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VOTER REGISTRATION AND LIST MAINTENANCE (CONTINUED)

HEARING

BEFORE THE

SUBCOMMITTEE ON ELECTIONS

COMMITTEE ON HOUSE ADMINISTRATION

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

HELD IN WASHINGTON, DC, NOVEMBER 16, 2007

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VOTER REGISTRATION AND LIST MAINTENANCE (CONTINUED)

FRIDAY, NOVEMBER 16, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 1310, Longworth House Office Building, Hon. Zoe Lofgren (chairwoman of the subcommittee) Presiding.

Present: Representatives Lofgren and McCarthy.

Staff Present: Liz Birnbaum, Staff Director; Thomas Hicks, Senior Election Counsel; Matt Pinkus, Professional Staff/Parliamentarian; Kyle Anderson, Press Director; Kristin McCowan, Chief Legislative Clerk; Daniel Favarulo, Staff Assistant, Elections; Matthew DeFreitas, Staff Assistant; Gineen Beach, Minority Election Counsel; Roman Buhler, Minority Election Counsel; Bryan T. Dorsey, Minority Professional Staff; and Salley Collins, Minority Press Secretary.

Ms. LOFGREN. The subcommittee will come to order.

This is the continuation of the Voter Registration and List Maintenance hearing. We have two panels today, and I will begin by asking the first panel to come forward—Mr. Leiendecker, Mr. O'Neal, Mr. Bell, Ms. Mitchell—and I will introduce them.

Mr. Leiendecker is the Republican director of the St. Louis Board of Election Commissioners. The Board is responsible for the planning and the administration of elections within the jurisdiction of the city of St. Louis, Missouri. It is also responsible for the voter registration records of more than 200,000 citizens registered to vote in the city of St. Louis and the processing of all petitions within the jurisdiction. Prior to joining the St. Louis City Board of Elections, Mr. Leiendecker was the chief of staff for Missouri State Senator Bill Alter. He also served as the special election investigator for former Secretary of State Matt Blunt, now the Governor of Missouri.

Edward O'Neal is with us. Mr. O'Neal previously served as both the chair and the vice chair of the Norfolk Electoral Board. We look forward to his testimony and his experiences in administering elections in Virginia.

Mr. Bell, Charles Bell, is a partner at Bell, McAndrews & Hiltachk, LLP, where he practices both political and election law. Mr. Bell also serves as general counsel to the California Republican Party. He was the first vice president of the Republican National Lawyers Association and vice chairman of the Federalist Society

Free Speech and Election Law Practice Group. Prior to his private practice work, Mr. Bell served as a consultant to the American Bar Association's Committee on Election Laws, was an advisor to the California Election Law Recodification Project and was counsel in the Office of General Counsel at the Federal Communications Commission.

Finally, we have with us Ms. Cleta Mitchell, who is a partner in Foley and Lardner's Washington, D.C., office, and she is a member of the firm's public affairs practice. Ms. Mitchell advises corporations, nonprofit organizations, candidates, campaigns and individuals on State and Federal election campaign finance law and compliance issues related to lobbying, ethics and financial disclosure. Prior to her work at Foley and Lardner, Ms. Mitchell served as a member of the Oklahoma House of Representatives for 8 years, as well as practiced litigation in administrative law in Oklahoma City.

Your full written statements will be made part of the record of this hearing. At this time, we would ask each of you to deliver testimony in 5 minutes' time, summarizing your written testimony.

That little machine on the table will tell you how the time is being managed. When the yellow light goes on, it means that 4 minutes have been taken. When the red light goes on, it means your time is up, and we would ask, at that point, if you could summarize so that we can hear from all of the witnesses.

With that, we would like to hear from you first, Mr. Leiendecker, and we will go right down the row.

STATEMENTS OF MR. SCOTT LEIENDECKER, REPUBLICAN DIRECTOR OF ELECTIONS, ST. LOUIS BOARD OF ELECTIONS; MR. EDWARD O'NEAL, FORMER MEMBER, NORFOLK ELECTORAL BOARD; MR. CHARLES H. BELL, JR., ATTORNEY, BELL, MCANDREWS & HILTACHK, LLP; MS. CLETA MITCHELL, ELECTION ATTORNEY, FOLEY AND LARDNER, LLP

STATEMENT OF SCOTT LEIENDECKER

Mr. LEIENDECKER. Thank you, Madam Chairman, for having me. It is an honor to be here in front of you today, representing the St. Louis City Board of Elections.

What I would like to talk to you about is—this has always been an ongoing problem at the City Board of Elections, the registration, getting people up to date and active with our rolls.

In 2000—I don't know if you are familiar with some of the problems that we ran into at that time. I wasn't involved at the St. Louis City Board of Elections, but we were that close to being another Florida. There were a lot of problems. What ultimately happened was St. Louis City was ultimately sued, and a consent decree was put in place for us to follow.

A lot of positive things came out of that. We had an inactive list that, you know, was taken statewide by then-Secretary of State Matt Blunt, and that is one of the positive things that has come out of the consent decree. Another thing that we have done that I think—I don't know if other election authorities do it across the country. I know that, in Missouri, there are a few who do it. We do it. I know St. Louis County doesn't do it. But we have cell phones in the polling place, which really helps out with commu-

nication between the judges and back here at the home base for the Board of Elections.

How we keep our rolls cleaned, I want to talk to you about our canvas that we do that is mandated by State law. What we do is we send out a first mailing. It is not forwarded. When that first mailing comes back, then we send a second mailing. With that second mailing, when that comes back, they put the individual on what is called the "inactive list," what I just talked about. The inactive list is in effect for two Federal elections and, at that time, an individual can be removed.

I want to talk to you about problems that we have faced in the past, what I call—it is an umbrella of different election fraud. A lot of people think that fraud is people going into the polling places, stuffing ballot boxes and committing fraud on Election Day. There is more to it than that. One thing that, you know, is a problem is registration fraud, petition fraud and, ultimately, voting fraud, which it could ultimately lead up to. Those are some things that we have dealt with in the past.

I want to talk to you about this last election. In 2006, we had many problems with an organization called ACORN that did a lot of petitions—or some registrations. There were over 5,000 that came into St. Louis, about 15,000 that came into Kansas City. The disserving thing that happened was that—what they were doing was they were basically transferring registrations, people who did not know it, from one address to another. We saw that immediately. We took action immediately. We found that maybe there were thousands of individuals who had transferred their registrations. In Kansas City, it is, like I said, 15,000. I cannot speak for them, but it is a problem that could have created an enormous problem in the 2006 election.

That is a concern for this upcoming presidential election. I am concerned about it. I think other jurisdictions, especially in Missouri, are concerned about it—St. Louis County, Kansas City. We actually meet now on a monthly basis to talk more about some issues like this and how we can better manage issues that come up like that.

Another problem that we face is petition fraud. We have recalls that happen in St. Louis quite a bit, not the type that happen in California but on a smaller, you know, field—aldermen. We have got one currently facing our mayor that they are trying to get.

What happens is these individuals do a two-step process. It makes it easier for them to get these names on the petition. They fill out the registration cards there, and then they sign the names. What happens is, when we send a letter to confirm if that individual is an actual person—we call them "ghost voters," in a sense—then what happens is that letter comes back to us. Then we can——

Ms. LOFGREN. Your time has expired.

Mr. LEIENDECKER. Oh, sorry.

Ms. LOFGREN. I don't want to cut you off in mid-sentence.

Mr. LEIENDECKER. I am sure there will be questions.

[The statement of Mr. Leiendecker follows:]

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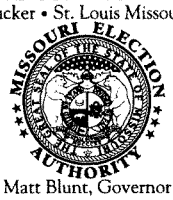

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Mary Wheeler-Jones, Director

November 16, 2007

Written Statement by:
Scott Leiendecker
Director of the St. Louis City Election Board, Republican
Matthew Potter
Deputy Director of the St. Louis City Election Board, Democrat

The Committee on House Administration
Subcommittee on List Maintenance

The City of St. Louis Board of Election Commissioners (the "Board") has been asked by your Committee to provide a statement on voter registration, voter registration rolls, keeping said rolls updated, and the potential fraud that occurs with the manipulation of said rolls. We are honored with the opportunity to present to you our thoughts on these matters. Within the last two years, this Board has been transformed from a mediocre organization (see *Mandate for Reform: Election Turmoil in St. Louis, November 7, 2000*, report by Secretary of State Matt Blunt, July 24, 2001) into an efficient and effective governmental entity that proactively confronts challenges and devises creative and thoughtful solutions to potential problems.

Part one of this statement discusses the background of the Board. Part two discusses the importance of keeping voter registration rolls up-to-date and accurate. Part three examines Missouri statutes designed to ensure the accuracy of voter registration rolls. Part four details potential obstacles in keeping voter registration rolls updated. Finally, part five lays out proactive devices the Board has implemented to keep voter registration rolls as up-to-date and accurate as possible.

I. Background of the St. Louis City Board of Election Commissioners

Until recently, the Board has always been under a cloud of controversy. This controversy was the very reason the Board of Election Commissions was formed by the Missouri legislature. In 1894, according to the *St Louis Post Dispatch*, Henry Youngman, the City of St. Louis Recorder of Voters, was receiving "no respect." The public was fed up with the ongoing charges of voter fraud, election judge tampering, fixed elections and general all-around election problems. The fraud and election abuse was at all levels and involved both major political parties. Candidates and election workers were involved in said fraud as well as both Democrats and Republicans.

The law creating the Board for the City of St. Louis was the first law of its kind in the State of Missouri. The model for the Missouri law was first seen in Chicago, Illinois where an election board was created a decade earlier in 1886. Not surprisingly, the Chicago Board was conceived following a "public outcry" for a new election code. The Illinois model was a court-appointed board, while the Missouri model involved appointments by the Governor.

The bill establishing the Board was approved by the Missouri General Assembly on May 31, 1895 in a special session of the legislature called an "extraordinary session" by Governor William J. Stone. The session was deemed "extraordinary" because of the pervasive election problems in both St. Louis and Kansas City, Missouri. Governor Stone noted in his opening message to the General Assembly the severity of the election problems, indicating that "not a few consummate and dastardly outrages have been perpetrated."

The current Board was appointed by Governor Matt Blunt, who was elected in 2004. The Election Board consists of a four person Commission, two Republicans and two Democrats, all appointed to four year terms, serving at the pleasure of the Governor. The board hires the management, which consists of a bi-partisan six-member team: two directors, two deputy

directors and two assistant deputy directors. Working with the management is 25 full time employees. During an election cycle the full time and temporary workforce can reach 50 employees depending on the size and type of the election.

II. Why is it so important to keep voter rolls clean?

In light of the election-related abuses detailed above and as a matter of common sense, a jurisdiction must consistently labor, both during election cycles and during off-peak seasons, to keep its voter rolls updated and complete. As an obvious beginning, when a jurisdiction's voter registration rolls are correct, the voters will receive proper notification of elections and their appropriate polling places. This efficiency encourages participation in the civic process, allows citizens to be active in their government, and consequently provides for a more informed, stable community. When voters receive proper notification of an election and their concomitant polling place, the odds of a voter traveling to the incorrect polling place are minimized, thus resulting in less time poll workers must spend filling out paper work for that confused voter and speedier lines at the polling place.

However, other pernicious results occur from tainted voter rolls, in particular, illegally manipulated and tainted voter registration rolls. Many have argued that the benefit of laws requiring voters to produce photo identification at the polling places is outweighed by the societal costs of such laws. Generally, the primary argument cited against such laws is that fraud rarely occurs at polling places and that such a law would do nothing to curtail election fraud. Without considering the efficacy or suitability of such photo identification laws, we believe that the roots of fraud begin far in advance of election day; most fraud initially stems from malfeasants who either illegally register hundreds of voters, either real individuals without their knowledge or fictional individuals, or illegally register themselves at multiple inter-jurisdictional addresses. At the Board, we have deemed this destructive form of fraud as **"registration fraud."** Incidents have occurred in the St. Louis metropolitan area where fictional or deceased

individuals have voted in elections and real individuals have voted in multiple jurisdictions during one election. For this reason, voter rolls must be kept accurate and up-to-date at all times, thus minimizing election day shenanigans.

When registration fraud occurs, everyone suffers. Every bad registration is a potential bad vote that, in effect, cancels the vote of an honest voter. In the past, numerous fraudulent registrations have been traced to "drop sites", or residences housing a far less number of individuals than the voter registration rolls and voting records would suggest. The taxpayers must pay for the data entry involved to input illegal registrants, often including the overtime and temporary staff employed therein; the taxpayers must pay for the mailing of information to non-existent and fictional individuals. These costs also include training, employing, and paying more poll workers than needed to work in certain precincts because the voter numbers are artificially and illegally inflated and an election authority may be required to provide a certain number of poll workers, by law, for the number of registered voters in that precinct.

Moreover, a jurisdiction's voter rolls often serve as the benchmark for certain other legal requirements, for example, the number of petition signatures required for a recall, referendum, or initiative petition to be successful. As an illustration, the Charter for the City of St. Louis requires twenty percent of the registered voters in a Ward to sign a petition in order to force a recall vote for that Ward's Alderperson. Charter for the City of St. Louis, Article III, §2 (1914). If a jurisdiction's voter rolls are filled with fraudulent, non-existent, duplicative and deceased persons, the number of signatures required to initiate these civic actions are increased and more difficult to obtain because of the number of non-existent voters on the rolls. Finally, charitable, non-profit, governmental, and other organizations that depend upon access to a jurisdiction's voter rolls are slighted because of their attempt to distribute goods, information or services to non-existent and fictional individuals.

III. Procedures in Missouri for ensuring the accuracy of voter registration records

Under the Help America Vote Act, each chief State election official is required to implement, "in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State..." 42 U.S.C. 15483(a)(1)(A). Moreover, "[t]he computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State." 42 U.S.C. 15483(a)(1)(A)(i). Missouri, by and through Secretary of State Robin Carnahan, has successfully launched and currently administers an effective statewide voter registration database to which the individual election authorities input their respective voter registrations. Consonant with federal law, Missouri law provides that "[e]ach election authority shall use the Missouri voter registration system...to prepare a list of legally registered voters for each precinct." §115.163 RSMo (2004). Thus, the precinct register provided by each election authority to the various polling places is generated from the statewide voter registration list administered by the Secretary of State to which the individual election authorities input their respective voter registrations.

Missouri law also provides for a "canvass" to take place every two years wherein each election authority must mail to all registered voters within its jurisdiction a "voter notification card" containing the voters' name, address, precinct, and other salient election related information. §115.163.3 RSMo (2004). The voter may cut out the attached card, sign the card, and utilize the card as a form of identification on election day. As helpful as this information may be to the voters, the canvass also allows the election authority to identify those voters who addresses have changed by monitoring those voter notification cards that are returned "undeliverable" by the U.S. Postal Service to the election authority. After this voter notification mailing is sent to all voters, the election authority must send a second mailing *only* to individuals

whose cards were returned "undeliverable" to the election authority. §§115.193.1(2), 115.193.5 RSMo (2004). This second forwardable mailing must contain a postage prepaid and preaddressed return card on which the voter shall state his or her current address. §115.193.2 RSMo (2004). If the individuals to whom this second mailing was sent do not contact the election authority to confirm their proper address "not later than the fourth Wednesday prior to the next election," the individuals will be placed on an "inactive" list. Despite the often-misinterpreted title, those voters on the "inactive" list are not automatically eliminated from the voter rolls. Rather, their names remain on a list that is provided to all precincts within the election authority's jurisdiction and they are permitted to cast a ballot provided they show up on election day and "affirm" their correct address at any election "during the period beginning on the date of the notice and ending on the day after the date of the second general election that occurs after the date of the notice." §115.193.5 RSMo (2004). If said voter does not vote by the second general election following the second mailing, *then and only then* will the voter be excluded from the voter registration rolls.

The Board recently began its canvass for 2007. A canvass card was professionally designed that contained the information required by law, i.e. voters' names, addresses, precincts; however, the card also contained information about 2008 elections, becoming a poll worker, and bright and colorful graphics. The card was designed to attract the voters' attention and separate the mail piece from sales and marketing pieces that may be immediately discarded by recipients. See Exhibit "A", Voter Notification Card. In addition, the Board initiated an aggressive media campaign, appearing on the internet, multiple local newspapers, television stations, and radio stations, in an attempt to educate voters about what they should do with their cards, what they should do if they do not receive a card, and, very importantly, what they should do to initiate a change of address. Through this proactive, friendly, yet intense campaign, the Board has been able to initiate name changes and changes of addresses for hundreds of City of St. Louis voters.

This purification of the information for hundreds of voters will lead to shorter lines, less manpower expended, and more efficient polling places for the 2008 elections.

Moreover, the Board is currently embarking upon the second mailing mentioned above. This mailing will be sent to the voters whose first mailing was returned to the Board by the U.S. Postal Service as "undeliverable". The second mailing explains that the first mailing sent to the voter was returned, and that the Board is attempting to confirm the address of the voter. See Exhibit "B", Second Mailing. The second mailing also explains that if the voter has moved out of the City of St. Louis, he or she must register within his or her new election jurisdiction; the name and telephone number of one neighboring jurisdiction is provided on the card. Finally, the second mailing explains that the voter *must* send back and sign the attached postage pre-paid postcard to remain on the rolls. The voter is informed that if he or she fails to send back and sign said postcard, he or she will be placed on the inactive list until the second general election following the mailing, at which time he or she may be permanently removed from the voter registration rolls.

Going above and beyond what is required by the law, the Board plans a third mailing to voters for whom the Board has a potential new address but whose new address has not been confirmed in writing by the voter. Recognizing that these voters may have received limited information about the canvass, the Board plans to mail information to their potential new address about the need for the voter to confirm his or her address in writing to prevent the voter from going on the inactive list. This third mailing is planned for early 2008.

This method of voter registration roll housekeeping maintains a healthy balance between keeping properly registered voters on the rolls, updating voter information, and eliminating voters who have moved, died or do not exist. Nevertheless, we believe that this legally mandated plan must involve a significant amount of media and publicity to reach voters of all socioeconomic classes and inform all voters of the purpose and reason for the canvass. In

addition, the language on the mailings must be clear, uncluttered, and succinct. Individuals are sent two mailings, no less than one forwardable, to their last known address to inform them about the canvass. If the first mailing does not come back marked "undeliverable" to the election authority, the voter remains intact on the voter rolls. Even if the first mailing is returned to the election authority and the voter never responds to the second mailing or the second mailing is also returned to the election authority, the voter remains eligible to vote for at least "two general elections" following the second mailing. This time period usually equates to at least 2 years that a voter will remain on the inactive list. Nevertheless, the intent of the jurisdiction wide canvass appears to be that voters who do not respond to two mailings and do not vote during the inactive period presumably no longer live in the jurisdiction and should be left off the rolls.

IV. Nevertheless, problems remain with **registration fraud**

Despite the effectiveness of Missouri's procedures for keeping voter registration rolls updated, registration fraud remains a challenge to detect and combat. As discussed above, registration fraud remains the seed which germinates into other forms of election fraud which often remain undetected, including polling place fraud and absentee voting fraud. In addition, many do not appreciate the perniciousness of such fraud; election fraud convictions are often seen as less significant crimes and often go unpunished. Until society seriously accepts the destructive nature of such crimes, malfeasants will continue to wreak havoc upon voter registration rolls, often with impunity.

A. Registration fraud perpetrated by voter solicitors

A classic example of attempted registration fraud occurred within the City of St. Louis prior to the November 7, 2006 election. At that time, the Board was the subject of much consternation concerning alleged fraudulent voter registration applications submitted by various organizations. Among these 5,000+ alleged fraudulent applications were multiple applications that appeared to have been signed by the same person and applications with invalid residential

addresses. In addition, many of the individuals listed on the applications were contacted and explained to the Board that they had never completed the registration form at issue; among those fraudulently registered were deceased individuals and individuals well under the voting age. Most perniciously, many of the fraudulent applications transferred the address of an unwitting voter to a bogus or incorrect address. A number of these allegedly fraudulent voter registration applications were subpoenaed by the United States Attorney's Office for the Eastern District of Missouri, and our investigation and their investigation remains ongoing. Moreover, regional leaders from at least one community activist group, namely ACORN, have admitted that potentially thousands of voter registration cards submitted were fraudulent. (St. Louis Post-Dispatch, *St. Louis ACORN in Disarray, Under Reconstruction*, November 20, 2006). In the final days before the election, erring on the side of caution, the Board did its best to sort out the few real registrations of qualified voters from the far greater numbers of non-existing, dead or fraudulently registered persons.

Not only does this put the election authority in a time constraint on the eve before a major election, but it also leads to the disenfranchisement of legal voters. These shenanigans could have created a potential election scenario reminiscent of the 2000 above-referenced election turmoil if the Board had not sprung into action. We had potential fraudulent registrations numbering over 5000, mainly presented to us the weekend before the close of registration, a few weeks before the November General Election. All legitimate voters were permitted to vote, however, the fraudulent voter registration applications were flagged and turned over to the proper authorities pursuant to subpoena.

This incident was eerily reminiscent of a 2003 registration drive prior to a contested mayoral primary in the City of St. Louis. At that time, the Board faced the inundation of registration rolls by thousands of manifestly bogus registrations filed at the very last minute by an organization whose operatives were later prosecuted in the City of St. Louis Circuit Court for

registration irregularity. These above two incidents represent the cancerous nature of registration fraud and how laws must be strengthened and fine-tuned to defeat the malfeasants.

B. Registration fraud as detailed by the Missouri State Auditor

In 2004, then State Auditor Claire McCaskill, now United States Senator, conducted an audit of the Board. Although the current Board, in particular, the Commissioners and a significant number of directors and employees, are different from the Commissioners and Board from 2004, the findings are enlightening and deserve mention. Senator McCaskill's findings included the following:

> We obtained the statewide centralized voter registration data from the Secretary of State's office and the voter registration data from the Board of Election Commissioners of St. Louis County [as well as the City]. We matched the data of the city to both the statewide and the county data and noted that 9,097 voters are registered in both the city and St. Louis County with 7,922 voters having a later registration date in the county and therefore were listed in the poll registers in both places. This increases the risk that persons could vote in both the city and the county in the same election. We noted 12 instances in which a voter, according to the available data, did vote in both places. We also identified 318 instances in which a voter voted in the city after the date of registration in the county.
> We also noted that 4,500 voters were registered in the city and elsewhere in the state (but not in St. Louis County). Of the 4,500 voters, 2,317 were listed as active in both places while 3,038 had a registration date in the other county that was later than the registration date in the city. We noted 16 instances in which a voter may have voted in the same election in both places. We provided the results of our match to the BEC for further investigation.
> The BEC does not obtain voter registration data from nearby counties in Illinois. We requested the voter registration and available voting history of Madison and St. Clair counties in Illinois, including the city of East St. Louis, from the Illinois Board of Elections. We identified 2,366 voters who were listed in the registration data in both the city of St. Louis, Missouri and Illinois. Of those, 1,482 voters had a more recent registration date in Illinois than in the city. **The data indicated that 10 voters had voted in both Illinois and the city in the same election.** We provided our match results to the BEC for further investigation.
>
> Auditor Claire McCaskill, *Audit Report, Board of Election Commissioners, City of St. Louis*, Report No. 2004-40, May 26, 2004. (emphasis added).

Although the issue of individuals illegally maintaining dual registration in various Missouri jurisdictions has been significantly curtailed due to the Help America Vote Act and the concomitant Missouri statewide voter registration database, as successfully administered by

Secretary of State Robin Carnahan; the statewide database does not address illegal dual registrations in different states. As Senator McCaskill has shown, the issue is one that deserves attention.

C. Registration fraud fueled and revealed by recall process

On November 22, 2005, a petition for the recall of City of St. Louis 22nd Ward Alderman Jeffrey Boyd was submitted to the Board. On November 23, 2005, the Board's registration staff began to work the petition, which involved comparing names and signatures on the petitions with names and signatures on the voter registration rolls. During the work, the registration coordinator noticed multiple signatures that appeared to be signed by the same person. An example of this flagrancy included one member of a family apparently signing for other members of the family registered from the same address. The names and "signatures" of deceased voters were also discovered on the petition. See Exhibit "C", recall petition signature page; Exhibit "D", death certificate; Exhibit "E", Funeral Mass announcement.

The Board immediately further investigated the individuals that circulated and sought signatures for the petition. Meanwhile, newly received voter registration applications from the 22nd Ward proved to be questionable. For example, the Board reached out to one "registrant" by contacting the number listed on "her" registration form; the individual reached by telephone informed the Board that no one by that name dwelled at the address. As in the petition for the recall, some registrations submitted had different names, however the signatures had *identical* shape, contour, and form.

As the Board conducted its investigation and researched the petition, Jeffrey Boyd approached the Board with concerns of possible fraud. As provided by City recall procedure, Mr. Boyd was canvassing the 22nd Ward to speak with petition "signatories" in an attempt to convince them to withdraw their names from the petition. Mr. Boyd stated to the Board that, while canvassing, he learned that many "signatories" stated they did not actually sign the

petition. Consequently, the Board composed a phone script and began contacting all individuals whose names appeared on the petition. Numerous individuals indicated that they did not sign the petition or were mislead about the substance of the petition. The Board also dispatched field representatives to physically canvass and inspect addresses that were considered questionable from the registration cards. Some vacant lots and abandoned buildings were discovered as addresses for multiple registrants. See Exhibit "F", Fraudulent Registration Card/Photo of Vacant Lot. A letter was also sent to all petition signatories, and responses were mailed to the Board with personal statements. As a result of this investigation, the recall petition was rejected by the Board in full, and a number of signature gatherers were indicted for election related offenses in the City of St. Louis Circuit Court.

This petition travesty underscores the cavalier attitude that many individuals display toward registration fraud and how a heated race, candidacy, or recall attempt can fuel registration fraud. Had the Board not initiated a thorough investigation and followed up the investigation with the rejecting of the entire petition and informing the City of St. Louis Metropolitan Police Department, the signature gathers would have slighted the voice of the people and may been vindicated in their illegal attempt to recall an elected official.

V. St. Louis Board's recent attempts to maintain correct voter registration rolls

We believe that the City of St. Louis Board of Elections has developed numerous proactive methods to effectively correct and preserve its voter rolls. With the aid and assistance of a rapidly advancing technological frontier, numerous creative methods can be employed to make contact with voters and impart the importance of updating their voter information upon a move or a name change.

The Board is currently assembling a one-year calendar of "voter registration" outreach throughout the City of St. Louis. This calendar will involve setting up a station and a laptop computer at differing heavy trafficked locations with the city every two weeks. The laptop will

have the above mentioned statewide voter registration list, freshly updated, downloaded onto the hard drive. Upon presentation of any form of identification, an individual will be able to confirm, in real time, that his or her voter registration information is correct. If the voter registration information is not correct, the voter will have the opportunity to immediately fill out the paperwork, at the station, to correct his or her information. This technologically driven effort is different, and will be more effective, than a traditional paper and pencil voter drive. We believe that "bringing the Board directly to the people on the street" and giving them the instant opportunity to verify their information will lead to more participation, more accuracy, and shorter lines on election days.

The Board is working with City of St. Louis Collector of Revenue Gregory F.X. Daly to track all new residents to the City by monitoring newly created water accounts billed within the City of St. Louis. The Board plans to send voter registration cards and important voter registration information, directly to all individuals who have recently begun receiving a water bill within St. Louis. In this way, the Board anticipates it will effectively target new City residents and permit them to register without first having to request a registration card. Again, the proper and correct registration of voters earlier rather than later will result in less frustration, more accuracy in voter rolls, and shorter lines on election days.

To deter individuals either working for an organization or working on their own who illegally submit false or fraudulent voter registration cards, the Board has proposed a number of legislative changes to the Missouri legislature. Missouri law currently requires any person "who is paid...for soliciting more than ten voter registration applications...[to be] registered with the secretary of state as a voter registration solicitor." §115.205 RSMo (2004). Although this is a good start, we believe that any individual who solicits and/or submits a voter registration card on behalf of a voter should be required to print his or her full name, date of birth, and last four digits of his or her social security number on the back of the application. Moreover, if the solicitor was

working and receiving money on behalf of or for any organization while accepting or receiving said application he or she should be required to print the full name of the organization on the rear of the application. Only by requiring full disclosure will would be malfeasants be deterred from submitting fraudulent and illegal voter registration cards and concomitantly tainting the voter rolls. In addition, this requirement will make it easier to identify individual perpetrators of registration fraud.

Finally, the Board has been proactive in working with neighboring jurisdictions, including Illinois jurisdictions East St. Louis, Madison County, Monroe County, and St. Clair County, jurisdictions not within the purview of the statewide voter database, in attempting to identify individuals who have voted in more than one jurisdiction during the same election. The St. Louis metropolitan area County Clerks and election officials have met previously to discuss this problem, other meetings are anticipated. Only through working together and cooperation will election jurisdictions keep their voter registration rolls accurate and up-to-date.

VI. Conclusion

This Board respects, welcomes, and appreciates the efforts by all concerned citizens and interest groups to conduct voter registration drives to ensure that all qualified individuals are secure in the utmost right, the right to vote. However, sloppy and careless efforts to register voters, coupled with ineffective oversight of agents, can lead to bloated voter registration rolls and the abuses detailed above. Moreover, the malfeasant who consciously conducts registration fraud hoists a number of irreversible problems upon the community as a whole. Registration fraud, as a whole, affects communities more deeply than the traditional idea of polling place fraud, which carries with it the antiquated vision of a perpetrator physically stuffing a ballot box full of a handful of fraudulent ballots in an attempt to sway one race in one election. Registration fraud results in skewed statistics, wasted taxpayer dollars, wasted effort on the part of civically minded individuals, and voter disenfranchisement over a term of many years.

Utilizing creativity and technological advances as the Board has done **and** passing laws to give teeth to election related offenses should deter malfeasants from such fraud, or at least make such fraud more easily detectable.

Exhibit A

YOUR OFFICIAL ELECTION MATERIALS FROM THE ST. LOUIS CITY BOARD OF ELECTIONS

Dear City Voter:

Here is your new permanent voter ID card. It contains important registration information, including your name, address, current ward and precinct. If your name or address is incorrect, or if you move after receiving your ID card, please notify the St. Louis City Election Board at once.

In an effort to serve the City by keeping the voter rolls updated and accurate, this card is being mailed to you as part of a citywide canvass. If any other voter ID card is delivered to your address for someone who does not live there, please mark **"RETURN TO SENDER"** and place back in your mailbox or telephone the St. Louis City Election Board.

Carol Ann Wilson, Chairman

HERE IS YOUR NEW PERMANENT VOTER ID CARD.
Cut out card, sign it below, bring it with you next time you vote

CITY OF ST. LOUIS
BOARD OF ELECTION COMMISSIONERS
300 N. Tucker Blvd. St. Louis, MO 63101-1914 • 622-4336
PERMANENT VOTER ID CARD

Please sign

MARK YOUR CALENDAR – 2008 ELECTION CYCLE

Presidential Preference Primary
Absentee Balloting Begins – December 26, 2007
Election Day - Tuesday, February 5, 2008

Primary Election
Absentee Balloting Begins – June 24, 2008
Election Day – Tuesday, August 5, 2008

Presidential General Election
Absentee Balloting Begins - September 23, 2008
Election Day - Tuesday, November 4, 2008

PRESORTED
AUTO
FIRST-CLASS MAIL
U.S. POSTAGE PAID
ST. LOUIS, MO
PERMIT 1213

AS A MISSOURI VOTER you may present any of the following forms of personal identification:

(1) identification issued by the **State of Missouri**, a **state agency**, or a **local election authority**, OR
(2) identification issued by the **U.S. Government** or a **federal agency**, OR
(3) identification issued by an **institution of higher education located in Missouri**, OR
(4) a copy of a current **utility bill**, **bank statement**, **government check**, **paycheck** or **other government document** that contains the voter's name and current address, OR
(5) **a driver's license** or **state identification card** issued by **another state**, OR
(6) other **Secretary of State** ID.

If a voter does not have identification but is **personally known by both a Republican and Democratic Manager** at a polling place, an **affidavit may be filled out** at the polling place permitting the voter to cast a ballot.

CONTACT INFORMATION
St. Louis City Board of Election Commissioners
300 N. Tucker Blvd, St. Louis Missouri, 63101
(314) 622-4336
www.stlelections.com

BECOME AN ELECTION JUDGE TODAY!

JOIN UP

TODAY!
WE NEED YOU!

Help the Election Board for the City of St. Louis ensure a quality election.

Must be 18 years of age and a registered voter.

Serve and Earn
Poll Managers **$114**
Election Judges **$89**

Ask about being a Technical Specialist at the polls.

Democrats call (314) 622-3546
Republicans call (314) 622-4327
or visit us on the Web at
www.stlelections.com

TRANSFER OF REGISTRATION

IF YOU MOVE TO A NEW ADDRESS WITHIN THE CITY OF ST. LOUIS, LIST YOUR NEW ADDRESS BELOW, SIGN YOUR NAME IN INK AND MAIL TO

BOARD OF ELECTION COMMISSIONERS
300 N. TUCKER BLVD.
ST. LOUIS, MO 63101-1914

NAME _____

NEW ADDRESS _____

_____

SIGNATURE _____

Exhibit B

voter reg mailer.qxd 10/18/07 9:29 AM Page 1

FIRST CLASS MAIL
U.S. POSTAGE
PAID
ST. LOUIS, MO
PERMIT NO. 1213

Board of Election Commissioners
for the City of St. Louis
300 N. Tucker Blvd.
St. Louis, MO 63101

FORWARDING SERVICE REQUESTED

OFFICIAL ELECTION MATERIAL

Matthew W. Potter
1313 Missouri Unit E
St. Louis, MO 63104

VOTER REGISTRATION UPDATE

PLEASE CHECK ONE OF THE FOLLOWING BOXES AND PROVIDE NEW ADDRESS IF NEEDED. SIGN, DATE, AND PROVIDE YOUR DATE AND PLACE OF BIRTH BELOW:

☐ The above address accurately reflects my current and correct address.

☐ My address has changed. My new City of St. Louis address is as follows:

(No.) (Street) (Apt. No., if applicable)

(City) (State) (Zip Code)

Also, if you receive mail at a different address than above, please fill out the following:

(No.) (Street) (Apt. No., if applicable)

(City) (State) (Zip Code)

Signature **(Required of all)**

Current Date **(Required of all)**

Date of Birth **(Required of all)**

Place of Birth **(Required of all)**

If you have moved outside the City of St. Louis, you must register with the election authority in your new jurisdiction. Filing out this form **does not** register you in your new jurisdiction. Contact us at 314-622-4336 if you have any questions.

voter reg mailer.qxd 10/18/07 9:29 AM Page 2

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT 8789 ST. LOUIS MO

POSTAGE WILL BE PAID BY ADDRESSEE

CITY OF ST LOUIS
BOARD OF ELECTION COMM'RS
300 NORTH TUCKER BLVD
ST. LOUIS MO 63101-9887

IMPORTANT NOTICE
Concerning Your Voter Registration

Dear Voter:

Recently, the City of St. Louis Board of Election Commissioners conducted a **City Wide Voter Canvass** during which we mailed a voter identification card to all registered voters in the City of St. Louis. **Your card was returned to us by the U.S. Postal Service.** It is important that you keep your voter registration information current. Accordingly, we are asking you to confirm your current address for us. **To remain an active voter on the City of St. Louis voter rolls, you must complete the attached postcard and return it to us.** Please provide the information required on the front of the postcard, including your date and place of birth, sign and date the postcard, and drop the postcard in the mail. You do not need to place postage on the postcard; the postage has been prepaid by us.

If you have moved outside the City of St. Louis, you must register with the election authority in your new jurisdiction. If you have moved into St. Louis County, you must register with the St. Louis County Board of Election Commissioners (314-615-1800). If you have moved within the City of St. Louis, you will be sent information about your new polling place prior to the next election.

If you do not return this card and do not vote by the second general election after the date of this notice, you may be removed from the City of St. Louis' voter rolls.

Please contact us at 314-622-4336 with any questions.

Section 115.193.3 of the Missouri Revised Statutes states:

"(1) Any voter who has not changed his or her residence, or has changed residence but remained in the same election authority's jurisdiction, shall return the card not later than the fourth Wednesday prior to the next election. If the card is not returned by this date, oral or written affirmation of the voter's address may be required at the polling place before the voter will be permitted to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election that occurs after the date of the notice. Any voter who does not vote in an election during that period will have his or her name removed from the list of eligible voters."

"(2) For additional information on registering to vote, contact the election authority located in the county of your current residence. If you reside in the City of St. Louis, contact the St. Louis City Election Board."

Exhibit C

WE THE UNDERSIGNED, BEING REGISTERED VOTERS IN THE TWENTY-SECOND (22ND) WARD IN THE CITY OF ST. LOUIS, MISSOURI ASK FOR THE RECALL OF JEFFERY BOYD ALDERMAN OF THE TWENTY-SECOND (22ND) WARD, IN THE CITY OF ST. LOUIS, MISSOURI

	SIGNATURE	PRINTED NAME	ADDRESS
NR	David Lewis	David Lewis	1417 Montclair Ave
R	Leodora Jackson	Leodora Jackson	5636 Terry
WS	Debora Thomas	Debora Thomas	5632 Terry
NR	Calton Owens	Calton Owens	5656 Roosevelt
R	Annie Chandler	Annie Chandler	5700 Roosevelt
R	Ernestine Gray	Ernestine Gray	5708 Roosevelt
NR	Shantay Sanders	Shantay Sanders	5730 Roosevelt
R	Jerry Brown	Jerry Brown	5814 Roosevelt
R	Virginia Harden	VIRGINIA HARDEN	5879 Roosevelt

I Michael L MALONE BEING DULY SWORN, UPON MY OATH, STATE THAT EACH OF THE SIGNATURES WAS MADE IN MY PRESENCE BY, AS I VERILY BELIEVE, THE PERSON WHOSE NAME IT PURPORTS TO BE.

