

**Access to Voting Across
America: Collected Reports
of the State Advisory
Committees to the U.S.
Commission on Civil Rights**



October 2018

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Access to Voting in Alabama



A Summary of Testimony received by the
Alabama Advisory Committee to the United
States Commission on Civil Rights

June 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Alabama Advisory Committee to the
U.S. Commission on Civil Rights**

The Alabama Advisory Committee to the U.S. Commission on Civil Rights submits this summary of testimony detailing civil rights concerns associated with barriers to voting in Alabama. The Committee submits this summary as part of its responsibility to study and report on civil rights issues in the state of Alabama. The contents of this summary are based on testimony the Committee heard during a hearing held on February 22, 2018 in Montgomery, Alabama.

This summary documents civil rights concerns raised by panelists with respect to barriers to voting throughout the state of Alabama and discusses possible strategies for improving voter access in Alabama. Based on the findings of this summary, the Committee will ultimately offer to the Commission recommendations for addressing this issue of national importance. The Committee recognizes that the Commission has previously issued important studies about voting and civil rights nationwide and hopes that the information presented here aids the Commission in its continued work on this topic.

**Alabama State Advisory Committee to the
U.S. Commission on Civil Rights**

Jenny Carroll, Chair, Alabama Advisory Committee

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Craig Hymowitz
Michael Innis-Jimenez
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Alabama Advisory Committee

Access to Voting Hearing – February 22, 2018, Montgomery, Alabama

Panelists

John Merrill - Alabama Secretary of State

On November 4, 2014, John was elected as Alabama's Secretary of State with 65% of the vote and carried 53 of Alabama's 67 counties. He was inaugurated as Alabama's 53rd Secretary of State on January 19, 2015. He is a member of the National Association of Secretaries of State and the Republican Association of Secretaries of State. He is the Co-Chair of the NASS Voter Participation Committee and serves as the NASS Representative to the Steering Committee of the National Voter Registration Day. He is also a member of the United States Election Assistance Commission Standards Board.

Kareem Crayton - Interim Director, Southern Coalition for Social Justice

Kareem Crayton is a widely cited and internationally respected scholar, expert and consultant whose work centers on the intersection of law, politics, and race. He is the only academic in the United States with formal training in law and political science whose primary work explores the relationship between race and politics in representative institutions. The insights and analyses from his research have distinguished him as a leading voice in the academy and key player in public policy debates. His commentary, insight, and analysis regularly appear both in highly-ranked academic publications along with major media outlets including The New York Times, PBS, and Fox News.

John J. Park, Jr. - Counsel at Strickland, Brockington, Lewis LLP

Jack Park is of counsel with Strickland Brockington Lewis LLP (SBL). He has been designated a Deputy Attorney General for the State of Alabama and is assisting the Alabama Attorney General's Office with the legal work associated with the process of redistricting that follows the 2010 Census. Before joining SBL, Jack was a Visiting Legal Fellow in the Center for Legal and Judicial Studies at the Heritage Foundation from October 2009 through October 2010. As a Visiting Legal Fellow, Jack participated in the Center's Supreme Court program and worked on the Center's overcriminalization, civil justice, and civil rights projects.

Brock Boone - Alabama Chapter of the American Civil Liberties Union

Brock graduated law school from Georgetown University, where he was Executive Editor of the *Georgetown Journal of Legal Ethics*. He also graduated from Spring Hill College with a degree in Political Science & Law, where he finished with the highest GPA in his major. Brock has previously worked as a public defender in Alabama.

Jennifer Holmes - NAACP Legal Defense Fund

Jennifer A. Holmes joined the NAACP LDF from Covington & Burling, LLP, where she worked as an associate. During her time at Covington & Burling, Jennifer represented primarily pharmaceutical companies and sports teams, while maintaining a robust pro bono portfolio that encompassed criminal defense, economic justice, and immigrants' rights. She is a member of the Leadership Counsel on Legal Diversity's Pathfinder program, which selects promising legal associates from diverse backgrounds for advanced professional development opportunities. A native of Washington, D.C., Jennifer received her J.D. from Stanford Law School, and attended Yale University as an undergraduate, earning a B.A. with distinction in Political Science.

Scott Douglas - Greater Birmingham Ministries

Before joining the staff of GBM, Scott served as Environmental Justice Organizer for the Sierra Club – Southeast, Executive Director of the Southern Organizing Committee for Economic and Social Justice and Southern Field Representative for the Partnership for Democracy Foundation. Scott serves on the boards of AIDS Alabama, the Alabama Poverty Project, The Gulf Coast Fund, the Progressive Technology Project, the Equal Justice Initiative of Alabama, and the Steering Committee of the Alabama Organizing Project. He formerly served on the boards of directors of The Needmor Fund and The New World Foundation, among many others. Scott has published articles on human rights, community organizing and social change in *Social Policy*, *Southern Exposure*, and the *Howard Law School Journal*. Scott is from Nashville and graduated from the University of Tennessee in Knoxville. He is married to Lynn Douglas; they have one son.

Jonathan Barry-Blocker - Southern Poverty Law Center

A graduate of Morehouse College in Atlanta, and the University of Florida's Fredric G. Levin College of Law, Jonathan is a staff attorney for the Southern Poverty Law Center's Criminal Justice Reform practice group where he engages in litigation and policy campaigns to correct disparities in Alabama's criminal justice system.

Charlotte Morrison - Equal Justice Initiative

Charlotte Morrison, Senior Attorney, has been with EJI since 2001. She clerked for Judge Rosemary Barkett on the United States Court of Appeals for the Eleventh Circuit, is a former Rhodes Scholar with degrees in Philosophy from Oxford University and the University of Montana and graduated from New York University School of Law in 2000.

Benard Simelton - President, Alabama Chapter of the NAACP

Benard H. Simelton Sr. was born in Tiplersville, MS and attended College at Mississippi Valley State University in Itta Bena, MS. He graduated with a B.S. degree in Sociology in 1976 and received a Master's in Public Administration from the University of North Dakota 1981. He is a life member of the NAACP and served as President of Limestone County for six years and is in his fifth year as President of Alabama State Conference of the NAACP. Since joining the NAACP in Alabama, he has received the Regional Medgar Evers, Regional Kelly M. Alexander, and Regional Director Award and numerous branch awards. Benard served 23 years in the Air Force and retired in 2000 as a Lieutenant Colonel.

Kenneth Glasglow - Pastor, The Ordinary People Society

No Show

Jaffee Pickett - Deputy Director, Alabama Legal Services

Jaffe S. Pickett became Deputy Director in 2018 and Director of Development of Legal Services Alabama in 2013. Prior to that, Pickett led various departments at Legal Services including Director of Training, Call Center Director and Director of Alabama's first Elder Law Helpline. Pickett is a graduate of Troy University, Cum Laude, and a graduate of Louisiana State University School of Law, where she received dual degrees in Civil Law Studies and a Juris Doctorate.

Callie Greer – Citizen Impact Statement

Callie lost her right to vote due to a felony conviction and shared her story of getting back the right to vote.

Also in Attendance:

The Office of Congresswoman Terri Sewell - Shanna King, Constituent Services Representative

The Office of U.S. Senator Doug Jones – Jose Perry, Jr., Regional Director

Introduction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

On September 5, 2017, the Alabama Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted to undertake a study focused on access to voting in the State of Alabama which may have a disparate impact on voters on the basis of race, color, national origin, disability status, or religion, or those that undermine the administration of justice. The objective of the study is to determine whether any changes in Federal law or policy are necessary to guarantee protected classes of individuals the right to vote.

As one of the preclearance states under the Voting Rights Act of 1965¹, the Alabama Committee chose to examine the impact in the state of the *Shelby County v. Holder*² decision, as well as any subsequent proliferation of restrictions on voter access. The Committee hopes that such information will lead to a better understanding of the current state of access to the franchise, as well as to specific recommendations for addressing identified problems. The Committee proposes to advise the Commission by issuing a report with its findings and recommendations at the conclusion of this project. The report may include recommendations to the Commission for federal policy and statutory changes.

This Summary of the February 22, 2018 hearing held in Montgomery, Alabama is intended to provide testimony to the Commission in hopes of providing a boots-on-the-ground view of the current status of access to voting in the state of Alabama.

¹ 42 U.S.C. § 1973.

² 570 U.S. 2 (2013).

Background

For most of Alabama’s history, African Americans and other racial and ethnic minorities were systematically excluded from voting. Despite the promise of the Fifteenth Amendment³, which outlawed voting discrimination on the basis of race, color, or previous condition of servitude, state-sanctioned disenfranchisement denied the vote to African Americans. As evidenced by the opening remarks in the Alabama Constitutional Convention of 1901, protecting the “sanctity of the ballot” meant the exclusion of African-American voters:

I submit it to the intelligent judgment of this Convention that there is no higher duty resting upon us, as citizens, and as delegates, than that which requires us to embody in the fundamental law such provisions as will enable us to protect the sanctity of the ballot in every portion of the State. The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of negro domination.

John B. Knox – President of the Alabama Constitutional Convention of 1901⁴

The failure of constitutional mechanisms to break apart discriminatory voting regimes resulted in barriers to the ballot box for African American and other minority voters. Only with the enactment of the Voting Rights Act of 1965⁵ (“Voting Rights Act” or “Act”), almost a century after the Fifteenth Amendment’s ratification, did the constitutional right to vote free from racial discrimination, start to become a reality.

Congress included a provision in the Act, Section 5,⁶ which required “preclearance” of voting changes in jurisdictions with the worst records of discrimination. Section 4(b) of the Act captured a coverage formula that was based on low political participation and the use of a voting test or device.⁷ This system was extremely effective as the Department of Justice issued more than 1,000 objection letters that blocked racially discriminatory voting changes from going into effect.⁸

On June 25, 2013, in *Shelby County, Alabama v. Holder*,⁹ the five-member conservative majority of the Supreme Court “immobilized”¹⁰ Section 5 by holding that the coverage formula was unconstitutional.¹¹

³ U.S. Const. amend. XV.

⁴ Alabama Constitutional Convention of 1901. Proceedings, Vol.1, Day 2, P10. (Statement of Convention President John B. Knox).

⁵ 42 U.S.C. § 1973 (2012).

⁶ *Id.*

⁷ *See* 42 U.S.C. § 1973c(a) (2012).

⁸ *See Voting Rights Act: Section 5 of the Act-History, Purpose, and Scope: Hearing Before Subcomm. On the Constitution of the H.Comm. on the Judiciary*, 109th Cong. 13 (2005) (statement of Bradley Schlozman, Ass’t Att’y Gen. for Civil Rights).

⁹ 570 U.S. 2 (2013).

¹⁰ *Id.* Chief Justice Roberts wrote the majority opinion on behalf of himself and Justices Kennedy, Scalia, Thomas, and Alito. Justice Ginsburg wrote a dissenting opinion on behalf of herself and Justices Breyer, Sotomayor, and Kagan.

¹¹ *Id.*

The Effects in Alabama of *Shelby County v. Holder*

Antecedents to Shelby

The Committee heard testimony regarding how the State of Alabama found itself under the preclearance regime to begin with. John Park, a former Deputy Attorney General for the State of Alabama, suggested a repeated pattern of evasion of court orders regarding African American voter registration and turnout led to the Voter Registration Act, “when federal courts told them to do something or they couldn't do something, the state legislature would change the law and, say, well --they'd end run the court rulings in an equally discriminatory way.”¹² Mr. Park also said the Act “put a stop to that” and stated the Act told the states “before you can change your laws to evade federal court rulings, you got to send them up to Washington or go up to D.C. to get them precleared.”¹³

Alabama and the other covered jurisdictions ended up under [Section 5] because when federal courts told them to do something...the state legislature would change the law...in an equally discriminatory way
- John Park, former Alabama Deputy Attorney General

Jennifer Holmes, an attorney with the NAACP Legal Defense Fund, said the main benefit of Section 5 “is that it comes before the actual voting change is put into effect...you can root out a problematic voting practice before it is actually implemented.”¹⁴ Ms. Holmes stated that the Section 5 preclearance regime was important, adding “Between 1969 and 2015, the Department of Justice objected to more than 90 proposed voting changes in Alabama under section five, and other proposed voting changes were withdrawn or altered after DOJ requested more information.”¹⁵

Dr. Kareem Crayton, director of the Southern Coalition for Social Justice, commented that the one thing Section 5 provided was an election system that was more or less predictable.¹⁶ If there were to be changes in the election laws or process, “most people understood...there would be a great deal of conversation, maybe even debate, before it could be adopted.”¹⁷

Post Shelby

Many panelists focused their testimony on the effects on access to voting in Alabama after the *Shelby* decision.

¹² John Park, testimony, *Hearing Before the Alabama Advisory Committee, Montgomery, AL*, Feb. 22, 2018, transcript, p. 97 (hereafter cited as *Montgomery Hearing*).

¹³ Park Testimony, *Montgomery Hearing*, p. 97.

¹⁴ Holmes Testimony, *Montgomery Hearing*, P. 192.

¹⁵ Homes Testimony, *Montgomery Hearing*, P. 165.

¹⁶ Crayton Testimony, *Montgomery Hearing*, P. 42

¹⁷ Id.

Kareem Crayton told the Committee the one issue most people tend to forget is “how quickly the State adopted laws after *Shelby County* was placed on the books that radically changed the way our election system worked.”¹⁸ The counties change precincts “if not arbitrarily, unexpectedly” and it may surprise voters to find when they show up at the registrar’s office their house which they thought was in precinct A is now in precinct B.¹⁹

Dr. Crayton also observed that *Shelby* “essentially rendered Section four of the Voting Rights Act null, it essentially removed a significant protection that most voters in this neck of the woods, in this region of the country had to assure that new

The one issue most people tend to forget is how quickly the State of Alabama adopted laws after Shelby County was placed on the books that radically changed the way that our election system worked.

- Dr. Kareem Crayton

laws on the books did not reduce the opportunity for people to cast a ballot.”²⁰ The difference was “since *Shelby County*, Alabama doesn’t have to submit changes in vote [sic] and the county commissions don’t have to submit changes in voting laws for preclearance.”²¹

Jennifer Holmes told the Committee that in the aftermath of *Shelby County*, formerly covered jurisdictions like Alabama were emboldened to act.²² She pointed out that the state legislature had passed a restrictive voter ID law in 2011. Within days of the *Shelby County* decision in 2013, the Secretary of State’s office “announced that it would now prepare to implement the law.”²³ She posited the State declined to submit the law for preclearance for two years because the sponsor of the law anticipated a lengthy court battle.²⁴

Scott Douglas, Executive Director of Greater Birmingham Ministries, told the Committee without the protection “of the guts” of the Voting Rights Act, the Alabama’s voter ID laws place a tremendous burden on already economically burdened black and Latino families.²⁵ Black voters are “three times more likely than white voters to live more than five miles from an ID-issuing office and to live in a -- in a household without a vehicle.”²⁶

The laws added post *Shelby* “added burden to low-income and rural families that now have to get to the nearest DMV for an ID.”²⁷ Transportation is a burden for low income people. If there is one car in the family, “it’s being used by the breadwinner who has to use the car to commute back and forth to work, often in a Black Belt neighboring county.”²⁸

¹⁸ Crayton Testimony, *Montgomery Hearing*, P. 41.

¹⁹ *Id.* at P. 43.

²⁰ Crayton Testimony, *Montgomery Hearing*, P. 41.

²¹ Park Testimony, *Montgomery Hearing*, P. 93.

²² Holmes Testimony, *Montgomery Hearing*, P. 167.

²³ *Id.*

²⁴ Holmes Testimony, *Montgomery Hearing*, P. 167.

²⁵ Douglas Testimony, *Montgomery Hearing*, P. 207-208.

²⁶ Holmes Testimony, *Montgomery Hearing*, P. 169.

²⁷ Douglas Testimony, *Montgomery Hearing*, P. 207-208.

²⁸ *Id.*

In October 2015, “the governor made these travel burdens even worse when he took the drastic step of partially closing 31 driver's license issuing offices, most of which were located in – in Alabama's rural Black Belt.”²⁹

Additionally, even though the State offers “free state-issued photo IDs” there are costs involved to acquire the underlying “documents such as birth certificates” required to obtain the ID and transportation to and from agencies to retrieve the documents.³⁰

Voter Fraud

The testimony at the Montgomery Hearing indicated voter fraud was either a serious problem, or non-existent, depending on which panelist was speaking.

John Merrill, the Alabama Secretary of State, testified that since his election, “there have been six convictions of voter fraud, and we’ve had three elections that have been overturned.”³¹ That statement was furthered by John Park who told the Committee he knew of elections that have been overturned or subject to question in Phenix City, in Wetumpka, and in Guntersville “because of problems with voter registration or absentee ballot – voter fraud.”³²

A 2016 Gallup poll, taken before the party’s national convention, found that the United States ranked 90th out of 112 countries in in terms of their confidence in the honesty of their elections.

- John Park

Mr. Park informed the Committee that in the November 2017 election for District Two of the Phenix City Council, “at least 32 voters who registered used their business address in violation of Alabama law.”³³ The investigation, he said, turned up 82 voters who “registered using their business addresses in violation of law -- state law, as well as convicted felons who had not had their voting rights restored, included some dead people and some people from Georgia. People coming over from Columbus [Georgia] across the river.”³⁴

Mr. Park provided another example in the August 2016 election for Wetumpka City Council District Two, the “Circuit Court of Elmore County overturned the election results because 8 -- just 8 -- absentee ballots were found to be fraudulent -- illegally cast.”³⁵ The initial count declared one candidate to be the winner “by a count of 168 to 165.”³⁶ But “eight absentee ballots for the -- for the winner were thrown out because the ballot was not properly signed or witnessed as required by state law.”³⁷

²⁹ Holmes Testimony, *Montgomery Hearing*, P. 169.

³⁰ *Id.*

³¹ Merrill Testimony, *Montgomery Hearing*, P. 15.

³² Park Testimony, *Montgomery Hearing*, P. 95.

³³ *Id.*

³⁴ *Id.* at P. 96.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

To drive home the point that added security in elections is needed, Mr. Park shared with the Committee results of recent polls, such as “In August 2017, a Rasmussen Report National Telephone and Online Survey found that 54 percent of likely U.S. voters say voter fraud is at least a somewhat serious problem, and 27 percent say it’s a serious -- very serious problem.”³⁸ He also shared “A 2016 Rasmussen poll reported that only 41 percent of those polled believe that American elections are fair to voters”, and “2016 Washington Post-ABC poll found that 46 percent of those polled believed that voter fraud happens somewhat 16 or very often.”³⁹

Other panelists gave a different story. Brock Boone of the Alabama ACLU said, “in person voter fraud is virtually nonexistent across the country.”⁴⁰ Kareem Crayton echoed this sentiment in his testimony, adding “I think the important thing to see about voter fraud, it is --as you know, every study that has attempted to track this, nearly infinitesimal, if not, you know, negligible, zero.”⁴¹ Adding to the diversity of perceived threats to the franchise, a panelist said the safeguards that were in place were that “poll workers and registrars are monitored such that votes, once they are bundled, accurately reflect the votes that were cast.”⁴²

When the Secretary of State invested a lot of money to investigate [voter fraud] during the December primaries...he found that roughly 600 or so examples that he submitted to the local county registrars and they reported back that those were administrative errors.

-Dr. Kareem Crayton

The Secretary of State's office did choose to investigate a young person of color for voter fraud “based on an off-the-cuff remark he made during a newscast about people coming ‘from different parts of the country to pitch in and canvas for Doug Jones.’ Unsurprisingly, the investigation concluded that the man was a properly registered Alabama voter and that the allegations of any widespread voter fraud were a myth.”⁴³

To add an Historical perspective, Scott Douglas told the Committee “If you’re looking for vote fraud, the vote of -- on the 1901 constitution is the pinnacle or rather the pits of vote fraud, and it was implemented not by voters but by a conspiracy of state officials. That conspiracy was so well known, it was called at the time an open secret.”⁴⁴

³⁸ Park Testimony, *Montgomery Hearing*, P. 94.

³⁹ *Id.*

⁴⁰ Boone Testimony, *Montgomery Hearing*, P. 102.

⁴¹ Crayton Testimony, *Montgomery Hearing*, P63.

⁴² *Id.*

⁴³ Holmes Testimony, *Montgomery Hearing*, P. 173.

⁴⁴ Douglas Testimony, *Montgomery Hearing*, P. 206.

Regulations on Voting

Jennifer Holmes testified to the frustration shared by many Alabama voters regarding regulations or procedures. She related circumstances involving voter purging, that removed from the rolls eligible and active voters:

In January 2016 -- 2017, the Secretary of State's office sent postcards to all registered Alabama voters. Voters whose first card was returned undeliverable and who did not reply to a second card were designated as inactive. This had nothing to do with their voting record in the past four years. This error-prone process for identifying purported inactive voters resulted in widespread voter confusion. On election day, numerous voters were alarmed to discover, at the polls, that they were on this inactive list that they had never heard of, despite having voted in recent elections.⁴⁵

Ms. Holmes also reminded the Committee that “the Voting Rights Act sets only a floor. Alabama's legislature can also pass its own voting rights protections. “At a minimum, even under the current legal framework, state and local officials should promote voter access through increased poll hours and locations, better-trained poll workers, adequate machines and ballots, and more meaningful engagement with communities of color.”⁴⁶

When asked about the Alabama state law that requires proof of citizenship in order to vote (federal law does not), the Secretary said, “We've not enforced that law, even though in February of 2016 the Election Assistance Commission had indicated that we could ask that question” ‘And I said, I don't want to cause any confusion for anybody’.”⁴⁷

We've not enforced that law [proof of citizenship to vote] ...I don't want to cause confusion for anybody.

-Secretary John Merrill

Another law passed in 2017 that made crossover voting illegal, meaning that “someone voting in one party's primary could face fines and jail time if they voted in the other primary's runoff. People who voted in the runoff had also voted in a democratic primary and recommended that they be prosecuted to the full extent of the law and given up to five years in prison for voting.”⁴⁸ Eventually, “it came out that it was mostly administrative error, but the damage was already done with many individuals worried that maybe making a mistake while voting might land them in prison.”⁴⁹

⁴⁵ Holmes Testimony, Montgomery Hearing, P. 172.

⁴⁶ Holmes Testimony, Montgomery Hearing, PP. 175 and 200.

⁴⁷ Merrill Testimony, Montgomery Hearing, P. 18.

⁴⁸ Boone Testimony, Montgomery Hearing, P. 107.

⁴⁹ Id.

Redistricting

In recent litigation, the Supreme Court found that districts drawn by the Alabama state legislature at the state legislative level violated the 14th Amendment of the Constitution, which forbids racial gerrymandering.⁵⁰ In solving that problem – “in trying to solve that problem last session, the legislature created a new plan that organized districts in yet another way. And what was not quite apparent, and still isn't apparent to a lot of people, is where those lines actually match up to these precincts which, again, have been sort of unexpectedly changed county by county.”⁵¹

One of the challenges discussed by panelists is “when you show up for elections and you find out that either you're not in the right place or that there's some confusion at the polls about whether or not you are in the right place or perhaps even the person in front of you is in the right place.”⁵² So there's a difference between the example of “the person at the polling place telling you, oh, no, I don't like you, you can't vote, and the example where there's this administrative confusion.”⁵³ The outcome in both cases though is that lines are longer, and it takes a longer time for the average person to cast a ballot.

In many cases redistricting makes it harder to vote, and “that's not the State explicitly telling you, we don't like you, you can't cast a ballot. But if you work an hourly job, if you only have an hour available to cast a ballot, then you may actually effectively be cut out of the opportunity to cast a ballot, and that's of concern.”⁵⁴

Registration

The State of Alabama has developed and introduced a phone application that enables first time voters to register via the app if they have a valid Alabama driver's license.⁵⁵ The Secretary said, “We've had more than 350,000 people that have used that system today, and we're very excited about that.”⁵⁶ He added, “Since January the 19th, 2015, we've registered 914,697 new voters. We now have 3,347,398 registered voters in Alabama. Both those numbers are unprecedented and unparalleled in the history of the state. I'm really excited about that.”⁵⁷ “There's less than 350,000 people in the state of Alabama that are not registered to vote, period.”⁵⁸

Other panelists saw the numbers in a different light. Dr. Kareem Crayton said, “Registration is an important part of the process. I'd be really excited [about the numbers the Secretary shared], to be frank about it, if this were 1966 or 1982.”⁵⁹ We don't have automatic registration in this state, and

⁵⁰ Crayton Testimony, *Montgomery Hearing*, P. 44.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Merrill Testimony, *Montgomery Hearing*, P. 10.

⁵⁶ *Id.* at P. 11.

⁵⁷ *Id.* at P.16.

⁵⁸ *Id.* at P. 31.

⁵⁹ Crayton Testimony, *Montgomery Hearing*, P. 45.

we should,” He added, “The measure that the Secretary of State mentioned was registration, and, again, there have been a number of people that have been put on the rolls. But in terms of voting, I’m sad to tell you, the State of Alabama is, at best, in the middle of the pack compared to other states in terms of turnout.”⁶⁰ Dr. Crayton added, “it strikes me that citizenship, if it really is going to include voting as a right, does impose upon the State some obligation. And I think the State should do some work to make certain that as many people want to vote can vote.”⁶¹

Some felons are ineligible to register to vote. Brock Boone said, “in the moral turpitude law, the State did not repeal the provision that requires fees and fines to be paid off to vote again. This means that the State directly discriminates against the poor. Many poor people cannot vote simply because they are poor.”⁶²

One panelist said there is a history of disparate impact in Alabama, “I think *Hunter v. Underwood*, 471 U.S. 222 (1985) showed that the registrars in Alabama denied higher ratios of black citizens the right to vote based on their criminal histories. It appeared to be indiscriminate, whether it was a felony or a misdemeanor, partially because there was no firm policy at the time. That was back in the 1980s.”⁶³

Benard Simelton, of the Alabama NAACP, said his organization “received several complaints [in 2017] by individuals whose names were removed from the rolls but had voted previously in the primary election in 2017. All of a sudden, their names were removed from the rolls.”⁶⁴

Felony Disenfranchisement

Moral Turpitude Laws

The Alabama Constitution disenfranchises individuals convicted of felonies involving moral turpitude. Until 2017, Alabama did not define which crimes involve “moral turpitude,” leaving the standard for disenfranchisement open to the interpretation of individual registrars.

When people are being qualified for discharge in the location where they’re being held, they have to be told what their rights are, they have to be provided with information to register to vote, they have to have the opportunity to register to vote.

- Secretary John Merrill

The Secretary of State told the Committee that as he was campaigning for office, he heard from people in the community that had been denied the opportunity to vote after being convicted of crimes of moral turpitude.⁶⁵ He discovered that the moral turpitude laws were being interpreted in different ways throughout the

⁶⁰ Crayton Testimony, *Montgomery Hearing*, P. 45.

⁶¹ Crayton Testimony, *Montgomery Hearing*, P. 40.

⁶² Boone Testimony, *Montgomery Hearing*, P. 106.

⁶³ Blocker Testimony, *Montgomery Hearing*, P. 177.

⁶⁴ Simelton Testimony, *Montgomery Hearing*, P.254.

⁶⁵ Merrill Testimony, *Montgomery Hearing*, P. 19.

state.⁶⁶ He brought forth legislation to ensure that the moral turpitude law was only going to be interpreted and enforced in one way.⁶⁷ The legislation passed in 2017 and now “only people who have been convicted of crimes of moral turpitude have lost their opportunity to vote and are not allowed to vote.”⁶⁸

In 2016 the SOS submitted legislation to create a law for restitution and restoration of voting rights. This is where the law stands today: “If someone has paid --served all their time associated with their original sentence and paid all their fees and fines associated with their original sentence, their voting rights are automatically restored.”⁶⁹

According to the Secretary, the procedure has been expedited. “When people are being qualified for discharge in the location where they’re being held, they have to be told what their rights are, they have to be provided with information to register to vote, they have to have the opportunity to register to vote.”⁷⁰ “That’s a part of their packet. We want to make sure that that is being communicated and that is being done.”⁷¹

The Committee asked the Secretary why there are no Certificates of Eligibility [a form needed for the formerly incarcerated to get their rights restored] at these registration events, the Secretary replied “we don’t coordinate the event... We just were a participant in those events. And in the ones that I participated in, Pardons and Paroles have provided that information.”⁷² Brock Boone of the ACLU said, “Secretary Merrill claimed it was not his responsibility to notify those voters that they are eligible to vote again. So largely, that task has been left to nonprofit entities without the same resources.”⁷³

While the Secretary of State presented the new law as a benefit for Alabamians, other panelists felt otherwise. One panelist said, “Alabama does almost very, very little for people leaving prison. And I do think this is one area where the voting rights could be impacted by requiring the Department of Corrections actually issue the necessary paperwork.”⁷⁴ Dr. Crayton said “people who have some relationship with the correction system is another example of where I think there’s a difference between the State saying we made something available and the State taking an effort to make sure that people who are citizens have

If the State decided, for example, to make it easy to determine whether you’ve entered a particular phase of supervision, or you’ve ended it, and we make sure that you’re automatically put on the rolls, that might make things more simple from the user’s perspective.

-Dr. Kareem Crayton

⁶⁶ *Id.* at 20.
⁶⁷ *Id.*
⁶⁸ *Id.*
⁶⁹ *Id.* at P. 21.
⁷⁰ Merrill Testimony, *Montgomery Hearing*, P. 21.
⁷¹ *Id.*
⁷² *Id.* at P. 27.
⁷³ Boone Testimony, *Montgomery Hearing*, P. 106.
⁷⁴ Morrison Testimony, *Montgomery Hearing*, P.226.

their entitled right to cast a ballot. It is very confusing.”⁷⁵ He added, “The administrative process of just corrections itself is terribly confusing to know what your sentence is. To know when you're no longer under supervision is itself a complex process. To know when you cast a ballot is an even more complicated process, that is, when you are eligible once again.”⁷⁶

Callie Greer, providing an impact statement to the Committee said, “You're not thinking about voting or becoming a legal citizen or any of that stuff when you're straight out of prison. You know, you're thinking about where I'm going to sleep, where I'm going to eat, how the hell I'm going to get rid of these ugly clothes.”⁷⁷ Another panelist added, “your application is controlled by your PO -- it's your parole officer. Depending on what kind of parole officer you have, they may or may not be interested in facilitating you getting your voting rights back.”⁷⁸

Johnathan Barry-Blocker, of the Southern Poverty Law Center, added, “the legislature passed an amendment getting the definition of moral turpitude *back in as a functioning policy of the law*. Currently, in *Thompson v. Alabama*,⁷⁹ the Campaign Legal Center has filed a lawsuit challenging...the moral turpitude provision and policy, and currently they are actionable claims that have survived dismissal, focused on intentional discrimination under the 14th and 15th Amendments.”⁸⁰

The Committee heard testimony about the approximately 40 crimes that are considered crimes of “moral turpitude.” One panelist commented, “upon closer review is that most of these crimes are street-level crimes, meaning crimes they expect poor or black people to commit. What you will find missing are ethics crimes. You will find public corruption crimes missing and tax evasion. Most frauds missing. Basically, your white-collar crimes are nowhere in there.”⁸¹

Mr. Barry-Blocker told the Committee that “approximately 15.1 percent of Alabama's black citizens [formerly incarcerated] cannot vote as of a 2016 report by The Sentencing Project, and based on population data from the census, that was about 196,808 citizens.”⁸² He also said there's been a “recent heavy disenfranchisement in counties with notable black populations.”⁸³ The largest number of voters purged for felonies were in “Mobile, Montgomery, Houston, and Jefferson Counties.”⁸⁴ And respectfully, “Mobile had 1,245 people purged for felonies, Montgomery had 782, Houston County had 481, and Jefferson had 453. That was as of a 2016 Election Administration & Voting Survey report issued by the government.”⁸⁵

⁷⁵ Crayton Testimony, *Montgomery Hearing*, P. 46.

⁷⁶ *Id.*

⁷⁷ Greer Testimony, *Montgomery Hearing*, P. 240.

⁷⁸ Morrison Testimony, *Montgomery Hearing*, P.221.

⁷⁹ No. 2:16-CV-783, 2017 U.S. Dist. LEXIS 118606 (M.D. Ala. July 28, 2017). (Plaintiffs challenged the “moral turpitude” standard on due process, racial discrimination, and void for vagueness grounds, among others.)

⁸⁰ Blocker Testimony, *Montgomery Hearing*, P. 178.

⁸¹ Blocker Testimony, *Montgomery Hearing*, P. 180.

⁸² Blocker Testimony, *Montgomery Hearing*, P. 178.

⁸³ *Id.* at 179.

⁸⁴ *Id.*

⁸⁵ *Id.*

In contrast to the Secretary's claim that the restoration process is now a speedy one, Mr. Barry-Blocker said "according to The Sentencing Project in their 2016 report, only 16,000 restorations happened from 2005 to 2015. Now, I want you to compare this number with the fact that – they estimate 250,000 citizens were disenfranchised as of 2016. So there is a delay in processing claims."⁸⁶

Additionally, one panelist said, "the vast majority of people in Alabama's prisons are serving a sentence for a conviction considered by law to be one of moral turpitude. These citizens are, therefore, subject to permanent disenfranchisement. They must go through the voter restoration process, either by applying for a certificate of eligibility to vote or a pardon."⁸⁷

Charlotte Morrison told the Committee Alabama's disenfranchisement scheme and moral turpitude test did not evolve in a vacuum. "Alabama amended its constitution" she said, "to expand disenfranchisement to all crimes involving moral turpitude, which apply to misdemeanors and noncriminal acts after the president of the constitutional convention argued that the state needed to avert the, "menace of negro domination." Alabama's long and violent history of erecting insurmountable obstacles for African-American voters and the undisputed evidence that felony disenfranchisement laws have a racially disparate impact should disqualify Alabama from using convictions and fines as mechanisms to deny citizens the right to vote."⁸⁸

Fines and Fees

Charlotte Morrison, senior attorney with the Equal Justice Initiative, told the Committee "Alabama is one of only ten states where a person with a felony conviction may lose the right to vote permanently unless restoration is sought, and all fines are paid."⁸⁹ "This requirement that all fines be paid" she added, "acts as a permanent bar to voter restoration for tens of thousands of people in Alabama."⁹⁰ She added, "Certificates of eligibility to vote, or the CERV, will not be issued to anyone who owes fines or is on parole supervision. This means that the vast majority of people leaving Alabama's prisons cannot apply for a CERV. They are ineligible for a CERV."⁹¹

While fines and fees are assessed to persons regardless of race and are "generally assessed similar amounts of court debt... blacks were less able to pay back due to the systemic wealth gap"⁹² Mr. Barry-Blocker discussed "a study called Discretionary Disenfranchisement, The Case of Legal Financial Obligations 46 -- volume 46 of the Journal of Legal Studies starting at page 309 that look at the burden of court debt on citizens trying to reclaim their right to vote. They found in their 2017 published study that one-third of CERV applications were denied due to court debt, that the median court debt for Alabama citizens is \$3,956, whereas they estimate the average annual income of formerly incarcerated people is about \$9,000."⁹³

⁸⁶ Blocker Testimony, *Montgomery Hearing*, P. 185.

⁸⁷ Morrison Testimony, *Montgomery Hearing*, P.212.

⁸⁸ Morrison Testimony, *Montgomery Hearing*, P. 215-216.

⁸⁹ Morrison Testimony, *Montgomery Hearing*, P. 211.

⁹⁰ *Id.* at P. 213.

⁹¹ Morrison Testimony, *Montgomery Hearing*, P. 212.

⁹² Blocker Testimony, *Montgomery Hearing*, P. 188.

⁹³ Blocker Testimony, *Montgomery Hearing*, P. 187.

The Committee heard testimony about an Alabama law⁹⁴ that allows the district attorney, after 90 days, to pursue and levy a 30 percent interest on outstanding court debt. One panelist related a story of a formerly incarcerated person he assisted after that person had been released. “He had a minimum of \$50,000 fine. I think his total debt was looking at about a little closer to 60. He got out of prison. He was paying it consistently... had started making headway... knocked off about 10,000, all of a sudden, that 30 percent hit. Last I spoke with him, he owed closed to \$60,000, and he had just pretty much stopped trying to make major payments.”⁹⁵ This individual, the panelist said, cannot “reclaim his right to vote because under the current law, you must be paid up on your court debt. drug trafficking convictions will function as a permanent bar to voting in Alabama because the cost of the fine is so prohibitive.”⁹⁶

There was some uncertainty among the panelists as to whether the 30 percent collection fee was mandatory or optional, the Chair of the Committee said, “I’ve got the statute in front of me, and it actually indicates that you *shall* assess a collection fee of 30 percent. So, it is not discretionary. 75 percent of the collection fee is distributed to the attorney’s office that is -- that is collecting that fee.”⁹⁷

Charlotte Morrison shared the story of Stanley Washington, “who was originally sentenced to life imprisonment without the possibility of parole for possession of cocaine in 1995. He was also fined \$50,000. The Alabama Supreme Court unanimously decided to allow judges to reconsider sentences of life without parole for nonviolent offenders. In 2008, Mr. Washington was paroled. He was released in January of 2009. in 2011. His application was denied because he had not paid the \$50,000 fine. It did not matter that Mr. Washington was 63 years old, that he was on SSI. It did not matter that he had paid his parole fees, \$40 a month, consistently for six years.”⁹⁸

Crimes in Other Jurisdictions

Jonathan Barry-Blocker told the Committee that, “It’s also worth noting that the Board of Pardon and Parole will take into account your convictions in other jurisdictions.”⁹⁹ “They’re [Board of Pardons and Paroles] going to say” he added, “you need to go get your pardon from that other jurisdiction before you can get your pardon here in Alabama.”¹⁰⁰ He related a case of an Alabama resident convicted in Georgia, where that state said, “we’re not really bothered about whether or not we’re going to pardon you so we’re not going to. He had done everything he needed to [to get his rights restored] in Alabama. Because he could not take care of Georgia, he could not take care of Alabama.”¹⁰¹

Absentee Ballots

Secretary Merrill commented on providing absentee ballots to those persons who are incarcerated, but who have not lost their right to vote. He said, “we made it very clear to all the sheriffs and all the other penal authorities throughout [Alabama] and the Department of Corrections, there are a number of

⁹⁴ § 12-7-225.4.

⁹⁵ Blocker Testimony, *Montgomery Hearing*, P. 182-183.

⁹⁶ *Id.*

⁹⁷ Chair’s Comment, *Montgomery Hearing*, P. 202.

⁹⁸ Morrison Testimony, *Montgomery Hearing*, P. 213-214.

⁹⁹ Blocker Testimony, *Montgomery Hearing*, P. 189.

¹⁰⁰ *Id.* at P. 190.

¹⁰¹ *Id.*

people in our state who are incarcerated but have not lost their voting rights. And so if someone wants to vote and they're incarcerated, then they need to have the opportunity to do so and made sure they've got access to absentee applications.”¹⁰²

One panelist, positing on absentee voting in general, told the Committee “why is it that we don't allow early voting or Sunday voting or more reasonable opportunities to cast an absentee ballot?”¹⁰³ He told the Committee “[Alabama has] one of the more limited opportunities in this state to cast a ballot by absentee. There are states out there that have -- that give opportunities to people who cast an absentee ballot on a regular basis. So, you can be a consistent absentee ballot voter. That's not readily available in this state. [Alabama should be] opening up the absentee ballot process.”¹⁰⁴

Voter ID Law

The Secretary of State his remarks on the efforts his office has made to make ID's available by stating “we want to ensure that each and every eligible U.S. citizen that's a resident of the State of Alabama is registered to vote and has a photo ID.”¹⁰⁵ Of his mobile registration drive, he said he “reached out to the 140 members of the Alabama legislature and asked, ‘we just want to know where you'd like us to go.’”¹⁰⁶ He then “reached out to the Probate judges and asked for ‘can't miss festival events or activities in your community where you'd like us to go to conduct a voter registration photo ID drive.’”¹⁰⁷

Secretary Merrill told the Committee in an effort to ensure he was reaching people statewide, solicited the help of celebrities to help promote voter registration photo ID. Mr. Merrill identified Alabama head football coach Nick Saban, Auburn coach Gus Malzahan, heavyweight boxing champ Deontay Wilder, Basketball star Charles Barkley, Miss Alabama Jessica Procter, and Dr. Mae Jemison who's one of the first African-American astronauts.¹⁰⁸

The Secretary said his office has made “414 unique visits to the 67 counties in 2016 to promote voter registration photo ID.”¹⁰⁹ He mentioned cases of homebound individuals or those without transportation, “We have gone to those people's homes and we have given them photo ID's and we have made sure they were registered to vote.”¹¹⁰

When asked why his office takes such measures, the Secretary said, “I cannot, in good conscience, sit here in Montgomery, Alabama and tell you I'm going to do whatever it takes to ensure that each and every eligible U.S. citizen that's a resident of our state, is registered to vote, and has a photo ID unless I'll do whatever it takes to make it happen.”¹¹¹

¹⁰² Merrill Testimony, *Montgomery Hearing*, Pp. 21-22.

¹⁰³ Crayton Testimony, *Montgomery Hearing*, P46.

¹⁰⁴ Crayton Testimony, *Montgomery Hearing*, P. 56-58.

¹⁰⁵ Merrill Testimony, *Montgomery Hearing*, P.

¹⁰⁶ Merrill Testimony, *Montgomery Hearing*, P. 7

¹⁰⁷ *Id.*

¹⁰⁸ Merrill Testimony, *Montgomery Hearing*, P. 8-9.

¹⁰⁹ Merrill Testimony, *Montgomery Hearing*, P. 11.

¹¹⁰ *Id.* at P.12.

¹¹¹ *Id.* at pp. 12-13.

The Secretary told the Committee, “you don't have a photo ID, you can be identified by two polling officials and you, at that point, are able to vote by them signing an affidavit and you signing the statement that would indicate that they know who you are. So, you don't have to have an ID to even vote, and you could vote a provisional ballot and then bring your ID by that Friday after the election and have it confirmed as well.”¹¹² He added, “Not one instance has been reported since we passed the voter photo ID law where an individual has gone to the poll and been denied access to participation.”¹¹³

Some panelists said the voter registration mobile outreach was lacking. Benard Simelton, of the Alabama NAACP said, “The problem is where they located these mobile systems most of the time were near or at the same place you could go to register in the --kind of center of town off of -- I mean, of the county. Say for instance, the county seat of Montgomery County is Montgomery, and they were located somewhere near Montgomery. Where I live in Limestone County, it came to Athens. Now, that did not help the people in rural areas to get closer to getting the -- getting to the location where they could obtain or get the photo ID. So I think that was -- it was good to say that in -- in theory, but it didn't work that well in practice.”¹¹⁴

Other panelists took issue with the Voter ID law in general. Brock Boone of the ACLU said, “Voter identification laws are part of an ongoing strategy to roll back decades of progress on voting rights.”¹¹⁵ “Voter ID laws are a solution in search of a problem.”¹¹⁶ He added, “Over 20,000 black registered voters in Alabama have no valid photo ID that is accepted under the photo ID law.”¹¹⁷

Benard Simelton said, “The photo ID has a disproportionately [sic] impact on African-American voters because African-American voters are less likely to have the credentials required to obtain the photo ID, such thing as the birth certificates.”¹¹⁸

Jennifer Holmes told the Committee, “According to our expert in the litigation [*Greater Birmingham Ministries* – a lawsuit that alleges the law has discriminatory effect on black and Latino voters and that the legislature enacted the law for the purpose of discriminating against people of color], more than 118,000 registered voters lack a photo ID that can be used to vote under the law, and black and Latino voters are twice as likely than white voters to lack such an ID. This figure breaks down as 50,000 registered voters who lack any acceptable ID and 68,000 registered voters who, although they have an ID, have discrepancies in the name on the ID or other information on the ID that would prevent them from using it to vote.”¹¹⁹

Ms. Holmes also told the Committee “the Secretary of State's expert in the litigation does acknowledge that black and Latino voters are twice as likely to lack an ID as white voters. Black

¹¹² Merrill Testimony, *Montgomery Hearing*, P. 28.

¹¹³ Merrill Testimony, *Montgomery Hearing*, P. 14.

¹¹⁴ Simelton Testimony, *Montgomery Hearing*, P.252.

¹¹⁵ Boone Testimony, *Montgomery Hearing*, P. 101.

¹¹⁶ *Id.*

¹¹⁷ Boone Testimony, *Montgomery Hearing*, P.103.

¹¹⁸ Simelton Testimony, *Montgomery Hearing*, P251.

¹¹⁹ Holmes Testimony, *Montgomery Hearing*, P.168.

and Latino voters without a photo ID are also much more likely than their white counterparts to lack access to vehicles, to live in poverty, and to face other barriers to obtaining an ID.”¹²⁰

Dr. Crayton suggested more IDs should be allowed. “if our goal is to make more people have access, how many IDs can we reasonably say fit the category? And if we're going to allow passports -- which, again, I'm in favor of if you're going to have an ID system, then we should be more expansive than that for places where we can find IDs that have your photo and some indication or means of verifying where you happen to live, that you're in the state.”¹²¹ He added, “Student ID's and federal IDs [should qualify.] If we establish the minimum standards that open up our access for any person that has an ID, that has a photo, and is issued by some state agency that has some sense of verification, that ought to qualify.”¹²²

Some panelists pointed out that the problem, as they perceive it, isn't just with the law itself, it is exacerbated by state action. Brock Boone said, “Not only does Alabama enact voter ID laws, but then the State of Alabama made it more difficult to obtain a photo ID, in particular a driver's license, by closing 31 county driver's license offices, including every county in which 70 percent or more of the population is black.”¹²³

Jennifer Homes stated in her testimony “The governor closed driver's license offices in eight of the ten counties with the highest proportion of black voters. These important offices were opened only one day a month for the entire 2016 election season, making it more difficult for black voters in these poor and rural communities to obtain the required photo ID.”¹²⁴ She added, “The governor only agreed to reopen these offices in December 2016 after the presidential election and after an investigation by the U.S. Department of Transportation that found that Alabama's partial closure of the offices had a discriminatory effect on black voters in violation of title six of the Civil Rights Act.”¹²⁵

Benard Simelton shared complaints received by his organization from voters at the polls, stating “The Alabama NAACP has received several complaints from individuals who did not have the photo ID and, therefore, were not able to vote. One individual who went to the polls where he had voted prior to the photo ID being required was turned away, even though poll workers recognized him. Another elderly gentleman was not able to vote because he had not obtained the photo ID. And another gentleman was not able to use his military ID in order to vote.”¹²⁶

Scott Douglas, of Greater Birmingham Ministries, gave testimonials about low-income people burdened by Alabama's photo ID laws. He first spoke of Ms. Elizabeth Ware, “Due to Ms. Ware's fixed income, lack of reliable transportation, and limited mobility, HB 19 [Alabama Voter ID Law] substantially burdens Ms. Ware's ability to vote. Ms. Ware's income consists solely – consisted solely of Social Security Disability as a result of a number of serious maladies, including bullet

¹²⁰ Holmes Testimony, *Montgomery Hearing*, P.168-169.

¹²¹ Crayton Testimony, *Montgomery Hearing*, P. 53.

¹²² Crayton Testimony, *Montgomery Hearing*, P.52.

¹²³ Boone Testimony, *Montgomery Hearing*, P. 101.

¹²⁴ Holmes Testimony, *Montgomery Hearing*, P.169.

¹²⁵ *Id.*

¹²⁶ Simelton Testimony, *Montgomery Hearing*, P. 253.

fragments in her back. Ms. Ware does not drive and has limited transportation options. The bus stop is four to five blocks from her house and walking that distance takes her over an hour and causes her pain, and rides by car are unreliable for Ms. Ware. The nearest place to get a license where Ms. Ware will go get an ID is not in walking distance of her home, and a ride can cost 20 bucks -- \$20, a significant amount for someone with a fixed income. She -- she attempted to get the free voter ID card; however, she was wrongly denied the card by the -- the ID by the staff member who had been improperly trained who told her that because she had an ID in the past, she was now ineligible for the free voter ID card now, despite her circumstances. Finally, after becoming a plaintiff in our lawsuit, Ms. Ware's attorneys aware -- arranged for the Secretary of State's office mobile unit to visit her home during her deposition, and she had never heard of the mobile ID unit prior to litigation. The unit's process was deeply flawed and faced many technical issues when attempting to issue Ms. Ware an ID. Ultimately, it took over an hour to issue Ms. Ware a temporary ID, and she had to wait for the permanent ID to be mailed to her. This process clearly cannot be replicated for the thousands and thousands of other people in Alabama who do not have an ID, a personal home visit by a mobile unit.”¹²⁷

Mr. Douglas then shared a story of Debra Silvers, “who was unable to replace her photo ID after a house fire destroyed both her ID and the underlying documents that she would need to replace it. To begin replacing the documents lost in her fire, Ms. Silvers had to pay for a ride to various government agencies. Each trip costed her \$15 to \$20. Ms. Silvers paid over \$100 in cost of transportation before getting a temporary nondriver ID. These costs were especially substantial given that Ms. Silvers had just lost everything in the fire and was in the process of rebuilding her entire life. Ms. Silvers was in such dire straits that she had required the Red Cross to house herself and her children. Once Ms. Silvers had obtained a temporary nondriver ID, she attempted to vote in March 2016, but she was turned away because the poll worker could not see the picture on the temporary ID and that old ID had expired. HB 19 directly prohibited Ms. Silvers from participating in the franchise.”¹²⁸

Provisional Ballots

The Committee heard testimony about provisional ballots. John Park said, “with respect to provisional voting, if you go to the wrong precinct, one of the things you need to understand is they're not going to have your ballot. They're going to have the ballot for that precinct. Now, there may be common races -- common elections, but you'll only be able to vote -- the only votes that you can conceivably count are the ones for those common ones.”¹²⁹

Even if you get to the right precinct, if there is confusion and “a pollster says -- and I think with no ill intent -- ‘oh, just cast a provisional ballot. You'll get your ballot counted and, you know, it'll be fine.’ But they want to keep the line moving. But that has an effect on the person who casts a

¹²⁷ Douglas Testimony, *Montgomery Hearing*, P. 209.

