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LESSONS LEARNED FROM THE 2008 ELECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

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"Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow," a report on the Non-Partisan Election Protection program, submitted by Barbara R. Arnwine. This report is available at the Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, and can be accessed at:

http://www.866ourvote.org/tools/documents/files/0077.pdf

Exhibits regarding evidence of criminal and other improper actions by the Association of Community Organizations for Reform Now (ACORN), submitted by Heather S. Heidelbaugh. This information is available at the Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, and can be accessed at:

http://republicans.judiciary.house.gov/Hearings/Read.aspx?id=21

LESSONS LEARNED FROM THE 2008 ELECTION

THURSDAY, MARCH 19, 2009

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

The Subcommittee met, pursuant to notice, at 10:10 a.m., in room 2141, Rayburn House Office Building, the Honorable Jerrold Nadler (Chairman of the Subcommittee) presiding.

Present: Representatives Nadler, Conyers, Watt, Jackson Lee, Sensenbrenner, King and Gohmert.

Staff present: LaShawn Warren, Majority Counsel; Kanya Bennett, Majority Counsel; David Lachmann, Subcommittee Chief of Staff; and Paul Taylor, Minority Counsel.

Mr. NADLER. This hearing of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties will now come to order.

I will recognize myself for a 5-minute opening statement, which will not take 5 minutes.

Today's hearing looks at the 2008 elections to see what lessons we can learn to improve election administration and the protection of voting rights in the future

Although we were thankfully spared another national election in which the result was questioned by large numbers of Americans, there were still problems encountered by voters across the country. In too many instances, legally qualified voters were robbed of their right to vote either by poor administration, by excessively cumbersome procedures, or by efforts designed to disenfranchise them. In the world's leading democracy, that is simply intolerable. There is no more important right than the right to exercise the franchise freely, fairly, and without fear or intimidation.

Our Nation's history is one of expanding inclusion. We have expanded the franchise to include all persons, regardless of race, color, or previous condition of servitude or gender or age. We have enacted the Voting Rights Act, the Help America Vote Act, and the Motor Voter law. We recently renewed the Voting Rights Act with almost no dissent, thanks to the leadership of the distinguished gentleman from Wisconsin sitting uncharacteristically to my left and the distinguished Chairman of the full Committee.

But rights on paper are not the same as rights in fact. For that, we need vigorous enforcement. Efforts by both official and private parties to suppress the vote, especially of certain groups targeted

by race or belief, are unacceptable. Even when the culprit is poor management, the result is the same and still unacceptable.

I am eager to hear from our outstanding panels of witnesses today so we can take your guidance as to how best to improve the process for the future.

I would yield back the rest of my time.

The Chair will now recognize the distinguished Ranking Member for 5 minutes for an opening statement.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

The legitimacy of our elected leaders depends upon the legitimacy of our election process. During the last election, one organization became notorious for threatening that legitimacy through a massive campaign of improper election activity. That organization is called ACORN, and its actions cry out for investigation by this Committee.

We will hear much more about ACORN from some of our witnesses today, but by way of general background, let me read sections of ACORN's extensive rap sheet which spans from coast to coast.

In Seattle, local prosecutors indicted seven ACORN workers following a scheme the Washington secretary of state called the worst case of voter registration vote in the state's history. Of the 2,000 names submitted by ACORN, only nine were confirmed as valid. The rest—over 97 percent—were fake.

In Missouri, officials found that over 1,000 voter addresses submitted by ACORN did not exist. Eight ACORN employees pled guilty to Federal election fraud there.

In Ohio, an employee of one ACORN affiliate was given crack cocaine in exchange for fraudulent registrations that included underage voters and dead people.

Last year, in Pennsylvania, a former ACORN worker was charged with 19 counts of perjury, making false statements, forgery, and identity theft.

In my own State of Wisconsin, the special investigations unit of the Milwaukee Police Department issued a report that concluded eight people were sworn in as deputy registrars who are convicted felons under the supervision of the Division of Corrections. ACORN was their sponsoring organization.

The 67-page Wisconsin report generally describes what it calls an illegal organized attempt to influence the outcome of the 2004 election in the State of Wisconsin. The report found that between 4,600 and 5,300 more votes were counted in Milwaukee than the number of voters recorded as having cast ballots. Mike Sandvick, the head of the special investigative unit, said the problems his unit found in 2004 were only the tip of the iceberg of what could happen today.

Another former ACORN field director reported ACORN threw out Republican registrations and paid cash for Democrat registrations.

In the end, during the 2008 election, ACORN's executive director had to admit that of the 1.3 million new voters ACORN claimed to have registered, only a third of those 450,000 were legitimate and that the organization was forced to fire 829 of the canvassers it

hired for job-related problems, including falsifying registration forms.

Astonishingly, in the face of all this, a lawyer for President Obama's election campaign wrote a letter to the Justice Department demanding that it investigate not ACORN, but the McCain campaign for daring to mention what the campaign lawyer referred to as unsupported spurious allegations of vote fraud.

But the President should be particularly concerned with ACORN's behavior because, as it was reported last year, his presidential campaign paid more than $800,000 to an offshoot of ACORN for services it misrepresented in Federal reports. The Obama campaign initially reported the ACORN affiliate used the money for polling, advance work, and event staging, but really it used the money for the same projects that has mired ACORN in criminal investigations in at least 12 states.

Beyond voting fraud, a recent article in *The New York Times* revealed just how shady ACORN's financial operations can be, stating, "ACORN chose to treat the embezzlement of nearly $1 million as an internal matter and did not even notify its board or law enforcement." *The New York Times* also reported that, "An internal investigation revealed the potentially improper use of charitable dollars for political purposes, illicit money transfers, and potential conflicts created by employees working for multiple affiliates."

It is tragic enough when voluntary donations are used illegally, but when ACORN also receives millions of taxpayer dollars and it is eligible to receive millions more under the wasteful spending bill that Congress just passed—as it turned out, the 2008 presidential election was not close, and when elections are not close, vote fraud too often goes uninvestigated, but as elected representatives, we have a special responsibility to ensure that only legal voters are registered and that only legal votes are cast and counted.

I thank the Chair.

Mr. NADLER. The Chair now recognizes the distinguished Chairman of the full Committee for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman, and friends.

This may be the most important part of the Judiciary Committee's work, and yet out of 17 Members of the Committee, we have five here—Steve King is around in the back—no press, and I think that tells a story in itself. Now everything in a democratic system turns on the fairness of the voting process, to choose who governs, at every level, and this is not about just looking at the last election. It is about looking at the history of elections in this country.

We have come through two presidential elections that were highly controversial. We have never had the Supreme Court decide a presidential election before. And what went wrong in Ohio is now a part of history. We have people in this country for whom it is made so inconvenient to vote, that they frequently do not get a chance to vote.

Then you have another group of people who have given up on the voting process, that they just say, look, it is not going to change very much anyway. And to have the former Chairman of the Committee worry about ACORN as if that is a serious problem, why don't we, Steve, have a hearing on ACORN?

Let's bring in everybody and go through it, but just venting about it like this is some sinister group I do not think reflects well on the seriousness of why we are, and there are a lot of attitudes about voting, this whole phenomena of voter ID that is sweeping the country, all of these allegations about fraud in voting. I think we found the Department of Justice had about 86 cases over a period of years.

In Michigan, we used to have hordes of suits come into Detroit to challenge people voting—at their own physical risk, I might add—but the whole idea is that we are going to get rid of some of this fraudulent voting. We are going to challenge people. They really had a ball for a while. They were snatching papers away from election workers, and police were coming out to get them safely out of election places.

So I am interested in how we can get a more positive attitude about voting in America, and it has to come from the Federal Government, and the celebration about the victory of the 44th President really signals how much people do not understand the depth of this problem.

We have some very serious problems, and because of the state jurisdiction on much of this, it is not easy. It is not like the feds can come in on each and every election problem. With redistricting, the courts just did us a great for. Thanks a lot, Supreme Court, for the earlier decision this week that rather complicated the process.

So I look forward to the witnesses. I commend the Chairman and Ranking Member for bringing us together today.

Mr. NADLER. Thank you, Mr. Chairman.

In the interest of seeing to our witnesses and mindful of our busy schedules, I ask that other Members submit their statements for the record. Without objection, all Members will have 5 legislative days to submit opening statements for inclusion in the record.

Without objection, the Chair will be authorized to declare a recess of the hearing, if necessary to do so.

We will now turn to our first panel of witnesses. As we ask questions of our witnesses, the Chair will recognize Members in the order of their seniority on the Subcommittee, alternating between majority and minority, provided that the Member is present when his or her turn arrives. Members who are not present when their turns begin will be recognized after the other Members have had the opportunity to ask their questions. Of course, that assumes that that is a relevant consideration today. The Chair reserves the right to accommodate a Member who is unavoidably late or only able to be with us for a short time.

Our first panel consists of four witnesses.

Barbara Arnwine, executive director of the Lawyers' Committee for Civil Rights Under Law, is our first witness. In 2004, Ms. Arnwine was the leader of the non-partisan Election Protection Coalition which helped to organize 8,000 lawyers to accept calls from voters and serve as poll monitors in over 28 states. The Election Protection Voter Assistance Program continues to thrive today under her leadership. Ms. Arnwine is a graduate of Scripps College and Duke University School of Law.

Matthew Segal is the founder and executive director of the Student Association for Voter Empowerment, SAVE, a Washington,

DC-based, non-partisan, non-profit organization funded and run by students with a mission to increase youth voter turnout by removing barriers to participation and promoting stronger civic education.

Mr. Segal was appointed a senior research fellow and national democracy coordinator for the Roosevelt Institution, a 7,000-member national student think tank. Additionally, he serves on Ohio Secretary of State Jennifer Brunner's Voting Rights Advisory Council, guides regular workshops and panels on youth voter mobilization and voter participation trends, and contributes a blog to *The Huffington Post.*

Heather Heidelbaugh—and I hope I pronounced that correctly—is a shareholder in the litigation services group of Babst, Calland, Clements & Zomnir—I hope I pronounced that correctly, too—and vice president of the Republican National Lawyers Association. Ms. Heidelbaugh has substantial experience practicing election law and has frequently lectured on the topic. Previously, she served as the Bush-Cheney 2004 Pennsylvania election counsel. Ms. Heidelbaugh received a B.A. in economics and political science from the University of Missouri-Columbia, where she also earned her J.D.

And, finally, Dr. James Thomas Tucker is a consulting attorney for the Native American Rights Fund. Currently, he is co-counsel in *Nick v. Bethel,* Alaska, the first language assistance and voter assistance case brought under the Voting Rights Act on behalf of Alaskan natives. Previously, he worked on behalf of the National Association of Latino Elected and Appointed Officials to secure the 25-year re-authorization of the Voting Rights Act, and he has served as a senior trial attorney with the voting section of the Civil Rights Division at the U.S. Department of Justice.

Dr. Tucker holds doctor of the science of laws and master of laws degrees from the University of Pennsylvania, a juris doctorate degree with high honors Order of the Coif from the University of Florida, and a master in public administration degree from the University of Oklahoma. He received undergraduate degrees in history from Barrett Honors College at Arizona State University.

I am pleased to welcome all of you.

Your written statements in their entirety will be made part of the record. I would ask each of you to summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light, I should say, at your table. When 1 minute remains, the light will switch from green to yellow, and then red when the 5 minutes are up.

You may be seated.

The first witness for 5 minutes is Ms. Arnwine.

TESTIMONY OF BARBARA B. ARNWINE, EXECUTIVE DIRECTOR, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Ms. ARNWINE. Okay. There we go.

Mr. Chairman and Members of the Committee, thank you for inviting me to this hearing today.

My name is Barbara Arnwine, executive director of the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee leads Election Protection, the Nation's largest non-partisan voter protection and education effort. This historic coalition brought to-

gether hundreds of national, statewide, and local organizations, and law firms in common purpose to provide eligible voters with the tools they need to cast a ballot that counts.

Through our state-of-the-art 866-OUR-VOTE hotline, interactive Web tools, and comprehensive field programs, we directly helped over a half a million voters in 2008's historic election. This election exemplified a stark dichotomy in which we saw a historic election of unexpected voter participation take place against a background of persistent barriers and chicanery. We have a duty to make our elections open to all eligible citizens, conduct them fairly, and make them transparent so all Americans have confidence in the electoral system today.

Today, Mr. Chairman, I want to thank you for your leadership in reintroducing the Deceptive Practices and Voter Intimidation Prevention Act of 2009, which helps thwart deliberate attempts by political operatives to confuse, deceive, and intimidate voters at the polls. In addition, this Committee has played a lead role in exposing the failures of the Justice Department in previous Administrations, particularly in the area of voting rights. These two issues—the need for Federal legislation banning deceptive practices and Justice Department enforcement of Federal voting rights protections—are the focus of my testimony today.

Our Election Protection experience in the last several cycles has confirmed an unfortunate reality: Deceptive practices—that is false information designed to mislead voters about the time, place, and manner of elections—has become an endemic problem. For example, in 2004, there were flyers from the fictitious Milwaukee Black Voters League telling voters that if they had voted in the primary or if anyone in their family had been guilty of any infraction, even a traffic ticket, they could not vote in the presidential election and would be imprisoned for 10 years if they voted.

In 2008, Election Protection received almost daily reports, in the weeks leading up to the election, of deceptive practices. Flyers, robocalls, emails, text messages, and online social networking programs such as Facebook were all used to deliver false voter information.

One egregious example occurred on the campus of George Mason University. An email circulated around the campus purportedly from Provost Peter Stearns informing students and staff that the election had been postponed until Wednesday, November 5. Later, Stearns sent a message revealing that someone had hacked into the system and that voting would indeed take place "today, November 4."

We believe Congress should prioritize the Deceptive Practices and Voter Intimidation Act for this year. An effort to make it "unlawful for anyone before or during a Federal election to knowingly communicate, or attempt to communicate, false election-related information about the election with the intent to prevent another person from exercising the right to vote," is directly responsive to the type of problems that voters encounter. The Deceptive Practices Act and extended enforcement therein establishes a clear standard of law: If you intend to deceive voters, you will be punished.

Mr. Chairman, you deserve our utmost appreciation for your continued attention to this matter.

The Bush administration's underenforcement of section 7 of the National Voter Registration Act of 1993 disenfranchised millions of poor Americans. Section 7 requires public assistance agencies to provide voter registration applications and offer assistance to individuals applying for benefits. Congress included section 7 to make sure that people who are poor and vulnerable would not be disadvantaged in voter registration because they did not have driver licenses and thus would not be registered under the motor voter provisions of the NVRA.

The Lawyers' Committee has been working with Demos and Project Vote on a national effort to enforce section 7. In the last reporting period of the United States Election Assistance Commission, officials received only 500,000 applications from public assistance offices as compared to 16.5 million applications from motor vehicle offices. We estimate that more than half of the states are in violation of section 7.

For most of the Bush Justice Department years, section 7 noncompliance was ignored. The department brought only one case under section 7 in Tennessee where it was part of a larger NVRA case. It was not until 2008 that the Bush Justice Department began taking its responsibilities seriously by reaching out-of-court settlements in Illinois and Arizona.

Active section 7 enforcement can make a difference. Last year, the Lawyers' Committee filed suit against Missouri's Department of Social Services in *ACORN v. Scott.* In July, the district court granted our motion for preliminary injunction and ordered an interim remedial plan. In the first 6½ months under the remedial plan, the Department of Social Services registered nearly 80,000 people, a 2,000 percent increase as compared to the 2005-2006 reporting period.

If there was full compliance with section 7, instead of a paltry 270,000 people being registered per year by social services agencies, 2 to 3 million poor people would be registered to vote.

Mr. Chairman, thank you and the Committee for the opportunity to testify today, and I would be happy to answer any questions.

[The prepared statement of Ms. Arnwine follows:]

PREPARED STATEMENT OF BARBARA R. ARNWINE

Mr. Chairman and members of the Committee, thank you for inviting me to this hearing today. My name is Barbara Arnwine, Executive Director of the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee leads Election Protection, the nation's largest nonpartisan voter protection and education effort. This historic coalition brought together hundreds of national, statewide and local organizations in common purpose to provide eligible voters with the tools they need to cast a ballot that counts. Through our state of the art 866-OUR-VOTE hotline, interactive web tools and comprehensive field programs, we directly helped over half a million voters in 2008's historic election.

Mr. Chairman, I want to thank you for your leadership in combating deceptive voting practices. As you know, voters across the country still have to navigate through deliberate attempts by political operatives to confuse, deceive and intimidate them as they try to vote. In particular, I thank Chairman Conyers for reintroducing the Deceptive Practices and Voter Intimidation Prevention Act of 2009. This bill will not only prevent these practices under federal law, but will provide the necessary administrative remedies to ensure quick dissemination of correct information to the affected communities in ways they trust. In addition, this Committee has played a lead role in exposing the failures of the Justice Department in the previous Administration, particularly in the area of voting rights. These two issues—the need

for federal legislation banning deceptive practices and Justice Department enforcement of federal voting rights protections—are the focus of my testimony today.

The Lawyers' Committee, founded 46 years ago, by President Kennedy enlists the private bar in providing legal services to address racial discrimination. Since our inception, voting rights has been at the core of our work. Just yesterday, we filed our brief in the United States Supreme Court in *Northwest Austin Municipal Utility District No. 1 v. Austin,* where we assert that Congress acted within its broad authority to enforce the guarantees against voting discrimination in the 14th and 15th Amendments when it reauthorized Section 5 of the Voting Rights Act three years ago.

In the aftermath of the 2000 election debacle, we cofounded Election Protection to monitor and mitigate problems and to help ensure that all voters have an equal opportunity to participate in the political process. In 2005, we created an initiative within the Voting Rights Project of the Lawyers' Committee—the National Campaign for Fair Elections—to lead Election Protection and the Lawyers' Committee's efforts to reform the election process.

The 2008 Election Protection program was our most ambitious voter education and protection effort in history. Election Protection built the largest voter protection and education effort yet, bringing together civil rights advocates, diverse community partners, media and concerned citizens to safeguard the votes of all Americans. We did a tremendous amount of public outreach with NBC, BET, and other media to educate voters on our efforts. With the support of over 150 coalition partners, we worked with election officials, conducted strategic legal voter protection field programs and answered over 240,000 calls to 1-866-OUR-VOTE our one of a kind voter support hotline that, combined with our sister hotline 1-888-Ve-Y-Vota, is the only nationwide number to provide live, real-time assistance to voters to help them cast a ballot. Further, we took advantage of new technology, and initiated our online voter education program—*www.866OURVOTE.org,* which served as an interactive clearinghouse for state and national voting rules, regulations, news and information on hot election topics. From September 17th through Election Day, more than 283,000 people visited the website. Of course, Election Protection's primary purpose is to deliver a comprehensive support network to voters. That goal, however, is followed closely by our unique data collection effort. Combining the stories from callers into the hotline with those that come in from our interactive webchat and those developed in the field, our partner, the Electronic Frontier Foundation, created *www.ourvotelive.org,* a public website that collects the experiences of the hundreds of thousands of voters with whom Election Protection interacts. The result is the most complete picture of the obstacles Americans face as they head to the polls from the perspective of the voters.

Mr. Chairman, I believe we have not only a legal obligation, but a moral one to uphold such fundamental rights of all eligible Americans. Since the ratification of the civil war amendments, through the Voting Rights Act of 1965, the National Voter Registration Act of 1993 ("NVRA") and the Help America Vote Act of 2002, Congress has demonstrated its commitment to protecting this right. Now is the time to continue that tradition by focusing on election reform when we are not clouded by the partisanship of an election year. Instead, we should focus on election reform—both here in Congress, and in the administrative agencies responsible for protecting our rights—at a safe enough distance to develop and pass real, meaningful reforms. Now is the time to pass the Deceptive Practices and Voter Intimidation Act and now is the time to refocus the Department of Justice on its historic role as a protector of the right to vote. We have a duty to make our elections equally open to all eligible citizens, conduct them fairly and make them transparent so all Americans have confidence in the electoral system, today, Mr. Chairman, you are taking the critical first step on that noble path.

The recent election season presented us with a stark dichotomy in which we saw a historic election take place amid a background of old concerns. We should ensure that such elections, although they may be historic, are substantiated by increased access and credibility. Attached to my testimony is our report,* *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow,* which details the Election Protection experience from 2008 and our recommendations as to how to improve our election system. My testimony focuses on two issues of particular concern to this Committee: the endemic problem of practices that disfranchise voters by intentionally deceiving them as to the time, place and manner of elections and

*The report, "Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow," has been made a permanent part of this record and is available at the Committee on the Judiciary. This report may also be viewed on the Internet at: http://www.866ourvote.org/tools/documents/files/0077.pdf

the under-enforcement of federal voting protections by the United States Department of Justice.

DECEPTIVE PRACTICES

Our Election Protection efforts are very important to me; In fact, I personally help answer phones and participate in a variety of ways during the chaos and excitement of each election season, surrounded by hundreds of dedicated colleagues committed to providing voters with the information they need to go to the polls and have their vote counted. The phones will ring on the day after the election and sometimes it is an ultimately heartbroken voter who, because of a flier, email or call went to the poll on the wrong day. This should never happen. I hope you will stand with me in ensuring that it does not continue.

Our Election Protection experience in the last several cycles has confirmed an unfortunate reality; deceptive practices—false information designed to mislead voters about the time, place, and manner of elections—has become an endemic problem. For example, in 2004, there were fliers from the non-existent Milwaukee Black Voters League telling voters that if they had voted in the primary or if anybody in their family had been guilty of any infraction, even a traffic ticket, they could not vote in the Presidential election and would be imprisoned for ten years if they voted. In Allegheny County, Pennsylvania there was a notice on official-looking letterhead informing Republicans to vote on Tuesday, November 2 and Democrats to vote on Wednesday, November 3. Indeed, the day after the election the 866-OUR-VOTE hotline received calls from voters asking us why the polls were not open. In 2006, we received reports from voters in several states saying that they had received calls stating their polling place had been moved when it had not and or stating that the their registrations had been cancelled.

In 2008, Election Protection received almost daily reports in the weeks leading up to the election of voters targeted with misinformation and voter intimidation. These were intentional efforts to keep voters from casting ballots. Fliers, robocalls, e-mails, text messages and online social networking programs such as Facebook were all used to deliver deliberately false information about registration, polling locations, poll closing times and voter ID requirements. These are deceptive practices we have observed repeatedly since the start of our Election Protection efforts. In fact, this year, deception expanded, as new, high tech outlets made it easier than ever to disseminate false information quickly. One egregious example occurred on the campus of George Mason University—an e-mail circulated around the campus purportedly from Provost Peter Stearns, informed students and staff that the election had been postponed until Wednesday, November 5th. Later, Stearns sent a message revealing that someone had hacked into the system and that voting would indeed take place "today, November 4th."

Our efforts need to adapt accordingly to combat these practices and minimize the effect of partisan tricks. This is an opportunity for us to use new media to combat those very same tactics. We need to make sure correct information is clearly identified, consistent and widely accessible.

More examples follow, which demonstrate the influences deceptive practices had on the most recent election:

Pennsylvania—In a West Philadelphia neighborhood, fliers appeared stating that anyone who showed up at the polls with a criminal record of any kind—including something as minor as an unpaid traffic ticket—would be arrested on the spot by law enforcement officials stationed at every polling location. Election Protection conducted aggressive media outreach in the area to quickly debunk this myth. As a result of Election Protection's efforts, the false fliers were discussed and discredited in articles about election-related dirty tricks published by the Associated Press, *Philadelphia Inquirer,* McClatchy and ABC.com.

Michigan—Misinformation about student voting rights surfaced in Michigan as in other states. Emily D. of Grand Rapids was working to get eligible voters—including students—registered in time to vote for November's general election. Like many students, Emily was given erroneous advice from election officials that registering students in a county other than where their parents lived could endanger their financial aid and health insurance. She called the 866-OUR-VOTE hotline to verify this information, and upon learning that students could register in Michigan without legal repercussions, Emily went on to register 200 new student voters

Missouri—The Secretary of State's office in this state reportedly received complaints from people who had received text messages claiming that due to high turnout, Democrats would be voting on Wednesday, November 5. In one loca-

tion, it was reported that there was a sign posted, informing voters that they were not allowed to vote a straight ticket, which prompted the voter who called Election Protection—and untold others—to vote against his preferred party once to ensure that his ballot would be counted.

These were not cases of isolated incidents—quite the contrary—they only begin to highlight occurrences of similar circumstances in many states throughout the country.

As we have noted, voters in nearly a dozen states were the victims of misinformation in the weeks leading up to and including Election Day. By denying a voice to eligible voters, deceptive practices increase the poisonous cynicism voters have about the process.

Again, we applaud the work done by this Committee in reintroducing the Deceptive Practices Act this year. We believe Congress should prioritize this bill, as such legislation can have a tremendous stake in the election process in light of the problems we still see, as outlined above. An effort to make it "unlawful for anyone before or during a federal election to knowingly communicate, or attempt to communicate, false election-related information about that election, with the intent to prevent another person from exercising the right to vote" is directly responsive to the type of problems we see. We believe this is a warranted and welcomed effort to remedying those persistent problems.

Historically, voters who are deliberately provided misinformation about when, where or how to vote or about voter registration requirements do not have adequate legal recourse. The Deceptive Practices Act and extended enforcement therein, establishes a clear standard of federal law: if you intend to deceive voters, you will be punished. For that, Mr. Chairman, you deserve our utmost appreciation for your continued attention to this matter.

While it will be an improvement to prohibit deceptive practices through federal law, in the heat of an election season, when most of this activity happens, voters should also be informed of correct information through sources they trust. Prosecutions are often not possible or the most effective way to overcome deceptive information as Election Day approaches—the most important goal near an election. This remedy should be collaboration between the relevant government actors at the general, state and local levels. The Justice Department should collect information and statistics about these practices to inform investigations and determine the extent and character of deceptive voting practices. We laud the fact that the Act "requires the Attorney General, immediately after receiving such a report, to consider and review it and, if there is a reasonable basis to find that a violation has occurred, to: (1) undertake all effective measures necessary to provide correct information to voters affected by the false information; and (2) refer the matter to the appropriate federal and state authorities for criminal prosecution or civil action after the election."

VOTING RIGHTS ENFORCEMENT BY THE UNITED STATES DEPARTMENT OF JUSTICE

We are shoveling our way out of a hole dug by several years of insufficient attention to voting rights enforcement in the previous administration. This Committee's record in unearthing the previous administration's lack of enforcement is notable, but we are still digging. There is a need for the Department of Justice to continue to expand enforcement measures to help us dig out of the hole more expeditiously.

One notable area where the Bush Administration's failure to enforce federal voting protections impacted millions of poor Americans was its under-enforcement of Section 7 of the National Voter Registration Act of 1993 ("NVRA"). Section 7 requires public assistance agencies to provide voter registration applications and offer assistance to individuals applying for benefits. Congress included Section 7 to make sure that people who are to poor and vulnerable would not be disadvantaged in voter registration because they did not have drivers' licenses and thus would not be registered through the "motor voter" provisions of the NVRA.

There is large-scale noncompliance with Section 7 as the Lawyers' Committee has found while working with Demos and Project Vote on a national effort to enforce Section 7. The numbers tell much of the story. The United States Election Assistance Commission (EAC) reports to Congress on NVRA compliance after every federal general election. In the last reporting period, which covers the two year period preceding the November 2006 election, election officials received only 527,752 applications from public assistance offices as compared to 16,591,292 applications from motor vehicle offices. We estimate that more than half of the states are in violation of Section 7.

For most of the Bush Justice Department, Section 7 noncompliance was ignored despite repeated efforts by the civil rights community to prod it into action. The Department brought only one case under Section 7—in Tennessee, where it was part

of a larger NVRA case. Only last year did the Bush Justice Department begin taking its enforcement responsibility seriously by reaching out-of-court settlements in Illinois and Arizona.

Active Section 7 enforcement can make an enormous difference. Last year, the Lawyers' Committee filed suit against Missouri's Department of Social Services in *ACORN v. Scott.* In July, the district court granted our motion for preliminary injunction and ordered an interim remedial plan into effect. In the first six-and-a-half months under the remedial plan, the Department of Social Services registered nearly 80,000 people—a *2000%* increase as compared to the 2005–06 reporting period. Moreover, in Tennessee, the one place where the Bush Justice Department brought a case, the public assistance agencies generated more than 120,000 voter registration applications in the 2005–06 reporting period. This represented more than one in five registrations from public assistance agencies in the *nation.*

If there was full compliance with Section 7, 2–3 million poor people would be registered to vote at public assistance agencies per year as opposed to less than 270,000 per year as indicated in the EAC's last biannual report to Congress. If approximately 15 attorneys and eight paralegals were added to the Department of Justice's Voting Section to focus on NVRA Section 7 work, we believe that full compliance could be achieved in a two to three year period. This would be a small price to pay for the results that would be achieved.

CONCLUSION

Mr. Chairman, thank you and the Committee for your continued commitment to our fundamental patriotic need to provide an equal opportunity for every eligible citizen to make her voice heard through the ballot box. For far too long, the cynicism of deception and intimidation has kept that goal just out of reach. To truly realize our constitutional democratic promise, we must eliminate these cynical practices and restore the role of the Department of Justice as a guardian of our most fundamental right, the right to vote.

Thank you for the opportunity to testify today and I would be happy to answer any questions.

Mr. NADLER. Okay. Thank you.

Mr. Segal, you are recognized for 5 minutes.

TESTIMONY OF MATTHEW SEGAL, EXECUTIVE DIRECTOR, STUDENT ASSOCIATION FOR VOTER EMPOWERMENT (SAVE)

Mr. SEGAL. Thank you, Mr. Chairman, Mr. Ranking Member.

My name is Matthew Segal, and I am the executive director of the Student Association for Voter Empowerment, otherwise known as SAVE. I speak here today representing a constituency of over 10,000 members and on more than 30 college campuses throughout the country. As several journalists coined 2008, it was the year of the youth vote. Young voter participation increased considerably, with over 23 million young Americans—or 52 percent of all eligible young voters—casting ballots.

Beyond just statistics, young people provided unprecedented energy, spirit, and volunteer service to political campaigns, which was instrumental in shattering the conventional wisdom that young people do not vote or do not want to vote. Yet notwithstanding these clear successes, a closer examination of the 2008 election demonstrates that young voters succeeded in spite of numerous barriers, not necessarily because the system worked efficiently.

The problems of the 2008 begin with voter registration. First, there were several instances of misleading statements made by election officials regarding the potential consequences for out-of-town college students who wished to register and vote within their campus communities.

At jurisdictions including Virginia Tech and Colorado College, for instance, county clerks issued statements indicating that if students chose to register at school and they wanted to participate where they attend college for 9 months of the year, that their parents could no longer claim them as tax dependents on their forms, and that they could potentially lose their scholarships, grant money, and health insurance. And since these false claims originated from election officials, disputing their accuracy was particularly difficult.

Students attempting to register at Jackson State University, Furman, and both Radford and Mary Washington College were repeatedly denied registration status because they listed a dorm room as their residency. This dilemma was and is the result of vague definitions of domicile, which registrars may interpret subjectively to include or exclude college communities.

While voter registration issues were indeed the dominate problem in 2008 for young people, we also faced additional barriers, including misinformation campaigns and deceptive practices, like Ms. Arnwine referred to, and I will just mention briefly that I would like to submit for the record some flyers that were posted around Drexel University as well as Penn, which warned if you have any unpaid parking tickets that you could potentially risk jail time for voting.

Mr. Chairman, I would like to submit this.

[The information referred to follows:]

Recently, at school, an Obama supporter approached me during a rock the vote assembly. He informed that on the day of the election there will be undercover officers to execute warrants on those who come to vote based on the anticipated turnout. He advised me if I had any outstanding warrants or traffic offenses I should clear them up prior to voting. They assume this to be an opportunity for those who normally go by fake names and addresses, to give their real names and id's. Allowing them to place name and face together and walla, gotcha! Arrested on the spot. So if you have one or the other to take care of it.

Due to the electronic genius of wireless technology this can and will take place all around the nation from LA to New York. Why hasn't this been done before? This seems to be a great way to arrest or just be able to identify criminals in the area. I applaud the new efforts of local and state authorities and hope to see a great success rate. I 'm sorry to say but I don't think they should be able to vote anyway! Question? Are convicted felons allowed to vote?

He also said that both Obama and McCain support this idea but that he, "Obama", does not want the public to see any of his supporters get locked up showing their support or illegally voting for him. An incentive to avoid the legal dilemmas, but still participate in the vote is being put in place. This would allow individuals to turn themselves in, prior to voting, without legal penalty. This type of incentive recently took place at a South Philadelphia church with an outstanding turnout. Is this taking away from the true freedom of voting? Is this legal?

He had also learned that at the polling sites local authorities will not only be checking for "scoff law" traffic tickets offenders inside, but this will also take place outside. There will be vehicles equipped with plate identification computers. Upon identification cars will be locked with an immobilization feature locked to its tire then towed.

I think this November will be a November to remember. I love technology.

Anonymous

Mr. SEGAL. Thank you.

Deceptive practices also occurred via text message, and because the Obama and McCain campaigns regularly sent text messages, this increased the believability of them for young people.

Without sufficient time in my oral testimony to overview absentee ballot problems and a lack of polling locations, I feel compelled to briefly mention long lines. Temple University, University of Connecticut, and University of South Florida, students all waited in excess of 3 hours to vote, while the longest lines were at Lincoln University in Pennsylvania, over 11 hours in line. These extremely long lines were caused by a lack of voting machines, five machines for 3,000 registered voters.

Long lines are a particularly salient issue to me, given that my first voting experience attending college in Gambier, Ohio, back in 2004 had the longest line lines in the country at 12 hours in length. I, therefore, come to this Committee today with the exact

same question I asked just 4 years ago when I testified here in saying: What safeguards or standards are currently in place to ensure that elected officials, whether intentionally or inadvertently, cannot allocate two voting machines to one district and 10 voting machines to another district, both of which are identical in scope and composition?

While long lines or deceptive flyers create a clear graphic image of voting barriers, perhaps the most insidious obstacle for young people are stringent voter ID laws. Students at Butler University and Earlham in Indiana voted provisionally because they were unable to satisfy their state government-issued photo ID requirements and could not use college or university ID as a permissible alternative. According to a Rock the Vote poll, 19 percent of young adults report they do not possess a government-issued photo ID that reflects their current address. This is a consequence of the fact that young adults are a uniquely mobile demographic.

In response to the issues I have raised in this testimony, we have several policy proposals, and I have little time to share them, so I will be brief.

First, we support the Count Every Vote Act, which was a comprehensive election reform piece of legislation introduced by the late Congresswoman Stephanie Tubbs Jones.

We also support the Chairman of the full Committee's bill, The Voting Opportunity and Technology Enhancement Rights Act. With these bills, which already have some of these things in their policies, we recommend same-day voter registration, standards for allocation of voting systems, less restrictive photo ID requirements, and a tracking system to follow the status of absentee ballots similar to what one can do for a UPS package.

Finally, SAVE's top legislative priority is passing the Student Voter Act, a bipartisan bill introduced by Jan Schakowsky, Steven LaTourette of Ohio, and Dick Durbin of Illinois, which would amend the National Voter Registration Act to require all colleges and universities that receive Federal money to act as voter registration agencies for their enrolling students. This bill would specifically target the 30 percent of young non-voters in this country who cite uncertainty and confusion with the registration process as their primary reason for not participating.

I look forward to discussing potential solutions further in the Q and A, and I thank you for including young people in this critical discourse.

[The prepared statement of Mr. Segal follows:]

PREPARED STATEMENT OF MATTHEW SEGAL

Student Association for Voter Empowerment

Testimony of Matthew Segal

Executive Director
Student Association for Voter Empowerment

"Lessons Learned From the 2008 Election"
March 19, 2009

Subcommittee on the Constitution, Civil
Rights, and Civil Liberties

Committee on the Judiciary

United States House of Representatives

Good morning Chairman Nadler, Ranking Member Sensenbrenner, and the Committee members; I thank you for inviting me here today and am grateful for the opportunity to testify on "Lessons Learned From the 2008 Election." I also want to thank your committee staff, Chairman Conyers, and my fellow panelists, all of whom have important perspectives to contribute today.

My name is Matthew Segal, and I am the executive director of the Student Association for Voter Empowerment, otherwise known as SAVE. A national non-profit organization founded and run by young people, SAVE's mission is to increase youth voting participation by removing access barriers and promoting stronger civic education. I speak here today representing a constituency of over 10,000 members on more than 30 college campuses across the country.

As several journalists coined it, 2008 was the "Year of the Youth Vote." For the third consecutive presidential election, young voter participation (among 18-29 year olds) increased considerably, with over 23 million young Americans—or 52% of all eligible young voters—casting ballots. This was also a 12% increase in young voter participation since the 2000 presidential election.[1] Beyond just statistics, young people provided unprecedented energy, spirit and volunteer service to political campaigns, which was instrumental in shattering the conventional wisdom that "young people don't vote" or "don't want to vote." Yet notwithstanding these clear successes, a closer examination of the 2008 election demonstrates that young voters succeeded in spite of numerous barriers, not necessarily because the system worked efficiently.

The problems of the 2008 election begin with voter registration:

First, there were several instances of misleading statements made by elected officials regarding the potential consequences for out-of-town college students who wished to register and vote within their campus communities. At jurisdictions including Virginia Tech[2] and Colorado College[3], for instance, county clerks issued statements indicating that if students chose to register at school, then their parents could no longer claim them as dependents for tax purposes. The registrars also cautioned that students could lose scholarships, grant money, and health insurance. And since these false claims originated with election officials, disputing their accuracy was particularly difficult. It was not until civil rights attorneys sued and the IRS declared such claims inaccurate that these registrars issued corrections to their student populations.

Second, students attempting to register at Jackson State University in Mississippi,[4] Furman University in South Carolina,[5] and both Radford University[6] and Mary

[1] "Youth Voting," *Center for Information and Research on Civic Learning and Engagement*, accessed via http://www.civicyouth.org on March 17, 2009.
[2] Tamar Lewin, "Voter Registration by Students Raises Cloud of Consequences," *The New York Times*, September 7, 2008.
[3] Laura Fitzpatrick, "College Students Still Face Voting Stumbling Blocks," *Time*, October 14, 2008.
[4] Individual Interview with Lafeyounda Brooks, President Jackson State University NAACP, October 28, 2008.

Washington College in Virginia,[7] were repeatedly denied registration status because they listed a dormitory room as their address. This dilemma was (and is) the result of vague definitions of domicile, which registrars may interpret subjectively to include or exclude dormitories. With such different styles of housing (whether a dorm, an apartment, a home, a public assistance agency, etc.), there is room for potential malfeasance or confusion in granting residency to eligible citizens.

Third, voter caging resulted in the removal of young people from the voter rolls. A prominent example of voter caging, which specifically targeted students, occurred in Montana[8]. Republican Party officials intended to use "change of address" forms to remove voters from the registration rolls despite the fact that students routinely use such forms to forward mail during temporary absences. Certainly, a temporary leave of absence does not constitute a legitimate reason for removing a potential voter from the rolls; and after several groups, including SAVE, brought significant public pressure against party officials, the voter-caging plan was abandoned. Had the voter caging continued unchecked, thousands of young voters could have been removed from the registration lists without their knowledge and left with little recourse.

These examples demonstrate the symptoms of a greater problem: the voter registration process is flawed. In addition to the problems I cited previously, election officials are often overwhelmed by an influx of voter registration forms immediately prior to the deadline. As a result, officials are swamped and hard pressed to sort through hundreds, if not thousands, of forms in a matter of days, which often results in delays. Delays in the registration process decrease voter confidence, lead to uncertainty, and open the door to mistakes.

While voter registration issues may have been a dominant problem in the 2008 election, young voters faced additional barriers, including misinformation campaigns and deceptive practices.

Prior to Election Day, students at Drexel University and University of Pennsylvania received flyers carrying false warnings that individuals with outstanding parking tickets were subject to arrest if they voted.[9] The flyers were posted across each campus, particularly at bus stops serving the student body. Mr. Chairman, I ask for consent to submit a copy of this flyer for the congressional record.

Misinformation and deception did not end prior to Election Day either; sinisterly intentioned individuals used technology to spread false information on November 4, 2008 as well. One specific example occurred at George Mason University in Virginia where someone hacked into the email of the university provost and sent a message to the entire campus community (students, faculty, and staff) stating that Election Day had been

[5] Anna Simon, "Voter Deadline Looms; College Students A Special Case," *The Greenville News*, October 1, 2008

[6] Cora Currier, "Student Voting Challenged in Virginia," *The Nation*, November 2, 2008.

[7] Heather Brady, "UMW Registers in Fredericksburg," *The Bullet*, September 24, 2008.

[8] Interview with Matt Singer, President Forward Montana, October 2, 2008.

[9] Julie Harte, "False Flyers Aim To Intimidate Voters," *The Daily Pennsylvanian*, October 9, 2008.

moved to November 5.[10] Deceptive practices also occurred pervasively in Florida, Texas, Missouri, Montana, and Wisconsin through the usage of cell phones. Text messages circulated claiming people should wait to vote until Wednesday due to long lines.[11] In some cases, the message began with "Breaking News from CNN" as the headline. To worsen matters, the frequent use of text messages by the Obama and McCain campaigns increased the believability of this false information. In addition, reports indicated that similar misleading messages were sent via Facebook.

For an experienced voter, the misleading claims and deceptive practices may appear dubious; however, for young, inexperienced, and first-time voters, having to ascertain the validity of a factual text message versus a deceptive one can be a particularly arduous task.

For the numerous young voters who navigated the registration process and avoided deception, absentee ballot procedures, difficulties finding the correct polling location, and excessively long lines on Election Day were additional barriers.

Throughout the election season, students expressed their concerns regarding absentee ballots with SAVE. We learned that too many students share a perception that absentee ballots are not counted and that they would like to be given notification of whether their ballots are received. The absentee ballot process in Michigan reflects another specific concern with election procedures. Along with some other states, Michigan requires individuals who registered to vote by mail or with a third party to vote in person their first election. Local registrars across Michigan attempted to provide an avenue to satisfy the requirement, only to meet resistance from the state Attorney General.[12] Statewide, 65 of 83 county clerks initiated a program allowing new voters, who had registered by mail, to verify their identity at any participating clerk's office, thereby providing them access to absentee ballots. Since the vast majority of college students attend school away from their parents' home, the program would have mitigated the burdens associated with traveling home to vote. The attorney general's decision to eliminate the program roughly two weeks prior to the election, however, unnecessarily complicated the voting process.

For some young people who voted on Election Day, finding the proper polling site turned out to be more difficult than anticipated. Students at South Carolina State University expected to vote at a polling station on campus, only to learn on Election Day that no such location existed.[13] The students were redirected to two different polling places instead, which exacerbated confusion and led many to cast provisional ballots. A similar incident occurred at Virginia Tech, where a polling station was moved six miles away from campus to a location with virtually no parking.[14] The polling place at Virginia Tech

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[10] Josh White, "Hoax Voting E-mail Targets George Mason University Community," *The Washington Post Online*, November 4, 2008.
[11] Madoline Markham, "Secretary of State Condemns False Text Messages," *Columbia Missourian*, November 4, 2008.
[12] Kathleen Gray, "Cox Disputes Shortcut to Aid First-Time Voters," *Detroit Free Press*, October 25, 2008.
[13] Michael Connery, "South Carolina State Polling Site Never Went Live," *Future Majority Blog*, November 4, 2008.
[14] Domenico Montanaro, "Voting Obstacles in VA, PA," *MSNBC First Read*, November 4, 2008.

was less than half the needed size to accommodate the 5,600 registered students on campus. As a result, students waited in burdensome lines.

Aside from Virginia Tech, numerous other college towns experienced long lines. At the University of Connecticut Storrs, students waited three hours. At one point, they were told to form a separate line from non-student voters.[15] The longest waits in the country lasted approximately 11 hours at Lincoln University in Pennsylvania.[16] These extremely long lines were caused by a lack of voting machines, only 5 machines for 3,000 voters. And there were also long lines at numerous other schools, including (but not limited to) Temple University, Penn State, and University of South Florida.

Long lines are a particularly personal issue to me, given that my first voting experience at Kenyon College in Gambier, OH was marred by 12 hour waits—the longest in the country at the time. In fact, our final student voter cast his ballot at 4:00am the day after the election. Long lines are not only physically taxing; they are a clear violation of our civil rights—precluding citizens from their financial, familial, and work obligations.

Election officials must make a concerted effort to prepare for high turnout among young voters and voting machines must be allocated proportionally with a ratio of machines per registered number of voters. I come today to this committee with the exact same question I asked of it over 4 years ago (when I first testified here as a 19-year old new voter): what safeguards or standards are currently in place to ensure that elected officials, whether intentionally or inadvertently, cannot allocate 2 voting machines to one district and 10 voting machines to another district that is identical in scope or composition?

Whereas long lines or deceptive flyers create a clear graphic image of voting barriers, perhaps the most insidious obstacle for young voters are stringent voter identification laws. In separate incidents, students at Butler University and Earlham College in Indiana voted provisionally because they were unable to satisfy their state's strict identification requirements. Similar circumstances prevented a number of University of Illinois students from voting.[17] According to reports, some students made multiple (two, three, four, or five) trips to the polls, with several only being able to cast a provisional ballot. Local election officials stated that neither college IDs nor copies of a lease were sufficient to prove residency.

According to a Rock the Vote survey, 19 percent of young adults (18-29) report they do not possess a government issued photo ID that reflects their current address.[18] This is a consequence of the fact that young adults are more mobile than any other age demographic. As a result, young voters are forced to rely upon alternative forms of identification. The substitutions for a photo ID however, such as utility bills, are not easily obtainable for students because colleges and universities generally pay all the bills

[15] Sujatha Jahagirdar, "Campus Stories from CT, OH, FL, and More," *Future Majority Blog*, November 4, 2008.
[16] "Movie Star Among Voters Running into Problems," *CNN*, November 4, 2008.
[17] Julie Wurth, "Students Have Problems Voting at Illini Union," *The News-Gazette Online*, November 5, 2008.
[18] Ben Adler, "Activists: Ruling Hurts Youth Voters," Politico, April 28, 2008

(gas, electric, water, etc) for students who live in dormitories or on-campus apartments. These laws therefore compel thousands of students to vote provisionally for which they might never receive verification as to whether or not their ballots count. If we are going to maintain voter ID laws in general, then SAVE firmly encourages all states to recognize college and university IDs as an acceptable alternative.

In response to the issues I have raised in this testimony, SAVE has several policy proposals.

First, the Count Every Vote Act (CEVA), previously championed by the late and honorable Congresswoman Stephanie Tubbs Jones and former Senator Hillary Rodham Clinton, is a piece of comprehensive legislation that addresses many of the problems I previously identified. The Voting Opportunity and Technology Enhancement Rights Act, introduced by Chairman Conyers, is also an exemplary model for election reform.

In regards to voter registration, CEVA provides for Election Day registration as a fail-safe for eligible voters that arrive on Election Day only to learn that they are not on the voter rolls.

In response to misinformation and intimidation, CEVA will increase penalties on individuals who knowingly deceive potential voters regarding election related information.

As far as polling sites and long lines, CEVA creates standards for allocation of voting machines, personnel, and resources, which will create a more efficient system. The standards will be based on population, registered voters, and previous turnout, ensuring more equality across polling locations than currently exists.

Voter identification requirements are the final problem I discussed which CEVA addresses. Instead of restrictive photo identification laws, which are increasing in number, voters would be required to swear under penalty of perjury that they are eligible and the individual they claim to be.

While CEVA and Mr. Conyer's bill are both expansive election reform packages, SAVE is also supportive of smaller legislative initiatives aimed at solving specific problems. On the issue of absentee ballots, SAVE recommends the creation of a tracking system. Under a tracking system, voters could follow the progress of their ballot beginning at the registrar's office, proceeding through the mail to their address, then through the mail back to the registrar, and finally to the day the ballot is counted. Such a system would dramatically increase voter confidence and eliminate much of the uncertainty that accompanies the absentee ballot process. UPS and Federal Express allow this for our packages; we ought to be able to do it for our ballots. We also strongly support the no-excuse absentee ballot bill, the "Universal Right to Vote by Mail Act," introduced by Congresswoman Susan Davis (D-CA).
In addition to the proposals above, SAVE's top legislative priority is passing the Student Voter Opportunity to Encourage Registration (VOTER) Act, a bill that will amend the

National Voter Registration Act (NVRA) to designate colleges and universities as "voter registration agencies" in the model of a Department of Motor Vehicles (DMV). This bi-partisan bill, conceived of by our student members, and introduced by Congresswoman Jan Schakowsky (D-IL), Congressman Steven LaTourette (D-OH) and Senator Dick Durbin (D-IL) would provide millions of students the opportunity to register to vote in conjunction with matriculation, class registration or enrollment.

We are very confident in the potential benefits of this legislation based, in part, on statistics in a 2004 study by the Center for Information and Research on Civic Learning and Education (CIRCLE). According to the study, 22% of 18-29 year olds did not vote because they missed the registration deadline while an additional 10% of this age group did not know where or how to register to vote. In other words, a combined 32% of 18-29 year olds did not participate in the election because of uncertainties within the registration process. According to the same CIRCLE study, 30% of young voters registered at the DMV, by far the most common outlet for voter registration. Young voters rely upon the DMV at considerably higher rates than do older voters, only 19% of whom use a DMV to register. These statistics provide significant evidence that extending the successful NVRA model to higher education institutions will aid our demographic.

In closing, we must particularly consider the disproportional access barriers young voters face when crafting our policy solutions throughout the future. We must also be mindful of the need to encourage an active, informed, and thriving young citizenry. I therefore urge the congressional members here today as well as my colleagues on the panel to continue including young people in this crucial discourse.

Yet again, I thank the distinguished Chairman and Ranking Member for inviting me here today, and I look extremely forward to working with you to achieve meaningful bipartisan election reform.

Mr. NADLER. Thank you.
Ms. Heidelbaugh, you are recognized for 5 minutes.

TESTIMONY OF HEATHER S. HEIDELBAUGH, SHAREHOLDER, BABST, CALLAND, CLEMENTS & ZOMNIR

Ms. HEIDELBAUGH. Thank you, Mr. Chairman.

My name is Heather Heidelbaugh, and I am an attorney.

On October 29, I represented a candidate, voters, and the Republican State Committee of Pennsylvania in a lawsuit against ACORN, alleging violations of Pennsylvania Election law as well as fraud and misrepresentation. The injunctive request against ACORN requested that they stop contacting voter registration applicants who they knew to be fraudulent and encourage them to vote; in addition, to agree with the King County, Washington, consent decree where they agreed not to do a variety of things that were deemed illegal in Washington State and to provide my client with copies of the fraudulent voter registrations which they submitted.

We became aware that there were four pending criminal investigations in the Commonwealth of Pennsylvania by the district attorneys as well as the U.S. attorney in Philadelphia. The district attorney in Pittsburgh, who happens to be a Democrat, was also investigating ACORN for fraudulent voter registration activities.

Four days later after I filed my injunctive request, I was contacted by a woman who is seated here behind me, and her name is Anita Moncrief, and she is a former employee of Project Vote, and she is seated right there in the red. She testified at the trial, and the testimony that I provided to this Committee is literally quotes from her testimony.

I have the testimony here, and the court reporter requires that in order for me to copy it, every copy must be paid for. So, if the Committee would like to obtain an official transcript, they can do that from the court reporter of the commonwealth.

One of the first things that I learned about Ms. Moncrief was that she had been a confidential informant to *The New York Times* since August, and *The New York Times'* Stephanie Strom printed six articles based on the information that was given to her by Ms. Moncrief.

In addition to Ms. Moncrief, she is accompanied here today by Marcel Reed. Marcel Reed is the current chair of DC ACORN and has been a volunteer for DC ACORN for a number of years and has issued a press release verifying Ms. Moncrief's testimony.

When Ms. Moncrief indicated to *The New York Times*——

Mr. NADLER. Excuse me. Could you just clarify that? Was that injunction granted or you just applied for it?

Ms. HEIDELBAUGH. The injunction was denied in part, and it was granted in part. The part that was denied, we have also filed against the secretary of the commonwealth, and they testified that they believe that despite the massive voter registrations that were submitted throughout the commonwealth by ACORN that they felt that they could conduct a fair election. That part of the injunction which was against ACORN was granted and that additional time to ask for discovery and to proceed against ACORN was allowed, based on the testimony of Ms. Moncrief, as well as the ACORN witnesses that were in court.

Ms. Moncrief testified for approximately 2 hours, and the testimony that I provided to the Committee is actual quotes, and what

she said was that she was a development associate for Project Vote, but that Project Vote and ACORN were virtually one entity. Further, part of her work was to investigate voter fraud allegations made by ACORN in the 2004 election cycle, and what she found out was that ACORN had a systemic and systematic corporate philosophy to deny voter registration fraud even when they knew that it had occurred.

In large part, the problem with ACORN is the quality of people that they hire. They do not do background checks. They do not inquire whether the individuals can conduct regular office work. Furthermore, they have enormous problems with quality control. Even though they agreed in a consent decree with the State of Washington to enhance their quality control, they have not. In addition, there is training problems. They have manuals in which they indicate to law enforcement that they have trained individuals, but they really do not in practice, she testified.

They know that they filed duplicate registrations. The reason why they file so many registrations is because they are paid $17 per registration. There is a quota system. Each ACORN worker has to turn in 20. Some of the ACORN workers are paid in cash, which is violative. They use the voter registration cards for other purposes. There is also a fraud in the absentee ballots. They know that there is going to be absentee ballots that are requested on these fraudulent registrations, and they have not done anything organizationally.

They also have a program to deny voter registration fraud, and it is called informally Throw Them Under the Bus. What they do is, when an individual ACORN employee is caught violating, they say it is not a systemic organizational problem, even though national president Maude Hurd signed a document with King County that it is. They accuse the ACORN worker.

In addition, they have a Money for the Muscle program in which she testified about a shakedown of corporations to increase donors.

I see that my time has stopped.

I would sincerely request that Congress investigate these allegations as I have out lined against ACORN.

[The prepared statement of Ms. Heidelbaugh follows:]

PREPARED STATEMENT OF HEATHER S. HEIDELBAUGH*

TESTIMONY OF HEATHER S. HEIDELBAUGH, ESQUIRE

My name is Heather Heidelbaugh. I am a practicing attorney in Pittsburgh, Pennsylvania, and I serve on the Executive Committee of the Republican National Lawyers Association. For a number of years, I have represented Republican candidates and party committees in various election-related litigation and have served in a leadership role in a number of projects and activities to protect the integrity of the election process in Pennsylvania and other states.

On October 29, 2008, I represented a candidate, voters and the Republican State Committee of the Commonwealth of Pennsylvania in a preliminary injunction before the Commonwealth Court in Harrisburg, Pennsylvania against ACORN and The Secretary of the Commonwealth. The Complaint alleged violations of the Pennsylvania Election code, Fraud and Misrepresentation and Violation of Equal Protection and Due Process. The Complaint asked the Court to Order the Secretary of the Commonwealth, the state administrator of Elections, to make certain that the computer data base of registered voters mandated by HAVA, known in Pennsylvania as the SURE system, was running properly and was on line consistently to election workers throughout the Commonwealth. Further, the injunction requested that the Court direct the Secretary to require that all election officials comply with HAVA and request and receive identification from all first time registrants, as required by law. And lastly, the Complaint asked the Secretary to insure there were adequate amounts of provisional ballots printed and available at each polling place.

The injunctive requests against ACORN sought the Court's Order that ACORN stop encouraging voting by individuals that they knew had falsely registered to vote, to provide to the Plaintiffs copies of the voter registration materials obtained by ACORN and known by ACORN to be false, that public service announcements be funded ACORN to educate first time voters that they would be required to provide identification at the polling place, and that ACORN be ordered to abide by the same terms to which ACORN had agreed with King County Washington prosecutors in the King County Settlement and Compliance Agreement to not fraudulently register individuals to vote. The Injunction was filed on October 17, 2008, based on information and facts obtained from Election workers and officials across the Commonwealth, and news reports about criminal activity of ACORN in the Commonwealth of PA. Four days later on October 21, I received a call from a woman I did not know. She informed me that she had worked for ACORN in their Washington, DC office for a number of years, had heard about the lawsuit I had filed, and had some information for me about ACORN. This individual, Ms. Anita Moncrief, agreed to testify in the court proceedings because, as she later testified under oath: "I contacted you once I heard about the lawsuit because I felt like this might be a chance for the truth actually to get out." [page 81, lines 6-17].

The next day I traveled to Washington, DC and met for the first time Anita Moncrief, who is seated in the front row here today. I have spent hours talking to Ms. Moncrief about what she had learned about ACORN from her years in the ACORN DC office and Ms. Moncrief agreed to testify under oath, subject to the penalty of perjury.

One of the first things that Ms. Moncrief told me was that she had been fired from her job for using an ACORN credit card for personal expenses. When she worked at ACORN in DC, she lived in a low rent apartment with rats in Baltimore with a new baby and was only making $25,000 per year with ACORN. She charged moving expenses to the ACORN credit card, wrongly, and hoped to pay it back. The total amount owed is less than $2,000 but she was fired.

*Note: A collection of exhibits regarding evidence of criminal and other improper actions by the Association of Community Organizations for Reform Now (ACORN) is not reprinted here but is on file at the Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights,

Thereafter, she informed me that she had been a confidential informant for several months to the New York Times Reporter, Stephanie Strom, who had been writing articles about ACORN based on the information that she had provided.[page 81, lines 18-25] [Ms. Strom wrote the following articles about Acorn from July 9, 2008 to October 21, 2008: 1.) 'Funds Misappropriated at 2 Nonprofit Groups' July 9, 2008; 2.) 'Head of Foundation Bailed Out Nonprofit Group After Is Funds Were Embezzled' August 16, 2008; 3.)'Lawsuit Add to Turmoil for Community Group' September 9, 2008; 4.) 'On Obama, ACORN and Voter Registration' October 10, 2008; 5.) 'ACORN Working on Deal to Sever Ties with Founder' October 15, 2008; and 6.) 'ACORN Report Raises Issues of Legality' October 21, 2008.] The New York Times articles stopped when Ms. Moncrief, who is a Democrat and a supporter of the President, revealed that the Obama Presidential Campaign had sent its maxed out donor list to Karen Gillette of the Washington, DC ACORN office and asked Gillette and Ms. Moncrief to reach out to the maxed out donors and solicit donations from them for Get Out the Vote efforts to be run by ACORN. Upon learning this information and receiving the list of donors from the Obama Campaign, Ms. Strom reported to Ms. Moncrief that her editors at the New York Times wanted her to kill the story because, and I quote, "it was a game changer". That's when Ms. Moncrief telephoned me on October 21, 2008. Ms. Strom never wrote another article about ACORN for the New York Times for the remainder of the period before Election Day, i.e. November 4, 2008.