Michael Malone — 2518 Clara Ave — 11-21-05

SIGNATURE OF AFFIANT — ADDRESS OF AFFIANT — DATE

SUBSCRIBED TO AND SWORN BEFORE ME THIS 21st DAY OF November THE YEAR OF OUR LORD, TWO THOUSAND AND 5

NOTARY Barbara C. Jones

"NOTARY SEAL"
Barbara C. Jones, Notary Public
St. Louis City, State of Missouri
My Commission Expires 4/21/2006

NOTARY SEAL

MY COMMISSION EXPIRES ON _____

Exhibit D

R/Oscard 12/28/05
0011907

STATE OF OKLAHOMA
CERTIFICATE OF DEATH

LOCAL FILE NUMBER — STATE FILE NUMBER

1. DECEDENT'S NAME (First, Middle, Last): LEODORA FREDONIA JACKSON
2. SEX: Female
3a. DATE OF DEATH (M. D. Y): 5/31/01
3b. TIME OF DEATH: 0403
4a. PLACE OF DEATH (Check only one): ☐ HOSPITAL: inpatient ☐ ER/Outpatient ☐ DOA
RACE: ☐ Nativ. Amer. ☐ Asian/Pacific Isl. ☒ Black ☐ Other (Specify)
4b. FACILITY NAME (If not institution, give street and number): 502 N. SEVERS
4c. CITY, TOWN, OR LOCATION OF DEATH: OKMULGEE
4d. INSIDE CITY LIMITS: ☐ Yes ☐ No
4e. COUNTY OF DEATH: OKMULGEE
5. ☐ MARRIED ☐ NEVER MARRIED ☒ WIDOWED ☐ DIVORCED
6. SURVIVING SPOUSE (If wife, give maiden name): n/a
7. SOCIAL SECURITY NO.: 578/36/0983
8a. Age Last Birthday (Years): 82
8b. UNDER 1 YEAR: Months / Days / Hours / Minutes
8c. UNDER 1 DAY: Hours / Minutes
9. DATE OF BIRTH (Month, Day, Year): 6/16/1918
10. BIRTHPLACE (City, and State or Foreign Country): Okmulgee, Oklahoma
11a. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life): Police Officer
11b. KIND OF BUSINESS/INDUSTRY: City of St. Louis
12a. RESIDENCE - STATE: Oklahoma
12b. COUNTY: Okmulgee
12c. CITY, TOWN, OR LOCATION: Okmulgee
12d. STREET AND NUMBER: 502 N. Severs
12e. INSIDE CITY LIMITS? ☒ Yes ☐ No
12f. ZIP CODE: 74447
13. WAS DECEDENT OF HISPANIC ORIGIN? ☐ Yes ☒ No (If Yes, specify Cuban, Mexican, Puerto Rican, etc.)
14. RACE - American Indian, Black, White, etc.: Black
15. DECEDENT'S EDUCATION (Specify only highest grade completed): Elementary/Secondary (0-12): 12 College (1-4 or 5+): 4
16. FATHER'S NAME (First, Middle, Last): Steven Frederick Davis
17. MOTHER'S NAME (First, Middle, Maiden, Surname): Emma Simmons
18a. INFORMANT'S NAME (Type/Print): Lillian Harris
18b. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code): 5047 North Land St. Louis, MO 63113
19a. METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Donation ☐ Removal from State ☐ Other (Specify)
19b. PLACE OF DISPOSITION (Name of cemetery, crematory or other place): Woodlawn Cemetery
19c. DATE OF DISPOSITION: 6/8/2001
19d. LOCATION - City or Town, State: Okmulgee, Oklahoma
20. FUNERAL HOME NAME AND ADDRESS (Street or R.F.D. No., City or Town, State, Zip): Keith D.Biglow F.D.Inc. 1601 N.Wood Dr.Okmulgee74447
20a. FUNERAL DIRECTOR: Keith Dwight Biglow
20b. SIGNATURE: Keith D. Biglow

21a. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, it list only one cause on each line. — Approximate interval between onset and death

IMMEDIATE CAUSE (Final disease or condition resulting in death)
a. ACUTE CORONARY INSUFFICIENCY
Due to (or as a consequence of):
Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (Disease or injury that initiated events resulting in death) LAST
b.
Due to (or as a consequence of):
c.
Due to (or as a consequence of):
d.

PART II. OTHER SIGNIFICANT MEDICAL CONDITIONS (not directly contributing to death.)

21c. WAS AN AUTOPSY PERFORMED? Yes ☐ No ☒
21d. AUTOPSY FINDINGS (If Yes)
21e. Was a death examination Yes ☐ No ☐ Yes

22. MANNER OF DEATH: ☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined
23a. DATE OF INJURY (Month, Day, Year)
23b. TIME OF INJURY
23c. INJURY AT WORK? ☐ Yes ☐ No
23d. DESCRIBE HOW INJURY OCCURRED
23e. PLACE OF INJURY - At home/farm, street, factory, office, building, etc. (specify)
23f. LOCATION (Street and Number or Rural Route Number, City or Town, State)

24a. CERTIFIER (Check only one): ☐ ATTENDING PHYSICIAN
To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.

Notice to attending physician: Do not sign this certificate unless you are the physician who attended the deceased for a natural illness unrelated to injury or poisoning—to which the patient has apparently succumbed, provided that death did not occur while deceased was in panel hospitalization or during a therapeutic procedure to which death was not reasonably medically expected. For determination of deaths subject to investigation and certification by Medical Examiner, refer to O.S. 63, Sec. 939, or contact office of Chief Medical Examiner in Oklahoma City.

☒ MEDICAL EXAMINER
On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.

24b. SIGNATURE AND TITLE OF CERTIFIER: M. McAlester D.O.
24c. DATE SIGNED (Month, Day, Year): 6/3/01
25. NAME AND ADDRESS OF PERSON WHO COMPLETED CAUSE OF DEATH (Item 21) (Type/Print): MINIE McALESTER, D.O. RT 2 BX 186 Wilburton Ok 74578
26. Signature and Title of Registrar: [signature]
27. DATE RECEIVED BY LOCAL REGISTRAR: JUN 12 2001
28. DATE RECEIVED BY STATE REGISTRAR

State Department of Health
State of Oklahoma
OKLAHOMA CITY, OKLAHOMA 73117

I hereby certify the foregoing to be a true and correct copy, original of which is on file in this office. In testimony whereof, I have hereunto subscribed my name and caused the official seal to be affixed, at Oklahoma City, Oklahoma, this date.

June 11, 2001

CERTIFIED COPY MUST BE VALIDATED IN THREE PLACES

C. Burks
STATE REGISTRAR OF VITAL STATISTICS

Exhibit E

Mrs. Leodora F. Davis-Jackson

June 16, 1918 ~ ~ ~ ~ ~ May 31, 2001

Funeral Mass

Friday
The Eighth day of June
In the year Two-thousand, One
At the Eleventh hour of the morning

UGANDA MARTYR'S CATHOLIC CHURCH
Third and Choctaw Streets
Okmulgee, Oklahoma

Father James McGlinchey
Celebrant

Professional services by:

Keith D. Biglow
FUNERAL DIRECTORS
548 SOUTH SIXTH
MUSKOGEE, OKLAHOMA
(918) 687-6510

1601 NORTH WOOD DRIVE
OKMULGEE, OKLAHOMA
(918) 756-2233

Exhibit F

MISSOURI VOTER REGISTRATION APPLICATION

USE PEN - PLEASE PRINT CLEARLY

PC 2431675

1 ARE YOU A CITIZEN OF THE UNITED STATES OF AMERICA? ☑ YES ☐ NO 2 WILL YOU BE 18 YEARS OF AGE ON OR BEFORE ELECTION DAY? ☑ YES ☐ NO

If you checked no in response to either of the questions, do not complete this form.

3 ☑ NEW REGISTRATION ☐ ADDRESS CHANGE ☐ NAME CHANGE — FOR OFFICE USE ONLY REGISTRATION NO.

4 LAST NAME: Word — FIRST NAME: Samuel — MIDDLE NAME: — SUFFIX (CIRCLE): JR. SR. II III IV — ☐ MALE ☐ FEMALE

5 ADDRESS WHERE YOU LIVE (HOUSE NO., STREET, APT. NO. OR RURAL ROUTE AND BOX - NO PO BOXES): 1423 Clara — CITY: — COUNTY: — ZIP CODE:

6 ADDRESS WHERE YOU GET YOUR MAIL (IF DIFFERENT FROM #5 ABOVE): — CITY: St. Louis — STATE: MO — ZIP CODE: 63112

7 LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER*: 5016 — 8 DRIVER'S LICENSE NUMBER:

9 DATE OF BIRTH (MM/DD/YY): 11/25/72 — 10 PLACE OF BIRTH (OPTIONAL): — 11 DAYTIME PHONE NO. (OPTIONAL): 314 533-4246

12 NAME AND ADDRESS ON LAST VOTER REGISTRATION**

NAME:

ADDRESS:

CITY: STATE:

COUNTY:

**If currently registered in another state please complete this box.

13 I hereby certify that I am a citizen of the United States and a resident of Missouri. I am at least seventeen and one half years of age. I have not been adjudged incapacitated by any court of law. If I have been convicted of a felony or a misdemeanor connected with the right of suffrage, I have had the voting disabilities from such conviction removed pursuant to law. I swear under penalty of perjury that all statements made on this card are true to the best of my knowledge and belief.

14 RURAL VOTERS: COMPLETE THIS SECTION IF YOU LIVE OUTSIDE THE CITY LIMITS OF ANY CITY.

I live: miles N/S/E/W of the intersection of

Section, Township and range:

My neighbors are:

11/9/05 — Date — Signature

☐ Check here if you are interested in working as an Election Judge — Warning: Conviction for making a false statement may result in imprisonment for up to five years and/or a fine up to $10,000.

MO 231-0169 (8-04) *Required for registration pursuant to §115.155 RSMo and will be used only by authorized officials to combat voter fraud and facilitate orderly elections.

MISSOURI VOTER REGISTRATION APPLICATION

USE PEN - PLEASE PRINT CLEARLY

PC 2431668

1 ARE YOU A CITIZEN OF THE UNITED STATES OF AMERICA? ☑ YES ☐ NO | 2 WILL YOU BE 18 YEARS OF AGE ON OR BEFORE ELECTION DAY? ☑ YES ☐ NO

If you checked no in response to either of the questions, do not complete this form.

3 ☑ NEW REGISTRATION ☐ ADDRESS CHANGE ☐ NAME CHANGE | FOR OFFICE USE ONLY REGISTRATION NO.

4 LAST NAME: DAVIS | FIRST NAME: Sharon | MIDDLE NAME: | SUFFIX (CIRCLE): JR. SR. II III IV | ☐ MALE ☐ FEMALE

5 ADDRESS WHERE YOU LIVE (HOUSE NO., STREET, APT. NO. OR RURAL ROUTE AND BOX - NO PO BOXES): 1916 Bell | CITY: | COUNTY: | ZIP CODE:

6 ADDRESS WHERE YOU GET YOUR MAIL (IF DIFFERENT FROM #5 ABOVE): | CITY: St. Louis | STATE: Mo | ZIP CODE: 63112

7 LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER*: 5657 | 8 DRIVER'S LICENSE NUMBER:

9 DATE OF BIRTH (MM/DD/YY): 9 / 10 / 64 | 10 PLACE OF BIRTH (OPTIONAL): | 11 DAYTIME PHONE NO. (OPTIONAL): (314) 832-6044

12 NAME AND ADDRESS ON LAST VOTER REGISTRATION**:
NAME:
ADDRESS:
CITY: STATE:
COUNTY:
**If currently registered in another state please complete this box.

13 I hereby certify that I am a citizen of the United States and a resident of Missouri. I am at least seventeen and one half years of age. I have not been adjudged incapacitated by any court of law. If I have been convicted of a felony or a misdemeanor connected with the right of suffrage, I have had the voting disabilities from such conviction removed pursuant to law. I swear under penalty of perjury that all statements made on this card are true to the best of my knowledge and belief.

11-9-05 | Sharon Davis
Date | Signature

14 RURAL VOTERS: COMPLETE THIS SECTION IF YOU LIVE OUTSIDE THE CITY LIMITS OF ANY CITY:
I live:
Section, Township and range:
My neighbors are:

☐ Check here if you are interested in working as an Election Judge. Warning: Conviction for making a false statement may result in imprisonment for up to five years and/or a fine up to $10,000.

MO 231-0169 (8-04) *Required for registration pursuant to §115.155 RSMo and will be used only by authorized officials to conduct voter fraud and facilitate voter verification.

MISSOURI VOTER REGISTRATION APPLICATION

USE PEN - PLEASE PRINT CLEARLY

PC 2431669

1 ARE YOU A CITIZEN OF THE UNITED STATES OF AMERICA? ☑ YES ☐ NO 2 WILL YOU BE 18 YEARS OF AGE ON OR BEFORE ELECTION DAY? ☑ YES ☐ NO

If you checked no in response to either of the questions, do not complete this form.

3 ☑ NEW REGISTRATION ☐ ADDRESS CHANGE ☐ NAME CHANGE — FOR OFFICE USE ONLY REGISTRATION NO.

4 LAST NAME: Brown — FIRST NAME: Michael — MIDDLE NAME: — SUFFIX (CIRCLE) JR. SR. II III IV — ☐ MALE ☐ FEMALE

5 ADDRESS WHERE YOU LIVE (HOUSE NO., STREET, APT. NO. OR RURAL ROUTE AND BOX - NO PO BOXES): 2810 Bell — CITY: — COUNTY: — ZIP CODE:

6 ADDRESS WHERE YOU GET YOUR MAIL (IF DIFFERENT FROM #5 ABOVE): ~~[illegible]~~ — CITY: St. Louis — STATE: MO — ZIP CODE: 63112

7 LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER*: 5760 — 8 DRIVER'S LICENSE NUMBER:

9 DATE OF BIRTH (MM/DD/YY): 7/15/70 — 10 PLACE OF BIRTH (OPTIONAL): — 11 DAYTIME PHONE NO. (OPTIONAL): 531-1911

12 NAME AND ADDRESS ON LAST VOTER REGISTRATION**:
NAME
ADDRESS
CITY STATE
COUNTY
**If currently registered in another state please complete.

13 I hereby certify that I am a citizen of the United States and a resident of Missouri. I am at least seventeen and one half years of age. I have not been adjudged incapacitated by any court of law. If I have been convicted of a felony or a misdemeanor connected with the right of suffrage, I have had the voting disabilities from such conviction removed pursuant to law. I swear under penalty of perjury that all statements made on this card are true to the best of my knowledge and belief.

Date: 11-9-05 Signature: Michael Brown

14 RURAL VOTERS: COMPLETE THIS SECTION IF YOU LIVE OUTSIDE THE CITY LIMITS OF ANY CITY.
I live
Section, Township and range
My neighbors are

☐ Check here if you are interested in working as an Election Judge

Warning: Conviction for making a false statement may result in imprisonment for up to five years and/or a fine up to $10,000.

MO 231-0169 (8-04) *Required for registration pursuant to §115.155 RSMo and will be used only by authorized officials to combat voter fraud and facilitate orderly elections.

Ms. LOFGREN. Oh, all right then.
Mr. O'Neal.
Mr. LEIENDECKER. Thank you.

STATEMENT OF EDWARD O'NEAL

Mr. O'NEAL. Thank you, Madam Chairman.

An essential part of the foundation of our republic is the opportunity for all qualified citizens to elect their representatives through a secret ballot. In order to ensure that only qualified persons vote, election officials must maintain an accurate database. And that requires the positive identification of potential voters at the time of registration as well as at the polls. Illegal votes dilute the legitimate votes of all voters, regardless of political persuasion.

The National Voter Registration Act has made it easier to register, but unfortunately, it has also made it easier to do so without adequate identification. In simpler times, citizens voted close to their homes, with their neighbors manning the polls. It was readily apparent when an interloper attempted to vote. In our mobile society, this is no longer true. Positive identification is absolutely necessary to protect the votes of legitimate voters.

Previous testimony a couple of weeks ago suggested that, just as there is a presumption of innocence in criminal cases, applications for registration to vote should also be presumed legitimate and that efforts to prove otherwise should be limited. I do not agree. Let us look for a minute at the potential consequences of not investigating questionable applications.

In 2005, the city of Norfolk experienced a massive surge of applications, the vast majority of which were submitted by third-party organizations, one of which was Project ACORN. Of some 5,000 applications presented, many were questionable. Some were simply mistakes on the part of the applicant, but approximately 1,000 of those 5,000 had to be denied because of serious flaws. Of those denied, 213 applications contained Social Security numbers which the Social Security Administration confirmed did not belong to the named applicants. Some of those numbers had belonged to deceased persons.

761 felons denied having been convicted of a felony. The Commonwealth of Virginia keeps a special database of all felons whose rights have been restored, and none of those had completed a much-simplified process for restoration. Parenthetically, a previous witness here stated that her State keeps no list of felons. I don't understand how she manages to keep felons off of the rolls without such a list.

Signatures on some applications did not match signatures already on file or on applications subsequently received from those persons. An employee of one of the third-party organizations admitted to having completed 14 applications where she obtained the names and addresses from a local telephone book. Apparently, there are few, if any, attempts by employees of these third-party organizations to determine whether the applicants are entitled to be registered.

The NVRA, as an attempt to increase voter registration, had mandated Government agencies, other than dedicated voter registration offices, to offer applications to prospective voters. While

these agencies act in good faith, their employees have other primary responsibilities and, subsequently, do not always perceive problems with the applications submitted. Applications received from these agencies have a high rate of error.

Further, our experience is that some persons who have registered at places like the DMV never intended to register and frequently do not vote.

As you can see, regardless of good intentions, there are forces at work which have the potential to degrade the integrity of our voter registration rolls. Investigating questionable applications is tedious and expensive yet critical. The provision of the Help America Vote Act, which requires Statewide registration systems, is a very positive step. However, as a high-turnout presidential election approaches, there is growing concern about the ability of registrars to maintain database integrity, partially due to questionable tactics on the part of these third-party organizations. The legal process against registration fraud moves slowly and is difficult to prosecute because of the necessity to prove that fraudulent action was willful.

The future of our Nation and of our form of government hinges on our system of elections. To summarize, we need to make major improvements in our voting system to include: one, requiring that voter registration be conducted in person before registrars whose first duty is voter registration; two, requiring positive identification at registration as well as at the polls; three, permitting registrars to remove "deadwood," so-called, from the rolls in a more expeditious manner; and four, ensuring that the public understands that the purpose of the provisional ballot is to compensate for administrative errors and to further ensure that voting officials count those ballots when appropriate.

[The statement of Mr. O'Neal follows:]

My name is Ed O'Neal and I was privileged to serve on the Norfolk, Virginia Electoral Board from 1998 to 2006.

An essential part of the foundation of our republic is the opportunity for all qualified citizens to elect their representatives through a secret ballot in an atmosphere free from intimidation, that is, in a public place. In order to ensure that only qualified persons vote, election officials must maintain an accurate database; and that requires positive identification of potential voters at the time of registration. Illegal votes dilute the legitimate votes of all voters, regardless of political persuasion.

The National Voter Registration Act has made it easier to register but, unfortunately, it has also made it easier to register without adequate identification. Because of this it is even more imperative that voters be accurately identified at the polls. In simpler times, citizens voted close to their homes with their neighbors manning the polls. It was readily apparent when an interloper attempted to vote. In our mobile society, that is no longer true. Positive identification is absolutely necessary to protect the votes of legitimate voters.

In 2005, the City of Norfolk experienced a massive surge of applications, the vast majority of which were submitted by a third party organization. Of some 5,000 applications. Many of these applications were questionable, some were simply mistakes on the part of the applicant and approximately 1,000 were denied. Of those denied, 213 applications contained Social Security Numbers which the Social Security Administration reported did not belong to the named applicant. Some numbers were those of deceased

persons. Seven hundred and sixty one felons denied having been convicted of a felony. The Commonwealth of Virginia keeps a database of all felons whose rights have been restored and none of those had had their rights restored. Signatures on some applications did not match signatures already on file or on applications subsequently received from those persons. An employee of the third party organization admitted to having completed 14 applications, and having obtained the names from a local telephone book.

As you can see, there are forces at work, regardless of their good intentions, which have the potential to degrade the integrity of voter registration rolls. Investigating questionable applications is tedious and expensive, yet critical. The provision of the Help America Vote Act which requires statewide registration systems is a very positive step, however, as the 2008 presidential election approaches, there is growing concern about the ability of registrars to maintain database integrity due to questionable tactics on the part of third party registration organizations. The legal process against registration fraud moves slowly and is difficult to prosecute because of the necessity to prove that a fraudulent action was willful.

Many election officials believe that there is a crisis looming, however, it is not in the electronic voting equipment that has occupied the attention of the nation. The validity of an election can not rise above the quality and accuracy of registration records. In the short run, positive identification at the polls will go a long way toward resolution of this problem. The future of our nation and of our form of government hinges on our system of elections. I urge you to take immediate action to ensure that the votes of legitimate

voters are not diluted by fraud by requiring positive identification at registration and at the polls.

Further, we need to be able to clean up our lists of registered voters expeditiously. The National Voter Registration Act forbids prompt removal of voters who miss two federal elections and fail to respond to two notices from the registrar. Currently we must wait FOUR YEARS before removing these people. It's simply bad business to clutter our lists with extraneous names. It increases the chances for error and it costs money. Voters whose names have been purged can always cast a provisional ballot and we will accommodate them.

Ms. LOFGREN. Thank you, Mr. O'Neal, for your testimony.
Mr. Bell.

STATEMENT OF CHARLES BELL

Mr. BELL. Thank you, Chairwoman Lofgren, for the opportunity to testify before the committee on the subject of voter registration and list maintenance. This is a critical subject for the future of American elections because the integrity of the voter registration list is essential to the integrity of the entire election process.

This subject needs to be considered in light of two concerns: voter fraud and voter participation. Voter participation is the lifeblood of the American election process, and we should ensure that every eligible voter is able to cast his or her ballot. And interference with the right of any eligible voter to exercise the franchise must not be tolerated, but at the same time, we must view any effort to cast or to facilitate the casting of illegal votes with equal concern, because each illegal vote cancels a legal one.

There are some who allege that voter fraud is not a serious problem in the American election process, and I would disagree with that. Documented cases of organized voter fraud in Miami, Philadelphia, East Chicago, Compton, Orange County and Fresno in our own State demonstrate this, and we cannot take the integrity of elections for granted.

When the names of ineligible voters appear on the rolls, they create an opportunity and even an invitation for fraud, something that Secretary Bowen has commented about—the opportunity for fraud being a reason for more careful consideration of electronic voting systems.

HAVA took some important steps toward improving the quality of voter registration lists and in ensuring that voter rolls are clean and accurate, but more needs to be done.

I would suggest that Congress look especially at two key areas: first, the restrictions that NVRA imposes on States that want to promptly remove ineligible voters from the rolls and, second, the loopholes in both HAVA and NVRA that make it too easy for illegal aliens and other noncitizens to register.

With regard to NVRA, I would urge Congress to remove the unwise restrictions imposed by the law which make it extraordinarily difficult to remove voters who have failed to vote in two or more Federal elections and who have not responded to numerous inquiries from election officials, allowing States with proper notice to remove such voters who have not voted or who have not responded to notices in 4 years, covering two Federal elections. It would remove a dangerous potential source of deadwood from the voter rolls.

With regard to voting by illegal aliens, there are also a couple of common-sense reforms. First, State agencies should be able to ask applicants for services if those applicants are citizens before offering them a voter registration card. NVRA now prohibits agencies from doing this. HAVA ought to be strengthened to make it absolutely clear that, when voters register, they must answer "yes" to the citizenship question. Any doubt about a nonresponsive answer with nothing filled in should not be resolved in favor of a voter who has signed a registration affidavit without answering that question.

Now, these are just a few of the examples of things that I think can be done to improve the quality of voter lists. The integrity of the election process is at stake, and I would hope there would be some bipartisan agreement on the importance of these essential things: keeping the voter rolls free of illegal aliens and the names of those who are no longer legally registered to vote.

Thank you.

[The statement of Mr. Bell follows:]

SUMMARY OF TESTIMONY OF CHARLES H. BELL JR.

Before the Committee on House Administration, Subcommittee on Elections, November 16, 2007

Thank you for the opportunity to testify before the Committee on the subject of voter registration and list maintenance.

This is a critical subject for the future of American elections. The integrity of the voter registration list is essential to the integrity of the entire elections process.

The subject of voter registration and list maintenance needs to considered in light of two concerns. They are voter fraud and voter participation.

I would start by saying that voter participation is the lifeblood of the American political process. We should ensure that every eligible voter is able to cast their ballot. Interference with the right of any eligible voter to exercise their right to vote must not be tolerated.

But we must view any effort to cast or facilitate the casting of illegal votes with equal concern. Every illegal vote cancels out a legal one.

There are some who allege voter fraud is not a serious problem in the American elections process.

I would submit that they are incorrect.

Documented cases of organized voter fraud in Miami, Philadelphia, and East Chicago, as well as in Compton and Orange County, California are among the many examples that demonstrate why we cannot take the integrity of elections for granted.

Where the names of ineligible voters appear on the rolls they create an opportunity, and even an invitation, for fraud.

The Help America Vote Act took some important steps towards improving the quality of voter registration lists and insuring that voter rolls are clean and accurate, but more needs to be done.

I would suggest that Congress look especially at two key areas.

First, the restrictions that the National Voter Registration Act imposes on states who want to promptly remove ineligible voters from the rolls. And second, the loopholes in HAVA and the NVRA that make it too easy for illegal aliens and other non-citizens to register.

With regard to the NVRA, I would urge Congress to remove the unwise restrictions imposed by that law which make it extraordinarily difficult to remove voters who have failed to vote in two or more federal elections and have not responded to multiple notices from election authorities.

Allowing states, with proper notice, to remove voters who have not voted or responded to notices in four years covering two federal general elections would remove a dangerous potential source of "deadwood" from the voter rolls.

With regard to voting by illegal aliens, I suggest two common-sense reforms.

First, State Agencies should be able to ask applicants for services if those applicants are CITIZENS, before offering them a voter registration card. NVRA now prohibits agencies like welfare offices from asking that question.

Second, HAVA ought to be strengthened to make absolutely clear that voters must answer "YES" to the Citizenship question on the voter registration form in order to be able to cast a ballot.

Some states now claim that HAVA allows citizens who leave the question blank on the registration form to be legally registered and to vote.

Signing a statement in fine print, which many may not have read, or can claim not to have read, is no substitute for answering the specific, simple question with the appropriate "YES" or "NO" check in the box.

These are only a few of the many things that should be done to improve the quality of voter lists.

At stake is not only the integrity of the process, but the confidence of American citizens in the integrity of the process.

I would hope that there could bipartisan agreement on the importance of keeping the voter rolls free of illegal aliens and names of those who are no longer legally allowed to vote.

Thank you again for the opportunity to testify before this Committee.

Ms. LOFGREN. Thank you very much for your testimony.

We will close this panel with Ms. Mitchell's testimony.

STATEMENT OF CLETA MITCHELL

Ms. MITCHELL. Thank you, Madam Chairman. I am pleased to be here and to have the opportunity to speak to you today.

I would open with one very basic question. Why do some people in organizations in this country so resent and so forcefully object to efforts to ensure the integrity of our voting procedures?

Ensuring our voting systems are secure and that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy is the goal of every Republican organization and conservative group that I work with—every candidate, in every conversation. I have never been in a conversation with any Republican attorneys or candidates or campaign operatives who ever said, "Let's figure out how to keep minorities from voting." It simply does not happen.

Our goal is to ensure that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted. But there is an industry that has arisen in this country over the past decade which is determined to convince all of us that there is no voter fraud. So, if there is no voter fraud, then, of course, we have to make sure that there are no protections in place, and we have to make sure that there are no observers and no safeguards, because if there is no voter fraud, then we do not need all of these things, right?

Well, personally, I am tired of the professional vote-fraud-deniers industry that has arisen, because their view is: There is no vote fraud; therefore, anybody who says there is vote fraud and who tries to take steps to protect against it must be, of course, a racist.

I am not a racist. I am not out here to talk about protecting the integrity of the voting system because I am a racist. Because it simply is not true, nor is it true of all of the people who I work with, who are honorable people and who want to protect the integrity of the voting system.

When they say there is no vote fraud, let me give you some examples.

Headline, October 30, 2007, the Seattle Times: "three Plead Guilty in Fake Voter Scheme. The prosecutors in King County, Washington, are in the process of sending people to jail for what they call the most massive voter registration fraud scheme in King County history."

From the Monroe Free Press, Monroe, Louisiana, November 5th, just 2 weeks ago: "Were Votes Bought with Toilet Tissue and Vanilla Wafers? The Louisiana Ethics Commission is investigating allegations of vote buying, stemming from the Statewide elections held last month. The candidates were all African American."

I talked to my daughter this morning, who graduated from the University of Pennsylvania last May, and she reminded me when I told her what I was doing today that, a year ago this month, she had been an observer at a Philadelphia polling place. She was a volunteer Republican observer. They sent her to a largely Hispanic minority voting place, not because the Republicans were racist but because my daughter is fluent in Spanish.

During the course of the time when she was there, she just rattled off the things she witnessed—people tampering with the voting machines, people who were not the election officials who were going behind and tampering with the voting machines after voting had begun, people distributing partisan literature inside the polling place.

When she, as she was supposed to do, objected and told the election officials that they are not supposed to be here deliberating passing out this literature, she was told, "We don't want any Republicans here in this precinct. We all vote Democratic in this precinct. So why don't you just leave?"

There were able-bodied people walking in, going directly to the disabled voting table, saying that they were disabled so that somebody could go with them into the polling place and could tell them how to vote.

All of these things are not—people say, "Well, that is just anecdotal evidence." Well, anecdotes of breaking the law are still instances of illegal voting activity.

I could go on and on with instances of voting fraud, but what I am here today to ask is, why is it that we should have this debate about whether vote fraud exists?

One of the things that I think I would most like to say, as a point of personal privilege, is that I have read the written testimony of one of the other witnesses. I want to personally go on record here today as saying that the efforts by this professional vote-fraud-deniers industry to attack and to malign Commissioner Hans von Spakovsky, formerly of the Justice Department, now the Commissioner of the Federal Election Commission, I find to be outrageous. Hans von Spakovsky is an honorable, decent man, and the attacks on his integrity, the aspersions cast on his character by people with whom he disagrees philosophically should not be tolerated.

During the Clinton administration, the Justice Department was ordered to pay over $4 million in attorney fees for groundless, baseless cases that had been brought by the Justice Department. Now, none of that has been discussed publicly. Hans von Spakovsky—during the time when he was at the Justice Department, none of those kinds of cases were brought and did not happen. Well, his sin was to object to career people's being able to bring cases based on their philosophy and not the law.

Thank you.

[The statement of Ms. Mitchell follows:]

Testimony of Cleta Mitchell, Esq.

House Administration Committee

November 16, 2007

My name is Cleta Mitchell. I am an attorney, specializing in the area of political law – the business and regulation of politics, lobbying, public policy and elections.

I have been involved in law and politics for more than thirty years. It is a privilege for me to appear here today to discuss with the Committee the integrity of America's elections and voting process.

I begin with a simple but very basic question:

Why do some people and organizations so resent and so forcefully object to efforts to insure the integrity of our voting procedures?

It absolutely mystifies me that there has emerged over the past several decades an entire industry – well financed and well organized, supported by the mainstream media and the liberal elites in this country – which is determined to stymie any effort **to insure that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy.**

That is the absolute goal of every organization, campaign and entity with which I am involved. From the Republican National Lawyers Association to the American Conservative Union to the informal groups of lawyers who practice political law as I do for Republican candidates and conservative organizations…we all are dedicated to this principle:

To insure that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy.

Yet, there are well-organized forces furiously at work even as we speak, seeking to block this principle from ever being effectuated.

These are the people and the groups who contend that there is no voter fraud and no people who try to illegally influence the election process – and that any of us who believe otherwise are and must be racists.

I am personally offended and sick and tired of being labeled a racist simply because I *know* there are people out there who are determined to steal votes and steal elections if they possibly can.

I am tired of the **Professional Vote Fraud Deniers Industry**. Because that is what it is. A massive, well-funded industry of people and groups who deny the existence of vote fraud in order to make certain that there are no watchdogs, no safeguards and no protections in place to keep vote fraud from happening.

No vote fraud? Really? Then how about these facts…

- Headline: *The Seattle Times,* October 30, 2007 "Three plead guilty in fake voter scheme". The story reads "Three of seven defendants in the biggest voter-registration fraud scheme in Washington history have pleaded guilty and one has been sentenced, prosecutors said Monday. The defendants were all temporary employees of ACORN, the Association of Community Organizations for Reform Now, when they allegedly filled out and submitted more than 1,800 fictitious voter-registration cards during a 2006 registration drive in King and Pierce counties."

- From the Monroe Free Press, Monroe Louisiana, November 5, 2007 "Were Votes Bought with Toilet Tissue, Vanilla Wafers?" The story: "The Lousiana Ethics Commission will be investigating allegations of vote buying stemming from the state-wide elections held last month. An incumbent state senator learned that a non-profit group was instructing families to whom it was distributing food to vote for his opponent or "the food would stop." The Monroe Free Press prides itself on being the "voice of the Monroe Area African-American community"

- 2002, General Election day, North Carolina. I was overseeing the statewide voter effort from the North Carolina Republican Party headquarters. I personally took a phone call from a voter who had witnessed the following: From the moment the polls opened on election day, a man sitting in a van parked just outside a polling place motioned to voters as they entered the polling place. They approached the van, he spoke to them apparently giving them instructions. The voters went inside and when they came out they walked over to his van and in exchange for their ballot stub, received biscuits with what appeared to be money stuffed inside. I personally contacted the state election board and the Department of Justice election day fraud hotline. Of course, by the time anyone arrived to investigate, the man had stopped handing out the biscuits. His response to investigators was that he was just "handing people something to eat…" It would be nice to know what was really going on. But because of the **Professional Vote Fraud Deniers Industry,** taking photographs or videoing shenanigans such as the witnessed by the woman who called that day couldn't take photos to establish the evidence of her assertions…so convenient…if preservation of evidence is prohibited by law…then there is no evidence of vote fraud

and thus there must not BE any vote fraud…surely no one would buy…or sell…a vote. Right?

- November 15, 2007 – YESTERDAY….from The Politico "Twenty percent of students polled by their peers at New York University said they'd exchange their vote in the next presidential election for an iPod touch. Sixty-six percent would exchange it for free tuition. And fifty percent said they'd lose the right forever for $1 million. Ninety percent of the students who said they'd give up their vote for the money also said they consider voting "very important" or "somewhat important"; only 10 percent said it was "not important." Also, 70.5 percent said they believe that one vote can make a difference — including 70 percent of the students who said they'd give up their vote for free tuition.

- 2001 -- The state of Missouri established a bi-partisan commission to review the events of November 7, 2000 in which 1,233 persons who were not legally qualified to vote in the State of Missouri nonetheless cast ballots upon obtaining court orders, falsely claiming to be eligible. The evidence demonstrated that a concerted effort was planned in *advance* of election day to not only illegally extend the hours for voting beyond the statutory period but also to obtain court orders authorizing votes to be cast by persons not legally eligible to vote. Clearly, this was a plan to violate the integrity of the voting system in the state of Missouri – which succeeded. Key findings include votes cast by:
    * convicted felons
    * people who voted at least twice, possibly more than twice
    * deceased persons
    * persons registered at vacant lots

* multiple names registered at the same address – which addresses are not multiple family dwellings, nursing homes, dorms, hospitals or group homes
* The primary lawsuit brought by the Democrats in Missouri to keep the polls open beyond the statutory poll closing time had a lead plaintiff who was deceased. When the fact was brought to the attention of the attorney, he responded that it was another person by the same name who had not been allowed to vote – a review of the records revealed that the individual had voted earlier in the day without difficulty.

I can go on and on. The facts are the facts *despite* the yeoman and unceasing efforts of those in the **Professional Vote Fraud Deniers Industry** to deny the existence, the patterns, the practices of dishonorable persons and organizations to engage in vote fraud. It reminds me of the former Soviet Union's official position that it was never at war in Afghanistan in the 1980's…hoping no one would notice the dead soldiers who came home in increasing numbers in coffins or the returning soldiers who were just supposed to stick with the Soviet party line and deny that there was a war…or that they had been in it.

Here is a fact: there ARE people who steal or attempt to steal votes. There ARE people who willingly sell their votes.

That is illegal.

And efforts to uphold and enforce the laws of every jurisdiction that prohibit illegal activities related to voting are NOT racist.

There are some who are so committed to their philosophical view of the world that they literally have no sense of propriety or integrity when it comes to using the levers of government to support their own political agendas.

The Clinton Administration's Justice Department through its Voting Rights Section in 1993 filed suit in Dallas County alleging racism and discrimination by Dallas County public officials. After four years, the federal appellate court upheld the dismissal of the case by the lower court as well as upholding the lower court's order to the federal government to pay almost $85,000 in defendants' attorneys fees and costs. The Court said, "this is a very troubling case. Over four years ago, the United States filed this action against Dallas County public officials accusing them of purposefully discriminating against black voters in order to deny them the opportunity to elect their preferred candidate for the office of commissioner of District 2 in the 1992 general election...A properly conducted investigation would have quickly revealed that there was no basis for the claim that the Defendants were guilty of purposeful discrimination against black voters...In this appeal, we affirm the district court's order awarding EAJA fees to the Defendants because the position of the United States, when viewed as a whole, was not substantially justified. Unfortunately, we cannot restore the reputation of the persons wrongfully branded by the United States as public officials who deliberately deprived their fellow citizens of their voting rights. We also lack the power to remedy the damage done to race relations in Dallas County by the unfounded accusations of purposeful discrimination made by the United States...The filing of an action charging a person with depriving a fellow citizen of a fundamental constitutional right without conducting a proper investigation of its truth is unconscionable...Hopefully, we will not again be faced with reviewing a case as carelessly instigated as this one." *United States v. Jones, 125 F. 3d 1418, 1431 (11th Cir., 1997)*

Today, the other witnesses appearing here today to complain of something they now term "vote caging" is of a kind and is exactly the kind of baseless claim of discrimination that the Court found so repugnant in the *Jones* case cited above. And, one of the witnesses appearing here today, Mr. Hebert, was the attorney of record for the United States who made the false claims that the Court so soundly

rejected – and which cost the American taxpayers not only the costs of the government's unfounded lawsuit, but also the costs of the defendants' attorneys and legal expenses.

Likewise, the Congress, the media and anyone of sound mind should reject the latest tool in the **Professional Vote Fraud Deniers Industry's** toolbox: "vote caging".

When I was involved in electoral politics as a candidate for the legislature in Oklahoma, the best lists of voters were the new registrants. Those were the most current addresses, and we reasoned, those who had taken the trouble to recently register were more likely to also vote. I always made it a practice to be sure to get those new registration lists and to send them letters welcoming to the voter rolls in my district, and asking their support for my election and my subsequent three re-elections.

I can tell you that if those letters were returned to me as "undeliverable", I would have been surprised. And if a LOT of those letters were returned, I would have been the first person to say to the election board of my county, "there is something really wrong here."

Now, I am being told – that anyone who sends letters to newly registered voters is a racist and probably looking to suppress minority votes AND Congress is being asked to make such communications illegal.

So what we have is one of the very best ways to identify potential illegal votes and voters, which is now being described as 'racist'...as yet another tactic of the **Professional Vote Fraud Deniers Industry** to further undermine the integrity of our voting system.

It defies common sense.

And I want to take a moment of personal privilege here today to state for the record that I am tired of the false, baseless and bitter personal attacks on the honor and integrity of Hans von Spakovsky which are leveled in the testimony of Mr. Herbert today and which has been ongoing for several years now.

He is engaged in a concerted effort to utterly destroy Commissioner von Spakovsky, who is someone I know well, and whose honor, integrity and principles are absolutely pristine. He has been subjected to the very worst kind of personal attacks for the simple reason that Commissioner von Spakovsky is a conservative and a Republican. Two strikes against him in the eyes of these individuals.

Commissioner von Spakovsky's real sin, however, was that for the first time in decades, he and others fought with these individuals who thought they owned the Voting Rights Section of the Department of Justice and have declared war on Mr. von Spakovsky and others who made a concerted effort to base the decisions of the Voting Rights Section on the law, not on personal political persuasions or liberal orthodoxy. For that, those individuals have determined to destroy this honorable public servant, Hans von Spakovsky.

As Edward Blum of the American Enterprise Institute has written, "Hans von Spakovsky's only crime was his failure to embrace the agenda of the liberal voting rights community".

I am here today in no small part to challenge their attacks on Commissioner von Spakovsky and to remind the Committee that the legal positions taken by Commissioner von Spakovsky and others in opposition to these witnesses were upheld and validated by the Courts. And if we are to review the facts, it was the Voting Rights Section of the Department of Justice during the Clinton Administration that was responsible for bringing frivolous lawsuits with baseless allegations of racism that resulted in over $4,000,000 in attorneys fee award *against*

the United States government. Something that did NOT happen on Commissioner von Spakovsky's watch.

