ The rare instances of non-citizen voting that do occur are not automatically fraudulent. To commit voter fraud, individuals must "cast ballots despite knowing that they are ineligible to vote, in an attempt to defraud the election system."⁴¹ The crime of voting fraud, then, cannot be committed without a requisite intent. By using the strong label of 'voter fraud,' then, Dobbs makes an unwarranted generalization that all non-citizen voting constitutes voter fraud. Von Spakovsky, too, makes the same mistake by suggesting that authorities prosecute non-citizen voting—as if that very act in itself stands as a crime. In fact, the few documented instances of non-citizen voting typically result from innocent errors, not intentional acts of improper voting.

VI. Von Spakovsky's Flawed Proposals

In light of his excessive speculation and narrow diagnosis of election problems, it is not surprising that von Spakovsky makes a number of flawed policy suggestions. These recommendations are not supported by facts. Three of his proposals deserve particular attention for their potential harm to U.S. election systems.

⁴⁰ *Lou Dobbs Tonight*, *supra* n. 1.

⁴¹ Justin Levitt, *supra* n. 9, at 4.

A. Proof of Citizenship Laws

Von Spakovsky recommends that all eligible voters provide proof of American citizenship when they register to vote.⁴² Von Spakovsky suggests that such a requirement should use the same standard as proof of employment.⁴³ He ignores the fact that citizenship documentation requirements are more effective at disenfranchising eligible U.S. citizen voters than preventing non-citizens from voting. Many voters do not always carry the requisite forms of identification that would be required to register through voter registration drives. Few people regularly carry, for example, their passport, and some voters may not even have one.

In addition, the burdens of proof-of-citizenship requirements, like poll taxes, fall disproportionately upon low-income and minority voters. A 2001 study by the Commission on Federal Election Reform found that 6 to 10 percent of voting-age Americans do not have any identification issued by the state and that most of these voters have limited funds.⁴⁴ Voting experts Tova Wang and Jonah Goldman have found that “[t]he citizens who do not have voter identification are mostly poor, minority, elderly, disabled, and young voters.”⁴⁵ In order to justify the excessive burden identification laws would place on eligible voters, proponents have to fall back on unsupported allegations of widespread voter fraud.

The burden placed on voters—and their overall disproportionate impact on particular communities—explains why voting rights laws have been a focal point of

⁴² Von Spakovsky, *supra* n. 2, at 25.

⁴³ *Id.*

⁴⁴ National Commission on Election Reform, *To Assure Pride and Confidence – Task Force Reports to Accompany the Report of the National Commission on Election Reform, Chapter 6 – Verification of Identity*, at 4 (2001), available at http://www.tcf.org/Publications/ElectionReform/NCFER/hasen_chap6_verification.pdf.

⁴⁵ Tova Andrea Wang and Jonah H. Goldman, *Photo ID Requirement Compromises Voter Rights*, *The Press-Enterprise*, Nov. 6, 2005, available at <http://www.tcf.org/print.asp?type=NC&pubid=1133>.

much civil rights litigation. Currently in Arizona, MALDEF is challenging a restrictive voting law that requires, among other things, proof of citizenship for voter registration. Von Spakovsky cites the Arizona law with approval, praising it for the fact that it has prevented over 31,000 individuals from registering to vote.⁴⁶ What he fails to acknowledge, however, is MALDEF has found (and is asserting in federal district court) that the Arizona law has in fact prevented eligible voters from registering. One plaintiff in MALDEF's case, for example, is an eligible voter who is a Vietnam veteran who fought for the freedoms that he is now being denied. So far, moreover, it has not been shown that any of the disqualified voters are non-citizens, let alone undocumented immigrants.

B. Increased Prosecution

Despite his legal background, von Spakovsky betrays an elementary mistake when he proposes the following: "Local district attorneys must be made to realize that registration and voting by non-citizens are offenses against the basic principles of our democratic system and that such cases must be prosecuted."⁴⁷ Here, von Spakovsky makes the same mistake made by Lou Dobbs in his report on CNN. Non-citizen voting, when it does occur, does not automatically become a prosecutable offense. To be criminally punishable, the voter must have voted or registered to vote while knowing that he or she was ineligible to do so. Only with this requisite intent do a voter's actions constitute voter fraud.⁴⁸ Indeed, in most cases an act can be a crime only if the suspect maintained the state of mind to intentionally commit the act.

⁴⁶ Von Spakovsky, *supra* n. 2, at 7.

⁴⁷ Von Spakovsky, *supra* n. 2, at 10.

⁴⁸ Certain criminal acts that are treated under federal law as "strict liability" offenses—that is, acts that do not require a particular mental intent in order to be punishable. Voting fraud, however, is not a strict liability offense.

C. Misuse of E-Verify System

One of von Spakovsky's other suggestions concerns the government-run E-Verify program and features so many troubling assumptions that it should be quoted in full:

The database, known as E-Verify, that is being used by U.S. employers to check the citizenship status of prospective employees should be made available to election officials and administrators of the statewide registration databases required by HAVA so that election officials can run database comparisons to identify registered voters who are not citizens.⁴⁹

E-Verify is, essentially, an online version of the former Basic Pilot / Employment Eligibility Verification Program that verifies the employment eligibility of individuals. It does this by checking whether the information on a standard Social Security Card matches the information on a form of government-recognized identification. If the information doesn't match, employers receive a tentative nonconfirmation (TNC) letter acknowledging the mismatch. The employer is supposed to immediately tell the employee, who then has ten days to rectify the matter.

A common misperception of E-Verify, which von Spakovsky makes, is that it effectively checks citizenship and immigration status in general. As noted above, however, E-Verify merely checks whether the information on a standard Social Security Card matches the information on a form of identification recognized by the federal government. Matching the information verifies eligibility for employment, which is *not* the same thing as verification of citizenship. To substantiate this point one needs to look no further than an I-9 form itself, which is used to verify employee eligibility. The form states that "[t]he purpose of this form is to document that each new employee (both citizen and non-citizen) hired after November 6, 1986 [the date on which the President signed into law the Immigration Reform and Control Act of 1986] is authorized to work

⁴⁹ Von Spakovsky, *supra* n. 2, at 10.

in the United States.”⁵⁰ Millions of non-citizens are, of course, eligible to work in the United States under immigrant visas. Determining whether an individual is eligible to work, therefore, is quite different from determining citizenship and voter eligibility. Von Spakovsky clearly does not understand this when he proposes comparing E-Verify data with that on voter rolls.

Even being classified by E-Verify as ineligible to work, moreover, should not be viewed as determinative. The Social Security Administration admits that its database is full of many errors that concern actual U.S. citizens: the SSA Office of the Inspector General estimates that nearly 13 million out of 17 million errors in its database regard U.S. citizens.⁵¹ Clearly it would not be sound, as von Spakovsky wants, to compare information in a deeply flawed database with information in voter registration rolls. Such a recommendation would disenfranchise millions of citizens.

VII. Conclusion

Von Spakovsky has a history of advocating troubling approaches towards “voter fraud” and other goals associated with a partisan political agenda. Before von Spakovsky finally withdrew his name from consideration for a permanent seat on the FEC, numerous voting and civil rights groups denounced his partisanship and deemed him unfit to protect the most fundamental right of Americans: the right to vote.⁵²

⁵⁰ Federal I-9 Form (through June 30, 2009), available at <http://www.uscis.gov/files/form/I-9.pdf>. [Emphasis added].

⁵¹ *Congressional Response Report: Accuracy of the Social Security Administration's Numident File*, Report No. A-08-06-26100, Dec. 2006, at Appendix C, available at <http://www.ssa.gov/oig/ADOBE/PDF/A-08-06-26100.pdf>.

⁵² Letter from Barbara R. Amwine, Executive Director for the Lawyers' Committee for Civil Rights Under Law (Oct. 3, 2007) available at <http://www.truthaboutfraud.org/pdf/10-03-07%20LCCRUL%20Senate%20Letter.pdf>; See also Letter from Laura MacCleery, Director of Public Citizen's Congress Watch, and Craig Hollman, Public Citizen Lobbyist, (Oct. 3, 2007) available at <http://www.truthaboutfraud.org/pdf/100507%20Public%20Citizen%20full%20Senate%20letter.pdf>

Perhaps the most damning criticism of von Spakovsky, however, has come from his former colleagues in the Voting Section of the Department of Justice's (DOJ) Civil Rights Division:

While he was at the Civil Rights Division, Mr. von Spakovsky played a major role in the implementation of practices which injected partisan political factors into decision-making on enforcement matters and into the hiring process, and included repeated efforts to intimidate career staff. Moreover, he was the point person for undermining the Civil Rights Division's mandate to protect voting rights Over the past five years, the priorities of the Voting Section have shifted from its historic mission to enforce the nation's civil rights laws without regard to politics, to pursuing an agenda which placed the highest priority on the partisan political goals of the political appointees who supervised the Section. We write to urge you not to reward one of the architects of that unprecedented and destructive change with another critical position [at the FEC] enforcing our country's election laws.⁵³

That former career professionals felt obligated to publicly criticize von Spakovsky speaks volumes about his unsettling record regarding voting rights.

Regardless of his troubling and partisan past, however, von Spakovsky's report suffers from a serious disconnect with the facts. As we approach an historic election, this nation deserves better. Viewers of Dobbs's story and readers of von Spakovsky's study may get an inflated sense of non-citizen voting and may lose faith in our democratic processes.

Even more seriously, von Spakovsky's recommendations, were they to be implemented, would effectively disenfranchise countless eligible U.S. citizen voters. In the context of debunking claims of widespread voter fraud in Ohio in 2004, James Sample of the Brennan Center at NYU makes the following point: "Americans are more

⁵³ Letter from Joseph D. Rich (former Chief of the Voting Section and Civil Rights Division Attorney) et al. (June 11, 2007) available at <http://www.truthaboutfraud.org/pdf/06-11-07%20Former%20Voting%20Section%20Staff%20Letter.pdf>. See also Letter from Joseph D. Rich (former Chief of the Voting Section and Civil Rights Division Attorney) et al. (June 18, 2007), available at: <http://www.truthaboutfraud.org/pdf/06-18-07%20Former%20Voting%20Section%20Staff%20Letter.pdf>.

likely to be struck by lightning [than to have committed voting fraud in Ohio]. Granted, lightning does strike, but we're not yet ready to pass legislation requiring a dome for the planet."⁵⁴ The same sentiment may be applied to allegations of non-citizen voting. Von Spakovsky might view himself as a pioneer on the forefront of election reforms, but he better resembles one who proudly battles a mirage.

⁵⁴ James Sample, *It's Not Fraud, It's Alienated Voters*, Politico.com, Nov. 11, 2007, available at http://www.brennancenter.org/content/resource/its_not_fraud_its_alienated_voters/.

BRENNAN
CENTER
FOR JUSTICE

THE TRUTH
ABOUT
VOTER FRAUD

Justin Levitt

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution—part think tank, part public interest law firm, part advocacy group—the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

ABOUT THE BRENNAN CENTER'S VOTING RIGHTS AND ELECTIONS PROJECT

The Voting Rights and Elections Project works to expand the franchise, to make it as simple as possible for every eligible American to vote, and to ensure that every vote cast is accurately recorded and counted. The Center's staff provides top-flight legal and policy assistance on a broad range of election administration issues, including voter registration systems, voting technology, voter identification, statewide voter registration list maintenance, and provisional ballots.

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THE TRUTH ABOUT VOTER FRAUD

I. INTRODUCTION

Allegations of election-related fraud make for enticing press. Many Americans remember vivid stories of voting improprieties in Chicagoland, or the suspiciously sudden appearance of LBJ's alphabetized ballot box in Texas, or Governor Earl Long's quip: "When I die, I want to be buried in Louisiana, so I can stay active in politics." Voter fraud, in particular, has the feel of a bank heist caper: roundly condemned but technically fascinating, and sufficiently lurid to grab and hold headlines.

Perhaps because these stories are dramatic, voter fraud makes a popular scapegoat. In the aftermath of a close election, losing candidates are often quick to blame voter fraud for the results. Legislators cite voter fraud as justification for various new restrictions on the exercise of the franchise. And pundits trot out the same few anecdotes time and again as proof that a wave of fraud is imminent.

Allegations of widespread voter fraud, however, often prove greatly exaggerated. It is easy to grab headlines with a lurid claim ("Tens of thousands may be voting illegally!"); the follow-up — when any exists — is not usually deemed newsworthy. Yet on closer examination, many of the claims of voter fraud amount to a great deal of smoke without much fire. The allegations simply do not pan out.

These inflated claims are not harmless. Crying "wolf" when the allegations are unsubstantiated distracts attention from real problems that need real solutions. If we can move beyond the fixation on voter fraud, we will be able to focus on the real changes our elections need, from universal registration all the way down to sufficient parking at the poll site.

Moreover, these claims of voter fraud are frequently used to justify policies that do not solve the alleged wrongs, but that could well disenfranchise legitimate voters. Overly restrictive identification requirements for voters at the polls — which address a sort of voter fraud more rare than death by lightning — is only the most prominent example.

The Brennan Center for Justice at NYU School of Law carefully examines allegations of fraud to get at the truth behind the claims. The Brennan Center has analyzed purported fraud cited by state and federal courts; multipartisan and bipartisan federal commissions; political party entities; state and local election officials; and authors, journalists, and bloggers. Usually, only a tiny portion of the claimed illegality is substantiated — and most of the remainder is either nothing more than speculation or has been conclusively debunked.

This paper seeks to distill our findings: the truth about voter fraud. It first offers a straightforward definition to avoid the common trap of discussing election irregularities that involve neither voters nor fraud as if they showed voter fraud. It then discusses different alternative reasons more credible than voter fraud to explain many of the recurring allegations. The paper then analyzes, scenario by scenario, some of the more common types of alleged voter fraud and their more likely causes and policy solutions. Finally, the paper presents individual case studies of notorious instances of alleged voter fraud, and finds those allegations to be grossly inflated. For more information, analysis, and opinion about voter fraud, by the Brennan Center and others, please see www.truthaboutfraud.org.

II. WHAT IS VOTER FRAUD?

"Voter fraud" is fraud by voters.

More precisely, "voter fraud" occurs when individuals cast ballots despite knowing that they are ineligible to vote, in an attempt to defraud the election system.¹

This sounds straightforward. And yet, voter fraud is often conflated, intentionally or unintentionally, with other forms of election misconduct or irregularities.

There are many such problems that are improperly lumped under the umbrella of "voter fraud." Some result from technological glitches, whether sinister or benign: for example, voting machines may record inaccurate tallies due to fraud, user error, or technical malfunction.² Some result from honest mistakes by elec-

IT IS MORE LIKELY THAT AN INDIVIDUAL WILL
BE STRUCK BY LIGHTNING THAN THAT HE WILL
IMPERSONATE ANOTHER VOTER AT THE POLLS.

tion officials or voters: for example, a person with a conviction may honestly believe herself eligible to vote when the conviction renders her temporarily ineligible,³ or an election official may believe that certain identification documents are required

to vote when no such requirement exists.⁴ And some irregularities involve fraud or intentional misconduct perpetrated by actors other than individual voters: for example, flyers may spread misinformation about the proper locations or procedures for voting; thugs may be dispatched to intimidate voters at the polls; missing ballot boxes may mysteriously reappear. These are all problems with the election administration system ... but they are not "voter fraud."

Conflating these concerns is not merely a semantic issue. First, the rhetorical sloppiness fosters the misperception that fraud by voters is prevalent. That is, when every problem with an election is attributed to "voter fraud," it appears that fraud by voters is much more common than is actually the case.

This, in turn, promotes inappropriate policy. By inflating the perceived prevalence of fraud by voters, policymakers find it easier to justify restrictions on those voters that are not warranted by the real facts.

Moreover, mislabeling problems as "voter fraud" distracts attention from the real election issues that need to be resolved. It draws attention away from problems best addressed, for example, by resource allocation or poll worker education or implementation of longstanding statutory mandates, and instead improperly focuses on the voter as the source of the problem.

III. THE RESEARCH LANDSCAPE

It is easy to find opinion pieces and legislative statements claiming that voter fraud is a substantial concern. But aside from a trickle of news stories of low-grade fraud in a few isolated elections, there are surprisingly few sources recounting specific incidents of alleged voter fraud.

The most notorious such sources are documents prepared by the American Center for Voting Rights ("ACVR"), a controversial organization established in early 2005 and apparently defunct just over two years later.⁵ The ACVR produced two reports — one compiling allegations of fraud in Ohio in 2004, and another compiling allegations of fraud in 2004 nationwide.⁶ The ACVR has also repeated these and other allegations in *amicus* briefs filed in litigation related to voter identification provisions.⁷

Former *Wall Street Journal* editorial board member and weekly columnist John Fund has also recounted several specific allegations of voter fraud in his 2004 book *Stealing Elections*;⁸ two other books by academics, *Dirty Little Secrets* and *Deliver the Vote*, address allegations of fraud from a historical perspective.⁹ Hans von Spakovsky, a commissioner on the Federal Election Commission and a former Counsel to the Assistant Attorney General for Civil Rights in the Department of Justice, has similarly recounted allegations of voter fraud in several policy papers and presentations.¹⁰

Finally, there are a few newspaper articles that seem repeatedly cited in discussions of voter fraud — for example, a 2000 article in the *Atlanta Journal-Constitution* and a 2004 article in the *New York Daily News*.¹¹ These articles review attempts to match voter rolls to other large lists in an effort to find allegedly ineligible voters; the limitations of such studies are discussed later in this paper.

Similarly, there are surprisingly few sources of information specifically analyzing the allegations of alleged voter fraud to determine the extent to which they show reliable evidence of fraud. In two studies, both focusing more heavily on the political and legal context of voter fraud allegations, Professor Lorraine Minnite has reviewed several incidents.¹² Professor Spencer Overton, a former commissioner on the 2005 Commission on Federal Election Reform, has also reviewed several incidents of alleged fraud in his book *Stealing Democracy*.¹³ After careful analysis, both authors find the claims largely overblown.

Among its other work on the subject,¹⁴ the Brennan Center for Justice has developed a methodology for reviewing allegations of voter fraud,¹⁵ and continues to collect analyses of noted allegations at www.truthabout-fraud.org. This paper distills the results of that work, compiling for the first time the recurring methodological flaws that continue to spawn allegations of widespread voter fraud where it does not exist.

IV. VOTER FRAUD AND THE PRESS FOR PHOTO ID

The most common example of the harm wrought by imprecise and inflated claims of “voter fraud” is the call for in-person photo identification requirements. Such photo ID laws are effective *only* in preventing individuals from impersonating other voters at the polls — an occurrence more rare than getting struck by lightning.¹⁴

By throwing all sorts of election anomalies under the “voter fraud” umbrella, however, advocates for such laws artificially inflate the apparent need for these restrictions and undermine the urgency of other reforms.

Moreover, as with all restrictions on voters, photo identification requirements have a predictable detrimental impact on eligible citizens. Such laws are only potentially worthwhile if they clearly prevent more problems than they create. If policymakers distinguished real voter fraud from the more common election irregularities

erroneously labeled as voter fraud, it would become apparent that the limited benefits of laws like photo ID requirements are simply not worth the cost.

THE VOTER FRAUD PHANTOM DRIVES POLICY
THAT DISENFRANCHISES ACTUAL LEGITIMATE
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BENEFIT.

Royal Masset, the former political director for the Republican Party of

Texas, concisely tied all of these strands together in a 2007 *Houston Chronicle* article concerning a highly controversial battle over photo identification legislation in Texas. Masset connected the inflated furor over voter fraud to photo identification laws and their expected impact on legitimate voters:

Among Republicans it is an “article of religious faith that voter fraud is causing us to lose elections,” Masset said. He doesn’t agree with that, but does believe that requiring photo IDs could cause enough of a dropoff in legitimate Democratic voting to add 3 percent to the Republican vote.¹⁷

This remarkably candid observation underscores why it is so critical to get the facts straight on voter fraud. The voter fraud phantom drives policy that disenfranchises actual *legitimate* voters, without a corresponding actual benefit. Virtuous public policy should stand on more reliable supports.

V. THE TRUTH ABOUT VOTER FRAUD

There have been a handful of substantiated cases of individual ineligible voters attempting to defraud the election system. But by any measure, voter fraud is extraordinarily rare.

In part, this is because fraud by individual voters is a singularly foolish and ineffective way to attempt to win an election. Each act of voter fraud in connection with a federal election risks five years in prison and a \$10,000 fine, in addition to any state penalties.¹⁸ In return, it yields at most one incremental vote. That single extra vote is simply not worth the price.

Instead, much evidence that purports to reveal voter fraud can be traced to causes far more logical than fraud by voters. Below, this paper reviews the more common ways in which more benign errors or inconsistencies may be mistaken for voter fraud.

CLERICAL OR TYPOGRAPHICAL ERRORS

In the course of millions of recorded votes and voters, it is virtually certain that there will be clerical errors. Often, what appears to be voter fraud—a person attempting to vote under a false name, for example — can be traced back to a typo.

Errors in the poll books. In a jurisdiction of any significant size, it is unfortunately easy to make an entry in the poll book next to the wrong voter's name. For example, despite having died in 1997, Alan J. Mandel was alleged to have voted in 1998; upon further investigation, Alan J. Mandell (two "l"s), who was very much alive and voting at the time, explained that local election workers simply checked the wrong name off of the list.¹⁹ The same problem may occur when information from a poll book is entered incorrectly into a county's computer system, as in Milwaukee in 2004.²⁰ Or voters — legitimate voters — may make a mistake: a 1994 investigation of fraud allegations in California, for example, revealed that voters accidentally signed the poll books on the wrong lines, next to the names of deceased voters.²¹

Errors in registration records. Simple typos may also infect voter records, changing a name or an identifying number or an address in a way that interferes with attempts to validate the voter's information against some other source. For example, in Washington State in 2006, Marina Petrienko tried to register to vote for the first time, but a county official mis-typed the year of her birth, entering "1976" into the database, instead of the year on her form: "1975."²² First-time Illinois voters Mike and Sung Kim "had been mistakenly registered with Kim as their first names" in 2004.²³ And in Milwaukee, Victor Moy was listed on the rolls as living at 8183 W. Thurston Avenue, but actually resides at number 8153.²⁴ Because such typos may prevent registrations from being externally validated by information in other sources, officials and observers may believe that registrations are fraudulent when they are, in reality, entirely legitimate.

BAD "MATCHING"

The most common source of superficial claims of voter fraud, and the most common source of error, probably involves matching voter rolls against each other or against some other source to find alleged double voters, dead voters, or otherwise ineligible voters.

Errors in the underlying data. Some such matches fail to account for errors or default entries in the underlying data. In New Jersey in 2005, for example, examiners alleged fraud by individuals on the voter rolls in two different places whose first and last names and birthdates matched, including a woman named Mary Johnson.²⁵ Closer examination, however, showed that some of the matching birthdates in question were January 1, 1880, which was simply a system default for missing information.²⁶ In reality, the examiners had found only two different women named "Mary Johnson," with no relevant birthdate information at all.

Partial matches. Other matches neglect middle names or suffixes: in the same New Jersey procedure described above, for example, James A. Smith and James G. Smith were presumed to be the same person, as were J. T. Kearns and J. T. Kearns, Jr.²⁷ Similarly, in New Hampshire, 22 pairs of people who shared the same first and last names were flagged for possible double-voting; in fact, all of the flagged voters had different middle names.²⁸ And in one of the more infamous examples of inappropriate matching, a vendor preparing a set of voters to be purged in Florida in 2000 found "matches" in the first name if the first four letters were the same on two different lists, and "matches" in the last name if 80% of the letters were the same.²⁹ The final set of voters to be purged, of course, contained the names of many individuals whose records had been falsely matched.³⁰

The "birthdate" problem. Even given an exact match, however, two entries with the same name and birthdate may not represent the same individual. Statistics students are often surprised to discover that in a group of 23 people, it is more likely than not that two will share the same month and day of birth; in a group of 180, two will probably share the same birthdate. In any group of significant size, statistics teaches that there will be many with the same first and last names — and it is likely that at least two such voters will be born on the same day.³¹ It should not therefore be surprising, for example, that "Kathleen Sullivan" was most likely listed twice on the rolls of 2004 New Jersey voters not because one woman drove the length of the state to cast a second ballot, but because two women named Kathleen Sullivan happen to share the same birthdate.³²

JUMPING TO CONCLUSIONS

Those searching for fraud — politicians, pundits, and even occasionally prosecutors — sometimes jump to unwarranted conclusions with a limited amount of information. The “birthdate problem” above — mistaking two different people with the same name and birthdate — is one example. But there are many other circumstances in which observers draw illicit conclusions from data that in fact have a benign explanation.

Dual registration. Registering twice — or mistakenly leaving an old registration on the rolls — is not meaningful evidence of an intent to commit fraud by voting twice. There is no requirement that citizens inform their local election officials before they move, and with approximately 14% of Americans moving each year,³¹ it is not surprising to find that many voters are registered under multiple addresses — but vote only once. In New Hampshire in 2004, for example, local officials found 67 individuals on the rolls in both Dover and Durham; each of the 67 had moved from one town to the other, and each voted only once.³²

It may seem significantly more suspicious to register twice on the same day — but even then, two registrations do not necessarily yield two votes. In 2004, for example,

FRAUD BY INDIVIDUAL VOTERS IS A SINGULARLY FOOLISH WAY TO ATTEMPT TO WIN AN ELECTION.

federal prosecutors charged Wisconsinite Cynthia Alicea with double-voting. Wisconsin allows residents to register on Election Day, which Alicea did. Poll workers found an error on the form, and asked Alicea to fill out another, which she also did — but the first form was never discarded. Although Alicea completed two registration forms, following poll worker instructions, she voted only once. Her innocence was eventually proven, but not before prosecutors forced the 23-year-old through an unwarranted trial.³³

Death records. Voting from the grave offers salacious headlines, and investigators often attempt to match death records to voter rolls in an attempt to produce purported evidence of fraud. Yet in addition to the problems with inaccurate matching identified above, a simple match of death records to voter rolls may conceal citizens who voted before dying, in quite ordinary fashion. In Maryland in 1995, for example, an exhaustive investigation revealed that of 89 alleged deceased voters, none were actually dead at the time the ballot was cast. The federal agent in charge of the investigation said that the nearest they came was when they “found one person who had voted then died a week after the election.”³⁴ Similarly, in New Hampshire, postcards were sent to the addresses of citizens who voted in the 2004 general election; one card was returned as undeliverable because the voter died after Election Day, but before the postcard arrived at her home.³⁵

Criminal records. Reports of votes by persons with convictions have often fed claims of voter fraud. Yet without more information, such reports may be deceptive. Many, if not most, convictions are misdemeanors, which in most states do not affect the defendant’s voting rights. Wallace McDonald, for example, was purged from the Florida voter rolls in 2000 because of a conviction. Yet Mr. McDonald’s crime was not a felony, for which many Floridians forfeit voting rights forever — but merely a misdemeanor, which should not affect voting rights at all. Indeed, Mr. McDonald had been convicted only of falling asleep on a bench.³⁶ Similarly, in Washington’s 2004 gubernatorial election, hundreds of citizens were alleged to have voted illegally because of convictions that were actually juvenile dispositions — which do not disqualify voters.³⁷

Other claims of fraud rely solely on the fact that someone was convicted but never look to see whether the accused person had his voting rights restored. Even in Florida, where, until 2007, most persons with felony convictions lost their voting rights permanently, not every person convicted of a felony was ineligible to vote. Reverend Willie Dixon, 70, was purged from the Florida voter rolls in 2000 because of a felony conviction — but Reverend Dixon had already been pardoned for his crime and his voting rights had been restored.⁴⁰ In most other states, persons with convictions regain the franchise after release from either incarceration, probation, or parole. Allegations of fraud that rely on a past criminal conviction but fail to investigate whether voting rights were restored will likely prove unfounded.