¹²⁸ *Id.* at P. 210.

¹²⁹ Park Testimony, *Montgomery Hearing*, P. 90.

ballot. And usually, that person doesn't know that those ballots don't get counted.”¹³⁰ Dr. Crayton informed the Committee that “there's no obligation for the State to count those provisional ballots unless the outcome of the election is likely swayed by the number of provisional ballots that are cast.”¹³¹ “When you're denied access,” he said, “you may cast a ballot, but getting that ballot counted is another affair, particularly when you get slotted toward provisional ballots.”¹³²

Voter Turnout

The Secretary of State told the Commission the voters in Alabama have been turning out in record numbers, “March 1st, 2016, broke every record in the history of the state for voter participation. 1.25 million went to the polls and voted. November 8, 2016, broke every record for voter participation in the history of the state, more than 2.1 million went to the polls.”¹³³

The Secretary added, “The SOS said his office has also tried to make it easier for people when they go to the polls. Polling places now have “electronic poll book in place where people can go and they can participate in a faster environment, a faster setting, and with more efficiency through the check-in procedure where people are able to go and be processed a lot quicker. That reduces the wait time some 60 to 75 percent, depending on the voter and depending on the poll worker.”¹³⁴

Dr. Kareem Crayton said voter registration was a significant part of the process, but it wasn't the only factor, “I applaud the Secretary of State to have so much emphasis placed on registration...I think you have to take account of whether people who are registered actually show up to vote, and I think that the State has an obligation to do all that it can to encourage that.”¹³⁵

Other panelists discussed the difficulties some voters face at the polls. Jennifer Holmes, of the NAACP Legal Defense Fund, said “Unfortunately, we observed or received reports of many systemic voting -- voting-related problems on election day, including long lines at predominantly black precincts, lack of or malfunctioning voting machines, insufficient numbers of ballots, and law enforcement officials conducting warrant checks at polling places. In particular, we heard from frustrated voters whose attempts to cast a ballot were stymied by the photo ID law or Alabama's inactive voter procedures.”¹³⁶

Brock Boone, of the Alabama ACLU, said, “for the individuals in Mobile, we heard that many just left when they were told by the election officials that their address doesn't match.”¹³⁷ The reason was, “They have to get back to work or they only had a certain amount of time, not to mention the lines. Some of them stayed and they were told to get into the line for a provisional ballot, but that

¹³⁰ Crayton Testimony, *Montgomery Hearing*, P. 67.

¹³¹ Crayton Testimony, *Montgomery Hearing*, P.66.

¹³² *Id.* at P. 67.

¹³³ Merrill Testimony, *Montgomery Hearing*, P. 14.

¹³⁴ *Id.* at P. 15

¹³⁵ Crayton Testimony, *Montgomery Hearing*, P. 39.

¹³⁶ Holmes Testimony, *Montgomery Hearing*, P. 171.

¹³⁷ Boone Testimony, *Montgomery Hearing*, P. 104-105.

line was long. For some people, it was like an hour and a half up to two hours. We have heard that this particular probate judge in Mobile County has been doing this for years, which is troublesome.”¹³⁸

Mr. Boone also shared with the Committee that, “almost a dozen called us [that were turned away at the polls because address on ID did not match rolls] they were standing there basically telling us everyone that’s leaving in the lines...it could be up to 100 or more.”¹³⁹ He also said, “There were instances of police intimidation or individuals who felt like it was police intimidation where cops are right outside the voting precincts like when you come into the door...that discriminates against people who might have something on their record or they’re worried about what the police might stop them and question them or if a police officer is standing behind where they’re giving their information to -- or showing their ID.”¹⁴⁰

Mr. Boone added, “The ACLU of Alabama, my organization, set up a hotline to report difficulties in voting on election day for the special senate election here this past December, the one where Senator Jones won, and we received complaints all day on our hotline. On election day in particular, we got word of dozens and dozens of people prohibited from voting in Mobile County because the address on their driver's license does not match the address on the registration rolls. That is not a requirement.”¹⁴¹

Training

To address inconsistency and problems at the polls, Jonathan Barry-Blocker said, “I’m not -- not overly focused on trying to convince government agencies, because they’re already overwhelmed, to make sure training is happening.” He said, “My focus was always holding a clinic, training people, and then just speaking with people who need the assistance by any means necessary, to get them to start asking questions, to start making phone calls.”¹⁴² He added, “I just want to stress, there is a lot of confusion. There will need to be a lot of public education. We were helping people at our clinics who were --because of confusion, thought their conviction solely in another state was blocking them for 40 years from being able to register here in the State of Alabama.”¹⁴³

Jaffee Pickett told the Committee her organization “found that people who have never lost their rights didn’t know [they are eligible to vote]. They don’t vote because they don’t know they have the right. So, it really is about educating citizens.”¹⁴⁴

¹³⁸ *Id.*

¹³⁹ Boone Testimony, *Montgomery Hearing*, P. 118.

¹⁴⁰ Boone Testimony, *Montgomery Hearing*, P. 134.

¹⁴¹ Boone Testimony, *Montgomery Hearing*, P. 104.

¹⁴² Blocker Testimony, *Montgomery Hearing*, P. 194.

¹⁴³ Blocker Testimony, *Montgomery Hearing*, P. 190.

¹⁴⁴ Pickett Testimony, *Montgomery Hearing*, P. 271.

The Committee heard testimony on how a lack of training of poll workers denied citizens the opportunity to vote. Jennifer Holmes shared the example of “poll workers in Mobile County barred people from voting or improperly forced voters to cast provisional ballots when they presented an ID with an address that did not match the address on their registration record, even though the photo ID law does not require a voter to present an ID with an address at all.”¹⁴⁵

Ms. Holmes pointed out, “This misapplication of the voter ID – of the photo ID law is more likely to affect voters who do not have an alternate form of ID or cannot take additional time off from their workday to contest a poll worker's decision or to retrieve an alternate ID.”¹⁴⁶ She added, “Even when applied as intended, Alabama's photo ID law and its inactive voter list procedures disproportionately burden poor, rural, and transient voters who are often black or Latino. The erroneous application of these laws only magnifies this effect.”¹⁴⁷

Mr. Boone of the ACLU said in his experience, “the election manual contains the information that would provide clarity at the polls in terms of what ID’s are accepted. It seems like the manual should be handy if you are -- if there's questions at the polls.”¹⁴⁸

Although inactive voters should have been permitted to cast a regular ballot “as long as they updated their registration information at the polls,” Jennifer Holmes said the “LDF received many reports that poll workers were turning away inactive voters or improperly requiring them to cast provisional ballots or answer immaterial and illegal questions, such as the county of their birth, before allowing them to cast a vote.”¹⁴⁹

¹⁴⁵ Holmes Testimony, *Montgomery Hearing*, P. 171.

¹⁴⁶ *Id.*

¹⁴⁷ Holmes Testimony, *Montgomery Hearing*, P. 173

¹⁴⁸ Boone Testimony, *Montgomery Hearing*, P. 159.

¹⁴⁹ Holmes Testimony, *Montgomery Hearing*, P. 172-173.

Appendix

- I. [Transcript of the Hearing Before the Alabama Advisory Committee, Montgomery Alabama, February 22, 201.](#)
- II. [Alabama Photo ID Law.](#)
- III. [Alabama Final Voter ID Rules.](#)
- IV. [Alabama Voter Registration Application.](#)
- V. [Alabama Moral Turpitude Crimes.](#)

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Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Alaska Advisory Committee to the U.S. Commission on Civil Rights

Date: March 27, 2018

Subject: Alaska Native Voting Rights

On August 24, 2017, the Alaska Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) convened a public meeting to hear testimony regarding Alaska Native voting rights. The Committee's inquiry was two-fold: 1) to determine whether the State of Alaska is providing access to language minority Alaska Natives in accordance with the *Toyukak v. Mallott* settlement and court order (Toyukak Order), and 2) to determine the potential impact of mail-in voting on Alaska Native voters.

The following advisory memorandum results from the testimony provided during the August 24, 2017, meeting of the Committee, as well as related testimony submitted to the Committee in writing during the thirty-day public comment period. It begins with a brief background of the issue to be considered by the Committee, identifies primary findings as they emerged from this testimony, and recommendations for addressing related civil rights concerns. This memo focuses specifically on the effectiveness of the implementation of the Toyukak Order and identifies the potential impact of mail-in voting. While other important topics surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memo and the recommendations included within it were adopted by a majority of the Committee on March 27, 2018, by majority vote.

Background

Alaska has a long history of problems with guaranteeing the rights of Alaska Natives to vote. In its early days, Alaska disenfranchised Alaska Natives by imposing a pre-registration process on Natives seeking citizenship¹ and required a literacy test as a qualification for voting.² These practices had a profound impact on Alaska Native voter participation.³ Despite the passage of key laws that sought to remedy discrimination against Alaska Natives such as the Indian Citizenship Act of 1924, Alaska Equal Rights Act of 1945, and the Voting Rights Act of 1975 (VRA) and its language minority requirements, Alaska continues to face challenges with providing its residents equitable access to the polls.

¹ Chapter 24, Session Laws of Alaska, 1915

² Stephen Haycox, *William Paul, Sr. and the Alaska Voters' Literacy Act of 1925*, 2 ALASKA HIST. 17 (1986–1987), available at http://www.alaskool.org/native_ed/articles/literacy_act/LiteracyTxt.html.

³ See Tova Wang, *Ensuring Access to the Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy*, DEMOS (2012), available at <http://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>.

At issue in this memorandum is the state of Alaska’s compliance with Section 203 of the VRA,⁴ which mandates that the State’s election “standards, practices and procedures” for limited English proficient voters equal those for English-speaking voters. There are two criteria under Section 203’s coverage formula which must be satisfied for the provision to apply in a given state or jurisdiction. First, the limited English proficient citizens of voting age in a single protected language group must: (1) number more than 10,000; (2) comprise more than five percent of all citizens of voting age; or (3) comprise more than five percent of all American Indians of a single language group residing on an Indian reservation. Second, the illiteracy rate of the citizens of the limited English proficient group must exceed the national illiteracy rate.⁵ In Alaska, there are 14 census areas that are covered jurisdictions, and each must provide language assistance in at least one Alaska Native language.⁶

On July 19, 2013, two Alaska Native citizens and four federally recognized tribes in Alaska sued the Lieutenant Governor of the State of Alaska and the Division of Elections,⁷ alleging violations of Section 203 of the VRA and the U.S. Constitution⁸ due to the State’s failure to provide translations of voting materials to voters whose primary language is Gwich’in or Yup’ik in the Dillingham, Kusilvak,⁹ and Yukon-Koyukuk Census Areas. On September 22, 2014, the United States District Court issued a decision that found that the state of Alaska failed to provide limited English proficient Alaska Native voters with voting information substantially equivalent to what voters receive in English and ordered a series of remedies that included translation of all voting information available to English-speaking voters.¹⁰ In the Toyukak Order effective until 2020, the parties reached a settlement agreement that includes:¹¹

- Increasing information provided to voters about the availability of language assistance and a requirement that there be at least one trained bilingual outreach worker and poll worker in each village;
- Providing the translations and language assistance in five additional Yup’ik dialects;
- Providing glossaries of election terms in the Yup’ik dialects and Gwich’in to assist outreach workers and poll workers with their translations;
- Providing a toll-free number for voters to receive language assistance in all dialects;

⁴ Section 203 was adopted in 1975 and extended in 1982, 1992, and 2006.

⁵ 42 U.S.C. §§ 1973aa-1a(b)(2).

⁶ See Appendix B.

⁷ Alaska Stat. §§ 44.19.020.

⁸ *Toyukak v. Mallott*, No. 3:13CV137 (D. Alaska Sept. 8, 2015) (noting that the plaintiffs originally made constitutional claims under the Fourteenth and Fifteenth Amendments, but under the terms of the Stipulated Judgement and Court Order, the plaintiffs agreed to dismiss those claims).

⁹ In 2015, Governor Bill Walker requested the U.S. Census Bureau to rename the Wade Hampton Census Area to Kusilvak Census Area in response to requests from Bethel residents.

¹⁰ *Toyukak v. Mallott*, No. 3:13CV137 (D. Alaska Sept. 8, 2015), Dkt. No. 226.

¹¹ See Appendix A.

- Instituting a Yup'ik translation panel comprised of eight members and a Gwich'in translation panel comprised of at least three;
- Implementing additional procedures to ensure translations are accurate;
- Requiring that the State maintain a full-time employee to oversee the language assistance program;
- Requiring that there be language assistance in all villages in the Dillingham and Kusilvak Census Areas, and in seven villages in the Yukon-Koyukuk Census Area;
- Mandating training for poll workers and outreach workers;
- Mandating pre-election outreach to voters to explain what will be on the ballot;
- Providing Election Day publicity translations on all radio stations in the impacted census areas; and
- Providing translated sample ballots and touch-screen voting machines.

Toyukak v. Mallott came three years after the state of Alaska settled a similar lawsuit filed by Alaska Native voters from the Bethel Region in *Nick, et al. v. Bethel, et al* that required the State to provide meaningful language access to Alaska Native voters in future elections.¹²

Effective September 22, 2014, the Division of Elections was required to implement the settlement terms and the September 2014 Toyukak Order. The mandate of this Committee is to examine the quality of the implementation by the State and Division of Elections to date.

In addition to the examination of the implementation of the Toyukak Order, the Committee seeks to determine the potential impact of the State's plan to shift to a vote-by-mail system. The suggested policy change was largely prompted by a 2017 internal audit of the Division of Elections' current and impending fiscal and policy challenges. The Division of Elections urges consideration of a vote-by-mail system because the current, aging precinct-based ballot tabulation system is nearing its end-of-life and will require eventual replacement. The Division of Elections acknowledges that adopting a vote-by-mail system may have cost-savings benefits but discloses that "unique considerations of mail service in rural Alaska would need to be carefully considered."¹³ To advance policy discussions about the future of the State's election administration, Lieutenant Governor Mallot convened a new body called the Election Policy Work Group. At this writing, the Election Policy Work Group has been meeting and performing research for more than six months and has discussed the potential impact of a vote-by-mail system and its effect on language access.

¹² *Nick, et al. v. Bethel, et al*, 3:07CV98(TMB), 2010 WL 4225563, at *2 (D. Alaska Jan. 13, 2010) (noting that the preliminary injunction was issued on July 30, 2008 and is at docket number 327. The final decision and settlement order was issued on February 16, 2010 and is at docket number 787).

¹³ Div. of Elections, *2017 Fiscal & Policy Challenges*, ELECTIONS.ALASKA.GOV (May 16, 2017), <http://www.elections.alaska.gov/doc/info/Fiscal%20Challenges.pdf>.

In addition to the requirements of Section 203 of the VRA, Title VI of the Civil Rights Act of 1964 and Executive Order 13,166 (“Improving Access to Services for Persons with Limited English Proficiency”), issued in 2000, establish specific compliance standards that require agencies and recipients of federal funding to ensure that limited English proficient individuals receive “meaningful access” to federal programs and activities through appropriate assistance. Federal funding to state and local governments involved in election administration triggers Title VI compliance. Executive Order 13,166 guidelines identify four factors that must be considered: (1) the number or proportion of limited English proficient persons to be served; (2) the frequency with which these individuals come in contact with the program; (3) the nature and importance of the program or service to people’s lives; and (4) the costs and resources available to the recipient.¹⁴

The Committee notes that Section 203 of the VRA, Title VI and Executive Order 13166 constitute federal law and, despite the potential expiration of the specific terms of the Toyukak Order in 2020 (should it not be extended as recommended below), these three laws remain fully enforceable.

Findings

The section below provides findings received and reflects views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand experience with the topics at hand.

Findings regarding the implementation of the Toyukak Order:

1. While the Toyukak Order requires language assistance and election materials in Yup’ik and Gwich’in in the Dillingham, Kusilvak, and Yukon-Koyukuk Census Areas, the State is also obligated to comply with Section 203 covered languages¹⁵ in other regions within the state.¹⁶
2. Federal observers present during the 2016 Primary and General Elections documented the following training deficiencies under Section 203 and the Toyukak Order:

¹⁴ Angelo N. Ancheta, *Language Accommodation and the Voting Rights Act*, DIGITALCOMMONS.LAW.SCU.EDU (2007), <https://digitalcommons.law.scu.edu/facpubs/623>.

¹⁵ See Appendix B for Section 203 covered languages in Alaska.

¹⁶ Justin Levitt, Associate Dean for Research and Professor of Law, Loyola Law School, Public Meeting on Alaska Native Voting Rights: Hearing Before the Alaska Advisory Committee to the U.S. Commission on Civil Rights, hearing transcript, p. 29 (2017), available at <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234> (hereinafter *Transcript*).

- a. Although training for poll workers is supposed to be mandatory, and is supposed to emphasize in-person training, it fell short of that goal. In 2016, 46 percent (55 poll workers) received training, 4 percent (5 poll workers) received training at least a year earlier, 10 percent (12 poll workers) received training two or more years earlier, and 39 percent (47 poll workers) had never been trained.¹⁷
 - b. Trainings were conducted exclusively in English by a non-Native instructor from the Division of Elections.
 - c. Bilingual poll workers were not trained on how to translate contents of the ballot or how to provide procedural instructions in Yup'ik and Gwich'in.¹⁸
3. Inadequate staffing of bilingual poll workers in the three Census Areas suggests that some limited English proficient voters may have not received bilingual assistance and translations necessary to cast their ballot on Election Day. For example, federal observers found that some villages had no bilingual poll worker available,¹⁹ bilingual poll workers were only available on call or available for a limited time,²⁰ poll workers left the polling location with no assistance available during their absence,²¹ or poll workers left early before the polls closed and did not return.²²
 4. Translated written materials required under the Toyukak Order were unavailable in numerous locations. Federal observers monitoring the 2016 Primary and General Elections identified the following deficiencies:
 - a. During the 2016 Primary Election, no translated voting materials were available in 6 of the 19 villages; the “I voted” sticker was the only material in an Alaska Native language in Marshall and Mountain Village; in Emmonak, the Yup'ik glossary was the only translated material available; and only two villages, Koliganek and Manokotak, had written translations of the candidate lists.

¹⁷ James Tucker, Co-Counsel, Wilson, Elser, Moskowitz, Edelman, & Dicker LLP, written testimony submitted to the Alaska Advisory Committee to the U.S. Commission on Civil Rights, hearing transcript, p. 4 (2017), available at <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234> (hereinafter *Written Testimony*).

¹⁸ *Id.*

¹⁹ Tucker, *Written Testimony* at 5 (noting that during the 2016 Primary Election, no bilingual poll worker was available at any time at 3 out of 19 villages and in November during the General Election, no bilingual poll worker was available at any time in one out of the 12 villages observed).

²⁰ *Id.* (noting that during the 2016 Primary Election, a bilingual poll worker was only available “on call” and was not present in the polling place in Koliganek. In the November 2016 General Election, there was no language assistance available for at least 80 minutes in Fort Yukon).

²¹ *Id.* (noting that during the 2016 Primary Election, the bilingual poll worker left the polling place during a portion of the time the polls were open and there was no assistance available during their absence in Dillingham, Kotlik, and Marshall).

²² *Id.* (noting that during the 2016 General Election, the only bilingual poll worker in Venetie left the polling place 3 ½ hours before the polls closed and did not return).

- b. During the 2016 General Election, half of polling places observed had a translated sample ballot available for voters. Five of those villages had no sample ballot at all²³ or if a translated ballot did exist, it was not made available for voter use.²⁴
5. In comparison with New Mexico, a state with a high number of limited English proficient voters requiring American Indian language accommodations, it employs eight full-time language coordinators, whereas Alaska²⁵ has just two full-time bilingual workers to carry out the implementation of the Toyukak Order. Alaska also relies on Yup'ik and Gwich'in language panels and part-time outreach workers.²⁶ While the Toyukak Order requires hiring one permanent elections language compliance manager to implement it, there is concern that current language access efforts may be insufficient to accomplish meaningful implementation.
6. The Division of Elections has no procedures in place to assess the effectiveness of poll worker training or outreach worker training.²⁷
7. While the Division of Elections reported to the Committee that it had implemented most of the remedies in the Toyukak Order and even expanded the language panels to include the Inupiat panel,²⁸ testimony indicates that the Division of Elections still falls short on quality and usefulness of translations. For example:
 - a. A voter indicated that she could not understand the Official Election Pamphlet (OEP) because it was not translated into her village dialect of Koliganek Yup'ik²⁹ and;
 - b. Some voters indicated they had difficulty reading the Yup'ik ballot due to small font size.³⁰
8. There is a statutory inconsistency regarding the rights of voters to receive the OEP in that one statute requires that it is sent to each household and another states that it should be sent to each voter. A Koliganek voter official reported that she never received an OEP in advance of the general election and state elections³¹ but according to Alaska Statute

²³ *Id.* (noting that no sample ballot was available at New Stuyakok, Alakanuk, Hooper Bay, Arctic Village, and Venetie).

²⁴ *Id.* (noting that Fort Yukon had a Gwich'in sample ballot that was kept at the poll worker's table and not made available for voter use).

²⁵ Alaska is one-fifth the size of the contiguous U.S.

²⁶ Tucker, *Written Testimony* at 2.

²⁷ Arriaga, *Transcript* at 56

²⁸ Arriaga, *Transcript* at 42-53.

²⁹ Mulipola, *Written Testimony* at 1 (noting that Koliganek Yup'ik is not a required dialect under the settlement and court order. Togiak and Manokotak Yupik voters were able to understand the Yup'ik translation on the Division of Election's materials. Rose Wassillie, a Togiak resident was able to understand the ballot, but Tatiana Kapatak, a Koliganek resident was unable to).

³⁰ Merlino, *Transcript* at 119 (noting that requiring a specific font size in the translated ballots was not mandated by the Toyukak Order).

³¹ Mulipola, *Written Testimony* at 2.

15.58.010, the Division of Elections must mail “at least one election pamphlet to each *household* identified from the official registration list.”³² However, Alaska Statute 15.58.080 requires that the Division of Elections must mail to every registered *voter* one copy of the pamphlet prepared for the region in which the voter resides at least 22 days before the general election.³³

9. There is an unequal distribution of election equipment among urban and rural polling stations. Some panelists expressed concern that equipment lacked privacy and was inadequate to serve rural voters.³⁴
10. Although the *Nick, et al. v. Bethel, et al* case alleged the State of Alaska had been out of compliance with the VRA since the language assistance provisions were passed in 1975, testimony by Alaska Federation of Natives³⁵ and individuals³⁶ indicated that Governor Walker’s Administration was making efforts to comply.

Findings concerning the potential impact of implementing a vote-by-mail system:

1. Voters expressed grave concern over the State’s interest in implementing a vote-by-mail system due to slow mail delivery that often takes up to 2-3 weeks.³⁷ Mail delivery relies on air service but, according to testimony, villages may be inaccessible by air for several weeks due to inclement weather, and at times flights may be cancelled even in good weather conditions. To compound the issue further, the Regional Educational Attendance Areas elections and statewide general elections are held in October and November, when weather conditions are usually the most challenging, and delays in mail service are likely to disenfranchise rural voters.³⁸
2. There has been no study examining the impact of vote-by-mail on Alaska Natives, limited English proficient voters, geographically and linguistically isolated communities, and voters who receive mail exclusively by P.O. Box.³⁹
3. A recent study conducted on reservations in Arizona, New Mexico, Nevada and South Dakota indicated that native voters have a very low level of trust in mail-in voting.⁴⁰

³² Alaska Stat. §§ 15.58.010 (2014).

³³ Alaska Stat. §§ 15.58.080 (2000).

³⁴ Mulipola, *Written Testimony* at 2; *See also* Appendix C.

³⁵ Borromeo, *Transcript* at 90.

³⁶ Hayton, *Transcript* at 130.

³⁷ Mulipola, *Written Testimony* at 1.

³⁸ Tucker, *Written Testimony* at 7.

³⁹ Rich, *Transcript* at 89 and 170-174.

⁴⁰ Rich, *Transcript* at 83-84; *See* Jean Schroedel, *Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada and South Dakota*, NATIVE AMERICAN VOTING RIGHTS COALITION (2018), *available at*

4. At a recent hearing in North Dakota, a tribal member who is also a current member of the Montana House of Representatives testified that offering only mail-in voting disenfranchises voters in native communities because they have irregular mail and inconsistent or nontraditional addresses.⁴¹
5. Some rural Alaska Native villages lack access to broadband internet or have unreliable service⁴² that may be necessary to meaningfully participate in the election process. Internet access would allow voters to access the Division of Election’s website to download election forms and the OEP.⁴³ According to testimony, an Alaska Native elder walked two miles from her home to the nearest public library that had internet access to download the necessary election forms to participate in early voting.⁴⁴
6. Testimony indicated the following concerns with implementing a vote-by-mail system:
 - a. There are challenges with employing and retaining postmasters residing in rural parts of the State.⁴⁵ This poses a concern as voters rely heavily on postmasters to keep post offices open to receive mail and obtain mail services.
 - b. Since rural residents often share P.O. boxes, sometimes multiple families sharing one P.O. box,⁴⁶ voters may not be receiving all election-related material. This is critical to ensuring privacy and enfranchisement.
7. Adopting a hybrid model that consists of a vote-by-mail and in person voting system is seen more favorably rather than implementing a vote-by-mail system exclusively.⁴⁷ In-person voting and service locations known as “voting centers” which allow a voter to obtain a ballot, replace a mismarked or otherwise spoiled ballot, obtain language assistance, or vote in an accessible manner, are argued to make a vote-by-mail approach successful.⁴⁸ Testimony indicated that the application of a hybrid model may only work if the Division of Elections established a voting center in each of the over 200 Alaska Native villages and required that each of them be open for the same period as other early voting locations.⁴⁹

<https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-summary.pdf>.

⁴¹ Tucker, *Written Testimony* at 7.

⁴² Hayton, *Transcript* at 88; Tucker, *Written Testimony* at 1-2; Merlino, *Transcript* at 119-20.

⁴³ Merlino, *Transcript* at 120-121.

⁴⁴ Borrromeo, *Transcript* at 88.

⁴⁵ Haberman, *Transcript* at 213.

⁴⁶ Medicine-Crow, *Transcript* at 210.

⁴⁷ Bahnke, *Transcript* at 151.

⁴⁸ Gronke, *Transcript* at 203-04; Steele, *Written Testimony* at 2.

⁴⁹ Tucker, *Written Testimony* at 1.

8. Panelists noted that when considering a vote-by-mail system, the State is still required to abide by the terms of the Toyukak Order. Those terms require significant in-person assistance and therefore vote-by-mail can only potentially work if there was a “voting center” in each village covered by Section 203 of the VRA.⁵⁰
9. According to a vote-by mail expert, developing a remedy process and signature verification system is a necessary component when considering a vote-by-mail system.⁵¹
10. Panelists suggested strong and ongoing collaboration among the Alaska Native community, rural community,⁵² state election officials, and the U.S. Postal Service⁵³ to deter voter disenfranchisement especially among Alaska Native voters in need of language assistance.
11. According to the U.S. Postal Service, when inclement weather impacts delivery to rural areas, passengers and luggage are the priority, not mail. This means that election-related mail is considered secondary in importance.⁵⁴
12. Because the U.S. Postal Service transfers mail from villages to the Anchorage central hub, where it is postmarked,⁵⁵ there is concern that rural residents who vote in a village may not have their ballots counted due to the possibility of late postmarking.
13. Testimony indicated that U.S. Postal Service training on handling election-related material is inadequate due to the high number of U.S. Postal Service employees who need to be trained.⁵⁶
14. Presently, state election officials have not yet determined how to directly distribute ballots and the translated OEPs to Section 203-covered households⁵⁷ due to limited data sources that indicate languages spoken at home. Efforts to circulate the OEP were done through respective regional tribes, local governments, online, the Alaska Federation of Natives’ conference, and other advocacy organizations prior to the 2016 presidential election and will continue to be circulated in this fashion.⁵⁸

⁵⁰ Tucker, *Transcript* at 7-8.

⁵¹ Gronke, *Transcript* at 196.

⁵² Patrick, *Transcript* at 159-60.

⁵³ Gronke, *Transcript* at 179; Patrick, *Transcript* at 162.

⁵⁴ Haberman, *Transcript* at 189-90.

⁵⁵ *Id.* at 190.

⁵⁶ *Id.* at 186-87.

⁵⁷ Bahnke, *Transcript* at 202-03.

⁵⁸ Arriaga, *Transcript* at 47-48.

15. Testimony indicated the following potential impacts of implementing a vote-by-mail system:

- a. It may have the potential for improving voter registration rolls.⁵⁹
- b. It has increased voter turnout in state and local elections among certain demographics in other states.⁶⁰

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁶¹ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Alaska Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the U.S. Department of Justice to:
 - a. Vigorously enforce Section 203 of the Voting Rights Act in Alaska.
 - b. Continue to send federal observers to monitor state of Alaska elections even after the Toyukak Order expires, to ensure its implementation remain in place.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a recommendation to the U.S. Postal Service to:
 - a. Require specific training of all Alaska postal service employees to handle election material to ensure prompt delivery.
 - b. Ensure prompt postmarking of election mail, especially in rural areas of the state. This may include proactive recruitment of postmasters in rural post offices to ensure adequate support to rural residents.

⁵⁹ Gronke, *Transcript* at 179.

⁶⁰ Paul Gronke, Thad Kousser & Megan Mullin, *Does Voting by Mail Increase Participation? Using Matching to Analyze a Natural Experiment*, 15(4) *POLIT. ANAL.* 428-45 (2007), available at <http://www.jstor.org/stable/25791905>; Justin Burchet & Priscilla Southwell, *The Effect of All-mail Elections on Voter Turnout*, 28(1) *AM. POLIT. RES.* 72-79 (2000), available at <https://doi.org/10.1177/1532673X00028001004>; Alan S. Gerber, Gregory A. Huber & Seth J. Hill, *Identifying the Effect of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State*, 1 *PRSM* 91-116 (2013).

⁶¹ 45 C.F.R. § 703.2 (a).

- c. Prioritize handling election mail as among other mail.
3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a recommendation to the Alaska Congressional Delegation to:
 - a. Provide appropriations from the Help America Vote Act to support language assistance efforts in Alaska.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a recommendation to the State of Alaska Legislature urging the State to:
 - a. Provide appropriations to ensure the Division of Elections has the funding to continue complying with Section 203 of the Voting Rights Act, the Toyukak Order, and Title VI of the Civil Rights Act.
 - b. Consider improving broadband service in rural areas of the State, to ensure that voters have access to all online election material, including translated official election pamphlets provided by the Division of Elections.
 - c. Consider enacting legislation resembling Title VI of the Civil Rights Act to help ensure statewide access to voting materials for voters who speak an Alaska Native language.
5. The U.S. Commission on Civil Rights should send this advisory memorandum and issue the following recommendations to the Alaska Governor, Lieutenant Governor, and the State of Alaska Division of Elections:
 - a. Conduct analyses on the vote-by-mail system and its potential impact on the following communities: (i) Alaska Natives, (ii) rural residents, (iii) linguistically isolated and limited English proficient residents, and (vi) the illiterate voting age population.
 - b. Pause plans to move forward with a vote-by-mail system in any census area covered by the *Toyukak v. Mallott* settlement agreement, unless the Division of Elections can ensure that all terms of the Toyukak Order will be fully complied with.
 - c. Continue providing language assistance in Gwich'in and Yup'ik because these languages continue to be covered by Section 203 despite the 2020 expiration of the Toyukak Order.
 - d. Implement a hybrid voting system that includes: a strong early voting option; in-person voting both in early/absentee voting and on Election Day; and a vote-by-mail system to avoid voter disenfranchisement.

- e. Continue to convene community speaker-based language panels to strengthen language access efforts and consider identifying additional panel members from the University of Alaska Fairbanks, Alaska Native Language Center, if available.
- f. Consider implementing recommendations and best practices from the President's Commission on Election Administration regarding access to the polls and polling place management.⁶²
- g. Review Title VI language access requirements to ensure compliance.
- h. Evaluate the effectiveness of poll worker and outreach worker training to identify areas for improvement.
- i. Based upon testimony heard regarding the substantial undertaking to implement a state-wide language assistance program and the testimony indicating that problems and challenges remain, the State should extend the Toyukak Order past 2020.
- j. Given the lack of broadband access in most parts of rural Alaska,⁶³ require alternative methods for receiving election materials such as sending election material directly to voting centers and inform voters by broadcasting informational commercials on radio and television.

⁶² *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION (Jan. 2014), <https://www.eac.gov/assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

⁶³ Hayton, *Transcript* at 88; Tucker, *Written Testimony* at 1-2; Merlino, *Transcript* at 119-20.

Appendix

- A. *Toyukak v. Mallott* Stipulated Judgement and Court Order
- B. Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations Under Section 203
- C. Photos of Rural Voting and Urban Voting Experiences
- D. Briefing Agenda & Minutes
- E. Briefing Transcript
- F. Written Testimony

Appendix A

Toyukak v. Mallott Stipulated Judgement and Court Order

<http://bit.ly/AK-voting>

Appendix B

<u>Alaska Political Subdivision</u>	<u>Language Minority Group</u>
Aleutians East Borough	Filipino.
Aleutians East Borough	Hispanic.
Aleutians East Borough	Yup'ik.
Aleutians West Census Area	Filipino.
Aleutians West Census Area	Aleut.
Bethel Census Area	Inupiat.
Bethel Census Area	Yup'ik.
Dillingham Census Area	Yup'ik.
Kenai Peninsula Borough	Yup'ik.
Kodiak Island Borough	Yup'ik.
Lake and Peninsula Borough	Yup'ik.
Nome Census Area	Inupiat.
Nome Census Area	Yup'ik.
North Slope Borough	Inupiat.
Northwest Arctic Borough	Inupiat.
Southeast Fairbanks Census Area	Alaskan Athabascan.
Valdez-Cordova Census Area	Alaskan Athabascan.
Kusilvak Census Area	Inupiat.
Kusilvak Census Area	Yup'ik.
Yukon-Koyukuk Census Area	Inupiat.

Appendix C

Urban Voting vs. Rural Voting



Voting in the City



Voting in rural Alaska

Appendix D

Briefing Agenda and Minutes:

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234>

Appendix E

Briefing Transcript:

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234>

Appendix F

Written Comment:

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234>



**Alaska Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights Contact

USCCR Contact Regional Programs Coordination Unit
U.S. Commission on Civil Rights
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Voting Rights in Arizona



An Advisory Memorandum of the
Arizona Advisory Committee to the
U.S. Commission on Civil Rights

July 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Letter of Transmittal

**Arizona Advisory Committee to the
U.S. Commission on Civil Rights**

The Arizona Advisory Committee to the U.S. Commission on Civil Rights (Committee) submits this advisory memorandum regarding potential barriers to voting in the state of Arizona that may have a discriminatory impact on voters based on race, color, sex, disability status, and national origin. The Committee submits this advisory memorandum as part of its responsibility to study and report on voting rights concerns and to supplement the U.S. Commission on Civil Rights' 2018 statutory enforcement report. The contents of this advisory memorandum are based on testimony received during a public meeting on March 9, 2018 held in Phoenix, testimony submitted to the Committee in writing, and testimony received during the January 11, 2018 meeting of the Native American Voting Rights Coalition.

This advisory memorandum begins with a brief background of state-specific voting rights issues, identifies primary findings as they emerged from testimony, and recommendations for addressing related civil rights concerns directed to federal and state enforcement agencies, and various state-level stakeholders. In recognition of the U.S. Commission on Civil Rights' continued study on this topic and in lieu of providing a detailed discussion of each finding presented, the Committee offers these findings and recommendations for addressing voting rights issues in Arizona.

**Arizona Advisory Committee to the
U.S. Commission on Civil Rights**

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Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Arizona Advisory Committee to the U.S. Commission on Civil Rights

Date: June 15, 2018

Subject: Voting Rights in Arizona

On March 9, 2018, the Arizona Advisory Committee to the U.S. Commission on Civil Rights (Committee) convened a public meeting to hear testimony regarding voting rights in Arizona. The following advisory memorandum results from testimony provided during the March 9, 2018 meeting of the Committee, testimony submitted to the Committee in writing, and testimony received during the January 11, 2018 meeting of the Native American Voting Rights Coalition. It begins with a brief background of issues to be considered by the Committee, identifies primary findings as they emerged from this testimony, and recommendations for addressing related civil rights concerns.

This memo is intended to focus specifically on i) potential barriers to voting in the areas of language access, bifurcated voter registration system, voter ID law, and restriction on mail-in ballots; and ii) the impact of the *Shelby County v. Holder* decision, specifically regarding access to polling locations. This memo and the recommendations included within it were adopted by a majority of the Committee on June 15, 2018.

Background

Arizona has a recorded history of challenges with guaranteeing the rights of their citizens to vote. In its early days, Arizona prohibited Native Americans from voting due to their residency and ward status,¹ disenfranchised voters from the polls by requiring literacy tests,² and failed to print election materials in languages other than English even as the State's Spanish-speaking population grew.³ In the last two decades, Arizona continues to face scrutiny over access to polling locations, language access, voter ID law, dual voter registration, and a restriction on mail-in ballots that may have had a disparate impact on voters in protected classes.

¹ Patty Ferguson-Bohnee, *The History of Indian Voting Rights in Arizona: Overcoming Decades of Voter Suppression*, 47 ARIZ. ST. L.J. 1099, 1108 (Winter 2015).

² James T. Tucker, Rodolfo Espino, Tara Brite, Shannon Conley, Ben Horowitz, Zak Walter, and Shon Zelman, *Voting Rights in Arizona: 1982– 2006*, 17:2 S. Cal. Rev. L. & Soc. Just., 283 (Spring 2008).

³ *Continuing Need for Section 203's Provisions for Limited English Proficient Voters: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 496–97 (2006) (testimony of Alfred Yazzie, Navajo Language Consultant, Department of Justice). <http://electionlawblog.org/archives/yazzie.pdf>.

Access to Polling Locations

On June 25, 2013, the U.S. Supreme Court ruled in *Shelby County v. Holder* that the formula used to determine which states should be subjected to “preclearance” requirements under the Voting Rights Act of 1965 (VRA) was outdated and thus unconstitutional.⁴ This ruling effectively nullified the preclearance requirement, a core component of the VRA, until Congress agrees on a new formula. States across the country responded to this ruling swiftly and transformed voting and registration processes.

As of March 2016, state legislatures have engaged in substantial activity regarding legislation that affects voting, some of which restrict access to voting and others that expand access to voting. In Arizona, almost every county reduced the number of polling locations. This resulted in 212 fewer polling locations statewide before the 2016 election.⁵ For example, Pima County, the state’s second-largest county, reported 62 fewer locations. Receiving national attention, Maricopa County made headlines with reports of frustrated voters who waited for as long as five hours to cast their ballots during the March presidential preference election.⁶ At this time, there were 60 polling locations which meant there was roughly one polling location for every 21,000 voters.⁷ This was in part due to Maricopa County officials who approved a plan to cut polling locations by 85 percent compared to the 2008 presidential preference election⁸ and 70 percent compared to the 2012 presidential preference election.⁹

⁴ See *Shelby County v. Holder*, 570 U.S. 529, 556-57 (2013); See also John Schwartz, “Between the Lines of the Voting Rights Act Opinion,” *New York Times*, Jun. 25, 2013, http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?_r=2&.

⁵ Scott Simpson, “The Great Poll Closure,” *The Leadership Conference Education Fund*, 11, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

⁶ “Our View: A five-hour wait to vote in Arizona primary? That’s shameful,” *The Republic*, Mar. 23, 2016, <http://www.azcentral.com/story/opinion/2016/03/23/arizona-primary-our-view-we-outraged-long-lines/82152636/>.

⁷ Anne Ryman, Rob O’Dell, and Ricardo Cano, “Arizona primary: Maricopa County had one polling site for every 21,000 voters,” *The Republic*, Mar. 22, 2016 ,

<http://www.azcentral.com/story/news/politics/elections/2016/03/22/live-arizona-primary-coverage-presidential-preference-election/82096726/>; “Past Polling Place Detail Report for 2016 Presidential Preference Election,” *Maricopa County Recorder Website*,

<https://recorder.maricopa.gov/pollingplace/pastppdetailresults.aspx?view=PPE&election=PRESIDENTIAL+PREFERENCE+ELECTION%2c+3%2f22%2f2016&ElectNo=1290&Type=C>.

⁸ “Past Polling Place Detail Report for 2008 Presidential Preference Election,” *Maricopa County Recorder Website*, <https://recorder.maricopa.gov/pollingplace/pastppdetailresults.aspx?view=PPE&election=PRESIDENTIAL+PREFERENCE+ELECTION%2c+3%2f22%2f2008&ElectNo=1290&Type=C>.

⁹ Greg Stanton to Attorney General Loretta Lynch, Mar. 23, 2016, “Request of U.S. Department of Justice Investigation into Disparate Distribution of Polling Locations in Maricopa County,” *City of Phoenix, Office of the Mayor*, http://content.12news.com/document_dev/2016/03/23/mayor-greg-stanton-letter-to-doj_1141486_ver1.0.pdf; “Past Polling Place Detail Report for 2012 Presidential Preference Election,” *Maricopa County Recorder Website*,

<https://recorder.maricopa.gov/pollingplace/pastppdetailresults.aspx?view=PPE&election=PRESIDENTIAL+PREFERENCE+ELECTION%2c+2%2f28%2f2012&ElectNo=1206&Type=C>.

Language Access

Language access is required by Section 203 of the VRA, which mandates that the State's election standards, practices, and procedures for limited English proficient voters are equal those for English-speaking voters.¹⁰ Since 2006, the VRA has required the U.S. Census Bureau director to determine which state and political divisions are subject to the minority language assistance provision of Section 203.¹¹ There are two criteria under Section 203's coverage formula that must be satisfied for the provision to apply in a state or jurisdiction. First, the limited English proficient citizens of voting age in a single protected language group must: (1) number more than 10,000; (2) comprise more than five percent of all citizens of voting age; or (3) comprise more than five percent of all American Indians of a single language group residing on an Indian reservation.¹² Second, the illiteracy rate of the citizens of the limited-English proficient group must exceed the national illiteracy rate.¹³ If these criteria are not met, jurisdictions are not required to comply with this Section 203 of the VRA.

Language assistance is imperative in Arizona, as 31 percent of Arizona's population is Hispanic¹⁴ and five percent are Native American.¹⁵ As of 2016, 12 of Arizona's 15 counties must comply¹⁶ with Section 203 by providing translated election material in Spanish or Native American languages.

Voter ID and Bifurcated Voter Registration

Arguably to prevent voter fraud, Arizona and several other states passed laws requiring proof of citizenship in order to register to vote followed by presentation of proof of identification in order to vote in person.¹⁷ In 2004, Arizona voters passed Proposition 200 that requires prospective voters to provide proof of citizenship when registering to vote. Under this law, a voter must present acceptable identification when voting in person on election day before casting a ballot.¹⁸ Due to this controversial requirement, advocates brought challenged voter registration requirement. In 2012, the U.S. Supreme Court held that requiring proof of citizenship was inconsistent with the National Voter Registration Act.¹⁹ Subsequently, the State created a dual registration system to allow individuals to register to vote with the federal form for federal elections only but, requiring voters in State and local elections to meet the additional voter-

¹⁰ 52 U.S.C. § 10301.

¹¹ Pub. L. 109-246, 120 Stat. 577 (2006).

¹² 52 U.S.C. §§ 10503(b)(2)(A)(i).

¹³ 52 U.S.C. §§ 10503(b)(2)(A)(ii).

¹⁴ U.S. Census Bureau, "Fact Finder: Arizona (2016),"

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

¹⁵ U.S. Census Bureau, "Quick Facts: Arizona," <https://www.census.gov/quickfacts/AZ>.

¹⁶ See Appendix A.

¹⁷ *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 6 (2013) (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 2 (2006) (per curiam)) (Proposition 200 was designed in part "to combat voter fraud by requiring voters to present proof of citizenship when they register to vote and to present identification when they vote on election day.").

¹⁸ Ariz. Rev. Stat. § 16-579.

¹⁹ *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 15 (2013).

approved citizenship requirements.²⁰

Restriction on Mail-in Ballots

The most recent and controversial law to pass related to voting involves a restriction on the collection of mail-in ballots, or HB 2023. In March of 2016, Arizona voters made it a felony for individuals to knowingly collect and turn in another voter's completed ballot, even with the voter's permission. However, exceptions exist for a family member, household member or caregiver of the voter as defined within the statute.²¹ Opponents of the law took legal action and argued that this law has a disproportionate impact on minorities. The U.S. District Court for the District of Arizona denied the request for a preliminary injunction, but the decision was overturned by the Ninth Circuit, sitting *en banc*.²² The Ninth Circuit found that the law likely violated the Fourteenth Amendment and Section 2 of the Voting Rights Act and stated, "it is quite doubtful that the Justice Department would have granted preclearance."²³ The Supreme Court stayed the Ninth Circuit's opinion, and the law remained in effect for the 2016 general election.²⁴

On May 10, 2018, the Arizona District Court issued an order upholding the ban on ballot collection and found HB 2023 did not violate either the Constitution or the Voting Rights Act.²⁵ In doing so, among other things, the court surveyed the number of voters who are affected by the ballot collection ban and compared them against the overall number of voters in Arizona to conclude that the law did not have a sufficiently negative impact on voters statewide to raise sufficient concerns.²⁶ Plaintiffs immediately appealed.

Testimony received, and the finding outlined below in reference to ballot harvesting was developed prior to the issuance of the May 10, 2018 Order.

Findings

The section below provides findings received and reflects views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand experience with the topics at hand.

²⁰ *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 6 (2013).

²¹ H.B. 2023, 52nd Leg., 2nd Sess. (Ariz. 2016).

²² *Feldman v. Ariz. Sec'y of State's Office*, 843 F.3d 366 (9th Cir. 2016) (*en banc*).

²³ *Id.* at 369.

²⁴ *Arizona Sec'y of State's Office v. Feldman*, 137 S. Ct. 446, 196 L. Ed. 2d 326 (2016).

²⁵ See Amended Findings of Fact and Conclusions of Law, *Democratic National Committee v. Reagan, et al.*, No. CV-16-01065-PHX-DLR, ECF No. 416, (D. Ariz. May 10, 2018).

²⁶ *Id.* at 21-31.

Findings regarding access to polling locations:

1. Testimony revealed there has been substantial closure of polling locations across the State. Election officials justified these closures due to a decrease in demand because of an increase in early voting preference;²⁷ cost pressures associated with maintaining polling locations and voting equipment; and less locations willing to serve as polling locations because of increased liability, lack of security, lack of compliance with the Americans with Disabilities Act (ADA), and insurance concerns.²⁸
2. To remedy the closure of polling locations, counties have the discretion to implement a vote center model upon approval of a board of supervisors.²⁹ Vote centers provide voters the opportunity to vote at a location of their choice, instead of a mandatory polling location, and may decrease the likelihood of voters being turned away for appearing at the wrong polling location.³⁰ Both Coconino County and Cochise County use this model.³¹
3. County Recorders expressed frustration over the lack of Help America Vote Act funding to support election administration efforts. For example, as voting machines near its end of life, counties have used their own funding to pay for new voting machines.³²
4. Members of the disability community expressed the following concerns regarding access to the polls:
 - a. poll workers lacked knowledge on how to operate accessible voting machines³³ and machines were not turned on;³⁴
 - b. voting machines did not have the option to change or view access options;
 - c. polling locations were inaccessible as many lacked wheelchair ramps or elevators, sufficient reserved accessible parking spaces and;
 - d. on one occasion, a poll worker threatened to call the police because a voter appeared at the wrong polling location.³⁵

²⁷ Patty Hansen, testimony, *Briefing Before the Arizona Advisory Committee to the U.S. Commission on Civil Rights, Phoenix, AZ, March 9, 2018*, transcript, p. 27 (hereafter cited as *Phoenix Briefing*) <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234>.

²⁸ Spencer Testimony, *Phoenix Briefing*, p. 14.

²⁹ *Ibid.*, pp. 18-19.

³⁰ Marra Testimony, *Phoenix Briefing*, p. 42.

³¹ *Ibid.*, Hansen Testimony, *Phoenix Briefing*, p. 27.

³² Marra Testimony, *Phoenix Briefing*, p. 44 (noting that Cochise County purchased voting equipment).

³³ Huereña Testimony, *Phoenix Briefing*, p. 183.

³⁴ *Ibid.*, pp. 182-183.

³⁵ Britton Testimony, *Phoenix Briefing*, p. 184.

5. Transportation is a barrier for protected voter groups to access the polls. The following examples demonstrate these challenges:
 - a. During the 2016 presidential preference election, many voters with disabilities who relied on public ride service, Dial A Ride, were unable to vote because of the long lines and the limited amount of time they were given before it left.³⁶
 - b. Native American voters residing in reservations, some spanning thousands of square miles, have few polling locations available to them.³⁷

Findings regarding language access:

1. Voting rights experts argue that Native American tribes who reside in jurisdictions that lost Section 203 coverage are likely to continue receiving language access if they maintain collaboration with county officials. For example, Gila County was not a covered jurisdiction during the 2016 elections because they did not meet Section 203 covered language criteria, but county officials continued to employ Apache-speaking election workers due to ongoing collaborations with Native American tribe leaders.³⁸ Similarly, Coconino and Maricopa Counties continue to provide language assistance despite losing Section 203 coverage.³⁹
2. The National Voter Registration Act (NVRA) requires designated state agencies to register voters, however there is a legal question regarding whether state agencies operating in counties, especially counties subject to the Section 203 language requirement, should also be providing language assistance in the same manner county officials are required to.⁴⁰ For example, a regional office of the Department of Transportation operating in Apache county where Navajo is a covered language, the Department of Transportation may not be required to provide voter registration information in that language.
3. Election officials have a process and criteria in place when procuring voting equipment. This includes upload features to store audio clips for language access.⁴¹ These features

³⁶ Fowler Testimony, *Phoenix Briefing*, pp. 83-84.