This Committee and the Congress would do well to carefully consider the source before buying into their proposals.

Protecting the integrity of the voting process is not a racial insult or slur. And to my way of thinking, those who equate the two do an injustice to both the American electoral system and America's minority voters.

It is time to STOP playing the race card. It is time to take every possible step **to insure that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy.**

Thank you.

Voice of the Monroe Area African-American Community
Free Press

Were votes bought with toilet tissue, vanilla wafers?

11/05/07

The Louisiana Ethics commission may be busy in a few weeks trying to unravel complaints of illegal activities in the October 20th elections statewide.

Included among the complaints will be one expected to be filed by Representative Willie Hunter who claims that a Federally tax exempt organization in Lake Providence gave boxes of food and household supplies to voters and told them to vote for his opponent and a slate of candidates endorsed by the Louisiana Democratic Party.

Hunter claims that hundreds of families were given boxes of food two days before the election then told that the food would stop if Frances Thompson was not elected State Senator. He said he is preparing a formal ethics complaint that will not change election results but will stop illegal activity in the future.

The Free Press contacted one Lake Providence woman who said she was called just before election day and told that food and household supplies would be distributed at the office of the Louisiana Center Against Poverty.

She said when she arrived she was told to sign in and she and others listened to two lectures about the importance of voting for Frances Thompson for State Senator. She said she did not recognize the first woman but the second was The Reverend Carolyn Hunt, a Monroe Minister who also heads the Girl Power organization.

She said The Reverend Hunt told them to vote the numbers on the ballot which included Secretary of Agriculture Bob Odom and Rep. Frances Thompson. She said Hunt made it clear that unless these persons were elected the food boxes would stop.

After the lecture each was given two boxes, one containing food items such as vanilla wafers, crackers, potatoes or other dry

goods. The other contained toilet tissue, mouthwash, cleaning supplies, body lotion and other supplies.

Inside each box was a voting ticket.

Another Lake Providence woman said she was concerned because it did not appear that asking people to vote for a candidate to get food was legal. That's why she said she reported the boxes she received without using any of the items.

Tony Sellers of "Feed the Children" based in Oklahoma said his organization delivered a truck load of supplies to the offices of the Louisiana Center Against Poverty on October 18th. He said the truck contained food and household supplies for 400 families. He said another sponsor was the Cornerstone Family Church. He said the order was placed by the Center Against Poverty with a note that funds will be overnighted to cover the cost of the rush order.

However, Sellers said that Feed the Children is non-political and does not allow distributors to give speeches, support candidates or even to give sermons or religious speeches.

"If that happened it would definitely be against our policy." Said Sellers.

Sellers said the truck made the delivery on October 18th, two days before the election. He said usually a trailer of food for 400 families cost $7,200, which covers the cost of the food, delivery costs and other overhead.

Both organizations receiving the foods are Tax Exempt organizations that are prohibited from political activity.

Sellers said "Feed the Children" has an investigation unit that is presently investigating the Lake Providence area complaints.

Senator Charles Jones, who founded the Louisiana Center Against Poverty, said the agency feeds thousands of poor people every year and has never placed conditions upon the receipt of food.

When the agency distributes foods through the Poverty Center, Jones said, it is usually paid for from state funds through his Senatorial District. However, since he was not aware of the October 18th activity, he said Tuesday he was not sure of the source of the $7,200 payment.

Jones said he does not know about the specific complaint but doubts that anyone in his agency placed conditions on receiving food.

He said the underlying tone of the allegations seems to suggest

that he supported Frances Thompson's Senate bid over Rep. Willie Hunter.

"I supported Willie Hunter. I spent 14 hours with him on the radio. I announced it in the Free Press and in Irma's paper (Dispatch) and everywhere else. If anyone is trying to suggest that I did anything except support Willie Hunter they are not telling the truth." Jones said. When asked Tuesday about the allegations made by the Lake Providence residents concerning her, The Reverend Carolyn Hunt said she would have to contact someone else before she could answer. Then she said, "no comment."

Wednesday just before press time she left a message on the Free Press Answering service that said, "I called to respond to your question on yesterday and the answer is 'no' it did not happen."

Contacted again Wednesday about Hunt's denial, one of the complainants told the Free Press, "She might say it didn't happen but half the community saw it."

The Reverend Hunt is a relative of Senator Jones and is aide to Senator Jones.

Most at NYU say their vote has a price

By: Lily Quateman - Washington Square News
November 14, 2007 07:29 PM EST

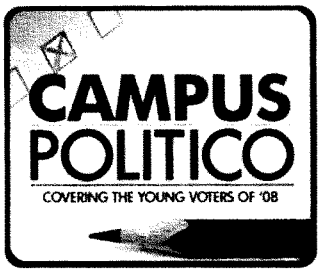
Two-thirds say they'll do it for a year's tuition. And for a few, even an iPod touch will do.

That's what NYU students said they'd take in exchange for their right to vote in the next presidential election, a recent survey by an NYU journalism class found.

Only 20 percent said they'd exchange their vote for an iPod touch.

But 66 percent said they'd forfeit their vote for a free ride to NYU. And half said they'd give up the right to vote forever for $1 million.

But they also overwhelmingly lauded the importance of voting.



Ninety percent of the students who said they'd give up their vote for the money also said they consider voting "very important" or "somewhat important"; only 10 percent said it was "not important."

Also, 70.5 percent said they believe that one vote can make a difference — including 70 percent of the students who said they'd give up their vote for free tuition.

The class — "Foundations of Journalism," taught by journalism department chairwoman Brooke Kroeger — polled more than 3,000 undergraduates between Oct. 24 and 26 to assess student attitudes toward voting.

"The part that I find amazing is that so many folks think one vote can make a difference," Sociology Department Chairman Dalton Conley said. He added, "If we take them at their word, then perhaps they really think votes matter, and that's why someone might pay a year's tuition to buy theirs."

Sixty percent of the students who said they'd give up their vote for tuition also described their families' income as upper-middle or high.

Their reasons for giving up their votes varied.

"At the moment, no candidate who truly represents my political beliefs has a chance of winning a presidential election," one male junior studying film and television at the Tisch School of the Arts wrote on the survey.

"It is very easy to convince myself that my vote is not essential," wrote a female CAS sophomore. "After all, I'm from New York, which will always be a blue state."

Other students wrote that they were disgusted by the thought.

"I would be reversing history — a lot of people fought so that every citizen could be enfranchised," said a female in her second year at the Stern School of Business.

One CAS junior went even further, writing that "anyone who'd sell his lifelong right to vote should be deported."

Lily Quateman reports for New York University's Washington Square News. Washington Square News is partnering with Campus Politico for the 2008 elections.

Would you give up your vote for anything? If so, what would it take? Post a comment here and let us know.

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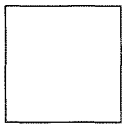

Ms. LOFGREN. Thank you all for your testimony.

Since this is the minority panel, I will turn now to our ranking member, Mr. McCarthy, for his 5 minutes of questions.

Mr. MCCARTHY. Well, thank you, Madam Chair.

I want to thank all of the witnesses on this panel and the next panel.

Even though this is known as the minority witness day, I was happy to approve the other panel to come as well. This is what I believe it should be, and I know Madam Chair personally approved and changed the ratio on the last hearing. I want to thank you for that.

If I could get to questions, Mr. Leiendecker, you had mentioned in your statement 1,500 voter registrations. You talked about an organization called ACORN. What followed through on that? Was there any prosecution? Was anybody found guilty?

Mr. LEIENDECKER. I am guessing you are referring to 2003.

Mr. MCCARTHY. Yes.

Mr. LEIENDECKER. Is this the time?

Mr. MCCARTHY. I think you said—yes.

Mr. LEIENDECKER. There were two that I mentioned. One was in 2003 that that happened, and the other one was just recently in the 2006 November election.

In 2003, nothing at all happened to the individuals. There was an investigation. I was not there at the time, but I have talked with individuals in the office. What ultimately happened was the information was sent over to the prosecutor's office, and the prosecutor's office did not do anything.

This last time in 2006, right before the November election, there was roughly 4,000 or 5,000 cards that we deemed as problems. What happened was the Justice Department came in and subpoenaed them and took them. It is, to my knowledge—and I talked with them about 2 weeks ago—that it is still under investigation, and we will be hearing something very shortly of indictments, I would say.

Mr. MCCARTHY. So this is something that continues from election to election, where you are finding this fraud?

Mr. LEIENDECKER. We have an ongoing problem. I don't know how it is with other jurisdictions with this group, but, you know, it was very frustrating to me, because, right before the November election, we tried to right this wrong and make sure that, you know, as to everybody who may have slipped through the cracks, that they were going to get the right to vote. And everybody did get the right to vote.

The problem that we ran into with them was that they started pointing the finger back at us and saying, "You guys are the problem. You are trying to just minimize individuals voting, and you are the problem," basically. It was not true.

After the November election, there was a Post-Dispatch article in which one of the heads of ACORN came in and said, "Well, maybe they were a little right on this." They were not necessarily sorry, but they said that their organization in St. Louis was the worst that they have ever seen.

Mr. MCCARTHY. Now, Mr. O'Neal, you talked about ACORN. You made some statement of 5,000 registrations, 1,000 of them seri-

ously flawed, that 213 had Social Security numbers that were not theirs; they were those of deceased people.

So you are witnessing the same concern?

Mr. O'NEAL. Yes, sir.

Mr. MCCARTHY. Maybe you could elaborate on that, as well.

Mr. O'NEAL. Well, what we experienced was, apparently, some task forces, some of which belonged to ACORN and some of which apparently were part of other organizations that came in and went to various places throughout the city, particularly to college campuses, and they attempted to register people to vote, but they did so without really checking to make sure that the people there signing up really were qualified to vote.

We would contact, for instance, these felons, and the felons would say, "Well, they told us not to worry about checking that block; it didn't matter." Then, subsequently, somebody apparently went in and checked the block for them, saying they were not a felon. Well, of course, we caught up with that. We do look at these things very closely.

Mr. MCCARTHY. Now, Mr. Bell, you brought up some—and I know your background personally. We have a personal relationship. I know we have talked about races and seeing problems throughout. We know personal witnesses have seen problems through there.

Could you talk about ways in which we might be able to change this in a bipartisan manner, about the citizen box not even being checked? Why would somebody not check whether they were a citizen or not if they were?

Mr. BELL. Well, there is not a lot of evidence on that, court cases or testimony, of people who failed to check the box. I believe, during the Dornan-Sanchez investigation, there was a pretty thorough investigation of a number of votes that were illegally cast in that congressional race.

Mr. MCCARTHY. I think that number was in the 600s, was it not?

Mr. BELL. Well, I think it was in the low thousands of people who—650 were identified as actually being illegal, noncitizens, who voted in that election. Over 1,000 were people who did not check the box on their voter registration affidavits.

Mr. MCCARTHY. Now, you say one thing that maybe we can do—and maybe we can do this, Madam Chair, in a bipartisan manner. If we just made everybody answer that question, that could clean up a lot within the rolls.

Maybe if I could just quickly go down the line, because my time is up. Would you agree with that, if we just made everybody answer the question of whether they are a citizen or not?

Mr. BELL. I think it is very important.

Mr. MCCARTHY. Could I ask each witness really quickly if they agree with that?

Ms. LOFGREN. The gentleman is given an additional minute so that the witnesses can answer.

Mr. MCCARTHY. Thank you.

Ms. MITCHELL. Well, I do not want the Federal Government to take over the decisions about voter registration any more than they already have. I think every State should require that that be done, yes.

Mr. MCCARTHY. Mr. O'Neal.

Mr. O'NEAL. Yes, I agree completely that that would help.

Mr. LEIENDECKER. I would agree.

Mr. MCCARTHY. Thank you very much, Madam Chair.

Ms. LOFGREN. The gentleman's time has expired.

I, without objection, will enter into the record a letter that has been provided to the committee from the Secretary of State's office in Missouri to you, Mr. Leiendecker, and to Mary Wheeler-Jones, dated October 30, 2006.

[The information follows:]

ROBIN CARNAHAN
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

October 30, 2006

Scott Leiendecker, Director
Mary Wheeler-Jones, Director
300 N. Tucker Blvd.
St. Louis, MO 63101

Dear Scott and Mary,

The Secretary of State's office received a copy of the letter your office sent to voter registration mail-in applicants whose voter registration applications were submitted to your office by a representative of ACORN sometime between July 31, 2006, and October 11, 2006.

Your letter requires that each applicant contact the Election Board so that their voter registration information is confirmed prior to completing the registration process. In addition, the letter is not clear as to whether the applicant must also sign and return the letter with his or her telephone number in order to complete the registration process.

These steps as outlined in your letter are additional registration requirements in violation of Missouri law. See Missouri Constitution Article VIII, Section 2 and Sections 115.133, RSMo.

Furthermore, Section 115.155.4, RSMo, specifically provides that if your office determines that an applicant is not entitled to register your office must, within seven business days after receiving the application, notify the applicant by mail and state the reason the applicant is not qualified to register to vote.

These additional requirements may also be in violation of federal election laws. See National Voter Registration Act, 42 U.S.C. §1973gg-6(a)1 and 6(a)2 and the Voting Rights Act, 42 U.S.C. §1971(a)(2)(B).

As a result, your office should process these voter registration applications pursuant to state and federal law. For your reference, we have enclosed another copy of the memo we sent to you regarding driver's license and last four digits of the Social Security numbers on voter registration forms.

Respectfully yours,

Betsy Byers
Co-Director of Elections

Kay Dinolfo
Co-Director of Elections

PO BOX 1767 • JEFFERSON CITY, MISSOURI • 65102
www.sos.mo.gov

Ms. LOFGREN. I would just simply note that this letter from Betsy Byers and Kay Dinolfo, who were co-directors of elections, points out that the steps that you outlined in your letter are additional registration requirements in violation of Missouri law. And they cite the section of the Constitution and also indicate that your actions may also have been in violation of Federal election laws.

That goes into the record.

At this point, we would thank the panel for their——

Mr. LEIENDECKER. May I respond to that?

Ms. LOFGREN. No. You had 5 minutes of testimony. She is responding to your testimony, and we are just putting it in the record, and people will sort it out.

Well, now, I thank these witnesses, and I will ask the next panel to come forward.

As the witnesses are coming forward, I will introduce them.

We have Joseph Rich. Mr. Rich is the director of Fair Housing and Community Development, the Lawyers' Committee for Civil Rights Under Law. Before joining the Lawyers' Committee in 2005, Mr. Rich spent his career in the Department of Justice's Civil Rights Division, where he litigated and supervised civil rights cases. In addition, from 1999 to 2005, Mr. Rich served as the chief of the Voting Section, where, in 2004, he directed and coordinated the most extensive election monitoring program in the history of the Civil Rights Division, involving coverage of 86 jurisdictions and election monitoring by over 1,000 Federal employees. Mr. Rich received his J.D. degree cum laude from the University of Michigan Law School and his bachelor's in history from Yale.

Next, we have Gerald Hebert. For the past 10 years, Mr. Hebert has had an active Federal court litigation practice, specializing in redistricting and in voter rights issues. Over the last 3 decades, he has served as legal counsel for parties and amici curiae in numerous redistricting lawsuits, including several cases decided in the Supreme Court of the United States. Prior to his time in solo private practice, Mr. Hebert served in the Department of Justice from 1973 to 1994 in many supervisory capacities, including acting chief, deputy chief and special litigation counsel in the Voting Section of the Civil Rights Division.

Finally, we have Elizabeth Westfall. Ms. Westfall is the senior attorney and deputy director of The Advancement Project's Voter Protection Program. In this capacity, Ms. Westfall litigates voting rights cases on behalf of voter registration organizations and individual voters. She also engages in advocacy with election officials on various voter registration and other election administration issues. Ms. Westfall joined The Advancement Project after serving as a civil rights litigator in private practice and with the Washington Lawyers' Committee for Civil Rights and Urban Affairs. She received her law degree from Harvard Law School and her undergraduate degree from Carleton College.

We do thank you for being with us this morning.

We will start with you.

I think you heard the instructions with the first panel. Your entire statements will be made part of the official record. We do ask that your testimony consume 5 minutes. And when your 5 minutes

are up, the red light will be on, and we will ask you to complete your sentence so we can hear the next witness.

We will start with you, Mr. Rich.

STATEMENTS OF MR. JOSEPH RICH, FORMER CHIEF, DEPARTMENT OF JUSTICE VOTING RIGHTS SECTION; MR. J. GERALD HEBERT, FORMER ACTING CHIEF, DEPUTY CHIEF AND SPECIAL LITIGATION COUNSEL, DEPARTMENT OF JUSTICE VOTING RIGHTS SECTION; MS. ELIZABETH WESTFALL, DEPUTY DIRECTOR OF VOTER PROTECTION, THE ADVANCEMENT PROJECT

STATEMENT OF JOSEPH RICH

Mr. RICH. Thank you very much, Madam Chairman.

I was asked to address the issue of vote caging, and I very much appreciate the opportunity to state my views on this subject.

Vote caging is defined in various ways, but the one I am using is in a ballot security report from 2004, which states "challenging voters using inaccurate, unofficial lists of registrants derived from do-not-forward letters sent to low-income and minority neighborhoods." And these are letters that are not sent by election officials. These are letters that are sent by organizations or party organizations. Targeted at traditionally disenfranchised voters, this practice relies on voter challenge laws to indiscriminately question the ability of eligible voters to cast a ballot.

While purported to be designed to fight voter fraud, caging is really a quite cynical way to undermine the most fundamental right of all Americans for partisan gain. The reason it really cannot be justified as a fight against voter fraud is it is targeted. The lists are targeted at predominantly minority areas. These activities have the effect of discouraging voters who are challenged, as the challenge process is cumbersome and time-consuming. They also may cause delays in lines, further lowering the number of persons who vote.

And, of course, especially alarming is the targeting of minority voters. Indeed, in 2004, one State representative in Michigan was quoted as saying, "If we do not suppress the Detroit vote," which was over 80 percent African American, "we are going to have a tough time in this election."

My written testimony focuses on the increased uses of this technique in recent years, which is well-documented in four studies that I discuss in the written testimony. The practice has grown significantly in recent years. Just a few weeks ago, the registration eligibility of over 900 students at Georgia Southern University was challenged by local residents in Georgia—Statesboro, Georgia. Despite a requirement under Georgia law that required personal knowledge in order to file a challenge, each of the forms used in this challenge were identical, save for the name of the challenged voters. The Voting Rights Project at the Lawyers' Committee investigated and monitored the situation closely. Just a few days ago, the challenges were dropped under threat of litigation from the Lawyers' Committee.

Many vote caging incidents came to the Voting Section's attention when I was chief of the section in 2004. They included threat-

ened challenges to voters at predominantly African American precincts in Duval County and Louisville, Kentucky, and to Hispanic voters in Alamance County, North Carolina, Atkinson and Long Counties, Georgia. In each instance, they were investigated, and monitors were present at the polls on Election Day. The challenge plans were successfully addressed because the schemes had been made public, and the Department of Justice as well as other interested national groups took strong, responsive action.

However, with respect to the most extensive voter caging program in 2004 in Ohio, the Department's response was limited and appeared to be politically tinged. According to a Project Vote report, there were over 232,000 letters sent to newly registered voters by the Republican Party and around 30,000 returned as undeliverable. Lists of returned mail to election officials were used to supplement the list, and in the end, there were over 35,000 voters on these lists.

Extensive litigation resulted from this. In one of the vote caging cases, Spencer v. Blackwell in Ohio, the case was brought just before the election. The Democratic Party sought to enjoin any new challenges of voters in Hamilton County. The court found that the challenges would be of 97 percent of African American voters, newly registered voters, while only 14 percent of new voters in white precincts would face a challenge. This is the court's finding. In other words, it was the classic and especially extensive vote caging scheme targeted at minority voters.

The United States was not a party to this case, but nonetheless, it took the unusual step of sending the court a letter right before the hearing of October 29th, a letter drafted and submitted to the court by the political appointees in the division, with no knowledge, much less any input, from the Voting Section career staff.

Ms. LOFGREN. Mr. Rich, your time has expired, so if you could conclude.

Mr. RICH. Okay. I will just finish up on this particular incident.

Although the case raised serious claims of race discrimination, the letter by the then-Assistant Attorney General inexplicably did not address race, and urged that the challenges be permitted.

[The statement of Mr. Rich follows:]

TESTIMONY FOR THE HOUSE ADMINISTRATION COMMITTEE SUBCOMMITTEE ON ELECTIONS

Hearing on Voter Registration and List Maintenance (cont.)

November 16, 2007

Joseph D. Rich
Director, Fair Housing Project
Lawyers' Committee for Civil Rights Under Law
1401 New York Ave. NW
Washington, DC 20005
jrich@lawyerscommittee.org

My name is Joe Rich. Since May, 2005 I have been Director of the Housing and Community Development Project at the Lawyers' Committee for Civil Rights Under Law. Previously I worked for the Department of Justice's Civil Rights Division for almost 37 years. The last six years – from 1999-2005 – I was Chief of the Division's Voting Section.

I have been asked to address the issue of "vote caging" and first want to thank the Committee very much for the opportunity to state my views on this subject. Vote caging is the term given an unfortunate practice that undermines the integrity of our electoral system. Targeted at traditionally disenfranchised voters, this practice relies on voter "challenge" laws to blindly question the ability of eligible voters to cast a ballot. While dressed in the garb of protecting against the "voter fraud," caging is really a cynical way to undermine the most fundamental right of all Americans – the right to participate freely

in our democracy – for partisan gain. It is especially pernicious because it has almost invariably been used to suppress the vote of minority voters.

My testimony will first provide some background on vote caging and then focus on what I believe has been increased use of the technique in recent years with special attention to the significant impact of this deplorable practice, and how the Department of Justice addressed the issue when I was Chief of the Voting Section. I conclude with suggestions to address the practice.

I. BACKGROUND

Vote caging is another name for a "ballot security" technique that has been used for many years. An especially good summary of such techniques can be found in the September, 2004 report entitled "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both? A Report to the Center for Voting Rights and Protection," authored by Chandler Davidson, Tanya Dunlop, Gale Kenny and Benjamin Wise. (hereinafter referred to as "Ballot Security Report") The report focuses on numerous vote suppression programs connected with what the authors call "*ballot security programs gone bad*" *or* "programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino or Indian voting precincts and have the intent and effect of discouraging or preventing voters in those precincts from casting a ballot." (Executive Summary) This report details the history of such voter suppression programs from the 1950's through 2004.

Several of the programs described in this report were brought to the attention of the Department of Justice and actions were taken to combat them. For instance, in the 1990 Senate race in North Carolina pitting the incumbent Republican, Jesse Helms,

against Harvey Gantt, an African-American who had been the first of his race to enter Clemson University and the first African-American mayor of Charlotte. In the last week of the campaign, the Helms campaign and the State Republican Party sent out 150,000 postcards to persons living in heavily minority areas in the state which contained threatening and false warnings. The Civil Rights Division got involved shortly before the election and secured an agreement from the Republican Party that information from the postcards would not be used to challenge voters. In addition, a team of Voting Section monitors were sent to North Carolina to observe the election. After the election, the Division filed a lawsuit alleging intimidation and interference with black voters in violation of the Voting Rights Act. The case was settled by consent decree which enjoined any future ballot security programs targeting minority voters and required approval of the federal court for any future ballot security programs of any kind. (See Ballot Security Report, pp. 72-75).

The Summary and Conclusions to the Ballot Security Report states:

> The foregoing examination of Republican ballot security programs since the 1950's can be summarized succinctly. However legitimate the party's desire to guard against Democratic election fraud, these programs have sometimes degenerated into efforts to suppress the votes of blacks and Latinos – often the poorest and most vulnerable among them. (Report, p. 96).

As the Report documents, such efforts were not isolated and were well-organized.

II. VOTE CAGING IN 2004

In summarizing the types of voter suppression programs used , the Ballot Security Report lists eight different types of programs, one of which is described as "Challenging voters using inaccurate, unofficial lists of registrants derived from 'do-not-forward' letters sent to low-income and minority neighborhoods." (Report, p. 97) It is this practice

that has come to be known as vote caging. Since the attention brought to this term by Monica Goodling in May, three reports concerning vote caging have been published. First, in June, 2007 the Brennan Center published two guides: "A Guide to Voter Caging" and "Reported Instances of Voter Caging."[1] Second, in September, 2007 Project Vote published "Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters," by Teresa James (hereinafter referred to as Project Vote Study).[2] Third, Davidson, Dunlap, Kenny and Wise have written a follow-up article to the 2004 Ballot Security Report focusing specifically on vote caging entitled "Vote Caging as A Republican Ballot Security Technique," forthcoming in the William Mitchell Law Review, vol. 34 (hereinafter referred to as Ballot Security Report II).

The articles provide similar definitions of "vote caging." For instance, the Project Vote Report states:

> Vote caging is a 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. In recent years, other techniques, such as database matching have been used to compile challenger lists. (p.3)

In the Ballot Security Report II, "vote caging" is defined as

> We define vote caging as typically involving a three-stage process designed to identify persons in another party or faction whose name is on a voter registration list but whose legal qualification to vote is dubious, and then to challenge their qualification either before or on Election Day. Ostensibly, caging is an attempt to prevent voter fraud. In practice, it may have the effect of disfranchising voters who are legitimately registered.
>
> *In the first stage*, political operatives typically identify a geographic area with a disproportionate number of registered voters who belong to a different party from that of the operatives.

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[1] See www.brennancenter.org/stack_detail.asp?key=348&subkey=49604&proj_key=76 and www.brennancenter.org/stack_detail.asp?key=348&subkey=49605&proj_key=76.
[2] See http://projectvote.org/fileadmin/projectvote/publications/caging_democracy_report.pdf.

> *In the second stage*, the operatives send first-class, do-not-forward letters (sometimes by registered mail) to people in the identified areas, sometimes asking them to perform a simple task that includes responding by mail to the original letter. All letters returned to the senders unopened are assumed to indicate the addressees no longer live at the address that appears on the registration rolls and therefore may not be legally entitled to vote. Their names are then put on a "caging list."
>
> *In the third stage*, political operatives allied with those who constructed the caging list may appear on Election Day at the polling places where those people whose letters were returned unopened may try to vote. The voters would then be challenged individually, either by the partisan operatives or by election officials who have been supplied with their names by the operatives, depending on the state's laws.

These activities have the effect of discouraging voters who are challenged as the challenge process is cumbersome and time-consuming. They also may cause delays and lines further lowering the number of persons who vote. Especially alarming as noted earlier, it is almost always targeted to areas with heavily black and Latino concentrations. Indeed, in 2004 one state representative in Michigan told a county Republican Party meeting that: "If we do not suppress the Detroit vote [over 80% African-American], we're going to have a tough time in this election." (Report, p. 96)

Ballot security measures of this kind have been used for many years. The Brennan Center and Project Vote Reports spell out several examples of vote caging schemes in recent years. The Project Vote study estimates that in 2004 over half a million voters in nine states were the targets of vote caging operations, and that at least 77,000 had their votes challenged between 2004 and 2006. (Project Vote Report, p.4) The Brennan Center has presented accounts of vote caging in five instances in 2004 in Ohio, Nevada, Pennsylvania, Florida, and Wisconsin.[3] In the Project Vote Report, actual or intended voter challenges in 2002 or later, which may have involved caging lists derived from other techniques than direct mail, are discussed as having occurred in

[3] Levitt and Allison, *Reported Instances of Vote Caging, op. cit.*, 1-5.

Wisconsin (2002 and 2004), North Carolina (2004), South Carolina (2004), Georgia (2004), Kentucky (2004), Washington (2005), and New York (2006).

Several of these schemes came to the Voting Section's attention while I was at the Department of Justice through April, 2005. The most extensive were the voter caging activities in 2004 were in Ohio. According to the Project Vote Report, over 232,000 letters were sent to newly registered voters by the Republican Party and around 30,000 were returned as undeliverable. Lists of returned mail to election officials were used to supplement the list. In the end, a list of over 35,000 voters in the five metropolitan areas with the highest number of minority voters was used as a challenge list, accompanied by a major publicity campaign. See Project Vote Report, pp. 16-18. Extensive litigation challenged this vote caging program. *Id.*, pp.29-31.

Despite the scope of the Ohio vote caging operation, the Department of Justice's response was very limited. Moreover, the actions taken were indicative of the politicization of the Civil Rights Division of which I have testified in the past. The Voting Section monitored the reports of vote caging and the resulting litigation. Although there were individuals sent to Ohio to monitor the election as part of a major monitoring effort by the Division during the 2004 election, it was limited to six persons who were handpicked by the political appointee overseeing the Voting Section, Bradley Schlozman, overruling the Voting Section recommendations.[4] These persons did not report to career supervisors which was the standard procedure when monitoring elections.

In addition, in one of the cases growing out of this caging activity, *Spencer v. Blackwell*, (S.D. Ohio), the actions of Department indicated a partisan tinge. In this case

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[4] Schlozman himself was on the ground in Miami monitoring the election in the second major battleground state – Florida.

brought shortly before the 2004 election, the Democratic Party sought to enjoin any challenges of voters in Hamilton County, Ohio, alleging that the vote caging program discriminated on the basis of race. On November 1, 2004, the District Court granted the requested relief. It found that in addition to the usual executive challengers who did not come to the polls, the Republican Party filed to have 251 challengers and that

> ". . . two-thirds of them filed to be challengers in predominantly African-American precincts. The evidence presented at the hearing reflects that 14% of new voters in a majority white location will face a challenger . . . but 97% of new voters in a majority black location will see such a challenger."

347 F. Supp. 2d 528, 530 (S.D. Oh. 2004). The court then went on to state

> The evidence before the Court shows that in Tuesday's election, the polling places will be crowded with a bewildering array of participants -- people attempting to vote, challengers (Republican, Democrat, and issue proponents or opponents), and precinct judges. In the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there exists an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door.

347 F. Supp. 2d at 534.[5] In short, this was a classic and especially extensive vote caging scheme,

The United States was neither a party nor an *amicus curiae* in the case, but nonetheless took the unusual step of sending the Court a letter on October 29, 2004, a letter drafted and submitted to the Court by the political appointees in the Division with no knowledge, much less input, from the Voting Section career staff. Although the case raised serious claims of race discrimination, the letter from Alex Acosta, the Assistant Attorney General for the Civil Rights Division inexplicably did not address this issue.

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[5] On November 2, 2004 the Sixth Circuit Court of Appeals granted motions for emergency stays of the District court order,primarily on standing grounds, with no mention of the evidence of racial discrimination produced by plaintiffs. See 388 F. 3d 547 (6th Cir. 2004).

Rather, it discussed the requirement of the Help America Vote Act that required voters be permitted to vote a provisional ballot. It then went on to argue in favor of permitting the challenges: "We bring this provision to the Court's attention because HAVA's provisional ballot requirement is relevant to the balance between ballot access and ballot integrity. Challenge statutes such as those at issue in Ohio are part of this balance." The letter goes on to state that "nothing in the Voting Rights Act facially condemns challenge statutes" and further notes that a "challenge statute permitting objections based on United States citizenship, residency, precinct residency, and legal voting age like those at issue here are not subject to facial challenge (as opposed to as applied challenge) under the Act because these qualifications are not tied to race." Amazingly, the Civil Rights Division letter makes no mention of the strong evidence that the challenge/vote caging plan was targeted at predominantly African-American precincts. The District Court ruled for the plaintiffs on November 1, 2004 and made no mention of this letter in its opinion.

In another battleground state in 2004, Florida, vote caging was also quite sweeping. As described in the Project Vote Report at pp. 18-20, the counties with the largest minority populations, such as Dade, Broward and Duval, were targeted for challenge lists based on mailings to new registrants. Minority precincts were disproportionately targeted for the challenge lists. According to the Project Vote Report, in Dade County, 59 percent of the predominantly minority precincts were scheduled to have one Republican challenger, as opposed to 37% of the predominantly white precincts. Moreover, the information was sent to the national headquarters of the Republican National Committee. The Voting Section received reports of the vote caging/challenge plans in Duval County about ten days before the election. Its response

was more affirmative than in Ohio. An attorney was sent there to investigate and at the election the Department placed monitors in the county on election day. Apparently as a result of the publicity and the Department's attention to this matter, the Republican Party greatly reduced or eliminated its challenge plans on election day.

Other vote caging type incidents which came to the Voting Section's attention included the threatened challenge to voters at predominantly African-American precincts in Louisville, Kentucky by the Republican Party in 2003.[6] In response to this information, a Voting Section senior staff attorney investigated the allegations and monitored the election. Similarly, before the 2004 election, reports of vote caging-type activities in Alamance County, NC,[7] and Atkinson and Long Counties, Georgia[8] were investigated and monitors were present at the polls on election day. In each case, the ethnically targeted challenge plans were successfully addressed because the schemes had been made public and the Department of Justice, as well as many interested national groups and local people, took strong responsive action.[9]

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[6] See Project Vote Report, p. 24; Ballot Security Report, pp.
[7] See Project Vote Report, p. 23.

[8] See Project Vote Report, pp. 23-24. The Long County matter first surfaced the summer of 2004 at the primary. About a year and a half later, in February, 2006, the Civil Rights Division brought suit against Long County for permitting challenges against voters with Hispanic names at this primary. A consent decree settling this matter was entered immediately. It included the following language: "Defendants shall provide to each person who wishes to challenge the right to vote of any elector and to each person who wishes to challenge the qualifications of any elector on the list of registered voters a notice that states: 'A challenger must have a legitimate non-discriminatory basis to challenge a voter. Challenges filed on the basis of race, color, or membership in a language-minority group is not legitimate bases for attacking a voter's eligibility.'" Unlike the normal caging scheme, these challenge activities were the result of anti-immigrant sentiment not planned voter caging activity of the Republican Party. This was also true in Atkinson County, GA and Alamance County, NC.

[9] For example, in Atkinson County, Georgia, there were challenges of all Latino surnamed voters on the rolls. The Election Protection Coalition (which is led by the Lawyers' Committee) received the complaint and its lawyers on the ground sprang into action, working with the local election official to dismiss all of the challenges.

Finally, it is clear that challenge practices similar to vote caging remain a major threat to free and open elections. Just a few weeks ago, the registration eligibility of 909 students at Georgia Southern University was challenged by local residents in Statesboro, Georgia. The students had been organizing to elect a number of members of the city council that represented their interest. After an extremely successful voter registration drive demonstrated the potential power of this new voting bloc, long time residents got nervous and filled out the 909 voter challenge forms. Despite a requirement under Georgia law requiring personal knowledge in order to file a challenge, each of the forms used in this challenge were identical, save for the name of the challenged voter.

After a member of the community contacted the Lawyers' Committee to complain about the challenges, we began investigating and monitoring the situation closely as the students went to the polls during early voting and on Election Day. Unfortunately, this caging operation was partially successful, keeping student turnout relatively low. The race in one of the city council districts was left in limbo as there were more challenged ballots than the difference between the two candidates. Just two days ago, the challenges were dropped under the threat of litigation from the Lawyers' Committee, our local leaders in the Election Protection Coalition and the ACLU. .

III. RECOMMENDATIONS

It appears that in 2004 vote caging activities increased significantly, especially in battleground states. These activities are especially pernicious and are a threat to fair elections in the future. They are targeted primarily at minority voters, affecting **tens of thousands** of voters. They are potentially very disruptive to the voting process, causing delays in voting and long lines at polls. Even with the availability of provisional ballots,

the burden on voters to ensure that a provisional ballot forced to be used by vote caging activities is significant. Moreover, publicity about such activities is likely to deter thousands of other voters from even attempting to vote.

The stated reason for such activities is to fight what is painted to be widespread voter fraud. This issue has been debated for years and the argument that there is widespread voter fraud has been used over and over again in support ballot security programs. In recent years, it has been used as the chief justification for the passage of laws requiring the showing photo id cards to vote, despite, again, strong evidence that such a requirement disproportionately disenfranchises otherwise eligible minority voters. Yet, in the two states in which there has been litigation about voter id laws – Georgia and Indiana – there is no evidence that persons have been prosecuted for fraudulently voting twice in different names. Like voter id laws, permitting vote caging activities which can disenfranchise tens of thousands of eligible voters cannot be fairly justified to fight only anecdotal evidence of voter fraud.

In view of the growing use of vote caging schemes and the disenfranchising impact of these activities, I recommend Congress give serious consideration to new legislation to prohibit directly vote caging. Most vote caging activities may violate the Voting Rights Act, but it is recognized by experts in the field that there are shortcomings in the protections provided because of proof problems that arise in enforcement of the applicable sections of the Act. Direct prohibition of vote caging activities would be more effective in deterring vote caging and would bring needed clarity to deterring, and hopefully ending it.

First, there should be a prohibition of the use of direct mail to compile vote caging lists. The National Voter Registration Act (NVRA) contains registration list maintenance activities that require such mailings as part of requirements to maintain accurate registration lists and remove ineligible voters from these lists. Determining which voters are eligible and who should be purged is the responsibility of election officials and should be the exclusive province of these officials. Activities that are used by election officials to carry out this responsibility should be limited to election officials who are not performing such tasks for partisan purposes which infect vote caging activities by political parties.

Second, there should be a provision in an anti-caging bill law that challenges to voters can only be made on the basis of personal knowledge of the challenger. Reliance on evidence that is not personally known by the challenger and is not conclusive proof of ineligibility should not be permitted in the challenge process.

Ms. LOFGREN. Thank you.
Mr. Hebert.

STATEMENT OF GERALD HEBERT

Mr. HEBERT. Thank you, Madam Chairman. I would like to thank Mr. McCarthy for permitting us to testify as well, so thank you both.

My name is Gerald Hebert. I am the executive director of the Campaign Legal Center. I am also the director of litigation there. I am here to talk about a couple of issues today. I would like to talk about the voter fraud statements that were made in the earlier panel and respond to some of that. I would also like to make a point about the Ohio situation that Mr. Rich just described, because the Ohio defense of vote caging by the Justice Department was not only unprecedented, it was actually contrary to the position that the Justice Department took a decade earlier when I was there.

We actually filed a lawsuit against the Jesse Helms for Senate Reelection Committee, which engaged in a similar kind of voter intimidation effort, but the Justice Department under this administration did not do so. In fact, they came to the defense of vote caging, as Mr. Rich just pointed out. They were led by attorney Hans von Spakovsky, whose name came up earlier today, and by Brad Schlozman, who has now resigned from the Justice Department. They are men who have been called in front of Congress to testify about partisanship and law enforcement in the Justice Department, which is continuing there and needs to be cleaned up by the new Attorney General.

It is, I think, fair to say, in responding to Ms. Mitchell in particular, that it is not just Gerry Hebert who is complaining about Mr. von Spakovsky's record of suppressing minority votes. It is Senator Obama, who has written a letter; it is the civil rights community that has written letters, and even Mr. Rich and other former career Justice Department officials.

I want to talk briefly about the voter fraud issue. You know, you hear a lot of repeated references to this so-called "epidemic" of voter fraud. Some, like Mr. O'Neal, for example, propose that there should be photo IDs mandated for everybody so that, you know, we can stamp out this epidemic. But photo IDs only address a single type of alleged voter fraud, the impersonation of a registered voter at the polls. It does not address the more common types of voter fraud such as voting by absentee ballot or vote buying, nor does it address the voting by ineligible persons with felony convictions or double voting at two different addresses, which can only be addressed through the updating of a voter registration list. In my view, the effective maintenance of voter registration lists by the States are the best means of combating this problem.