Returned mail. Voter “caging” is a tactic involving a mass mailing to registered voters to sniff out mailings that are returned undelivered; these undelivered mailings are then used to compile a list of voters allegedly enrolled under invalid addresses. But for many reasons, undelivered mail need not be an indication that a person registered at the given address is not entitled to vote there.⁴¹ A voter may be away from home for work, like a Louisiana Congresswoman challenged because she received her mail in Washington;⁴² or for military service, like an Ohio servicewoman challenged because she received her mail where she was stationed, in North Carolina;⁴³ or for an extended vacation, like an Oregon woman rendered inactive because she was out of the country for a few months.⁴⁴ A voter may live with others but be unlisted on the mailbox. Or, like Ohio resident Raven Shaffer, he may receive mail at a post office box or other mail service, and not at his registered residence.⁴⁵ Moreover, some mail is simply not delivered, through no fault of the voter: in the 1990 census, for example, *The New York Times* reported that “[a]lthough at least 4.8 million [census] forms were found to be undeliverable by the Postal Service, 1.8 million of those were later delivered by hand.”⁴⁶ And recent reports found that government records used by Chicago postal workers to deliver mail contained more than 84,000 errors.⁴⁷

Mail sent to a listed registration address may also be returned as undeliverable because the voter has moved — even though the citizen remains wholly eligible to vote without re-registration. Each state has different rules determining when a voter who has moved must inform election officials of her new address. At a minimum, however, federal law provides that if a voter has moved within the same area covered by a given polling place — if, for example, a voter moves from one apartment to another within the same apartment complex, as a 2000 Oregon voter did⁴⁸ — she may legitimately vote at that polling place even if she has not yet notified a registrar of her move.⁴⁹ Similarly, a voter who has moved within the same registrar’s jurisdiction and Congressional district may return to vote at her former polling place without re-registering.⁵⁰ Especially in urban areas where there is high mobility within a particular neighborhood, undeliverable mail may simply reflect the recent move of a voter who remains fully eligible to vote.

Unusual addresses. In most states, voters must register at a residential address; those looking for fraud may therefore flag addresses zoned for business use as an indication of fraudulent activity. Broad zoning restrictions, however, do not account for many less traditional — but legitimate — residences. Barbara Taylor was among hundreds of Washington voters challenged in 2005 for this reason. While it is true that the address on her registration was the address of a public storage facility, Taylor explained that she is “a manager for the company and has lived in an apartment on the site for 12 years.”⁵¹ In other cases, transient or homeless individuals have registered — as they are legally entitled to do — at shelters or government buildings.⁵²

Records compiled for a different purpose. In St. Louis in 2000, officials compared the voter rolls to city property records and alleged that some voters fraudulently registered from vacant lots.³³ The property records, however, were originally compiled for a purpose other than individual identification; an address with multiple plots of land was apparently deemed entirely “vacant” if only one of the plots had no building. Further investigation by local reporters revealed that the supposedly vacant lots where voters were registered in fact contained valid residences.³⁴

VOTER MISTAKES

Even after accounting for the false conclusions above, investigations reveal that ineligible voters do sometimes cast votes. It is important, however, to distinguish those cases in which voters know they are ineligible but vote anyway — real voter fraud — from cases in which ineligible voters mistakenly believe themselves to be eligible. Both scenarios are unquestionably of concern. But it is likely to be more productive to address mistakes with remedies different from those often proposed for fraud.

Of the relatively small number of ineligible voters who mistakenly cast ballots, most are citizens rendered ineligible by criminal conviction. The laws concerning eligibility vary from state to state and can be confusing; different voters are disenfranchised for different convictions for different lengths of time.³⁵ Moreover, the process of restoring a citizen’s right to vote varies as well, from automatic restoration upon release from prison in states like Pennsylvania, Indiana, Ohio, Illinois, and Michigan,³⁶ to the excruciatingly burdensome application process in Kentucky — which requires all would-be voters to submit a written application accompanied by three character references, an essay explaining why they should be eligible to vote, and a filing fee.³⁷

These rules are not merely difficult for voters to navigate; election officials with special training in the rules and regulations governing eligibility routinely get the law wrong. A 2004 survey, for example, found that 43% of New Jersey’s county election offices did not follow state law in restoring citizens’ right to vote.³⁸ In New York, a much-publicized 2003 survey found that more than half of the local election officials did not follow state law; when the survey was repeated just two years later, 38% of the local boards of elections still got the law wrong.³⁹

It is difficult to expect disenfranchised voters to navigate the election laws successfully when so many election officials with expertise do not. Indeed, in Milwaukee, one voter asked to present identification at the polls showed his Department of Corrections ID card, with “OFFENDER” printed in bold letters across the face — but he was not informed by any poll worker that he might be ineligible to cast a ballot.⁴⁰ Such cases show confusion ... but not voter fraud.

VI. TYPES OF "VOTER FRAUD"

Allegations of "voter fraud" seem to fall into one of several recurring categories. Some would represent actual fraud if the allegations proved true, though the allegations are often unsupported. Some would not actually represent fraud even if they were true. This paper reviews some of the more common assertions of "fraud" below, to substitute more careful analysis for overreager and salacious headlines.

ALLEGATIONS OF DOUBLE VOTING

Allegations of double voting are among the most common assertions of voter fraud. Consider one set of agitated headlines: "More Double Voting Tied to '04 Election,"⁶¹ "Double Voting Being Investigated,"⁶² "Double Voting Fear Rises,"⁶³ "Hundreds Might Have Double-Voted,"⁶⁴ "Exposed: Scandal of Double Voters,"⁶⁵ Most of these reports are hypothetical — hundreds "might" have double voted — and further research shows reason to question the conclusion that widespread double voting occurred. Other reports appear more certain but are actually more incorrect.

There are a handful of known cases in which admissions, poll book entries, absentee ballots, provisional ballot stubs, or other documentation indicate that one individual has actually voted twice.⁶⁶ These cases are extremely rare — not because such documentation is hard to come by (many states require that such documents be retained), but because actual double voting is itself extremely rare. Moreover, the scarcity is expected, given the severity of the penalty (criminal prosecution), and the meager nature of the payoff (one incremental vote).

ALICEA VOTED ONLY ONCE, BUT BASED ON TWO REGISTRATION FORMS, PROSECUTORS TOOK HER TO TRIAL. SHE EVENTUALLY WON HER CASE BUT, BECAUSE OF THE ORDEAL, "SHE'S INCLINED NOT TO VOTE EVER AGAIN".

Instead, it is far more common to see allegations of epidemic double voting that are unfounded. Such claims are usually premised on matching lists of voters from one place to another; upon closer inspection, the match process shows error. Sometimes the interpretation is flawed:

two list entries under the same name — even the same name and birthdate — indicate different individuals, as with two Kathleen Sullivans confused for each other in New Jersey in 2004.⁶⁷ The opportunity for error increases with the size of the attempted match: when allegations of fraud in 2000 were based on a nationwide attempt to match names and birthdates, it is not surprising that 3,273 alleged double voters were found — and not surprising that many, like those attributed to Martha Alexander, the chair of the North Carolina legislature's panel on election laws, were based on flawed assumptions that two people with the same name and birthdate were the same individual.⁶⁸ Moreover, sometimes the lists themselves are flawed: because of the occasional clerical error by overworked and undertrained election workers, an individual is marked as voting when she did not in fact cast a ballot, as Missouri investigators discovered in 2004.⁶⁹

Sometimes, merely following a poll worker's accurate instructions can land legitimate voters in unwarranted hot water. In 2004, for example, federal prosecutors were especially attuned to claims of voter fraud, and fixed the weight of the federal government on 23-year-old Cynthia Alicea. Alicea, an eligible resident of Wisconsin, registered on Election Day, as permitted under Wisconsin law. Poll workers found an error on the form, and asked Alicea to fill out another, which she also did. The poll workers, however, never discarded the first form. Alicea voted only once, but based on the two registration forms, prosecutors took the young woman to trial. Though she eventually won her case, because of the ordeal, "she's inclined not to vote ever again."⁷⁵

Exaggerated or unfounded allegations of fraud through double voting include the following:

- In Missouri in 2000 and 2002, hundreds of voters were alleged to have voted twice, either within the state or once in Kansas and once in Missouri. The same analysis acknowledged that the "computer files contain many errors that show people voting who did not actually vote."⁷⁶ Of 18 Kansas City cases that reporters followed up, 13 were affirmatively shown to result from clerical errors.⁷⁷ We are aware of public sources substantiating only four cases (amounting to six votes within the state), yielding an overall documented fraud rate of 0.00039%.⁷⁸
- In New Hampshire in 2004, citizens were alleged to have voted twice. In fact, on further investigation, many of the voters who were allegedly listed multiple times on the rolls actually represented different people with identical names; others were listed with multiple registrations, but voted only once. We are not aware of any public materials substantiating the claims of double voting.⁷⁹
- In New Jersey in 2004, 4,397 voters were alleged to have voted twice within the state, and 6,572 voters were alleged to have voted once in New Jersey and once elsewhere.⁸⁰ Many of these alleged double votes were actually flawed matches of names and/or birthdates on voter rolls.⁸¹ Only eight cases were actually documented through signatures on poll books; at least five signatures appear to match.⁸² Even if all eight proved to reveal fraud, however, that would amount to an overall double voting rate of 0.0002%.⁸³
- In New York in 2002 and 2004, between 400 and 1,000 voters were alleged to have voted once in New York and once in Florida. These allegations were also prompted by a flawed attempt to match names and birthdates.⁸⁴ We are aware of public sources substantiating only two cases, yielding an overall documented fraud rate of 0.000009%.⁸⁵
- In Wisconsin in 2004, dozens of voters were alleged to have voted twice. After further investigation, the vast majority were affirmatively cleared, with some attributed to clerical errors and confusion caused by flawed attempts to match names and birthdates. There were 14 alleged reports of voters casting ballots both absentee and in person; at least 12 were caught, and the absentee ballot was not counted. There were no substantiated reports of any intentional double voting of which we are aware.⁸⁶

ALLEGATIONS OF DEAD VOTERS

Allegations of “dead voters” are also popular, not least for the entertaining pop culture references to be found in the headlines: “Among Voters in New Jersey, G.O.P. Sees Dead People,”⁸² for example, or “Dead Man Voting.”⁸³ After further investigation, however, these allegedly dead voters often turn up perfectly healthy.

There are a handful of known cases in which documentation shows that votes have been cast in the names of voters who have died before the vote was submitted.⁸⁴

It is far more common, however, to see unfounded allegations of epidemic voting from beyond the grave, with a chuckle and a reference to Gov. Earl Long’s quip (“When I die — if I die — I want to be buried in Louisiana, so I can stay active in politics.”) or Rep. Charlie Rangel’s update (same idea, but takes place in Chicago).⁸⁵

Here, too, flawed matches of lists from one place (death records) to another (voter rolls) are often responsible for misinformation. Sometimes the interpretation is flawed: two list entries under the same name indicate different individuals.⁸⁶ Sometimes the lists themselves are flawed: as Hilde Stafford discovered in 2006, individuals who are in fact quite spry are occasionally listed as deceased on the Social Security Administration’s master files.⁸⁷ And sometimes, because of clerical error by election workers or voters or both, an individual is marked as voting when she did not in fact cast a ballot, or is marked as voting under the wrong person’s name. For example, despite having died in 1997, Alan J. Mandel was alleged to have voted in 1998. On further investigation, Alan J. Mandell (two “l”s), who was very much alive and voting at the time, explained that local election workers simply checked the wrong name off of the list.⁸⁸ Indeed, a 2007 investigation of about 100 “dead voters” in Missouri revealed that every single purported case was properly attributed either to a matching error, a problem in the underlying data, or a clerical error by elections officials or voters.⁸⁹

In other circumstances, the match is accurate but reveals nothing illegal about the vote: the voter has died, yes, but *after* casting her ballot. In Maryland in 1995, for example, an exhaustive investigation revealed that of 89 alleged deceased voters, none were actually dead at the time the ballot was cast. The federal agent in charge of the investigation said that the nearest they came was when they “found one person who had voted then died a week after the election.”⁹⁰

Exaggerated or unfounded allegations of fraud by dead voters include the following:

- In Georgia in 2000, 5,412 votes were alleged to have been cast by deceased voters over the past 20 years.⁹¹ The allegations were premised on a flawed match of voter rolls to death lists. A follow-up report clarified that only one instance had been substantiated, and this single instance was later found to have been an error: the example above, in which Alan J. Mandel was confused with Alan J. Mandell.⁹² No other evidence of fraudulent votes was reported.
- In Michigan in 2005, 132 votes were alleged to have been cast by deceased voters.⁹³ The allegations were premised on a flawed match of voter rolls to death lists. A follow-up investigation by the Secretary of State revealed that these alleged dead voters were actually absentee ballots mailed to voters who died before Election Day; 97 of these ballots were never voted, and 27

were voted before the voter passed away.⁹⁸ Even if the remaining eight cases all revealed substantiated fraud, that would amount to a rate of at most 0.0027%.⁹⁹

- In New Jersey in 2004, 4,755 deceased voters were alleged to have cast a ballot. The allegations were premised on a flawed match of voter rolls to death lists. No follow-up investigation publicly documented any substantiated cases of fraud of which we are aware, and there were no reports that any of these allegedly deceased voters voted in 2005.¹⁰⁰
- In New York in 2002 and 2004, 2,600 deceased voters were alleged to have cast a ballot, again based on a match of voter rolls to death lists. Journalists following up on seven cases found clerical errors and mistakes but no fraud, and no other evidence of fraud was reported.¹⁰¹

ALLEGATIONS OF FRAUDULENT ADDRESSES

Those claiming voter fraud also point to allegations that voters have been registered at fraudulent addresses such as vacant lots, storage units, or government buildings. As with the allegations above, there are a few cases in which charges that votes have been improperly cast from illegitimate addresses have been substantiated.¹⁰²

More often, however, the allegations are either unsupported or further investigation reveals that the allegedly flawed addresses turn out to be legitimate.

These sorts of claims are often based on postcards that are returned undelivered or undeliverable — but the postcards are an unreliable indicator. Typos during the registration process, like the one listing Victor Moy at 8183 W. Thurston Avenue in Milwaukee instead of 8153,¹⁰³ may cause mail to be misdirected. Or, like the post office box used by Raven Shaffer in Ohio, individuals may receive mail at an address different from the legal residence they list as their registration address.¹⁰⁴

Other unsupported claims are based on attempts to screen registration addresses against lists of vacant lots, or against zoning regulations to find locations dedicated to non-residential use. Here, too, typos may cause legitimate addresses to be flagged as suspicious.¹⁰⁵ Or the underlying lists may be flawed: in Missouri in 2000, lots that were supposedly vacant actually held houses.¹⁰⁶ Sometimes the lists are simply overly broad, and capture voters who list less traditional — but entirely legitimate — residences. Barbara Taylor, for example, was among hundreds of Washington voters challenged in 2005 for this reason. While it is true that the address on her registration was the address of a public storage facility, Taylor — a manager for the storage company — “has lived in an apartment on the site for 12 years.”¹⁰⁷ Though her address appeared superficially questionable, her address was in fact entirely legitimate.

Finally, a variant of the above claims concern allegations that large numbers of votes are all tied to one address. There is, however, nothing inherently suspect about multiple votes from one address if multiple eligible voters live there, whether the address is a college dormitory or nursing home or any other group housing arrangement. In New Hampshire, for example, a citizen apparently became concerned because 88 individuals had registered with residences on property owned by Daniel Webster College; on further investigation, the 88 registrations were revealed to be from students at the college — and unsurprisingly, entirely legitimate.¹⁰⁸

Exaggerated or unfounded allegations of fraud by voters with invalid addresses include the following:

- In Missouri in 2000, 79 voters were registered from addresses alleged to be vacant lots, but further investigation found that properties classified as vacant in fact contained legitimate residences, and that at least one of the voters was apparently the victim of a typographical error.¹⁰⁵ We are aware of no public reports substantiating claims that any votes were cast by individuals fraudulently registered at invalid addresses.
- In New Hampshire in 2004, based on undelivered postcards sent after the election, citizens were alleged to have voted from invalid addresses. Many actually lived at the addresses claimed, but received their mail elsewhere. Others moved after the election but before the postcards arrived. We are aware of only two substantiated cases (including one domestic violence victim, who voted from an old address in order to avoid disclosing her current domicile), with two more under investigation. Even if all four revealed fraud, that would amount to an overall rate of 0.0006%.¹⁰⁶
- In Wisconsin in 2004, after an attempt to match voters' addresses to a postal service list, 1,242 votes in Milwaukee were alleged to be fraudulent; many of these allegations were later traced to data entry errors or to legitimate residences that were presumed to be business addresses.¹⁰⁷ 5,800 additional Election Day registrants were sent undeliverable postcards, but many of these postcards were returned because the voters legitimately moved after the election.¹⁰⁸ We are aware of no substantiated reports of any votes cast by individuals fraudulently registered at invalid addresses.

ALLEGATIONS OF VOTER FRAUD BY PERSONS WITH FELONY CONVICTIONS

Many close elections have also featured allegations that waves of ineligible people with felony convictions have deliberately overtaken the voting system. There are, however, only a handful of known cases in which people rendered ineligible by convictions cast ballots despite knowing that they were not permitted to do so.¹⁰⁹

More frequently — though still quite rare — individuals who are ineligible because of convictions have reportedly registered or voted *without* realizing that they were ineligible. In Washington in 2004, for example, there were reports of voting by ineligible persons with convictions, in substantial part because of significant confusion about the circumstances under which civil rights were taken away or restored.¹¹⁰ At the time, citizens convicted of a felony were disenfranchised both while in prison and after they had returned to the community on parole or probation. In order to regain the right to vote, these citizens had to complete their sentence — including repayment of all restitution, fees, and fines.¹¹¹ Confusion abounded. Many citizens with convictions thought they could vote again once they were released from probation.¹¹² Some individuals rendered ineligible by conviction were allegedly told by corrections officers that they could vote; other probationers were apparently mailed ballots they thought they could (indeed, should) cast.¹¹³ At least one county elections office provided mistaken information on its website.¹¹⁴

Similar confusion was not confined to Washington. A 2004 survey in New Jersey, for example, found that 43% of election offices got the law wrong; the error rate by election officials in New York was 38%.¹¹⁵ When more than a third of trained election officials do not know the rules, it is not hard to imagine that persons with convictions are also poorly informed. Moreover, given the ease with which poll book entries can be

double-checked against lists of convictions to find ineligible voters, it seems unlikely that ineligible citizens would take the substantial risk of a return to prison for just one incremental vote. On the rare occasions when citizens rendered ineligible by conviction do vote, it is far more sensible to believe that they do so by mistake than that they do so with intent to deceive.

The few examples above concern actual votes — intentional or unintentional — cast by people who are ineligible because of a conviction. More common are allegations of such activity that prove unfounded. Such reports are often based on comparisons of voter rolls with lists of people who have been convicted. Yet these “matches” are subject to the same errors mentioned repeatedly above: typos, clerical errors, individuals who superficially appear to be the same person but are actually different. The notorious 2000 purge of purported felons in Florida is a good example: a system that found roughly similar names and birthdates on voter rolls and conviction records ended up disqualifying thousands of voters who were perfectly eligible to vote, but who were deemed ineligible by the “match.”¹¹⁶ For example, because of the inaccurate matching protocol, eligible citizen Matt Frost was prevented from voting because state officials incorrectly linked him with a similar alias of ineligible voter Shawn Chadwick.¹¹⁷

Even when the matching system is not to blame, allegations of ineligible voting may be inflated. As with at least some names on the 2000 Florida purge list, convictions may be mislabeled as disenfranchising felonies when in fact a voter has been convicted only of a misdemeanor.¹¹⁸ As in Washington in 2004, citizens may be accused of ineligible voting due to juvenile dispositions — which do not affect their voting rights.¹¹⁹ Or as with at least seven cases in Waukesha, Wisconsin, in 2004, accusations may fail to account for voters who are convicted *after* casting a legitimate vote.¹²⁰

Moreover, even when the individual in question has actually been convicted of an offense that renders him ineligible, few such voters are ineligible to vote indefinitely. Some, like Reverend Willie Dixon of Florida, have been pardoned, and their voting rights restored.¹²¹ Other convictions may be overturned on appeal. Still others, depending on the state, regain the franchise automatically or upon petition, after release from incarceration, probation, or parole. Allegations of fraud that look to convictions without accounting for the restoration of voting rights often miss the mark.¹²²

Exaggerated or unfounded allegations of fraud by persons rendered ineligible by conviction include the following:

- In Florida in 2000, a large-scale purge became justifiably notorious for its inaccurate, even haphazard, discarding of the rights of eligible citizens. Despite recognizing the flawed nature of the purge lists, however, reporters used similar lists to claim that 5,643 ineligible persons with convictions actually voted in 2000. These reports used slightly more rigorous match criteria than were used to create the purge lists, but still acknowledged that the underlying data included eligible citizens with misdemeanors, citizens with convictions *after* their valid vote, and convicted persons with names and birthdates that matched eligible citizen voters. It is true that some votes were cast by ineligible citizens, some of whom were told by election officials that they were eligible. We are not aware of any reports of citizens voting despite knowing that they were ineligible.¹²³

- In Wisconsin in 2004, after an attempt to match voters to Department of Corrections records, 376 people with allegedly disenfranchising convictions were said to have voted. A follow-up investigation revealed that several were found to be convicted *only after* they voted;¹²⁴ one was convicted of a misdemeanor,¹²⁵ and in another case, a woman's vote was improperly recorded in her ineligible husband's place.¹²⁶ Still another presented an identification card boldly labeled "OFFENDER," but was not told that he might be ineligible.¹²⁷ We are aware of sources documenting seven cases in which the voter knowingly voted while ineligible, yielding a fraud rate of 0.0002%.¹²⁸
- In Washington in 2004, evidence submitted in vigorously prosecuted election contest proceedings showed 1,401 votes by individuals rendered ineligible due to convictions. Some of these voters were apparently misinformed by official county election information or corrections officers; most were apparently sent ballots in the mail by the state. We are not aware of any reports that any of these individuals voted knowing that they were ineligible.¹²⁹

ALLEGATIONS OF VOTER FRAUD BY NONCITIZENS

We are not aware of any documented cases in which individual noncitizens have either intentionally registered to vote or voted while knowing that they were ineligible. Given that the penalty (not only criminal prosecution, but deportation)¹³⁰ is so severe, and the payoff (one incremental vote) is so minimal for any individual voter, it makes sense that extremely few noncitizens would attempt to vote, knowing that doing so is illegal.

Although there are a few recorded examples in which noncitizens have apparently registered or voted, investigators have concluded that they were likely not aware that doing so was improper. In one highly publicized case, for example, noncitizens were given voter registration forms by a group helping them through the naturalization process, immediately after successfully completing citizenship interviews with federal officials and receiving letters beginning "Congratulations, your application for citizenship has been approved."¹³¹ Though the actual swearing-in ceremonies were still up to 90 days away, these individuals most likely mistakenly thought it their obligation and privilege to complete the paperwork, and did not intentionally fabricate their citizenship status in front of federal officials who *knew* that they were noncitizens.¹³²

Far more common than these incidents of noncitizen voting are allegations of noncitizen voting that prove wholly unfounded. These claims are often premised on matching lists of voters from one place to another, but as with each of the examples above, upon closer inspection, the match process shows error. The interpretation may be flawed, as when two list entries under the same name indicate different individuals. Or the lists themselves may be flawed, with an individual marked due to a clerical error as voting when she did not in fact cast a ballot.

Government citizenship records — as the government itself acknowledges — are also replete with errors or incomplete information. Naturalization documentation may find its way into the government files slowly, or not at all, leaving outdated or inaccurate information for investigators looking for fraud. And this, in turn, leads to flawed accusations that noncitizens have been voting, when the voters in question have in fact become fully naturalized American citizens.

Exaggerated or unfounded allegations of fraud by noncitizens include the following:

- In Washington in 2005, an individual asked county offices to investigate the citizenship status of 1,668 registered voters based on their “foreign-sounding names.” There are no reports of which we are aware that any individual on the submitted list was actually a noncitizen.¹³³
- In Washington in 2004, documentation appears to show that two votes were cast in King County by noncitizens. There are no reports of which we are aware that either of these noncitizens knowingly voted illegally, although one did ask to rescind his vote shortly after the election. Given these votes, the rate of documented noncitizen votes — without proof of fraud — in King County was 0.0002%.¹³⁴
- In Milwaukee in 2001, journalists analyzed 370,000 voting records from 1992 to 2000, and found four instances in which voters’ names matched a list of naturalized city residents, but appeared to have voted before their naturalization dates; there is no indication of which we are aware that any of these four knowingly voted illegally. Even if all four of the matched records accurately represented noncitizen votes, the rate of noncitizen voting among the city records examined would have been 0.001%.¹³⁵
- In Hawaii in 2000, 553 apparent noncitizens were alleged to have registered to vote. On further investigation, 144 documented that they had become citizens. At least 61 individuals affirmatively asked to cancel their registration; the others were stopped at the polls and specifically asked about their citizenship before voting. There are no reports of which we are aware that any noncitizen actually voted. To the extent that noncitizens were actually represented on the rolls, officials attributed the registrations to mistake rather than fraud.¹³⁶
- In Hawaii in 1998, four years after an INS investigation into more than 10,000 names identified fewer than twelve noncitizens whose names matched those on the voter rolls, the INS again investigated claims of extensive noncitizen voting. The agency examined 1,200 noncitizens suspected of voting, but found no evidence that any had voted. A separate proceeding uncovered three noncitizens who had indeed voted in 1998, and three others who were reported to be under further investigation. There are no reports of which we are aware that any noncitizens voted knowing that they were ineligible. But even if all six had voted, the overall noncitizen voting rate would have been 0.001%.¹³⁷
- In California in 1996, 924 noncitizens allegedly voted in Orange and Los Angeles Counties, including 624 allegedly ineligible voters identified by the Task Force of the U.S. House of Representatives investigating the Dornan/Sanchez election. The allegations were based largely on attempts to match immigration lists to voter rolls, but only 71 voters matched name, date of birth, and signature; other matches were less reliable. Most of the identified voters were processed by one nonprofit group registering individuals proceeding through the naturalization process; many were registered immediately after passing an INS citizenship interview, and after receiving a letter indicating that they had become naturalized. At least 372 of the voters were apparently officially sworn in before Election Day. There are no reports of which we are aware that any noncitizens registered or voted knowing that they were ineligible. Even assuming there were no matching errors, and

leaving aside the critical question of intent, if all 552 remaining individuals were in fact noncitizens when they cast their votes, the overall noncitizen voting rate would have been 0.017%.¹³⁸

ALLEGATIONS OF REGISTRATION FRAUD

There have been several documented and widely publicized instances in which registration forms have been fraudulently completed and submitted. But it is extraordinarily difficult to find reported cases in which individuals have submitted registration forms in someone else's name in order to impersonate them at the polls. Furthermore, most reports of registration fraud do not actually *claim* that the fraud happens so that ineligible people can vote at the polls. Indeed, we are aware of no recent substantiated case in which registration fraud has resulted in fraudulent votes being cast.

Instead, when registration fraud is alleged, the allegations generally fall into one of four categories:

The first type of allegation concerns individuals intentionally submitting forms in the name of someone (or something) ineligible in order to have some fun or — more often — to make a point.¹³⁹ Most of the infamous stories of dogs on the rolls fall into this category, including a recent incident in Washington State.¹⁴⁰ Most of the time, these forms are discovered and investigated by local officials before they make it onto the rolls. There are no reports that we have discovered of votes actually cast in the names of such registrants.

The second type of allegation concerns “fraud” that is not actually fraud at all. This includes registration forms submitted by eligible voters, but with errors or omissions.¹⁴¹ Such mistakes are relatively common, but do not represent fraud. Similarly, there are many jurisdictions in which the registration rolls are inflated with the names of eligible voters who have moved or died or otherwise become ineligible.¹⁴² These lingering entries also do not represent fraud; furthermore, as states build and improve the statewide voter registration databases now required by federal law, it will become easier to remove ineligible voters from the rolls while maintaining safeguards for eligible registrants.

The third type of allegation concerns registration drive workers, who may be paid for their time or on the basis of how many forms they submit,¹⁴³ and who intentionally submit fraudulent forms. The allegations may involve forms submitted in the names of fictional voters, as in the case of “Jive Turkey,”¹⁴⁴ or with the names of actual voters but a false address or a forged signature.¹⁴⁵ Most of the cases of registration fraud that are prosecuted fall into this category.¹⁴⁶ If voter registration drives have enough time and are allowed by law to review the forms submitted by their workers, they can often catch these forms and draw them to the attention of local elections officials.¹⁴⁷ These forms actually defraud the voter registration drives, which compensate workers on the expectation that their time will be spent registering new and eligible citizens; the worker herself is interested not in defrauding the government, but in getting credit for work she didn't do.¹⁴⁸ When drives are able to flag these forms for elections officials, the forms are investigated, not processed, and the worker can be investigated and prosecuted. There are no reports that we have discovered of votes actually cast in the names of such registrants.