³⁷ Raul Grijalva, 3rd Congressional District, State of Arizona, Public Meeting on Arizona Voting Rights: Briefing Before the Arizona Advisory Committee to the U.S. Commission on Civil Rights, written testimony, p. 2 (2018), (hereafter cited as *Written Testimony*) <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>; See Appendix E.

³⁸ Brian Curley-Chambers, testimony, Hearing before the Native American Voting Rights Coalition, *Phoenix, AZ*, January 11, 2018, transcript, p. 25 (hereafter cited as *Desert Southwest Voting Rights Hearing*) <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>; See Appendix F.

³⁹ Fontes Testimony, *Phoenix Briefing*, p. 56.

⁴⁰ Hill Testimony, *Phoenix Briefing*, p. 101.

⁴¹ Spencer Testimony, *Phoenix Briefing*, p. 11.

are key to ensuring voters with language access needs are able to fully participate when using voting equipment.

4. The Secretary of State has the following plans to ensure language access:
 - a. Development of a uniform standard for election websites; and
 - b. Further discussion regarding translation services, such as Google Translate, are appropriate to use to translate election websites and for election equipment.⁴²

Findings regarding the State's voter ID requirement and bifurcated voter registration:

1. Testimony revealed that Arizona's bifurcated voter registration system is confusing and may have prevented voters from participating in State and local elections due to the proof of citizenship requirement.⁴³ Communities are who are less likely to have the required ID include: (i) out of state college students,⁴⁴ (ii) Native American voters, (iii) minority communities (vi) women,⁴⁵ and (v) overseas military personnel.⁴⁶
2. Based on testimony, the Secretary of State's Office is currently in litigation regarding requirements of the state voter registration form.⁴⁷ The anticipated change may involve acquiring citizenship status electronically by accessing various government databases. This potential election procedure may address the issue of dual registration.⁴⁸
3. Native American voters reported that when they went to the polls to vote, they learned they were dropped from registration rolls, but received no notification explaining the reason for being dropped.⁴⁹ This poses a challenge for many voters who were similarly dropped because the State's deadline to register is 30 days prior to Election Day.
4. Testimony indicated that government databases housing citizenship status are not widely utilized to confirm proof of citizenship of applicants unless election officials take additional steps to confirm citizenship status.⁵⁰ For example, in Maricopa County, roughly 96,000 voter registration forms were rejected because applicants were required to resubmit physical documentation of citizenship.⁵¹ To remedy incomplete forms, County

⁴² *Ibid.*

⁴³ Hansen Testimony, *Phoenix Briefing*, p. 23.

⁴⁴ *Ibid.*, p. 26.

⁴⁵ Hill Testimony, *Phoenix Briefing*, p. 99.

⁴⁶ *Ibid.*

⁴⁷ See Complaint, *League of United Latin American Citizens Arizona v. Reagan*, No. 2:17-CV-04102-DGC, ECF No. 1, (D. Ariz. Nov. 7, 2017).

⁴⁸ Spencer Testimony, *Phoenix Briefing*, pp. 21-22.

⁴⁹ Parsons Testimony, *Desert Southwest Voting Rights Hearing*, p. 14.

⁵⁰ Hill Testimony, *Written Testimony*, p. 2.

⁵¹ Fontes Testimony, *Phoenix Briefing*, p. 31.

officials used the Arizona Motor Vehicle Division (MVD) database to compare names to confirm proof of citizenship.

5. Newly naturalized U.S. citizens seeking to register to vote through ServiceArizona, the State's online portal for MVD, must show proof of citizenship by providing the appropriate documents in person or their application will be rejected.⁵² This indicates that federal and State government databases do not communicate with each other.
6. The State's paper voter registration form⁵³ is different from the online voter registration form available through ServiceArizona.⁵⁴ The State's paper voter registration form provides a space for applicants to add a Tribal ID number but is unavailable on the online registration form. With this discrepancy in mind, Native Americans who choose to register to vote online faced challenges with completing their online form.⁵⁵
7. There is reason for concern that Arizona may not be complying with NVRA. According to the American Civil Liberties Union (ACLU), there was a 60 percent reduction in the number of registered voters through public assistance agencies from 1999 to 2015.⁵⁶ In 1999, there were 32,137 voters registered through a public assistance agency and in 2015, there were only 13,135.⁵⁷ In a separate report focused on Native American residents, 42 percent were asked about registering at the MVD and 35 percent were asked through a social service agency.⁵⁸
8. In 2012, poll workers failed to accept alternative forms of ID from Native American voters, despite the state providing a special procedure for Native American voters to prove their identity.⁵⁹
9. Under state and federal law, a felony conviction triggers cancellation of voter registration.⁶⁰ Consequently, formerly incarcerated are required to re-register in order to exercise their right to vote. This is a concern because Latino and African American communities are disproportionately affected by felony disenfranchisement.⁶¹

⁵² Sainz Testimony, *Phoenix Briefing*, p. 171.

⁵³ *Service Arizona*, "Arizona Voter Registration Form,"

https://www.azsos.gov/sites/default/files/voter_registration_form.pdf.

⁵⁴ *Service Arizona*, "Online Voter Registration Form," <https://servicearizona.com/voterRegistration>.

⁵⁵ Lane Testimony, *Desert Southwest Voting Rights Hearing*, p. 89.

⁵⁶ Hill Testimony, *Phoenix Briefing*, p. 98.

⁵⁷ *Ibid*.

⁵⁸ "Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada, and South Dakota," *The Native American Voting Rights Coalition*, January 2018,

4, <https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-results.pdf>.

⁵⁹ Titla Testimony, *Desert Southwest Voting Rights Hearing*, p. 248.

⁶⁰ Ariz. Rev. Stat. 13-904(A).

⁶¹ Edman Testimony, *Phoenix Briefing*, p. 89.

Furthermore, Arizona is ranked the 7th highest in the country and has disenfranchised 220,000 adults and 11.89 percent of African Americans.⁶²

10. Native Americans with a felony record can participate in Tribal elections, but not in federal or state elections. Advocates stated that it is unclear if whether Native Americans with a felony record were aware of their right to vote, and if poll workers were trained to allow them to vote.⁶³
11. Voting rights are restored under the discretion of a judge. For some, voting rights can be restored if mandatory fines are fully paid. However, this is not the case for 25 percent of formerly incarcerated individuals who served time in Maricopa County, who did not owe fees, were denied restoration of voting rights due to judge's decision.⁶⁴
12. There is a lack of information regarding restoration of voting rights for the formerly incarcerated available through court websites.⁶⁵

Findings regarding restriction on mail-in ballots:

1. Advocates argue a ban on ballot collection may impose a disproportionate burden on Native American voters due to their proximity to a mailbox,⁶⁶ and voters who rely on caregivers, friends, family members, or others in their community to collect ballots to take to voting sites.

⁶² Christopher Uggen, Ryan Larson, and Sarah Shannon, "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement," *The Sentencing Project*, <http://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/#II.%20Disenfranchisement%20in%202016>; Edman Testimony, *Phoenix Briefing*, p. 89.

⁶³ Jackson Testimony, *Phoenix Briefing*, p. 185.

⁶⁴ Hill Testimony, *Phoenix Briefing*, pp. 102-103.

⁶⁵ *Ibid.*, p. 107.

⁶⁶ Gonski Testimony, *Phoenix Briefing*, p. 139.

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁶⁷ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Arizona Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to U.S. Department of Justice to:
 - a. Enforce the Voting Rights Act in Arizona.
 - b. Appropriate the nearly \$320 million dollars already allocated to counties to election assistance to improve voter outreach and education.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to Arizona State Legislature to:
 - a. Provide appropriations from the Help America Vote Act fund to support language assistance efforts, voter registration efforts, and upgrade voting machines and ballot counting readers in Arizona.
 - b. Eliminate the requirement that felons pay fines and fees in order to restore their voting rights.
 - c. Institute mandatory training of all judges, court staff, law enforcement, prosecutors and public defenders on the use of the bench card.⁶⁸
 - d. Ensure information regarding the restoration of voting rights is available on court and election websites.
 - e. Consider implementing same day voter registration to encourage voter turnout.

⁶⁷ 45 C.F.R. § 703.2 (a)-(c).

⁶⁸ National Task Force on Fines, Fees and Bail Practices, *Lawful Collection of Legal Financial obligations: A Bench Card for Judges*, 2017, http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx (noting the bench card contains a clear set of instructions for state judges to use when determining whether a person has the means to pay fines and fees. In addition, it provides simple and clear rules about notifying defendants about their rights (including the right not to be jailed for being poor), how they must be allowed to explain their financial situation, and a definition of poverty).

- f. Change the state voter registration form to include room to depict and describe in writing a non-traditional, rural or remote address that is not recognized by the U.S. Postal Service.
3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Arizona State Bar, Arizona Supreme Court, Arizona Federal Court, Arizona Superior Courts and respective probation offices to:
 - a. Encourage members of the judiciary to be knowledgeable in voting rights for those with one and multiple felonies.
 - b. Encourage members of the judiciary to advise those sentenced in their courtroom of future voting eligibility, including reminder of automatic voting rights restoration upon completion of sentence, including prison, parole and probation.
 - c. Encourage probation offices and their officers to be knowledgeable in voting rights for those with one and multiple felonies.
 - d. Encourage probation offices and their officers to advise their clients of future voting eligibility, including reminder of automatic voting rights restoration upon completion of sentence, including prison, parole and probation.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Arizona Secretary of State and Elections Director to:
 - a. Provide appropriations from the Help America Vote Act fund to support language assistance efforts, voter registration efforts, and upgrade voting machines and ballot counting readers in Arizona.
 - b. Comply with the Americans with Disabilities Act to ensure that polling locations are accessible by voters with disabilities.
 - c. Comply with the National Voter Registration Act by requiring Section 5 and Section 7 servicing agencies to consistently ask individuals to register to vote. In addition, require that Section 5 and Section 7 agencies perform voter registration functions in accordance with Section 203 jurisdictions to obtain uniformity and efficiency in Arizona's voting process.
 - d. Provide election materials to voters with visual disabilities such as providing braille and large print ballots at polling locations.
 - e. Strengthen voter education efforts, especially on how to properly fill out registration forms.

- f. Consider changing the current voter registration form to avoid the need for a bifurcated voter registration system.
 - g. Strongly encourage the use of federal and state government databases that house citizenship information to avoid rejecting registration applications.
 - h. Solicit input from diverse communities prior to purchasing election equipment to ensure unique needs are addressed.
 - i. Ensure information regarding the restoration of voting rights is available on court and election websites and shared through voter registration efforts.
5. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to Arizona County Recorders to:
- a. Ensure poll workers are trained to provide service to voters with disabilities. This includes training on how to operate accessible machines and training on “people-first” language.⁶⁹
 - b. Allow poll workers the opportunity to work in split shifts to address scheduling concerns.
 - c. Maintain relationships with community leaders to address language access needs, especially among jurisdictions that recently lost Section 203 coverage.
 - d. Consult with organizations such as Arizona Commission for the Deaf and Hard of Hearing to improve county election websites.

⁶⁹ Center for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, *Communication With and About People with Disabilities*, https://www.cdc.gov/ncbddd/disabilityandhealth/pdf/disabilityposter_photos.pdf.

Appendix

- A. Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations Under Section 203
- B. *Democratic National Committee v. Reagan, et al.*, Amended Findings of Fact and Conclusions of Law
- C. Briefing Agenda & Minutes
- D. Briefing Transcript
- E. Written Testimony
 - a. Darrell Hill, Attorney, ACLU of Arizona
 - b. Raul Grijalva, 3rd Congressional District, State of Arizona
- F. Desert Southwest Voting Rights Hearing Transcript

Appendix A

<https://www.federalregister.gov/documents/2016/12/05/2016-28969/voting-rights-act-amendments-of-2006-determinations-under-section-203>

Appendix B

Democratic National Committee v. Reagan, et al., Amended Findings of Fact and Conclusions of Law

<https://bit.ly/AZ-ballotharvesting>

Appendix C

Briefing Agenda and Minutes

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>

Appendix D

Briefing Transcript

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>

Appendix E

Written Testimony

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>

Appendix F

Desert Southwest Voting Rights Hearing Transcript

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>

**Arizona Advisory Committee to the
United States Commission on Civil Rights**



U.S. Commission on Civil Rights Contact

USCCR Contact Regional Programs Coordination Unit
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This advisory memorandum is the work of the Arizona Advisory Committee to the U.S. Commission on Civil Rights. The memorandum, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this memorandum and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government. For more information or to obtain a print copy of this memorandum, please contact the Regional Programs Coordination Unit.

Voting Integrity in California

Issues and Concerns in the 21st Century

**A Report of the California Advisory Committee to the
United States Commission on Civil Rights**

June 2017

This report is the work of the California Advisory Committee to the U.S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and generally reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. **Neither an editorial nor legal sufficiency review was completed on this report. This report may or (may not) comply with the Commission's standards for form, legal citations, or methodology.** Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

State Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

California Advisory Committee to the U.S. Commission on Civil Rights*

Percy Duran, *Chair*
Los Angeles

Velma Montoya, *Vice-Chair***
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Betty Wilson **
Los Angeles

** Members of the voting rights sub-committee

Letter of Transmittal

California Advisory Committee to the U.S. Commission on Civil Rights

The California Advisory Committee to the U.S. Commission on Civil Rights submits this report, *Voting Integrity in California: Issues and Concerns in the 21st Century*, as part of its responsibility to examine and report on civil rights issues in the state under the jurisdiction of the Commission.

On July 23, 2002, Congress passed the Help America Vote Act (HAVA) of 2002¹ to reform the nation's voting process. Under HAVA, states are required to implement programs and procedures in the following areas: (1) provisional voting; (2) voter information; (3) statewide voter registration databases; (4) updated and upgraded voting equipment; (5) voter registration identification procedures; and (6) administrative complaint procedures.² To help meet these requirements, HAVA provides the states with funds— a portion of which are to be disseminated to specific counties to assist local entities meet the provisions of the Act. HAVA has provided more than \$380 million in federal funding to California to help improve the state's administration of elections.³

An assessment of all 50 states' election performances in 2012 and 2014 by an independent non-profit organization reported that California performed well below the national average. California's low performance prompted the California Advisory Committee to undertake an examination questioning the implementation of HAVA, and the integrity of the voting process in California.

A public hearing was held on August 28, 2015, at the Central Library of the City of Los Angeles. The scope of the hearing was the general compliance by the State with HAVA. Invited presenters included, among others, the California Secretary of State, the California State Auditor, election officials in Los Angeles and San Diego Counties, representatives from the Pew Charitable Trust, Everyone Counts, the Election Integrity Project, and the public.⁴

Based upon its research and public hearing, the California State Advisory Committee concludes and recommends the following:

Conclusions

1. Insufficient training in election laws for poll workers and on-site election officials pursuant to witnesses Linda Paine and Ruth Weiss of the Election Integrity Project⁵;

¹ Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15301 et seq., *available at* http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF.

² Ibid.

³ California Office of the Secretary of State, Audit of the administration of the federal Help America Vote Act of 2002 at <https://www.bsa.ca.gov/reports/summary/2012-112.pdf>, August 2013 (last accessed Nov. 22, 2014).

⁴ A listing of all presenters at the August 28, 2015, public hearing is in Appendix 1, and the complete transcript of the proceedings is posted on the Commission's website at www.usccr.gov.

⁵ Linda Paine and Ruth Weiss, Election Integrity Project, Testimony before the California Advisory Committee to the U.S. Commission on Civil Rights, Transcript, Hearing on Help America Vote Act, Los Angeles, CA, Aug. 28, 2015, pp. 158-191 (hereafter referred to as Help America Vote Act (HAVA) Transcript), *available at* <https://www.justice.gov/crt/text-proposed-regulations>.

Training materials⁶ fail to provide for the implementation of California Election Code §14216, voter self-identification, which states:

“Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address . . . ”.

2. Disabled voters face unnecessary obstacles, according to testimony by Lillibeth Navarro, representative of Communities Actively Living Independent and Free;
3. VoteCal, the mandated statewide voter database, is not ready (SOS testimony);
4. Explanations about the decision-making process of the Secretary of State for potential voting system developers are required after doubts raised from materials provided by State Auditor Elaine Howle, which state:

“The Office paid \$4.6 million to develop a replacement database – Vote Cal - but terminated a critical contract because the vendor failed to provide key deliverables. In its second attempt to hire a new vendor to complete the VoteCal project, the Office appears to have limited the bidder competition to only one bidder, raising concerns for future success.”⁷

5. The methodology used to report HAVA expenditures in California’s spending plan has not been explained, according to the testimony of State Auditor Elaine Howle;
6. Deceased, inactive and ineligible voters remain on voter lists;
7. The delayed and multi-stage human handling of vote-by-mail ballots creates openings for tampering or mishandling, according to Ruth Weiss’s testimony and EIP’s written testimony;
8. In 2012, California cast forty percent of the provisional ballots in the nation.⁸ Though the official intent is to allow for convenient voting and options that support participation, inadequate poll worker training in following the law likely contributes to the indiscriminate use of provisional ballots;
9. Prohibitive costs to citizens to purchase voter roll data;

⁶ Ibid., p. 177.

⁷ Ibid., p. 46

⁸ See *supra* note 5 p. 171.

10. Indiscriminate use of Permanent Absentee Voting;
11. Statewide voting and election irregularities in many counties, both large and small, require further investigation;⁹
12. Antiquated election laws prohibit the introduction of modern voting technology, according to testimonies of SOS and Everyone Counts;
13. Inadequate utilization of online voting with military-grade encryption for military and overseas voters, according to Pew testimony;
14. Citizens have concerns about the new “Motor Voter Law “AB 1461, its implementation and confidentiality. A good third of the eighty-plus Post-Hearing written testimonies were about this bill.

Recommendations:

1. Training for Election Officials and Poll Workers
 - a. Include awareness and knowledge of applicable election laws (HAVA, NVRA, California Election codes, and the U.S. Constitution) and of the poll workers’ authorities;
 - b. Increase length of training time of election workers;
 - c. Verify that an election official or poll worker completed recommended online training instruction;
 - d. Establish citizen oversight ensure training materials correspond to the law;
 - e. Train poll workers to follow California Election Code §14215, asking voters to state their names and addresses - in their own words -to avoid voter impersonation.
2. Citizen Oversight
 - a. Provide expert citizen election integrity oversight for the pending VoteCal statewide voter registration database;
 - b. To ensure instructions to poll workers and election officials correspond to election laws, provide expert citizen oversight of training procedures and materials, and voting and election materials.
3. The Disabled Voter
 - a. Legislation required to assure that current and future digital or computerized voting systems are accessible and will accommodate voters with disabilities;
 - b. Poll workers shall be provided training, communication, and accommodations for voters with disabilities;
 - c. All polling sites shall be accessible to voters with disabilities.

⁹ Testimony of Mark Sonnenklar, Business Attorney, HAVA Transcript, p. 109.

4. Office of the Secretary of State

- a. Appoint a non-partisan citizen election integrity and oversight organization with authority to assess VoteCal, its methods, and test results;
- b. Clarify the state's current standards for voting, election processes, voting equipment and systems and assure procedures and equipment are in compliance with state and federal disability laws;
- c. Clarify the process by which the Secretary of State verifies that the person applying to vote, whether through online registration, DMV registration, or in-person registration, is eligible to vote;
- d. Inform public agencies that only those agencies mandated to examine and verify proof of citizenship shall process voter registration applications;
- e. Create and advertise the complaint procedure by which citizen complaints about the administration of elections are addressed and rectified;
- f. Recommend to the California legislature an upgrade of all coded obstacles to the modernization of California's election process and voting systems (Election Code Article 4, Sections §19217, §9217, §19250 (a), §14223 (b));
- g. Recommend each California county standardize its forms and costs for citizen organizational purchases of voter data;
- h. Verify that every poll location is accessible to voters with disabilities;
- i. Clearly state the methodology used to report prior HAVA expenditures in the HAVA spending plan.

5. County Registrars of Voters

- a. To prevent inaccurate voter turnout statistics and possible election results, follow HAVA and California Election Code procedures for the distribution of provisional ballots;
- b. To ensure voters' privacy and ballot integrity during handling, redesign absentee ballot forms and improve current processing procedures for security;
- c. To prevent impersonation and fraud, timely remove deceased, inactive and ineligible voters from voter lists according to HAVA's suggestions;
- d. Establish standard fee schedules for citizen groups requesting public documents and lists;
- e. Verify that every poll location is accessible for voters with disabilities;
- f. In accord with election laws, train election officials and poll workers in the handling of provisional, absentee, and in-person ballots;
- g. Clarify the procedures by which registrars of voters process and rectify election complaints;
- h. Provide citizen oversight of training manuals and materials, poll worker training, and at election polls and voting centers;
- i. Train poll workers and election officials in the proper use of California Election Code §14216, which, without a voter ID requirement, provides for self-identification.

6. Upgrade Outdated Election Laws (Legislation Required)

- a. Modernization requirements -
 1. Upgrade outdated California Election Codes (Article 4, Sections §19217, §19217, §19250 (a), and §14223 (b)):
 - i. Permit digital and telephone access for voter systems;
 - ii. Allow connectivity to the internet;
 - iii. Allow electronic transmission of election data through exterior communication networks;
 - iv. Allow wireless communications or wireless data transfers;
 - v. Allow a remote server to store any voter's identifiable selections and tabulate votes using military grade encryption;
 2. Reconsider the requirements of federal qualification and accessible voter verified paper audit trails for voting systems;
- b. Upgrade and revise the Military and Overseas Voter Empowerment Act of 2009 (MOVE) to incorporate military grade encryption for secure online voting;
- c. Allow poll workers to redact voters' street addresses when posting precinct voter lists near poll entrances to prevent harvesting of data used for voter impersonation.

7. California's "Motor Voter" Law – AB1461

- a. Pass AB 2067 amending AB 1461 to -
 1. Create a clear, mandated procedure by which the citizenship status of all potential registrants will be verified prior to uploading information to the Secretary of State;
 2. Establish oversight provisions;
 3. Authorize ongoing education and/ training for Department of Motor Vehicles (DMV) personnel

This report was approved as amended by the members of the California Advisory Committee by a vote of 6- yes, and 0 - no with no abstentions on Wednesday, June 1, 2016.

Respectfully,
Percy Duran, *Chair*
California Advisory Committee

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I. Introduction

A. California Advisory Committee to U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to denial of the right to vote because of race, color, religion, sex, age, disability, national origin, or in the administration of justice.¹⁰ The Civil Rights Act of 1957¹¹ created the U.S. Commission on Civil Rights. Since then, Congress has reauthorized or extended the legislation creating the Commission several times; the last reauthorization was in 1994 pursuant to the Civil Rights Commission Amendments Act of 1994.¹²

Established as an independent, bipartisan, fact-finding federal agency, its mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. The Commission pursues this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. The Commission plays a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.¹³

The Commission has established an advisory committee in each of the 50 states and the District of Columbia. These state advisory committees are composed of state citizens who serve without compensation and advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin and other matters under the jurisdiction of the Commission.

B. Help America Vote Act of 2002

On July 23, 2002, a bipartisan Congress passed the Help America Vote Act (HAVA) of 2002¹⁴ to assess compliance and suggest reforms to the nation's voting process. HAVA made recommendations for improvements to voting systems and voter access¹⁵ and established:

- 1) new mandatory minimum standards for states to follow in several key areas of election administration;¹⁶
- 2) funding to help states meet these new standards, replace voting systems and improve election administration;¹⁷

¹⁰ Civil Rights Act of 1957, Pub.L. 85-315, 71 Stat. 634, *et seq.* (1957).

¹¹ Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d, *et seq.*

¹² Civil Rights Commission Amendment Acts of 1994, as amended, 42 U.S.C. 1975, *et seq.*

¹³ U.S. Commission on Civil Rights at www.usccr.gov.

¹⁴ Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15301 *et seq.*, *available at* http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF.

¹⁵ United States Election Assistance Commission at http://www.eac.gov/about_the_eac/help_america_vote_act.aspx (last accessed Nov. 22, 2014). <http://doodle.com/poll/947m69wbxmgrs8uz>

¹⁶ *Ibid.*, HAVA, §§ 101-906 (2002), *available at* http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF.

¹⁷ *Ibid.*

- 3) the Election Assistance Commission (EAC) to assist the states regarding HAVA compliance and to distribute HAVA funds to the states.¹⁸ EAC is also charged with creating voting system guidelines and operating the federal government's first voting system certification program.¹⁹

Under HAVA, states are required to implement programs and procedures in the following areas: (1) provisional voting; (2) voter information; (3) statewide voter registration databases; (4) updated and upgraded voting equipment (5) voter registration identification procedures; and (6) administrative complaint procedures.²⁰ To help meet these requirements, HAVA provides the states with funds— a portion of which are to be disseminated to specific counties to assist local entities meet the provisions of the Act. HAVA has provided more than \$380 million in federal funding to California to help improve the state's administration of elections

An assessment of election performances between states in 2012 and 2014 by an independent non-profit organization reported that California performed well below the national average. The effectiveness and implementation of HAVA and the integrity of the voting process is of particular concern in California because of the growth and reported difficulty of voter access of various potential voter populations, including Latinos, Asian-Americans, and the voters with disabilities.

Table 1: California Population by Percent by Race/Ethnicity, 2000 and 2014

	Percent of population	
	2000	2014
White	46.6	38.8
African American	6.4	5.8
Asian	11.1	13.0
American Indian	1.0	0.8
Latino	32.3	39.0
Two or more races	2.6	2.6

Source: California Advisory Committee from Census data.

With respect to provisional voting, many eligible citizens in the United States are denied the right to cast ballots and have them counted on Election Day. Many voters are turned away from polls because their names do not appear on a list of registered voters for varied reasons— at times the responsibility of the individual voter. To correct this problem, the “fail-safe” provisional voting requirements in the HAVA require election officials to first provide aid to those individuals who are not listed on the official list of registered voters by helping them locate their proper polling place, and, if not resolved, then to provide provisional ballots. After an election, once in-person and absentee ballots are counted, and the appropriate election officials determine that the individual is eligible to vote, the provisional ballot is counted.

¹⁸ HAVA, § 201, available at http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF.

¹⁹ United States Election Assistance Commission at http://www.eac.gov/about_the_eac/help_america_vote_act.aspx (last accessed Nov. 22, 2014).

²⁰ Ibid.

A key component of HAVA regarding statewide voter registration databases is that each state must establish a statewide voter registration database.²¹ This database must include the name, address, birthdate and other registration information for every legally registered voter within each state. The state is also to assign a “unique identifier” to each applicant. The list is to be coordinated with other agency databases within each state, and accessible electronically to local election officials and individual voters. HAVA also regulates the maintenance of these lists, requiring states to ensure that the name of each voter appears on the list, and that the names of voters who are not registered, inactive (including the deceased), or ineligible, and duplicate names, be eliminated.

This section of HAVA further requires that voters provide either their driver's license number or social security number or the last four numbers of their Social Security number. In the case of applicants lacking any of the three items, the state is to assign a unique identifying numbers for each applicant.²² States are required to establish agreements with their state motor vehicle agencies and the Commissioner of Social Security, through which identification numbers can be "matched" to verify accuracy and legitimacy of the voter registration application information.²³

The effective date of HAVA's statewide registration database requirement was January 1, 2004, but was extended for good cause to January 1, 2006. California planned to implement a “bottom-up” system, with the counties maintaining the voter file and precinct and district boundaries, and transmitting this information to the state. The statewide system was not in place by the January 1, 2006, deadline nor implemented for another decade. During a state audit, the California Deputy Secretary of State for HAVA activities explained that in addition to its agreement with Justice, the Secretary of State (SOS) pursued VoteCal because its previous system—CalVote—was a failure.²⁴ With so many years of failing to create the mandated state-wide voter database (California is the only state without that compliance with HAVA), there were concerns about any state-wide system meeting the HAVA requirements of interactivity to allow local election official immediate electronic access to voter information as well as electronic transmission of voter registration data into the single system.

All 58 counties are now engaged in the process of VoteCal implementation prior to its expected June 2016 certification as the State’s system of record. Even though all counties are actively engaged, many tasks must be completed before VoteCal can be certified. These include a mock election, on-going performance testing, and analyzing and monitoring the data in VoteCal. The VoteCal project team, with assistance from county election officials, intends to focus on these activities in the coming weeks.²⁵

The current SOS is committed to the implementation of Vote Cal; the expectation is for June 2016 after VoteCal is successfully deployed to all counties and the SOS and the Election Audit

²¹ HAVA, § 303(a).

²² Ibid.

²³ Daniel Tokaji, Moritz College of Law, available at http://moritzlaw.osu.edu/electionlaw/ebook/part5/hava.html#_edn11 (last accessed Nov. 22, 2014).

²⁴ California Office of the Secretary of State, Audit of the Administration of the Federal Help America Vote Act of 2002 at <https://www.bsa.ca.gov/reports/summary/2012-112> (last accessed Nov. 22, 2014).

²⁵ Testimony of Alex Padilla, California Secretary of State, *VoteCal News*, available at <http://www.sos.ca.gov/elections/voter-registration/votecal-project/news/> (last accessed May 27, 2016).

Committee (EAC) test and validate that VoteCal is fully and accurately functional, VoteCal will be declared certified as the official system of record for voter registration in California, almost 11 years after the passing of HAVA.²⁶

Other issues raised by HAVA mandates reflect that the 21st century is experiencing a new era in voting. Electronic voting systems are being scrutinized for integrity and reliability. Expensive, antiquated purpose-built hardware-based systems and manual and paper processes are being transformed with systems designed to result in increased accessibility and improved accuracy for all elections, as well as enhanced security, increased auditability, and significant cost savings.

Apart from HAVA, it is important to understand the legislation with respect to other Federal voting rights legislation, such as the Voting Rights Act of 1965 (VRA);²⁷ the National Voting Registration Act of 1993 (NVRA) that requires state governments to offer voter registration opportunity to eligible citizens who apply for or renew a driver's license or seek public assistance;²⁸ and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) that requires states and U.S. territories to allow certain U.S. citizens to register and vote by absentee ballot in federal elections.²⁹ Along with HAVA, these respective Federal Acts need to be understood in context with the California Election Code³⁰ and the California Code of Regulations, such as Title 24, which is the building code section. So, although it is an important piece of legislation in its own right, focusing solely on HAVA may not provide the full breadth and extent of what election officials at the state and local level confront in their obligations to conducting fair and impartial elections.

C. Non-Government Reports on Election Integrity

1. Pew Charitable Trusts' Election Performance Index Report

The Pew Charitable Trusts' (Pew) Elections Performance Index, or EPI, reports comparisons between all states regarding election effectiveness. The Pew EPI profile analyzes 17 key indicators of election administration and scores each state's performance by indicator.

The EPI is based on a snapshot in time and on data that is not always commonly collected or comparable across state lines. The intent of the EPI is to draw policy level attention to election administration at the state level. By its nature the EPI is set up to more favorably reflect states with centralized election administration and states that have adopted policy changes advanced by Pew research, i.e, same day registration and participation in interstate data matching for file maintenance. The application of election laws are not indicators used in Pew analyses.

Pew reported that California's EPI average increased slightly from 2008 to 2012, but at a rate well below the national average. In 2008, 2010, 2012, and 2014, the state was the 49th lowest-performing states, and one of only six states in the bottom 25 percent in all four years. California

²⁶ Ibid.

²⁷ Pub. L. 89-110, codified at 42 U.S.C. §§ 1973 to 1973aa-6.

²⁸ Pub. L. 103-31, (52 U.S.C. § 20501 - 52 U.S.C. § 20511) (formerly 42 U.S.C. §§ 1973gg-1973gg-10),

²⁹ Pub. L. 99-410, codified at 42 U.S.C. § 1973ff.

³⁰ California Elections Code, Stats. 1994, Ch. 920, Sec. 2.

improved its average wait time to vote, which fell from nearly 14 minutes in 2008 to less than six minutes in 2012. The state also added online voter registration before the 2012 election, and by the end of that year, more than 900,000 Californians used the system to register or update their information.³¹

Decreases in other indicators, however, overwhelmed these improvements. The increase in California's rate of provisional ballots cast was the second-highest in the nation. In 2008, the rate was already the country's fourth-highest at 5.8 percent, and in 2012, when the state issued more than 1 million provisional ballots, the rate was 8.1 percent, the second-highest.

Pew measured California as the 49th worst election performing state of 50 using criteria such as:

- 1) Low turnout statistics
- 2) Mail Ballots unreturned
- 3) Mail ballots rejected
- 4) Military and Overseas Ballots rejected
- 5) Military and Overseas Ballots unreturned
- 6) Provisional ballots cast
- 7) Provisional ballots rejected
- 8) Registration or Absentee Ballot problems
- 9) Voter Information Lookup Tools Available (49th)
- 10) Disability or illness-related problems

Pew reports that California issues provisional ballots for many reasons.

- Almost 30 percent of the requested vote-by-mail ballots in California are not cast— the highest rate in the nation. Any voter who requests a mail ballot but then shows up at the polls on Election Day without it is required to cast a provisional ballot. This number contributes to the statistics regarding low turnout.
- When California voters have a registration problem (e.g., if they moved within the same county and did not update their address or if their eligibility is called into question), they are issued a provisional ballot.
- The state also had the greatest number and percent of rejected provisional ballots amongst all states. In 2012, more than 175,000 provisional ballots were rejected, equivalent to almost 1.4 percent of all ballots cast in the state.³²

As noted above, the state's rate of unreturned mail ballots was the highest among all states in 2012, when it jumped to 29.4 percent from 16.2 percent in 2008, the fourth-largest increase in the country. California has permanent mail voting: Any registered voter can choose to automatically receive mail ballots for all future elections.³³

³¹ Pew Charitable Trusts, California Elections Performance Index, April 2014, at http://www.pewtrusts.org/~media/Assets/2014/04/07/2012_Election_Performance_Index_California.pdf?la=en (last accessed Nov. 22, 2014).

³² Pew Charitable Trusts, California Elections Performance Index, April 2014, *available at* http://www.pewtrusts.org/~media/Assets/2014/04/07/2012_Election_Performance_Index_California.pdf?la=en (last accessed April 18, 2016).

³³ *Ibid.*

Another statistic in the Pew report concerned the voter with disabilities. In 2012, California showed 13.6 percent of those responding to a census survey did not cast ballots due to an “illness or disability (own or family’s).”³⁴ The national average is 15.8 percent. The PEW Report found the following regarding the 2010 Census:

Disabled and permanently ill voters face unique challenges, such as inaccessible polling places and voting technology that is difficult to use. Federal law mandates that all polling places must generally be accessible to physically disabled voters. The Help America Vote Act of 2002 requires that at least one voting machine in each precinct be equipped for physically disabled individuals.³⁵

2. Election Integrity Project Report

The Election Integrity Project (EIP) identified over 60,000 irregularities in California’s 2013 voter roll data provided by the counties. Statistics for the deceased are based on 50 years of records. In addition to the Pew report on elections in California, the EIP emphasized the well-known fact that California is the only state without a federally-required single, uniform, official, centralized, interactive, computerized statewide voter registration list. The state entered into a Memorandum of Agreement (MOA) with the Department of Justice in 2005, which required it to expedite the development of a fully compliant database.³⁶

The Election Integrity Project operates in three major capacities: As a citizen training organization in election integrity, an election integrity research organization, and a non-partisan election oversight company.

Meanwhile, according to the EIP report, in a high tech state with 55 electoral college votes and 53 U.S. House seats, California’s official state list was an agglomeration of 58 county lists and used 1993 technology. List maintenance deficiencies are illustrated in a chart which showed over 81,000 list irregularities (duplicate registrations, deceased, double voting) in just nine counties reported by EIP to election officials in 2013.

³⁴ Ibid.

³⁵ Ibid.

³⁶ U.S. Department of Justice Memorandum of Understanding with the State of California (Nov. 2, 2005), *available at* <https://www.justice.gov/crt/text-proposed-regulations>.

Table 2: Rate of Irregularities by County

California County	# Registrants On Active List	# In-County Dups	# Deceased	# Cross-County Dups	# Unlawful Votes	Total Irregularities/ % Of Registrations
Fresno	405,888	659	1,264	607	83	2,613/0.6%
Kern	331,510	209	389	163	22	783/0.2%
Kings	47,853	139	45	271	8	463/1.0%
Los Angeles	4,818,730	37,675	14,958	5,330	2,389	60,352/1.3%
Nevada	61,717	45	40	NA	3	88/0.1%
Riverside*	932,892	2,877	214	1,251	120	4,462/0.5%
San Bernardino*	862,237	3,349	418	1,251	329	5,347/0.6%
San Diego	1,562,447	1,112	164	5,330	214	6,820/0.4%
Tulare	145,738	178	51	451	15	695/0.5%
Total/Straight Average						81,623/0.6%

Source: Election Integrity Project Report, 2014

Based in Los Angeles County, which is the nation’s largest county, Election Integrity Project (EIP) reported a disturbingly high percent of irregularities – more than twice the rate of other large counties. EIP also submitted over 3,200 suspected unlawful voters (suspected double voters, deceased voters) to election officials.³⁷ In a state with no voter ID, inaccurate voter lists can result in voting fraud since duplicated and deceased persons are easy to impersonate.³⁸

In California, however, obstacles to the most up-to-date, modern and secure election and voting systems exist in the very codes created to protect the voter. The best updated and upgraded election systems can only occur with an updating and upgrading of the election laws and codes concerning them.

D. Public Hearing on Election Administration in California

A public hearing was held on August 28, 2015, at the Central Library of the City of Los Angeles. The scope of the hearing was the general compliance by the state with HAVA. Invited presenters included, among others, the California Secretary of State, the California State Auditor, election officials in Los Angeles and San Diego Counties, representatives from the Pew Charitable Trust, Everyone Counts, and the Election Integrity Project, and the public.³⁹

³⁷ Testimony of Linda Paine and Ruth Weiss, HAVA Transcript, pp. 158-191.

³⁸ Ibid.

³⁹ A listing of all presenters at the August 28, 2015, public hearing is in Appendix 1, and the complete transcript of the proceedings is posted on the Commission’s website at www.usccr.gov.

II. Background

Federal Commission on Election Reform Report

The issues of concern before the California Advisory Committee with respect to the conduct of elections are also nationwide concerns. Ten years ago, the Commission on Federal Election Reform (CFER) was constituted to recommend ways to raise confidence in the electoral system. The prefatory comments by the Co-Chairs in the Commission's report on election integrity and growing lack of public confidence in the fairness of elections was sobering for the future of democracy in the nation.⁴⁰

Elections are the heart of democracy. They are the instrument for the people to choose leaders and hold them accountable. At the same time, elections are a core principal function upon which all other government responsibilities depend. If elections are defective, the entire democratic process is at risk.

Americans are losing confidence in the fairness of elections. And while we do not face a crisis today, we need to address the problems of our electoral system. First, there appears to be a growing lack of confidence in the integrity and fairness of the election system. Second, certain identifiable segments of the population may face barriers in their right to vote.⁴¹

Of particular concern to the California Advisory Committee in its project on voting integrity in California, the CFER examined and commented on: (1) ballot integrity and voter registration, (2) election administration, and (3) expanding access to elections.

1. Ballot Integrity and Voter Registration

Undermining the integrity of the ballot, fraud can occur in several ways. Ineligible persons can vote. Eligible voters can vote multiple times and/or in multiple locations. Persons can cast votes on behalf of others or persons who are dead. But among the possible election frauds, "absentee ballots remain the largest source of potential voter fraud."⁴²

Regarding voter registration, the CFER noted that "election systems cannot inspire public confidence if safeguards do not exist to deter or detect fraud or to confirm the identity of voters."⁴³ While there is no evidence of extensive fraud in U.S. elections or of multiple voting, as the Commission on Federal Election Reform reported, one potential source of fraud arises from inactive or ineligible voters left on voter registration lists.

A good registration list (accurate and up-to-date) ensures that citizens are only registered in one place— and is maintained in a manner that persons who move or die or who are inactive are

⁴⁰ Commission on Federal Election Reform, *Federal Election Commission report*, Letter from the Co-Chairs.

⁴¹ Ibid.

⁴² Ibid., p. 46.

⁴³ Ibid., pp. 4 and 18.

systematically removed from the voter registration list. A good registration list also identifies the same person being registered in two different locations. However, election officials still need to make sure that the person voting—whether in person or by mail ballot— is the same one as that voting.

2. Election Administration

The Commission on Federal Election Reform stated that a major source of public mistrust in the election process is the perception of partisanship in actions taken by election officials.⁴⁴ In California, similar to a majority of states, election administration comes under the authority of the Secretary of State. In recent years, both Republican and Democratic Secretaries of State have been accused of bias because of their discretionary actions.

For example, in Kansas legal action has been taken against the Secretary of State, Kris Kobach (R), for alleged voter suppression. The lawsuit challenged the state's dual voter registration system crafted by the Secretary of State that requires voters to provide proof-of-citizenship documents when they register to vote for the first time or after moving to Kansas.⁴⁵ In Oregon, citizen groups such as True the Vote have challenged the actions of Secretary of State Jeanne Atkins (D) regarding the accurate maintenance of voter registration lists.⁴⁶

Poll workers are essential to effective election administration. Effective administration of elections requires that poll workers have the capability and training to carry out complex voting systems correctly, which often change with each election. As CFER reported, poll workers must administer an array of voting procedures in compliance with HAVA and other election laws, to include provisional ballots, checking voter identification, correctly counting votes, setting up voting machines, instructing voters on the use of voting equipment, and providing helpful and accurate service to a diversity of voters including persons with disabilities and non-English speakers.⁴⁷

3. Expanding Access to Elections

This nation has a long and unfortunate history of denying the right to vote to certain groups of citizens. Despite ratification of the 15th Amendment to enfranchise former slaves, in the century following the Civil War Americans in many parts of the country were systematically denied the right to vote. State and local registration boards used poll taxes, literacy tests, felon disenfranchisement laws, and other impediments to deny minorities their legal right to vote. In the Voting Rights Act⁴⁸ was enacted after Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforcement of the 15th Amendment.

⁴⁴ Ibid., p. 49.

⁴⁵ Kira Lerner, *Judge shuts down Kris Kobach's attempt to disenfranchise voters in Kansas elections*, accessible at <http://thinkprogress.org/politics/2015/08/27/3695987/kris-kobach-ruling-kansas>.

⁴⁶ Shelby Sebens, *Too Nice for Fraud: Some Say OR Election System Vulnerable Despite Few Cases*, Watchdog.org, May 16, 2013, available at <http://watchdog.org/85032/too-nice-for-voter-fraud-some-say-or-election-system-vulnerable-despite-few-cases/>.

⁴⁷ Ibid., p. 52.

⁴⁸ Pub. L. 89-110, codified at 42 U.S.C. §§ 1973 to 1973aa-6.

Concerns about ballot integrity, voter registration, and the administration of election systems must not be co-opted into denying the right to vote to eligible citizens. CFER noted this challenge in building confidence in elections. While many states allow the representatives of candidates or political parties to challenge a person's right to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to voter integrity, but it can have the effect of intimidating eligible voters, prevent them from casting their ballots, or otherwise disrupting the voting process.⁴⁹

B. State Differences in Accessibility to the Right to Vote

It is more and more a reality that there exists a great deal of diversity across the country with respect to voter registration and accessibility to the voting process. Where one lives affects the ease or difficulty in voting. And the Nation's federal structure encourages this as states are afforded latitude within the confines of adherence to the Constitution to institute voter policies in their states to include voter registration, voter identification and mail ballots, as well as ex-felon voting.

1. State Variance in Voter Identification Laws

In the 2000s, voter ID as an issue began to take center stage. The Commission on Federal Election Reform (aka the Carter-Baker Commission), in 2005 made a bipartisan recommendation for voter identification at the polls.⁵⁰

In recent years, 34 states have introduced laws requiring voters to show photo identification at the polls.⁵¹ And photo identification bills have been enacted in eight states—Alabama, Kansas, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin—and passed by referendum in Mississippi.⁵²

Independent studies reviewed by the Government Accountability Office (GAO) showed mixed effects of various forms of state voter ID requirements on turnout. All 10 studies examined general elections before 2008, and 1 of the 10 studies also included the 2004 through 2012 general elections. Five of these 10 studies found that ID requirements had no statistically significant effect on turnout; in contrast 4 studies found decreases in turnout and 1 found an increase in turnout that were statistically significant.

⁴⁹ Commission on Federal Election Reform, *Federal Election Commission report*, p. 47.

⁵⁰ Center for Democracy and Election Management, *Building Confidence in U.S. Elections: Report on the Commission on Federal Election Reform*, September 2005, p. 21, available at <http://www.eac.gov/assets/1/AssetManager/Exhibit%20M.PDF>.

⁵¹ U.S. Government Accountability Office, *Issues Related to State-Issued Voter Identification Laws*, GAO-14-634: Published: Sep 19, 2014. Publicly Released: Oct 8, 2014 and re-issued February 27, 2015. The 34 states with introduced and/or enacted voter identification laws are: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.

⁵² Ibid.

2. Ex-Felon Voting Rights

In 41 of the 50 states ex-felons may vote, but there is wide variance among the states on this allowance. In two states, Maine and Vermont, even incarcerated felons may vote. In thirteen other states, former felons are allowed to vote soon as they are released from prison. The most common restriction on ex-felon voting rights withholds the right to vote until parole and/or all other terms of the sentence have been completed. Thirty-one (31) states have such provisions.

In 13 states, ex-felons may vote upon release as long as they are not on parole. In 18 states there is a similar restriction, and the restriction extends until all terms of the sentence including parole have been completed, e.g., restitution, community service. In three states, the right to vote for an ex-felon is withheld until a specified amount of time has elapsed. In Nebraska that period of time is 2 years; in Delaware and Wyoming the time period is 5 years.

Nine states have lifetime bans on ex-felons voting. In all nine of these states, however, it is possible for a person to obtain a form of clemency and have their voting rights restored. The process of clemency varies among the states. For example, in Mississippi, ex-felons are banned for life from voting, but under the state's Constitution may have their voting rights restored by a vote of two-thirds of both legislative houses. In seven other states with lifetime bans on ex-felon voting rights the clemency process is an executive decision. In four of these states, the Governor possesses the sole power to grant clemency. In Alabama, Arizona, and Nevada, executive clemency is under the authority of the state's correctional system. Florida is unique among the nine states with lifetime bans for ex-felons in that its clemency procedure resides with the state's cabinet.⁵³

In California, citizens convicted of a felony are ineligible to vote while incarcerated and on parole. Voting rights are automatically restored upon completion of parole, and citizens on probation can vote. Ex-offenders should re-register to vote.

3. Mail Ballots and Provisional Voting

Different states have established alternatives for voters to cast a ballot other than at the polls on Election Day. Most states—35 and the District of Columbia—currently provide an opportunity for voters to cast a ballot prior to the election without an excuse, either by no-excuse absentee voting by mail or in-person early voting, or both. States vary in terms of the number of days and locations provided for early voting. In addition, states, as well as whether voting is available on a weekend, and whether the state allows voters who cast an absentee ballot without an excuse to be on a list to permanently receive a ballot by mail without an excuse.⁵⁴

Under federal law, if a person comes to the polls and declares that he/she is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list

⁵³ Tennessee Advisory Committee to the U.S. Commission on Civil Rights, *The Right to Vote and Ex-Felon Disenfranchisement in Tennessee*, December 2013, pp. 14-5.

⁵⁴ U.S. Government Accountability Office, *Elections: State Laws Addressing Voter Registration and Voting on or before Election Day*, GAO-13-90R: Oct 4, 2012.

of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot.

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place.⁵⁵

III. State Compliance with HAVA

A. 2005 Memorandum of Agreement with Department of Justice

Following the enactment of HAVA, in 2005 California's initial statewide voter registration database was upgraded to the CalVoter system. CalVoter was implemented to comply with HAVA's requirement for a statewide voter registration system.

After CalVoter was online, the Secretary of State contacted the U.S. Department of Justice (Justice), which is the entity responsible for overseeing and enforcing HAVA, to determine the state's compliance under HAVA regarding a statewide voter registration database. Justice was notified that the state had in place a single list of all registered voters.

Justice, however, countered that the installed statewide system was not compliant with HAVA. Under HAVA, the statewide database of all registered voters must be accessible and connected to the state's 58 county election officials. The database also needed to be interconnected with other sources of voter information, such as state entities responsible for death notices and state correctional offices.⁵⁶ As a result, Justice determined that the state was in non-compliance with HAVA's voter database requirement.⁵⁷

The Secretary of State then entered into discussions with Justice to learn what was necessary by the state for compliance. The result of those discussions was a Memorandum of Agreement (MOA) between Justice and the State of California.⁵⁸ Under the MOA, Justice agreed to not initiate legal action to comply and the State agreed to install "bridges" between the statewide database and required reporting entities. The State also agreed to report to Justice on a monthly basis with updates regarding the status of the project.⁵⁹

⁵⁵ 52 U.S. Code § - Provisional voting and voting information requirements.

⁵⁶ Testimony of Susan Lapsley, Deputy Secretary of State, Office of the California Secretary of State, Testimony before the California Advisory Committee to the U.S. Commission on Civil Rights, Transcript, Hearing on Help America Vote Act, Los Angeles, CA, Aug. 28, 2015, pp. 36-38 (hereafter referred to as Transcript on Help America Vote Act), available at <https://www.justice.gov/crt/text-proposed-regulations>.