Ms. Moncrief testified at the Injunction hearing about the telephone call from the Obama Presidential Campaign: "In late 2007 – I want to say it was November – I was in the Project Vote office by myself, and I received a call on the main line. I answered the call, and a caller identified himself as being from the Obama campaign. And he wanted to know was this the same Project Vote that Obama had worked with in the 90's. I had been recently told that it was. So, of course, I said yes, and I was very excited. And I took his information. And I passed it on – well, I sent an e-mail to Karen Gillette, Nathan Henderson James, I want to say Kevin Whalen and Zach Polett – I think that was everyone I sent the e-mail to – letting them know we had been contacted and someone wanted them to get back to them as soon as possible…I didn't get any official contact that they contacted anyone. I was told that if there are any inquiries, that they had needed to go through either Kevin or Zach, mostly Kevin because he handled those type of things. I think that I probably shouldn't have written [that e-mail]. It was one of those things that I should have just called, and that was the feeling I got. But it wasn't like anyone was being mean to me, but it was the impression [Karen Gillette gave me]. I worked with the [Obama] donor list extensively…There were a ton of duplicates because a lot of people gave more than once...the list is huge…so in order to get the list smaller, we were trying to get out the duplicates. That was really hard to do. And it was just really getting frustrated because we were always trying to get numbers and other stuff for these people because I think we were going to set up some meetings for Zach [Polett] or something to do with it, and I know there also might have been a mailing that was going to go out…[ACORN] wanted to use it for donor solicitations…I went through [the Obama donor list] and broke it up by state. I broke out California donors. I also looked at celebrities and Hollywood people, professors, and I broke them into separate categories because there were people looking for a spokesperson. We talked about Barbara Streisand because her foundation gave money. We talked about Bruce Springsteen. So we were trying to see who on that list…we had contact information for that might want to work with us or at least give money to us. Karen Gillette instructed me to do that." [pages 61-63]. Ms. Moncrief worked on the Obama list culling it for potential donors. She testified: "I would go through the list...and I would break out smaller lists and sent that to Karen [Gillette]. And it was just donor cultivation. At that point, before I was fired, there was not a lot that we were doing with this. We were getting ready to do stuff. We had just ordered a ton of stationery and a lot of glossies.

and Civil Liberties, and can be accessed at *http://republicans.judiciary.house.gov/Hearings/Read.aspx?id=21*

They were the ACORN glossies, and then we had the exact same glossies with Project Vote on them. And then we were going to send them out as solicitations." [pages 63-64].

Ms. Moncrief's interest in my lawsuit against ACORN for fraudulent voter registration activities was two-fold: to tell the whole story about ACORN's activities including the real story behind their voter registration activities, and second, to voluntarily put herself under oath so that the press would understand she was telling the truth and hopefully then the story would be reported. Ms. Moncrief testified: "[I am testifying] because I want the truth out. Honestly, a lot of people think I have a vendetta, but even after I left ACORN, I was still trying to be involved in the act because I believe that the local offices do a lot of good. Local offices where the people are involved and you see them every day and you're there—like, when I worked in the D.C. office, you would – you'd stumble over some member, and there was just this type of informal environment. And that's where a lot of the work was done. So I don't think ACORN is a bad organization. I feel like they have gotten into a lot of areas that was not – that they weren't meant to be in. And because we're in these other areas, we're losing focus of what's really wrong with these communities. There's so much that needs to be done, and we're over here when we should be right there. So that's why I'm here, because I don't want ACORN to go away, I just want it to go back to what its supposed to be." [pages 79-80].

Ms. Moncrief was on the stand for approximately two hours and her testimony was transcribed. The official court reporter for the hearings will not allow me to provide any one with a full copy of the transcript as she requires payment for all complete copies. I have my purchased copy of the Original Transcript here with me and I would like to provide the Committee with excerpts from Ms. Moncrief's sworn testimony.

Ms. Moncrief testified that in October of 2005 she began working for Project Vote, a 501(c)(3) educational and charitable organization, as a development associate. [page 18, line 11] [page 102, line 11-13]: "Project Vote is a 501(c)(3) voter registration group. They do voter registration, election administration and voter protection." Ms. Moncrief testified that Project Vote obtained donor lists with names, addresses and amounts of contributions. The lists were provided to ACORN from political parties, campaigns, and organizations that did the same type of work as ACORN such as ACT [America Coming Together]. In particular, Project Vote received donor lists from the John Kerry Campaign, the Bill Clinton Campaign, and the Barack Obama Campaign. The Obama Campaign sent their donor list to Project Vote, around late 2007. [page 40-41, lines 7-25, and 1-5]. Ms Moncrief testified: "I know that I got the DNC list and the Kerry list around the same time, so I want to put that at October of 2007…and I think the Obama list came in, in late 2007, maybe November…It was passed on to me by Karen Gillette…It was forwarded to me and with the understanding that it had come from the campaign…I was to take out all the duplicates and get the list together for donor solicitations. We were breaking it down like California, D.C., New York, like that. We were also looking for telephone numbers as well." Ms. Moncrief was to reach out to these Obama contributors who had maxed out to the presidential campaign and who could then give additional money to ACORN to do GET OUT THE VOTE work. [page 41, line 19]. Ms. Moncrief testified: "Yes. That was part of the plan…That was our development plan written by Karen Gillette, that we were to approach maxed out presidential donors." [pages 41- 42, lines1-25, and 1-2]. The money from the 'maxed out presidential donors' was allegedly to be used for 'voter registration' drives. Further, "when I left [Project Vote] the $28 million budget was approaching 30 something million." [page 42, lines 8-12].

She testified that she "...learned that there wasn't much of a difference between ACORN and Project Vote. [page 18, l. 18]: "Project Vote is a sister organization of ACORN. When I got there, I actually thought I was working for ACORN because that was the only thing I heard about during the interview. But when I got there, I realized that I was working for Project Vote, and they explained to me the difference between the two organizations. But as I was there, I learned that there wasn't much of a difference...I had an ACORN e-mail address up until...2007. I was considered to be part of the ACORN political operations staff, and I was actually a part of the strategic writing and research department with the acronym SWORD, which was basically an internal consulting department for ACORN political operations. So a lot of the work I did ...and answering some voter fraud allegations that came from 2004, were actually all ACORN work. It wasn't until...late 2006 that I actually began doing actual development work for Project Vote." She further testified, [page 22, line 9] in regard to the difference between ACORN and Project Vote: "Honestly, there really isn't a difference between Project Vote and ACORN except for the fact that one is a 501(c)(3) and one is not a (2)(3). As far as the – who does the voter registration work and how things get done...Project Vote is basically considered ACORN political operations." Ms. Moncrief testified: [page 44, line 1-25] "There was active cooperation between ACORN's political wing and Project Vote...[They] basically had the same staff. Nathan Henderson James was the strategic writing and research department...director of ACORN and he was the research director of Project Vote. Zach [Polett] was the executive director of Project Vote and the executive director of ACORN political. All of the organizations and the entities worked together. We shared the same space." Further, Ms. Moncrief testified: "...there's no real separation between the organizations for real. So when you have the same people that are working, that are—like, I was getting paid through Project Vote's checkbook, but I was working on ACORN stuff. I even did PowerPoints during the midterm elections for Jeffrey Robinson where they were like, okay, don't vote for Albert Win (ph) or vote for this person. And they had doorknob – door hangers that they would go and put on people's doors, and we turned this into a PowerPoint presentation. So there was never any division between the staff where you would say, okay, this is (2)(3) stuff and this (c)(4) stuff. It was just—I don't want to say business as usual, but it was a lot of collaboration between the organizations." [page 89, lines 21-25, page 90 1-25, page 91, lines 1-3].

Ms. Moncrief testified, [page 25, line 10 et seq.] "...ACORN is a member organization. It has...the national branch. But...the local offices...try to be self sustaining...when I was working in the DC office, I would hear all the time, if we don't increase our membership, we won't meet payroll...[The] money in the accounts for the local offices was determined by how many members they had on bank drafts or that they were going out in the community and collecting money from." ACORN, however, also has many affiliate organizations with whom it associates and for which the legal relationship to is unclear. Ms. Moncrief testified [page 26, line 4] "the number [of affiliates] changes all the time. To the best of my knowledge, it's got to be at least over 170. The last number I heard was 176, but its constantly changing." ACORN refers to its affiliates as "the council of organizations." [page 26, line 10-11]. In addition to the affiliates, there are state ACORN's and city branches of ACORN. Ms Moncrief testified [page 26, line 17-23]: "Well, often they say 'state ACORN,' its more like we're represented in let's say Pennsylvania and then they'll have three or four off-shoot offices, depending on the counties or where there's the most population."

ACORN and Project Vote targeted particular individuals and entities to solicit donations. [page 58, line 20]. These included: 1.) maxed out presidential donors; 2.) the billionaires club i.e. Herb Sandler, the Rockefellers; and 3.) the millionaires club i.e. Patricia Bowman, the

Bowman Foundation, Wellspring, and Sykes. The donor list from the Obama Campaign that was provided to ACORN/Project Vote was admitted into evidence during the Injunction hearing.

Ms. Moncrief testified at page 22, line 16: "ACORN political…was formerly run by Zach Polett and it's the strategic planning arm of ACORN. It looks at contested congressional districts, ballot measures, initiatives like the minimum wage. And it's a way to build the organization off of these types of drives."

Part of the work that Ms. Moncrief did was to investigate voter fraud allegations lodged against ACORN by other groups. When she was involved in the investigation of the voter fraud allegations, she testified, [page 21, line 15]: "There were allegations that came out of the 2004 voter registration drive…My job was to actually write these voter fraud briefs…where I would contact the district attorney's offices in the states [and] research the case. There was a report by a group at the time called AVCR, American Center for Voting Rights, so I had to refute a lot of the claims that were presented in that report. Through reading the report and doing my research, I learned about ACORN employees…some of them single moms that had been prosecuted or were being brought up on charges for things they had done in, I think it was Missouri, Kansas City."

When she was hired, the National Director of Project Vote was Jehmu Green. When he left in October of 2006, Ms. Moncrief was then the only employee of Project Vote until the summer of 2007. In 2007, Karen Gillette began working in the DC office of Project Vote and began to supervise Ms. Moncrief. Ms. Moncrief testified at page 20, line 23: "And I have to say that's when my work blossomed and I worked on what we call the $28 million budget and donor list, donor cultivation, just basically anything that Karen [Gillette] would need."

Project Vote in 2007 had a $28 million dollar budget which was funded by CCI, an affiliate of ACORN. CCI is an acronym for Citizens Consulting Incorporated. Ms. Moncrief testified: "CCI is basically the accounting arm for all of the money, the payments, who gets what, the – how the organization operates and flows and makes sure its bills are paid. All of that goes through CCI…CCI makes disbursements to them either directly into their account or does transfers between I guess the different organizations." All donations to ACORN or any of its approximately 175 affiliates are deposited into bank accounts held by CCI. Thereafter, CCI transfers money into various affiliates, one being Project Vote. I asked Ms. Moncrief the following question on direct examination: "And can you describe how the money flows between ACORN, Project Vote and any other organization like CCI?" She answered: "The money goes into accounts at CCI. CCI has dozens – dozens and dozens of accounts. Some of them are Project Vote. Some of them are ACORN." Project Vote also received checks "directly to the D.C. office. Other checks would go to the Arkansas office where Zach [Polett] is, where ACORN political has its base. Those checks were usually copied, and [Ms. Moncrief] would have PDF access to them. The checks that [Ms. Moncrief] received [she] would copy and send them over to Little Rock for processing." In CCI, Project Vote's designation was 'the vote account'. [page 88, line 20]. Money was wired into CCI, "sometimes and especially into what we call the vote account, which was Project Vote's designation…in CCI. I would see incoming wires from the Rockefeller…Fund. I think sometimes Vanguard Charitable Endowment would also do wires. And other times there would be things that would say stuff like "general income" and it would just – wasn't sure where it was coming from." [page 88, lines 20- 25, page 89, lines 1-3]. There was money donated in which there was no source to the money. That was part of that whole donor reconciliation process." [page 89, lines 6-7].

Ms. Moncrief had access to the accounting system known as NewVision. [page 42, lines 13-17]. "NewVision is the system that pulls up the accounts so you can see what has been credited to the account, deposited and what has been taken out of the account…[NewVision is the system] for all of them i.e. [Project Vote, ACORN, and CCI]. I had the Project Vote access. But NewVision worked with CCI and ACORN, and they had their own page in NewVision. For each – in each local office, they had their own page." [pages 42-43, lines 13-25, and 1-2]. In mid 2007, Ms. Moncrief was granted access to NewVision. One of her job responsibilities was to reconcile accounts. Her first task in that regard was to reconcile the $9 million gap between the contribution amount in the donor system known as 'Donor Perfect' and the NewVision system. [page 43, lines 3-14]. Ms. Moncrief testified that: "she print[ed] out deposit records going back sometime to early 2000. And then I would match them up with donor letters, information in NewVision and sometimes [the] recollection of people that used to handle that, depending on how far the information was going back…There were so many…random letters and money and checks that were never cashed…at one point we felt that we had got it as good as it was going to get." [page 44, line 15 to 25]. Ms. Moncrief further testified: "…its hard to tell which – which accounts have what because CCI is – it's not run very well. And there's – sometimes you get paid twice. Sometimes you don't get paid at all. Sometimes the accounts will show negative a hundred thousand dollars, and then magically the money is in there next week. So there's really no way at this point without a forensic audit to tell what are the assets of any one of the ACORN entities. [page 65, lines 17-25]…To my knowledge, there may have been money that went to ACORN International." [page 66, line 3-4].

In addition to her other duties, Ms. Moncrief learned about ACORN's voter registration drives. The purpose of the voter registration efforts at ACORN was to get [page 23, line 2] "more members, which means more money…they'd say the more cards you get, the more money you get…It's in the way they train the people for voter registration. Its to let them know that the cards are tied to money. So the more cards you get, the more money you get. If people are not producing cards, they're wasting your time, get rid of them, get people who are producing." Ms. Moncrief testified further: [page 23, line 16 et al:] "…they know that there is a vast number of people, because we do the census work, that are unregistered African-American or Latino voters. The Project Vote side gets money from certain liberal organizations to run these voter drives…" She said that donors increase their donations to ACORN based on the voter registration drives that ACORN agrees to conduct. "And there's a concern of what happens after the election. So there's a frenzy to build up money and resources before the election is decided because after, if it doesn't go their way, there could be a serious drop off of funds." The state or local chapters of ACORN are also interested in conducting voter registration drives. Ms. Moncrief testified: [page 27, line 4-14]: "…the local chapters get their direction from national…[National ACORN] would have these political plans already in place so the local offices would know where it was going. [National ACORN] had political directors in these offices, and a lot of times they worked in conjunction with the local. Because of the limited space, you would have political local or national sometimes in the same office."

ACORN hires canvassers to conduct voter registrations. Some canvassers are employed as paid political canvassers that are paid a salary. [page 30, line 11-13]. Ms. Moncrief testified [page 28, line 22 et seq]: "…there have been problems over the years with how to pay the canvassers. There's some states that do not allow you to pay per card. And so they've actually tried to figure out a way as late as 2007 to pay people for [registrations]…they're still trying to figure out a way to pay people [without paying them per card] because that's the motivation. It was always said that if you pay someone $8 an hour, you know, they might go home; but if

you're paying them per card, they're more likely to go out there and get, lets say 20 to 30 cards per day." "Some of the canvassers that are political organizers are on staff payroll. They are hired with the understanding that they...are usually there through the whole voter registration drive. So I know that they are paid salary." [page 33, line 3-7].

Ms. Moncrief confirmed that ACORN does have a 'quota system' for their voter registration canvassers. [page 29, line 9]. Ms. Moncrief testified that she was aware of a system that required each canvasser to turn in "...at least 20 cards per day". [page 29, line 11-13]. If the canvasser does not turn in the minimum of 20 cards per day, the canvasser is "fired". [page 29, line 15]. Ms. Moncrief testified if the registration cards being turned in didn't meet the quota "they were told that they needed to start firing the non-performers; if the people weren't performing, then they were basically wasting the people's time and money and they needed to go." [page 50, line 6-11] "Sometimes they would say, check the numbers before they go out because if they're already bad, fire them right there; don't let them waste your money for the day." [page 50, line 6-13].

In order to meet the daily quota, ACORN "puts a lot of pressure on what they call the contractual employees, the part-time, temporary employees...that understand they have no obligation after the registration drive to be rehired. They know that they're only there for that amount of time...They would pressure these people to get the numbers in." "As far as the part-time employees, I'm a little fuzzy on how that works. Like I said, I have knowledge of them being paid in cash, but I know that it's something that might have been from previous years and has been worked on. So I can't be positive on how they're paid at this point." "To my knowledge, there are canvassers that are paid per registration card in cash." [page 33, line 7-19].

Ms. Moncrief also testified about additional canvassers that are hired if the registration numbers are not coming in at the rate anticipated. "And then there's a period of time where if there seems to be that they're not meeting goals for that state or whatever, that they might go through a hiring frenzy of hiring part-time employees to kind of fill in the gap...That's the 'ramp-up period'...They talked about the problems that were associated with this period [at the political operations retreat that we had in Arkansas]." Ms. Moncrief testified [page 31, line 2-6]: "[the ramp up period] is a time where there's massive hiring, where they'll put up flyers, go to community places where they can find people, job banks, social services offices; basically get the word out that they're hiring people to do voter registration and get as many people in the door as possible."

ACORN knew they had many internal problems. Ms. Moncrief described these internal problems in her testimony as follows:

I. QUALITY OF HIRES:

First, Acorn knew there was a problem with 'the quality of the people they were getting. Some of the people didn't know how to use basic office...systems, which made it very hard for copying the registration card and making sure that they were turning in accurate counts and work ethic issues." [page 34, line 1-6].

II. QUALITY CONTROL:

The second problem was 'quality control'. [page 34, line 12]. "At the meeting, they talked about ways to improve quality control...they were finding out which cards were bad...We were having a problem at the time with turnover. Turnover is a very big problem in the

organization, so they wanted to make sure that training was consistent and ongoing and these people understood exactly what was going on. The thing about it is that it was the same complaint from the previous registration drive as well…I wasn't aware of any concrete plans that came out of the meeting." [page 35, lines 1-10]. Ms. Moncrief testified: [page 44, line 19-25] "I remember…in Arkansas, Jessica Angus, Jarvis Houston, Zach Polett and Karen Gillette all knew and [discussed ACORN's lack of internal quality controls at the management level]. [page 45, lines 1-9].

III. TRAINING:

Third, there were problems with training. "There was a consistent concern about training. I even actually raised the issue myself that there was a sink or swim type thing going on in ACORN, where you come in and you really don't understand what you're doing and they expect you to move a mountain and then when you don't, they think you're stupid…So I actually talked to Zach [Polett] about ways to improve the training department and come up with…manuals…that we could actually follow." [page 35, line 12-21]. ACORN did have a training manual provided to its employees that engaged in canvassing for voter registration. However, the employees were never trained using the training manual. Ms. Moncrief testified: "…they tell people never ask someone if they're registered to vote because that's a yes or no question...ask them if they voted in the last presidential election. If they didn't vote, register them anyway, which at times can lead to duplicates." [page 36, line 18-25]. The new employees are sent out to obtain new registrations in areas in which they are likely to get registrations. That's the extent of their training. Ms. Moncrief testified: [page 37, line 1-12] "So they had very little training. They were given the information about the fraud, what would happen to them if they did commit the fraud, and they had to sign a piece of paper saying I have read these fraud policies and I understand that I could be prosecuted. Once they sign that paper, that was basically it. There was not a lot of room for ongoing training when you're in the middle of a massive drive." There was no program for on-going training.

If an employee was caught by law enforcement fraudulently registering voters, Ms. Moncrief testified that ACORN threw the employee under the bus. [page 36, line 2-4]. Instead of accepting blame or responsibility for failure to train employees or for telling them to ask improper questions of potential registrants, ACORN "…went after that employee intensely to make sure that they took the brunt of what was going on." [page 37, line 20]. Ms. Moncrief testified: "Through my research on the voter fraud brief, I saw…a consistent pattern that over the voter registration drives dating back to 2000, there was at least seven to nine people, sometimes only four…that were always heavily prosecuted. And some of them you could tell from their stories weren't…the brightest people in the world…I don't think they knew what they were getting into…They did do something wrong. They made a bad judgment…I…feel that they were caught up in trying to get the money and they were worried about getting fired…" [page 38, line 3-14]. Ms. Moncrief continued: "[ACORN] always felt that the quality assurance was adequate for what they were doing and that…adults should know better. So [ACORN] wouldn't give them any leeway. [ACORN] wouldn't understand well, maybe [the employees] weren't paying attention; maybe its good to reinforce these things over and over. It was more they did this, they were wrong, we're going to prosecute them, then we're going to move on and keep registering voters." [page 38-39, lines 20-25, and 1-2].

IV. DUPLICATE REGISTRATIONS:

Fourth, ACORN knew that their canvassers were turning in duplicate registrations. [page 45, line 10-25] [page 66, lines 16-21][page 67, lines 7-10] Ms. Moncrief testified: "I have knowledge that they were striving for at one time 40% accuracy rate." Further, ACORN knew that their canvassers "dumped" voter registration cards on election divisions throughout the United States immediately before the cut off dates. Ms Moncrief testified that the Election Division "already had a bad opinion of [ACORN] because they sent so many cards over to them. So I was to try to sweet talk them, they said, make them feel like they're really helping you, thank them a lot, and if all else fails, tell them that you're doing a provisional voting academic survey or something. So I wouldn't name myself." Ms. Moncrief admitted that when she placed calls to the Election Divisions that she would not tell the election officials that she was with ACORN or Project Vote. She testified: "Sometimes I said I was doing an academic study. Sometimes I mentioned voter protection. Other times I just said my name is Anita and I was doing a provisional voting survey, could they help me." [page 46, line 14-25]. Ms Moncrief testified: "There was awareness at the national ACORN level or Project Vote that there was fraudulent registrations." Further, she testified: "I think that Zach Polett was aware that there were certain [local ACORN] offices that they had to watch more closely and that there might be quality control issues in certain places. ACORN was more interested in the total number of submitted registrations than the total number of valid registrations." [page 51, line 1-4].

When a fraudulent voter registration card is discovered by an ACORN worker, "there's a project called 'Project Fix Error' where they contact bad cards, whether they be from ACORN or whoever submitted the cards. They try to find out the type of information that is needed to get this person on the rolls. And from what I also understand, Democracy Alliance was approached or is funding this project." [page 97, line 12-23]. ACORN seeks additional donors to fix the bad registrations they obtained in the first place in order to garner additional donations. [page 97, lines 24-25; page 98, lines 1-5].

V. USE OF VOTER REGISTRATION CARDS FOR OTHER PURPOSES:

Fifth, ACORN kept copies of the registration cards obtained for various purposes. Ms. Moncrief testified: "[The registration card] is brought back to the office. It's supposed to be checked by whoever is doing quality control. They usually will call I think about 20 percent of the person's batch. And if they do find it to be fraudulent, they're supposed to call the whole batch and – just to make sure. And they're supposed to look for similar handwritings and things like that…I know that there have been problems with people missing cards before and things slipping by and not being called until it gets to the board of elections…They try to tag them and separate them, though...Then after that process, the cards are inputted into a database, called the voter contact database and I think that's used for GOTV…I think there is [an ACORN organizational plan] to contact them and make sure that they get on the rolls and that they stay on the rolls…I think they get a certain number of contacts before the election day, especially if they're – they have an active APAL, the ACORN Precinct Action Leader program in that state. If they have an active APAL program, they would probably get more contacts…If they can't make it to the polls, then yes, they are definitely encouraged to submit absentee ballots. [pages 71-72].

VI. FRAUD IN ABSENTEE BALLOTS:

Sixth, ACORN knew there was a high rate of fraud in their absentee ballots. Ms. Moncrief testified: "I know that there was some talk with the EA, Election Administration

people, that there was a high rate of fraud in our absentee ballots and they needed to plan accordingly for that. That – I wasn't really sure what that meant. And then I know as far as their voter database, they had—they have what they call the V base where they would put this information in. They would contact these registered voters to see if they were going to vote. If they – they would also see if they needed an absentee card. So they would have numbers of lets say 295 people in this county need an absentee ballot or these number of people might need a ride to the polls. So it was not only voter registration, it was also voter contact and following up to make sure these people got to the polls. [page 67, lines 7-25, page 68, lines 1-5]. Ms Moncrief produced a document from ACORN, notes from a management call from 2006, in which the document stated: "Universal absentee states give us an opportunity to do an absentee touch. That was stated by Jeff Robinson. Mike Slater comes back and says, History of fraud in absentee balloting and we need to incorporate into the way we design the program. Jeff Robinson says, "absentee voting works well for unlikely voters in some states." Ms. Moncrief testified: "[ACORN] was aware that there is a problem with absentee ballots and they were coming up with some type of plan to address that. I'm not sure based on this information what type of plan that would be." [page 69, lines 7-18]. Ms. Moncrief testified that a fraudulent registration can turn into a fraudulent absentee ballot "...if one of the cards is not caught either by ACORN or the board of elections, that person would be on the ballots. If they did not want to present themselves in person, they could get an absentee ballot very easily, vote and just mail it in." [page 69 lines 19-25]. ACORN is aware that absentee ballots are fraudulently voted. [page 70, line 4].

VII. DENY VOTE REGISTRATION FRAUD:

Seventh, ACORN attempted to divert attention from the problems it had with its voter registration drives and deny that it knew the organization had problems in this regard. [page 56]. Ms. Moncrief testified: "[ACORN] had prepared responses that everyone was given to say that voter registration fraud doesn't really happen...It was certain spiels that were all given to say. And at the meeting in 2007, there was actually a conversation about how you can make sure everyone was on the same page of how to respond to that because those responses like, oh, you don't want African Americans to vote or you don't want minorities to vote or things where its very hard to come back at and they were good at fighting that." [page 56]. Despite the fact that Ms. Moncrief had worked in 2005 on issues of voter registration fraud by ACORN in 2004, she was instructed by ACORN to deny ACORN knew of it or was involved with it. Ms. Moncrief testified: "...everyone in the organization was given a – talking points as to how to respond to allegations of voter fraud. But they much preferred that you run it through the media...So they even thought about passing those out to the organization as a whole, but most people in political had a copy of the voter fraud talking points." [page 57, lines 7-16]. One of the talking points suggested that if an ACORN official was asked about registration fraud, he/she should state that it was a lone employee acting outside the scope of his employment and that ACORN would prosecute the employee to the fullest.

VIII. POLITICAL CONSIDERATIONS USED IN VOTER REGISTRATION DRIVES:

Eighth, ACORN chose which states Project Vote would conduct voter registration drives based on political considerations. Ms. Moncrief testified that the voter registration drives were NOT conducted in every state in the union. [page 49, line 4-6]. "I remember political plans for Ohio, Pennsylvania, Florida. want to say Maryland, maybe Colorado, New Mexico...It was basically the states that had either contested congressional seats or what were considered to be battleground states." [page 49, line 7-13]. Ms. Moncrief defined 'battleground states' as: "where

it could go either way, it was really close; and by coming in and registering new voters, it could change the outcome of the election." There were established goals for the battleground states for the number of registration cards that ACORN wanted to obtain. Ms. Moncrief testified: "That was usually contained in the political plans, but sometimes they would tweak those goals the closer [they] got to starting the registration drive." [page 49, lines 22-24]. The local offices and their political directors are to submit information on an ongoing basis about the number of registrations their canvassers obtained. It was "sometimes a condition on the people getting paid, if they sent their batches in when they were supposed to." [page 50, lines 1-5].

IX. MUSCLE FOR THE MONEY PROGRAMS:

Ninth, ACORN had official and unofficial programs called 'Muscle for the Money'. [page 52, lines 17]. The first program, the official program, is the marketing name ACORN gives for its voter registration drives. Citizens Services Incorporated (CSI), an affiliate of ACORN, prices the cost to register a voter, drive the voter to the poll, and eventually get the voter to vote. CSI does voter identification, turnout and GOTV. [page 52, line 2-23]. "It's sort of a consulting firm for candidates that want to use the services to help…them get elected." [page 52, line 20-23]. ACORN/CSI markets its program to candidate or campaigns and sells their services by stating that if you use [the] program with their proven methodologies, they will get it done at a certain price. The Obama Campaign originally reported in FEC schedules that it paid CSI $880,000 for 'sound and lighting equipment'. [page 53, line 1- 14]. However, CSI does not possess sound and lighting equipment. Ms. Moncrief testified: "I made the flyer for the first CSI program that they did. They do voter identification, turnout, GOTV, calling voters, getting them out to the polls." [page 53, line 13- 20]. Ms. Moncrief further testified: "[CSI] would get – let's say they would try to get a certain number of people to commit. Let's say they'd hire a canvasser and this canvasser is paid to get the 50 people in his area to the polls. If they didn't get them to the polls by bus or whatever, make sure they get an ABSENTEE BALLOT or somehow get those people to the polls." (emphasis added). [page 66, lines 9-15].

Ms. Moncrief further testified: "…when Karen [Gillette] was hired, they told me that she was going to – she was coming on but she would be through CSI. I know that our main person, which I'm not really sure what his title is but I always called him the money man, Jeff Robinson was through CSI. And Nathan Henderson James, he was the research director for Project Vote. But he transferred from Project Vote's checkbook over to CSI's checkbook. So the main managerial people were paid through CSI. And I think that after Zach [Polett] left Project Vote, he's now with CSI." Page 64, lines 4-17]. CSI was involved with 'voter identification turnout'. Ms. Moncrief testified: "They were – I'm not really sure how they implemented it. I know I made the flyers for it, and so I understand what they did. But as far as how it was completely separate from ACORN, I know it was a consulting agency, but I'm not sure how they implemented the work that they said they were going to do without using the political directors or the canvassers that they already had on hand. I'm not sure." [page 64-65, lines 18 to 25, 1-2]. CSI worked with ACORN and Project Vote. "All the affiliate organizations worked together. [page 65, lines 2-6]. Ms. Moncrief testified about a document she had access to that was introduced at the Injunction as follows: "It talks about America Votes and some notes from a meeting that took place I would say. [The document states under 'Political Money Rules']…we prefer that political money go to us in the form of a vendor, which would be CSI, our for profit business, which doesn't have to report the cash because it's a business, like the phone company." [page 74, lines 1-19]

The second unofficial 'Muscle for the Money' Program is a corporate directed program for donations. Ms. Moncrief testified: "That [program] is what I learned in the local offices. That's where – lets say the D.C. office where I was. They would be given a project to go work on, even if they didn't have interest in it. At the time, even after I was fired, I was working with ACORN, going to barbecues, doing other stuff with D.C. local. They got involved with a group called the Carlyle Group. They were paid by SEIU to harass a man named Mr. Rubenstein, and they wanted me to go out – the D.C. local did, wanted me to go out and break up a banquet dinner, protest out in front of his house. But the local – D.C. local did not have an invested interest really in messing with the Carlyle Group. It was because they were paid by SEIU to do this. And it was always referred to as 'Muscle for Money' because they would go out there, intimidate these people, protest. They did it in front of Sherwin Williams. They did it at H&R Block, where H&R Block was a target for years. And instead of, you know, reforming the way they did the rapid anticipation loans, they ended up giving money to the ACORN tax sites which paid for new computers and money to run these tax filing sites around the country." [pages 54-55] "The protesting was used to get companys to negotiate. The companys would pay money to get the protesting to stop. In addition to calling this activity 'Muscle for the Money', the insiders at ACORN called it "PROTECTION". [page 55, line 15]. Ms. Moncrief testified: "Protection. We were very – not to be flippant, but we were just always very sarcastic about it in the offices. We knew what was going on. And its not that we thought it was funny, it was just one of those things that we talked about. That's why I said it like that, so you understand." [page 55, lines 15-20]. The 'Muscle for Money'/'Protection' programs were carried out against Sherwin Williams, Jackson Hewitt, H&R Block, the Carlyle Group, and Money Mart. [pages 54 and 55].

X. PARTISAN POLITICAL ACTIVITY:

Tenth, ACORN and its affiliates engaged in partisan political activity despite their tax exempt status which prohibited them from doing so. ACORN was concerned 'publically' to prohibit its tax exempt organizations from engaging in partisan political activity but in actual practice it occurred behind the scenes. [page 90, lines 23-25, page 91, lines1-8]. Ms. Moncrief was told not to get caught engaging in partisan political activity. [page 91, lines 9-11].

XI. VIOLATION OF GRANT PARAMETERS:

Eleventh, ACORN received a grant from the Election Assistance Commission, a governmental agency, and did not accurately report what the grant money was spent on. Ms. Moncrief testified as follows: "...there was one thing that really bothered me from last year. I received an e-mail. It was called 'dotting the I's and crossing the T's', and it was based on an Election Assistance Commission grant that we had just gotten. And it was from Nathan Henderson James and to myself and one other person; I can't remember the name. But it was just basically telling us, okay, guys, it's reporting time again; we need to show them what we did with this EAC money; so I want you to put this on letterhead – on ACORN letterhead and say something like, we had a really great time working with our partner, Project Vote. And the attitude of the e-mail was quotation marks, you know--...to where we knew that it wasn't that there was any type of partner organization. There might have been – on paper there might have been a partnership going on, but really it was ACORN and Project Vote together...The EAC was giving money to Project Vote for a poll watcher study in Delaware and they were working with ACORN, from what I understand on this. And I think Project Vote approached them with the understanding that they were going to hire a partner to help them in the community...[The project was done]...but it wasn't this whole nonpartisan thing that it was made out to be to get the money. It was just, hey, guys, we need to get this done for Delaware because we got this

check; let's get this done; let's make this report out." [page 91, lines 15-25, page 92, lines 1-25]. Ms. Moncrief testified that there was a government grant in which the work was misrepresented to the government. [page 92, lines 24-25, page 93, lines 1-3.] She testified: "And I didn't like the fact that I was included in on that e-mail and they they – she was told to send the copies of it to me in the D.C. office, because I didn't want anything to do with government grants." [page 93, lines 3-6].

XII. QUESTIONS REGARDING PRESERVATION OF DOCUMENTS IN PENDING LITIGATION:

Twelfth, ACORN is possibly destroying documents. Ms. Moncrief testified that ACORN and it's affiliates are in possession of documents. She testified: "I have knowledge that financial documents are possibly being destroyed…I was told that and I read that as well." [page 93, lines 18]. "I've seen court papers saying that [The ACORN Eight] are trying to access the financial records of CCI but they are being blocked and they fear that records are being destroyed as they're trying to access them."

Mr. Chairman and Members of the Committee, it is imperative that Congress take immediate steps to:

1. Investigate the serious lawbreaking in which ACORN and its related entities are engaged;

2. STOP providing taxpayer funds to ACORN and its related entities that fund these illegal activities; and

3. Bring accountability to the American people by stopping these illegal activities, and demonstrate through your actions a clear dedication by Congress to protecting the integrity of the American electoral process from these lawbreakers.

The time is now. The American people are watching.

I am happy to answer any questions the Members may have regarding ACORN and its illegal activities. Thank you for allowing me to testify before you today.

MEMORANDUM

TO: Heather Heidelbaugh, Esq.
Vice-President, Republican National Lawyers Association

FROM: Cleta Mitchell, Esq.
Co-Chairman, Republican National Lawyers Association

DATE: March 17, 2009

RE: Violations of Law by ACORN Based on Facts Contained in Testimony of Anita Moncrief

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You have requested that I review the testimony you have prepared for presentation to the Subcommittee on the Constitution, House Judiciary Committee on Thursday, March 19, 2009, based on the sworn testimony in open court of Anita Moncrief, a former ACORN/Project Vote employee to ascertain if the facts presented constitute any potential violations of law. Based on the testimony, there are substantial facts which describe numerous potential violations of federal law. The following is a summary of the facts described in the testimony which would constitute violations of federal law by ACORN[1].

I. Violations of law by Project Vote, ACORN, the Obama Presidential Campaign and others related to the Internal Revenue Code and federal campaign finance laws:

The testimony reflects the following significant facts:

- November 2007 – Project Vote contacted by Obama presidential campaign (p. 2)
- Project Vote received Obama donor list from Obama campaign (p. 3)
- Project Vote solicited Obama donors to pay for voter registration and to 'get out the vote' (p.3)
- Project Vote receives donor lists from other Democratic and labor union sources: John Kerry campaign, Bill Clinton campaign, Barack Obama campaign, Democratic National Committee, America Coming Together ("ACT") (p.3)
- Project Vote development plan was to 'approach maxed out presidential donors', and 'allegedly use the funds for voter registration drives' (pp.3-4)
- ACORN 'employees' were paid through Project Vote for partisan campaign activities telling voters … "**don't vote for Albert Win (sic) or vote for this person" (p. 4)**
- There were no divisions between the staff of ACORN and Project Vote, and persons working for one entity actually perform work for either or both organizations (p. 4)

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[1] This Memorandum is a summary only and not a legal brief. Citations to specific sections of the U.S. Code are purposely omitted.

- ACORN chose which states Project Vote would conduct voter registration drives, based on political considerations (p. 10-11)
- Registration drives (by Project Vote) conducted in 'battleground states', where ... "by coming in an registering new voters, it could change the outcome of the election". (p. 11)
- The Obama campaign's donor list was part of the evidence admitted into the hearing on the injunction in October 2008 (p. 5)
- ACORN political is the 'strategic planning arm' of ACORN, and it looks at contested congressional districts, ballot measures, initiatives like minimum wage, etc. (p. 5)
- Project Vote had a $28 million budget which was funded through Citizens Consulting Incorporated ("CCI") (p. 5)
- CCI is an ACORN affiliated entity, that receives, disburses all funds, including charitable contributions from the Rockefeller Fund, the Vanguard Charitable Endowment and other private foundations and donors, to the 175 affiliated ACORN entities (p. 5)
- In 2007, there was a $9 million discrepancy in the ACORN affiliated accounts (p. 6)

Legal Issues.

1. Violations of the Internal Revenue Code. Project Vote is, according to its website (http://projectvote.org) a 501(c)(3) charitable and educational organization. As such, it is prohibited by the Internal Revenue Code from intervention in partisan campaign activities. According to the IRS, "Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.... voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention." http://www.irs.gov/charities/charitable/article/0,,id=163395,00.html

Further, there are substantial rules and regulations governing charitable organizations with respect to assuring that funds contributed to the organization are used for permissible exempt purpose expenditures, that sufficient records and documentation of the receipt and use of funds are maintained and that the board of directors of the exempt organization are performing their fiduciary responsibilities as required by law.

2. Violations of the Federal Election Campaign Act of 1971, as amended ("FECA"). ACORN is a Louisiana, not-for-profit corporation, which has no tax exempt status from the Internal Revenue Service. A not-for-profit corporation is treated *no* differently from a for-profit corporation for purposes of the federal campaign finance laws, which absolutely prohibit corporate contributions to campaigns of federal candidates and / or corporate expenditures to support or oppose a federal candidate. The FECA further prohibit expenditures by non-profit corporations such as ACORN and Project Vote which are made in coordination with, at the

request, behest, suggestion or with the material involvement of a federal campaign (such as the Obama presidential campaign). The solicitation of funds by an organization for purposes of engaging in partisan campaign activities or to support or assist a federal campaign and/or candidate convert the organization into a Section 527 political organization and further a federal political committee required to register with the Federal Election Commission ("FEC"). Contributions to such an organization are limited to $5,000 per calendar year and may not be received / accepted from corporations. Further, expenditures made by an organization in coordination with a candidate or political committee are considered contributions to that committee and are subject to the $5,000 per election limit.

II. Voter Registration Fraud (pp 6-11). The record is filled with specific instances of fraudulent voter registration activities, failure to comply with state law in voter registration drives, absence of quality control and training, and the internal procedures as to how ACORN responds to allegations of illegality. The violations of law are well documented in the testimony and the list of ACORN related individuals charged with voter registration fraud, the criminal complaints in several jurisdictions and other evidence of voter registration is included in the testimony and the exhibits to the testimony.

III. Muscle for Money Program (pp. 11-12) The testimony reflects the following specific facts:

- ACORN has official and unofficial programs called "Muscle for the Money"

ACORN's Official "Muscle for the Money" Program:

- The 'official' program is the name for the ACORN voter registration drives
- The Obama campaign paid ACORN affiliate Citizens Services International ("CSI") almost $900,000 for voter registration, voter identification, turnout and get-out-the-vote services
- Obama campaign reported to the FEC that the expenditure was for "sound and lighting equipment', which does not exist
- ACORN / CSI markets its programs to campaigns, which pay ACORN / CSI for the 'services'
- **ACORN is *paid* not only to *register* voters, but to also convert those voter registrations into votes at the polls for specific candidates**
- ACORN is supposed to get the voters to the polls by bus or to make sure the voters get an absentee ballot and to make sure the votes are cast.
- CSI used the political canvassers and others employed by ACORN for its voter turnout programs

ACORN's Unofficial "Muscle for the Money" Program:

- This is an 'unofficial' corporate directed program for donations
- Payments from SEIU were made to ACORN's DC office to harass The Carlyle Group and, specifically, Mr. David Rubenstein, a founder of the company
- Even though DC ACORN had no interest in The Carlyle Group, they were paid by SEIU to go break up a banquet and protest at his house.

- It was called "Muscle for Money" because they would go intimidate people and protest.
- Targets of the paid protests included Sherwin-Williams, H&R Block, Jackson Hewitt, Money Mart, among others
- The purpose was to get money from the targeted entities for ACORN, to force the companies to 'negotiate'

IV. Illegal Use of Funds from Election Administration Commission ("EAC") (pp. 12-13)
The testimony reflects that ACORN received a grant from the EAC, but misreported / wrongfully reported the use of the federal funds.

Conclusions:

1. Project Vote should be investigated and audited by the IRS to ascertain whether Project Vote should be allowed to maintain its 501(c)(3) tax exempt status, based on the apparent misappropriation of charitable contributions for impermissible purposes.

2. Based on the testimony, Project Vote, ACORN and other ACORN affiliated entities illegally coordinated activities with the Obama presidential campaign, converting the expenditures by Project Vote, ACORN and ACORN affiliated entities to illegal, excessive corporate contributions to the Obama presidential campaign, in violation of federal law.

3. Voter Registration Fraud. The Department of Justice should *immediately* undertake a nationwide review of the fraudulent activities of ACORN and its affiliated entities to *stop* the ongoing illegal ACORN voter registration AND get-out-the-vote efforts. As is evident from the testimony, these are not isolated cases; rather, this is a nationwide scheme to fraudulently register voters, which registrations are then converted into actual votes under the 'official' Money for the Muscle program at ACORN and its affiliated entities. Further, the witness testimony clearly suggests that ACORN officials knew or should have known of the substantial registration fraud that was occurring and therefore willfully denied, deflected and dissembled regarding their knowledge, acceptance and ongoing perpetration of this fraud.

4. The Department of Justice and the FBI should *immediately* investigate the 'Muscle for Money' shakedown activities of ACORN and its affiliates, and should prosecute individuals responsible for the extortion of the targeted companies and individuals.

5. ACORN and its affiliated entities should be audited immediately and all government funds to ACORN halted until every penny of taxpayer dollars to ACORN and its 175 entities and affiliates are properly accounted for.

Please contact me if you have any additional questions. Thank you.

Mr. NADLER. Thank you.
The next witness I recognize is Dr. Tucker for 5 minutes.

TESTIMONY OF JAMES THOMAS TUCKER, CONSULTING ATTORNEY, NATIVE AMERICAN RIGHTS FUND

Mr. TUCKER. Thank you, Mr. Chairman.

Chairman Nadler, Ranking Member Sensenbrenner, and Members of the Subcommittee, thank you very much for your invitation to testify today on the lessons learned from the 2008 presidential election. The Native American Rights Fund applauds the Committee for examining this important topic. Last November shows how far our native voters have come. Thanks to registration and get-out-the-vote efforts by groups, including the National Congress of American Indians, natives in many parts of the country experienced high turnout rates.

At least 23 Native American candidates from 11 states and 17 tribes won their elections. Denise Juneau of the Three Affiliated Tribes became the first American Indian elected to statewide office in the State of Montana, following her election as state superintendent of public instruction. Today, thanks in large part to Federal laws, including the Voting Rights Act, there are 67 natives serving in the legislatures of 16 states. Congressman Tom Cole, an enrolled member of the Chickasaw Nation, was also reelected to office.

But election 2008 also shows that our work remains unfinished. In Montana, American Indians in seven counties, including three with very large reservation populations, had to file a lawsuit to stop challenges to their voter registration. Obviously, given the fact we are talking about Native Americans, there can be no question that these are United States citizens. NCAI reported that its election protection efforts also identified, "local tensions with state officials" and "confusion about IDs."

In Arizona, Agnes Laughter, a 77-year-old grandmother who only speaks Navajo and has voted all of her adult life using her thumbprint as her identification, was forced to sue state election officials to restore her right to vote. Ms. Laughter was first turned away from the polls in 2006 when new voter identification laws went into effect in Arizona. She was unable to meet state requirements because she was born in a Hogan, has no electricity and, therefore, has no utility bills, has no birth certificate, does not have a tribal identification card, and does not drive.

Alaska, which has the highest percentage of native voters of any state, continues to experience depressed native turnout. In the 2008 presidential election, the statewide turnout rate in Alaska was 66 percent. Unfortunately, turnout among Alaska natives was 47 percent, almost 20 percent lower, despite the fact that this was an historic election and one of the highest profile elections in American history.

That is no coincidence. It is continuation of the pattern of neglect and discrimination by state election officials against geographically and linguistically isolated native voters, which includes lack of outreach to the native voters, English-only materials and assistance, the absence of publicity in native languages, such as Yup'ik, the most widely spoken Alaskan native language that is spoken by well over 15,000 Alaskan natives in Alaska, no information in native languages about voter purges, and insufficient trained and qualified translators, among other things.

Last July, a Federal court issued an injunction to force Alaska officials to comply with the language assistance and voter assistance requirements in section 208 of the Voting Rights Act, and I have included a copy of that injunction as an attachment to my testimony which describes these and other problems in greater detail.

The experience of Native Americans in the 2008 presidential election identified several areas where additional work is needed in Indian country.

First and foremost, more enforcement of existing laws, greater use of Federal observers, and, in fact, as I noted in my written testimony, we have a pending request with Attorney General Holder to certify Alaska, in particular the Bethel census area, for Federal observers pursuant to his authority under section 3 of the Voting Rights Act.

In addition, there need to be sufficient resources for the Justice Department to investigate and litigate enforcement actions, particularly as we head into the next round of redistricting. And there also should be consideration of legislation to expand early voting, same-day registration, and other measures that facilitate native voter turnout and participation.

NARF looks forward to working with Members of the Subcommittee in identifying the cures to the remaining barriers to political participation for Native Americans.

Thank you very much for your attention, and I would welcome the opportunity to answer any questions you may have.

[The prepared statement of Mr. Tucker follows:]

PREPARED STATEMENT OF JAMES THOMAS TUCKER

Testimony of Dr. James Thomas Tucker
Native American Rights Fund (NARF)

Before the House Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Lessons Learned from the 2008 Presidential Election

March 19, 2009

Chairman Conyers, Chairman Nadler, Ranking Member Sensenbrenner and Members of the Subcommittee, thank you for your invitation to testify on the lessons learned from the 2008 Presidential Election. The Native American Rights Fund (NARF), the oldest and largest nonprofit law firm dedicated to asserting and defending the rights of Indian tribes, organizations and individuals nationwide, applauds the Committee for examining this important topic. Voter participation by the First Americans is perhaps more fragile than for any other group. Alaska Natives and American Indians were not recognized as citizens until 1924 and could not vote in many places until much later. Today, language barriers, lack of educational opportunities, geographic isolation, and socio-economic disparities remain challenges to increasing native participation.

Nearly three years ago, members of this Committee worked together in a bipartisan partnership with many of the groups represented today to secure the reauthorization of the Voting Rights Act (VRA). Since then, we have witnessed continuing progress towards achieving the VRA's promise of equal access to the political progress for all Americans. The historic election of President Obama, our nation's first African-American President, marked an important step on a journey that began on the Edmund Pettus Bridge in Selma, Alabama forty-four years ago this month. Record numbers of voters, including Native Americans, turned out to vote. Increased early voting opportunities facilitated voter participation. An air of excitement marked a campaign that nearly saw the first woman nominated to the top of the Democratic ticket and did result in the first woman nominated as the Republican Party's vice presidential candidate. We have made much progress together.

Nevertheless, Election 2008 also shows that our work is unfinished. Many barriers to political participation remain.[1] Today's oversight hearing marks a critical first step in responding to those challenges. To assist the Subcommittee in its response, I will cover four topics. I will begin by briefly providing some general observations about voter participation and barriers present in the 2008 Election and their impact on native voters. Next, I will use NARF's recent experiences in Alaska to detail current impediments to voter participation by Native Americans. Finally, I will conclude with some suggestions on remedial steps that should be taken to remove obstacles to voters for future elections.

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[1] *See* James Thomas Tucker, *Electoral Access, Political Participation and Voter Protection in the 2008 Election*, *in* the American Bar Association's electronic supplement to AMERICA VOTES! A GUIDE TO MODERN ELECTION LAW AND VOTING RIGHTS (Ben Griffith ed. 2009) (forthcoming).

Voter Participation and Progress Made by Native Americans

Early and no-excuse absentee voting played a significant role in improving turnout in the 2008 Presidential Election. In 2000, just 13 states offered some form of early voting. In 2004, that number had climbed to 23 states.[2] By 2008, that number had increased to 34 states that allowed either no-excuse absentee voting, in person early voting, or both. Many of those states have large numbers of native voters, including states where all ballots were cast by mail (Oregon and all but two counties in Washington). The growing availability of early voting opportunities has resulted in large increases in pre-election voting, jumping from seven percent in 1992 to an estimated 30 percent in 2008, or about 38 million voters.[3]

Early voting contributed to record voter turnout. More than 131 million people voted in the 2008 Presidential Election, the highest total ever and an increase from the 122.3 million who voted in the 2004 Presidential Election.[4] The tremendous mobilization of voters led to the highest turnout in the past 40 years with about 61.6 percent of eligible voters casting ballots, slightly trailing the voter turnout rate of 63.8 percent in the 1960 Presidential Election.[5] The turnout rate increased from turnout for the 2004 Presidential Election in 33 states and the District of Columbia. Native Americans contributed to that record turnout.

According to preliminary data, in many places Native American turnout was much higher in 2008 than in previous elections. Thanks to registration and get-out-the-vote (GOTV) efforts by groups including the Native Vote Alliance of Minnesota, Take Action Minnesota, and the National Congress of American Indians (NCAI), the Red Lake Reservation in Minnesota reported its highest voter turnout ever. In November 2008, 2,249 tribal members cast ballots, an increase of 125 votes from 2004 and an 800 vote increase from 2000.[6] The NCAI reported survey results showing that tribal turnout on some Minnesota reservations was as high as 83 percent.[7]

In Montana, all nine precincts on the Crow Reservation saw increased voter turnout. Five precincts had turnout increases of 28 percent to 47 percent over 2004 turnout. "Half of the precincts on the Fort Peck Reservation had an increase in voters."[8] All but two reservations in Montana "had at least one precinct increase voter turnout by at least 25 percent."[9] Over all,

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[2] Rick Lyman & William Yardley, *Sharp Increase in Early Voting Alters Campaign*, N.Y. TIMES, Oct. 29, 2004.

[3] The Pew Center on the States, *electionline.org Briefing: Election 2008 in Review* 7 (Dec. 2008).

[4] *2008 Election Turnout Hit 40-Year High*, CBS NEWS, Dec. 15, 2008, *available at* http://www.cbsnews.com.

[5] *Voter Turnout*, CHI. TRIB., Nov. 6, 2008, at 3.

[6] Brad Swenson, *American Indian reservations see record voter turnout*, BEMIDJI PIONEER (Minn.), Nov. 16, 2008, *available at* 2008 WLNR 21886573.

[7] *See* Nat'l Cong. of Am. Indians, *Election 2008: Impact in Indian Country* (Nov. 6, 2008) ("NCAI Report"), *available at* http://www.ncai.org/fileadmin/pdf/Election2008AnalysisFINALCompatibilityMode.pdf.

[8] Jodi Rave, *Dakota Wire*, BISMARCK TRIB. (N.D.), Dec. 3, 2008, at B1.

[9] *Id.*

NCAI found that tribal turnout in Montana was about 65 percent, with the Crow Reservations having turnout estimated at 77 percent in some places.[10]

New Mexico had 11 pueblos and tribes that experienced increases in voter turnout of at least 25 percent over 2004, "with five pueblos recording notable increases ranging from 57 percent to 119 percent."[11] In the northern half of the Standing Rock Reservation, which is on the border between North Dakota and South Dakota, early numbers show a 22.4 percent increase in Indian turnout over 2004 turnout.[12] GOTV and election protection efforts by NCAI, native advocacy groups, and tribal governments proved very successful in most places. Many tribes with substantial increases in voter turnout used full-time voter empowerment staff, administrative efforts to coordinate volunteers, publicity, and provided transportation to the polls.[13]

Increased Native American voter participation resulted in the electoral success of several native candidates. At least 16 Native American candidates were on the ballot in Montana and Oklahoma, and seven were on the ballot in New Mexico and South Dakota.[14] At least 23 Native American candidates from 11 states and 17 tribes won their elections.[15] Rep. Tom Cole (R, OK) an enrolled member of the Chickasaw Nation and currently the only Native American in Congress, won reelection.[16] Denise Juneau of the Three Affiliated Tribes became the first American Indian elected to statewide office in Montana, following her election as State Superintendent of Public Instruction.[17] In the South Dakota state house race, Kevin Killer and Ed Iron Cloud III, enrolled members of the Oglala Sioux Tribe, were elected.[18] Election 2008 proved historic for Native Americans.

According to the National Conference of State Legislators, following the November 2008 election there are 67 natives serving in the legislatures of 16 states: Alaska has four native representatives and three native senators; Arizona has one native representative and one native senator; Colorado has two native senators; Kentucky has one native representative; Maine has two native representatives; Maryland has one native delegate; Montana has six native representatives and three native senators; Nevada has one native state assemblyman; New Mexico has four native representatives and two native senators; North Carolina has one native representative; North Dakota has one native senator; Oklahoma has 21 native representatives and five native senators; Pennsylvania has one native representative; South Dakota has two native representatives and one native senator; Washington has two native representatives and one native

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10 *See* NCAI Report, *supra* note 7.

11 Rave, *supra* note 8.

12 *Id.*

13 *See* NCAI Report, *supra* note 7.

14 *Id.*

15 S.E. Ruckman, *Tribal leaders, citizen groups lead Native vote*, NATIVE AM. TIMES, Nov. 14, 2008, at 1.

16 *See* NCAI Report, *supra* note 7.

17 *Id.*

18 *See* Ruckman, *supra* note 15.

senator; and Wyoming has one native representative.[19] The number of Native Americans serving in state legislatures across the country is an important measure of progress.

Barriers to Voting and their Impact on Native Americans

Despite the significant strides made in the 2008 Presidential Election, there is work left to do. Many states still do not have early voting laws. Virginia law illustrates the problems that lack of early voting laws can pose. State law there required completion of an absentee affidavit stating one of 17 reasons why it is necessary to cast it. That resulted in some of the nation's longest waiting times with a record turnout of 3.7 million out of 5 million registered voters. It was reported that it could take up to six or seven hours to cast an absentee vote in the days leading up to the deadline.[20] At one precinct in Petersburg, the line into the polling place stretched for more than half-a-mile.[21] Many voters do not have the luxury of waiting in line that long and simply gave up.

Generally, early voting made some waiting times shorter than expected in states that had it. Nevertheless, lengthy waiting times did occur.[22] Those delays did not impact every group equally.[23] Native American voters had to wait much longer in many places. Inadequate staffing and resources allocated to predominately minority precincts were blamed for the disparities. Language assistance also was unavailable in many states with early and absentee voting. Alaska, which has the highest percentage of native voters of any state, continued to experience a lack of sufficient trained and qualified translators for every part of the voting process.

Overall, Native American turnout increased, but it did drop in some localities. In Montana, voter turnout fell in some precincts on the Northern Cheyenne and Rocky Boy reservations.[24] In New Mexico, voter turnout in seven Navajo precincts dropped by as much as 90 percent.[25] In Alaska, native turnout showed little improvement over the 2004 Presidential Election, when it was estimated at 44.8 percent, compared to non-native turnout of 68.4 percent.[26] It is unclear what the causes of decreased turnout were in Montana and New Mexico. However, NARF has observed that inadequate language assistance and voter outreach by state election officials contributed to depressed native turnout in Alaska. It is possible that also may have been an issue in other states where native turnout remained flat or dropped.

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[19] Nat'l Conf. of State Leg., Native American Legislators (updated Feb. 2009), *available at* http://www.ncsl.org/programs/statetribe/2009tribl g.htm#AK. NCSL also reports that 12 Native Hawaiians are serving in Hawaii's legislature. *See id.*

[20] Tyler Whitley, *Lawmakers File Bills to Address Voting Problems*, RICHMOND TIMES DISPATCH, Dec. 11, 2008, at A1.

[21] Editorial, *Polling Post-Mortem*, ST. LOUIS POST-DISPATCH, Nov. 10, 2008, at A16.

[22] *See* Tucker, *supra* note 1.

[23] Richard Wolf, *Survey Reveals Disparities on Election Day*, USA TODAY, Dec. 10, 2008, at A8.

[24] Jodi Rave, *Dakota Wire*, BISMARCK TRIB. (N.D.), Dec. 3, 2008, at B1.

[25] *Id.*

[26] *See* 152 CONG. REC. S7962 (daily ed. July 20, 2006) (statement of Sen. Specter).

Election Day problems reportedly included polling place closures because of equipment breakdowns, voters failing to receive absentee ballots who were not allowed to vote at the polls, and thousands of voters turned away without being offered provisional ballots.[27] Voter registration issues were the most prevalent barrier reported.[28] Registration problems included not receiving a voter registration card listing the voter's precinct, the voter's name not appearing on the registration list, going to the wrong polling place, or even having the voter turned away without being allowed to cast a ballot.

In Montana, the state Republican Party challenged voters based on change-of-address information in Democratic-leaning precincts.[29] Many of those precincts were located on Indian reservations. American Indians in seven counties, including three with large reservation populations, filed a lawsuit to stop the registration challenges.[30] Challenging native voters is especially pernicious because there is no viable question that they are U.S. citizens. Unfortunately, impediments to native registration in Montana have been an ongoing problem.[31] Fortunately, the native voters were able to dismiss their lawsuit after Republican officials dropped their challenges.[32] Nevertheless, challenges to native registration remain a real threat in future elections.

State photo identification requirements that were enacted to prevent impersonation voter fraud contributed to some voters being delayed or turned away without being allowed to vote. That was true even in states that had not enacted a voter identification law. A study by the Massachusetts Institute of Technology reported that 12 percent of voters in states without a voter identification law were asked to present a photo ID to vote, while 20 percent of voters in states with a voter identification law were not asked for ID.[33]

Photo identification requirements can have a discriminatory impact on Native Americans. NCAI reported that its election protection efforts identified "local tensions with State officials" and "confusion about IDs."[34]

In Arizona, Agnes Laughter, a 77 year-old grandmother who only speaks Navajo and has "voted all her adult life using her thumbprint as her identification," was forced to sue election officials to restore her right to vote. Ms. Laughter was first turned away from the polls in 2006,

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[27] *See* Election Protection, *An Election Alert: Virginia and Pennsylvania*, Nov. 4, 2008, *available at* http://www.866ourvote.org/newsroom.

[28] CNN, *Voter Hotline*, *available at* http://www.cnn.com/ELECTION/2008/voter.hotline/ (last visited Mar. 16, 2009).

[29] Bob Herbert, *The Real Scandal*, N.Y. TIMES, Oct. 21, 2008, at A29.

[30] Rave, *supra* note 8.

[31] *See Windy Boy v. County of Big Horn*, 647 F. Supp. 1002 (D. Mont. 1986) (lawsuit by Crow and Northern Cheyenne against at-large elections in Montana that included evidence of discriminatory voter registration practices).

[32] Rave, *supra* note 8.

[33] Wolf, *supra* note 23.

