



STATEMENT OF **JONAH H GOLDMAN**, DIRECTOR OF THE NATIONAL CAMPAIGN FOR FAIR ELECTIONS AT THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW TO THE ELECTION ASSISTANCE COMMISSION

December 7, 2006

Chairman DeGregorio, members of the Commission,

Thank you for inviting me here today. My name is Jonah H Goldman and I am the Director of the National Campaign for Fair Elections at the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee is a 43 year old organization, started at the direction of President John F. Kennedy, dedicated to ensuring that every American has an equal opportunity to participate in our national experience.

In addition to the Committee's traditional activities litigating on behalf of minority voters, the National Campaign for Fair Elections serves as lead legal partner in the Election Protection Coalition - the largest non-partisan voter protection program in the nation's history. In 2006, the Lawyers' Committee recruited over 2,000 legal volunteers to staff our legal programs across the country. These volunteers served over 20 local legal organizations by responding to voters' problems on the ground. Legal volunteers trained in state specific election law staffed the 1-866-OUR-VOTE voter assistance hotline making it the nation's largest such hotline. Election Protection received nearly 25,000 calls during this election cycle from voters in 48 states and the District of Columbia. Our volunteers on the ground responded to thousands of concerns from voters, worked with hundreds of state and local election officials to solve problems on and before Election Day and developed legal materials for the District and all 50 states. In addition to our role as the lead legal partner, our friends at the NAACP and People For the American Way Foundation organize an extensive field program that includes poll monitors and voter education programs.

On November 7, 2006, millions of Americans across the country went to the polls and dramatically shifted the political landscape in the United States Congress and in legislatures and governors mansions across the country. Many commentators proclaimed that the election moved forward without any structural problems or dismissed the obstacles voters faced as insignificant because electoral catastrophe was limited to a few races but expanding the diagnostics of success from those that are purely partisan to those that form our fundamental democratic identity as Americans demands a different conclusion. Unfortunately, countless eligible Americans were prevented from exercising their most fundamental right – the right to vote – because of inadequacies in the infrastructure of our election system. If the goal is to provide every eligible voter who wants to participate the opportunity to do so, I do not think that we can be so quick to anoint Election 2006 a resounding success.

As in years past, the Election Protection experience paints the most comprehensive, independent picture of the health of our electoral process. Unfortunately, it is once again clear that the American voter is underserved by our nation's electoral structure. From coast to coast, problems at all parts of the process led to eligible voters being denied the right to participate. While there were only a few places where the margin of disenfranchisement led to uncertainty with election results, the damage to our democratic experiment remains a national problem. Regardless of the political impact, voters in nearly every district are at risk of being unfairly and unnecessarily removed from the system.

While the case should not be overstated, it is critical that as we immediately enter the 2008 presidential election cycle, we undertake a more honest assessment of what happened in this election so we can concentrate on ensuring real, meaningful reform before the next federal cycle. Assuming the dual goal of faith in our electoral system and its outcomes and honoring our constitutional promise of free and equal access to the polling place for all eligible Americans, it is critical that we understand the problems that voters experienced in 2006, the causes and how to craft meaningful solutions. While disenfranchisement resulted from dozens of causes, I want to talk specifically about a few problems that were especially pronounced this November.

### **Voting Machines and Problems at the Polls**

Problems with the administration of the election created obstacles to efficient voting that have become increasingly familiar to voters across the country. In multiple states there were reports of people waiting in line for hours on end because of machine failures, poll workers who didn't know how to operate the machines, insufficient numbers of voting machines and general poor administration of election systems. In Tennessee, for example, too few machines in one jurisdiction led to waiting times of five and a half hours. In Prince George's County, Maryland, voters stood in line for hours as poll workers struggled with voting technology and new voter registration procedures. Voters in St. Louis called Election Protection to report lines of up to 4 hours due to broken election machines, poll workers providing incorrect information about provisional balloting, and problems with administering the voter registration lists.

In all of these places, many voters left without casting a ballot. These problems have a disproportionate impact on working people, especially those who have work or family duties that prevent them from having enough time on Election Day to stand on long lines or make multiple trips to the polls. There must be statewide, if not national, standards for sufficient and equal distribution of voting machines, improved and standardized training and testing of poll workers, and increased resources to ensure sufficient numbers of machines and professionals operating them in every jurisdiction.

Across the country voters noticed that electronic machines "flipped" their votes when the vote summary screen indicated that the machine registered a vote for the opponent of their desired candidate. Voters called the hotline from Florida, Ohio, and elsewhere to complain that, despite going through the steps required by the machine, their vote for certain races never registered. Problems caused by inadequate procedures for making the best decisions about voting machines will be solved by demanding accountable, accessible, and transparent voting technology. We

cannot shy away from a discussion about the most effective way to ensure that election technology is secure, reliable and engenders faith by the electorate.