⁵⁷ Ibid., p.37.

⁵⁸ An "interim solution" to meet the requirements of Section 303 of HAVA for a statewide voter registration system was implemented pursuant to a Memorandum of Agreement (MOA) executed with the U.S. Department of Justice (US DOJ) – the enforcement authority for HAVA – on November 2, 2005.

⁵⁹ Ibid.

In 2013, the State Auditor completed its examination of the Secretary of State's compliance with HAVA. One recommendation from the examination was that the Secretary of State re-negotiate the MOA. The reasoning for the recommendation was that the MOA had been in effect for over six years, and the state was now close to implementing a compliant statewide voter database system.⁶⁰

According to Agency officials, the Secretary of State did act on the recommendation and reach out to Justice and held conversations with the department about re-negotiating the MOA. Justice, however, declined to re-negotiate the MOA. The position of Justice was that the agency had deferred any sort of enforcement action against the state, so the state needed to comply and implement a statewide voter database compliant with HAVA.⁶¹

Subsequent to the discussions with Justice, the Secretary of State initiated procurement for a new statewide voter database called Vote-Cal. In July 2015, the new system did test pilot programs with two counties and followed with three additional test pilot programs in October 2015.⁶² In 2016, the state gradually deployed to all 58 counties in a series of six "waves."⁶³

B. State Auditor Report on State Compliance with HAVA

The Bureau of State Audits investigates the financial management and effectiveness of state government agencies. This investigation includes audits that examine whether state agencies and programs are accomplishing what they were created to do; whether they are obeying the law; and whether state resources are being used properly. The California State Auditor's staff conducts their reviews in a nonpartisan manner, free from outside influence, including that of the Legislature, Governor, and the subjects of their audits and investigations.⁶⁴

In 2013, the State Auditor released a report on the state's compliance with HAVA.⁶⁵ As reported by the Auditor, HAVA provided more than \$380 million in federal funding to California to help improve the state's administration of elections by complying with requirements that are set out in three different sections of the Act. These three sections provide funding for activities such as educating voters, training election officials and poll workers, replacing punch card voting systems, and complying with HAVA Title III (Title III) requirements to include the development and deployment of a statewide computerized voter registration list.⁶⁶

A significant problem noted in the audit was that the state had not effectively spent HAVA funds for new voting systems. Specifically, over \$22 million in HAVA funds have been spent on

⁶⁰ California Auditor's Report 2011-2012, Aug. 2013, p.36, available at <http://www.bsa.ca.gov/pdfs/reports/2012-112.pdf>.

⁶¹ Testimony of Susan Lapsley, Transcript on Help America Vote Act, pp. 37-38.

⁶² California Secretary of State, Elections Division, at <http://www.sos.ca.gov/elections/voter-registration/votecal-deployment-status>.

⁶³ Ibid.

⁶⁴ AllGov California http://www.allgov.com/usa/ca/departments/independent-agencies/bureau_of_state_audits?agencyid=212

⁶⁵ California State Auditor, *Secretary of State: It Must Do More to Ensure Funds Provided Under the Federal Help America Vote Act Are Spent Effectively*, Report 2012-112, August 2013 (hereafter Auditor HAVA report).

⁶⁶ Ibid., Executive Summary.

replacing voting systems with new systems that counties and voters cannot fully use.⁶⁷ Speaking to this concern, Elaine Howle, California State Auditor, said:

As of June 30 of 2012, the State of California still had \$130 million in HAVA money available, but it was tied up because ... the State had not deemed itself compliant with Title III. Again, that is money the Legislature could have engaged in the process and provided some of those funds at the local level for training, for improving (voting) systems, those sorts of things. So we really felt that that was something the Secretary of State's Office needed to be pro-active about and reach out of to the Department of Justice and try to work with them to modify the agreement that they had entered into a few years before. The status of that, the Secretary of State's Office listened to us.⁶⁸

The audit also noted that there appeared to be a lack of clarity by the state regarding buying voting systems and the manufacture of them, and what standards are applied by the Secretary of State for voting system approval. State law has required the Office to develop regulations that define this process since 1994. A survey of all 58 California counties found that a number of counties needed additional funding to replace their voting systems, and some county officials expressed concern about the process for voting system approval, highlighting both the conflicting guidance regarding which systems can be used and the lack of vendors developing new voting systems.⁶⁹ Addressing this issue, Howle said:

One of the things we asked the Secretary of State's Office and...the County Registrar's was: "Is it clear what the expectations are?" What we found was the answer to that was "No," even though there was a statutory requirement in California State Law that there be specific voting standards and standards for the elections process and voting equipment and systems.... There needs to be very specific expectations laid out in regulation, and do that through a public process so the County Registrar's, the public can be engaged in that process. So once those regulations are established, everyone across the state -- vendors, citizens, county registrars -- understand what is expected as far as what a voting system should look like, what kind of capacity, functionality that system should have....

What the Secretary of State's Office was required to do (dates) back to when this statute was enacted in 1994. So it had been a long time to establish (such) regulations. And the Secretary of State's Office took this recommendation very seriously and ...started the rule-making process not long after our audit report went public in August of 2013. I am happy to announce, and I have to give the Secretary of State's Office credit, they completed the regulatory process, went through the appropriate state agency in Sacramento, and those recommendations became effective this year, April 1st of 2015.⁷⁰

⁶⁷ Ibid.

⁶⁸ Testimony of Elaine Howle, Transcript on Help America Vote Act, p. 13.

⁶⁹ Auditor HAVA report, Executive Summary.

⁷⁰ Testimony of Elaine Howle, Transcript on Help America Vote Act, p. 7.

A third issue raised by the Auditor concerned the state's implementation of the National Voter Registration Act of 1993 (NVRA).⁷¹ A key component of this law—sometimes referred to as the “Motor Voter” law—is the requirement that an application submitted for a driver's license simultaneously serve as an application to register to vote for an eligible citizen. However, visits by the Auditor to some California Department of Motor Vehicles (DMV) offices found that the driver's license application did not act as a simultaneous application for voter registration as required by law.⁷² Howle noted for the Committee that the State of California must address this issue.

The Secretary of State's Office needs to engage with the Department of Motor Vehicles and...figure out what we need to do to be able to accomplish this and allow it to be simultaneous. Because the intent of NVRA is to allow people (some ease) to register to vote. If you're going to register your car, you're going in to get a driver's license or ID card, you should be able register to vote very easily. And actually, it should be something that you do not even realize. It is a simultaneous process. So the recommendation that we made in the audit report to the Secretary of State's Office was to work with the Department of Motor Vehicles and develop a new process that would allow Californians to go into their local DMV, conduct business, and then, if they so choose, register to vote simultaneously with whatever transaction they were engaging in. In the response to our initial report and as they have provided status updates, the Secretary of State's Office, has reiterated that they really do not have a lot of control over the DMV.⁷³

On October 10, 2015, the Governor signed into law a measure that will register citizen voters through the DMV. Under the program, after the Secretary of State certifies that certain enumerated conditions are satisfied, the DMV is required to electronically provide to the Secretary of State the records of each person issued an original or renewal of a driver's license or state identification card or who provides the department with a change of address, as specified. The person's motor vehicle records would then constitute a completed affidavit of registration and the person would be registered to vote, unless the person affirmatively declined to be registered to vote during a transaction with the Department or the Secretary of State determines that the person is ineligible to vote.⁷⁴

California joins Oregon as the second state in the nation opting to register voters through its Department of Motor Vehicles. The California New Motor Voter Act, AB 1461, was sponsored by Secretary of State Alex Padilla and jointly authored by Assembly members Lorena Gonzalez (D-San Diego), Luis Alejo (D-Salinas), and Kevin McCarty (D-Sacramento).

Howle concluded by telling the Committee that many of the Audit's recommendations have been fully implemented by the Secretary of State. And with respect to voter registration, she said the audit found that although the state may have met the minimum requirements for designating voter registration agencies under the NVRA, it should designate more agencies:

⁷¹ 52 U.S.C. § 20501 - 52 U.S.C. § 20511) (formerly 42 U.S.C. §§ 1973gg–1973gg-10).

⁷² Auditor HAVA report, Executive Summary.

⁷³ Testimony of Elaine Howle, Transcript on Help America Vote Act, p. 15.

⁷⁴ Assembly Bill No. 1461 at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160.

The last issue in the audit report that we talk about is designating additional agencies (in addition to the DMV) that can assist people who may want to register to vote. Back in 1994, Governor Wilson issued an Executive Order, identifying specific state agencies...One we identified specifically was unemployment offices. We felt that would be a location where there would be a lot of interaction with the public. The only agency that I know that, subsequent to our audit, has been identified as an agency to assist is Covered California. There are millions of people who have gone to the website who have enrolled in (health) insurance coverage through the exchange. So that was a good decision, by the Secretary of State's Office and has been a positive result for the state.⁷⁵

C. California Secretary of State Comment on Election Administration

The Elections Division of the Secretary of State oversees all federal and state elections within California. In every statewide election, California prepares voter information pamphlets in 10 languages for nearly 18 million registered voters. As the Chief Elections Officer for the largest state in the nation, the California Secretary of State tests and approves all voting equipment for security, accuracy, reliability and accessibility in order to ensure that every vote is counted as it was cast.⁷⁶

The Secretary also ensures election laws and campaign disclosure requirements are enforced, certifies the official lists of candidates for elections, tracks and certifies ballot initiatives, compiles election returns and certifies election results, educates California citizens about their voting rights, and promotes voter registration and participation. HAVA was signed into law by President Bush to address irregularities in voting systems that came to light in 2000, and under HAVA, as previously noted, the office is pursuing the development of a statewide database of all registered voters that is connected and accessible to local election officials and the voter.⁷⁷

1. Statewide Voter Registration Improvement Efforts: Database

The Secretary of State is pursuing the new VoteCal system to replace the older CalVoter system. When finalized in 2016, VoteCal will replace the current California voter registration database and provide a single, uniform, centralized voter registration database connecting the Secretary of State and all 58 county elections offices together. The new system intends to improve the voter registration process, provide a publicly available website which will allow voters to register online, and provide a single, official statewide database of voter registration information.⁷⁸ Susan Lapsley representing the California Secretary of State, told the Committee:

HAVA requires in Section C, that the state set up and maintained a computerized statewide voter registration list, including the name and registration information of every legally registered voter in the state. The statewide list must be the official list of all registered voters for said elections, and must be connected with other state

⁷⁵ Testimony of Elaine Howle, Transcript on Help America Vote Act, p. 18.

⁷⁶ Secretary of State, Elections Division, at <http://www.sos.ca.gov/administration/about-agency>.

⁷⁷ Ibid.

⁷⁸ Ibid.

agency databases to assist state and local officials in keeping them accurate and up to date. The state system must also provide a functional interface for counties because counties in California are the ones who administer elections.⁷⁹

While the Secretary of State is responsible for the oversight of elections, it is really the 58 counties that administer elections. So in order to have a functional statewide system, we need to connect in with each of the 58 counties. So California has actually had a statewide system since 1995. Secretary Bill Jones established a statewide system at the time to look for duplicates and act as a tool for counties to be able to look at a comprehensive list. It was very rudimentary. Secretary Jones got no money to do it hardly. So it was kind of done in-house, and it was not a very robust system. Since 1995, that system was upgraded at times. However, it was done in 1995, so at this point, that was old technology. So Cal-Voter is currently the statewide system of record. We're moving towards Vote-Cal, and we anticipate having that in place and becoming the system of record by June of 2016.⁸⁰

We are very close as of this speaking. There are currently seven counties that are live on Vote-Cal and five more, hopefully going live (shortly). The Vote-Cal project itself has seven phases. There's a planning, design, development, testing, pilot, and then deployment and maintenance operation. We have completed 3 of the phases. We're also done with the fourth phase, which is the testing phase. We just have one piece. I anticipate with that phase 4, we will be done with it, hopefully, in the next two weeks.⁸¹

We are also in the pilot phase. Counties I talk to that are live on this system are part of this pilot phase. We actually have started the deployment. Deploying these counties takes a lot of training, changes to their databases, changes to ours, productivity. So it's taken --like L.A. County, they're scheduled to go live in March of 2016. We've already started the process of bringing them aboard two weeks ago. So it's underway. And then the last phase is maintenance and operation of the system. So that's just the ongoing maintenance and continuing operation of the system. So that's where we're at with the statewide voter registration system.⁸²

California is taking steps to advance such policy positions with same day registration which take effect once the statewide VoteCal database is fully implemented and certified as the official record of voters in the state. Provisional Ballot elements reflect a policy decision in California to allow for convenience voting and options that support voter participation that are administratively burdensome, but that compensate for the technical and regulatory inadequacies that are being addressed with the statewide database.

2. Improvements to Voter Registration

⁷⁹ Testimony of Susan Lapsley, Transcript on Help America Vote Act, pp. 36-37.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

The California Advisory Committee also heard about the commitment of the Secretary of State to increasing opportunities for California to participate in our democratic process. In recent years, there has been low voter turnout. The Secretary of State is seeking to identify remedies to that issue insofar as California has the opportunity to think differently about the election process. Steve Reyes, General Counsel, Secretary of State, discussed some of the initiatives by the Secretary of State to improve citizen access to voting.

In 2012, we went online with the California Online Voter Registration Website. For those who are not familiar with it, it's a new powerful tool to allow people, from their homes to their phone. To date, 1.8 million people have availed themselves of that choice. You can register for the first time. You can change background. You can change voter preferences, language preferences, political party preferences. Anything that is on that registration form can be changed.. In one month, I add that 800,000 people registered to vote for the first time, and a third of them were under 25. So that's providing an ongoing tool that exists.⁸³

With respect to voter registration, the Secretary has sponsored legislation that is designed to modernize our registration system when Californians interact in person or online or by mail with our Department of Motor Vehicles. That was the legislation that the state auditor was referencing, AB1461, which she described, and is true, has been moving very smoothly and quickly through the legislative process.⁸⁴

In addition to voter registration reforms, Reyes discussed other voting administration improvements that were under consideration by the Secretary of State. These improvements included the establishment of voting centers and upgrading old and obsolete voting machines.

Secretary of State Padilla has announced that he and his staff are working with the governor and our legislative leaders to help identify additional funding for new, modernized voting systems. As you may have heard, there have been a number of systems that are now reaching their end-of-life term. So they are at the final stages of usefulness. We want to make sure that we can provide a means for counties and folks to pay for and implement new voting systems in the State of California. Of course, that depends on funding to allow us to work with our counties to make sure they can identify systems that are appropriate and work for their particular needs. So Californians, we're heading toward a big election year.⁸⁵

Secretary Padilla has also been working closely with our county election officials and partners to introduce legislation on vote centers, which is a concept that would help modernize and think differently a little about the way we cast ballots. The idea behind vote centers is that you would have these community vote centers in various parts of a jurisdiction to allow folks, perhaps two weeks before an election, to cast ballots anywhere within the county. So no longer are you going to be tied

⁸³ Testimony of Steve Reyes, General Counsel, California Secretary of State, Transcript on Help America Vote Act, pp. 29-30.

⁸⁴ Ibid., p. 30.

⁸⁵ Ibid., p. 73.

necessarily to that polling place in your neighborhood. But you can go somewhere that is convenient to your work, where you drop your kids to school, and where you run your errands. These type of systems will allow folks to cast ballots there, vote by mail, drop off their ballots, drive up and drop off their ballots in vote drop-off locations as well.⁸⁶

IV. Election Administration in Los Angeles County California

A. Voter Responsibility of Los Angeles County Clerk and Registrar

The Los Angeles County Registrar's Office is responsible for the registration of voters, maintenance of voter files, conduct of federal, state, local and special elections and the verification of initiative, referendum and recall petitions. In January 1968, the Departments of Registrar of Voters and County Recorder were merged by the Board of Supervisors and further merged with the County Clerk in January 1991.⁸⁷

Los Angeles County is the largest electoral jurisdiction in the country, with a population of nearly 10 million residents. The county spans 4,083 square miles, and includes 88 cities, as well as hundreds of municipal school and special districts. Each year, the office participates in approximately 200 elections for schools, cities and special districts. There are approximately 4.8 million registered voters, as well as 5,000 voting precincts established for countywide elections.

To place the immensity of the county in context, Dean Logan, Registrar-Recorder County Clerk for Los Angeles County, told the Committee that the county's electorate is larger than that of 42 of the 50 states in the country and reflects a greater cultural, economic, and demographic diversity than in any other electoral jurisdiction in the country. Additionally, the community served by the Los Angeles County registrar is highly mobile and current registration processes necessitate an individual having to complete a new registration form each time they have a change in residency.⁸⁸

The Census reports that in 2014, the population of persons 18 and over—that is the number of persons of voting age—was 7,810,096. Of those, 4,544,455 million (58.2 percent) are registered voters. The actual voter participation rate in the county has not been high in recent years. In the 2014 mid-term elections, 1,518,835 persons voted. This is a participation rate of 33.4 percent.⁸⁹

The 2014 mid-term election also prompted a media report of persons voting multiple times. In response to the report, an audit of voter registration records in Los Angeles County following the 2014 election found a few dozen voters with duplicate registration records, but did not find any cases where people had actually voted twice in the same election. County supervisors had asked for a review of voter records after KNBC News reported in November that at least 442 people—

⁸⁶ Ibid.

⁸⁷ Los Angeles County Recorder-Registrar/County Clerk, at <http://www.lavote.net/about-us/background>.

⁸⁸ Testimony of Dean Logan, Transcript on Help America Vote Act, p. 51.

⁸⁹ Table 2.

and possibly as many as 52,000—were registered to vote more than once in the county registrar’s system.⁹⁰

The Los Angeles County Auditor-Controller office reviewed a sampling of 100 voters with possible duplicate registrations. Many of the duplicate registrations were found to have been in the system for three or four years. Records from the registrar initially showed that three people had voted twice in a recent election, but a further review showed that there was not duplicate voting but rather registrar staff mistakes in entering voter information.⁹¹

Table 3: Los Angeles County, California—Adult Population, Registered Voters, Number of Voters in 2014 Elections, 2014 Voter Participation

	Number/percent
Adult population--persons 18+ years of age	7,810,096
Number of 18+ population registered to vote	4,544,455
Number of voters in 2014 mid-term election	1,518,835
Voter participation in 2014 mid-term elections	33.4

Source: California Advisory Committee from Census data and Los Angeles County Recorder-Registrar data.

B. Comment on Election Administration by Los Angeles County Registrar

Dean Logan told the Committee that he came prepared to discuss with the Committee issues regarding: (1) the establishment of a voter registration database, (2) duplicate voter registration and voting, (3) provisional voting, and (4) election official training.⁹² With respect to the establishment of a voter registration database, a system should be in place for testing by the end of 2015. As to voter rolls, identifying duplicate records in a database of 4.8 million records is one of the more challenging processes for the county registrar office. Regarding provisional voting, it is to allow an unverified registered to vote. And the County’s election training section works to deliver effective election training to election day workers.

1. Establishment of a Statewide Voter Registration Database

A requirement of HAVA is that each state must establish a statewide voter registration database to include the name and registration information for every registered voter within each states, and to assign a “unique identifier” to each voter.⁹³ The list is to be coordinated with other agency databases within each state, and accessible electronically to local election officials. Logan told the Committee:

⁹⁰ Abby Sewell, Los Angeles Times, *County audit finds duplicate voter records but no one who voted twice*, Feb. 9, 2015 at <http://www.latimes.com/local/lanow/la-me-In-voting-record-audit-20150209-story.html>.

⁹¹ Ibid.

⁹² Ibid.

⁹³ HAVA, § 303(a).

Los Angeles County, through its legislative advocacy, and my department, through its participation in national and statewide associations, is actively involved promoting the completion and implementation of (a) functional and robust statewide database.... Los Angeles County is slated for testing and implementation of the new system following the November 2015 local election. We already have a cross functional team from my office and the Secretary of State's Office, working on data readiness and preparing for that transition.⁹⁴

In addition to working in partnership with the Secretary and other counties in California, L.A. County continues to advocate California's participation in interstate data exchanges to both improve voter list maintenance and to better identify eligible unregistered citizens for outreach and education. In anticipation of the completion of the new statewide database and further enhancement to update and modernize the voter registration process, L.A. County is continuing our efforts to enhance, improve and expand voter filing and maintenance and promote access to voter registration services through community outreach and education programs.⁹⁵

2. Duplicate Voter Registration in Los Angeles County

The custody and maintenance of the county's 4.8 million voter records is the core function of the Registrar-Recorder County Clerk, and involves myriad processes and activities associated with ensuring that eligible citizens who have registered to vote are properly assigned to the appropriate jurisdiction and are provided information essential to their ability to exercise the voting franchise. Logan first told the Committee:

Our voter compilation is of numerous records from households that including members who have the same name as well as records with common names and birth dates, but different addresses and state identification numbers. It can be quite difficult to determine with certainty whether two records are associated with the same person. Additionally, the community we serve is highly mobile and current registration processes necessitate an individual having to complete a new registration form each time they have a change in residency. And that gets further complicated with the frequency of elections, and we have a proliferation of elections in Los Angeles County.⁹⁶

He later noted:

To address these challenges, the county conducts routine list maintenance activities that identify and update invalid or inactive records while also assuring a high degree of confidence in avoiding false/positive matches that could impinge on voter's rights. That said, the county has made significant strides in enhancing and

⁹⁴ Testimony of Dean Logan, Transcript on Help America Vote Act, pp. 51-52.

⁹⁵ Ibid., p. 52-53.

⁹⁶ Ibid., pp. 53-54.

improving our voter file maintenance. This includes the development of a number of customized data-matching algorithms to identify potential duplicate records.⁹⁷

Logan described the importance of the official voter file as well:

The official voter file, however, is not merely a mailing list or marketing file. There is nothing more threatening to the integrity of our democratic process than administrator disenfranchisement. And we've seen examples of incomplete data matching and purges in other states that have demonstrated that such attempts negatively impact the sense of fairness and equality that is so critical to elections.⁹⁸

He also stated that the Department took additional steps to ensure voter data integrity:

Demonstrating our commitment to these efforts, the Department established a full-time unit within our Voter Records Research and Integrity Section to review the reports from the queries, and to perform regular and consistent voter file activities. As a result of these enhanced and customized queries, over 82,000 records were identified for review, resulting in the cancellation of more than 37,000 records as a result of those records.⁹⁹

Finally, Logan detailed the process for identifying and handling potentially duplicative records:

In all of these queries and list maintenance activities, records were identified in every category that looked very much to be a match. But after further research, turned out not to be duplicate records. It is a very tedious process, but we have to be careful that we are not removing records of people who are active and have the legal ability to cast a vote. The same thing is true with duplicate records. As one example, (the query showed) two voters at the same address with the same exact date of birth. Same first name; different last name. This certainly would be a record that you would flag that looks like a duplicate. However, when we looked further, these voters had different social security numbers and different DMV records. So they are not, in fact, the same.¹⁰⁰

3. Provisional Voting in Los Angeles County

In general, provisional ballots serve two broad purposes in California. The first—consistent with HAVA—is that it serves as a failsafe mechanism to ensure that an individual whose status as a registered voter cannot be verified is still able to cast a ballot, that is then held pending verification. The second is the use of provisional ballots to allow voters to vote at sites other than their assigned polling place. Logan told the Committee:

Provisional ballots ensure that an individual who appears to vote and their status as a registered voter cannot be verified on the spot is still able to cast a ballot that is

⁹⁷ Ibid., p. 54.

⁹⁸ Ibid., pp. 58-59.

⁹⁹ Ibid., p. 56.

¹⁰⁰ Ibid., p. 57.

then held for processing, pending verification of their eligibility and confirmation of their registration status as part of a post- election canvas. The second, which is more unique to California or the western part of the United States, is using provisional ballots in a manner that's characterized as 'convenience voting', where registered voters appear to vote at a location other than their assigned polling place or where they've been issued a vote-by-mail ballot. They choose to go to the polling place, but then they do not have their vote-by-mail ballot. In those cases, the voters were issued provisional ballots. The latter category has resulted in a trend of increased numbers of provisional ballots in recent elections, in some cases trending at or around 10 percent of the ballots cast in the election.¹⁰¹

Logan also addressed the positive impact that changes to conditional election-day voter registration could bring for voters:

California is positioned to see improvement in this area through the authorization and implementation of conditional election day voter registration. Those services will be available to voters in the first election cycle following the implementation of the statewide database. Once that is in place, voter will have the ability to update their registration records or complete the registration process at the time of voting, thus decreasing the likelihood of casting personal ballots.¹⁰²

4. Election Official Training in Los Angeles County

Training is conducted for election day workers to prepare them for the critical functions they conduct on election day. Such training must meet the needs of voters with respect to information about ballots and voting equipment, Federal and state law with respect to ensuring eligibility to vote, and equal access to voting for persons with disabilities and limited English speaking ability. Logan told the Committee:

Los Angeles County is committed to delivering effective election training to election day workers for federal, state, local and special elections. The County's training section conducts more than 500 classes at various facilities and locations throughout the county leading up to each election. Training is conducted for over 23,000 election day workers to prepare to perform the critical functions that we rely upon them for on election day.¹⁰³

He also provided additional information about the types of training that are available:

There are several different types of training that are offered. These trainings consist of hands-on training, by presentations, scenario-based videos, written training, manuals, handouts, and job cards. And this training begins one month prior to and continues through the weekend prior to the election.¹⁰⁴

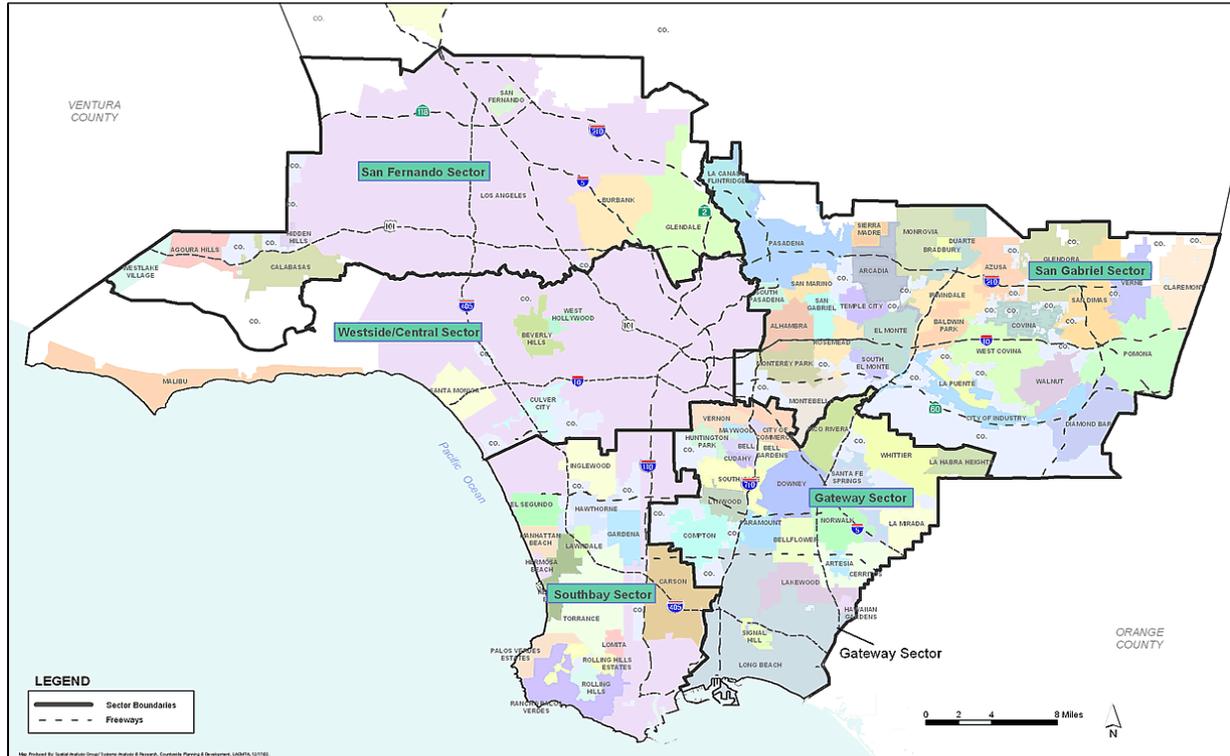
¹⁰¹ Ibid., pp. 58-59.

¹⁰² Ibid., pp. 60-61.

¹⁰³ Ibid., p. 62.

¹⁰⁴ Ibid.

Figure 1: Map of Los Angeles County California



Source: Google maps

(With respect to limited English voters), according to the 2010 U.S. Census Data, 57 percent of Los Angeles County residents speak a primary language other than English, and 26.4 percent assess their own speaking ability in English at less than very well. Under provisions of the Federal Voting Rights Act, Minority Language requirement, the county must provide written election material in 10 languages, including English and provide bilingual poller systems in at least four additional dialects.¹⁰⁵

Logan also discussed the growing demographics of persons with disabilities in L.A. County:

Additionally, based on the 2007 Los Angeles Health Surveys, 19.6 percent or 14.6 million voting-aged adults in the county reported having a disability. And residents over the age of 65 are among the fastest growing demographics in the country. Given these demographics in our jurisdiction, L.A. County in 2013 produced comprehensive reports describing the numerous services provided to voters with primary language other than English and for voters with disabilities and specific needs.¹⁰⁶

¹⁰⁵ Ibid., p. 64.

¹⁰⁶ Ibid.

In addition, Los Angeles County hired IDEO to create a voting system that offers contemporary experiences and equal access for all. The County hopes to switch to the new machines in time for the 2020 presidential election. After the 2008 election drew record numbers to the polls, county election officials decided it was time to replace the county's obsolete machines. IDEO has developed a touch screen system that incorporates features familiar to voters used to scrolling and tapping.¹⁰⁷

V. Election Administration in San Diego County California

A. Voter Responsibility of San Diego County Clerk and Registrar

The San Diego County Registrar of Voters (ROV) is entrusted with providing the means for all eligible citizens of San Diego County to exercise their right to actively participate in the democratic process. The Department works to ensure widespread, ongoing opportunities to register and vote in fair and accurate elections for all federal, state and local offices and measures. The ROV is also responsible for providing access to the information needed for citizens to engage in the initiative, referendum and recall petition processes and is the main repository for all County, school district, and special district campaign finance disclosure statements.¹⁰⁸

The Census reports that in 2014, the population of persons 18 and over in the County—that is the number of persons of voting age—was 2,535,686. Of those, 1,546,924 million (61 percent) are registered voters. The actual voter participation rate in the county has been high in recent years. In the 2014 mid-term elections, 692,434 persons voted for a participation rate of 44.9 percent.¹⁰⁹ This was a noticeably higher rate than observed in the three nearby counties of Los Angeles (33.4 percent), Orange (Riverside (40.1 percent), and San Bernardino (34.4 percent).¹¹⁰

The County Registrar-Recorder is responsible for the conduct of federal, state, and local elections, as well as for the verification of initiative, referendum and recall petitions and the receipt of county, school and special district campaign financial disclosure statement. To illustrate the challenges facing the County Registrar-Recorder, in the 2014 mid-term election, the office was responsible for 1,432 voting precincts on election day and processed 91 voter petitions (2 statewide petitions, 2 local petitions, and 87 candidate petitions) and 24 ballot propositions (6 state and 18 local).¹¹¹

Although generally holding problem-free elections, similar to many other jurisdictions, San Diego County has reported voting machine problems. In many parts of the country, voting machines in use today were purchased with HAVA funds. Inspectors and regulators have subsequently discovered dozens of security flaws in different types of machines. For example, in 2008, a Princeton University group found that it only took about seven minutes to hack into an

¹⁰⁷ Bloomberg Businessweek, L.A. tackles a national disaster: voting machines, July 13-July 19, 2015, pp. 22-3.

¹⁰⁸ San Diego County Registrar of Voters, <http://www.sandiegocounty.gov/content/sdc/info/bythenumbers/rov.html>.

¹⁰⁹ See Table 2.

¹¹⁰ Ibid. Orange County, directly north of San Diego County had a similar participation rate of 44.9 percent.

¹¹¹ San Diego County Registrar of Voters, <http://www.sandiegocounty.gov/content/sdc/info/bythenumbers/rov.html>.

AVC Advantage voting machine—currently used in over 90 counties, and plant malware to steal votes from one party and give them to another.¹¹²

In 2007, a comprehensive California review uncovered serious weaknesses in the software architecture of a number of voting machines. One machine was the Diebold AccuVote TSX, which is currently in use in over 400 counties nationwide. San Diego County was one jurisdiction that felt the effects of that decision. Roughly 10,000 AccuVote TSX touchscreen machines were purchased by San Diego County for \$25 million dollars. They are now sitting shrink-wrapped in a warehouse, and the County has since switched to optical scan ballots and has had to make the system work with a limited supply of such ballots.¹¹³

Table 4: San Diego County, California—Adult Population, Registered Voters, Percent Registered Voters, Voters in 2014 Elections, 2014 Voter Participation

	Number/percent
Adult population--persons 18+ years of age	2,535,686
Number of 18+ population registered to vote	1,546,924
Number of voters in 2014 mid-term election	692,434
Voter participation in 2014 mid-term elections	44.9%

Source: California Advisory Committee from Census data and San Diego County Recorder-Registrar data

B. Comment on Election Administration by San Diego County Registrar

Michael Vu, Registrar-Recorder for San Diego County, told the Committee that his office, like other counties, is working with the Secretary of State to develop a reliable and efficient statewide voter database. In the meantime, the public expects the county’s voter database to be accurate and up-to-date. With respect to provisional voting, state law initiated the voting provision to allow a person registered within the County the right to cast a provisional ballot anywhere within the County, which is not the case in all states. San Diego County recruits up to 7,000 volunteers to serve as poll workers for statewide elections, and the County engages in a “train-the-trainer” model to provide expert and consistent training across the County.

1. Establishment of a Statewide Voter Registration Database

When completed in 2016, VoteCal will replace the current Cal-Vote California voter registration database and provide a single, uniform, centralized voter registration database that meets HAVA requirements. It is anticipated that the new system will connect the Secretary of State’s office and all 58 county election offices together providing a single, official statewide database of voter registration information.¹¹⁴

¹¹² Michael Keller, Aljazeera America, *Voting’s Impending Crisis—with US voting machines aging, states have few funds to replace them*, at <http://america.aljazeera.com/multimedia/2014/9/voting-s-impendingcrisis.html>.

¹¹³ Ibid.

¹¹⁴ California Secretary of State Alex Padilla, VoteCal Project, at <http://www.sos.ca.gov/elections/voter-registration/votecal-project>.

VoteCal was to begin implementation in 2015 with five pilot counties (El Dorado, Mendocino, Orange, Sacramento, and Solano). The remaining counties are grouped into a series of “waves”, and monthly wave deployments will occur from October 2015 to March 2016. After VoteCal is deployed to all counties and VoteCal is working correctly, VoteCal will be declared the official system of record for voter registration in the State, which is expected to occur in June 2016. Regarding VoteCal, Michael Vu told the Committee:

The Secretary of State’s team and our local election management are working in concert with San Diego County to provide the necessary support to migrate into our new Vote-Cal system. This includes ensuring the necessary hardware and software are in place and that it is well-tested to actively interact and reflect the status of every registered voter in the state. For those who are currently in the middle of their deployment, inasmuch as it is important to comply with this section of HAVA, it is equally as important that its implementation is right. So there should be caution in exercising it. The Secretary of State Padilla and his team have demonstrated that they are moving with character to achieve both goals.¹¹⁵

2. Duplicate Voter Registrants in San Diego County

The San Diego County Registrar-Recorder is responsible for maintaining a database of 1.4 million voter records. The number of persons in the County’s database is larger than the total population of 11 states. Most of the legal obligation for list maintenance activity is covered by NVRA, not HAVA. Michael Vu told the Committee:

The San Diego County database of 1.4 million registered voters is... highly regulated by Federal and State laws. In fact, the majority of the list maintenance activity is covered by the National Voter Registration Act, not HAVA. And (in accordance with that act election officials are) to err on the side of keeping voters on the list of registered voters. So we are extra careful not to inadvertently disenfranchise the voter because of being overly aggressive and removing voters without going through channels spelled out in NVRA.¹¹⁶

On the other hand, the public and ourselves expect that our database is as up to date as possible. And so, again, we have an extensive program in place to ensure proper maintenance list efforts. These include the Secretary of State’s Office sending us monthly duplicate records and deceased records for us to verify. To give you an idea of the number of records we are processing in San Diego, we analyzed a nine month window of maintenance and registration activity and over 515,000 records were received from government entities and voters during this time frame.¹¹⁷

Our local County Health Department sends monthly and electronic lists of those that have passed away in the county for us to view and take action as appropriate. We run duplicate checks on the registration file on a quarterly basis. On a daily basis we receive information of county voters who have registered in another

¹¹⁵ Testimony of Michael Vu, Transcript on Help America Vote Act, pp. 73-74.

¹¹⁶ Ibid., p. 80.

¹¹⁷ Ibid., pp. 82-83.

jurisdiction. We receive information from family members notifying us that a person is no longer a registered voter within the county.¹¹⁸

We run national change-of-address comparisons before each election in order to have the most updated information. And pursuant to NVRA, any mailed ballot or sample ballot or voter information pamphlet triggers affordable confirmation card process to be sent to the voter. And the voter is then placed on inactive status. Should the voter have no activity for two general elections, we are able to cancel them from the voter rolls. Finally, we receive daily Department of Motor Vehicle registration updates, and these are supplied on a weekly basis.¹¹⁹

As I have mentioned before, when a person registration to vote, there is a feedback to safeguard their right to be registered to vote and our ability to maintain the files. And this happens in every single county, across all 58 counties, when a person re-registers to vote that triggers a process of that record. We automatically provide feedback known as that voter notification card. We send it to the registered voter at their address. If that card comes back undeliverable, then we have the ability to act on it and put them on inactive status. If we do not receive that card back, they will remain on the active status.¹²⁰

3. Provisional Voting in San Diego County

California was the first state in the nation to introduce the safeguard whereby a person registered within the county has the ability to cast a provisional ballot anywhere within the county and have his/her vote on count. Michael Vu told the Committee:

To give you some idea as to the numbers in San Diego County in the 2012 presidential general election, 103,004 individuals voted a provisional ballot and 87 percent or 89,686 of the ballots were partially or fully counted. In last November's 2014 gubernatorial general election 35,651 provisional ballots were cast and 93 percent or 32,967 were partially or fully counted. In both elections, the main reason for not counting the ballot was the result of individuals not being registered to vote within the county.¹²¹

Although provisional balloting is a safety net instituted across the country, it should be seen and used as a measure of last resort, an exception rather than the rule for a number of reasons. We highly encourage vote within their assigned precincts so they are assured they will be able to vote on all contents in which they are eligible. As Mr. Logan had mentioned, we share the same things. We want all voters to be able to cast all the content that they are eligible to. As an example, due to the number of contested political jurisdictions that overlap San Diego County, there are 569 different versions of the official ballot during the November 2014 electoral general election. The Voter who visits an unassigned voting place will most likely

¹¹⁸ Ibid., p. 81.

¹¹⁹ Ibid., p. 82.

¹²⁰ Ibid.

¹²¹ Ibid., p. 70.

vote on a difference set of content that had she or he gone to their assigned polling place.¹²²

We encourage voters to vote in their voting precincts so that they will have a good voting experience. When a voter is not voting at their assigned voting precinct, it takes more time for them to issue the ballots, and more time get their ballots counted. Additional time by coworkers to serve a voter may, in turn, contribute to longer lines at a polling place, particularly during IT voting. Finally, voters are encouraged to vote at their assigned voting place. This reduces the amount of time and cost associated with verifying and validating provisional ballot.¹²³

4. Election Official Training in San Diego County

San Diego County recruits up to 7,000 volunteers to serve as poll workers for statewide elections. Poll workers are schooled by vetted trainers, who themselves must have successfully completed a three-week intensive course to learn all aspects of election day procedures and management practices at the polls. Michael Vu told the Committee:

In order to ensure the proper administration at the polls and to ensure that every voter has the opportunity to cast, at minimum, a provisional ballot to ensure voters have a robust coworker training program. As part of their course work, coworkers are required to take a two-hour, online training course with another two-hour onsite course with our trainers. As it gets closer to election day, we open up workshops to any coworker to hone in their skills and ask questions. In addition, each coworker receives a detailed, easy to read, and reference coworker manual so they are able to study and refer to and are able to purchase should they have any questions.¹²⁴

¹²² Ibid., pp. 70-71.

¹²³ Ibid., p. 71.

¹²⁴ Ibid., p. 79.

Figure 2: Map of San Diego County California



Source: Google maps

Continuing about election worker training, Michael Vu told the Committee about the County’s “train-the-trainer” model approach, which provides both expert and consistent training across the County.

Our office conducts a train-the-trainer model, where our trainers go through a three-week intensive course to learn all aspects of election day procedures and management practices at the polls. These individuals are highly skilled, many having training background themselves. The three-week train-the-trainer course includes coverage of all election day practices and scenarios and covers the use of the poll place supplies. In this manner, we are able to create consistent training across all the training teams. At the end of the training course, it is capped with a dress rehearsal. Should a team not perform to the standards expected, they may not train coworkers. It should be noted that, since these trainers know the procedures and all the poll place election materials by then, these trainers become our coworker hotline staff on election day, making it efficient to quickly answer election day procedures by poll workers.¹²⁵

¹²⁵ Ibid., pp. 79-80.

VI. Organization and Public Comment on Election Administration

Three organizations with dedicated interest in voting systems and voting integrity were invited by the California Advisory Committee to speak at the public hearing. They were the Pew Charitable Trusts, the Election Integrity Project, and Everyone Counts. The Pew Charitable Trusts publishes an *Elections Performance Index*, which analyzes 17 key indicators of election administration. The Election Integrity Project is a non-partisan election oversight organization based in California whose members observe and research election practices and report on alleged voting irregularities. Everyone Counts is an election and voting system technology company based in San Diego, California, that provides electronic election administration technology to governments and private entities.

A. Comment on Election Administration from the Pew Charitable Trusts, Election Integrity Project, Everyone Counts, Communities Actively Living Independent and Free, and Mark Sonnenklar

1. The Pew Charitable Trusts

David Becker, Director of the Election Project for Pew Charitable Trusts, was interviewed by the Committee subsequent to the public hearing. He discussed the Trusts Elections Performance Index (EPI), and the integrity of election systems generally.

The EPI is used by Pew to evaluate key indicators of election administration, and Pew scores each state's performance by indicator and overall score. The Index itself is not an absolute score, but rather a relative measure of how states perform against each other. Pew has been issuing EPIs since 2008, and an EPI for 2014 is due to come out in the Spring of 2015. Pew releases Indices in each federal election year, so to date there have been releases for 2008, 2010, and 2012. Regarding California's low relative EIP standing in election processes in comparison to other states, the biggest thing going against the state was the lack of a look-up tool of voter rolls at the precinct level. As of 2012, precinct workers in the state did not have a look-up capability. But by 2014 that had corrected, and going forward precinct workers can look-up a voter information.¹²⁶

It is not possible to compare 2010 Indices with either 2008 or 2012 as 2010 measured a different election cycle, but it is appropriate to measure Indices between 2008 and 2012 to gauge changes in state performance. From that comparison, Pew concludes that California improved its election processes during that 4-year period, but still fell performance-wise compared to other states. In 2008, California ranked 47th among all states in election administration, and although in 2012 the state's EPI score increased to 54, the state's ranking fell to 49th as other states showed improvement. To that low ranking, I think California has some areas that should be further examined for inefficiencies in the administration of election processes. The classic area for attention is provisional ballots. Roughly one-half of all provisional

¹²⁶ David Becker, telephone interview, California Advisory Committee to U.S. Commission on Civil Rights, Sept. 17, 2015 (Record of interview on file with Western Regional Office, U.S. Commission on Civil Rights files).

ballots nationwide are cast in California. Some of that is the result of state policy, as California state law for example allows a provisional ballot to be cast if a voter comes to the wrong precinct.¹²⁷

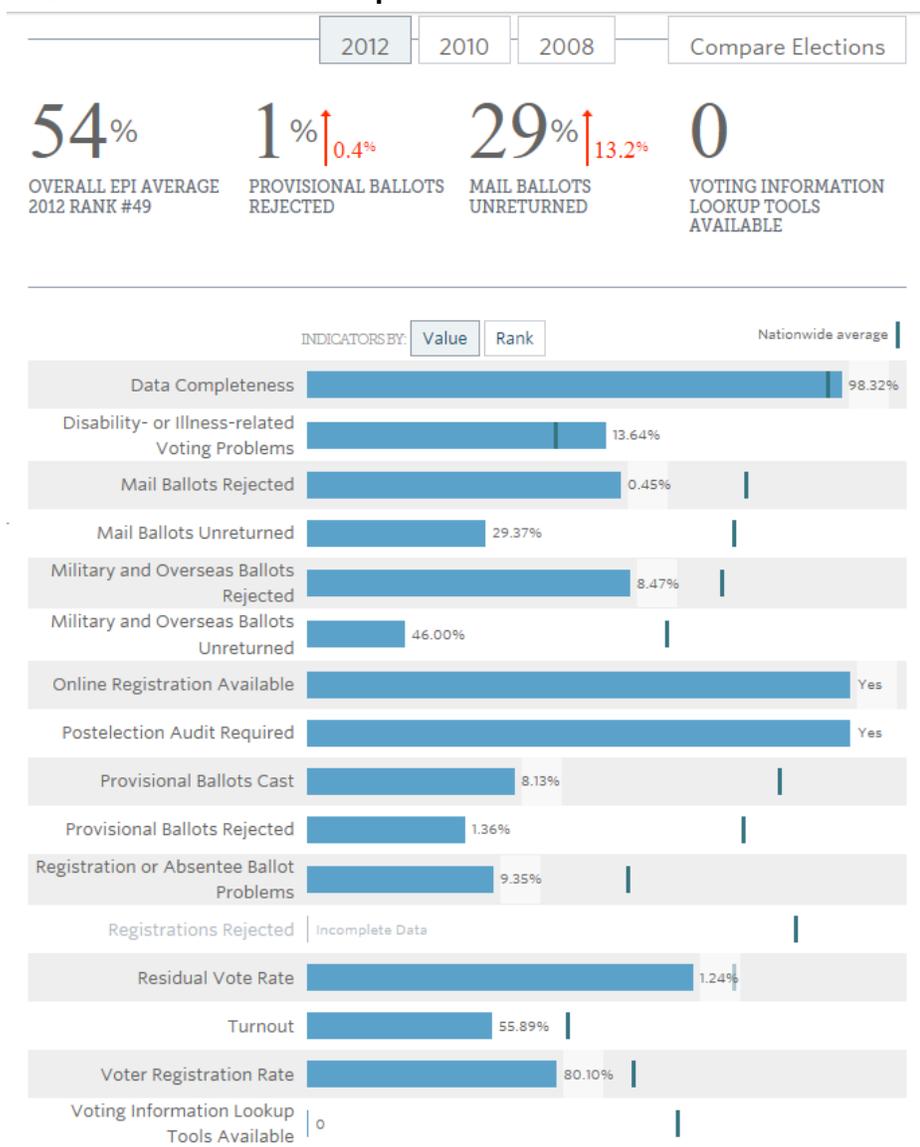
California also struggles with a fairly high percentage of provisional ballots that are rejected. One likely reason for that is the high number of “mail ballot” voters in the state.

For more than a decade, the U.S. Census Bureau’s Current Population Survey has asked nonvoters why they did not submit a ballot. This indicator captures the number of people who responded that they did not cast a ballot due to an “illness or disability (own or family’s).”

Voters with disabilities and permanently ill voters face unique challenges, such as inaccessible polling places and voting technology that is difficult to use. Federal law mandates that all polling places must generally be accessible to physically disabled voters. The Help America Vote Act of 2002 requires that at least one voting machine in each precinct be equipped for those voters.

¹²⁷ Ibid.

Figure 3: California EPI Index Graph



Source: CALIFORNIA EPI INDEX GRAPH FROM PEW CHARITABLE TRUST, 2014

If a person is identified as a “mail ballot” voter, on election day that person can only vote in person by delivering his or her “mail ballot” in person to the precinct. If the voter attempts to vote in person and the election officials see that the voter is a “mail ballot” voter, then his or her vote will be considered a provisional ballot. The provisional ballot will only count after the state ensures that the voter did not also cast a “mail ballot.” So mail ballots drive a lot of the provisional voting observed in the state.¹²⁸

Pew is also supportive of online voter registration processes. Online voter registration saves taxpayer dollars, increases the accuracy of voter rolls, and

¹²⁸ Ibid.

provides a convenient option for Americans who wish to register or update their information. Pew has analyzed online voter registration and has found zero fraud as a result of this election process. Moreover, the accuracy of voter rolls is vastly improved as data entry errors are significantly reduced. That is because the voter directly inputs the information, instead of a data entry clerk.¹²⁹

Low voter turnout continues to be a concern, not just in California but nationwide. Preliminary data from the Election Project indicates that national turnout for the 2014 mid-term elections was below 37 percent. There is no one simple answer for low voter turnout. It is complex situation of factors that play out differently in different years and areas. But it is nevertheless thought-provoking that in 2014, half of all California voters received a “mail ballot” yet only about one-third of those persons voted. The publicizing of the Index seems to have generated conversation about addressing voter turn-out and voter integrity. Pew would like to see that conversation continue.¹³⁰

And even though California has historically performed poorly in terms of voter turn-out and election process, the state is situated to make great strides. Across the state, there is a remarkably high quality of county recorder/registrar. The new Secretary of State has demonstrated a commitment to improving the election process in the state. And given the considerable wealth in the state, there are sizeable financial resources to allow the state to make great and quick strides to improve voting integrity.¹³¹

Moreover, the issues raised in HAVA reflect that the 21st century is experiencing a new era in voting. It is becoming more common for electronic voting systems to be scrutinized for integrity and reliability. Expensive, antiquated purpose-built hardware-based systems and manual and paper processes are being transformed with systems designed to result in increased accessibility and improved accuracy for all elections, as well as enhanced security, increased auditability, and significant cost savings.