Finally, the fourth type of allegation involves individuals who change or manipulate the registration of an eligible voter to frustrate her ability to vote.¹⁴⁹ Like the deliberate destruction of forms,¹⁵⁰ these incidents are

rare and most often committed by partisan actors. Most states criminalize the intentional destruction of registration forms or fraudulent submission of forms. Like the allegations of fraud by election officials, these incidents do not concern allegations of fraud by individual voters, and we do not address them in detail here.

Exaggerated or unfounded allegations of voter fraud due to fraudulent registration forms include the following:

- In Florida in 2005, a registration drive was alleged to be submitting thousands of fraudulent registration forms and withholding valid ones, with a box of 179 complete but unsubmitted forms produced as evidence. The charges later proved groundless, and the disgruntled former worker who produced the box was found to have defamed the drive. There are no reports of which we are aware that any votes were cast using any fraudulent registration connected to the drive.¹¹⁹
- In Georgia in 2004, 3,000 allegedly fraudulent registration forms — with the same handwriting and with numerous errors — were submitted by a registration drive. Procedures apparently meant to protect the forms from interference seemed to interfere with the group's ability to perform quality control on the forms that were submitted. There are no reports of which we are aware that any votes were improperly cast using the name of any fraudulent registration form.¹²⁰
- In Missouri, in a departure from clear Department of Justice policy, four individuals were federally indicted on the eve of the 2006 election for alleged registration fraud in Kansas City. At least 1,492 other allegedly questionable voter registration forms were submitted to St. Louis, prompting the Board of Elections for the City of St. Louis to send misleading notices to a wide swath of voters who had registered through the same group.¹²¹ Yet the wrongdoers were an isolated few registration workers, and despite the skepticism of some that registration fraud occurs only to let ineligible people vote fraudulently, there are no reports of which we are aware that any votes were cast using any fraudulent registration connected to the drive.¹²²

ALLEGATIONS OF VOTER FRAUD BY DOGS

Popular media seem especially drawn to allegations that dogs are voting. These stories have a compelling “news of the bizarre” feel, and offer particular pleasure to punsters: “Prank Lands Voter in the Doghouse,”¹²³ “Woman Registers Her Dog to Vote; Prosecutors Growl,”¹²⁴ The fact, however, is that the voter rolls have not been overrun by canines. We are aware of only nine specific reports of dogs found on the voter rolls, including the registration card of “Ritzy Mekler” made infamous by Senator Kit Bond of Missouri.¹²⁵

At least six of the nine canine registrants were placed on the rolls by individuals trying to make a point about the fact that it is possible, if one risks prosecution, to place a dog on the voter rolls.¹²⁶ Which is to say, if people no longer registered dogs to show that dogs are on the rolls, dogs would no longer be on the rolls.

We are aware of only two cases — ever — involving ballots actually submitted in the name of a dog: the ballots cast by “Duncan MacDonald” in 2006 and 2007 (but labeled “VOID” and signed with a paw print),¹²⁷ and the ballot cast by “Raku Bowman” in 2003 in the Grass Roots Venice Neighborhood Council elections in Venice, California.¹²⁸ Only Bowman's vote — in a local election run by volunteers, rather than state or

federal election officials — was counted. Moreover, in order to cast these votes, both owners had to go to significant lengths: swear falsely on a voter registration form, forge a signature there, forge proof of identity, swear falsely again on the absentee ballot request form, forge a signature there, swear falsely again on the absentee ballot envelope itself, and forge a signature there. In an election for federal candidates, that could subject a defendant to up to thirty years in prison on federal charges alone.

ALLEGATIONS OF VOTE-BUYING

We also briefly mention allegations of vote-buying, which are often lumped together with “voter fraud,” though they do not usually involve allegations that the voters in question are ineligible. Instead, these incidents involve illegal agreements by *eligible* citizens to buy or sell their votes.

Vote-buying schemes may involve agreements to buy or sell votes for particular candidates, or they may simply involve payments for voting — candidate unspecified — in get-out-the-vote efforts targeted at communities thought more likely to support a particular candidate.¹⁴¹ Usually, the monetary value of the reward is fairly small: a small amount of cash, for example, or cigarettes, or food. And in virtually every case, a candidate or campaign staff are directly and centrally involved in brokering the illegal deal.

We mention such schemes specifically because they *do* still occur,¹⁴² and are often used to buttress claims that widespread fraud infects the election system.¹⁴³ However, for most purposes, it is necessary to distinguish vote-buying from the voter fraud that more typically captures the attention of the public. Because the individuals involved in vote-buying schemes are almost always citizens who are eligible to vote, vote-buying cannot possibly be addressed by most of the remedies proposed to confront voter fraud: photo identification rules, restrictions on registration, and the like. In supporting the need for policies that address alleged fraud by ineligible voters, then, it is misleading to include vote-buying in the list of wrongdoing.

ALLEGATIONS OF FRAUD BY ELECTION OFFICIALS

Similarly, reporters and analysts should be wary of attempts to bootstrap fraud by election officials or other insiders into compendiums of alleged “voter fraud.” Election fraud by insiders has been an issue since Senators wore togas. Sadly, there are still occasional reports of wrongdoing by those who are employed to safeguard the process. For example, in 2004, election judge Leander Brooks was convicted of casting at least twenty ballots in others’ names in 2002 in East St. Louis, Illinois; his cousin Michael Collins, a former city councilman, had been convicted of registering acquaintances from outside his precinct to vote fraudulently from a neighbor’s address in 1995.¹⁴⁴

Like the allegations of vote-buying above, fraud by election officials should be condemned, and documented acts of such fraud should be prosecuted. But also like the allegations above, such incidents should be clearly distinguished from voter fraud. Most remedies aimed at preventing alleged fraud by ineligible voters depend on honest enforcement of the law by election officials. Conversely, if as above, election officials are willing to pervert the law, policies aimed at policing voters will not be able to stop insiders from corrupting the system.

VII. APPENDIX

SELECTED CASE STUDIES

Allegations of widespread fraud by malevolent voters are easy to make, but often prove to be inaccurate. The Brennan Center has analyzed public materials in some of the areas branded as notorious election fraud “hot spots,” finding that various election irregularities led to inflated claims of widespread fraud.

In many of these cases, proposals to require restrictive identification documents of voters at the polls were under debate at the time of the election — or were proposed as a result. The cries of “voter fraud” were often used to support the call for restrictive ID.

We examined each of the allegations of fraud by voters to uncover the truth behind the assertions. Further case studies are available at our website devoted to the topic, www.truthaboutfraud.org.

Missouri	In some ways, the recent hunt for voter fraud began in Missouri in the 2000 election, the crucible that proved formative for Attorney General John Ashcroft and Senator Kit Bond, among others. Yet despite all the frenzy, the allegations yielded only six substantiated cases of Missouri votes cast by ineligible voters, knowingly or unknowingly, except for those votes permitted by court order. The six cases were double votes by four voters—two across state lines and two within Missouri—amounting to an overall rate of 0.0003%. None of these problems could have been resolved by requiring photo ID at the polls.
New Jersey	Just before the 2005 election, partisan actors attempted to probe the accuracy of New Jersey’s voter rolls by comparing election records for 2004 with death records and with the rolls of other states. The allegations yielded only eight substantiated cases of individuals knowingly casting invalid votes that counted—eight voters who voted twice. Given the number of votes cast in these elections, this amounts to a rate of 0.0004%. None of these problems could have been resolved by requiring photo ID at the polls.
Wisconsin	The 2004 election was hotly contested in Wisconsin, and various irregularities led to inflated claims of widespread fraud. The allegations yielded only seven substantiated cases of individuals knowingly casting invalid votes that counted—all persons with felony convictions. This amounts to a rate of 0.0025% within Milwaukee and 0.0002% within the state as a whole. None of these problems could have been resolved by requiring photo ID at the polls.

MISSOURI

The 2000 election was hotly contested in Missouri, and various irregularities led to inflated claims of widespread fraud. Many of these fraud claims were later used to support the call for restrictive ID requirements. We examined each of the allegations of fraud by individual voters — the only sort that ID could possibly address — to uncover the truth behind the assertions.

THE ALLEGATIONS:

- **Invalid addresses:** 79 individuals listed as voting in St. Louis City were registered from addresses alleged to be vacant lots. Further investigation found that properties that were wrongly classified by the city assessor's office as vacant in fact contained legitimate residences. Only 14 voters were found to be listed as registered from vacant lots, at least one of whom was apparently victim of a typographical error, and three more of whom moved within St. Louis City and may not have been required to re-register with a new address before voting.¹⁶⁵

14 addresses in St. Louis City were allegedly "drop sites" where fraudulent registrations might have been processed.¹⁶⁶ The 14 alleged "drop sites" in St. Louis City were addresses that were determined to be locations other than apartment buildings, nursing homes, or recognizable group homes where more than eight people were registered at each location. Seven of these addresses were actually visited by reporters, and all seven visits revealed that more than eight people properly lived at the address noted.¹⁶⁷

- **Ineligible by conviction:** 62 individuals listed as voting in St. Louis City and County matched the name, date of birth, and Social Security number of individuals listed on federal court records of felony conviction, and 52 individuals listed as voting in St. Louis County matched the name and date of birth of individuals listed on county records of felony conviction. It is not clear whether there was any overlap between the list of 62 and the list of 52, nor is it clear whether any of the individuals had had their rights restored before the election. We are not aware of any public reported analysis of poll records to determine whether individuals listed as voting actually voted and were not listed as voting due to a clerical error or mistakenly listed instead of an eligible voter with the same name and birthdate.¹⁶⁸
- **Double voters:** 23 individuals listed as voting on the voter rolls maintained by St. Louis City and County matched the name, date of birth, and Social Security number of another individual listed as voting; 45 individuals matched the name and date of birth of another voter. We are not aware of any public reported analysis of these poll records to determine whether individuals listed as voting actually voted twice and were not listed as voting due to a clerical error or mistakenly confused with another eligible voter with the same name and birthdate.¹⁶⁹

Based on a computer match of names and dates of birth on voter rolls, 150 individuals from St. Louis — presumably including the individuals above — were listed as voting twice in 2000 or 2002, and 150 other individuals from across the rest of the state were alleged to have either voted twice within the state or once in Kansas and once in Missouri. The same analysis acknowledged that the "computer files contain many errors that show people voting who did not actually vote."¹⁷⁰ Of 18 Kansas City cases that reporters followed up, 13 were shown to result from clerical errors, 2 were uncertain, and 3 appeared to show double voting in Missouri and Kansas — 2 in 2000 and 1 in 2002. (At least two of these were convicted in federal court.) One other case of double voting within Missouri in 2000, and one in 2002, were substantiated using poll records.¹⁷¹

- **Dead voters:** 14 votes in St. Louis City and County were cast in the names of allegedly dead people, based on a computer match of names, dates of birth, and Social Security numbers on the voting rolls against information in Department of Health records.¹⁷² It is not clear whether any of these individuals died after the election. We are not aware of any public reported analysis of poll records to determine whether individuals listed as voting actually voted and were not listed as voting due to a clerical error.¹⁷³

ADDITIONAL ALLEGATIONS OF IRREGULARITIES UNCONNECTED TO INDIVIDUAL VOTER FRAUD:

- **"Inactive" purge:** In St. Louis, approximately 49,589 eligible voters were removed from the active voter rolls and placed on an "inactive list" after postcards allegedly sent to them were returned as undeliverable. At many polling places, the "inactive lists" were not made available, and these voters were allegedly unlawfully instructed that they could not vote at their regular precinct, but instead had to travel to the central city office to wait on lengthy lines to affirm their registered status, and then return to their original polling places to vote. Some voters were still on line at the central office when the polls closed, and were not able to return to their polling places to vote.¹⁷⁴
- **Polling place time:** In St. Louis, the polls were kept open by court order until 7:45pm, 45 minutes past the original closing time. The lead plaintiff requesting this order was allegedly deceased, although later review showed that the plaintiff's name had been typed with an incorrect middle initial; the legal filings also stated that this plaintiff had been unable to vote when he had in fact voted. The effort to keep the polls open was alleged to have been conceived before Election Day. The delayed closing time allowed at least 100 voters to vote who otherwise would have arrived at the polls too late to cast a vote.¹⁷⁵
- **Court order:** At least 342 voters in St. Louis City and 891 voters in St. Louis County were allegedly improperly granted a court order allowing them to vote. The effort to seek court orders was also alleged to have been conceived before Election Day. Most of these voters allegedly gave insufficient reasons for obtaining a court order, although the report arriving at this conclusion stated an inaccurately high threshold for obtaining a court order.¹⁷⁶ 143 of these voters allegedly had not been registered by the voter registration deadline; it is not clear if any of the other voters were ineligible to vote.¹⁷⁷
- **Improper election judges:** 45 election judges in St. Louis City allegedly not registered to vote were later found to be validly registered; all were thought invalid because of typographical errors.¹⁷⁸
- **Inflated voter rolls:** St. Louis City had more names registered on the voting rolls than the voting-age population of the city, and 24,000 names were also listed as registered elsewhere in Missouri.¹⁷⁹
- **Chain of custody:** Ballot boxes were allegedly left unattended at 29 precincts.¹⁸⁰

THE RATE OF SUBSTANTIATED VOTER FRAUD:

- The allegations of fraud related to the 2000 general election, in which 124,752 votes were cast in St. Louis City, 497,577 votes were cast in St. Louis County, and 2,361,586 votes were cast in all of Missouri.¹⁸¹
- There were 6 substantiated cases of Missouri votes cast by ineligible voters, knowingly or unknowingly, except for those votes permitted by court order. These six cases were double votes by four voters – two across state lines and two within Missouri. This amounts to a rate of **0.0003%**. None of these problems could have been resolved by requiring photo ID at the polls.
- Even given allegations that were unsubstantiated, the rate of possible fraud remains low. The analysis above lays out the allegations, reasons to question each, and the facts that we now know. But assuming that **all 278** of the remaining questionable allegations—including 14 voters with allegedly invalid addresses, 114 allegedly ineligible persons with felony convictions, 68 allegedly double voters (at two votes apiece), and 14 votes in the names of allegedly deceased individuals—in fact represent ineligible votes, that would amount to a rate of **0.045%** within St. Louis City and County and **0.012%** within the state as a whole. If all 14 votes in the names of allegedly deceased individuals in fact proved fraudulent and were cast in person, these votes—0.002% within St. Louis City and County and 0.0006% within the state as a whole—might possibly have been resolved by requiring photo ID at the polls.

Note: this analysis does not include 228 unsubstantiated cases of alleged double voting across the state reported by the *Kansas City Star*, because they did not distinguish between votes cast in 2000 and 2002. In the 2002 general election, 1,877,620 votes were cast in Missouri.¹⁸²

COVERAGE BY EXISTING LAW:

- Proper implementation of the federal Help America Vote Act (HAVA), which was passed after (and to some extent, because of) the 2000 election, would have addressed most of these allegations. HAVA requires states to create statewide electronic voter registration lists with each eligible voter listed uniquely to remove duplicate registrations, and to coordinate those computerized lists with agency records on death and conviction in order to remove ineligible voters. Although the obligation to maintain these cleaned lists predated HAVA, the computerized registration rolls — if implemented with suitable controls for accuracy — offer a new and efficient means to do so statewide. Like most states, Missouri did not have a statewide computerized database up and running in 2000, but now that it does, the database should allow the state to sharply reduce even the small number of alleged invalid votes due to allegedly improper registrations.

NEW JERSEY

Just before the 2005 elections, partisan actors attempted to probe the accuracy of New Jersey's voter rolls by comparing them with death records and with the rolls of other states. The reports led to inflated claims of widespread fraud in the 2004 election, of the sort commonly used to support restrictive identification requirements for voters at the polls. We examined each of the allegations of fraud by individual voters—the only sort that ID could possibly address—to uncover the truth behind the assertions.

THE ALLEGATIONS:

- **Dead voters:** 4,755 votes were alleged to have been cast in the names of dead voters in 2004, based on an attempt to match the first and last name and date of birth from voting records to death records.¹⁹³ No follow-up investigation appears to have been published on the number of votes actually cast in the names of dead voters in 2004, if any. None of the allegedly dead voters actually voted in 2005.¹⁹⁴
- **Double voters:** 4,397 individuals allegedly voted twice in New Jersey, and 6,572 individuals allegedly voted both in New Jersey and in either New York, Pennsylvania, Florida, North Carolina, or South Carolina, based on an attempt to match the first and last name and date of birth from one set of voting records to another.¹⁹⁵ Analysis of the list of alleged double voters within New Jersey showed that 2,305 of the entries had different middle names or suffixes, or an error in the date of birth.¹⁹⁶ Data errors in Middlesex county, and the statistical likelihood of finding two different individuals with the same name and birthdate, call into question much of the remainder of the list.¹⁹⁷ Ultimately, the existence of eight double voters was substantiated through original signatures on poll book materials.¹⁹⁸

THE RATE OF SUBSTANTIATED VOTER FRAUD:

- The allegations of fraud related to the 2004 general election, in which 3,611,691 votes were cast in New Jersey.¹⁹⁹
- There were eight substantiated cases of individuals knowingly casting invalid votes—eight voters voting twice. This amounts to a rate of **0.0004%**. None of these problems could have been resolved by requiring photo ID at the polls.
- Even given allegations that were unsubstantiated, the rate of possible fraud remains low. The analysis above lays out the allegations, reasons to question each, and the facts that we know. But assuming that **all 13,419** of the remaining cases in fact involved voter fraud—which is highly unlikely, given the methodological errors revealed in the study of double-voting—that would amount to a rate of 0.61%.

COVERAGE BY EXISTING LAW:

- The federal Help America Vote Act (HAVA) requires states to create statewide electronic voter registration lists, and to coordinate those computerized lists with agency records on death in order to remove ineligible voters. Although the obligation to remove deceased voters from the rolls predated HAVA, the computerized registration rolls — if implemented with suitable controls for accuracy—offer a new and efficient means to do so statewide. Like most states, New Jersey did not have a HAVA-ready statewide database up and running in 2004, but once it does, the database should allow the state both to eliminate duplicate registrations within the state and to cut down on the number of deceased citizens who are still on the rolls.

WISCONSIN

The 2004 election was hotly contested in Wisconsin, and various irregularities led to inflated claims of widespread fraud. At the same time, Wisconsin citizens were debating a proposal to require restrictive identification of each voter at the polls, and the fraud claims were used to support the call for ID. We examined each of the allegations of fraud by individual voters—the only sort that ID could possibly address—to uncover the truth behind the assertions.

THE ALLEGATIONS:

- *Invalid addresses:* Based on an attempt to match voter roll entries to the U.S. Postal Service's database of street addresses, 37,180 people in Milwaukee were alleged to have registered from invalid addresses. Of these, 31,500 listed accurate street addresses, but had problems with an apartment number. Further review of the remaining allegedly invalid addresses revealed cases in which the list was corrupted; digits were dropped on some entries, making otherwise valid addresses appear fictitious. This review also showed typos turning valid addresses into invalid ones. Though reporters following up on the story could not locate 68 listed addresses, at least 400 addresses were affirmatively proven to be valid. The bipartisan Milwaukee Election Commission ultimately threw out a challenge lodged to 5,619 of the entries, citing insufficient evidence that the registrations were invalid. Still, poll workers were specifically instructed to ask challenged voters for proof of residency, so every voter on the list of 5,619 should have been asked for proof of proper residency.¹⁹⁸

1,242 Milwaukee votes were cast from allegedly invalid addresses, based on another computerized match; this match paired voter rolls with U.S. Postal Service and City of Milwaukee property lists, with spot checks of 40 specific addresses.¹⁹⁹ A sample of 300 of the entries showed that about 20% of the invalid addresses were attributed to data entry errors (e.g., "3130 S. 15th Place" became "3130 S. 15th St.," and "S. 68th St." became "S. 63rd St."). At least two other addresses ostensibly deemed business locations were found to be valid residences after an individual spot-check. Furthermore, 75% of these votes were from Election Day registrants, who were required to show proof of residence at the polls.²⁰⁰

- *Faulty registration cards:* In Milwaukee, 10,921 voter registration cards from Election Day voters were allegedly unable to be processed. This allegation turned out to be an error; in fact, 1,305 Election Day registration cards from Milwaukee could not be processed. 548 of these listed no address, and 48 cards listed no name, but voters had to show both proof of name and proof of residence to register on Election Day. 236 cards had missing or incomplete dates of birth, 28 had no signature, 141 listed addresses outside of the city limits, and 23 were deemed illegible. 155 cards were not processed because they had not been given a voter number by the city. It is unclear why the remaining 126 cards could not be processed.²⁰¹ 3,600 address verification cards mailed using information entered from these Election Day registrations were returned as allegedly undeliverable.²⁰² We are not aware of any further public investigation of these cards.²⁰³

2,200 address verification cards from outside of Milwaukee, mailed using information entered from Election Day registrations, were also returned as allegedly undeliverable.²⁰⁴ 313 of these were from Racine; 207 were returned because the voter moved after the election, and at least 24 addresses were entered incorrectly by election workers.²⁰⁵ Of the 1,887 returned address verifications of Election Day registrations from elsewhere around the state, 1,198 were returned because the voter moved after the election or was temporarily absent

when the card arrived; 610 showed a valid address but the individual could not be found there; 36 had an incorrect street number; 2 had an incorrect street name; 9 had a missing apartment number; 9 were sent to an address with no mailbox; 2 were sent to vacant addresses; and 21 were returned for some other reason.²⁰⁸

- **Ineligible by conviction:** The organizers of one pre-election jailhouse absentee ballot drive conducted a records check on 400 inmates who had signed up, found 18 ineligible, and alerted election officials; no votes were cast by these ineligible persons.²⁰⁹

376 individuals allegedly rendered ineligible by felony conviction cast ballots, based on an attempt to match voter rolls and information from the Department of Corrections.²⁰⁸ 96 individuals listed as voting in Milwaukee matched name, address, and birthdate against Department of Correction records, and 182 individuals listed as voting matched only name and address. At least one appears to have been erroneously listed as voting; he is listed as voting but claims that he did not, while his wife is not listed as voting, but did cast a ballot. Another 98 people listed as voting elsewhere around the state matched name, address, and birthdate against Department of Correction records, but at least 7 were convicted after the election, and were eligible at the time they cast their ballot.²⁰⁸

13 voters have been formally charged with fraudulently voting while ineligible; of these, 7 have been convicted, 1 voter was acquitted, 1 case was dismissed upon evidence that the voter was eligible when voting, 2 cases were dismissed for other reasons, and 2 cases were dismissed despite evidence that the voter was ineligible. In one of the latter cases, the voter provided his Department of Corrections identification card at the polls, which had "OFFENDER" printed in bold letters across the face, but was not told that he was ineligible to vote.²⁰⁸

3 others were documented as voting while ineligible but have not been charged. An additional voter documented as ineligible was found in 2006.²⁰⁸

- **Double voters:** A computer glitch in Milwaukee caused at least 314 voters who re-registered before or on Election Day to be listed twice on the rolls, with a notation of voting next to each listing. Each was given only a single ballot.²⁰⁸

83 people allegedly voted twice; 14 allegedly voted both absentee and in person, 9 allegedly voted in Milwaukee and other cities, 59 allegedly voted twice in Milwaukee, and 1 allegedly voted twice in Madison.²⁰⁸ Of the 59 voters alleged to have voted twice in Milwaukee, most registered twice but voted only once. 51 were cleared by investigators, 1 was acquitted at trial, 1 received no verdict at trial, and 1 was found incompetent to stand trial. Finally, another voter named Gloria Bell believes that she was confused with a woman named Gloria Bell-Phipps.²⁰⁸

Of the 9 voters alleged to have voted both in Milwaukee and in another city, all 9 were cleared of wrongdoing; clerical and scanning errors by poll workers accounted for 6 of the voters, 2 were fathers and sons alleged to be the same person, and 1 had a different middle name and birthdate from his alleged double.

Of the 14 voters alleged to have voted both absentee and in person, in at least 12 cases, after comparing absentee records to poll records, the absentee ballot was not counted.²⁰⁷

- **Dead voters:** 4 votes were cast in the names of allegedly dead people.²⁰⁸ These were all absentee ballots, cast by individuals who died within two weeks of the election; it is not clear whether the ballots were cast before the individuals died.²⁰⁹

- Impersonation: 1 vote was allegedly cast in the name of an individual who did not vote.²¹⁶ Further investigation of the alleged vote cast in the name of another was determined to be a clerical error by a poll worker.²¹⁷
- Fictitious voters: 2 votes were allegedly cast in the name of an individual who could not be verified as an actual individual.²¹² These votes were cast in the name of Marquis F. Murff, who could not be verified by a reporter as an actual individual. We are not aware of any further public investigation.²¹³
- Underage voter: One ballot was cast by a 17-year-old voter, using his real birthdate.²¹⁴
- Noncitizen: One columnist reported that a ballot was allegedly cast by a Canadian legal permanent resident. We are not aware of any further public investigation.²¹⁵
- Faulty registration: Four individuals allegedly submitted false voter registration applications.²¹⁶ 2 Milwaukee residents were convicted for submitting false voter registration applications; 1 person alleged to have supervised two others who turned in false forms was also convicted, but that conviction was overturned. The trial of one other individual accused of submitting false registration applications is still pending. No votes were alleged to have been cast under these registrations.²¹⁷

ADDITIONAL ALLEGATIONS OF IRREGULARITIES UNCONNECTED TO INDIVIDUAL VOTER FRAUD:

- "Extra" ballots: In Milwaukee, there were allegedly 8,300 more ballots cast than individuals processed as voting; the gap was later narrowed to 4,609. The discrepancy was later attributed to administrative error in reconciling poll book logs with ballots, and at least one typographical error in reporting results.²¹⁴
- Election Day interference: In Milwaukee, tires on 20 get-out-the-vote vans were allegedly slashed.²¹⁵
- Uncounted ballots: 238 valid absentee ballots from Milwaukee were counted late.²¹⁸
- Uncounted votes: 600 valid votes were allegedly not counted in Medford due to a computer error.²¹³
- Unprocessed registration cards: Eight boxes of valid registration cards were allegedly not processed in order to put voters on the rolls by the time individuals arrived at the polls.²²²

THE RATE OF SUBSTANTIATED VOTER FRAUD:

- The allegations of voter fraud related to the 2004 general elections, in which 277,565 votes were cast in Milwaukee, and 2,997,007 votes were cast in all of Wisconsin.²²³
- There were 7 substantiated cases of individuals knowingly casting invalid votes—all persons with felony convictions. This amounts to a rate of 0.0025% within Milwaukee and 0.0002% within the state as a whole. **None** of these problems could have been resolved by requiring photo ID at the polls.

- There were 11 substantiated cases of votes cast by ineligible Milwaukee voters—all persons with felony convictions. There are 8 substantiated cases of votes cast by ineligible voters from other parts of the state — 2 persons with felony convictions, 1 foreign national, 1 17-year-old voter, and 4 absentee ballots cast by deceased voters. That amounts to a rate of **0.004%** within Milwaukee and **0.0006%** in the state as a whole. **None** of these problems could have been resolved by requiring photo ID at the polls.
- Even given allegations that were unsubstantiated, the rate of possible fraud remains low. The analysis above lays out the allegations, reasons to question each, and the facts that we now know. But assuming that **all** 6,877 of the remaining questionable allegations—including 1,150 voter registration cards not processed, 5,356 allegedly flawed addresses, 353 other allegedly ineligible persons with convictions, 8 allegedly double voters (for a total of 16 votes), and 2 votes from the allegedly fictitious individual—in fact represent ineligible votes, that would amount to a rate of **2.2%** within Milwaukee and **0.2%** within the state as a whole. **None** of these votes could have been resolved by requiring photo ID at the polls.