## **Identification Problems**

Over the past two years, the country has engaged in a national debate about how voters should identify themselves at the polls. Advocates for election reform and voting rights have shown that current protections, such as signature matches and severe penalties for impersonating eligible voters, strike an effective balance between protecting the rights of eligible voters to participate in the process and preventing ineligible people from manipulating the system. Unfortunately, partisanship has trumped reason as the states and the Congress are now grappling with unconstitutional legislation which hypes the false specter of voter fraud as an excuse for disenfranchising countless eligible voters.

On November 7, 2006, the confusion created by this false debate disenfranchised eligible citizens in two ways. First, in states like Arizona where restrictive voter identification requirements were operable, Arizonans were prevented from casting a ballot because they did not have the requisite documentation. Second, in over a dozen states across the country, the Election Protection Hotline received complaints of poll workers asking voters for identification that was not required by law, wrongly forcing voters to cast provisional ballots, and otherwise misinterpreting the voting rules to prevent eligible voters from casting a ballot. Rep. Steve Chabot in Ohio was wrongly turned away at the polls because his Ohio driver's license did not have a current address. Although he was able to come back to the polling place and eventually cast a ballot, many ordinary Ohioans do not have the time to make multiple trips to the polls. Missouri's Secretary of State Robin Carnahan was also improperly asked for photo ID and reported that her office got numerous complaints of similar incidents throughout the day.

Congress and state legislatures must pay more attention to the problems created by our election system and less to partisan proposals designed to remove eligible voters from the process. In addition, confusion about identification problems will be solved through better poll worker training.

## **Deceptive Practices**

Voters also encountered problems before they arrived at their polling place. Voters complained of cynical and fraudulent activities of both campaigns and individuals. In Orange County, California, a congressional campaign sent 14,000 voters with Hispanic surnames a letter advising recipients that "if you're an immigrant, voting in a federal election is a crime that can result in incarceration," or deportation. While illegal immigrants are barred from voting, legal immigrants who have become citizens are, of course, permitted to do so. In Virginia, there were numerous reports of voters receiving calls telling them, falsely, that their polling place had changed, and telling them to go to the wrong precinct. Similar reports came in from New Mexico. In Colorado, it was reported that Hispanics were getting phone calls telling them they were not registered and that they might be arrested if they voted. In heavily Democratic Maryland, materials were distributed statewide that suggested Republican candidates actually represented the Democratic

Party, causing widespread confusion. In Arizona, the intimidation was more overt, with gunmen standing at polling places threatening Latino voters with severe ramifications for casting a ballot.

States and the federal government must do more to prevent and punish those committed to manipulating election results through this type of fraud. This means taking measures to directly criminalize such activity and requiring election administrators and elected officials to take proactive steps to ensure that voters are made aware of the deception and provided with the correct information immediately.

## **Voter Registration Problems**

Voting rights advocates widely predicted that many voters would appear at the polling place to find their names not on the registration list. It was an easy prediction given the fact that many states were imposing unnecessarily high hurdles to registration. This included states requiring exact matches between voter registration information and information in existing state databases—despite the overwhelming evidence that much of that information is inaccurate because administration of both the registration rolls and other state databases is often inexact, frequently causing the names and other information in the databases to be incorrect. In other states, new registration requirements for proof of citizenship and rules virtually shutting down voter registration drives by civic organizations both reduced registration rates and made it more likely that voters would be left off the rolls.

On Election Day, voters from Georgia to California who were eligible to vote and submitted a timely voter registration form were turned away at the polls because their names did not show up on the registration lists. In some situations, these voters complained that they were not provided a provisional ballot.

These problems underscore the importance of fair and effective protocols for matching voter registration information and the elimination of rules requiring an “exact match”; the abolition of rules requiring proof of citizenship in order to register, when voters already must swear an oath under penalty of a felony that they are a citizen; and only reasonable rules governing third party voter registration drives, not rules that are meant to shut such worthy and essential services down.

In addition to these problems, voters across the country were disenfranchised through problems with the absentee balloting process. From Maryland to Ohio to California, and in dozens of states in between, voters who were eligible and applied for absentee ballots by the state deadline never received the ballots or received them too late to cast them.

Of course, Americans deserve better than this. The infrastructure that supports our voting system should be strong and responsive to the will of the voters. Our democratic values demand that election reform be considered outside of politics and the campaign cycle. Instead, we need to search for real, meaningful solutions and treat the issues that prevent eligible citizens from exercising their right to vote as a problem that demands serious, apolitical policy solutions. In short, Congress and the states must move forward on meaningful reforms that strengthen citizen

confidence in the system and expand access to all eligible Americans, as well as the resources necessary to make our democracy the model for the world.