¹²⁹ Ibid. In January 2014, Pew released its assessment of online voter registration in a briefing paper, *Understanding Online Voter Registration* and followed with a second brief in May 2015, *Online Voter Registration—Trends in development and implementation*.

¹³⁰ Ibid.

¹³¹ Ibid.

2. The Election Integrity Project

The Election Integrity Project (EIP) is a nonpartisan, citizen organization that seeks to empower “citizen volunteers, through education and training to participate actively in protecting our freedoms and way of life.”¹³² According to their website, EIP performs the following functions:

- Research County & State Voter Rolls.
- Educate volunteer poll workers, poll observers, and ballot processing observers in the state election codes for their election process.
- Train volunteer observers to interact lawfully with elections officials to rectify perceived inconsistencies.
- Send Position Papers to the Legislative Committees on proposed bills that impact the integrity of the election process.
- Inform citizens about impending legislation, encouraging them to communicate with their own representatives and direct their voting patterns.¹³³

Linda Paine, founder and president of EIP, spoke before the Committee regarding their work to ensure the integrity of California elections. In particular, they attested to their efforts to conduct county by county research to enhance the integrity of the state voter database, and “train citizens across the state to observe polls and document whether the laws are being followed.”¹³⁴ EIP established a centralized database and server, and has volunteer analysts to analyze the data collected to create a findings report that they provide to registrars.¹³⁵ In addition, EIP meets with registrars to discuss their findings.

As a result of EIP’s work, Paine stated that the organization has “found hundreds of thousands of duplicates across the state. The implementation of the online voter registration noted in our research found that there were thousands of voters who registered in other counties.”¹³⁶ Paine asserts that the causes of the duplicative voter registrations are faulty county operating procedures and technology. According to Linda Paine:

Why does this happen? Because with the memorandum of agreement, the statewide voter database that California uses is a model that makes it impossible for the counties to do cross country research and for the state database to know immediately if I have registered in multiple counties. Just for clarity, we have a compliant topdown centralized database. It functions this way: If I register in L.A. County, it immediately shows up in Sacramento. And so if I have already registered in another county, it’s flagged. If I’m duplicating or voting for a deceased person, it’s flagged. We don’t have that.¹³⁷

¹³² Election Integrity Project, 2016. “Who We are: Our Mission,” *available at* <https://www.electionintegrityproject.com/>.

¹³³ Ibid.

¹³⁴ Testimony of Linda Paine, Transcript on Help America Vote Act, p. 165

¹³⁵ Ibid., p. 167

¹³⁶ Ibid., p.168.

¹³⁷ Ibid.

Paine provided evidence of EIP's efforts in the form of testimony emailed by several citizens, declarations from the citizens of Nevada County where there is a civil grand jury decision regarding voter irregularities, a 2014 observation report from Trinity County and L.A. County, as well as a letter to the Secretary of State, a report from the EIP Chief Analyst, a memorandum of investigation into a city county raise in San Diego Valley in L.A. County, and 12 packets of their training materials.¹³⁸

She also spoke regarding her hope that the new Vote-Cal system would make a positive difference in the state, but cautioned that a similar system in the past did not provide the needed integrity and security in the elections.¹³⁹ Paine suggested that citizen oversight of the Vote-Cal system and standardized pricing for purchasing voter rolls would be helpful to ensure both the continuation of EIP's work and the integrity of the voter system in California.¹⁴⁰

Ruth Weiss, the San Diego Coordinator for EIP, spoke to the Committee regarding the issue of provisional ballots. First, she stated that California has a large number of provisional ballots compared to other states, and that "with all the difficulties with validating those and making sure that they're processed appropriately and that there isn't some sort of fraud involved in it, it's a big job and we're concerned about that."¹⁴¹ She also cited a 2012 statistic that found that the number of provisional ballots cast in California alone was 40 percent of all the national provisional ballots cast.¹⁴²

Weiss discussed the balance between providing provisional ballots as a protection for "voters who are the legitimate victims of error or someone who may not be able to make it back to his polling place in time to vote,"¹⁴³ but that there are also risks inherent in providing provisional ballots. As a result of these ballots, she stated that "almost every provisional voter is going to vote out of precinct,"¹⁴⁴ and that poll workers are providing incorrect information to potential voters regarding when the votes will be counted. However, she found that the large number of provisional ballots was leading to large delays in publicizing the results of the elections, which in turn eroded public confidence in the election process.¹⁴⁵

3. Everyone Counts

The Committee also heard from Lori Steele, Founder and CEO of Everyone Counts, universal voting, and the way in which voting systems are mission critical in ensuring the integrity of the voting process. For Steele, it was important to have the requisite experts on voting processes and practices to design meaningful integrity and security measures for the voting system. According to Steele:

¹³⁸ See *Ibid*, p. 166.

¹³⁹ See *Ibid*, 169.

¹⁴⁰ *Ibid*.

¹⁴¹ Testimony of Ruth Weiss, Transcript on Help America Vote Act, pp. 170-171.

¹⁴² *Ibid.*, p.171.

¹⁴³ *Ibid*.

¹⁴⁴ *Ibid.*, p.172.

¹⁴⁵ *Ibid.*, p. 175

[W]e need to bring together experts in administrative process of elections, experts in security and technology and experts in accessibility. And we need to put all those things together into a platform that can give voters what they need and can give election administrators what they need. And Everyone Counts has been doing this for well over a decade.¹⁴⁶

Steele also emphasized the links among up-to-date technology, wise spending, and integrity in the voting process:

The Help America Vote Act resulted in \$3.9 billion being spent in the United States. 3.9 billion being authorized and 3 billion being spent. There's about 800 million left somewhere in the states. Those dollars, those billions of dollars were used to buy 30- and 50-year-old technology. Those technology you read about in the newspaper that isn't that accessible and that slips votes because the screen calculated – the screen calibration is so old. And California is thinking of buying new voting systems.¹⁴⁷

Steele stated that California prohibited the type of greater security that her system provides, and was even considering using mail in ballots. For Steele, use of the mail ballots may represent a lost opportunity for California's voters:

But what if they could have better benefits? What if they could have fully accessible absentee? What if they could have fully auditable absentee? What if they could have military grade encryption of every single ballot?¹⁴⁸

However, Steele posits that California law prohibits the introduction of such technology into the voting process:

In California, you cannot. There are three lines in the code that prevent that. One says you can't use the Internet ever. One says you can't use wireless technology ever. The other one is also about wireless technology.¹⁴⁹

In conclusion, she suggested that if California seeks to introduce new voting technology to the state, then the laws should be adjusted to accommodate these new measures:

So if California is going to think about ensuring every person in California who has the right to vote has the ability to do so privately, independently and with greater security than offered in any other voting system, then California needs to think about adjusting their laws, so that federally certified voting systems can be – that provide the remote opportunities to vote and in-person opportunities to vote

¹⁴⁶ Testimony of Lori Steele, Transcript on Help America Vote Act, p. 175.

¹⁴⁷ Ibid., p. 134-135

¹⁴⁸ Ibid., p.135.

¹⁴⁹ Ibid.

in a state of the art way that will never reach end of life, then California need to think differently about voting systems.

4. Communities Actively Living Independent and Free

Lillibeth Navarro, Disability Rights Advocate and Executive Director of Communities Actively Living Independent and Free, spoke before the Committee. Her organization is a downtown Los Angeles-based social services advocacy organization for civil rights for the disabled in the context of the Americans with Disabilities Act (ADA). It offers the disability community with an “entire gamut of social services through Civil Rights Advocacy, from housing to benefits advocacy, peer counseling, information and referral, personal assistance services, physically change advocacy, assistive technology transition, and transportation, in the context of the Americans with Disabilities Act.”¹⁵⁰

She provided personal testimony regarding her work as a poll worker and witnessing the lack of persons with disabilities at the polls, and the physical and electronic inaccessibility of many polling locations in California.¹⁵¹ She noted at least twelve studies related to improving voter access for persons with disabilities, but that this information did not always manifest itself as tangible resources and funding for disability advocacy groups to work with the government to develop and implement educational programs for the community.¹⁵²

Ms. Navarro challenged the current state of voting accessibility for the voter with disabilities in Los Angeles, starting with wheelchair access. Though few severely disabled voters vote in person, most choosing to vote by mail (VBM), the need to have adequate handicap access for all polls remains for those who do vote in person.

Parking and pathway situations frequently deter the voter with disabilities from access, i.e., long walks after parking, obstructions, and inadequate lighting. California Advisory Committee member Javier Gonzalez noted that all facilities selected by the Los Angeles County Registrar of Voters as polling places are required to be chosen with and tested for ADA compliance.

Additionally, Ms. Navarro asked for easier access for the voter with disabilities to election education programs and computer usage (such as for the blind,) and to online information. Current electronic devices often impose discouraging obstacles to gaining voting information. With respect to the voters with intellectual disabilities, social service workers often find that important issues, when simply explained, can be comprehended. Ms. Navarro asks for more empathy and sensitivity to and for voters with disabilities and their needs by those in industry who create modern solutions. One idea she submitted is for counties to create a form of media “get-out-the-vote” Amber Alert sound or flashing light, to alert those voters that the time to vote, to have a say in government, is here.

¹⁵⁰ Testimony of Lillibeth Navarro Transcript on Help America Vote Act, p. 137.

¹⁵¹ Ibid., p. 138.

¹⁵² Ibid., pp. 138-139.

5. Mark Sonnenklar

Mark Sonnenklar, a Los Angeles Resident and Business Attorney, gave testimony concerning a civil rights breach (HAVA) – the fair and equal administration of justice.¹⁵³ His testimony described what ultimately was a story of a civil rights breach (HAVA) – the fair and equal administration of justice. The four-month episode described centered on the Los Angeles County Registrar’s refusal to provide public data to a citizen’s request, Mark Sonnenklar’s, as legally allowed.¹⁵⁴ The particular public documents requested had previously been provided another organization (Election Integrity Project), upon which data EIP published a report concerning thousands of irregularities involving the L. A. County Registrar.¹⁵⁵ Mark Sonnenklar wished to obtain the same data provided EIP to determine if a separate analysis of the data corresponded to theirs. After a series of delays, it seemed clear the Registrar’s office hoped the request would die out. Sonnenklar persisted, and, as of August 28, the date of the hearing, four months after his original request, finally received the data, with a cover letter signed in person by Mr. Dean Logan, the Registrar of Voters, a person who normally would not have been involved with one single citizen’s request.¹⁵⁶

Sonnenklar also testified that the prices quoted for providing the data were entirely arbitrary, and changed several times: Once the ROV agreed to provide the data, a \$600 fee was set. This was arbitrarily lowered by the registrar’s representative to \$450.¹⁵⁷ When that amount was challenged as excessive by Sonnenklar, the fee was lowered to \$146.¹⁵⁸ When Mr. Sonnenklar then asked for the statutory justification for the calculation of the fee, he was quoted L.A. County Code Section 2.32.24, which states the fee is \$54 for one CD. That was the amount eventually set, which Sonnenklar paid.¹⁵⁹ He also said the Registrar of Voters told him to delete the individual voters’ identifications.

Several members of the California Advisory Committee commented on several aspects of this revelation:

- Committee member Ms. Montoya raised the concern that providing the data to anyone who asks might be a breach of individual privacy.
- Committee member Ms. Jester recounted that the type of data requested is regularly provided to political consultants, as she was for many years, and there was no reason for such a delay by public officials.

Sonnenklar further expressed this opinion:

¹⁵³ Testimony of Mark Sonnenklar, Transcript on Help America Vote Act, p. 105-129.

¹⁵⁴ Ibid., pp. 109-117.

¹⁵⁵ Ibid., pp. 122-123.

¹⁵⁶ Ibid., p. 117.

¹⁵⁷ Ibid., p. 115.

¹⁵⁸ Ibid., p. 115-116.

¹⁵⁹ Ibid., p. 115. Linda Paine of EIP states in later testimony that she paid \$500 for the supposedly same data.

“(I)think someone in a position of authority needs to, you know, have -- have a word with Dean Logan and make sure that his staff is responding to these requests in a timely basis. I think that's the immediate thing that needs to happen.

Committee member Betty Wilson asked Sonnenklar if he had made this request to the registrar, Mr. Logan. He stated:

You know, I don't have a personal relationship with Mr. Logan. And -- so, no.

And, finally, from Sonnenklar:

There is no coincidence in politics. And I don't think it's a surprise that I received the data finally this morning in the mail, the day that I was supposed to come and testify. So there are a lot of things about this story that I don't quite understand, you know, about the Registrar Recorder's behavior during this four-month ordeal, but one thing I can say for sure is, they didn't want to provide me with those records. They violated the law by taking as long as they did to actually finally provide them and I think they expected me to get tired and go away. And that's why they dragged this on for as long as they did. So Section 6252(e) of the act defines a public record as, quote, "Any writing containing information relating to the conduct of the public's business that is prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics."¹⁶⁰

¹⁶⁰ Ibid., p. 116.

Committee Findings and Conclusions

Conclusions

1. Insufficient training in election laws for poll workers and on-site election officials pursuant to witnesses Linda Paine and Ruth Weiss of the Election Integrity Project¹⁶¹; Training materials¹⁶² fail to provide for the implementation of California Election Code §14216, voter self-identification, which states:

“Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address . . . ”.
2. Disabled voters face unnecessary obstacles, according to testimony by Lillibeth Navarro, representative of Communities Actively Living Independent and Free;
3. VoteCal, the mandated statewide voter database, is not ready (SOS testimony);
4. Explanations about the decision-making process of the Secretary of State for potential voting system developers are required after doubts raised from materials provided by State Auditor Elaine Howle, which state:

“The Office paid \$4.6 million to develop a replacement database – Vote Cal - but terminated a critical contract because the vendor failed to provide key deliverables. In its second attempt to hire a new vendor to complete the VoteCal project, the Office appears to have limited the bidder competition to only one bidder, raising concerns for future success.”¹⁶³
5. The methodology used to report HAVA expenditures in California’s spending plan has not been explained, according to the testimony of State Auditor Elaine Howle;
6. Deceased, inactive and ineligible voters remain on voter lists;
7. The delayed and multi-stage human handling of vote-by-mail ballots creates openings for tampering or mishandling, according to Ruth Weiss’s testimony and EIP’s written testimony;

¹⁶¹ Linda Paine and Ruth Weiss, Election Integrity Project, Testimony before the California Advisory Committee to the U.S. Commission on Civil Rights, Transcript, Hearing on Help America Vote Act, Los Angeles, CA, Aug. 28, 2015, pp. 158-191 (hereafter referred to as Help America Vote Act (HAVA) Transcript), *available at* <https://www.justice.gov/crt/text-proposed-regulations>.

¹⁶² *Ibid.*, p. 177.

¹⁶³ *Ibid.*, p. 46

8. In 2012, California cast forty percent of the provisional ballots in the nation.¹⁶⁴ Though the official intent is to allow for convenient voting and options that support participation, inadequate poll worker training in following the law likely contributes to the indiscriminate use of provisional ballots;
9. Prohibitive costs to citizens to purchase voter roll data;
10. Indiscriminate use of Permanent Absentee Voting;
11. Statewide voting and election irregularities in many counties, both large and small, require further investigation;¹⁶⁵
12. Antiquated election laws prohibit the introduction of modern voting technology, according to testimonies of SOS and Everyone Counts;
13. Inadequate utilization of online voting with military-grade encryption for military and overseas voters, according to Pew testimony;
14. Citizens have concerns about the new “Motor Voter Law “AB 1461, its implementation and confidentiality. A good third of the eighty-plus Post-Hearing written testimonies were about this bill.

Recommendations:

1. Training for Election Officials and Poll Workers
 - a. Include awareness and knowledge of applicable election laws (HAVA, NVRA, California Election codes, and the U.S. Constitution) and of the poll workers’ authorities;
 - b. Increase length of training time of election workers;
 - c. Verify that an election official or poll worker completed recommended online training instruction;
 - d. Establish citizen oversight ensure training materials correspond to the law;
 - e. Train poll workers to follow California Election Code §14215, asking voters to state their names and addresses - in their own words -to avoid voter impersonation.
2. Citizen Oversight

¹⁶⁴ See *supra* note 5 p. 171.

¹⁶⁵ Testimony of Mark Sonnenklar, Business Attorney, HAVA Transcript, p. 109.

- a. Provide expert citizen election integrity oversight for the pending VoteCal statewide voter registration database;
 - b. To ensure instructions to poll workers and election officials correspond to election laws, provide expert citizen oversight of training procedures and materials, and voting and election materials.
3. The Disabled Voter
- a. Legislation required to assure that current and future digital or computerized voting systems are accessible and will accommodate voters with disabilities;
 - b. Poll workers shall be provided training, communication, and accommodations for voters with disabilities;
 - c. All polling sites shall be accessible to voters with disabilities.
4. Office of the Secretary of State
- a. Appoint a non-partisan citizen election integrity and oversight organization with authority to assess VoteCal, its methods, and test results;
 - b. Clarify the state's current standards for voting, election processes, voting equipment and systems and assure procedures and equipment are in compliance with state and federal disability laws;
 - c. Clarify the process by which the Secretary of State verifies that the person applying to vote, whether through online registration, DMV registration, or in-person registration, is eligible to vote;
 - d. Inform public agencies that only those agencies mandated to examine and verify proof of citizenship shall process voter registration applications;
 - e. Create and advertise the complaint procedure by which citizen complaints about the administration of elections are addressed and rectified;
 - f. Recommend to the California legislature an upgrade of all coded obstacles to the modernization of California's election process and voting systems (Election Code Article 4, Sections §19217, §9217, §19250 (a), §14223 (b));
 - g. Recommend each California county standardize its forms and costs for citizen organizational purchases of voter data;
 - h. Verify that every poll location is accessible to voters with disabilities;
 - i. Clearly state the methodology used to report prior HAVA expenditures in the HAVA spending plan.
5. County Registrars of Voters
- a. To prevent inaccurate voter turnout statistics and possible election results, follow HAVA and California Election Code procedures for the distribution of provisional ballots;
 - b. To ensure voters' privacy and ballot integrity during handling, redesign absentee ballot forms and improve current processing procedures for security;

- c. To prevent impersonation and fraud, timely remove deceased, inactive and ineligible voters from voter lists according to HAVA's suggestions;
 - d. Establish standard fee schedules for citizen groups requesting public documents and lists;
 - e. Verify that every poll location is accessible for voters with disabilities;
 - f. In accord with election laws, train election officials and poll workers in the handling of provisional, absentee, and in-person ballots;
 - g. Clarify the procedures by which registrars of voters process and rectify election complaints;
 - h. Provide citizen oversight of training manuals and materials, poll worker training, and at election polls and voting centers;
 - i. Train poll workers and election officials in the proper use of California Election Code §14216, which, without a voter ID requirement, provides for self-identification.
6. Upgrade Outdated Election Laws (Legislation Required)
7. Modernization requirements -
- a. Upgrade outdated California Election Codes (Article 4, Sections §19217, §9217, §19250 (a), and §14223 (b)):
 - i. Permit digital and telephone access for voter systems;
 - ii. Allow connectivity to the internet;
 - iii. Allow electronic transmission of election data through exterior communication networks;
 - iv. Allow wireless communications or wireless data transfers;
 - v. Allow a remote server to store any voter's identifiable selections and tabulate votes using military grade encryption;
 - b. Reconsider the requirements of federal qualification and accessible voter verified paper audit trails for voting systems;
8. Upgrade and revise the Military and Overseas Voter Empowerment Act of 2009 (MOVE) to incorporate military grade encryption for secure online voting;
9. Allow poll workers to redact voters' street addresses when posting precinct voter lists near poll entrances to prevent harvesting of data used for voter impersonation.
10. California's "Motor Voter" Law – AB1461
- a. Pass AB 2067 amending AB 1461 to –
 - b. Create a clear, mandated procedure by which the citizenship status of all potential registrants will be verified prior to uploading information to the Secretary of State;
 - c. Establish oversight provisions;
 - d. Authorize ongoing education and/ training for Department of Motor Vehicles (DMV) personnel

Appendix I. Presenters at the Public Hearing on August 28, 2015, and Public Commenters

A. Invited Presenters (in order of presentation)

Elaine Howle, California State Auditor

Steve Reyes, General Counsel for Secretary Alex Padilla, Secretary of State Alex Padilla

Susan Lapsley, Secretary of State Deputy Secretary of State and HAVA Director

Dean Logan, Registrar-Recorder County Clerk for Los Angeles County

Michael Vu, Registrar-Recorder for the city County of San Diego

Mark Sonnenklar, Business Lawyer and Los Angeles Resident

Lori Steele, Founder and CEO of Everyone Counts

Lillibeth Navarro, Disability Rights Advocate and Executive Director of Communities Actively Living Independent and Free

Linda Paine, Co-Founder and President, Election Integrity Project, Inc.

Ruth Weiss, Director, Election Integrity Project; San Diego County Liaison,

B. Citizens Making Public Comments (in order of presentation)

Ana Cubas, Hermandad Mexicana Nacional

Robert Gray, Resident of the City of Compton

Lynn Boone, Resident of the City of Compton

Nancy Kremer, Resident of City of Los Angeles

Shoshana Egan, Resident of City of San Diego

David Gooding, Retired Public Employee and Resident of Hayfork Trinity County, California.

Drue Lawlor, Resident of Los Angeles County

Mary Dee Romney, Resident of the City of Pasadena, Los Angeles County

Yesenia Martinez, California Project Coordinator for the National Association of Latino Elected and Appointed Officials

Kim Castro, Resident of Fresno County

Margarita Canaba, Resident of Fresno County

Lance V. Woods, Resident of L.A. County

Nicolas Ochoa, Vietnam Veteran and Retired Law Enforcement Officer, Ventura County

Harry Gradi, Retired L.A. City Fireman, Ventura County

Ron Gerber, Resident of Oxnard, Ventura County

C. Summary of Post-Hearing Public Comments

CA SAC USCCR Post-8/28/15 Hearing Testimonies: Citizens' Key Issues (approx 80 submissions)					
Categories, Testimony #	Issues Raised	Causes	Impact	Conclusions	Recommendations
CA Secretary of State (SOS) 52 and others	Multiple HAVA violations; non-citizen voting. No competitive bidding. VoteCal database	political will, office management, leadership	HAVA not followed. "Third World competency"	Does not follow HAVA in voter registration follow-up, other	Hold accountable to HAVA by DOJ, EIC; Reveal status/results VoteCal
Provisional Ballots 66, 67, 70, 71, 72, PEW	HAVA required, but statewide misuse prevalent. Non-Citizen voting	HAVA and election code ignorance. Poor training. Fraud	election outcomes, voter deprived, disenfranchised; Ineligible votes cast and counted	Biggest deterrent to Election Integrity. Training, observers needed	HAVA training, citizen oversight, SIGNATURE VERIFICATION system improvement needed
CA Legislature: AB 1461 "Motor Voter Law" 32 ltrs oppose	Non-citizen is given voter registration forms w/DMV application	Secretary of State, Legislature, partisan, people had no say	Citizen vote disenfranchised, diluted; HAVA violation, creates havoc in election results	Chaos: No prosecution for non-citizen who votes. Violates election integrity, U. S. Election codes	Constitution violation. Change forms. Change law.
Vote By Mail (VBM) ballots, including Permanent VBM 48, 78	Disenfranchises the disabled, weakest link for election integrity	Vulnerable design, overuse encouraged by SOS, parties	Opens door to misuse, impersonation, ballot dumping fraud	Current process opens door to corruption and misuse	Require Photo ID when requesting VBM ballot, re-design; use only when needed
Voter Rolls 2, 16, 66, 80	Unclean, inflated; deceased vote; misuse, VBM fraud, error. PO Box addresses.	ROV omission, neglect	denies redress ability, initiative process (% of required signatures inflated)	opens door to impersonation, corruption, a direct HAVA violation	ROV performance monitored with citizen oversight
Student Voting (Ineligible) 82	600 more voted than registered; students vote twice, absentee ballots	HAVA ignorance, training failures	election outcomes, voter deprived, disenfranchised	State-wide issue is colleges are not trained in issue	HAVA training, election code training, citizen oversight
Electronic Election & Voting Systems	Public concerns about safety, privacy, hackability	Vulnerable old technology	Subject to human interference, but modernizing could benefit election integrity, help disabled	Future voting systems must be certified; cannot be associated w/voter lists	CA Election laws now impede modernizing and testing; revise
Voting Machines, Ink-a-Vote 57,	Hackable, old technology	Can be manipulated, at site or in ROV	Doubt of voter; vote changed, outrage	Old technology, distrust by voter	Replace with modern military-grade election system
CA Election Code (Outdated) 59	Need revision in order to modernize election systems	Obsolescence, legislative neglect	CA unable to modernize election and voting systems as other states have	Change election code in order to modernize	See below
Bilingual Issues 74	San Gabriel-no Hispanic translator. Other, only Cantonese speaker allowed to vote	HAVA ignorance, training failures	May deny right to vote	HAVA violation	HAVA training, election code training
"Covered California" 47	Party affiliation changed w/o permission (R to D)	crime or incompetence	unknown	fraud, or data enter staff - dishonest	Accountability enforced
Voter ID Support 2, 16, 66, 80	Reduce fraud, impersonations	Parties divided, people support	Without: Chaos, With: More secure elections	Prevent impersonation at polls, reduce VBM, Prov fraud,	Voter ID Legislation for CA

Appendix II. DISSENT FROM CALIFORNIA ADVISORY COMMITTEE MEMBER

Statement of Rachel Sigman*

**Member, California Advisory Committee to the United States Commission on Civil Rights
May 8, 2017**

**The contents of this memo express my personal views and do not represent the views of any institution or organization with which I am affiliated.*

In June 2016, the California Advisory Committee to the United States Civil Rights Commission produced a report entitled “Voting Integrity in California: Issues and Concerns in the 21st Century.” The report calls attention to a number of important issues, including the obstacles faced by voters with disabilities in exercising their voting rights, challenges of maintaining accurate voter lists and the high percentage of provisional ballots cast in California. I support the Committee’s efforts to shed light on these issues, and agree wholeheartedly with the specific contents of the report that advance the mission of the U.S. Commission on Civil Rights in seeking to protect voting rights for all eligible California voters.

I have asked to abstain from the vote on this report because the facts and evidence available do not support some of the report’s conclusions and recommendations. Of specific concern are the report’s conclusions related to threats to voter integrity and California compliance with the Help America Vote Act (HAVA). I am not able to fully address these issues in a single page, but I wish to raise several points that I strongly believe to undermine the credibility of the report’s conclusions and recommendations.

The report’s conclusion that “statewide voting and election irregularities...require further investigation” – and associated conclusions and recommendations – is simply unfounded. The California Secretary of State’s office already investigates many election-related complaints. A Public Records Act request by non-profit non-partisan group CALmatters showed that current cases being investigated amount to 0.001% of the more than 23 million votes cast in California’s 2016 primary and general elections. Additionally, a database that tracks instances of voter fraud maintained by researchers at Arizona State University found only 56 instances in California between 2000 and 2012.¹⁶⁶ Such statistics are consistent with a large number of academic studies that find extremely few instances of voting irregularities across the country.¹⁶⁷ Moreover, there is no evidence in this academic that duplicate registrations, poll worker training or specific vote-by mail procedures lead to voting irregularities, as is suggested in the report’s conclusions and recommendations. Instead, these issues tend to limit citizens’ ability to vote and should therefore be addressed in ways that seek to better protect voting rights equally across the eligible voting population.

It is not clear, moreover, that the report’s conclusions regarding California’s HAVA compliance reflect any serious threats to voting integrity. The only reference to non-compliance comes on p.2 from an uncited study by an unnamed independent non-profit organization. The ratings cited from the Pew Charitable Trusts Election Performance Index are not related to|the application of election laws| (p.4) and the information regarding HAVA drawn from the Election Integrity Project, an organization with unknown sources of support, is based largely on anecdotal information that can not be verified. Likewise, the report’s conclusion that “VoteCal, the mandated statewide voter database is not ready” is no longer true. According to the Secretary of State’s website, VoteCal has been deployed in all 58 California

¹⁶⁶ News21 “Who Can Vote: Election Fraud in America.” Available at <http://votingrights.news21.com/interactive/election-fraud-database/index.html>, accessed May 1, 2017.

¹⁶⁷ For an overview and links to these studies, see the Brennan Center’s webpage at <http://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

counties as of February 2016.¹⁶⁸

I thank my fellow committee members, the Committee staff and all those who shared their views and expertise with the Committee. There are many important insights contained in the report as to how we can work together as Californians to protect voting rights more effectively across the state.

¹⁶⁸ <http://www.sos.ca.gov/elections/voter-registration/votecal-project/votecal-deployment-status/>, accessed May 3, 2017.

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This report can be obtained in print form or on disk in Word format from the Western Regional Office, U.S. Commission on Civil Rights, by contacting the above named Commission contact person. It is also posted on the web-site of the Commission at www.usccr.gov.

Civil Rights *and* Voting in Illinois



A Briefing Report of the
Illinois Advisory Committee to the
U.S. Commission on Civil Rights

February 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory Committee in each of the 50 states and the District of Columbia. These Committees are composed of state/district citizens who serve without compensation; they are tasked with advising the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction. Committees are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state or district's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to Committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states/district.

Acknowledgements

The Illinois Advisory Committee would like to thank each of the panelists who presented to the Committee during the March 9, 2017 meeting of the Illinois Advisory Committee, and the members of the public who either submitted written testimony or who spoke during the period of public comment. The Committee would also like to thank the Ralph H. Metcalfe Federal Building for hosting the public event.

The Committee is also grateful to Juan Carlos Linares, Chair of the Illinois Advisory Committee, who presided over the 2017 hearing; and all of the Committee members who assisted in the project planning and hearing preparations.

**Illinois Advisory Committee to the
U.S. Commission on Civil Rights**

The Illinois Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding civil rights and voting in Illinois, and the potential disparate impact in access to voting on the basis of race, color, age, religion, or disability. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Illinois. The contents of this report are primarily based on testimony the Committee heard during a public hearing on March 9, 2017 in Chicago, IL.

This report details civil rights concerns relating to potential disparities regarding access to voting and discrimination based upon the race, national origin, religion, sex, disability, and age of the electorate. It also addresses challenges to voting facing the incarcerated and formerly incarcerated, Limited English Proficient individuals, individuals with disabilities, and those experiencing homelessness. Primary concerns included inconsistent training of election judges and implementation of instruments to assist access to voting, the debate on pieces of legislation that could either enhance or limit access to voting across the state, such as automatic voter registration and election day registration, the practices of prison gerrymandering and the need to expand access to voting for inmates awaiting trial, and the ongoing need to educate youth on the importance of voting. From these findings, the Committee offers to the Commission recommendations for addressing this problem of national importance.

**Illinois Advisory Committee to the
U.S. Commission on Civil Rights**

Juan Carlos Linares, *Chair, Illinois Advisory Committee*, Chicago

Jonathan Bean, Herrin

Trevor Copeland, Bolingbrook

Joanna Bohdziewicz-Borowiec, Chicago

Rick Garcia, Chicago

James Botana, Chicago

Tabassum Haleem, Naperville

Cindy Buys, Murphysboro

William Howard, Darien

Kendric Cobb, Peoria

Bryant Jackson-Green, Chicago

Reyahd Kazmi, Chicago

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I. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory Committees in each of the 50 states and the District of Columbia. These advisory Committees advise the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction.

Among the responsibilities of each Advisory Committee is to inform the Commission "of any knowledge of information it has of any alleged deprivation of the right to vote and to have the vote counted by reason of color, race, religion, sex, age, disability, or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination."¹ Through this study, the Illinois Advisory Committee examines voting rights and voter participation in Illinois. Specifically, the Committee examines the extent to which voters in the state have free, equal access to exercise their right to vote without regard to race, color, disability status, national origin, age, religion, and/or sex.

On July 8, 2016, the Illinois Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to conduct a study of the civil rights issues surrounding voting throughout the state. Specifically, the Committee sought to examine potential disparities regarding access to voting and discrimination based upon the protected categories of the electorate as designated by the Constitution. The Committee also sought to explore challenges to voting facing the incarcerated and formerly incarcerated, Limited English Proficient individuals, individuals with disabilities, and those experiencing homelessness.

On March 9, 2017, the Committee convened a public meeting in Chicago, Illinois to hear testimony regarding challenges and recommendations to improve access to voting across Illinois. The following report results from the testimony provided during this meeting, as well as testimony submitted to the Committee in writing during the related period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. The focus of this report is specifically on concerns of disparate access to voting in Illinois on the basis of race, color, age, religion, national origin, or other federally protected category. While other important topics may have surfaced throughout the Committee's inquiry, those matters that

¹ 45 C.F.R. § 703.2.

are outside the scope of this specific civil rights mandate are left for another discussion. The Committee adopted this report and the recommendations included within it on October 24, 2017.

II. BACKGROUND

A. The United States Voting Rights Act

The right to vote is one of the most fundamental components of democracy—so important in fact that the United States Constitution includes four amendments protecting it.

- Amendment XV guarantees that the right to vote will not be denied on the basis of “race, color, or previous condition of servitude”;²
- Amendment XIX guarantees that the right to vote will not be denied “on account of sex”;³
- Amendment XXIV guarantees that the right to vote will not be denied “by any reason of failure to pay poll tax or other tax”;⁴
- Amendment XXVI guarantees that the right to vote will not be denied on account of age for all citizens aged 18 years or older.⁵

Though it does not explicitly address enfranchisement, the 14th Amendment to the U.S. Constitution granting citizenship to “all persons born or naturalized in the United States” and guaranteeing “equal protection of the laws”⁶ to all within its jurisdiction has also been used to protect voting rights.

However, throughout much of American history, jurisdictions instituted discretionary, inconsistently applied, requirements such as poll taxes, literacy tests, and vouchers of “good character” to suppress the African American vote.⁷ Many of these jurisdictions also

² U.S. Const. amend. XV, § 1, *available at* <http://www.law.cornell.edu/constitution/overview>.

³ U.S. Const. amend. XIX, § 1, *available at* <http://www.law.cornell.edu/constitution/overview>.

⁴ U.S. Const. amend. XXIV, § 1, *available at* <http://www.law.cornell.edu/constitution/overview>.

⁵ U.S. Const. amend. XXVI, § 1, *available at* <http://www.law.cornell.edu/constitution/overview>.

⁶ U.S. Const. amend. XIV, § 1, *available at* <http://www.law.cornell.edu/constitution/overview>.

⁷ The U.S. Dep’t. of Justice, *Before the Voting Rights Act*, Introduction to Federal voting Rights Laws (June 29, 2017), <https://www.justice.gov/crt/introduction-federal-voting-rights-laws>.

disenfranchised individuals who committed "crimes of moral turpitude" for the same purpose.⁸ In addition, terrorist organizations such as the Ku Klux Klan and the Knights of the White Camellia used harassment and violence to keep African American voters away from the polls.

In response to such continued voter intimidation and suppression, the 1965 United States Congress passed the Voting Rights Act (VRA) in an attempt to eliminate discriminatory voting practices.⁹ Among its key provisions, the VRA included a section that prohibited "drawing election districts in ways that improperly dilute minorities' voting power."¹⁰ It also required that states and counties with a "history of discriminatory voting practices or poor minority voting registration rates" secure preclearance approval from the United States Attorney General or a three-judge panel of the District of Columbia District Court prior to making any changes to their local legislation.¹¹

When Congress renewed the VRA in 1975, they added protections designed to bring an end to discrimination against "language minority citizens."¹² In 1982, the Act was again renewed and amended to include a clause stating that a violation of the Act's nondiscrimination section could be established "without having to prove discriminatory purpose."¹³ In other words, the clause declared that if the voting requirements in a particular jurisdiction are found to have a discriminatory impact, those requirements are illegal, regardless of intent.

According to the U.S. Department of Justice Civil Rights Division, soon after the VRA was passed, "black voter registration began a sharp increase," and as a result, the "Voting Rights Act itself has been called the single most effective piece of civil rights legislation ever passed by Congress."¹⁴

On June 25, 2013, the U.S. Supreme Court released their *Shelby County v. Holder* ruling, stating that the formula used to determine which states should be subjected to VRA preclearance requirements was outdated and, thus, unconstitutional.¹⁵ So, the preclearance requirement of the

⁸ *Id.*

⁹ 42 U.S.C. § 1973.

¹⁰ Voting Rights Act, 42 U.S.C. § 1973, available at https://www.law.cornell.edu/wex/voting_rights_act.

¹¹ *Id.*

¹² The U.S. Dep't of Justice, *The History of Federal Voting Rights Laws*, *Justice.gov* (June 16, 2017), <https://www.justice.gov/crt/history-federal-voting-rights-laws>.

¹³ *Id.*

¹⁴ The U.S. Dep't. Of Justice, *The Effect of the Voting Rights Act*, Introduction to Federal Voting Rights Laws (July 14, 2016). <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0>.

¹⁵ *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, (2013), available at https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf; see also John Schwartz, *Between the Lines of the Voting Rights Act Opinion*, *The New York Times*, June 25, 2013, available at

VRA cannot be used to regulate jurisdictions until Congress can agree upon a new formula, which they have yet to do.

Many states have enacted legislation to limit ballot access since the *Shelby County* decision. At least 77 bills aiming to restrict voter registration have been introduced or passed during the prior congressional session.¹⁶ In November of 2016, state efforts to expand voter access had outpaced the enactment of restrictive measures overall,¹⁷ but, nevertheless, 14 states had new restrictive voting laws in effect for the first time in a presidential election.¹⁸

At the same time, concerns about voter fraud have been expressed at the national level. On May 11, 2017, President Trump's administration issued an executive order establishing the Presidential Advisory Commission on Election Integrity.¹⁹ This newly established Commission aims to study voting practices and identify "vulnerabilities in voting systems and practices used for Federal elections that can lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting."²⁰ On June 28th, 2017, the Presidential Advisory Commission on Election Integrity's co-chair Kris Kobach sent each state a letter requesting all publicly available voter data including: names, birth dates, political party, voting history (from 2006 onward), felony convictions and the last four digits of voter's Social Security numbers.²¹ In the letter, co-Chair Kobach asked that the data be shared by July 14, 2017.²² The Illinois State Board of Elections has yet to turn over the requested data, citing concerns that doing so may violate

http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?_r=2&

¹⁶ Brennan Center for Justice at the N.Y. Univ. Sch. of Law, *Voting Laws Roundup 2016* (July 21, 2016), <https://www.brennancenter.org/analysis/voting-laws-roundup-2016>.

¹⁷ *See Id.* (noting that the Brennan Center for Justice reported that as of March 25, 2016, 422 bills to enhance voting access were introduced or carried over from the previous session in 41 states plus the District of Columbia, while at least 77 bills to restrict access to registration and voting were introduced or carried over from the previous session in 28 states).

¹⁸ *Id.*

¹⁹ The White House Office of the Press Secretary, *Presidential Executive Order on the Establishment of Presidential Advisory Commission on Election Integrity* (May 22, 2017), <https://www.whitehouse.gov/the-press-office/2017/05/11/presidential-executive-order-establishment-presidential-advisory>.

²⁰ *Id.*

²¹ Lynn Sweet & Sam Charles, *Illinois to delay Trump Commission Voter Data Request Until August*, Chicago Sun Times, July 5, 2016, available at <http://chicago.suntimes.com/news/illinois-to-decide-on-trump-commission-voter-data-request-in-august/>.

²² *Id.*

state law.²³ In September 2017, the IL State Board of Elections sent a letter to the Commission seeking additional information regarding how the voter data would be used.²⁴ At this point in time, it appears unlikely that Illinois will provide all of the requested information, as Ken Menzel, general counsel to the Illinois State Board of Elections, stated that the Presidential Advisory Commission on Election Integrity is “certainly not going to get the last four numbers of (each registrant’s) Social Security number...we don’t give that out to anybody.”²⁵ As of July 6, 2017, 11 states and the District of Columbia have announced that they will not comply with the request, 16 states (including Illinois) are undecided and 22 states indicated that they have (or will) hand over partial information as allowed by state law.²⁶

In this context, the Illinois Advisory Committee addresses the voting climate in Illinois, and the extent to which all qualified voters in the state have equal access to voter registration and ballots at the polling place.

B. Current Voting Regulations

Across the United States, current policies designed to restrict voting access include: eliminating early voting, requiring documentary proof of citizenship during voter registration, prohibiting people with prior felony convictions from voting, purging the identification data associated with those accused of being registered in more than one state, moving and consolidating polling places, and prohibiting third parties from collecting and turning in early ballots on behalf of voters.²⁷ The extent to which jurisdictions have adopted such measures varies widely.

²³ Associated Press, *More than a dozen states still refuse to release voter data* Los Angeles Times (October 30, 2017), <http://www.latimes.com/nation/sns-bc-us--voting-commission-state-responses-20171022-story.html>.

²⁴ *Id.*

²⁵ See Greg Hinz, *Illinois Balks at Vote Fraud Panel’s Data Request*, Crain’s Chicago Business (July 6, 2016), <http://www.chicagobusiness.com/article/20170705/BLOGS02/170709989/illinois-balks-at-vote-fraud-panels-data-request> (noting that under Illinois Law, Social Security numbers are not available to the public).

²⁶ *Id.*

²⁷ The Advancement Project, *Barriers to the Ballot: Restrictive Voting Procedures in 2016* (Sept. 22, 2016), http://b3cdn.net/advancement/8579f669557471b98c_yfm6bxkd8.pdf.

1. *The National Voter Registration Act*

In 1993, Congress enacted the National Voter Registration Act (NVRA), which was designed facilitate voter registration and make it easier for voters to maintain their registered status.²⁸ Under the NVRA, states must allow citizens to register to vote at the same time they apply for their driver's license or seek to renew their license.²⁹ The NVRA also requires states to forward completed voter registration applications to the appropriate election officials.³⁰ In addition, the Act also requires states to provide voter registration support for individuals with disabilities and allows any eligible person to register by mail if they so choose.³¹

2. *Voting in Illinois*

Illinois requires two forms of identification for any individual who wishes to register to vote (in person, by mail or online), change their name on voter registration, or change their registration address (after October 11 in a given election year).³² At least one identifier must include the registrant's residential address.³³ Acceptable forms of identification are limited to the following documents:³⁴

- Passport or Military ID;
- Vehicle registration card;
- Social Security, Medicare, or Medicaid card;
- Illinois FOID card;
- Driver's License or State ID card;
- Lease, mortgage, or deed to home;

²⁸ The U.S. Dep't of Justice, *About the National Voter Registration Act*, (Sept. 26, 2016), <https://www.justice.gov/crt/about-national-voter-registration-act>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *When Voters Do (And Don't) Need Identification (ID)* (June 29, 2017), <http://app.chicagoelections.com/pages/en/when-you-need-id-to-vote.aspx>.

³³ *Id.*

³⁴ *Id.*

- Civic, union or professional membership card;
- College/University/School/Work ID;
- Credit or debit card;
- LINK/Public Aid/Department of Human Services card.

Additionally, mail addressed to the registrant may also be accepted in some cases.³⁵ Examples of acceptable mail include: bills, transcripts/report cards from school, bank statements, pay stubs, pension statements, utility/medical/insurance bills and official mail from any government agency.³⁶

While Illinois does not require all voters to present government issued photo identification at the polls, a voter may be asked to show identification if they registered to vote by mail and did not submit the required identification in time.³⁷ Illinois voters may also be subject to an ID request if an election official challenges their right to vote for any other reason.³⁸

Automatic Voter Registration

Voting-eligible individuals in Illinois are not automatically registered to vote, but, because of the NVRA, they are given opportunity to indicate that they would like to register when they fill out certain government forms, such as an application for a driver's license.³⁹ Outside of Illinois, seven states have implemented automatic voter registration.⁴⁰ In automatic voter registration jurisdictions eligible citizens are registered to vote when they provide identifying information to state government agencies, unless they explicitly indicate that they would not like to register.⁴¹ For instance, if an individual applied to obtain or renew a driver's license through their state Department of Motor Vehicles, they would automatically be registered to vote unless they stated that they would not like to be registered. Voter information is then securely transferred to election

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Motor Voter: Driver Services* (June 7, 2017), <http://www.cyberdriveillinois.com/departments/drivers/motorvoter.html>.

⁴⁰ Brennan Center for Justice at the N.Y Univ. Sch. Of Law, *Automatic Voter Registration* (June 27, 2016), <https://www.brennancenter.org/analysis/automatic-voter-registration>.

⁴¹ *Id.*

officials, which is why proponents of automatic voter registration argue that such a process would both save money and lessen the potential for voter fraud.⁴²

In May 2016, both chambers of the Illinois General Assembly passed legislation that would have instituted automatic voter registration throughout the state. Illinois Governor Bruce Rauner however, vetoed the bill two months later, citing concerns regarding potential fraud and conflicts with federal law.⁴³ The Illinois House sought to override the veto in November of 2016, but failed to do so when they fell four votes short of the seventy-one person majority needed to turn the bill into law.⁴⁴ In May 2017, the Illinois Senate voted 115-0 to approve SB1933, a bipartisan automatic voter registration bill that included revisions that addressed the Governor's concerns.⁴⁵ On June 29, 2017, the bill was sent to Governor Rauner's desk.⁴⁶ Governor Rauner signed the bill into law on August 28, 2017.⁴⁷

Election Day Registration

Election Day registration allows individuals to complete voter registration and cast a ballot on the day of an election. In 2014, the Illinois General Assembly instituted a pilot program that permitted Election Day voter registration during the general election held that year.⁴⁸ Subsequently, the Illinois General Assembly passed additional legislation (SB 0172) making same day voter registration permanent throughout the state.⁴⁹ Under SB 0172, counties with fewer than 100,000 eligible voters and no electronic registration records are permitted to opt out of same day registration at some of their polling locations, provided that same day registration remains

⁴² *Id.*

⁴³ Rick Pearson, *Rauner Vetoes Automatic Voter Registration Bill*, Chicago Tribune (Sept. 23, 2016), <http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-veto-automatic-voter-registration-met-0813-20160812-story.html>.

⁴⁴ Jessie Hellmann, *Illinois Passes Automatic Voter Registration* The Hill (June 7, 2017), May 29, 2017, <http://thehill.com/homenews/state-watch/335555-illinois-legislature-passes-automatic-voter-registration>.

⁴⁵ *Id.*

⁴⁶ S. 1933, 100th Gen. Assemb. (Ill. 2017) available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1933&GAID=14&DocTypeID=SB&SessionID=91&GA=100>.

⁴⁷ *Id.*

⁴⁸ Sophia Tareen, *Same-day Voter Registration at Issue in Illinois Lawsuit*, Associated Press (Oct. 13, 2016), <http://bigstory.ap.org/article/55cf8dad5b944a06822b5214393d68ef/same-day-voter-registration-issue-illinois-lawsuit>.

⁴⁹ Illinois Public Act, Pub L. No. 98-1171.

available at the county election authority's main office and at "a polling place in each municipality where 20% or more of the county's residents reside."⁵⁰

In August 2016, U.S. House of Representatives candidate Patrick Harlan and the Crawford County Republican Central Committee filed a lawsuit in federal court alleging that Illinois SB 0172's small county exception put voters from rural counties at an unfair disadvantage.⁵¹ In September of 2016, U.S. District Court Judge Samuel Der-Yeghiayan granted the plaintiff's motion for a preliminary injunction to block same day voter registration in the state prior to the 2016 presidential election.⁵² In October of 2016, the 7th U.S. Circuit Court of Appeals stayed this injunction, re-opening same day voter registration for the November 8, 2016, presidential election.⁵³ In August of 2017, the Seventh Circuit Court of Appeals issued a stay reinstating same-day voter registration for the November election.⁵⁴

3. *Felony Disenfranchisement*

In a vast majority of U.S states, individuals who have been convicted of a felony lose their right to vote some duration of time. A person convicted of a felony automatically becomes permanently ineligible to vote in 9 U.S states.⁵⁵ Twenty-nine states automatically restore voting rights after the completion of an offender's entire sentence, including parole and probation.⁵⁶ Illinois is one of 14 states that automatically restore voting rights to people with felony convictions upon their release

⁵⁰ Illinois Public Act, Pub L. No. 97-766.

⁵¹ *Harlan v. Scholz*, 210 F. Supp. 3d 972 (N.D. Ill. 2016), *vacated*, 866 F.3d 754 (7th Cir. 2017), *available at* <https://d2dv7hze646xr.cloudfront.net/wp-content/uploads/2016/08/Harlan-v.-Scholz-complaint-with-expert-report.pdf>.

⁵² *Id.*

⁵³ Kim Geiger, *Same-Day Voter Registration Will be an Option November 8 in Illinois*, Chicago Tribune (Oct. 13, 2016), <http://www.chicagotribune.com/news/local/politics/ct-illinois-same-day-voter-registration-1009-20161007-story.html>.

⁵⁴ Bailey Lorraine, *Seventh Circuit Upholds Same-Day Illinois Voter Registration*, Courthouse News (Aug. 4, 2017), <https://www.courthousenews.com/seventh-circuit-upholds-day-illinois-voter-registration/>.