COVERAGE BY EXISTING LAW:

- The vast majority of these allegations would have been addressed by adequate implementation of existing law. Elections officials should have been able to correct incomplete or illegible registration cards on site; the requirement of proof of residence for Election Day registrants should have caught invalid addresses on Election Day. Addresses of voters registering before Election Day could have been carefully investigated before Election Day — by an investigation more thorough than a computer match, and attuned to the possibility of data entry errors. If the investigation revealed questions, as occurred here, the questioned voters could have been validly challenged by election officials, and asked to verify their residence; if an investigation revealed fraud rather than error or a valid change of residence, the case could be referred for prosecutorial follow-through. Similarly, as occurred here, absentee ballots should have been matched against poll records to determine if a duplicate had been cast.
- Proper implementation of the federal Help America Vote Act (HAVA) would have addressed most of the remaining allegations. HAVA requires states to create statewide electronic voter registration lists with each eligible voter listed uniquely to remove duplicate registrations, and to coordinate those computerized lists with agency records on death and conviction in order to remove ineligible voters. Although the obligation to maintain these cleaned lists predated HAVA, the computerized registration rolls — if implemented with suitable controls for accuracy — offer a new and efficient means to do so statewide. Like most states, Wisconsin did not have a HAVA-ready statewide database up and running in 2004, but once it does, the database should allow the state to sharply reduce even the small number of alleged invalid votes due to allegedly improper registrations.

ENDNOTES

- 1 See also MINNITE, THE POLITICS OF VOTER FRAUD, *supra* note 12, at 6 (offering a similar definition).
- 2 See Sec'y of State Robin Carnahan, Voters First: An Examination of the 2006 Midterm Election in Missouri 8, 9 (Winter 2007), at <http://www.sos.mo.gov/elections/VotersFirst/VotersFirst-FINAL.pdf> (technical malfunction, user error); Greg Borowski, *A New Push to Repair Elections*, MILWAUKEE J. SENTINEL, May 15, 2005 (technical malfunction); Arakawa Lynda, *Recount Confirms Results*, HONOLULU ADVERTISER, Mar. 16, 1999, at A1 (technical malfunction).
- 3 See, e.g., Janine Anderson, *4 Men Face Voter Fraud Charge*, JOURNAL-TIMES (Racine, Wis.), Sept. 11, 2007; *Scores of Felons Voted Illegally*, SEATTLE TIMES, Jan. 23, 2005.
- 4 See, e.g., Jake Wagman, *Secretary of State Blames County on ID's*, ST. LOUIS POST-DISPATCH, Nov. 9, 2006, at D1.
- 5 See Richard L. Hahn, *The Fraudulent Fraud Squad*, SLATE, May 18, 2007; Rep. John Conyers, Jr., *The GOP's Attack on Voting Rights*, TOMPAINE.COM, May 13, 2005, http://www.tompaine.com/articles/2005/05/13/the_gops_attack_on_voting_rights.php. See also Jo Mannies, *Voting Rights Group Disappears From Web*, ST. LOUIS POST-DISPATCH, June 14, 2007.
- 6 AMERICAN CENTER FOR VOTING RIGHTS, OHIO ELECTION ACTIVITIES AND OBSERVATIONS, Mar. 21, 2005, <http://web.archive.org/web/20050425104337/www.ac4vr.com/news/OhioElectionReport.pdf>; AMERICAN CENTER FOR VOTING RIGHTS, VOTE FRAUD, INTIMIDATION & SUPPRESSION IN THE 2004 PRESIDENTIAL ELECTION, Aug. 2, 2005, http://www.foxnews.com/projects/pdf/Vote_Fraud_Intimidation_Suppression_2004_Pres_Election_v2.pdf.
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- 9 TRACY CAMPBELL, DELIVER THE VOTE: A HISTORY OF ELECTION FRAUD, AN AMERICAN POLITICAL TRADITION — 1741-2004 (2005); LARRY J. SARATO & GLENN R. SIMPSON, DIRTY LITTLE SECRETS: THE PERSISTENCE OF CORRUPTION IN AMERICAN POLITICS (1996).
- 10 HANS A. VON SPAKOVSKY, *The Effect of Identification Requirements on Minority Voter Turnout*, 8 ENGAGE: THE JOURNAL OF THE FEDERALIST SOCIETY PRACTICE GROUPS 87 (2007), available at http://www.fed-soc.org/doclib/20070322_Engage81Feb2007.pdf; Publius, *Securing the Integrity of American Elections: The Need for Change*, 9 TEX. REV. L. & POL. 2 (2005); see also Dan Eggen, *Official's Article on Voting Law Spurs Outcry*, WASH. POST, Apr. 13, 2006, at A19.
- 11 Jingle Davis, *Even Death Can't Stop Some Voters*, ATLANTA J.-CONST., Nov. 6, 2000; Russ Buettner, *Exposed: Scandal of Double Voters*, DAILY NEWS (N.Y.), Aug. 22, 2004.
- 12 LOBI MINNITE & DAVID CALLAHAN, SECURING THE VOTE: AN ANALYSIS OF ELECTION FRAUD 39-43 (2003), at http://www.demos.org/pubs/EDR_-_Securing_the_Vote.pdf; MINNITE, *supra* note 1, at 22-35; see also Lorraine C. Minnite, *An Analysis of Voter Fraud in the U.S.* (2007) (adapted from SECURING THE VOTE, *supra*). Professor Minnite has examined the incidence of fraud specifically in states that permit Election Day Registration; this analysis confirms the lack of widespread voter fraud, but discusses few individual inflated allegations. Lorraine Minnite, *Election Day Registration: A Study of*

- Voter Fraud Allegations and Findings on Voter Roll Security (2007), at http://www.demos.org/pubs/edr_fraud_v2.pdf. Professor Minnite is also working on a forthcoming book on the politics of electoral rules, tentatively titled *The Myth of Voter Fraud*. See *Current Fellows*, <http://www.demos.org/page247.cfm> (last visited Oct. 4, 2007).
- 13 SPENCER OVERTON, *STEALING DEMOCRACY: THE NEW POLITICS OF VOTER SUPPRESSION* (2006); see also Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631 (2007); BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW & SPENCER OVERTON, *RESPONSE TO THE REPORT OF THE 2005 COMMISSION ON FEDERAL ELECTION REFORM* (2005), at http://www.brennancenter.org/dynamic/subpages/download_file_47903.pdf.
 - 14 See sources cited at Brennan Center for Justice at NYU School of Law, *Voter Fraud Resources*, http://www.truthaboutfraud.org/analysis_reports/.
 - 15 BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, *INVESTIGATOR'S GUIDE TO "VOTER FRAUD"* (2006), <http://www.truthaboutfraud.org/pdf/Investigator%27s%20Guide%20to%20Voter%20Fraud.pdf>.
 - 16 Most proposals to require photo identification of voters do not address the absentee voting process, where fraud through forgery or undue influence, often directly implicating candidates or their close associates, is far more of a threat. See, e.g., COMMISSION ON FEDERAL ELECTION REFORM, *BUILDING CONFIDENCE IN U.S. ELECTIONS* 46 (2005), available at http://www.american.edu/ia/cfer/report/full_report.pdf; Becky Johnson, *Savain Voter Fraud Investigation Sent to Feds*, SMOKY MOUNTAIN NEWS (N.C.), Sept. 19, 2007; Stephanie Taylor, *2 Accused of Voter Fraud in Hale County*, TUSCALOOSA NEWS (Ala.), Aug. 18, 2007; Laura B. Martinez, *Potential For Fraud*, BROWNVILLE HERALD (Tex.), July 22, 2007; Gary McElroy, *Former Candidate Faces Charges of Voter Fraud*, PRESS-REGISTER (Ala.), July 13, 2007; Rex Bowman, *Sentencing Postponed for Former Appalachian Mayor*, RICHMOND TIMES-DISPATCH, Jan. 19, 2007; Bill Theobald, *Fake Counts*, INDIANAPOLIS STAR, Nov. 5, 2000, at 1A; Marylyne Pitt, *Murphy Arraigned on Vote-Fraud Charges*, PITTSBURGH POST-GAZETTE, May 25, 1999, at B1. See also Minnite, *An Analysis of Voter Fraud in the U.S.*, *supra* note 12.
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 - 18 42 U.S.C. § 1973i(c), (e); 42 U.S.C. § 1973gg-10.
 - 19 Greg Palast, *The Wrong Way to Fix the Vote*, WASH. POST, June 10, 2001, at B1; see also Marcia Myers, *Election Theft Ruled Out*, BALT. SUN, Aug. 24, 1995, at 1A.
 - 20 Greg J. Borowski, *Nothing Points to Fraud in 9 Double Voting Cases*, MILWAUKEE J. SENTINEL, Aug. 22, 2005; see also Ruper Roy & Beth Kassab, *Double Votes Taint Florida, Records Show*, ORLANDO SENTINEL, Oct. 22, 2004, at A1 (finding clerical error improperly showing vote for alleged double-voter).
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- 27 *Id.*
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We note that none of the crimes prosecuted in this period could possibly have been prevented by requiring photo identification at the polls.

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Ms. LOFGREN. Mr. Chairman?

Mr. GONZALEZ. And then I will yield to Ms. Lofgren at this time.

Ms. LOFGREN. I, unfortunately, had to have a meeting with the speaker, which prevented me from being here to receive the testimony, although I have had a chance to read it.

And I was so anxious to ask Ms. Becker the questions that I asked that I didn't have a chance to say thanks to Karen for being here all the way from—you know she does wonderful work not only in California, but throughout the United States.

And it is a pleasure to see someone from home who is here. And I just neglected to say that.

And I also did want to—I am advised by counsel that 11B of the Voting Rights Act, although in the civil section, is actually a criminal statute.

So I think we should find—you know get to the bottom of that. I don't want to get into an argument here today, but maybe we can pursue that and reach a conclusion together on that point after the hearing.

And I thank the gentleman for your—

Mr. GONZALEZ. You are welcome.

Reclaiming my time, Mr. O'Leary, I know you are not here to give maybe this kind of opinion, but I think you have had enough experience with logistics and how we do things.

But I want to make one comment. I appreciate everything that you are doing. You are now a resource in my book with my staff, because we are getting responses from DOD and others that are not satisfactory as to why we can't start doing some voting projects and pilot projects with the military overseas via the Internet.

So I will really welcome some of your input.

But do you have an opinion on my question that was posed to the panel?

Mr. O'LEARY. I appreciate that, Mr. Chairman. And I would agree that the points that you brought up are in order, and the five points are important.

I am not going to quibble one or the other about priorities. But really I think you know fundamentally what this gets down to is a matter of will to do the right thing for the country, thinking long-term and not thinking in terms of what our partisan benefits are going to be if one group—you know if we work for one group or work for another group, we need to think to the long term to the good of the country.

And I would hope that Congress has an attention span that goes past the November election.

Mr. GONZALEZ. Just keep reminding us. That is—

Mr. O'LEARY. Thank you, Mr. Chairman.

Mr. GONZALEZ. Mr. Terry?

Mr. TERRY. Yes, sir. I certainly agree with the list. I think that they are all perhaps equally important, because I think they are probably very interrelated. And it takes all of them to come to what I think we have all agreed that the goal is that of fair elections.

And if you take, for instance, the voter registration component, I think you can see where it will affect every other item on your list.

The logistics—if you are talking about in cases where you are talking about 27,000 potentially fraudulent—or erroneous even—registrations, the logistics of trying to deal with that at the polling place on Election Day, the personnel it takes to do that.

Certainly on the voter intimidation, manipulation of registrations is sort of the core element of the caging of this.

And I think they are all equally relevant and should be addressed to achieve a fair election.

Mr. GONZALEZ. And I would agree with you conceptually. The problem is, to the degree and the extent that you have any of these factors actually existing, not just the potential, but the reality.

And so I am saying we need to be dealing with the reality.

And I want to go on with the—Professor Benson?

Ms. BENSON. Thank you. I believe in data driven decisions. And based on that, anything that blocks any eligible voter from voting and disenfranchising them is a problem.

And to your list I would add in that regard voter education and clarity, which I believe is the responsibility of the government to ensure that every voter is aware of her rights.

In that case, if they arrive at the polls and they are intimidated or told that they can't vote, that they are aware that they can and they are able to produce any necessary evidence to ensure that they vote.

So I would add voter education on the qualifications of voting and the requirements on Election Day where the polling place is.

And I would emphasize that I do believe it is the responsibility of election officials and the government generally to ensure that every voter knows how to vote.

Mr. GONZALEZ. Thank you very much.

Ms. Clarke?

Ms. CLARKE. The one thing that I would add to that list is the failure of a lot of states to put in place a contingency plan for the problems that we know are going to happen, are going to emerge on Election Day.

We have got to be prepared to put in place a Plan B for when Plan A fails us. We have got to be prepared to turn to the courts to get orders to extend poll hours or order the release that is necessary that will make sure, make certain that every voter gets to cast a vote that counts on Election Day.

So I am concerned about the lack of contingency plan and emergency plan in a lot of states.

Mr. GONZALEZ. Thank you very much.

At this time I do want to inquire. I know that the Chairman of the full Committee of the Judiciary is here—if he has any further questions or observations before we wrap it up.

Mr. Conyers?

Mr. CONYERS. Yes. Thank you very much. I want to thank you for all of your work. I think it was quite productive today.

And of course I am indebted to the witnesses for their stamina, first, and their contributions, secondly.

A couple of things occur to me. The rhetoric that comes from the symbolic and actual importance and significance of voting can really get quite remarkable. I mean everybody agrees it is important, sacred, the basis of a democratic representative government.

What I wanted to ask as we close, do any of you have any recollections of the history of voting in America? I mean it is not the most beautiful picture you would want to teach young people that are going into the—that are looking at the voting process.

This election is marked for the young people that have been brought into and caught up in and engaged in the electoral process in numbers never before recorded.

But there are a long list of unsavory incidents in the history of the electoral process in America. Does anybody remember them besides me? Not that I was there, but I have been around for a little longer than most everybody in this room.

But using the Gonzalez technique, let us go down the row. What do you think, Ms. Clark? We are talking about the history.

To come into this without any full knowledge of what has gone on before can leave you in a rather elevated aspiration or keep hope alive mode that belies what has been reported as the true history of voting in America.

Ms. CLARKE. During your remarks I was reminded of Bloody Sunday and folks who marched across the Edmund Pettus Bridge in Selma, Alabama, and who fought and gave their lives to see that all citizens in our country have the ability to exercise the fundamental right to vote.

So we at the Legal Defense Fund continue to fight and will continue to fight and expect that the others here on the dais, including the Justice Department, will do everything in its power to make sure that all voters can cast their ballots in November.

Ms. BENSON. I thank you for reminding us of the very important history that came before all of us. I am a former resident of Montgomery, Alabama, and spent some time—a lot of time—in Selma. And so I in fact every March would go, when I was down there, to the bridge and take my students down there every March now to go to the bridge.

So I think it is crucial to remember that. And back to what I was saying with regards to election administration, I do fully believe in data driven decision making with regard to the priorities for election administration.

And I believe in historical data as well. In that regard I think voter intimidation and any ongoing efforts to disenfranchise any voter needs to be taken in light of the context of history and the way that seemingly innocent policies in the past have been used to disenfranchise voters, particularly historically to disenfranchise populations like African Americans and Latino voters and voters of Asian descent and Native American voters.

And so I think it is a priority for all of us to ensure that our election system encourages the participation of everyone, disenfranchises no one, and that we move forward based on addressing any limitations that we know block voters from voting on Election Day.

Mr. CONYERS. Thank you.

Mr. Terry?

Mr. TERRY. Thank you, Mr. Chairman. I think perhaps the word “recollection”—my recollection is probably very different from yours, probably more based on things I have read in books.

But I think that what we have as a country come a very long way through some very bad times, but I think if there is one thing

that we can probably all agree on leaving here today after the discussions is that we still have a long way to go.

And we certainly appreciate the Committee's time in addressing this.

Mr. CONYERS. Thank you.

Mr. O'LEARY. Mr. Chairman, I think we can all agree that we all need to fight to create a more perfect union, but in that regard I think from women's suffrage to the civil rights movement, this country has come a long way, and we have a lot to be proud of.

And I know that it is the business of this body to look at the ways to make things better, but at the same time we should recognize how great a system we have.

Ms. NARASAKI. Mr. Chairman, my recollection begins actually even before you get to vote. My grandmother immigrated in the 1920's from Japan, and by law she was not allowed until the 1950's to become a citizen because she had come from Japan.

And that has been one of the ways that Asian Americans have faced a series of suppressions of our vote. Then my parents were interned with my grandmother during World War II, even though they were born here. And I am certain that they were not given an opportunity to vote during those days.

But I think it is important to note that it is not just our history. We just went through the reauthorization of the Voting Rights Act with your leadership. And we know that all of these things are still happening.

And then when we have the hearings and when we reached out and heard from tribal leaders in South Dakota, who just 4 years ago were talking about how they were being deprived of their right to vote, I think it is important for Americans to understand it is not just our history, it is also what is going on right now.

And I very much appreciate the fact that you are doing this hearing to bring that to light.

Mr. CONYERS. Thank you.

Mr. HANCOCK. I would say that you nailed it, sir. And I would add that our preparation for this election has to be implemented in the context of that history.

And I would give you one example from our—in Florida in 2000—and I would add to what you said that the discrimination was effectuated under color of law by government officials.

And so when in 2000 police officers outside of Tallahassee set up a drivers license checkpoint near a polling place, it was viewed as harmless by White citizens, but southern Blacks were intimidated because of what they live through.

So this is not ancient history. We are going to have a lot of voters who live through this.

And that is why it is particularly important, as we balance this issue of vote fraud with the right to vote and the Voting Rights Act, that we not—we do it in a very delicate balance so that in effectuating criminal laws, we are not intimidating people from voting.

And that is I think this department took a terrific step forward with this year's plans to not use criminal prosecutors for that reason.

So we have a very—I mean we have made remarkable progress, and the candidates on this ballot show that progress, but we still live in a context of a very sorry history of discrimination in this country, that we need to make sure as we plan for this election that we understand that.

And to give you one other example in the housing context, someone in your generation who reads a housing ad that says housing is restricted might do that differently than a younger African American person.

So we have to go forward with this plan for this election, recognizing how discrimination can be effectuated in very subtle ways. And it is not, as I said before, racial animus is not a prerequisite for a claim under the Voting Rights Act.

The question is are people being singled out or targeted because of their race or national origin or language minority status? That is not a difficult standard.

And some of the things we are hearing about now certainly raise issues under the Voting Rights Act that I suggest the department should be looking at actively with investigations.

Mr. CONYERS. Thank you, Mr. Hancock. Does that suggest that caging could be illegal if racism was not even involved?

Mr. HANCOCK. People target—voter suppression is done because the people doing it believe that the persons they are targeting are more likely to vote for the opposite party.

And the question is what is their reason for believing that? The Detroit, the Macomb County incident—and I am not going to discuss the merits of that. I am just going to discuss the allegations.

But if people who face foreclosure notices are being targeted to be challenged, the question is why does someone believe that people who had a foreclosure notice are most likely to vote for the other party?

And if you look at foreclosure statistics, I think they would show that they are disproportionately minority. So there becomes a link there.

We know in this election that people could be targeted for suppression based on the color of their skin because of the candidates that we have in this election.

So yes, I would say that those allegations raise claims under the Voting Rights Act. I am not commenting whether they can be proved or can't be proved, but I think that they certainly raise issues that implicate the Voting Rights Act.

Mr. CONYERS. Thank you.

Ms. Becker?

Ms. BECKER. I agree with my other panelists here that certainly Selma is one. I was just reading yesterday—last night—Congressman Lewis' book and was just admiring his bravery during that time period.

One other person that I would like to note in terms of historical perspective in Fannie Lou Hamer, who was one of the individuals who was named in the 2006 reauthorization act, which the department is currently defending the constitutionality of in Federal court.

She was again another person who exhibited tremendous bravery, a woman who was just a regular person like so many Ameri-

cans here today. And while progress has been made, I agree with the other panelists that there is more work to be done.

Mr. CONYERS. Now, looking at just a little bit different dimension, we have also in our history allegations of a lot of unsavory practices in voting.

Half a pint of whiskey if you vote, and vote right—whatever that might have meant to the person giving out the alcoholic beverage.

Stories of a Chicago machine politics in which the ward boss would go into the polling place with the voter to make sure he or she voted the right way. No one was depending on anyone's integrity.

And we have had—I hate to raise this with the Chairman in the seat here, but in Texas we have had some elections that involved former President Lyndon Johnson that have been written about from different perspectives.

Indeed, even the Kennedy election within our memory was highly debated and contested for many, many years.

Louisiana—you could write volumes about voting practices there that I can only hope have been ended—and throughout the South in its entirety.

So what are you suggesting, Chairman Conyers?

Well, I am suggesting that we keep these things in perspective as the patriotic rhetoric rises to the sky. Elections are a reflection culturally of a people. I mean, the whole notion of war by any other means—a great way to duke it out in America is to win an election.

Well, like in sports, people resort to excesses to win. I mean you want to win. The question on—I just saw it leaving the majority leader's office on, I think, it was Time or Newsweek magazine. It said, "Will McCain win nasty?" Everybody knows what that means. They could put in anybody else's name.

There is something in our cultural situation like in sports. U of M has got to beat MSU in Michigan or else. Well and, of course, Michigan State is just reverse, and so it is across the country. I mean sports is a great way to get it off your chest. Let's pulverize these guys. Let's win.

And in our system it translates over into everything: elections, voting. But I haven't heard any discussion of that. In other words, if we just ignore that and say, "Well, everybody is honorable and ethical, and everybody wants everybody else to vote, and we don't want any hanky-panky or froth.

But, look, we are all human, so how does, Attorney Avery, this factor into it? We are trying to get the best, fairest election we can in 42 days, so what about that factor? There are people that are saying, "We have got to win. Look, this election is so critical. We have got to win it."

Ms. CLARKE. I think that some of the examples that you raised, you know, may very well be true and are isolated, frankly. The examples of persons who are seeking to buy votes, seeking to fraudulently cast votes, seeking to impersonate the dead, I think those incidents are few and far between in our country.

And what I think we are seeing today is a real struggle where people are trying to overcome very real barriers that stand between them and the ballot box, trying to overcome the burdens imposed by restrictive mandatory, government-issued photo identification

requirements, trying to overcome tactics like what we are seeing in Macomb County.

And although party officials have since backed down from their plans to use foreclosure lists to challenge voters, the chilling effect remains. And who knows how many voters may be discouraged or deterred from turning out on November 4 because of Macomb County officials' initial plan.

So I remain very focused and think that we are all better served remaining focused on the substantial barriers and burdens that voters are up against today, and that we sometimes allow ourselves to be unnecessarily sidetracked by these isolated examples of vote-buying that you hear about from time to time.

Mr. CONYERS. Well, the only problem is, though, that some of the intimidation and coercion is not coming from citizens or other groups. It is coming from the government. I mean citizens didn't dream up ID, all these incredible barriers to people that don't even drive and can't even get to a place and couldn't afford it if they could.

The foreclosure lists may have been dreamed up by a political party, but you know, as I think a little bit more about this, is that there seems to be two classifications of people in this country.

There are some people that honestly want to restrict the right of the ballot. They want to make it tough, tough as they can, exclude as many people however you can. And there are other people that want to make it as open as you can, inclusive as you can, simple as you can.

Isn't bad individuals that still have Election Day on a Tuesday. Why is it a government requirement that you have to vote after you get the kids to school however you can. You got to get to work. You got to hope the weather is good, all of this.

But nobody says, "Well, look, why do we that? Why don't we just have a day off for voting?" which many modern countries have been doing for quite awhile now. That is not mal-intentioned individuals. That is government. That is the ID notion. That is the make it tough as you can.

If you are a student, how can you vote from your dormitory? You are signed up in Ann Arbor. You live in Ann Arbor. You can't vote in Lansing. I mean these are government initiatives. I am not talking about a few bad eggs floating around in the community. What about that? That is government-directed strategies that do not encourage voting and do not make it any fairer or safer or less fraudulent.

Ms. BENSON. Congressman, if I could add, as you may know, I live in the city of Detroit where a state legislator named Papa George, in 2004, was quoted as saying, "If we do not suppress the Detroit vote, we are going to have a tough time in this election." And that was something that he talked about and was covered in *The New York Times* and other places.

And so from my perspective and as I tried to make clear in my testimony, denials are denials. We know Acorn has also denied things. You know, the discussion still needs to go forward around clarifying the issue for voters, ensuring that voters know they are welcome and encouraged to participate on Election Day and also recognizing that there is at times a pattern of statements that are

made, as you said, by government officials about suppressing the vote that does need to be emphasized.

Mr. TERRY. Yes, I think one of the core elements that I sort of took out of your remarks is when you talk about sports and, you know, doing anything to win is at the core of human nature, human nature to win.

And human nature, you know, we all have morals and values and things that got us, that sort of draw us away from those more natural instincts. But when those aren't enough, we build laws and institutions, structures and government.

And you talk about a lot of examples of where government is doing this, and in this country we are government by the people. And very often that government gets it wrong, and that is why it takes other people to fix the government.

And so I don't have any solutions for any of those things, but it did strike me that, you know, human nature being bound by rules, morals and laws and government being bound by the people, and that is ultimately the solution.

Mr. O'LEARY. Mr. Chairman, I think I don't need to tell you this after your years of service to your country, but what I think this all comes down to is the difference between running for elected office for power or running for elected office because you want to serve your country.

If it is about power, you are willing to do anything. If it is about service, you are only willing to do the right thing.

Ms. NARASAKI. One of the things I finally have figured out after about 20 years of doing this is—one of the challenges that I think really needs to be rethought about our system is we rely on the candidates and the parties to get people out to vote.

And what we have seen with the immigrant community is because they are first-time voters and no one is sure how they are going to vote, there is actually no incentive by many of the parties or the candidates to actually get them out to vote.

And I think government really needs to take a much more active role and responsibility in the realm of how do we make sure that people get the information they need, know what their rights and responsibilities are and get that real opportunity to vote.

And we shouldn't rely anymore on private sectors because what it spawns is what you said. The example that came to mind when you were talking was the Department of Justice had to intervene in Bayou La Batre, Alabama.

Now, there is a Vietnamese community in Bayou La Batre, Alabama. It is on the coast, and they are shrimpers. And for the first time, a Vietnamese-American was going to run for a local office.

Well, the incumbent decided that the best way to prevent him from winning was to challenge the voter rolls of everybody who had an Asian name assuming, of course, that the Asians would vote for him.

The Department of Justice intervened. What I found so striking about the story was that the people who challenged it were then supposed to be the main poll-workers in the general election, and that is the problem.

We have to really take this more out of the hands of the teams, as you will, and put it more in a neutral forum so that what Mr.

O'Leary refers to, the focus is on what the greater importance of democracy is for America and not on the short-term wins and losses.

Mr. HANCOCK. I guess my comments would be that, first of all, I could argue about the propriety of certain laws that we have. I mean if you are going to vote for President, why does it matter where you go? Everybody can vote for President.

But at the same time, we are not going to change those laws before this election, and they are going to be enforced, and we are going to have live with them. And there is room for principle disagreement as to what the best result is, but there is no room for any disagreement that the national policy is reflected in the Voting Rights Act.

And that is that while partisan politics can drive conduct, partisan politics cannot use race to drive that conduct so that to the extent—and I emphasize this repeatedly because I think it is so important, given the election that we are facing—that people are going to be identified as possibly supporting a particular candidate by the color of their skin. And suppression efforts likely are going to be directed just like the example that was given earlier based on that factor.

So although the people doing it may claim that their motivating factor is partisan politics, that does not absolve them from liability under the Voting Rights Act because they are using race to carry that out. And this Congress passed a law 43 years ago that said you can't do that, and I would hope that that would be enforced stringently as we proceed to this election.

And having been in the department for many years—I spent 27 years in the Civil Rights Division of the Department of Justice—I know that there is a great reluctance to get involved with issues at the time of a presidential election because it might appear to be partisan.

But over the years, the department has always addressed partisan issues. They have precleared redistricting plans that might favor one political over another or they have objected to redistricting plans that might favor one political party over the other.

So that even though a particular vote-caging effort that is directed at African-Americans, a remedy for it might favor a political candidate, that is not a reason for the department not to act, and they have always been under a burden to act in a non-partisan way in enforcing this law. I recognize that it is very difficult for them to do it, but I would urge you to demand that they do it.