[34] *See* NCAI Report, *supra* note 7.

when new voter identification laws went into effect in Arizona. She was unable to meet state requirements because she was born in a Hogan, has no electricity (and therefore no utility bills), has no birth certificate, does not have a tribal identification card, and does not drive. Therefore, she had no way of proving her citizenship to be able to vote. Her lawsuit was settled in May 2008, following Arizona's agreement to use an expanded list of identifications that Native Americans could use when they vote. Even then, Ms. Laughter had to endure a lot of red tape and bureaucratic delay:

> Her work-worn hands rubbed the crook of her cane as she patiently waited at the Tuba City office of the Arizona Department of Motor Vehicles which did not have a machine to immediately issue the ID, at the Navajo Area Office where she had to obtain an Affidavit of Birth, on the drive to the DMV office in Flagstaff, in the plastic chairs beneath the lighted sign that would eventually display her number waiting for the elusive identification card that would allow her to vote.[35]

Ms. Laughter expressed her joy when she learned she would be able to vote again. "All of my heartache has changed as of this day. I have an identity now. My thumbprint will stand. I feel fulfilled."[36] Her lawsuit undoubtedly made a substantial difference for many native voters in Arizona who wanted to participate in the 2008 Presidential Election. But it is likely that not all native voters, particularly those isolated on the Hopi, Navajo, or Tohono O'odham reservations, were able or willing to engage in the sort of odyssey Ms. Laughter had to fulfill to restore her fundamental right of citizenship.

Barriers to Native Voters in Alaska

The promise of federal legislation to remove voting barriers is unrealized for thousands of Alaska Native voters. In the 2008 Presidential Election, the statewide turnout rate in Alaska was 66 percent.[37] Turnout among Alaska Natives, on the other hand, was just 47 percent, nearly 20 percent lower.[38] That is little higher than the estimated native turnout of 44.8 percent in the 2004 Presidential Election.[39]

Depressed native turnout in Alaska during one of the highest-profile elections in American history is no coincidence. It is a continuation of the pattern of neglect and discrimination by state election officials against geographically and linguistically isolated native voters. I will briefly summarize some of the more glaring barriers that we have encountered in Alaska in 2008, particularly (though not exclusively) in the Bethel region.

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35 *Clinic Helps Navajo Woman Restore Right to Vote*, U.S. FED. NEWS, Nov. 10, 2008, *available at* 2008 WLNR 21517476.

36 *Id.*

37 *See* State of Alaska, Division of Elections, Official Results of the Nov. 4, 2008 General Election, *available at* http://www.elections.alaska.gov/08general/data/results.pdf.

38 *See* NCAI Report, *supra* note 7.

39 *See supra* note 26.

NARF represents individual limited-English proficient (LEP) Yup'ik voters and tribes in the Bethel region of Alaska who have been denied access to the political process by a combination of State neglect, indifference to federal laws, and ideological opposition to providing language assistance to LEP voters. In July 2008, we obtained some preliminary relief for those voters in *Nick et al. v. City of Bethel et al.*, case no. 3:07-cv-0098-TMB (D. Alaska July 30, 2008).[40]

Alaska and its political subdivisions are subject to the bilingual election requirements and preclearance requirements of the VRA.[41] Several areas of the State, including the Bethel region, are separately covered by Section 203 of the VRA for Alaska Native languages.[42] In the Bethel region, Yup'ik is the predominant language. The LEP rate in the area is very high. Among all eligible voters, nearly 21 percent are LEP in Yup'ik. In eight Yup'ik villages more than half of eligible voters are LEP, and ten villages have LEP rates between 20 to 50 percent. Because of the State's educational discrimination, the illiteracy rate among LEP Yup'ik voters greatly exceeds the national average: 21.5 percent, nearly 16 times the national illiteracy rate of 1.35 percent. Yup'ik is the largest native language group in Alaska, and the Bethel region has the largest concentration of Yup'ik voters in the State.

1. Lack of outreach

Alaska's most basic failing is its virtually non-existent outreach to native voters and native villages to provide voting opportunities. State election officials acknowledge that voter outreach is critical. Lieutenant Governor Sean Parnell, who is statutorily responsible for administering state elections, agreed that the most effective approach to providing language assistance during the voting process is to work with the local tribal governments and reach out to LEP voters in areas where Alaska Native languages are spoken. That has not occurred.

Alaska did almost no outreach to native villages until after NARF filed its lawsuit in June 2007. According to the State's own records, it sent out voter registration forms for the first time to some native villages in 2006. However, no forms were sent to Yup'ik villages in the Bethel region. The State did not send out any voter registration packets to tribal councils in the Bethel Census Area in 2007, even though the State conducted two elections there and had been sued for its lack of outreach. No follow-up mailings or telephone calls were made to determine if native villages needed assistance with voter registration. All mailings were done in English, causing many LEP natives to throw the materials away because they could not read them.

No elections employees have attended tribal council meetings in the Bethel region for purposes of increasing voter participation. Becka Baker, the State's Region IV supervisor, admitted that she had not traveled to any of the villages despite being in her position for over four years. She explained, "My job is to conduct elections and… that's what I'm focused on.

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40 I have included a copy of the preliminary injunction as an attachment to my testimony.

41 *See* 40 Fed. Reg. 49,422 (Oct. 22, 1975).

42 *See* Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002).

I'm not focused on attending tribal council meetings in all of these communities." She acknowledged that doing so "quite possible may" provide a good opportunity to improve access for LEP voters, "but I wouldn't know that unless I attended one."

Consistent with that neglect, the State did not reach out to native organizations to facilitate voter turnout even when it was convenient to do so. The Alaska Federation of Natives (AFN), Alaska Inter-Tribal Council (AITC), and Bureau of Indian Affairs regularly hold meetings in Anchorage and Juneau that are attended by tribal leaders from all over Alaska, including the Bethel region. State officials ignored those opportunities to meet with them. The second-longest tenured State elections employee, a supervisor who has been employed by Alaska for nearly two decades, admitted that the first time election officials met with AFN and AITC members about facilitating native participation was in the summer of 2008, when court action on our Motion for a Preliminary Injunction was imminent.

Alaska has conducted voter registration drives in some of the predominately white and non-native areas of the State. However, Whitney Brewster, the State's Director of Elections until December 2007,[43] admitted that election officials did not target any voter registration efforts at native voters, such as those in the Bethel region.

2. English-only election materials and assistance

Alaska is a hotbed of English-only opposition to providing any materials or assistance in languages other than English.[44] Consistent with the State's ideological opposition to bilingual election materials, voter registration forms have only been available in English and Tagalog, with the latter forms added under threat of litigation by the U.S. Department of Justice. No language assistance for the registration or voting process, whether in audio or written form, is available for LEP Alaska Natives.

All elections materials that Alaska sends out are in English-only. State election officials attempt to shift their responsibility for providing assistance in Alaska Native languages to the tribal governments. The registration packets sent to certain parts of Alaska in 2006 included a "request for the tribal governments to provide as much assistance to the LEP applicants as needed."

Even when native voters read English, they often cannot read and understand the language well enough to understand English election materials. Dr. Claudia Dybdahl, a linguist who chairs the Department of Education at the University of Alaska-Anchorage, analyzed Alaska's voter registration form. She determined that it was written at a 13.83 grade level, requiring roughly two years of college to understand it. Most Alaska Natives do not have any college education and suffer from the effects of the state's past and present educational

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[43] Ms. Brewster resigned her position and was reassigned just a few weeks after she was deposed in 2007.

[44] For example, in 1998 voters enacted the Official English Initiative, which required that only English be used for "all government functions and actions." Alaska Stat. § 44.12.300 (1998). The law subsequently was struck down for violating the free speech guarantees of the State Constitution. *See Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 187-188 (Alaska 2007).

discrimination.[45] Alaska's lack of assistance in their native language prevents them from being able to understand most election materials.

3. Lack of publicity about voter registration in native languages

In 2008, for the first time, Alaska aired radio announcements in Yup'ik that included a limited amount of information about voter registration deadlines. However, the radio announcements did not reach all of the native villages in the Bethel area. The State did not pursue alternative ways of communicating election information in native languages, such as through VHF radios that are commonly used in the villages. As a result, large native villages such as Tuluksak received no information in Yup'ik for the 2008 Presidential Election.

In 2006, Alaska aired two radio announcements in Yup'ik about elections information. According to the Director of Elections, the purpose of the announcements was "[t]o get information across to voters who do not speak English," including "[v]oter registration, deadlines, date of election, absentee voter deadline, that there's an election." However, the Division of Elections failed to confirm the actual content of the announcements. The Yup'ik announcements said:

> On August 22nd, from 7 in the morning until 8 o'clock in the evening there will be voting for leaders. When you vote [unknown, something like all your choices] are written in the Division of Elections. Also [unknown]. And be sure to bring your ID when you go to vote. For those who need more information, call 888-383-8683.

According to a Yup'ik translator, the State's radio announcements were given in an English diction, inflection, and intonation difficult for a native speaker to understand. No information was provided about voter registration deadlines. The other announcement was virtually identical, except that it referred to the date of the general election in 2006.

Alaska's remaining publicity about voter registration deadlines was limited to English-only press releases sent to broadcast stations. When the State sends out voter information to broadcast stations with the notation of "Local Native Language Requested," it does not confirm whether any of that information is actually broadcast or whether any translations into native languages are accurate. As the State Director of Elections admitted, "With the media, you never know what is accurate and uniform, frankly." She further acknowledged that broadcast stations provided with voter information "pick and choose what information they choose to pass along, if at all."

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[45] *See* Decision and Order, *Moore v. State of Alaska*, Case No.3AN-04-9756-CIV (Alaska Super. Ct. June 21, 2007) (unpublished opinion), at 194-95 (finding that Alaska violated its constitutional responsibility to maintain a public school system" by failing to sufficiently oversee the quality of secondary education in many Alaska Native villages and to provide a "meaningful opportunity to learn the material" on a graduation exam); *Kasayulie v. State of Alaska*, Case No. 3AN-97-3782-CIV (Alaska Super. Ct. 1999) (finding that Alaska violated the Constitution by using a dual, arbitrary, unconstitutional, and racially discriminatory system for funding school facilities); Settlement Agreement, *Hootch v. State Operated Sch. Sys.*, Civil No. 72-2450, *settled sub nom, ex rel. Tobeluk v. Lind* (Alaska Super. Ct. Sept. 3, 1976) (acknowledging the State's failure to provide any secondary schooling in native villages).

4. Lack of communications in native languages about voter purges

When Alaska's election officials conduct their annual purges of voter registration rolls, all written information about voters being removed from the list is in English only. The National Voter Registration Act (NVRA) requires that voters be notified that they are being purged to give them an opportunity to contact elections officials to remain registered.[46] Although Alaska officials have claimed that they provide that notice, they also have conceded that all written communications to LEP Yup'ik voters are in English.

State officials have no information about whether any purge announcements or notices have been translated by private citizens into Yup'ik and if so, whether those translations were accurate and complete. The State has not made any efforts to remedy the lack of language assistance for registration activities in other ways. Oral Yup'ik is not provided for any voter registration information including purges because an elections supervisor explained, "All our communications are done in English."

During the 2008 Presidential Election, we learned of an elderly LEP voter in the native village of Kasigluk who had been disenfranchised for over two decades because of Alaska's failure to provide information about voter purges in native languages. "She had not voted in many years because her name was not on the list and she could not vote. She did not know how to get her name back on the list…." Failure to comply with the overlapping requirements of the NVRA and the VRA has resulted in similar voting discrimination in other native communities.[47]

5. Lack of language assistance in polling places

Alaska's failure to provide language assistance is detailed in the attached Order granting the Plaintiffs' Motion for a Preliminary Injunction in the *Nick* litigation. In February 2009, the Plaintiffs filed a Motion for Further Relief under the injunction, documenting several violations of the Court's Order during the 2008 Presidential Election. The Motion was supported by more than three dozen declarations from voters in 17 native villages.

6. Lack of registration and voting site accessibility assessments

The Voting Accessibility for the Elderly and Handicapped Act of 1984 was passed, in part, to remove barriers that the elderly and disabled faced in the registration and voting process.[48] Registration and voting locations must be physically accessible, or alternatives need

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[46] *See* 42 U.S.C. § 1973gg-6(c).

[47] Several provisions of the VRA require that barriers to registration be removed. *See generally* 42 U.S.C. § 1973(a) (the general nondiscrimination provision); 42 U.S.C. § 1973c(a) (barring changes in registration procedures with a discriminatory purpose or that place minority voters in a worse position); 42 U.S.C. § 1973aa (barring the use of tests or devices, including English literacy, as a prerequisite to registration); 42 U.S.C. § 1973aa-1a (requiring language assistance be provided for voter registration activities).

[48] *See* 42 U.S.C. § 1973ee.

to be provided for registration by mail or at the residence of an applicant.[49] Registration and voting aids, such as telecommunications devices for the deaf and instructions in large type must be displayed at each registration site and polling place.[50]

Alaska's election officials view federal requirements to evaluate the accessibility of voter registration sites in native villages as unworthy of their attention. Villages generally have social service agencies that may be used for voter registration. However, no State officials have visited those villages to determine whether they are accessible to the elderly and the disabled.

State election officials admitted that they had conducted in-person polling site accessibility surveys for the three precincts in the City of Bethel, which is where most non-natives and whites in the Bethel region reside. However, they acknowledged that they had not done any in the native villages outside of city. Instead, all of those required accessibility surveys for the villages are conducted over the telephone.

No full-time Division of Elections employee has visited any of the native villages outside of the City of Bethel between 2000 and the present for election related purposes. Becka Baker, the Region IV Supervisor, who has been responsible for elections in most of the voting precincts in the Bethel Census Area since 2003, has never traveled to any of the native villages outside of the City of Bethel. She has never even considered taking a flight out to the villages to see the conditions of the registration and polling sites. Native voters should not be an afterthought for any elections official.

7. Lack of special needs assistance for voter registration

Alaska likewise does not disseminate information about special needs assistance for registration and voting. The State describes special needs assistance in this way on its website: "If you had planned on going to your polling place on election day but become ill or are homebound, you can vote by having a personal representative bring you a ballot."[51] LEP native voters are not provided with that information in their native language.

Although Alaska offers registration and voting opportunities by mail, that denies access to LEP voters who cannot read English and for whom the State provides no language assistance. In-person registration and voting, preferably at the home of registrants as provided in the Voting Accessibility for the Elderly and Handicapped Act, is needed but not offered. Such home visits generally also will require that information be communicated in a native language. Many elderly LEP Alaska Natives who cannot walk to registration and polling locations or use English-only mail-in or Internet registration processes have not been voting because of the State's violations.

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49 *See* 42 U.S.C. § 1973ee-2.

50 *See* 42 U.S.C. § 1973cc-2.

51 *See* State of Alaska, *available at* http://www.elections.alaska.gov/voting.php.

8. Lack of information about the status of provisional ballots

The Help America Vote Act of 2002 (HAVA) provides that an individual whose name does not appear on a voter registration list but who declares their eligibility, must be offered the choice to cast a provisional ballot. The voter also must be given written information on how to determine the disposition of their ballot. Election officials must establish a free access system (such as a toll-free number) accessible to the voter that informs them if their vote was counted, and if it was not counted, the reason it was not.[52] Section 303 of HAVA provides for a variety of procedural safeguards to ensure the timely processing and maintenance of voter registration applications and record.[53]

In Alaska, that has not happened for LEP native voters in past elections. LEP voters who encounter registration issues often are turned away without being offered a provisional ballot. If an LEP voter is offered and casts a provisional ballot, the State does not provide information to them in their native language advising them about what the status of their ballot is. Even if that information was provided, it would not matter. The State's Director of Elections admitted that the free access system provided for voters who cast provisional ballots is in English only. The State has taken no steps to provide that information in Alaska Native languages such as Yup'ik.

Policy Recommendations

The experience of Native Americans in the 2008 Presidential Election identifies several areas where additional work is needed.[54] In some cases, federal law already addresses many of the barriers that native voters encountered. The problems NARF and its clients have observed in Alaska highlight that there has been a general lack of enforcement of federal voting protections in many parts of Indian country.

This Subcommittee should request that the Justice Department more actively enforce federal voting laws on behalf of Alaska Natives and American Indians where discrimination has been reported. NARF is encouraged by many of the recent steps that the Obama Administration has taken to address the neglect of natives. President Obama has announced that he will be appointing a cabinet level Native American affairs senior advisor. Furthermore, Department personnel have consulted with NARF in the Section 5 review process on several recent discriminatory voting changes that Alaska has attempted to implement. Nevertheless, vigorous oversight of the Department in its enforcement activities remains essential for protecting access of native voters to the political process.

Furthermore, NARF commends the U.S. Department of Justice for its continued monitoring of elections with large native populations in places like Arizona, New Mexico, and South Dakota. However, native voters in Alaska voters have been left out of that monitoring

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[52] *See* 42 U.S.C. § 15482.

[53] *See* 42 U.S.C. § 15483.

[54] I understand that the House Rules and Administration Committee may have overlapping or primary responsibilities for some of the policy recommendations that follow.

despite judicial findings of voting discrimination. NARF recently requested Attorney General Holder certify the Bethel Census Area for federal observers because of the Preliminary Injunction in the *Nick* case and evidence of ongoing discrimination.

NARF requests that this Subcommittee encourage Attorney General Holder to appoint federal observers in Alaska. In 2006, Congress significantly streamlined the process for appointing federal observers in jurisdictions like Alaska that are covered under Section 4 of the VRA.[55] As the House Judiciary Committee Report accompanying the 2006 amendments explained, "that minority voters will be better served by authorizing the Attorney General to directly certify jurisdictions for the use of Federal observers."[56] However, not a single new jurisdiction covered by Section 4 of the VRA has been certified by the Attorney General for federal observers using that broader authority.[57] Thousands of LEP native voters in the Bethel Census Area of Alaska remain at risk of the disenfranchisement identified in the *Nick* litigation without the oversight of federal observers. Elections will be held in the Bethel region later this year, making it critical that certification happen soon.

The Obama Administration has stated that civil rights will be one of its priority issues. As we prepare for the 2010 round of redistricting, it also is critical that the Justice Department be provided with sufficient resources to vigorously enforce federal voting laws, particularly Sections 2, 4(f)(4), 5, 203, and 208 of the VRA, the NVRA, and HAVA. This Subcommittee should ensure that the Department has adequate resources to meet the Administration's mandate and to fully restore the Civil Rights Division in response to the Inspector General's recent findings of unlawful politicization.

Early voting proved to be a safety valve that relieved much of the pressure on polling places that otherwise would have been overwhelmed on Election Day. Voters had greater opportunities to vote in the evenings or the weekends leading up to the election, when it was more convenient for them. If a voter failed to provide required identification or there was a problem with their voter registration, early voting afforded greater opportunities to address the deficiency than on Election Day. For those reasons, this Subcommittee should consider legislation that will expand early voting opportunities for federal elections.

Voter registration also has continued to be a barrier to voting by Native Americans and other racial, ethnic, and language minority groups. It would be beneficial to examine legislation requiring same-day voter registration for federal elections. The Subcommittee would have to be mindful of removing and not erecting further barriers for native voters in the registration process. For example, Agnes Laughter's lack of identification required to register to vote highlights a barrier that many natives continue to experience. Registration opportunities must comply with language assistance requirements under the VRA. In addition, access to voter registration, whether in advance of an election or in the polling place on Election Day, must be fully accessible to special needs voters, including the elderly and disabled.

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[55] Pub. L. No. 109-246, 120 Stat. 577, 578-79 (July 27, 2006) (codified at 42 U.S.C. §1973f(a)).

[56] H. Rep. No. 109-478, at 63.

[57] *See* U.S. Dep't of Just., Civ. Rts. Div., Voting Sec., *About Federal Observers and Election Monitoring*, *available at* http://www.usdoj.gov/crt/voting/examine/activ_exam.php (last revised Mar. 9, 2009).

Additionally, the Subcommittee should consider election reform legislation introduced in the 110th Congress. For example, native voters have experienced the disabling effects of deceptive practices, harassment, and intimidation for which federal remedies remain incomplete.

Finally, NARF has one particular concern that is a product of our current economic crisis. Many local jurisdictions have been severely impacted by the loss of tax revenue and investment income, which may lead to personnel reductions. However, some of the most at-risk positions will be Native American elections personnel, bilingual coordinators, and others who coordinate native voter outreach and participation in states like Alaska, Arizona, New Mexico, and South Dakota. If those positions are eliminated or work hours are reduced, it is likely that violations of federal voting laws, particularly the VRA, will follow. Therefore, the Subcommittee should consider holding an additional oversight hearing on the impact of the recession on efforts by state and local jurisdictions to comply with the VRA and other federal voting laws.

Conclusion

Bill Moyers observed, "Although our interests as citizens vary, each one is an artery to the heart that pumps life through the body politic, and each is important to the health of democracy." Election 2008 showed that our democracy remains vibrant, despite suffering from some ailments. NARF looks forward to working with Members of the Subcommittee in identifying the cures to the remaining barriers to political participation for many voters, including Native Americans. Thank you very much for your attention. I will welcome the opportunity to answer any questions you may have.

ATTACHMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Nick, et al. Plaintiffs, vs. Bethel, et al. Defendants.	Case No. 3:07-cv-0098 TMB **ORDER** **Re: Plaintiffs' Motion for a Preliminary Injunction Against the State Defendants**

I. MOTION PRESENTED

At Docket 202, Plaintiffs seek a preliminary injunction requiring the Defendants to adopt certain measures related to the minority language and voter assistance rights guaranteed by the Voting Rights Act of 1965 ("VRA"). Specifically, the Plaintiffs urge the Court to order mandatory relief to ensure that Yup'ik-speaking voters in the Bethel Census area receive effective language assistance under sections 203[1] and (4)(f)(4)[2] of the VRA , and that eligible voters receive assistance during the voting process, including in the voting booth, as guaranteed by section 208[3] of the VRA. Defendants oppose the motion, on which oral argument was heard July 8, 2008.

[1] 42 U.S.C § 1973aa-1a.

[2] 42 U.S.C. § 1973b(f)(4).

[3] 42 U.S.C § 1973aa-6.

In light of the fact that the State's August 26, 2008 primary election is rapidly approaching, the Court issues this ruling with regard to the State Defendants[4] only. The portion of the Plaintiffs' motion seeking injunctive relief against the Bethel Defendants[5] remains under consideration.

As to the State Defendants, the Court has determined that the Plaintiffs are entitled to injunctive relief in connection with the upcoming state-run elections. The Court therefore GRANTS the Plaintiffs' motion with regard to the State Defendants and directs the State to comply with the relief described in section IV.B. of this order.

II. LEGAL STANDARD

A party moving for preliminary injunction must show that a legal remedy is inadequate, meaning that the moving party is faced with an immediate and irreparable injury for which they cannot be compensated with money damages.[6] "[A] preliminary injunction should issue...upon a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them fair grounds for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief."[7] Under this second test, it must be shown, at a minimum, that "even if the balance of hardships tips decidedly in favor of the moving party, it must be shown as an irreducible minimum that there is a fair chance of success on the merits."[8]

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[4] The "State Defendants" include Sean Parnell, in his official capacity as state Lieutenant Governor; Whitney Brewster, in her official capacity as Director of the state Division of Elections; Becka Baker, in her official capacity as Elections Supervisor of the Nome Regional Elections Office; and Michelle Speegle, in her official capacity as Elections Supervisor of the Fairbanks Regional Elections Office.

[5] The "Bethel Defendants" include Bethel, Alaska and Lori Strickler, in her official capacity as municipal clerk of Bethel.

[6] *See Dymo Industries, Inc. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964).

[7] *Aguirre v. Chula Vista Sanitary Serv. & Sani-Trainer, Inc.*, 542 F.2d 779, 781 (9th Cir. 1976) (*citing Gresham v. Chambers*, 501 F.2d 687, 691 (2nd Cir. 1974)); *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999).

[8] *Martin v. Int'l. Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984).

Thus, the standard for a preliminary injunction balances the moving party's likelihood of success against the relative hardship to the parties.[9] "If the harm that may occur to the [moving party] is sufficiently serious, it is only necessary that there be a fair chance of success on the merits."[10]

In the instant case, the Court must also consider the nature of the relief sought by the Plaintiffs. Where a party seeks mandatory relief that "goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction."[11] Mandatory preliminary relief is to be issued only where "the facts and law clearly favor the moving party."[12]

III. BACKGROUND

On June 11, 2007, the Plaintiffs initiated this action seeking declaratory and injunctive relief with respect to election-related policies and procedures used by the state of Alaska and the city of Bethel in the Bethel census area. The Plaintiffs' original complaint asserted violations of the VRA's bilingual language and voter-assistance guarantees. The Plaintiffs later amended their complaint to add an additional cause of action, alleging that the Defendants violated the "preclearance" requirements of section 5[13] of the VRA. A three-judge panel was then appointed to hear the section 5 claim, as required by federal law.[14]

On May 22, 2008, the Plaintiffs filed the motion for a preliminary injunction at issue here, along with a 29-page proposed order addressing the purported shortcomings of the Defendants' efforts to provide language assistance to Yup'ik-speaking voters in the Bethel region. The Plaintiffs

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[9] *See Sun Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1118 (9th Cir. 1999).

[10] *William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc.*, 526 F.2d 86, 88 (9th Cir. 1975).

[11] *Id.*

[12] *Stanley v. University of Southern Calif.*, 13 F.3d 1313, 1320 (9th Cir. 1994).

[13] 42 U.S.C. § 1973c.

[14] 42 U.S.C. § 1973c; 28 U.S.C. § 2284.

seek injunctive relief in connection with three upcoming state-run elections: the August 26, 2008 primary, the October 7, 2008 Regional Educational Attendance Area (REAA) and Coastal Resources Service Area (CRSA) elections; and the November 4, 2008 general election

The Plaintiffs did not seek expedited review of their request for injunctive relief until June 9, 2008. Following a Court-convened status conference, the Plaintiffs filed a status report with a much-reduced list of actions sought as relief for the August 26, 2008 primary election. The pared down list includes: the appointment of federal election observers, the hiring of a bilingual elections coordinator fluent in English and Yup'ik, the development of a Yup'ik glossary of common election terms, the airing of pre-election publicity and announcements in Yup'ik, consultation with Plaintiffs' counsel and tribal leaders to ensure the accuracy of any materials translated into Yup'ik, mandatory poll worker training on the VRA's bilingual language requirements, and pre- and post-election reports summarizing the State's efforts to comply with these measures. The Plaintiffs also seek, for each polling place within the Bethel census area, the provision of a sample ballot translated into Yup'ik and the display of a poster written in Yup'ik and English notifying voters of the availability of language and voting assistance.

Even while opposing the Plaintiffs' motion for a preliminary injunction, the State has, during the course of this litigation, taken substantial steps to overhaul its minority language assistance program ("MLAP") for Alaska Native voters. The revised MLAP includes many – but not all – of the actions sought by the Plaintiffs in their status report. The State's plan does not, however, call for the translation of all written election materials into Yup'ik, because the State contends this is not required under the VRA. The State moved for summary judgment on this issue, which the Court granted before the hearing on July 8, 2008; in a written ruling issued on July 23, 2008, the Court found that Yup'ik is a "historically unwritten" language for purposes of the VRA and, therefore, the VRA requires the Defendants to provide oral – but not written – assistance to Yup'ik-speaking voters. While granting summary judgment to the State Defendants on this issue, the Court noted that they may need to print some election-related materials in Yup'ik, such as

sample ballots, to provide "effective" language assistance, as required by federal regulations implementing the VRA.[15]

Because it initially appeared that the Plaintiffs' original motion for a preliminary injunction implicitly involved the section 5 claim, the three-judge panel appointed to hear that claim participated in the July 8, 2008 hearing. But the parties' arguments at the hearing, and the Plaintiffs' filing of a separate motion for a preliminary injunction on the section 5 claim shortly before the hearing, made clear that the issues raised in this motion are distinct from the section 5 claim. Because of this, Judge Burgess, to whom this case was originally assigned, retained jurisdiction over the Plaintiffs' original motion for a preliminary injunction. The Plaintiffs' second motion seeking injunctive relief – which deals exclusively with the section 5 claim – remains pending before the three-judge panel.

IV. DISCUSSION

As noted above, a party seeking a preliminary injunction must show either the possibility of an irreparable injury and a likelihood of succeeding on the merits, or sufficiently serious questions going to the merits and a balance of hardships tipping decidedly in their favor. Given the importance accorded an individual's constitutional right to vote, the Court finds at the outset that the Plaintiffs have satisfied the "irreparable harm" prong of the first preliminary injunction standard. The "right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."[16] Denial of the right to participate in an election is by its nature an irreparable injury.[17]

A. Probable Success on the Merits

Shifting to the second prong of the analysis, the Plaintiffs assert that there is "overwhelming evidence" of the State Defendants' failure to provide effective language and voter assistance in violation of sections 4(f)(4), 203 and 208 of the VRA. The State Defendants respond that injunctive

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[15] 28 C.F.R. § 55.2.

[16] *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

[17] *Id.* at 585.

relief should be denied because they are in the process of improving their MLAP and, therefore, the Plaintiffs cannot establish a likelihood of success on the merits.

The requirements of sections 4(f)(4) and 203 of the VRA are essentially identical. They bar covered jurisdictions from providing English-only voting instructions and materials in any public election; all "voting materials" provided in English must also be provided in each language triggering coverage under the VRA. Specifically, the VRA's provisions direct that whenever a State or political subdivision "provides any voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language . . . ." Both sections also include the following exemption:

> *Provided,* That where the language of the applicable minority group is oral *or unwritten or in the case of Alaskan Natives and American Indians, if the predominant language is historically unwritten,* the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.[18]

Because the Court has ruled that Yup'ik is a "historically unwritten" language, this exemption applies and the Defendants are required to provide oral assistance only to Yup'ik-speaking voters.

Compliance with the VRA's bilingual provisions is measured by an "effectiveness" standard. The critical question is whether materials are provided in a such a way that voters from applicable language groups are "effectively informed of and participate effectively in voting-connected activities" and whether a covered jurisdiction has taken "all reasonable steps to achieve that goal."[19] In addition, the U.S. Attorney General has issued regulations on oral assistance and election-related publicity, which state:

> (a) General. Announcements, publicity, and assistance should be given in oral form to the extent needed to enable members of the applicable language minority group to participate effectively in the electoral process.
>
> (b) Assistance. The Attorney General will consider whether a jurisdiction has given sufficient attention to the needs of language minority group members who cannot

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[18] 42 U.S.C. §§ 1973b(f)(4) and 1973aa-1a(c) (emphasis added).

[19] 28 C.F.R. § 55.2.

> effectively read either English or the applicable minority language and to the needs of members of language minority groups whose languages are unwritten.
>
> (c) Helpers. With respect to the conduct of elections, the jurisdiction will need to determine the number of helpers (i.e., persons to provide oral assistance in the minority language) that must be provided. In evaluating the provision of assistance, the Attorney General will consider such facts as the number of a precinct's registered voters who are members of the applicable language minority group, the number of such persons who are not proficient in English, and the ability of a voter to be assisted by a person of his or her own choice. The basic standard is one of effectiveness.[20]

It is undisputed that the state of Alaska is a "covered jurisdiction" under Section 4(f)(4) for Alaska Natives, and that the Bethel census area, which includes the city of Bethel, is a "covered jurisdiction" under Section 203 for Alaska Natives and the Yup'ik language.[21] Section 208 of the VRA applies to all jurisdictions, and not just those deemed "covered" for the language assistance provisions. It provides that voters who need assistance because they are blind, disabled, or unable to read or write, may receive assistance from a person of their choice, other than their employer, agent of their employer, or an agent of their union.[22]

Based on the evidence presented, the Court finds that the Plaintiffs have met their burden and established that they are likely to succeed on the merits on the language assistance claims brought under sections 203 and 4(f)(4) of the VRA, and the voter assistance claims brought under section 208 of the VRA. In reaching this conclusion, the Court relies on affidavits, depositions and other evidence showing that the State has failed to: provide print and broadcast public service announcements (PSA's) in Yup'ik, or to track whether PSA's originally provided to a Bethel radio station in English were translated and broadcast in Yup'ik;[23] ensure that at least one poll worker at each precinct is fluent in Yup'ik and capable of translating ballot questions from English into Yup'ik;[24] ensure that "on the spot" oral translations of ballot questions are comprehensive and

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[20] 28 CFR § 55.20.

[21] *See* 28 C.F.R. Pt. 55, App.

[22] 42 U.S.C. § 1973aa-6.

[23] Dkt. 202, Ex. 191 at 127-28, 148.

[24] Dkt. 202, Ex. 191 at 166; Ex. 159 at 73; Ex. 183 at ¶¶ 198-99. *See also* Dkt. 90 at ¶ 17

accurate;[25] or require mandatory training of poll workers in the Bethel census area, with specific instructions on translating ballot materials for Yup'ik-speaking voters with limited English proficiency.[26]

After considering this evidence and the parties' arguments at the July 8, 2008 hearing, the Court also rejects the State Defendants' contention that injunctive relief should be denied because the State is in the midst of revamping its MLAP. The evidence shows that State officials became aware of potential problems with their language-assistance program in the spring of 2006, after the Native American Rights Fund issued a report describing the State's alleged failure to comply with the VRA's minority language provisions. Yet the State's efforts to overhaul the language assistance program did not begin in earnest until after this litigation began. Whitney Brewster, director of the State's Division of Elections, testified during her deposition that the Division began working to improve the MLAP in April 2006. These efforts were put on hold, however, while the Division prepared for elections in the fall of 2006 and a statewide special election in April 2007.[27] Therefore, while the State contends that an injunction is unnecessary, the court disagrees in light of the fact that: 1) the State has been covered by Sections 203 and 4(f)4 for many years now; 2) the State lacks adequate records to document past efforts to provide language assistance to Alaska Native voters; and 3) the revisions to the State's MLAP, which are designed to bring it into compliance, are relatively new and untested. For all these reasons, the Court concludes that injunctive relief is both appropriate and necessary. The Court acknowledges that the State has undertaken significant efforts to improve its language assistance program. But by the State's own admission, the overhaul remains a work in progress. In opposing the Plaintiffs' motion, the State asserts that it is "in the process of adopting enhancements," and counsel for the State acknowledged during the July 8, 2008 hearing that officials are still working to train and recruit poll bilingual poll workers and to assemble a Yup'ik glossary of election-related terms. Until these measures and others are fully in place, the

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[25] Dkt. 202, Ex. 159 at 76-77.

[26] Dkt. 202, Ex. 191 at 169-71; Ex. 159 at 60, 63.

[27] Dkt. 202, Ex. 191 at 70-71.

evidence of past shortcomings justifies the issuance of injunctive relief to ensure that Yup'ik-speaking voters have the means to fully participate in the upcoming State-run elections.[28]

In addition to the language-assistance claims brought under sections 203 and 4(f)(4) of the VRA, Plaintiffs have demonstrated that they are likely to prevail on their section 208 voter-assistance claim as well. That claim asserts that poll workers have regularly failed to allow voters (or apprise voters of their right) to bring an individual of their choice into the voting booth to assist them in the voting process. While the evidence on this claim is more anecdotal, it nonetheless satisfies the Plaintiffs' burden for injunctive relief. This evidence primarily consists of affidavits and deposition testimony showing that some poll workers in the Bethel census area do not understand that blind, disabled or illiterate voters have the right to receive assistance from a "helper" of their choosing. For example, Plaintiff Anna Nick has heard poll workers in Akiachak tell other voters that they "cannot bring anyone with them into the booth because their vote must remain private."[29] Similarly, Elena Gregory, a resident of the village of Tuluksak, reports being told by a poll worker that she "could not help the others vote if they did not understand" the ballots written in English.[30] In her declaration, she states: "I have voted in an election where the poll worker told me that elders could not have help interpreting or reading the ballots, and that everyone had to be 50 feet away from the person voting."[31] And in the city of Bethel of the village of Kwigillingok, election workers have failed to offer assistance to voters who needed it, and who were entitled to it under section 208.[32] Although courts have denied injunctions based on isolated instances of election-related misconduct, the evidence here appears to go well beyond that. Multiple

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[28] The Court also rejects the State's arguments that injunctive relief should be denied on the grounds of laches and unclean hands. The State asserts that the Plaintiffs unreasonably delayed filing for injunctive relief and "tried to block" the Division's implementation of improvements by filing critical comments with the U.S. Department of Justice in response to the State's effort to obtain "preclearance" of its new procedures. The Court finds these arguments to be without merit.

[29] Dkt. 90 at ¶¶ 19-20.

[30] Dkt. 164 at ¶ 8.

[31] *Id.*

[32] Dkt. 89 at ¶ 24. *See also* Dkt. 161 at ¶¶ 22, 23.

individuals, in different districts and with different poll workers, have reported strikingly similar experiences. These accounts suggest that the violations of section 208 – which deny voters rights guaranteed by the VRA – are more than disparate incidents. As a result, an injunction appears to be an appropriate way to provide relief. Notably, as the Court will explain in the following section, most of the ordered relief simply obligates the State, under penalty of contempt, to do what it already promised to do at the July 8, 2008 oral argument. Accordingly, the burden imposed by this injunction will be minor.

B. Injunctive Relief

Having established that Plaintiffs are entitled to some form of injunctive relief, the Court turns next to the specific relief sought by the Plaintiffs. As noted above, the Plaintiffs submitted a pared-down list of requested actions in their June 6, 2008 status report to the Court. At oral argument, counsel for the State Defendants indicated that the State has already taken significant steps to implement a number of these actions. As a result, the issues in this case have narrowed considerably, and the remedial actions on which the parties remain at odds are relatively few. Based on the July 8, 2008 hearing and the parties' briefs, the Court orders the State Defendants to implement the following actions:

> **1. Provide mandatory poll worker training.** Poll workers shall be instructed on the VRA's guarantees of language and voter assistance. In addition, poll workers serving as translators should be trained on the methods and tools available for providing complete and accurate translations.
>
> **2. Hire a language assistance coordinator fluent in Yup'ik.** In addition to implementing the State's revised language assistance program in the Bethel region, the coordinator should act as a liaison to the tribal councils and Yup'ik-speaking community to ensure the State's efforts result in effective language assistance.
>
> **3. Recruit bilingual poll workers or translators.** At least one poll worker or translator fluent in Yup'ik and English shall be assigned to each polling place within the Bethel census area for the upcoming State-run elections.
>
> **4. Provide sample ballots in written Yup'ik.** At least one such ballot shall be available at each precinct within the Bethel census area to aid poll workers in translating ballot materials and instructions for Yup'ik-speaking voters with limited English proficiency.
>
> **5. Provide pre-election publicity in Yup'ik.** Election-related announcements provided in English shall be broadcast or published in Yup'ik as well. Pre-election publicity should specifically inform Yup'ik speakers that language assistance will be available at all polling locations within the Bethel census area.

6. Ensure the accuracy of translations. The State must consult with Yup'ik language experts to ensure the accuracy of all translated election materials.

7. Provide a Yup'ik glossary of election terms. During oral argument, counsel for the State Defendants indicated that the State has already compiled a draft version of a Yup'ik glossary of election-related terms. At least one copy of this glossary shall be provided to each polling place within the Bethel census area to assist bilingual poll workers and translators.

8. Submit pre-election and post-election progress reports. The State Defendants shall submit information on the status of efforts to comply with this Court-ordered program of relief and, more generally, the VRA's language and voter assistance provisions. The information should be specific and provided in a verifiable form, e.g., a precinct-by-precinct list of the names of designated bilingual poll workers or translators for the upcoming fall elections. Progress reports must be filed with the Court 15 days before each election (beginning with the August 26, 2008 statewide primary), and again 30 days after each election.

The Court's reasons for requesting the pre- and post-election progress reports are two-fold: First, they will assist the Court in gauging compliance with the measures ordered here and with sections 4(f)(4), 203 and 208 of the VRA. Second, the reports will aid the three-judge panel in assessing the baseline for Plaintiffs' section 5 preclearance claims. As mentioned above, the Plaintiffs' motion for a preliminary injunction on that claim remains pending before the panel.

In ordering this injunctive relief, the Court declines the Plaintiffs' request for federal election observers. Under 42 U.S.C. § 1973a(a) the Court has authority to appoint federal election observers "if the Court determines that the appointment of such examiners is necessary to enforce" the voting guarantees of the fourteenth and fifteenth amendments.[33] Given the significant efforts made by the State to revamp the language assistance program for Alaska Natives, and the progress reports required in connection with this order, the Court concludes that federal observers are not necessary at this time.

The Court also denies the Plaintiffs' request that the State be required to display a poster at each polling location within the Bethel census area announcing, in Yup'ik and English, the availability of language assistance. The State asserts that such a requirement would contradict the VRA's written-assistance exemption for "historically unwritten" languages. Without addressing this argument, the Court is satisfied that the State is pursuing adequate alternative means to inform

[33] 42 U.S.C. § 1973a(a)

Yup'ik-speaking voters about the availability of language assistance via pre-election publicity, poll worker training, and buttons for poll workers.

V. CONCLUSION

For the reasons stated above, the Court GRANTS the Plaintiffs' Motion for a Preliminary Injunction at Docket 202 as to the State Defendants and orders the specific relief listed in Section IV.B. of this order.[34]

Dated at Anchorage, Alaska, this 30th day of July 2008.

/s/ Timothy Burgess
Timothy M. Burgess
United States District Judge

[34] Although courts typically require the plaintiff to post a bond before obtaining a preliminary injunction, *see* Fed. R. Civ. P. 65(c), this procedure may be excused when the defendant fails to request a bond, or when a case presents "exceptional" circumstances. Both apply here. First, the Defendants have effectively waived the requirement by failing to request a bond in their opposition. *See Aoude v. Mobile Oil Corp.*, 862 F.2d 890, 896 (1st Cir. 1988); *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 82 (9th Cir. 2003)(appellate court will not consider issued not raised in the trial court). Further, bonds may also be excused in exceptional cases, such as suits to protect the public interest, *Pharmaceutical Soc. of State of New York, Inc. v. New York State Dept. of Social Services*, 50 F.3d 1168, 1175-75 (suit to ensure that State complied with federal Medicaid Act), or cases in which a bond would effectively deny access to judicial review, *see Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005) ([R]equiring nominal bonds is perfectly proper in public interest litigation"). The Court finds that these exceptional circumstances exist here: Plaintiffs have brought a public interest lawsuit, seeking only equitable and declaratory relief, to enforce the voting rights guaranteed themselves (and others) under federal law. Accordingly, the Court concludes that a bond is unnecessary. *See Roth v. Bank of the Commonwealth*, 583 F.2d 527, 538 (6th Cir. 1988).

Mr. NADLER. Well, thank you very much.

I will begin the questions by recognizing myself for 5 minutes.

Mr. Tucker, in a number of states, if election officials cannot match a voter's registration information against information in other government databases, the voter will be purged. Although purging the rolls is necessary to keep the states' rolls up to date, it could be highly problematic due to the inherent unreliability of many of the computer-match processes the states use. It is esti-

mated that between 15 to 30 percent of all match attempts fail because of typos, other administrative errors, and minor discrepancies between database records, such as conflicting use of maiden and married names or the use of hyphenated names.

Strict matching policies often disenfranchise thousands of voters through no fault of their own. In your experience, is this a major concern? How regularly do legally qualified voters encounter the effects of these policies and, if you think it is a major concern, what do you think can be done to prevent erroneous purges?

Mr. TUCKER. Mr. Chairman, I agree with you. It is a major concern, and it is actually something that we encountered when we were visiting several native villages during the 2008 presidential election. We actually encountered one very elderly Alaska native, a Yup'ik speaker, in the native village of Kasigluk who had been disenfranchised over 20 years ago because of a voter purge, again very much using the sort of no-match, no-vote procedure, and then was never informed about it.

The problem that we experience with the natives in particular is that oftentimes the National Voter Registration Act may be complied with in form, but it is not being complied with in its spirit because language assistance is not being provided, native voters receive cards in English that they cannot read, and they are purged, and then they simply cannot vote.

So, fundamentally, I think one of the issues that this Subcommittee should look at is both in terms of enforcing laws, such as the National Voter Registration Act, and also to identity jurisdictions where no match procedures are being used to disenfranchise and target specific communities, such as Alaska natives and American Indians.

Mr. NADLER. In most states, election officials do not have to give notice to voters when they are purged from the voter rolls. This often means that eligible voters who are wrongfully purged lack the ability to contest this decision. What can be done to prevent this disenfranchisement, in your opinion?

Mr. TUCKER. Well, you know, it is ironic because all of us thought when the National Voter Registration Act was enacted in 1993 that this problem was resolved because it sets up a very particular procedure that Ms. Arnwine has identified that has to be followed. There has to be a postcard sent out to confirm to the voter that "We are putting you on notice that you have been identified for purge," and give you an opportunity to correct the problem.

That is just simply not being done in many jurisdictions around the country, and, unfortunately, more often than not, it tends to impact the most susceptible and vulnerable populations, not just——

Mr. NADLER. Has any judicial action been taken to try to make the states obey that part of the law?

Mr. TUCKER. Well, you know, it is my understanding that the Justice Department has brought some enforcement actions, but that is one of the things that we are currently doing in the State of Alaska, and it has been a struggle because they just simply do not want to do it.

Mr. NADLER. They do not want to do it? They do not want to send these notices to people?

Mr. TUCKER. Well, they want to send them out in English, but they do not want to provide the information in a language that the voters can actually understand.

Mr. NADLER. Okay. And, Ms. Arnwine and Mr. Tucker, very briefly, because I have one more question I want to ask, what key lessons can we learn from the election to deal with potential voting issues that might arise in future elections? Very broad question, brief answer, please.

Ms. ARNWINE. Yes.

Mr. NADLER. Ms. Arnwine?

Ms. ARNWINE. Yes. I think that, you know, as I testified, very key to future actions is passing that Deceptive Practices and Intimidation——

Mr. NADLER. The Deceptive Practices Act. What else?

Ms. ARNWINE. It is very key.

The other one will be coming to the House at some point, will be working on voter modernization legislation. A lot of testimony today about problems with third-party registration groups really should not exist because, frankly, the states should have the responsibility for automatically registering all adult citizens, and that should not be the responsibility of third-party groups. Just like when you turn 18 and you get your Selective Services card, you should get your own voter card.

And this whole issue about matches and everything that we have been talking about, the purging, that also would not exist because you would have better portability for voters within states because people move just two blocks away and do not want to..

Mr. NADLER. Why don't we do what some European countries do—in fact, most countries do—and say it is the responsibility of the state or the Federal Government, some government, to make sure that everybody is registered——

Ms. ARNWINE. Exactly.

Mr. NADLER [continuing]. And the default position is you are registered unless someone proves you should not be, and what I am told is, "Well, you can do that in other countries because you have a national I.D. card. We do not have a national I.D. card. It would be very difficult to do it here." Would you comment on that?

Ms. ARNWINE. Yes. The whole issue about an ID card doesn't necessarily fly because everybody in the country has a Social Security card——

Mr. NADLER. Yes.

Ms. ARNWINE [continuing]. And a Social Security number, and that is, I think, adequate for the purposes of being able to do the——

Mr. NADLER. Okay. My time has expired. Could Mr. Tucker briefly answer the same question?

Mr. TUCKER. I think Ms. Arnwine has hit the nail on the head. I mean, what we are really talking about here is that many of the barriers that exist are things such as the National Voter Registration Act that were originally put in place to facilitate the administration of elections, but far too often, rather than facilitating voter participation, these are being set up and used as barriers to prevent people from voting, and I think fundamentally the one question that needs to be looked into is why aren't more people voting.

We had record turnout in terms of numbers, but a third of all American voters still did not cast ballots.

Mr. NADLER. Thank you.

I now recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

I thank the witnesses for coming forward and testifying today. A series of questions arise in my mind as I listen to each of you, and I want to direct my first question to Ms. Heidelbaugh.

Listening to Mr. Sensenbrenner's opening statement, I think he said 1.2 million voter registrations by ACORN, roughly. I saw a number that was 400,000 that were, I think, confessed by them to be fraudulent. That number alleged is significantly higher than that, I believe.

Can you imagine that there would be that many fraudulent voter registrations in a country and not have fraudulent votes cast off of those registrations?

Ms. HEIDELBAUGH. No, sir. I believe that the problem is the mechanism by which that particular group, ACORN, goes about doing voter registrations. The concern based on the testimony and my conversations with people inside ACORN is that they really do not as an organization want to register to people to vote. They want to obtain money per registration card.

That is how they bill their customers, and so they have to tell their foundations that provide them with support that they have, in fact, obtained 1.3 million registration cards, and I thought the number was actually flipped, that it was only 400,000 that were allegedly valid and it was the remainder that were invalid.

Mr. KING. Let me accept that correction. I am going off of memory from months ago, as that number was accumulated rather than a current report that is brought up today. Then the foundations that fund ACORN—what would be their motivation for wanting more voter registrations or for wanting more people signed up as their customers?

Ms. HEIDELBAUGH. Well, the thought is that there is a fraud going on here between ACORN here and the foundations because the foundations legitimately want people to be registered so that they can exercise their franchise, but what they do not even understand is that the money that they are giving to ACORN is not being spent properly.

Mr. KING. But, Ms. Heidelbaugh, I am still concerned. Are they foundations this altruistic that it is just their goal to get more people registered, or do they have a political agenda that is on the other side of that?

Ms. HEIDELBAUGH. I cannot speak for the foundations. I do not know. I am taking them at their word, that these organizations would like more people to be registered to vote, and as an American, I think that is fantastic, that is great. The problem comes in when you have all these fraudulent registrations and you push them into the election divisions, the election workers cannot register people who are proper registrants which is a——

Mr. KING. Let me submit that——

Ms. HEIDELBAUGH [continuing]. Which is a chilling of the franchise.

Mr. KING. I really do not want, of course, any fraudulent voter registrations for the obvious reasons, but I do not think I have heard it boiled down to what it really means here, and that is that the more fraudulent voter registrations you have, the more likely there will be fraudulent votes cast in greater and greater numbers, and I believe that number was 537,000 votes that made the difference in the leader in the free world in Florida in the year 2000.

And so I hear an emphasis on concern about voter suppression. I certainly am opposed to willful voter suppression, but I think we could always define voter suppression as something else. Even a negative political campaign that attacks a candidate is voter suppression. That is exactly what it is. It is designed to keep their supporters home.

But we will always be able to chew on the bone of voter suppression to the end of a—the constitutional republic that we are, but fraudulent votes are another matter. That is something we should tolerate none of, nor any kind of a system that facilitates it, and, you know, I understand Mr. Tucker's testimony about we need more interpreters, and that keeps people from the polls.

But in the end, you know, this is the United States of America, and people have certain responsibilities, and there are many constitutional privileges or constitutional rights that we have. Voting is a conditional right, not specified in the Constitution, and so I will submit this, that I do not want to see 537 fraudulent votes. I do not want to see one because it disenfranchises legitimate voters, and voter suppression can generally, as sad as it is—and we have a history of it—as sad as it is, can be overcome by the will to vote.

And I want to encourage the will to vote, but I do not want to cancel the legitimate votes that are there, and so I will add the case for a voter registration list that is free of duplicates, deceased and felons, and require a voter picture ID and that in, again, the states that outlaw felons from voting—I have to condition that statement—and then when we have voters that are reported—I saw a number of 55,000 New Yorkers allegedly voted in Florida in the election.

Right now, I can tell you that an individual could register to vote in all 99 counties in Iowa, vote absentee in all 99 counties in Iowa, and we do not have a provision to even stop that. We are a long, long ways from having legitimate votes, and I would like to see this Committee focus on the fraudulent votes that are there, and we can chew on the voter suppression bone in perpetuity.

Thank you, Mr. Chairman. I yield back.

I thank the witnesses again.

Mr. NADLER. I now recognize the Chairman of the full Committee, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you. Thanks, Mr. Chairman.

Well, since we are at a hearing on ACORN, is there anybody here from ACORN that can testify?

Oh, well, may I ask respectfully that the Chairman consider such a hearing so we can get to the bottom of this. I mean——

Mr. NADLER. Well, let me just say that I will certainly consider a hearing on ACORN, if I ever hear any credible allegations.

Mr. CONYERS. Well, wait a minute. This is a member of the bar here that got a successful partial injunction against ACORN, and we have our distinguished colleague on the Committee where he has asserted that people could fraudulently vote in every county in the state. That is a pretty serious matter.

And I would just like the Chairman, who is a fierce supporter of constitutional rights, civil rights, and human rights, to take this matter up. I think it would be something that would be worth our time.

Mr. NADLER. The Chairman makes a good point, and we will certainly consider it.

Mr. CONYERS. Well, that is what all Chairmen say around here, so—— [Laughter.]

That is pretty instructive and encouraging.

So, you know, I am not too happy about the depth of our discussion here, to be honest with you. And maybe we will get it into the next panel or through further hearings even, but the voter rights section, the civil rights section of the Department of Justice has been clearly off track across the years, and I suppose there is more that we can do about that.

One of our staffers praised Attorney Tucker for his knowledge of section 5 and the great work he has done. Of course, we know Attorney Arnwine and the work she has done. And we are glad to see young people coming in. And, of course, on campuses throughout the country, there was this great misunderstanding of who could vote and where. There were some campuses where students had to fly back to their home to cast their ballot because they were not going to be allowed to cast one at the university, and I think there is a lot we can do to clear that up as well.

So we welcome the witnesses and invite you to stay with the Committee as we work on these various matters.

Do any of the panelists wish to comment on anything they have heard today? All right.

Ms. ARNWINE. Yes, Congressman Conyers. Thank you so much for everything that you do in promoting open and free and fair elections.

One of the most critical things coming up before the Congress is, of course, the budget for the Department of Justice, you know, the budget in general, and I think it is very critical that that budget have the correct funding for the civil rights division so that there will be adequate resources in the voting rights section to do the work that needs to be done, not only for compliance with the section 7 of the NVRA and compliance with section 5 and bringing cases under section 2, but also to make sure that there is adequate staff to deal with redistricting issues and census issues.

I just think that that is one of the most important things coming before this House and before the Congress and that it is very, very important that there be a great increase in that budget at least a 25 percent increase.

Mr. SEGAL. And, Mr. Chairman, if I may, Mr. King referenced the notion of will to vote being prevalent in allowing or mitigating this issue of voter suppression. But with regards to will to vote, it cannot necessarily be overcome when students or young people or

anyone for that matter are standing in line for 9, 10, 11 hours to vote.

I mean, that takes them away from their economic opportunities. That takes them away from their jobs, their families, their commitments, and it is tantamount to a poll tax if it is taking them away from earning a living for 10 hours. It is making them take an entire day off of work.

The other thing is you mentioned the 99 counties of Iowa. Well, it is a felony to vote in every single county. So the felony is the real deterrent from the voter fraud, not necessarily making the laws more stringent and restrictive, which could theoretically disenfranchise eligible citizens.

Mr. NADLER. The time of the gentleman has expired.

I now recognize the distinguished gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. I do not know how distinguished, but I am from Texas.

But appreciate the testimony I have been hearing back in the back room. But really appreciate you all being here. Obviously, you are not here for the money you get for testifying. You all can find that amusing, but you do not get anything, right? So thank you. I know you come out of a sense of duty to this country and love for it.

Ms. Heidelbaugh, let me ask you, though—the court had granted an injunction, and we had heard that—what was the legal threshold that you had to clear in order to get an injunction? What kind of legal proof was required?

Ms. HEIDELBAUGH. We presented a day of testimony. Ms. Moncrief testified under oath under penalty of perjury. Her testimony is here. She subjected herself voluntarily and——

Mr. GOHMERT. Yeah, but my question is what is the legal threshold procedurally that you have to cross in order to get an injunction?

Ms. HEIDELBAUGH. There was a misstatement that the injunction was granted in part and denied in part, and the——

Mr. GOHMERT. Okay.

Ms. HEIDELBAUGH [continuing]. The part that was granted was the allowance of the petitioners, my clients, to proceed in further discovery and further injunctive proceedings against ACORN because the court found—and they are the trier of fact in that case——

Mr. GOHMERT. Right.

Ms. HEIDELBAUGH. They found that they had serious concern about the testimony that had been presented against ACORN.

Mr. GOHMERT. Okay. Is that a probable cause type level?

Ms. HEIDELBAUGH. That would be a criminal——

Mr. GOHMERT. Preponderance?

Ms. HEIDELBAUGH. No, that would be——

Mr. GOHMERT. A preponderance of the evidence?

Ms. HEIDELBAUGH [continuing]. A preponderance of the evidence, yes.

Mr. GOHMERT. That you would be successful and that you should at least be entitled to proceed with discovery, correct?

Ms. HEIDELBAUGH. The court granted the right to proceed to discovery and outlined—and I attached this in the documents which I have provided to Congress—the language that the court issued against ACORN.

Mr. GOHMERT. So that trier of fact that heard the case on the injunction found that there was evidence—some evidence—to justify going forward, correct?

Ms. HEIDELBAUGH. Yes, sir.

Mr. GOHMERT. Okay.

Ms. HEIDELBAUGH. I can——

Mr. GOHMERT. So this——

Ms. HEIDELBAUGH. I can quote from——

Mr. GOHMERT [continuing]. Body could recognize that an authorized trier of fact within this country has found evidence to justify discovery and going forward, in the event we wanted to determine whether there was voter fraud out there with an organization like ACORN and could be justified. Wouldn't you think so?

Ms. HEIDELBAUGH. Yes, sir. And I could quote what the court said, "Given the above timeframe and given evidence that in Pennsylvania practices of ACORN outreach workers can encourage duplicate voter registration, that in Pennsylvania quality control practices of ACORN may be inadequate to identify duplicate voter registration, that in Philadelphia a huge number of duplicate voter registrations were received, and that in Pennsylvania ACORN maintains computer records of problematic card cover sheets. The court will entertain a motion for expedited discovery should a hearing on permanent injunction be scheduled."

Mr. GOHMERT. Okay. Well, thank you.

Now we have been hearing here this week that with regard to the U.S. census that is coming up the end of the decade, that the census may be entering a contract with ACORN to assist them in getting volunteers to help with the census, and so I would be curious to anyone's response, if you have any concerns on ACORN being hired to help do the census that will determine what representation any states have here in the Congress.

Ms. HEIDELBAUGH. I would like to answer that, Congressman.

Mr. GOHMERT. Okay. Go ahead.

Ms. HEIDELBAUGH. A couple of things. It is my understanding that, in fact, that ACORN now is a national partner with the U.S. Census Bureau and has signed a contract as of February of 2009.

In regard to the testimony under oath regarding the actions of ACORN throughout the Nation, I believe that the following violations of law have occurred. There is violations of the Internal Revenue Code; 501(c)3 charitable organizations cannot engage in the activities in which they are engaged. The people here with me today filed a lawsuit against ACORN for embezzlement. It is my understanding that a 501(c)3 that has been charged with embezzlement must turn over that information, even if they have been charged——

Mr. GOHMERT. And so embezzlement causes you concern?

Ms. HEIDELBAUGH. It causes me deep concern.

Mr. GOHMERT. How about that?

Ms. HEIDELBAUGH. In addition——

Mr. GOHMERT. Here in Congress, we just give away lots of money and we do not hold any people accountable, but——

Ms. HEIDELBAUGH. In addition, I believe that there is——

Mr. GOHMERT [continuing]. It is interesting you find it——

Ms. HEIDELBAUGH [continuing]. Gross violations of the Federal Election Campaign Act of 1971. There was testimony under oath that the Obama campaign coordinated illegally with ACORN in Project Vote, which was part of *The New York Times*, and she testified to that in her story.

In addition, voter registration fraud is illegal in all 50 states. In addition, she testified about the Muscle for Money program which would be potential criminal and civil RICO violations and illegal use of the Election Administration Commission grant. She testified under oath that that the parameters of the work that was actually done based on a grant from the EAC was not actually done.

There is gross violations of law, and as an American, I was shocked and dismayed to believe that in this country that an organization representing poor people could shake down corporations for what she called protection money and that no one in this country would stand up and be incensed and, frankly, nauseated that this can go on in our country.