⁵⁵ *Felon Voting Rights*, National Conference of State Legislatures, *available at* <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

⁵⁶ *Id.*

from prison.⁵⁷ In Maine and Vermont, persons with felony convictions never lose the right to vote, even while they are incarcerated.⁵⁸

The National Conference of State Legislatures reported that, even in states like Illinois where voting rights are automatically restored after an individual completes their prison sentence, a lack of information and/or timely communication between courts, corrections officers, and elections officials can “result in uneven application of the law, even when the laws are clear.”⁵⁹ Specifically, “ex-offenders sometimes are not aware that they regain their voting rights automatically upon completion of their sentence” causing them to “go through life believing they cannot vote when, in fact, they can.”⁶⁰

III. SUMMARY OF PANEL TESTIMONY

The panel discussion on March 9, 2017, at the Ralph H. Metcalfe Federal Building in Chicago, Illinois included testimony from diverse panels of academic experts; legal professionals; community advocates; and elected officials who discussed challenges in access to voting along with recommendations for potential improvements.⁶¹ At the direction of the Committee’s bipartisan members, panelists were selected to provide a balanced overview of the civil rights issues impacting voters in Illinois. Testimony included the perspective of both proponents and opponents of election-day registration, recommendations of best practices for election judges, expert testimony on disenfranchisement of the incarcerated and formerly incarcerated, the challenges faced by Limited English Proficient voters, homeless voters, young voters and voters with disabilities. The Illinois Secretary of State or clerks from jurisdictions outside of Cook County did not respond to outreach attempts.

The Committee notes that where appropriate, all invited parties who were unable to attend personally were offered the opportunity to send a delegate; or, at a minimum, to submit a written statement offering their perspective on the civil rights concerns in question. The Committee did receive a number of written statements from the public offering supplemental information, which are included in Appendix B. It is in this context that the Committee submits the findings and recommendations following in this report.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ The complete agenda from this meeting can be found in Appendix A.

A. Voting Rights in Illinois

1. Election Day Registration

Through the hearing, panelists provided testimony on the laws, procedures, and policies that impact voting rights in the state of Illinois. For instance, the Committee heard arguments both for and against Illinois' Election Day registration policies. Mr. Jacob Huebert, Senior Attorney at the Liberty Justice Center and counsel to the plaintiff in the aforementioned lawsuit contesting the constitutionality of Illinois' Election Day registration policy, shared his perspective on why the Illinois' Election Day registration procedures violate the 14th amendment's equal protection clause.⁶² Mr. Huebert contends that the expanded opportunity for voter registration on Election Day is unconstitutional because individuals are only guaranteed the right to register last minute at every polling place in 20 of the 102 total counties in the state of Illinois.⁶³ He also stated that in the 2016 general election, only 4 of Illinois' 82 low population counties voluntarily offered Election Day registration at every polling place, making registration accessible to some and inaccessible to others.⁶⁴

Mr. Huebert explained that “when a citizen challenges a law that restricts voting rights or favors some voters over others, the law can only be upheld if the Court concludes that the burden the restriction imposes on voting rights is outweighed by the government interest.”⁶⁵ He testified that that, under this legal standard, Illinois has defended its Election Day registration scheme by arguing that it improves voting access for Illinoisans in general.⁶⁶ However, Mr. Hubert argues that residents of small counties without Election Day registration are unfairly disadvantaged because, in some cases, they would have to travel over twenty miles for the opportunity to register on Election Day while people in highly populated jurisdictions could register at their own local polling place.⁶⁷ Mr. Huebert also noted that there may be a partisan interest in limiting mandatory

⁶² Huebert Testimony, Hearing before the Illinois Advisory Committee to the U.S. Commission on Civil Rights, hearing transcript, p. 34 (2017), available at <http://facadatabase.gov/committee/meetingdocuments.aspx?flr=147706&cid=246> (hereinafter cited as *Transcript*).

⁶³ Huebert, *Transcript* at 36.

⁶⁴ *Id.*

Id. at 38.

⁶⁶ *Id.* at 38.

⁶⁷ *Id.* at 40.

Election Day registration to high-population counties, which have consistently favored the Democratic Party in statewide elections throughout the past decade.⁶⁸

Mr. Huebert proposed altering the Illinois' Election Day registration legislation so that a system that is fair to voters all throughout the state may be implemented.⁶⁹ To do this, he suggested that Illinois should either revoke all Election Day registration or guarantee last minute registration at every polling place, just as every other state allowing Election Day registration does.⁷⁰ Rebecca Glenberg, a Senior Attorney at the ACLU of Illinois, stated that, in fact, the initial draft of the Election Day registration bill called for a uniform state of access to polling place Election Day registration, "but low population counties advocated for an ability to opt out of that requirement especially if they had a cost concern."⁷¹ Ami Gandhi, Director of Voting Rights and Civic Empowerment of the Chicago Lawyers' Committee for Civil Rights Under Law argued that Election Day registration should not be removed from places where it has already proven to be useful and necessary, arguing that Election Day registration should simply be required in more polling places.⁷²

According to Ms. Gandhi, revoking Election Day registration would be a step backwards for Illinois voters because the ability to register at the last-minute expands ballot access.⁷³ Ms. Gandhi reported that over 100,000 voters across the state registered on the day of the November 2016 general election.⁷⁴ She also explained that Voting Rights Project of the Chicago Lawyer's Committee received numerous public comments indicating that voters rely on Election Day registration.⁷⁵ Specifically, she noted that the Voting Rights Project heard "stories of voters of color in urban areas using Election Day registration, as well as veterans, rural voters who work on farms, and a diversity of others who use Election Day registration."⁷⁶ This increased rate of registration among people of color is especially noteworthy for, as Juan Thomas, chair of the National Association for the Advancement of Colored People's Legal Redress Committee reported, 35% of Illinois' voting eligible African Americans were not registered to vote in the year

⁶⁸ *Id.* at 41.

⁶⁹ *Id.* at 42-43.

⁷⁰ *Id.* at 43.

⁷¹ Glenberg, *Transcript* at 57- 58.

⁷² Gandhi, *Transcript* at 3.

⁷³ Gandhi, *Transcript* at 32.

⁷⁴ Gandhi, *Transcript* at 3.

⁷⁵ Gandhi, *Transcript* at 28.

⁷⁶ Gandhi, *Transcript* at 3.

2014.⁷⁷ Additionally, Mr. Andy Kang, the Legal Director of Asian Americans Advancing Justice Chicago, highlighted the importance of Election Day registration when he described the municipal primary races in Chicago's 11th and 25th Wards in which 12,000 voters registered on Election Day, resulting in races that were decided by approximately 515 votes each.⁷⁸

2. *Fraud Allegations and Voter ID Requirements*

Several panelists provided testimony on recent allegations of voter fraud and their impact on the electoral process. Ms. Glenberg discussed the recent increase in allegations of voter fraud in national level political rhetoric and its effect on voting within the state of Illinois. She stated that between the years 2000 and 2014, there were over a billion votes cast but only 31 credible allegations of voter impersonation throughout the country, which nearly all turned out to be caused by accidental election judge or voter error, not a malicious attempt to influence an election.⁷⁹ None of these incidents occurred in Illinois.⁸⁰

Other panelists specifically addressed the recent voter fraud allegations that claim noncitizens have been registering to vote in American elections. Ruth Greenwood, Deputy Director of Redistricting at The Campaign Legal Center stated that there is no evidence of illegal non-citizen voter registration.⁸¹ Ms. Gandhi explained that, among noncitizens, there is a widespread understanding that voter registration is a deportable offense.⁸² She also noted that the tension within the current political climate has even caused eligible immigrant citizens to be hesitant about registering to vote.⁸³ Furthermore, Ms. Gandhi added that inadvertent registration of non-citizens through the Illinois NVRA system is not typically a problem but that reforms like automatic voter registration in Illinois have been constructed to even further strengthen safeguards against registration of non-citizens.⁸⁴

⁷⁷ Thomas, *Transcript* at 200.

⁷⁸ Kang, *Transcript* at 170.

⁷⁹ Glenberg, *Transcript* at 45.

⁸⁰ Justin Levitt, *A Comprehensive Investigation of Voter Finds 31 Credible Incidents out of One Billion Ballots Cast*, Washington Post, Aug. 6, 2014, available at https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.badaf18f08d2.

⁸¹ Greenwood, *Transcript* at 61-62.

⁸² Gandhi, *Transcript* at 62.

⁸³ *Id.*

⁸⁴ *Id.* at 64.

Ms. Glenberg asserted that Illinois should consider the potential impacts of laws requiring identification at the polls because in 2016 alone, “14 states had new restrictions on voting that had not existed before.”⁸⁵ Furthermore, she noted that the Illinois General Assembly has seen proposals for voter identification bills during the past 8 years, which, if passed, would be some of the strictest laws voter ID laws in the nation.⁸⁶ She explained that, for instance, there is currently a bill the Illinois General Assembly requiring unexpired and valid photo identification at polling places, which poses the question of whether someone is still eligible to vote if, say, their driver’s license had been suspended because of a traffic violation.⁸⁷

When describing the recently enacted laws requiring voter identification at the polls, Ms. Glenberg posited that voter identification laws “reduce voter participation in direct opposition to our country’s overall trend of including more Americans in the Democratic process.”⁸⁸ Ms. Glenberg further clarified that state voter identification laws vary from state to state and generally do not justify or explain for why particular forms of identification are required.⁸⁹ According to Ms. Greenwood, federal law requires that government issued identifiers (such as the last four digits of a person’s social security or driver’s license number) must be presented in order to register to vote, so “adding a photo identification requirement on top [of the current requirements] is just restricting who can access the polls.”⁹⁰

Additionally, the Committee heard testimony on the disparate impact of voter ID law. Ms. Glenberg testified that many Americans do not possess one of the acceptable forms of identification required by strict voter ID laws.⁹¹ She noted that, in the year 2006, 11% of American citizens did not have government-issued photo identification and added that the elderly, members of racial/ethnic minority groups, and people earning less than \$35,000 annually were less likely to possess a government ID than individuals who did not belong to any of those groups.⁹² On a similar note, Jeff Raines, Director of Communications and Engagement at CHANGE Illinois, reported that individuals living in black and Latino neighborhoods are much less likely to have drivers’

⁸⁵ Glenberg, *Transcript* at 49.

⁸⁶ Glenberg, *Transcript* at 50.

⁸⁷ Glenberg, *Transcript* at 73.

⁸⁸ Glenberg, *Transcript* at 46.

⁸⁹ Glenberg, *Transcript* at 72.

⁹⁰ Greenwood, *Transcript* at 70.

⁹¹ Glenberg, *Transcript* at 46.

⁹² Glenberg, *Transcript* at 47.

licenses or state IDs than white people.⁹³ Ms. Glenberg explained that after strict voter ID laws were enacted in Kansas and Tennessee, both states saw lower overall rates of voter turnout, with a larger decrease in electoral participation among African Americans than among whites.⁹⁴ Additionally, she noted that voter ID requirements are particularly burdensome for low income people who need to show utility bills or other documents to identify themselves, but do not have the proper documentation in their name because their bills are issued to the family members or friends with whom they live.⁹⁵ Also, Ms. Glenberg stated that voter ID laws also burden individuals who do not have access to the reliable forms of transportation that are often necessary to access the government offices that issue official identification.⁹⁶

3. *Issues with Redistricting*

In addition, a number of panelists provided testimony on current redistricting practices, which can function as a barrier to equitable representation throughout the state. Redistricting is the process in which partisan actors draw district lines, which is often done in a way that maximizes the probability that members of their political party will be elected. According to Ruth Greenwood, current incumbents have an advantage due to the manner in which partisan interests have dominated redistricting processes since 1980.⁹⁷ Ms. Greenwood further emphasized that incumbents remain in power without consideration for the preferences of their constituents because partisan redistricting reduces the number new candidates running for office, since there little incentive to fundraise and campaign in an election that seems impossible to win because of the way districts are drawn.⁹⁸ To illustrate this point, Ms. Greenwood reported that, within Illinois, “in 2016, 64 percent of state house races were uncontested and 75 percent of State Senate races were uncontested.”⁹⁹ She also explained that as the greater Chicagoland region continues to become residentially integrated, it becomes even more difficult to ascertain minority representation because it must be shown that a community is segregated to a certain degree in order to draw a

⁹³ Raines, *Transcript* at 1 – 2.

⁹⁴ Glenberg, *Transcript* at 49.

⁹⁵ Glenberg, *Transcript* at 74.

⁹⁶ Glenberg, *Transcript* at 47.

⁹⁷ Greenwood, *Transcript* at 19.

⁹⁸ *Id.* at 22.

⁹⁹ *Id.*

district around it using special provisions.¹⁰⁰ Drawing a district around a minority community would increase the likelihood that the minority group's preferred candidates would win the district.

The U.S. Supreme Court has declared redistricting on the basis of racial demographics in a manner that disadvantages minority voters unconstitutional, but it has never determined that political gerrymandering violates the U.S. Constitution.¹⁰¹ On June 19, 2017, the Supreme Court of the United States agreed to hear a Wisconsin case on partisan redistricting/gerrymandering.¹⁰² It is suspected that this case will set a standard that lower courts will be able to use to determine whether an instance of partisan redistricting is unconstitutional.¹⁰³

4. Challenges to Equal Representation

Electing Members of Minority Communities

Many panelists agree that minority groups currently lack sufficient political representation. Several of these panelists referenced the 2015 Joyce Foundation report titled "The Color of Representation: Local Government in Illinois"¹⁰⁴, which found that "people of color are underrepresented in hundreds of local governments across Illinois."¹⁰⁵ The report specifically identifies 38 Illinois jurisdictions that have "severe underrepresentation of one or more racial or ethnic minority groups."¹⁰⁶ Also, Ms. Greenwood testified that the report "showed that there are numerous cities, towns, villages and school boards have growing minority populations but all or majority white councils or boards to govern them."¹⁰⁷ In reference to the same report, Mr. Thomas noted that, in some districts, "...African-American and Latino votes are not only suppressed, but also

¹⁰⁰ *Id.* at 16.

¹⁰¹ Adam Liptak, *Justices to Hear Major Challenge to Partisan Gerrymandering*, The New York Times, June 19, 2017, https://www.nytimes.com/2017/06/19/us/politics/justices-to-hear-major-challenge-to-partisan-gerrymandering.html?_r=0.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ The Joyce Foundation, *The Color of Representation: Local Government in Illinois* (May 24, 2017), https://static1.squarespace.com/static/53e11e1be4b0d63b5fc97ee3/t/55de53dde4b0e78736571d1b/1440633821328/CLC_TheColorOfRep_FINAL_41315-2.pdf.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Greenwood, *Transcript* at 14.

marginalized in a way that does not create fair and equal representation based upon peoples of colors population numbers.”¹⁰⁸

According to Ms. Greenwood, civic participation and trust in government within communities of color would be enhanced if minority representation were improved.¹⁰⁹ Ms. Greenwood stated that it is difficult to increase minority representation because of factors including a lack of resources allocated to local organization efforts, the reality that ballot initiatives are controlled and manipulated by central authorities, and the fact that litigation efforts can be very time-consuming and costly.¹¹⁰

Ms. Greenwood suggested implementing a ranked choice voting system with multi-member districts in order to increase the number of minority board members elected within integrated communities.¹¹¹ She explained that, on a ranked choice ballot, each person writes out their electoral preferences in order by marking their favorite candidate as “1”, their second favorite candidate as “2”, and so forth.¹¹² If a voter’s favorite candidate does not get many votes, their vote will be counted towards their second favorite candidate, so each person’s vote is allocated to their most preferred candidate remaining in a run-off between the most popular candidates.¹¹³ According to Ms. Greenwood, this ballot format would likely improve minority representation in jurisdictions with more than one racial group.¹¹⁴ She explained that if “a black community and a Latino community [may] have different number one preferences, but as long as they preference each other for number two”¹¹⁵ they will end up with an elected official that was preferred by the minority community as a whole.¹¹⁶ Ms. Greenwood reported that San Francisco, CA; Cambridge, MA; Minneapolis, MN; the entire country of Australia and numerous other localities have all successfully implemented rank a choice voting system.¹¹⁷ She also testified that, on a more local

¹⁰⁸ Thomas, *Transcript* at 201.

¹⁰⁹ Greenwood, *Transcript* at 15.

¹¹⁰ *Id.* at 15.

¹¹¹ *Id.* at 16.

¹¹² *Id.* at 16.

¹¹³ *Id.* at 16 -17.

¹¹⁴ *Id.* 17.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

level, the New York City School Board saw a dramatic increase in the number of elected officials of color when they switched to a ranked choice ballot.¹¹⁸

Voter Intimidation

The Committee also heard testimony on voter intimidation in Illinois. Instances of intimidation at the polls have been reported by Illinoisans, many of whom were non-white.¹¹⁹ Cook County Clerk David Orr reported that in Cicero, Illinois, police officers have harassed voters and asked people for voting “permits.”¹²⁰ Mr. Orr explained that between 60 and 70 off-duty Chicago police officers were armed and present at the polls, intimidating Cicero residents.¹²¹ It took the County Clerk’s office between 4 and 5 hours to clear the police officers from the polling place.¹²²

Ms. Gandhi also described instances of voter intimidation. She testified that police improperly told voters they needed identification to vote during the 2015 municipal elections in Illinois, and she also stated that voters reported police harassment because of political views at the November 2016 general election polls.¹²³ Ms. Gandhi emphasized that “the lasting sting of such an experience is not trivial to voters who are made to feel like they do not belong at the polls.”¹²⁴

B. Voting Access among Jail Inmates and the Formerly Incarcerated

1. Background

According to DePaul University Political Science Professor Christina R. Rivers, the history of felony disenfranchisement is linked to the concept of “civil death,” which can be traced back to Ancient Greece.¹²⁵ She explained that the Ancient Greeks used the term in reference to the deprivation of one’s political personhood through punishment after having committed an offense against an individual or society.¹²⁶ She then noted that, centuries later, the concept was reflected

¹¹⁸ *Id.* at 56.

¹¹⁹ *Voting Matters*, Illinois Voting 2016 (June 29, 2017), <http://2016.electionprotectionillinois.org/>.

¹²⁰ Orr, *Transcript* at 256.

¹²¹ *Id.* at 257.

¹²² *Id.*

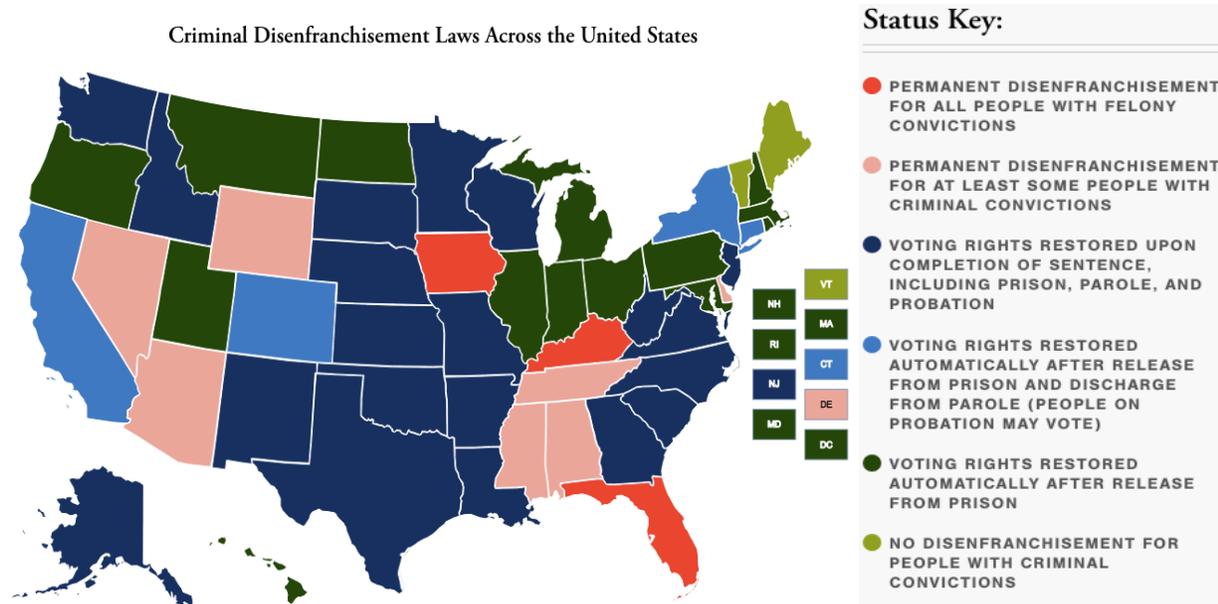
¹²³ Gandhi Written, *Transcript* at 3.

¹²⁴ *Id.*

¹²⁵ Rivers, *Transcript* at 78.

¹²⁶ *Id.*

in Section 2 of the 14th Amendment to the United States Constitution, which exempts those who have participated in a crime from representation.¹²⁷ Ms. Rivers explained that there is controversy surrounding this issue; for, despite remaining U.S. citizens, the fundamental right to vote can still be taken away from people who are or have been incarcerated.¹²⁸ The following map from the Brennan Center for Justice illustrates the current felony disenfranchisement laws across the United States:



Brennan Center for Justice, “Criminal Disenfranchisement Laws Across the United States” <http://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>

The issue of felony disenfranchisement is particularly pertinent in the United States, because, as Ms. Rivers testified, it incarcerates more people than any other nation, with prison inmates making up 2.5 percent of the total population.¹²⁹ She stated State laws restricting the right to vote after a felony conviction vary between jurisdictions,¹³⁰ with most states disenfranchising those who are in prison, on parole or on probation. Michelle Mbekeani-Wiley, the Community Justice Staff

¹²⁷ *Id.*; see also U.S. Const. amend. XIV, § 1, available at <http://www.law.cornell.edu/constitution/overview>.

¹²⁸ Rivers, *Transcript* at 93.

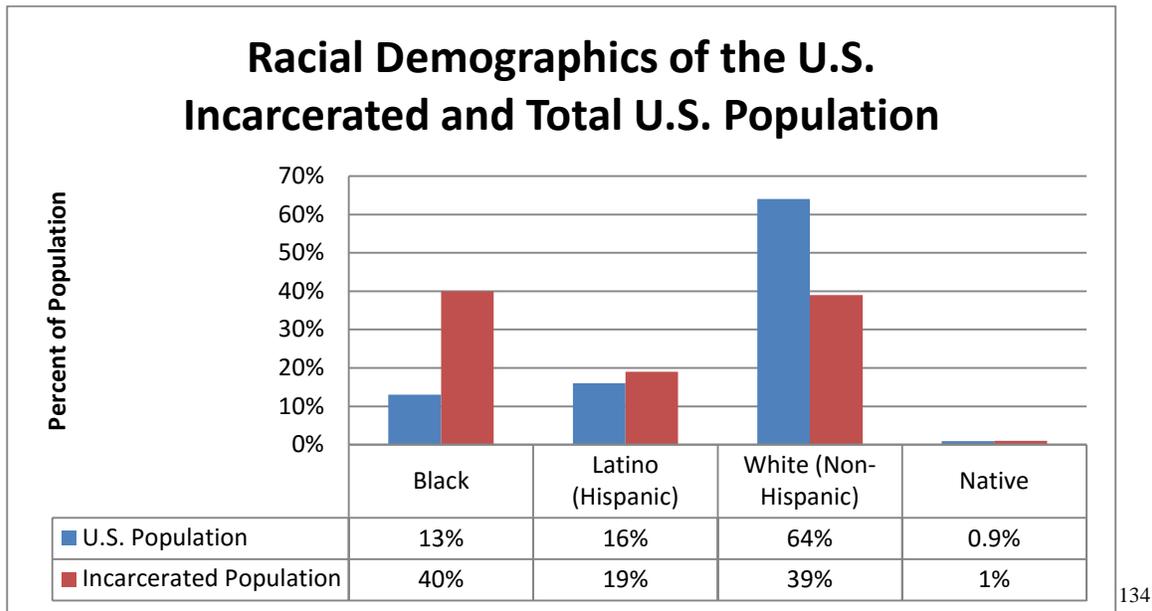
¹²⁹ *Id.* at 80; see also Christina R. Rivers, *Mass Incarceration and the Execution of Black Political Power*, in *Minority Voting in the United States* 35, 35-36 (Kyle L. Kreider & Thomas J. Baldino eds., 2015).

¹³⁰ Rivers, *Transcript* at 8.

Attorney at the Sargent Shriver National Center on Poverty Law explained that in Illinois, only those who are currently serving a felony sentence in prison are ineligible to cast a vote.¹³¹

Race/Ethnicity

The Committee heard testimony regarding voting barriers affecting jail inmates and individuals who have been released from prison; two populations which are disproportionately composed of people of color (see graphs below).¹³² Currently, 60% of prisoners come from racial/ethnic minority groups.¹³³ The over-representation of racial/ethnic minorities among the incarcerated population in the U.S. results in racial disparities in voting rights.



As the graph above indicates, black people are over-represented in prisons and jails throughout the United States while white people are underrepresented.¹³⁵ The graph also indicates that at the national level, Latino (Hispanic) people are slightly over-represented within the incarcerated population.¹³⁶

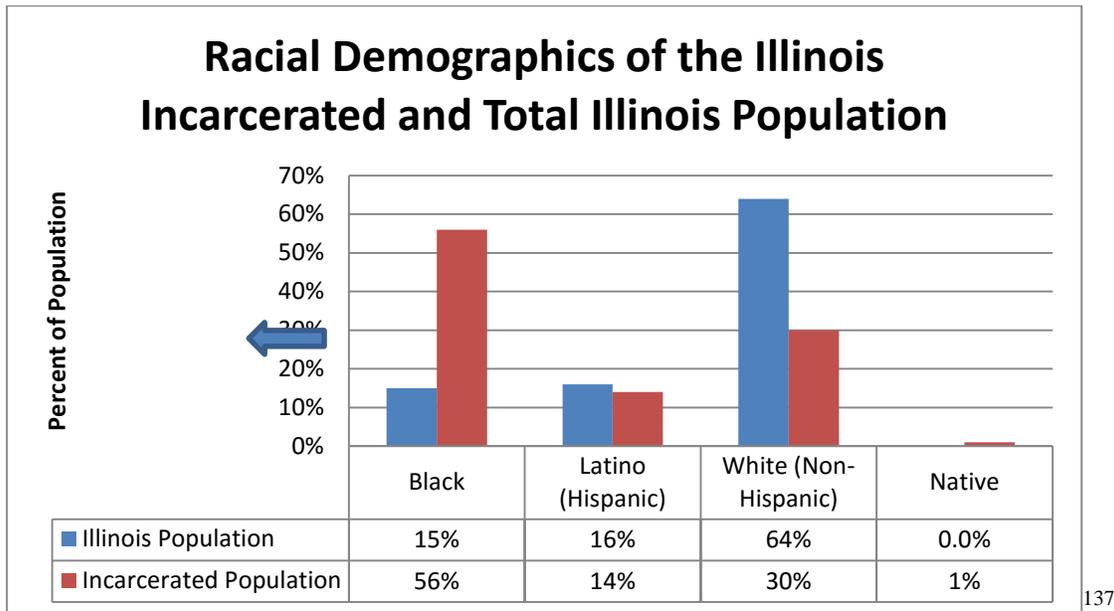
¹³¹ Mbekeani-Wiley, *Transcript* at 102.

¹³² Peter Wagner & Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2017*, Prison Policy Initiative (June 7, 2017), <https://www.prisonpolicy.org/reports/pie2017.html>.

¹³³ *Supra* note 130, at 36.

¹³⁵ *Supra* note 132.

¹³⁶ *Id.*



In the state of Illinois, black people are over-represented within the incarcerated population while white people are under-represented.¹³⁸ The Latino (Hispanic) population is slightly under-represented within the prisons and jails at the state level.¹³⁹ These demographic trends indicate that the voting rights issues discussed throughout this section have a disparate impact on the basis of race. To that point, Ms. Mbekeani-Wiley asserted that “barriers for voting while behind bars will always have a disproportionate impact on black and brown people so long as contact with the justice system disproportionality impacts black and brown people.”¹⁴⁰

2. Prison Gerrymandering

The Committee heard testimony indicating that, like felony disenfranchisement, prison gerrymandering is manner by which incarceration impacts the democratic process. Ms. Rivers explained that prison gerrymandering occurs as a result of the fact that U.S. Census counts prisoners as residents of the particular facility in which they are incarcerated. Ms. Rivers stated that, in the current system, a non-incarcerated person is still counted as a resident of their

¹³⁷ Prison Policy Initiative, *Illinois Profile*, 50 State Incarceration Profiles (June 7, 2017), <https://www.prisonpolicy.org/profiles/IL.html>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Mbekeani-Wiley, *Transcript* at 104.

permanent home for electoral representation purposes, but individuals in prison are counted as constituents of the location in which they are serving their sentence.¹⁴¹ Ms. Rivers reported that the typical Census procedures that apply to citizens who are temporarily residing outside their homes (including college students, military personnel, and individuals working out of state/abroad) do not apply to the incarcerated, despite the fact that the average stay in prison of three to five years is comparable to the academic tenure of a college student.¹⁴² She also stated that, since the prison population is counted as part of the prison district's population, inmates become "phantom constituents, zombie constituents, [or] ghost constituents" who are ineligible to vote.¹⁴³ Ms. Rivers noted that "in this way, inmates provide political power to their elected officials through their population numbers, without the accompanying right to vote."¹⁴⁴ She also drew a parallel between this prison gerrymandering and the three-fifths clause of the U.S. Constitution, which allowed slaves who were not afforded the right to vote to be counted for representation within the Electoral College.¹⁴⁵ Specifically, Ms. Rivers stated that "in a very real sense, there is a reinvigoration of the three-fifths clause, this time not strictly targeting African Americans, but also it's at a one-to-one ratio."¹⁴⁶

Additionally, Ms. Rivers explained that the process of prison gerrymandering presents certain districts with an unfair advantage because of the fact that they use their local prison population to obtain added representation.¹⁴⁷ Ms. Mbekeani-Wiley described how Pinckneyville, Illinois

¹⁴¹ Rivers, *Transcript* at 84.

¹⁴² *Id.*; see also Mbekeani-Wiley, *Transcript* at 121.

¹⁴³ Rivers, *Transcript* at 84.

¹⁴⁴ *Id.* at 83-84.

¹⁴⁵ See *Id.* (noting that the three-fifths clause (Article 1, Section 2, Subsection 3 of the United States Constitution) states: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons." The three-fifths clause is was a compromise between the northern, non-slaveholding states who argued that disenfranchised slaves should not be counted for representation and the southern, slaveholding states who wanted to increase their representation in congress by counting slaves as individuals requiring representation. The implementation of the Three-Fifths Compromise greatly increased the representation and political power of slave-owning states. The Southern states, if represented equally [if only those who could vote/non-slaves were counted for representation] would have accounted for 33 of the seats in the House of Representatives. However, because of the Three-Fifths Compromise, the Southern states accounted for 47 seats in the House of Representatives of the first United States Congress of 1790).

¹⁴⁶ *Id.* at 84.

¹⁴⁷ *Id.* at 85.

exemplifies this phenomenon.¹⁴⁸ Ms. Mbekeani-Wiley reported that there are more inmates in Pinckneyville Correctional Center than there are non-incarcerated people in the city, yet both inmates and eligible voters are counted for electoral representation, which increases each voting eligible Pinkney resident voting power.¹⁴⁹ She also stated that cities like Pinckneyville can obtain government funding using these artificially inflated population statistics, which in turn, may lead elected officials to seek a prison within their district as a way to raise money for their constituents.¹⁵⁰

According to “The Color of Representation” Report, Cook County is one of the Illinois jurisdictions influenced by prison-based gerrymandering because “60% of the state prison population comes from Cook County, yet 99% of the population is housed and counted in districts outside of Cook County.”¹⁵¹ The report indicates that prison gerrymandering reduces comparative urban representation within Cook County and increases rural representation in rural prison-containing counties, which leaves minority voters (who make up a large portion of urban communities) underrepresented.¹⁵²

Legislators concerned with the issue of prison gerrymandering drafted Illinois State Senate bill HB1489, which would create the “No Representation Without Population Act” and make it illegal to count disenfranchised prisoners as constituents in the county they are incarcerated.¹⁵³ The bill has been tabled and no future hearing date has been assigned.¹⁵⁴

3. *Barriers to Voting in Jail*

The Committee was also presented testimony on the difficulties associated with voting while in jail. Although Illinois residents residing in jail while waiting for trial or serving a misdemeanor sentence are eligible to vote, panelists identified several barriers that place limitations on jail inmates’ ability to engage in the electoral process. Cara Smith, the Policy Chief for Cook County Sheriff Tom Dart, noted that the majority of inmates in Illinois’ Cook County Jail, the largest

¹⁴⁸ Mbekeani-Wiley, *Transcript* at 121.

¹⁴⁹ *Id.*

¹⁵⁰ Rivers, *supra* note 142, at 86.

¹⁵¹ The Joyce Foundation, *supra* note 105, at 29.

¹⁵² *Id.*

¹⁵³ H.R. 1489, 99th Gen. Assembly. (Ill. 2017) Illinois General Assembly, *available at* <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1489&GAID=13&DocTypeID=HB&LegId=86237&SessionID=88&GA=99>.

¹⁵⁴ *Id.*

single site jail in the nation¹⁵⁵, are eligible to vote absentee. Specifically, she stated that that “95 percent [of inmates in Cook County Jail] are pre-trial, and only about 30 percent are maximum security detainees.”¹⁵⁶

Panelist Michael Nasir Blackwell of the Inner-City Muslim Action Network revealed that he spent time some in Cook County Jail before he entered prison to serve 24 and a half years inside the Illinois Department of Corrections.¹⁵⁷ Mr. Blackwell testified that he would have liked to vote in the state election that took place while he was awaiting his trial in Cook County Jail, but he was “adamantly told by jail officials, you [Mr. Blackwell] do not have the right to vote.”¹⁵⁸

While discussing the demographic markup of voting-eligible inmates in Cook County Jail, Ms. Smith testified that 90 percent of the inmates Cook County Jail are non-white.¹⁵⁹ Ms. Mbekeani-Wiley also noted that the majority of inmates who are eligible to vote in Cook County Jail are black men under the age of twenty-five, which demonstrates that the barriers to voting that disadvantage the jail population have a disparate impact on people of color.¹⁶⁰

Social Security Numbers

Ms. Mbekeani-Wiley stated that one of the main barriers to voting access in jail is the potential registrants’ inability to access their social security numbers.¹⁶¹ She explained that, although social security numbers are frequently used to identify voters, they are not included on standard arrest reports or criminal court case dockets.¹⁶² Because of this, people in jail must rely on their own memory and/or resources to find their social security number. Ms. Mbekeani-Wiley testified that this requirement is difficult to meet because many jail inmates have transitioned straight from the juvenile justice system to jail and have become adults while in custody awaiting trial, never having the occasion to learn their social security number.¹⁶³

¹⁵⁵ Smith, *Transcript* at 107.

¹⁵⁶ *Id.* at 105.

¹⁵⁷ Blackwell, *Transcript* at 108.

¹⁵⁸ *Id.*

¹⁵⁹ Smith, *Transcript* at 105.

¹⁶⁰ Mbekeani-Wiley, *Transcript* at 95-96.

¹⁶¹ *Id.* at 96.

¹⁶² *Id.* at 116.

¹⁶³ *Id.* at 104.

Lack of an Address

In addition to providing testimony on social security numbers access, Ms. Mbekeani-Wiley also testified that the inability to register to vote without providing a residential address makes it difficult for inmates to exercise their right to vote. Ms. Mbekeani-Wiley reported that people awaiting trial in Illinois may find themselves in jail for extraordinarily lengthy periods of time, which, in some instances, can extend up to four years.¹⁶⁴ She explained that, despite this fact, inmates are not allowed to list a jail address as their place of residence on a voting registration form, regardless of the amount of time they have spent there.¹⁶⁵ Even though the inmates physically reside in jail, they cannot register the jail as either their personal residence or claim the address as shelter in an attempt to register as a homeless voter.¹⁶⁶ Ms. Mbekeani-Wiley asserted that, within the present system, jail inmates are essentially living in “residential exile.”¹⁶⁷ She clarified that the current legislation makes it impossible for some inmates to register because the duration of time spent in jail can be so lengthy that an individual may no longer recall their last address or no longer have family ties at their most recent place of residence.¹⁶⁸

4. Misinformation among the Formerly Incarcerated

The Committee also heard testimony indicating that barriers to voting access impede democratic participation among individuals who have been released from prison after serving a felony conviction. Illinois law states that individuals who were convicted of a felony are eligible to vote immediately after they are released from prison, even if they must remain on parole or probation.¹⁶⁹ However, Mr. Marlon Chamberlain of the Community Renewal Society testified that he was not informed of his right to vote after he served 10 years in federal prison. Mr. Chamberlain reported that “when I was released from prison, my probation officer told me that I couldn’t vote, and along with like pretty much 90 percent of [the residents at] the halfway house that I was sent home to I was under the impression that we couldn’t vote.”¹⁷⁰ Similarly, Mr. Blackwell testified that an individual who had just served 33 years in Statesville Maximum Security Prison did not know that

¹⁶⁴ *Id.* at 98.

¹⁶⁵ *Id.* at 99.

¹⁶⁶ *Id.* at 100.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 99-100.

¹⁶⁹ Rivers, *Transcript* at 82; see also *Illinois Online Voter Application: State Board of Elections*, Illinois Online Voter Registration Application (May 12, 2017), <https://ova.elections.il.gov/>.

¹⁷⁰ Chamberlain, *Transcript* at 113.

he had the ability to vote because prison officials did not inform him of his renewed right.¹⁷¹ Along the same lines, Ms. Mbekeani-Wiley described her interactions with a formerly incarcerated 64 year old black man who recently registered to vote for the first time. She explained that the man had never registered previously because he thought his prior felony convictions disqualified him.¹⁷² According to Ms. Mbekeani-Wiley, such misinformation was cited as a frequent reason why those with felony records do not engage in the electoral process.¹⁷³ Because of this, she suggested that the State Election Board should be responsible for challenging the myth that individuals with past convictions cannot vote in Illinois.¹⁷⁴

5. *Overcoming Voting Barriers*

Distributing Ballots in Jails

Additionally, Ms. Mbekeani-Wiley provided testimony on recent efforts to increase voter registration and facilitate in person ballot access within Cook County Jail. She explained the Sargent Shriver National Center on Poverty Law has posted signs describing inmates' voting rights in all eight divisions of the facility.¹⁷⁵ Ms. Mbekeani also noted that that within same year, the Shriver Center, the Cook County Sheriff's office and the Cook County Clerk's office collaboratively distributed 7,500 registration forms and absentee ballots to what was essentially the entire population of Cook County Jail.¹⁷⁶ Ms. Mbekeani-Wiley revealed that, after these efforts, more than 1,000 people registered to vote in Cook County Jail throughout the period leading up to the November 8, 2016, general election.¹⁷⁷ During the same election, nearly 1,200 ballots were cast from Cook County Jail.¹⁷⁸

After describing the process by which absentee ballots were distributed throughout Cook County Jail, Ms. Mbekeani-Wiley stated that Cook County Jail is currently the only facility outside the District of Columbia where ballots are distributed in person rather than by mail.¹⁷⁹ She noted that,

¹⁷¹ Blackwell, *Transcript* at 110.

¹⁷² Mbekeani-Wiley, *Transcript* at 102.

¹⁷³ *Id.* at 101.

¹⁷⁴ *Id.* at 104.

¹⁷⁵ *Id.* at 102.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 95.

¹⁷⁸ La Risa Lynch, *Ability to Vote Compromised for Thousands Behind Bars*, Chicago Rep. (July 6, 2017), <http://chicagoreporter.com/ability-to-vote-compromised-for-thousands-behind-bars/>.

¹⁷⁹ Mbekeani-Wiley, *Transcript* at 103.

in order for efforts like those undertaken in Cook County Jail to be successful, both inter-organization coordination and sufficient funding are necessary.¹⁸⁰ She also asserted that the success of future efforts is contingent on the political landscape of a particular county, which can determine whether elected leadership will be enthusiastic about jail voting initiatives.¹⁸¹ To that point, Ms. Mbekeani-Wiley suggested that some counties may be unlikely to support jail absentee voting initiatives because of partisan beliefs, just as they have historically resisted funding other inmate programs (including ones dedicated to basic education).¹⁸²

Jail Voter Registration IDs

In order to facilitate voter registration among jail inmates who are unable to access their social security numbers, Ms. Mbekeani-Wiley suggested expanding the range of acceptable forms of identification. Ms. Mbekeani explained that, although municipal jail records do not include social security numbers, they do include fingerprint information for every inmate.¹⁸³ Because of this fact, she suggested that these readily available fingerprints could be used as alternative form of identification in lieu of a social security number, especially since fingerprints are technically a more reliable form of identification.¹⁸⁴ Alternatively, she proposed that an inmate's county jail identification card, which contains both their name and photograph, could potentially serve as a form of identification for voter registration.¹⁸⁵

Training Jail and Prison Staff

Panelists also testified that teaching jail and prison staff about voting polices would help increase rates of voter registration among individuals who are or have been incarcerated. According to Mr. Blackwell, maximum security prisons do not provide adequate pre-release programs that teach inmates about their rights outside of the correctional facility.¹⁸⁶ Ms. Mbekeani-Wiley suggested that a possible way to ensure that inmates are properly informed would be to assign the dissemination of information to probation and parole officers who already discuss government programs with their parolees. She testified that the Sargent Shriver National Center on Poverty Law has worked extensively to teach probation and parole about Medicaid and the Affordable

¹⁸⁰ *Id.* at 127.

¹⁸¹ *Id.* at 127-28.

¹⁸² *Id.* at 129.

¹⁸³ *Id.* at 116.

¹⁸⁴ *Id.* at 116-117.

¹⁸⁵ *Id.* at 119.

¹⁸⁶ Blackwell, *Transcript* at 110.

Health Care Act eligibility requirements so that the officers can help inmates register.¹⁸⁷ Ms. Mbekeani-Wiley speculates that a similar program focused on voting rights education could be also implemented, since the “Office of Probation and Parole have typically been fairly open to receiving” training.¹⁸⁸

Community Engagement

In addition to the aforementioned efforts to increase voter registration among jail inmates and the formerly incarcerated, a number of Illinois community groups are working to improve voting rights awareness and education for individuals who have been released from prison. For example, Mr. Chamberlain explained that the Chicago-based Community Renewal Society holds both Know Your Rights and Exercise Your Rights workshops for formerly incarcerated community members in order to teach people who their representatives are and to encourage engagement in the development of legislation that will affect their lives.¹⁸⁹ Additionally, Mr. Blackwell explained that the Inner-City Muslim Action Network will be making an effort to distribute community surveys focused specifically on this matter, which will ask people about their basic knowledge regarding voting rights. He stated that the data collected will be used to inform individuals who plan to create programs that will address the gaps in voter education.¹⁹⁰ According to Mr. Blackwell, the organization’s ultimate goal is to increase voter registration within the community.¹⁹¹

C. Voting Access for Limited English Proficient Voters

1. The Voting Rights Act

The Voting Rights Act of 1965 prohibited discrimination against voters because of race or ethnicity, but did not mandate language access until ten years later when Congress recognized that guaranteeing the availability of translated materials would prevent discrimination based on national origin, race, and level of education.¹⁹² While justifying the 1975 language access

¹⁸⁷ Mbekeani-Wiley, *Transcript* at 126.

¹⁸⁸ *Id.*

¹⁸⁹ Chamberlain, *Transcript* at 113.

¹⁹⁰ Blackwell, *Transcript* at 112.

¹⁹¹ *Id.*

¹⁹² The U.S. Dep’t of Justice, *The History of Federal Voting Rights Laws*, Justice.gov (May 12, 2017), <https://www.justice.gov/crt/history-federal-voting-rights-laws>.supra note ; *see also*: Cortazar, *Transcript* at 135

provisions, United States Congress stated: “citizens of language minorities have been effectively excluded from participation in the electoral process.”¹⁹³ Additionally, they remarked that “among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal education opportunities afforded them resulting in high illiteracy and low voting participation.”¹⁹⁴ Ryan Cortazar of the Chicago Lawyers’ Committee for Civil Rights Under Law reported that the language access provisions guaranteed by the 1975 amendment have not been updated since, despite the fact that “language and minority communities have evolved over the last 40 years, not just geographically, but also in terms of the different languages that these communities speak.”¹⁹⁵

2. *Background Information on Sections 203 and 208*

Several panelists discussed the ways in which the provisions guaranteed in the amended Voting Rights Act have impacted limited English proficient voters. Specifically, Mr. Cortazar explained that sections 203 and 208 of the Voting Rights Act were established in 1975 in order to provide assistance to “language minorities” at the polls.¹⁹⁶ Together, these two sections were designed to make voting accessible to all Americans as guaranteed by 14th and 15th Amendments of the Constitution.

Mr. Cortazar stated that, under Section 203, jurisdictions are required to provide written and oral assistance in a language other than English if that particular jurisdiction demonstrates a significant need for translated materials.¹⁹⁷ He noted that, specifically, if more than 10,000 or 5% of voting age citizens within a particular jurisdiction are a) members of a single language minority, b) limited English proficient, and c) have an illiteracy rate higher than the national average, then that particular jurisdiction will be covered by Section 203.¹⁹⁸ Mr. Cortazar reported that there are currently 263 jurisdictions that receive Section 203 accommodations.¹⁹⁹ He added that, although

¹⁹³ U.S. Dep’t of Justice, *The Language Minority Provisions of the Voting Rights Act*, Justice.gov (May 12, 2017), <https://www.justice.gov/crt/about-language-minority-voting-rights>.

¹⁹⁴ *Id.*

¹⁹⁵ Cortazar, *Transcript* at 136.

¹⁹⁶ *Id.* at 138.

¹⁹⁷ *Id.* at 139.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

these Section 203 eligible regions make up only 3.3% of the total jurisdictions in the nation, 31.3% of voters cast their ballots in these districts.²⁰⁰

Mr. Cortazar also explained that, since Section 203 does not provide resources to every jurisdiction, limited English proficient voters often rely on the provisions guaranteed by Section 208.²⁰¹ Mr. Cortazar reported that Section 208 allows voters to bring any person (other than a representative of their employer or their union) with them to their polling place to translate a ballot.²⁰² Furthermore, he stated that Section 208 allows voters to bring a person of their choice to assist them if they are unable to (or lack confidence in their ability to) vote by themselves because of impaired vision, a disability, or the inability to read or write.²⁰³

The Committee also heard testimony on the topic language access from the Chicago Board of Elections, a body that, according to Shobhana Verma, Director of the South Asian Outreach Program at the Chicago Board of Election Commissioners, “oversees one of the largest election operations in the United States with approximately 1.6 million registered voters and 2,069 precincts.”²⁰⁴ Although the Committee only had the opportunity to hear from the Board of Elections for the city of Chicago, the testimony provided gave sufficient insight into the government’s perspective on the efforts required to accommodate language minorities. Ms. Verma reported that the Chicago Board of Election Commissioners provides translated materials for three major language groups: Spanish which it has incorporated since the 1970’s, Chinese, which was included in the early 2000’s, and most recently, Hindi, which was included after the 2010 Census findings.²⁰⁵ The Board has emphasized the importance of community outreach as a method to reach the various diverse immigrant groups in the city of Chicago.²⁰⁶

Additionally, Ms. Verma spoke about the efforts required for a jurisdiction to implement Section 203. She stated that dispensing adequate verbal and written assistance requires “translating every possible voter contact material, every voter form, all polling place signs and materials including the smallest of stickers on voting equipment, all banners for outreach events or election functions like early voting by mail and election day voting, all news releases, all legal notices that are

²⁰⁰ *Id.* at 6.

²⁰¹ *Id.* at 139-40.

²⁰² *Id.* at 140.

²⁰³ U.S. Dep’t of Justice, *About Language Minority Voting Rights*, Justice.gov (May 12, 2017), <https://www.justice.gov/crt/statutes-enforced-voting-section>.

²⁰⁴ Verma, *Transcript* at 154.

²⁰⁵ *Id.* at 155.

²⁰⁶ *Id.* at 163-64.

published in local newspapers”²⁰⁷ Mr. Cortazar also emphasized that providing effective language access services for voters requires a strong cross-agency effort that can only be achieved through a “constant collaboration between voters, between civic groups, and between the election authorities.”²⁰⁸

Currently, the Election Assistance Commission delivers language access voting materials to Section 203 jurisdictions by certifying specialized voting equipment and providing technical support to election officials.²⁰⁹ Additionally, the Election Assistance Commission works collaboratively with advocacy and policy organizations to create and disseminate materials through the Commission’s Language Accessibility Program.²¹⁰

In January 2017, a bill seeking to terminate the programs and activities of the Election Assistance Commission (H.R. 634, also known as the “Election Assistance Commission Termination Act”) was filed in the United States House of Representatives.²¹¹ Most recently, H.R. 634 is has been ordered to be reported in the house administration Committee.²¹² Mr. Kang expressed concern that this bill would jeopardize e the future of voting rights for limited English proficient voters.²¹³ If passed, the impacts of this piece of legislation would be far reaching, because, according to Ms. Verónica Cortez, Staff Attorney at the Mexican American Legal Defense and Education Fund, “70 percent of [Limited English Proficient] people have said they would not vote if they didn’t have language access.”²¹⁴

3. *Determining Language Access Eligibility*

Panelists identified several issues impeding voter language access, some of which pertained to the manner in which jurisdictions are selected for Section 203 coverage. Mr. Cortazar explained that, in the current system, jurisdictions may be unduly denied coverage because the federal government uses the American Community Survey, rather than the decennial Census, to determine Section 203

²⁰⁷ *Id.* at 158.

²⁰⁸ Cortazar, *Transcript*, at 141.

²⁰⁹ *Voting Accessibility*, the U.S. Election Assistance Comm’n (May 12, 2017). <https://www.eac.gov/election-officials/voting-accessibility/>.

²¹⁰ *Id.*

²¹¹ H.R.634, 115th Cong. (2017), available at <https://www.congress.gov/bill/115th-congress/house-bill/634>.

²¹² *Id.*

²¹³ Kang, *Transcript* at 185.