Ms. BECKER. I would like to emphasize something that I said in my opening remarks, which is that I have made clear, as Mr. Hancock has suggested, to everyone on the voting issues that we handle, that we need to enforce all of the statutes that we have. Where are the facts in law? Well, we have evidence and the law is there for us to bring a case, and to do so without regard to politics and just let the chips fall where they may at the end of the day. If we do our job, which is to vigorously enforce the laws under our authority, that is all we can do.

Mr. CONYERS. Well, I thank you all.

Ms. Becker, let me ask you about another book. Have you ever heard of the book "What Went Wrong in Ohio?" It is about the 2004 election.

Ms. BECKER. I printed that off of the internet, but I haven't seen the actual bound copy of the book.

Mr. CONYERS. Well, you will immediately after this hearing.
[Laughter.]

Ms. BECKER. Thank you.

Mr. CONYERS. You are more than welcome.

Thank you, Mr. Chairman.

Mr. GONZALEZ.

Thank you, sir.

I don't believe that we have any other Members seeking recognition. Without objection, all Members will have 5 legislative days to submit to the clerk of each Committee additional written questions for the witnesses, which will then be forwarded and then ask the witnesses to respond as promptly as they can so that their answers may be made part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

This hearing is now adjourned.

[Whereupon, at 3:07 p.m., the Subcommittees were adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD



To: Interested Parties

From: Bertha Lewis and Steve Kest

Date: October 10, 2008

Re: The Truth About ACORN's Voter Registration Drive

Election Day is less than a month away, and our efforts to make sure that low-income and minority voters have a voice and vote on November 4th are in full swing. Unfortunately, just as we've seen in previous election cycles, the more success we have in empowering these voters, the more attacks we have to fend off from partisan forces making unfounded accusations to disparage our work and help maintain the status quo of an unbalanced electorate.

After a similar spate of charges against ACORN in 2006, we learned that then-Attorney General Alberto Gonzales had fired Republican US Attorneys because they refused to prosecute ACORN for trumped up fraud charges. This was the heart of the US Attorneysgate scandal that led Karl Rove, Gonzales and other top Department of Justice officials to resign.

On Monday, October 6, as voter registration deadlines passed in most states, ACORN completed the largest, most successful nonpartisan voter registration drive in history. **In partnership with the nonpartisan organization Project Vote, we helped register over 1.3 million low-income, minority, and young voters in a total of 21 states. Highlights of this success include:**

- We collected over 151,000 registrations in Florida, 153,000 in Pennsylvania, 215,000 in Michigan, and nearly 250,000 in Ohio.
- An estimated 60-70 percent of our applicants are people of color.
- At least HALF of all are registrations are from young people between 18-29.

We are proud of this unprecedented success, and grateful to everyone who supported us in this massive effort, from our funders and partners to the literally thousands of hardworking individuals across the country who dedicated themselves to the cause and conducted the difficult work of registering 1.3 million Americans, one voter at a time.

In the course of this work, we hired more than 12,000 registration workers to help people register. As with any business or agency that operates at this scale, there are always some people who want to get paid without really doing the job, or who aim to defraud their employer. Any large department store will have some workers who shoplift. Any large voter registration operation will have some workers who turn in bogus registration forms – not because the “Mickey Mouse” whose name they put on a registration form will ever attempt to vote on Election Day, but because they want to get paid without earning it. Only a small fraction of the workers we hire try to defraud ACORN in this way, but we obviously have a big stake in making sure people know we will turn them in and encourage prosecution when we catch them.

When a department store calls the police to report a shoplifting employee, no one says the department store is guilty of consumer fraud. But for some reason, when ACORN turns voter registration workers over to the authorities for filling out bogus forms, it gets accused of "voter fraud." This is a classic case of blaming the victim; indeed, the act is outrageous, libelous, and often politically motivated.

As *The Nation* pointed out recently, ACORN's success in registering millions of low-income and minority voters has made it "something of a right-wing bogeyman." Though ACORN believes that the right to vote is not, and should never be, a partisan issue, attacks from groups threatened by our historic success continue to come, motivated by partisan politics and often perpetuated by the media without full investigation of the facts. These stories typically lump together "incomplete" voter registration cards (applications missing key information) with "erroneous" or "fraudulent" voter registration applications. These distinctions are important, yet few media outlets discuss them. Predictably, however, partisan forces have tried to use these isolated incidents to incite fear of the "bogeyman" and of "widespread voter fraud." But we want to take this opportunity to set the record straight and tell you a few facts to show how these incidents really exemplify everything that ACORN is doing right:

Fact: ACORN has implemented the most sophisticated quality-control system in the voter engagement field but in almost every state we are required to turn in ALL completed applications, even the ones we know to be problematic.

Fact: ACORN flags in writing incomplete, problem, or suspicious cards when we turn them in. Unfortunately, some of these same officials then come back weeks or months later and accuse us of deliberately turning in phony cards. In many cases, we can actually prove that these are the same cards we called to their attention.

Fact: Our canvassers are paid by the hour, not by the card. ACORN has a zero-tolerance policy for deliberately falsifying registrations, and in the cases where our internal quality controls have identified this happening we have fired the workers involved and turned them in to election officials and law-enforcement.

Fact: No criminal charges related to voter registration have ever been brought against ACORN or partner organizations. Convictions against individual former ACORN workers have been accomplished with our full cooperation, using the evidence obtained through our quality control and verification processes — evidence which in most cases WE called to the attention of authorities.

Fact: There has never been a single proven case of anyone, anywhere, casting an illegal vote as a result of a phony voter registration. Even if someone wanted to influence the election this way, it would not work. Think of the risk someone would have to be motivated to take. They would be a sitting duck to be nabbed and prosecuted.

Fact: Most election officials have recognized ACORN's good work and praised our quality control systems. Even in the cities where election officials have complained about ACORN, the applications in question represent less than 1% of the thousands and thousands of registrations ACORN has collected.

Fact: Our accusers not only fail to provide any evidence, they fail to suggest a motive: there is virtually no chance anyone would be able to vote fraudulently, so there is no reason to deliberately submit phony registrations. ACORN is committed to ensuring that the greatest possible numbers of people are registered and allowed to vote, so there is also NO incentive to "disrupt the system" with phony cards.

Fact: Similar accusations were made, and attacks launched, against ACORN and other voter registration organizations in 2004 and 2006. These attacks were not only groundless, they have since been exposed as part of the U.S. Attorneygate scandal and revealed to be part of a systematic partisan agenda of voter suppression. Unfortunately, at this time of year, partisan forces and politicians seeking to portray

themselves as "fraud-busters" can't resist the temptation to try again. As David Iglesias (former Republican US Attorney in New Mexico who was forced from office) has said, he refused Karl Rove's and Alberto Gonzales pressure to charge ACORN with voter fraud, because he knew ACORN was innocent of that charge. And another US Attorney, Bradley Schlozman, who did politicize prosecutions against former ACORN canvassers, was forced to acknowledge under cross examination by the Senate Judiciary Committee that ACORN was the victim of fraud by its employees and ACORN had caught the employees and had identified them to law enforcement.

These are the facts, and the truth is that a relatively small group of political operatives are trying to orchestrate hysteria about "voter fraud" and manufacture public outrage that they can use to justify fraudulently challenging voters at the polls and other schemes to suppress the votes of millions of low-income and minority Americans.

These tactics are nothing new, and history has shown that they will come to nothing. We'll continue to weather the storm, as we've done for years, and we'll continue to share the truth about our work and express pride about our accomplishments.

Most importantly, we want to assure you that this good work continues, unabated and undeterred. ACORN will not be intimidated, we will not be provoked, and in this important moment in history we will not allow anyone to distract us from these vital efforts to empower our constituencies and our communities to speak for themselves. If the partisan political machines are afraid of low-income and minority voters, they're going to have to do a lot better than coming after ACORN.

Our work is far from over: **now begins our effort to mobilize these new voters around local and national issues, getting them to the polls and helping to channel their commitment and conviction into an ongoing movement for change in our communities.**

After all, there are now at least 1.3 million more registered voters in this country, and they will not be silenced. They're taking an interest, and taking a stand, and they'll be taking their concerns to the voting booth in November.

And ACORN will be here, to make sure that the voices of these Americans are heard, on Election Day and for every day to come.

PRESS RELEASE**ACORN**www.acorn.org

Contact: Kevin Whelan – ACORN
985-960-1108; communications@acorn.org

For Immediate Release: October 4, 2006

ACORN statement on AP's voter registration article

On Monday October 2, the Associated Press distributed an inaccurate and misleading news story ("Allegations trip up voting rights group") regarding ACORN's national voter registration program.

Maude Hurd, ACORN's national President, said: "ACORN has helped more than 1.6 million American citizens become registered voters since 2004. We work hard to bring new people into the democratic process and to maintain good quality control. ACORN has even gone to court to overturn regulations that would prevent us from checking registration cards for errors. ACORN members will not be deterred from our continued work to make the promise of democracy real for all Americans, in the courts and in our neighborhoods."

ACORN and its allies have recently won a series of legal victories in Florida, Georgia, Maryland, and Ohio blocking enforcement of laws that severely burdened voter registration activities and denied disenfranchised citizens assistance in registering to vote.

Despite a misleading first paragraph, the AP article actually contains not even a single allegation that ACORN has ever knowingly submitted a fraudulent application or sought to get an ineligible person to cast a ballot. The story wrongly conflates alleged fraudulent applications, incomplete applications, duplicate applications, and even complaints about bad handwriting, treating them as a manifestation of the same problem on ACORN's part. An incomplete card or one with messy handwriting represents a legitimate attempt by a person to register to vote. While ACORN makes every effort to make sure applicants complete their applications, including calling them, before submitting them, this is not always possible. Duplicate applications are often the result of applicants who may not remember whether or not they are already registered to vote at their current address.

Also excluded from the story the fact that some of the applications "questioned" have proven to be legitimate. In Summit County, Ohio, for example, officials cut off the bottom of an application where an elderly woman noted she helped her husband complete the form because his handwriting was difficult to read, before alleging that the card was an ACORN forgery. In Franklin County, Ohio, ACORN has obtained signed statements from some of the 400 applicants whose cards allegedly "questionable" cards attesting to their authenticity.

ACORN has invested considerable resources into developing and managing a comprehensive quality control process that reviews for accuracy and completeness applications submitted to election officials. ACORN has helped 475,000 people in seventeen states register to

vote this year alone, and 1.2 million in 2004. The 3,612 “questionable” applications from four jurisdictions cited in the story—at least some of which have subsequently been proven to be legitimate and properly completed—represent less than 1% of the applications ACORN submitted to election officials this year.

The AP story further misleads readers with a list of states where ACORN was “accused of voter fraud in 2004” without making it clear that ACORN successfully refuted the politically-motivated charges brought against it. In Florida, allegations against ACORN contained in a private lawsuit were dismissed and the lead plaintiff admitted to defaming ACORN (St. Petersburg Times, “Voter fraud charges collapse” 12/15/05). In Ohio, allegations against ACORN (and other organizations helping minorities register to vote) were contained in a lawsuit funded by the Free Enterprise Coalition. The plaintiffs withdrew the suit as ACORN began discovery. The list in the article also includes states where ACORN caught and worked with prosecutors to convict an employee who submitted duplicate registration cards.

The rare instances in which an employee has submitted duplicate or fraudulent voter registration cards are an example of workers attempting to defraud ACORN by passing off bad work as good work—a situation akin to a retail clerk stealing from his or her employer. ACORN and has fired and, where appropriate sought prosecution of, any employee suspected of misconduct. There have been *no* findings of wrongdoing against ACORN itself. This is true despite systematic efforts to distract or disparage us by organizations and individuals who oppose our goals of increasing political participation by low-income and minority voters.

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ACORN is the nation's largest community organization of low-and moderate-income families, with over 220,000 member families organized into 800 neighborhood chapters more than 100 cities across the country. Since 1970 ACORN has taken action and won victories on issues of concern to our members, including better housing for first time homebuyers and tenants, living wages for low-wage workers, more investment in our communities from banks and governments, and better public schools. Learn more at www.acorn.org and www.raisewages.org.

PRESS RELEASE**ACORN®**www.acorn.org

For Immediate Release:
October 15, 2008

Contact: Steve Kest, (917) 855-3165, skest@acorn.org
Brian Kettenring (727) 692-7215, flacornho@acorn.org
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ACORN Responds to Senator McCain's Desperate Attack

Maude Hurd, ACORN's National President, issued the following statement in response to Senator McCain's attack:

"We appreciate that Senator McCain's effort to stir up the Republican base by attacking a community organization working to increase public participation in our democratic process. However, these attacks reflect an increasingly panicked candidate; unfortunately the Senator McCain we saw tonight is very different than the Senator McCain who stood shoulder to shoulder with ACORN at a February 20, 2006 immigration reform event.

It is clear for us to see that John McCain was for ACORN before he was against ACORN; he was for reform before he was against reform; and he was a maverick before he became erratic. What is really going here is that Senator McCain and his allies are part of a coordinated effort to engage in what appears to be an unprecedented effort to suppress voter turnout. Repeating a lie doesn't make it true, and the McCain campaign has resorted to the worst type of deceptions in regards to ACORN."

Tomorrow, at 11:00 am EST, ACORN will be convening a conference call unveiling a pointed critique to Senator McCain's outlandish assertion that ACORN was responsible for the housing crisis:

Thursday, October 16th: ACORN Call on ACORN Critique of McCain on Housing/Financial Crisis:

Call in #: 800-247-5110, pass code 8388

Additionally, ACORN Spokesperson Scott Levenson is on site at tonight's debate, available for television interviews: (917) 833-3175 cell.

The Facts:

- ACORN has helped 1.3 million citizens from all parties and all walks of life apply for voter registration.
- In most states, ACORN is required by law to turn in every voter registration card - even in

cases where the cards are not valid.

- It is ACORN that has reported almost all of the issues regarding voter registration cards.

- Invalid voter registration cards do NOT constitute voter fraud. Even RNC General Counsel Sean Cairncross has recently acknowledged he is not aware of a single improper vote cast as a result of bad cards submitted in the course of an organized voter registration effort.

- ACORN hired 13,000 field workers to register people to vote. In any endeavor of this size, some people will engaged in inappropriate conduct. ACORN has a zero tolerance policy and terminated any field workers caught engaging in questionable activity. At the end of the day, as ACORN is paying these people to register voters, it is ACORN that is defrauded.

ACORN's Fight Back Thursday:

Tomorrow, at 11:00 am EST, ACORN will be convening a conference call unveiling a pointed critique to Senator McCain's outlandish assertion that ACORN was responsible for the housing crisis:

Thursday, October 16th: ACORN Call on ACORN Critique of McCain on Housing/Financial Crisis:

Call in #: 800-247-5110, pass code 8388

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ACORN is the nation's largest community organization of low- and moderate-income families, with over 400,000 member families organized into neighborhood chapters in 100 cities across the country. Since 1970 ACORN has taken action and won victories on issues of concern to our members. Our priorities include: better housing for first time homebuyers and tenants, living wages for low-wage workers, more investment in our communities from banks and governments, and better public schools. ACORN is an acronym, and each letter should be capitalized. ACORN stands for the Association of Community Organizations for Reform Now.

ACORN's website is at <http://www.acorn.org>.



Association of Community Organizations for Reform Now

ACORN'S VOTER REGISTRATION DRIVE

ACORN members can be very proud of the patriotic work they have done by helping more than 1.3 million citizens apply to become registered voters in 2007 and 2008.

ACORN helps the people register who most need to make their voices heard in this election: African Americans, Latinos, low-income citizens, and youth.

Sen. John McCain, who has recently attacked ACORN, should make no mistake—the many, many citizens ACORN has helped register are very real and many of them will be coming out to vote next month.

- √ McCain would be better off if he spent more time appealing for the support of these new voters than attacking the community organization that helped them register to vote.

ACORN's Quality Control system works

ACORN has dedicated Quality Control staff which calls the person listed on every card to verify information.

- √ ACORN alerts election officials whenever its Quality Control staff find a card that appears to be a duplicate or problematic.
- √ In most states, the law requires that every signed card be turned into election officials, even if it is fake or incomplete.
- √ ACORN is now being attacked by partisan officials over problematic cards that ACORN itself pointed out, in writing, to election officials.

ACORN employed thousands of part-time canvassers to work on its voter registration drives, and most of these individuals did a great job.

- √ In the relatively few cases where some canvassers have turned in bad voter registration cards, there has never been any evidence that so-called "voter fraud" was the motive.
- √ As these cases prove, it is extraordinarily difficult to falsely register to vote, and fraudulent voting by individuals is extremely rare.
- √ Rather, these cases appear to be nothing more than former part-time workers trying to get paid for doing work they didn't do—like a store clerk shoplifting from his or her employer.

Behind the partisan attacks

The goals of the people orchestrating partisan attacks against are to distract ACORN from helping people vote and to justify massive voter suppression.

In 2004 and 2006, attacks against voter registration drives were orchestrated by political forces that have since been exposed by the U.S. Attorneygate scandal to have been working in conjunction with a politicized Department of Justice to push a partisan agenda of voter suppression.

In 2008, Republican operatives have already:

- Tried to prevent Ohio from registering voters at its early voting sites
- Admitted plans to use foreclosure notices to challenge thousands of voters in Michigan
- Gone to court to try to block early voting in Lake County, Indiana

ACORN and its 400,000+ member families will not be intimidated. ACORN is committed to empowering local low- and moderate-income residents by bringing them into the democratic process and ensuring that they have a say in the issues that affect them most.



Association of Community Organizations for Reform Now

ACORN's Civic Participation Program: Standing up for Voting Rights

For the 250,000-plus member families of ACORN voter registration represents a key strategy to win a voice and material improvement for low and moderate income communities. In 2006, ACORN helped more than 540,000 low income and minority citizens to apply to become voters. ACORN has helped more than 1.6 million people register to vote since 2003.

As ACORN, the nation's largest grassroots community organization, conducts large-scale voter registration drives it provides careful training for staff and volunteers and enforces high standards and quality control procedures to make sure that all voter registration cards are handled properly. Project Vote provides training and support to ACORN and other community-based voter registration drives, and helps implement quality-control programs.

While ACORN's civic engagement programs have earned accolades from civic organizations and voting rights advocates nationwide, they have also made the organization a target for attacks by partisans who fear that new African American, Latino, and low income voters may not support their candidates or policy positions and who seek to pass laws that would disenfranchise these voters.

ACORN's quality control program

ACORN works hard to check the quality of its voter registration work and maintains a cooperative relationship with hundreds of Boards of Election across the country; such a relationship helps to catch and correct any problems. Ironically, voter-suppression advocates attempt to use the results of our careful quality-control program to attack the organization's work. A few key facts:

- In the course of ACORN's voter registration drives, the organization routinely meets with Board of Elections officials to review the quality of its work, and to establish a cooperative relationship.
- In most states, civic groups are required to turn in ALL signed voter registrations they collect to the Board of Elections, even cards suspected to be invalid.
- ACORN flags registration cards it knows to be incomplete or potentially invalid at the point when they are turned in, for appropriate verification or follow-up by the Board of Elections.

ACORN has employed several thousand temporary workers in recent years to help its full-time organizing staff and volunteers conduct its voter registration drives—the vast majority of whom have done an outstanding job. In a few cases, ACORN has identified (and fired) employees who tried to defraud the organization by submitting duplicate or bogus cards. The rare cases of workers attempting to defraud ACORN by passing off bad work as good work represent a



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situation akin to a retail clerk stealing from his or her employer. In such cases, ACORN seeks to have these individuals prosecuted.

In 2006, ACORN's quality control team in Kansas City, with the assistance of Project Vote, caught a handful of voter registration workers submitting questionable cards in order to make it appear they were doing more work than they really were. ACORN fired them, brought their names to the County Attorney, and provided evidence for the investigation that resulted in four workers being indicted for submitting a total of seven improper cards. Nowhere in this voter registration case--or any other--was there any indication that someone was trying to get an extra vote. Yet advocates of voter suppression seized upon this case, as they have a handful of similar incidents, to attack the organization and its voter registration work.

2004-5: ACORN vindicated in court and by investigators after politically-motivated attacks

In 2004 ACORN ran the largest non-partisan voter outreach program in the country and assisted more 1.1 million low and moderate income and minority voters nationwide in registering to vote, including 210,000 in Florida and 190,000 in Ohio.

During and after ACORN's successful voter registration drive alleged incidents of "voter fraud" were cited by partisan critics of the organization as a justification for implementing laws that restrict access to voting. In the year after the contentious 2004 election, however, charges leveled against ACORN's voter registration program were proven to be false.

In 2005 three brought by partisan law firms based on unfounded allegations of "voter fraud" against the organization were dismissed or "dismissed with prejudice."

In Florida, Republican attorneys at Rothstein, Rosenfeldt, Adler filed two suits against ACORN, working with an ex-ACORN employec, Mac Stuart, who had been fired by ACORN for misconduct in 2004. Judge James Lawrence King of the Southern District of Florida dismissed Stuart's claims with prejudice, and granted judgment to ACORN on its defamation counterclaims. The second Florida suit filed by the same firm was also based on false information provided by Stuart, alleging that ACORN had failed to submit 11 voter registration applications in time for the general election. Discovery in this case revealed that the applications Stuart provided his counsel were never collected by ACORN. In pleadings filed in the Southern District of Florida, Stuart admitted that his allegations of voter registration fraud against ACORN were defamatory.¹

¹ "Voter fraud charges collapse: Judges' rulings negate a fired worker's claims that the grass roots group ACORN mishandled voter registrations," Joni James, *St Petersburg Times*, Dec. 15, 2005.



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In Ohio, a case alleging “conspiracy to commit voter fraud” was brought by another prominent Republican law firm. Again, the case was dismissed when no evidence could be produced.

Similarly, investigations by the Florida Department of Law Enforcement and local election officials into voting issues have returned no evidence that ACORN participated in improper election conduct. In Florida’s Duval County, for example, the FBI found that all 59 cases of alleged double voting were clerical errors by the Supervisor of Elections. In Cleveland and Akron, FBI investigators reviewed registration applications submitted by ACORN and found no evidence of any organizational misconduct.

Other attacks were farther-fetched: A story circulated widely on conservative blogs claiming that the *Columbus Dispatch* has reported that ACORN registered two terrorist suspects to vote; it continues to be cited by critics attacking ACORN despite an article in the *Dispatch* debunking the story.²

Some charges were too general to be definitively refuted in the courts or the media. For example, in Minnesota in 2004, a fired employee was caught having failed to turn in--or perhaps having stolen--some voter registration cards. The cards were recovered, all the voters were properly registered, and ACORN staff assisted in the prosecution of the former employee—who had been caught by quality-control system as having turned in a duplicate registration card. The County Attorney emphasized that there was no indication anyone had tried to register an extra or improper voter. Nonetheless reports continue to make their way from partisan blogs to the mainstream press that ACORN “was accused of voter fraud in Minnesota in 2004.”

2006: Voter suppression tactics fail to stop ACORN voter participation drive

In 2006, ACORN’s members worked with other community groups, unions and religious leaders to pass minimum wage increases on the ballot in AZ, OH, MO and CO and conducted successful voter registration and turnout drives in 20 states. Groundless public attacks on the organization this year were tied more closely with attempts to impede the enfranchisement of African American voters.

In Ohio, the Legislature and the Secretary of State’s Ken Blackwells’s office worked together to limit ACORN’s effectiveness through a new statute—House Bill 3—and implementing rules. The statute and rules collectively required voter registration workers to return personally all completed applications to election officials, without first turning them into supervisors. In effect, the new requirements *prevented* ACORN from supervising its workforce or reviewing

² An account of the incident appears at <http://mediamatters.org/items/200410270005?offset=20&show=1>.



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applications for accuracy or completeness. ACORN, represented by Project Vote, the Brennan Center and the law firm of Perkins and Coie, successfully sued the state to overturn the restrictions.

"There is a national trend of using the straw man of voter fraud as a way to impose restrictive regulations on voting and voter registration," Wendy Weiser, an attorney with the Brennan Center for Justice at NYU told the *New York Times* in August, 2006.³

In Columbus, Ohio, an election official publicly accused ACORN of submitting 500 "potentially fraudulent" applications. ACORN requested that Project Vote investigate the allegations. To date Project Vote has reached 60 applicants who verified the information on the applications and talked with family members of an additional 19 applicants who confirmed the information on the application. Project Vote is continuing its investigation.

In St. Louis, Missouri, the Republican election director (jurisdictions in Missouri each have a Republican and a Democratic election director appointed by the Governor) sent letters to 5,000 individuals who had submitted voter registration applications through ACORN demanding that they call election officials and return an additional signed form before their applications would be processed. The letters followed extensive news coverage of the director's accusations against ACORN although no concrete evidence was forthcoming at the time or since then. Project Vote and Advancement Project intervened to protect ACORN's voter registration work and, in the face of a voting rights lawsuit and bad publicity, the St. Louis elections director backed down and registered the 5,000 voters. (The St. Louis Board of Elections was later chastised after illegally demanding photo identification before allowing Missouri Secretary of State Robin Carnahan to vote, and for other attempts to suppress the urban turnout.)

While ACORN was unbowed by these attacks, they did make the organization's work more difficult, may have limited participation of minorities in the political process. For example, during the six weeks it took to overturn the unconstitutional restrictions in Ohio, ACORN was forced to curtail a voter registration drive that had been helping 5,000 Ohioans register to vote each week.

The "experts" behind the attacks ACORN's voter registration drives

A fairly small group of political operatives have managed to orchestrate most of the attacks against ACORN's voter registration work. They repeatedly produce news releases and "reports" reissuing old accusations--even after they have been disproved--and quoting news stories generated by their past activity. By citing past accusations without reporting on whether any

³ "New Registration Rules Stir Voter Debate in Ohio," Ian Urbina, *New York Times* August 6, 2006.



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evidence supported them, these full-time ACORN critics work systematically to create a false impression that “where smoke there is fire”—that ACORN must have done something wrong simply because it was accused so often. (“It is the same as saying that ‘Martin Luther King, Jr. faced charges of being a Communist in every state in the South,’” commented ACORN President Maude Hurd. “Saying it again and again doesn’t make it true.”)

- Mr. Thor Hearne, the General Counsel for the Bush/Cheney campaign in 2004 has issued many accusations against ACORN—mixing distortions with blatant falsehoods—in reports issued under the name “American Center for Voting Rights.” While it claims to be experienced in election administration, the “experience” of its contributors to this effort is focused on trying to keep minority voters from voting in Ohio. Many, if not all of, the allegedly non-partisan ACVR’s contributors James F. Burke, Mark Weaver and Jack Morrison represented the Republican Party and individuals who tried to challenge minority voters’ right to vote, without any personal knowledge of their status.
- The Employment Policies Institute⁴ although registered as a charitable 501(c)(3), is in a project of Richard (“Rick”) Berman for the restaurant, hotels alcoholic beverage, and tobacco industries. Berman’s firm, Berman and Company, lobbies on behalf of these clients on such issues as anti-drunk driving efforts, minimum wage, smoking and the regulation of tobacco and has been a strident opponent of ACORN’s successful campaigns to pass living wage legislation around the country. Berman’s “institute” issues dozens of press releases and “reports” attacking ACORN each year. (The EmPI also hired a billboard truck to drive back and forth outside of the ACORN 2006 National Convention displaying the slogan “ACORN is rotten.”)
- The *Wall Street Journal* editorial page and its columnist John Fund attacked ACORN on a regular basis in 2006, mixing a litany of charges—including a number of flat-out falsehoods—with “accusations” to which ACORN was proud to admit, such as negotiating community lending agreements with banks and advocating for living wage ordinances.

Confusion about the voter registration process—stoked by voter suppression experts—among some reporters who cover election issues has produced news clips with the attack forces can in turn use to attack the organization. For example an inaccurate and misleading story titled “Allegations trip up voting rights group” published in October, 2006 by an AP reporter in Ohio listed a number of states where ACORN was “accused of voter fraud.” The list included Florida, where ACORN’s accusers later admitted that their charges constituted defamation; cases where

⁴ The name of Berman’s anti-living wage attack group seems to have been deliberately chosen to foster confusion by using the same name as the Economic Policies Institute (www.epinet.org), which is staffed by actual economists and favors fair wage increases.