And I would note that the most comprehensive study done on this subject, by Professors Minnite and Callahan, indicates that this alleged epidemic of voter fraud is not an epidemic at all. In fact, instances of in-person voter fraud are rare, indeed.

You may know that there is a case pending in the Supreme Court right now involving a challenge to Indiana's voter ID law. Now, voter IDs are supposed to stop the impersonation of people

at the polls according to the State of Indiana. Well, how many people have actually been prosecuted for in-person voting fraud in the State of Indiana that justifies this photo ID? The answer is zero. A study that has been done shows that the people who lack IDs are particularly the elderly and the young and the low-income and the poor.

So what is outrageous—Ms. Mitchell, in her comments, said it was outrageous to criticize people who suppress the minority vote. What is really outrageous is apologists for people who do suppress minority voting rights in this country.

Now, finally, a word on the NVRA, since I have a minute and a half left. I would like to just make a couple of points about the DOJ. The Justice Department has unfortunately used the National Voter Registration Act as a partisan tool rather than as a legitimate law enforcement tool to get people registered to vote. That was the purpose of the NVRA, the so-called "Motor Voter Bill." Instead of actually pursuing cases in States for failing to register people at public assistance agencies, they instead have gone and taken that part of the law that requires people to purge voters. And under von Spakovsky, Schlozman and others, that was their priority.

Mr. Rich has submitted a statement to the Senate detailing this issue regarding von Spakovsky's actually not permitting the Justice Department to really investigate claims that people's voting rights are being suppressed and that States are not following through on their NVRA obligations. Instead, von Spakovsky treated his office more like the Republican National Committee's General Counsel's Office and only enforced the law when it saw fit to advance partisan gains.

Now, oversight hearings like this are really critical, though, and I just want to close with this point, because what they really do—when you shine a spotlight on the Justice Department, it sometimes forces them to act, and I think it is starting to make a break in their politicization. For example, they just sent letters to 18 States, they say, on this issue of public assistance agencies not registering people to vote, and that is a good thing. If there is one thing we can all agree on, it is that the voting rights of all Americans, especially those who are poor and of low income, deserve vigorous protection.

Thank you very much.

[The statement of Mr. Hebert follows:]

TESTIMONY OF

J. GERALD HEBERT

EXECUTIVE DIRECTOR AND DIRECTOR OF LITIGATION

CAMPAIGN LEGAL CENTER

BEFORE THE

HOUSE ADMINISTRATION COMMITTEE'S

SUBCOMMITTEE ON ELECTIONS

VOTER REGISTRATION AND LIST MAINTENANCE (continued)

November 16, 2007

Thank you, Mr. Chairman, for the opportunity to testify this morning before this Subcommittee.

My name is J. Gerald Hebert. I am the executive Director and Director of Litigation at the campaign Legal Center in Washington, DC. From 1973 to 1994, I served as an attorney in the Civil Rights Division, with 15 of those years in Voting Section, where I served in a number of supervisory capacities, including Acting Chief and Deputy Chief for Litigation. I am here today to talk about two issues in particular: vote caging and the enforcement of the National Voter Registration Act (NVRA).

Vote Caging: The Vote Suppression Weapon Of Choice In 2004:

Conspiracies to stop African-Americans from exercising their constitutional right to vote aren't new – and neither is vote caging. The Republican National Committee has been under a federal consent decree not to engage in the practice since getting caught in the 1981 gubernatorial election in New Jersey. Despite the injunction, which remains in effect, vote caging schemes continue to be used as an integral part of an ongoing campaign to suppress minority voting rights.[1]

Vote Caging, in this context, involves sending out non-forwardable or registered mail to targeted groups of voters and compiling "caging lists" of voters whose mail is returned for any reason. Although the National Voter Registration Act (NVRA) prohibits election officials from canceling the registration of voters merely because a single piece of mail has been returned, Republican operatives have used the lists for many years in caging operations to challenge the voting rights of thousands of minority and urban voters nationwide on the basis of the returned mail alone.

With these lists in hand, they use the media for aggressive campaigns to create the illusion that the returned mail is evidence of mass voter fraud. They then use these caging lists to challenge the voting eligibility of thousands of African Americans and Democrats.

To bring these schemes to an end will require vigorous prosecution by the United States Department of Justice. But the Department's priorities have shifted over the years, with the Justice Department under this Administration not only ignoring vote caging schemes, but actively working to give them a boost in the courts.

Contrast, for example, the Department of Justice's efforts in 1990 in North Carolina under President George H.W. Bush to the current Bush Justice Department's

[1] In Attachment A to this written statement, I have set forth a list of vote caging activities over the past three decades.

actions in the 2004 election cycle in Ohio. In 1990, the North Carolina Republican Party and the Jesse Helms for Senate campaign engaged in vote caging by sending 44,000 postcards to black voters, giving them incorrect information about voting and threatening them with criminal prosecution. The plan was designed to intimidate and threaten black voters, and the postcards that came back as undeliverable could easily have been used to compile a caging list. Fortunately, the scheme was uncovered just prior to the election as DOJ took swift action, sending the FBI out immediately to investigate. Even though the perpetrators of this vote suppression scheme were exposed before the election, DOJ went ahead with a post election prosecution. The Bush I Justice Department, where I served at the time as a federal prosecutor of voting discrimination cases, filed a federal lawsuit against the GOP and Helms' campaign and obtained declaratory and injunctive relief in the form of a consent judgment and decree.

Vote Caging in Ohio 2004:

Contrast that aggressive nonpartisan law enforcement action with what the current Bush Justice Department did about such voter suppression efforts in Ohio in 2004. That year, when the Ohio Republican Party was sued by voters prior to the election to stop what appeared to be a similar vote caging scheme in progress, the Bush II Justice Department took immediate action. But they did not file a lawsuit to protect voting rights and stop the vote caging. Instead, led again by attorneys Hans von Spakovsky and Brad Schlozman, DOJ intervened in a highly unusual manner, coming to the defense of the Ohio GOP's efforts and by writing a letter to the federal judge overseeing the case and coming to the defense of the Ohio's GOP efforts. The federal judge appears to have ignored the letter, which was totally unsolicited and contrary to the Department's tradition of avoiding intervention in pre-election litigation.

It's one more example of how, under this Administration, with the likes of von Spakovsky and Schlozman calling the shots, the Justice Department's law enforcement program became overtly political. Even worse, this politicization perverted its mission of defending the right to vote. The new Attorney General has quite a task on his hands, because what we have seen in recent years has been unprecedented: the resources of the federal government being used to thwart and attack the voting rights of Americans and all for partisan political purposes.

Vote Caging In Other Battleground States

And it was not just in Ohio that vote caging efforts were attempted in 2004 by the Republican Party. There is evidence that caging lists were assembled in Florida, Ohio, and Pennsylvania during the 2004 elections, possibly intended as the basis for massive voter eligibility challenges. The Florida incident made headlines again earlier this year during Congress's investigation into the firing of several U.S. Attorneys, when allegations resurfaced that Tim Griffin, the former RNC opposition researcher then serving as an interim U.S. Attorney in Arkansas, had been involved in an effort to cage voters in Jacksonville. In June, Senators Whitehouse and Kennedy called for a Justice Department investigation into allegations that Griffin and others at the RNC may have

engaged in caging during the 2004 elections. To my knowledge, DOJ failed to respond to these inquiries. Even more troubling, DOJ does not appear to have undertaken a single prosecution, or even an investigation, of any of the 2004 vote caging schemes.

In Ohio, Florida, Wisconsin, Pennsylvania, and Nevada – all battleground states with significant minority populations living in urban communities – vote caging was the voter suppression method of choice for Republicans in 2004. Despite the sworn declaration of Deputy RNC Chair Maria Cino that the RNC has not "been involved in any efforts to suppress voter turnout," e-mails circulated among top RNC and Bush-Cheney campaign officials suggest otherwise. A document for use by state GOP officials in developing campaign plans worked on by Bush-Cheney campaign lawyer Christopher Guith provides a template of plans for vote caging. An e-mail from Guith declares "we can do this in NV, FL, PA, and NM because we have a list to run," referring to a plan to challenge absentee ballots using a caging list. Terry Nelson, Political Director of the 2004 Bush/Cheney campaign, was included on the e-mail.[2]

Vote Caging Schemes Involve The Intentional Suppression of Voting Rights

Those who perpetrate these caging schemes know full well the racially discriminatory nature of their efforts, and make every effort to cover their tracks and distance themselves from the vote suppression schemes they unleash. Thus, in another e-mail chain involving the vote caging in Ohio later enjoined by a federal judge, Guith, Tim Griffin and others discussed "the risk of having GOP fingerprints" on the caging lists.

As we enter another hotly contested, high stakes election cycle, there is reason to believe vote caging will once again be used illegally to suppress the black vote or the vote of other minority voters, for partisan gain. The recommendations of the Conyers report on how to stop vote caging have yet to be heeded. The RNC has shown that federal consent decrees are inadequate to stop vote caging from again and again rearing its ugly head.

DOJ Officials Who Supported Vote Suppression Schemes Have Not Been Held Accountable

Unfortunately, those at the DOJ who failed to stop – and in some cases actually supported – the voter suppression efforts in 2004 through vote caging and other schemes have not been held accountable. Instead, they've been rewarded with promotions for their partisan misdeeds. Alex Acosta, the Assistant Attorney General who, along with Hans von Spakovsky and Brad Schlozman, was responsible for sending the letter to the Ohio federal judge in defense of the vote caging scheme there, was appointed in May

[2] These emails and documents are available at:
http://i172.photobucket.com/albums/w31/drational/Cino2.jpg,
and http://www.epluribusmedia.org/features/2007/images/Allstates.jpg, and
http://www.epluribusmedia.org/features/2007/documents/State%20Implementation%20Template%20III.doc.

2005 to the post of U.S. Attorney for the Southern District of Florida – a past and possibly future site for voting rights controversies. And the DOJ political appointee who likely drafted the letter to the Ohio federal court in support of the 2004 vote caging scheme, Hans von Spakovsky, has been nominated for the Federal Election Commission, the agency charged with overseeing the fair administration of our election laws.

With the stakes in the upcoming 2008 elections being so high, both major political parties have once again directed their efforts at combating alleged voter fraud (the GOP) and fighting alleged vote suppression schemes (the Democrats). Given the politicization of the DOJ, it is highly unlikely that we will see efforts to stop vote caging among the enforcement priorities of the Civil Rights Division. That's unfortunate, because it means that once again the burden to put an end to these tactics will be on private litigants. Congress can and should do something: hold hearings devoted exclusively to vote caging, bring in Party officials, and ask them under oath about these past efforts. Such hearings might have a chilling effect on those who were otherwise planning a new round of vote caging activities. And that would be a good outcome. Caging voters will continue to be an issue unless Congress enacts legislation making it clear what vote caging is and prescribes penalties for those who unfairly target voters using that technique. Failure to do so will likely produce more vote suppression efforts in 2008 through vote caging and other methods, and this will likely suppress the voting rights of minorities, overseas persons on active military service, and students registered at a parent's address.

Pending Vote Caging Legislation:

That is why I was pleased to see legislation introduced last week that will make vote caging illegal. Challenging a person's right to vote because a letter sent to him or her was returned as undeliverable would be illegal under a Senate bill introduced last week. U.S. Senator Sheldon Whitehouse (D-R.I.) joined 12 other senators to unveil legislation aimed at preventing the practice of "voter caging," a long-recognized voter suppression tactic which has often been used to target minority voters.

The Caging Prohibition Act would prohibit challenges to a person's eligibility to register to vote, or cast a vote, based solely on returned mail or a caging list. The bill would also mandate that anyone who challenges the right of another citizen to vote must set forth the specific grounds for their alleged ineligibility, under penalty of perjury.

DOJ's Partisan and Selective Enforcement of the National Voter Registration Act (NVRA):

Vote Caging is merely one weapon in the arsenal of those who want to suppress the right to vote. Other schemes also exist, including the method of enforcing (or not enforcing) the National Voter Registration Act (NVRA).

At the outset, I should note that the *main* purpose of the NVRA, or the motor voter law as it is sometimes called), was to make it easier for people to become registered to vote. Among other things, the NVRA requires states to designate as a place of voter

registration all offices in the State that provide public assistance. At a minimum, each public assistance office must distribute voter registration forms, assist applicants in completing forms, and accept completed forms and forward them to appropriate election officials. Under Section 7 of the NVRA, each public assistance office must distribute voter registration materials with each application for assistance, and each renewal of benefits or change of address. And officials in these public assistance offices must inquire of applicants in writing if they want to become registered to vote, inform the applicant in writing that a decision whether to register will not affect the amount of public assistance they will receive, and provide assistance to applicants in filling out the voter registration forms to the same degree the agency does with all other forms.

Unfortunately, states are failing to meet their obligations under the NVRA. Take for example, New Mexico. Although there were over 559,000 applications for or re-certifications for Food Stamps in that state from 2001 and 2002, all of whom should have been offered voter registration, the public assistance offices reported registering only 3719 persons during this period. But New Mexico is not alone. Between 1995 and 2006, there has been an 80% decrease in voter registrations from public assistance agencies.

The political stakes in registering low-income voters are huge. The Election Assistance Commission's biennial report to Congress on the impact of the NVRA for 2005-2006 found that 16.6 million new registration applications were received by state motor vehicles agencies while only 527,752 applications came from public assistance offices - a 50 percent drop from 2003-2004. Two organizations, Demos and Project Vote, did a study of voter registrations over the ten year period from 1995 to 2004. What they found was a decline in registrations coming from public assistance agencies. The decline was a dramatic 59%! Demos senior policy analyst Scott Novakowski has noted that that many politically significant states - Arizona, Florida, Maryland, Massachusetts, Missouri, New Jersey, Ohio and Virginia - were largely ignoring the registration requirement. Congressman John Conyers and 29 other representatives asked Attorney General Alberto Gonzales to look into this. To my knowledge, they have not received a response.

Since then, work by Demos, Project Vote, and the Lawyers' Committee has shown that the implementation of simple procedures and a system of monitoring and accountability can dramatically increase the number of public assistance voter registrations. For example, after working with these groups to re-implement the law, North Carolina's public assistance agencies have registered over 20,000 voters in public assistance agencies since January 2007. To put this number in context, such agencies in the state only registered 11,607 voters at public assistance agencies in the *entire preceding two-year period.*

Lack of DOJ Enforcement of NVRA

A number of groups, including Demos, Project Vote, the Lawyers' Committee for Civil Rights Under Law, and ACORN, have been trying to work with DOJ to enforce the public assistance provisions of the NVRA for years. In late 2004 voting rights groups met

with the Justice Department's top Voting Section staff in Washington – including Hans Von Spakovsky, counsel to the assistant attorney general overseeing the Voting Section, and Voting Section Chief Joseph Rich, to discuss enforcing the public assistance requirement. At that meeting and in a series of memos, these organizations presented von Spakovsky, who helped set and oversaw voting rights policy, with evidence of states' noncompliance with and/or poor implementation of the public assistance provisions of the NVRA. The meeting was polite, participants said, but little came of it. This is not surprising, as Schlozman and von Spakovsky have been repeatedly cited by numerous DOJ attorneys as blocking numerous voting rights matters for partisan purposes.

Mr. Rich was a Civil Rights Division career attorney for 37 years and chief of the Voting Section for six years until he resigned in April 2005, citing politicization of voting rights enforcement. Mr. Rich recently recalled that meeting about the NVRA's voter registration requirements. Von Spakovsky – who had become his de facto boss – decided to ignore that part of the law, Mr. Rich said. Instead, Mr. Rich observed, Mr. von Spakovsky was interested in only one line in the statute that allowed the DOJ to pressure states to purge voter rolls. As Mr. Rich was quoted in a recent press interview: "Four months before I left, in 2005, Von Spakovsky held a meeting where he said he wanted to start an initiative for states we want to purge... Their priority was to purge, not to register voters. That was January. I left in April." Mr. Rich added: "To me, it was a very clear view of the Republican agenda." "The Republican agenda is to make it harder to vote: purge voters and don't register voters."

The change in DOJ's enforcement priorities under the NVRA is perhaps best illustrated by two Voting Section lawsuits filed against Missouri election officials. In 2002, the DOJ alleged St. Louis had improperly purged 50,000 voters from registration lists. St. Louis ended up settling the dispute with DOJ. In 2005, however, the Department's sued the State claiming that it wasn't sufficiently purging voter rolls. Meanwhile, local community group ACORN had taken it upon themselves to initiate the litigation process against the state in August 2007 by sending a letter to state officials documenting significant violations of the NVRA's public assistance registration provision.

Congressional Oversight Hearings May be Spurring DOJ To Take More Aggressive Enforcement of NVRA:

The nonprofit group Demos recently obtained the 18 letters referenced by DOJ in an October NPR story on their selective enforcement of voting rights laws. Five states received letters requesting that they submit information on additional agencies designated under the NVRA. Six states received letters because they reported no voter registrations received from public assistance agencies and another seven received letters because they were "among the ten states with the lowest percentage of voter registration applications received from offices providing public assistance." I believe that DOJ only sent letters to seven of these latter 10 states. Depending on how states with the same percentage are treated in the ranking, at least Florida, Texas and Virginia should have also received letters under DOJ's criteria. It's not clear why these states were not sent letters.

It should be noted, though, that the criteria used by DOJ to select the states that received

letters was based on a narrow, and somewhat misleading, indicator of noncompliance. If they are truly interested in enforcement, DOJ needs to investigate a much wider range of factors. Let me explain.

In investigating NVRA compliance, an assessment should be based on a number of different figures and data sources. One useful starting point would be to begin with the number of registrations reported to the EAC and compare that number to the size of their public assistance caseloads. This helps give context to the raw numbers. For example, if a state reports 1000 public assistance registrations, this means something different in a state with a caseload of 2000 clients compared to a state with a caseload of 1,000,000 clients. Voting rights advocates have been urging the EAC for quite some time now to collect public assistance caseload data from the states as part of their biennial report to Congress, so that they can report a more accurate measure of public assistance registration. EAC has not yet agreed to do so, as I understand it. In the meantime, such data are often available on states' public assistance agency websites.

It is also helpful to look at trends in EAC data over time. While public assistance registrations in most states have declined since implementation of the law in 1995, some states have experienced declines of 90 percent or more in the number of voter registrations in public assistance offices since that time. This to me is a strong indication that something is wrong. It's also helpful to compare the declines in public assistance registrations to trends in motor vehicle departments and overall registrations, to determine if the decline in registrations is reflective of a statewide trend or such decline is more pronounced in public assistance offices.

One final measure of determining public assistance voter registration opportunities is to visit the public agencies themselves to inquire whether the offices have applications on site and whether they are being offered to clients. This is quite a burden on resources, however, and thus is an approach that should be taken by either the EAC or the Justice Department.

Not only is using a single indicator inadequate, but there is also a problem with the criteria that DOJ uses to determine where to send letters seeking information about registration under NVRA. As I understand DOJ's current procedures, they select states based on the % of 'categorized' applications in a state that came from public assistance offices. Since some states, such as New Mexico, do a poor job reporting "categorized" applications, the percentage of this total coming from public assistance agencies actually looks fairly large even though the raw number is unrealistically small for a state following the law. For example, in the 2005-2006 EAC report, New Mexico actually showed that 20% of their categorized registrations came from public assistance agencies. What this figure doesn't show is that the state only reported registering 1,200 voters in a two-year period. More comprehensive analyses and investigations by Demos and other groups showed clear non-compliance.

Noncompliance with NVRA Section 7 is by no means limited to the states that received letters from DOJ, and it would be unfortunate if the omission of other states from this round of letters from DOJ to the States is taken to infer that they are in compliance. The chief of DOJ's Voting Section was recently called on to testify in front of Congress. Oversight hearings such as this one, and other oversight hearings into the operations of DOJ, are the only way to eliminate the politicization of DOJ root and branch. I would note that such hearings already seem to be having a positive effect, as DOJ, for the first time in a long time, is being held accountable for the selective enforcement of voting rights laws. Even more positive, turning the spotlight onto DOJ's voting rights enforcement abuses may have produced the 18 letters sent earlier this year inquiring about enforcement of the NVRA. Letters are a start, but much more enforcement by DOJ needs to be done and in far many more states than the ones who received letters. One thing we should

all be able to agree on: the voting rights of all Americans, especially those who are poor or have low income, deserve vigorous protection.

Attachment A

Vote Caging Activities in the 1980's:

New Jersey 1981

The notorious 1981 New Jersey gubernatorial election between Republican Tom Kean and Democrat Jim Florio provided a window into voter intimidation and suppression techniques, vote caging in particular. The Republican National Committee used vote caging to compile a list of more than 45,000 voters, mostly Black and Latino, to challenge at the polls. Republican "ballot security" teams hired armed guards with armbands to police polling places.

Kean won by less than 2,000 voters, but only after an almost month-long recount. Both state and county prosecutors launched investigations into voter intimidation. A federal court eventually entered a consent decree that prohibited the RNC from engaging in vote caging.

Louisiana 1986

In the 1986 election, the RNC used vote caging to compile a list of 31,000 voters, mostly black, that it attempted to have thrown off the voter rolls. At the time, Kris Wolfe, the Republican National Committee Midwest political director, wrote Lanny Griffith, the committee's Southern political director, "I know this is really important to you. I would guess this program would eliminate at least 60,000 to 80,000 folks from the rolls. If this is a close race, which I assume it is, this could keep the black vote down considerably." Following this caging scandal, both parties agreed to amend the original 1982 consent decree to require that the RNC would submit to the court any ballot security plan for approval.

The 1990's: Vote Suppression Through Caging Continues

North Carolina 1990

In October of 1990, when the black Democratic candidate for U.S. Senate, Harvey Gantt, was leading incumbent Jesse Helms in the polls, the Helms for Senate Committee and the North Carolina Republican Party developed a vote caging scheme.
As described above, according to a lawsuit brought by the Bush I Justice Department, on October 29, 2004, at least 44,000 postcards were sent, without a disclaimer that they were paid for by a political party, exclusively to black voters in North Carolina. The postcards served two purposes; first, they were intended to directly intimidate and threaten black voters and to give them false information about voting; second, and more insidiously, the undelivered postcards would be used to create a caging list of black voters with the intent of challenging them at the polls. According to the suit, "This effort was terminated shortly before the election and subsequent to the initiation of an investigation ... by the United States Department of Justice." Later a consent decree was entered against defendants that allowed the court oversight until 1996.

The 2004 Elections: Vote Caging Suppression At Full Bore

Florida 2004

The 2000 election in Florida raised the stakes and also showed the effectiveness of disenfranchising black voters in a close election. Both parties trained their sights on the state again in 2004 and vote caging became an integral part of the Republican Party plan in the Sunshine State.

In the late summer and fall of 2004, the Republican National Committee developed a caging list of voters in predominantly black areas of Jacksonville, Florida. The scheme came to light when Tim Griffin, then the Research Director and Deputy Communications Director for the RNC, mistakenly sent an e-mail with the subject line "caging" to an e-mail address at georgewbush.org, a political parody website whose operators sent it to the press. Griffin had meant to send the list to a Republican operative with an e-mail address at georgewbush.com, the official Bush campaign e-mail suffix. Griffin's e-mail contained an Excel spreadsheet "Caging-1.xls" containing the names of 1,886 Florida voters, mostly black, including the names of black soldiers deployed abroad.

As the BBC reported, "An elections supervisor in Tallahassee, when shown the list, told Newsnight: 'The only possible reason why they would keep such a thing is to challenge voters on Election Day.'" A recent analysis of the names on the caging list showed that the Jacksonville caging preferentially selected blacks and excluded whites. Griffin was later appointed an interim U.S. Attorney in Arkansas. The White House refused to submit him to the Senate for confirmation out of concerns over his involvement in vote caging, as Monica Goodling verified in her testimony before the Senate Judiciary Committee.

Nevada 2004

In Clark County Nevada, the former state Republican Party executive director, Dan Burdish, attempted to cage 17,000 voters weeks prior to the 2004 election. The voters had been put on an "inactive" list when mail sent to their addresses was returned. The *Las Vegas Review Journal* reported, "Burdish said he only targeted Democratic voters because 'I'm a partisan Republican, I admit it."

Local election administrators objected to the challenge, including Registrar of Voters Larry Lomax. As reported by the *Review Journal*, "Lomax said he can see no legitimate reason why Burdish would challenge _ the voters. 'The law already tells us what to do with inactive voters,' Lomax said. 'The law provides a remedy for these people, and I'd guess that the only point in a challenge _ would be an attempt to intimidate voters.'"

Ohio 2004

More so than Florida, Ohio was ground zero for the hotly contested 2004 election – and also a hotbed of voter intimidation. The Ohio Republican Party developed a caging scheme and identified 35,000 newly registered voters in urban areas, mostly black, who either refused to sign for letters from the Republican party or whose letters came back

undeliverable. An attorney for the Ohio Republican Party even admitted that the plan was to use the returned letters from minority neighborhoods to challenge voters.
Prior to Election Day, when the caging list would be used to challenge voters at the polls, the caging scheme was challenged in court on two fronts. In New Jersey, voters filed suit against the RNC for violating the 1982 consent decree. The RNC argued that the consent decree only applied to it, not the Ohio Republican Party, which planned to supply the challengers, and therefore was inapplicable to the Ohio election. The federal court rejected that argument, and, on Nov. 1, 2004, ordered Republicans in Ohio not to proceed with the caging scheme on Election Day.

Meanwhile, in Ohio, voters filed suit to challenge the Ohio law permitting political parties to post challengers in polling places on Election Day – challengers armed with caging lists.

While the court battles were playing out in New Jersey and Ohio in the days and hours leading up to the 2004 election, with the rights of minority voters hanging in the balance, did the Department of Justice step in to enforce the Voting Rights Act? Unsurprisingly for anyone who's followed the ongoing scandal over the politicization of the Civil Rights Division, the answer is "of course not." Perversely, the Justice Department sent a letter to the Ohio federal judge overseeing the lawsuit to tell her that the challenge statute that was to be used as part of the vote caging scheme was perfectly fine.

Assistant Attorney General Alex Acosta's Oct. 29, 2004 letter to District Judge Susan Dlott was unusual not just in that it attempted to offer legal cover for the same practices that 12 years earlier DOJ had sued to stop, but also because it was nearly unprecedented for DOJ to intervene in an election eve case in which it had not previously participated, its involvement was unsolicited, and it was not a party,. (Acosta's letter was sent just a few days after then-U.S. Attorney Bradley Scholzman filed the now-infamous indictments against the four ACORN workers in Missouri.)
Judge Dlott refused to heed the advice of the Assistant Attorney General, found that permitting the challenges would have a racially discriminatory impact, and issued an order enjoining the Republican Party from placing challengers at the polls.In the end, the caging scheme was stymied. (For a thorough discussion of other voter intimidation techniques that succeeded, see *Preserving Democracy: What Went Wrong in Ohio*, Status Report of the House Judiciary Committee Democratic Staff, January 5, 2005 [a.k.a. "the Conyers Report"].)

Pennsylvania 2004

The Pennsylvania GOP targeted for caging only voters in Philadelphia, which is approximately 45% black, according to Census data. Voters in other parts of the state, which is 85% white, were not caged.

The party compiled a caging list of 10,000 returns from a Republican mailing purporting to welcome new registrants in Philadelphia to the political process, and then announced plans to challenge those 10,000 voters on Election Day. The Republican speaker of the state House admitted the campaign tactics were intended to "keep down" the vote in Philadelphia.

As *The Inquirer* reported, "State Republicans released additional details yesterday from their list of 10,000 letters to Philadelphia _ voters that they said were returned as undeliverable. They said they would use this list to challenge voters at the polls today - a

type of challenge similar to one that federal judges have barred Republicans from using today in Ohio."[25]

According to the *Bucks County Courier Times*: "Election officials and other observers, however, say the 7.6 percent rate of returned letters isn't surprising in a large city with many transient, low-income neighborhoods. 'This is a mobile population,' said Randall Miller, who teaches a course on elections at St. Joseph's University. 'Some people are living in places where they don't really have addresses, [such as] shelters. They have every right to vote.'" When the media asked the GOP for the list, the party initially refused but later provided just six names and addresses.

Wisconsin 2004

The Wisconsin Republican Party announced the Saturday before the 2004 election plans to challenge 37,180 voters on a caging list developed by the party. The Wisconsin GOP targeted for caging only voters in Milwaukee, which is approximately 40% black and 55% minority (black and Hispanic), according to Census data. Voters in all other parts of the state, which is 91% white, were not caged.

In this caging scheme, the party used a commercial software program to compare addresses on voter registration cards to a postal service database of known addresses, and then announced plans to challenge 37,180 voters at the polls whose addresses, the party claimed, didn't match.

The non-partisan City Attorney called the plan "outrageous." It was. Of the caged list, 13,300 of the addresses simply listed incorrect apartment numbers. Some 18,200 more cases stemmed from the lack of an apartment number for a resident of an existing building.

Of the remaining 5,000 or so addresses, the City Attorney's office found hundreds actually did exist, and many of the other non-matches were likely due to clerical errors. Had the plan been allowed to go forward, thousands of legally-registered, apartment-dwelling black voters would have been challenged because of a clerical error involving apartment numbers. The attempt was stopped by the City Attorney and Election Commission.

Ms. LOFGREN. Thank you, Mr. Hebert, for your testimony. Ms. Westfall, we will close with you.

STATEMENT OF ELIZABETH WESTFALL

Ms. WESTFALL. Thank you. On behalf of The Advancement Project, I would like to thank you, Chairwoman Lofgren and Mr. McCarthy, for inviting me to testify today.

I would like to follow up on the remarks of one of my co-panelists concerning voter caging and Advancement Project's involvement in litigation in 2004 in Ohio, concerning voter caging.

As well, if I have time, I would like to respond to some of the comments of Mr. O'Neal concerning the matching of an applicant's information on his or her application with information in the Social Security Administration's database, which is riddled with errors.

In the months leading up to the 2004 presidential election, voter protection advocates, including The Advancement Project, became concerned that a large-scale effort would be undertaken to challenge the eligibility of African American and Latino voters. Advocates' fears were realized in Ohio, among other States, when, in October, the Ohio Republican Party compiled a list of 35,000 newly registered Ohio voters through voter caging and filed challenges against those voter registrations. Local election officials told our voter protection partners in Ohio that these challenges were overwhelming and could cause chaos at the polls and could disenfranchise thousands of voters on Election Day.

Four days before the 2004 presidential election, The Advancement Project filed a motion to intervene and to reopen a case styled "DNC v. RNC" on behalf of an Ohio voter named Ebony Malone. Ms. Malone was a newly registered African American citizen of Cleveland who was on the list of voters to be challenged by the Ohio Republican Party. The DNC v. RNC case had been filed in 1981 in Federal court in New Jersey to challenge the RNC's voter caging in that State.

The case resulted in a consent decree that requires the RNC nationwide to refrain from engaging in so-called "ballot security activities" where the racial composition of the polling place or election district is at issue and is a factor in the decision to conduct such activities. In 1987, the consent decree was modified based on further voter caging that the RNC had employed in Louisiana to require the RNC to obtain prior approval from the court of all ballot security efforts.

In 2004, the district court in the DNC case granted Ms. Malone's, our client's, motion to intervene. On November 1st, one day before the election, it found the RNC had violated the consent decree and that it had, in fact, been involved in and connected to and had coordinated, in part, the Ohio caging activities. Further, the court ordered the RNC to refrain from using its compiled list of voters to challenge those voters on Election Day. Although the Court of Appeals granted the RNC's motion to stay, that order was not issued until late in the day on Election Day, so the district court's ruling, in addition to rulings in other cases, contributed to the absence of challenges in Ohio on Election Day. Ms. Malone, I am happy to report, successfully cast her ballot without being challenged.

The Advancement Project recommends that Congress enact legislation to prohibit voter caging and voter challenges by private citizens outright. At a minimum, Congress should enact legislation that prohibits challenges to a person's eligibility to register to vote or to cast a ballot based solely on returned mail or a caging list. Further, it should require that challengers base their challenges on personal knowledge, and they should set forth specific grounds for their purported ineligibility under penalty of perjury. Finally, Congress should prohibit partisan poll watchers from challenging voters at the polls on Election Day.

With my remaining time, I would like to respond to the comments of Mr. O'Neal, that there were applicants who submitted applications in Norfolk, Virginia, in 2005 that did not match the Social Security database. I would like to bring to the subcommittee's attention that the Social Security database is riddled with errors, and for any number of reasons, information that an applicant puts on an application may not match data in the Social Security Administration. It may be wholly unrelated to their eligibility. Advancement Project and the Brennan Center and other counsel are involved in litigation against the Secretary of State of Florida for refusing to register applicants for that reason.

For example, typos can be made from entering that person's data into a Statewide database. Women may use their married names instead of their maiden names, which are listed in the Social Security database. And of course, hyphenated names and the use of double names by Latino applicants, in particular, can cause mismatches with the database.

We have found in discovery in that case that this rule, Florida's statute, disproportionately impacts African Americans, who often have nontraditional spellings of common names, as well as Latino voters.

[The statement of Ms. Westfall follows:]

Testimony of Elizabeth S. Westfall, Deputy Director of the Voter Protection Program of Advancement Project

Hearing on Voter Registration and List Maintenance (Continued)
Before the Subcommittee on Elections of the Committee on House Administration
Washington, DC
Friday, November 16, 2007

Chairwoman Lofgren and Members of the Subcommittee on Elections, my name is Elizabeth S. Westfall. I testify today in my capacity as the Deputy Director of the Voter Protection Program of Advancement Project, a non-partisan, national civil rights and racial justice organization. I am honored to appear before you to share Advancement Project's perspective on voter registration and list maintenance.

Advancement Project is a policy, communication and legal action organization that supports organized communities in their struggles to achieve universal opportunity and a just democracy. Voter protection is a central component of our Power and Democracy program, which supports community-based efforts to increase civic participation, improve election administration, and remove structural barriers to electoral participation in low-income and minority communities.

My testimony today will focus on three topics: (1) voter caging that is conducted for partisan purposes to challenge the eligibility of voters of color; (2) disenfranchisement through list maintenance; and (3) needless restrictions on third-party voter registration activities that deprive eligible citizens of assistance in registering to vote.

I. VOTER CAGING AND CHALLENGES TO THE ELIGIBILITY OF MINORITY VOTERS

"Voter caging" is a private, voter challenge device generated for partisan purposes that seeks to substitute the judgments of partisan interests for public officials about the quality of public voter registration lists and the eligibility of newly registered voters. The device is often used in a racially discriminatory manner to undermine or obfuscate the work of trained, election officials who have the authority, personnel, and duty to maintain the accuracy of voter registration lists and ensure that only eligible voters remain on the rolls.

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If left uncontrolled, voter caging permits partisan takeovers of voter eligibility determinations, and thus elections, and at a minimum, causes substantial disruptions of polling place operations on Election Day.

A. Background on Voter Caging

"Voter caging" is a partisan, discriminatory method of challenging the eligibility of voters of color. The term derives from the use of politically motivated, direct mailings that are sent to targeted voters. Typically, a political party sends registered mail to the addresses of targeted registered voters. If the mail is returned as undeliverable—because the voter, for example, refuses to sign for it, is not present for the delivery, refuses to accept registered mail, or is homeless—the party adds that voter to what is known as a "caging list." The party, pursuant to a state challenger statute, then challenges the eligibility of the voters on the "caging list" on the ground that because the registered mail directed to the address was returned as undeliverable, the applicant does not reside at that address and the registration is fraudulent. Once a challenge is made to a voter's registration, the voter must prove that her registration is valid.

Voter caging and challenges have often been employed to disenfranchise voters of color. The historical origins of state challenger statutes suggest that the very purpose of those statutes is to interfere with the voting rights of African-Americans.[1] In Florida, for example, the state challenge statute, now codified in Fla. Stat. § 101.111, has its roots in Reconstruction Era laws intended to curtail the ability of newly freed slaves to participate in elections. In 1865, the Florida legislature adopted a state constitution that restricted the right to vote and to hold office to white men. Two years later, federal law extended the right to vote to African-American men. And in 1868, after African-American men began to vote in large numbers, the Florida legislature enacted its challenge statute that granted poll watchers the authority to challenge a voter's registration status. Likewise, in 1859, Ohio enacted a statute permitting challenges to a voter's registration status if the voter had "visible admixture of African blood." Challenges continue to be employed in a racially discriminatory manner today.

B. *DNC v. RNC*

In 1981, the Republican National Committee ("RNC") sent letters to predominantly African-American neighborhoods in New Jersey and from the letters that were returned as undeliverable, the RNC compiled a list of voters to challenge. On Election Day, the RNC sent off-duty law enforcement officials to the polls and hung posters in heavily African-American neighborhoods warning that violating election laws is a crime.

In response, the Democratic National Committee ("DNC") filed a federal lawsuit against the RNC in New Jersey. The *DNC v. RNC* lawsuit resulted in the issuance of a consent decree that requires the RNC, nationwide, to refrain from undertaking ballot

[1] Advancement Project, *Report to State and Local Officials on the Urgent Need for Instructions for Partisan Poll Watcher* (Oct. 2004) (attached hereto as Ex. 1).

security activities in polling places or election districts where the racial composition of such districts is a factor in the decision to conduct such activities ("consent decree").

In 1986, the RNC was found to have violated the consent decree, when it challenged the voter registration status of 31,000 predominantly African-American voters, in Louisiana, to whom the RNC had sent a party mailer which was returned as undeliverable. As a result, in 1987, the consent decree was amended to require the RNC to obtain prior approval for all "ballot security" efforts, which may include "efforts to prevent or remedy vote fraud."[2]

C. Voter Caging in 2004

In the months leading up to the 2004 presidential election, voter protection advocates became concerned that a large scale effort would be undertaken to challenge the eligibility of African-American and Latino voters. Advocates were particularly fearful that voters of color would be subject to voter caging and subsequent challenges to their registration.

In October 2004, the Ohio Republican Party ("ORP") compiled a list of 35,000 newly registered Ohio voters and prepared to challenge persons on the list based on "mail returned to the party." The mail was sorted according to zip codes. Pursuant to a state statute permitting political parties to station "poll watchers" inside polling places to challenge a person's right to vote, the ORP registered challengers in five counties in Ohio—in which 73% of all African Americans in the state resided—and targeted precincts with high concentrations of African Americans.

Under then-current law, Ohio required challenges to be filed eleven days before the election and provided hearings on challenges to a voter's registration. As a result of the ORP's challenges, Ohio county boards of elections were overwhelmed and unable to conduct all hearings before Election Day. Advancement Project's coalition partners interviewed local election officials about the ORP's challenges and were told that officials expected the challenges to result in long lines at the polls, poll worker confusion, and chaos in precincts where large numbers of African-American voters were expected to cast ballots.

Ohio was not the only state in which state Republican parties resorted to caging procedures to challenge voters.[3] For example, in Wisconsin, the state Republican Party used U.S. Postal Service software to scrutinize the addresses of over 300,000 registered voters in Milwaukee to determine whether the addresses were valid. After the Republican Party registered 5,600 challenges against Milwaukee voters, the city attorney reviewed the list of challenged voters and found that hundreds of the addresses, claimed by the party to be nonexistent, were actually legitimate.

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[2] *Democratic National Committee v. Republican National Committee* (July 27, 1987) (Settlement Stipulation and Order of Dismissal).

[3] For a comprehensive discussion of caging operations in 2004, see Project Vote, *Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters*, 16-20 (Sept. 2007).