These women here have come here today to try to be heard so that this Nation will hear them and so that something will be done to stop this, and they have both been personally and physically threatened because of their actions, and so we come here today as ordinary American citizens, and we ask for every American, poor, rich, White, or Black——

Mr. NADLER. The——

Ms. HEIDELBAUGH [continuing]. That they be heard.

Mr. NADLER. The time of the gentleman has well expired.

The gentleman from North Carolina is recognized.

Mr. GOHMERT. Thank you very much.

Mr. WATT. Thank you, Mr. Chairman.

I want to do several things here. First of all, I want to offer for the record Amendment 15 to the Constitution in connection with Mr. King's assertion that there is no right to vote in the Constitution. I will not read it, but I am sure Mr. King will. He is not interested in knowing the facts. I would invite now that Mr. King bring his attention to the 15th amendment to the Constitution in connection with the question of whether there is a right to vote.

I would ask Ms. Heidelbaugh—I would say first to you that I am outraged that voter fraud takes place, but I would also ask you—you got into court under some kind of voter fraud statute, did you not? You have a record there.

Most states have laws against voting fraud. Would you think it would be the responsibility of the United States Congress to spend a bunch of time on trying this case as opposed to having the courts try it where you are not constrained by a 5-minute testimony rule. Everybody is playing by the same rules. Everybody can come. I mean, I am always fascinated that everybody who comes here thinks we should be playing the role that the Judiciary is out there to play, and so I am outraged.

I would even stipulate if I were in court that voter fraud does, in fact, take place. I might even stipulate that ACORN or some of

its employees have participated in voter fraud, but I would hope that you would acknowledge that there is already a law that deals with that, and you would not be in court in the first place proceeding with your discovery but for that law.

Now let me go on to bigger and broader issues because Mr. Segal has raised some interesting questions here that I would like Mr. Tucker and Ms. Arnwine, our legal experts, to opine about. He has raised questions about domicile for students and lines at polling places, and one of the constraints we have always had looking at the bigger picture here is article I section 4 of the Constitution which says that "times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof, but the Congress may at any time by law make or alter such regulation."

I am the chair of the States Rights Caucus on this Committee. Would it give us the authority in Federal elections, in your opinion, Ms. Arnwine and Mr. Tucker, to address some of these issues, like domicile and long lines or misallocation of voting machines? Is that the basis that Mr. Nadler's piece of legislation is proceeding on?

Mr. TUCKER. Mr. Watt, I guess the first thing I would say is that, yes, absolutely, and, in fact, I would turn the Committee's attention to what the State of Pennsylvania actually does for its student voting. I would think that any Federal legislation that looks into this, dealing with student voting, should deal with two basic premises.

Mr. WATT. But you start with the proposition that we have the right to do it in Federal elections?

Mr. TUCKER. Absolutely.

Mr. WATT. Okay.

Ms. Arnwine, my time is out. That is why I am rushing.

Ms. ARNWINE. Students have the right to vote where they reside in college, and it is very, very clear, yet we still have all these jurisdictions violating it. Absolutely this Congress has that right and should exercise its right.

Mr. CONYERS. Mr. Chairman, could the gentleman get a couple more minutes?

Mr. NADLER. Without objection.

Mr. WATT. All right. In that case, I will let Mr. Tucker go ahead and talk about the Pennsylvania law. I just wanted to establish the predicates here that we have the authority to do this, but even then we are not going to try the cases. Somebody else has to try these cases, and the judges out there have to determine whether somebody has violated them.

You know, it is hard enough to do our part of this job in a tripartite government. We are just one branch here, and I am delighted that you are in court pursuing this case because there, unlike here, they can hear all the sides. You can do all the discovery. I am delighted that you have the right to do discovery.

But contrary to what my Chair says, I am not coming to any hearing to have a trial on ACORN. That is not my job. So go ahead, Mr. Tucker. You got me on my soapbox today.

Mr. TUCKER. Thank you, Mr. Watt.

There are two things the Pennsylvania law does. First of all, it says that it is the student's choice on where they can register to vote. And then the second thing is very simple. They say do not

vote twice. If you are going to vote here, do not vote back in wherever home state you came from.

Mr. WATT. Now back to my original point, even that would require somebody to enforce it, other than the state legislature of Pennsylvania, would it not? If it were violated, there would have to be a prosecution and a trial, two different sections of the state legislative and judicial and executive process.

So understand that we can pass the laws. I am addressing my comments again to Ms. Heidelbaugh. I welcome you. I think it is wonderful to have you here, but we are all falling to chasing rabbits when we ought to be chasing big constitutional principles when we go spend too much time on ACORN, not that I am sanctioning anything improper that they did.

I thank the Chairman and yield back.

Mr. NADLER. Thank you. I thank the gentleman.

I now yield 5 minutes to the gentlewoman from Texas.

Ms. JACKSON LEE. Chairman, thank you very much for this timely hearing.

And to each and every one of you, thank you for your presentation.

I ask for your indulgence on your testimony. We were in a whip meeting talking about some other challenges about the budget, but I think that the vision that we saw or have now in place is a result of all of your organizations or at least the organizations that I know have focused on these issues of empowerment. It is the result of your work.

And the sadness is, as we worked on the Voting Rights Act reauthorization and, if you will, certain sections, as we worked on the Help America Act, we still have a ways to go. There seems to be a dullness in the American psychie, meaning political and governmental psychie, that, in fact, there is the right, if you will, to task your decisions through this democratic process. Even though the voting rights issue is not constitutionally embedded per se, certainly, the equal protection under the law is constitutionally embedded and so is due process.

So, Ms. Arnwine, let me thank you, and I know that you have been to Texas on many occasions, and I maybe under this new Administration have your partnership to be back again because even though we made great strides, for example, in a county like Harris County and, in fact, elected new representatives, happen to be in a different party, I think we have to question and look again at the whole effort that we made on provisional ballots. People do not understand it.

The idea of provisional ballots is to make sure that there is empowerment. Our local elected officials and election officers are using it to deny the right. They intimidate. They make sure that you do not know about the provisional ballot, you certainly do not understand what a provisional ballot is, and they almost have a smirk, such as, "Yeah, they will do the provisional ballot for the circular file."

We were out on the early voting time in the State of Texas, that is creeping along a balanced voting process. When I say balance, it has been dominated by one party for so long, and I do not consider that the issue of empowerment. Everyone has a right to vote

their choice, but it does speak to intimidation, and so I think it is extremely important that we have in front of us, again, though it has many jurisdictional aspects, Help America Vote, or the aspect that had the provisional ballot.

Let me just give you an example: 6,880 provisional ballots cast in Harris County. These ballots were determinative in many races. We lost a district attorney election and judges who happen to be African-American, who happen to be a representative from the gay community, a person who had an ethnic name, if you will.

That was the allegation of why everybody else won and they did not. I take issue with that and offense. You put yourself forward and you have the credentials, you should be considered. And so up to four district court judicial races which have a current margin of 200 to 5,000 votes—all of these had these kind of indicia to them, African-American and people from distinct groups.

We had documentation from the Republican provisional vote counter that said a retired business executive will chair the ballot board of 35 people, said the counting process was delayed by faulty work by Bettencourt court staff. That is our tax assessor. That is his responsibility.

The problems included hundreds of voter forms whose information the registrar's staff masked with white correction fluid and then altered with new information. Also, the board has accepted ballots cast by voters whose registrations were classified by Bettencourt staff as incomplete.

My question to you is: What is the angle that we should take as we place laws in place and the utilization of them become moot beyond the beltway or at least beyond this body, this Congress?

Ms. ARNWINE. Thank you.

Ms. JACKSON LEE. Barbara?

Ms. ARNWINE. Thank you so much.

You know, we have worked together with the Prairie View students——

Ms. JACKSON LEE. Yes.

Ms. ARNWINE [continuing]. And, you know, fighting not only their right to vote, the illegal moving of polling places, all kinds of problems together in Harris County, so thank you so much for your great advocacy.

In our report, which is appended to my testimony, the Election Protection Committee Coalition reports, you know, very strongly that one of the biggest problems out there is the barriers to voter registration, which is why most provisional ballots are cast. There is some problem with registration.

Ms. JACKSON LEE. Yes.

Ms. ARNWINE. And we believe very strongly, as I said before, that the ultimate answer to this is passing a new voter registration modernization act that will be important to making sure that the states automatically register citizens at the age of 18 so that they receive their voter card and that they are able to vote. I think that if we were able to do that, provisional ballots would, in fact, decrease in their use.

Provisional ballots, you know, are misused in two ways. They either are denied to people who are entitled to them, or they are overused when people should be given regular ballots. So provi-

sional ballots have not turned out to be the panacea that many people thought it would be under the Help America Vote Act, and I think that the ultimate answer here is, you know, voter registration modernization, VRM.

Ms. JACKSON LEE. If the Chairman would indulge me just very quickly, I just want to mention the voter ID, Mr. Chairman. Anyone who wants to take a stab at this, we are debating the voter ID in Texas. There is no doubt that the idea was to diminish the voting impact of the last election. Should that be made a national issue?

Mr. NADLER. The time of the gentlewoman has expired.

Ms. JACKSON LEE. Yes, the——

Mr. NADLER. The witness may answer the question briefly.

Ms. JACKSON LEE. Yes. Thank you, Mr. Chairman.

Should the voter ID legislation that is going around the Nation be made a national issue, voter ID legislation?

Ms. ARNWINE. No. Voter ID legislation is very injurious to young voters. It is injurious to African-Americans, Latinos, Native Americans, Asian American voters. It is injurious to elderly voters, all of the people who normally do not have driver's license. These are very bad laws. The evidence is very strong, looking at Indiana and other states, that when you pass these strict voter ID laws based on driver's licenses that it really just——

Mr. NADLER. I thank the——

Ms. ARNWINE [continuing]. Is injurious to a lot of people.

Mr. NADLER. I thank the witness.

I thank the panel.

This panel is dismissed with our thanks, and we would ask the second panel to come forward.

Ms. ARNWINE. Thank you.

Mr. NADLER. And we will now proceed with our second panel. I would ask the witnesses to take their places, and while they are taking their places, I will do the introductions, especially since we have our votes proceeding on the floor, but I think we can start this before we have to recess.

The first witness is Tova Andrea Wang, who is vice president of research at Common Cause, where she focuses on voting rights, campaign finance, and media reform. Prior to joining Common Cause, she held positions with The Century Foundation as a democracy fellow and executive director of the foundation's post-2004 Election Reform Working Group. In 2001, she was staff person for the National Commission on Federal Election co-chaired by former Presidents Carter and Ford. She is the author of numerous election reform reports, the most recent of which was Voting in 2008: 10 Swing States.

She is a 1996 graduate of NYU School of Law, which I have a particular affinity of because my son is now a student at NYU School of Law, and a magna cum laude graduate of Barnard College at Columbia University.

James Terry is the chief public advocate for the Consumers Rights League. Mr. Terry has managed multiple grassroots voter registration drives, including one of the most successful programs ever developed in Southern California. He served as Congressman John Campbell's chief of staff and was legislative staff of Congress-

man Ed Royce. Previously, Mr. Terry served as chief executive officer of the Free Enterprise Fund and as executive director of STOMP, a grassroots mobilization program, and maybe he will inform us at some point what STOMP stands for.

Hilary Shelton serves as director of the NAACP's Washington Bureau, which provides the Federal legislative and public policy support for the national organization. During his long career in Washington, Mr. Shelton has advocated for the passage of important legislation, such as the reauthorization of the Voting Rights Act. Previously, Mr. Shelton was the Federal liaison/assistant director to the government affairs department of the College Fund/UNCF and was the Federal policy program director to the United Methodist Church's social justice advocacy agency, the General Board of Church and Society.

Mr. Shelton holds degrees in political science, communications, and legal studies from Howard University in Washington, DC, the University of Missouri in St. Louis, and Northeastern University in Boston, MA, respectively.

Glenn Magpantay is a staff attorney at the Asian American Legal Defense and Education Fund where he coordinates the organization's voting rights program. In this capacity, Mr. Magpantay has represented Asian Americans in a number of prominent voting rights cases, and he oversees AALDEF's Asian American election protection efforts in 15 states across the Northeast, Mid-Atlantic, and Midwest. Additionally, Mr. Magpantay has written widely on the Voting Rights Act, on bilingual ballots, redistricting, and Asian American voting patterns, and political opinion.

He is a cum laude graduate of New England's School of Law in Boston and completed his undergraduate studies at the State University of New York at Stony Brook.

I am pleased to welcome all of you.

Your written statements will be made part of the record in its entirety. I would ask each of you to summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow, and then red when the 5 minutes are up.

You may be seated.

We have votes proceeding on the floor, and I thought we would break for the three votes. We will break for the votes now, and I apologize for witnesses for having to recess now, but there are votes on the floor. So the Committee will stand in recess and will return as soon as the third vote is called, and I would ask the Members to return as soon as they vote in the third vote.

I thank you.

The Committee is now in recess.

[Recess.]

Mr. NADLER. The Subcommittee is called back into session. The Subcommittee hearing will come to order.

We thank the witnesses for their patience during our votes on the floor, and regardless of the order in which I introduced the witnesses, we will go from left to right in order of testimony, so we will start with Mr. Shelton who is recognized for 5 minutes.

TESTIMONY OF HILARY O. SHELTON, DIRECTOR, WASHINGTON BUREAU OF THE NAACP

Ms. SHELTON. Thank you. Good morning.

As you mentioned, my name is Hilary Shelton. I am director of the NAACP's Washington Bureau.

I want to first thank the Chairman, Chairman Conyers as well, and others——

Mr. NADLER. Mr. Shelton, are you using the mic?

Ms. SHELTON. Yes. Sorry.

I would like to thank Chairman Nadler, Chairman Conyers, and other Members of the Subcommittee for holding this year.

For more than 100 years, the NAACP has fought for equal rights for all Americans. Sadly, our struggle continues as there is still clear evidence of voter suppression throughout the United States. While the 2008 election saw some improvements in the terms of voter participation, we also saw that there is still so much left to be done before the promise of democracy is universally fulfilled.

In our pursuit of equal voting rights for all Americans, the NAACP was involved in three lawsuits of note in relations to the 2008 election. While I have detailed these cases in my written testimony, I will further summarize them for you now. I would also like to acknowledge the NAACP's interim general counsel, Ms. Angie Ciccolo, who oversaw all the NAACP's legal efforts as they related to the 2008 election and is here with us today.

From the outset, I would like to say that it is our experience that these are not isolated incidents. Indeed, all three examples are indicative of the problems that are sadly rampant throughout the United States and should be addressed by Federal legislation before another Federal election occurs.

In the first case, *NAACP Pennsylvania State Conference v. Cortes,* under the leadership of president Jerry Mondesire, the Pennsylvania State Conference of the NAACP filed for an injunction requiring Pennsylvania to furnish emergency paper ballots to any precinct at which at least half the electronic voting machines were broken. The state's position had been that it would only provide paper ballots to precincts in which all the machines had stopped working. I am pleased to say that we prevailed in that case, and the judge's comments, which I have included in my written testimony, were especially profound.

In the second case, under the leadership of Barbara Bolling, the NAACP Indiana State Conference intervened as a defendant in a lawsuit against the Lake County, Indiana, Board of Elections, when they tried to close several early voting places in predominantly African-American neighborhoods, while leaving other polling places in predominantly White sections of the county open. I am pleased to report that we were also successful in our efforts.

The third case NAACP case from the 2008 election was brought by the Michigan State Conference of the NAACP Branches under the leadership of Yvonne White and confronted the practice of caging. Specifically, the NAACP challenged the Michigan Bureau of Elections' policy of immediately canceling a voter registration upon learning that said voter had obtained a driver's license in another states. In addition, the lawsuit challenged provisions in the Michigan election law that call for the rejection of newly registered vot-

ers whose original voter registration cards are returned by the post office as undeliverable. I am pleased to report that the court ruled in our favor, thereby permitting more than 5,550 purged voters to be returned to the rolls before Election Day.

As I said before, sadly, these three cases are not isolated incidents. We hear instances in which voting rights of racial and ethnic minority communities are routinely challenged. What is perhaps more frightening, however, is the fact that some efforts to disenfranchise whole communities are also taking place at the Federal level. As I testified here before you, the Subcommittee, just last year, the move toward requiring government-issued photo identification from potential voters would disenfranchise whole communities much in the spirit of poll taxes.

While supporters of these initiatives purport to be combating voter fraud, what these laws are, in fact, doing is creating a barrier to keep the up to 20 million Americans who do not have government-issued photo IDs out of the voting booth. And I would hasten to add that a disproportionate number of these people who do not have government-issued IDs are racial and ethnic minorities or are low-income Americans.

Lastly, I would like to raise a disenfranchising issue that the NAACP has been concerned about for decades. Nationally, 5.3 million Americans are not allowed to vote because they have convictions of felony offenses on their records, regardless of the nature of the offense or how much time has elapsed since their conviction. And because of racial disparities inherent in our criminal justice system, African-American men are disenfranchised at a much greater rate. In the 2008 election, one in eight African-American men were not allowed to vote because of ex-offender disenfranchisement laws.

While the good news is that, since 1997, 19 states have amended felony disenfranchisement policies in an effort to reduce their restrictiveness, much more needs to be done. State laws vary when it comes to defining a felony and in defining if people who are no longer incarcerated can vote. The process to regain one's right to vote in any state is often difficult and cumbersome.

So, in closing, the NAACP calls for stronger Federal laws to protect and enhance the rights of all Americans to cast a free and unfettered vote and ensure that their vote is counted. Specifically, the NAACP calls for Federal laws to require guaranteed early voting with no excuses, institute same-day registration nationally, outlaw voter caging, clarify and strengthen the use of provisional ballots, make voter intimidation and deception punishable by law with strong penalties and establish a process for reaching out to misinformed voters with accurate information, allow ex-offenders once they are out of prison the opportunity to register and vote in Federal elections without challenges or complication.

Many of the incidents that I have reported here—and many more of the stories that we have heard today—are sad and can be avoidable.

Thank you for your leadership on this issue, and you have the NAACP's unwavering support in reaching these goals, and we stand ready to work with the Subcommittee and Congress to pass comprehensive, effective voter empowerment legislation.

Thank you so much.

[The prepared statement of Ms. Shelton follows:]

PREPARED STATEMENT OF HILARY O. SHELTON

Good morning. My name is Hilary Shelton and I am the Director of the Washington Bureau of the NAACP, our Nation's oldest, largest and most widely-recognized grassroots-based civil rights organization. The NAACP's Washington Bureau is the legislative and public policy arm of the NAACP. Our organization currently has more than 2,200 membership units with members in every state across the country.

I would like to begin by thanking and commending the Subcommittee for holding this hearing. The right to vote is the cornerstone of our Nation's democracy. Throughout our history, countless Americans have fought and died to protect the right of people across the globe to cast a free and unfettered ballot and to have that vote counted. We owe it to these men and women and their families to ensure that the right to vote is protected.

The NAACP has been in existence for more than 100 years, and since our inception we have fought for equal voting rights for all Americans. Sadly, our struggle continues as there is still voter suppression throughout the United States. While the 2008 election saw some improvements in terms of voting rights, we also saw that there is still much to be done before the promise of democracy is universally fulfilled.

In our pursuit of equal voting rights for all Americans, the NAACP was involved in three lawsuits of note in relation to the 2008 election. Before I provide you details about these cases, however, I would like to add that it is our experience that they are not isolated incidents: indeed, all three examples are indicative of problems that sadly are rampant throughout the Nation and should be addressed by federal legislation before the next election is held.

In the first case, *NAACP Pennsylvania State Conference v Cortes,* the Pennsylvania State Conference of the NAACP under the leadership of State Conference President Jerome Mondesire and other voting rights groups and private citizens filed for an injunction requiring Pennsylvania to furnish emergency paper ballots to any precinct at which at least half the electronic vote-counting machines had broken down. The state's position had been that it would only provide such paper ballots to precincts in which all the machines had stopped working. In granting the Pennsylvania State Conference's request for an injunction the Court wrote, "Some waiting in line, of course, is inevitable and must be expected. One must always choose between and among a number of candidates for different offices listed on the ballot and often, as in this election, there are questions to be read and considered. All of this takes time. Nonetheless, there can come a point when the burden of standing in a queue ceases to be an inconvenience or annoyance and becomes a constitutional violation because it, in effect, denies a person the right to exercise his or her franchise."

In the second case, *John B. Curley v. Lake County Board of Elections/United Steel Workers District 7, et al. v. Lake County Board of Elections* the NAACP Indiana State Conference under the leadership of State Conference President Barbara Bolling intervened as a defendant in a lawsuit against the Lake County, Indiana Board of Elections. The plaintiffs sought to enjoin the Lake County Board of Elections and Registration and the Lake County Clerk from establishing early voting sites in the cities of Gary, Hammond and East Chicago. On October 22, 2008, the court granted intervener NAACP's motion for a preliminary injunction. The court enjoined the Lake County Board of Elections from closing early voting sites in Gary, Hammond and East Chicago. In its ruling, the court stated that "providing early voting in the community of Crown Point, with an overwhelming white population, and denying accessible early voting to the majority of Lake County's African American and Latino residents, would violate Section 2 of the federal Voting Rights Act." The plaintiffs appealed the case. The Indiana Supreme Court denied certiorari. The plaintiffs appealed to the Indiana Court of Appeals. Oral argument was held on October 30, 2008. The Board of Elections, Steel Workers and the NAACP prevailed on appeal and early voting continued for voters in Gary, Hammond and East Chicago.

The third case I would like to bring to your attention is *Michigan State Conference of NAACP Branches et al. v. Terri Lynn Land, Michigan Secretary of State, et al.* On October 7, 2008, the Michigan State Conference of NAACP Branches under the leadership of State Conference President Yvonne White filed a lawsuit against the Michigan Secretary of State. The lawsuit alleged that Michigan's voter purging and cancellation procedures violate the National Voter Registration Act, the Civil Rights Act of 1964 and First and Fourteenth Amendments of U.S. Constitution. The law-

suit challenged the Michigan Bureau of Elections' policy of immediately canceling a voter's registration upon learning that said voter had obtained driver's licenses in other states. In addition, the lawsuit challenges provisions of the Michigan Election Law that call for the rejection of newly registered voters whose original voter identification cards are returned by the post office as undeliverable. Federal appeals ruled in the NAACP and other plaintiffs' favor, thereby permitting more than 5,550 purged voters to be returned to the rolls before Election Day.

As I said before, sadly these three cases are not isolated incidents: we hear of instances in which the voting rights of racial and ethnic minority communities are routinely targeted. What is perhaps more frightening, however, is the fact that some efforts to disenfranchise whole communities are also taking place at the federal level. As I testified before this subcommittee just last year, the move toward requiring a government-issued photo identification from potential voters is a blatant attempt to disenfranchise whole communities much in the spirit of poll taxes.

While supporters of these initiatives purport to be combating "voter fraud," (a "problem" which, as numerous studies have shown, is not really a problem when compared to other issues currently faced by our Nation's electoral system), what these laws are in fact doing is creating a barrier to keep the up to 20 million Americans who do not have government-issued photo IDs out of the ballot booth. And I would hasten to add that a disproportionate number of these people who do not have government-issued IDs are racial or ethnic minorities or low-income Americans. Furthermore, studies of recent elections show that the application of photo-id requirements is biased: whether purposeful or not, poll workers tend to ask African Americans and other racial and ethnic minority voters for their photo identification at much greater rates than they do Caucasian voters.[1]

Lastly, I would like to raise a disenfranchisement issue that first came into the national spotlight with the 2000 election, but that the NAACP has been concerned about for decades. Nationally, 5.3 million Americans are not allowed to vote because they have been convicted of a felony, regardless of the nature of the offense or how much time has elapsed since their conviction. Three fourths of these Americans are no longer in jail. And because of the racial disparities inherent in our criminal justice system, African American men are disenfranchised at a much greater rate: in the 2008 election, 1 in 8 African American men were not allowed to vote because of ex-offender disenfranchisement laws.[2]

While the good news is that since 1997, 19 states have amended felony disenfranchisement policies in an effort to reduce their restrictiveness and expand voter eligibility[3] and citizen participation, much more needs to be done to make ex-offender re-enfranchisement more uniform across the nation. State laws vary when it comes to defining a felony and in determining if people who are no longer incarcerated can vote. Thus it is possible that in some states, a person can lose their right to vote forever if he or she writes one bad check. The process to regain one's right to vote in any state is often difficult and cumbersome. Most states require specific gubernatorial action, and in several states federal ex-felons need a presidential pardon to regain their voting rights.

So to summarize, the NAACP calls for stronger federal laws to protect and enhance the rights of all Americans to cast a free and unfettered vote and to ensure that their vote is counted. Specifically, the NAACP calls for federal laws to:

- Require guaranteed early voting throughout the country with no excuse required;
- Allow same-day registration nationally;
- Outlaw "voter caging", a practice by which mail is sent to a registered voter's address and, if the mail is returned as "undeliverable" or if it is delivered and the voter does not respond, his or her registration is challenged;
- Clarify and strengthen the use of provisional ballots;

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[1] Stephen Ansolobehere, "Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day," PS: Political Science & Politics (2009), 42:127–130 Cambridge University Press, The American Political Science Association 2009

Atkeson, et.al, New Barriers to Participation: Application of New Mexico's Voter Identification Law," Caltech/MIT Voting Technology Project, 2008.

Stewart, et. al, "Evaluating the Performance of Election Administration Across the States: Lessons from the 200 Gubernatorial Elections and the 2008 Super Tuesday," Paper prepared for the American Political Science Association, August 27-September 1, 2008.

[2] Ryan King, "Expanding the Vote: State Felony Disenfranchisement Reform 1997–2008" the Sentencing Project, September 2008

[3] ibid

- Make voter intimidation and deception punishable by law, with strong penalties so that people who commit these crimes suffer more than just a slap on the wrist, and establish a process for reaching out to misinformed voters with accurate information so they can cast their votes in time; and
- Allow ex-offenders, once they are out of prison, the opportunity to register and vote in federal elections without challenges or complication.

As I said at the beginning of my statement, many of the incidents that I have reported here, and many more of the stories that we have heard today are as sad as they are avoidable. I think that everyone in this room, and in fact, the vast majority of Americans, would agree that Congress can and should do more to make sure that every eligible American can cast a free and unfettered vote and should rest assured that their vote will be counted. As such, the NAACP stands ready to work with the subcommittee and the Congress to pass comprehensive, effective voter reform legislation.

Mr. NADLER. Thank you.

I now recognize Mr. Magpantay for 5 minutes.

TESTIMONY OF GLENN D. MAGPANTAY, STAFF ATTORNEY, ASIAN AMERIAN LEGAL DEFENSE FUND (AALDEF)

Mr. MAGPANTAY. Good afternoon, Chairman.

My name is Glenn Magpantay from the Asian American Legal Defense and Education Fund. I am a staff attorney there. I practice in voting rights law.

Does that work better? Very good.

So AALDEF litigates the Voting Rights Act and the Help America Vote Act and the Constitution of the United States.

I have a PowerPoint presentation which identifies some of the work that we have done in a number of cases.

We monitor elections for compliance with the Federal Voting Rights Act and the Help America Vote Act, and these are the provisions that we look for.

In 2008, AALDEF, working with national election protection, monitored over 200 poll sites, surveying in our multilingual exist poll over 16,000 Asian American voters. We covered 52 cities across the United States in 11 states.

Asian Americans are among the fastest-growing minority population in the United States. Many are foreign born and have no formal U.S. education. These are the jurisdictions that we had covered. Because of section 203 of the Voting Rights Act, the language assistance provisions, basically, Asian language groups are covered in 16 counties in seven states across the United States.

Many Asian Americans are limited English proficient, and, therefore, they need ballots, such as this, which is a New York ballot, that gives Asian Americans an opportunity to cast their vote free of discrimination, bias, and harassment. And the success of this tool cannot be underestimated.

We found in our multilingual exit poll that 31 percent of Asian Americans were voting for the first time in these elections, a tremendously high number, but there were problems in terms of enforcement and compliance with section 203. A number of times, assistance was inadequate, poll workers were not allowed to assist voters, or they did not even know that they needed to provide language assistance.

In the Lower East Side in New York, one poll site had one Chinese interpreter to help hundreds of Asian American voters. When poll workers tried to get additional interpreters, they were told, "You do not need any more. That is good enough."

In Boston, Massachusetts, Boston would not translate the names of candidates. The names of candidates are amongst the most important pieces on a ballot. And yet Boston, Massachusetts, says, "No, we will not do that." Ninety-five Chinese American voters came to us and said, "I had trouble identifying my candidates of choice because the ballots were not fully translated."

In section 208, which requires voters to get assistance by persons of choice, poll workers said, "No, you cannot get someone to help you," even though that is their right under the Voting Rights Act.

Now we do commend a number of jurisdictions for voluntarily providing assistance and interpreters. Chicago, New Orleans, Lowell and Quincy, Massachusetts, Middlesex, New Jersey, and Philly. We are still working on Hamtramck, Mr. Conyers, and a number of Michigan jurisdictions to provide assistance. So we applaud those jurisdictions. However, it was not enough.

In Pennsylvania, there was a language line that was supposed to help voters and poll workers, but poll workers said, "I did not know it was there." They did not know how to access the language line.

In Virginia, the lack of interpreters provided opportunities for partisan gain, and what you have there is limited English proficient Korean senior citizens who had to go to partisan campaign workers—in this instance, to the Republican Party—to get assisted, and those campaigners not only showed voters how to vote, but who to vote for. That was a problem.

We found that Asian American voters encountered racist poll workers and continued to face intimidating and hostile environments in the poll sites. Asian American voters were described as terrorists. In New York, South Asian Sikh voters were told they all have to vote by provisional ballot because "We cannot tell you all apart." We found a number of jurisdictions in which training was insufficient for poll workers.

Congress passed a Help America Vote Act that requires mandatory posting of voters' bill of rights. Voters need to know their rights, and yet many jurisdictions failed to even post that notice blatantly and affirmatively not complying with the Help America Vote Act.

We found voter registration lists. Like the problems that Black and Latino voters faced in 2000 in Florida, Asian Americans in 2008 and 2006 and 2004 in a number of jurisdictions came to vote, their names were not on the list, and they were not able to vote. They were turned away. Congress, in its wisdom, passed the Help America Vote Act to provide provisional ballots, and poll workers would not administer them to voters. They said, "If you are not on the list, you cannot vote."

In Lowell, Massachusetts, they told voters, "Go to city hall," and in Chinatown Philadelphia in Pennsylvania, they horded provisional ballots because "there is not enough. We have too few ballots and too many voters." So they do not get it.

We found a number of problems with regards to identification. Asian Americans were subject to improper and excessive forms of

identification. In past elections, we had complained of problems, of Asian American voters having to provide naturalization certificates before they could vote. South Asian voters were racially profiled in their polling sites. And these are their jurisdictions.

Even in jurisdictions where all voters must provide identification, like in Texas, Louisiana, Michigan, we found that Asian American voters were subject to ID checks. White voters got a pass. So they did not have to provide it, and so we found even the mandatory obligation was racially disparate and discriminatory.

We have a number of recommendations that we made, and we are very proud to say that we would like to present our report to the Committee on Asian American access to democracy—formally into the Committee record. We have a number of recommendations for the Committee on what things should be done.

First, HAVA needs to be fixed to allow that provisional ballots be used as opportunities to register voters for the next election and to correct errors. This was the intent under the Carter-Ford Presidential Election Commission after the 2000 elections. The problem is that the statutory language did not explicitly state that, and so jurisdictions have done a number of different things. It is a small fix which we think will have a tremendous impact.

Mr. NADLER. The time has expired. Could you wrap up quickly?

Mr. MAGPANTAY. Okay. The only other thing is we believe that the Department of Justice must more fully enforce the Voting Rights Act and the Help America Vote Act, and the Elections Assistance Commission should translate the voter registration form into the federally required languages.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Magpantay follows:]

PREPARED STATEMENT OF GLENN D. MAGPANTAY

Testimony of Glenn D. Magpantay
Asian American Legal Defense and Education Fund

Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Hearing on "Lessons Learned from the 2008 Election"
2141 Rayburn House Office Building
March 19, 2009

Good morning, Mr. Chairman and Members of the Subcommittee. My name is Glenn D. Magpantay, and I am a staff attorney at the Asian American Legal Defense and Education Fund (AALDEF). Thank you for the invitation to testify today.

AALDEF is a 35-year old New York-based national organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy and community education. Our programs focus primarily in the areas of immigrant rights; economic justice for workers; the elimination of hate violence, police misconduct, and human trafficking; language access to services; youth rights and educational equity; and voting rights and civic participation.

AALDEF led the campaign to secure the first Chinese-language ballots in New York City in 1994. We have filed comments under section 5 of the Voting Rights Act with the U.S. Department of Justice in support of fully-translated ballots. We have litigated and participated in lawsuits arising under the Voting Rights Act, *see, e.g.*, *Chinatown Voter Education Alliance v. Ravitz*, Civ. No. 06-CV-913 (S.D.N.Y. June 11, 2008); *United States v. City of Boston*, 497 F.Supp.2d 263, (D. Mass. 2005) (representing Asian American voters). AALDEF testified before this House Subcommittee in 2006 and the U.S. Senate Judiciary Committee in 2007 in support of reauthorization of the Voting Rights Act's language assistance (Section 203) and enforcement (Section 5) provisions. In preparation for the 2008 Elections, AALDEF conducted 73 legal trainings on voters' rights for more than 2,600 community leaders, lawyers, and students.

Asian Americans are the fastest growing minority group in the United States. For almost two decades, AALDEF has monitored elections. We monitored for compliance with the language assistance provisions (section 203) of the federal Voting Rights Act, more recently for compliance with the Help America Vote Act (HAVA), and to document other incidents of anti-Asian voter disenfranchisement.

On November 4, 2008, AALDEF monitored over 229 poll sites and conducted a nonpartisan multilingual exit poll of 16,665 Asian American voters in 52 cities in 11 states – New York, New Jersey, Massachusetts, Pennsylvania, Michigan, Illinois, Texas, Nevada, Louisiana, Virginia, Maryland – and the District of Columbia. AALDEF received more than 800 complaints of voting barriers.

A. The Asian American Population

Asian Americans are becoming U.S. citizens through naturalization and are registering to vote. According to the Census, Asian citizens of voting age numbered 3.9 million in 1996 and rose from 4.7 million in 2000 to 6.7 million in 2004. Asian American voter turnout also steadily increased, from 1.7 million in 1996, nearly 3 million in 2004, and 3.2 million in 2006.[1] In AALDEF's 2008 exit poll, we found that almost a third (31%) of Asian American respondents were first-time voters.

We also found that 79% were foreign-born naturalized citizens and 21% had no formal U.S. education. Because of this, many Asian Americans were unfamiliar with the American electoral process, having come from Asian countries with political systems very different from that of the United States and which may even lack a tradition of voting. Some did not understand even basic political procedures, such as the need to register by a certain date, the need to enroll in a political party in order to vote in a primary election, and how to operate voting machines. Moreover, among voters surveyed, only 20% identified English as their native language; 35% were limited English proficient. Specific efforts are needed to help Asian Americans fully participate in the electoral franchise.

AALDEF's Multilingual Exit Poll, Nov. 2008: Respondents

ALL	FIRST-TIME VOTER	FOREIGN BORN	NO FORMAL U.S. EDUCATION	ENGLISH AS NATIVE LANGUAGE	LIMITED ENGLISH PROFICIENT	LARGEST ETHNI GROUPS
TOTAL: 16,665	31%	79%	21%	20%	35%	32% Chinese 31% South Asian 14% Korean 9% Southeast Asi 5% Filipino
BY ETHNIC GROUP						
Chinese	29%	74%	23%	15%	45%	N/A
Korean	25%	83%	20%	18%	54%	N/A
Filipino	24%	74%	12%	26%	6%	N/A
South Asian	36%	87%	22%	24%	20%	49% Indian 25% Bangladeshi 11% Pakistani
Southeast Asian	35%	83%	20%	9%	49%	70% Vietnamese 18% Cambodian

[1] U.S. Census Bureau, Current Population Survey (2004).

B. The Language Assistance Provisions (Section 203) of the Voting Rights Act

In 1975, Congress enacted the language assistance provisions of the Voting Rights Act, codified at Section 203. In 2007, after extensive fact-finding into the continued disenfranchisement of Asian American and other minority voters, Congress reauthorized the Act for twenty-five more years. AALDEF provided evidence to Congress about the need for an extension of Section 203 to remove barriers to voting for Asian Americans.[2]

Section 203 covers counties that have, according to the Census, 5% or more than 10,000 voting-age citizens who speak the same language, are limited English proficient, and, as a group, have a higher illiteracy rate than the national illiteracy rate as measured by educational attainment. Covered counties must translate ballots and all voting materials, including voter registration forms, instructions, and notices, into the covered language(s), as well as provide interpreters at poll sites to assist voters.[3] Currently, five Asian language groups – Chinese, Japanese, Korean, Filipino, and Vietnamese – are covered in 16 counties in 7 states.[4]

Section 203 has opened the political process to hundreds of thousands of Asian American voters, many of them new citizens. Partly due to Section 203's mandate for translated voter registration forms, Asian American voter registration growth from 1996 to 2004 was nearly 60%. This number led all other demographic groups (Hispanics at 44.6%, Blacks at 14.6%, and whites at 6.9%). Asian Americans also led in voter turnout growth at 71.2%, (Hispanics at 57.1%, Black at 25.6%, and white at 15.0%).

According to AALDEF's 2008 exit poll, nearly one in five voters (18%) preferred voting with some form of language assistance in order to exercise their right to vote. The rates were higher in jurisdictions required to provide translated ballots. Translated ballots have enabled Asian American voters to exercise their right to vote independently and privately inside the voting booth.

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[2] *See* Oversight Hearing on the Voting Rights Act: Section 203-Bilingual Election Requirements, Part I Before the House Subcomm. on the Const., House Judiciary Comm., 109th Cong. 19 (2005) (statement of Margaret Fung, AALDEF Exec. Dir.).

[3] Voting Rights Act, 42 U.S.C. § 1973; Implementation of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. §§ 55.16.

[4] 67 Fed. Reg. No. 144, 48871-77 (July 26, 2002) (Notices). For Spanish, 217 jurisdictions are covered, and Native American languages are covered in 80 jurisdictions. Asian language coverage follows: AK- Kodiak Island Borough (Filipino); CA- Alameda (Chinese), Los Angeles (Chinese, Filipino, Japanese, Korean, Vietnamese), Orange (Chinese, Korean, Vietnamese), San Diego (Filipino), San Francisco (Chinese), San Mateo (Chinese), Santa Clara (Chinese, Filipino, Vietnamese); HI- Honolulu (Chinese, Filipino, Japanese), Maui (Filipino); IL- Cook (Chinese); NY- Kings (Chinese), New York (Chinese), Queens (Chinese, Korean); TX- Harris (Texas); and WA- King (Chinese).

C. AALDEF Poll Monitoring Findings from Election Day 2008

Notwithstanding such increased participation in the elections, Asian American voters continued to encounter several voting barriers in November 2008 in regard to language assistance, racist and poorly trained poll workers, inaccurate voter registration lists and denials of provisional ballots, improper and excessive identification checks, and confusion at poll sites.

1. Language Assistance

Language assistance, such as interpreters or translated voting materials, if any, was far from adequate. Some poll workers were completely unaware of their legal responsibilities or outright refused to make language assistance available to voters.

New York and Boston are required to provide language assistance, but there were many shortcomings. New York is covered under Section 203 for assistance in Chinese and Korean. Boston is obligated to provide assistance in Chinese and Vietnamese pursuant to a settlement to remedy violations of Section 2 of the Voting Rights Act.

- At a poll site in the Lower East Side, there was only one interpreter for hundreds of voters. Poll workers tried to get additional interpreters but were told they "didn't need" them. The lone Chinese interpreter was extremely overworked. At another site in Jackson Heights, NY the poll site coordinator did not even know that a Korean interpreter was available at the site.

- Some interpreters did not effectively assist voters. In Houston, TX, two Vietnamese American voters stated that they were unable to vote for president even after requesting poll worker assistance.

- Poll workers in Dorchester, MA could not locate Vietnamese-language provisional ballots. They said these were not provided to them.

- In Boston, ballots did not have transliterations of candidates' names in Chinese. Limited English proficient voters typically know the candidates by their transliterated names, which often appear in Asian-language media. In our survey, ninety-five (95) Chinese voters stated that they had difficulty identifying their candidates of choice because the names were not transliterated. One voter in Chinatown remarked that new citizens were happy to have just been sworn in and were excited about voting but were disappointed to find that ballots were not fully translated.

Voters have the right to be assisted by persons of their choice under Section 208 of the Voting Rights Act. Unlike Section 203, this provision applies across the nation. These assistors may accompany voters inside the voting booth to translate the ballot for them. The only exception under this federal law is that they may not be the voters' union representatives or employers. Poll workers, however, obstructed this right.

- At one site in Alexandria, VA, poll workers did not allow limited English proficient voters to bring interpreters with them into the voting booth. Poll workers stated that individuals should have a minimum proficiency in English in order to be American citizens and to vote.

Many jurisdictions voluntarily provided language assistance to Asian American voters on November 4, 2008. For example:

- Chicago, IL hired election judges who spoke Gujarati, Hindi, Tagalog, Korean, Urdu, and Vietnamese.
- New Orleans, LA had about half a dozen Vietnamese interpreters and bilingual election commissioners.
- Lowell, MA hired about 20 Khmer and Vietnamese interpreters.
- Quincy, MA hired 15 Chinese and Vietnamese speaking poll workers.
- Middlesex, NJ appointed Chinese and Hindi/Gujarati speaking poll workers.
- Philadelphia, PA provided 30 Chinese, Khmer, Korean, and Vietnamese interpreters.

While we commend these efforts, there were also many shortcomings.

- Bergen County translates voting instructions into Korean. During the Presidential Primary Elections, one poll worker in Fort Lee, NJ did not even know why she received the Korean voting instructions.

- Under New Jersey state law, Voter Bill of Rights signs must be available and translated into the language spoken by 10% or more of registered voters in a district.[5] However, none of the 25 poll sites inspected in Bergen County provided a translated Voter Bill of Rights, even though translated signs were required by law.

- During the Presidential Primary Elections, Philadelphia provided a language line that poll workers could call and get on-the-spot assistance for voters. However, poll workers did not know it existed, did not know how to access the line, or the line was overwhelmed and was constantly busy. Voters in Olney left because they could not understand the ballots and were not able to get help.

- The lack of language assistance created opportunities to take advantage of limited English proficient voters for partisan gain. In Annandale, VA, limited English proficient Korean American senior citizens had to turn to a Republican campaigner for assistance. This person led groups of voters into the poll site and refused to give them privacy while they cast their votes. AALDEF received and reported similar complaints of improper voter influence during the 2006 elections by the same individual involved.

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[5] N.J. Stat. § 19:12-7.1(b) (2007).

2. Poll Workers
Some poll workers were rude, hostile, and made derogatory remarks.

- At different poll sites in Brooklyn, NY one poll worker remarked that Middle Eastern voters "looked like terrorists to [him]," and another poll site supervisor challenged an Arab American voter saying to the voter, "We don't trust you; you're not voting. It's my authority. If you want to complain go to the judge." The voter was not able to vote.

- A voter complained that a poll worker in Long Island City, Queens, NY made her feel uncomfortable when the poll worker said, "Why do you have an American name? Are you Japanese?"

- A Sikh voter was made to vote by provisional ballot because his last name (Singh) was very common and poll workers in Ozone Park, Queens, NY "couldn't figure out which one he was."

Sometimes Asian American voters were simply treated with less courtesy than white voters, or they were simply ignored.

- In Chinatown, Manhattan, NY, a poll worker made comments complaining about Chinese voters and was inattentive when they arrived. The poll worker made an entire line of Chinese voters wait while he sent text messages on his cell phone.

- In Lowell, MA, several Asian American voters reported being ignored by poll workers. One particular voter complained that when she came to the front of the line, the poll worker instead turned to the white voter standing behind her. The voter had to go to a different poll worker to vote.

Some poll workers were simply poorly trained. HAVA requires that voters be informed of their rights at poll sites. But poll workers failed to post the Voter Bill of Rights signs in Virginia, New Jersey, Pennsylvania, and New York. In Alexandria, VA, one poll worker did not even know what the sign was. In Bergen County, NJ, only seven poll sites, out of 26 poll sites observed, displayed the sign. In New York City, 40% of 47 poll sites observed were missing the sign. In Fairfax, VA, poll workers posted the sign only after our observer inquired about its absence.

3. Voter Registration Lists and Provisional Ballots
Many Asian Americans complained that their names were missing from lists of registered voters located at poll sites. In our survey, 540 voters complained that their names were not listed or had errors in their voting records.

In the past, poll workers used to turn away voters, but HAVA now grants these voters the right to vote by provisional ballots to preserve their votes. But such ballots were not always offered or were expressly denied. Voters were again turned away.

Sometimes, poll workers were too quick to turn away Asian American voters and assumed they were not registered, as we observed in Quincy, MA; Philadelphia and Upper Darby, PA; and Falls Church and Fairfax County, VA.

Some cities had more systemic problems that totally undermined HAVA's goal of allowing voters to vote by provisional ballots.

- In Lowell, MA, voters were not permitted to vote by provisional ballot at poll sites. Instead, if names were missing, poll workers either called City Hall or directed the voter to City Hall to confirm their registration and cast a provisional ballot. Voters were unable to vote on Election Day. This problem also occurred in 2004.

- In Chinatown Philadelphia, the main poll site for the area had a limited number of provisional ballots and poll workers would not distribute the ballots unless voters specifically demanded them. When voters did ask, poll workers requested documentation of their addresses. But many voters did not know they could ask for a provisional ballot and simply left without voting. Similar problems occurred during the Presidential Primary Election, but in that election, poll workers turned away voters and told them to register for the next election.

4. Identification Checks

Poll workers made improper and excessive demands for identification, misapplying HAVA's ID requirements. These demands were often only made of Asian American voters in violation of the Voting Rights Act.

Asian American Voter Complaints About Identification Checks
In states where ID is not generally required to vote

	DC	NV	MD	IL	NJ	NY	PA	MA
Required to provide ID to vote	28	43	51	124	262	1,903	199	185
% of total voters surveyed	22%	25%	7%	40%	18%	24%	42%	18%
% ID not required under HAVA	82%	77%	76%	70%	69%	68%	68%	60%

AALDEF received specific complaints of racial profiling and demands for identifications from Indian American voters in Bensalem, PA and Bangladeshi American voters in Woodside, Queens, NY.

Some states required all voters to provide identification before they could vote. However, we occasionally found that such identification checks were only applied to Asian American voters and white voters did not have to show ID to vote. Sometimes, Asian American voters had to provide additional forms of ID.

5. Poll Site Confusion

Inadequate notice of poll sites and misdirection to voting booth lines inside sites created much confusion. Frustrated voters left without voting. For example, in Philadelphia's Chinatown,

during both the Presidential Primary and General Elections, Asian American voters complained about slow poll workers and extremely long lines. During the Primary Election, some voters waited in line for up to four hours. Our observers witnessed voters leaving due to frustration.

AALDEF sent complaint letters to local election officials that detailed these voting obstacles and offered recommendations for improvements. Our findings demonstrate that vigorous enforcement of the Voting Rights Act is still needed. Copies of the complaint letters were sent to the U.S. Department of Justice's Voting Section for further investigation.

D. Recommendations

Several steps must be taken to address the barriers faced by Asian American voters. AALDEF makes the following recommendations.

1. National Recommendations

- The United States Supreme Court should uphold Section 5 of the Voting Rights Act. Congress reauthorized the enforcement provision for 25 years in 2007 finding that racial, ethnic, and language minority voters continued to face voting discrimination and that the provision was necessary to protect the right to vote. The provision is being challenged in *Northwest Austin Municipal Utility District One v. Holder*.

- Congress should consider legislation to allow for universal voter registration which will alleviate many of the registration problems that Asian American voters encountered.

- Congress should amend HAVA to clarify that voting by provisional ballot should also be used to correct errors and omissions in voters' registrations, as was recommended by the Carter/Ford National Commission on Federal Election Reform.

- The U.S. Department of Justice should continue its vigorous enforcement of Section 203 of the Voting Rights Act for Asian language assistance and increase enforcement of Section 208 to ensure that voters can be assisted by persons of their choice.

- The U.S. Department of Justice should more forcefully investigate and enforce full compliance with HAVA, including the proper and nondiscriminatory application of identification requirements and the availability of provisional ballots.

- The U.S. Election Assistance Commission should translate the national voter registration form into the federally required Asian languages.

2. Local Recommendations

- Language assistance should be provided to limited English proficient voters at the local level. There should be translated voter registration forms, voting instructions, and ballots, as well as interpreters and bilingual poll workers at poll sites.

- Poll workers who are rude, hostile, or racially discriminatory toward Asian American and limited English proficient voters, or who deny language assistance, should be reprimanded or removed from their posts.

- Voters whose names cannot be found in lists of registered voters located at poll sites must be given provisional ballots. Local election officials should count the ballots of all these registered voters when their ballots are cast in their neighborhoods and local districts, even if they were at the wrong poll sites.

- Errors in the registrations of new voters must be corrected so that ballots are not disqualified. Voting by provisional ballot should be used as opportunities to correct such errors.

- Poll workers need better training in election procedures and voters' rights, especially on:
    - the requirements for language assistance and the proper use and posting of translated voting materials and signs under Section 203, where applicable;
    - voters' rights to be assisted by persons of their choice, who may also accompany voters inside voting booths under Section 208;
    - how to properly direct voters to their assigned poll sites and precinct voting booths;
    - proper demands for voter identification checks under HAVA; and
    - proper administration of provisional ballots under HAVA.

Asian American populations have surged throughout the United States. Asian Americans are becoming citizens and seek to participate in the nation's political franchise, but they have encountered many voting barriers. The findings and recommendations herein will hopefully assist the Committee in ensuring that Asian Americans, and indeed all Americans, can fully and fairly exercise their right to vote.

AALDEF Multilingual Exit Poll, Nov. 2008: Language Minority Groups

STATE - LOCALITY	LANGUAGE MINORITY GROUP	LIMITED ENGLISH PROFICIENT	PREFERS VOTING W/ ASSISTANCE	USED INTER-PRETER	USED TRANSLATED MATERIALS
NEW YORK					
- Manhattan	Chinese	61%	36%	27%	23%
- Queens	Chinese	58%	31%	21%	20%
	Korean	75%	29%	35%	26%
	Urdu	22%	9%	*	*
- Brooklyn	Chinese	62%	43%	31%	26%
	Bengali	50%	21%	*	*
	Urdu	39%	20%	*	*
NEW JERSEY					
- Bergen Co.	Korean	62%	22%	22%	*
- Middlesex Co.	Gujarati	29%	12%	*	*
	Chinese	25%	9%	*	*
MASSACHUSETTS					
- Boston	Chinese	63%	45%	31%	39%
	Vietnamese	54%	32%	20%	23%
- Lowell	Khmer	47%	31%	29%	*
- Quincy	Chinese	38%	15%	*	*
ILLINOIS					
- Chicago/Cook Co.	Korean	81%	43%	35%	34%
MICHIGAN					
- Dearborn	Arab	27%	18%	*	*
- Detroit	Bengali	45%	27%	*	*
- Hamtramck	Arab	40%	29%	16%	*
MARYLAND					
- Rockville	Chinese	36%	20%	*	*
- Silver Spring	Korean	45%	10%	*	*
	Vietnamese	43%	13%	*	*
VIRGINIA					
- Centreville	Korean	53%	12%	*	*
- Falls Church	Vietnamese	49%	13%	*	*
- Annandale	Korean	78%	31%	32%	*
PENNSYLVANIA					
- Philadelphia	Chinese	63%	41%	34%	*
- Bensalem	Gujarati	42%	17%	*	*
TEXAS					
- Houston	Vietnamese	51%	27%	18%	23%
LOUISIANA					
- New Orleans	Vietnamese	63%	45%	*	*

* None available

Mr. NADLER. Thank you.

I will now recognize Mr. Terry for 5 minutes.

TESTIMONY OF JAMES TERRY, CHIEF PUBLIC ADVOCATE, CONSUMERS RIGHTS LEAGUE

Mr. TERRY. Thank you, Mr. Chairman.

My name is James Terry, and I am chief public advocate at the Consumers Rights League. I appreciate the opportunity to return to follow up our testimony from September about threats to the integrity of the U.S. voting system. We hope that our perspective will shed light on the matter before this Committee today, namely that our system is still vulnerable to voter registration fraud and to voter fraud.

In September, we examined the issue of voter registration fraud and voter fraud through the prism of the actions of the Association of Community Organizations for Reform Now, or ACORN. As you will recall, we highlighted ACORN's troubling pattern that spans multiple election cycles that included, among others, the 2007 case in King County, Washington, where seven ACORN workers were indicted for what officials called the "worst case of voter registration fraud in the history of the state."

We also highlighted an example from 2008 in Wisconsin that involved bribery and apparently falsified driver license numbers, Social Security numbers, and similar personal information. By the end of August, Milwaukee's Election Commission had referred over 49 individuals to prosecutors for suspected voter registration fraud. Of them, 37 were ACORN employees.

All told, local and state officials called for investigations of ACORN in about a dozen states, and numerous parties, including internal ACORN activists, have sought Federal intervention to investigate the organization. Yet we have heard little to nothing since the election about the results of investigations from state or Federal authorities. It is simply not acceptable to forget these problems because the result of the presidential elections were not close.

It is also not acceptable to heed the fatalistic argument that bizarrely defends voter registration fraud as a byproduct of efforts to increase participation. It is indeed a danger to our system. The legitimate votes of both minority and non-minority voters are threatened with vote dilution by those who fraudulently register and fraudulently cast a ballot.

Now, as we contemplate the possibility that fraudulent registrations can dilute legitimate votes, our attention returns to ACORN. Their record from 2008 alone is stunning. According to *The New York Times*, of the 1.3 million voters ACORN claims to have registered, roughly 400,000 were rejected by election officials for a variety of reasons, including duplicate registrations, incomplete forms, and fraudulent submissions.

Now let that sink in for a minute. The American electoral system was burdened by 400,000 bad forms from just one group. By contrast, the population of the entire State of Wyoming in 2007 was only slightly larger, at 522,000.

Voter registration fraud is not just a problem for the system. It causes the types of disenfranchisement that Congress and this Committee have addressed many times, such as havoc in the voting lines, long wait times, that drive busy citizens out of the process. Whether due to human error or fraud, these factors become barriers to participation.

We need look no further than the most recent election to see examples of such disenfranchisement. In Bridgeport, CT, nearly 500 voters, many of whom thought they were registered to vote by ACORN, were sent to city hall on Election Day after their names did not appear on voter registration lists. Once there, they found out they could only vote for President and, thus, were denied their right to choose representation in Congress and the other offices on the ballot.

Many have attempted to dismiss such irregularities as the natural side effects of simple human error often associated with such large efforts. But, as we have shown, this is a problem that has persisted in every election for over 10 years, and recent statements and sworn testimony from ACORN employees further highlight that the problem is not one of simple error.

Now the size and scope of ACORN's efforts make it one of the most visible examples of the vulnerability to manipulation in our system. Now, whether their actions are the result of fraudulent intent, negligence, or simple incompetence, the overarching conclusions must be the same: that any system that enables and continues to allow such behavior is broken and must be addressed.

While it appears that local and state authorities may have run out of resources or focus to fully follow the trail of fraud and address this issue, we are heartened that this Committee is still looking for answers. It is a certainty that there will be close elections again in the future, and we must be prepared to ensure that every proper vote counts.

Thank you very much, and I look forward to answering your questions and assisting in any way we can.

[The prepared statement of Mr. Terry follows:]

PREPARED STATEMENT OF JAMES TERRY

Testimony

of

James Terry

Chief Public Advocate

Consumers Rights League

Prepared for the

Committee on the Judiciary

Subcommittee on the Constitution, Civil Rights and Civil Liberties

Hearing on "Lessons From the 2008 Election"

March 19, 2009

10:00 am

2141 Rayburn House Office Building

Thank you, Chairman Nadler, Chairman Conyers, Ranking Member Sensenbrenner and Members of the Committee.

My name is James Terry and I am the chief public advocate at the Consumers Rights League, a non-profit education and advocacy organization dedicated to preserving consumer choice in a broad array of issue areas.

I appreciate the opportunity to return to follow up our testimony from September about threats to the integrity of the U.S. voting system and the ramifications for citizens. We hope our perspective will shed light on the matter before this committee today: that ,while the 2008 election was not close, our system is still vulnerable to voter registration fraud and, despite some claims to the contrary, to voter fraud.

In September we examined the issue of voter registration fraud and voter fraud through the prism of the actions of the Association of Community Organizations for Reform Now, or ACORN. As we noted, the group with more than a $100 million budget in 2008[1] continued its multi-year record of sloppy, erroneous, and fraudulent voter registration activities.

As you will recall, we highlighted ACORN's troubling pattern that spans multiple election cycles:

[1] Projection by ACORN founder Wade Rathke in June 2008.

- In 2003, ACORN employees in Missouri turned in more than a thousand suspicious voter registration cards, with one woman saying a card was turned in under the name of her infant.[2]
- Following Colorado's 2004 election, two ex-ACORN employees were convicted of perjury for submitting false voter registration forms[3]; one ex-ACORN employee admitted to registering her friends 40 times.[4]
- In 2004, police arrested a former ACORN employee who had more than 300 completed voter registration cards in the trunk of his car, many of which had not been turned in within the legal time limit.[5]
- In 2005, Virginia authorities found that of a sample of Project Vote-gathered registrations, 83% were rejected for using false or questionable information.[6]
- In 2007, King County, Washington officials announced the indictment of seven workers ACORN had hired to register voters, calling the episode the "worst case of voter registration fraud in the history of the state."[7] At least three of those individuals have pleaded guilty and ACORN was forced to pay a $25,000 settlement.[8]
- In April 2008, federal prosecutors announced guilty pleas for federal election fraud by eight former ACORN employees in Missouri, based on their activities in the 2006 election. They submitted false addresses and

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[2] "Voter registration fraud dogs St. Louis." Association Press. September 19, 2003.
[3] "Briefing." Rocky Mountain News. January 4, 2005.
[4] "Investigation reveals potentially fraudulent voter forms." Associated Press. October 12, 2004.
[5] Sweeney, Patrick. "Voter registration cards bring felony charge." Saint Paul Pioneer Press. October 16, 2004.
[6] Jones, Matthew. "State: Voter registrar did no wrong." The Virginian-Pilot." October 22, 2005.
[7] Ervin, Keith. "Felony charges filed against 7 in state's biggest case of voter-registration fraud." Seattle Times. July 26, 2007.
[8] "Ervin, Keith. "Three plead guilty in fake voter scheme." Seattle Times. October 30, 2007.

names, as well as forged signatures. At least one former ACORN employee was sentenced to 15 months in prison.[9]

We also demonstrated a list of ACORN actions that posed widespread problems in 2008, including:

- ACORN was forced to announce that it would begin running background checks on its signature gatherers in New Mexico after it was learned that nine employees had felony criminal records[10] ranging from forgery to identity theft to child rape.[11]
- In Ohio, ACORN's continuing pattern of voter registration fraud apparently included the 73 registration cards turned in this year for just one individual.[12]
- The citizens of Wisconsin were among the greatest victims of ACORN's fraud in 2008. There ACORN allegedly offered to bribe citizens with pre-paid gasoline cards or restaurant gift cards to induce them to register. Further voter registration problems include apparently falsified drivers license numbers, Social Security numbers, and similar personal information. By the end of August, Milwaukee's Election Commission Executive Director had referred over 49 individuals to prosecutors for suspected voter registration fraud — of them, 37 were ACORN employees.[13]

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[9] Associated Press. "Guilty pleas in election fraud." April 3, 2008.
[10] Associated Press. "ACORN starts background checks for NM registrars." August 9, 2008.
[11] See report from KRQE: http://www.youtube.com/watch?v=EvJE3SMHRTs
[12] O'Mara, Michael. "Voter registration problems investigated in Cleveland." WKYC. August 28, 2008.
[13] Sandler, Larry. "10 more voter registration workers face investigation." Milwaukee Journal-Sentinel. August 29, 2008.