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registrations deemed “questionable” by election officials later proved to be legitimate (Franklin County, OH); an incident in which an election official inadvertently altered a card to make it appear fraudulent (Summit County, OH)⁵; and a statement from an election board spokesperson in Denver whose expressed concern was the legibility of some applicants’ handwriting. The AP story (and statements by partisan officials attacking ACORN) wrongly cited incomplete applications, duplicate applications, scribes errors as examples of “voter fraud.” In fact, an incomplete card or one with messy handwriting represents a legitimate attempt by a person to register to vote—and some number of such cards are inevitable in the collection and verification of hundreds of thousands of voter registration forms.

Standing up for voting rights

While ACORN faces repeated attacks by opponents of minority voter participation primarily because it operates the largest and most effective voter participation projects in the country, the organizations successful legal and legislative efforts to protect voter rights has further earned the ire of voter suppression advocates.

Early in 2006, ACORN began to gather evidence and work with allies to prepare voting rights lawsuits and legislative campaigns in order to ensure that eligible American citizens in 12 states could register to vote without illegal or unfair barriers. In partnership with leading voting rights organizations such as Project Vote, Advancement Project, Brennan Center for Justice and the NAACP, ACORN won legal victories striking down restrictions on voter registration activities in Ohio, Georgia and other states. ACORN and its allies succeeded in getting rid of “no match, no vote” provisions which improperly implemented the Help America Vote Act in Washington, Pennsylvania and Maryland. These policies would have disenfranchised voters due to routine errors with state databases and data-entry, without giving voters the chance to get the problem corrected.

“We are very proud of the work we do to bring new voters into the process. Non-partisan voter registration and outreach is a key part of our daily work to build more power for our communities, and we will never be intimidated by baseless attacks,” said ACORN President Maude Hurd. “People and organizations that work for civil rights—especially ones who actually help African Americans and minorities register to vote—have often faced slander or much worse. While no one likes to have people tell lies about them, ACORN members will not let anyone deter us from our work to encourage every single American citizen to exercise his or her democratic rights. We have come too far for that.”

⁵ In the Summit County incident, the wife of a disabled man had signed a card on his behalf, and submitted it with a note of explanation. A clerk trimmed the note to make the card fit in the office’s file system; a political official at the Board later showed the *altered* copy of the card to the press as evidence of ACORN misconduct.

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VOTER FRAUD BAIT AND SWITCH

Every election year, like clockwork, the right-wing smear machine surfaces and works to deflect attention from the real issues. This fall is no exception. Instead of talking about real right-wing tactics to suppress the vote — which are going on right now in crucial swing states like Indiana, Pennsylvania, and Colorado — the Right's got the media covering a fake controversy: ACORN's supposed "voter fraud."

Use the resources on this page to help make sure we stop responding to right-wing fabrications, like those that have been made about ACORN — and start defending the hundreds of thousands of people who might be prevented from exercising their right to vote this Election Day because of right-wing voter suppression tactics.

People For the American Way has been tracking, exposing, and fighting the Right for nearly three decades. Sign up to stay informed about this work and make a donation today to support it — we can't fight the Right's anti-democratic activities without your help.

Make a donation today to help us fight the Right's campaign to keep thousands of Americans from voting this Nov. 4

DONATE NOW

Sign up for our alert list to get updates about voting rights and what you can do to help counter the Right

STAY INFORMED

THE FACTS.

The stories about ACORN are just that — stories.

Our New York Times ad about the real fraud, being perpetrated with the attacks on ACORN.

Statement of People For's president, Kathryn Ruffert, on election integrity.

ACORN responds to the McCain campaign's wild attacks.

THE RIGHT.

Learn more about the Right's history of waging efforts to suppress the vote.

Report: The New Face of Jim Crow: Voter Suppression in America

Report: The Long Shadow of Jim Crow: Voter Suppression in America

The latest news on the Right from our blog, Right Wing Watch.

SPREAD THE WORD.

Help get out the facts. Tell your friends about our New York Times ad exposing the truth about the right-wing's smear campaign against ACORN.

Forward the link to the ad to your friends.

Download and send around the PDF version.

Fraud.

You've heard a lot about ACORN in the media lately, accused of voter fraud. But it's news fraud – a false story instigated by right-wing operatives.

The wild charges made against ACORN aren't true. Period. It's the story the right wing wants you to hear and the media is reporting as unchallenged fact.

ACORN hired 13,000 workers to register voters. And unfortunately a few bad apples turned in registration forms with inaccurate and even made-up names.

Here's what's missing from the story: In most states, ACORN is *required* to submit all forms they collect, whether they appear to be bogus or not. That way election officials, not independent groups, can decide who gets registered and who doesn't. ACORN spends millions to flag cards that may not be legitimate. And many of the irregularities you've heard about only came to light because ACORN itself flagged the cards!

Meanwhile, ACORN has successfully registered over 1 million legitimate voters – Democrats, Independents and Republicans. And there are no reported instances of organized double voting – so there's no chance this will affect the election.

So what's the real story?

The right wing wants to discourage low-income people and African Americans from voting. And attacking ACORN helps justify their real efforts to suppress the vote – which are well under way.

- In Indiana, the right is considering using home foreclosure as a reason to prevent legitimate registration.
- In Philadelphia, an anonymous flier targeting African-American neighborhoods falsely warns that voters with outstanding traffic tickets may be arrested if they go to the polls.
- In Colorado, the Republican Secretary of State rejected more than 6,000 citizens' registration cards because of minor errors like not marking a checkbox.

Last week, Fox referenced ACORN 770 times on the air. That's to be expected, but then CNN and others parroted the same right-wing talking points.

Instead of hearing about the hundreds of thousands of American citizens who will be prevented from casting a vote this year, you heard about fictional people who will never cast a vote.

And that's the real fraud.



To learn more, please go to www.PFAW.org/ACORN

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they should be ready to disavow the organized effort that they have made to subvert the democratic process and undermine this election.

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Commentary: ACORN issue not vote fraud, but vote suppression

- Story Highlights
- Donna Brazile: With all the big issues we face, ACORN is a distraction
- Brazile: ACORN is a public spirited organization that pointed out the problems
- No fraudulent votes cast, only fraudulent voter registrations, Brazile says
- Brazile: Republicans hyping ACORN story to discourage people from voting

By Donna Brazile
CNN Contributor

Editor's Note: Donna Brazile, a Democratic strategist, serves as a political contributor for CNN. She also serves as the chairwoman of the Democratic National Committee's Voting Rights Institute, an adjunct professor at Georgetown University and founder of Brazile & Associates, a Washington-based political consulting firm. Brazile, who served as the campaign manager for the Al Gore-Joe Lieberman ticket in 2000, wrote "Cooking with Grease: Stirring the Pots in American Politics," a memoir about her life in politics.

[CNN] -- Our nation's economic foundation is crumbling like sand beneath our feet. Middle-class families are losing their jobs, homes, savings accounts and college funds.

Retirement nest eggs are fried to a crisp. Nine million children in America don't have health care coverage. We're fighting wars on more fronts than we can handle.

And John McCain is talking about ACORN?

Just as a top McCain adviser admitted that his candidate wouldn't campaign on the economy because it's a losing issue, so too it seems that the GOP has made a collective decision to abandon any real discussion of the issues in favor of distortion and distraction.

Through its 850 neighborhood chapters in more than 100 cities across the United States, the Association of Community Organizations for Reform Now organizes the powerless to work together for social justice and stronger communities through affordable housing, quality education and better public services. They are dedicated to looking out for those with little means in our society.

In the world of some elites, low- and moderate-income families and the organizations that work to empower them are the bad guys. There is all-out class warfare going on here, folks.

Another example of it is how people in the low-income bracket are being blamed for the subprime market crash -- rather than the unscrupulous lenders who redirected them from the fixed 30-year prime rates they could have paid to the subprime and adjustable rate mortgages destined to implode. The victims are revictimized.

It is an unfortunate reality that "poor" and "racial minority" are invariably overlapping circles in a Venn diagram. But the class animosity now being bred is, as it always has been, a cover for racial antipathy. And, make no mistake, this is exactly what's going on here. How pathetic and immoral in the face of the challenges we must confront as a nation.

Experts who have examined the allegations against ACORN have concluded that there is no significant threat of voter fraud. For the fraudulent registration forms to turn into fraudulent votes, they would have had to get through the election officials' vetting systems and make it onto the voter rolls.

Commentary: ACORN issue not vote fraud, but vote suppression - CNN.com <http://cnm.site.printthis.clickability.com/p/cpr?action=cpt&title=Comm...>

Next, someone would need to arrive at the assigned polling location with valid identification that lists the same name and address as the fraudulent registration. (This is fairly difficult to do if you're dead or named Mickey Mouse.)

Then, having passed all these hurdles, that someone would cast a vote that will cost him or her 10 years in jail. Just find me someone willing to spend 10 years in jail just for a chance to vote for Obama or McCain?

Let's look at the facts. ACORN labeled as "suspicious" the fraudulent registration forms a few of its paid volunteers submitted. Moreover, ACORN delivered them to election authorities under that heading. ACORN offered to help election officials pursue prosecutions against those who filled out the fraudulent forms.

The so-called ACORN scandal is no more than a few canvassers trying to meet their quota and make easy money by cheating the system.

Ask yourself how likely is it that someone would go through the effort and risk of submitting multiple false registration forms, find an accomplished forger capable of producing IDs of sufficient quality to trick election officials, and then spend Election Day racking up a couple extra votes at the potential cost of spending a decade in jail?

A simple cost-benefit analysis tells us this is not a reasonable or significant threat. The real threat here is the Republican Party using attacks on ACORN as a calculated strategy to justify massive challenges to the votes cast in Democratic-leaning voting precincts on Election Day. And this is what is truly outrageous, but where is John McCain's concern when it comes to people being harassed at the voting booth?

The same Republican Party shouting "Voter fraud!" is also furiously trying to prevent Ohio from registering voters at early voting sites and suing to shut down some early voting sites in Indiana.

Just as the GOP will use the so-called "Bradley effect" to explain away voting irregularities it created through voter suppression, it will use allegations of voter fraud to cover its efforts of voter suppression.

McCain and Republican candidates up and down the GOP ticket don't want increased voter turnout.

Let them sputter and fret. A swelling of the voter rolls strengthens our democracy. The more eligible voters we have participating in the process, the stronger we are as a nation -- and the more accurately the results on November 4 will reflect our nation's choice for president.

We must be vigilant in protecting people's right to vote, not vigilant in suppressing it. We must be vigilant that new voters aren't threatened, harassed or turned away. And we must be vigilant that resources like voting machines and poll workers are distributed appropriately to accommodate the projected influx of new voters.

Finally, we must be vigilant that this election, unlike 2000 or 2004, doesn't return conspicuous voting irregularities, and that those irregularities aren't left unchallenged.

We must be vigilant in the protection of our democracy because the way things are going in the United States right now, democracy may be the only valuable left in our national treasury.

The opinions expressed in this commentary are solely those of Donna Brazile.

[All About Elections and Voting](#) • [Republican Party](#) • [John McCain](#)

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Ex-ACORN worker: 'I paid the price' for voter registration fraud

- Story Highlights
- Clifton Mitchell is one of few ACORN workers convicted of voter registration fraud
- Mitchell: ACORN threatened to close his office if workers didn't meet quotas
- Allegations of voter registration fraud have surfaced in several states
- Study: Person more likely to get struck by lightning than commit voter fraud

By Chris Lawrence
CNN "American Morning"

SEATTLE, Washington (CNN) -- Clifton Mitchell helped register nearly 2,000 voters for the community group ACORN. But not one of them actually existed.

"I regret it. I paid the price for it," he said.

Mitchell was convicted last year and spent nearly three months in prison. He's one of the few ACORN workers convicted of voter registration fraud.

Today, he lives with his wife and two boys, ages 3 and 1, in a small apartment in suburban Seattle, Washington. Mitchell said he scammed the system because, "I needed money, I had to support my family and I was new to the area. It was the only job I had."

Mitchell said ACORN threatened to close the office if he and his team didn't meet their quota to register 13 to 20 voters a day. So, without consulting their supervisors, he said, they came up with a plan.

"We came up with the idea. Let's make fraudulent cards. I tell my crew, 'I don't care how you get 'em, just get 'em,'" Mitchell recalled.

(C) Watch Mitchell explain how they created voters >

They took addresses from homeless shelters, used fake birthdays and Social Security numbers and took names from baby books to create voters out of thin air.

"Every day I'd go to the library and get a newspaper," Mitchell said. "I had one guy who'd go to the phone book. Everyone had different methods."

The secretary of state called it "the worst case of voter registration fraud in the history of the state of Washington." ACORN was fined \$25,000 and ordered to improve its oversight.

The group is under investigation in 10 states for voter registration fraud, and Republican presidential candidate John McCain's campaign has accused ACORN of trying to rig the [election](#) for Democrats.

But University of Washington law professor Eric Schnapper says the idea of fake cards turning into real votes is a myth.

"There are no known instances of fictitious people actually voting," Schnapper said. "You look at some of the names: Mickey Mouse. Dr. Seuss. Mickey Mouse only votes in Disneyland. He's not going to show up at a critical precinct in West Virginia or North Carolina."

Schnapper said that if anyone should be upset, it's ACORN.

Ex-ACORN worker: 'I paid the price' for voter registration fraud - CNN.com <http://cnn.site.printthis.clickability.com/pe/cpt?action=cps&title=Ex-A...>

"The victims of this are the people who paid these workers \$8 an hour to go out and find legitimate voters, and ... they didn't get their \$8 worth; they put down phony names," Schnapper said.

Schnapper said he's worked on Republican and Democratic campaigns and has paid people to hand out leaflets or register voters. He said some of the workers do their jobs and some don't.

ACORN said it has registered well more than 1 million voters, most of them Democrats. Though the group is under investigation in a number of swing states, such as Ohio and Nevada, amid accusations that it turned in fake voter registration cards, Schnapper said there's no evidence that any worker intended to commit voter fraud and actually take those names, produce phony identification and vote on Election Day.

Threats of criminal prosecution may scare some groups into closing voter registration drives, according to Schnapper. It could scare actual voters away from the polls as well, he said, "and that really does affect the outcomes of the election."

A report from the nonpartisan Brennan Center for Justice at the New York University Law School supports his claim. Researchers reviewed voter fraud claims across the country and found that most were caused by technical glitches, clerical errors or mistakes made by voters. One other finding: A person is more likely to be struck by lightning than to impersonate another voter at the polls.

ACORN has recently released a video on the Internet called "Fight Back: The Truth About ACORN." It uses a mix of interviews and video to fight what the group calls Republican efforts to suppress voter turnout.

CNN asked Clifton Mitchell whether he and his team, at any point, got together to try to rig the election.

"When I did it, when my team did it, it wasn't to steal any election," Mitchell said. "They're just trying to keep a job. But understand, I blame myself. I can only blame myself."

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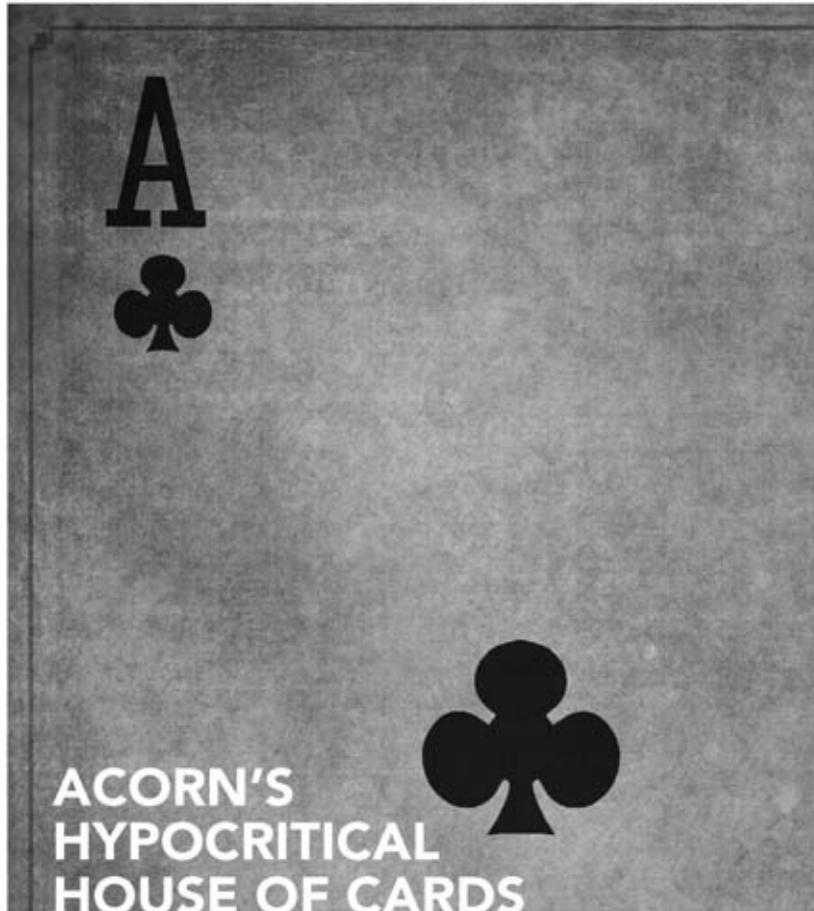
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How One "Community" Group Helped
the Housing Crisis Harm Taxpayers



Executive Summary

It is an enduring irony that the groups which profit most from worry over America's ongoing housing correction—described in breathless media reports as a crisis—are frequently labeled “consumer advocates.” (See Predatory Charity, our policy paper on The Center for Responsible Lending.)

This report focuses on the troubling record of the Association of Community Organizations for Reform Now (ACORN) and its tax-exempt offshoot, the ACORN Housing Corporation (AHC). The ACORN/AHC version of consumer advocacy has consisted of a three-decade assault on free enterprise and a history of extracting resources from financial lenders seeking abatement of ACORN's public relations assaults. Specifically, this report examines ACORN's impact on the housing problem. Documents provided by internal whistleblowers, cross-checked with public records and recorded events, expose hypocritical lending recommendations tied to ACORN Housing Corporation's agreements with major banks—agreements that end up harming consumers.

Media reports, combined with information provided by former ACORN employees, show that:

- ACORN leveraged the Community Reinvestment Act in order to attack lenders' reputations and secure financial resources for itself; it has also endorsed loans offered by companies that fund ACORN operations
- ACORN's decades of lobbying and publicity seeking have contributed to the current housing crisis by lowering lending standards
- Despite raking in a troubling 40 percent of its revenue from taxpayers over the last three years, ACORN Housing Corporation's actions range from controversial to borderline illegal:
 - AHC has worked to obtain mortgages for undocumented workers
 - AHC relies on undocumented income, “under the table” money that may not be reported to the Internal Revenue Service
 - ACORN's “financial justice” operations attack lenders for “exotic” loans, but AHC has recommended ten-year interest-only loans (which deny equity to the buyer) and reverse mortgages (which can be detrimental to senior citizens)
 - AHC may have violated federal law by failing to maintain a proper distinction between its tax-exempt housing work and the aggressive political activities of ACORN

Given this record, Congressional appropriators and administration officials should investigate ongoing and future grants to ACORN Housing Corporation.

“Documents provided by internal whistleblowers, cross-checked with public records and recorded events, expose hypocritical lending recommendations tied to ACORN Housing Corporation's agreements with major banks—agreements that end up harming consumers.”

About ACORN and ACORN Housing Corporation

To understand the current subprime credit mess is to glimpse a world in which a politically active organization with a non-profit housing arm reaps millions of dollars through "rent seeking" or manipulation of favorable laws. ACORN and its non-profit housing arm have taken in millions of taxpayer and corporate dollars by abusing a three-decade-old law intended to help the poor obtain housing. For decades, the activist organization known as ACORN has grabbed headlines—and cash—by attacking mortgage lenders in the name of citizens' rights. Considerably less attention has been paid to the amount of taxpayer money that funds ACORN Housing Corporation (AHC) and to the financial rewards ACORN has amassed by extracting resources from corporate targets.

Because the ACORN does not claim federal tax exemption, it is free to engage in politics and is not required to disclose details of its vast and varied financial operations. ACORN claims 350,000 member families in a half-dozen nations. Observers can shine light on this shrouded financial picture only by studying news reports. According to *The New York Times*, the budget for ACORN organizations exceeded \$37 million in 2006.¹ In 2005 a longtime labor activist, aware of its sizable budget, remarked, "That's quite a business"²—and business is the operative word. It was reported in 2005 that ACORN had received more money in settlements from corporations than from foundations and churches combined,³ a startling finding for a community organization.

ACORN's business model involves choosing a corporate target, attacking it, reaching a financial settlement, and then beginning the cycle again with a different target. The organization's own manifesto says: "ACORN's lifeblood is conflict with targets outside the organization," according to an internal document.⁴ This strategy has been very effective in the case of mortgage lenders. A magazine sympathetic to ACORN notes dryly, "AHC exhibits a unique ability to develop relationships with institutions, including some with which ACORN was previously in conflict."⁵

ACORN's "Business Model"



— Presentation by Former ACORN Organizer and University of Georgia Professor Fred Brooks

Evidence from the public record, as well as documents provided to the Consumers Rights League by whistleblowers, suggests ACORN's extension of its business model to the housing arena has been lucrative. AHC is one of ACORN's largest 501(c)(3) tax-exempt organizations. In its fiscal year ending 30 June 2006, AHC reported expenses of \$8 million. It is one of the most influential non-profit housing consumer advocates in the United States.

In addition to the millions of taxpayer dollars AHC has taken in, one of the organization's tax returns shows private donations of more than \$4 million from major banks.⁹ Whistleblower documents covering AHC's revenue sources from July 1, 2004 through June 31, 2005 included:

- ACORN (Citibank Partnership)\$127,500
- ACORN (Citibank Partnership)\$240,000
- ACORN (Freddie Mac)\$35,000
- Ameriquest Mortgage.....\$130,000
- Fannie Mae (for Broadband)\$20,000
- Fannie Mae FYE 2005-2006\$100,000
- JP Morgan Chase 2005-2006\$1,000,000
- Bank of America 2005-2006.....\$1,390,000
- Washington Mutual\$175,000
- M & T Bank\$150,000
- United Way (American Dream).....\$15,000

"B of A pays quarterly. Chase when they feel like and are tired of getting bugged by me."⁷

— Internal ACORN e-mail from 2005

Why would banks pay so much without a fight? Sol Stern, a consultant to the financial industry has explained, "The banks know they are being held up, but they are not going to fight over this. They look at it as a cost of doing business."⁸ Lenders could be forgiven for this impression, because ACORN intentionally cultivates that perception. Internal ACORN Housing documents suggest that staff members raise money by telling bankers exactly that: "It's the cost of doing business."⁹



ACORN's Role in the Current Housing "Crisis"

Setting aside for a moment the sea of acronyms and allegations swirling around the current housing correction, there are a few core concepts at its base. Some claim fraud on a massive scale, but at present there is insufficient evidence to substantiate that allegation. A more serious—and more supportable—explanation centers on the loosening of credit and acceptance of greater risk both by borrowers and by lenders seeking to serve riskier, non-traditional consumers. It is here that ACORN is most clearly tied to the present housing woes.

Whether by intention or by happy accident, ACORN has become both a leading beneficiary and an important advocate of the Community Reinvestment Act (CRA). Three decades ago politicians, spurred by activist groups, found that banks were engaging in "redlining"—refusing loans in areas with high concentrations of individuals with low credit scores. Legislators passed a bill that gave community groups significant sway over bank mergers based on the banks' record of lending to minorities and the poor. The fact that poor credit put such borrowers at higher risk for default was deemed irrelevant. ACORN and AHC have taken advantage of that 1977 bill and have aggressively argued—since at least 1991—for its continuation. Given ACORN's reliance on AHC to funnel federal funds for "mortgage counseling," such support is hardly surprising.

By 1992 ACORN and AHC had for several years wielded their CRA clout to pressure banks. Then *The New York Times* published an in-depth examination of how changing bank practices aligned with ACORN's goals. The paper reported from Philadelphia, Pennsylvania:

Prodded by Federal laws and an aggressive community-action group called Acorn, banks here and in other cities across the country have started making mortgage loans in neighborhoods they have traditionally avoided.

In Philadelphia, bankers are setting the rules for this kind of lending. So far, \$60 million has been lent in a widely watched program. It matters little if an applicant has a small income, an irregular job pattern or collects welfare or food stamps. He or she might still qualify for a mortgage, bankers here say—a radical departure from traditional banking practices.¹⁹

The newspaper was quite clear about CRA's role: "these mortgages help banks fulfill somewhat vague obligations of the Community Reinvestment Act of 1977, which requires banks to invest in communities that provide them with deposits."²¹

More than two decades on, scholars and economists are now recognizing ACORN's dual role in the present "crisis"—as supporter and beneficiary of a financial regime that made credit too cheap and easy to obtain. As media panic mounted in 2007, Dr. Thomas DiLorenzo of Loyola College argued that ACORN and its community allies directly contributed to current problems with subprime loans, writing that "thousands of mortgage defaults and foreclosures in the 'subprime' housing market (i.e., mortgage holders with poor credit ratings) . . . [are] . . . the direct result of thirty years of government policy that has forced banks to make bad loans to un-creditworthy borrowers."²² Further, DiLorenzo argues:

The only way these borrowers could qualify for their mortgage loans (even ignoring their bad credit ratings) was to take out adjustable rate mortgages, some of which had astonishingly low first-year rates in the 3 percent range, and sometimes lower. This is what has largely fueled the subprime mortgage meltdown—the inability of thousands of subprime borrowers to afford their mortgages now that their rates have adjusted upward. Thus, the combination of the Fed's enforcement of the CRA (with the help of political pressure groups like ACORN) and its post 9/11 monetary policy in general are the reasons for the bursting real estate bubble and the "subprime" mortgage meltdown.¹³

"It matters little if an applicant has a small income, an irregular job pattern or collects welfare or food stamps."

November 24, 2004

Dear XXX,

This letter discusses your recent pattern of conduct, which, if continued, will force me to terminate your employment here.

On October 27, 2004 at 4:00 pm, I sent you a communication asking you to stop using your personal cellular phone during office hours, except in case of an emergency. An emergency happens once in a while, but you continue to use your cellular phone during office hours on daily basis. Every time you call me from Tampa I can hear your cell phone ringing on the background. The same thing happens during my visits to the Tampa Office.

On my reply to your e-mail dated October 26, I disagreed with your claim of not getting supportively from me in order for you to conduct business properly at the Tampa Office. The facts, which are on record, demonstrate the opposite.

On Oct 1, 2004, I issued you a warning for disrespecting your supervisor and co-workers.

Furthermore, during my visits to the Tampa Office on Nov 4, 2004, my file review identified incomplete files left unattended since my visit of October 8, for which I left specific recommendations. Unfortunately, I found that these files were still as incomplete as I found them on October 8.

The File review of 10/25-29 I made recommendations for completions of files:
HUD #970179, 970203, 970243, 970246

Clients you claimed you saw face to face were not recorded on the appointments book or HCO or Files. Therefore, there is no proof that you actually saw these clients. Those files are HUD# 970211, 970249, 970237, 970239, 970208, 970210, 970206, 970242, 970241, 970230 and 970248

During my recent visit of Nov22-24, I found once again that all clients files are in complete disarray, incomplete, specifically the following HUD factors:

- Counseling activity and visit log
- Initial Interview Form
- Client Chart
- Counseling/Action Plan

During each of my visits, I explained you the AHC guidelines and procedures, but you still fail to implement them. In this visit, when I reminded you that you need to comply with official AHC guidelines and procedures you answered me that you had your own method of work. Furthermore, most files reviewed show that you are using the maximum undocumented income allowed (\$1,200) for household members, without pulling credit reports and verifying source of income. This is another matter I explained to you over and

In February 2008, economics professor Sean Liebowitz of the University of Texas at Dallas suggested:

At the crisis' core are loans that were made with virtually nonexistent underwriting standards—no verification of income or assets; little consideration of the applicant's ability to make payments; no down payment ...

From the current hand-wringing, you'd think that the banks came up with the idea of looser underwriting standards on their own, with regulators just asleep on the job. In fact, it was the regulators who relaxed these standards—at the behest of community groups and "progressive" political forces.¹⁴

Liebowitz further pointed to ACORN's role in the current housing "crisis" and to current advertisements highlighting its

role in procuring loans without using credit scores,

100-percent financed loans, and acceptance of undocumented income.¹⁵

In the prescient 1992 New York Times article, ACORN's longtime housing leader, Michael Shea, admitted that banks would not have adopted ultimately harmful policies "if there was no community pressure and the law," but that those factors made "a lot of bankers see it's in their self-interest."¹⁶ That self-interest—ACORN's and modern banks'—made possible the extension of cheap credit to risky borrowers and has led directly to the modern subprime mess.