In Florida, the state Republican Party undertook a caging operation that was similar to the one employed in Ohio. There, the Florida Republican Party sent a non-forwardable mailing to Democratic and African-American voters and compiled the returned mail into a list to challenge voters. Documents filed by the state republican party in five counties indicating their plans to deploy poll watchers revealed that the party stationed its poll watchers disproportionately in predominantly African-American precincts.

D. Motion To Intervene and Reopen the DNC v. RNC case

Four days before the 2004 presidential election, Advancement Project filed a motion to intervene and reopen the *DNC v. RNC* case on behalf of an Ohio voter, Ebony Malone.[4] Ms. Malone was a newly registered African-American citizen of Cleveland who was on the list of voters to be challenged by the Ohio Republican Party.

The district court granted Ms. Malone's motion to intervene, and on November 1, one day before the election, found that the RNC had violated the consent decree and ordered the RNC to refrain from using its compiled list of voters to challenge those voters. Although the Third Circuit Court of Appeals granted the RNC's motion to stay of the lower court's order, the stay was issued so late on Election Day that the district court's order, along with orders issued in other concurrent cases challenging the challenges, resulted in an absence of widespread challenges on Election Day. And Ms. Malone successfully cast a ballot without being challenged.

E. Recent Amendments to State Challenger Statutes

Since 2004, several states have amended their voter challenge laws to expand the rights of challengers and reduce the rights of voters. Current Florida law requires challengers to have only a "good faith belief," rather than personal knowledge, to issue a challenge to a voter.[5] Ohio voters are no longer entitled to notice and a hearing based on a pre-election challenge.[6] Instead, the voter's board of elections may render a determination of the voter's registration based solely on records possessed by the board. On a positive note, challengers are no longer permitted in the precincts in Ohio; only poll workers can challenge a voter. In Pennsylvania, partisan poll watchers are no longer required to remain in polling places where they are officially registered; they are now permitted to move within polling places in their specific county. As a result, poll watchers will have a greater capacity to challenge more voters.[7]

F. Recommendations

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[4] *Democratic National Committee v. Republican National Committee*, Civ. Action No. 81-3876 (Oct. 27. 2004) (Complaint in Intervention for Preliminary and Permanent Injunctive and Declaratory Relief).
[5] Fla. Stat. § 101.111.
[6] O.R.C. Ann. § 3505.24.
[7] *Compare* 2002 Pa. ALS 44 (2002) (restricting poll watchers to one district in a municipality or township in which the watcher is a registered voter) *with* 25 P.S. 2687 (2007) (poll watchers may serve more than one election district in the county in which the watcher is a registered voter).

Advancement Project recommends that Congress take steps to prohibit voter caging and voter challenges by private citizens. These tactics should be prohibited first and foremost because they are not necessary for the accomplishment of appropriate list maintenance activities. Instead, they have been employed historically to keep voters of color off the rolls. Further, voter caging has a chilling effect on voter participation because eligible voters who are listed on the voter registration rolls, especially inexperienced or newly registered voters, are less likely to vote if they face voter intimidation by challengers who confront them at the polls or if challenges of other voters create confusion, cause disruption, or generate long lines and unnecessary delays on Election Day.

Determining whether a voter registration applicant is eligible to vote, and whether a registered voter should be purged from the rolls, should be left to state or local election officials. Likewise, all politically-motivated interference by the U.S. Justice Department in state, county, and local list maintenance procedures must be strictly prohibited.

Advancement Project recommends that at a bare minimum, Congress enact legislation that: (1) prohibits challenges to a person's eligibility to register to vote, or cast a ballot, based solely on returned mail or a caging list;[8] (2) requires that challengers base their challenge on personal knowledge and set forth specific grounds for their purported ineligibility under penalty of perjury; and (3) prohibits partisan poll watchers from challenging voters at the polls on Election Day, in order to prevent the chaos and voter suppression that Election Day challenges cause.

II. DISENFRANCHISEMENT THROUGH LIST MAINTENANCE

Although the National Voter Registration Act was intended, in part, to ensure that voters are not wrongfully purged from the rolls, Advancement Project's recent investigations of several purging programs reveal that large numbers of voters may have been wrongfully targeted for purging.

A. Michigan's Errors in Purging Voters on the Basis of Death

In 2006, the Michigan Secretary of State began a program under which it compared its Qualified Voter File ("QVF"), the statewide voter registration database, with the Social Security Administration's nationwide Death Master File and, where matches were found, purged the names of the presumably deceased voters. The state used two match criteria: (1) [Exact First Name] [Exact Last Name] [DOB] and (2) [First Letter of First Name] [Exact Last Name] [Exact DOB] [Exact ZIP Code]. Approximately

[8] *See also* Minn. Stat. § 204C.07, Subd. 5 ("Challengers and the political parties that appointed them must not compile lists of voters to challenge on the basis of mail sent by a political party that was returned as undeliverable or if receipt by the intended recipient was not acknowledged in the case of registered mail. This subdivision applies to any local, state, or national affiliate of a political party that has appointed challengers, as well as any subcontractors, vendors, or other individuals acting as agents on behalf of a political party.").

60,000 QVF records were marked for cancellation under this procedure, 94% of which were based upon the first set of match criteria. Of those 60,000, approximately 40,000 had no voting history in the QVF and were cancelled immediately without notice. Notices were sent to the remaining 20,000 registrants who had voting history in the QVF, indicating that they were being cancelled, along with a contact number to call if they were, in fact, not deceased.

In response, approximately 400 of the 20,000 voters who were mailed a notice responded and indicated they had been canceled in error. Those voters' registrations were reinstated by the state. According to a state elections official, the second set of match criteria had higher error rates than the first set and was "too loose," which led to quite a high number of mismatches. In addition, according to the state, the state's failure to exclude those individuals who had voting histories after their listed date of death was also problematic, resulting in an error rate of 94% among those votes. Part of the problem was also attributable to the fact that the state was operating off of a Death Master File (DMF) that it purchased in May 2005 for their purge program in 2006, which did not take into account the corrections that the Social Security Administration may have made to the database in the intervening year.

B. Louisiana's Errors in Purging Displaced Voters on the Basis of Having Registered Elsewhere

Prior to Hurricanes Katrina and Rita, New Orleans had approximately 297,000 registered voters listed on the rolls. Currently, there are approximately 278,000 on the rolls. Louisiana state law requires the Secretary of State to conduct an annual canvass, under which notices are mailed to every registered voter on the rolls. If the notice is returned as undeliverable, the list maintenance process commences, and the voter is placed on the inactive list. Then, if the voter either does not contact the local parish registrar of voters to update his or her address or does not vote in either of the next two federal elections, the voter's registration is cancelled, and he or she is removed from the rolls.

In Advancement Project's ongoing investigation of barriers to voting in Louisiana since the 2005 hurricanes and, specifically, in discussions with the Orleans Parish Registrar of Voters, Dr. Sandra Wilson, we learned that following the annual canvass of voters in 2007, approximately 105,000 of the 278,000 voters in New Orleans were placed on the inactive list because their notices were returned by the postal service as undeliverable. Many of these voters were displaced by the storm and during the past two years, may have moved several times. As a result, many of these displaced voters did not have current forwarding addresses on file with the Postal Service, either because they never filed a change of address or because their addresses had changed since they last filed a change of address. Thus, these voters likely never received their notices from the local registrar and, therefore, are unaware that their registration status is in jeopardy.

Similarly, we learned from Dr. Wilson that in June and July of this year, approximately 7,000 New Orleans registrants were targeted for removal from the voter

rolls at the direction of the Secretary of State as a result of information that his office obtained through cooperative agreements with eight other states, which indicated that the voters had registered to vote in another state. However, upon further investigation and follow-up with those voters, the Orleans Parish Registrar and her staff confirmed that all but approximately 109 of these voters had either not registered in another jurisdiction or had not intended to register in another jurisdiction. In other words, but for the diligence of the local registrar and responsive voters, the Secretary of State's purging protocol would have unfairly removed nearly 6, 900 eligible voters from the Louisiana voter registration rolls. As Kristin Clarke of the NAACP Legal Defense and Education Fund indicated in her testimony to this Committee on October 23, 2007, this reveals serious flaws in list maintenance methodology and procedures.

C. Recommendations

State and local election officials have a tremendous amount of flexibility and discretion in how they conduct list maintenance activities, provided that their procedures are uniform, nondiscriminatory and in compliance with the Voting Rights Act. While the NVRA requires notice and certain safeguards to particular categories of voters who are targeted for purging, in many states, large numbers of voters receive no notice whatsoever before they are purged from the rolls. Depending upon the matching criteria employed, states' attempts to match records of voters in their database with records of individuals in other state's databases or death registries may result in false matches. Absent notice to the voter, the voter will be unaware that she has been purged until she appears at the polls on Election Day and learns that her name does not appear on the register. Even if states do attempt to notify voters, in low income communities of color, ineffectiveness of mail delivery may prevent voters from receiving actual notice that they have been flagged for purging from the rolls.

Advancement Project recommends that Congress enact legislation that: (1) directs the Election Administration Commission ("EAC") to convene a panel of experts, including election officials, voter protection advocates and data matching experts, to develop and recommend to Congress best practices for matching voters' information to information in other databases; (2) requires that all voters targeted for purging receive written notice and a postage-prepaid return reply card by forwardable first-class mail that they are slated to be purged and the basis for the purging, and that such voters be provided with a reasonable opportunity (e.g. 45 days) to contest their purging from the rolls; (3) ensures that voters are not purged from the rolls for non-voting; and (4) requires state and local election officials to promulgate written policies and procedures related to list maintenance.[9]

III. NEEDLESS RESTRICTIONS ON THIRD-PARTY VOTER REGISTRATION ACTIVITIES

[9] Advancement Project supports the recommendations concerning list maintenance set forth in the Testimony of Deborah Goldberg, Director, Democracy Program, Brennan Center for Justice at NYU School of Law, Subcomm. On Elections Comm. On House Administration (Oct. 23, 2007) at 5-8.

The National Voter Registration Act established voter registration by mail for all federal elections and specifically empowered and encouraged private groups to organize voter registration drives using the national mail voter registration form. Third-party voter registration groups seek to register eligible applicants who are among the least represented in the democratic process. These historically disenfranchised applicants often benefit from assistance in registering to vote. For example, according to U.S. Census Bureau statistics on voter registration in Florida, in the November 2004 election, the last statewide contest before Florida's third-party voter registration law, that is described below, went into effect, 17% of African-American voters and 19% of Hispanic voters in Florida registered to vote through voter registration drives, whereas only 7% of white voters did so. Similarly, 23% of voters in households where only Spanish was spoken were registered through drives, versus only 9% of households in which Spanish was not the only language spoken.

In spite of Congress's efforts to enhance and facilitate voter registration through the use of mail registration and through private/third-party voter registration dries, several states have recently erected onerous barriers that have prevented or significantly curtailed community-based voter registration drives by such groups. Some states, like Florida, imposed heavy fines and criminal penalties on third-party groups which did not adhere to strict submission deadlines and other voter registration requirements. Others, like Georgia, prevented third-party organizations from accepting applications from registrants unless they were sealed and prevented third-party groups and voter registrants from retaining a copy of their completed registration application. Advancement Project is co-counsel in challenges to these barriers to third-party voter registration, which federal courts have enjoined as violating the First Amendment or the NVRA.

Recommendation

The NVRA was intended to encourage third-party voter registration activities, thereby increasing voter registration and voter participation. States' efforts, such as those described above, that needlessly restrict third-party voter registration activity thwart the intent of the NVRA. Advancement Project recommends that Congress takes steps to ensure that states do not chill or otherwise deter third-party voter registration groups from registering voters.

Report to State and Local Election Officials on the Urgent Need for Instructions for Partisan Poll Watchers

October 27, 2004

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CALL FOR IMMEDIATE ACTION TO PROTECT THE RIGHT TO VOTE

Introduction

This year, the right to vote is at risk because of unprecedented attempts by partisan operatives to purge voters prior to and on Election Day through the use of "challenges." In the past few weeks thousands of challenges to voter eligibility have been submitted, most notably, 17,000 challenges to Democratic voters in Clark County (Las Vegas) Nevada, and 35,000 in Ohio, disproportionately in urban areas. (Exhibit 1.) Yet, this is not the end, large numbers of these Eleventh Hour purges are expected on November 2nd. Partisan poll watchers or challengers have already registered in massive numbers in Florida and Ohio, two states critical to the Presidential election. (Exhibit 2.) Further, Republican Party officials in Michigan and Pennsylvania have revealed that efforts are underway to suppress the vote in Detroit and Philadelphia.

State challenge laws permit persons to "challenge" a voter's eligibility to cast a ballot. These laws provide seemingly unbridled power to persons to deprive citizens of the right to vote. In some states there are no standards for the type of evidence that must be provided in order to wage a challenge. While the political operatives know who they plan to challenge, voters are not provided with notice that their right to vote is at risk. Further, there are no penalties for persons engaging in baseless, random challenges. However, where these challenges infringe upon the right to vote on the basis of race, the Voting Rights Act and state civil rights statutes are clearly implicated. In addition, such baseless actions are in fact an act of fraud upon our democracy. Election officials should immediately put in place procedures for challenges that protect voters' rights and reduce any chance that aggressive use of challenges does not create chaos in polling places on Election Day.

In light of these recent actions and the history of voter suppression tactics undertaken by the Republican Party, in particular, there is grave concern that voter suppression efforts will be targeted at minority voters. The following details the historical roots of challenges in Florida and Ohio detailing their discriminatory intent, past efforts by the Republican Party and others to suppress the minority vote and recent actions. In addition, we advance recommendations for elections officials charged with handling these challenges so as to protect the rights of voters, to avoid disruption on Election Day and, ultimately, to preserve the integrity of the election.

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RECOMMENDATION FOR IMMEDIATE ACTION: Election Officials must issue and enforce clear and effective written Instructions for Poll Workers and Poll Watchers/Challengers in order to protect the right to vote.

FLORIDA

PROPOSED INSTRUCTIONS FOR POLL WORKERS AND POLL WATCHERS

1. Florida law requires a challenger to reduce the challenge to writing, *giving reasons* for the challenge under oath. Florida Stat. § 101.111 (emphasis added). This means that the challenger must set forth *facts known to the challenger,* which, if true, would mean that the challenged voter is ineligible to vote. If the challenger fails to do this, the clerk and supervisors should not require the voter to execute any oath, and should permit the voter to vote by regular ballot. **Because these challenges may result in depriving a citizen of her right to vote, challengers should set forth *clear and convincing evidence* that the voter is ineligible.**

For example:

A. **A challenger cannot challenge a voter based merely on the fact that he or she is also registered in another state.** Although state and federal law prohibit a person from voting twice in an election, it is not a violation to be registered in Florida and another state at the same time. The Secretary of State's Assistant General Counsel recently confirmed in a July 27, 2004 letter: "The state of Florida does not have a provision expressly prohibiting dual registration." If a person from another state moves to Florida and registers, it is the duty of the Supervisor of Elections, not the voter, to notify the last jurisdiction so that it can remove the voter from its rolls. Fla. Stat. §§ 97.073(2), 98.045(2).

B. **Challenges based upon citizenship must not be based upon appearance or surname.** A challenge to voters must be based upon "evidence," not stereotypes or discriminatory factors.

C. **Challenges must not be based on race, ethnicity, religion or national origin.** A challenge to voters must be based on "evidence," not stereotypes or discriminatory factors. Fla. Stat. § 101.111(3)(a). Of course, federal and state law prohibits discrimination based on race, religion,

ethnicity and national origin. If election officials allow poll watcher challenges that reflect a pattern based on the race, ethnicity, religion or national origin of voters, then the officials themselves would be committing a clear violation of the federal Constitution's equal protection clause. See Batson v. Kentucky, 476 U.S. 79 (1986). A court would order such election officials to reject challenges based on these unlawful grounds.

D. **A challenge may not be based solely on the fact that the voter has changed his or her address.** If the voter's name appears on the precinct register, but if the voter has moved to a different address than the address listed, the voter must complete a change of address affirmation provided by the election officials. If the new address is within the precinct, the voters shall be permitted to cast a regular ballot. If the new address is in another precinct, the voter will be directed to the other precinct where they will be permitted to cast a regular ballot once they have completed a change of address affirmation.

E. **A challenge may not be based solely on the fact that the voter has changed his or her address within the Precinct.** If the voter's name appears on the precinct register, but if the voter has moved to a different address within the precinct than the address listed, the voter may complete a change of address affirmation provided by the election officials. If the new address is within the precinct, the voters shall be permitted to cast a regular ballot. If the new address is in another precinct, the voter will be directed to the other precinct where they will be permitted to cast a regular ballot once they have completed a change of address affirmation. If the new address is in a different county, the voter may be permitted to cast an absentee ballot in their former county.

F. **If a challenger claims that the voter is a felon, he should provide official proof of the felony.** Only official documentation in the form of certified court records or other official government documents can reliably establish that a voter is a felon. This past July, the Secretary of State instructed counties not to use a "felon purge list" that was generated by a private vendor/because the list was found to be unreliable. Moreover, the challenger must prove (with confirming identification such as an address or other information) that the voter is the same person who has been convicted of a felony, not merely someone with a similar name. Thus, the challenger should also

provide information that substantiates an exact match based upon name, address, date of birth, and race.

2. **In the rare case where a challenge is upheld by poll workers, a voter must be allowed to vote a provisional ballot**. *See,* Fla. Stat. § 101.111(3)(b).

3. **If a poll watcher raises multiple meritless or frivolous challenges, the official poll workers should instruct the poll watcher to stop or leave.** Poll watchers are "state actors," and thus, to the extent they engage in activities intended to intimidate voters, election officials may be held liable for such actions. *See Tiryak v. Jordan*, 472 F. Supp. 822, 824 (E.D. Pa. 1979).

4. **Where poll watchers have information about voter's alleged ineligibility prior to the election, they should provide it by close of business on October 29.** All documentary evidence or otherwise, including the name and address of the challenger should be provided to permit Supervisors an opportunity to investigate prior to Election Day and to alert the voter.

5. **Challengers should not be permitted to disrupt the orderly functioning of the election.** Florida counties should set aside an area in each polling location for challenges. Challenges should not be conducted in a fashion that prolongs the voting process of others.

* * * *

OHIO

PROCEDURES APPLICABLE TO POLL WORKERS AND POLL WATCHERS

1. If the Board of Elections has previously ruled on the voter's eligibility that ruling shall be final and binding.

2. The only grounds allowed for Challenges are as follows:

   A. Not a U.S. Citizen – R.C. 3505.20(A)

   B. Not a Resident of Ohio for 30 days immediately before the Election - R.C. 3505.20(B).

   C. Not a Resident of the County or the Precinct - R.C. 3505.20(C)

   D. Not 18 years old by Election Day – R.C. 3505.20(D)

3. A challenge by ***any qualified elector*** of the county may be made to the Board of Elections not later than 11 days prior to an election. "The applications or challenges, ***with the reasons*** for the application or challenge, shall be filed with the board on a form prescribed by the Secretary of State and shall be signed under penalty of election falsification." Section 3503.24. **The law contemplates that challenges will be filed by a registered voter in the county, who is subject to prosecution for false claims. The Board, therefore, should confirm that the challenge is presented by a qualified voter who is fully aware of the potential consequences for election falsification**

A challenger must take an oath that he/she "will faithfully and impartially discharge the duties as an official challenger . . . will not cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of their qualifications as electors . . ." Ohio Rev. Code § 3505.21. According to the Department of Elections, a challenger may challenge only for "good cause." Memorandum from Director of Elections to All County Boards of Elections dated October 20, 2004 (hereinafter "Ohio Memo"). When challenging, the challenger must state his/her reasons for the challenge. Ohio Memo. ***The burden is on the challenger to present accurate and compelling facts in order to deny a citizen the right to participate in an election. The challenger should be required to offer facts that rest on credible personal knowledge on which the challenge is based and set forth in a sworn affidavit. If a challenger fails to set forth facts under oath that on their face are adequate to show that the individual is not eligible to vote, the challenge should be dismissed.***

For example,

A person may be challenged on grounds of lack of citizenship. OH Rev. Code 3505.20 (A). ***The person should be permitted to declare under oath that she is a citizen and she should not be***

required to produce a certificate of naturalization in the absence of any document produced by the challenger that proves she is not a U.S. citizen. Challenges based on the lack of citizenship should be dismissed if not based on clear and convincing documentary evidence produced by the challenger.

4. Challenges must not be based on race, ethnicity, religion or national origin. A poll watcher challenge to voters must be based on "evidence," not stereotypes or prejudice. Of course, federal and state laws prohibit discrimination based on race, religion, ethnicity and national origin. If election officials allow poll watcher challenges that reflect a pattern based on the race, ethnicity, religion or national origin of voters, then the officials themselves would be committing a clear violation of the federal Constitution's equal protection clause. See Batson v. Kentucky, 476 U.S. 79 (1986).

5. The challenger must have a good faith basis for challenging a voter. Election judges are empowered to "prevent and stop any improper practices or attempts tending to obstruct, intimidate, or interfere with any elector in registering and voting. Ohio Rev. Code § 3501.33. They may eject any challenger for any violation of the election code. Ohio Rev. Code § 3501.33. For example, if a challenger challenges so many voters that his or her activities slow down the voting process or intimidate voters, the presiding judge should take immediate action including expelling him or her from the polling place. Further, no candidate, "uniformed" peace officers, state highway patrol troopers, firemen, organized militia or any person wearing a uniform or a person carrying a firearm or other deadly weapon shall serve as a challenger or witness. OH. Rev, Code Section 3505.21 . ***Election officials must ensure that challenges do not proceed in a manner that intimidates voters or disrupts the orderly process of voting.***

6. Challengers shall remain stationed behind the table where poll workers are seated. Challengers may not talk to voters in the polling place. Challengers shall not use cell phones in the polling place. Challengers shall not handle any election materials or touch any election equipment or supplies.

7. If a voter is challenged, the prospective voter shall respond to the questions set forth in the statute, R.C.3505.20, and contained on form 10-U, under oath.

8. If the challenged voter, who is in the signature book, responds to the questions with answers indicating that they are qualified to vote and signs the form 10-U under oath, they shall be given a regular ballot. If the challenged voter refuses to answer the appropriate questions under oath, or if their answers indicate that they are not qualified to vote, they shall be permitted to vote a provisional ballot.

9. If the challenged voter indicates that they are a resident of another precinct, they shall be directed to the correct precinct.

10. If the voter's name does not appear in the signature book, they shall be permitted to cast a provisional ballot. If the voter's name has changed because of marriage or other legal process, they shall be permitted to cast a regular ballot if the voter completes a change of name affirmation.

CHALLENGES ROOTED IN RACISM

Challenges were, and currently are, used to disenfranchise minority voters. While on their face challenge statutes are racially neutral, their history reveals their intent. These laws give seemingly unbridled power to individuals to disenfranchise voters immediately prior to and on Election Day. The historical roots of challenge statutes in Florida and Ohio demonstrate that they were intended to be used to deprive black voters of the franchise and were effectively used for these purposes.

Florida: The Florida challenge statute, now codified in Fla. Stat. § 101.111, has its roots in Reconstruction Era laws intended to curtail the ability of newly freed slaves to participate in elections. In 1865, the Florida legislature clearly indicated that it wanted to deny Blacks the right to vote by adopting a state constitution that restricted the right to vote and to hold office to white men. (See Florida Constitution of 1865, Article VI, Section 1 (limiting voting to white men); id., Article IV, Section 4 ("No person shall be a Representative unless he be a white man . . ."); id., Article IV, Section 5 ("No person shall be a Senator unless he be a white man . . .").) In March, 1867, federal law pre-empted Florida State law and extended the right to vote to Black men. With this, Blacks began to vote in large numbers. In fact, seventeen of the forty-six signers of the 1868 Florida Constitution were African-American. (See Eric Foner, Freedom's Lawmakers (Lousiana State University Press 1993, 1996), p. xvi.) The Florida legislature took immediate steps to limit this increased power.

Just one year after Blacks were granted the right to vote in Florida, the legislature enacted its challenge statute that provided the challenge power to poll watchers in 1868. The law provided, in relevant part:

> If any person offering to vote shall be challenged, as not qualified, by an inspector or by any other elector, one of the board shall declare to the person challenged the qualifications of an elector. If such person shall claim that he is qualified, and the challenge be not withdrawn, one of the inspectors shall administer to him an oath prescribed by law.

In addition to this statute the legislature passed laws limiting the representation of counties with significant Black populations and disenfranchising persons convicted of felonies. (See, e.g., *Johnson v. Bush*, 353 F.3d 1287, 1295-96 (11th Cir. 2003).) In fact, one white delegate to the Florida Constitutional Convention stated that the legislature had successfully prevented the government of Florida from becoming "Niggerized." See *Johnson v. Bush*, 353 F.3d at 1296. Immediately after the convention, the legislature passed the challenge statute.

In 1876, Reconstruction had ended and Florida, like other Southern states, enacted disenfranchisement laws. Thus, the following year, Florida re-enacted its challenge/poll watcher law and passed statutes that required that counties purge all voters and require them to re-register, and divided counties into voting precincts. (See Williamson, *Florida Politics in the Gilded Age, 1877-1893*, at 28 (1976); Jesse Jefferson Jackson, Republicans

and Florida Elections and Election Cases, 1877-1891, at 27-28 (Ph.D. Diss., Florida State University, 1974).) Black state legislators objected to these laws. One legislator, Sen. Fred Hill, noting the devastating impact the law would have on African-American voters moved to have the bill read, "To provide for the disfranchising of one-third of the legal voters of Florida." (See *Florida Senate Journal*, Ninth Session, Feb. 17, 1877, p. 301; Williamson, *Florida Politics in the Gilded Age*, at 28.) (Blacks constituted one-third of the State's population. . See U.S. Bureau of the Census, Negro Population, 1790-1915 (Washington, D.C., 1918), p. 51.) By 1890, most Blacks in Florida were disenfranchised. (J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*, at 91-103 (1974).)

Ohio: In 1831, Ohio granted authority to election judges to challenge a person's right to vote. [43 Statutes of Ohio § 23 (passed June 1, 1831 (29.v.44).] The law was expanded in 1841 and titled "An Act to Preserve the Purity of Elections." [42 Revised Statute Oho §§ 71-98] In 1859, the statute was amended to provide for challenges based upon a voter's possession of a "visible admixture of African blood." [42 Rev. Stat. Ohio §§ 104-07.] By1868, the law required:

> Section 1. Be it enacted by the General Assembly of the State of Ohio, that it shall be the duty of judges of elections to challenge any person offering to vote at any election held under any law of this state, having a distinct and visible admixture of African blood, and shall tender to him the following oath or affirmation [swearing to answer the following questions truthfully]. [T]hereupon the said judges, or one of them, shall put to him the following questions:
>
> 1. What is your age?
> 2. Where were you born?
> 3. Were your parents married, and did they live together as man and wife?
> 4. Had your parents, or either of them, a visible and distinct admixture of African blood?
> 5. In the community in which you live are you classified and recognized as a white or colored person, and do you associate with white or colored persons?
> 6. Are there schools for colored children in operation in the township, village or ward in which you live; and if you have children, do they attend the common schools organized for white children, under the laws of the State? [32 Rev. Stat. Ohio §§ 11-24]

The Ohio Supreme Court ultimately struck down the use of these questions, and the 15th Amendment, ratified in 1870, subsequently superceded Ohio's law.

DISCRIMINATORY USE OF CHALLENGES

While these challenge laws can be traced to an era in which this country openly restricted the right to vote on the basis of race, challenges continue to be used in a discriminatory fashion today.

DNC v. RNC
("Ballot Security")

- In 1981, after the RNC compiled a challenge list of 45,000 individuals from returned mail sent to an outdated voter registration list, it attempted to have these individuals removed from the rolls, without knowing whether these voters still resided in the precinct. The RNC also reportedly used off-duty county sheriffs and local policeman to watch polling places in predominantly African-American and Latino precincts, and posted signs in these areas warning that it was patrolling the area and that it was a crime to violate election laws. After a lawsuit by the DNC, the RNC agreed in a consent decree not to "us[e], nor appear[] to use, racial or ethnic criteria in connection with ballot integrity, ballot security or other efforts to prevent or remedy suspected vote fraud..." The court directed the RNC to "refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct . . . such activities...and where a purpose or significant effect of such activities is to deter qualified voters from voting; and the conduct of such activities disproportionately in or directed toward districts that have a substantial proportion of racial or ethnic populations shall be considered relevant evidence of the existence of such a factor and purpose." [Civ. Action No. 81-3876, U.S. District Ct. of NJ.] (Exhibit 3.)

- In 1986, the RNC violated the Consent Decree by trying to have 31,000 Louisiana voters removed from the rolls after mail sent to them was returned undelivered. As a result, the Consent Decree was expanded to require that the RNC obtain prior court approval for all efforts to combat "vote fraud" other than normal poll watcher activities. Additionally, the court ordered that poll watchers cannot use the fruits of pre-election ballot security efforts unless court-approved. This Amended Consent Decree is still in effect. [Civ. Action No. 86-3972, U.S. District Ct. of NJ.] (Exhibit 4.)

United States v. Republican Party of North Carolina

- In 1990, the Republican Party of North Carolina and the Helms for Senate Committee sent out 81,000 postcards to registered Democrats (in precincts in which 94% of the registered voters were black) and another 44,000 postcards exclusively to black voters. The cards contained false information on the eligibility to vote for people who had recently moved, and also set forth the federal criminal penalties for election fraud. The postcards returned as undeliverable were used to compile a list of voters to be challenged.

- The parties entered into a Consent Decree, under which the state GOP was "enjoined from engaging in any ballot security program directed at qualified voters in which the racial minority status of some or all of such voters is a factor in the decision to target those voters." Further, the decree required that the

defendants obtain prior court approval for all subsequent ballot security efforts. [Civ. Action No. 92-161-CIO-5-F, U.S. Dist. Ct., E.D. of North Carolina]

United States v. City of Hamtramck

- During the 1999 general election, a group called the Citizens for Better Hamtramck ("CCBH") registered to serve as challengers to maintain a "pure" election. CCBH challenged the citizenship voters with dark skin and seemingly Arabic names. These voters were required to take a citizenship oath, even if they produced proof of citizenship. The federal government brought an action alleging that elections officials discriminated against Arab-American voters by allowing illegitimate challenges of their voting qualifications. They entered into a consent decree with the city which required, among other things, that election officials be provided training on the challenge process, that bilingual Arab-American or Bengali-American election inspectors be appointed to the precincts where the discriminatory challenges had occurred, and that a federal examiner be appointed to the city. [Civ. Action No. 00-73541, U.S. Dist. Ct., E.D. Mich.]

SUPPRESSION TODAY

A scan of recent news accounts documents steps being taken during this election cycle to suppress the voting power of minority voters.

- In August, John Pappageorge, a Republican state representative in Michigan and then-team leader for the state Bush-Cheney re-election campaign, said "If we do not suppress the Detroit vote, we're going to have a tough time in this election cycle." Detroit is 83 percent African-American. [Sources: Detroit Free Press: 10/13/04; New York Times, 9/13/04.]
- John Perzel, Pennsylvania Speaker of the House and Bush-Cheney '04 State Regional Campaign Chair, said "The Kerry campaign needs to come up with humongous numbers here in Philadelphia. It's important for me to keep that number down." [Source: Philadelphia Daily News, 10/26/04.]
- In Philadelphia, Republicans submitted last-minute requests to relocate 63 polling places. 53 of the polling places are located in precincts where the population of white voters is less than 10 percent. [Source: Philadelphia Daily News, 10/18/04.]
- In Cuyahoga County, Cleveland, Ohio, there have already been many reports of individuals posing as Election Board officials, telling individuals that the election has been postponed to November 3rd or that the location of their polling places has changed. There have also been reports that individuals posing as election officials have been knocking on doors and telling voters that they will turn in their absentee ballots for them. [Source: Los Angeles Times 10/26/04.]

Republicans At Work Again

Despite the consent decree in the New Jersey *DNC v. RNC*, there are growing concerns that the RNC and its state parties plan to aggressively use challenges and that challenges may be targeted at minority voters.

A. Recent News Accounts
   - The Republican Party of Michigan announced that it was hoping to recruit 1,000 poll watchers for November 2nd, and is offering to pay up to $100 per shift. [Source: Detroit Free Press, 4/29/04
   - In Ohio, the Republican Party claims to have registered 3,600 challengers who will be inside polling places on Election Day, each being paid $100. 1,436 of the challengers are devoted solely to Cuyahoga County (Cleveland). [Sources: Columbus Dispatch, 10/24/04; New York Times, 10/23/04]
   - The Republican Party hopes to have at least 1,000 paid poll watchers in Pennsylvania. [Source: Pittsburgh Post-Gazette, 10/24/04]
   - Wisconsin Republicans are reportedly training more than 50,000 volunteers to monitor precincts and lodge challenges. [Source: Wall Street Journal, 10/22/04]
   - Florida is also expecting an unprecedented number of poll watchers and challenges. [Source: St. Petersburg Times, 10/16/04]

- The Republican Party has also initiated massive investigations of new voters. Again, there is evidence that the efforts are focused on communities with large African-American and Latino populations.
   - In Pennsylvania, Republicans purchased an official list of about 130,000 people who had registered to vote in Philadelphia in the previous six months. They mailed letters to each, and 10,000 came back marked as undeliverable. It is still unclear what the state GOP intends to do with this information, but the deputy city commissioner has urged the Republicans to turn over the letters for investigation. [Source: Philadelphia Inquirer, 10/25/04]
   - In Ohio, the Republican Party has filed challenges against approximately 35,000 new registrants whose notices of voter registration were returned as undeliverable. Over 17,000 of the challenges are in Cuyahoga County. [Source: Columbus Dispatch, 10/24/04]
   - The Wisconsin GOP is using state freedom of information laws to obtain the names of 100,000 new voters and conduct background checks on them. [Source: Wall Street Journal, 10/22/04]
- In Atlanta, Republican officials have reportedly challenged voters with Latino surnames or who identified themselves as Latino on their voter registration applications without any evidence to substantiate the allegations. [Source: Atlanta Journal-Constitution, 10/21/04]
- The former state Republican Party Chair of Nevada attempted to purge about 17,000 Democrats from the voter rolls in Clark County, Nevada on the ground that they were inactive voters. [Source: Associated Press, 10/13/04] [(The challenges were rejected by the Clark County registrar.)]

B. Racial Targeting

The Republican Party and Republican candidates have already designated an unprecedented number of poll watchers for the November election. Moreover, Republicans have detailed these poll watchers disproportionately to predominantly African American counties. For example, in Miami-Dade County in Florida and Hamilton County in Ohio, the Republican Party designated more of its poll watchers to the predominantly African American precincts than to other precincts. *See* Expert Report of Philip Klinkner, James S. Sherman, Associate Professor of Government, Hamilton College, Exhibit 5. Further, in Miami-Dade County, Republican poll watchers are 30 percentage points more likely to be assigned to large and heavily African American precincts than to other precincts. *See Id.* Klinkner's analysis indicates that the relationship between Republican poll watcher allocations and the race and size of precinct suggests that Republicans have targeted large, heavily African American precincts for the assignment of poll watchers. *See Id.*

Likewise, in Hamilton County, (Cincinnati) Ohio, Republican poll watchers are concentrated in heavily African-American precincts. *See Id.* Klinkner's report state that while 55% of voting age whites and 62% of voting age Hispanics live in voting locations covered by Republican poll watchers, 89% of voting age blacks live in areas covered by Republican poll watchers. *Id.*

LEGAL OR NOT?

Florida Challenge Provisions

Florida law invests partisan challengers with substantial power to affect the election process. Under Florida Stat. § 101.131(1), one poll watcher from each party and one poll watcher for each candidate may be present at each precinct on November 2. Each poll watcher has the power to challenge any voter's right to vote. Florida. Stat. §§ 101.111. If a poll watcher lodges a "challenge" to a voter, it automatically triggers a time-consuming process which is administered by poll workers who are needed to process voters through the voting process. The challenger must execute a written challenge on a form provided to him or her for that purpose; an affidavit must be prepared by the voter; the consideration of any additional evidence is required; and the process concludes by majority vote of the election workers on whether the voter will be permitted to vote. [Florida Stat. 101.111(d) and (3)] Once a poll watcher makes a challenge, the state poll workers *must* resolve that challenge using this process before the challenged individual can vote. [Florida Stat. 101.111(d) and (3)]

Ohio Challenge Provisions

In Ohio, challenges may be made prior to election day or on Election Day. For Election Day, challengers may be appointed for each polling place. Ohio law states that any appointed challenger, or any elector (lawfully in the polling place), or any judge or

elections clerk may challenge the right of a person to vote for good cause. [An. Rev. Code § 3505.20 and 3505.21] Persons may be challenged on the following grounds:

Citizenship;
New resident (a voter must reside in Ohio for 30 days prior to an election);
Residence outside of county or precinct; and
Age. [Ohio Rev. Code § 3505.20]

After conducting an inquiry into the reason for the challenge, election judges render a "final" decision as to the right of the challenged person to vote at the election. [Ohio Rev. Code § 3505.20]

Federal Law and Legality

Challenge statutes permit poll watchers to engage in purging of voters, providing a loophole to the National Voter Registration Act ("NVRA"), which was passed by Congress with the intent to provide for uniform and nondiscriminatory registration and list maintenance procedures. 42 U.S.C. 1973gg. In fact, the NVRA was intended to end discriminatory purging.

These "Election Day-purges" are allegedly being undertaken under the pretext of eliminating voter fraud. Yet, the NVRA, the Help America Vote Act ("HAVA") and state laws provide mechanisms by which election officials may prevent fraud. For example, the NVRA provides that a voter who presents himself to vote but who has moved within his precinct may still vote by affirming his or her new address. 42 U.S.C. 1973gg-6(e)(1). Also, voters who move outside of their original precinct but remain in the election official's jurisdiction and the same congressional district may also vote at their old polling place upon written affirmation, or at a central polling place, or at their new polling place (if state law permits this alternative). 42 U.S.C. 1973gg-6e(2). Challengers using lists of returned mailings and inactive voter lists should be precluded from issuing such challenges because these voters may still be eligible.

The NVRA also provides strict measures for election officials to maintain accurate voter registration lists. List maintenance procedures provide for the removal of voters from the registration rolls where election officials have an indication (through non-forwardable mailings) that the voter has moved and if the person does not vote in two consecutive federal general elections. [42 USC 1973gg.] This procedure balances the rights of voters by ensuring that they are not prematurely purged with the need to provide accurate voter registration lists.

In addition to NVRA, HAVA permits states to require identification for first-time mail-in registration voters. This requirement, while burdensome to voters and also adversely impacting minority voters, specifically addresses concerns about voter fraud. Many states, including Florida, which requires all voters to present photo identification, have even more restrictive laws regarding identification at polling places. These measures, in addition to the work that is performed in elections offices to screen out bad addresses and false identities, were intended to weed out fraud through official processes

that provide for nondiscrimination and uniformity. Challenges are the purge-loophole that threatens to disenfranchise minority voters in 2004.

Furthermore, these challenge statutes may themselves be unconstitutional under the rule of *Hunter v. Underwood*, 471 U.S. 222 (1985), based on the discriminatory purpose for which these laws were adopted.

Those engaging in such activities may also be subject to criminal penalties. Federal law states in relevant part, "any person...who in any election for Federal office knowingly and willfully or attempt to intimidate ...any person for...voting...shall be fined...or imprisoned not more than 5 years or both." 42 U.S.C. 1973gg-10.