- Durham County, North Carolina's elections officials asked for an investigation of dozens of cards submitted by ACORN. One was for a fourteen-year-old boy.[14]

Since then, the problems associated with ACORN's voter efforts only continued:

- In October, Michigan authorities held Antonio Johnson for six counts of forging applications for two women.[15] Meanwhile, ACORN continued its efforts to expand the franchise to our youth, turning in a voter registration form for a seven-year-old girl in Connecticut.[16]
- In November, former ACORN employee Jemar Barksdale pleaded guilty to charges of forgery, identity theft, and tampering with public records in Delaware County, Pennsylvania in November.[17] Of the 18 existing voters for whom Barksdale turned in fraudulent forms, six were elderly and one attends a facility for the mentally disabled.[18]
- In January, Missouri officials indicted former ACORN employee Deidre Humphrey for allegedly submitting forged and false voter registration cards, including those for nursing home residents.[19]

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[14] Milliken, Mathew. "Elections chief asks for voter fraud probe." Durham Herald-Sun. September 19, 2008.
[15] Hepker, Steven. "Man accused of forging voter applications to head to jail." Jackson Citizen Patriot. October 27, 2008.
[16] Otis, Giner Adams et al. "7-yr-old gets an Acorn vote." New York Post. October 12, 2008.
[17] "Ex-ACORN worker admits voter-registration fraud." PhillyNews.com. November 25, 2008.See: http://www.philly.com/philly/news/pennsylvania/20081125_Ex-ACORN_worker_admits_voter-registration_fraud_1.html.
[18] Bender, William. "Ex-ACORN aide held in vote fraud." Philadelphia Daily News. October 22, 2008.
[19] O'Connell, Patrick M. "ACORN worker indicted in voter fraud case ACORN launched own inquiry, gave results to election officials." St. Louis Post-Dispatch. January 6, 2009.

Perhaps the most powerful commentary on ACORN's nationwide machine of voter fraud may be that Newsday found it appropriate to report that there *were not* problems with ACORN's drive on Long Island.[20]

All told, local and state officials called for investigations of ACORN in about a dozen states. There were some small, disparate investigations by local and state authorities. There were even reports that the Federal Bureau of Investigation raided ACORN offices in October.[21] Numerous parties, including internal reformers, have sought federal intervention to investigate the organization.

Yet we have heard little to nothing since the election about the results of investigations from state or federal authorities.

It is simply not acceptable to forget these problems because the results of the presidential election were not close. Other elections were, and future elections will be again. Each citizen must be convinced of the integrity of our electoral system and, consequently, be confident of the importance of their vote. As The Wall Street Journal reminds us:

> Vote fraud is real and can affect elections. In 2001, the Palm Beach Post reported that more than 5,600 people who voted in Florida in the 2000 Presidential election had names and data that perfectly matched a statewide list of suspected felons who were barred from voting. Florida was decided by about 500 votes.

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[20] Amon, Michael. "No problems reported with ACORN's LI branch." Newsday. October 13, 2008.
[21] Jordan, Lara Jakes. "Officials: FBI investigates ACORN for voter fraud." Associated Press. October 16, 2008.

> In 2003, the Indiana Supreme Court overturned the result of a mayor's race because of absentee ballot fraud -- a case that led to a stricter Indiana ID law recently upheld by the U.S. Supreme Court. A 2005 Tennessee state Senate race was voided after evidence of voting by felons, nonresidents and the deceased. A Washington State Superior Court judge found that the state's 2004 gubernatorial race, which Democrat Christine Gregoire won by 133 votes, had included at least 1,678 illegal votes.[22]

Nor is it acceptable to heed the fatalistic argument that bizarrely defends voter registration fraud as a byproduct of efforts to increase participation. It is indeed a danger to our system.

A half-dozen former attorneys for the Department of Justice wrote a letter arguing the Department "must protect the rights of voters from fraud." The former Justice lawyers correctly argued:

> It is the protection of legitimate voting activities that demands immediate and uncompromising pursuit of voter registration fraud especially during election cycles. Otherwise, the legitimate votes of both minority and nonminority voters will be threatened with vote dilution by those who fraudulently register and cast a fraudulent ballot … Preventing fraudulent voter registration forms from being submitted cannot possibly chill 'legitimate voting and campaign activities,' but can only positively 'affect

[22] "Justice and Vote Fraud." The Wall Street Journal. October 27, 2008.

> the election itself" by fostering the appearance and reality of an honest election.[23]

As we contemplate the possibility that fraudulent registrations can dilute legitimate votes, our attention returns to ACORN. Their record from 2008 alone is stunning. According to the New York Times, ACORN was force to admit of the 1.3 million voters they claimed to have registered nationwide there were "…roughly 400,000 that were rejected by election officials for a variety of reasons, including duplicate registrations, incomplete forms and fraudulent submissions from low-paid field workers trying to please their supervisors...[24]

Now, let that sink in: the American electoral system was burdened by 400,000 bad forms from just one group trying to make money and influence the election. For reference, the U.S. Census Bureau estimated that the entire population of the state of Wyoming in 2007 was only slightly larger at 522,000.

Voter registration fraud is not just a problem for "the system"; it causes the types of disenfranchisement that Congress and this Committee have addressed many times such as havoc in voting lines and long wait times that drive busy citizens out of the process. Perhaps even more directly disenfranchising is the risk that it can lead to people thinking they are registered when in fact they may not be. Whether due to human error or fraud these factors become barriers to participation.

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[23] Spakovsky, Hans A. et al. "Justice Must Protect the Rights of Voters From Fraud." The Wall Street Journal. November 6, 2008.
[24] Falcone, Michael and Michael Moss. "Group's tally of new voters was vastly overstated." The New York Times. October 24, 2008.

We need look no further than the most recent election to see examples of such disenfranchisement and fraud:

- In October, the Republican Party of New Mexico identified 28 alleged fraudulent votes in just one state House district during the June primary. Several of the suspect voters were registered by ACORN.[25]
- In Ohio, officials investigating ACORN's activities alleged that a man registered to vote several times was able to cast a fraudulent ballot using the address of a legitimately registered voter.[26]
- As citizens lined up in Bridgeport, Connecticut to cast their ballots the Connecticut Post reported that, "Nearly 500 voters, many of whom thought they were registered to vote by the Association of Community Organizations for Reform Now, were sent to City Hall late Tuesday after their names did not appear on voter registration lists. Once there, they found out they could only vote for president."[27]

Many have attempted to dismiss such voter registration irregularities as the natural side effects of simple human error often associated with such large efforts. But as we have shown, this is a problem that has persisted in every election for over ten years. And recent statements and sworn testimony from ACORN employees further highlight that the problem is not one of simple error:

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[25] "republican Party finds 28 suspect voters." The Lawrence Journal-World. October 17, 2008.
[26] MacIntosh Jeane and Maggie Haberman. "Bogus voter booted amid probe of ACORN." New York Post. October 14, 2008.
[27] Mayko, Michael P. "Some not on voting rolls blame ACORN." Connecticut Post. November 4, 2008.

- A former ACORN employee testified in a Pennsylvania courtroom that the group's voter registration safeguards were "minimal or nonexistent."[28] The Philadelphia Inquirer reported Anita Moncrief testified that ACORN "knew that most new voter registration forms it had gathered were fraudulent" and "barely trained its workers in how to register voters properly, and would fire employees if they did not meet a quota of 20 new voter applicants daily. And, if they were caught committing fraud, the group 'threw them under the bus' as scapegoats to take all the legal blame…"[29]
- Moncrief's testimony is further corroborated by Clifton Mitchell, responsible for the 2006 Washington State voter registration fraud that gained national attention. CNN interviewed Mitchell in 2008 and reported "Mitchell said ACORN threatened to close the office if he and his team didn't meet their quota to register 13 to 20 voters a day."[30]
- Multiple ACORN employees working in Ohio added similar allegations. One said, "Every day, there was pressure on us. Every single day … [management] would sit us down and say if you didn't do better, they'd suspend you. They'd say, 'Try harder next time,' [and] if you didn't get it, you'd be fired."[31] A woman who identified herself as an ACORN staff director said of supposedly rogue canvassers, "We know who they are; we've told them not to do it. But they weren't among the people fired."[32]

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[28] Fund, John. "An Acorn Whistleblower Testifies in Court." The Wall Street Journal. October 30, 2008.
[29] Cattabiani, Mario F. "ACORN knew of fraudulent voter registration forms, ex-employee of Project Vote says." The Philadelphia Inquirer. October 30, 2008.
[30] Lawrence, Chris. "Ex-ACORN worker: 'I paid the price' for voter registration fraud." CNN. October 22, 2008.
[31] Nichols, Adam and Jeane MacIntosh. "Acorn instilled fear in workers." New York Post. October 20, 2008.
[32] Nichols, Adam and Jeane MacIntosh. "Acorn instilled fear in workers." New York Post. October 20, 2008.

The size and scope of ACORN's efforts make it one of the most visible examples of the vulnerability to manipulation of our system. Whether ACORN's actions are the result of fraudulent intent, negligence or simple incompetence, the overarching conclusions should be the same—any system that enables and continues to allow such behavior is broken and must be addressed.

While it appears that local and state authorities have run out of resources or focus to fully follow the trail of fraud and address this issue, we are heartened that this Committee is still looking for answers. It is a certainty that there will be close elections again in the future, and we must be prepared to ensure that every proper vote counts. Further, even when elections are not terribly close, it remains important to remember that the right to have one's legitimate vote counted is sacred in this republic and no one should be forced to worry that their voice will not count because of fraud.

Thank you. I look forward to answering your questions and to assist in any way I can.

Mr. NADLER. I thank the gentleman.
And Ms. Wang is recognized for 5 minutes.

TESTIMONY OF TOVA ANDREA WANG, VICE PRESIDENT FOR RESEARCH, COMMON CAUSE

Ms. WANG. Mr. Chairman, thank you. Thank you for having me here today.

I am Tova Andrea Wang, and I am vice president of research at Common Cause, a national, non-partisan organization with 36 state chapters and 400,000 members and supporters.

Thanks to the work of elections officials, voting advocates, and patriotic citizens, many Americans were able to easily and effectively cast their ballots in 2008. Yet perhaps millions of voters faced unacceptable and unnecessary barriers to voting. I go through the whole myriad of problems and barriers that people confronted in my written testimony. I will just focus in on a couple of things here in the short time that I have.

We recently heard about an analysis by Professor Stephen Ansolabehere of MIT and Harvard University that millions of people reported they could not vote in 2008 because of registration problems. Untold millions of voters registered to vote but were not on the registration list when they came to vote and had to cast provisional ballots, legitimate voters were purged from registration lists, and eligible voters had their registration forms improperly rejected by elections officials. Florida and Colorado are just two examples from 2008 in which this type of activity occurred.

And we heard a little bit earlier about Florida and its no-match, no-vote policy, effectively requiring people to have exactly the same information on their voter registration form as that which exists on the other databases. And they would not process the voter registration forms if there was not this exact match.

There are many reasons such information might not match that say nothing about the voter's eligibility or identity. The voter might use one variation of his name in one database and another on a voter registration form. This is particularly for Latinos and Asian Americans and others with unusual names. Other government databases are incredibly flawed. The person inputting the information might make a mistake, such as a simple typo. The voter might make a mistake or have even poor handwriting.

This rule led to over 22,000 voters having their voter registration initially blocked in the states.

As of Election Day, some 10,000 of these voters had not taken the extra, unnecessary step of resubmitting ID in advance of the election, and their vote may not have been counted.

As usual, rejected voters statewide were disproportionately minorities. Slightly more than 27 percent were listed as Hispanic, and 26.8 percent were Black.

In Colorado, on the voter registration form, voters who provided a Social Security number rather than a driver's license number also had to check a box that stated, "I do not have a Colorado driver's license or a Department of Revenue identification number." If they did not, their registration was disqualified. This impacted thousands of voters.

Furthermore, Common Cause Colorado and other groups had to sue the secretary of state for purging thousands of voters from the registration rolls in clear violation of the National Voter Registration Act's prohibition on systematic purging within 90 days of an

election. A Federal court forced the secretary to agree to allow the voters who he had improperly purged to vote via a provisional ballot which would be presumed legitimate unless proven otherwise.

As a result of these kinds of problems, I suggest that you amend the Help America Vote Act and ban the practice of automatically rejecting voter registration applications based solely on a nonmatch, as has been discussed, enact and implement a voter registration modernization.

Another huge problem that has been touched on is long lines. While we are proud of the historic turnout that we saw on Election Day, and some Americans had to wait in order to vote was not just unfortunate, it denied the right to vote, to cast a ballot for many voters. While in many precincts, voting took only a matter of minutes, in Detroit, some had to wait in line for 5 hours. In the St. Louis area, it was 6 hours.

And, once again, the distribution of resources was random at best and possibly discriminatory at worst. This problem was widely predicted by voting rights advocates, who warned that states did not have enough voting machines for the expected turnout and had no plans in place for ensuring that the machines available were allocated strategically and fairly.

As a result, I recommend that we demand that states identify formulas and create plans for allocation of voting machines that have the best chance of creating an equal playing field and effective voting process on Election Day.

I want to touch briefly on the issue of caging and challenges. Every election year for the last 40 or 50 years, voters, especially minorities, have been threatened with or actually had their eligibility to vote challenged for no legitimate reason. 2008 was no different. This is voter intimidation and vote suppression and must stop.

In addition to passing the Caging Prohibition Act, which we fully support, it is also crucial that the Department of Justice reinstate its earlier prioritization of pursuing large-scale cases of voter suppression, such as this, which was abandoned several years ago in favor of pursuing isolated instances of alleged fraud. Investigations and possible legal action must be given high priority and pursued vigorously by DOJ in these instances going forward.

I want to touch just also briefly on ID laws. We know from testimony we have heard about the millions of people that do not have the requisite kind of voter ID that some states are now requiring or seeking to require, and we know that tens of thousands, maybe hundreds of thousands, of people were unable to vote in the 2008 election because of lack of voter ID.

But perhaps as significant, we also have studies from the 2007 election and the 2008 election that show that poll workers ask minority voters for identification far more often than White voters to the point where it is possibly systematic, and I encourage you to look at my written testimony for more details on that.

My recommendation is that the United States Department of Justice should subject any future ID laws to intense scrutiny during the Voting Rights Act section 5 preclearance process where it applies and further review their implementation under section 2 of the Act as a discriminatory voting practice or procedure.

I see my time is up, so I will just say thank you, Mr. Chairman, for holding this hearing and giving extremely needed attention to the ongoing challenges we face in perfecting our already great democracy. We are making progress, but there is a great deal of progress yet to be made, and I look forward to working with you, the Committee, hardworking and dedicated elections officials, and my fellow citizens in order to get us there.

Thank you very much.

[The prepared statement of Ms. Wang follows:]

PREPARED STATEMENT OF TOVA ANDREA WANG

Testimony of Tova Andrea Wang

Vice President, Research

Common Cause

Hearing on Lessons Learned from the 2008 Election

Before the United States House of Representatives Committee on the Judiciary

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

March 19, 2009

Mr. Chairman, thank you for having me here today. My name is Tova Wang and I am Vice President of Research for Common Cause, a national, nonpartisan organization with 36 state chapters and 400,000 members and supporters. Common Cause has been dedicated to protecting voting rights and ensuring fair elections for many years. Once again, the organization was extremely active in the effort to prevent and address problems during the 2008 election, taking the lead on confronting issues in many states and working as a major partner in the Election Protection Coalition.

I personally have been conducting research and writing on elections issues for the last eight years, the first seven as Democracy Fellow at The Century Foundation, and now at Common Cause.

The 2008 election was greatly anticipated, not least because many observers predicted record, historic turnout. Indeed there had been unprecedented turnout during the primaries and by the time many voter registration deadlines had passed, an estimated 9 million people had registered to vote for the first time,[i] especially in swing states.[ii] Election reform and voting rights advocates expressed tremendous concern that the system was not constructed to handle such numbers of voters. As I remarked prior to the election, the structure of our voting system is very well designed for low rates of participation, since that has been our experience over the last forty years. In this election we knew that at least in some states, we would find out the answer to the question, what would happen if we held an election and people actually voted?

How did the 2008 election go overall considering the turnout predictions and expressions of concern? Many organizations spent the months prior to the election, and even the previous years, working with election administrators and elected officials to iron out the problems ahead of time. Organizations and election administrators also went beyond where they had gone before in educating voters, recruiting poll workers, and training poll workers, while voting rights groups strived to ensure that elections officials had a proper understanding and interpretation of election laws and were prepared to follow them and implement them in a uniform, nondiscriminatory fashion. There was a fair amount of pre-election litigation when it was necessary. All of this activity went a long way toward making the election smooth, fair and effective for many Americans.

Yet thousands, perhaps millions of voters faced unacceptable and unnecessary barriers to voting in 2008. These included problems with registering to vote effectively, extraordinarily long lines that may have led to disenfranchisement, deceptive practices designed to suppress voting, caging and challenges meant to deter participation, barriers to student voting, and problems with voter identification requirements.

REGISTRATION

Voting rights advocates have long realized that barriers to voter registration present the biggest challenge to the voting system, and analysis of the 2008 election bears this out. We now know through analysis of data from the Cooperative Congressional Election Study ("CCES") by Professor Stephen Ansolabehere of MIT and Harvard University that between 4 and 5 million people reported they could not vote in 2008 because of registration (and absentee ballot) problems – approximately the same number as in 2000, before we were supposed to have started addressing these problems in the wake of that infamous elections. Professor

Ansolabehere estimates 9 million people are not registered to vote in this country because of the administrative hurdles of missing a registration deadline and residency rules.[iii]

Issues around the voter registration process were not just the biggest problem in 2008, they were also the most controversial. Untold numbers of voters registered to vote but were not on the registration list when they came to vote and had to cast a provisional ballot. Legitimate voters were purged from registration lists, and eligible voters had their registration forms improperly rejected by elections officials.

The root of many of the problems was the lack of clarity in the Help America Vote Act. HAVA required states to create a statewide voter registration database that is able to match information with the state's Department of Motor Vehicles and the federal Social Security Agency, but did not explain explicitly what was to be done with the resulting information. It is clear, however, that whatever the state matching process, under HAVA, "un-matched" registrants are still entitled to cast regular ballots if they provide proof of identity when they register or vote. Moreover, many states very effectively employ a "substantial match" standard that ensures that voters are not improperly left off the rolls.

Nonetheless some secretaries of state and partisan officials demanded in the weeks before the election that the strictest matching standards possible be used, which would have led to a great many voters not making it on to the registration list for unjustified purposes. In other places, secretaries of state illegally purged existing voters from the rolls in violation of the National Voter Registration Act's prohibition on such removal within ninety days of an election except under limited circumstances.[iv]

Florida

Florida again was the focal point of the debate with its "exact match" or so-called "no match no vote" rule. Although Secretary of State Kurt Browning held off implementing the measure immediately after a court unfortunately upheld it, in the month before the registration deadline he mandated that if the state could not validate the voter's driver's license through the Department of Motor Vehicles database or the last four digits of his social security number by comparing it to the database the Social Security Administration maintains, that registration would be regarded as a "non-match" and after further perfunctory review possibly rejected. Essentially, the state required that the information on a voter's registration application exactly match the information in existing state databases for the registration to be duly processed. Making matters worse, the Secretary of State insisted that the problem could not be rectified by a voter coming in with identification when they voted. Instead, the voter had to take the extra steps of presenting documentation prior to the election or after the election. But not at the election, which would have been much easier for voters to comply with.

The problem was there are many reasons such information might not match that say nothing about the voter's eligibility or identity:

- The voter might use one variation of his name in one database (e.g. on his driver's license) and another on the voter registration form, for example using a middle name in one and not the other. This is particularly likely for Latino voters (who may or may not use mother's maiden name). Errors are more likely to be made with regard to voters with hard to spell or unusual names, often immigrants and African Americans.
- Other government databases are incredibly flawed.

- The person inputting the information might make a mistake, such as a simple typo
- The voter might make a mistake or have poor handwriting

This rule led to over 22,000 voters having their voter registration initially blocked in the state. As of Election Day, some 10,000 of these voters had yet to take the extra, unnecessary step of resubmitting an ID and their vote was thus in jeopardy. As usual, rejected voters statewide were also disproportionately minorities. Slightly more than 27 percent were listed as Hispanic, and 26.8 percent of those rejected were black.[v]

On Election Day itself, the exclusionary impacts of the Secretary's actions were ameliorated because of work that had gone on prior to the election. Common Cause was able to obtain lists of voters whose registration was affected and personally contact many of them. Moreover, the county registrars had somewhat of a mass rebellion against the policy and opted to allow voters to cure the problem when they arrived at the polls, at least during early voting.[vi]

Georgia

A month before Election Day, the Social Security Administration sent a letter to the state claiming that the agency had received 2 million voter verification requests from Georgia in the last year. That far exceeded the number of people who had newly registered to vote in the state of Georgia: 406,000. Moreover, the state was supposed to look at statewide databases for comparisons first, before going to SSA.

More than 50,000 registered Georgia voters were "flagged" by the Secretary of State because of a computer mismatch in their personal identification information. Almost 5,000 of those people had their citizenship questioned and were required to prove their eligibility to vote prior to Election Day in order to cast a regular ballot. Clearly the list was flawed, since the flagged voters proved to be citizens, many of them long time voters.[vii]

As this information indicated that the Secretary of State, Karen Handel, was purging voters from the rolls in violation of federal law, voting rights attorneys took her to court. The Secretary unlawfully conducted verification checks on existing voters and purged them or flagged them for further investigation or requests for identifying documents in violation of NVRA's provision that there be no systematic removal of registered voters within 90 days of an election unless the voter so requests removal, death, felony or mental incapacity.

A federal court ultimately ruled that those mismatched voters who had not proved their identity to a local board of elections prior to Election Day had be allowed to cast a challenged ballot, which meant it wouldn't automatically be counted. Not surprisingly, many voters were disenfranchised as a result of this voter exclusionary move. According to the Atlanta Journal Constitution, just among the 5,000 or so people whose citizenship was contested, in Gwinnett County, 300 people used the paper "challenge" ballot because the state questioned their citizenship status. Of those, 192 returned to the county elections office to bring documents proving they were citizens. 108 voters did not return. In Cobb County, 227 people cast challenge ballots on Election Day. Of those, 161 returned to furnish their documents. But 51 voters did not return with proof of citizenship and their votes were not counted.

Georgia election administrators themselves said the problem was not that these voters were actually not citizens. In fact, according to DeKalb's election administrator,

> When the Georgia secretary of state gave DeKalb an updated list of voters who were not thought to be citizens last fall, there were more than 700 names. Many of those, though, were flagged incorrectly, from something as simple as transposed numbers on their driver's licenses or because they had common names...Some of those red-flagged had even been registered for 25 years and were able to bring in their old voter ID cards, which showed their place of birth. None of the Election Day voters in DeKalb whose ballots were challenged tried to pass muster with false documents, which would have indicated an attempt at fraud. Instead, no one showed up Friday afternoon at the DeKalb election office training room to bring the right documents. The 39 bright pink envelopes, showing they were challenged, will end up being tossed.[viii]

As one columnist pointed out, "the fact that so many *did* provide documentation only served to bolster the contention of voting-rights groups that the process for flagging voters had been badly flawed. That claim was further strengthened by the fact that the system now seems to have flagged not only naturalized citizens like [the plaintiff in the lawsuit], but also U.S. born voters whose citizenship has never been in question."[ix]

Ohio

Ohio was of course the focal point of controversy in 2004, and although the strides forward made in Ohio election law and through the leadership of a new secretary of state helped it avoid major problems, that wasn't for some lack of some trying to create them. In October of 2008, the Republican Party filed a lawsuit seeking to force the Secretary to verify voter registration information of everyone who had registered since January 1 with the Social Security Administration database and DMV, flag non-matches and require marked voters to vote by provisional ballot.[x]

Of the 665,000 people who had registered since January 1, over 200,000 had some discrepancy between their registration form and information on other databases. As has been explained, such discrepancies can arise for many reasons, virtually never having anything to do with the eligibility of the voter to cast a ballot.

On October 11, a federal appeals court ruled 2-1 in favor of Secretary of State Jennifer Brunner to put on hold an order sought by the Ohio Republican Party. The three-judge panel of the 6th U.S. Circuit Court of Appeals said Brunner was not required to provide county elections boards with the names of voters whose personal information did not match state motor-vehicle or federal Social Security records, as had been ordered days earlier by U.S. District Court Judge George C. Smith. Brunner had sought an emergency order delaying Smith's order, and the appeals court agreed with Brunner that federal law did not require her to provide the names and that the November 4 election was too close for major policy changes.[xi]

Eventually the Supreme Court also ruled against the GOP on the basis of standing.

Colorado

There were multiple registration issues in Colorado. First, the state insisted upon an extremely narrow technical registration rule that disqualified voters' registration applications for failure to check an irrelevant box on the registration form. On the Colorado form, voters who provided a Social Security number rather than a driver's license also had to check a box that stated "I do not have a Colorado driver's license or Department of Revenue identification number." This impacted thousands of voters.

Furthermore, Common Cause Colorado and other groups had to sue the Secretary of State Michael Coffman for purging thousands of voters from the registration rolls in clear violation of the National Voter Registration Act's prohibition on systematic purging within 90 days of an election. A federal court forced the Secretary to agree to allow the voters who he had improperly purged to vote by a provisional ballot which would be presumed legitimate unless proven otherwise. In a remarkable move, even after the court's order the Secretary of State resumed purging voters from the books in violation of the law. The parties went back to court leading the judge to angrily order him to stop doing so in an emergency hearing.[xii]

Even as I emphasize the barriers to effective registration, we must not lose sight of the forest but for the trees. Our registration rates remain intolerably low in the United States. 44 million eligible Americans still were not registered to vote in 2008.[xiii] We must completely rethink voter registration if we are ever to have an effective electoral system.

Recommendations:

1. Amend the Help America Vote Act to ban the practice of automatically rejecting voter registration applications based solely on a "non-match."
2. Enact and implement voter registration modernization, which would provide for automatic and permanent registration for all Americans who want to participate

LONG LINES

While we were proud of the historic turnout on Election Day, the amount of time some Americans had to wait in order to vote was not just unfortunate, it could have denied the right to cast a ballot for many voters. While in many precincts, voting took only a matter of minutes, in Detroit, some had to wait in line for 5 hours. In the St. Louis area it was six hours. While the commitment of so many to wait no matter how long it took was inspiring, some voters inevitably could not wait that long -- they worked for hourly wages, couldn't get that much time off or had child care responsibilities. And once again the distribution of resources was random at best, and possibly discriminatory at worst. This problem was widely predicted by voting right advocates, who warned that states did not have enough voting machines for the expected turnout and had no plans in place for ensuring that the machines available were allocated strategically and fairly.

Some came to refer to this as a "time tax." As the election law scholar and Dean of the Boalt Hall School of Law at Berkeley, Christopher Edley, wrote just prior to the election,

> Suppose in your neighborhood there are 600 registered voters per machine, while across town there are only 120 per machine. (That's a 5 to 1 disparity, which is what exists in some places in Virginia today.) On Election Day, your line wraps around the block and looks to be a four-hour wait, while in other areas lines are nonexistent.

> This ought to be a crime. It amounts to a "time-tax" on your right to vote, and some of your neighbors will undoubtedly give up and go home. This scenario raises... questions: Nationwide, will it discourage tens of thousands, or untold millions? Which presidential candidate and down-ballot candidates might benefit from this "tax"?[xiv]

Indeed the Advancement Project, Fairvote and Common Cause all put out reports prior to the election warning there would be long lines due to insufficient voting machines and inadequate plans for equitable and effective distribution.[xv]

This had been the case in 2004 as well. An assessment of voting in Ohio by academics for the Democratic National Committee found that, "Scarcity of voting machines caused long lines that deterred many people from voting. Three percent of voters who went to the polls left their polling places and did not return due to the long lines... Statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes. Overall, 20 percent of white Ohio voters reported waiting more than twenty minutes, while 44 percent of African American voters reported doing so."[xvi]

Were long lines simply the result of inadequate numbers of machines? The data is insufficient to say with precision, but we do know some things. We knew going into the election that there was going to be much higher turnout this year than in the past, but that in many places, especially swing states where turnout would be highest, there were simply not going to be enough voting machines to handle the capacity. Many states had no statewide standards on how many machines there needed to be per voter, while in other states, such as Virginia, the standard ratio was far too high. We also know that machine breakdowns and problems with electronic poll books significantly exacerbated the problem of long waits, especially where there were insufficient back up plans.

Recommendation:
Demand that states identify formulas and create plans for allocation of voting machines that have the best chance of creating an equal playing field and effective voting process on Election Day.

Many states have no requirements regarding machine allocation whatsoever and in others those rules are extremely vague. Often the decision is left to the counties, and only some of them have any concrete discernable formula for making sure there are enough machines, that they are distributed equitably, and allocated in such a way to ensure minimal wait times. In devising standards for voting system distribution states must take into account the voting age population; voter turnout in past elections; the number of voters registered, as of the last possible date leading up to Election Day; the number of voters registered since the last federal election; census data for the population served by the voting site; the educational levels and socio-economic factors of the population; the needs and numbers of voters with disabilities and voters with limited English proficiency; and the type of voting systems used. The decision-making process regarding the distribution of machines should be fully transparent and open to public review.

DECEPTIVE PRACTICES

In 2008, we once again saw the insidious types of deceptive practices that are designed to suppress voting that we have seen in the past – misinformation campaigns that are designed to mislead and confuse voters about whether they can vote and how, when and where to vote. Whereas in the past this had usually taken the form of flyers and mailings, as a report published by Common Cause, the Lawyers Committee for Civil Rights and The Century Foundation predicted prior to the election, in 2008, such activities went online as well.[xvii] There were robocalls, emails and text messages telling people they could vote on Wednesday in several states across the country including Virginia, Missouri and Florida, as well as at least five other states.[xviii] Most of these emails said that given the high turnout expected, Republicans were to vote on Tuesday, Democrats on Wednesday. An email went to the entire student body of George Mason University that appeared to be from the provost of the school making this claim.[xix] There were robocalls in Florida and Nevada telling people they could vote by phone and calls in Virginia fraudulently telling people the wrong place to vote.[xx] In the days prior to the election there were emails in places like Texas and Florida with misleading information about straight ticket voting and voter identification rules.[xxi] There was a denial of service attack on the Secretary of State of Ohio's website in the days leading to the election.[xxii]

As always, there were the more traditional flyers in the Philadelphia area telling people if they had outstanding parking tickets or traffic violations they would be arrested at the polls.[xxiii] And a flyer was circulated in Virginia, again with the message that Republicans vote on Tuesday, Democrats on Wednesday. Although law enforcement caught the creator of this flyer, no charges were pressed as it was deemed to have been a "joke."[xxiv]

None of this was anything new. In 2004 and 2006 there were a series of incidents in which individuals and groups – and there is no sense at all of who was behind any of these activities – disseminated flyers and mailers and conducted robocalls with misinformation about voting that was squarely directed at minority voters.

Currently, the Department of Justice does not believe there is a federal statute that explicitly criminalizes this activity.

Recommendation:
There must be reform at the federal and state level that not only criminalizes deceptive practices, but puts in place a mandatory procedure for law enforcement and election officials working with community and voting rights organization to debunk the false information and disseminate the correct information rapidly. The Deceptive Practices and Voter Intimidation Prevention Act would take us in that direction. Law enforcement should also put in the energy and resources it needs to pursue the perpetrators. Indeed, there are already a number of laws on the books that could be used to go after the people responsible for these tactics given a prosecutor with the will to do it.[xxv]

CAGING AND CHALLENGES

Although it was not at the levels of 2004 or in the period from the 1960s to the 1980s, caging and challenges were again an issue in 2008.

Early on in the fall election season, it was reported that state Republican officials were planning on using lists of people whose homes had been foreclosed as a basis for mounting challenges to their right to vote at the polls. In Michigan, this led to the Democratic Party suing for an

injunction prohibiting challenges on the basis of being in foreclosure. As a result of that case, the Republic National Committee ultimately was forced to enter into a joint statement that bound it not to challenge voters solely on the basis that a voter's home was in foreclosure.[xxvi] In Ohio and other states election administrators sent out directives and statements that foreclosure was not a legitimate basis for a challenge.

Prior to the election, the Montana Republican Party challenged the eligibility of 6,000 registered voters in six counties that historically are Democratic strongholds.[xxvii] A lawsuit by the state Democratic Party forced the Republicans to shut the operation down.

Recommendations:

1. Pass the Caging Prohibition Act of 2008, which provides that the right to register to vote or vote shall not be denied by election officials if the denial is based on voter caging and other questionable challenges not corroborated by independent evidence; prohibits persons other than election officials from challenging a voter's eligibility based on voter caging and other questionable challenges; requires that any voter challenge by persons other than election officials be based on personal, first-hand knowledge; and designates voter-caging and other questionable challenges intended to disqualify eligible voters as felonies, crimes eligible for fines up to $250,000, five years imprisonment, or both.
2. The Department of Justice should reinstate its earlier of prioritization of large scale cases of voter suppression, such as caging and systematic challenges, especially when they appear to be based on race. When a vote caging scheme meant to suppress black voting was uncovered in the 1990 North Carolina Senate race, the Department of Justice acted with strong action both before and after the election. That has not been the case since, especially in recent years when there have been more allegations of vote caging and voter intimidation. Investigations and possible legal action must be given high priority and pursued vigorously by DOJ in these instances going forward.[xxviii]

STUDENTS

In the 2008 primaries the number of voters under thirty nearly doubled from the comparable election of 2000, to 6.5 million. Young people, polling indicated, were also overwhelmingly in favor of Democrats and Barak Obama in particular.[xxix] While the expected historic turnout by young people was tremendously exciting, it also meant that youth, and more particularly students, who are easily identifiable, also became a target for vote suppression. And election administrators themselves were the ones most often aiming at that target, usually in the guise of questioning students' right to register and vote from the school they attend. Under a 1971 Supreme Court ruling, students do have the right to register and vote from their campus address and any residency requirements must be applied to students in the same manner as all other citizens.

Virginia, which has a long history of erecting barriers to student voting, had the most egregious examples of attempts to suppress the student vote. Early in the Fall, the registrar in Montgomery, Virginia, home of Virginia Tech University, warned students that if they registered to vote there that they were jeopardizing their scholarships, financial aid, car and health insurance, and status as a dependent on their parent' taxes.[xxx] This was all false. The problem was that the registrar had based his warning on information on the State Board of Elections Website, which included a questionnaire that inaccurately implied that a student is taking such risks should he or she register from school. Several students withdrew their registration

applications as a result. Another local registrar where Radford University is located in Virginia simply automatically denied all registration applications from students who listed a dorm as their address, in violation of the law.[xxxi]

There was similar incident in El Paso County, Colorado. A county clerk in Colorado Springs sent a letter to students at Colorado College, a relatively progressive bastion in an otherwise conservative jurisdiction, telling them that they could not vote at school if their parents claimed them as dependents on their federal tax returns. This was also completely untrue.[xxxii] Students were also targeted by deceptive practices. A flier was disseminated on the campus of Drexel University in Philadelphia warning that undercover officers would be waiting at the polls, looking for voters with outstanding warrants or parking violations to arrest them. On Election Day someone managed to hack into the George Mason University computer system send out an email to the entire student body that appeared to be from the school's provost telling them that Election Day had been moved to Wednesday, November 5.

Long lines on campuses were a special problem in part because, as had been warned, there were insufficient numbers of machines at campus poll sites. This was especially acute in Pennsylvania. Over 1,000 students were waiting in line when the polls opened at 7 a.m. at Penn State in College Park. Students often skipped classes for the two hour waits. Those in line reported many others who left after seeing the lines.[xxxiii] Colleges in Florida reported similar waits of 2.5 hours.[xxxiv] Rock The Vote reported that students at Virginia Tech, many without cars, had to travel over six miles to reach the nearest polling place that was placed at a church hidden away from any of the main roads. Furthermore, there were over twice the legal limit of voters assigned to this one polling place that included most Virginia Tech students.[xxxv]

Recommendations:

1. Enact federal legislation that explicitly gives students the right to identify what they consider to be their residence for the purposes of registering and voting. It should be made clear that choosing to establish residency under this provision does not affect residency for other purposes.
2. Passage of the Student Voter Act, which would require all universities that receive federal funds to offer voter registration to students at the same time they register for classes. The bill would amend the National Voter Registration Act by designating universities that receive federal funds as "voter registration agencies" for the purposes of the NVRA.

ID LAWS

As proponents of strict voter ID laws continue to argue in statehouses throughout the country that voter ID laws do not disenfranchise voters, and falsely claim that they are necessary to combat fraud, the Ansolabehere analysis found that 2 percent of registered non-voters did not vote in 2008 because they lacked appropriate identification. Of voters who tried to vote but could not, the study found that 150,000 were blocked at the polls for lack of voter identification.[xxxvi]

Perhaps as significant, poll workers demanded photo identification much more often from African Americans and Latinos than white voters. A Harvard survey of thousands of voters in the 2008 Super Tuesday primary found that 53% of whites were asked for photo ID, compared with 58% of Hispanics and 73% of African Americans. This was true even after controlling for factors

such as income, education, age and region.[xxxvii] In an evaluation of the 2007 gubernatorial elections and the 2008 Super Tuesday primary, researchers from MIT, Caltech, and the University of Utah found that African American voters were 14% points more likely to be asked for photo identification than whites and Latinos were 18% more likely to be asked for photo ID in some states.[xxxviii]

Recommendation:
The United States Department of Justice should subject any ID laws to intense scrutiny during the Voting Rights Act Section 5 (preclearance) process where applicable and further review their implementation under Section 2 of the Act as a discriminatory voting practice or procedure.[xxxix]

GOOD NEWS

For the first time, North Carolina implemented a combination of in-person early voting and same day registration at the polling place during this early voting period. With the outreach the campaigns and civic organizations did to make best use of these new tools, the achievement was phenomenal.

North Carolina had the largest increase in voter turnout in the country. 236,700 people became new voters through same day registration, and 39% of those were African American. More than 5% of the 4.2 million voters in the 2008 election registered when they went to vote. 691,000 African Americans voted during the early voting period—51% of the 1.32 million black registered voters in North Carolina.[xl]

Recommendation

1. Pass federal legislation requiring all states to provide the option of same day registration.

Thank you Mr. Chairman for holding this hearing and giving extremely needed attention to the ongoing challenges we face in perfecting our already great democracy. We are making progress, but there is a great deal of progress yet to be made. I look forward to working with you, the committee, hard working and dedicated elections officials, and my fellow citizens in order to get us there.

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[xxix] Susan Page, "Poll: Young Voters Hint at Electoral Shift," USA Today, October 6, 2008
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[xxxvii] Stephen Ansolobehere, "Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day," PS: Political Science & Politics (2009), 42:127-130 Cambridge University Press, The American Political Science Association 2009
[xxxviii] Stewart, et. al, "Evaluating the Performance of Election Administration Across the States: Lessons from the 200 Gubernatorial Elections and the 2008 Super Tuesday," Paper prepared for the American Political Science Association, August 27-September 1, 2008.
[xxxix] Letter from Members of Congress to R. Alexander Acosta, Assistant Attorney General ,Civil Rights Division U.S. Department of Justice. April 21, 2005
[xl] Email exchange with Bob Phillips, Executive Director, Common Cause North Carolina, November 18, 2008

Mr. NADLER. Thank you.

I now recognize myself to begin the questioning.

Mr. Terry, you testified at length about ACORN, as our witnesses in the prior panel, and you also say, "While it appears that local and state authorities have run out of resources or focus to

fully follow the trail of fraud and address the issue," by which I assume you mean that there has not been a large number of convictions on this. In other words, lots of allegations, lots of beginnings in courts, but no or very few convictions?

Mr. TERRY. Well, I think, in fact, you have seen are three instances, I think in Michigan, at least two other states where you have seen people indicted or have pled guilty.

Mr. NADLER. I did not ask about indicted.

Mr. TERRY. But I think what we have a lot of is the willingness that when the election is over, sort of the desire to pursue this goes away.

Mr. NADLER. Okay. So, in other words——

In other words, we do not have a lot of judicial determinations that what you are alleging is, in fact, true.

Mr. TERRY. Correct.

Mr. NADLER. Okay. Now everything you are alleging is basically against the law.

Mr. TERRY. Correct.

Mr. NADLER. Okay. So why are you telling the Committee this? What should we do about it since it is already against the law?

Mr. TERRY. Well, I think we have heard a variety of different testimony talking about long lines, havoc, problems of people being kicked off the voter rolls. I think any instance where you have 400,000 registrations nationwide that were submitted that were inaccurate, that is a problem that deserves exploration to understand——

Mr. NADLER. No, no, no. You made no recommendations. In other words, deliberately submitting an application you know to be incorrect is against the law.

Mr. TERRY. Correct.

Mr. NADLER. Because you are careless is not against the law, but you should not do it obviously. Aside from recommending that local governments enforce the law better or that somebody does—the Bush administration obviously did not enforce the law according to you——

Mr. TERRY. No.

Mr. NADLER [continuing]. And aside from venting against someone you do not like, what are you saying in effect?

Mr. TERRY. Well, I think you have heard a lot of testimony and will continue to hear it about the modernization of the voter registration process, and I think——

Mr. NADLER. Well, we have heard testimony and all those other things, but specific recommendations about legislation and actions we can take because many of those things are not illegal. Arguably, they should be, we should make them illegal, and so forth. Everything you are talking about is already illegal.

Mr. TERRY. Correct.

Mr. NADLER. And, therefore, what should we do?

Mr. TERRY. Well, I think that looking at the fact—I guess the pattern here is that you do have an ongoing pattern of illegal behavior that has continued across——

Mr. NADLER. And——

Mr. TERRY [continuing]. Election cycles, and——

Mr. NADLER. All right. So your recommendation is that, obviously, where there is a pattern of illegal activity, someone should look into it.

Ms. Wang, Mr. Terry described fraudulent registrations to include incomplete registrations. Is an incomplete registration fraud?

Ms. WANG. No. Sorry. No, I do not believe it is, and I think it happens all the time.

Mr. NADLER. And could some of the people he described as being unable to vote have had their registration rejected on this basis?

Ms. WANG. They may have, and, as we discussed earlier, they may not have been notified that their voter registration application was incomplete and even been given an opportunity to fix it.

Mr. NADLER. Now are you concerned about people maybe being disenfranchised for these technical reasons?

Ms. WANG. Absolutely.

Mr. NADLER. And what is your opinion since you have been looking into all these different things? Do we have a large problem of voter fraud with ACORN or anybody else, I mean, deliberately submitting lots of fraudulent or duplicative applications, 400,000?

Ms. WANG. There is part of me that hesitates to engage any more of the time of this Committee on the issue of ACORN—as I said during the election period, ACORN has its problems and I am not going to deny that, and they submitted registration forms that should not have been submitted, but the amount of attention it has gotten and the exaggeration of the claims—it is all just one big head fake.

I would like to know how many of the people that ACORN allegedly registered to vote fraudulently actually cast fraudulent votes. I have not heard since the election of one of the people that they allege was registered in a fraudulent manner having actually cast a vote. I would like to spend our time talking about things that go on that actually impact the outcome of the election.

Mr. NADLER. Is there any evidence of people voting in two states or more?

Ms. WANG. There have been a handful of isolated cases over the last several years. It is very rare.

Mr. NADLER. Okay. Now of the issues you identified, what do you see as the greatest obstacle to the franchise now?

Ms. WANG. I think——

Mr. NADLER. And also Mr. Shelton and Mr. Magpantay.

Ms. WANG. I think, certainly, we need to rethink the entire way we do voter registration in this country. I think that Mr. Terry and others who work on this issue should agree that it should be not up to third-party organizations to have to go into communities that are not served otherwise to make sure they are registered to vote. The government ought to assume a good portion of that role and do its duty as it does in most other western countries and take some responsibility for registering people to vote. I think we need to have a whole new paradigm shift on the registration process.

Mr. NADLER. Thank you. My time is expired. I will ask Mr. Shelton and Mr. Magpantay to answer the same question.

Ms. SHELTON. I would say a number of things would be very helpful: requiring guaranteed early voting without excuse—some places offer it, but you have to give a good excuse, and in some

cases, even a note from you doctor to do it; institute same-day registration so that you can vote and register on the same day. It makes good sense. Some people have not decided until the last minute and, quite frankly, if you find that you are not registered when you get to the polling place, it is an opportunity to fix that problem by being able to register right on site.

Third, we have to outlaw caging as well. This insidious practice of disqualifying people is extremely problematic and it very well should not be in place. We have to clarify and strengthen one of the most important provisions in the Help America Vote Act, the provisional ballot provision, but, right now, states interpret that in so many different ways that it is become nothing more than a placebo in many places.

Go to the polls to vote. Your name is not on the roster. You say you know you are registered. They give you a provisional ballot. You should have just gone around the corner and then get back to the election site. They take a look at it and say, "We are throwing it out anyway because even though you are registered, you went to the wrong polling site."

Those issues and so many others, I think, would actually really help fulfill the commitment of our country to make sure that every eligible American will be able to cast that vote and, indeed, have it counted.

Mr. NADLER. Thank you.

Mr. Magpantay?

Mr. MAGPANTAY. I agree with my co-panelists. There are very large things that the Committee and the Congress can do like universal voter registration that would very much work, but there are also a couple of very small changes that will have a tremendous impact on many voters, such as a HAVA update using provisional ballots to correct voter registration errors and to register voters for the next election. Some counties in your state use it, an update, but they do not do it in New York City. We have some——

Mr. NADLER. I am sorry. What don't they do in New York City?

Mr. MAGPANTAY. They do not use affidavit ballots, provisional ballots to correct voter registration errors or to register voters for the next election.

Here is what happens. Voter comes to vote. Their name is not there. They were missing. The form was not submitted. It was keyed in wrong. The voter comes to vote. Their name is not on the list. You get to vote by provisional ballot or, in New York, an affidavit ballot. Voter elections has that information. You are not on the rolls. Your vote does not count. Voter does not know that. She comes back next year. The name is not on the list. She votes provisional again. All the information is there, and President Ford and President Carter said we should use this to correct voter registrations.

Mr. NADLER. So, in other words, the affidavit ballot or the provisional ballot, even if you cannot vote that day, should be a registration for——

Mr. MAGPANTAY. That is correct.

Mr. NADLER. Thank you.

My time is well expired.

I now recognize the distinguished Chairman of the full Committee, Mr. Conyers.

Mr. CONYERS. Thanks, Mr. Shelton. Thanks, Attorney Wang, Mr. Terry, Mr. Magpantay.

How do we begin? We need to carry on the discussion that Chairman Nadler raised in terms of how we comprehensively and effectively approach the issues raised here. I think we need to go into provisional ballots, same-day voting more.

The reason I still think we need to have a hearing on ACORN because they have been made the poster child of illegal voting in America, and we have never had one person representing ACORN before the Committee. Take today's hearing. That was our friend's battle cry. I mean, we are here. We are meeting about an urgent vital national interest and then to bring in the lawyer that represented someone opposing ACORN, but still that is all pretty one-sided, and I think in all fairness we ought to really examine it.

Then the other side of it, is how do we get the Department of Justice back on track, and, of course, a hearing about where—ACORN is the third hearing. Then inside DOJ, that is another story, the civil rights division, the voters section, not only what we do to make it better, but also what went wrong.

Now there is nothing more abhorrent than looking back in the Congress. We do not want to look back on anything, but we have to, not particularly for crimes, but just for inefficiencies, and how we build on where we are now. It took 232 years to get to where we are now. So reviewing it should not hurt anybody's feelings, and that is the way I see it.

What would you add to the direction that I think Chairman Nadler and we are going to move in?

Ms. SHELTON. I think we absolutely need new legislation. That, indeed, in addition to the issues mentioned earlier, we have still to talk about issues like the voter intimidation that clearly occurred over the last election as well, people being misled and being intimidated to believe if they came to the polls to vote and they had outstanding parking tickets, they would be arrested on sight.

We have still to address the issue of what would happen to ex-felony offenders. Indeed, we are a country of second chances, and very well those who have paid their debt to society by spending time in jail, when they are out on the streets, they should able to vote. It is important. It is part of them reclaiming their full citizenship and very well also their responsibilities.

We also need to make sure that we address issues of making sure we have adequate numbers of voting machines in place. Thank God for early voting in so many states in this last election, as we saw what happened with those very long lines where Americans simply wanted to come out, exercise their constitutional right, and participate in this process.

We need legislation that will address those issues and complete the task that was begun by the Help America Vote Act and, certainly, the reauthorization of the Voting Rights Act.

Mr. CONYERS. Mr. Magpantay?

Mr. MAGPANTAY. Mr. Conyers, what we need is greater enforcement of the Federal Voting Rights Act. AALDEF submitted a number of complaints to the Justice Department. Every complaint from

the last election, we have to have translated to local elections officials and to the voting section of the Department of Justice about the 2008 election. We did the same work after the presidential primaries, after the 2007 elections, 2006.

I am still waiting for some actions on some of those patterns. I am still waiting for violations of the Voting Rights Act in New York, New Jersey, and Virginia to be adequately addressed. DOJ did do something in Massachusetts and Michigan. They left. There is nothing there. But there are still problems that we found in those elections.

And I do want to note that this issue is not a partisan issue. We have had problems with Democratic campaign workers and Republican campaign workers. There are instances in which new Americans, new citizens of the United States, want to vote, and they are disenfranchised, and so to the extent that the Committee could in its oversight work, work with the Department of Justice to make sure that they fully enforce the Constitution of the United States and the Voting Rights Act, that would help a tremendous amount.

Mr. CONYERS. Mr. Chairman, may I have enough time to have responses from the two other witnesses?

Mr. NADLER. Without objection.

Mr. TERRY. Thank you, sir.

Well, you know, we have heard a lot of conversation about voter registration modernization, and I think that the goal of increasing participation is certainly noble, but I think what happens sometimes is the conversation tends to drift toward increasing participation at the expense of security, and I think that the objective should be to increase participation and security simultaneously——

Mr. CONYERS. Well, when you say security, what are we talking about?

Mr. TERRY. Well, I mean, ensuring that the votes that are cast are legal or proper, that, you know, fraudulent votes are not being cast, and there is a lot of conversation around the negative impacts of ID laws on disadvantaged citizens, and I think that if that is the case, then that negative impact needs to be addressed.

But I think the direction I would encourage is to go in the direction of not us having a more lax, less secure system in order to resolve those injuries. Let's figure out how to help them get the ID that they need to get to fix the other end of the equation to enable to increase participation, give everybody the rights, but yet maintain a secure system.

Ms. WANG. Well, first of all, I am wondering where the actual voter fraud at the polling place is that would be addressed by a voter ID or the other types of remedies that Mr. Terry and others seek to promote throughout the states. There is no evidence of in-person voter fraud on any kind of large scale in this country. I think that we saw that most particularly during the U.S. attorneys' scandal where we know that U.S. attorneys were under tremendous pressure to seek out these kinds of instances and did not.

And I just will reemphasize my points about the importance of doing something about caging and challenges. This has been going on since the 1950's. I think it is abhorrent, and I think that we need to enact legislation that outlaws it and make sure that that is enforced.

And with respect to more about the ID laws, I will just take this opportunity to cite a Harvard survey of thousands of voters in the 2008 Super Tuesday primary that found that 53 percent of Whites were asked for photo ID compared with 58 percent of Hispanics and 73 percent of African-Americans. Voter ID is, as has been said so many times, a solution in search of a problem and leads to all sorts of discriminatory and disenfranchising impacts.

Mr. CONYERS. But what can we do about it? I mean, those are state laws.

Ms. WANG. I think that the discriminatory implementation of those laws should be one of the things that the Department of Justice should be looking into it.

Mr. MAGPANTAY. Agreed, agreed. They have the enforcement powers. They are charged with enforcing HAVA. This body passed HAVA. It should not be applied in an inappropriate or racially discriminatory way.

Ms. WANG. And the——

Mr. MAGPANTAY. We think something can be done.

Ms. WANG. And I am not aware of any cases that they have brought even though we know over the last several years there has been what could possibly at least be a systematically discriminatory implementation of the voter ID laws.

Mr. NADLER. Thank you.

That concludes this——

Oh, I am sorry. I did not see Ms. Jackson Lee. I now recognize for 5 minutes the distinguished gentlewoman from Texas.

Ms. JACKSON LEE. Thank you, Mr. Chairman very much, and I thank you for the indulgence of the witnesses and to each and every one of you always a champion of what I think is enormously precious rights and the disappointing aspect of that is how little our local officials, state officials appreciate the preciousness of this right.

Let me quickly just say that we had an exciting time in the election in 2008, and I think everyone had a chance to express their views, but why in our communities—Hispanic, Asian, elderly, African-American, poor neighborhoods—again, in Ohio, wrong date for coming out to vote sent around, the wrong locations for sending around.

In the early vote process in the 18th congressional district, the district of Barbara Jordan and Mickey Leland—and now I hold it—going around where machines failed, lights went out, voting officers did not understand the law. They sent people away frustrated, and, if you will, inexperienced voters were intimidated by not having what they said was the information that they needed because, obviously, in early vote, you know you are not at your precinct. You are in some general place where you can go. But these are the horror stories that happened on a day that should have been jubilant, whether you were voting for the Republican candidate for President, for the Democratic candidate, because it was so intense, so exciting.

So I lay that groundwork to let everyone know that our work is not yet finished, and I am going to get these three points and ask you about whether we should nationalize this issue.

Frankly, we should nationalize the crisis of voter ID. It is beginning to be a plague across America. Each state, because it is state law, is moving slowly but surely to make this a national, if you will, epidemic of undermining votes, and so I want your thoughts. You did say the Justice Department, but we need to raise this, maybe amending some of our election laws in terms of its discriminatory aspects.

In the State of Texas, the state legislature has a rule that redistricting and voting rights bill, Hilary, need a two-third vote. They removed that provision to vote on redistricting and the voter ID. That sounds to me like we have a crux of an issue. So I throw out the idea of nationalizing the issue on voter ID legislation as a general premise of looking or having legislation that says that it must be vetted—and I use the term "vetted"—but precleared on the possibility of its discriminatory impact and maybe on voter rights. Maybe that is the first step.

The second is if you would comment on the thoughts of voter registration modernization dealing with this whole idea of how people get purged and the idea of the massive purging that goes on particularly in poor neighborhoods, and when I say poor neighborhoods, poor people of color, of new citizens, that is one of the tactics that is used by local governments to get people off the rolls or not voting. There is something that needs to be done about purging.

My last quick point is—I asked this question before—provisional balloting. I know the remedy is supposed to be good, but when we have glaring examples of the election officer throwing the ballots out—I will not say the quotes again. I read them into the record—where they were using white-out in Harris County before the ballots commission was able to review this, so you are whiting out something on someone else's ballot—as far as I am concerned, either the person needs to be—what are you tampering with that person's ballot after they have exercised their right to vote.

So I leave you with those three points, if you would answer the voter ID, nationalize it, looking at some way to amend national legislation on that, the voter modification—excuse me—registration modernization, and this whole idea of purging.

Ms. SHELTON. I would start out by saying we strongly agree with you very well. If we look at how photo IDs have been utilized in such a discriminatory manner and if we look at even who has photo IDs, there is an assumption in our society that most Americans have them, and, quite frankly, they do not.

Ms. JACKSON LEE. They do not.

Ms. SHELTON. A good example is if you look at what happened after Hurricane Katrina when they told people to evacuate, the assumption was people had cars, which meant they had driver's license. The assumption is most people have photo IDs with driver's license and so forth. But if you simply look at in New Orleans the number of Americans that were left in the Superdome and at the Convention Center, those are people that did not own cars, did not have driver's license, did not have photo IDs. That is a good example just for that place, but it happens everywhere. It is a poll tax because you have to pay for that photo ID, whether it is your driver's license or just a state-issued identification card.

Secondly, so, certainly, the Federal Government needs to become actively involved because there is such a hodgepodge of how those policies are being implemented throughout the country. We need some standardization, some nationalization, quite frankly.

On the second issue of voters paying—I think the question was paying—I may have——

Ms. JACKSON LEE. Voter registration modernization.

Ms. SHELTON. Oh, yes, indeed. And, indeed, we need to address that issue right here in Washington as well. With, again, the hodgepodge going on across the country, it is going to be important that we have the kind of hearings to focus in on these issues to make sure we take out the concepts and issues of partisan politics and address real issues of our democracy, not a Democratic democracy, not a Republican democracy, but American democracy.

And, finally, throwing out provisional ballots is something that we have to talk about in a very serious away. When we went through the process here under the leadership of Chairman Conyers, and we passed the Help America Vote Act, and Chairman Nadler as well, we knew very well that there were some issues around how people were being excluded at the polls. They would go. They knew they registered. They would not be able to vote.

The intent of the Congress is not being carried out in many states when it comes to provisional ballots. The intent of the Congress was if we know you are registered, go ahead and fill out the form. Send it back. If we find that you are, count everything that would apply.

So, if you a happened to be at the wrong polling site, you are still voting for everything, a ballot. You are voting for everything from the mayor to the governor to your representative in Congress and your senator and, certainly, the President and Vice President of the United States. If you are casting those votes with provisional ballots, they should be counted regardless of where you cast that vote in that state.

Mr. MAGPANTAY. Ms. Jackson Lee, it is a pleasure to appear before you again, and we are really proud to work in Houston this past election and found problems in the election. Obviously, we want to work together to try to reform that process.

Again, with just the voter ID issue, in Texas, all voters must show identification, but we found racially discriminatory application. South Asian voters were racially profiled and had to provide additional forms of identification. That should not be happening to any racial ethnic minority group.

And in Texas, you are allowed to sign an affidavit. We need to fix these laws, and AALDEF is very happy and looking forward to working with the Committee to make this happen.

Mr. NADLER. Thank you.

The time of the gentlelady has expired.

I want to thank the witnesses for their patience especially.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as they can so that their answers may be made part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

With that and with the thanks of the Chair, this hearing is adjourned.

[Whereupon, at 1:15 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

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Answers to Questions from the Honorable Sheila Jackson Lee
Hearing on Lessons Learned from the 2008 Election
March 19, 2009

Below are answers to your questions regarding the testimony of Matthew Segal, executive director of SAVE.

1. What steps can we as Members undertake to ensure that students know their voting rights?

There are a number of steps any member can take to improve a young person's knowledge of and confidence in their voting rights.

First and foremost, SAVE advocates for a National Voter Awareness Week in the month of September, during which schools, grassroots organizations, and cultural and community institutions would promote voter awareness and registration programs. Because many states have 30-day voter registration deadlines, the public must be informed of their local and state election laws in September in order to participate fully in the federal elections in November. This is particularly important for students and young people, as we are more likely to be inexperienced or first time voters. Potential activities for the week include helping to distribute sample ballots, voter registration forms, and other educational materials to all eligible voters. Specific programming to engage student voters would include interaction with local government officials, exploring relevant legislation, holding mock elections, and expanding poll worker programs. In addition, activities to connect younger students such as elementary or middle school kids could feature lessons on the history of voting rights or "Take Your Kids 2 Vote" programs. We believe a National Voter Awareness Week will provide a necessary platform and the impetus for local institutions to educate their constituencies on both their rights and responsibilities as voters.