²¹⁴ Cortez, *Transcript* at 151.

jurisdiction eligibility.²¹⁵ Mr. Cortazar stated that the sample of survey respondents from a given district is used to make generalizations about the district as a whole, creating the potential for sampling error.²¹⁶ Furthermore, he explained that the extrapolated survey data will probably indicate that there are fewer language minority citizens than their actually are, for it is likely that people who are not comfortable with their English will not respond a government survey at all.²¹⁷ Additionally, Mr. Cortazar suggested that those who do submit responses may overestimate their level of English proficiency since the survey does not explicitly mention that responses will be used to determine whether a community needs translated election materials.²¹⁸ He explained that, “for example, a voter may think she speaks English ‘very well’ but still be uncomfortable navigating confusing election procedures and ballot language without language assistance.”²¹⁹ Mr. Cortazar stipulates that data collection and sampling error made DuPage County ineligible for Section 203 coverage in 2016, although they were previously covered in 2011.²²⁰ These issues with methodology, Mr. Cortazar explains, may cause districts to lose Section 203 coverage even though the need for language access in that particular jurisdiction had grown.²²¹

Additionally, Mr. Cortazar suggested that the American Community Survey data may not accurately identify the jurisdictions that require language access because limited English proficient immigrant communities have high rates of mobility. Mr. Cortazar explained that there is “a constant shift in these populations across the [Chicago] metropolitan area, not just in the city, but also in the suburbs... and so even though we might have a county be covered, from election to election, those populations might shift from one precinct to another.”²²²

4. *Language Access in Illinois*

The Committee heard testimony on the number of voters whose fundamental civil rights are affected by language access provisions in Illinois. Ms. Cortez stated that there are approximately 435,000 Limited English Proficient voters in Illinois, a majority of whom are located in Cook,

²¹⁵ Cortazar, *Transcript* at 7.

²¹⁶ *Id.* at 140.

²¹⁷ *Id.* at 140-41.

²¹⁸ *Id.* at 8.

²¹⁹ *Id.*

²²⁰ *Id.* at 144.

²²¹ *Id.* at 184.

²²² *Id.* at 143.

Lake, and Kane Counties, and, to a slightly lesser extent, in Will and DuPage Counties.²²³ She clarified that Cook, Kane, and Lake Counties qualify for Section 203 coverage because they each have Limited English Proficient Spanish speaking voter populations of more than 10,000.²²⁴ Additionally, Ms. Verma testified that select precincts in Chicago are required to provide translated materials in Chinese and Hindi.²²⁵ Ms. Cortez testified that DuPage County lost Section 203 Spanish language coverage in 2016 because their population of Spanish-speaking Limited English Proficient voters fell just 220 under the 10,000 population requirement.²²⁶ Similarly, she reported that Will County fell just 400 voters short of qualifying for Spanish Language Section 203 coverage with a Spanish-speaking population of 9,600 in 2016.²²⁷

5. *The Implementation of Language Access Provisions*

Ballot Issues

Several panelists identified various barriers to language access that exist within Section 203 jurisdictions. For instance, Mr. Cortazar explained that even when ballots and supplemental information is translated, voting materials can include complex and technical language to the extent that it is very difficult for people who are proficient in a language to understand it.²²⁸ He noted that the complexity of voting material language causes “difficulties ...for context specific minority language translations.”²²⁹

Ms. Cortez also explained that in Section 208 jurisdictions where voting materials are only available in English, many voters are unaware that they have right to bring a ballot translator into the polling place with them, and many of those who are aware of this right are unsure of the procedures for doing so.²³⁰ She also stated that, if election judges do not clearly explain that the voter and the person assisting them must sign affidavits, the voter and translator may be confused and unnecessarily intimidated.²³¹

²²³ Cortez, *Transcript* at 145.

²²⁴ *Id.* at 145-46.

²²⁵ Verma, *Transcript* at 158.

²²⁶ Cortez, *Transcript* at 146.

²²⁷ *Id.*

²²⁸ Cortazar, *Transcript* at 141.

²²⁹ *Id.*

²³⁰ Cortez, *Transcript* at 147-48.

²³¹ *Id.*

Election Judges

Panelists explained that, in addition to facing ballots issues, limited English proficient voters may also be denied the language access because of issues with poll staff. Ms. Cortez explained that there are not always bilingual judges at the polls, even though Section 203 jurisdictions are required to have such staff present.²³² When a jurisdiction has more polling places than bilingual election judges, only certain polling places will be fully language accessible. Ms. Cortez also noted that Limited English proficient voters may be left unassisted because authorities reduce the total number of open polling places during local elections, which leads to instability in the location of polling places with bilingual workers.²³³ In addition, she explained that there may be only one bilingual election judge at a particular polling place, which makes it highly unlikely that every voter who needs language assistance can interact with bilingual personal.²³⁴ Ms. Cortez testified that when there are not enough bilingual officials available, language access voters may need to perform requisite verbal check in process in English, which would be extremely intimidating to a person who is limited English proficient.²³⁵

Additionally, Ms. Cortez, Mr. Kang and Mr. Cortazar provided testimony on the ways in which improper election judging can also adversely impact limited English proficient voters. Ms. Cortez noted that she once saw translated materials stored away in a locker, even though judges were required to post those materials throughout the polling place.²³⁶ Mr. Kang revealed that during the March 2016 primary election there were eighteen instances in which required language access materials were not displayed, and election judges in two of those instances expressed resistance when they were asked to provide the appropriate Section 203 materials.²³⁷ Mr. Cortazar noted that there have been instances in which election judges have directed racially charged and xenophobic comments towards limited English proficient voters.²³⁸ This type of inappropriate commentary, and many of the other obstacles that limited English proficient individuals encounter at the polls, are likely to have a disparate impact based on race/ethnicity and national origin.

²³² *Id.* at 149.

²³³ Cortazar, *Transcript* at 11.

²³⁴ Cortez, *Transcript* at 150.

²³⁵ *Id.*

²³⁶ *Id.* at 148.

²³⁷ Kang, *Transcript* at 168.

²³⁸ Cortazar, *Transcript* at 143.

6. *Improving Voter Language Access*

In order to ensure that the jurisdictions with significant language access needs are covered by Section 203, Mr. Cortazar suggested that district eligibility determinations should be altered. Specifically, he proposed that the accuracy of Section 203 eligibility determinations could be improved if the Census Bureau were engaged with the public and accepted public comment in the jurisdiction selection process.²³⁹ Mr. Cortazar suggested that, this were the case, the public would have the opportunity to report that Section 203 coverage was mistakenly revoked from a particular district.²⁴⁰ Additionally, Ms. Cortez suggested that officials can improve voter language access at the polls is by engaging election judges and community leaders during the periods between elections to ensure that language access requirements are maintained between years.²⁴¹ More generally, enhancing the frequency and scope of election judge training would make it more likely that election judges are aware of the specific requirements for jurisdictions covered under Section 203 and/or Section 208.

Expanding Language Access

Ms. Cortez explained that the goal of language access is to engage as many voters as possible, regardless of their English language ability. To that point, Ms. Cortez testified that, as long as survey data continues to indicate that voter populations continue to “need help with accessing the ballots because of their language abilities...then we’re hoping they’re still going to continue to receive those services.”²⁴²

Additionally, the Committee heard testimony indicating that, in order to expand language access, strong community outreach programs will be necessary. Ms. Verma explained that a community liaison who can work with both voters and election officials must be available in order to guarantee the effective provision of language assistance. Specifically, she stated that “having a language assistance program does not automatically benefit the community...it requires extensive voter outreach, education, and communication with voters.”²⁴³

Mr. Kang emphasized the importance of maintaining language access when he reported that the number of individuals requiring language assess is likely to increase, particularly among first

²³⁹ Cortazar, *Transcript* at 143-44.

²⁴⁰ *Id.* at 143.

²⁴¹ *Id.* at 142.

²⁴² *Id.* at 176.

²⁴³ Verma, *Transcript* at 157.

generation immigrants who have expressed the desire to engage in the democratic process during the recent years.²⁴⁴ After acknowledging the political climate surrounding the 2016 general elections, Mr. Kang explained that recent events have led to “stronger interest in voting among immigrants” and a “renewed, healthy interest in being engaged” within immigrant communities.²⁴⁵ Also, Ms. Cortez testified that, because naturalization applications are on the rise, there are “going to be more people probably that are going to need language access that are citizens but also more people that are going to want to go and register.”²⁴⁶

D. Voting Access within Other Community Groups

1. The Homeless

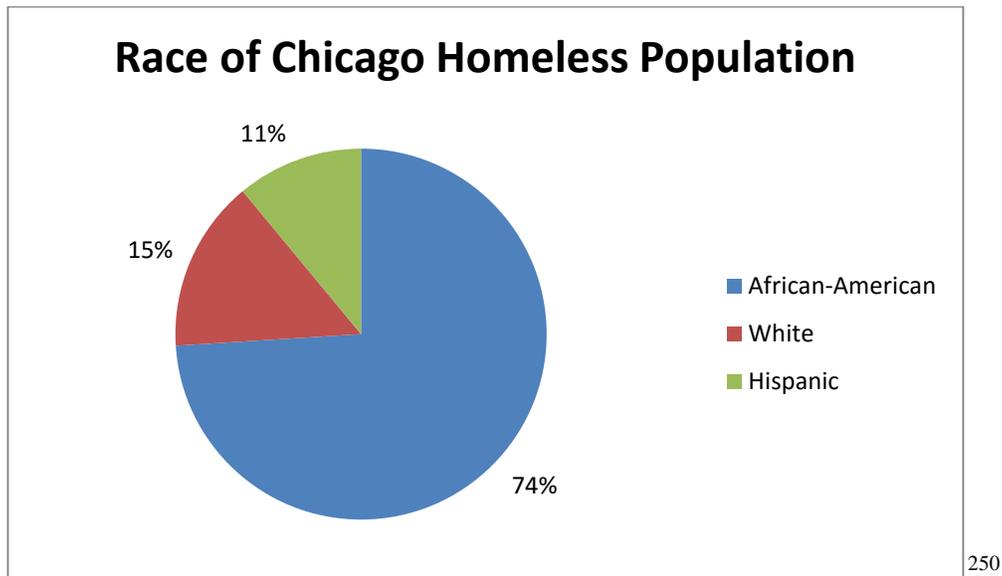
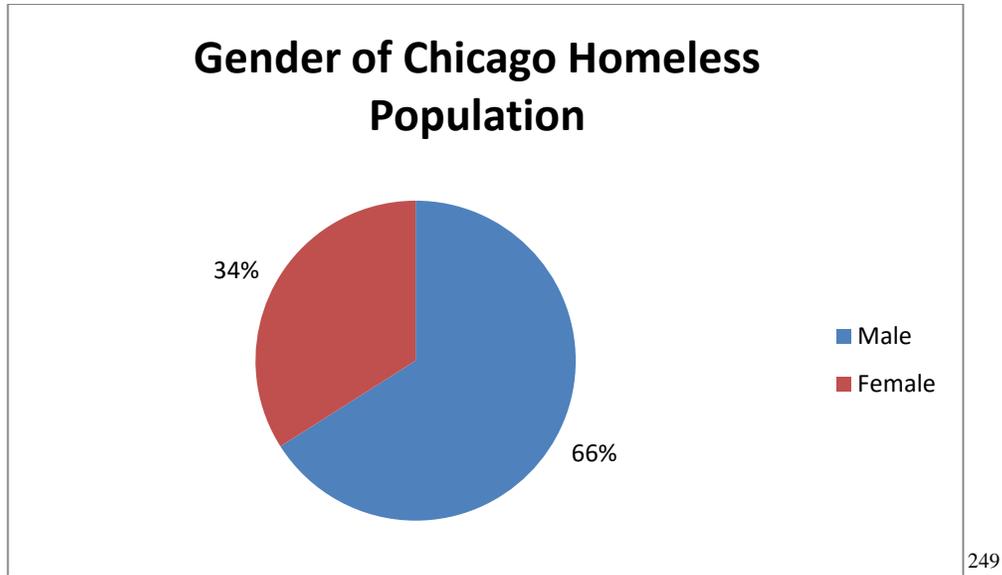
In addition to hearing testimony on the manner in which incarcerated and limited English proficient individuals are impacted by Illinois voting laws, the Committee also heard testimony on voting rights within various community/social groups. Panelist Sharon Legenza, the Executive Director of Housing Action Illinois, explained that a person is considered to be homelessness if they are unsheltered (living in locations generally not considered inhabitable) or if they are living in transitional housing, supportive housing, a temporary shelter, or with friends or relatives.²⁴⁷ Ms. Legenza reported that, according to the US Census, there were 259,484 homeless individuals experiencing homelessness in Illinois. She also noted that half of this population was based in Chicago.²⁴⁸ The gender and racial demographics of Chicago’s homeless population (not including those living “doubled up” with family or friends) are broken down as follows:

²⁴⁴ Kang, *Transcript* at 176.

²⁴⁵ *Id.* at 180-81.

²⁴⁶ Cortez, *Transcript* at 181.

²⁴⁷ Legenza, *Transcript* at 211.



Like the Illinois incarcerated population, Chicago’s homeless population is disproportionately black/African American, which means that the barriers impeding democratic participation among the homeless have a disparate impact on racial/ethnic minority individuals.

²⁴⁹ *Id.* at 213 (noting that within the population depicted, 0.5% of individuals are transgender).

²⁵⁰ *Id.*

According to Ms. Legenza, 53% of males and 26% of females within the Chicago homeless population reported that they had been previously incarcerated.²⁵¹ Additionally, veterans account for 14% of Chicago's homeless population.²⁵²

Ms. Legenza explained that in 2013, the Illinois State Legislature approved the Bill of Rights for the Homeless, which prohibits the denial of any rights, privileges, or access to public service because of homelessness.²⁵³ Ms. Legenza stated that, among other things, this act requires Illinois to provide homeless individuals who receive assistance from a social service agency the opportunity to obtain a Homeless Status Certification, which may be used to acquire identification acceptable for voter registration.²⁵⁴ To apply for a Homeless Status Certification, an applicant must provide identification that states their name, date of birth, and social security number.²⁵⁵

Ms. Legenza testified that, despite the protections guaranteed by the Bill of Rights for the Homeless Act, homeless individuals still face numerous challenges when attempting to exercise their right to vote. For instance, she reported that homeless people lack the forms of identification required to register as homeless (such as a birth certificate) and explained that it is very difficult for homeless individuals to obtain such documentation because the process often requires fees, which many homeless people cannot afford to pay.²⁵⁶ Ms. Legenza also noted that many of the homeless individuals that are able to register to vote and have trouble accessing their polling places, which can be located in areas that cannot be reached via public transit.²⁵⁷ Furthermore, Ms. Legenza revealed that those who advocate for homeless voters are "usually under-resourced and over-stretched," and thus their ability to assist the homeless with applications and transportation is often limited.²⁵⁸

During her testimony, Ms. Legenza shared the story of a homeless voter who called the Chicago Lawyers Committee for Civil Rights' Election Protection Program hotline on the day of the 2016

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.* at 214; see also Ellyn Fortino, *Illinois Enacts Landmark Homeless Bill of Rights*, Progress Ill. (June 7, 2017), <http://progressillinois.com/quick-hits/content/2013/08/27/illinois-enacts-landmark-homeless-bill-rights>; see also Bill of Rights for the Homeless Act (2013), <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3517&ChapterID=64>.

²⁵⁴ Legenza, *Transcript* at 216.

²⁵⁵ *Homeless Status Certification*, Office of the Sec'y of State Driver Serv. Dep't (May 12, 2017), https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a230.pdf.

²⁵⁶ Legenza, *Transcript* at 216.

²⁵⁷ *Id.* at 217.

²⁵⁸ *Id.* at 216.

election.²⁵⁹ The caller was temporarily staying with a friend, but did not possess documentation or mail tying him to that address.²⁶⁰ Ms. Legenza testified that when the homeless voter arrived at his polling place, he found that the election judges were not familiar with the Illinois provision allowing homeless voters to cast a ballot in the precinct where they receive mail.²⁶¹ According to Ms. Legenza, the situation was resolved when “the voter, the friend [with whom the homeless voter was living] and the election judge, and the election protection worker were all able to get on the phone and figure out what was going on and get the proper documentation.”²⁶² Ms. Legenza testimony indicates that, although the election judge was ultimately able to assist the voter, this situation exemplifies the manner in which uninformed election judges can limit ballot access among the homeless.²⁶³

2. *Individuals with Disabilities*

During the panel on community/social groups, the Committee heard from Cheryl Jansen, Public Policy Director for Equip for Equality, who provided testimony on voting rights within the community of individuals with disabilities. Ms. Jansen explained that the Help America Vote Act, which was approved by Congress in 2002, requires areas in and around polling places (e.g., electronic voting machines, balloting areas, the path of travel, facility entrances, and facility exits) to be accessible to people with disabilities.²⁶⁴ Ms. Jansen stated that the Act also requires election officials be trained to assist individuals with disabilities and mandates the distribution of information on disability accommodations through outreach programs.²⁶⁵

Although the Help America Vote Act requires all polling places to accommodate individuals with disabilities, Ms. Jansen testified that individuals with disabilities are very likely to report that they have had or expect to encounter issues at the polls.²⁶⁶ Specifically, she stated that, in the 2012 election, 30% of people with disabilities reported difficulty voting, while only 8% of people

²⁵⁹ *Id.* at 217.

²⁶⁰ *Id.*

²⁶¹ *Id.* at 218.

²⁶² *Id.* at 217.

²⁶³ *Id.*

²⁶⁴ Jansen, *Transcript*, at 222, 224-25; see also: *Help America Vote Act*, the U.S. Election Assistance Comm’n (May 15, 2017), <https://www.eac.gov/about/help-america-vote-act/>.

²⁶⁵ *Help America Vote Act*, the U.S. Election Assistance Comm’n (May 15, 2017), <https://www.eac.gov/about/help-america-vote-act/>.

²⁶⁶ Jansen, *Transcript* at 221.

without disabilities reported difficulty.²⁶⁷ According to Ms. Jansen, this is likely the case because less than one third of U.S. polling places are fully accessible to disabled voters.²⁶⁸ She also noted that these difficulties are reflected in the fact that 57% of eligible voters with disabilities voted 2012 presidential election, while 63% of voters without disabilities cast ballots that same year.²⁶⁹

Ms. Jansen also mentioned that there have recently been surveys designed to measure the level of disability access at the polls. She reported that the Equip for Equality partnered with the Chicago Board of Election to create the Voting Access Chicago program in preparation for the 2016 election.²⁷⁰ Ms. Jansen stated that, together, these two organizations enlisted volunteers who distributed surveys that asked about the level of disability access at 1,900 polling places in Chicago.²⁷¹ She also reported that, at the same time, the U.S. Department of Justice's Election Access Initiative identified numerous polling place problems that had an adverse impact on individuals with disabilities in several cities, including Chicago.²⁷² Ms. Jansen testified that both voting access surveys found that there are often circumstances that make it difficult for individuals with disabilities to cast their vote in person. Specifically, she stated that the Voting Access Chicago program found that some voters believed that accessible voting machines were not working, although upon investigation, officials later discovered that the machines were not plugged in.²⁷³ Furthermore, she noted that the report revealed that disabled voters were asked to wait up to 30 minutes while judges or other volunteers attempted to get the accessible machines working.²⁷⁴ In other reported instances, voters with disabilities were told come back and vote at another time because a technician had to be called in to repair or setup the accessible voting system.²⁷⁵ Additionally, Ms. Jansen stated that there have been reported incidences in which election judges have failed to display assistance tools, including magnifying lenses used to assist individuals with visual impairments.²⁷⁶

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 223.

²⁶⁹ *Id.* at 221.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Equip for Equality Partner with Chicago Board of Election to Conduct Accessibility Surveys of 1700 Polling Places*, PR Newswire (May 15, 2017), <http://www.prnewswire.com/news-releases/equip-for-equality-partners-with-chicago-board-of-election-to-conduct-accessibility-surveys-of-1700-polling-places-300359155.html>.

²⁷³ Jansen, *Transcript* at 225.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 224.

Ms. Jansen recommended improving voting access for Illinoisans with disabilities by taking basic and practical steps towards making polling places universally accessible.²⁷⁷ She suggested that, if officials would like to make polling places more welcoming to individuals with disabilities, they should designate parking areas with the international symbol for disability access, position accessible voting systems in a location that is both easily reachable and private, and install doorbells that voters can use to let election judges know they require assistance.²⁷⁸

3. Youth

Panelist Christian Diaz, the former-director of Chicago Votes, testified about voting rights among youth. Mr. Diaz explained that Millennials (individuals between age 18 and 45) will soon be the most powerful age-based voting bloc in the country.²⁷⁹ Specifically, he stated that by 2036, it is estimated that there will be 81.1 million Millennials, which would make voters born between 1982 and 2004 the largest age group constituency in history.²⁸⁰ Furthermore, Mr. Diaz reported that the levels of civic and political engagement among college students are currently the highest they have been in a decade.²⁸¹ Mr. Diaz also testified that commitment to community engagement has also become increasingly important to young people, with the majority of millennials surveyed reporting that community engagement is either a “very important” or “essential” objective.²⁸²

Mr. Diaz reported that, although the U.S. has seen a recent increase in political engagement among youth, Illinois remains the state with the fifth lowest rate of youth participation in local elections.²⁸³ However, he also revealed that Illinois had the 13th highest level of youth reporting that they discuss community issues with their friends and families²⁸⁴, which shows potential for increased electoral participation among Illinois youth. To that point, Mr. Diaz stated that Illinois already had

²⁷⁷ *Id.* at 223.

²⁷⁸ *Id.* at 224.

²⁷⁹ Diaz Testimony, *Transcript* at 203-04.

²⁸⁰ *Id.* at 204.

²⁸¹ Kevin Eagan et al., *The American Freshman: National Norms Fall 2015* (May 12, 2017), <https://www.heru.ucla.edu/monographs/TheAmericanFreshman2015.pdf>.

²⁸² *Id.*

²⁸³ Diaz, *Transcript* at 203.

²⁸⁴ *Id.*

the second largest increase in primary election voter turnout among young people during the 2016 election year, indicating that a surge in electoral participation among youth has already begun.²⁸⁵

However, Mr. Diaz testified that the likelihood of electoral participation among any given millennial is highly dependent upon that young person's background. Mr. Diaz stated that "as early as the 4th grade and continuing into 8th and 12th grade, African-American, Hispanic, and poor students perform significantly worse on tests of civic knowledge than their white, Asian and middle class peers."²⁸⁶ He explained that youths who receive a low quality civics education are less likely to understand and participate in the electoral process, which inevitably decreases political candidates' motivation to cater to the needs of low-SES and minority people.²⁸⁷

This disparity in the quality of civics education may soon be reduced, for, as Mary Schaafsma, Executive Director of the League of Women Voters of Illinois, noted, the Illinois General Assembly approved House Bill 4025, which requires that all high school students take a stand-alone civics course before graduation.²⁸⁸ In August 2015, Governor Rauner signed HB4025 into law and recognized the importance of "helping young people acquire and learn to use the skills, knowledge, and attitudes that will prepare them to be competent and responsible citizens throughout their lives."²⁸⁹

E. Voting Procedures in Illinois

1. Illinois Election Judges

Election Judge Recruitment

Election judges hold a crucial role in ensuring free and fair elections, where all eligible citizens have equal access to vote. However, testimony indicated that recruiting election judges is a significant challenge in many jurisdictions. Brent Davis, Director of Election Operations for the Illinois State Board of Elections, explained that it is difficult to recruit election judges because there is provision in the Illinois Election Code requiring officials to work from the time the polls

²⁸⁵ *Id.* at 207.

²⁸⁶ *Id.* at 205-06.

²⁸⁷ *Id.* at 206.

²⁸⁸ Schaafsma, *Transcript* at 240.

²⁸⁹ H.R. 4025, 99th Gen. Assemb. (Ill. 2015), *available at*:

<http://ilga.gov/legislation/billstatus.asp?DocNum=4025&GAID=13&GA=99&DocTypeID=HB&LegID=90242&SessionID=88>.

open to the time that they close.²⁹⁰ This provision was designed to keep election judges accountable and allows officials to maintain a complete record of poll activity on an election day, which can last up to 14 hours.²⁹¹ Owing to the long hours, Mr. Orr described this provision as “the biggest single impediment to [recruiting] good judges who want to do the job.”²⁹²

Additionally, Mr. Davis noted that it can be difficult to recruit election judges because of funding limitations.²⁹³ He explained to the Committee that, in well-funded jurisdictions, it is relatively easy to recruit election judges because each poll worker can be paid enough to incentivize participation.²⁹⁴ In counties with smaller budgets, recruitment is difficult because judges must work between 13 and 14 hours for little pay.²⁹⁵

In addition to the aforementioned challenges, Mr. Davis explained that it can be difficult to hire election judges because recruits are required to state that they are a Democrat or Republican in order to be considered for the job. In Illinois, all election judges must be appointed by the two most popular political parties (currently Democrat and Republican) in order to ensure that there is an equal balance of partisan individuals at each polling place.²⁹⁶ The county chairmen of a political party may provide the county clerk with a list of election judge recruits from each precinct, but it is more often the case that the county clerk must find election judges themselves by distributing application forms.²⁹⁷ In this system, potential election judges may not submit an application because they do not identify as a Democrat or Republican or because they are hesitant to reveal political affiliation.²⁹⁸

Election Judge Training

In addition to the selection of election judges, panelists noted that the training judges receive can also have a significant impact on the way elections are administered in each jurisdiction. However, Mr. Davis testified that election judge training is inconsistent between jurisdictions because of

²⁹⁰ Davis, *Transcript* at 279-90.

²⁹¹ *Id.*

²⁹² Orr, *Transcript* at 278.

²⁹³ Davis, *Transcript* at 252.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 276.

²⁹⁷ *Id.* at 276-77.

²⁹⁸ *Id.* at 277.

differences in district funding.²⁹⁹ The Illinois State Board of Elections provides training to jurisdictions only that do not have the resources necessary to instruct their own election judges; as a result, approximately half of Illinois jurisdictions are trained by the board.³⁰⁰ In 2016, the Illinois State Board of Elections conducted training in 51 of the state's 109 jurisdictions, a majority of which were small districts.³⁰¹ The typical Illinois State Board of Elections training presentation varies slightly from jurisdiction to jurisdiction due to regional differences in polling place regulations, but the vast majority of presentations include information on setting up the polling place, the use of affidavits, provisional ballot procedures, accommodating special needs, and electioneering.³⁰² The Illinois State Election Board also offers to consult jurisdictions that provide their own training, but they do not require jurisdictions to confer with them.³⁰³

Mr. Davis explained that the 58 Illinois jurisdictions that do not receive state board training must educate their election judges themselves, which causes between-jurisdiction variability in the extent to which judges are taught regulations and requirements. Although there are some basic requirements, there is room for each locality to decide what they would like cover in training.³⁰⁴

Additionally, Ms. Schaafsma explained that election judge training may be further restricted by budgetary constraints, so much so that some jurisdictions cannot afford to retrain judges between elections.³⁰⁵ She told the Committee that, without retraining, when "laws rapidly change and as some things get replaced with other things, there's some confusion at the polls."³⁰⁶

Panelists testified also that, even in well-funded jurisdictions with high quality training, enforcing such policies can pose an additional challenge. Mr. Davis reported that issues arise because, within the population of over 50,000 Illinois election judges, some individuals have been judging for decades and do not wish to follow current rules because they are used to different procedures.³⁰⁷ Karyn Bass Ehler of the Civil Rights Bureau of the Office of the Illinois Attorney General noted that, in some instances, election judges might not follow procedure for

²⁹⁹ *Id.* at 246.

³⁰⁰ *Id.* at 245.

³⁰¹ *Id.* at 246.

³⁰² *Id.* at 246-52.

³⁰³ *Id.* at 274.

³⁰⁴ *Id.*

³⁰⁵ Schaafsma, *Transcript* at 231.

³⁰⁶ *Id.*

³⁰⁷ Davis, *Transcript* at 252.

the sake of efficiency. Ms. Bass Ehler reported that Illinois election judges have asked voters for a driver's license at the polls in an effort to expedite the check-in process.³⁰⁸ This improper procedure gave voters the erroneous impression that photo ID was required to vote.³⁰⁹ In an effort eliminate incidents like this one, the Office of the Attorney General reminds voters and local officials that voters "do not need to show identification to cast [their] vote so long as [their] voter registration is active and you are in the correct precinct."³¹⁰

Also, Mr. Davis explained that when multiple districts share a polling place, there is a risk that voters may receive the incorrect ballot if judges are not trained properly. Mr. Davis explained that if an individual submits a ballot from a jurisdiction that they do not reside in, their vote will not be counted in the appropriate local races.³¹¹ He further noted that, although it is not difficult to determine the correct ballot to give a voter, one of the most frequent grievances his office hears pertains to an individual who was given the wrong ballot style.³¹² Ms. Schaafsma revealed that she herself was once given wrong ballot, and she expressed that if she had not been an employee of the League of Women Voters, she may not have recognized the error.³¹³ Upon asking for a new ballot, an election judge told Ms. Schaafsma that "it really doesn't matter because that person [candidate] is going to win any way."³¹⁴ Ms. Schaafsma testified that she was horrified to have that sort of value judgement raised in this situation.³¹⁵ She also revealed that when she insisted on receiving the correct ballot, the election judge complained that retrieving the correct ballot would be extra work.³¹⁶

Additionally, Mr. Thomas stated that early voters from municipalities that spread over county lines may also encounter issues because officials do not clearly explain which specific location/building each individual must visit to pick up their ballot.³¹⁷ Mr. Thomas explained that he resides in the

³⁰⁸ Bass Ehler, *Transcript* at 269.

³⁰⁹ *Id.*

³¹⁰ *Id.* at 272.

³¹¹ Davis, *Transcript* at 243-249.

³¹² *Id.* 250-251.

³¹³ Schaafsma, *Transcript* at 232.

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ Thomas, *Transcript* at 233.

city of Aurora, which is “in Kane, DuPage, Kendall and a portion of Will” counties.³¹⁸ Mr. Thomas noted that some of Aurora’s early voting population is required to receive their ballots at the Will County Clerk’s office, while others are required to retrieve their ballots at the Kane County Clerk’s office.³¹⁹ Mr. Thomas testified that that the location of early ballot pickup is can be confusing for it is sometimes “not explained to voters in a way that they fully understand.”³²⁰ Mr. Thomas also revealed that that in Aurora (and the city of Naperville) some municipal elections are run by the city’s election commission while others are run by the county election commission, which causes confusion for voters and election officials alike.³²¹ Specifically, Mr. Thomas stated that the municipal election system may be confusing because “sometimes voters are told to go the wrong place to go vote early or to register to vote or to change their voter registration information.”³²²

Mr. Davis testified that improper judge training can result in issues related to the distribution of provisional ballots. According to Mr. Davis, even if an individual is unable to register on or before Election Day, they can still exercise their right to vote using a provisional ballot.³²³ He stated that these ballots are distributed in various circumstances, including when an individual cannot register on Election Day because they do not have the necessary forms of identification or when a voter’s registration forms cannot be located.³²⁴ Ms. Schaafsma stated that her organization has received public comments expressing confusion about provisional ballots, along with concerns that provisional votes will not be counted.³²⁵ She presumes that provisional ballots confuse the public because election judges are not aware of all the options that should be provided at each polling location.³²⁶

Mr. Davis reported that the Illinois State Board of Elections is currently looking to expand election judge training by providing on-line orientations and attempting by to make training sessions more accessible to judges who cannot attend their local training sessions.³²⁷

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.* at 233-234.

³²² *Id.* at 234.

³²³ *Id.* at 248.

³²⁴ *Id.*

³²⁵ Schaafsma, *Transcript* at 235-236.

³²⁶ *Id.* at 236.

³²⁷ Davis, *Transcript* at 275.

2. *Potential Improvements*

Improving Election Judge Training

As noted in previous sections of this report, improperly trained election judges can adversely impact individuals attempting to exercise their right to vote. Panelists testified that increasing funding for election judge compensation, expanding the reach of the Illinois State Election Board Election programs, and increasing the frequency of mandatory election judge training sessions would make officials more prepared to help voters at the polls.³²⁸ Additionally, Ms. Bass Ehler testified that enforcement efforts that can be used to ensure that election officials are trained and held accountable “are key to ensuring that our elections are fair and balanced.”³²⁹

All In

Mr. Orr provided a detailed description of All In, his proposed plan to increase voter registration rates in Illinois. Upon implementation, All In would automatically register eligible voters, require data sharing between state agencies, and guarantee election day registration.³³⁰

According to Mr. Orr, the first provision of All In would guarantee automatic voter registration when an individual interacts with a state government agency.³³¹ This system would allow eligible individuals to opt out of voter registration, instead of requiring them request registration as the current system does.³³² Research has shown that, in this form, automatic voter registration would increase overall voter registration rates and eliminate the costs associated with traditional on-paper registration at the local level.³³³ In addition, automatic voter registration would help increase registration rates among language minority voters.³³⁴ Specifically, Mr. Kang suggested that automatic voter registration would provide a great deal of assistance to the Asian American community, which currently has the lowest registration and voter turnout rates of any racial/ethnic group in Illinois.³³⁵ Ms. Legenza stated that automatic voter registration would also simplify the registration process for homeless individuals, who frequently interact with state agencies, but often

³²⁸ Diaz, *Transcript* at 209; see also Schaafsma, *Transcript* at 231; see also Davis, *Transcript* at 253.

³²⁹ Ehler, *Transcript* at 272.

³³⁰ Orr, *Transcript* at 260-261.

³³¹ *Id.* at 260.

³³² *Id.*

³³³ Chapin & Keunnen Written, *Transcript* at 10.

³³⁴ Kang, *Transcript* at 171.

³³⁵ *Id.* at 172.

do not have access to the financial means or methods of transportation necessary to acquire the identification required for registration.³³⁶

Additionally, Mr. Orr explained that the voter registration system proposed in All In would automatically update a registrant's address, which would be a significant change from Illinois' current system requiring individuals to re-register every time they move.³³⁷ Mr. Orr justified the necessity of this provision by explaining that the current registration policy places an unfair burden on members of highly mobile groups, which disproportionality include the low income and racial/ethnic minority communities.³³⁸ Specifically, he testified that, in the year 2015, more than 13% of all Illinois residents moved.³³⁹ He then noted that, of those 1.7 million total movers, 21% of people low-income, 15% were African American and 13.9% were Hispanic.³⁴⁰ Mr. Orr also told the Committee that, in any given year, individuals living in poverty are two times more likely to move than those living above the poverty line and African American people are likely to move twice as often as white people.³⁴¹ If All In were implemented, highly mobile groups would no longer be subject to the inconvenience associated with repeating the voter registration process after each move.

Mr. Orr also explained All In's second provision, which calls for secure data sharing between States to ensure that all voter information on file can be used to register people who move across state lines.³⁴² He stated that Illinois is currently a member of Electronic Registration Information Center, which allows states to share driver's license data, social security information, birth records and death records.³⁴³ According to Mr. Orr, All In would allow Illinois to share voter registration data with other states on Electronic Registration Information Center, which would eliminate instances of duplicate registration between states and improve registration efficiency.³⁴⁴

³³⁶ Legenza, *Transcript* at 218-219.

³³⁷ Orr, *Transcript* at 260-261.

³³⁸ *Id.* at 262.

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.* at 263.

³⁴³ *Id.*

³⁴⁴ *Id.* at 264.

The third provision of All In mandates Election Day registration at polling places.³⁴⁵ According to Mr. Orr, if All In were implemented, Election Day registration would serve as a backstop allowing eligible voters who were not registered automatically to receive a ballot at the last minute.³⁴⁶ Mr. Orr asserted that the recent success of Election Day registration within Illinois' larger counties indicates that expanding Election Day registration would further increase democratic participation throughout the state.³⁴⁷

Mr. Orr reported that the State Board of elections is currently considering adapting All In, but they are not ready to implement the provisions quite yet.³⁴⁸

Expanding the Teen Judge Program

In addition to proposing All In, two panelists also suggested expanding the Teen Judge Program in order to improve the Illinois election system. In the year 2000, the Chicago Board of Election teamed up with Mikva Challenge, an organization that aims to help young people become “informed, empowered, and active citizens and community leaders”³⁴⁹, to create the Student Judge Program.³⁵⁰ Since its inception, the program has provided election judge training to 2,000 high school juniors and seniors from over 50 schools across the city of Chicago.³⁵¹ Ms. Diaz explained that, in addition to providing the city with many well-trained judges, the Student Judge Program teaches young people about voting rights so that they can share the information they learned with their peers and family members.³⁵² According to Mr. Orr, the program has been highly successful, in part because the teenaged program participants understand technology well, making them extremely helpful at polling places.³⁵³ While describing the program's success, Mr. Orr stated that Student Judge Program is “one of the best things” that he had ever worked on.³⁵⁴ Mr. Diaz, who was also enthusiastic about the program, proposed expanding training to include City Colleges of

³⁴⁵ *Id.* at 260-261.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 264.

³⁴⁸ *Id.* at 261.

³⁴⁹ *Elections in Action*, Mikva Challenge (June 13, 2017), <http://www.mikvachallenge.org/programs/electoral-engagement/>.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² Diaz, *Transcript* at 239.

³⁵³ Orr, *Transcript* at 254.

³⁵⁴ *Id.*

Chicago students, which would further broaden the base of young people engaged in the electoral process.³⁵⁵

A Day Off to Vote

Additionally, the Committee heard testimony on the possibility of addressing some of the issues facing the Illinois electoral system by making Election Day a holiday. Mr. Orr noted that, currently, the United States is one of only two major nations that hold elections on a work day.³⁵⁶ He suggested that the federal government should make Election Day a holiday because it is very difficult for low income people and individuals with transportation issues to vote without the day off.³⁵⁷ Mr. Orr argued that the federal government could move Election Day to an already existing federal holiday (such as Veteran's Day), but recognized that it would take a great deal effort to alter the United States' statute requiring elections to take place the first Tuesday of November.³⁵⁸ Alternatively, Mr. Orr proposed closing schools for elections, which would eliminate many of the issues associated with election judge recruitment.³⁵⁹ He argued that, if schools were closed on Election Day, thousands of teachers, administrators, and students, who are well suited to serve as election judges, would be available to work at the polls.³⁶⁰

Public Campaign Financing

After hearing testimony on civil rights issues related to voting in Illinois, the Committee also heard testimony on civil rights concerns associated with campaign finance. In the 2010 *Citizens United* decision, the Supreme Court ruled that the First Amendment's freedom of speech clause protects political campaign donations.³⁶¹ This ruling made limiting individual campaign donation illegal, which led to a dramatic increase in large donations from wealthy people and special interest groups.³⁶²

³⁵⁵ Diaz, *Transcript* at 239.

³⁵⁶ Orr, *Transcript* at 259.

³⁵⁷ *Id.* at 290.

³⁵⁸ *Id.* at 290-291.

³⁵⁹ *Id.* at 254.

³⁶⁰ *Id.*

³⁶¹ *Citizens United v. Fed. Election Comm'n*, 558 U.S 310, available at <https://www.supremecourt.gov/opinions/09pdf/08-205.pdf>

³⁶² Sarah Childress, *Report: After Citizens United, Outside Spending Doubles*, PBS Frontline (June 14, 2017), <http://www.pbs.org/wgbh/frontline/article/report-after-citizens-united-outside-spending-doubles/>.

Brian Gradstein, Executive Director of Illinois Common Cause, an organization that aims to “ensure that every eligible citizen has an opportunity to cast a vote, free from discrimination and obstacles”³⁶³ noted that the individuals who make large political donations are more likely to be older, white and male.³⁶⁴ These trends were reflected in an analysis of campaign contributions during Chicago’s 2015 mayoral race, which found that over 90% donations to the top two mayoral candidates came from donors who gave more than \$1000 each, 80% of donations to the current mayor’s campaign came from individuals earning more than \$100,000 per year, and 94% of the current mayor’s donors were white.³⁶⁵ Mr. Gladstein reported that the policy preferences of influential donors tend to be very different from marginalized groups’ preferences, and that elected officials are likely influenced by the donors who helped them secure their position.³⁶⁶

Other panelists also expressed concern that the current system of campaign finance is fundamentally unfair.³⁶⁷ Speaking generally, Mr. Orr stated “if we don’t deal with money and politics and the rise of voter suppression in this country, our fragile democracy will be gone.”³⁶⁸ He later explained that campaign donations contribute to both election outcomes and public policy changes, which is why political actors may support policies that please their donors rather than the policies that would benefit the average voter.³⁶⁹ Mr. Orr suggested that this disparity between public opinion and political outcome may be a reason why people give up on the democratic process altogether.³⁷⁰ Ms. Schaafsma described the manner in which campaign finance impacts individuals who are deciding whether to become a political candidate themselves. She explained that, while the League of Women Voters of Illinois encourages females to run for office, they realize that candidates are challenged by the need to raise money to mount a serious campaign.³⁷¹ Mr. Orr and Ms. Schaafsma both recommended campaign finance reform.³⁷²

³⁶³ Gladstein, *Transcript* at 2.

³⁶⁴ *Id.* at 3.

³⁶⁵ *Id.*

³⁶⁶ *Id.* at 3-4

³⁶⁷ Schaafsma, *Transcript* at 195; *see also* Orr, *Transcript* at 265.

³⁶⁸ Orr, *Transcript* at 265.

³⁶⁹ *Id.* at 297-298.

³⁷⁰ *Id.* at 298.

³⁷¹ Schaafsma, *Transcript* at 195.

³⁷² *Id.*; *see also* Orr, *Transcript* at 265, 298.

Mr. Gladstein proposed that Illinois should replace its private campaign donation system with a voluntary public campaign finance system, just as New York City did.³⁷³ He explained that, in New York City's public campaign finance system, political contributions are limited to \$500 in aggregate per election cycle per donor.³⁷⁴ The first \$175 each individual donates is matched 6 to 1 with money from the district's general fund.³⁷⁵ In order to receive these funds, politicians must raise a requisite number of small donations, agree not to accept any donations from corporate interests and abide by restrictions that limit self-funding.³⁷⁶ He testified that this form of campaign finance aims to: "help contain campaign expenditures; ensure that politicians remain in close contact with the people that voted them into office; and provide a pathway for citizens with limited access to capital to support the candidate of their choosing to run for office themselves."³⁷⁷

Mr. Gladstein stated that after New York City switched from private to public campaign finance, more people donated money to candidates, which contributed to an overall increase in political participation.³⁷⁸ He also explained that public campaign finance increases civic engagement because people who contribute to political campaigns (even through very small donations) are more likely to vote on Election Day.³⁷⁹

Alternatively, Mr. Orr suggested that Illinois could instead improve campaign finance by adapting a voucher system similar to the one that will be implemented in Seattle, Washington.³⁸⁰ In 2015, Seattle residents voted create new a campaign finance system in which each citizen will be allotted four \$25 "Democracy Vouchers" to donate to whichever political candidate(s) they choose.³⁸¹ Seattle will hold its first voucher-funded election in the fall of 2017.³⁸²

³⁷³ Gladstein, *Transcript* at 308.

³⁷⁴ *Id.*

³⁷⁵ *Id.* at 308, 314.

³⁷⁶ *Id.* at 4-5.

³⁷⁷ *Id.* at 5.

³⁷⁸ *Id.* at 309.

³⁷⁹ *Id.* at 298.

³⁸⁰ Orr, *Transcript* at 298.

³⁸¹ *Id.*; see also *Democracy Voucher Program: About the Program*, Seattle Gov't (June 21, 2017), <http://www.seattle.gov/democracymv/about-the-program>.

³⁸² *Id.*

IV. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory Committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.³⁸³ The Illinois Advisory Committee heard testimony that current voting access may disproportionately disenfranchise voters on the basis of race, color, sex, age, disability, and national origin. In addition, the Committee heard concerns regarding the need to find reasonable ways to prevent voter fraud and maintain the integrity of all elections at the local, state, and federal levels.

Below, the Committee offers to the Commission a summary of concerns identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to the State of Illinois and to the nation as a whole.

A. Findings

1. Election Day Registration

- a. Only districts with both electronic voting records and more than 100,000 eligible voters are required to offer Election Day registration at all jurisdiction polling places. In 2016, 24 Illinois jurisdictions provided universal polling place Election Day registration while 82 counties did not.
- b. In 2016, over 100,000 voters registered on Election Day.

2. Voter Fraud and ID Laws

- a. The Illinois Board of Elections has estimated that suspected instances of voter fraud in Illinois equate to a couple thousandths of a single percent of the votes cast in the state. No evidence was presented that widespread voter fraud was a problem in Illinois between 2000 and 2016.

3. Voter Intimidation

³⁸³ 45 C.F.R. § 703.2.

- a. Multiple incidents of polling place voter intimidation and harassment have been reported in Illinois.

4. Electoral Representation

- a. Partisan redistricting has been associated with Illinois' high rates of uncontested state house and senate races, along with low levels of minority representation throughout the state.
- b. Individuals of color are underrepresented within hundreds of elected bodies in Illinois.
- c. Illinois jurisdictions legally engage in prison gerrymandering, a process by which disenfranchised prison inmates are counted as constituents of the district in which they are incarcerated for the purposes of electoral representation. Prison gerrymandering unfairly advantages prison-containing districts, which, in most instances, increases comparative rural representation in within elected bodies.

5. Voting in Jail or with a Prior Felony Conviction

- a. Barriers inhibiting electoral participation within jails include difficulty accessing social security numbers and restrictions prohibiting inmates from listing a jail as a residential address.
- b. Individuals who have been released from prison after serving a felony conviction can be discouraged from voting because they are unaware of their renewed enfranchisement.

6. Language Access

- a. The current method used to determine Section 203 jurisdiction eligibility utilizes survey responses from a sample of a given district's population to measure that district's language access needs. These estimates of language access need can be affected by sampling error and biased rates of response.
- b. In jurisdictions covered by Section 203 of the VRA, limited English proficient voters may still be disadvantaged by complicated ballot language and/or election judge misconduct. Limited English Proficient voters in Section 208 jurisdictions may also be adversely impacted by the same issues, along with the potential that they could be misinformed or unaware of their right to bring a translator to the polls.

7. Voting in Social/Community Groups

- a. It is difficult for homeless individuals to engage in the electoral process because of financial and transportation barriers that limit their ability to partake in voter registration and/or access their polling place.
 - b. Individuals with disabilities are often disadvantaged by inaccessible polling places and faulty voting machines.
 - c. Electoral participation among youth depends on education quality, which is influenced by social class and race/ethnicity.
8. Illinois Election Judges
- a. Election judge recruitment is limited by the Illinois Election Code provision requiring judges to work from the time the poll opens to the time that it closes. In addition, individuals may be dissuaded from applying to be an election judge because judges are required to declare that they are either a Democrat or a Republican.
 - b. Jurisdiction funding impacts election judge recruitment because wealthier districts are able to pay election judges more than jurisdictions with limited funding. Budgetary constraints also determine how often jurisdictions can afford to hold judge retraining.
 - c. In 2016, the Illinois State Board of Elections conducted election judge training in 51 of the state's 109 districts. Jurisdictions that are not trained by the Illinois State Board of Elections have freedom to decide what to cover in training, which allows for between-jurisdiction variability in the extent to which judges are taught regulations and requirements.
 - d. Panelists testified that election judge error and misconduct adversely impacted Illinois voters.

B. Recommendations

1. The U.S. Commission on Civil Rights' national study on voting rights in the United States should include:
 - a. An analysis of changes in state voting laws and related changes in voter participation following the 2013 U.S. Supreme Court *Shelby County v. Holder* decision;
 - b. An analysis of changes in voter participation following the 2010 U.S. Supreme Court *Citizens United v. Federal Election Commission* decision;

- c. An analysis of changes in voter participation following the passage of Automatic Voter Registration and/or Election Day registration legislation;
 - d. An analysis of current allegations of voter fraud and its related evidence; such a review should include a cost/benefit analysis comparing evidence of voter fraud with evidence of voter suppression, including concerns regarding potential fees associated with required identity documents, poll worker training, and public education efforts.
2. The U.S. Commission on Civil Rights should issue the following formal recommendations to the U.S. Congress:
 - a. The U.S. Congress should establish a working committee to study the impact of the 2013 U.S. Supreme Court decision *Shelby County v. Holder* including a review of any changes in state voting laws and related changes in voter participation since the ruling;
 - b. According to the results of this study, the Congress should develop updated formulae to identify which states require continued review under the Voting Rights Act and/or require Section 203 language access, then introduce appropriate legislation to implement the new formulae.
3. The U.S. Commission on Civil Rights should issue the following, formal recommendations to the U.S. Department of Justice, Civil Rights Division, Voting Section:
 - a. The Division should conduct a thorough review of the requirements imposed under Illinois voting laws to assess their compliance with applicable federal law including but not limited to: the Voting Rights Act, the Help America Vote Act, and the National Voter Registration Act; and
 - b. If such a review reveals areas of noncompliance or conflict with federal law, then the Division should take appropriate enforcement action to correct them.
4. The U.S. Commission on Civil Rights should issue a letter to the U.S. Election Assistance Commission, to the Illinois Governor, and the Illinois Legislature urging them to:
 - a. Review the findings and recommendations contained within this report; and
 - b. Further investigate identified areas of concern within their jurisdiction and take appropriate action to address them.

V. APPENDIX

A. Hearing Agenda: March 9, 2017

B. Written Testimony:

1. Ami Gandhi
2. Jeff Raines
3. Ryan Cortazar
4. Chapin and Keunnen
5. Brian Gladstein

C. Panelist Presentations

1. Ami Gandhi
2. David Orr
3. Ryan Cortazar
4. Shobhana Johri-Verma

**Illinois Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights Contact

USCCR Contact Regional Programs Unit
 U.S. Commission on Civil Rights
 55 W. Monroe, Suite 410
 Chicago IL, 60603
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This report is the work of the Illinois Advisory Committee to the U.S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

U.S. COMMISSION ON CIVIL RIGHTS



Civil Rights and Voting in Illinois

Hosted By:

The Illinois Advisory Committee to the U.S. Commission on Civil Rights

Date:

Thursday March 9, 2017

Time:

8:00am—5:00pm

Location:

Ralph H. Metcalfe Federal Building, 3rd Floor

77 W. Jackson Blvd.
Chicago, IL 60604

The Illinois Advisory Committee to the United States Commission on Civil Rights is hosting a public meeting to hear testimony regarding civil rights concerns related to voting rights in the State. This meeting is free and open to the public.