It's important to note, as the Times did, that in this campaign there were "many such voices. But by far the loudest belongs to Acorn..."¹⁷

Feeding at the Taxpayer Trough

It is not corporate targets-turned-benefactors alone that keep ACORN Housing Corporation afloat and poised to attack. AHC's tax-exempt status allows it to accept taxpayer money in the form of grants or contracts. It has done so, and hungrily. Two out of every five dollars AHC takes in come from taxpayer coffers. Given this largesse, AHC owes the public a good deal of transparency and good stewardship of these public dollars. However, AHC's record in recent years includes:

- Poor service to some of its vulnerable clients
- Potential staff lapses allowing HUD fraud
- Controversial collaborations assisting undocumented workers in obtaining mortgages
- Assistance to borrowers using "under the table" undocumented income in loan applications
- Ironic (if not hypocritical) recommendations for exotic loans
- Possible violations of federal law through failure to maintain a distinction between the activities of AHC and those of the very political ACORN

Potential HUD Fraud

This sloppy staff work doesn't just fail to meet the public's needs—a public that is paying with its tax dollars—it also raises the possibility of fraudulent use of taxpayer money. In a disciplinary letter to one AHC staff member obtained by the Consumers Rights League, ACORN officials warn:

Clients you claimed you saw face to face were not recorded on the appointments [sic.] book or HCO or Files. Therefore, there is no proof that you actually saw these clients. Those files are [redacted HUD file numbers].

A Big Bite from Big Brother

Total AHC Revenue:



Taxpayer Money into AHC:

	Government	Total
Total: 40%	\$7,329,323	\$18,303,239
2006	\$1,700,317	\$6,243,882
2005	\$3,020,045	\$6,655,051
2004	\$2,608,961	\$5,404,306

— Years reflect AHC's fiscal periods ending June 30.

During my recent visit of Nov22-24, I found once again that all clients' files are in complete disarray, incomplete, specifically the following HUD forms:

- Counseling activity and unit log
- Initial Interview Form
- Client Chart
- Counseling/Action Plan²⁹

ACORN's Own Words

From: acorn@acorn.org
 Date: Tuesday, September 28, 2004 11:52 AM
 Subject: FHP Grants

Total funding from HUD's fair housing initiatives (FHIP) this year is about \$650,000 which will provide a good opportunity for ACORN and AHC to work together on fair housing issues and campaigns.

Two new grants were funded in the newer funding categories for minority homeownership and hispanic outreach and seven new cities will be participating in fair housing this year.

AHC
 AHC - AZ \$99k
 ACLA NM - NM \$99k
 TX AHC - Houston
 MN AHC - MN \$80k

ACORN
 AI - Florida (Miami, Broward, Palm Beach) \$80k
 AFSI - CT & RI \$80k
 AEPJ - MD \$80k

Fair Housing
 AR - ACHC \$50k
 I'll keep folks updated on when it looks like the money will actually be coming in. HUD is moving rather quickly on this for a change.

Undocumented Income

I. INTRODUCTION

Undocumented income is a feature that allows ACORN Housing committees to capture the applicant (s) total household income. Primarily observed in minority and immigrant communities, this type of income is not reported in the IRS and is also known as under-the-table. Individuals who earn undocumented income are typically paid cash from a variety of jobs that include second or third jobs, self-employment, specialized skills and hobbies, outside the applicant (s) regular working schedule such as weekends or evenings.

Although it is a strictly national feature in other banks and products, Bank of America's policy toward undocumented income is very flexible. ACORN Housing committees establish the amount, source and number of applicant (s) income sources, without guaranteeing from underwriters. In other words, if the housing affordability program.

This feature has been heavily used and abused in the past year. Largely, the abuse is due to the influence of account executives, Real Estate professional and builders, whose interest is to qualify borrowers for larger loan amounts, without any regard to the applicant (s) long-term affordability. Let's look at the following example:

The Smith total gross earnings are \$2,000/month, their PITI would be \$700, at 30% housing ratio. However, if we add \$1,200 in undocumented income, their income becomes \$3,200/month and their PITI equals 45% of gross earnings without undocumented income!

The consequences can be beneficial or detrimental. For AEA, Real Estate Agents and builders, a higher PITI increases \$40,000-\$50,000 over a regular loan, therefore a larger commission or profit. For the families, if the income is not real, it would mean buying according to what they can afford. However, hidden income is expensive. Most likely, this family would not be able to keep the house in the long term.

Undocumented income can be a powerful tool to capture the applicant (s) total household income. However, accuracy must be careful at providing undocumented income letters, as it can hurt the applicant (s) in the future. The following guidelines will help you in establishing and documenting the amount, and following the proper steps to refer your client to the bank.

ACORN agrees that they shall cooperate in good faith with each other and all to promote their respective organizations and operations, as well as to promote the public interest in the housing industry.

The parties agree to meet and resolve such concerns in good faith. The parties agree that such meetings shall be held at a mutually agreeable time and place after receipt of notification. Neither party will engage in any public campaign or protest against such concerns unless the other party has refused to meet in this manner or the party will have the right to terminate this agreement if, after meetings and discussions, the other party unreasonably engages in a public campaign or protest against the complained about practices and procedures.

Chigroup and ACORN share a broad interest in public policy issues surrounding consumer lending (including terms and conditions of loans, practices of lenders, Chigroup and ACORN believe that the lending industry environment for lenders. Consequently, Chigroup and ACORN agree that these lending practices from a bank for state or local legislation to use these practices as a template for discussions with each other on the throughout its consideration. Accordingly, ACORN agrees that it will not will not enter into any restrictive terms and conditions, which legislation have made their best efforts to reach agreement on the content of the legislation. However, in recognition of ACORN's ongoing efforts to promote sound lending legislation in Pennsylvania

It's Documented: ACORN Housing Works for Its Donors, Not for the Poor

Most people unfamiliar with AHC would assume that a group dedicated to protecting consumers from abusive loans would advocate safe, traditional 30-year mortgages which build equity and help buyers experience the American dream. Records show otherwise. Professor Liebowitz notes: "On the Web, you can still find CRA loans available via ACORN with '100 percent financing . . . no credit scores . . . undocumented income . . . even if you don't report it on your tax returns.' Credit counseling is required, of course."²¹

The requirement for credit counseling would be reassuring if the counseling service did not bring millions of dollars in donations from the federal Department of Housing and Urban Development into AHC's coffers.

Of specific concern is ACORN's agreement to provide letters of "undocumented income" to Bank of America. According to a 2005 internal ACORN e-mail, that bank "pays ¼ of \$1,300,000 each quarter."²² Another pre-2007 ACORN document instructs its staff:

Undocumented income is a feature that allows ACORN Housing counselors to capture the applicant(s) total household income. Primarily observed in minority and immigrant communities, this type of income is not reported to the IRS and is also known as under-the-table.

AHC appears to be using taxpayer dollars to assist individuals who are dodging their taxes. Nor was AHC unaware of the potentially harmful effects for borrowers:

Although it is a strictly enforced feature in other banks and products, Bank of America's policy toward undocumented income is very flexible. ACORN Housing counselors establish the amount, source and conduct verification of such income, without questioning from underwriters . . .

The consequences can be beneficial or detrimental . . . counselors need to be careful at providing undocumented income letters, as it can hurt the applicant(s) in the future.

AHC claims it attempts to use "undocumented income" judiciously, but one employee's 2004 performance review indicated:

. . . most files reviewed show that you are using the maximum undocumented income allowed (\$1,200) for household members, without pulling credit reports and verifying source of income.²³

An internal e-mail chain described particular use of undocumented income properly as "a longstanding policy of ACORN that was not enforced." A reply noted, "I get your point that from now on we cannot do these over-income limits [sic.] deals. The reality is that we have deals pending."²⁴

"On the Web, you can still find CRA loans available via ACORN with '100 percent financing . . . no credit scores . . . undocumented income . . . even if you don't report it on your tax returns.' Credit counseling is required, of course."

Negotiating a Lobbying Hiatus and Loans for Undocumented Workers

ACORN has built much of its reputation and its ability to raise funds from HUD on its image as a foe of powerful banks, a consumer advocate that damns the torpedoes to lobby for change. Its agreements with major donors, however, would probably not delight the taxpayers who pick up 40 percent of the organization's budget. For instance, an agreement with Citibank, a significant ACORN donor and partner, showed that some activists become less active when deals are in place: "ACORN agrees that it will not lobby for more restrictive terms and conditions, and Citigroup agrees that it will not lobby for less restrictive terms and conditions, on such legislation."²³

ACORN's relationship with Citi rests on far more than a simple lobbying cease-fire—though that alone would outrage most ardent consumer advocates. In February 2006 the San Diego Union-Tribune reported that Citibank "has funded its first home loans to undocumented Mexican immigrants" in "a move that targets a lucrative, wide-open market while providing new grist for the debate over illegal immigration." An ACORN Housing spokesperson admitted, "It is a controversial program."²⁴ The paper was careful to note that the "nonprofit organization receives much of its funding from the Department of Housing and Urban Development."²⁵

Exotic Loans

Allowing consumers to decide which loan products are best for them allows the market to function optimally. But between 2004 and 2006—and perhaps beyond—ACORN and AHC have used taxpayer money to advocate "exotic" loans to low- and moderate-income customers, including:

- **Interest-Only Loans:** An ACORN Housing program in operation since February 2006 has offered a Bank of America "10/30" loan. Its terms allow AHC's low- and moderate-income customers to pay only interest for the first ten years of a forty-year mortgage. It seems fine to ACORN that these customers are building no equity for those ten years.
- **Non-Amortized Mortgages:** AHC has counseled some of its clients into "40 year non-amortized" loans, which means that their low- and moderate-income customers would reach the end of a forty-year mortgage and still owe money.
- **Reverse Mortgages:** AHC counselors have been trained to recommend that low- and moderate-income senior citizens opt for reverse mortgages, an exotic loan that may be a good choice for some borrowers and a disaster-in-waiting for others.

Bank of America has enhanced the mortgage terms for several of our products. Effective February 13, 2006, a 10/30 Fixed Rate Interest-Only (40-year fixed rate fully amortized term) will be available with the ACORN Housing Corporation product.

Customers receiving a Bank of America product with the interest only feature must receive additional information on this feature and how it works from the ACORN Housing Corporation counselor. We have prepared a fact sheet that explains the interest only option for your use. A comparison between a traditional 30-year fixed rate fully amortizing, 40-year fixed rate fully amortizing and a 10/30 Fixed Rate Interest-Only (10-year interest only feature and 40-year term) is also provided. Please add this to your curriculum, either classroom training or one on one counseling session for customers considering the 10-year interest only feature.

Bank of America believes that offering a variety of flexible products and terms helps to meet the varied needs of the customers in the communities that we serve. We understand this product feature is not the right option for everyone, but it is the perfect answer to for some.

If you have any questions or concerns, please contact us. Thank you for the valuable partnership that we share as we serve our mutual customers.

Failing (Again) to Separate Charity and Politics

Following a 1994 Clinton administration \$1 million+ grant to ACORN Housing Corporation, an investigation by the Inspector General of AmeriCorps found that AHC had falsely assured the government that it remained separate from the highly political ACORN, as required by law. In fact, the investigation found quite the opposite:

Not only did we find references to ACORN having "created" AHC to serve purposes common to both organizations, we noted numerous transactions and activities involving "fraternal" ACORN-related corporations. These transactions included costs charged to AHC, and thus to the CNS grant, by ACORN or other ACORN-related entities.²⁸

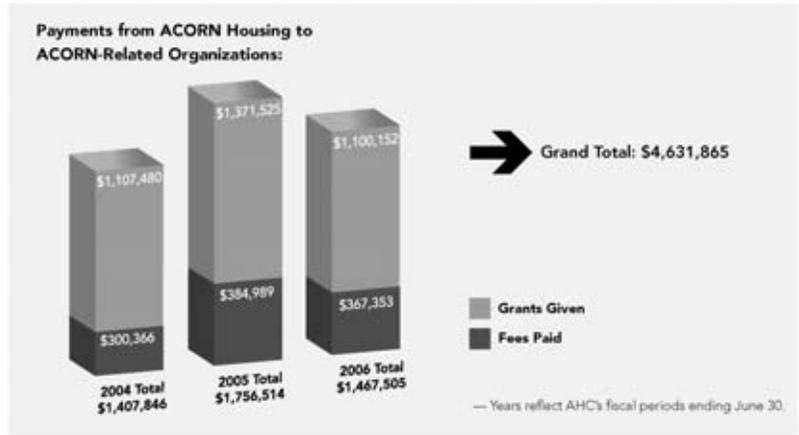
The grant was withdrawn as a result of those findings, but evidence suggests the illegal relationship continued. In fact, by 1996 Shelterforce magazine reported: "ACORN Housing Corporation is closely connected to ACORN, the national advocacy organization, and consequently has greatly enhanced clout when it sits down with reluctant bankers or city officials."²⁹

An internal ACORN e-mail from 2004 confirms ACORN and AHC planned to continue using government

funds to fund coordinated efforts (emphasis for clarity): "Total funding from HUD's fair housing initiatives (FHIP) this year is about \$650,000 which will provide a good opportunity for ACORN and AHC to work together on fair housing issues and campaigns."³⁰

Public documents offer more evidence that "transactions and activities involving 'fraternal' ACORN-related corporations" also continued. Tax returns for three recent years show taxpayer funding accounted for 40 percent of the organization's total budget. Meanwhile, AHC has sent \$4,631,865—an average of over \$1.5 million per year—to other ACORN organizations through fees and grants. In each of those three years AHC paid annual fees in excess of \$300,000 to Citizens Consulting, an ACORN-related firm. Payments of at least \$50,000 were made to the Peoples Equipment Resource Center—another ACORN-related organization—in two of those years.

Yet another troubling pattern emerged from the Inspector General's original investigation, which found that AHC attempted—perhaps aggressively—to persuade counseling clients to pay for ACORN memberships. The Consumers Rights League has received a credible statement from a current or former AHC employee suggesting the practice remains in place.



Conclusion

ACORN's long history of abusing the public's trust seems to have continued through the housing bubble. Its advocacy for loose credit played a role in the current subprime mess. Its advocacy of exotic loans calls into question the wisdom of giving taxpayer money to the organization. And its record of inappropriate ties between a non-profit that receives government funding and a political organization may violate federal laws. Congressional leaders should be wary of donating hard-earned tax dollars to a group with this sordid record. At a minimum, a Congressional investigation is warranted.

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About Us

The Consumers Rights League is a non-profit, non-partisan, educational organization dedicated to preserving consumer choice in the marketplace. Through investigative analysis, the Consumers Rights League produces quality research that thoroughly documents the real-world choices and challenges consumers face, and reports on the benefits enjoyed by an overwhelming majority of consumers.



\$1 Million Scandal Latest To Hit ACORN

As Evidence Mounts, Congress Must Investigate and Install Taxpayer Protections

ACORN and its affiliates have a multi-decade history of fraud and abuse of taxpayer funds. Recently, the Consumers Rights League released a whistleblower report that uses internal ACORN documents to highlight alleged misuses of taxpayer money by ACORN Housing Corp, which took in 40% of its funds from the government and sent more than a million dollars to ACORN's affiliate, Citizens Consulting.

Now, The New York Times reports ("Funds Misappropriated at 2 Nonprofit Groups," June 9) that ACORN has hid since 2001 the embezzlement of nearly \$1 million by the brother of ACORN's founder from that same organization--Citizens Consulting.

*Additionally, ACORN is currently under investigation for potential voter fraud all across the nation. **With millions of dollars transferred from AHC to these affiliates, it is entirely plausible that taxpayer funds are funding much of this fraud.***

Yet, Congress is poised to reward these organizations with hundreds of millions more dollars. The current housing bill working its way through Congress (HR 3221) would create a multi-billion dollar housing fund from which these organizations could draw vast sums of money.

These groups operate as a complex family of political and non-profit organizations that freely move funds from one to another. More and more evidence of fraud and abuse surfaces seemingly every day. Only a thorough investigation will reveal the truth. Congressmen Feeney, Royce and Hensarling have asked Chairman Frank to hold hearings. But so far, Chairman Frank has chosen not to act or to acknowledge the problem.

This document provides a brief overview and some examples of ACORN and its affiliates' long history of fraud and abuse as well as recommendations that should be included in HR 3221 to protect taxpayers and prevent new abuses.

A Multi-Decade History of Fraud

ACORN has repeatedly been implicated in scandals involving public funds and political activities. Below are a few examples:

Misuse of Taxpayer Funds

- In 1977 — *three decades ago* — ACORN accepted a \$470,000 federal grant through the Volunteers in Service to America (VISTA) program to train volunteers to help low-income citizens. ACORN was accused of illegally using the resources for its political activities, and the report from a Congressional investigation found that ACORN had illegally used the money for labor organizing.
- In 1994 following a Clinton Administration grant worth more than \$1 million to ACORN Housing Corp, an investigation by the Inspector General of AmeriCorps found that AHC used government funds to register low-income individuals for paid ACORN memberships — a violation of federal law. The Inspector General found evidence of inappropriate transactions charged to AHC — and thus to taxpayers — “by ACORN or other ACORN-related entities.” Further, AHC had also lied about maintaining separation from ACORN, which engages in overt political activities. The Inspector General found evidence of “ACORN having ‘created’ AHC to serve purposes common to both organizations” and “noted numerous transactions involving AHC and other ‘fraternal’ ACORN-related corporations.” This grant was revoked.

Voter Fraud

- Since 1998, ACORN and Project Vote employees were implicated in voter registration fraud allegations in more than a dozen states.
- In 2003, ACORN employees in Missouri turned in a batch of thousands of registration forms — of which only about 40 percent were valid, with another 1,000 believed to be attempts to register voters illegally.
- Following Colorado’s 2004 election, two ex-ACORN employees were convicted of perjury for submitting false voter registration forms; one ex-ACORN employee admitted to registering her friends 40 times.
- In 2004, police pulled over a former ACORN employee who had more than 300 voter registration cards in the trunk of his car, many of which had not been turned in within the legal time limit.
- In 2005, Virginia authorities found that of a sample of Project Vote-gathered registrations, 83% were *rejected* for using false or questionable information.
- In 2007, King County, Washington officials announced the indictment of seven workers ACORN had hired to register voters, calling the episode the “*worst case of voter registration fraud in the history of the state.*” At least three of those individuals have pleaded guilty and ACORN was forced to pay a \$25,000 settlement.

Money Laundering

- Project Vote was implicated in a money-laundering scheme to rig the 1996 Teamsters president election, which was thrown out by federal authorities. Project Vote received

\$175,000 to undertake ostensibly non-partisan get-out-the-vote efforts, though an internal Teamsters memo reported that "in each instance they will benefit the Clinton campaign but also, and more specifically, congressional and senate races that we are tracking."

ACORN's Abuses Continue Today

Misuse of Taxpayer Funds

- Whistleblower evidence obtained by the Consumers Rights League indicates that the same illegal practice of comingling taxpayer funds with political projects used in 1994 is ongoing.
- An internal 2004 memo brags that a HUD grant of \$650,000 "will provide a good opportunity for ACORN and AHC to work together..."
- From its fiscal years 2004-2006, ACORN Housing Corp obtained 40% of its funding from the government, totaling more than \$7 million.
- During this same time, AHC sent millions of dollars to affiliate organizations.
- *A significant portion of AHC's money was paid to Citizens Consulting in the form of "fees" (a search of the last five tax returns available on Guidestar shows AHC paid \$1,343,930 in "fees" to Citizens Consulting).*

Embezzlement of Funds

- According to a July 2008 report from The New York Times, ACORN has hid since 2001 the embezzlement of \$948,607.50 from Citizens Consulting, Inc. by ACORN founder Wade Rathke's brother from 1999 to 2001.
- The New York Times report followed closely on the June 2008 exposé from the Consumers Rights League, which found that taxpayer money supported corporate shakedown tactics, counseling of potential homebuyers to use "undocumented" or "under the table" income to obtain mortgages, and obtaining mortgages for undocumented workers.
- That means taxpayer dollars intended to support housing counseling and easing housing woes directly funded an organization that was covering up massive fraud and engaging in questionable mortgage practices.
- Meanwhile, millions more in taxpayer money has flowed from AHC to other ACORN entities in recent years.

Voter Fraud

- In 2008, federal authorities announced that *eight former ACORN voter registration employees pleaded guilty* to federal election fraud for submitting false registration cards during the 2006 election.
- In June 2008, ninety completed voter-registration applications were stolen from ACORN's offices in Las Cruces, New Mexico. ACORN's record in New Mexico includes *registering a 13-year-old to vote in 2004, and the submission of 3,000 potentially fraudulent signatures by four of its employees in 2005.* A sheriff said plainly that, *"It's safe to say the forgery was widespread."*
- In March 2008, Philadelphia officials sought an investigation into ACORN's voter registration program because they "were fed up with false applications gumming up the works" and "specifically accused" ACORN of turning in bad paperwork.

- In June 2008, a Project Vote spokesman acknowledged that 35 percent of the cards turned into Louisiana officials were duplicates. One woman, for instance, had five cards turned in for her, though she didn't complete them.
- On July 6, 2008, authorities in Dauphin County, Pennsylvania announced the investigation of more than 100 voter registration cards submitted by ACORN, including instances where voters say they never filled out a document.
- On July 7, 2008 the Las Vegas Review-Journal reported that a Clark County, Nevada official "sees rampant fraud in the 2,000 to 3,000 registrations ACORN turns in every week."

Congress is Poised to Reward these Organizations with Hundreds of Millions of Dollars

The housing bill working its way through Congress (HR 3221) creates several funds from which AHC and its affiliates could garner potentially hundreds of millions of dollars.

Affordable Housing Fund

- This is funded by requiring Fannie Mae and Freddie Mac to direct 4.2 basis points of all of their new business into this fund.
- The exact language is: "set aside an amount equal to 4.2 basis points for each dollar of the unpaid principal balance of its total new business purchases"
- *The Congressional Budget Office estimates that new mortgage purchases by Fannie Mae and Freddie Mac will total about \$1.7 trillion in 2009, and that gross assessments under the bill would total about \$710 million in 2009 and about \$9 billion over the 2009-2018 period.*

Housing Counseling Funds

- The House bill that was accepted and is pending passage in the Senate included \$230 million for counseling - \$200 million for loss mitigation counseling and \$30 million for the Neighborhood Reinvestment Corporation to make grants to counseling agencies.

Congress Must Investigate Fraud and Add Protections to Prevent Future Abuses

The Consumers Rights League remains in opposition to the bailout bill as a whole. But even proponents of this legislation must admit that there is a problem with the current system. As evidence mounts that the very same organizations that would reap a financial windfall from HR 3221 are actively engaged in fraud, it would be outright irresponsible for Congress to pass this legislation without investigating current abuses and putting in place measures to prevent future abuses.

Duty to Investigate

- There is clear evidence that strongly suggests that the ACORN family of organizations may have engaged in activities ranging from the misuse of taxpayer funds to fraud and embezzlement.

- Monies that go into one organization become fungible and are easily moved from nonprofit organizations to political organizations with a few semantic and accounting tricks.
- In order to rectify past abuses and better understand how to prevent future abuses, Congress must investigate these practices and allegations.

Measures to Prevent Future Abuses

Increased Transparency

- Congress should add increased transparency requirements for organizations receiving taxpayer funds such as public annual audits and itemized spending reports.
- Taxpayers have a right to know and Congress has a duty to ensure that taxpayer funds are being used responsibly.

Organization Firewall

- Currently organizations are able to hide the misuse of public funds by moving fungible money through multiple organizations.
- Often these organizations are not only affiliated but are run by the same executives.
- Congress should implement measures that prohibit organizations receiving public funds from affiliations with political organizations.

Increased Penalties for Misuse of Public Funds

- Aside from the felony charges that should arise from the embezzlement of funds and the obstruction of justice charges for covering up that embezzlement, there are currently relatively few penalties for the misuse of taxpayer funds.
- HR 3221 requires only that organizations found to have misused funds, repay the funds to the government within 12 months.
- Congress should impose significant financial and other penalties for organizations found to have misused public funds, including permanent ineligibility for future grants.

Conclusion

ACORN and ACORN fraternal organizations' multi-decade record of partisanship and misusing public funds is a prime example of a broken system. They continuously turn in faulty, if not false, voter registration forms that threaten to disenfranchise voters on Election Day. They have repeatedly used taxpayer funds to bolster their own political ends. Eventually, taxpayer money ended up in the pockets of the brother of ACORN's founder and ACORN attempted to hide the truth for years.

Federal authorities must investigate the misuse of taxpayer funds supplied to ACORN and its affiliates and rectify these past abuses. Further, Congress must put into place measures that will prevent such abuses in the future.

SWORN AFFIDAVITS

IN THE MATTER OF
SHARED FUNDING BETWEEN ACORN
AND ACORN HOUSING CORP

AFFIDAVIT
of
Sharon Trotter

August 19, 2008

IN THE MATTER OF SHARED FUNDING BETWEEN
ACORN AND ACORN HOUSING CORPORATION

I, Sharon Trotter, a former employee of ACORN Housing Corporation ("AHC"),
SOLEMLY AFFIRM AND SAY THAT:

I am the petitioner in this matter and have knowledge of the matters herein referred to.

BACKGROUND

I was employed by AHC from October 2000 to December 2006. I served in the position
of Regional Director on AHC's management team until March 2006.

FACTS

I, Sharon Trotter, come forward with the following facts regarding the relationship
between AHC, a not-for-profit Organization partly funded by the United States Federal
Government and many other financial and banking institutions, not limited to, but
including, the Department of Urban Housing and Development, and ACORN, a political
organization funded by member donations and other funds.

AHC and ACORN are supposed to be independent organizations whose operations are
supposed to be funded by separate accounts. ACORN cannot receive funds or operate
from AHC because they are a political group and political organizations are not permitted
under law to receive government funds.

CONCLUSION

As a tax payer, I have seen the methods of AHC and ACORN and am deeply concerned about unethical and clearly inappropriate activities that have occurred and I believe continue to occur within these two organizations. If called to testify, I will turn over relevant information and will provide testimony under oath as to my experiences with AHC and their relationship with ACORN. It is due time that tax payers get a full accounting of how their money is being spent and that organizations such as these are held accountable for their actions.

SIGNED AND WITNESSED BY _____)

Sharon Truiter by
Kendall Dean)


SHARON TRUITER

A Notary Public
In the County of) Alameda)
(NAME) Kendall Dean)

OFFICIAL SEAL
KENDALL DEAN
NOTARY PUBLIC - STATE OF CALIFORNIA
MY COM. EXPIRES 03/31/11



AFFIDAVIT

Andrew M. Johnson
711 W. Belmont Avenue Apt. 202
Chicago, Illinois 60657

July 24, 2008

IN THE MATTER OF SHARED FUNDING BETWEEN
ACORN AND ACORN HOUSING CORPORATION

AFFIDAVIT OF ANDREW M. JOHNSON

I, Andrew M. Johnson, a former employee of ACORN Housing Corporation ("AHC"), SOLEMNLY AFFIRM AND SAY THAT:

1. I am the petitioner in this matter and have knowledge of the matters herein referred to.

BACKGROUND

2. I am 29 years of age.
3. I was employed by AHC from December 2004 to March 2006.
4. I was a Foreclosure Avoidance Counselor at AHC and worked in a special program that was the product of a court memorandum between HSBC Finance and AHC.
5. I filed a lawsuit against AHC, *Johnson v. ACORN Housing Corporation* ("the Lawsuit"), in October 2006.
6. The lawsuit, case # 06 E 16198) was filed in the Circuit Court of Cook County, Illinois before the Honorable Judge Susan McDonald.
7. The basis of the Lawsuit arose from AHC's violations of the Illinois Minimum Wage Law and Illinois Wage Payment and Collection Act, the Fair Labor Standards Act, and related laws.
8. The Lawsuit was settled in my favor prior to reaching trial. The total amount of the settlement was \$40,000.00 and the case was dismissed **WITH PREJUDICE**.
9. As part of the settlement agreement I can never seek employment at AHC.