Election officials may also subject themselves to liability for permitting racially discriminatory challenges whether they are based upon intent or effect. Many states, including Florida and Ohio, invest poll watchers with the power to trigger a process that may prevent a citizen from voting and cause massive delays at the polling place. Poll watchers represent the State's interest in addition to the interests of a political party or candidate. Thus, poll watchers have been held to be "state actors" under the law because they exercise state power in the election process. *Tiryak v. Jordan*, 472 F. Supp. 822, 824 (E.D. Pa. 1979), ("the poll watcher's statutory role ... involves him in a public activity, regardless of his private political motive ... . The Supreme Court has long and consistently held that private individuals engage in state action when performing a public function ... .")

Florida and the county Supervisors of Elections have an obligation to prevent these partisan challengers, whom the State has made "state actors," from exercising their state power in a discriminatory fashion. The State is obligated to ensure that the poll watcher function is performed in a good faith, non-discriminatory and non-burdensome manner. If the State does not take these steps, it may be liable under the Voting Rights Act of 1965. This only can be done if the State restrains the designated poll watchers from exercising their power to challenge in an indiscriminate manner. Otherwise, there is a grave risk that poll watchers, disproportionately deployed to predominately African American precincts, will indiscriminately challenge voters – holding up the election process and disenfranchising African American voters. It is incumbent upon the Supervisors of Elections to issue guidelines injecting standards into the otherwise standardless exercise of state power by highly partisan challengers who could, if unchecked, severely disrupt the election process.

Actions of Other States Anticipating Unprecedented Challenges

Some states already have adopted guidelines for challengers to protect against discrimination and abuse of the challenge process. Guidelines already exist in Michigan to ensure that voter challenges are not abused. The Michigan Department of State Bureau of Elections' September, 2003 challenge guide requires that "challenges may *not* be made indiscriminately or without good cause." It provides, *inter alia*, "a challenger does not have the right to issue a challenge based on an 'impression' that the voter may

not be eligible to vote." Nor may a challenge be based on "inability to read or write English [or] perceived race or ethnic background." See Michigan Department of State Bureau of Elections, "The Appointment, Rights and Duties of Election Challengers and Poll Watchers" (2003), attached as Exhibit 6. In fact, the Michigan Board of Elections sets out a detailed challenge procedure. *Id.* at 6-7. Similarly, on October 22, 2004, the Hamilton County Board of Elections in Ohio issued its "Witnesses and Challengers Policy." Exhibit 7. Under this policy, unsupported challenges are prohibited, and challengers "must have a good faith basis for challenging a voter and may not blanket challenge or randomly challenge voters." The Ohio Director of Elections also issued an October 20, 2004 Memorandum to the all of the Ohio County Boards of Elections providing guidelines for challengers and witnesses. Exhibit 8. Challengers are restricted to challenges for "good cause." Many election officials have no plan for dealing with an inundation of challengers.

PREVENTING CHAOS, SUPPRESSION AND INTIMIDATION ON NOVEMBER 2ND

If partisan poll watchers exercise the power to challenge African American voters in an indiscriminate manner, or use overbroad or incorrect challenge lists, the eligible voters at precincts where this occurs could be delayed or denied the right to vote. Already scarce time of the official poll workers will be diverted – they will have to administer and adjudicate the challenges. The challenges will overwhelm the official poll workers' ability to process the voters who come to the precincts to cast their votes. The number of poll workers and machines allocated to those precincts per registered voter is already under the national average. (See "Shortage of Poll Worker's Cited"," *Washington Post*, October 23, 2004, p. A5.) If partisan poll watchers challenge even a fraction of the voters, there is a potential for confusion, long waiting times, erroneous denial of voting privileges and other activities that will result in disenfranchisement of African American voters. *See* Statement of Miles Rappaport, attached as Exhibit 9; Report of Phillip Klinkner, attached as Exhibit 5.

Clearly, the 2000 Presidential Election provided a glimpse into the cracks in our Democracy. Minority voters were disenfranchised through a plethora of problems that plagued the our electoral system. See Exhibit 10, *Voting Irregularities in Florida During the 2000 Presidential* Election, Executive Summary, U.S. Commission on Civil Rights, June 2001. Election officials must immediately take steps to ensure that eligible voters are not harassed at the polls by baseless challenges and that the orderly conduct of the election is not undermined by partisan efforts to disenfranchise eligible voters.

EXHIBIT 1

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Big G.O.P. Bid to Challenge Voters at Polls in Key State

By MICHAEL MOSS

Published: October 23, 2004

Republican Party officials in Ohio took formal steps yesterday to place thousands of recruits inside polling places on Election Day to challenge the qualifications of voters they suspect are not eligible to cast ballots.

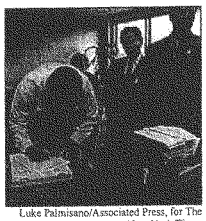
Party officials say their effort is necessary to guard against fraud arising from aggressive moves by the Democrats to register tens of thousands of new voters in Ohio, seen as one of the most pivotal battlegrounds in the Nov. 2 elections.

Election officials in other swing states, from Arizona to Wisconsin and Florida, say they are bracing for similar efforts by Republicans to challenge new voters at polling places, reflecting months of disputes over voting procedures and the anticipation of an election as close as the one in 2000.

Ohio election officials said they had never seen so large a drive to prepare for Election Day challenges. They said they were scrambling yesterday to be ready for disruptions in the voting process as well as alarm and complaints among voters. Some officials said they worried that the challenges could discourage or even frighten others waiting to vote.

Ohio Democrats were struggling to match the Republicans' move, which had been rumored for weeks. Both parties had until 4 p.m. to register people they had recruited to monitor the election. Republicans said they had enlisted 3,600 by the deadline, many in heavily Democratic urban neighborhoods of Cleveland, Dayton and other cities. Each recruit was to be paid $100.

The Democrats, who tend to benefit more than Republicans



Luke Palmisano/Associated Press, for The New York Times

Francis Lally of the Cuyahoga County elections board signed paperwork Friday for Republicans who want thousands of poll watchers.

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from large turnouts, said they had registered more than 2,000 recruits to try to protect legitimate voters rather than weed out ineligible ones.

Republican officials said they had no intention of disrupting voting but were concerned about the possibility of fraud involving thousands of newly registered Democrats.

"The organized left's efforts to, quote unquote, register voters - I call them ringers - have created these problems," said James P. Trakas, a Republican co-chairman in Cuyahoga County.

Both parties have waged huge campaigns in the battleground states to register millions of new voters, and the developments in Ohio provided an early glimpse of how those efforts may play out on Election Day.

Ohio election officials said that by state law, the parties' challengers would have to show "reasonable" justification for doubting the qualifications of a voter before asking a poll worker to question that person. And, the officials said, challenges could be made on four main grounds: whether the voter is a citizen, is at least 18, is a resident of the county and has lived in Ohio for the previous 30 days.

Elections officials in Ohio said they hoped the criteria would minimize the potential for disruption. But Democrats worry that the challenges will inevitably delay the process and frustrate the voters.

"Our concern is Republicans will be challenging in large numbers for the purpose of slowing down voting, because challenging takes a long time," said David Sullivan, the voter protection coordinator for the national Democratic Party in Ohio. "And creating long lines causes our people to leave without voting."

The Republican challenges in Ohio have already begun. Yesterday, party officials submitted a list of about 35,000 registered voters whose mailing addresses, the Republicans said, were questionable. After registering, they said, each of the voters was mailed a notice, and in each case the notice was returned to election officials as undeliverable.

In Cuyahoga County alone, which includes the heavily Democratic neighborhoods of Cleveland, the Republican Party submitted more than 14,000 names of voters for county election officials to scrutinize for possible irregularities. The party said it had registered more than 1,400 people to challenge voters in that county.

Among the main swing states, only Ohio, Florida and Missouri require the parties to register poll watchers before Election Day; elsewhere, party observers can register on the day itself. In several states officials have alerted poll workers to expect a heightened interest by the parties in challenging voters. In some cases, poll workers, many of them elderly, have been given training to deal with any abusive challenging.

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Mr. Trakas, the Republican co-chairman in Cuyahoga County, said the recruits would be equipped with lists of voters who the party suspects are not county residents or otherwise qualified to vote.

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EXHIBIT 2

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Election 2004

Voters will be under rare scrutiny

Unprecedented legions of poll watchers from both parties are being sent out this year, armed with a 109-year-old voter challenge law.

By JONI JAMES
Published October 16, 2004

TALLAHASSEE - More than ever, voters on Election Day may sense they are being watched.

They will be right.

Four years after Florida's contested presidential election, an unprecedented army of poll watchers representing candidates and political parties will be stationed at voting precincts throughout the state on Nov. 2.

And for the first time in recent memory, poll watchers may challenge whether some voters are properly registered.

By Tuesday's deadline, political parties and candidates are expected to flood elections offices with applications for poll watchers.

For example, Hillsborough County Elections Supervisor Buddy Johnson has collected 212 applications for poll watchers; 29 showed up for August's primary election.

Florida Republicans and Democrats say they are heavily recruiting volunteers to serve as poll watchers. They will not say what instructions they are giving them, but they are expected to draw on poll watchers'

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experiences in any post-election litigation.

The approaches are somewhat different.

Democrats say their goal is to have poll watchers ensure every eligible voter gets to vote. Republicans say they want their poll watchers to ensure election laws are enforced.

The poll watchers also are expected to be more aggressive in challenging the qualifications of voters. Longtime elections officials could not recall the last time they saw such a challenge.

State law allows each political party and candidate to post one observer at each precinct. The poll watchers must be registered voters from the same county and cannot be candidates or law enforcement officers.

But the law also includes an arcane 109-year-old provision that gives poll watchers the right to challenge on the spot an individual's qualification to vote. The challenge must be in writing and is similar to a sample affidavit included in state law.

Dawn Roberts, director of the state division of elections, sent a reminder last month to county elections supervisors about the poll watcher law.

The Sept. 29 memo suggested elections supervisors designate an area in each precinct for poll watchers to sit or stand to watch the check-in process. It said local officials also need to determine how to handle written challenges while other voters wait.

Democratic lawyers contend the memo was meant to encourage elections officials to go out of their way to accommodate poll watchers' challenges of would-be voters.

State law says poll watcher challenges must be addressed on-site by election workers before a citizen is given or denied a ballot. In many cases it will require calls to election headquarters to double-check voter registration or asking the citizen to sign another affidavit. If the challenge can't be resolved, the would-be voter may cast a provisional ballot and the county canvassing board would decide later if the citizen is qualified.

Multiple challenges could quickly clog voting precincts.

"The secretary of state's memo acts as a road map to challenge voters on Election Day," said Mitchell Berger, a Fort Lauderdale lawyer who was a key member of Vice President Al Gore's 2000 legal team and is general counsel for John Kerry's legal team. "It's not a road map that ensures that a citizen interested in coming to the polls and voting will have the opportunity to exercise that franchise."

Among Berger's concerns: Polling places will come to a virtual standstill

if Republican poll watchers challenge voters by comparing would-be voters' names to the state's controversial and since-discarded list of suspected felon voters. Or they might aggressively challenge any voter who shows up without a photo identification.

Berger said those tactics could intimidate voters, which is a felony.

A spokeswoman for Secretary of State Glenda Hood defended the memo and said there was no need to repeat what every supervisor already knows about voters' rights.

"They are reading into it things that really aren't there," Alia Faraj said. "Supervisors know no one should interfere with a person's right to vote on that day. They know their jobs, and they do it well."

Poll watchers' right to challenge a person's qualifications to vote has been a part of Florida elections since at least 1895.

"This goes back to when poll watchers knew who people were in their precincts and elections workers may not have," said John French, a Tallahassee elections law expert and one-time Florida Democratic Party executive director.

In modern times, poll watchers have been largely passive. They have helped political parties or candidates monitor voter turnout at key precincts so that last-minute, get-out-the-vote efforts can be targeted.

It is unlikely most voters will see a gantlet of poll watchers at their precinct. In Hillsborough County, for example, applications could double and still there would be just one poll watcher at most of the county's 359 precincts.

Broward County Deputy Elections Supervisor Gisela Salas, a 16-year-veteran of South Florida elections, can't remember when a poll watcher has challenged a voter's qualifications. "I'd have to say it is pretty unusual," Salas said last week. "But then there's never been the kind of talk of it like there is right now."

[Last modified October 16, 2004, 06:34:53]

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EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

DEMOCRATIC NATIONAL COMMITTEE and DEMOCRATIC PARTY OF THE UNITED STATES 1625 Massachusetts Avenue, N.W. Washington, D.C. NEW JERSEY DEMOCRATIC STATE COMMITTEE 329 West State Street Trenton, New Jersey VIRGINIA L. FEGGINS 12 Faircrest Avenue Trenton, New Jersey LYNETTE MONROE 699 Rutherford Avenue Trenton, New Jersey Plaintiffs, v. REPUBLICAN NATIONAL COMMITTEE 301 First Street, S.E. Washington, D.C. NEW JERSEY REPUBLICAN STATE COMMITTEE 28 West State Street Trenton, New Jersey ALEX HURTADO 301 First Street, S.E. Washington, D.C. RONALD C. KAUFMAN 301 First Street, S.E. Washington, D.C. JOHN A. KELLY 3645 Kanawha Street, N.W. Washington, D.C. Defendants.	Hon. Dickinson R. Debevoise, USDJ Civil Action No. 81-3876

ORIGINAL FILED
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ANGELO W. LOCASCIO, CLERK

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES

1. This is an action, arising chiefly from the activities of the defendants' National Ballot Security Task

Force, for declaratory and injunctive relief and damages against the defendants for their efforts to intimidate, threaten and coerce duly qualified black and Hispanic voters from voting and from urging and aiding other black and Hispanic duly qualified persons to vote in the State of New Jersey. Plaintiffs seek a declaratory judgment that the actions of the defendants violate the Fourteenth and Fifteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1971(a)(1), 1971(a)(2), 1973i(b), 1983 and 1985(3). Plaintiffs also request that this Court enjoin the defendants from engaging in activities to intimidate, threaten or coerce minority voters, and award the plaintiffs compensatory and punitive damages for defendants' unlawful interference with their rights to vote and to equal protection of the laws.

JURISDICTION

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. Plaintiffs' action for declaratory and injunctive relief and damages is also authorized by 28 U.S.C. §§ 2201 and 2202 and by 42 U.S.C. § 1988.

PLAINTIFFS

3. Plaintiff Democratic National Committee is the governing body of plaintiff Democratic Party of the United States ("Democratic Party"), an unincorporated membership association. Their principal place of business is 1625 Massachusetts Avenue, N.W., Washington, D.C. 20036. The members and supporters of the Democratic Party include in excess of eight million black and Hispanic duly qualified voters throughout the several states and the District of Columbia, approximately 250,000 of whom reside in the State of New Jersey. These black and Hispanic members and

supporters include persons who were intimidated and harassed by the defendants and who suffered harm as alleged in this Complaint, as well as persons who will be similarly harmed in the future if defendants' illegal activities are not enjoined as requested in this Complaint. The Democratic National Committee and the Democratic Party and its members and supporters have a direct interest in (1) the integrity of the electoral process; (2) maintaining an equal opportunity for all candidates and their supporters; (3) insuring that all voters are free to participate in elections on an equal basis and free from intimidation, threat, or coercion; and (4) insuring compliance with the laws violated by the defendants which preserve and protect the foregoing interests. Plaintiffs Democratic National Committee and the Democratic Party accordingly sue to vindicate their own interests and the rights of their members who have been harmed by defendants' conduct and who will be similarly harmed in the future unless the relief requested in this Complaint is granted.

4. Plaintiff New Jersey Democratic State Committee is an unincorporated association organized under the laws of the State of New Jersey in accordance with N.J.S.A. 19:5-4. Its principal place of business is 329 West State Street, Trenton, New Jersey. Its members and supporters include approximately 250,000 black and Hispanic duly qualified voters in the State of New Jersey. These black and Hispanic members and supporters include persons who were intimidated and harassed by defendants as alleged in this Complaint. The New Jersey Democratic State Committee and its members and supporters have a direct interest in (1) the integrity of the electoral process; (2) maintaining an equal opportunity for all candidates and their supporters; (3) insuring that all voters are free to participate in elections

on an equal basis and free from intimidation, threats or coercion; and (4) insuring compliance with the laws violated by defendants which preserve and protect the foregoing interests. Plaintiff New Jersey Democratic State Committee accordingly sues to vindicate its own interests and the rights of its members who have been harmed by defendants' conduct.

5. Plaintiff Virginia L. Feggins is black, a citizen of the United States, a duly qualified voter in the State of New Jersey, and resides at 12 Faircrest Avenue, Trenton, New Jersey. Plaintiff Feggins is a member of the Democratic National Committee and the Democratic Party and a member and vice-chair of the New Jersey Democratic State Committee. As such, she shares in the interests described in paragraphs 3 and 4 above. In addition, Ms. Feggins herself was harmed directly by defendants' efforts to intimidate, harass, and coerce duly qualified black and Hispanic voters in the State of New Jersey, as described in paragraph 33 below.

6. Plaintiff Lynette Monroe is black, a citizen of the United States, a duly qualified voter in the State of New Jersey, and a member of the Democratic Party. She resides at 699 Rutherford Avenue, Trenton, New Jersey. Plaintiff Monroe was stopped by members of the defendants' National Ballot Security Task Force when she attempted to vote in the general election on November 3, 1981. She was asked if she had her voter registration card and was told that if she did not have the card she could not vote. The members of the National Ballot Security Task Force standing outside of the polling place at which Plaintiff Monroe was entitled to vote turned her away, preventing her from casting her ballot. Ms. Monroe was thus harmed directly by defendants' efforts to intimidate, harass, and coerce duly

qualified black and Hispanic voters in the State of New Jersey, as described in paragraph 33 below.

DEFENDANTS

7. Defendant Republican National Committee is an unincorporated association. Its principal place of business is 301 First Street, S.E., Washington, D.C. It has engaged in and continues to engage in systematic and continuous business in the State of New Jersey, including the activities challenged in this complaint.

8. Defendant Alex Hurtado is the political director of the Republican National Committee. His principal place of business is 301 First Street, S.E., Washington, D.C. As political director, defendant Hurtado directs the political activities of the defendant Republican National Committee, including those of the National Ballot Security Task Force challenged in this Complaint.

9. Defendant Ronald C. Kaufman is the regional political director for the Republican National Committee for the region that includes New Jersey. He resides at 65 Linfield Street, Holbrook, Massachusetts. Defendant Kaufman's principal place of business is 301 First Street, S.E., Washington, D.C. As regional political director, defendant Kaufman supervised the activities of the National Ballot Security Task Force in New Jersey.

10. Defendant John A. Kelly is employed by the defendant Republican National Committee and was the director of the activities of the National Ballot Security Task Force in New Jersey. Defendant Kelly resides at 3645 Kanawha Street, N.W., Washington, D.C. Defendant Kelly was deputized as a Deputy

Sheriff in the State of New Jersey to assist him in his activities in connection with the National Ballot Security Task Force which are challenged in this Complaint.

11. Defendant New Jersey Republican State Committee is an unincorporated association organized under the laws of the State of New Jersey in accordance with N.J.S.A. 19:5-4. Its principal place of business is 28 West State Street, Trenton, New Jersey. The defendant New Jersey Republican State Committee actively participated through its officers, employees, and agents in the activities of the National Ballot Security Task Force in New Jersey.

RELEVANT STATE STATUTORY AND
CONSTITUTIONAL PROVISIONS AND PRACTICES

12. Under New Jersey law, citizens of the United States who are eighteen years of age and who will have resided in New Jersey for 30 days before an election are entitled to register to vote, unless they are mentally impaired, convicted of a violation of the New Jersey Election Code, Title 19 N.J.S.A., or serving a sentence or on parole or probation for commission of a state or federal crime. N.J.S.A. 19:4-1. Once registered, voters are entitled to cast their ballot. This is the case even if at any time they have moved within the same election district, or if they have moved within their county subsequent to the closing of the registration rolls. N.J.S.A. 19:31-11.

13. The supervisors of elections in New Jersey follow a specifically prescribed procedure prior to each election to prevent ineligible voters from casting a ballot without interfering with the right to vote of those eligible to do so. A sample ballot, which is requested not to be forwarded but instead returned to the sender if not delivered, is sent to each

registered voter at the address listed on his registration. Thereafter, a first class letter is sent to all voters whose sample ballots are returned, informing them that the sample ballot was returned, inquiring what their present address is, and requesting that they fill out a change of address card if they have moved.

14. Those persons who move to another address in the same district may simply file a change of address and are not prevented from voting. Voters who do not respond to the inquiry described in paragraph 13 above are put on the superintendent's challenge list, and poll workers are instructed to challenge such voters if they appear to vote on election day. A voter who does so appear and is challenged will be permitted to vote in accordance with N.J.S.A. 19:31-11 if he signs an affidavit asserting that he still resides at the same address, that he resides at a new address in the same district, or that he has moved to an address within the county since the close of registration. Otherwise, he will not be permitted to vote.

15. Voters who are placed on the superintendent's challenge list, and who do not appear at the polls, are dropped from the current registration rolls after notice in accordance with N.J.S.A. 19:32-39.

16. The procedures for purging and challenging voters described in paragraphs 13 through 15 above were followed prior to the 1981 general election by the supervisors of election in the areas in which the defendants engaged in the activities complained of in this pleading.

17. In addition to the procedures described in paragraphs 13 through 15 above to prevent fraudulent voting, the New Jersey statutes provide for a method of challenging

unqualified voters at the polls. Challenges to voters at the polls on election day may be made by appointed challengers, candidates and district election board members. N.J.S.A. 19:7-1, 7-2, 15-8. Two challengers in each district may be appointed from each political party appointed by the candidate. Challengers must be registered voters in the county, and must be appointed no later than the Tuesday before the election, N.J.S.A. 19:7-3.

18. Permits to act as challengers, and badges for the challengers, are then issued by the county board of elections to persons appointed as challengers, N.J.S.A. 19:7-4 and 7-6.

19. No more than one (1) challenger from each party may be present at any polling place, unless given express permission by the district board of election. N.J.S.A. 19:7-6.1.

20. Challengers when in a polling place must display their badges at all times which shall show on whose behalf the challenger is acting. N.J.S.A. 19:7-6.

OPERATIVE FACTS

21. The defendants did not resort to the carefully prescribed procedures described in paragraphs 13-20 above for insuring that only qualified voters cast a ballot in the November 3, 1981 general election in New Jersey. Instead, they engaged in an extra-legal activity which has been employed by defendant Republican National Committee for a number of years, under the guise of ballot security, to harass and intimidate duly qualified black and Hispanic voters for the purpose and with the effect of discouraging these voters from casting their ballots in federal and state elections. In the November, 1981 general election in New Jersey, the operation was conducted under the name "National Ballot Security Task Force."

22. As part of their activities described in paragraph 21, the defendants selected predominantly black and Hispanic precincts in New Jersey for the activities of the National Ballot Security Task Force.

23. As part of their efforts to disenfranchise black and Hispanic voters in New Jersey under the guise of the National Ballot Security Task Force, the defendants in September of 1981 mailed letters to those persons appearing on outdated voter registration lists who resided in predominantly black or Hispanic districts in New Jersey. The envelopes for those letters requested that they not be forwarded if not delivered at the original address, but instead returned to the sender. The defendants received back in excess of 45,000 letters from the mailings that were not forwarded, which they then converted into challenge lists. At the end of October, 1981, less than two weeks before the election, representatives of the defendant Republican committees delivered these challenge lists to the various Commissioners of Registration and requested that the persons on the lists be removed from the voter registration rolls.

24. After receipt of the challenge lists described in paragraph 23 above from the defendants' representatives, the Commissioners of Registration checked the lists. They discovered that the lists had been based upon outdated voter registration rolls. The persons on the challenge lists, in fact, had either already been purged from the rolls, re-registered to vote, or transferred their registration to a new address. The appropriate election officials then notified defendants' representatives that they had used outdated voter registration lists for mailing and refused to purge the properly registered voters remaining on the registration rolls.

25. Although defendants had been informed that they had used out of date registration lists, and that many of the persons appearing on these challenge lists had registered or were otherwise qualified to vote, the defendants persisted in their efforts to prevent these properly registered black and Hispanic voters from casting their ballots in the general election held in New Jersey on November 3, 1981. Defendants Republican National Committee and New Jersey State Republican Committee first publicly announced on or about October 26, 1981 through the news media their plans to attempt to disqualify these duly registered black and Hispanic voters from voting in the New Jersey general election held on November 3, 1981.

26. To assist in their effort to disenfranchise duly registered black and Hispanic voters, the defendants then hired county deputy sheriffs and local policemen to patrol the targeted predominantly black and Hispanic polling places. Defendant Kelly himself was deputized as a deputy sheriff to further defendants' efforts. Officials of local police agencies assisted in recruiting county deputy sheriffs and local policemen for this purpose.

27. On Tuesday, November 3, 1981, defendants' representatives placed posters in and around polling places for predominantly black and Hispanic precincts in New Jersey. These posters measured approximately 20" x 30". The print was in bright red ink with some letters 5" tall. The poster was headed:

WARNING

THIS AREA IS BEING PATROLLED BY THE

NATIONAL BALLOT

SECURITY TASK FORCE

IT IS A CRIME TO FALSIFY A BALLOT OR

TO VIOLATE ELECTION LAWS.

It offered a reward of $1,000 for information leading to the arrest and conviction of anyone violating the New Jersey election laws, and contained a toll-free long-distance number to be called. Nowhere did the poster indicate that it was a partisan political document of the defendants. The posters were displayed within the targeted polling places and within 100 feet of the exterior entrance to said polling places in violation of state law, N.J.S.A. 19:34-15.

28. The defendants then fielded an army of workers on election day, including the deputy sheriffs and local policemen described in paragraph 26 above, to appear at the targeted polling places prominantly displaying revolvers, two-way radios, and armbands, with the words "National Ballot Security Task Force" printed thereon.

29. Through the actions of the National Ballot Security Task Force including the police officers described in paragraph 26 above, which operated under defendants' direction and control and pursuant to policies and procedures which they had established, defendants obstructed and interfered with the operations of the targeted polling places in predominantly black and Hispanic precincts in a number of ways, including, but not limited to, disrupting the operations of polling places, harassing poll workers, stopping and questioning prospective voters, refusing to permit prospective voters to enter the polling places, ripping down signs of one of the candidates, and forcibly restraining poll workers from assisting, as permitted by state law, voters to cast their ballots.

30. The defendants' actions and those of their employees and agents as described in paragraphs 21-29 above were undertaken under color of state law and constitute state action.

31. The defendants' actions as described in paragraphs 21-30 above were restricted to predominantly black and Hispanic precincts in New Jersey.

32. The actions and conduct of defendants as described in paragraphs 21-31 above were part of a conspiracy by defendants designed to intimidate, harass, and coerce black and Hispanic voters not to vote, and were undertaken with the intent to deprive blacks and Hispanics in the State of New Jersey of their rights to equal protection of the laws and their right to vote.

33. The actions and conduct of defendants as described in paragraphs 21-32 above have had the effect of intimidating, harassing, and coercing duly qualified black and Hispanic voters in the state of New Jersey, including plaintiffs Feggins, Monroe, and other members of plaintiff Democratic Party, in attempting to exercise their right to vote and to participate in the political process. Defendants' conduct has actually deprived plaintiffs Monroe and other members of plaintiff Democratic Party of their right to vote. Plaintiffs Feggins, Monroe, and other members of plaintiff Democratic Party have also suffered psychological and emotional pain, anguish and frustration as a result of defendants' conduct.

34. The defendants will continue to engage in the actions described in paragraphs 21-33 above across the country unless restrained from doing so by this Court.

FIRST CAUSE OF ACTION

35. Paragraphs 1 through 34 of this Complaint are incorporated herein by reference.

36. The actions of defendants described in paragraphs 1 through 34 above violate the Fourteenth and Fifteenth

Amendments to the Constitution, which protect the right to vote from discrimination on account of race and guarantee to all persons equal protection of the laws.

SECOND CAUSE OF ACTION

37. Paragraphs 1 through 34 of this Complaint are incorporated herein by reference.

38. The actions of defendants described in paragraphs 1 through 34 above violate 42 U.S.C. § 1973i(b), which prohibits any person, whether or not acting under color of law, from acting to intimidate, threaten or coerce, or from attempting to intimidate, threaten, or coerce any person from voting or attempting to vote or from urging or aiding any person to vote or attempt to vote.

THIRD CAUSE OF ACTION

39. Paragraphs 1 through 34 of this Complaint are incorporated herein by reference.

40. The actions of defendants described in paragraphs 21 through 34 above violate 42 U.S.C. §§ 1971(a)(1) and 1971(a)(2), which protect the right to vote from discrimination based on race by persons acting under color of law.

FOURTH CAUSE OF ACTION

41. Paragraphs 1 through 40 of this Complaint are incorporated herein by reference.

42. The actions of defendants described in paragraphs 21 through 40 above violate 42 U.S.C. § 1983, which prohibits persons acting under color of state law from depriving persons of rights protected by the Constitution and civil rights statutes including 42 U.S.C. §§ 1971 and 1973i.

FIFTH CAUSE OF ACTION

43. Paragraphs 1 through 42 of this Complaint are incorporated herein by reference.

44. The actions of defendants described in paragraphs 21 through 42 above violate 42 U.S.C. § 1985(3), which prohibits two or more persons, whether or not acting under color of state law, from acting jointly to deprive any person or class of persons of equal protection of the laws.

IRREPARABLE INJURY

45. As a direct consequence of defendants' actions as described in paragraphs 21 through 44 above, plaintiffs have and will continue to suffer immediate and irreparable injury. The ability of plaintiffs Democratic National Committee and Democratic Party and New Jersey State Democratic Committee and their members to achieve their purposes and to protect the interests set forth in paragraph 3 of this Complaint has been and will be impaired by the violations of law charged in this Complaint. The ability of the members of plaintiffs Democratic National Committee, Democratic Party, and New Jersey State Democratic Committee to participate in the federal electoral process as candidates, campaign workers, contributors of lawful amounts to candidates and political committees, and voters is substantially impaired by defendants' actions.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

46. Declare that defendants' actions as described in paragraphs 21 through 34 above abridge and deny the Fourteenth and Fifteenth Amendment rights and statutory rights (42 U.S.C. §§ 1971(a)(1), 1971(a)(2), and 1983) of plaintiffs and their

members by invidiously discriminating on the basis of race in the electoral process.

47. Declare that the defendants' actions as described in paragraphs 21 through 34 above abridge and deny the plaintiffs' statutory rights protected by 42 U.S.C. §§ 1973i(b) and 1985(3).

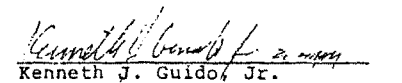
48. Issue preliminary and permanent injunctions enjoining the defendants from committing actions similar to those described in paragraphs 21 through 34 of this Complaint in the future.

49. Award the plaintiffs $10,000,000 in compensatory and punitive damages for the deprivation of the right to vote and to equal protection of the laws caused by the unlawful and unconstitutional actions described in paragraphs 21 through 34 of this Complaint.

50. Award the plaintiffs their attorneys' fees and costs and disbursements incurred in this action, as provided in 28 U.S.C. § 1920 and 42 U.S.C. § 1988.

51. Grant to plaintiffs and against defendants such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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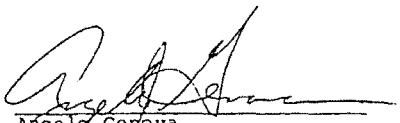

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Of Counsel:

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

DEMOCRATIC NATIONAL COMMITTEE and DEMOCRATIC PARTY OF THE UNITED STATES 1625 Massachusetts Avenue, N.W. Washington, D.C.	Honorable Dickinson R. Debevoise, USDJ
NEW JERSEY DEMOCRATIC STATE COMMITTEE 329 West State Street Trenton, New Jersey	Civil Action No. 81-3876
VIRGINIA L. FEGGINS 12 Faircrest Avenue Trenton, New Jersey	
LYNETTE MONROE 699 Rutherford Avenue Trenton, New Jersey	AMENDMENT TO AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES
Plaintiffs,	
v.	
REPUBLICAN NATIONAL COMMITTEE 301 First Street, S.E. Washington, D.C.	
NEW JERSEY REPUBLICAN STATE COMMITTEE 28 West State Street Trenton, New Jersey	
ALEX HURTADO 301 First Street, S.E. Washington, D.C.	
JOHN A. KELLY 3645 Kanawha Street, N.W. Washington, D.C.	
Defendants.	

ORIGINAL FILED
MAR 15 1982
ANGELO W. LOCASCIO, CLERK

Plaintiffs, by their attorneys, Baumgart & Genova, and Sonosky, Chambers, Sachse & Guido, having been ordered by the Court to file an amendment to their Complaint, and having been granted leave to do so, hereby amend their Complaint, and their Amended Complaint by striking thereform any and all demands for money damages which specify a fixed amount therefor, by substituting in paragraph (1) one, subsection (2) two of the Complaint the following:

(2) award the plaintiffs compensatory and punitive money damages for the unlawful interference with the right to vote.

and by substituting into paragraph (42) forty-two of the Complaint, the following:

(42) Award the plaintiffs compensatory and punitive money damages for the deprivation of the right to vote by the unlawful and unconstitutional actions described in paragraphs 20 through 32 of this Complaint.

and by substituting into paragraph (49) forty-nine of the Amended Complaint, the following:

(49) Award the plaintiffs compensatory and punitive money damages for the deprivation of the right to vote and to equal protection of the laws caused by the unlawful and unconstitutional action described in paragraphs 21 thorugh 34 of this Complaint.

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Of Counsel:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DEMOCRATIC NATIONAL COMMITTEE, NEW JERSEY DEMOCRATIC STATE COMMITTEE, VIRGINIA L. FEGGINS, and LYNETTE MONROE, Plaintiffs, v. REPUBLICAN NATIONAL COMMITTEE, NEW JERSEY REPUBLICAN STATE COMMITTEE, ALEX HURTADO, RONALD C. KAUFMAN and JOHN A. KELLY, Defendants.	Civil Action No. 81-3576 Hon. Dickinson R. Debevoise

FILED
NOV 1 1982
at 5:00
WILLIAM T. WALSH
Clerk

CONSENT ORDER

This matter having been brought before the Court by Plaintiffs Democratic National Committee ("DNC"), New Jersey Democratic State Committee ("DSC"), Virginia L. Feggins and Lynette Monroe, and by Defendants Republican National Committee ("RNC"), New Jersey Republican State Committee ("RSC"), John A. Kelly, Ronald Kaufman and Alex Hurtado, for the entry of a Consent Order disposing of all claims which have been raised and which could have been raised by way of complaint, counterclaim or crossclaim in the above-entitled matter, and the parties having consented to the entry of this order, and the Court having found good cause, it is on this 1st day of November, 1982,

ORDERED that the annexed settlement agreement between certain plaintiffs and certain defendants, without any finding by this Court of, and without any admission of, liability or wrongdoing by them or by any other person or entity be, and the same hereby is adopted by this Court as its final order in the above-entitled matter; and it is

FURTHER ORDERED that, as a result of the amicable resolution of this matter, Plaintiffs' Amended Complaint be, and the same hereby is, dismissed with prejudice and without costs as against all named Defendants.

Dickinson R. Debevoise, U.S.D.J.

Oct. 14. 2004 11:24AM

CONSENT AS TO FORM AND ENTRY:

SONOSKY, CHAMBERS, SACHSE & GUIDO

By: _____
Kenneth Guido, Jr.

BAUMGART & GENOVA

By: _____
Angelo J. Genova

Attorneys for Plaintiffs

SHANLEY & FISHER

By: _____
Thomas F. Caupion
Attorneys for Defendants
Alex Hurtado and Ronald C. Kaufman

STERNS, HERBERT & WEINROTH

By: _____
Richard K. Weinroth
Attorneys for Defendant
Republican National Committee

STRYKER, TAMS & DILL

By: _____
William J. Heller
Attorneys for Defendant
New Jersey Republican State Committee

JOHN J. BARRY, ESQ.

_____
Attorney for Defendant
John A. Kelly

_____
Philip D. Kaltenbacher
Chairman, Republican State Committee

Oct. 14. 2004 11:24AM

SETTLEMENT AGREEMENT

WHEREAS, the Democratic National Committee ("DNC"), New Jersey Democratic State Committee ("DSC"), Virginia L. Feggins and Lynette Monroe, Plaintiffs, have instituted an action in the United States District Court for the District of New Jersey, Civil Action No. 81-3876, against the Republican National Committee ("RNC"), New Jersey Republican State Committee ("RSC"), John A. Kelly, Ronald Kaufman and Alex Hurtado, Defendants; and

WHEREAS, the parties wish to resolve amicably all matters raised or which could have been raised in the pleadings in the above-entitled matter,

NOW THEREFORE, in consideration of the foregoing, in consideration of the mutual covenants and conditions herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. The undersigned plaintiffs agree to consent to the entry of an order dismissing their Amended Complaint against all Defendants, without costs, with all parties bearing their own attorneys' fees.

2. The RNC and RSC (hereinafter collectively referred to as the "party committees") agree that they will in the future, in all states and territories of the United States:

(a) comply with all applicable state and federal laws protecting the rights of duly qualified citizens to vote for the candidate(s) of their choice;

(b) in the event that they produce or place any signs which are part of ballot security activities, cause said signs to disclose that they are authorized or sponsored by the party committees and any other committees participating with the party committees;

(c) refrain from giving any directions to or permitting their agents or employees to remove or deface any lawfully printed and placed campaign materials or signs;

(d) refrain from giving any directions to or permitting their employees to campaign within restricted polling areas or to interrogate prospective voters as to their qualifications to vote prior to their entry to a polling place;

(e) refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities

is to deter qualified voters from voting; and the conduct of such activities disproportionately in or directed toward districts that have a substantial proportion of racial or ethnic populations shall be considered relevant evidence of the existence of such a factor and purpose;

(f) refrain from attiring or equipping agents, employees or other persons or permitting their agents or employees to be attired or equipped in a manner which creates the appearance that the individuals are performing official or governmental functions, including, but not limited to, refraining from wearing public or private law enforcement or security guard uniforms, using armbands, or carrying or displaying guns or badges except as required by law or regulation, in connection with any ballot security activities; and

(g) refrain from having private personnel deputized as law enforcement personnel in connection with ballot security activities.

3. The party committees agree that they shall, as a first resort, use established statutory procedures for challenging unqualified voters.

4. This Settlement Agreement, and the terms of the Consent Order to be entered pursuant thereto, shall bind the DNC, DSC, RNC, and RSC, their agents, servants and employees, whether acting directly or indirectly through other party committees. It is expressly understood and agreed that the RNC and the RSC have no present right of control over other state party committees, county committees, or other national, state and local political organizations of the same party, and their agents, servants and employees.

5. The parties to this Settlement Agreement shall ask that the New Jersey legislature institute an examination of the provisions of the New Jersey Election Laws to determine whether present laws are adequate to insure the integrity of the electoral process and the physical security of poll workers and their property in New Jersey.

6. All parties agree that they shall bear their own costs and attorneys' fees and further agree that they shall not seek to recover same in any action or proceeding instituted after the execution of this Settlement Agreement and the Consent Decree to be entered pursuant thereto. No party to this Agreement shall undertake any further legal action arising out of events surrounding the November 1981 general election in the State of New Jersey or arising out of the filing of this lawsuit, except as specified in paragraph 7 below.