Beyond supporting a voter awareness week, individual members can take important steps to engage the student community in their district. SAVE urges all elected officials, local, state and federal, to meet and work with student constituencies on a consistent basis. The more that we recognize elected officials as accessible and responsive to our needs, the more likely we are to participate in the process. SAVE encourages elected officials and candidates to take the opportunity while meeting with students to inform us of our voting rights, particularly in leading up to an election. Information emanating from elected officials carries significant credibility and can not only educate but also assure young voters of our rights.

Finally, SAVE believes it is necessary for members of Congress to work with local election officials to establish a clear understanding of the rights and requirements of all voters. Given that the vast majority of election law is implemented at the local level, it is difficult for a single national directive to adequately address the concerns of young voters in every county

across the country. Therefore, members of Congress must coordinate and consult with their local election officials months in advance of elections to eliminate confusion and guarantee fair access for all students. Out-of-state students choosing to participate at their school residence are especially vulnerable to uncertainty in election laws; therefore, the need to establish clear, acceptable, and legal procedures under which these students can participate is crucial. Once these procedures are established, we encourage elected officials and candidates to include this information in their outreach to young constituencies. While an institutional approach to these concerns, potentially in the form of National Voter Awareness Week, would be ideal, we must rely on responsible elected officials and candidates to disseminate clear and accurate information on the voting rights of all students.

2. You mentioned several bills in your testimony, which bill is the most comprehensive in terms of student voting rights?

Our top priority in advancing student voting rights is the Student Voter Opportunity to Encourage Registration (VOTER) Act (H.R. 1729). It is the only piece of legislation specifically addressing the problems of student voters, and while it is not comprehensive, it is a logical solution to reduce the primary barrier to young voter participation, voter registration.

The Student VOTER Act amends the National Voter Registration Act (NVRA) to designate colleges and universities as "voter registration agencies" in the model of a Department of Motor Vehicles (DMV). This bi-partisan bill, conceived of by our student members, and introduced by Congresswoman Jan Schakowsky (D-IL), Congressman Steven LaTourette (R-OH), and Senator Dick Durbin (D-IL) would provide millions of students the opportunity to register to vote in conjunction with matriculation, class registration or enrollment.

We are very confident in the potential benefits of this legislation based, in part, on statistics in a 2004 study by the Center for Information and Research on Civic Learning and Education (CIRCLE). According to the study, 22% of 18-29 year olds did not vote because they missed the registration deadline while an additional 10% of this age group did not know where or how to register to vote. In other words, a combined 32% of 18-29 year olds did not participate in the election because of uncertainties within the registration process. According to the same CIRCLE study, 30% of young voters registered at the DMV, by far the most common outlet for voter registration. Young voters rely upon the DMV at considerably higher rates than do older voters, only 19% of whom use a DMV to register. These statistics provide significant evidence that extending the successful NVRA model to higher education institutions will aid our demographic.

As far as comprehensive election legislation is concerned, student voters benefit from the same measures as older voters. In the past, SAVE has been supportive of the Count Every Vote Act, as well as the Voting Opportunity and Technology Enhancement Rights Act (H.R. 105). There are several provisions that are crucial to any comprehensive election reform legislation, each of which are particularly beneficial to young voters.

- Election Day Registration (EDR)—EDR is an important safeguard to provide ballot access for individuals who arrive at a polling location on Election Day only to learn

their name is not on the voter rolls. In addition, studies indicate that EDR increases youth voter participation, even when compared to the improvements in overall turnout.

- Standardize Allocation of Resources—Recent elections have witnessed extraordinarily long lines for student voters. In order to prevent future recurrences, we must implement standards for the allocation of voting machines, ballots, personnel, and general resources based on various factors such as eligible population, registered voters, and past voter turnout.
- Voter Identification—Requirements for voter identification should be minimal. A signed affidavit attesting to a voter's identity, proper residence, and eligibility is sufficient. At the very least, university and college identification must be included as an acceptable form where identification requirements are implemented.
- Absentee Ballots and Early Voting—Young people have a variety of responsibilities, just as older people, that may prevent us from voting on Election Day. Therefore, access to absentee ballots or early voting locations, without an excuse, is an important step to aid all voters.
- Misinformation and Deception—Legislation must include a prohibition against and stricter penalties for knowingly and intentionally misleading or deceiving a voter of election or voter registration related information. A ban on voter caging must also be included.
- Removal or Update to Voter Rolls—There must be a clear procedure to any alteration to the voter rolls, which has to include attempts to inform the affected voter.
- Provisional Ballots—A standard to guarantee provisional ballots are counted, including a presumption that a voter is eligible absent overwhelming evidence to the contrary.

We appreciate your interest in the voting rights of students. If you have any further questions or wish to contact SAVE, we can be reached at the information below.

Sincerely,

Matthew Segal
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Gregory P. Landis
Chesapeake Region
Michael Chanin
James J. Joseph

July 2, 2009

Congressman Jerold Nadler
Chairman
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties
2138 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Nadler:

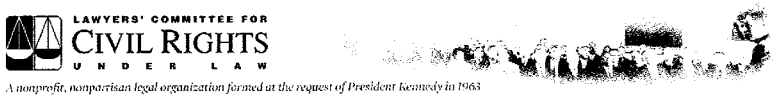
Thank you again for allowing me to testify in front of your subcommittee in March on the lessons learned from the 2008 election. It is vital that Congress continue to use its oversight and legislative powers to ensure that our democracy is accessible for all voters.

Enclosed are my responses to the follow up questions from the hearing posed by Congresswoman Sheila Jackson Lee.

Thank you again for allowing me to testify and I look forward to continuing to work with your subcommittee on legislation that expands access to the franchise for all eligible Americans.

Sincerely,

Barbara R. Arnwine
Executive Director
Lawyers' Committee for Civil Rights Under Law



Response to Questions from the Honorable Shelia Jackson Lee to Ms. Barbara Arnwine
Following the March 19, 2008 Hearing on Lessons Learned from the 2008 Election

Question 1: How successful was the 1-866-OUR-VOTE hotline, because when I had my staff call it in November after the elections because of certification of provisional ballot issues in Harris County, I found the hotline to be unmanned and non-responsive? Did you find that the hotline was responsive to voters who had questions or experienced voting irregularities?

Response: During last year's historic election season Election Protection and the 1-866-OUR-VOTE hotline were very successful at answering voters' questions and ensuring that traditionally disenfranchised voters were able to cast ballots for their candidate of choice. From its official launch in September through Election Day, the hotline received more than 200,000 calls from all 50 states – including nearly 100,000 calls on Election Day alone. To ensure voters were able to speak to a live volunteer we staffed call centers on both coasts during the pre-election phase and had 32 national and local call centers on Election Day. We also answered calls live on the day after the election. In addition to the voters we helped through the hotline, we were able to assist hundreds of thousands more through our comprehensive website, www.866OurVote.org that served as a clearinghouse for state-specific election information and provided voters with an opportunity to receive live support through web chat. Additionally, we worked with non-partisan civic engagement organizations and election officials across the country to support their work, and had a comprehensive mobile legal deployment servicing targeted polling places in 46 jurisdictions. Finally, we were involved in several successful pre-election lawsuits, some of which (referenced below) were a direct result of the work our Election Protection leaders performed on the ground.

We are sorry that your staff was not able to get through to the hotline after Election Day. It takes a large amount of staff time and resources to answer the hotline live. As a result, we do not answer the hotline live following Election Day, but instead allow callers to leave voicemails. We had a system in place to return voicemails promptly, and were able to respond to the majority of post-election inquiries. While we strongly believe that our hotline is the most effective nationwide voter assistance hotline, it is not perfect. Because of the large volume of callers we deal with, inevitably we are not able to service everyone. Clearly this was the case with the post-election inquiries made by your staff. However, the vast majority of voters who sought our assistance were able to speak with a live volunteer or have their voicemail returned. This is evidenced by the nearly 90,000 reports of voting problems and inquiries that our volunteers were able to collect and make publicly available at www.OurVoteLive.org.

Question 2: Congress has demonstrated its commitment to the extension of the franchise to many groups, including racial and language minorities. Increasingly, however, I am witnessing states passing legislation like the Texas Voter ID bill, that have the effect of turning back the hands of time...I am

concerned that the widespread proliferation of these types of laws in the United States, will amount to additional conditions on the fundamental right to vote. I see these conditions as being akin to a poll tax. What are your thoughts on these types of State laws that add conditions to the right to vote?

Response: We share your concern and have and will continue to fight these bills across the country. Mandatory, government-issued photo ID legislation does nothing but prevent eligible voters – especially elderly, young, minority and low-income voters – from participating in our democratic system. Studies consistently estimate that approximately 10 percent of voting-age citizens in the country—or more than 20 million individuals—lack a government-issued photo ID.[1]

Proponents of government-issued photo identification requirements have failed to produce any evidence of a massive conspiracy to impersonate eligible voters at the polling place – the only type of election misconduct that voter ID actually guards against. There are no shadow bands of ineligible voters roving from polling place to polling place to affect election results. And no wonder, since penalties are quite high. Plus, the prospects of affecting election outcomes are quite low. Such a scheme would require coordinating an army of individual impersonators in order to generate enough votes to sway an election.

The Lawyers' Committee agrees with you that voter ID laws are a modern day poll tax. In fact, the U.S. District Court for the Northern District of Georgia ruled that the state's 2005 voter ID law was just that, when the state provided no option for voters to receive a free ID. Since that ruling, Georgia and other states have found a way around that ruling by giving voters the option of obtaining free ID's through motor vehicle departments. Despite the U.S. Supreme Court's ruling in the Crawford case, however, these ID cards are by no means free. The process of assembling the requisite documentation to obtain an ID card and undertaking the other necessary steps involves real burdens and costs, and in certain situations may be nearly impossible to accomplish in enough time. This creates a sometimes insurmountable burden on the economically disadvantaged and those living on the margins of society – the exact individuals that we should be encouraging to become fully engaged in our democratic process.

We have, and will continue to challenge voter ID laws across the country. We helped to defeat Missouri's restrictive photo ID law in state court in 2006, are currently challenging Arizona's proof of citizenship and ID law, and fought Georgia's photo ID laws every step of the way.

In addition to photo ID laws, many states have started to take up proof of citizenships laws and other rules and procedures that they say prevents non-citizens from voting. Just like the photo ID debate, the "roving bands of non-citizens trying to destroy our democracy" is a fantasy created to scare the population into accepting rules and regulations that do nothing but keep eligible voters from the polls. During last year's elections our Election Protection leaders in Georgia uncovered a new voter

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[1] *See* Comm'n on Fed. Election Reform, Building Confidence in U.S. Elections 73 n.22 (2005); Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006) available at http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf ; Carter-Ford Commission on Election Reform, *To Assure Pride and Confidence in the Electoral Process: Task Force Reports to Accompany the Report of the National Commission on Election Reform, No. VI: Verification of Identity* (Aug. 2001), available at http://www.tcf,org/Publications/ElectionReform/99_full_report.pdf.

registration verification program when meeting with county election officials. The program was checking voter registration applications against citizenship data contained in the Department of Drivers Services database. If it indicated they were a non-citizen, the applicants would not be registered to vote unless they provided proof of citizenship to the registrar. The problem with this system is that DDS does not automatically update citizenship status when individuals become naturalized citizens. This faulty match led to the erroneous rejection of more than half of the 7,007 individuals caught up by the system - including one in seven who were actually born in this country. Thousands of legitimate U.S. citizens - many Latino and Asian-American - received letters that government matches found they were not a citizen. This is an intimidating process and may have discouraged many from taking part in last year's historic elections.

After discovering this program, and an equally discriminatory "no match, no vote" program, the Lawyers' Committee and its partners filed suit in federal court because Georgia had not precleared the rule, as required by Section 5 of the Voting Rights Act. We were able to successfully receive an injunction against the program from the U.S. District Court for the Northern District of Georgia in October, ensuring that thousands of eligible Georgians were not disenfranchised through no fault of their own. Just this past May, the Department of Justice used its authority under Section 5 to issue an objection to the state's voter verification program because it had found significant evidence that the programs discriminated against minority voters.

Instead of pursuing legislation that only prevents eligible voters from casting a ballot, Congress and state legislatures should be taking proactive steps to increase civic participation in our nation.

Question 3: During the 2008 election, I asked DOJ to review the provisional ballots and asked that the DOJ send monitors to Texas to witness the certification, which DOJ agreed is permitted under the law, but DOJ refused to comply with my requests. Apart from filing suit in federal court, what can we as members of Congress do to ensure that DOJ and the Administration are complying with the law?

Response: Thank you for your commitment to assuring that the Department of Justice take a proactive effort to ensure Texas elections are run properly. It is unfortunate that your requests went unheeded and it is our sincere hope that the new leaders at DOJ will refocus the Civil Rights Department on its historic mission – combating racial injustice in any form across this nation. We urge you to use your oversight powers as a member of the U.S. Congress to hold hearings on DOJ's performance during the 2008 elections and continue to use your position to speak out on these issues. Your efforts in exposing any future lack of enforcement help highlights the problem and will create an impetus for change.

Question 4: Should we introduce a law with more criminal penalties for interference with voting rights?

Response: The Lawyers' Committee wholeheartedly encourages the House of Representatives to pass legislation that will prevent individuals and groups from disenfranchising voters through deception,

intimidation, and suppression. As we have seen over the past few decades, the current federal statutes are inadequate and outdated. In order to prevent nefarious tactics from keeping eligible voters from the polls we urge Congress to pass the Deceptive Practices and Voter Intimidation Prevention Act (HR 97), and the Caging Prohibition Act (HR 103). The Lawyers' Committee is a strong proponent of both pieces of legislation and ready to use our resources and experiences running Election Protection to help support your efforts to pass these critical pieces of legislation.

Question 5: Were there incidents of "robo calls" in this election as there were in 2004? Was the incidence higher or lower than in 2004?

Response: As in 2004, we received numerous reports of callers receiving deceptive "robo calls" throughout the 2008 election season. While it is difficult for us to ascertain whether or not there was an increased or decreased incidence of deceptive phone calls in 2008, it was clear that individuals and groups used technology in new ways to create mass mischief. False e-mails, text and Facebook messages "directed" college students to vote on the Wednesday after polls closed. Official websites and email lists were breached in Missouri and Virginia, spreading misinformation. Election Protection coalition members worked diligently to ensure that millions of voters knew their rights. Election Protection partners Common Cause and the Lawyers' Committee documented these new problems in a white paper, "Deceptive Practices: 2.0." We encourage Congress to consider these new and evolving tactics when taking up deceptive practices prevention legislation.

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July 2, 2009

The Honorable Jerrold Nadler
Chairman
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

c/o Matthew Morgan
Committee on the Judiciary
B-353 Rayburn House Office Building
Washington, DC 20515

Delivered via Fax

Dear Representative Nadler:

Thank you for your June 17, 2009 letter forwarding a request from Representative Sheila Jackson Lee for additional information regarding the voter registration efforts and practices of the Association of Community Organizations for Reform Now (ACORN).

I am glad to see that you have continued to take an interest in this important issue. ACORN and its related entities are being investigated in a number of jurisdictions for voter registration fraud. After hearing my testimony that reiterated the testimony of former ACORN employee Anita MonCrief, regarding the actions of ACORN, the U.S. House Committee on the Judiciary Chairman John Conyers Jr. requested that hearings be held to further investigate ACORN. The continuing investigations of widespread voter registration fraud linked to ACORN and its affiliates demonstrate the need for a thorough and complete investigation of ACORN and its practices. Though Chairman Conyers has indicated that "the powers that be decided against" further hearings, I trust that you will hold hearings regarding this serious matter.

Below you will find the responses to the two specific questions contained in your letter.

1. **Do you think ACORN staff was simply untrained and that there was no systematic attempt by ACORN to engage in voter fraud?**

ANSWER: Based on the evidence I have seen, my opinion is that the ACORN staff were not adequately trained to conduct proper voter registration drives. Further, I question whether the system of compensation in place for the staff obtaining voter registration cards both for the worker and for ACORN encouraged voter registration fraud. It is also my opinion based on the evidence that I have seen that it was not a simple matter of poor training. Lastly, it is my opinion based on the evidence I have seen from the King County Settlement Agreement, the testimony in the Pennsylvania case, and the news reports from other criminal investigations that ACORN as an organization has either willfully failed to properly train its workers or grossly negligently failed to train its workers. Further information is needed in order to

determine which is closer to the actual scenario. In addition, since ACORN operated in so many states, each state or local operation may differ in its training efforts.

Allegations of voter registration fraud have been made against ACORN and its affiliates, including Project Vote, in the 2004, 2006 and 2008 election cycles. Many question whether ACORN has failed to properly train and supervise its staff. Apparently, ACORN has failed to correct this perception, based on the fact that criminal investigations for voter registration fraud are taking place nationwide. ACORN has appeared to have ignored this systemic problem and its "defenders protest that they are the victim of a few bad apples." ("Mickey Mouse for Obama?" The Economist, October 18, 2008)

Cases of voter registration fraud linked to ACORN have occurred in states including Florida, Michigan, Missouri, Nevada, Ohio, Pennsylvania and Washington. This appears to be an organization-wide problem and not isolated occurrences. The cases are varied in location and have persisted over at least three national election cycles. Part of the problem appears to be a lack of training and supervision. ACORN should correct this problem by imposing more rigorous and thorough training and supervision programs nationwide. However, ACORN has been forced to create such a program in Washington State in order to avoid litigation.

In King County, Washington, seven ACORN workers were charged in the "worst case of voter-registration fraud in state history." ("7 Charged With Voter Registration Fraud", AP, July 26, 2007) The prosecutor noted, "this was an act of vandalism upon the voter rolls of King County." (Id.) The workers produced fraudulent cards in order to keep their office from being shut down. (Id.) "ACORN's oversight of the workers was virtually nonexistent – to the extent that civil charges could have been warranted," noted the King County prosecutor. (Id.) Rather than face litigation ACORN entered into a settlement and compliance agreement.

The agreement that ACORN entered into in King County clearly sets forth a system for conducting voter registration efforts in compliance with state law. The system established included common sense practices such as placing a salaried "responsible organizer" in charge of any local voter registration operations, tasking an employee to serve as a "quality control officer," the production of a training video, and overall better training for workers. The agreement also required ACORN to maintain a list of its employees and their initials. (Each employee is required to initial registration cards that he or she submits, so that one will be accountable for their submissions.) These protections were necessary to ensure the integrity of the electoral system. "Acting Seattle U.S. Attorney Jeff Sullivan said he believes the agreement could become a model for other states in dealing with organizations like ACORN." ("7 Charged With Voter Registration Fraud", AP, July 26, 2007)

The facts that led to the King County agreement are familiar and appear to be present in ACORN voter registration operations across the country. News reports indicate that untrained workers are given a financial incentive to complete registration cards, and then are left to their own devices allegedly without adequate supervision. Upon information and belief, ACORN has not implemented the terms of this agreement nationwide. The protections of the settlement and compliance agreement provide a minimum safeguard necessary to prevent voter registration fraud. As I have previously testified, on October 29, 2008, I represented a candidate, Pennsylvania voters and the Republican State Committee of the Commonwealth of Pennsylvania in a preliminary injunction before the Commonwealth Court in Harrisburg, Pennsylvania against ACORN. Among the injunctive requests sought against ACORN was the application and implementation of the protections found in the King County agreement in Pennsylvania.

ACORN's failure to implement rigorous training and oversight of its employees nationwide is part of a larger program that results in the submission of fraudulent voter registration cards.

As will be further explained in the response to Question 2, it appears that ACORN has imposed registration quotas upon workers and has paid workers on a per registration basis. A 2004 management directive produced by ACORN affiliate Project Vote stated that "[a]nyone who performs at less than three voter registrations per hour SHOULD NOT BE ON THE STAFF." ("Reform Association's Manual Suggests Use of Quota System", The Pittsburgh Tribune Review, June 14, 2009) When contacted for comment by the Pittsburgh Tribune Review a Project Vote spokesperson "acknowledged that canvassers are expected to produce 20 voter registrations per day." (Id.)

There have also been specific allegations of ACORN employees being paid based on the total number of registrations submitted or on a per registration basis. These allegations have been made in Colorado, Minnesota, Nevada, and New Mexico. You can find a complete discussion of these allegations in the response to Question 2.

Whether motivated to collect additional signatures in exchange for a payment per signature, or by the knowledge that if one does not meet their "performance standard" one may lose their job, ACORN workers are financially incentivized to create additional voter registration cards, whether valid or fraudulent.

ACORN has operated an aggressive voter registration program that ACORN claims registered 1,315,037 voters throughout its 2007 and 2008 campaign. During this campaign, ACORN claims to have registered 153,898 voters in Pennsylvania, 247,335 in Ohio, and an additional 23,090 in Indiana.

The scale of these voter registration efforts often overwhelms and overtaxes the limited resources of local registrars' offices. These offices have limited resources available to process and investigate voter registrations. CNN has reported that in Indiana ACORN "tried to register as many new voters in Lake County as they possibly could. The deadline was October 6. They came in with 5,000 new applications. And when the registration office began going through them, they found a pattern -- every single one of them was fraudulent." (Lou Dobbs Tonight, October 9, 2008). CNN further reported that:

> [T]hey're all in the same hand. You can tell they're all written by the same person. They showed us the death certificates of some of these people who are registered there.
>
> The workers have been diligently trying to go through all these new ones. But finally, they had to just put them aside. 2,100 of these applications are fraudulent. The other 2900 have been placed to the side. They haven't even looked at them yet.
>
> They want to take care of the actual good applications of real new voters who really want to vote in this election. But they're scared. They're scared they don't know what's out there and who or what is going to show up at the polls when voting actually begins in the ballot boxes.

(Lou Dobbs Tonight, October 9, 2008)

The massive number of voter registrations thrust upon local registrars by ACORN makes it increasingly likely that due to limited office resources valid registration forms may not be processed. Furthermore, fraudulent names may be added to the voter rolls because registrars lack the resources to properly investigate the volume of registrations, both valid and fraudulent, that ACORN has submitted.

In conclusion, the lack of training of ACORN employees is part of a more systematic effort that may result in voter fraud. The lack of worker training, the use of financial incentives to motivate workers, the massive scope of its unchecked voter registration efforts, and ACORN's refusal to correct system-wide problems, continue to tax the already over burdened election offices throughout the United States.

2. Do the workers with ACORN get paid based upon how many registrations they complete?

ANSWER: There have been widespread allegations from former ACORN employees that ACORN does pay its employees on a per registration basis and has imposed a quota system upon its employees. These allegations have been raised in states including Florida, Michigan, Missouri, Nevada, Ohio, Pennsylvania and Washington. These allegations have been the basis of charges brought against ACORN representatives in the state of Nevada.

ACORN'S PAYMENT FOR PERFORMANCE

News reports suggest that in many states ACORN does pay individuals on a per registration basis, or ties payment to the total number of voter registration cards submitted. Such pay for performance programs have been reported in the 2002 and 2004 election cycles and persist today.

In 2002, ACORN acknowledged turning in "numerous flawed voter registration cards" in New Mexico. ("Flawed Voter Sign-Ups Piling Up", Albuquerque Tribune, August 7, 2004) While explaining the New Mexico ACORN operation, "Seana Silver, a crew leader with ACORN, said ... the typical ACORN voter registration worker earns $8 per hour. Workers who register 24 voters in a day get a $50 bonus for that day's work." (Id.)

In Colorado in 2004, then Attorney General Ken Salazar investigated suspicious voter registrations tied to ACORN. While ACORN did work with Attorney General Salazar once the investigation had commenced, the payments for making specific performance targets appear to have been a root cause of the problem. The head organizer for Colorado ACORN was interviewed by the Denver Post regarding the suspicious registrations. "He said ACORN employs about 50 people in Colorado to register voters. It pays them $8 an hour with a bonus of $1 more per hour for those who sign up more than five new voters." (Susan Greene, "Group Fears Ties to Bad Voter Forms," The Denver Post, 8/6/04)

One Colorado woman "claims she not only registered to vote 25 times, but also signed up three of her friends 40 times, all to help her boyfriend who was making $2 for every application, working for ACORN." (CNN Live Transcript, October 14, 2004).

In 2004 in Minnesota, "ACORN paid $1 for each new voter registration they secured." ("Stash of Voter Cards Probed", Saint Paul Pioneer Press, October 8, 2004) The head organizer of Minnesota ACORN admitted that one employee was let go "because representatives of the county attorney warned ACORN that they suspected he was registering some voters twice to double his fee." (Id.)

These payments tied to specific performance have persisted throughout the 2008 election cycle. Nevada's Attorney General Catherine Cortez Masto, a Democrat, has filed charges against ACORN and two of its employees. The complaint charges that payments were made based on the number of registrations submitted. It alleges that throughout the 2008 election cycle ACORN management established a program known as "Blackjack." The Blackjack program was an incentive "which rewarded employees with $5 extra per shift if they brought in 21 or more completed registrations." ("ACORN Lawyers: Case Just Political" Las Vegas Review-Journal, June 4, 2009) ACORN CEO Bertha Lewis claims, "the group stopped the practice after learning about it." (Id.) While it is appropriate that ACORN has moved to curtail this specific incentive program, the fact that such programs exist is troubling.

ACORN'S USE OF PERFORMANCE STANDARDS AND QUOTAS

A 2004 Project Vote management directive stated that "[a]nyone who performs at less than three voter registrations per hour SHOULD NOT BE ON THE STAFF." ("Reform Association's Manual Suggests Use of Quota System", The Pittsburgh Tribune Review, June 14, 2009) Michael McDunnah, the spokesman for Project Vote has stated that the directive is no longer in effect, but "acknowledged that canvassers are expected to produce 20 voter registrations per day." (Id.) McDunnah explains that "based on years of experience conducting community based voter registration drives, Project Vote estimates 20 completed applications per shift as a reasonable performance standard." (Id.)

ACORN officials have claimed that "performance standards" are not quotas: "Performance standards do not represent a 'quota,' or payment per registration, but simply a baseline for job performance. And, as the complaint itself makes clear, failing to meet this standard does not result in automatic termination." (Steve Kest, "News from Nevada", May 4, 2009 email to "Friends of ACORN") Despite the protestations of ACORN management, former employees felt pressured to meet these quotas out of fear for their jobs.

Clifton Mitchell, a former ACORN employee, was convicted of voter registration fraud in Washington State where he submitted nearly 2,000 fraudulent voter registrations. Mr. Mitchell was interviewed by CNN where he confessed that he falsified applications out of fear of losing his job. His interview also explains how he and his cohorts went about creating the fraudulent applications:

> Mitchell said he scammed the system because, "I needed money; I had to support my family and I was new to the area. It was the only job I had."

> Mitchell said ACORN threatened to close the office if he and his team didn't meet their quota to register 13 to 20 voters a day. So, without consulting their supervisors, he said, they came up with a plan.
>
> "We came up with the idea: Let's make fraudulent cards. I tell my crew, 'I don't care how you get 'em, just get 'em,'" Mitchell recalled.
>
> They took addresses from homeless shelters, used fake birthdays and Social Security numbers and took names from baby books to create voters out of thin air.
>
> "Every day I'd go to the library and get a newspaper," Mitchell said. "I had one guy who'd go to the phone book. Everyone had different methods."
>
> ("Ex-ACORN worker: 'I paid the price' for voter registration fraud", http://www.cnn.com/2008/POLITICS/10/22/voter.fraud/, October 22, 2008)

In Ohio, ACORN employees also reported that their jobs were in jeopardy if they did not meet their daily quotas.

> "Every day, there was pressure on us. Every single day," said Teshika Elder, a Cleveland single mom of three who worked for ACORN this summer.
>
> "We had meetings every morning where they'd go over your quota; they'd yell at you if you were low," said Elder, 21. "They'd sit us down and say if you didn't do better, they'd suspend you. They'd say, Try harder next time, [and] if you didn't get it, you'd be fired."
>
> Desperate canvassers sometimes resorted to trading cigarettes, cash and food in exchange for registrations, according to Elder and two other former ACORN workers, Jaymes Sanford, 18 and Selvin Cunningham 23.
>
> ("ACORN Instilled Fear: Workers", New York Post, October 20, 2008)

This story is all too familiar. In Missouri, ACORN representatives have acknowledged the use of a quota system and implied that it may have motivated workers to create fraudulent registrations.

> Ken McKoy, ACORN's executive director, blamed most of his group's bogus cards on four temporary employees who have been fired after admitting that they filled out the cards themselves with fake names, addresses and Social Security numbers. The four were among 39 people hired for the drive. McKoy said the workers were paid $7 an hour and had to meet a daily quota of filled-out cards. 'We warned people that it was a crime to turn in bad cards,' McKoy said.
>
> ("Voter Registration Fraud Dogs City", St. Louis Post-Dispatch, September 19, 2003)

Stories like these are present across the country. While it is ACORN's official position that it does not utilize a quota system, the stories of its past employees tell a different tale. By

requiring hourly workers to satisfy a performance standard based on the number of voter registration cards completed, ACORN and its affiliates, including Project Vote, have imposed a quota system that indirectly places a dollar value on voter registration cards.

Whether ACORN and Project Vote have placed a dollar value on each registration card, or imposed a quota per shift worked, the result is the same. An ACORN employee is financially motivated and incentivized to complete voter registration cards whether valid or fraudulent. The worker who is paid by the card will do so for an increased reward, while the worker who is paid hourly, but subject to a quota, will do so to meet his quota and retain his job. Both payment methods are reportedly widespread, and foster an environment where workers may feel compelled to cheat.

Numerous national organizations engage in voter registration drives. Many of these organizations run effective and accurate voter registration drives. For example, both the Democratic Party and the League of Women Voters engage in voter registration drives that result in legal and valid registrations. They do not produce the same abnormally high number of fraudulent voter registration submissions that ACORN does. There are problems endemic to ACORN and its voter registration drives that warrant additional investigation and scrutiny.

I encourage you to initiate a thorough and complete investigation of ACORN regarding the voter registration activities detailed within this letter and the financial improprieties to which I have previously testified. This is a serious issue that requires a meaningful, transparent and complete investigation. I look forward to working with you to provide additional information at subsequent hearings on this matter.

Sincerely,

Heather S. Heidelbaugh
First Vice President

Consumers Rights League
Response to Follow Up Questions from the Honorable Sheila Jackson Lee
July 2, 2009

1. ACORN has had a multi-election year cycle of voter registration and voter fraud problems, was the organization ever held accountable?

2. In your testimony, you seem to agree that voter fraud is a real threat to the American form of democracy, do you believe that the state enactment of voter ID laws, which have been upheld by the Supreme Court, are in the best interests of the voters or do these state laws burden the voter with more requirements that must be satisfied before the voter can cast his or her ballot?

3. Do you believe that State voter ID laws will have a chilling effect on the right to vote?

Answers

1. To our knowledge, the current investigation in Nevada into the role that ACORN as an organization may have had in acquiring and submitting fraudulent voter registrations is a first of its kind. In years past, the organization has successfully laid blame on *individual* workers and has accepted no responsibility for the role that *organization policies* may have played in the acquisition and submission of fraudulent voter registrations.
2. While this is not an area of specific expertise for our organization, we generally believe that voter fraud is indeed a threat to the American form of democracy. We also believe that as long as the ID laws are written and implemented in a fair, unbiased way, they can be very useful measures to help ensure the integrity of our elections. As was evidenced in Indiana last year, such laws can help prevent fraudulent registrations from becoming fraudulent votes.
3. The use of ID is required for many if not most services in today's society, including: boarding a plane, cashing a check, and acquiring public services. Such requirements do not have a chilling effect on individuals' behaviors and abilities to gain access to services in these other areas of life and commerce. Therefore, as long as ID laws are written and implemented in a fair, impartial manner, we do not believe that they should have a chilling effect on the right to vote.

Consumers Rights League
Response to Follow-Up Questions from The Honorable Jerrold Nadler
July 2, 2009

1. In your testimony you stated that the Consumers Rights League is a "non-profit education and advocacy organization dedicated to preserving consumer choice in a broad array of issue areas." The Committee is unaware of efforts by the Consumers Rights League to promote voter registration and participation.

   A) Please provide your personal history of working on voter registration and participation.

   B) Please provide detailed information on the years in which you worked on these issues, and through what organizations you performed this work.

   C) Please provide information on the history of efforts made by the Consumers Rights League to promote voter registration and participation. Please provide the years in which this work was performed.

2. The Consumers Rights League website does not provide any information about the organization prior to 2008, nor does it describe the history and structure of CRL. Please describe the history and structure of the organization. Specifically, is it a membership organization? If so, how many members does it have? Do you have a board of directors? If so, who serves on the board?

3. Your testimony gives your title as "Chief Public Advocate." How large is your staff? Do you have an executive director or other management staff? If so, please identify these individuals.

Answers

1. As stated in my testimony before the Subcommittee, the Consumer Rights League is a non-profit education and advocacy organization dedicated to preserving consumer choice in a broad array of issue areas. Our mission is as follows:
   - Work with consumers, present facts and produce quality research that thoroughly documents the real-world choices and challenges consumers face;
   - Report the benefits enjoyed by an overwhelming majority of consumers; and
   - "Pull back the curtain" to reveal the agenda driven research distributed by many of these self-described consumer advocacy groups.

   I was invited to testify before the Subcommittee by Ranking Member Sensenbrenner on "Lessons Learned from the 2008 Election." While voter

registration and participation have not been specifically core to the Consumer Rights League mission, my testimony presented to the Subcommittee regarding the facts surrounding ACORN's voter registration efforts were generally and philosophically consistent in our performing our mission.

2. The Consumers Rights League is a non-profit, non-partisan, educational organization dedicated to preserving consumer choice in the marketplace. Our supporters share a commitment to protecting the benefits society receives from competition and innovation. Our organization was formed at the end of 2007 because many of the options we rely on are presently under threat from the numerous, self-appointed "consumer advocacy" groups who aggressively lobby to restrict the choices we have. These groups often believe that we (consumers) are unable to make informed, responsible choices for ourselves. We are not a membership organization. Our Board of Directors is: Jason Roe, Michael Flynn, and Duane Dichiara.

3. The Chief Public Advocate at the Consumers Rights League functions much as Executive Directors do for similar organizations. As a small and young organization, we rely on a variety of vendors for many of the services that other organizations may maintain a staff to perform in order to minimize our overhead as much as possible.

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Question 1: Do the State voter ID bills amount to voter suppression?

Answer: Any voter photo identification requirement, whether it be mandated by the federal government, state governments, or local municipalities can have the result of suppressing voter participation. These proposals fly in the face of our right, guaranteed by the Constitution, to cast a free and unfettered ballot, as well as the recently reauthorized 1965 *Voting Rights Act*, which mandates that no state or municipality shall in any way infringe on our right to vote.

While supporters of these initiatives purport to be combating "voter fraud," (a "problem" which, as numerous studies have shown, is not really a problem), what these laws are in fact doing is creating a barrier to keep the up to 20 million Americans who do not have government-issued photo IDs out of the ballot booth. Sadly, a disproportionate number of these people who do not have government-issued IDs are racial or ethnic minorities, the elderly or low-income Americans.

The Photo ID proposals we have seen so far create new obstacles in voting akin to a modern day "poll-tax" by forcing U.S citizens to pay for government approved ID that many of our most vulnerable citizens do not have or cannot easily obtain to prove their citizenship, such as passports or birth certificates. The requirement that all voters present a photo ID before being able to cast a regular ballot will disproportionately disenfranchise African Americans and other racial and ethnic minority Americans, as well as the elderly, individuals with disabilities, Americans living in rural areas, Native American voters, the homeless, and low-income people who are less likely to have or carry a photo ID. Until recently, it was common in certain parts of the country for people to be born at home, without obtaining an official birth certificate. Under many of the proposals, most of these American citizens would be completely disenfranchised.

To add insult to injury, these proposals would do little or nothing to prevent actual instances of voter fraud. In most instances, nothing in the proposed legislation addresses actual documented problems of election and voter fraud which continue to plague our electoral process and our democracy. These include the improper purges of

voters, distributing false information about when and where to vote, stuffing ballot boxes, and tampering with registration forms, most of which are perpetrated by corrupt election officials, not voters. Rather, they would only exacerbate the already existing problem of voter non-participation by erroneously removing or discouraging countless eligible voters, American citizens, from the process.

Question 2: In your opinion is voter fraud on the increase since 2004 or declining?

Answer: "Voter fraud" has many definitions, but is usually used by politicians and election officials who have close races or who are hoping to promote certain ballot initiatives or referendums. As a rule, the NAACP is more active in cases concerning voter suppression as our members and units are more likely to be those targeted for disenfranchisement through deceptive practices.

As such, I would refer the committee to a report issued by the Brennan Center in 2007, entitled "The Truth About Voter Fraud[1]". In the introduction of this report it states,

> Allegations of widespread voter fraud, however, often prove greatly exaggerated. It is easy to grab headlines with a lurid claim ("Tens of thousands may be voting illegally!"); the follow-up — when any exists — is not usually deemed newsworthy. Yet on closer examination, many of the claims of voter fraud amount to a great deal of smoke without much fire. The allegations simply do not pan out.

Question 3: Should all ex-felons be extended the franchise?

Answer: As I said in my statement before the Subcommittee during the hearing in March, the NAACP strongly supports the re-enfranchisement of all ex-felony offenders once they are released from jail or prison.

Nationally, 5.3 million Americans are not allowed to vote because they have been convicted of a felony, regardless of the nature of the offense or how much time has elapsed since their conviction. Three fourths of these Americans are no longer in jail. And because of the racial disparities inherent in our criminal justice system, African American men are disenfranchised at a much greater rate: in the 2008 election, 1 in 8 African American men were not allowed to vote because of ex-offender disenfranchisement laws[2].

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[1] Justin Levitt, "the Truth About Voter Fraud"", 2007, The Brennan Center for Justice at the New York University School of Law. Available at http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf

[2] Ryan King, "Expanding the Vote: State Felony Disenfranchisement Reform 1997 – 2008" the Sentencing Project, September 2008

While the good news is that since 1997, 19 states have amended felony disenfranchisement policies in an effort to reduce their restrictiveness and expand voter eligibility[3] and citizen participation, much more needs to be done to make ex-offender re-enfranchisement more uniform across the nation. State laws vary when it comes to defining a felony and in determining if people who are no longer incarcerated can vote. Thus it is possible that in some states, a person can lose their right to vote forever if he or she writes one bad check. The process to regain one's right to vote in any state is often difficult and cumbersome. Most states require specific gubernatorial action, and in several states federal ex-felons need a presidential pardon to regain their voting rights.

[3] ibid

Tova Andrea Wang
Responses to the Questions of The Honorable Shelia Jackson Lee
From the March 19, 2009 Hearing on Lessons Learned from the 2008 Election

1. Does the HAVA and NVRA make it easier for voting age adults to vote or does it make more stringent?

The Help America Vote Act was certainly designed to make it easier to vote. The infusion of federal money into the election system for the first time was helpful. However, many of the provisions of HAVA that may have been designed to make the voting process more fair and efficient have been used and interpreted in ways that have defeated that purpose. For example, rules around the statewide voter registration databases propagated by some officials have led to eligible voters having their voter registration rejected and registered voters being taken off the rolls. Requiring provisional ballots should have been a positive step in ensuring the right to vote, but since HAVA only required giving provisional ballots but did not prescribe how they should be counted, many states have rules and procedures that lead to provisional ballots cast by eligible voters not being counted. Finally, it is unfortunate that HAVA's very minimal identification requirement led many states to enact very strict laws regarding voter identification that have a disenfranchising impact on many voters.

NVRA has made it easier for Americans to register to vote. Allowing citizens to register through the DMV, by mail and through public assistance agencies has led to the registration of millions of new voters. The major problem with NVRA has been a lack of enforcement of the provision requiring states to register clients at public assistance agencies. Through collaborative work with several voting rights organizations, and litigation where it has been necessary, more states are doing a better job of complying with this provision. Going forward, the concept of NVRA ought to be expanded. For example, more federal agencies could be designated as agencies required to engage in voter registration activities. Ultimately, a system of automatic, universal voter registration will be the most effective way to ensure that all eligible Americans are registered to vote.

2. What reforms need to be made at the State level to ensure that the right to vote is extended to all Americans?

The most significant reform that states can enact is same day voter registration, or election day registration. Numerous studies have demonstrated that allowing voters to register and vote on the same day significantly increases voter participation without leading to any major administrative difficulties or fraud. This was vividly demonstrated in North Carolina in 2008. For the first time, North Carolina implemented a combination of in-person early voting and same day registration at the polling place during this early voting period. With the outreach the campaigns and civic organizations did to make best use of these new tools, the achievement was phenomenal. North Carolina had the largest increase in voter turnout in the country. 236,700 people became new voters through same day registration, and 39% of those were African American. More than 5% of the 4.2 million voters in the 2008 election registered when they went

to vote. 691,000 African Americans voted during the early voting period—51% of the 1.32 million black registered voters in North Carolina.

In addition, the practices of caging and challenges must be curtailed. At the federal level, Congress should pass the Caging Prohibition Act of 2008, which provides that the right to register to vote or vote shall not be denied by election officials if the denial is based on voter caging and other questionable challenges not corroborated by independent evidence; prohibits persons other than election officials from challenging a voter's eligibility based on voter caging and other questionable challenges; requires that any voter challenge by persons other than election officials be based on personal, first-hand knowledge; and designates voter-caging and other questionable challenges intended to disqualify eligible voters as felonies, crimes eligible for fines up to $250,000, five years imprisonment, or both. Until such time as Congress acts, states can enact similar laws that would make it far more difficult for illegitimate challenges to voters' right to register and vote to occur.

In addition, states must establish fair standards for challenges. All states should have uniform challenge procedures characterized by transparency and fairness; such procedures must be designed in a way that prevents disenfranchisement or voter deterrence. On Election Day, only poll workers should have the legal authority to challenge a voter – not another voter or a poll watcher. States should enact stringent requirements for when someone can make a challenge at the polls, and the bases upon which such challenges can be made must be narrowly defined. Such challenges should be based on personal knowledge and documentary evidence of lack of eligibility. States should also require pre-election challenges to be filed well ahead of Election Day, and similarly be based on very particularized charges and on personal knowledge and/or documentary evidence. The Justice Department should also actively pursue vote caging and polling place challenges clearly based on race or ethnicity.

In 2008 we once again saw the insidious types of deceptive practices that are designed to suppress voting – misinformation campaigns meant to mislead and confuse voters about whether they can vote and how, when and where to vote. In the past, this had usually taken the form of flyers and mailings, but this year, as predicted in our deceptive practices report (produced by Common Cause, Lawyers Committee for Civil Rights, Electronic Privacy Information Center), such activities went online as well. We heard robocalls spreading false information about voting, and we saw emails and text messages in Virginia, Missouri, Florida and at least five other states doing the same. Most of these emails said that given the high turnout expected, Republicans were to vote on Tuesday, Democrats on Wednesday. An email went to the entire student body of George Mason University that appeared to be from the provost of the school making this same claim. There were robocalls in Florida and Nevada telling people they could vote by phone and calls in Virginia fraudulently telling people the wrong place to vote. In the days prior to the election there were emails in places like Texas and Florida with misleading information about straight ticket voting and voter identification rules. The Secretary of State of Ohio's website was hacked into in the days leading to the election, causing it to be shut down for several hours.

As always, there were the more traditional flyers in the Philadelphia area telling people if they had outstanding parking tickets or traffic violations they would be arrested at the polls. And a

flyer was circulated in Virginia, again with the message that Republicans vote on Tuesday, Democrats on Wednesday.

We need reform at the federal and state level that not only criminalizes deceptive practices, but puts in place a mandatory procedure for law enforcement and election officials working with community and voting rights organization to debunk the false information and disseminate the correct information rapidly. Law enforcement should also put in the energy and resources it needs to pursue the perpetrators. As we discussed in our deceptive practices report, there are already a number of laws on the books that could be used to go after the people responsible for these tactics given a prosecutor with the will to do it.

3. Explain how the DOJ can review state ID laws when the Supreme Court in numerous cases declared that state photo ID laws are constitutional?

As proponents of strict voter ID laws continue to argue in statehouses throughout the country that voter ID laws do not disenfranchise voters, and falsely claim that they are necessary to combat fraud, the most recent analysis found that 2 percent of registered non-voters did not vote in 2008 because they lacked appropriate identification. Of voters who tried to vote but could not, the study found that 150,000 were blocked at the polls for lack of voter identification. Perhaps as significant, poll workers demanded photo identification much more often from African Americans and Latinos than white voters. A Harvard survey of thousands of voters in the 2008 Super Tuesday primary found that 53% of whites were asked for photo ID, compared with 58% of Hispanics and 73% of African Americans. This was true even after controlling for factors such as income, education, age and region. In an evaluation of the 2007 gubernatorial elections and the 2008 Super Tuesday primary, researchers from MIT, Caltech, and the University of Utah found that African American voters were 14% points more likely to be asked for photo identification than whites and Latinos were 18% more likely to be asked for photo ID in some states.

It is in this context that the United States Department of Justice can act. DOJ should subject any ID laws to intense scrutiny during the Voting Rights Act Section 5 (preclearance) process where applicable and further review their implementation under Section 2 of the Act as a discriminatory voting practice or procedure.

3. What are your thoughts on the legality of state photo ID laws?

States now have a variety of identification requirements. Those few states that have the very strict requirement of mandating presentation of a government issued photo identification in order to vote are imposing a burden on votes that some may not be able to meet, and those voters tend to be the elderly, the poor, minorities, students and persons with disabilities. Although the U.S. Supreme Court recently rejected a facial challenge to Indiana's identification law, it is very possible that an as applied challenge will be brought, and the Supreme Court might in that case recognize the identification requirement as the unacceptable burden that it is on Americans' right

to vote. Moreover, voter identification laws in other states have been struck down as significant burdens on the right to vote that are not justified by any compelling state interest.

For example, the courts in Missouri struck that state's ID law down under the Missouri Constitution which expressly guarantees that "all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." *Mo. Const. art. I, sec. 25.*

In 2006, the Missouri legislature enacted a requirement that all voters present government issued photo identification in order to vote. The Supreme Court of Missouri in *Weinschenk v. Missouri* 203 S.W.3d 201 (Mo. S. Ct. 2006) struck it down, using strict scrutiny to do so. The Court understood that many thousands of Missourians would not be able to comply with the requirement and that the process of procuring such documentation would inevitably impose a fee on voters, making it tantamount to a poll tax. The Court further held,

> While Missouri has a compelling state interest in preserving the integrity of the election process and preventing voter fraud, the trial court properly found that the evidence presented negates the claim that the photo ID requirement is narrowly tailored to accomplish that purpose. The parties acknowledge that the photo ID requirement can only prevent impersonation of a registered voter and will not affect absentee ballot fraud or registration fraud. There was no evidence of any voter impersonation fraud in Missouri since the general assembly enacted the previous version of section 115.427, which was passed in 2002 in response to the federal Help America Vote Act and allowed voters to present many more and different types of identification in order to vote. While Missouri also has an interest in combating perceptions of voter fraud, where the fundamental rights to vote of Missouri citizens are at stake, more than mere perception is required for their abridgment. The identification requirement does not address any perception of voter fraud with precision, nor is it necessary to solve any existing voter fraud problems. This requirement, therefore, fails to pass constitutional scrutiny and cannot stand.

This is a dramatically different approach than the U.S. Supreme Court had in Crawford, the case regarding Indian's ID law, where it required virtually no evidence of fraud to justify the measure.

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The Honorable Sheila Jackson Lee
March 19, 2009 Hearing on Lessons Learned from the 2008 Election
Questions for Mr. Glenn D. Magpantay, AALDEF

On Election Day, November 4, 2008, the Asian American Legal Defense and Education Fund (AALDEF) conducted a nonpartisan multilingual exit poll of 16,665 Asian American voters. AALDEF's exit poll was the nation's largest survey of Asian American voters and covered 113 poll sites in 39 cities. The exit poll was conducted in English and twelve Asian languages. Voters were surveyed in New York, New Jersey, Massachusetts, Pennsylvania, Virginia, Maryland, the District of Columbia, Michigan, Illinois, Louisiana, Texas, and Nevada.

For the 2008 Presidential Election, AALDEF expanded its exit poll to cover the fast-growing Asian American communities in Louisiana, Nevada, and Texas. In Houston, Texas, 87% of voters polled were foreign-born, naturalized U.S. citizens and 32% were first-time voters. Thirty-eight percent of respondents were limited English proficient (LEP). Among Vietnamese American respondents, 55% were LEP and 31% preferred to vote with some form of language assistance.

AALDEF has conducted exit polls in every major election since 1988, and we have extensive data showing that language access is a chronic problem for Asian American LEP voters.

1) **Any explanation as to why 31% of the Asian community that voted in the 2008 election was a first-time voter?**

The Asian American Legal Defense and Education Fund's (AALDEF) 2008 exit poll found that 31% of Asian American respondents voted for the first time in the 2008 Presidential Election. Exit poll results from the National Election Pool[1] found only 11% of all voters in the U.S. voted for the first time in the November 2008 Election.

Many Asian American voters only recently became eligible to vote in the 2008 Election because they just turned 18 years old or became naturalized U.S. citizens. Therefore, first-time voting rates among Asian Americans in all elections are consistently high. Voter turnout is generally higher for all groups in Presidential election years, and this is also true for Asian Americans, especially first-time voters.

Furthermore, many groups, including Asian Americans, were heavily motivated to vote in 2008. Over three-quarters (76%) of Asian American respondents voted for Barack Obama, demonstrating the wide popularity and excitement generated by his candidacy and platform. In addition, many Asian Americans were affected by the recent economic crisis, motivating many

[1] The National Election Pool is comprised of ABC, CBS, CNN, FOX, NBC, and the AP.

individuals to vote. Two-thirds (66%) of Asian American voters chose Economy/Jobs as the most important issue influencing their vote for President in the 2008 Election.[2]

2) What recourse do voters have toward poll workers/watchers that curtail the right to vote based on their lack of knowledge about voting provisions established for language minorities?

Voters have several options available if they have experienced a problem at a poll site:

i. Voters can complain directly to the election official(s) in charge of the poll site.
ii. Voters can complain to the local election registrars so that the offices can respond the issue immediately.
iii. Voters can report problems to the Department of Justice, which may initiate investigations.
iv. Voters can report problems to organizations such as AALDEF, which monitors poll sites on Election Day and protects Asian American access to vote. AALDEF uses its resources to intervene and assist voters on Election Day immediately after a situation occurs.

It is important to create a record of voter problems by reporting incidents to both the local Board of Elections and to nonpartisan organizations that monitor poll sites, to demonstrate the frequency of these problems in certain locations.

However, it is often poorly-trained and/or biased poll workers or campaigners who interfere with or intimidate Asian American voters. The best approach to rectify this ongoing problem is to improve poll worker trainings and the quality of poll workers.

3) What initiatives can be enacted at the State level to ensure that language minorities are allowed to vote?

A number of jurisdictions voluntarily provided language assistance to Asian American LEP voters during the 2008 Election. These efforts can be further expanded and should be codified in law to guarantee language access in every election.

First, states can translate voter registration forms, voter guides, ballots, and other voting materials in Asian languages. States can also encourage local election officials to provide Asian language interpreters as well as hire bilingual poll workers.

States should allocate funding that can be used by the local Boards of Elections for translated voting materials and for media outreach. The Help America Vote Act (HAVA) provides federal funding for state and local initiatives that would increase voter turnout, and these funds should be used to ensure language access to the vote.

If there are any further questions, please contact Glenn D. Magpantay at 212-966-5932, ext. 206 or by email at gmagpantay@aaldef.org.

[2] AALDEF's 2008 exit poll survey asks respondents to pick at least three of the following responses for the question "What were the most important factor(s) influencing your vote for President?": Civil rights/immigrant rights, economy/jobs, crime in neighborhoods, education, foreign policy/war in Iraq, health care, terrorism/security, or other.

Association of Community Organizations for Reform Now

The Honorable Jerrod Nadler
Chairman, Subcommittee on Constitution, Civil Rights and Civil Liberties
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The Honorable F. James Sensenbrenner, Jr.
Ranking Member
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March 26th, 2009

Dear Chairman Nadler and Ranking Member Sensenbrenner:

Thank you, on behalf of ACORN (Association of Community Organizations for Reform Now) and its 400,000+ member families, for the opportunity to submit this testimony on the important work of voter registration and ways to improve the process of including all Americans in our democracy.

Although decades of work by civil rights advocates and civic groups and laws like the Voting Rights Act and the National Voter Registration Act (NVRA) have reduced barriers to registration and voting for many Americans, too many obstacles remain in the way of full civic participation. Registration rates for African Americans lag behind Whites by 10 percentage points (71 percent to 61 percent). Latinos (54 percent) and Asian Americans (49 percent) lag even further. Only half of eligible young Americans, ages 18-29, are registered to vote. Low-income people vote at much lower rates than the more affluent. These disparities in electoral participation weaken our democracy and distort public policy by making elected officials less accountable to citizens from disenfranchised communities.

In order to reduce these disparities in our electorate and help build a more truly representative American democracy, ACORN has conducted major, non-partisan voter registration drives in the last several years – talking face to face with millions of Americans about the importance of voting, and helping people complete and submit voter registration applications.

In 2008, ACORN surpassed its goals by collecting and submitting more than 1.3 million voter registration forms from Americans living in low-income and minority communities. Based on past studies of voter registration drives and samples from our own work, we estimate that seventy percent (more than 900,000) of these applications led to successful registrations and that hundreds of thousands of young, minority, and low-income citizens registered for the first time, while hundreds of thousands of others updated their voter registrations to their current address, empowering them to participate on Election Day 2008. In the end, voter registration drives by civic groups contributed to a surge in voter turnout among young people, people of color, and low-income citizens, making the 2008 electorate more representative of America than has been the case in previous elections.

Below, we share some of the information about how we conducted this work, challenges we faced, and our recommendations for involving all Americans in our democracy. This testimony also corrects the facts regarding the spurious allegations made against ACORN and other organizations that

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promote civic participation by minority groups, including falsehoods which, regrettably, were offered to the Committee by two witnesses last week.

Voter Suppression in 2008: Points Raised at the March 18th Committee Hearing

In the weeks leading up to the 2008 Elections, some partisan figures and organizations loudly issued near-hysterical warnings that asserted an impending crisis of widespread "voter fraud." Now that the elections have come and gone, these assertions have proven both meritless and unsubstantiated, indeed, these warnings lacked all plausibility at the time they were issued.

Fraudulent voting itself is close to non-existent in the United States, and there has never been a single documented instance of a fraudulent voter registration form resulting in an improper vote – in 2008 or any other year. Even if someone wanted to influence the election this way, it would not work. Election officials have to verify the identity of each registrant and, if somehow a person made it onto the rolls improperly, they would be a sitting duck to be nabbed and prosecuted as soon as they showed up to vote.

The numerous rhetorical attacks by partisan operatives and inflammatory media reports were all based on the same false and discredited premise: that a voter registration application that contains incorrect information represents an attempt, or at least an opportunity, for someone to commit "voter fraud," i.e. cast an improper ballot. As numerous studies and reports by responsible media have demonstrated, *this is simply not the case*. [1]

To be clear: the lawsuit filed against ACORN in Pennsylvania in late 2008 – in addition to those filed similarly in 2004 in Ohio and Florida – have been dismissed. Our organization is not under federal investigation, and ACORN has never been indicted for voter fraud or voter registration fraud. These publicity stunts and lawsuits have always amounted to nothing more than politically motivated attacks meant to distract us from the important work we do to enfranchise historically underrepresented voters and to provide a basis – even if fictitious – for voter identification laws and other regulatory barriers that limit democratic participation. Though the lawsuits have failed, the public persecution continues here, burdening your Committee with additional meritless accusations.

Two witnesses who appeared before your committee last week, including Ms. Heather Heidelbaugh, Vice President of the Republican National Lawyers Association, and Mr. James Terry, Chief Public Advocate for the Consumer's Rights League, actively asserted baseless claims that there would be fraudulent voting in the 2008 presidential election – a claim that proved to be false. The history of their claims and legal actions, and the testimony they offered your Committee last week, highlight the dangers still facing any organization that dares to help poor and minority voters register and engage in the democratic process.

In her testimony before the committee, Ms. Heidelbaugh omitted two relevant facts of which the Committee should be aware:

- First, **the court case filed by Ms. Heidelbaugh** on behalf of the Pennsylvania Republican Party against ACORN and the state of Pennsylvania in 2008 **was recently dismissed.** In October 2008, her motion for an injunction to stop ACORN from encouraging voter participation by

[1] One of the more comprehensive studies on the topic is "The Politics of Voter Fraud" by Barnard professor Lori Minnite. projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_

minorities and low-income community members was **denied** because it lacked merit. The court's order reads, "Petitioners failed to persuade the Court that they are likely to prevail on the merits."

- Second, **Ms. Heidelbaugh attributed a variety of accusations against ACORN to a woman named Anita Moncrief who worked** for a different, allied organization, Project Vote, in an administrative capacity **until she was fired for fraud and theft**. Ms. Moncrief was not involved in the planning or execution of ACORN's programs, and she has no reliable information.

Nevertheless, Ms. Heidelbaugh's association and other partisan operatives seem desperate to continue to attack ACORN – flooding this Committee and others with assertions that, besides often being generally confused or simply untrue, are plainly irrelevant to policymakers considering how to make voting accessible and secure for all eligible American citizens. Such vociferous attacks can only be meant to intimidate ACORN's members and staff and any other civic organization that seeks to encourage voter participation in low-income and minority communities.

Mr. Terry, Chief Public Advocate for The Consumer's Rights League, also shared misinformation regarding ACORN's nonexistent "profits" from government bailouts and other fictions spun and repeated without any basis in reality. Indeed about 75% of the CRL website seems to be dedicated to spreading such misinformation about our organization. We do agree, however, with one aspect of Mr. Terry's testimony – that events that occurred in New Mexico in late 2008 deserve the attention of this Committee and others concerned about voting rights.

As Mr. Terry testified: "In October, the Republican Party of New Mexico identified 28 alleged fraudulent votes in just one state House district during the June primary. Several of the suspect voters were registered by ACORN." When a press conference revealed the identities of these 28 "alleged fraudulent votes," ACORN organizers were immediately able to contact 10 of these individuals, and every single one was verified as an eligible voter who had legitimately cast a vote in the state's primary election. Interestingly, many of these voters were new citizens or first-time voters. Most were Latino and African American. All were outraged by this public attempt at alienation and intimidation.

Furthermore, several of these voters were subsequently visited at their homes by a private investigator hired by GOP officials and Pat Rogers, the New Mexico Republican lawyer who was directly involved in the New Mexico Republican party's effort to stir up issues of voter fraud in 2006. (Mr. Rogers was also involved in pressuring former U.S. Attorney David Iglesias to bring politically motivated voter-fraud cases. Iglesias' reluctance to bring such cases led to his firing that same year.)

Guadalupe Bojorquez of Albuquerque filed a complaint claiming her mother – a new citizen and new voter – was reduced to tears by private investigator Al Romero. Mr. Romero arrived at her mother's home Wednesday, October 22, 2008, and said he was a private investigator hired by an Albuquerque law firm where Mr. Rogers works, and asked to see her papers, questioning both her citizenship and her right to vote. Bernalillo County Clerk Maggie Toulouse Oliver confirmed she received the complaint and turned it over to the FBI.

The ACLU, ACORN, and Project Vote filed a class action lawsuit in October 2008 to address these violations of federal law, ranging from voter intimidation to invasion of privacy, misuse of voter registration information, and infringement of these voters' civil rights. Litigation is still pending.