FACTS

I, Andrew M. Johnson, come forward with the following facts regarding the relationship between AHC, a not-for-profit Organization partly funded by the United States Federal Government and many other financial and banking institutions, not limited to, but including, the Department of Urban Housing and Development, and ACORN, a political organization funded by member donations and other funds.

I come forward with the following facts:

1. AHC and ACORN are supposed to be independent organizations. ACORN cannot receive funds to operate from AHC because they are a political group and political organizations are not permitted under law to receive government funds.
2. I have knowledge that AHC has funded and continues to fund ACORN.
3. I am in possession of several E-mails that clearly show that AHC and ACORN have co-mingled funds over a period of many years.
4. On October 13, 2006 I was present at a regional AHC meeting where Lez Trujillo, AHC National Field Director, stated that as of that point in time AHC and ACORN would be funded out of the same account. Several other AHC employees witnessed Ms. Trujillo make this statement:
 - Munai Newash (Office Director)
 - Regan Brewer (supervisor)
 - Pat Siveks (Office Director)
 - Dwight Vaughn (former counselor)
 - Enimit Gross (Milwaukee office director)
5. I have knowledge of other individuals who would testify to the fact that AHC and ACORN have operated as one entity.

- 6. An internal AHC email dated September 18, 2004 in particular shows that AHC received a government PHIP grant in the amount of \$650,000.00. The E-mail states that this money would be well spent by AHC and ACORN to support dual initiatives. The PHIP grant was specifically used to fund AHC—the not-for-profit, not ACORN, the political entity.
- 7. AHC and ACORN have shared office space, voter initiative money, use of company copiers and fax machines. Many E-mails clearly show that AHC is paying for lease space occupied by ACORN.
- 8. On one occasion in 2005 during a HUD audit AHC asked me to redo files and hide boxes in the basement so that HUD auditors could not see them.
- 9. I went to speak with two HUD Federal Investigators to voice my concerns about these unethical and what I saw as illegal actions.

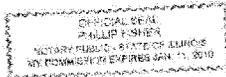
CONCLUSION

As a tax payer, I have seen the methods of AHC and ACORN and am deeply concerned about unethical and clearly illegal activities that have occurred, and, I believe, continue to occur within these two organizations. If called to testify, I will turn over relevant E-mails and will provide testimony under oath as to my experiences with AHC and their illegal relationship with ACORN. It is due time that tax payers get a full accounting of how their money is being spent and that organizations like these are held accountable for their actions.

SIGNED AND WITNESSED BY _____)



 ANDREW M. JOHNSON



A Notary Public
 In the County of Cook, Chicago IL
 (NAME) Phillip Fisher



AFFIDAVIT

Glenda Kizec
4319 Halloway Drive
Houston, TX 77047

August 15, 2008

IN THE MATTER OF SHARED FUNDING BETWEEN
ACORN AND ACORN HOUSING CORPORATION

AFFIDAVIT OF GLENDA KIZEC

I, Glenda Kizec, a former employee of ACORN Housing Corporation ("AHC"), SOLEMNLY AFFIRM AND SAY THAT:

1. I am the petitioner in this matter and have knowledge of the matters herein referred to.

BACKGROUND

2. I am 54 years of age.
3. I was an ACORN Board Member from 1997 to 1999 and I was co-chair of the city wide housing initiative during this time.
4. I was employed by ACORN from January 2nd, 1999 until June 19th 2003. I started off with ACORN as an organizer, and then Head Organizer.
5. I voluntarily switched over to work at AHC in June 20th 2003 and my employment with AHC stopped in August 26, 2006. During my tenure at AHC I was the Office Manager as well as Special Initiatives Coordinator.

FACTS

I, Glenda Kizec, come forward with the following facts regarding the relationship between AHC, a not-for-profit Organization partly funded by the United States Federal Government and many other financial and banking institutions, not limited to, but including, the Department of Urban Housing and Development, and ACORN, a political organization funded by member donations and other funds.

I come forward with the following facts:

1. AHC and ACORN are supposed to be independent organizations. ACORN cannot receive funds to operate from AHC because they are a political group and political organizations are not permitted under law to receive government funds.
2. I have knowledge that AHC has funded ACORN.
3. I am in possession of several E-mails that clearly show that AHC and ACORN have co-mingled funds.
4. An internal AHC e-mail dated September 18, 2004 in particular shows that AHC received a government FHIP grant in the amount of \$650,000.00. The E-mail states that this money would be well spent by AHC and ACORN to support dual initiatives.
5. AHC and ACORN have shared office space, office supplies and use of AHC copiers and fax machines. Many E-mails clearly show that AHC is paying for lease space occupied by ACORN.
6. One of the most compelling facts that portrays and validates my asserted claims against AHC is the fact that AHC signed a lease on 09/29/03 in which AHC was the Tenant and 2900 South Loop L.P. was the Landlord. I can verify the fact that ACORN solely occupied this space which was paid for by AHC.

CONCLUSION

As a tax payer, I have seen the methods of AHC and ACORN and am deeply concerned about unethical and clearly illegal activities that have occurred within these two organizations. I will turn over relevant E-mails.

SIGNED AND WITNESSED BY Saul Maddox August 15, 2008

Glenda Kizorek 8/15/2008
Glenda Kizorek

A Notary Public
in the County of Harris, Houston, TX
(NAME) Saul Maddox



**Florida's Election Preparedness
Written Testimony by Secretary of State Kurt S. Browning**

Thank you for inviting me to address you on Florida's preparations for the 2008 General Election.

There have been dramatic changes in the laws and procedures in the last 8 years and I am confident that Florida is ready for the 2008 Presidential election.

One of the major changes took place with the implementation of the statewide Florida Voter Registration System. The federal Help America Vote Act required each state to implement a statewide voter registration database. Florida's system went live on January 1, 2006. The statewide system contains the name and voter information for all registered voters in the state.

In order to assure that the voter registration rolls are up-to-date, the Department of State provides information to county Supervisors of Elections on a regular basis. Every two weeks a list of deceased persons is received from the Department of Health and the Department identifies names of those who were registered to vote. The names are forwarded to the Supervisors of Elections to be removed from the voter rolls. Likewise, the Department identifies names of persons declared mentally incompetent and those who have been convicted of a felony and who have not had their civil rights restored. After determining that the information is "credible and reliable," the Department forwards the information to the Supervisors of Elections who notify the voter of their potential ineligibility and give the voter the opportunity to refute the information. In addition, the Supervisors of Elections regularly update their registration information based on notices of address changes that they receive. The Supervisors of Elections provide biannual certifications of their list maintenance activities.

One item which has received a lot of press coverage recently is what some are calling the "No Match, No Vote" law. There have been many misstatements about this provision. The Voter Verification law regarding new voter registration applications became effective January 2006. It was in effect until December 2007 when a court first ordered the Department to stop the almost 2-year old process. That ruling was overturned on appeal. The law was re-implemented September 8, 2008. The implementation was delayed by pending litigation until July, when we received U. S. Department of Justice preclearance, and because of the time needed to reprogram the system to automatically notice voters and set up revised procedures.

Unlike what activists are saying, obvious errors, including nicknames or typos will be resolved and the applicant will be registered to vote. Every voter registration applicant must provide, if issued, a Florida driver's license number, state identification card number or the last 4 digits of the social security number. The identification number is automatically cross-checked against the Florida driver's license database or the Social Security Administration database. If that number does not match, the Bureau of Voter Registration Services manually reviews a scanned image of the application for identifiable typographical errors or a difference between a nickname and formal name based on available records and the actual voter registration application.

If the number still cannot be matched, the applicant is notified by letter and often by other means such as phone or email, to provide a photocopy of their identification by mail, by fax, or by e-mail; or the applicant may show their identification in person to the supervisor of elections. If proof is provided before the election, the applicant becomes registered and the person is able to vote a regular ballot. If proof is not provided before the election, the person may vote a provisional ballot. The person may provide proof up until 5 p.m. of the 2nd day after the election for the ballot to be counted.

This law does not keep any person with an unverified number from being able to vote. This law is about verifying identity at the time of registration, so that when the voter goes to the polls, the voter can vote a regular ballot, not a provisional ballot.

The I. D. required and checked at the polls is used solely to confirm the voter's identity, not to verify the voter's ID number or address. The photograph on the ID is compared to the person standing before the poll worker and the signature on the ID is compared to the signature the voter puts on the precinct register.

The courts have held that the Voter Verification law is valid because the state has a "compelling" interest to have accurate voter rolls. And despite what others have said, the state provided examples of fraudulent applications that had come through the system because the law had been temporarily stopped. This is a good law that will help our voter rolls achieve more accuracy and less fraud, while creating minimal inconvenience for prospective voters.

Florida is currently receiving an unprecedented number of voter registration applications. The staffs at the Division of Elections as well as in all 67 Supervisors of Elections offices are working diligently to timely enter all applications into the Florida Voter Registration System. Every application that is timely received will be processed prior to the beginning of Early Voting on October 20.

Absentee ballots were sent to overseas voters on September 20. This 45 day turnaround time is required so that the ballots have time to be received by the overseas voter, voted, and returned by the deadline. A court order permits Florida to accept ballots up to 10 days post election. Florida also allows overseas ballots to be e-mailed or faxed to the overseas voter and allows the voted ballot to be faxed or mailed back. Voted ballots are not allowed to be e-mailed back to the Supervisor.

Regular absentee ballots are in the process of being mailed and we expect that a large number of voters will take advantage of either voting by absentee ballot or voting at one of the early voting locations in their county. Over the years, the Florida Legislature has made voting easier for voters and they are taking advantage of the various options available.

Supervisors of Elections are in the process of training poll workers for the November election. All poll workers must receive training prior to each election. Although each poll worker must receive at least 2 hours of training, many counties are training poll workers for many more than the required number of hours for specialized training in the polling place and supplemental online training. For those counties that have new voting equipment this year, all poll workers are going through extensive hands-on training on the new equipment. We recognize that the poll workers are the front line people on Election Day and that they must be properly training in order to have a smooth election. Supervisors are working very hard to make sure that all poll workers are prepared for the high turnout expected.

As you are aware, 15 counties in Florida have transitioned from touch screen voting equipment to optical scan voting equipment. These counties have been working very hard to train employees, poll workers and voters on the new equipment. Supervisors have been taking the equipment out into the community to demonstrate the voting process and many have detailed instructions on their web sites on the procedures for voting on the optical scan ballots.

As you can imagine, dealing with paper ballots for the high volume of expected voters is a daunting task. Supervisors of Elections have planned for the high turnout and have ordered additional ballots with that in mind. In addition, many counties have purchased Ballot on Demand equipment that can print ballots should they begin to run low in any particular precinct.

Optical scan equipment has a number of advantages. Besides having a paper ballot to look at in the event of a recount, if there is any type of equipment failure at the polls on Election Day, the paper ballots can be put in an emergency bin and counted at the end of the day. Of course we are not anticipating problems with the voting equipment, but counties have contingency plans in the event of a power failure or other problems. We have also been stressing to counties to have a contingency plan in case of other emergency situations on Election Day.

Each county has developed security procedures for the storage and handling of ballots both prior to, during, and after the voting period. Polls workers are required to do an accounting of all ballots at the close of the polls on election night to assure that all ballots have been properly accounted for prior to taking the ballots back to the supervisor's office on election night. The county canvassing board is likewise required to certify on their official certification that they have compared the number of persons who voted to the number of ballots counted and that the certification includes all valid votes cast in the election.

Right now we are trying to battle various rumors and misleading information in many of which run rampant throughout the state and create voter angst and have the potential to keep people from going to the polls. For example, the rumor that a person will not be allowed to vote unless the voter's driver's license address exactly matches the voter registration record is completely false; yet this information is spreading like wildfire through e-mails. Another rumor is that if you have any campaign paraphernalia on, such as a t-shirt, cap, or button, you will not be allowed to vote. We have had to squelch these rumors and set the record straight. It appears that there are some people and groups are trying to keep our electorate stirred up and unfortunately it is working.

To summarize, Florida election officials have been working diligently and are ready for the November election.

WASHINGTON
LEGISLATIVE OFFICE



September 23, 2008

Chairman Jerrold Nadler
Ranking Member Trent Franks
Subcommittee on Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15TH STREET, NW, 6TH FL.
WASHINGTON, DC 20005
7/202.544.1491
F/202.544.6709
WWW.ACLU.ORG

Chairwoman Zoe Lofgren
Ranking Member Kevin McCarthy
Subcommittee on Elections
Committee on House Administration
U.S. House of Representatives
Washington, D.C. 20515

DAVIDSON FURUBERMAN
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 16TH FL.
NEW YORK, NY 10038-2400
7/212.549.1500

Dear Chairpersons Nadler and Lofgren and Ranking Members Franks and
McCarthy:

OFFICERS AND DIRECTORS
MADINE STRUBBER
PRESIDENT

ARTHUR D. BOMERS
EXECUTIVE DIRECTOR

RICHARD LACRE
TREASURER

On behalf of the American Civil Liberties Union (ACLU), and its hundreds
of thousands of members, activists and fifty-four affiliates nationwide, we
applaud the Judiciary and House Administration Committees for holding this
oversight hearing of the Department of Justice (DOJ), Civil Rights
Division's preparation for the 2008 general election. We welcome this
opportunity to submit these comments regarding the appropriate role of DOJ
in the upcoming November 2008 elections.

Historic Role of the Voting Section, Civil Rights Division

The Voting Section of DOJ's Civil Rights Division has a vital role to play in
ensuring that the fundamental right to vote is protected and that all eligible
voters are permitted to exercise their right to vote. The Voting Section was
created to protect minorities from voting discrimination and to ensure their
participation in all aspects of the political process. It is especially important
that the Voting Section fulfill its historic role of ensuring that no voter is
denied the right to vote based on race, ethnicity, disability, or language
proficiency.

Unfortunately, recent revelations of partisan bias in the decision making of
the Voting Section seriously undermine voting rights enforcement in this

country and breed a lack of confidence and trust in the Voting Section.¹ Partisan bias has undermined the Voting Section's effectiveness and has called into question, the Voting Section's decisions about what to investigate, what kind of cases to bring, and where and why to assign federal monitors. For example, by 2002, the Voting Section shifted its focus from enforcing the voting rights of minorities and election protection efforts to partisan enforcement of election laws.² Evidencing this shift, this administration has litigated on behalf of white voters in the southern town of Noxubee, Mississippi, shifted its focus away from minority voter suppression and dilution cases, and supported restrictive voter ID laws, which disproportionately impact minority, elderly, and low-income voters. In addition to this change in priorities, the 2004 election raised problems unchecked by federal election officials – improper voter purges, misuse of provisional ballots, and overly aggressive poll watchers.³

Recently, Attorney General Mukasey told voting rights advocates that there was no greater priority in the next two months for DOJ than to ensure a smooth election in November. To keep this promise and to protect the fundamental right to vote, DOJ must be prepared prior to Election Day with a comprehensive plan. We, therefore, applaud this congressional oversight of DOJ's preparations for the 2008 elections. Oversight is critical to restoring public trust and confidence in the Voting Section and ensuring that the nation's voting laws are fairly and adequately enforced. The following discussion describes areas requiring renewed vigilance by DOJ:

Registration Applications

This election season, citizens are registering to vote in extremely high numbers. Minority and young voters have demonstrated an enthusiasm to participate in what will prove to be one of the most historic elections for our nation. Facing the possibility of an unprecedented administrative challenge for some jurisdictions, DOJ must be vigilant in ensuring that states are in compliance with voting rights statutes.

In 2004, DOJ received many complaints from people who said they were registered to vote, but had not appeared on the voter lists.⁴ Frequently, these people were newly registered voters, whose applications had not been processed.⁵ It is the responsibility of state election officials to ensure that the counties are processing voter registration applications in a timely matter. However, armed with the knowledge of problems from earlier elections, DOJ should make certain those jurisdictions are in compliance with the law and provide oversight to ensure that applications are being properly and timely processed. Election officials' failure to process applications, resolve eligibility prior to rejection of applications, or clear backlogged applications of new voters, especially when they are more likely to be minority and young voters, could disfranchise many voters this November.

¹ See *Oversight Hearing on the Voting Section of the Civil Rights Division of the U.S. Department of Justice Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 110th Cong. 3 (Oct. 30, 2007) (statement of Lashlin McDonald, Director, ACLU Voting Rights Project).

² *Lessons Learned in the 2004 Presidential Election: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on Judiciary*, 110th Cong. 2 (July 24, 2008) (Statement of Gilda R. Daniels, Asst. Professor, Univ. of Baltimore School of Law) [hereinafter Daniels Written Testimony].

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.*

Purging of Voter Rolls

The Help America Vote Act (HAVA) requires that every state have a computerized statewide voter registration list. The National Voter Registration Act (NVRA) imposes important limitations on purging or otherwise removing names from the voter rolls improperly, including a restriction against purging within 90 days of an election. While modest purging of voter lists may be necessary in some instances, for example, to ensure that deceased individuals are no longer registered to vote, properly registered voters are too often purged from voter rolls inappropriately, frequently based on political motives or faulty data. For example, the ACLU, ACLU of Michigan and Advancement Project filed a federal lawsuit last week challenging two statewide voter purge programs that could potentially disfranchise hundreds of thousands of Michigan voters in advance of the November 2008 presidential election.

Rather than joining the ACLU and other groups in efforts to ensure that states like Michigan are in compliance with federal law regarding purging, under the current administration, DOJ has increased its focus on prosecutions that aim to purge states' voter rolls.⁶ Even though overly aggressive purges wrongly exclude eligible voters, DOJ continues to prioritize combating the "specter of voter fraud," even at the expense of disfranchising voters.⁷ For example, DOJ recently threatened to sue ten states to purge their voter rolls before the 2008 election.⁸ The goal of HAVA is to assist voters and the goal of the NVRA is to increase the number of eligible voters. Instead of aggressively pursuing these goals, the Voting Section appears focused on the opposite: concentrating its enforcement on strong-arming states to conduct sweeping purges of their voters' rolls. Making purging a priority of voting rights enforcement is simply contrary to the core mission of the Voting Section.

Training Poll Workers/Election Officials

Although HAVA does not require poll worker training, the Act requires states to indicate how they plan to train and educate poll officials. Unfortunately, untrained poll workers mishandle complications that inevitably arise on Election Day. These workers may arbitrarily enforce voting requirements or discriminatorily turn eligible voters away from the polls. Making matters worse, poll workers too often turn away eligible voters without informing them of their rights or of alternative means of voting.

Particularly with periodic changes to the laws and the emerging administrative hurdles, such as the proper distribution of provisional ballots, the legal requirements of requesting voter IDs, the influx of newly registered young and minority voters, and accessibility issues relating to disabled voters, poll workers and election officials must be properly trained to avoid disfranchising eligible voters. DOJ must be doing all it can within its authority to assist state and local officials in preparing poll workers for these predictable contingencies on Election Day.

⁶ *Hearing on Protecting the Right to Vote: Oversight of the Department of Justice's Preparations for the 2008 General Election Before the S. Comm. On the Judiciary*, 110th Cong. 8 (Sept. 9, 2008) (Statement of J. Gerald Hebert, Executive Director & Director of Litigation, The Campaign Legal Center) [hereinafter Hebert Senate Written Testimony]; see also, e.g., *Lessons Learned in the 2004 Presidential Election: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on Judiciary*, 110th Cong. 16 (July 24, 2008) (Statement of Daniel P. Tokaji, Associate Prof. of Law, Ohio State Univ., Moritz College of Law).

⁷ Hebert Senate Written Testimony, *supra* note 6, at 15.

⁸ Daniels Written Testimony, *supra* note 2, at 3. (citing Editorial, *What Congress Should Do*, N.Y. TIMES, Oct. 24, 2004; Stephen Roosevelt, *Bush Administration Orchestrating Massive Voter Purge Before 2008 Election*, Veteransforcommonsense.org (July 17, 2007)).

Government Issued Photo IDs

Recent studies have found no evidence to support claims that in-person voter fraud is a threat to the integrity of elections.⁹ Yet, DOJ supports restrictive voter ID laws, despite their disfranchising impact on eligible voters who lack government-issued photo identification. While the ACLU supports efforts to curtail fraudulent election practices – when and where they exist – voter ID laws are merely a “solution” in search of a problem. Elected officials should be seeking ways to encourage more voters, not inventing excuses to deny voters the ability to cast their ballots.

Although the Supreme Court has found that some forms of photo IDs can be constitutional, the ACLU continues to be concerned that voter ID laws cause an undue burden for poor, minority, disabled, student, and elderly voters. Even the expense or effort needed to obtain a “free” ID is prohibitive for many Americans. With the recent passage of such restrictive laws in a few states, and the possibility of other states following suit, it is critical that election officials be properly trained and that DOJ closely monitor those states where the voter ID laws have changed. DOJ must be aware of both the misapplication of voter ID laws by untrained poll workers, as well as the recent problem of election officials selectively requesting that minority voters produce an ID.¹⁰

Caging and Deceptive Practices

Recently, there has been a rise in the practice of voter caging – a voter suppression tactic generally aimed at poor and minority neighborhoods.¹¹ Voter caging is the practice of sending nonforwardable mail to addresses of registered voters, compiling a list of the mail that is returned, and using that list to purge or challenge voters at the polls on the grounds that the voters on the list do not legally reside at their registered addresses. However, voter caging practices are notoriously unreliable. For example, voters may live in areas where mail delivery is less reliable, voter rolls often contain typos or clerical errors, a voter may not be listed on the mailbox of her residential voting address, or a voter may be temporarily away from her permanent residence. In these cases, the voters are most likely still validly registered and eligible to vote.

In 2004, political operatives systematically targeted more than 500,000 mostly minority voters in caging schemes.¹² Targeting racial minorities to impair their right to vote is illegal under the Voting Rights Act and the U.S. Constitution. DOJ must be more proactive in its prosecution of this suppression tactic. Despite a history of prosecuting voter caging practices, in 2004, DOJ intervened before the election to defend the operatives of a vote caging scheme by the Ohio Republican party.¹³ The scheme targeted newly registered voters in urban areas, most of whom were African

⁹ For more information on the impact of voter ID laws, please see the ACLU’s letter to the U.S. Senate Committee on Rules and Administration, available at http://www.aclu.org/images/asset_upload_file74_34434.pdf.

¹⁰ See *Lessons Learned in the 2004 Presidential Election: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on Judiciary*, 110th Cong. 9-10 (July 24, 2008) (Statement of J. Gerold Hebert, Executive Director & Director of Litigation, The Campaign Legal Center).

¹¹ See *Protecting Voters at Home and at the Polls: Hearing before Senate Comm. on Rules and Administration*, 110th Cong. 2 (Feb. 27, 2008) (Statement of Justin Levitt, Counsel, Brennan Center for Justice).

¹² See generally Teresa James, PROJECTVOTE, CAGING DEMOCRACY: A 50 YEAR HISTORY OF PARTISAN CHALLENGES TO MINORITY VOTERS (2007).

¹³ http://projectvote.org/fileadmin/ProjectVote/Publications/Caging_Democracy_Report.pdf.

¹⁴ Hebert Senate Written Testimony, *supra* note 6, at 11-12.

American.¹⁴ Ultimately, the federal court ruled against the Republican Party, finding that the scheme had a discriminatory impact.¹⁵

Moreover, to the extent that political operatives are distributing false information in minority communities about when and where to vote, as we have seen in prior elections, DOJ must be committed and prepared to distribute corrective material and conduct outreach in those communities in a timely fashion. DOJ may need to issue public service announcements or press releases or disseminate other public information before the election. DOJ must stop racially discriminatory schemes – not defend them or ignore them. In 2008, racially motivated and politically partisan voter caging, voter harassment and intimidation, and deceptive practices continue to be real threats that DOJ must be prepared and willing to address.

Misuse of Provisional Ballots

The misuse of provisional ballots is a consequence of changing laws, misinformation, inappropriate voter challenges, and/or poor poll worker training. States often distribute provisional ballots in an attempt to remedy the fact that eligible voters are turned away from polling places. Unfortunately, provisional ballots are far from a panacea for the disfranchisement of eligible voters. In some instances, election officials may dispense them to voters who have the right to vote by regular ballot. Or election officials may improperly refuse to provide provisional ballots to eligible voters, and instead turn them away from the polls altogether. If provisional ballots are cast, election officials should have appropriate standards for deciding whether those ballots count in the final vote tally – it should not be left up to their discretion.

DOJ must seek to guarantee that all eligible voters have their votes counted by ensuring that states do not improperly dispense, fail to distribute, or discard provisional ballots. DOJ should also ensure that jurisdictions do not administer provisional ballots selectively or with a discriminatory purpose or result.

Election Monitors

Under the Voting Rights Act, the Attorney General may send federal monitors to certain jurisdictions to observe Election Day activities and report irregularities. In order to have meaningful observations, monitors must be fully trained on all the civil rights statutes and be sent to those places where there is evidence of possible civil rights violations. In 2004, however, DOJ sent partisan political staff to monitor the polls in closely contested states.¹⁶ In order to restore trust, DOJ must provide greater transparency in the process – the locations and the reasons for the monitors' dispatch should be made public prior to the election. DOJ should also limit the recent practice of using criminal prosecutors and the FBI as election monitors in order to avoid the chilling effect that law enforcement personnel can have in some communities.

In addition, Election Day monitors should not be used to investigate alleged voter fraud. Unfortunately, despite a longstanding practice of the Criminal Division, we understand from DOJ that the Election Crimes Branch will conduct election fraud investigations of individual voters prior to the election. We urge DOJ, because of the possible chilling effect and negative impact on

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 18.

turnout, that such fraud investigations should take place after the November election, unless the fraud undermines the integrity of the election itself.

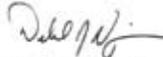
Conclusion

The reputation of DOJ and that of the Voting Section has been tarnished by the recent reports of political partisanship, selective enforcement of our nation's voting rights laws, and a shift away from voter protection and access in favor of an undue focus on questionable allegations of voter fraud. The ACLU believes that DOJ's efforts must focus on expanding the franchise and ending practices that actually threaten the integrity of the federal elections. As we approach this ground-breaking election, it is vital that DOJ return to its historic role of expanding access to the polls for all voters regardless of race, national origin, language proficiency, or disability. A vibrant democracy requires the broadest possible base of voter participation.

Sincerely,



Caroline Fredrickson
Director



Deborah J. Vagins
Legislative Counsel

cc: Members of the Subcommittee on Constitution, Civil Rights, and Civil Liberties
Members and the Subcommittee on Elections

NATIONAL RESIDENCE HALL ELECTION PROGRAM

- **Who:** Every RA in every state across the country!!!
- **What:** A floor meeting to educate our residents and get them to vote
- **Where:** On every floor at every University and College across the United States
- **When:** September 30th, 2004 at 8:30 p.m.
- **Why:** Because we need every resident on our floor to be knowledgeable about the issues and to be registered to vote. Plus, it's a great way to interact with your residents!

At 8:30 p.m. on September 30th, 2004, every RA will gather their floors together. RA's are encouraged to provide food or refreshments. Talk with your residents and encourage them to listen carefully, but not to react too loudly so that other people may have the opportunity to listen and make their own opinions.

At 9:00 p.m., turn on the T.V. on your floor section and watch the debate together with your residents. During your program, please TAKE PICTURES!!! We want to show the world that Resident Assistant's all over the country are making sure their residents are voting. Be sure to include who you are and where you're from so you can be recognized! Send the pictures to:

<http://www.residentassistant.com/election2004/pictures/index.htm>

Once the debate is over, turn off the T.V. and talk about what they just saw. It's important that you have a DISCUSSION and not an argument!!! Rock the Vote, in coordination with ResidentAssistant.com, has teamed up to create an online voter registration that your residents can fill out, sign, and send in. Give this address to your residents and encourage them to vote on Election Day. If they are registered elsewhere, make sure they are aware of how the absentee ballot system works. The online voting address is:

<https://secure5.ctsq.com/rtv/ovr/index.asp?pid=526>

You can then view the pictures at this address:

<http://www.residentassistant.com/election2004/pictures/pics.htm>

For more information, including any updates on the program, please visit the National Program Main Page at:

<http://www.residentassistant.com/election2004/nationalprogram/index.htm>

For more information about how you can be more active in registering people to vote, and additional resources to help with the program, please visit this address:

<http://www.residentassistant.com/election2004/index.htm>