7. The undersigned Plaintiffs, as Releasors, for and in consideration of the mutual covenants and conditions hereof, and in further consideration of the sum of One Dollar ($1.00), lawful money of the United States of America to the Releasors in hand paid by all Defendants, the receipt of which is hereby acknowledged, have remised, released and forever discharged, and by these presents do remise, release and forever discharge the Defendants-Releasees of and from all obligations, causes of action, claims or demands, at law or in equity, which arose out of ballot security activities during the 1981 general election in New Jersey that Releasors asserted or could have asserted against the Releasees in Civil Action No. 81-3876 in the United States District Court for the District of New Jersey, provided that nothing in this agreement shall prevent plaintiffs from seeking relief, at law or equity, for a violation of the terms of this settlement agreement or the related consent order incorporating the terms hereof. More particularly, but not by way of limitation, the undersigned plaintiffs expressly agree to abandon and to waive all claims to monetary relief asserted or which could have been asserted against the defendants.

8. It is expressly understood and agreed that this Settlement Agreement, and the Consent Order incorporating the terms hereof, do not constitute any finding or admission of liability or wrongdoing by any defendant and do not constitute any finding or admission of merit or lack of merit to the allegations raised by the plaintiffs. This agreement is not an admission that any of the activities which the party committees have agreed not to undertake were undertaken by any of the party committees or by any party to this lawsuit or by any other person or entity. This agreement is not an admission of civil or criminal liability or responsibility on the part of any participant in it.

DRS Dated November 1, 1982.

DEMOCRATIC NATIONAL COMMITTEE

By _____

By _____

REPUBLICAN NATIONAL COMMITTEE

By _____

NEW JERSEY DEMOCRATIC STATE COMMITTEE

By _____

NEW JERSEY REPUBLICAN STATE COMMITTEE

By _____

Philip D. Kaltenbacher
Chairman, Republican
State Committee

EXHIBIT 4

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Attorneys for Defendant
REPUBLICAN NATIONAL COMMITTEE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DEMOCRATIC NATIONAL COMMITTEE,

Plaintiff,

v.

REPUBLICAN NATIONAL COMMITTEE,

Defendant.

Hon. Dickinson R. Debevoise
Civil Action No. 86-3972

STIPULATION

FILED
OCT 20 1986
At 8:30 ... A.M.
WILLIAM T. WALSH
CLERK

WHEREAS, the Republican National Committee ("RNC") contends that it has completed a ballot security direct-mail program which it contends has been conducted in full compliance with all applicable state and federal voting rights laws and with the terms of a November 1982 consent order in this Court; and

WHEREAS, the Democratic National Committee has filed this action challenging said program, contending that the program

Oct. 14. 2004 11:17AM

violates state and federal voting rights laws and the terms of said consent order and that the RNC plans to continue the program and to use the results of the program in the November 1986 election.

NOW, THEREFORE, the parties by counsel hereby stipulate as follows:

1. That the RNC, its agents, employees and parties acting in active concert will not conduct a direct-mail campaign in the future directed at names appearing on voter registration lists in order: (1) to use the letters returned undelivered to compile voter challenge lists; (2) to make such challenges; or (3) to deter registered persons from voting;

2. That the RNC, its agents, employees and parties acting in active concert, will not use the results of any direct-mail campaign directed at names appearing on voter registration lists previously conducted by the RNC, its agents, employees and parties acting in active concert in order: (1) to use the letters returned undelivered to compile voter challenge lists; (2) to make such challenges; or (3) to deter registered persons from voting;

3. That the RNC, its agents, employees and parties acting in active concert, will not give any letters returned undelivered to it under circumstances set forth in numbered paragraph 2 above to any person except as required by law or to the Federal Bureau of Investigation or by order of Court;

4. That this stipulation shall have no effect with respect to any actions brought by third parties against any of the parties hereto;

Oct.14. 2004 11:18AM

5. That this stipulation shall be effective as of the date of filing with the Court and shall be effective until the first to occur of March 1, 1987 or further order of the Court.

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REPUBLICAN NATIONAL COMMITTEE

7-29-87
BC

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ORIGINAL FILED

DEMOCRATIC NATIONAL COMMITTEE,

Plaintiff,

v.

REPUBLICAN NATIONAL COMMITTEE,

Defendant.

Hon. Dickinson R. Debevoise
Civil Action No. 86-3972

SETTLEMENT STIPULATION AND ORDER OF DISMISSAL

Whereas, on November 1, 1982, this Court entered a Consent Order in Democratic National Committee, et al. v. Republican National Committee, et al., Civil Action No. 81-3876 ("Consent Order"). The Democratic National Committee ("DNC"), Republican National Committee ("RNC") and others were parties to the settlement agreement incorporated in and adopted as the Consent Order. The Consent Order remains in full force and effect;

Whereas, during the course of the case, the parties have engaged in extensive discovery from each other and third parties. More than 50 depositions have been taken and thousands of documents have been examined;

Whereas, the RNC and DNC recognize the importance of encouraging citizens to register and vote and the importance of not hindering or discouraging qualified voters from exercising their right to vote;

Whereas, the RNC and DNC recognize the importance of preventing and remedying vote fraud where it exists;

Whereas, the RNC and DNC recognize the importance of neither using, nor appearing to use, racial or ethnic criteria in

connection with ballot integrity, ballot security or other efforts to prevent or remedy suspected vote fraud;

It is therefore ordered upon the agreement and stipulation of the parties and all prior proceedings herein that as to the RNC and DNC the Consent Order is amended to specifically provide:

A. "Ballot security" efforts shall mean ballot integrity, ballot security or other efforts to prevent or remedy vote fraud.

B. To the extent permitted by law and the November 1, 1982 Consent Order, the RNC may deploy persons on election day to perform normal poll watch functions so long as such persons do not use or implement the results of any other ballot security effort, unless the other ballot security effort complies with the provisions of the Consent Order and applicable law and has been so determined by this Court.

C. Except as provided in paragraph B above, the RNC shall not engage in, and shall not assist or participate in, any ballot security program unless the program (including the method and timing of any challenges resulting from the program) has been determined by this Court to comply with the provisions of the Consent Order and applicable law. Applications by the RNC for determination of ballot security programs by the Court shall be made following 20 days notice to the DNC which notice shall include a description of the program to be undertaken, the purpose(s) to be served, and the reasons why the program complies with the Consent Order and applicable law.

Until further order of the Court, the Court retains jurisdiction to make the determinations set forth above.

Except as provided herein, the RNC and DNC respectfully request that the above-captioned case be dismissed with prejudice upon the order of the Court with each to pay its own costs.

IT IS SO STIPULATED:

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Attorneys for Defendant
Republican National Committee

AND IT IS SO ORDERED this 27 day of July, 1987.

s/ Debevoise
Dickinson R. Debevoise, U.S.D.J.

EXHIBIT 5

Report
OF
PROFESSOR PHILIP A. KLINKNER

1. My name is Philip A. Klinkner and I am currently the James S. Sherman Associate Professor of Government at Hamilton College in Clinton, NY. I received my Ph.D. in Political Science from Yale University in 1992. My research focuses on American politics, including party and electoral politics, voting behavior, and race and American politics. This research also involves statistical analyses of race and electoral data.

I. Hamilton County, Ohio

My analysis is based on the following data for each voting location in Hamilton County, Ohio: total number of voters, total number of new voters, racial breakdown of the voting age population (VAP), and the presence (or not) of a Republican pollwatcher.

My analysis found a strong and statistically significant relationship between the allocation of Republican pollwatchers and the racial composition of a voting location. The black portion of the VAP averages 20% across all voting locations in the county. In those voting locations that are covered by Republican pollwatchers, the average is 29%. In those without a Republican pollwatcher, the average is 6%.

As Table 1 shows, the percentage of voting locations covered by Republican pollwatchers increases significantly with the percentage of the VAP that is black. In fact, nearly all majority black precincts have been assigned a Republican pollwatcher.

Table 1.

Percent of VAP that is Black	Percent of Voting Locations with a Republican Pollwatcher	n
0-9.9%	50%	619
10-19.9%	48%	83
20-29.9%	65%	54
30-39.9%	79%	47
40-49.9%	84%	31
50-59.9%	95%	39
60-69.9%	96%	26
70-79.9%	100%	26
80-89.9%	100%	33

90-100%	100%	55

Overall, 55% of VAP whites and 62% of VAP Hispanics live in voting locations covered by Republican pollwatchers. This compares to 89% of VAP blacks who are covered by Republican poll watchers.

To examine this relationship more precisely, I conducted a probit analysis. I used probit analysis instead of the more common regression analysis since the dependent variable (whether a precinct has a Republican pollwatcher or not) is dichotomous (coded as 0 or 1) and not continuous as is required for regression analysis. The probit results are in Table 2. Furthermore, since not all voting locations are the same size, I weighted the equation by the number of voters in the voting locations. By controlling for the size of the voting location, we ensure that the results are not influenced by extreme results in a number of small voting locations.

Table 2:

	Coefficient	Standard Errorr	P>|z|
Percentage of the VAP that is Black	2.8	.27	.00
Constant	-.09	. 05	.07

The results in Table 2 indicate that the relationship between the percentage of the VAP that is black and and Republican pollwatcher coverage is positive and statistically significant. In fact, these results show that less 1 time in 1000 will these results be due to random chance, far below the usual standard in social science of 5 times in 100. Furthermore, this model predicts 61 percent of cases accurately. In other words, just knowing the percentage VAP that is black for a voting location will allow you to accurately predict more than 60% of the time whether it has a Republican pollwatcher

Since probit coefficients are often difficult to interpret, I then converted these coefficients into probabilities as shown in Table 3.

Table 3.

Percent of VAP that is Black	Estimated Probability of Having Republican Pollwatcher
0%	.46
10%	.57
20%	.68

30%	.77
40%	.85
50%	.90
60%	.94
70%	.97
80%	.98
90%	.99
100%	1.0

Table 3, like Table 1, shows that the Republican pollwatchers are substantially more likely to be found in heavily black voting locations.

Nor are these results explainable by the percentage of new voters in heavily black precincts. Overall, 68% of new voters are in voting locations with Republican poll watchers, substantially less than the 89% of blacks in such locations. Furthermore, as Table 4 shows, new voters in majority black voting locations are much more likely to be covered by a Republican poll watcher than new voters in minority black voting locations. In fact, nearly every new voter in majority black voting locations are likely to be covered by a Republican poll watcher, compared to less than 6 out of every 10 in minority black voting locations.

Table 4

		Minority Black Voting Location		Majority Black Voting Location	
		#	%	#	%
# of New Voters	Covered By a Republican Pollwatcher	35641	58%	20092	99%
	Not Covered By a Republican Poll Watcher	25511	42%	268	1%

This relationship between Republican pollwatcher allocations and the race and size of precinct is problematic since it suggest that Republicans have chosen to allocate their pollwatchers on a racial basis—i.e. by targeting heavily black precincts. As result of this pattern of allocation, black registrants are significantly more likely than whites to be in a precinct with a Republican pollwatcher.

II. Miami-Dade County, Florida

My analysis is based on the following data for each precinct in Miami-Dade County, Florrida: total number of voters, total number of new voters, racial breakdown of the voters, and the number of Republican pollwatchers.

My analysis shows a clear relationship between the presence of Republican pollwatchers with the race and size of a precinct. As Table 5 shows, Republican pollwatchers are much more prevalent in large and heavily African-American precincts

Table 5.

		Precinct Has More than 1200 Registered voters and More than 85% of Registered Voters Are African American	
		Yes	No
Republican Pollwatcher Assigned to Precinct?	Yes	84.38% (n=27)	54.61 (n=409)
	No	15.62 (n=5)	45.39 (n=340)

3. Table 5 demonstrates that Republican poll watchers are 30 percentage points more likely to be assigned to large and heavily African American precincts than to other precincts.

4. To examine this relationship further, I conducted a probit analysis. I used probit analysis instead of the more common regression analysis since the dependent variable (whether a precinct has a Republican pollwatcher or not) is dichotomous (coded as 0 or 1) and not continuous as is required for regression analysis. The probit results are in Table 6.

Table 6:

	Coefficient	Standard Errorr	P>|z|
Large Heavily African American Precinct	.90	.27	.00
Constant	.12	. 05	.01

5. The results in Table 6 indicate that the relationship between large and heavily African American precincts and Republican poll watcher coverage is positive and statistically significant. In fact, these results show that less one time in 1000 will these results be due to random chance. Since probit coefficients are often difficult to interpret, I then converted these coefficients into probabilities as shown in Table 7.

Table 7.

		Precinct Has More than 1200 Registered voters and More than 85% of Registered voters Are African American	
		Yes	No
Republican Pollwatcher Assigned to Precinct?	Probability of Yes	.83	.55
	Probability of No	.17	.45

6. Like Table 5, Table 7 demonstrates that the probability of a Republican poll watcher being assigned to a precinct is significantly greater in large and heavily African American precincts.

7. This relationship between Republican poll watcher allocations and the race and size of precinct suggests that Republicans have targeted large, heavily African American precincts for the assignment of poll watchers.

8. My analysis also reveals that this pattern of poll watcher assignments results in African American registered voters being significantly more likely than whites to vote in a precinct with a Republican poll watcher (see Table 8).

Table 8.

	Registered voters in Precincts with Republican Pollwatchers	All Registered voters	% in Republican Watched Precincts
African	170607	235381	72.5

Americans			
Whites	203686	321985	63.3

9. These results, illustrated in Tables 4-8, can not be attributed to the presence of new voters in these precincts. As Table 9 shows, there is no difference in the percent of new voters between large and heavily African American precincts and other precincts.

Table 9.

	Precinct Has More than 1200 Registered voters and More than 85% of Registered voters Are African American	
	Yes	No
Average Percentage of New Voters	24.1%	25.9%

Dated: 10/25/04

Signature

EXHIBIT 6

THE APPOINTMENT, RIGHTS AND DUTIES OF ELECTION CHALLENGERS AND POLL WATCHERS

Michigan Department of State
Bureau of Elections
September, 2003

www.Michigan.gov/sos

The Appointment, Rights and Duties of Election Challengers and Poll Watchers

Allowances are made in law to permit "election challengers" and "poll watchers" to monitor the election process as a protective safeguard against election fraud. Challengers, appointed by political parties and qualified groups and organizations, enjoy special rights and privileges. While poll watchers are not extended the same rights and privileges, there is no appointment process associated with the placement of poll watchers in the polls or absent voter counting boards.

This publication is intended as a summary of the laws and rulings which govern election challengers and poll watchers; it is not intended as a complete interpretation of the law. Questions may be directed to the Michigan Department of State, Bureau of Elections, P.O. Box 20126, Lansing, Michigan 48901. Phone: (517) 373-2540. Fax: (517) 241-4785.

ELECTION CHALLENGERS

Election challengers may be appointed by:

- A state-recognized political party.
- An incorporated organization.
- An organized group of citizens interested in the adoption or defeat of a proposal on the ballot.
- An organized group of citizens interested in preserving the purity of elections and in guarding against the abuse of the elective franchise.

It merits note that a candidate does *not* have the authority to appoint challengers. Similarly, a Candidate Committee registered under Michigan's Campaign Finance Act or any other type of organization expressly formed to support or oppose a candidate does *not* have the authority to appoint challengers.

Election challengers have the right to:

- Observe the election process in voting precincts and absent voter counting board precincts.
- Challenge a person's right to vote if the challenger has *good reason to believe* that the person is not eligible to vote in the precinct.
- Challenge the actions of the election inspectors serving in the precinct if the challenger believes that election law is not being followed.

GENERAL INFORMATION

- A challenger must be a registered voter in the State of Michigan.
- A challenger may *not* be a candidate for any elective office in the election. (Exception: a candidate for precinct delegate may serve as a challenger in a precinct other than the precinct in which he or she is a candidate.)
- A person appointed as an election inspector at the election may not act as a challenger at any time throughout the course of the day.
- A challenger may be assigned to serve in any precinct or absent voter counting board established in the state. In addition, a challenger may be assigned to serve in any number of precincts.
- A political party, group or organization may not have more than *two* challengers present in a voting precinct or more than *one* challenger present in an absent voter counting board at any time throughout the course of the day.
- A political party, group or organization may rotate challengers assigned to a voting precinct; a challenger assigned to an absent voter counting board must remain in the room in which the absent voter counting board is working until the close of the polls (8:00 p.m.).
- All challengers must carry an identification card issued by the appointing political party, group or organization. The identification card must show the challenger's name; the name of the appointing political party, group or organization; and the precinct or precincts in which the challenger is authorized to serve. It is recommended that challengers wear an identification badge which bears the words "ELECTION CHALLENGER." Upon entering a precinct, the challenger must exhibit the identification card to the precinct chairperson.
- A challenger appointed to serve in an absent voter counting board is required to take and sign the following oath: "I (name) do solemnly swear (or affirm) that I shall not communicate in any way information relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed." The oath may be administered by any member of the absent voter counting board.

THE APPOINTMENT OF ELECTION CHALLENGERS

Political parties may appoint election challengers to serve at partisan and nonpartisan elections. The appointments may be made at any time through the date of the election. A political party is *not* required to follow an application process to appoint election challengers.

An incorporated organization, a group interested in the adoption or defeat of a proposal on the ballot or a group interested in preserving the purity of elections and in guarding against the abuse of the elective franchise may appoint election challengers if authorized to do so under an application process. To apply for appointment authorization, the organization or

group must file, *not less than 20 days nor more than 30 days prior to the election*, the two items listed below with the clerk of the county, city, township or village where the election will be held. (If a school election, the filing is made with the secretary of the school board.)

1.) A statement which sets forth the organization's or group's intention to appoint election challengers and the reason why the right to make the appointments is claimed. The statement must be signed under oath (notarized) by the chief presiding officer, secretary or any other officer of the group or organization.

2.) A copy of the identification card which will be carried by the challengers the group or organization appoints. The identification card must have entry spaces for the challenger's name, the group's or organization's name, the precinct or precincts in which the challenger is authorized to serve and the signature of a recognized officer of the group or organization.

APPOINTMENT AUTHORIZATION APPLICATIONS SUBMITTED BY GROUPS AND ORGANIZATIONS: PROCESSING STEPS

A clerk or school board secretary receiving a challenger appointment authorization application from an organization or group is required to approve or deny the request and notify the group or organization of the decision *within two business days*. A clerk or school board secretary has the authority to deny a challenger appointment authorization application if the group or organization fails to demonstrate that it is qualified to appoint challengers.

If the application is denied, the group or organization may appeal the decision to the Secretary of State *within two business days after the receipt of the denial*. Upon the receipt of an appeal, the Secretary of State is required to render a decision on the appeal and notify the organization or group of the decision *within two business days*. Notification of the decision is also forwarded to the clerk or school board secretary who issued the application denial.

Before the opening of the polls, the clerk or school board secretary is required to notify all precincts in the jurisdiction of the groups and organizations that have gained the right to appoint challengers at the election.

CONDUCT

- Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.

- Challenges may *not* be made indiscriminately or without good cause.

- A challenger is *not* permitted to campaign, distribute campaign literature or display any

campaign material (including campaign buttons) while in the polls.

- A challenger is expressly prohibited from threatening or intimidating voters entering the polling place, applying to vote, entering a voting station, voting or leaving the polling place.
- Those present in the polls (including all election inspectors and voters) are expressly prohibited from threatening or intimidating any challengers assigned to serve in the polling place.

RIGHTS OF CHALLENGERS

It is the duty of the precinct board to provide space for challengers which will enable them to observe all election procedures being carried out. In a voting precinct, challengers are permitted to position themselves behind the election inspectors' table. Challengers have the right to:

- Examine the voting equipment before the polls open and after the polls close.
- Observe each person offering to vote. (Challengers may *not* observe electors voting.)
- Observe the processing of voters.
- Bring to the precinct board's attention the improper handling of a ballot by a voter or an election inspector; that the 100 foot campaign restriction is being violated; or that any other election law or prescribed election procedure is being violated.
- Inspect the Applications to Vote, Poll Books, registration records and any other materials used to process voters at the polling place. (When exercising this right, challengers may *not* touch the Applications to Vote, Poll Books, registration records or other materials being used by the precinct board.)
- Inspect ballots (including absent voter ballots) as they are being counted. (When exercising this right, challengers may *not* touch the ballots.)
- Observe the recording of absent voter ballots on voting machines.
- Keep notes on the persons offering to vote, the election procedures being carried out and the actions of the precinct board.
- Remain in the precinct until the precinct board completes its work.

If two challengers are representing a political party, group or organization in the precinct, only *one* of the challengers may hold the authority to challenge at any give time. The challengers may alternate the authority to challenge at their discretion. The challengers must advise the precinct board each time the authority is alternated.

CHALLENGE PROCEDURE: "UNQUALIFIED VOTER"

If a challenger has *good reason to believe* that a person who offers to vote is not qualified to vote in the precinct, a challenge may be made immediately after the voter completes an Application to Vote. The challenge is directed to the chairperson of the precinct board. The chairperson of the precinct board or an election inspector designated by the chairperson is responsible for supervising the challenge to make sure that it is conducted promptly and courteously. The challenge proceeds as follows:

1.) After the challenge is made, the challenged person takes the oath printed below. The oath is administered by the chairperson of the precinct board or a designated election inspector.

"I swear (or affirm) that I will truly answer all questions put to me concerning my qualifications as a voter."

2.) After the oath has been administered, the precinct chairperson or a designated election inspector may question the challenged voter. Election law stipulates that the questions be confined to the person's qualifications as a voter (citizenship, age and residency).

3.) A challenged voter is permitted to vote a specially prepared "challenged ballot" if the answers given under oath prove that he or she is qualified to vote in the precinct. A challenged voter may *not* vote if he or she refuses to take the oath, refuses to answer appropriate questions under oath or is found to be not qualified to vote through the answers given under oath.

4.) A complete record of the challenge must be entered on the "CHALLENGED VOTERS" page in the Poll Book. The record must include a description of the election disparities or infractions complained of or believed to have occurred; the name of the person making the challenge; the time of the challenge; the name, address and telephone number of the person challenged; and any other pertinent information.

It merits emphasis that a challenger is not permitted to challenge a voter's right to vote unless the challenger has *good reason to believe* that the elector is not eligible to vote in the precinct.

Proper challenges: A challenge is proper if it is based on information obtained by the challenger through a reliable source or means. For example, the challenger has obtained information that a particular voter 1.) is not a true resident of the jurisdiction 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. A challenger should know the specific individuals he or she intends to challenge *before the polls open on election day.*

Improper challenges: A challenge is improper if it is *not* based on information obtained by the challenger through a reliable source or means. For example, a challenger does not have the right to issue a challenge based on an "impression" that the voter may not be eligible to vote in the

precinct due to the voter's manner of dress, inability to read or write English, perceived race or ethnic background or need for assistance with the voting process. Similarly, a challenger does not have the right to issue a challenge due to any physical or mental disability the voter may have or is perceived to have.

Every effort must be made to ensure that the challenge procedures are properly carried out in the polls as the abuse of the process can have serious consequences including the disenfranchisement of qualified electors, criminal violations and legal challenges over the election results. The precinct chairperson has the authority to expel challengers who abuse the challenge process.

CHALLENGE PROCEDURE: ABSENTEE VOTER AT POLLS

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. If such a challenge is issued, the precinct inspector handling the challenge permits the voter to vote a specially prepared "challenged ballot" and enters a complete record of the challenge on the "CHALLENGED VOTERS" page in the Poll Book; the questioning of the voter is not required. (Note: A voter issued an absentee ballot who appears at the polls to vote on election day claiming that he or she never received an absentee ballot, lost his or her absentee ballot or destroyed his or her absentee ballot is required to sign an affidavit to that effect before voting in person. This requirement applies regardless of whether the voter is challenged.)

THE PREPARATION AND ISSUANCE OF CHALLENGED BALLOTS

A challenged voter must vote on a paper, punch card or optical scan ballot prepared as explained below; challenged voters are *not* permitted to vote on a voting machine or a direct recording electronic device as votes cast on such voting equipment cannot be retrieved at a later date if necessary.

- The election inspector handling the challenge writes the number appearing on the voter's ballot in pencil on the back of the ballot. If a punch card ballot is used, the number appearing on the voter's ballot is written in pencil on the secrecy envelope.
- After the ballot number is recorded in pencil on the ballot, the number is concealed with a slip of paper. The use of transparent tape and paper that matches the color of the ballot (or secrecy envelope if a punch card ballot is used) is recommended.
- The election inspector enters the voter's name in the Poll Book.

After completing the above steps, the election inspector issues the ballot to the voter. The voter

then votes the ballot in a voting station. After the voter has voted the ballot, the ballot is deposited in the ballot box under routine procedure. (If voting machines or direct recording electronic voting devices are used in the precinct, see below.)

A challenged ballot cannot be retrieved for examination after the election without an appropriate court order.

THE HANDLING OF CHALLENGED BALLOTS IN VOTING MACHINE AND DIRECT RECORDING ELECTRONIC PRECINCTS

If voting machines or direct recording electronic voting devices are used in the precinct, the election inspector handling the challenge has the voter place the ballot in an absent voter ballot return envelope; completes and signs the back of the envelope; directs the voter to sign the envelope; and writes the word "CHALLENGED" across the face of the envelope.

- If the jurisdiction does *not* use an absent voter counting board, the challenged ballot is processed with the absent voter ballots delivered to the precinct.
- If the jurisdiction uses an absent voter counting board, the election inspectors secure the absent voter ballot return envelope containing the challenged ballot and notify the election official in charge of the election. The election official in charge of the election is then responsible for arranging the delivery of the ballot to the absent voter counting board. The voter's Application to Vote is retained in the precinct.

CHALLENGE PROCEDURE: ABSENT VOTER BALLOTS

If a challenger has reason to believe that an absent voter ballot has been submitted by a person who is not qualified to vote in the precinct, a challenge may be made as the ballot is being processed. If such a challenge is made, the election inspector handling the challenge writes the number appearing on the voter's ballot in pencil on the back of the ballot (or secrecy envelope if a punch card ballot); conceals the number with a slip of paper; enters a complete record of the challenge on the "CHALLENGED VOTERS" page in the Poll Book; and proceeds with the routine processing and counting of the ballot.

CHALLENGE PROCEDURE: ACTIONS OF THE PRECINCT BOARD

If a challenger has reason to believe that the precinct board is not following election law, the actions of the precinct board may be challenged by consulting with the board chairperson. If the chairperson rejects the challenge, the challenger has the right to contact the election official in charge of the election on the matter at issue. The election inspectors must enter a complete record of the challenge in the Poll Book.

PENALTIES

Michigan election law provides penalties for the following infractions:

- A person who submits a challenger appointment authorization application on behalf of a group or organization that is not authorized to appoint challengers.
- A clerk or school board secretary who knowingly fails to perform the duties related to the challenger appointment process.
- A person who challenges a qualified elector for the purpose of annoying or delaying the voter.
- A challenged elector who gives false information regarding his or her qualifications to vote.
- An election official or precinct board that prevents a challenger from being present in the polls or refuses to provide a challenger with any conveniences needed for the performance of his or her duties.

POLL WATCHERS

An election is an open process that may be observed by any interested person. (However, note that candidates may not remain in the polling place after they have voted because of the possible conflict with the provisions which prohibit campaigning within 100 feet of the polls.) A person who wishes to observe the election process -- who is not a qualified election challenger -- is commonly called a "poll watcher." The qualifications, rights and duties of poll watchers and challengers are contrasted below:

- A challenger must be registered to vote in the State of Michigan; poll watchers do not have to meet this requirement.
- A challenger has the right to challenge a person's right to vote and the actions of the precinct board; a poll watcher does not have this authority.
- A challenger may sit behind the processing table; a poll watcher does not have this privilege. (Poll watchers must sit or stand in the "public area" of the polling place where they will not interfere with the voting process.)
- Challengers have a right to look at the Poll Book; poll watchers may look at the Poll Book at the discretion of the precinct board chairperson. A challenger or a poll watcher may *not* touch the Poll Book or any other voting records.
- A poll watcher who wishes to be present in an absent voter counting board must remain in

the room in which the absent voter counting board is working until the close of the polls (8:00 p.m.).

- A poll watcher who wishes to be present in an absent voter counting board is required to take and sign the following oath: "I (name) do solemnly swear (or affirm) that I shall not communicate in any way information relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed." The oath may be administered by any member of the absent voter counting board.

The equal treatment of competing interests is the cornerstone of fair elections! As a result, any special measures taken in the polls to provide challengers and poll watchers with information on the voters who have participated in the election must be administered in such a way as to ensure equal access to the information by all interested persons.

Authority granted under PA 116 of 1954
ED-2 (09/2003)
12,000 printed; total cost $3,660.00; $.305 ea.

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

Procedure for Implementing Federal Identification Requirement in Polls

Voters subject to the federal identification requirement are indicated on the QVF list with the code "ID."

If a voter subject to the federal identification requirement offers to vote in your precinct, follow the steps outlined below. Examples of the documents a voter can show to satisfy the federal identification requirement are listed on the following pages.

1) Read the following statement to the voter:

> **Our records show that you are subject to the new federal identification requirement. The requirement applies to any voter who 1) registered to vote by mail and 2) has never voted in Michigan.**
>
> **To meet the requirement, you must show a copy of any current and valid photo identification or a copy of a paycheck, government check, utility bill, bank statement or a government document which lists your name and address.**

2) If the voter shows one of the required documents, make a notation in the Remarks Section of the poll book and permit the voter to cast a ballot under the regular procedure.

3) If the voter is unable to show one of the required documents, read the following statement to the voter:

> **As you are unable to satisfy the federal identification requirement at this time, you can receive and vote a "provisional" ballot. As an alternative, you can leave and come back with one of the required identification documents. If you leave and come back with one of the required identification documents, you will be permitted to vote under regular procedure.**

4) If the voter chooses to vote a "provisional" ballot, preserve the ballot as an "envelope" ballot after the voter has completed voting the ballot. (It is not necessary to complete the Four-Step Procedure form.) When issuing the "provisional" ballot to the voter, also issue the voter the "Notice to Voters Subject to Federal Identification Requirement."

Examples of Documents Voters Can Show to Satisfy Federal Identification Requirement

Examples of Acceptable Photo Identification
(Document Must Be Current and Valid; Listing Applies to Federal ID Requirement Only)

Driver's license with photo (any state)

Personal identification card with photo (any state)

Government issued photo identification card

Passport

Student identification card with photo

Credit or automated teller card with photo

Military identification card with photo

Employee identification with photo

Examples of Acceptable Paychecks, Government Checks, Utility Bills and Bank Statements
(Must Contain Voter's Name and Address)

A paycheck or paycheck stub from any employer issued within the last year

A Social Security Administration check statement issued within the last year

Government or military paycheck or paycheck stub issued within the last year

Tax return check or check statement issued by the IRS or the State of Michigan within the last year

A gas, telephone, electric, water, cable or other utility bill issued within the last year

A statement from a bank or credit union dated within the last year

Example of Acceptable Government Documents
(Must Contain Voter's Name and Address)

Vehicle registration

Electronic Benefit Transaction (EBT) card

Department of Social Services (DSS) card

Insurance card issued pursuant to a government administered or subsidized health insurance program such as Medicare or Medicaid

Veteran's identification card

Lease agreement provided under a public housing program or subsidized housing program

Public housing identification card

Tuition statement or bill from a public college or university

Correspondence or a bill received from a federal, state or local government

Discharge certificate, release papers, pardon, or other official document issued to the voter in connection with the resolution of a criminal case, indictment, sentence or other matter, in accordance with state law

Discount card issued by a public transportation authority or a provider to senior citizens or persons with disabilities

Marriage license

EXHIBIT 7

WITNESSES AND CHALLENGERS POLICY
Adopted by Hamilton County Board of Elections
October 22, 2004

The following is the policy of the Hamilton County Board of Elections regarding witnesses and challengers in the November 2, 2004 Election. This serves to supplement the memorandum from t he Secretary of State's Office dated October 20, 2004, which is attached hereto.

1) Witnesses and challengers must be Ohio electors, but may be from outside of Hamilton County.

2) Challengers are election officials and therefore may cast absentee ballots.

3) The signatures of Party officials on the certifications of witnesses or challengers need not be original but may be photocopied, stamped or faxed, but only with the authority and approval of the involved Party officer.

4) Witnesses are not appointed at precincts but only for activities at the Board. A challenger may remain in the polling place after the close of voting to observe the process.

5) A challenger may serve in that capacity for more than one precinct where there is more than one precinct located in the same polling place.

6) The initial names of all witnesses and challengers must be submitted to the Hamilton County Board of Elections office by no later than Friday, October 22nd at 4:00 p.m. Changes in that list can be made up until 4:00 p.m. on Monday, November 1st, but changes can only be made in those precincts in which someone was named by October 22nd.

7) Conduct at the Polls:

a) Challengers may not campaign or wear any candidate, issue or Party identification inside the polling place;

b) Challengers may not touch any of the election equipment or supplies;

c) Challengers may not talk to voters in the polling place;

d) A challenger who desires to bring a challenge or to call attention to any issues he or she believes should be dealt with in the polling place shall do so by addressing the presiding judge or, if the presiding judge is not available any of the other judges, in a polite professional manner;

e) A challenger must have a good faith basis for challenging a voter and may not blanket challenge or randomly challenge voters;

f) The challenger may challenge a voter only for the following reasons:

i) lack of citizenship;
ii) non-residency in the state;
iii) non-residency in the county;
iv) non-residency in the precinct (this challenge may depend on developments in the pending litigation);
v) not of legal voting age; or
vi) impersonating an elector.

The challenger shall state which of these reasons apply to the challenge:

g) If challenged for any of the reasons stated in i) through iv) the prospective voter shall be provided with a form 10-U and the presiding judge or an assigned judge shall ask the questions of that prospective voter provided on the form that apply to the challenge being made. If the voter is in the signature book and voter responds to those questions with answers indicating that they are qualified to vote and signs the form under oath, they shall be given a regular ballot, be permitted to vote that ballot and the ballot shall be deposited in the ballot box. If the prospective voter's name is

not in the signature book, but the voter is otherwise qualified to cast a provisional ballot, if that voter is challenged, he or she shall complete the Form 10-U and if their answers indicate they are qualified to vote and they sign the form under oath, they shall be instructed to cast a provisional ballot. Such provisional voters shall also complete the provisional ballot envelope and their ballot shall be placed in the envelope after it has been voted and shall then be deposited in the ballot box.

h) If the basis for challenging a voter is that they are impersonating an elector, the prospective voter shall be asked to sign their name on a card or piece of paper provided to them by the presiding judge or judge. The presiding judge and judges shall then compare that signature to the signature in the signature book. The presiding judge and judges shall determine based upon the signature offered by the prospective voter and any other documentation the prospective voter chooses to provide, whether or not the prospective voter is permitted to vote. If the presiding judge and judges determine that the voter is not allowed to vote, the voter shall be advised that they may appeal that determination to the Hamilton County Board of Elections.

i) The presiding judge or judges may move a challenged voter away from the sign-in table to any area no less than 10 feet from the poll worker table while the judge and voter are completing the Form 10-U so that the processing of voters in line may continue.

j) Challengers shall not use cell phones in the polling place.

k) Challengers must follow the direction of the presiding judge. A Presiding Judge must recognize the right of Challengers to preform the duties conferred on Challengers under Ohio law. A presiding judge may remove a challenger from the polling place who the presiding judge deems to be disruptive following the process outlined in the attached Secretary of State's Memorandum of October 20, 2004..

8) By 4:00 p.m. on Friday, October 22nd, parties desiring to appoint witnesses for operations at the Board of Elections shall name those witnesses on the lists filed with the Board of Elections. Names of witnesses to procedures at the Board of Elections can be changed by filing the corrected name with

the Board of Elections by 4:00 p.m. on the day prior to the operation they are intended to witness. The operations which may be witnessed include:

a) The preparation of the AV ballots which will begin on Monday, October 25th and continue on a daily basis until the election. Absentee ballots that are challenged shall be kept in the secrecy envelope until the Board has determined the challenge;

b) The Election Night receipt of ballots on the first floor of the building and their preparation for counting;

c) The Election Night count in the counting room on the third floor;

d) The preparation and handling of provisional ballots in the ten days following the election;

e) The official count:

   i) at the tables where the ballots are reviewed;
   ii) in the counting room.

f) Witnesses to Post Election Night activities shall be accepted pursuant to the Ohio Revised Code.

9) The Director and Deputy Director, in consultation with the Board of Elections, shall determine the number of witnesses who may be present for each operation and shall do so giving consideration to the space available and the ability to efficiently and accurately complete the process involved. Witnesses shall not handle any ballots nor the absentee ballot secrecy envelopes or the provisional ballot secrecy envelopes.

N:\WIP\BDELECT\Misc\Witnesses and Challengers.TMB.wpd-trv

EXHIBIT 8

Ohio Secretary of State J. Kenneth Blackwell
Elections Division - 180 E. Broad St., 15th Floor, Columbus, OH 43215
Tel. (614) 466-2585 Fax (614) 752-4360 e-mail: election@sos.state.oh.us

MEMORANDUM

TO: All County Boards of Elections

FROM: Pat Wolfe, Director of Elections
Michael Sciortino, President of Ohio Association of Elections Officials (OAEO)

DATE: October 20, 2004

RE: Challenger and Witnesses

CHALLENGER & WITNESS GUIDELINES

As election day approaches, many boards will be asked for the forms to appoint and certify challengers and witnesses. R.C. 3505.21 and R.C. 3506.13 authorize the appointment of eligible electors to serve as challengers and/or witnesses of elections. The elector need not live in the precinct where appointed. The statutes set forth:

- The function of challengers and witnesses.
- Who may appoint challengers and witnesses.
- Who may serve as a challenger and/or witness.
- The appointment process and deadlines.

The Ohio Association of Elections Officials (OAEO) has recommended policy and procedures for handling challengers at the polling place which are included in this memorandum.

Function

Challengers may be appointed for each polling place (including the board of elections' office), and witnesses for each tabulating location, as provided in R.C. 3505.21 and R.C. 3506.13. The same person may serve as both a challenger and a witness.

- **Challengers**
  - **While Polls are Open:** Challengers are allowed to be in the polling place while the polls are open. A challenger may challenge (prior to the issuance of a ballot), for good cause, the right to vote of anyone who appears to vote. A challenge may be based on the person's citizenship, age, registration, residency in the precinct and, if the election is a partisan primary, political party affiliation. (R.C. 3505.21)
  - **After the Polls Close:** Challengers are allowed to remain in a polling place *after* the polls close if ballots are not counted in that polling place. Challengers may observe the processing of the ballots including the sealing and signing of the envelopes and/or containers holding the voted ballots. Challengers are not allowed to touch or handle ballots or any other election materials, nor question the actions of the election officials. (R.C. 3506.13)

- **Witnesses**
  Witnesses are allowed to observe the counting of ballots. (Thus, if ballots are not counted at a precinct polling place, then witnesses shall not be appointed to that polling place.) Witnesses are not allowed to touch or handle ballots or any other election materials, nor question the actions of the election officials.

Appointment

All challengers and witnesses must be appointed in writing on a "Notice of Appointment or Amendment of Appointment of Witnesses and Challengers" (Form No. 214) prescribed by the Secretary of State.

1. **By a Political Party**
   Notice of appointment signed by the central committee chairperson and secretary, and filed with the board of elections.

2. **By a Group of Five or More Candidates**
   Notice of appointment signed by at least five candidates and filed with the board of elections.