In 2008, ACORN and other allied organizations witnessed and fought other attempts at voter suppression in cities and states around the country. Fliers threatening undercover officers and unwarranted arrests of voters blanketed minority neighborhoods in Philadelphia, GOP officials threatened to use foreclosure lists to challenge votes in Michigan, and a case went to Ohio's Supreme Court to debate the legitimacy of a five-day window where voters could register and vote on the same day.

Mr. Terry, Ms. Heidelbaugh, and other critics of large-scale voter registration drives have been so intent on restricting voter registration and participation and stopping large-scale voter registration efforts that they're spending thousands of dollars and apparently thousands of person hours in what seems to be a national attempt to prove that somewhere, somehow, ACORN and its voter registration partner organization Project Vote have done something – anything – wrong. After all that expenditure of time and money, their testimony to this committee last week largely consisted of rumors from partisan blogs and the purported statements of an admitted thief. No one has yet sited a single instance in which Project Vote, ACORN, or any other group caused or encouraged anyone to vote improperly.

The testimonies of Mr. Terry and Ms. Heidelbaugh should be interpreted in the light of years of attempts to harass or undermine civil rights and civic groups who work for the empowerment of traditionally disenfranchised voters.

How ACORN conducted its voter registration work

Since voter registration drives have become the object of so much public discussion, we want to give some details regarding the ways in which we plan and conduct this important and difficult work.

In 2008, ACORN implemented the most sophisticated quality-control system in the voter engagement field. Each application collected was examined by independent staff for completeness and tagged and bundled so we could tell which employee gathered it. Registrations were entered into a database by an outside vendor, and call centers made several attempts to reach each and every registrant to verify their information. Where we were able to do so, ACORN and Project Vote worked to "cure" incomplete registrations by contacting voters to get missing or inaccurate information – such as county or zip-code information – and, in the manner prescribed by state law, correct what had caused the registration to be rejected.

ACORN turned applications in to election officials in three stacks with separate, detailed cover sheets: 1) those that ACORN believed were complete and ready for processing, 2) those that required additional information, and 3) those that ACORN thought were suspicious and should be carefully reviewed by election officials in order to verify the authenticity of the information on the applications.

Election officials generally recognized ACORN's good work and praised our quality control systems. In the course of our voter registration drives, ACORN routinely met and communicated with state and local election officials to review the quality of our work and to establish cooperative relationships. Unfortunately, a few election officials either ignored ACORN's attempt to notify them of applications that needed further review or simply did not conduct such a review. In all cases, ACORN staff and lawyers sought to work closely with election officials to resolve any problems and make the process of enfranchising American citizens as efficient as possible.

Understanding voter registration drives

In the course of this work, ACORN hired more than 12,000 workers to help people register to vote and verify their application information.

Still, as with any business or agency that operates at this scale, there are always some people who want to get paid without doing their job, or who aim to defraud their employer. Any large department store will have some workers who shoplift. Any large voter registration operation will have some workers who turn in bogus registration forms – not because the "Jimmy Johns" whose name they put on a registration form will ever attempt to vote on Election Day, but because they want to get paid without actually making the effort to help register actual voters.[2]

ACORN expends a large amount of resources on training the staff and managers of its voter registration efforts and great care has been taken to ensure that canvassers understand that the illegality of committing voter registration fraud is real and punishable by incarceration (contrary to the testimony of Ms. Heidelbaugh). It is the policy of ACORN that all canvassers complete an initial, mandatory training session before any registration applications are collected, and that all canvassers read and sign a document indicating they understand the severity of committing voter registration fraud (again, contrary to Ms. Heidelbaugh's testimony).

These and other organizational policies and expectations were clearly explained and repeated regularly before nearly every canvassing shift. Expectations were not only clear, but they were simple: engage people in conversation regarding civic participation and help them fill out a voter registration application if necessary.

Canvassers were also aware that ACORN had a zero-tolerance policy for any employee deliberately falsifying registrations, and in the cases where our internal quality controls identified this happening, we fired the workers involved and turned them in to election officials and law-enforcement. Still, despite ACORN notifying officials of instances of some canvassers submitting bad registration cards as early as January 2008, no law enforcement agency reached out to ACORN to begin investigations until September 2008, after partisan groups began attacking ACORN and the work we'd been conducting for months.

Fortunately, only a tiny fraction of the workers ACORN hired in 2008 tried to defraud ACORN in this way, but we have a significant stake in making sure employees know we will fire them and that we will encourage prosecution when we catch them.

That said, no criminal charges related to voter registration fraud have ever been brought against ACORN itself or its partner organizations. Convictions against individual former ACORN workers have been accomplished with our full cooperation and often at our suggestion, using the evidence obtained through our quality control and verification processes – evidence which, in most cases,

[2] For example, a number of news reports made much of a voter registration card turned into election officials in Lake County Indiana with the name "Jimmie Johns"--a local sandwich shop. What they almost all failed to report is that ACORN's Quality Control staff had found this application before submitting the application and attached a "problematic card report coversheet" for elections officials which stated this very fact.

ACORN called to the attention of authorities. Press stunts notwithstanding, ACORN's staff and attorneys have not received notification or information indicating the organization itself is under investigation by any government entity anywhere in the country.

Some poorly-reported media accounts further conflated instances of fraudulent voter registration cards, which constituted no more than a percent or two of all the applications we collected. Other unsuccessful registrations related more to routine problems endemic to any effort to collect large amounts of information from the field: incomplete voter registration cards (applications missing important information), handwriting errors, cards with inaccurate personal information, or unnecessary re-registrations from a voter who did not realize he or she was already on the rolls.[3] These distinctions are important, yet some media outlets reported on our voter registration program without accurately discussing them.

In addition, contrary to rumor and Ms. Heidelbaugh's testimony, ACORN paid its canvassers by the hour, not by the card. Expectations regarding numbers of cards collected were enforced to ensure productive time for hours paid, and employees who struggled to meet the same standards as their peers were provided further training and encouragement until it was clear that the individual was not suited for the position. The expectation that an employee will perform their work is of course a reasonable expectation of every employer.

Predictably, however, partisan forces tried to use the isolated incidents of law-breaking – which, again, was overwhelmingly detected first by ACORN's quality control measures – to incite fear of widespread voter fraud and to justify newly instated regulatory barriers to participation that inevitably disenfranchise the elderly and low-income voters who are less likely to possess photo identification and other newly mandated documents.

After these very public attacks on our work in 2008, ACORN staff and volunteers had to contend with break-ins and vandalism to their offices, racist harassment messages, and death threats as they went about the work of helping their fellow citizens register to vote.

Why civic groups must turn problematic cards over to election officials

In almost all states and localities, ACORN is required either by state law, local election officials, or good legal judgment to turn in every voter registration application, even if ACORN supervisors know that the card is incomplete or fake. Some states have explicit laws requiring the submission of all signed voter registration applications. Other states or localities have policies that require that an application be turned in within a given time period – implying that it must be turned in. In all cases, it is election officials who have the final right and responsibility to determine if a card is valid.

In every state, the worst possible decision an organization could make is to discard a registration application that turns out to be valid, thus disenfranchising a voter. This would be in opposition to our organizational goal of helping all citizens register and vote, and would be a legal liability as well.

[3] While there is very little research in this area, a comparison of voter registration records from the state of Pennsylvania indicated that cards collected by civic groups had a lower rate of errors than those that voters completed on their own or while doing business in government offices.

So the advice of our counsel has been in almost every case to turn in every single card, identifying in writing any suspected problems.[4]

Improving the voter registration process

Voting rights and issues regarding voter registration are fundamental components of our democracy and should not be partisan issues. ACORN's voter registration work reached out to and helped enfranchise American citizens from the most underrepresented and disenfranchised communities.

The U.S. Justice Department has an important role to play in the protection of voting rights for all citizens. *Existing laws make it clear that efforts to suppress or intimidate voters – individually or organizationally – are criminal offenses. Aggressive enforcement of these laws should be a high priority for the Justice Department going forward.*

In considering longer-term legislation to address problems with the voter registration process, it is worth bearing in mind the fact that in many other democracies, ensuring citizens are registered to vote is a government responsibility. ACORN's members and staff would be the first to applaud a system that takes responsibility for addressing the disparities in the electorate off the shoulders of community organizations. *A system of voter registration in which the government maintains and updates list of citizens who can vote would allow community organizations to focus on talking to citizens around public policy issues, rather than handling the mechanics of voter registration.*

The National Voter Registration Act

One important interim step in this direction would be to increase state compliance with the public-agency registration requirements of the **National Voter Registration Act (NVRA)**. Passed in 1993, the NVRA was intended to help close gaps in the electorate by requiring that states reach out to register citizens through commonly used services: motor vehicle offices and public assistance agencies.

To date, however, too many states have met the public agency provisions of the NVRA with reluctance, resistance, or outright refusal. A 2008 report by Project Vote and Demos, *Unequal Access: Neglecting the National Voter Registration Act 1995-2007*, documented that the number of registration applications from public assistance agencies was in fact at an historic low.

ACORN has worked with public officials and, where necessary, gone to court to see that public agencies provide registration opportunities to the citizens they serve.

A model of what can be achieved by bringing states into compliance with the NVRA is the outcome of the 2008 federal case *Acorn v. Scott* in the state of **Missouri**.

In April 2008 a lawsuit, *Acorn v. Scott,* was filed charging that the Missouri Department of Social Services (DSS) had failed to fulfill its legal obligations to provide voter registration services to all public assistance clients. The state's compliance with NVRA had fallen from 1995-1996, when the

[4] ACORN voter engagement and legal staff met with elections officials around the country as we began our voter registration drive in 2007-8 and discussed our procedures with them. In only three localities did elections officials ask us to turn cards we knew to be fraudulent into local law enforcement (as opposed to delivering them to the elections office with problems flagged). Because this was allowable under these states' laws, we agreed to do this only if we were 100% certain that it could not possibly be an application from a legitimate voter—and that only occurred in one place.

state was a leader in registering voters through public assistance agencies with over 143,000 registrations, to an appalling 15,500 public agency registrations in 2005-2006. "Substantial evidence" of voting rights violations cited in the Court's ruling include emails between two DSS employees acknowledging that voter registration applications completed by clients had been allowed to pile up for more than a year, through several elections.

On July 15, 2008 Judge Nanette K. Laughrey issued an order directing the Missouri DSS to immediately comply with NVRA. The order instructed Scott and Luck to send notice within five days to all DSS locations informing them that compliance with NVRA was mandatory and required by law, with failures subject to citation for contempt of court. Following this landmark ruling, the attorneys for the plaintiffs in *Acorn v. Scott* began negotiating a settlement with DSS, and opened discussions with the state's WIC program to improve Missouri's implementation of NVRA.

As a direct result of the court order, registrations through Missouri DSS agencies skyrocketed in the six-week period following implementation: **more than 26,000 Missourians registered to vote through Missouri DSS agencies from mid-August through the end of September 2008**. This six-week total surpassed the number of registrations the state collected in public assistance agencies during all of 2005 and 2006 combined.

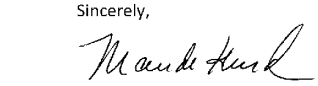
Such impressive results clearly indicate that Missouri's public assistance agencies could have registered hundreds of thousands of voters over the last two years had they implemented the law properly, and provide a perfect example of what can be achieved when states comply with the NVRA and live up to their responsibility to make voting easy and accessible for all Americans.

Conclusion

Any federal legislation or regulatory action regarding voter registration and election participation should be considered with the goal of building a more inclusive democracy. If protection of voting rights and widespread belief in the legitimacy of our democratic systems are indeed the goals of critics of past voter registration drives by ACORN and other civic groups, we'll welcome their cooperation as we work to build an adequate system of universal registration. Perhaps even those critical of ACORN can agree that voter registration is a necessary government role to ensure that all who are eligible are empowered to participate.

Again, on behalf of ACORN's member families around the country, I thank you for the opportunity to present this testimony to the House Subcommittee on the Constitution, Civil Rights and Civil Liberties. We are happy answer any further questions you may have.

Sincerely,



Maude Hurd
President, ACORN

For more information, contact Dēmos at **info@demos.org** or **212.633.1405**.

Statement of Miles Rapoport
President, Dēmos

House Subcommittee on Constitution, Civil Rights, and Civil Liberties

HEARING ON LESSONS LEARNED FROM THE 2008 ELECTION

March 19, 2009

As a national non-partisan organization dedicated to protecting and enhancing the democratic rights of U.S. citizens, Dēmos: A Network for Ideas and Action commends the House Subcommittee on Constitution, Civil Rights, and Civil Liberties for convening a hearing on Lessons Learned From the 2008 Election on March 19, 2009. Dēmos takes this opportunity to submit the following comments on continuing serious problems with voter registration experienced by millions of eligible voters during the most recent election cycle. We hope that the Subcommittee will embrace the opportunity to explore reforms in election administration that can address these serious problems and ensure that every American has the opportunity to register to vote and participate in the political process.

Denial of Voter Registration Opportunities to Low-Income Voters

Ensuring access to voter registration for low-income citizens, who all too often have been left out of the electoral process because of unnecessary barriers to voter registration, was a key priority for the Democracy Program at Dēmos during the 2008 election cycle. Our research, investigation and advocacy revealed massive, long-standing failings in states' compliance with Congress' key initiative to ensure full access to voter registration for low-income citizens, the National Voter Registration Act of 1993 ("NVRA").

Through enactment of the NVRA in 1993, Congress aimed to increase voter participation by simplifying "unfair registration laws and procedures,"[1] especially for historically disfranchised populations. Although the NVRA may be popularly known as the "Motor-Voter" law because of its requirement for providing voter registration through state DMV offices, an equally important part of the law is its requirement that state public assistance offices (administering programs such as Food Stamps, TANF, Medicaid and WIC) must provide voter registration services to all persons applying for benefits, recertifying their eligibility for benefits, or recording a change of address.

1 42 U.S.C. § 1973gg(a)(1)

Despite states' obligations under the NVRA, data strongly suggest that public assistance agencies across the country are not complying with their obligation to provide voter registration services. Dēmos' research shows that between initial implementation of the law in 1995-1996 and the most recent data reported by the EAC for 2005-2006, voter registration applications from public assistance agencies have declined by 79 percent nationwide. Nine states reported decreases of 90 percent or more.[2] Poor compliance with the NVRA perpetuates an already troubling discrepancy in political participation: nationwide, 80 percent of citizens in households making $100,000 or more are registered to vote, compared with only 60 percent of citizens in households making less than $25,000.[3]

Representative of the problem, but by no means the only offender, was Missouri's Department of Social Services (DSS). The state of Missouri has a substantial income gap with respect to those registered to vote: only 66 percent of adult Missouri citizens in households making less than $25,000 a year were registered to vote in 2006 compared to 85 percent of those in households making $100,000 or more. According to data from the Federal Election Commission and Election Assistance Commission, voter registrations from public assistance agencies dropped by 88 percent in Missouri between 1995-1996 and 2003-2004.

Field investigations confirmed what the numbers strongly suggested, specifically, that the agency was not providing the opportunity to register to vote to every individual who applied, recertified, or changed an address in connection with public assistance benefits. We notified the Secretary of State and agency Director about our findings. When we received no response that the offices would change their practices, Dēmos – together with partners including the Lawyers' Committee for Civil Rights Under Law, Project Vote, and a pro bono law firm – filed a complaint in federal district court and requested a preliminary injunction for immediate relief in light of the then-upcoming election.

On July 9, 2008, the Court heard testimony from eleven witnesses and accepted extensive written submissions from the parties. Less than a week after the hearing, on July 15, the Court issued the preliminary injunction we had requested, finding that Missouri DSS had violated the NVRA by failing to provide plaintiffs – and tens of thousands of other low-income Missourians – with the opportunity to register to vote required by the NVRA.[4] The state's own documents confirmed that the state was short by approximately *one million* of the number of voter registration applications that would have been necessary to provide required voter registration services to DSS clients between 2003 and 2008. Other evidence showed that voter registrations applications completed by clients had been allowed to pile up on a caseworker's desk for more than a year without being submitted to election authorities for processing, and that many local offices were simply unaware of their voter registration obligations. Based on these and other violations, the court directed the agency to immediately comply with the voter registration requirements of the NVRA and adopt a comprehensive plan on how to do so.

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2 Douglas Hess and Scott Novakowski, *Unequal Access: Neglecting the National Voter Registration Act* (Feb. 2008), available at http://www.demos.org/pubs/UnequalAccessReport-web.pdf. To put these declines in context, it is important to understand that the maximum possible decline in voter registrations is 100%: a 100% decline means that the number of voter registrations at public assistance agencies has declined to zero, with no further decline being numerically possible. Accordingly, a 79% nationwide decline in voter registrations at public assistance agencies – with some states recording a 90% decline – indicates an extremely grave compliance problem, approaching the outer mathematical boundary for a reduction in voter registrations.

3 *Id.* at 3, citing Douglas R. Hess, Project Vote, "Representational Bias in the 2006 Electorate," (2006), Table 6: Household Income and Voting Behavior, available at http://www.projectvote.org.

4 *ACORN, et al. v. Scott*, et al., 2:08-cv-04084 (W.D. Mo., July 15, 2008), available at http://www.demos.org/publication.cfm?currentpublicationID=39FF09AD-3FF4-6C82-5C632CED7216F265.

As a result, voter registration applications received at DSS offices skyrocketed. Whereas all Missouri public assistance agencies had received a total of only 15,500 registration applications over a two-year period in 2005-2006, DSS alone has since received over 70,000 registrations since August 2008 and the end of January 2009. The state's public assistance agency received over 12,700 registrations per month in five and a half months since the court order went into effect—a staggering increase over its previous two-year average of just 649 applications a month.

Dēmos is currently working in at least 10 states to overcome similar problems in compliance with states' voter registration obligations under Section 7 of the NVRA, and data from many more states indicate the need for investigation and enforcement. This problem affects millions of low-income persons who are missing the opportunity to register to vote at a local public-assistance agency. For many low-income individuals, such agencies may be their sole point of contact with the government, and sole opportunity to register to vote.

Ensuring states' compliance with their obligations under Section 7 of the NVRA must be a priority so that low-income citizens may register and participate in our political process, as Congress had intended 15 years ago in passing the NVRA. We are encouraged that the Voting Section of the U.S. Department of Justice, after years of neglecting its responsibility to enforce Section 7 of the NVRA, has entered into settlements with two states in the past year since Dēmos and its partners met with the leadership of the Voting Section last year.[5] However, there is much more work to be done to fulfill the promise of the NVRA for ensuring the political participation of low-income citizens.

Denial of Voter Registration Opportunities to Veterans

As this Committee is aware, many of our nation's veterans experienced serious obstacles to voter registration and the vote prior to the 2008 presidential election. Many veterans reside for extended periods at VA facilities—nursing homes, emergency housing, rehabilitative care centers, or some other type of facility with few on-site voter registration services—and some, especially those who are disabled, face significant obstacles to traveling off-campus for voter registration.[6] This problem was exacerbated prior to the 2008 elections by shifting and detrimental VA policies.

In the months preceding the 2008 presidential election, the Veterans Health Administration issued and withdrew no less than three different policies on voter registration. The first policy directive, VHA Directive 2008-23 issued on April 25, 2008, required all VA facilities to develop comprehensive voter registration plans to assist veterans in voting, required the VA to publicly post voter registration information for veteran inpatients, and required that VA facilities provide absentee voter applications if patients cannot leave the facility. Unfortunately, two and a half weeks later, it issued Directive 2008-25, rescinding Directive 2008-23 and announcing a broad *prohibition* against any third-party voter registration drives. In addition, the VA refused to accede to state requests from California, Connecticut, Vermont, North Carolina, and Arkansas that VA facilities serve as voter registration agencies and

5 See DOJ NVRA settlements with Arizona (available at http://www.demos.org/publication.cfm?currentpublicationID=BB58168C-3FF4-6C82-5DEC8F3E8A072061) and Illinois (available at http://www.demos.org/publication.cfm?currentpublicationID=51787F81-3FF4-6C82-568C31CA2CEDD7CD).

6 In 2006, 773,600 veterans obtained treatment at inpatient VA facilities. *See* http://www1.va.gov/opa/fact/vafacts.asp (last viewed September 6, 2008).

conduct voter registration themselves (to obviate the problem of a lack of third party voter registration).[7] State designation of federal agencies as voter registration agencies is provided for in the National Voter Registration Act.[8]

We know from our work that this second policy inhibited voter registration assistance at VA facilities. In mid-August of 2008, a colleague forwarded an inquiry from a veteran who wanted to organize a group of veterans to conduct non-partisan voter registration at a VA facility. After receiving Directive 2008-025 and information about VA Form 10-0462 (which the group of veterans would have needed to sign), he indicated that he felt it would be futile to request approval to try to register veterans at VA facilities.[9]

On September 8, 2008, after this Committee scheduled a hearing on the issue of voter registration assistance for veterans, the VA rescinded Directive 2008-025 and adopted its third policy on voter registration, Directive 2008-053. While an improvement over the second policy, the registration problem remained as the directive required only that each VA facility must adopt "a written published policy on voter assistance" and that information on registering and voting must be posted throughout VA facilities.[10] The new policy neither imposed any affirmative obligation on VA facilities and agencies to register veterans and failed to clarify whether and to what extent outside groups would actually be permitted to conduct voter registration activities. Indeed, the volunteers with responsibility for the policy were prohibited from affirmatively offering voter registration because each had to sign a form agreeing that (1) s/he would strictly limit voter registration assistance to only those veterans who specifically requested it, and (2) s/he would not encourage political participation through voting.[11]

Data collected by the U.S. Census Bureau indicate that a significant number of veterans remain unregistered to vote. In fact, over 5.3 million veterans (23.2 percent of all veterans) were not registered to vote in 2006.[12] There are also significant gaps in registration rates between more highly educated and affluent veterans and those with lower education and lower income, indicating the need for greater voter registration outreach among such veteran populations. In 2006, only 70 percent of veterans with a high school diploma or less were registered to vote compared to 83 percent of those with a baccalaureate degree and 88 percent of those with an advanced degree.[13] Similarly, only 73 percent of veterans in households with incomes below $25,000 were registered to vote compared to 85 percent of veterans in households making $100,000 or more a year.[14]

During the last session of Congress, Representative Robert Brady and Senators Diane Feinstein John Kerry introduced legislation in the House of Representatives (H.R.6625) and U.S. Senate (S. 3308) that would have required the Department of Veterans Affairs to approve state requests for designation of VA sites as voter registration agencies, in accordance with the National Voter Registration Act. The bills also directed the VA to facilitate voter registration activities by nonpartisan organizations and elections officials. The House passed the legislation but the

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7 *See* Written Testimony of Lisa J. Danetz before the Committee on Rules and Administration, United States Senate, at 8 (September 15, 2008), *available at* http://www.demos.org/publication.cfm?current publicationID=B9461641%2D3FF4%2D6C82%2D5A2FC05FB2A30A6A.

8 42 U.S.C. § 1973gg-5(a)(3)(B)(ii).

9 Written Testimony of Lisa J. Danetz, *supra*, at 7.

10 VHA Directive 2008-053 at 4.b(1), *available at* http://www1.va.gov/VHAPUBLICATIONS/ViewPublication.asp?pub_ID=1756.

11 *See* Transcript of Oral Testimony of Lisa J. Danetz before the Committee on Rules and Administration, United States Senate, at 31 (September 15, 2008).

12 Source: U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2006, Table 15b, available at http://www.census.gov/population/www/socdemo/voting/cps2006.html.

13 *Id.*

14 Source: U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2006, analysis by Dēmos.

Senate adjourned amidst extensive negotiations in this Committee over the bill. Thus, voter registration of veterans remains an issue.

We hasten to add our strong belief that the mechanism provided for in the National Voter Registration Act for designation of divisions of the federal government as voter registration agencies should not be restricted to the Department of Veterans Affairs. Extending voter registration opportunities for many citizens who interact with other federal agencies could help expand the franchise. Preliminary research suggests that voter registration could rise among newly-naturalized Americans and lower-income applicants and recipients of Supplemental Security Income and/or Social Security Disability Insurance if divisions of the United States Citizenship and Immigration Services and the Social Security Administration were also designated as voter registration agencies.

Voter Registration Problems Revealed By Provisional Ballot Usage

Experts estimate that as many as 3 million votes were lost in the 2000 election because of registration problems alone.[15] The Help America Vote Act of 2002 (HAVA) and its provisional balloting requirement were a response to these widespread problems. To ensure that no voter is turned away from the polls, provisional ballots are to be distributed to individuals who, among other things, believe they are registered to vote but whose names cannot be found on the voter rolls at the polling place. Provisional votes are subsequently counted if election officials are able to verify that the individual is a legitimate voter under state law.[16] While provisional ballots can save votes, they are not without their problems.[17]

While provisional ballots themselves pose many problems, their use (and abuse) is actually a symptom of a much more fundamental problem: a dysfunctional voter registration system. Examination of provisional ballot data can thus shed light on the scope and character of the problems affecting our registration system. Nationwide, hundreds of thousands, sometimes even millions, of voters who believe they have properly taken the steps necessary to register to vote are showing up at the polling place only to find their names omitted from the voter rolls. In many cases, their provisional ballots are not counted.

Over 1.9 million provisional ballots were cast in the 2004 presidential election.[18] Sixteen states reported that over 1 percent of all ballots cast in that election were provisional.[19] Provisional ballots made up over 3 percent of ballots cast in six states and over 5 percent in another three states.[20] In the 2006 midterm election, twelve states reported that over 1 percent of ballots cast were provisional, with Arizona reporting a provisional balloting rate of 4.7 percent and Ohio a rate of 3 percent.[21]

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15 CalTech/MIT Voting Technology Project, *Voting: What Is, What Could Be* (July 2001).

16 42 U.S.C. § 15482.

17 See e.g. Scott Novakowski, *A Fallible 'Fail-Safe': An Analysis of Provisional Balloting Problems in the 2006 Election* (Dēmos, November 2007), available at http://www.demos.org/pubs/failsafereport.pdf; Scott Novakowski, *Provisional Ballots: Where to Watch in 2008* (Dēmos, October 2008), available at http://www.demos.org/pubs/provisionalballot_brief.pdf; and Advancement Project, *Provisional Voting: Fail Safe Voting or Trapdoor to Disenfranchisement* (September 2008), available at http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-4-08.pdf.

18 Kimball W. Brace and Michael P. McDonald, *2004 Election Day Survey* (U.S. Election Assistance Commission, 2005), http://www.eac.gov/election_survey_2004/toc.htm.

19 Eagleton Institute of Politics, Rutgers University and Moritz College of Law, The Ohio State University, *Report to the U.S. Election Assistance Commission on Best Practices to Improve Provisional Voting* (2006), available at http://www.eagleton.rutgers.edu/News-Research/ProvisionalVoting_VoterID.html.

20 Ibid.

21 U.S. Election Assistance Commission, 2006 Election Administration and Voting Survey, available at http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/election-day-survey-results.

While nationwide provisional balloting data from the 2008 election is not yet available, Ohio is one state that is again attracting attention for its high provisional balloting rate. Statewide, 3.6 percent of votes cast were provisional, up from an already-high 3 percent in 2006.[22] Franklin County, home to city of Columbus, had a rate of 5 percent and Cuyahoga County, containing Cleveland, had a rate of 4.3 percent.[23]

Such high numbers of provisional ballots and high provisional balloting rates are indicative of breakdowns in our registration system. In most cases, provisional voters clearly believe they have followed all the steps required to be registered to vote. In fact, HAVA requires that each provisional voter sign an affirmation attesting that they are a registered voter.[24] Calls received by the Election Protection hotline in 2006 confirm that many voters given provisional ballots believed they had properly registered, some even saying they had confirmed their registration status with election officials as recently as the day before the election.[25] Furthermore, numbers of provisional ballots cast do not include the throngs of voters who were erroneously turned away from the polls without being offered a provisional ballot or refused to cast one because they believed it would not count.[26]

Just as troubling as high rates of provisional ballots being cast are the large numbers of provisional ballots that are rejected. In 2004, over one in three of the 1.9 million provisional ballots cast were ultimately rejected.[27] In 2006, almost 22 percent of the 791,483 provisional ballots cast were rejected.[28] Because HAVA left up to the states the decision of which provisional ballots to count, states vary dramatically in their rejection rates. In 2006, for example, rejection rates ranged from a high of over 93 percent in Kentucky to 1.6 percent in Oregon. The primary reason provided by the states for rejecting provisional ballots that year was because voters were determined to be "not registered." The second most frequent reason was that the ballot was cast in the "wrong precinct."[29] Thus, the majority of rejected provisional ballots in 2006 were discarded because of problems directly related to voter registration.[30] In these circumstances, not only is our registration system failing our citizens, but the safety net designed to protect them is also proving ineffective.

The widespread use of provisional ballots is indicative of fundamental, underlying problems with our voter registration system. While increasing access to the franchise, voter registration reform would also largely eliminate the problems associated with provisional ballots. By tackling these problems, registration reform would reduce the usage of, and problems related to, provisional ballots. Indeed, states that allow Election Day or Same Day Registration report much lower numbers of provisional ballots. For example, in 2006, Wisconsin reported 271 provisional ballots cast and Wyoming reported only 22 statewide.[31] After adopting EDR in 2007, Iowa experienced a dramatic drop in provisional ballot usage, from 14,661 provisional ballots in the 2004 election to only 4,725 in 2008.[32] North Carolina also experienced a huge drop: 92,533 provisional ballots were cast in the 2006 general

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22 Ohio Secretary of State, 2008 Election Results, available at http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults.aspx.

23 Ibid.

24 42 U.S.C. § 15482(a)(1).(2)

25 Scott Novakowski, *A Fallible Fail-Safe: An Analysis of Provisional Balloting Problems in the 2006 Election* (Dēmos, November 2007), available at http://www.demos.org/pubs/failsafereport.pdf

26 Ibid.

27 EAC, 2004. See note [4].

28 EAC, 2006. See note [7].

29 In 2006, thirty states and the District of Columbia automatically rejected provisional ballots cast in the wrong precinct even if they were cast in the correct jurisdiction or, in some cases, even the correct polling place.

30 In 2006, 66 percent of rejected provisional ballots were discarded for the following reasons: the voter was determined to be "not registered," the voter's registration was "not timely received" by election officials, the voter was purged from the rolls, or because the provisional ballot was cast in the wrong precinct or jurisdiction. EAC, 2006. See note [7].

31 EAC, 2006. See note [7].

32 Iowa Secretary of State 2008 Report, available at http://www.sos.state.ia.us/pdfs/2008report.pdf.

election, as compared to 53,972 in the high-turnout 2008 presidential election. Gary Bartlett, Executive Director of the North Carolina State Board of Elections, has attributed this drop to the state's use of Same-Day Registration.

Harassment of Voters Using Lawful Voter Registration Methods in Ohio

Other disturbing voter registration problems observed by Dēmos during Election 2008 included harassment of and unfounded accusations against lawful registrants by law enforcement authorities in Greene County and Hamilton County, Ohio.

Under Ohio law, voters are permitted to register and cast an in-person absentee ballot on the same day during the six-day window between the beginning of early voting and the end of the registration period. This "Golden Week" for same-day registration in Ohio extended from September 30 through October 6, 2008 in the recent presidential election. Despite legal challenges to this registration procedure by the Ohio Republican Party, four different federal and state courts upheld the lawfulness of this registration method in decisions issued in late September 2008.[33]

Despite the clear lawfulness of Ohio's same-day registration procedure under both Ohio and federal law, law enforcement officials in Greene County, Ohio, announced that they were launching an investigation into voting by each of the 302 persons in Greene County who registered and cast an absentee ballot on the same day during the period September 30 through October 6. The Greene County sheriff announced the investigation even though he acknowledged in news reports that he lacked any first-hand reports or evidence that could support allegations of voter fraud. Instead, the only grounds cited for the investigation were unsubstantiated "concerns" expressed in telephone calls by members of the public who appeared to object to registration and voting by students in the community, unaccompanied by any specific allegation of actual fraud or other illegal conduct committed by any specific voter.

After learning of this disturbing threat of voter harassment, Dēmos immediately drafted a letter to the Greene County Sheriff and Prosecuting Attorney stating that a law-enforcement investigation based solely on the fact that a voter registered to vote using lawful methods threatened the federally protected rights of Greene County voters under Section 11(b) of the Voting Rights Act of 1965, among other protections.

Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), provides:

> No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

33 Dēmos participated as counsel in defending the legality of Ohio's same-day registration period in conjunction with a variety of Ohio voters and advocacy groups. The litigation is described further in the attached letter to Greene County officials dated October 10, 2008 (also available at: http://www.demos.org/pubs/GreeneCountyLetterFinal.pdf)

Our letter pointed out that an investigation based on nothing more than a voter's decision to use a lawful method of registration would surely chill the willingness of voters in Greene County to exercise their right to register to vote in future elections, and that it was difficult to view such an investigation as anything other than unlawful intimidation under Section 11(b) of the Voting Rights Act. We accordingly urged the Greene County officials immediately to cease their investigation and we provided a copy of our letter to the U.S. Department of Justice. Fortunately, within hours after we sent our letter, Greene County officials announced that they were dropping their investigation.

Officials in Hamilton County, Ohio also made highly publicized and unwarranted allegations of voter fraud against some 600 Hamilton County voters who took advantage of the same-day registration window during the 2008 election. In announcing the investigation, Hamilton County Prosecuting Attorney Joe Deters declared "We know of certain voter fraud."[34] However, after news reports noted that Mr. Deters was serving as the Southwest Ohio Regional Chairman of the McCain campaign, Mr. Deters recused himself from the investigation and turned it over to a court-appointed special prosecutor.

In January 2009, the special prosecutor released a report establishing that the claims of voter fraud were in fact groundless.[35] "Ultimately," the report stated, "the investigators discovered get-out-the-vote practices, sponsored by community organizations, which took full advantage of this unique absentee-voting period, but no evidence that these practices violated Ohio law."[36]

Dēmos is concerned that these groundless accusations of voter fraud, and unwarranted investigations of lawful voter registration, may chill lawful voter registration activities. The Committee may wish to inquire whether the Voting Section of the U.S. Department of Justice uncovered other instances of voter registration intimidation through similar tactics during the 2008 election and, if so, what steps are being taken to address this problem.

CONCLUSION

Dēmos appreciates this opportunity to inform the Subcommittee of the serious voter registration problems that continue to impede and deter millions of citizens from full participation in the political process. We look forward to working with the Committee on its continuing efforts to address and overcome these problems in the 111th Congress.

34 Kimball Perry and Howard Wilkinson, "Deter Steps Out of Voter Probe," Cincinnati Enquirer, October 20, 2008
35 "Vote fraud claims were wrong," Cincinnati Enquirer, January 28, 2009, available at http://news.cincinnati.com/apps/pbcs.dll/article?AID=/20090128/NEWS01/901280317/
36 *Id.*

Before the Honorable John Conyers
Committee on the Judiciary
U.S. House of Representatives

March 19, 2009

Statement of Marcel Reid

Community Activist, Organizer and Leader

Marcel Reid began her involvement in grassroots and community organizations at a very young age. With over thirty years of community advocacy and grassroots organizing experience, Marcel is a member in good standing in the Association of Community Organizations for Reform Now (ACORN). Marcel is currently Chair of DC ACORN which serves both Washington, D.C. and Northern Virginia.

Marcel has served on the ACORN National Board of Directors for 5 years, during which she chaired the ACORN By-laws Committee and chaired the Organizational Development Committee for ACORN's Interim Management Committee. True to her convictions for democracy and representation in grassroots advocacy, Marcel is also a co-founder and leader in the ACORN 8 – ***The People's Movement To Reform ACORN***.

On June 20, 2008, the Association of Community Organizations for Reform Now (ACORN) by its Board of Directors, determined that the organization's Chief Organizer and long time affiliate, Wade Rathke, "shall immediately and permanently be terminated from all

employment" and "removed from all boards (and) any leadership roles with ACORN (and) its affiliated organizations (and) corporations." This action followed formal notice on the same day that Wade's brother and ACORN associate, Dale Rathke, reportedly embezzled a substantial amount of money from ACORN during the years 1999 to 2000. ACORN board members Karen Inman, Carol Hemingway, and Marcel Reid were subsequently selected by secret, paper ballot from among multiple candidates to lead a committee of ACORN staff members, temporarily charged with the organization's day to day management in Wade's absence.

Subsequently, on July 13, 2008, the ACORN Board voted unanimously "that funds be created to allow that the board members appointed by the board to sit on the Interim Management Committee have access to professional consultants needed to carry on the work so that the will of the Association Board be carried out." Inman, Hemingway, and Reid then engaged a team of professionals needed to identify, preserve, account for, and otherwise protect ACORN assets and interests. The team includes legal counsel which secured a temporary restraining order (TRO) on August 21, 2008 and is seeking additional injunctive relief. Ultimately, Inman, Hemingway, and Reid seek a full accounting of ACORN assets, a forensic examination of the alleged embezzlement and an independent audit by a licensed CPA firm.

Thus, on behalf of the ACORN 8 – the undersigned group, we come to Congress to explain to you our issues and how we have come to this point in our relationship with the Association Of Community Organizations for Reform Now known as ACORN.

Until recently, we have all been consciences dues paying members of ACORN. Many of us have been members for over ten years. We have served in almost all levels of ACORN membership and volunteer status, including National Board members and Presidents of local ACORN community groups. It brings us no pleasure and profound regret that we find ourselves

at cross-purposes with the National Executive Board and Senior Staff of ACORN. We have no differences within the membership of ACORN, nor with the great work and community building by which ACORN, for the most part, has been known, stood for and accomplished as an organization.

Over the years, some of us have questioned and were not in total agreement with the national leadership and the staff's "top down" decision making when it came to local issues and concerns. We have not understood why local offices had problems receiving accurate accounts of membership dues paid by our local membership to ACORN national. We had trouble understanding how money was spent ostensibly for local activities that local boards had made no request to disburse, and had no knowledge about. At the same time requested disbursements were refused with no reasonable explanation.

The catalyst that led to this present state of affairs was the theft and cover-up of the Dale Rathke's crime, and the subsequent refusal to allow any in depth inquiry or truth concerning ACORN National and Citizen's Consulting Incorporated's (CCI) accounting records and history. An Interim Management Committee (IMC) initially filed a TRO to preserve the financial books and records, and safe guard ACORN assets following the embezzlement of nearly $1 Million from ACORN. Their case is ACORN vs. Rathke, et al., no. 08-8342, before the Civil District Court for the Parish of Orleans, State of Louisiana. Unfortunately, various ACORN staff and executive committee members disagreed with what the IMC had done. These dissenters claimed that the underlying petition was not properly authorized or in ACORN's best interests and should have been withdrawn.

However, during ACORN's annual board meeting, by a 38 to 12 vote, the ACORN Board of Directors voted to withdraw the Preliminary Injunction filed to access records and

safeguard assets filed by the IMC following the embezzlement. The Association Board ordered Citizen's Consulting Inc., the custodian of ACORN's corporate books and records to cooperate with a full investigation of the underlying Rathke embezzlement. Consequently, the Association Board voted to withdraw the petition for a Preliminary Injunction because they regarded it as moot. However, individual Association Board members reserved the right to re-file the petition if necessary. Unfortunately, the refusal of these reasonable requests by elected representatives of the membership was further compounded by the illegal and arbitrary expulsion of any member or national officer who used legal means to pursue this inquiry, at the behest of local boards.

Our present activities are logical, measured and reasonable. Our goal is to reform ACORN, not tear it down. To assure that our national leadership and staff act to benefit the membership of ACORN. The dues paid by membership funds ACORN and the members nationally, are the bodies put at risk in ACORN actions. The members and communities are supposed to benefit from ACORN, not long-term national officers and staff, who seem to think they are ACORN. At present, ACORN works to benefit them, their families and friends, not the membership as a whole. As it stands now, ACORN is not a mass movement, but a movement to mast their illegal actions and preserves the status quo.

Should wisdom prevail, Karen Inman, Marcel Reid and the ACORN 8 will proceed to help initiate the removal of all ACORN staff , board members, and independent contractors who continue violating their fiduciary obligation(s) attendant to the reported or confirmed misdeeds of Dale and/or Wade Rathke; identify, preserve, account for, and otherwise protect ACORN assets and interests; restructure ACORN, its management, and governance as needed to further insulate the organization from misuse as it pursues its corporate mission; and vest the future of

ACORN in new leadership who will respect the organization, its members, and other supporters as they competently strive to advocate for America's poor and middle class.

WHAT WE WANT AND WHY? We want people to consider how ACORN has spent membership dues, government money, donations and foundation grants. Senior staff and Executive Board members through the course of an "association-in-fact" enterprise and RICO conspiracy have intentionally worked with a common purpose to:

- Totally control ACORN and its associated/affiliated entities
- Denying membership due process and benefits of a true democratic process or structure as called for in its own by-laws and the constitution of the United States.
- Shown a pattern of misuse and/or conversion of funds
- Abuse of management authorization
- Concealment and diversion of assets
- Exhibited evidence of management collusion, throughout ACORN and related organizations and entities
- Continually manipulated and used members in order to gain financial settlement, that directly benefit the national officers and staff and not the membership
- Attacked and separated from ACORN anyone who spoke out against its tactics, or asked for truth, transparency, or accountability.

This illegal activity must cease. And any national officer or staff that has furthered these above abuses and activities must be separated from ACORN, and if guilty of illegal actions should suffer the full criminal and civil consequences. This corrupt organization has faced lawsuit after lawsuit claiming the group is responsible for massive voter fraud. Now, this group will be helping with the 2010 census.

As Fox News reports, ACORN "signed on as a national partner with the U.S. Census Bureau in February 2009 to assist with the recruitment of the 1.4 million temporary workers needed to go door-to-door to count every person in the United States."

Much is at stake with the new census. The census not only determines congressional allocation, but it also provides the raw data by which government spending is allocated on everything from roads to schools.

ACORN has been accused of voter fraud, embezzlement, and more... and yet this is a group that the federal government wants helping with the census?

"It's a concern, especially when you look at all the different charges of voter fraud. And it's not just the lawmakers' concern. It should be the concern of every citizen in the country," Rep. Lynn A. Westmoreland, R-Ga., vice ranking member of the subcommittee for the U.S. Census, told FOXNews.com. "We want an enumeration. We don't want to have any false numbers."

The news story quotes an ACORN spokesman, Scott Levenson, as saying that ACORN "has not been charged with any crime." Levinson adds, "ACORN is committed to a fair and accurate count." Does anyone actually believe that? However, the ACORN 8 has filed criminal complaints including criminal civil rights violations and RICO allegations with U.S. Attorney's Office and the FBI in fifteen states and the District of Columbia.

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IN RE: ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW

Karen Inman, Marcel Reid, Coya Mobley, Robert Smith, Adrianna Jones, Yvonne Stafford, Louis Davis and Fannie Brown, *et. al.* Complainants vs. Wade Rathke, Dale Rathke, Steven Kest, Jon Kest, Mike Shea, Zach Pollett, Helene O'Brien, Amy Schur, Liz Wolf, Beth Butler, Mildred Brown, Maud Hurd, Alton Bennett, Bertha Lewis, Beth Kingsley and other unknown individuals. Defendants	January 7, 2009 **ALLEGATIONS** 18 U.S.C. §§1961-68 (RICO Act) 18 U.S.C. §1001 (False Statements to Agents of the U.S. Government), 18 U.S.C. §1341 (Mail Fraud), 18 U.S.C. §1027 (ERISA Violations), and 18 U.S.C. §241 (Conspiracy Against Civil Rights).

JUSTICE DEPARTMENT COMPLAINT

The undersigned State Board delegates and National Board members of the Association of Community Organizations for Reform Now ("ACORN") file this criminal complaint against ACORN Staff and Executive Board members for fraud, embezzlement, conspiracy and concealment, and criminal civil rights violations. Additionally, since there has already been the public admission that a felony was committed, it is also possible that other federal offenses have also been committed including but not limited to; Title 18 U.S.C. §1341, Mail Fraud, 18 U.S.C. §1001, Presenting a False Document to the an Agent of the United States Government; 18 U.S.C. §1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses including civil and/or criminal RICO violations.

Finally, the complainants contend that full investigations of a RICO conspiracy under 18 U.S.C. §1962(c) are warranted because they assert that (1) the defendant persons (2) were employed by or associated with an enterprise (3) that engaged in or affected interstate commerce and that (4) the defendant persons operated or managed the enterprise (5) through a pattern (6) of racketeering activity, and (7) the complaints were injured in its business or property by reason of the pattern of racketeering activity. Thus, the complainants feel that a formal RICO investigation is also warranted.

1. The Alleged Offense:

The Complainants hereby allege a violation of Title 18 U.S.C. §241 – Conspiracy Against Constitutional Rights – which prohibits in relevant part, "two or more persons (from conspiring) to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . ." *See, 18 U.S.C. §241.*

BACKGROUND

ACORN, or the Association of Community Organizations for Reform Now, is a community-based advocacy organization founded in 1970. ACORN became part of the story of the 2008 presidential election as news reports and allegations surfaced against ACORN in a number of states. These complaints refer primarily to alleged irregularities with voter registration drives conducted by the organization. (*National Review Online:* Inside Obama's ACORN, May 29, 2008.) But also included significant embezzlement and concealment by Senior Staff and Executive Committee members.

ACORN registered as a non-profit corporation with the Secretary of State in Louisiana in 1977. Its Charter Organization ID is 04700320X. According to its corporate filings, ACORN's principle place of business is New Orleans, Louisiana, and approximately 294 related entities and related non-profits are also located at this place of business. ACORN is not registered as a tax-exempt organization. ACORN's top three officers are President Maude Hurd of Dorchester,

MA, Vice President Maria Polanco of Brooklyn, NY, and Secretary Maxine A. Nelson of Pine Bluff, AR. Maxine A. Nelson is also the director of Project Vote.

Citizen's Consulting, Inc. (CCI) provides bookkeeping, human resource and financial management services exclusively for ACORN and related entities. All of CCI's "clients" reside at ACORN office locations, utilize common management and staff. CCI is the financial "nerve center" for ACORN and it affiliated organizations which houses the corporate books and records for all ACORN entities.

ACORN Structure

ACORN was founded by Wade Rathke, an activist on issues of labor unions and low income workers, and Gary Delgado, an activist on issues of race and social justice. It has national headquarters in New York, New Orleans and Washington, D.C. The organization describes itself as a non-profit, non-partisan social justice organization. In 2003, ACORN opened operations in 20 new cities, including 5 state capitals. The group claims about 350,000 members across the country. (*Wall Street Journal:* Obama and ACORN, October 14, 2008.). Since 1970, ACORN has grown to more than 400,000 member families, organized in 1,200 neighborhood chapters in 110 cities across the U.S. and in cities in Canada, Mexico, the Dominican Republic, Peru, Argentina and India.

ACORN Funding

Government grants

According to an October 8, 2008 article in the New York Post, 40% of ACORN's operations are funded through grants it receives from various governmental entities. (*New York Post:* The Pro-Barack Vote-Fraud Drive, Michelle Malkin, Oct. 8, 2008.) Grants have been issued to ACORN by the Department of Housing and Urban Development, which gave $8.2 million to ACORN in the years between 2003 and 2006, as well as $1.6 million to ACORN affiliates. The Environmental Protection Agency gave a $100,000 grant to ACORN in 2004 for a Louisiana Justice Project, which removed lead from the homes of low income families. The Justice Department also gave a grant to ACORN in 2005 for a juvenile delinquency program. (*NPR:* ACORN's Money Tree Has Many Branches, October 15, 2008).

Organized Labor

ACORN also receives money from organized labor. According to Department of Labor statistics, ACORN has received approximately $4 million from the Service Employees International Union as well as its local affiliates. The Illinois Homecare Workers and Home Childcare Providers, a local Chicago SEIU union, which was formed through ACORNs efforts pays rent to ACORN as well as contributing through the SEIU. (*NPR:* ACORN's Money Tree Has Many Branches, October 15, 2008) According to a recent NPR investigation, ACORN also receives funding from the Change to Win labor federation, the Food and Commercial Workers Union and the United Federation of Teachers.

Private Foundations

ACORN receives funding from a variety of private charitable organizations that are widely recognized as "liberal," including the Bauman Family Foundation, George Soros' Open Society Institute and the Charles Stewart Mott Foundation. (*NPR:* ACORN's Money Tree Has Many Branches, October 15, 2008).

ACORN and its affiliates also receive funding from more traditional sources, such as corporate foundations, including the JP Morgan Chase Foundation, Ben & Jerry's foundation, the Bank of America Charitable Foundation, and Citigroup, as well as the Bill and Melinda Gates Foundation, the Ford Foundation, and foundations affiliated with the founder of United Parcel Service (UPS). (*NPR:* ACORN's Money Tree Has Many Branches, October 15, 2008). A full list of ACORN and ACORN affiliate donors is available from the Capital Research Center, a non-profit organization which studies political advocacy groups. (Foundation Watch, 2008: Capital Research Center Cracks the ACORN)

Interrelated Corporations

ACORN and its affiliated entities make up a network that has drawn criticism for its complexity and internal relationships.

Elizabeth Kingsley, an ACORN attorney, wrote a 2008 report expressing concerns that ACORN and Project Vote may have violated federal laws because of how they interacted.

Project Vote, the report says, hires ACORN to perform voter registration drives.. Project Vote is a 501(c)(3) federally tax-exempt organization, which means that it is subject to prohibitions on partisan political activity. ACORN, however, is not subject to those same restrictions, because it is not federally tax exempt.

Michael Slater, executive director of Project Vote, told the **New York Times** that, "Project Vote and Acorn have a written agreement that specifies that all work is nonpartisan."

Kingsley, however, claims that the way records were kept made it impossible for her to tell whether or not PV's money had, at the end of the day, been used for strictly non-partisan purposes. Until 2007, Project Vote's board was exclusively composed of ACORN staff.

- Kingsley said about this, "As a result, we may not be able to prove that 501(c)3 resources are not being directed to specific regions based on impermissible partisan considerations."
- Kingsley also claims that governance issues plagued the organizations, writing, "Board meetings are not held, or if they are, minutes are not kept, or if minutes are kept, they never make it into the files."

Several Project Vote board members claim that they were unaware that they served on Project Vote's board:

- George Hampton, listed as a board member on federal tax filings from 1994-2006, said that he had never heard of Project Vote.
- Cleo Mata, listed as a board member on tax forms from 1997 to 2006, also said she was not aware she was on the Project Vote board.

Although ACORN represents itself as separate from its related or associated entities; these companies are in reality all ACORN. The entities share common goals, management, control, locations, financial management and interlocking directors and staff. (In a presentation to ACORN Funders, Steve Kest describes the Association or "ACORN Family" of as one corporation.)

2. **Complaint Overview** – "ACORN has become a cornucopia of power and wealth, wielded by people who patronize and exploit more than empower or even help the poor and moderate income people ACORN purports to serve; and any civil or constitutional right to dissent is a casualty of their intent to retain that control." *Marcel Reid, chairperson – The ACORN 8.*

"Pay no attention to that man behind the curtain."
The Wizard of Oz

ACORN is the acronym for "Association of Community Organizations for Reform Now." It is often described as a "community based" advocate for low and moderate income people. In fact ACORN's corporate governance is presumably supplied and controlled by people it represents. The association's bylaws confirm that its national operation is an outgrowth of local community organizations, affiliating on a district and statewide basis. *(See, ACORN Bylaws – Article One: Local Groups Affiliation / Article Three: Local Groups Operation / Article Four: District Boards / Article Five: State Level Co-ordination).* "The number of the board of Directors shall be equal to one plus twice the number of state ACORN organizations affiliated with the Association, . . . – in other words, one director being the Association president, and two directors coming from each state." *(ACORN Bylaws – Article Six: Association Board of Directors, 2).*

Though proverbially "of, for, and by" its constituents, ACORN interestingly vests considerable power in its "Chief Organizer," a paid staffer who need not be an ACORN member. "The Chief Organizer shall have the right to employ such other staff personnel as s/he deems appropriate and necessary to carry out (ACORN affairs)." *(AB – Article Nine: Staff, 3);* they need not emerge from communities ACORN serves. The organization's daily affairs "shall be carried out by . . . staff under the supervision of a Chief Organizer." *(AB – Article Nine: Staff, 1).*

So, ACORN, in effect, sanctions and funds a patronage system for its Chief Organizer. But even the division of power or lines of authority underlying that odd arrangement are proving illusory. They are subject to bylaws and other provisions the complainants find increasingly difficult to enforce. And for their corresponding dissent, each said complainant has been or is in the course of being purportedly removed from ACORN in any and all capacities.

In affirmatively acting to eject the complainants from ACORN, the respondents and each of them have conspired to "injure, oppress, threaten, (and) intimidate" said complainants "in the free exercise or enjoyment of (their rights or privileges) secured to (them) by the Constitution" and as dues-paying ACORN members; entailing their First Amendment right to speak out on matters of importance to ACORN and petition government for related relief. Moreover, one or more of said respondents may have so acted in violation of 18 U.S.C. §241 to avert liability for a reported embezzlement or misappropriation of ACORN funds, the unlawful concealment of that crime, and/or other breaches of fiduciary obligations. This complaint accordingly implicates the interests of all 500,000 families reportedly represented by ACORN; its dues paying members; as well as all the private and public sector benefactors, helping sustain ACORN's multi-million dollar, direct and indirect operations.

3. Personal Jurisdiction Considerations:

ACORN is a nonprofit corporation, organized under the laws of the State of Arkansas. The nonprofit is reportedly headquartered in New Orleans, Louisiana. But it has "national offices" in Washington, D.C., and New York City, NY.

ACORN's Executive Committee consists of the following board members, who respectively reside in the indicated states:

- Maude Hurd - Massachusetts
- Maria Planco - New York
- Maxine Brown - Arkansas
- Carol Hemingway - Pennsylvania
- Marie Pierre - New York
- Vanessa Guidry - Louisiana
- Pedro Rivera - New Jersey
- Alicia Russell - Arizona

ACORN's Executive Committee members may also include the following people:

- Tony McElroy - Texas
- Alton Bennett - Minnesota
- Paul Satriano - Minnesota

Corresponding with their respective state of residence, the complainants have been or in the process of being purportedly removed from ACORN by its following state boards:

- ACORN Minnesota State Board;
- ACORN Board for the District of Columbia;
- ACORN Ohio State Board;
- ACORN Michigan State Board;
- ACORN Texas State Board;
- ACORN North Carolina State Board;
- ACORN California State Board.

4. Complainants' Statement of Facts and Legal Contentions:

A. BACKGROUND:

(1). ACORN's former Chief Organizer recently admitted that he and the organization's "Staff Management Council", concealed an embezzlement or misappropriation of ACORN funds for nearly a decade. The organization's General Counsel, board president, former board treasurer, and various mid to upper level managers have publicly admitted to knowing of and acquiescing to or actively participating in that concealment.

Eight years ago, during 1999 and 2000, the aggregate budgets of ACORN and its affiliate organizations totaled about $41.5 million. During this time frame, Dale Rathke embezzled nearly $1 million from ACORN and affiliated charitable organizations in 1999 and 2000. Moreover, due to the admission that a felony has been committed, other federal offenses may have also been committed including but not limited to; Title 18 U.S.C. 1341, Mail Fraud, 18 U.S.C. 1001, Presenting a False Document to the an Agent of the United States Government; 18 U.S.C. § 1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses.

ACORN Staff members Steven Kest, Jon Kest, Mike Shea, Zach Pollett, Helene O'Brien, Amy Schur, Liz Wolf, Beth Butler, Mildred Brown and Bertha Lewis knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Additionally, ACORN executive committee members Maud Hurd (President) and Alton Bennett (Treasurer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement.

An ACORN founder, Wade Rathke, was the organization's Chief Organizer for nearly all of the approximately 32 years that the position has existed. "The Chief Organizer, unless otherwise incapacitated, shall be present at all meetings of the (ACORN) Board of Directors in order to make reports as requested and instructed by the Board, and to insure that Board decisions, policies, rules, and regulations are communicated and carried out by the staff." *(AB Article Nine: Staff, 4).*

Yet on June 20, 2008, Wade disclosed for the first time to the full ACORN board that his brother, Dale Rathke, embezzled or misappropriated funds from the organization over the course of 1999 to 2000. *(See, ACORN Annual Meeting Minutes June 20, 2008).* Wade acknowledged initially addressing the matter with "Staff Management Council", consisting at the time of Steve Kest, ACORN's current Executive Director; Zach Polett, ACORN's Political Director; and Helene O'Brien who was then ACORN's National Field Director. *(See, ACORN Minutes – 6/20/08).*[1]

A whistleblower reportedly exposed Dale Rathke's referenced embezzlement or misappropriation to at least one of ACORN's funders, precipitating his termination as the group's Chief Financial Officer. The logistics of Dale's termination and Wade's related, preliminary suspension are unclear as both were accomplished before being reported to the full ACORN board. In any event, on June 20, 2008, ACORN's board of directors determined that Wade Rathke "shall immediately and permanently be terminated from all employment" and "removed from all boards (and) any leadership roles with ACORN (and) its affiliated organizations (and) corporations." *(See, ACORN Minutes – 6/20/08).* ACORN board members subsequently selected fellow directors Karen Inman and Marcel Reid by secret paper ballots, from among multiple candidates, to join a committee of ACORN staff members, temporarily charged with the organization's daily management in Wade's absence. *(See, ACORN Minutes – 6/20/08).*

[1] According to Steve Kest, "(t)he following people were on the management council eight years ago, and were made aware of the embezzlement: Steve Kest, Jon Kest, Madeline Talbott, Keith Kelleher, Mike Shea, Zach Polett, Helene O'Brien, Amy Schur, Liz Wolff, and Beth Butler." *(See, Document from Ralph McCloud CCHD).*

Indiana attorney Steve Bachmann identifies himself as ACORN's general counsel. *(See, June 27, 2008 - 17:43:12 - Bachmann Email / Sent by Bertha Lewis to Carol Hemingway, Marcel Reid, Maria Polanco, and Marie Pierre).* He essentially admits to washing his hands of the Dale Rathke embezzlement or misappropriation once Wade Rathke claimed to have brought alternative legal counsel in on it. *(See, June 27, 2008 - 1 7:43:12 - Bachmann Email / Sent by Bertha Lewis to Carol Hemingway, Marcel Reid, Maria Polanco, and Marie Pierre).*

B. OPERATIVE FACTS:

(1). A literal revolt has been waged against addressing the apparent embezzlement or misappropriation of ACORN assets by Dale Rathke through state court intervention.