3. **By a Committee Supporting or Opposing a Ballot Issue**
   Petitions to be recognized as committee to appoint challengers (Form No. 219) and witnesses (Form No. 220), and Notice of appointment by duly recognized ballot issue committee.

Eligibility/Restrictions

No uniformed peace officer as defined by R.C. 2935.01, no uniformed state highway patrol trooper, no uniformed member of any fire department, no uniformed member of the armed services, no uniformed member of the organized militia, no person wearing any other uniform and no person carrying a firearm or other deadly weapon shall serve as a witness or challenger.

A candidate may not serve as a challenger or witness *unless* the candidate (a) also is a member of the party controlling committee and (b) has been appointed by the party.

- **Number of Challengers/Witnesses**

No candidate shall be represented by more than one challenger and one witness at any one polling place except that a candidate who is a member of a party controlling committee, as defined in R.C. 3517.03, may serve as a witness or challenger.

In no case shall more than six challengers and six witnesses be appointed for any one election in any one precinct. If more than three questions are to be voted on, the committees which have appointed challengers and witnesses may agree upon not to exceed six challengers and six witnesses, and the judges of elections shall appoint such challengers and witnesses. If such committees fail to agree, the judges of elections shall appoint six challengers and six witnesses from the appointees so certified, in such manner that each side of the several questions shall be represented.

Filing Deadline

By 4 p.m. of the 11th day (October 22) before the election, any political party, group of candidates or issue committee appointing challengers or witnesses shall file with the board of elections a properly **completed "Notice of Appointment" (Form No. 214)** containing the names and addresses of its appointees and the polling places at which they shall serve.

Deadline to Amend Appointments
The deadline for amending challenger and witness appointments is 4 p.m. the day before the election; i.e., Monday, November 1, 2004.

Certificate of Appointment
Each challenger and witness shall receive from his or her appointing authority the appropriate Secretary of State-prescribed **"Certificate of Appointment"** (*see* **Form Nos. 215, 216, 217, 218, 221 and 222.**) That certificate must be filed with the presiding judge of the polling place on election day. Appointments and certifications must be made in writing by 4 p.m. on **October 22, 2004**, using the appropriate forms prescribed by the Secretary of State:

Form #	Description
214	Notice of appointment or amendment of appointment of witnesses and challengers
215	Certificate of appointment of challenger - executive or central committee of a political party
216	Certificate of appointment of witness - executive or central committee of a political party
217	Certificate of appointment of challenger - five or more candidates
218	Certificate of appointment of witness - five or more candidates
219	Petition to be recognized as committee to appoint challengers - measure submitted
220	Petition to be recognized as committee to appoint witnesses and challengers – measure submitted
221	Certificate of appointment of challenger - duly recognized committee advocating/opposing a measur
222	Certificate of appointment of witness - duly recognized committee advocating/opposing a measure

Challenges to a Person's Right to Vote at the Polling Place - R.C. 3505.20

Who May Challenge

R.C. 3505.20 provides that the right of a person to vote on election day may be challenged, for good cause, by any of the following persons:

- Any challenger (appointed pursuant to R.C. 3505.21)
- Any elector then lawfully in the polling place
- Any judge or clerk of elections.

Procedure

- **If the Board of Elections Already Has Ruled on the Person's Eligibility**

  If the board of elections has ruled on the question presented by a challenge prior to election day pursuant to R.C. 3501.11(Q), R.C. 3503.24, R.C. 3505.19 or any other section of law, its finding and decision shall be final and the presiding judge shall be notified in writing of that decision.

- **If No Prior Ruling by the Board of Elections on the Person's Eligibility**

  If the board has not ruled, the question shall be determined as set forth in R.C. 3505.20.

Form

SoS No. 10-U *Affidavit/oath/examination of person challenged at polls on election day (RC 3505.20)*

Oath

If any person is so challenged as unqualified to vote, the presiding judge shall administer the following oath to the challenged person: "You do swear or affirm that you will fully and truly answer all of the following questions put to you, touching your place of residence and your qualifications as an elector at this election?"

Grounds for Challenge

1. Not a U.S. Citizen - R.C. 3505.20(A)

If the person is challenged as unqualified on the ground that the person is not a citizen, the judges shall put the following questions:

(1) Are you a citizen of the United States?
(2) Are you a native or naturalized citizen?
(3) Where were you born?

If the person offering to vote claims to be a naturalized citizen of the United States, the person shall, before the vote is received, either:

- Produce for inspection of the judges a certificate of naturalization and declare under oath that the person is the identical person named therein, or
- State under oath when and where the person was naturalized, that the person has had a certificate of the person's naturalization, and that it is lost, destroyed, or beyond the person's power to produce to the judges.

If the person states under oath that, by reason of the naturalization of the person's parents or one of them, the person has become a U.S. citizen, and when or where the person's parents were naturalized, the certificate of naturalization need not be produced.

2. Not a Resident of Ohio for 30 days Immediately Before the Election – R.C. 3505.20(B)

If the person is challenged as unqualified on the ground that the person has not resided in this state for 30 days immediately preceding the election, the judges shall put the following questions:

(1) Have you resided in this state for thirty days immediately preceding this election? If so, where have you resided? Name two persons who know of your place of residence.

(2) Have you been absent from this state within the 30 days immediately preceding this election? If yes, then the following questions:

(a) Have you continuously resided outside this state for a period of four years or more?

(b) Did you, while absent, look upon and regard this state as your home?

(c) Did you, while absent, vote in any other state?

3. Not a Resident of the County or the Precinct - R.C. 3505.21(C)

If the person is challenged as unqualified on the ground that the person is not a resident of the county or precinct where he offers to vote, the judges shall put the following questions:

(1) Do you now reside in this county?

(2) Do you now reside in this precinct?

(3) When you came into this precinct, did you come for a temporary purpose merely or for the purpose of making it your home?

4. **Not 18 years old by Election Day – R.C. 3505.20(D)**
   If the person is challenged as unqualified on the ground that the person is not of legal voting age, the judges shall put the following question: "Are you 18 years of age or more to the best of your knowledge and belief?"

Decision on Challenge
The presiding judge shall put such other questions to the person challenged under respective heads designated by this section, as are necessary to test the person's qualifications as an elector at the election.

- **Failure or Refusal to Answer**
  If a person challenged refuses to answer fully any question put to the person, is unable to answer the questions as they were answered on the registration form by the person under whose name the person offers to vote, refuses to sign the person's name or make the person's mark, or if for any other reason a majority of the judges believes the person is not entitled to vote, the judges shall refuse the person a ballot.

- **Failure to Qualify**
  If a person is disqualified under R.C. 3505.20(C) because the person does not now reside in the county or precinct, the presiding judge shall inform the person of the person's right to vote in the person's proper county or precinct of residence and instruct the person to contact the appropriate board of elections for information concerning the location of the person's voting precinct.

Decision is Final
The decision of said judges shall be final as to the right of the person challenged to vote at such election.

Policy and Procedures by the Ohio Association of Election Officials (OAEO)
Because statues do not specify the procedures and limitations for challenging voters, and because it is widely anticipated that challenger confusion could cause undue delays in voting, it is necessary to develop a policy for dealing with challenges posed at the precinct. The goal of this policy is to provide for the statutory rights of the challengers, while maintaining order in the polling location.

Challenger Interference
Challengers may not interfere with the voting process or unnecessarily delay it. For example, if a challenger challenges so many voters that his or her activities slow down the voting process or intimidate voters, then the presiding judge should take immediate action including expelling him or her from the polling place. If necessary, the presiding precinct judge shall follow the steps set forth below:

- The presiding precinct judge shall orally warn the challenger that his/her actions are jeopardizing the voters' constitutional right to cast a ballot.
- If a challenger again persists in delaying voting, the presiding precinct judge shall notify the Board of Elections director and deputy director of his or her decision to remove the challenger from the voting location.

Initiating the Challenge
- Challengers shall remain stationed behind the table where poll workers are seated.
- When a challenger wishes to challenge a voter, they shall do so by notifying the presiding judge and shall state the reason for the challenge.

- Whenever possible, the presiding judge shall move the challenged voter to an area no less than 10 feet from the poll worker table that will not obstruct other voters.

Presiding Judge Duties and Decision

- The presiding judge shall ask the appropriate questions by administering Form 10-U.
- The presiding judge shall put such other questions to the person challenged under respective heads designated by this section, as are necessary to test the person's qualifications as an elector at the election.
- If a person challenged refuses to answer fully any question put to the person, is unable to answer the questions as they were answered on the registration form by the person under whose name the person offers to vote, refuses to sign the person's name or make the person's mark, or if for any other reason a majority of the judges believes the person is not entitled to vote, the judges shall refuse the person a ballot.
- The decision of said judges shall be final as to the right of the person challenged to vote at such election.

Form 10-U Prescribed by Secretary of State (12-97)

Affidavit-Oath-Examination of Person Challenged

Revised Code Section 3505.20

The State of Ohio, _____ County, ss:

I, _____ the undersigned, swear or affirm that I will fully and truly answer all of the following questions put to me, touching my place of residence and my qualifications as an elector at this election.

(Check all that apply) **Being challenged as unqualified on the ground(s) that:**

(A) _____ The person is not a citizen, the following questions shall be put:

(1) Are you a citizen of the United States? _____

(2) Are you a native or naturalized citizen? _____

(3) Where were you born? _____

If a naturalized citizen, then
[1] I am the identical person named in the certificate of my naturalization herewith produced for the inspection of the Judges of Election.
Or,
I was naturalized on the _____ day of _____, _____, at _____.
I have had a certificate of my naturalization which is lost, destroyed or beyond my power to produce to the Judges.
Or,
By reason of the naturalization of my parent(s)_____ I have become a Citizen of the United States and my parent(s)_____ was naturalized on the _____day of _____, _____ at _____.

(B) _____ The person is not a resident of the state for thirty days immediately preceding election, the following questions shall be put:

(1) Have you resided in this state for thirty days immediately preceding this election?

_____

If yes:
(a) Where have you resided?

_____

(b) Names of two persons who know your place of residence.

(1) _____

(2)_____

[1] Cross out words or lines not applicable so that statements and answers made shall be factual.

EXHIBIT 9

Statement of Miles S. Rapoport
President, Demos, and Former Secretary of the State of Connecticut
October 25, 2004

My name is Miles Rapoport. I am currently the President of ***Demos: A Network of Ideas and Action,*** a national non-partisan policy and advocacy organization based in New York City and focused on expanding democratic participation and improving our nation's election procedures. From 1995-1999, I served as Secretary of the State for the state of Connecticut. In that role, I was the chief election official for the state and had responsibility for implementing all federal and state election laws.

I was asked by the Service Employees International Union to address three questions:

A. What is the potential situation in a number of counties in Florida with respect to the number of new registrations and the adequacy of the resources planned to be allocated to the key polling places?

B. What is the likely impact that aggressive official challenges to large numbers of prospective voters would have on the process?

C. What steps would I take if I were responsible for the process in Florida to attempt to avoid the potential problems brought about by the situation?

Question A.

1. According to Professor Philip Klinkner, the average ratio nationwide of election workers to voters is approximately one to 125. It appears as though the ratio in Florida polling places will be less than that.

2. I believe that a greater ratio of poll workers to voters will in general be required this year due to all of the new demands on poll workers based on the requirements of the Help America Vote Act, in regard to new machines, new voter identification requirements, new provisional ballot requirements, and others.

3. In addition, I am struck by the extraordinary number of new registrations in the six counties of Broward, Duval, Miami-Dade, Hillsborough, Orange, and Palm Beach. Based on figures compiled by Professor Klinkner, in these six counties alone there have been 1,464,811 new voter registrations since January 1, 2004. This level of new registrations, in my opinion, will create additional need for workers and training beyond even what the ratios would suggest.

4. Therefore, I do not believe that the number of poll workers will be adequate to handle the influx of new voters with any degree of confidence.

Question B.

1. Recent reports indicate that in many states, including Florida, aggressive efforts are planned by both parties, but by the Republican party in particular, to challenge voters they suspect may have registered improperly.

2. The impact of this effort at polling places with large numbers of new registrants could be dramatic and perhaps traumatic

3. Without adequate personnel, and without clear and separate procedures for handling the challenges, it is entirely possible—even likely--that these challenges will have a number of negative results:

    a. It will distract officials from the overall management of the polling place and the flow of voting traffic.
    b. It will create a bottleneck at the check-in tables as people come in.
    c. It could create a charged and confrontational atmosphere at the polling places.
    d. It could create long lines and long delays for people coming to cast their ballots.
    e. As a result, many people could be effectively disfranchised by the situation. For many first-time voters, this could be a long-term discouragement from participation in the process.

Question C.

If I were responsible for the management of the elections in the state of Florida, I would do a number of things that I believe could make a difference. In all of this, I would keep in front of me the fundamental principle that every eligible citizen should be able to cast his or her ballot, and have that ballot be counted fairly.

1. I would increase the number of personnel allocated to the precincts with the largest number of new registrants.

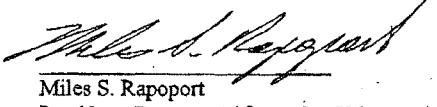
2. I would create a pool of highly trained personnel that could be dispatched to polling places that reported delays or difficulty in the process.

3. I would have a strongly enabled connection to law-enforcement personnel in case any situations began to deteriorate.

4. I would issue very clear and strong guidelines to individuals signed up as challengers, as has been done in Ohio and Michigan, that they must have a good reason to make a challenge. I would add the warning that any challenges based on the race or national origin of a prospective voter are potential violations of the Voting Rights Act of 1965.

5. I would require that each polling place have a separate station, removed by at least 50 feet from the area where voters are signing in, where challenges will be heard and adjudicated by the Election Board.

The election on November 2 will be a real challenge to our nation's democratic processes. That more people than ever have registered is a positive note for our democracy. It becomes the responsibility of every election official to do everything possible to ensure that every potential voter is able to vote, and will want as a result of this experience to stay in the process from hence forward.



Miles S. Rapoport
President, Demos: A Network of Ideas and Action.

EXHIBIT 10

Voting Irregularities in Florida During the 2000 Presidential Election

Executive Summary

Addressing voting rights issues has been a core responsibility for the U.S. Commission on Civil Rights since the Commission was founded in 1957. The Commission has broad authority over voting rights. It has general jurisdiction to examine allegations regarding the right of U.S. citizens to vote and to have their votes counted. These allegations may include, but are not limited to, allegations of discrimination based on race, color, religion, sex, age, disability, or national origin.

Pursuant to its authority, and fulfilling its obligations, members of the Commission staff conducted a preliminary investigation and discovered widespread allegations of voter disenfranchisement in Florida in the 2000 presidential election. The Commissioners voted unanimously to conduct an extensive public investigation into these allegations of voting irregularities. Toward that end, the Commission held three days of hearings in Miami and Tallahassee and, using its subpoena powers, collected more than 30 hours of testimony from more than 100 witnesses—all taken under oath—and reviewed more than 118,000 pages of pertinent documents.

The Commission carefully selected its subpoenaed witnesses to ensure that it heard testimony on the wide range of issues that had come to light during its preliminary investigation. The Commission also acted to ensure that it heard a broad spectrum of views. It subpoenaed a cross section of witnesses, including Florida Governor Jeb Bush, Florida Secretary of State Katherine Harris, members of Governor Bush's Select Task Force on Election Procedures, Standards and Technology, and Florida's attorney general. The Commission staff's research also led it to subpoena the state official responsible for oversight of motor voter registration, the general counsel for Florida's Elections Commission, the director of the Division of Elections (part of the secretary of state's office), the director of Florida's Highway Patrol, and numerous local elections officials, county supervisors, poll workers, and local sheriffs. Additionally, the Commission subpoenaed a number of witnesses who had problems or who had first-hand knowledge of problems during the election, especially those on Election Day.

The Commission attempted to ensure that it heard all points of view in a second way. At each of the hearings, it invited the general public to testify once the formal sessions had concluded. There were no time limits on how long these sessions lasted, and they ended only after all witnesses had made their statements and each of the Commissioners present had ample opportunity to ask any and all questions of the witnesses. The witnesses' statements and answers to Commissioners' questions were under oath.

During the three days of hearings, numerous witnesses delivered heartrending accounts of the frustrations they experienced at the polls. Potential voters confronted inexperienced poll workers, antiquated machinery, inaccessible polling locations, and other barriers to being able to exercise their right to vote. The Commission's findings make one thing clear: widespread voter disenfranchisement—not the dead-heat contest—was the extraordinary feature in the Florida election.

After carefully and fully examining all the evidence, the Commission found a strong basis for concluding that violations of Section 2 of the Voting Rights Act (VRA) occurred in Florida. The VRA was enacted in 1965 to enforce the 15th Amendment's proscription against voting discrimination. It is aimed at both subtle and overt state action that has the effect of denying a citizen the right to vote because of his or her race. Although the VRA originally focused on enfranchising African Americans, the law has been amended several times to also include American Indians, Asian Americans, Alaskan Natives, and people of Spanish heritage. Additionally, the VRA includes a provision that recognizes the need for multilingual assistance for non-English speakers.

The VRA does not require intent to discriminate. Neither does it require proof of a conspiracy. Violations of the VRA

..n be established by evidence that the action or inaction of responsible officials and other evidence constitute a "totality of the circumstances" that denied citizens their right to vote. For example, if there are differences in voting procedures and voting technologies and the result of those differences is to advantage white voters and disadvantage minority voters, then the laws, the procedures, and the decisions that produced those results, viewed in the context of social and historical factors, can be discriminatory, and a violation of the VRA.

The report does not find that the highest officials of the state conspired to disenfranchise voters. Moreover, even if it was foreseeable that certain actions by officials led to voter disenfranchisement, this alone does not mean that intentional discrimination occurred. Instead, the report concludes that officials ignored the mounting evidence of rising voter registration rates in communities. The state's highest officials responsible for ensuring efficiency, uniformity, and fairness in the election failed to fulfill their responsibilities and were subsequently unwilling to take responsibility.

Disenfranchised Voters

Disenfranchised voters are individuals who are entitled to vote, want to vote, or attempt to vote, but who are deprived from either voting or having their votes counted. The most dramatic undercount in the Florida election was the uncast ballots of countless eligible voters who were wrongfully turned away from the polls. Statistical data, reinforced by credible anecdotal evidence, point to the widespread denial of voting rights. It is impossible to determine the extent of the disenfranchisement or to provide an adequate remedy to the persons whose voices were silenced by injustice, ineptitude, and inefficiency. However, careful analysis and some reasonable projections illustrate what happened in Florida.

The disenfranchisement of Florida's voters fell most harshly on the shoulders of black voters. The magnitude of the ..pact can be seen from any of several perspectives:

- Statewide, based upon county-level statistical estimates, black voters were nearly 10 times more likely than nonblack voters to have their ballots rejected.
- Estimates indicate that approximately 14.4 percent of Florida's black voters cast ballots that were rejected. This compares with approximately 1.6 percent of nonblack Florida voters who did not have their presidential votes counted.
- Statistical analysis shows that the disparity in ballot spoilage rates—i.e., ballots cast but not counted—between black and nonblack voters is not the result of education or literacy differences. This conclusion is supported by Governor Jeb Bush's Select Task Force on Election Procedures, Standards and Technology, which found that error rates stemming from uneducated, uninformed, or disinterested voters account for less than 1 percent of the problems.
- Approximately 11 percent of Florida voters were African American; however, African Americans cast about 54 percent of the 180,000 spoiled ballots in Florida during the November 2000 election based on estimates derived from county-level data. These statewide estimates were corroborated by the results in several counties based on actual precinct data.

Poor counties, particularly those with large minority populations, were more likely to possess voting systems with higher spoilage rates than the more affluent counties with significant white populations. There is a high correlation between counties and precincts with a high percentage of African American voters and the percentage of spoiled ballots. For example:

- Nine of the 10 counties with the highest percentage of African American voters had spoilage rates above the Florida average.

- Of the 10 counties with the highest percentage of white voters, only two counties had spoilage rates above the state average.
- Gadsden County, with the highest rate of spoiled ballots, also had the highest percentage of African American voters.
- Where precinct data were available, the data show that 83 of the 100 precincts with the highest numbers of spoiled ballots are black-majority precincts.

The magnitude of the disenfranchisement, including the disparity between black and nonblack voters, is supported by the testimony of witnesses at the Commission's hearings. These witnesses include local election officials, poll workers, ordinary voters, and activists. Among the sworn testimony:

- One potential voter waited hours at the polls because of a registration mix-up as poll workers attempted to call the office of the supervisor of elections. The call never got through and the individual was not allowed to vote. A former poll worker herself, she testified that she never saw anything like it during her 18 years as a poll worker.
- A poll worker in Miami-Dade County with 15 years of experience testified, "By far this was the worst election I have ever experienced. After that election, I decided I didn't want to work as a clerk anymore."
- A poll worker in Palm Beach County testified that she had to use her personal cell phone to attempt to contact the election supervisor's office. Despite trying all day, she only got through two or three times over the course of 12 hours.
- A Broward County poll worker testified that in past elections it took about 10 minutes to get through to the elections supervisor. During the course of the November 2000 election, she turned away approximately 40–50 potential voters because she could not access the supervisor of elections.
- A Boynton Beach poll worker explained how his precinct workers turned away about 30–50 potential voters because they could not get through to the supervisor of elections. He was successful only once during an eight-hour period.
- Other persons testified about waiting in long lines only to be ultimately denied their right to vote.

The Commission calls upon the attorney general of the United States to immediately begin the litigation process to determine liability under the VRA and appropriate remedies. The Commission is a fact-finding body, authorized to investigate allegations of voting discrimination, fraud, and other irregularities. However, it does not adjudicate violations of the law, hold trials, or determine civil or criminal liability. It is within the jurisdiction of the U.S. Department of Justice and Florida law enforcement officials to seek appropriate sanctions and remedies. In addition to calling on the attorney general to initiate the litigation process on this issue, the Commission requests this action on a number of other issues as well, such as Florida's handling of its voter roll purge and its failure to accommodate voters with disabilities and limited English proficiency.

The Commission recommends that Florida retain knowledgeable experts to undertake a formal study to ascertain the reason for the racial disparities in vote rejection rates between white voters and persons of color. Once this is completed, the state should adopt and publicize procedures to eliminate this disparity. As a start, the state could identify and promote the "best practices" of counties in Florida or around the nation that performed well during the 2000 presidential election.

Missing Leadership

. orida's governor insisted that he had no specific role in election operations and pointed to his secretary of state as the responsible official. After the election, however, the governor exercised leadership and responsibility in electoral matters in the commendable action of appointing a task force to make recommendations to fix the problems that occurred. The secretary of state, the state's chief elections officer, denied any responsibility for the problems in the election, claiming only a "ministerial" role, her clear statutory obligations notwithstanding. Rather, she asserted that county election officials are responsible for the conduct of the election, describing her role in the policies and decisions affecting the actual voting operations as limited. However, her claims of no responsibility sharply contrast to her actions in the immediate aftermath of Election Day, when she asserted ultimate authority in determining the outcome of the vote count. On the local level, supervisors of elections in the counties that experienced the worst problems failed to prepare adequately and demand necessary resources.

This overall lack of leadership in protecting voting rights was largely responsible for the broad array of problems in Florida during the 2000 election. Furthermore, state officials ignored the pleas of some supervisors of elections for guidance and help. Especially at the highest levels, officials must take responsibility for leading on matters for which they have authority and, to the extent they do not have sole authority, to take the initiative for working with other key officials. Specific examples of the areas in which Florida officials need to improve are discussed in other parts of the Executive Summary and throughout the report. However, the need for key officials to exercise leadership in protecting the right to vote is imperative. This was not a responsibility that officials were willing to accept during the 2000 election.

Purging Former Felons from the Voter Rolls

Individuals not legally entitled to vote should not be allowed to vote. Appropriate efforts to eliminate fraudulent voting ·engthen the rights of legitimate voters. In fact, there are already laws in place in Florida that make it a crime to vote .nlawfully. However, poorly designed efforts to eliminate fraud, as well as sloppy and irresponsible implementation of those efforts, disenfranchise legitimate voters and can be a violation of the VRA. Florida's overzealous efforts to purge voters from the rolls, conducted under the guise of an anti-fraud campaign, resulted in the inexcusable and patently unjust removal of disproportionate numbers of African American voters from Florida's voter registration rolls for the November 2000 election.

The purge system in Florida proceeded on the premise of guilty until proven innocent. In 1998, the Florida legislature enacted a statute that required the Division of Elections to contract with a private entity to purge its voter file of deceased persons, duplicate registrants, individuals declared mentally incompetent, and convicted felons without civil rights restoration, i.e., remove ineligible voter registrants from voter registration rolls. This purge process became known as list maintenance. Once on the list, the process places the burden on the eligible voter to justify remaining on the voter rolls. The ubiquitous errors and dearth of effective controls in the state's list maintenance system resulted in the exclusion of voters lawfully entitled and properly registered to vote.

African American voters were placed on purge lists more often and more erroneously than Hispanic or white voters. For instance, in the state's largest county, Miami-Dade, more than 65 percent of the names on the purge list were African Americans, who represented only 20.4 percent of the population. Hispanics were 57.4 percent of the population, but only 16.6 percent of the purge list; whites were 77.6 percent of the population but 17.6 percent of those purged.

Florida easily could have, and should have, done much more to protect the voting rights of African Americans and other Floridians. What should have been done include the following:

- The governor, the secretary of state, or the director of the Division of Elections should have provided clear instructions to their subordinates on list maintenance strategies that would protect eligible voters from being erroneously purged from the voter registration rolls. Two key failings accounted for a large portion of the purge-

related disenfranchisement:

- The Division of Elections failed to recommend the same cautionary steps before the November 2000 presidential election that were taken before the 1998 election. At that time, supervisors of elections were asked to verify the exclusion lists with the greatest of care. They were asked to provide opportunities for persons to vote by affidavit ballot in those instances in which the voter made a credible challenge to his or her removal from the voter registration rolls.

- Inadequate supervision of Division of Elections staff allowed irresponsible decisions to be made, including an official of the Division of Elections encouraging an error-laden strategy that resulted in the removal of a disproportionate number of eligible African American voters from the rolls.

- State officials should have provided adequate training to supervisors of elections in purge verification procedures.

The purposeful use of erroneous listings to promote the state's purging priorities and the permanent disenfranchisement of discharged felons raise important questions of fundamental fairness. The state's aggressive purging laws, policies, and practices disproportionately affect African Americans, who are disproportionately charged, convicted, and sentenced in the criminal justice system. The Commission questions Florida's onerous and infrequently rendered clemency process. Former offenders who have paid their debt to society should have citizenship rights restored, which is already done in 36 states. Further, the report expresses disappointment that the recently enacted legislation failed to address the issue of automatic restoration of voting rights for former felons and asks that the governor recommend reform in this area of state law.

ccessibility

Florida failed to provide adequate access to individuals with disabilities and to people who have limited English proficiency. Specific concerns pertaining to those with physical disabilities include:

- Persons who rely on wheelchairs were forced to negotiate steps and unreachable polling booths or undergo humiliation by relying on others to lift them into the polling places to exercise their right to vote.

- Some voters with visual impairments found that the precincts did not have proper equipment to assist them in reading their ballots and, therefore, they had to rely on others—often strangers—to cast their ballots, denying them their right to a secret ballot.

- Others precincts were not equipped, or otherwise failed altogether, to accommodate potential voters with disabilities. As a result, individuals with disabilities were simply turned away, and therefore disenfranchised.

Individuals who were not proficient in English faced comparable barriers, despite federal requirements that language assistance be provided for non-English-proficient voters. Thus, a large number of limited-English-speaking voters were denied assistance at polling places, greatly increasing the likelihood of disenfranchisement. In some parts of Florida, Spanish-speaking voters did not receive bilingual assistance or bilingual ballots. Some of these counties are required to provide language assistance under the VRA. The failure to provide language assistance resulted in widespread voter disenfranchisement of an estimated several thousand Spanish-speaking voters in Florida.

Voter Education, Voter Registration, Training Poll Workers, and Election Day Problems

Many of the obstacles that caused voter disenfranchisement in the November 2000 election were the result of inadequate voter education and insufficient poll worker training. Moreover, counties were grossly unprepared for the large voter turnout and scrambled, often unsuccessfully, to meet the needs of voters on Election Day. Despite the early

signs of a large influx of new voters, Florida state election officials did not respond with the appropriate array of measures to avoid the chaos that occurred. The lack of sufficient and comparable resources and the absence of guidance from top state officials on matters such as voter education and effective poll worker training contributed to the incidence of spoiled and uncast ballots. Florida must take steps to remedy this, including:

The secretary of state's office and local election officials must ensure that they have sufficient resources to engage in effective voter education.

- Local election officials who do not have sufficient resources for conducting a well-run election must have an adequate process to ensure they can obtain those resources.
- There must be better coordination between the secretary of state's office and local election officials. The Commission recommends that any future reforms include effective monitoring systems and adequate resources to ensure the meaningful implementation of the proposals.
- Florida officials need to do a better job of consulting people with disabilities, individuals with limited English proficiency, and groups representing these individuals to ensure that voters with access problems have a full and fair opportunity to cast their ballots and to have them accurately counted.

As a result of these shortcomings, some potential voters never got to cast ballots. For example:

- Some voters were barred from voting despite arriving at their polling places before closing time because poll workers did not understand the rule that if voters arrive before 7 p.m., they must be allowed to vote.
- Adequate notice was not always given to voters when polling places were moved.
- The failure to process in a timely manner motor voter registrants contributed to disenfranchising voters.
- Aside from the lack of consistency and uniformity in election operations, many election officials failed to use affidavits under appropriate circumstances and instituted few procedures to confirm voter lists.
- Poll workers were unable to reach central offices to certify voters.

Conclusion

The Commission found that the problems Florida had during the 2000 presidential election were serious and not isolated. In many cases, they were foreseeable and should have been prevented. The failure to do so resulted in an extraordinarily high and inexcusable level of disenfranchisement, with a significantly disproportionate impact on African American voters. The causes include the following: (1) a general failure of leadership from those with responsibility for ensuring elections are properly planned and executed; (2) inadequate resources for voter education, training of poll workers, and for Election Day trouble-shooting and problem solving; (3) inferior voting equipment and/or ballot design; (4) failure to anticipate and account for the expected high volumes of voters, including inexperienced voters; (5) a poorly designed and even more poorly executed purge system; and (6) a resource allocation system that often left poorer counties, which often were counties with the highest percentage of black voters, adversely affected.

Since the Commission began its hearings, Florida has enacted legislation to address many of the problems of the last election. The Commission publicly applauded this development as soon as it occurred, and even before the details of the legislative package were finalized. The Commission reiterates that Florida and its leaders deserve credit for the new election law.

However, the same leadership that effectively ensured passage of the recent legislation was missing in the years and months leading up to the November 2000 election. If the same level of leadership had been present, the Commission's investigation reveals that most of the problems during the past election would have been prevented, and the dire consequences documented in this report could have been avoided.

Unfortunately, the recent legislation fails to address several other important issues, including accessibility for persons with disabilities, language assistance, and other barriers to voter participation. Additionally, the new law permits provisional balloting only under limited circumstances. While provisional voting is a positive step, the legislation is too restrictive to adequately address possible situations that might require its use. The provision should be amended to ensure additional voters are not disenfranchised.

Moving forward, the Commission urges that the same leaders who worked to enact the recent election reforms work even more diligently to ensure they are implemented effectively. Moreover, the Commission encourages Florida's leaders to expeditiously take up the issues they did not address in the last legislative package, such as making rules on purging of former felons less punitive and more in line with the mainstream of other states.

Ms. LOFGREN. Thank you for that testimony.

And thanks to all of the witnesses for your testimony.

Mr. McCarthy, would you like to proceed?

Mr. MCCARTHY. No. Go ahead.

Ms. LOFGREN. Okay. Fine. I will go first.

I would like to talk about the 1981 Federal ruling—I guess it is a consent decree—that prohibits the Republican National Committee from engaging in racially based caging activity. That ruling does not apply to State parties. So, in order to get this law enforced, you would have to prove a connection between the RNC and the State parties.

Is that not correct, Ms. Westfall?

Ms. WESTFALL. That is correct. That is a position—the RNC is the one that is bound by——

Ms. LOFGREN. Do you think there is a need to expand that ruling to State parties?

Ms. WESTFALL. Certainly. The State parties are not parties to the consent decree, so you do, as a plaintiff, need to establish a connection and a role that the RNC has played in the caging if you are to apply that case to the activities of the State parties. That is correct.

Ms. LOFGREN. I just want to note that, in addition to serving on the House Administration Committee, I serve on the House Judiciary Committee. Earlier this year, we had Ms. Monica Goodling appear as a witness before the committee. During the course of that testimony, she talked about vote caging and the activities of various lawyers in the Justice Department, but not on company time, to engage in the vote caging of African American voters. I mean, I remember sitting there, receiving this testimony, and asking other members of the committee, "What is 'vote caging?'" none of us knew, and none of the staff knew. I mean, it was a new concept to me.

Would it be true that it would include activities, for example, Mr. Hebert, where you would send, for example, a registered letter where you would have to sign to get your letter, and then if it got returned, you would use that as a basis for challenging a voter?

Mr. HEBERT. That is typically the way it works. You send out nonforwardable mail, and then, from the letters that come back, you compile a list.

Ms. LOFGREN. So if you were at work and you were not there to sign—I mean, lots of times people don't go down to the post office. They just aren't there to sign it, and they don't fill it out. They don't know what it is, and they didn't sign—you know, there is nothing coming from Amazon that they want. And so you could end up with people who are perfectly legitimate, and you could come to a wrong conclusion on the basis of that, could you not?

Mr. HEBERT. You could. The reason that it is most offensive, I think, is because, first of all, you are targeting a particular racial or ethnic group with your letters. That is problem number one.

Problem number two we saw, for example, in Jacksonville, Florida. A lot of the people who did not have forwardable mail were people who were overseas, fighting for the freedom of our country, and so their mail was not forwarded to them. So, you know, to disenfranchise somebody who is putting their life on the line every

day in the name of vote caging to suppress somebody's voting rights I think is un-American, frankly.

Ms. LOFGREN. Mr. Hebert, in looking at your bio, you joined the Department of Justice when Richard Nixon was President.

Mr. HEBERT. That is correct.

Ms. LOFGREN. You served under President Nixon, President Ford, President Carter, President Reagan, the first President Bush, President Clinton, and you are an observer of what is going on now.

Have you seen anything like this in other administrations, where the Department of Justice has apparently proceeded on the basis of partisanship in election laws?

Mr. HEBERT. No. In fact, I was proud during the Reagan years, in particular, when the civil rights organizations made a lot of criticisms about the Reagan administration's lack of enforcement of civil rights. Even in all of those years, there was not a partisan tinge to our law enforcement from the highest levels on down, whether it was Ed Meese as Attorney General or William French Smith or Dick Thornburgh, any of those Republican Attorneys General. They never let, to my knowledge, partisanship be the guidepost.

Ms. LOFGREN. I would ask you, Mr. Rich, you were a career person in the Department of Justice. Would you share Mr. Hebert's view?

Mr. RICH. Yes. I have testified and have spoken about this on several occasions. The difference between this administration and any other I served were the partisan factors that entered law enforcement decisions, which I had never seen before. I gave you an example in the Ohio case, which dealt with vote caging, but I have testified to several other examples that arose in, particularly, Section 5 decision-making in the Voting Section when I was there.

Ms. LOFGREN. Well, I thank the witnesses for this testimony.

And I will turn now to our ranking member, Mr. McCarthy, for his 5 minutes.

Mr. MCCARTHY. Well, I want to thank the panel. I appreciate your coming.

One thing I will tell you from both sides of the aisle is that we want to gather all of the information. If you have a different philosophical belief, that is fine, but the thing I believe is, regardless of whether you are a Republican or a Democratic, of the Green Party or are an independent, we want to make sure we have honest elections, fair elections. We want to make sure the voters have the right to vote.

We have come a long way. We have absentee balloting. We have early voting. We have others. We know, as we move to that direction and make it easier for individuals to vote—and we watch these other countries where people will stand in line for hours and will walk to their polling places and will turn out in such greater numbers than Americans will do. We want to make sure, as you set this up and make it easier for people, that we keep them honest.

I mean, I have had witnesses here who will tell me they disagree, and they will go through different things. The Secretary of State says we know we have fraud every time. We have Secretaries of State from small States who do not even ask for signatures when

they vote by absentee. They say, "Well, we trust everybody. We know everybody."

I think the one thing that binds us is our making sure that at the end of that Election Day that democracy worked, that we do not have fraud in the system, and that we allowed people to go to it as well. That is why I believe it is best to have these two panels. That is how I think Congress should work. That is how I think this committee should work.

So I applaud you for coming, and I thank you for your testimony.

Ms. LOFGREN. With that, we will note that we have 5 legislative days to ask additional questions. If questions are proposed, we will forward them to you. The Chair will forward them to you. We will ask that you respond as promptly as possible. And that would also be for the first panel of witnesses.

We do thank you for your testimony. A lot of people do not realize that our witnesses are volunteers and that you come here to help share your insight with the committee to make a better country, and we do appreciate that.

Mr. MCCARTHY. Madam Chair, if I may, I just have a letter I would like to submit here for the record. If I could ask for unanimous consent to have 5 days that members could submit additional——

Ms. LOFGREN. That is part of the rules. Without objection, the letter is made part of the record.

[The information follows:]

U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

August 23, 2006

Scott Leiendecker
St. Louis City Board of Elections
300 N. Tucker
St. Louis, MO 63101

Dear Scott:

It was an honor to have the opportunity to observe the Missouri Primary Election in St. Louis on August 8. Thank for your help in facilitating my visit. I enjoyed visiting the polling places and was thrilled to see history in the making at the City election board that evening.

I want to congratulate you on a successful election. You and Ed have brought about a new sense of professionalism and accountability at the office that was reflective in the completion of returns by 10:30 pm. While that fact made everyone in the state stand up and take notice, I know that there have been other changes that are bringing trust and confidence to the voters of the City. And we all know it was sorely needed and long overdue.

You came into your job at a most difficult time, with a new election system to implement and the need to be in compliance with the Help America Vote Act. There were also a lot of skeptics who thought elections in the City could never be conducted without major problems. I was very pleased to see that you took the challenge seriously and put in a lot of hard work into the effort. I know that in the past it was the results of who won and who lost that captured most of your attention. However, now you have experienced a different kind of election result, one that gets it done by 10:30 pm and gives voters trust and confidence in the election officials who conduct the election. It is that kind of result that gets you bi-partisan praise for a job well done and a result that fosters real democracy in America.

Let me assure you that your work is not complete. In fact, you are really just beginning. I am sure you learned a lot from this election—as you did from the April election. There is much more that you can do, and many new ideas and changes you can bring about to continue the momentum. I would encourage you to attend Election Center or IACREOT seminars, or visit other jurisdictions to learn from others. The EAC also issues a lot of best practices and other information that is very helpful to election officials. As I said to you on Election Day, I certainly hope that you stay and continue to grow in this job. I sensed a new spirit at the Board to get the job done right. And it was a bi-partisan spirit at that. This is the true spirit of democracy and I have had the pleasure of experiencing it all over the world. If you stick with this job, I am confident those same opportunities will await you.

Again, congratulations on a job well done. Please feel free to contact me if I can ever be of assistance.

Sincerely,

Paul DeGregorio

Paul DeGregorio
Chairman

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Toll free: 1 (866) 747-1471

Ms. LOFGREN. This hearing is adjourned.

[Whereupon, at 10:58 a.m., the subcommittee was adjourned.]