ACORN board member Karen Inman was to generally address legal matters and her fellow board member Marcel Reid was to propose ACORN's organizational growth and development as part of what began as the group's Interim Staff Committee. *(See, ACORN Minutes – 6/20/08).* By July 13, 2008, the ACORN board voted unanimously "that funds be created to allow that the board members appointed by the board to sit on the Interim Management Committee have access to professional consultants needed to carry on the work so that the will of the Association Board be carried out." *(See, ACORN Special Meeting Minutes – July 13, 2008).* But ACORN's staff proceeded, substantially independent of Inman and Reid's efforts. In fact the organization's Interim Chief Organizer and Executive Director circulated a September 2008 joint statement entitled "Moving Forward" in which they outline critical and sometimes costly action, purportedly taken by ACORN without prior knowledge or consent of its full board. *(See, Lewis and S. Kest's 9/2008 "Moving Forward").*[2]

In accord with their July 13, 2008 mandate, ACORN board and Interim Management Committee (IMC) members Inman and Reid engaged a certified community development

[2] When asked to summarize the transition strategy their opponents support, Inman and Reid explain it is "substantially managed by Wade's former accomplices; entails private negotiations with Wade with no legal compulsion of anything on his part, usurps the prerogative entrusted to them by board vote, and is being implemented through unauthorized contracting." By accomplices, Inman and Reid say they mean people who reportedly helped Wade conceal his brother's embezzlement from ACORN. Both Inman and Reid complain that "such deference over the years nearly transformed ACORN into a Rathke family alter-ego."

financial institution, Kappa Alpha Psi Federal Credit Union, to oversee a team of professionals needed to identify, preserve, account for, and otherwise protect ACORN assets and interests. The team includes attorneys who secured a temporary restraining order on August 21, 2008, to preclude destruction of ACORN's corporate records and books. (*See, ACORN – vs- Rathke, et al.*, case no. 08-8342 before the Civil District Court for the Parish of Orleans, State of Louisiana). The Washington, D.C. law firm of Harmon, Curran, Spielberg & Eisenberg, L.L.P., by attorney Beth Kingsley, responded by spearheading a literal revolt against Inman and Reid, in complete disregard of applicable rules of professional conduct. *(See, Kingsley Memo of 9/2/2008 and Legal Ethics Analysis of attorney Jesselyn Radack).*

(2). The prospect of ACORN employees and/or consultants exerting more than incidental control over the membership based, nonprofit corporation signals a conflict appreciably different than intra-organizational power struggles.

A New York Times article recently appeared in print and online, entitled "Lawsuit Adds to Turmoil for Community Group." The community group being referenced is of course ACORN. The writer, Stephanie Strom, indicates that "(t)he suit is a sign of the turmoil that has rocked Acorn since the embezzlement by Dale Rathke, Wade Rathke's brother, was revealed to the board in June." (Stephanie Strom, *"Lawsuit Adds to Turmoil for Community Group"*, New York Times – September 10, 2008). The Associated Press was even more poignant: "The embezzlement case, a recent revelation to some board members, has spawned a lawsuit and set off a power struggle inside ACORN at a time when the liberal group's voter registration practices are the subject of fraud investigations and fodder for presidential campaign attacks." *("Acorn Falls into More Trouble"*, Associated Press, October 18, 2008).

As valuable and sound as their insights and guidance may be, ACORN's staff and paid consultants hardly discern[3] the desires and will of ACORN constituents better than their duly elected representatives do collectively. So it would be inappropriate for ACORN staff and/or independent contractors (as nonmembers or unelected agents) to control the membership based, nonprofit corporation in more than an incidental way. The prospect of ACORN employees

[3] Their expertise in fulfilling the expressed desires and will of ACORN constituents is another matter.

and/or consultants exerting any other manner of control entails a situation more illicit than an intra-organizational power struggle. At issue is whether some of them are doing so by circumventing the sometimes unwieldy, but democratic voting process of ACORN's board of directors.

Should nonmembers and/or unelected corporate agents essentially operate ACORN, the organization and its governance would be something other than what they are purported to be. *(See, ACORN Bylaws: Articles One – Six).* Dues paying ACORN members need not tolerate such a sham or farce, particularly when it subjects them or any one of them and the nonprofit to widespread public ridicule if not civil and/or criminal liability. Several ACORN members have expressed and continue expressing corresponding dissent, some of which escalated to a pending state court petition for writ of mandamus. (*See, ACORN vs Rathke, et al.*, case no. 08-8342 before the Civil District Court for the Parish of Orleans, State of Louisiana).

(3). With or without cause, the ACORN board "can remove officers with . . . a vote equal in number to three-fourths of the members sitting on the Board."

An account of state court proceedings culminating with this criminal complaint are provided by certain correspondence of attorney James Grey, II of the Louisiana-based law firm, Gray & Gray, which correspondence is attached hereto, incorporated herein by reference, and listed below:

Date	Addressee	Subject
August 24, 2008	IMC and ACORN board of directors	"Association Board Explanation of TRO Petition"
October 18, 2008	Maud Hurd *(sic)*, Steve Kest, and ACORN board of directors	"Offer to Withdraw Writ of Mandamus" with attached "Request for Corporate Records to Association Board"
November 13, 2008	Andrew A. Lemmon, Esq.	"Removal of ACORN 8"

With or without cause derived from circumstances of the indicated correspondence, the ACORN board "can remove officers with . . . a vote equal in number to three-fourths of the members sitting on the Board." *(See, ACORN Bylaws – Article Seven: Officers, 2).* Should those

circumstances provoke one or more statewide disputes, "(e)ach state Executive Board (is supposed to have) a system for settling grievances within local groups in the state, to the end that ACORN's organizational democracy, harmony and unity might be maintained." *(See, AB – Article Eleven: Grievances).*

On or about November 11, 2008, Maude Hurde, president of ACORN's board of directors, issued the following statement, purportedly on behalf of "ACORN('s) Executive Board", to ACORN directors Karen Inman, Marcel Reid, Coya Mobley, Adrianna Jones, Yvonne Stafford, Fannie Brown, and Louis Davis:

> On November 9, 2008 the ACORN Executive Committee met and considered the resolutions of the majority of state boards. The feedback from the states was clear, and the Executive Committee acted upon it by voting that any member participating in the mandamus action, now or in the future, shall not be eligible to hold office or serve on any Association Board committee. Accordingly, you are hereby removed from any office or committee position you may have held.

(See, 11/11/08 Memo – ACORN Executive Board by Maude Hurd, President ACORN Association Board – to "Mandamus 7").

As ACORN Negotiation Committee Chair, Sonja Merchant Jones served ACORN directors Marcel Reid, Karen Inman, and Coya Mobley with the following written notice, on or about November 11, 2008:

> This is to inform you that after consideration of the resolutions of the majority of state boards, the Association Executive Committee has determined that your demands are not accepted and there will be no further negotiations with the individuals participating in the petition for Writ of Mandamus. We therefore have nothing further to negotiate at this time.

(See, 11/11/08 Memo – Negotiations committee chair (Sonja Merchant-Jones) to Mandamus negotiating group (Marcel Reid/Karen Inman/Coya Mobley).

Maude Hurd expounds on the foregoing notices in separate memos dated November 11, 2008 to "Association Board Delegates" and "DC and MN affiliates" respectively. *(See, 11/11/08 Memos – Executive Committee by Maude Hurd, President ACORN Association Board – to Association Board Delegates; and DC and MN affiliates, respectively).* She further provides that

"(a)ny state, region, or local groups that seeks to undermine these decisions may be subject to administratorship according to Article 13 of the Bylaws", which "shall be understood to mean a situation wherein the usual rights of ACORN regional authorities to direct policies, affairs and activities of their particular region shall be temporarily suspended; and given to an administrator." *(See, 11/11/08 Memo Executive Committee by Maude Hurd, President ACORN Association Board – to DC and MN affiliates; and AB – Article Thirteen: Administratorship, 2a.)* "The objective of (that) bylaw (is) to preserve ACORN's integrity as an effective, harmonious, unified, and democratic organization." *(See, AB Article Thirteen: Administratorship, 1.)*

(4). There would have to be advance notice of any board vote purportedly empowering ACORN's Executive Committee to expel fellow members from the organization and/or its offices.

According to Stephanie Strom of the New York Times, ACORN's Interim Chief Organizer contends that "the board's executive committee . . . is charged with making decisions between the board's two annual meetings." *(*Stephanie Strom, *"Acorn Working on Deal to Sever Ties With Founder"*, New York Times – October 16, 2008*)*. On July 13, 2008, ACORN's General Counsel represented that "the Exec Comm's power are *(sic)* Not in the bylaws and are determined from meeting to meeting – ". *(See, July 13, 2008 - 7:15 PM - Bachmann Email to myexdirector@acorn.org and Karen Inman).* Arguably without a "meeting" at which there is a "quorum", no such determination can be made by ACORN's board of directors. *(AB – Article Six: Association Board of Directors, 11).*

A quorum is unlikely to spontaneously convene; vote, on a totally impromptu basis, in adequate numbers to empower ACORN's Executive Committee as the organization's Interim Chief Organizer reportedly envisions; while simultaneously waiving prior notice. So, as a practical matter, there would have to be some kind of advance notice of any board vote purportedly empowering ACORN's Executive Committee to expel fellow members from the organization and/or its offices. *(AB – Article Six: Association Board of Directors, 9 & 10).* The complainants hereby attest that they have never been provided any such notice.

C. LEGAL CONTENTIONS:

(1). "A corporation is held responsible for acts not within the agent's corporate powers strictly construed, but which the agent has assumed to perform for the corporation when employing the corporate powers actually authorized, an in such cases, there need be no written authority under seal or vote of the corporation in order to constitute the agency or to authorize the act." *New York Central R. Co. vs- U. S.*, 212 U.S. 481 at 493-494 (1909). *See also,* American Criminal Law Review, March 22, 2008 – *Corporate Criminal Liability, §II. A. -C.;*

(2). "It is true that there are some crimes which, in their nature, cannot be committed by corporations. But there is a large class of offenses . . . wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes, (there is) no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them." *New York Central R. Co. at 494-495;*

(3). "(T)he intracorporate conspiracy doctrine does not apply to alleged intracorporate criminal conspiracies." *McAndrew –vs- Lockheed Martin Corp.,* 206 F.3d 1031 (11th Cir. *En Banc* 2000);

(4). "Courts . . . have interpreted the . . . requirement, 'with intent to benefit the corporation,' almost out of existence" as a criteria for imposing corporate criminal liability. *See, American Standards of Corporate Criminal Liability;*

(5). "The basic purpose of requiring that an agent have acted with the intent to benefit the corporation . . . is to insulate the corporation from criminal liability for actions of its agents which be inimical to the interests of the corporation or which may have been undertaken *solely* to advance the interests of that agent or of a party other than the corporation." *See, "Bringing Criminal Charges Against Corporations",* Memorandum by Deputy Attorney General to "All Component Heads and United States Attorneys";

(6). "(A)bsent proof of false statements knowingly or recklessly made . . . , exercise of (the) right to speak on issues of public importance may not furnish the basis for . . . dismissal . . ." *See, Pickering v. Board of Education,* 391 U.S. 563 at 574 (1968);

(7). "(T)he freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments given petitioner the right to hire attorneys . . . to assist . . . in the assertion of . . . legal rights." *Mine Workers vs- Illinois Bar Assn,* 389 U.S. 217 at 221-222 (1967);

(8). "(T)he rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights." *Id. at 222.*

(9). "Groups which find themselves unable to achieve their objectives through (legitimate voting processes) frequently turn to the courts . . . (a)nd litigation may well be

the sole practicable avenue open to a minority to petition for redress of grievances." *NAACP vs- Button,* 371 U.S. 415 at 429 (1963);

(10). "Directors may be removed from office, for good cause, by a majority vote of the board of directors or the members. What constitutes 'good cause' depends on the nature and circumstances of the organization, but it is not simply a desire by the majority to be rid of an opposing faction. Directors should be removed pursuant to procedural provisions contained in the bylaws or charter." *Glover, et al. v. Dean Overstreet, et al.,* 984 S.W.2d 406 at 409 (1999).

(11) "(T)o be guilty of conspiracy, a defendant (need not) have know that his conduct violated federal law." *U. S. –vs- Feola,* 420 U.S. 671 at 687 (1975).

3. The Direct Victims:

1) Karen Inman of St. Paul, Minnesota;
2) Marcel Reid of Washington, DC;
3) Coya Mobley of Dayton, Ohio;
4) Adrianna Jones of Grand Rapids, Michigan;
5) Robert Smith of Fort Worth, Texas;
6) Yvonne Stafford of Charlotte, North Carolina;
7) Fannie Brown of Oakland, California;
8) Louis Davis of Washington, D.C.
9) Robert Mills of Wyoming, Michigan;
10) Stephanie Cannady of Rhode Island;
11) Pochantas Outlaw of Washington, D.C.;
12) Charles Turner of Washington, D.C.;
13) Ronald Sykes of Washington, D.C.;
14) Rosyln Valeary of Texas;
15) Gwendolyn Cogshell of Missouri;
16) Yvonne Woods of Kentucky;
17) Diana Barnes of Mississippi; and
18) Dana Williams of Georgia.

Complainant, Karen Inman is an Association Board Delegate from Minnesota and member of the Interim Management Committee. Karen resides at 690 LaFond Ave. St. Paul, MN 55104.

Complainant, Marcel Reid is a DC Delegate to the Association Board and member of the Interim Management Committee. Marcel resides at 3790 Martin Luther King Jr., Blvd, SE, Apartment B-1, Washington, DC 20032.

Complainant, Coya Mobley is an Association Board Delegate from Ohio. Coya resides at 346 Kenwood Ave. Dayton, OH 45405.

Complainant, Adrianna Jones is an Association Board Delegate from Michigan. Adrianna resides at 842 SE Logan St., Grand Rapids MI 49506.

Complainant, Robert Smith is an ACORN Texas State Board Delegate. Robert resides at 1121 East Ramsey Ave. Fort Worth, TX 76104.

Complainant, Yvonne Stafford is an Association Board Delegate from North Carolina. Yvonne resides at 1018 Everett Place, Charlotte, NC 28205.

Complainant, Fannie Brown is an ACORN California State Board Delegate. Fannie resides at 7438 Weld St. Oakland, CA.

Complainant, Louis Davis is a DC National Board Delegate and Finance Committee Member. Louis resides at 729 Congress St., S.E., Washington, DC 20032.

Complainant, Robert Mills is a Michigan State Board Treasurer and alternate National Board Delegate. Robert resides at 2043 Clyde Park SW, Wyoming, MI 49509.

Complainant, Stephanie Cannady is a National Board Delegate State Co-chair for Rhode Island. Stephanie resides at 58 Julian Street #2, Providence, Rhode Island, 02909.

Complainant, Pochantas Outlaw is the Chair of ACORN PAC and a State Board Delegate for Washington DC. Pochantas resides at 214 Tenth Street NE, Washington, DC.

Complainant, Charles Turner is a member in good standing and Chair of DC ACORN housing programs. Charles resides at 2201 Savannah Street, SE, Apartment 301, Washington, DC.

Complainant, Ronald Sykes is the Treasurer of ACORN PAC in Washington DC. Ronald resides at 635 Tenth Street, NE, Washington, DC.

Complainant, Roslyn Valeary is a member of good standing and local ACORN chapter chair. Roslyn resides at Robin Hill Lane, Garland, TX 75044.

Complainant, Gwendolyn Cogshell is a National Board Delegate from Missouri. Gwendolyn resides at 5229 Maple Street, St. Louis, MO 63113.

Complainant, Yvonne Woods is a National Board Delegate and State Board Chair from Kentucky. Yvonne resides at 4201 Shady Villa Drive, Louisville, KY 40219.

Complainant, Diana Barnes is a National Board Delegate from Mississippi. Diana resides a 2037 East Drive, Jackson, MS 39204.

Complainant, Deacon Dana Williams is a National Board Delegate from Georgia. Dana resides at 37 Wadley St., NW, Atlanta, GA 30314.

4. The Alleged Motive - To Thwart a Comprehensive Investigation of a Previously Concealed Embezzlement or Misappropriation

The current complainants who joined ACORN at its annual board meeting in October, 2008, distributed to those attending that gathering, among other things, the attached tri-fold and legal as well as operational reports. *(See, "Scrubbing The Stain from White Collar Crime;* Inman Legal Report; and Reid Organizational Report – October 16, 2008). As these items, attorney Gray's attached correspondence, and the complainants' many published statements confirm their underlying objective is truth and transparency, it would seem the mechanisms for reaching that goal could be determined by candid resort to ACORN's democratic voting processes. Given that they have not been; the arguably unreasonable resistance to the complainants' related demands; and the clear transgression of First Amendment rights at hand – the respondents seem intent on thwarting a comprehensive investigation of Dale Rathke's previously concealed embezzlement or misappropriation.

A reasonable investigation prompted by this complaint is likely to confirm:

- ACORN bylaw violations;

- corresponding breaches of fiduciary duties;
- state law torts (including but not limited to legal malpractice);

and may establish one or more violations of 18 U.S.C. §§ 3 *(Accessory after the fact);* 4 *(Misprison of felony);* 245 *(Federally protected activities);* 371 *(Conspiracy to commit offense or to defraud United States);* 1341 *(Mail fraud);* 1343 *(Wire fraud)* 26 U.S.C. §7206 *(Fraud and false statements)* among other federal and/or state crimes in addition to the alleged conspiracy against rights prohibited by 18 U.S.C. §241.

Moreover, through the investigation following the embezzlement and subsequent acts of concealment and retaliation; the complainants have discovered that ACORN has become the victim of its Senior Staff and Executive Committee members through the course of an association-in-fact enterprise and RICO conspiracy.

The Defendants have engaged in these acts knowingly and intentionally with a common purpose of controlling ACORN its and its associated/affiliated entities and denying its membership the benefits of any true democratic process. Thus, there appears to be a pattern of misuse and/or conversion of funds, abuse of management authorization, concealment of assets and evidence of management collusion, throughout ACORN and related organizations.

Funding Draws Criticism

Donations to ACORN from traditionally "progressive" groups has drawn criticism to the social justice organization from other political organizations. The **Consumer Rights League** (CRL), in particular, has focused on ACORN's funding. They assert that ACORN's budget is "is fed by extracting immense resources from labor unions, government grants, private foundations, its members, and 'settlements' with targeted businesses". (Employment Policies Institute, Rotten ACORN: America's Bad Seed, July 2006.)

A press release from CRL on June 18, 2008 claimed, "The ACORN Housing Association (AHC), an ACORN affiliate that receives over 40% of its funding from government sources, claims to be a consumer advocate. In a newly-released report from CRL, however, a series of documents obtained from a whistleblower source reveals hypocritical and potentially illegal use of taxpayer dollars by ACORN and its related organizations." (June 18, 2008 press release by the Washington, DC-based Consumer Rights League).

ACORN's financial construction has also led to investigation by authorities. According to an October 21, 2008 article in the **New York Times**, "Acorn faces demands for back taxes by the Internal Revenue Service and various state tax authorities."

Requests To End Government Funding

On October 22, 2008 House Republican leader John Boehner asked President Bush to block all federal funds to ACORN because of the voter fraud allegations surrounding the group. Boehner said, "It is evident that ACORN is incapable of using federal funds in a manner that is consistent with the law," Boehner, R-Ohio, wrote Bush, saying that funds should be blocked until all federal investigations into the Association of Community Organizations for Reform Now are completed. (AP: House GOP leader asks Bush to cut off ACORN funds, Oct 22, 2008.)

Thus, ACORN is the victim of an association-in-fact enterprise, i.e., senior staff and insiders, and is being operated through a pattern of racketeering activity including extorting monetary settlements and fraudulently acquiring public financing through the means of interstate commerce, without the full knowledge and consent of the Association Board and its members. And there is a substantial probability that substantial ACORN assets and resources are being concealed, dissipated and transferred into offshore accounts.

In all relevant respects, the defendants and accomplices conspired and acted in concert with each other in order to further their fraudulent schemes. The RICO Defendants and their accomplice's acts of concealment took a number of forms, many of which were unknown to the complainants because such actions and concealment are within the exclusive knowledge of the Defendants.

5. The Alleged Perpetrators:

1) National ACORN;
2) The consenting members of ACORN's national Executive Committee;

3) The consenting members of the following ACORN, state boards:

- ACORN Minnesota State Board;
- ACORN Board for the District of Columbia;
- ACORN Ohio State Board;

- ACORN Michigan State Board;
- ACORN Texas State Board;
- ACORN North Carolina State Board;
- ACORN California State Board; and

3) Various ACORN staff members and independent contractors to be determined.

Defendant, Dale Rathke (former Chief Financial Officer) has admitted to embezzling nearly $1 Million dollars from ACORN and Dale is domiciled in Orleans Parish, Louisiana.

Defendant, Wade Rathke (former Chief Organizer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Wade and is domiciled in Orleans Parish, Louisiana.

Defendant, Steven Kest (Executive Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Steve is domiciled in New York.

Defendant, Jon Kest (New York Head Organizer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Steve is domiciled in New York.

Defendant, Mike Shea (Executive Director, ACORN Housing) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Mike is domiciled in Minnesota.

Defendant, Zach Pollett (Political Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Zach is domiciled in Little Rock, Arkansas.

Defendant, Helene O'Brien (National Field Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Helene is domiciled in Arizona.

Defendant, Amy Schur (Campaign Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Amy is domiciled in California.

Defendant, Liz Wolf (Western Regional Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Liz is domiciled in Orleans Parish, Louisiana.

Defendant, Beth Butler (Southern Regional Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Beth is domiciled in Orleans Parish, Louisiana.

Defendant, Mildred Brown (Legislative Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Mildred is domiciled in Washington, DC.

Defendant, Bertha Lewis (Chief Organizer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Bertha is domiciled in New York.

Defendant, Maud Hurd (President) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Maud is domiciled in Boston, Massachusetts.

Defendant, Alton Bennett (former Treasurer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Alton is domiciled in Minnesota.

Defendant, Beth Kinsgley, Esq. (Harmon, Curran, Spielberg & Eisenberg, LLP) is the attorney representing ACORN insiders and staff, and who is aiding and abetting in the conspiracy and cover-up. Beth Kingsley is domiciled in Washington, DC.

6. The People and Institutions Indirectly Impacted:

As a reasonable government investigation premised on the allegations at hand could confirm extensive embezzlement and/or other misappropriation of ACORN funds, other related crimes, breaches of fiduciary duties, and systemic, organizational mismanagement – this complaint implicates the interests of all 400,000 families reportedly represented by ACORN; its dues paying members; as well as all the private and public sector benefactors, helping sustain ACORN's multi-million dollar, direct and indirect operations.

ACORN's annual budget is estimated to exceed $100 million dollars. The amount of corresponding membership fees is uncertain. However:

> (s)tate and local ACORN offices (reportedly) pay (the following percentage of their income) to cover (the indicated) expenses . . . 4.55% goes to Citizens Consulting for account, audit and corporate services. 0.47% goes to cover the salaries of ACORN executive director Steve Kest and for the salary of AISJ executive director Carolyn Carr. 0.79% goes to cover a portion of the communication department budget which creates and maintains (the ACORN) website as well (as) works with local offices on press work. 0.23% goes into a fund to provide some funds for the expenses of the interim chief organizer and the Interim Management Committee.
>
> *See, Document from Ralph McCloud CCHD*

However, even these numbers are suspect since ACORN refuses to provide actually audited financial statements for it, or its related organizations, to Association Board Members or the public. Therefore, without an audit or a forensic examination, Association Board Members do not know the true financial picture or organizational structure of ACORN.

More than forty percent (40%) of ACORN's operations are reportedly funded by various government entities. *See, New York Post,* Michelle Malkin, October 8, 2008. "Over the last ten years, (the Catholic Church alone has reportedly) given $7.3 million . . . dollars to . . . ACORN . . ." (*-- insert citation --).* ACORN's other private benefactors are reported to regularly include J.P. Morgan Chase Foundation, Bank of America Charitable Foundation, Citigroup and others. (*-- insert citation --).*

7. The Substantial Lack of Available Redress through Civil Process

As indicated, this complaint was substantially prompted by the state court petition for writ of mandamus pending as *ACORN –vs- Rathke, et al.*, case no. 08-8342 before the Civil District Court for the Parish of Orleans, State of Louisiana. Theoretically that proceeding could be expanded to include various counts premised on the alleged facts of this complaint. Such causes of actions could possibly sustain other state and/or federal civil litigation as well. However, the complainants are unable to pay the substantial costs of that private redress. They have been unable to compensate attorney Gray for representing them to date and he will not proceed indefinitely on those terms.

While the interests of ACORN's most wealthy benefactors are implicated by the allegations of this complaint, direct civil action may be counterproductive for them to pursue. Of course a government investigation to curtail the requisite, private discovery may change those dynamics. In any event, the complainants and all of the families ACORN purports to represent, including but not limited to dues payment members, are unlikely to have any viable avenue of redress unless the U. S. Department of Justice undertakes a thorough investigation premised on the allegations of this complaint.

Submitted on the 7th day of January, 2009 –

Karen Inman
Karen Inman

Adrianna Jones
Adrianna Jones

Marcel Reid
Marcel Reid

Yvonne Stafford
Yvonne Stafford

Coya Mobley
Coya Mobley

Louis Davis
Louis Davis

Robert Smith
Robert Smith

Fannie Brown
Fannie Brown

Stephanie Cannady
Stephanie Cannady

Pocahantas Outlaw
Pocahantas Outlaw

Roslyn Valeary
Roslyn Valeary

Gwendolyn Cogshell
Gwendolyn Cogshell

Diana Barnes
Diana Barnes

Robert Mills
Robert Mills

Ronald Sykes
Ronald Sykes

Charles Turner
Charles Turner

Yvonne Woods
Yvonne Woods

Dana Williams
Deacon Dana Williams

FAIR · ELECTIONS · LEGAL · NETWORK

STATEMENT OF THE FAIR ELECTIONS LEGAL NETWORK ON LESSONS LEARNED FROM THE 2008 ELECTION

March 27, 2009

The Honorable Jerrold Nadler, Chair
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Of the House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Chairman Nadler and Members of the Subcommittee:

The Fair Elections Legal Network is a national, non-partisan advocacy organization seeking to increase democratic participation and access by traditionally underrepresented groups including students. We appreciate the opportunity to submit this statement to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties for the record in connection with last week's hearing on "Lessons Learned from the 2008 Election." Our comments are limited to ongoing problems confronting students who wish to register to vote and vote in their college communities.

Students, like other eligible individuals, are entitled to register to vote and vote in the communities in which they reside, and students often reside in the city or town where their college is located. Nevertheless eligible students encounter numerous barriers to voting. These barriers include restrictive registration laws and frequently illogical voter ID requirements. In addition to discussing those problems below we wish to highlight some positive developments that facilitated student voting during the 2008 election cycle.

Registration and Residency

One perennial problem that student voters face is difficulty proving residency to local election officials for voter registration purposes. In many states, local election officials exercise broad discretion to make determinations about residency, despite well established law that residency for voting purposes requires a domicile and the present intent to remain in the jurisdiction. Since students often move to a different community for college and may be temporarily absent, local election officials in some cases mistakenly believe students are residents of the jurisdiction in which their parents live, or the jurisdiction in which the student resided before attending college.

Students also face difficulties registering to vote because they often cannot provide a physical address within the jurisdiction or proof of their residency at that address. At many colleges and universities, mail is delivered to and distributed from a central location and students who live in dormitories or residence halls are not provided a physical street address. Students at

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these schools simply do not have an address that is sufficient for registering to vote and they may not have any government document or utility bill with their residence address.

Students who live off campus may face similar problems. A student may be living off campus and have no other form of identification with their address if they live in a group house in which only one person living there is responsible for the utility bills, or if they live in an apartment in which utilities are included in the lease.

Students have additional registration problems because they are typically a transient population. Students returning to college in the fall, or even those who have remained in their college communities to work or study, frequently change residences for a variety of reasons. Some students are required to move from dormitories to housing in the community; other students may have nine month leases, and others may be required to change residence for reasons beyond their control. As a result, even a student who may have registered to vote in the spring may no longer reside at the address reflected on the registration form or on the voter list by the fall. Most newly enrolled students may not have registered at all in their college communities.

We believe these problems could be addressed through the following simple reforms:

Encourage States to Amend Their Residency Laws to Create a Presumption of Residency for Students enrolled at Colleges and Universities Within the State. This would eliminate the need for local officials to make determinations about residency and would clarify residency "qualification" for students.

Encourage Institutions of Higher Learning to Provide Physical Addresses for Voter Registration Purposes for Students Who Reside on Campus in addition to post office boxes for receiving mail. All state and federal voter registration forms require the applicant to provide a physical address and will not be processed if only a P.O. Box is provided. Providing a physical address would eliminate an unnecessary obstacle to voting for many students.

Extend Section 7 of the National Voter Registration Act (NVRA)[1] to Institutions of Higher Learning, requiring them to provide voter registration services to students in the same way that state public assistance agencies are required to do now for their clients. Doing so would ensure students can resolve residence address issues through the campus administration and obtain help they might need completing the forms.

Voter Identification

In addition to problems with registration, many students face problems when they get to the polling place because they are unable to comply with voter identification requirements. The Help America Vote Act (HAVA)[2] requires new voters, typically college students, to provide identification when they register by mail or at the polling place. States have interpreted this requirement as a floor and many of them have enacted more stringent laws requiring a state issued photo ID with a current address or form of ID such as a bank statement or utility bill with

[1] 42 U.S.C.S. § 1973gg-5(a)(2) (2009)
[2] 42 U.S.C.S. § 15483(b) (2009)

a current address. Although student IDs issued from public colleges or universities are considered government issued they typically do not display an address. One way of addressing this problem would be to amend HAVA to add student ID to the list of acceptable forms of ID in the statute.

Positive Developments

The 2008 election saw positive steps for students taken in Ohio and North Carolina and the continuation of student friendly policies in Minnesota. These policies should be encouraged in other states.

In Ohio, Secretary of State Brunner issued a memorandum[3] clarifying that private colleges and universities could issue utility bills to students that they could then use for identification purposes at the polls. This development ensured that students who had already registered but may not have any other form of acceptable identification could cast ballots on Election Day. Additionally, public colleges and universities are allowed to issue simple documents to students that met the definition of government documents under Ohio's voter ID law.[4] Secretary Brunner and the Voting Rights Institute under her office matched the policy changes with outreach efforts to the University System of Ohio and private colleges and universities. These efforts undoubtedly provided many students with access to the polls.

In North Carolina, the One Stop Voting law enacted in 2007 similarly allowed students to prove residency for registration and voting purposes by showing a document provided by their college or university that contained their residence address.[5] Many colleges distributed documents to students in dormitories specifically for this purpose and thereby ensured that students with no other proof of residency could participate in the election.

Minnesota's election law allows students to register on Election Day if their college or university has provided a certified list of students to the county auditor and they are able to show their student ID at the polling place.[6] Although this relies on Minnesota's Election Day Registration policy and we believe Election Day Registration creates greater access to the polls for all individuals who are qualified to vote, this law could be adapted for use in states that do not allow voters to register on Election Day. Again, allowing colleges and universities to certify a list of students to the county election officer can ensure that students are able to vote and election officials are confident they are registering actual residents.

The 2008 election has again shown that college and universities students very often face significant obstacles to participating in our democracy, even as they take the initial required step of registration. Nonetheless, the student-friendly developments in Ohio and North Carolina, and Minnesota's registration policies are encouraging, and we are hopeful that they will lead to

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[3] *Clarification of utility bills as voter identification for college students*, Memorandum of February 25, 2008, available at http://www.sos.state.oh.us/SOS/Upload/elections/memos/2008/08-Memo0225.pdf

[4] Letter of September 29, 2008 from Secretary of State Jennifer Brunner to Chancellor Eric D. Fingerhut of the University System of Ohio.

[5] N.C. GEN. STAT. § 168-82.6A (2008)

[6] MINN. STAT. § 201.061 subd. 3. (2008)

additional reforms both at the state and federal level. We again thank you for the opportunity to submit this statement for the record.

Respectfully submitted,

Karen L. Neuman
Legal Director, Fair Elections Legal Network

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Staff Attorney, Fair Elections Legal Network

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Lieutenant Governor Sean Parnell

April 15, 2009

Honorable John Conyers, Jr., Chair
House Committee on the Judiciary
2426 Rayburn Building
Washington, DC 20515

Re: Response to Tucker Testimony on "Lessons Learned from the 2008 Presidential Election, March 19, 2009"

Dear Representative Conyers:

I respond on behalf of the State of Alaska to the March 19, 2009, testimony of Dr. James Thomas Tucker, Native American Rights Fund (NARF), presented to the House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties. As Lieutenant Governor of the State of Alaska, I have authority for the state division of elections. I am committed to full voting rights for all citizens, and to all citizens being able to effectively cast their votes at state and federal elections. Mr. Tucker was invited to testify at the Committee meeting, and I would like to provide you with information showing the State of Alaska's commitment to providing effective language assistance for Yup'ik-speaking voters, and to refute Mr. Tucker's testimony concerning Alaska elections.

Mr. Tucker is one of five attorneys representing plaintiffs in litigation pending in the federal district court in Alaska, challenging the State Division of Elections provision of language assistance to Yup'ik speakers in the Bethel census area (BCA), *Nick v. Bethel, et al*, 3:07-cv-0098 TMB. The division of elections is a defendant in this case, and contests the plaintiffs' claims. The state has provided a comprehensive, good faith defense against plaintiffs' claims, and is in full compliance with the Voting Rights Act requirements for minority language assistance. I was surprised to see Mr. Tucker attempting to relitigate issues pending in the *Nick* case before the Subcommittee.

In his testimony, Mr. Tucker set out NARF's request that federal election observers be appointed in the State of Alaska.[1] Election observers are not necessary in Alaska because the State is committed to providing minority language assistance in compliance with the VRA. The federal court in the *Nick* case has declined to order that federal observers be appointed in Alaska, despite plaintiffs'

1 Tucker testimony, p.13.

repeated requests for this relief.[2] While the Court did order some preliminary injunctive relief on language assistance, the order was phrased in terms to require the State of Alaska to follow through on measures that the state had already implemented.[3] Alaska has fully complied with the preliminary injunction and with the requirements of the VRA. The federal district court in which the *Nick* case is pending is the appropriate forum in which to raise claims in the case, and it is not appropriate to litigate this case in Congress.

I would however, like to set the record straight, and show the fallacy of Mr. Tucker's claims about Alaska. Alaska has a long-standing practice of providing trained, bilingual Yup'ik/English speaking poll workers to provide oral language assistance to voters in the polling places on Election Day. Oral assistance is provided because this is the most effective form of language assistance, and because Alaska Native languages are traditionally unwritten, as that term is used in the VRA.[4] Under the VRA, a state is not required to provide written language assistance for historically unwritten Alaska Native or Indian languages. For language assistance in the Tagalog language, which is not historically unwritten, Alaska has provided both oral and written language assistance, as required by the VRA.[5] The vast majority of the poll workers in the Bethel census area are Alaska Native people who are doing a commendable job assisting others to vote at state elections.

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2 *See Nick v. Bethel, et al.*, United States District Court, for the District of Alaska, case no., 3:07-cv-0098 TMB, Order re: Plaintiffs' Motion for a Preliminary Injunction Against the State Defendants, docket 327, dated July 30, 2008, p. 11:

> In ordering this injunctive relief, the Court declines the Plaintiffs' request for federal election observers. Under 42 U.S.C. § 1973a(a) the Court has authority to appoint federal election observers "if the Court determines that the appointment of such examiners is necessary to enforce" the voting guarantees of the fourteenth and fifteenth amendments. 42 U.S.C. § 1973a(a). Given the significant efforts made by the State to revamp the language assistance program for Alaska Natives, and the progress reports required in connection with this order, the Court concludes that federal observers are not necessary at this time.

3 *See* Order, docket 327, p. 10: "[M]ost of the ordered relief simply obligates the State, under penalty of contempt, to do what it already promised to do at the July 8, 2008 oral argument. Accordingly, the burden imposed by this injunction will be minor."

4 *See* VRA § 203, 42 U.S.C. § 1973aa-1a(c), and 4(f)(4), 42 U.S.C. § 1973b(f)(4), and *Nick v. Bethel, et al.*, United States District Court, for the District of Alaska, case no., 3:07-cv-0098 TMB, Order Re: State Defendants' Motion for Partial Summary Judgment, docket 319, July 23, 2008, p. 15:

> [T]he Court thus determines that Yup'ik is a "historically unwritten" language for purposes of the VRA. As a result, the Court finds that the VRA's exception applies, and that the Defendants are not required to provide written election-related assistance to Yup'ik speakers in the Bethel census area.

5 Therefore, Mr. Tucker's comment at p. 8 of his testimony that "Alaska is a hotbed of English-only opposition to providing any materials or assistance in languages other than English" is not only incorrect, but is also misleading and inflammatory.

The division of elections has recently taken measures to enhance language assistance in the BCA. For the 2008 election cycle, the division increased voter outreach to the village councils in the BCA through informational mailings,[6] surveys[7] and telephone contacts, and including increased voter registration efforts. Division staff provided an informational booth and conducted outreach over a period of three days at the October 2008 statewide conference of the Alaska Federation of Natives. The division has revamped poll worker training to include a specific, more detailed section on providing language, and for the BCA, included a Yup'ik language interpreter at poll worker training. The division has hired a bilingual, Yup'ik/English speaking staff person to facilitate language assistance in the BCA, including providing a toll-free telephone number for assistance to Yup'ik speaking voters.

The division has provided Yup'ik radio broadcasts of election and voter registration information, including information on the availability of language assistance. The division also produced a Yup'ik/English video presentation on these matters that was aired on the Alaska Rural Communications Service television channel, ARCS, which reaches 235 villages in Alaska, including those in the BCA. The division worked with the "Get Out the Native Vote" coalition for 2008 and provided election information audio in five native languages for placement on GOTNV website prior to the General Election. The division secured bilingual outreach workers in 24 BCA villages for the General Election, and 22 villages for the Primary Election, to provide voter registration and to make VHF radio announcements in their native languages.[8]

The division has produced a Yup'ik/English glossary of election terms for poll workers to use in providing language assistance. The division has also produced a written Yup'ik language sample ballot for poll workers to use in providing language assistance for all three state elections held in 2008. Most recently, the division has constituted a panel of Yup'ik translators to improve the Yup'ik/English glossary and provide translation of ballot measures that are slated to appear on future statewide election ballots.

There have been signs that the state's stepped-up language assistance efforts have been effective. During the past year, from 2007 to 2008, voter registration in the BCA has increased by 349 voters,

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[6] The division of elections sent letters to villages in March 2008, June 2008, and August 2008, providing information about language assistance, voter registration and elections.

[7] At the beginning of 2008, the division of elections sent a letter and survey regarding language assistance needs to approximately 167 villages throughout Alaska asking about language needs in these communities, and all but 19 villages responded.

[8] The division was thwarted in its efforts to provide additional language assistance to Alaska Native language speakers. The division contracted with the University of Alaska, Institute of Social and Economic Research for production of native language audio on voter registration and election information, to be sent to villages. The division also contracted with ISER to produce audio CDs in five native languages of election information for use by LEP voters at the 2008 primary election. The division was unable to secure preclearance from the US Department of Justice for these measures due, in part to unjustly critical letters from NARF and the ACLU.

from 8745 in 2007, to 9094 in 2008.[9] Voter turnout for the 2008 general election in House District 38, which comprises the majority of the BCA was 57.57 percent, the highest for that district in the last 10 years.[10] The local radio station in the Bethel area, KYUK, broadcast a story after the 2008 primary election that voters in the area were very pleased with the language assistance provided. And, as noted in Mr. Tucker's testimony, Alaska's state legislature includes seven Alaska Native senators and representatives; the third-highest number of elected officials in the 16 states noted in his testimony.

The State of Alaska has implemented numerous far-reaching, concrete measures to provide effective language assistance to Alaska Native voters. Mr. Tucker's testimony does a great disservice to the hard-working Alaska Native election workers in villages across the state and to the dedicated state division of elections staff who work hard to conduct elections in our large and mainly rural state. Far from the grim picture painted by Mr. Tucker, Alaska, today, is a model of modern election administration striving to enfranchise all qualified voters. I trust that the information I have provided you in this letter will correct the record.

Sincerely,

Sean Parnell
Lieutenant Governor

cc: Honorable Lamar S. Smith, Ranking Member
House Committee on the Judiciary
Honorable Jerrold Nadler, Chair
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Honorable F. James Sensenbrenner, Jr., Ranking Member
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Christopher Coats, Chief
U.S. Department of Justice, Civil Rights Division, Voting Section
John Katz, Director
State/Federal Relations and Special Counsel to the Governor
Gail Fenumiai, Director
Division of Elections, State of Alaska

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9 *See* statistics for District 38 and the total for each of the four precincts in District 6 (Aniak, Chuathbaluk, Crooked Creek and Sleetmute) that fall in the BCA at division's website: http://www.elections.alaska.gov/statistics.php

10 Statewide turnout in Alaska for the 2008 General Election was 66.03 percent. *See* voter turnout information at state division of elections website, http://www.elections.alaska.gov/08general/

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House of Representatives
Washington, DC 20515

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CONGRESSIONAL CHILDREN'S CAUCUS

November 25, 2008

Attorney General Michael Mukasey
United States Department of Justice
Robert F. Kennedy Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Mukasey:

I am writing this letter to express my sincere disappointment with the Civil Rights Division and the Office of Legislative Affairs in their non-responsive actions relating to my official requests. On November 7, 2008, and November 10, 2008, I submitted formal oral and written requests that Department of Justice federal election monitors be present during the certification of the provisional ballots in the 2008 Harris County, Texas, election covering several judicial and district attorney seats.

There were approximately 6,880 provisional ballots cast in Harris County. These ballots were determinative in as many as five races on the Harris County ballot, e.g., district attorney and up to four district court judicial races, which have current margins of 200 to 5,000 votes (out of over 1.18 million cast). All of the races determined by the provisional ballots involved minority candidates.

Since the election, a November 13, 2008, Houston Chronicle article has reported that Harris County Tax-Assessor/Voter Registrar Paul Bettencourt, a Republican, and his staff have committed numerous errors. The article reported:

> *"Republican Jim Harding, a retired Houston business executive who chairs the ballot board of about 35 people, said the counting process was delayed by faulty work by Bettencourt's staff."*

The article quoted Republican Jim Harding, Chair of the Early Voting Ballot Board:

> *"The problems included hundreds of voter forms whose information the registrar's staff masked with white correction fluid and then altered with new information. Also, the board has accepted ballots cast by voters whose registrations were classified by Bettencourt's staff as incomplete."*

The article further quoted Republican Jim Harding, Chair of the Early Voting Ballot Board:

> *"As ballot board members determined whether ballots should be counted...they wanted to have confidence in the accuracy of the registrar's research. But 'kind of confidence is not replicated here, and then when they see this 'white out' all over the place they get nervous.'"*

Republican Jim Harding, Chair of the Early Voting Ballot Board is reported as stating:

> *"there were more errors and related voting records problems than in five previous elections in which he served upon the ballot board."*

The article reported that in this election:

> *"most of the 7,000 or so provisional ballots were being rejected..."*

(Houston Chronicle, November 13, 2008).

On November 11, 2008, because of the numerous irregularities, the Texas Democratic Party, among other plaintiffs, filed a cause of action the United States District Court for the Southern District of Texas because of the numerous errors committed by Registrar Paul Bettencourt. See Tex. Dem.Party v. Bettencourt, Cause No. 4: 08-CV-03332. The plaintiffs' brief contained the testimony of affiant Collyn Peddie. In her affidavit, Ms. Peddie testified that:

> *"3. I was initially given an explanation of the process then allowed to remain present for the processing of the provisional ballots at Voter Registrar Paul Bettencourt's office for approximately 1 hour. After that time, I was told I could no longer do so by Sonya Alston, an attorney in Voter Registrar Paul Bettencourt's office. She wrote the reason on the attached appointment certificate. It is attached. Although I was initially told by Ms. Alston, after her review of the election code, that there was no prohibition in the election code to my watching this process, the explanation given for my later ouster was that the Secretary of State had informed her that there was confidential information involved in this process a poll watche[d] was not permitted to observe.*
>
> *4. I personally witnessed the affidavits and hence the votes of voters being set aside and not processed for the sole reason that they listed what was believed to be a commercial address. I saw numerous affidavits where it had been noted that the voter registered at DPS offices by the affidavit was set aside because the*

voter was not listed as registered to vote in the system used for checking the voting rolls in Mr. Bettencourt's office.

5. *If allowed, I stand ready and willing to return as a poll watcher for the processing of the provisional ballots at Voter Registrar Paul Bettencourt's office."*

It was precisely my concern that federally protected rights were being violated during the certification of the provisional ballots, that I requested that the Department of Justice send federal election monitors to observe the certification in the first instance. However, my numerous requests were ignored. There was no justifiable reason for the U.S. Department of Justice to refuse to assist by failing to send federal election monitors to observe the certification when the integrity of the certification had been called into question.

In my prior letters and numerous telephone calls, I requested the assistance of federal election monitors because of the manner in which provisional ballots were certified. The Secretary of State precluded local officials, namely the poll watchers, from observing the certification upon the basis that it was not open to the public. As legal authority, the Secretary of State cites Texas Administrative Code, Title I, Part 4, Chapter 81, Rule 81.172 (9) on "Poll Watchers." While this section precludes persons from the public from being present in the room during the counting and certification process; it in no way prohibits the Department of Justice from dispatching federal election monitors to observe the certification of provisional ballots. The officials from the Department of Justice are not public officials as contemplated by the Texas Administrative Code.

The provisional ballots are prepared for review by the Early Voting Ballot Board by individuals in the Office of the Harris County Tax-Assessor/Voter Registrar. The Office of Harris County Tax-Assessor/Voter Registrar takes physical possession of the provisional ballot applications and access code numbers and then determines whether the voter should, or should not, have been included on the voter rolls at the polling place and/or otherwise entitled to vote. The Voter Registrar then advises the Early Voting Ballot Board of its findings.

In this instance, the fundamental problem with the process is that the Voter Registrar did not permit duly appointed "poll watchers" to be present or to observe its activities in counting these provisional ballots. No one was permitted in the room when these election-related activities were taking place. In effect, these election-related activities were being conducted in secrecy and with no transparency.

The certification of the provisional ballots is a matter that involves the Voting Rights Act of 1965 (42 U.S.C. §§ 1973 – 1973aa-6), the Help Americans Vote Act of 2002 (42 U.S.C. § 15301, et seq.), and the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg). As you are well aware, the Voting Rights Act of 1965 outlawed discriminatory voting practices that had been responsible for the widespread disenfranchisement of African Americans in the United States. Specifically, Section 2 of the Voting Rights Act, expressly prohibits discriminatory voting practices or procedures. I am very concerned that the serious irregularities which occurred in the counting of the provisional ballots in question jeopardize this most fundamental right of citizenry. Many of the provisional ballots at issue were cast by minorities and the two candidates that were running for office were minorities. Therefore, there is reason to believe that the Voting Rights Act has been implicated. Thus, the certification is a matter of federal jurisdiction

In reaction to potential voters being shut out of the 2000 presidential election, Congress passed the Help Americans Vote Act which allows voters to cast provisional ballots rather than be subjected to disenfranchisement. Specifically, this Act requires voters identified as ineligible (such as voters not found upon the registered voters list), but who believe themselves to be eligible, to be able to cast a provisional ballot. After the election, the appropriate State election entity will determine if the voter was eligible, if so counting the vote and notifying the voter of the outcome. As cited above, there were numerous errors and claims regarding the Voter Registrar's processing of the Harris County provisional ballots. Therefore, it is likely that the Help Americans Vote Act may have been implicated. We as Members of Congress enacted the Help Americans Vote Act to ensure that the disenfranchisement and electoral crisis that occurred in the 2000 presidential election would never occur again. Accordingly, when I as a Member of Congress lodged both formal and informal requests via both telephone and by letter for the Department of Justice to send federal election monitors to ensure the integrity of the provisional ballot certification, the Department had the responsibility to respond by meticulously overseeing the counting of the provisional ballots and their certification.

The National Voter Registration Act dramatically increases the opportunities for eligible Americans to become registered to vote in federal elections. The Act required states to offer voter registration opportunities by mail application, driver's license offices, at state public assistance agencies and at other designated state offices. It also establishes some safeguards to prevent officials from purging voters without sufficient cause and creates failsafe voting for registered voters who move within a jurisdiction but fail to update their registration records. The Act begins with a few short findings of fact, including a finding that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation." See, e.g., 42 U.S.C. § 1973gg. Because the majority of the provisional ballots were rejected, and the right to vote is a fundamental right that should in no way be abrogated or impinged, I specifically called upon the U.S. Department of Justice to ensure that voter participation was not hampered by discriminatory or unfair practices by sending a monitor to witness the certification.

Given the numerous errors and irregularities that have been alleged, I am now formally requesting that the Department of Justice review the provisional ballot certification in the recent Harris County, Texas election. I am also requesting that the Department of Justice provide me with the following: (1) a written explanation as to why my previous requests on November 7 and 10, and my numerous telephone calls, were unanswered or ignored by the Department of Justice - especially when I followed up my written requests with telephone conversations with relevant personnel at the agency, namely those at the Office of Civil Rights, Voting Section and the Legislative Affairs Division; (2) a review of the election, the counting of the provisional ballots, and their certification; and (3) a report of all election cases, both administrative and those in litigation, and their disposition that the Civil Rights Division of the Department of Justice has handled since 2006.

Thank you for your attention and consideration to this important matter. Should you have any questions or concerns, please contact me directly at (202) 225-3816.

Very Truly Yours,

Sheila Jackson Lee
Member of Congress

cc:
Senator John Cornyn
NAACP Legal Defense FUND
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Tally may alter 2 Harris judge race outcomes Thursday

By ALAN BERNSTEIN
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Nov. 12, 2008, 10:58PM

Final vote totals that could reverse outcomes in two Nov. 4 Harris County judicial elections will be unveiled Thursday, election supervisors said, after a controversial counting process that left Republican and Democratic officials unhappy.

A bipartisan board that has been checking thousands of leftover ballots planned to be finished by midnight Wednesday.

About 1,400 ballots will qualify, officials estimated, and be added to last week's election totals after the county clerk's office reopens Thursday.

If the ballots contain votes on judicial elections, they could reverse the outcomes in two contests where fewer than 800 votes separated the winners and losers as of last week.

No other county races had margins of victory smaller than 1,400 votes.

Democratic candidate Goodwille Pierre, who trailed Republican state District Judge Joseph "Tad" Halbach by fewer than 600 votes, said he had faith the new totals will make him a new judge. "I believe it will definitely show that we are ahead," he said.

In the other closest race, Republican state District Judge Elizabeth Ray trailed Democratic challenger Josefina Muniz Rendon by 135 votes.

Provisional votes

The vote-counting work lurched forward when county voter registrar Paul Bettencourt delivered his reports on about 7,000 so-called provisional ballots that were cast by people not listed on the Election Day voter rolls.

Some of those residents had been omitted from registration records by mistake and under federal law were allowed to vote after swearing on special forms that they were registered. Their votes will added to the totals if their registrations are confirmed.

But Republican Jim Harding, a retired Houston business executive who chairs the ballot board of about 35 people, said the counting process was delayed by faulty work by Bettencourt's staff.

The problems included hundreds of voter forms whose information the registrar's staff masked with white correction fluid and then altered with new information, Harding said.

As ballot board members determined whether ballots should be counted, he said, they wanted to have confidence in the accuracy of the registrar's research.

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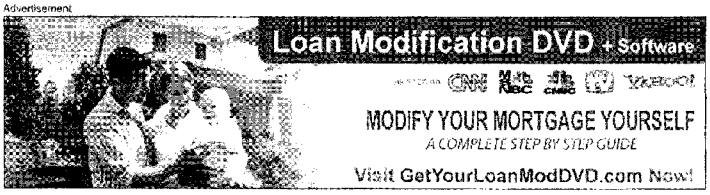

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But "that kind of confidence is not replicated here, and then when they see this 'white-out' all over the place they get nervous," he said.

Errors and claims

Also, the board has accepted ballots cast by voters whose registrations had been classified by Bettencourt's staff as incomplete, Harding said. In many cases records showed voters had visited state Department of Public Safety offices where they claimed to have registered to vote, Harding explained, and the ballot board is giving those voters the benefit of the doubt.

Harding said there were more errors and related voting records problems than in five previous elections in which he served on the ballot board.

Still, most of the 7,000 or so provisional ballots were being rejected — because, among other reasons, voters' registration had expired, they had moved out of Harris County or they are parolees.

Bettencourt could not be reached for comment late Wednesday after Harding made his comments.

Foot-dragging alleged

Earlier in the day, Texas Democratic Party officials dropped their request for a judge to order Bettencourt to complete the tallies and open his staff's work to monitors. However, Democrats said they will press ahead next year with the part of their lawsuit that accuses Bettencourt, a Republican, of illegally rejecting voter registrations applications.

After a court hearing on the Democrats' lawsuit, their lawyer, Chad Dunn, implied that Bettencourt had dragged his feet on processing the provisional ballots as the deadline for counting them neared.

"We are disappointed ... that it took a lawsuit to get Mr. Bettencourt to do his job," he said.

Bettencourt said he already had been doing the work in a timely fashion before the lawsuit was filed Monday.

"All that this type of frivolous action does is reduce the confidence of the public in the voting systems that have been carefully worked out after the 2000 election," he said. "I am absolutely stupefied that the Democratic Party could stoop to this level."

In reaction to potential voters being shut out of the 2000 presidential election, Congress passed a law allowing voters to cast provisional ballots.

alan.bernstein@chron.com

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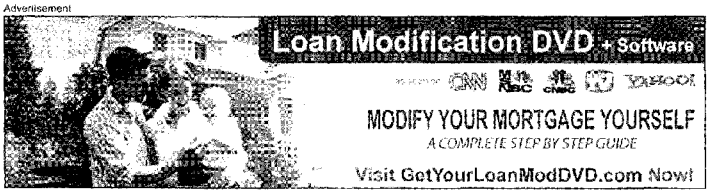

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Additional votes have no effect on Harris Co. election results

By ALAN BERNSTEIN
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Nov. 13, 2008, 11:13PM

The counting of special, additional Harris County ballots Thursday left the Nov. 4 local election outcomes unchanged, bringing a quiet end to a backstage political drama involving a few extremely close races.

The addition of about 3,000 ballots essentially gave each Democratic candidate on the countywide ballot a boost of a few hundred votes.

Before Thursday, for instance, Democratic challenger Josefina Muniz Rendon was ahead of Republican state District Judge Elizabeth Ray by only 135 of the 1.1 million votes cast in the race. The Democrat's winning margin is now 520.

In the other closest race, Republican state District Judge Joseph "Tad" Halbach's margin over Democrat Goodwille Pierre shrank to 230 votes from 595.

All other county races were decided by bigger vote gaps and were not affected by the new vote totals. Democratic challengers defeated 23 of the 27 Republican judges on the ballot.

County Clerk Beverly Kaufman said she will submit the vote totals to Commissioners Court on Monday for what is usually a routine acceptance. Afterward, any candidate seeking a recount or a court order to undo the results can take action.

Pierre said he probably would not seek a recount; Ray was unavailable for comment because of illness. The added ballots came from about 1,100 overseas voters and about 1,800 voters whose registrations were not on the rolls by Nov. 4 but who were allowed to vote.

Under federal law, provisional voters' choices were held in limbo while election officials checked on whether they indeed had valid voter registrations in the county. Most provisional ballots were rejected; more than half of the overseas voters used ballots that allowed votes only for president and Congress.

The final tallies triggered former Houston Police Chief C.O. "Brad" Bradford's concession of defeat in his race for district attorney against Republican Pat Lykos. He had been waiting for the final totals in a contest he ended up losing by less than 5,000 votes.

"I want to congratulate Judge Lykos on her victory and wish her all the best as she moves forward in the District Attorney's Office, " the Democrat said after talking to Lykos by phone. "We raised a number of important issues in this campaign, and I hope these issues will continue to be discussed and resolved — issues such as jail overcrowding, getting alternative treatment for the mentally ill and

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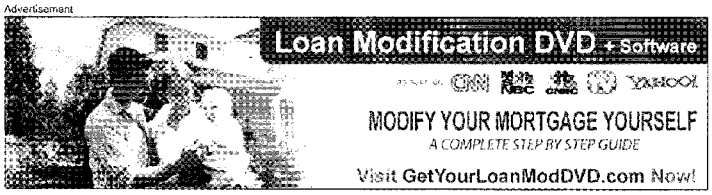

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substance abusers, a public defender's office and reform of the grand jury system."

Lykos said she hopes to meet with Bradford to reminisce about the campaign and discuss ways to develop policies they agreed on, including treatment options for mentally ill accused criminals.

During the counting process, the Texas Democratic Party accused voter registrar Paul Bettencourt, a Republican, of delaying the verifications. Jim Harding, the Republican chief of a bipartisan ballot board, which made final decisions on which ballots were valid, accused Bettencourt of supplying the board with faulty records.

Bettencourt denied the allegations. After the Chronicle published Harding's statements, Bettencourt firmly asserted his denials in phone messages to Harding, the men said.

In turn, Harding alleged Thursday that Bettencourt's calls were improper attempts to influence how the ballot board did business. He discussed the messages with County Attorney First Assistant John Barnhill, who was unavailable for comment.

Bettencourt said he had merely defended his staff's performance — without questioning the board's decision to accept some provisional ballots that Bettencourt's workers had classified as incomplete.

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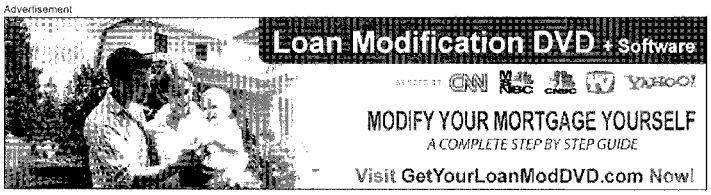

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EDITORIAL

Still Broken

In last year's presidential election, as many as three million registered voters were not allowed to cast ballots and millions more chose not to because of extremely long lines and other frustrating obstacles. Ever since the 2000 election in Florida, the serious flaws in the voting system have been abundantly clear. More than eight years later, Congress must finally deliver on its promise of electoral reform.

At a hearing last week, the Senate Rules Committee released a report sponsored by the Massachusetts Institute of Technology on the sorry state of voting. It said that administrative barriers, such as error-filled voting lists or wrongful purges of voter rolls prevented as many as three million registered voters from casting ballots. Another two million to four million registered voters were discouraged from even trying to vote because of difficulty obtaining an absentee ballot, voter ID issues and other problems.

The bad news didn't end there. According to the report, another nine million eligible voters tried to register but failed to because of a variety of hurdles, including missed deadlines or changes in residence.

The new study adds to a hefty, and rapidly growing, literature on voting problems. The American Civil Liberties Union of Florida just issued a report on the many difficulties that ex-felons in that state face when they try to register, a process that is filled with needless paperwork and bureaucratic confusion. A newly released report drafted at the request of Ohio's secretary of state, Jennifer Brunner, surveys many problems in her state's voting last year, including a large number of errors in the state's computer database of eligible voters.

One of the main reasons voting is in such bad shape is that the states have far too much leeway in running elections, ranging from what ID they require to the number of polling places they open and the allocation of voting machines, which has a big impact on how long the lines are on Election Day. Registering to vote and casting ballots in federal elections are federal acts, which should be governed by uniform national standards.

Senator Charles Schumer, a Democrat of New York, is the new chairman of the Rules Committee, which oversees elections, and last week's hearing is an encouraging sign that he intends to push for new laws.

The most important change Congress can make is to require universal voter registration. That would put the burden on states to register eligible voters — identifying them from other government lists such as tax and motor vehicle databases — rather than forcing prospective voters to navigate the obstacle-ridden path to the voting rolls. States should also be required to make registration permanent so voters are not purged from the rolls because of a move to a new address or a name change.

Congress should enact lenient federal rules for voter identification, allowing voters to present a wide array of IDs. Far too many states have onerous requirements that make it particularly hard for poor people and racial minorities to vote. And it should outlaw vote suppression and other campaign dirty tricks.

It can start by passing a bill re-introduced by Senator Sheldon Whitehouse, a Democrat of Rhode Island, to ban "voter caging," a tactic used by political operatives to erroneously label voters — often racial minorities — as ineligible and to get their names removed from the rolls.

President Obama championed election reform when he was in the Senate, and Democrats, who have been far more committed to the cause than Republicans, now have healthy margins in both houses of Congress. Supporters of a more fair, efficient and inclusive system of voting should not let this moment slip away. The millions of registered voters who are being turned away deserve a lot better.

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