- *Opening Remarks and Introductions (8:00am-8:15am)*
 - *Panel 1: Legal and Academic Research on Voting Rights (8:15am-9:30am)*
 - *Panel 2: Voting and Incarceration (9:45am-11:00am)*
 - *Panel 3: Language Access (11:15am-12:30pm)*
- *Break (12:30pm-1:30pm)*
 - *Panel 4: Voting Across Social Groups (1:30pm-2:45pm)*
 - *Panel 5: Government Perspectives (3:00pm-4:15pm)*
 - *Open Forum (4:15pm-5:00pm)*
- *Closing Remarks (5:00pm)*

The Committee will hear public testimony during the open forum session, as time allows. Please arrive early if you wish to speak. The record is also open for written testimony and will remain so for thirty days following the hearing. For more information please contact the Midwestern Regional Office of the U.S. Commission on Civil Rights.

U.S. COMMISSION ON CIVIL RIGHTS

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Agenda

Opening Remarks and Introductions (8:00-8:15am)

Juan Carlos Linares, Chair, Illinois Advisory Committee
Mauro Morales, Staff Director, U.S. Commission on Civil Rights

Legal and Academic Research on Voting Rights (8:15am –9:30pm)

Ruth Greenwood, Campaign Legal Center
Ami Gandhi, Chicago Lawyers Committee for Civil Rights Under Law, Inc.
Jacob H. Huebert, Liberty Justice Center
Rebecca Glenberg, American Civil Liberties Union of Illinois

Voting and Incarceration (9:45am-11:00am)

Christina R. Rivers, DePaul University Political Science Department
Michelle Mbekeani-Wiley, Sargent Shriver National Center on Poverty Law
Cara Smith, Office of the Cook County Sheriff
Nasir Blackwell, Inner-City Muslim Action Network
Marlon Chamberlain, Community Renewal Society

Language Access (11:15am-12:30pm)

Ryan Cortazar, Chicago Lawyers Committee for Civil Rights Under Law, Inc.
Shobhana Verma, Chicago Board of Election Commissioners
Verónica Cortez, Mexican American Legal Defense and Education Fund
Andy Kang, Asian Americans Advancing Justice

Break (12:30pm-1:30pm)

Voting Across Social Groups (1:30pm-2:45pm)

Cheryl Jansen, Equip for Equality
Sharon Legenza, Housing Action Illinois
Christian Diaz, Chicago Votes
Juan Thomas, National Association for the Advancement of Colored People
Mary H. Schaafsma, League of Women Voters of Illinois

Government Perspectives (3:00pm-4:15pm)

Brent Davis, Illinois State Board of Elections
David Orr, Cook County Clerk
Karyn Bass Ehler, Civil Rights Bureau, Office of the Illinois Attorney General
Representative, Illinois Secretary of State (*tentative*)

Open Forum (4:15pm-5:00pm)

Closing Remarks (5:00pm)

**TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS
BEFORE THE ILLINOIS ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS
MARCH 9, 2017**

Submitted By:

Ami Gandhi, Director of Voting Rights & Civic Empowerment
Chicago Lawyers' Committee for Civil Rights
100 North LaSalle Street, Suite 600, Chicago, Illinois 60602
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E-mail: agandhi@clccrul.org

I. Introduction

Thank you for the opportunity to speak today. My name is Ami Gandhi, and I am the director of voting rights and civic empowerment at Chicago Lawyers' Committee for Civil Rights. Chicago Lawyers' Committee is a nonprofit, nonpartisan civil rights legal organization in operation since 1969, and we work to secure racial equity and economic opportunity for all. We provide legal representation through partnerships with nearly 50 member law firms. We also collaborate with grassroots organizations and diverse coalitions to implement community-based solutions that advance civil rights.

The Voting Rights Project of the Chicago Lawyers' Committee was established to prevent, reduce, and eliminate barriers to voting for communities of color and low-income residents in Illinois. We advocate for expanded voter access for all communities, regardless of race, ethnicity, socioeconomic, or disability status. A major component of our work is Election Protection, the nation's largest non-partisan voter protection program, which operates the 866-OUR-VOTE hotline and supports companion lines at 888-VE-Y-VOTA and 888-API-VOTE. Election Protection hotline and pollwatcher volunteers have answered thousands of voter questions over the phone and in person. That puts us in a unique position to understand voter access barriers, investigate and remedy problematic practices, provide information on voting rights, and advocate for necessary reforms. For the 2016 general election, we trained and deployed hundreds of law firm and other volunteer attorneys with diverse political views – but they stand united in the belief that all eligible voters should have access to the polls.

Illinois has made great strides to expand its citizens' voting rights in recent years, but much work remains, particularly for those voters who are most vulnerable to discrimination and exclusion. To address these barriers in a comprehensive and practical way, community organizations, elected officials, and election administrators must all work together.

II. Takeaways from November 2016 Election

Chicago Lawyers' Committee led 300 legal volunteers who served as nonpartisan Election Protection poll watchers and who answered more than 1,000 calls to the 866-OUR-VOTE



hotline on November 8, 2016 from across Illinois and Indiana. On Election Day, we helped many voters who experienced disenfranchisement, and fortunately, we worked with voters and election officials to resolve many of the problems. At the same time, many of the problems are preventable, especially through modernization of registration. A diversity of communities in Illinois have advocated for the preservation of Election Day Registration, which is currently being challenged in federal litigation, and are currently advocating for Automatic Voter Registration.

Data and stories from Illinois voters are available at www.electionprotectionillinois.org, with a particular focus on the November 2016 election. The content points to recent voter experiences and provides ideas for aspects of voter access that should be improved going forward. Below are highlights of the content available at our site:

- An overview of the voting experience, including confirming the polling place, checking into the polling place, receiving the ballot, filling in the ballot, submitting the ballot, and leaving the polling place;
- Breakdown of when and where in Illinois voting issues arose, represented in maps and charts;
- Breakdown of types and locations of voter problems and questions, including ballot issues, registration issues, and polling place issues;
- An explanation of how we assist voters who report voting rights issues and how we take action after Election Day, through community outreach, legislative reform, administrative reform, and litigation;
- Description of ballot-related problems, including problems requesting mail-in ballots (also called absentee ballots), mail-in ballots being lost in the mail, vague ballot instructions, partially completed ballots, fragmented ballots, and the perception of insecure ballot storage;
- Description and examples of registration problems, including general registration and information needs, incorrect status on voter rolls, and unclear steps to confirm registration status;
- Description and examples of polling place problems, including difficulty locating polling place, needing to switch polling places, unexpectedly encountering a closed polling place, electioneering, incorrect voting procedures, and voting equipment malfunctions and delays; and
- Voter stories about the types of problems mentioned above, as well as questions from voters with disabilities, voters with limited English proficiency, homeless voters, voters facing intimidation and electioneering, and voters interfacing with the criminal justice system.

A few examples of voter access issues are detailed below and throughout today's testimonies. We would be glad to provide more details about these or other issues upon request.

III. Voter Intimidation

We all can agree that we must not tolerate any instances of voter intimidation, as they are a threat to our values of freedom and democracy. Throughout our country's history as well as today, voter intimidation uniquely impacts communities of color, particularly African American voters. This intimidation can come from fellow voters, election personnel, police officers or guards, or others. In order for all our communities to have the full and fair right to vote, it is critical for every voter to feel safe at the polling place. Safety means different things for different people, especially given the vastly different experiences between communities of color and law enforcement.

While police officers and guards work hard to keep our polling places safe, there are still incidents of voter intimidation involving police or authority figures in Illinois. We received a report of police officers outside a polling place during the 2015 municipal elections, improperly telling voters that they needed identification or voter registration information to vote. Unfortunately, this is not the first time that we have received a report like this. In the November 2016 election, a voter reported harassment by the police regarding the voter's political views. We also received a report of a police officer inaccurately stating the poll closing time to young African American voters in line to vote. We were proud to collaborate with community organizations such as Chicago Votes and Black Youth Project 100, as well as election administrators, to resolve some of these problems and open lines of communication. However, the lasting sting of such an experience is not trivial to voters who are made to feel like they do not belong at the polls.

The problem of political inclusion for people whose lives have intersected with the criminal justice system extends beyond these instances. To tackle these problems, we must eliminate voting barriers for individuals in pretrial detention and ensure that individuals can get back on the voter rolls after completing a sentence. These barriers that exclude eligible voters do not reflect the type of inclusive and fair community that we strive for in Illinois.

We urge government leaders to work closely with community organizations to decrease voter intimidation and increase safety and comfort for voters of all backgrounds, especially those who have faced discrimination and exclusion. It is essential that reforms to improve voter access are designed with input from community members and election administrators so that the implementation is positioned for success. We welcome the chance to work with government and community leaders to improve channels of communication so that when intimidation does occur, it can be addressed rapidly and effectively.

IV. Election Day Registration

Over 100,000 voters in Illinois used Election Day Registration (EDR) in the March 2016 primary election and over 100,000 voters used it in the November 2016 general election – in every single county in Illinois. We hear stories of voters of color in urban areas using EDR, as well as veterans, rural voters who work on farms, and a diversity of others who use EDR. [Research](#) shows that that “many [EDR voters] had tried to update their



information prior to the registration deadline but, due to administrative errors by government agencies or confusion over the procedure to update their voter registration, were unable to do so.”

EDR is required by statute to be in every county in Illinois, and there is an additional requirement for high-population counties that EDR be required in each polling place. The litigation addresses whether it is constitutional for there to be polling place EDR in high population counties. It is important to remember that, as we argued in our [amicus brief](#) in the case, that EDR could be required in more polling places, rather than removed where it has already proven to be useful and even necessary. It is also important to remember that even after the lawsuit was filed, election administrators from Democratic-leaning and Republican-leaning counties are proudly implementing EDR in polling places in a diversity of areas and working hard to improve voter access and registration access in their jurisdictions. Many election administrators are trying to move forward, not backward, in terms of modernizing elections.

We saw the huge success of EDR in Illinois and the ability of eligible voters to navigate through the process and eventually vote successfully. This was in stark contrast to our experience helping voters in Indiana - now remember, we focused today's remarks on Illinois but we also took Indiana calls on Election Day. We received numerous calls from voters seeking to register to vote on or shortly before Election Day in Indiana, but unfortunately, we were unable to help them cast a ballot. We also observed and documented other concerning barriers facing voters in Indiana and would be happy to provide additional details upon request.

V. Automatic Voter Registration

Automatic Voter Registration (AVR) is a proposed reform in Illinois that would add over 1,000,000 voters to the rolls by leveraging information from other state databases, including those relating to drivers' licenses, social services, and other interactions that we all have with state government agencies. There is bipartisan support of this reform in Illinois, and it has been reformulated this year in a way that is more likely to bring consensus from voters, community advocates, elected officials from both parties, and election administrators and government agencies who would be tasked with implementing these changes to the registration system.

Registration systems have been used in our country's history to [disenfranchise](#) voters of color and reduce and self-select the electorate. That said, expanding access to registration would benefit not only communities of color. Senior voters, military personnel, and low-income citizens of all races would be brought onto the rolls through AVR. Today, fair access to registration *goes hand in hand* with modernizing our country's registration system to increase the integrity of our election systems so that we have a full and accurate list of eligible voters.



VI. Conclusions and Recommendations

Numerous voting barriers can be resolved when lines of communication are open between advocates, voters, and election officials, and such problem solving often occurs in both Democratic-leaning and Republican-leaning counties in Illinois. **In order to improve election administration, it is essential for voters to trust their election officials. Recent renewed rhetoric about widespread voter fraud threatens to weaken such trust and intimidate voters.** We urge government leaders to denounce restrictive voting laws and myths of widespread voter fraud.

Illinois could serve as a model for ensuring full and fair ballot access for eligible voters from all communities, but a variety of interrelated barriers exist at the current time, including barriers for voters with disabilities, voters with limited English proficiency, and homeless voters. Registration barriers, improper requests for identification, equipment problems, and errors by election judges also happen much more than they should. Many voter access problems point to the need for systemic reforms. In addition to Election Day Registration and Automatic Voter Registration, we also need robust election judge training, voting modernization, improved protocols for mail-in ballots, access for voters with disabilities and limited English proficiency, redistricting reform, and fairness for voters interfacing with the criminal justice system.

Voting rights are intertwined with civil rights more broadly. In our civil rights work, we see that barriers to voting and civic engagement can cause or exacerbate barriers to education, housing, economic stability, and safety. And for community members facing inequities, for example unjust treatment by police, it is difficult for communities to achieve meaningful change unless there is a mechanism to elect candidates of their choice and hold government leaders accountable. While we focus our remarks today on a few examples of barriers to voter access, we urge the United States Commission on Civil Rights and the Illinois State Advisory Committee to keep in mind the broader systemic barriers to voting and civic engagement and to continue working with federal agencies, local election administrators, and community advocates to address them.

Voting rights are fundamental, not only as an inherently vital part of our democratic system, but also as a means for self-empowerment and self-determination for all of our communities. It is imperative that our laws reflect our values and that our government actively seeks to ensure the full and fair right to vote for all eligible voters.



MEMORANDUM

To: Cook County Commissioner Larry Suffredin
From: Emily Powers, Business and Professional People for the Public Interest
Ami Gandhi, Chicago Lawyers' Committee for Civil Rights Under Law, Inc.
Jennifer Vollen-Katz, John Howard Association
Patrick Keenan-Devlin, James B. Moran Center for Youth Advocacy
Michelle Mbekeani-Wiley, Sargent Shriver National Center on Poverty Law

Date: April 20, 2017

Re: Improving Cook County's efforts to support inmates obtain vital records and secure the franchise

Issue Presented:

Recently released inmates lack access to the vital identification records they need to obtain state identification, such as a birth certificate or Social Security card either because they did not have these documents when they entered custody, or because these documents were lost or misplaced while they were in custody.¹ Without vital identification documents, reentrants have a weak foundation to start a new life and are more likely to recidivate. A study conducted by the H.I.R.E Network found that without state identification, a reentrant is not only unable to access critical services for reintegration, such as housing, public benefits and subsidies, and entrance into mandated treatment programs, but he or she may also experience difficulty obtaining employment and be prompted to partake in criminal activity to fulfill basic needs.² Further, detention also may undermine individuals' proper standing to vote if they have been removed from voter rolls, if they lack access to voter registration (or even ways to check the status of their voter registration), or if they lack access to the actual voting process itself. While the relationship between civic engagement and the criminal justice system is complex, supporting voting while awaiting trial and supporting registration upon release affirms the returning community member's value to the polity, encourages participation in civic life, and thus helps to rebuild the ties to fellow citizens that motivate law-abiding behavior.³

¹ La Vigne, Nancy, Elizabeth Davies, Tobi Palmer, Robin Halberstadt (2008 September). Release Planning for Successful Reentry: A guide for Corrections, Service Providers, and Community Groups. Urban Institute- Justice Policy Center. Retrieved from: <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411767-Release-Planning-forSuccessful-Reentry.PDF>.

² Id.

³ Restoring the Right to Vote, Brennan Center for Justice at New York University School of Law (2009); measuring the causal relationship between voting rights and criminal behavior is difficult. But the one published study tracking the relationship between voting and recidivism did find "consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior." Christopher Uggen & Jeff Manza, Voting and Subsequent Crime and Arrest: Evidence From a Community Sample, 36 Colum. Hum. Rts. L. Rev. 193, 213 (2004). In fact, the study found that the former offenders who voted were half as likely to be re-arrested as those who did not. Id. at 205. And in a more recent study, Brennan Center concluded that protecting and restoring voting rights is gaining traction as a smart-on-crime reform because of the associated public safety benefits. The Sustained Momentum and Growing Bipartisan Consensus for Voting Rights Restoration, Brennan Center for Justice at New York University School of Law (2015).



Background:

In its December 2015 report, the Illinois Governor's Commission on Criminal Justice and Sentencing Reform identified that an offender's access to a state identification card upon release is critical to successful reentry. In 2016, the Illinois General Assembly and Governor Rauner acted upon the Commission's recommendation, enacting Public Act 99-0907 ("the Act"). The Act provides for the Illinois Secretary of State to issue a free Illinois Identification Card to persons being released from the Illinois Department of Corrections ("IDOC") and Illinois Department of Juvenile Justice ("IDJJ") ("the Departments") who present their birth certificate, Social Security card, or other documents authorized by the Secretary, as well as two proofs of address. For those who cannot offer proofs of address, they can present a limited-verification issued by the Departments valid for 90 days. Unfortunately **many inmates will still lack access to the delineated identifying documents and will be unable to obtain a state identification card.**

Cook County operates the Department of Cook County Corrections, which houses approximately 100,000 detainees annually,⁴ and the Juvenile Temporary Detention Center, which detains 4,500 youth annually.⁵ The Circuit Court of Cook County also commits 49.6% of all persons sentenced to the IDOC, totaling approximately 25,000 individuals per year,⁶ and 42% of all youth sentenced to the IDJJ, totaling approximately 300 juveniles per year.⁷

With Cook County either locally detaining or committing nearly 130,000 individuals to state penitentiaries each year, the County is well positioned to help a significant number of incarcerated adults and youth in Illinois obtain the critical records necessary to reenter society upon release and register to vote.

Recommendations:

- Issue a certified birth certificate to all inmates in the Cook County Department of Corrections ("CCDOC") and Juvenile Temporary Detention Center ("JTDC"), who were born in Cook County, upon their release as an intergovernmental exchange of records;
- Issue a birth certificate to the IDOC or IDJJ for all individuals born in and sentenced from Cook County, either by including a certified paper copy in inmates' IDOC Master Files or through a secure electronic system from the Cook County Clerk to IDOC, as an intergovernmental exchange of records;
- If the Cook County Department of Corrections does not presently have a Memorandum of Understanding with the Social Security Administration ("SSA"), we strongly recommend entering into such a formal agreement so that inmates can obtain **free replacement** Social Security cards (given that the SSA will accept the facility's certification as proof of identity.)⁸ Once the MOU is in place, then apply for free replacement Social Security cards on behalf of inmates;

⁴ Cook County Department of Corrections.

⁵ Juvenile Justice in Illinois: A Data Snapshot, April 2014.

⁶ Illinois State Commission on Criminal Justice and Sentencing Reform, 2015.

⁷ Juvenile Justice in Illinois: A Data Snapshot, April 2014.

⁸ SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10225.125 Replacement SSN Cards for Prison Inmates Covered by a Memorandum of Understanding (February 27, 2014).



- Partner with local election authorities to register all eligible CCDOC and JTDC inmates to vote while awaiting trial and prior release; and
- Partner with local election authorities and advocacy organizations, like the Chicago Lawyers' Committee for Civil Rights Under Law, Shriver Center, and JHA, to ensure all eligible CCDOC and JTDC inmates have ready access to vote in elections during their period of detention – replicating and expanding upon efforts from the April 4, 2017 municipal election.



CHANGE Illinois Testimony to the Illinois Advisory Committee to the U.S. Commission on Civil Rights

Submitted By:

Jeff Raines, Director of Communications & Engagement at CHANGE Illinois
309-533-1152 | jeff@changeil.org
www.changeil.org

Thank you for the invitation to provide testimony for your March 9th hearing on voting rights in Illinois. CHANGE Illinois is a part of the Just Democracy Coalition (Asian Americans Advancing Justice- Chicago, Chicago Votes, Common Cause Illinois, the Illinois Coalition for Immigrant and Refugee Rights, & Illinois Public Interest Research Group). Our broad, diverse coalition is comprised of dozens of organizations that recognize that access to the vote and robust civic participation is fundamental to a thriving democracy.

Our coalition strongly supports electoral modernization proposals in SB1933 and HB3695. These two bills would enact automatic voter registration (AVR), a procedure that would alleviate costs incurred by the state of Illinois close to a registration deadline, reduce barriers to ballots access for communities of color, and streamline registration processes for voters.

Research from Oregon’s first-in-the-nation automatic voter registration law indicates that by enacting AVR here in Illinois, our cash-strapped state could actually save money. Because of the influx of registration applications right before a registration deadline, it is common for a state government to have to spend additional money and hire temporary staff to process all the paper registrations and complete the follow-ups for erroneous or illegible forms before the deadline. Many election offices also incur high mailing costs related to sending out paper voter registration that would be reduced by AVR.

Second, automatic voter registration would act as one safeguard for voter disenfranchisement. U.S. Census Bureau data from 2016 demonstrates a concerning racial disparity in Illinois voter registrations. In fact, it’s 50 percent lower in Illinois than nationwide. Overall, Illinois is below the national average for voter registration. National research also demonstrates that communities of color – especially in Black and Latino neighborhoods – are much less likely to have a drivers’ licenses/state IDs than whites, lowering the chances that the state’s current DMV/ “motor voter” registration laws adequately engage

these minority populations. AVR would expand the number of state agencies that are permitted to be used to update a person's voter registration.

Lastly, automatic voter registration would modernize and improve the accuracy of Illinois voter rolls while ensuring safeguards are in place to prevent ballot access issues for communities of color and stop ineligible residents from voting.

CHANGE Illinois on behalf of the Just Democracy Coalition encourages you to recommend AVR legislation in Illinois and nationwide.

**TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS
BEFORE THE ILLINOIS STATE ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS
MARCH 9, 2017**

Submitted By:
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I. INTRODUCTION

Thank you for the opportunity to testify today. The Chicago Lawyers' Committee for Civil Rights (Chicago Lawyers' Committee) has operated as Chicago's preeminent nonprofit, nonpartisan civil rights legal organization since 1969, and we work to secure racial equity and economic opportunity for all. The Chicago Lawyers' Committee provides legal representation through partnerships with the private bar, including our nearly 50 member law firms. We collaborate with grassroots organizations to implement community-based solutions that advance civil rights, and we participate in coalitions such as Just Democracy Illinois.

The Voting Rights Project of the Chicago Lawyers' Committee was established to eliminate, reduce, and prevent barriers to voting for communities of color and low-income residents in Illinois. We advocate for expanded voter access for all communities, regardless of race, ethnicity, socioeconomic, or disability status. A major component of our work is Election Protection, the nation's largest non-partisan voter protection program, which operates the 866-OUR-VOTE hotline and supports

companion lines at 888-VE-Y-VOTA and 888-API-VOTE. Partnering with area law firms and nonprofit organizations, Election Protection hotline and poll watcher volunteers have answered thousands of voter questions and resolved numerous problems at the polls.

Because Illinois has elections of some kind every year, the Chicago Lawyers' Committee for Civil Rights works year-round with local election authorities to make sure that the officials who run our elections comply with federal and state voting rights laws and know about voting barriers experienced by community members. Our voting rights work often involves open communication and collaboration with election officials to address voters' concerns on Election Day and throughout the year. Our voting rights attorneys meet with election officials in the months leading up to Election Day to assess their plans and provide any assistance that we can in improving training materials, recruiting poll workers, assisting voters, and facilitating community input about areas where language assistance is needed. An important part of this outreach is helping election authorities meet their bilingual election requirements and expand language access in the voting process.

Every American citizen has the right to cast an informed ballot in the language they are most comfortable speaking and reading. Congress first planted the seed of this right in the Voting Rights Act of 1965,¹ and it blossomed in subsequent amendments in

¹ Pub. L. No. 89-110, 79 Stat. 437 (1965).

the 1970s² as Congress recognized the growing need of language access and the substantial language barriers that had been erected to discriminate against American based on national origin, educational level, and language ability in exercising their voting rights. Although there are administrative determinations about language needs every few years, Congress has not revisited these language access requirements since the 1970s, even as the needs of our country's language minority communities have significantly evolved over the last forty years. It is past time for the federal government to revisit its language access laws to ensure every citizen's right to vote. Any expansion of language access rights must take into account past and current discrimination against voters based on their English-language proficiency, current Voting Rights Act requirements for bilingual elections, how local governments implement or fail to implement bilingual elections, and the sufficiency of the government's data analysis to meet community needs, including U.S. Census Bureau methodologies. Any future action must also take into account America's growing diversity both in terms of the geographic distribution of individuals with limited English proficiency as they move to new areas outside of core cities as well as the growing number of languages that these individuals speak.

² Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314; Act of Aug. 6, 1975, Pub. L. No. 94-73, Tit. I, 89 Stat. 400.

II. HISTORY

For generations, states have erected language access barriers to discriminate against a broad swath of eligible voters with limited English proficiency, from natural born Americans to naturalized immigrant citizens. When Congress banned literacy tests in jurisdictions that historically disenfranchised black voters through the Voting Rights Act of 1965, it also banned discrimination against Puerto Rican voters in New York.³ Section 4(e) of the Act forbade states from disenfranchising voters based on English literacy tests if a voter had completed sixth grade in a school in the United States and its territories.⁴ The direct attack on New York's history of discrimination is apparent from the statute itself, which specifically names Puerto Rico as a covered jurisdiction.⁵ The Supreme Court, in declaring the provision unconstitutional, noted that prejudice against Southern and Eastern European immigrants "played a prominent role in the enactment" of New York state's literacy test,⁶ and the Court emphasized that the requirement "may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment."⁷

From this tiny but important intervention, recognition of this type of discrimination grew, and Congress revisited this issue in 1970 when it included additional protections in the Voting Rights Act. Although some courts and election

³ See *Katzenbach v. Morgan*, 384 U.S. 641, 643–45 & n.1 (1966).

⁴ Voting Rights Act of 1965, 79 Stat. 439, 52 U.S.C. § 10303(e) (2012).

⁵ See *id.*

⁶ *Katzenbach*, 384 U.S. at 654, 654 n.14 (1966).

⁷ *Id.* at 652.

authorities read the original law expansively to provide bilingual voting resources, Congress recognized that a legislative fix was needed because the original law had been drafted too narrowly to only apply to certain jurisdictions and certain ethnic minorities.⁸ In particular, the growing Chicano movement and civil rights litigation brought attention to voting discrimination against Mexican Americans in Texas and California that fell outside of the original Voting Rights Act protections.⁹ To better protect the rights of language minorities nationwide, Congress adopted a nationwide ban on literacy tests and passed several provisions aimed at assisting language minorities at the polls. These protections developed as a result of crosspollination between social movements as civil rights advocates and minority communities saw commonality between discriminatory literacy tests aimed at African American communities throughout the South and literacy tests directed at language minorities in other parts of the country. The most important of these provisions for Illinois are sections 203 and 208.

III. LEGAL REQUIREMENTS

With this context in mind, we can better understand the legal requirements of the Voting Rights Act. Section 203 requires covered states and political subdivision —

⁸ James Thomas Tucker, *Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 195, 203–04 (2006).

⁹ David H. Hunter, *The 1975 Voting Rights Act and Language Minorities*, 25 CATH. U. L. REV. 250, 254-57 (1976); *id.* at 255 n.29.

typically counties¹⁰ – to provide election materials in minority languages. A jurisdiction is covered by section 203 when it meets one of the following two thresholds:

- (1) five percent of the voting age population of the jurisdiction are members of a single language minority and limited-English proficient; *or*
- (2) more than 10,000 citizens in a political subdivision are members of a single language minority and are limited-English proficient.¹¹ Additionally, the illiteracy rate of the citizens of the language minority as a group must be higher than the national illiteracy rate.¹²

Once the federal government determines that a jurisdiction meets these requirements, that jurisdiction must provide written and oral assistance in the designated minority language for voters. There are currently 263 covered jurisdictions.¹³ Although this is just 3.3 percent of the country's political subdivisions, these areas have 68,800,641 eligible voters, or 31.3 percent of the total eligible voters in the country.¹⁴ In other words, nearly one in three eligible voters lives in a community that is mandated by law to provide bilingual election resources.

Section 203 is a practical provision that measures the community need for bilingual resources in light of the administrative concerns of election authorities.

Because of this, section 203 does not assist every voter who has language access needs.

¹⁰ In Illinois, these subdivisions include some cities that have election authorities that operate independently of county authorities. For example, Chicago and Cook County both execute their bilingual election requirements independently.

¹¹ 52 U.S.C. § 10503 (2014).

¹² *Id.*

¹³ U.S. Census Bureau, *Census Bureau Releases 2016 Determinations for Section 203 of the Voting Rights Act* (Dec. 5, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-205.html>.

¹⁴ *Id.*

For voters not residing in section 203-covered jurisdictions, section 208¹⁵ is critical. In section 208, Congress provided that any eligible voter may receive language assistance from any person that the voter chooses so long as that person is not an agent of the voter's employer or union.¹⁶ This means that voters who require language assistance can bring their relatives, including their children, friends, or neighbors to help them vote. This provision is an essential part of the regulatory scheme not only for individuals who live in areas without significant language minorities but also for voters who reside areas that have significant need for bilingual resources but that Census Bureau studies have concluded do not meet section 203 criteria.

IV. IMPLEMENTATION

The Voting Rights Act delegates to the Census Bureau the work of determining whether counties meet the demographic requirements for section 203-coverage outlined above. The Census Bureau collects data for this determination through the American Community Survey. The survey asks individuals what languages other than English the person speaks at home and how well they speak English. All responses that rank below "very well" are categorized as limited-English proficient.¹⁷ The survey has substantial sampling error in small populations, so it uses regression techniques and weighting to get more accurate estimates of language minority populations.¹⁸

¹⁵ 52 U.S.C. § 10508.

¹⁶ *Id.*

¹⁷ See U.S. Census Bureau, Voting Rights Act Section 203 Determinations 23 (2011), https://www.census.gov/2010census/news/pdf/20111011_203slides.pdf.

¹⁸ *Id.* at 25.

In the last decade, the Census Bureau has prioritized improving the quality of data from individuals with limited English proficiency. Despite improvements, challenges remain.¹⁹ According to its own data, the Census estimated undercounts for Black, Hispanic, and American Indian and Alaskan Native populations while it estimated an overcount for the Non-Hispanic white population.²⁰ Based on qualitative observations of the changing demographics in the Chicago metropolitan area, advocates and community members have expressed concern that the determinations made by the Census Bureau do not match demographic changes that they have witnessed over the years. These advocates have highlighted a number of factors that may lead to the Census underestimating the number of limited English proficient voters, including lower response rates and incomplete responses from these voters as well as overestimation of the level of English proficiency since the survey does not explicitly tie its English proficiency questions to voting needs. For example, a voter may think she speaks English “very well” but still be uncomfortable navigating confusing election procedures and ballot language without language assistance. In fact, many voters who use bilingual voter resources do speak English and have passed a citizenship test in English but feel more comfortable voting in their native language. Additionally, many voters using bilingual resources are actively working to improve their English fluency.

¹⁹ See U.S. Census Bureau, American Community Survey Design and Methodology (January 2014), at 98–102, http://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_report_2014.pdf.

²⁰ U.S. Census Bureau, DSSD 2010 Census Coverage Measurement Memorandum Series #2010-G-01, at 1–2 (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

Effective language access does not automatically materialize after the federal government makes its section 203 designations. In practice, providing language access at the polls requires relationship-building and coordination between election administrators and language minority communities, often with the input of civil rights advocates. Election authorities often have tight budgets that limit their resources. Although some election authorities like the Chicago Board of Election Commissioners and the Cook County Clerk's office have retained staff to aid in bilingual election assistance, others do not. Decisions on whether to hire professional staff devoted to language assistance should not be made only by considering additional labor costs because noncompliance and litigation may end up being more costly in the long run. These decisions should also take into account equitable factors like the importance of serving all members of a constituency and the increased voter participation that can result from greater bilingual resources.²¹ But even those election authorities that have hired translation, interpretation, and outreach staff must work closely with community groups to ensure effective implementation.

Other presenters today will provide more details on how to leverage the relationships between public officials and civic groups to improve the efficiency and effectiveness of language access, but I want to highlight the key types of assistance that government agencies can obtain from community groups. Covered jurisdictions must

²¹ See DEMOS, MILLIONS TO THE POLLS: PRACTICAL POLICIES TO FULFILL THE FREEDOM TO VOTE FOR ALL AMERICANS 63 (2014).

provide translated informational materials and ballots. These documents often contain specialized language that requires professional, context-sensitive translation – something that tools like free web translation tools are ill equipped to provide. Community groups have often facilitated connections between election authorities and professional translators to make sure that the translators retained by the government are high quality. Election authorities also struggle to recruit and retain poll workers of any type, but bilingual poll workers can be particularly difficult although not impossible to recruit. Community groups often play a crucial role in helping the government recruit and retain high-quality bilingual poll workers to provide oral assistance at the polling place. This involvement in the political process also leads to greater political empowerment. Studies have shown that higher rates of voting also correlate with higher levels of civic and community engagement.²²

V. RECENT DEVELOPMENTS

Because of the periodic nature of elections, election officials and community groups must constantly engage each other to guarantee that advancements in bilingual services are not lost in the space between elections and that election authorities appropriately address any demographic changes that occur within the jurisdiction. If

²² E.g. Jennifer Oser, *Assessing How Participators Combine Acts in Their "Political Tool Kits": A Person-Centered Measurement Approach for Analyzing Citizen Participation*, J. SOC. INDICATORS RES. (2016), <https://link.springer.com/article/10.1007/s11205-016-1364-8>; Seth H. Werfel, *Voting and Civic Engagement: Results from an Online Field Experiment*, RES. & POLITICS 1–3 (Jan.-Mar. 2017), <http://journals.sagepub.com/doi/pdf/10.1177/2053168017690736>; RGK Center, *The Investigator #2: Volunteering by States*, <http://rgkcenter.org/research/4/investigator/2>.

these details fall through the cracks, eligible voters are excluded from elections, and the discriminatory effects of language-based disenfranchisement fall along lines of national origin, language ability, education level, and race.

Because all communities are mobile and language minority communities are particularly mobile, the nature and location of bilingual election services should evolve from election to election. Other factors can also complicate the effective administration of bilingual election services. For example, election authorities sometimes change polling places based on projected turnout needs. Since far fewer voters turn out for local elections than for presidential elections, some election authorities reduce the number of polling places for local elections. This means that the locations having bilingual poll workers are not stable, and the election authorities have to adjust their recruitment of bilingual poll workers accordingly.

Beyond these inevitable polling place changes, demographic changes also complicate bilingual election needs. Over the past few decades, immigrant communities have expanded outside of urban centers and moved to more suburban and rural locales. In addition to the City of Chicago, Suburban Cook County, Kane, Lake, and DuPage counties have all met the requirements for section 203 coverage in the last ten years.²³ Several jurisdictions in Illinois currently fall just short of federal language access coverage despite significant language access needs in those areas, such

²³ Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 63,602, 63,604 (Oct. 13, 2011), https://www.census.gov/rdo/pdf/2011_26293.pdf.

as DuPage and Will counties, and we expect those areas to meet the requirements for bilingual election coverage in the future.²⁴ In addition to greater geographic coverage, language diversity has greatly increased over time. In Chicago and suburban Cook County, the Census Bureau requires bilingual language access for Hispanic, Chinese, and Indian voting populations. In practice, written materials are provided in Spanish, Chinese, and Hindi, and oral assistance is provided in Spanish, Mandarin, Cantonese, Hindi, Gujarati, and Urdu. Additionally, Kane and Lake counties must provide language access services in Spanish.

And beyond federal requirements, election authorities also provide voluntary language access in certain circumstances. Chicago and suburban Cook County election officials also provide language access in Polish and Korean, and DuPage County will continue to provide Spanish language access services even though it is not required to do so after the most recent December 2016 section 203 determinations. We applaud these efforts and welcome the opportunity to collaborate with jurisdictions looking to expand their language access in the future.

These concrete data points can obscure more subtle changes that complicate language access programs every year. Although we know what counties must provide these language services, determining what specific communities in these massive counties require language assistance is a more difficult determination. Continuous

²⁴ See U.S. Census Bureau, Public Use Data File and Technical Documentation (Dec. 5, 2016), https://www.census.gov/rdo/data/voting_rights_determination_file.html.

population shifts mean that every year some polling places might need bilingual election judges or materials that they did not carry in previous elections.²⁵ And while the demographics of these communities are changing, often many of the poll workers have worked the precincts for much longer periods of time and have not been trained fully on the changes to the law or regulations and how to implement them.

In addition to the recruiting problems that election officials face in finding new poll workers who can provide bilingual oral assistance, election authorities at times must address ethnic tensions, cultural clashes, and even problems of xenophobia and racism that arise as these communities diversify. As Cook County Clerk David Orr testified, despite training that advises poll workers on the legal rights of limited English proficient voters, some poll workers inject their personal frustration with bilingual voting and limited English proficient voters into the voting process.²⁶ In early voting for the November 2016 election, we received a report of local poll workers complaining about South Asian and Latino limited English proficient voters to other poll workers and voters. In other circumstances, even years of experience operating bilingual elections has not prevented serious problems arising on Election Day. On November 8, 2016, a local Spanish-speaking voter was improperly turned away from the polls even

²⁵ An appendix to this memorandum contains a list compiled by the Chicago Lawyers' Committee for Civil Rights of polling sites in the greater Chicago area that local election authorities identified as needing bilingual election judges.

²⁶ See Transcript, U.S. Commission on Civil Rights, Civil Rights and Voting in Illinois 299-300 (Mar. 9, 2017) (comments of Cook County Clerk David Orr).

though she was a registered voter and unsuccessfully tried to find a bilingual election judge to help her explain this fact to other election judges.

VI. PATHS FORWARD

As mentioned earlier, the most recent Census estimates removed the requirement for Spanish bilingual language access in DuPage County despite the belief from community groups and election officials that the need for language access in DuPage County may actually be growing. This problem raises serious concerns about the adequacy of the Census Bureau's determinations. To improve these processes, we recommend that the Census Bureau open up its section 203 determinations to a notice and comment process for community input and response to its determinations. Section 203's requirements are purely quantitative and based on one data set, but we believe that community input in these determinations would point to how language access can be implemented most efficiently and effectively and also put pressure on the Census Bureau to look more critically at its methodology for weaknesses and areas of improvement that might expand language access to new jurisdictions under section 203.

Information from our Election Protection program also raises serious concerns about the adequacy of section 203 to meet the needs of an increasingly diverse voting population. Through our hotline and poll watchers we received reports of voters unsuccessfully seeking assistance in different languages, beyond the language coverage that the election jurisdiction offered. At least eight states and the District of Columbia

have expanded language access beyond the requirements of section 203.²⁷ Proposals are currently being considered in Illinois, and while we support increased language access to the polls for all eligible voters, it is essential that state-level language access protections are designed and implemented with input from community members and election administrators so that the on-the-ground implementation of language assistance is successful.

Additionally, while section 208 provides an important failsafe for limited English proficient voters by allowing them to bring the person of their choice to help them translate the ballot, too few voters, poll workers, and observers are aware of this right. As Illinois State Advisory Committee member Tabassum Haleem noted, election authorities throughout the state should create clearer and more accessible voters bills of rights that they distribute widely to inform voters of the availability of personal language assistance at the polls.²⁸ If necessary, polling sites should post prominent materials that advise voters of this important right.

As I laid out before, in the first ten years after passage of the Voting Rights Act, Congress continuously amended its language access provisions in growing recognition of the barriers to voting encountered by citizens with limited English proficiency. Since then, Congress has allowed these protections to stagnate as the facts on the ground and

²⁷ See Brian J. Sutherland, *The Patchwork of State and Federal Language Assistance for Minority Voters and a Proposal for Model State Legislation*, 65 N.Y.U. ANN. SURV. AM. L. 323, 352-60 (2009).

²⁸ See Transcript, U.S. Commission on Civil Rights, *Civil Rights and Voting in Illinois 298-99* (Mar. 9, 2017) (comments of Illinois Advisory Committee Member Tabassum Haleem).

the demographics of the electorate have changed. To meet these demands, Congress should examine the voting rights expansions of the several states that have expanded language access beyond federal requirements as well as the technological advances that make the administration of bilingual elections significantly easier since 1975.

In addition to these technological changes, the country has also undergone significant social changes in the last forty years and even the last two years. The damage from false rhetoric about voting fraud and undocumented immigrant votes falls hard on language minorities. Part of this rhetoric undoubtedly comes from ignorance of the language access laws we passed decades ago. Even knowledgeable voters are unaware that section 208 permits eligible voters to bring a friend or relative to help them with translation and interpretation. As we work to expand voting rights on the local and state level and protect the voting rights from an attorney general hostile to the Voting Rights Act and voices amplifying xenophobia, we continue to strive to protect the right of all citizens, regardless of their English proficiency, to cast an informed ballot.

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
3	3	Chinese
3	13	Chinese
3	26	Chinese
4	1	Chinese
4	35	Chinese
4	36	Chinese
4	38	Chinese
11	1	Chinese
11	4	Chinese
11	5	Chinese
11	7	Chinese
11	8	Chinese
11	9	Chinese
11	10	Chinese
11	11	Chinese
11	14	Chinese
11	15	Chinese
11	16	Chinese
11	17	Chinese
11	18	Chinese
11	19	Chinese
11	20	Chinese
11	22	Chinese
11	23	Chinese
11	25	Chinese
11	26	Chinese
11	27	Chinese
11	29	Chinese
11	30	Chinese
11	32	Chinese
11	34	Chinese
11	35	Chinese
11	36	Chinese
11	37	Chinese
12	1	Chinese
12	2	Chinese
12	3	Chinese
12	4	Chinese
12	5	Chinese
12	6	Chinese
12	8	Chinese
12	9	Chinese
12	17	Chinese

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Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
	12	19 Chinese
	12	23 Chinese
	14	31 Chinese
	15	10 Chinese
	15	11 Chinese
	25	3 Chinese
	25	4 Chinese
	25	6 Chinese
	25	14 Chinese
	25	18 Chinese
	25	25 Chinese
	25	27 Chinese
	25	32 Chinese
	48	2 Chinese
	48	7 Chinese
	48	10 Chinese
	48	11 Chinese
	48	19 Chinese
	4	6 Hindi
	11	2 Hindi
	11	7 Hindi
	11	33 Hindi
	25	3 Hindi
	25	27 Hindi
	39	3 Hindi
	39	13 Hindi
	39	15 Hindi
	39	16 Hindi
	39	18 Hindi
	39	22 Hindi
	39	25 Hindi
	39	30 Hindi
	39	34 Hindi
	39	43 Hindi
	40	1 Hindi
	40	4 Hindi
	40	9 Hindi
	40	10 Hindi
	40	14 Hindi
	40	17 Hindi
	40	18 Hindi
	40	20 Hindi
	40	24 Hindi
	40	29 Hindi
	40	30 Hindi
	40	34 Hindi
	40	35 Hindi

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Ward	Precinct	Language
40	39	Hindi
42	3	Hindi
42	16	Hindi
42	41	Hindi
49	2	Hindi
49	7	Hindi
49	12	Hindi
49	17	Hindi
50	7	Hindi
50	10	Hindi
50	13	Hindi
50	17	Hindi
50	19	Hindi
50	20	Hindi
50	22	Hindi
50	23	Hindi
50	25	Hindi
50	26	Hindi
50	28	Hindi
50	29	Hindi
50	30	Hindi
50	31	Hindi
50	32	Hindi
50	35	Hindi
50	36	Hindi
50	37	Hindi
50	39	Hindi
1	1	Spanish
1	2	Spanish
1	3	Spanish
1	4	Spanish
1	5	Spanish
1	6	Spanish
1	7	Spanish
1	8	Spanish
1	9	Spanish
1	10	Spanish
1	11	Spanish
1	12	Spanish
1	13	Spanish
1	14	Spanish
1	15	Spanish
1	16	Spanish
1	17	Spanish
1	18	Spanish
1	19	Spanish
1	20	Spanish

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Ward	Precinct	Language
1	21	Spanish
1	22	Spanish
1	23	Spanish
1	24	Spanish
1	25	Spanish
1	26	Spanish
1	27	Spanish
1	28	Spanish
1	29	Spanish
1	30	Spanish
1	31	Spanish
1	32	Spanish
1	33	Spanish
1	34	Spanish
1	35	Spanish
1	37	Spanish
1	38	Spanish
1	39	Spanish
1	40	Spanish
1	41	Spanish
1	42	Spanish
1	43	Spanish
1	44	Spanish
2	1	Spanish
2	3	Spanish
2	4	Spanish
2	5	Spanish
2	6	Spanish
2	8	Spanish
2	20	Spanish
3	5	Spanish
3	10	Spanish
3	18	Spanish
3	23	Spanish
3	29	Spanish
3	35	Spanish
4	27	Spanish
5	11	Spanish
5	18	Spanish
5	20	Spanish
5	23	Spanish
7	25	Spanish
7	28	Spanish
7	30	Spanish
7	31	Spanish
7	45	Spanish
7	46	Spanish

Chicago Precincts with Bilingual Judges		
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Ward	Precinct	Language
9	7	Spanish
9	28	Spanish
9	31	Spanish
9	37	Spanish
9	46	Spanish
10	1	Spanish
10	2	Spanish
10	3	Spanish
10	5	Spanish
10	6	Spanish
10	7	Spanish
10	8	Spanish
10	9	Spanish
10	10	Spanish
10	11	Spanish
10	12	Spanish
10	13	Spanish
10	14	Spanish
10	16	Spanish
10	17	Spanish
10	18	Spanish
10	19	Spanish
10	20	Spanish
10	21	Spanish
10	22	Spanish
10	23	Spanish
10	24	Spanish
10	26	Spanish
10	27	Spanish
10	28	Spanish
10	29	Spanish
10	30	Spanish
10	31	Spanish
10	32	Spanish
10	33	Spanish
10	34	Spanish
10	35	Spanish
10	36	Spanish
11	1	Spanish
11	3	Spanish
11	4	Spanish
11	5	Spanish
11	8	Spanish
11	9	Spanish
11	10	Spanish
11	11	Spanish
11	12	Spanish

Chicago Precincts with Bilingual Judges		
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Ward	Precinct	Language
11	11	13 Spanish
11	11	15 Spanish
11	11	16 Spanish
11	11	17 Spanish
11	11	18 Spanish
11	11	19 Spanish
11	11	22 Spanish
11	11	25 Spanish
11	11	26 Spanish
11	11	28 Spanish
11	11	31 Spanish
11	11	32 Spanish
11	11	34 Spanish
11	11	35 Spanish
11	11	37 Spanish
11	11	38 Spanish
12	12	1 Spanish
12	12	2 Spanish
12	12	3 Spanish
12	12	4 Spanish
12	12	5 Spanish
12	12	6 Spanish
12	12	7 Spanish
12	12	8 Spanish
12	12	9 Spanish
12	12	10 Spanish
12	12	11 Spanish
12	12	12 Spanish
12	12	13 Spanish
12	12	14 Spanish
12	12	15 Spanish
12	12	16 Spanish
12	12	17 Spanish
12	12	18 Spanish
12	12	19 Spanish
12	12	20 Spanish
12	12	21 Spanish
12	12	22 Spanish
12	12	23 Spanish
12	12	24 Spanish
13	13	1 Spanish
13	13	2 Spanish
13	13	3 Spanish
13	13	4 Spanish
13	13	5 Spanish
13	13	6 Spanish
13	13	7 Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
13	8	Spanish
13	9	Spanish
13	10	Spanish
13	11	Spanish
13	12	Spanish
13	13	Spanish
13	14	Spanish
13	15	Spanish
13	16	Spanish
13	17	Spanish
13	18	Spanish
13	19	Spanish
13	20	Spanish
13	21	Spanish
13	22	Spanish
13	23	Spanish
13	24	Spanish
13	25	Spanish
13	26	Spanish
13	27	Spanish
13	28	Spanish
13	29	Spanish
13	30	Spanish
13	31	Spanish
13	32	Spanish
13	34	Spanish
13	35	Spanish
13	36	Spanish
13	37	Spanish
13	38	Spanish
13	39	Spanish
13	40	Spanish
13	41	Spanish
13	42	Spanish
13	43	Spanish
13	44	Spanish
13	45	Spanish
13	46	Spanish
13	47	Spanish
14	2	Spanish
14	3	Spanish
14	4	Spanish
14	5	Spanish
14	6	Spanish
14	7	Spanish
14	8	Spanish
14	9	Spanish

Chicago Precincts with Bilingual Judges		
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Ward	Precinct	Language
14	10	Spanish
14	11	Spanish
14	12	Spanish
14	13	Spanish
14	14	Spanish
14	15	Spanish
14	16	Spanish
14	17	Spanish
14	18	Spanish
14	19	Spanish
14	20	Spanish
14	21	Spanish
14	22	Spanish
14	23	Spanish
14	24	Spanish
14	25	Spanish
14	26	Spanish
14	27	Spanish
14	28	Spanish
14	29	Spanish
15	1	Spanish
15	3	Spanish
15	4	Spanish
15	5	Spanish
15	6	Spanish
15	8	Spanish
15	9	Spanish
15	10	Spanish
15	11	Spanish
15	12	Spanish
15	13	Spanish
15	14	Spanish
15	15	Spanish
15	16	Spanish
15	19	Spanish
16	1	Spanish
16	2	Spanish
16	3	Spanish
16	4	Spanish
16	6	Spanish
16	7	Spanish
16	8	Spanish
16	10	Spanish
16	11	Spanish
16	12	Spanish
16	13	Spanish
16	17	Spanish

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Ward	Precinct	Language
16	18	Spanish
16	19	Spanish
16	21	Spanish
16	22	Spanish
16	23	Spanish
16	32	Spanish
16	35	Spanish
17	1	Spanish
17	6	Spanish
17	7	Spanish
17	12	Spanish
17	14	Spanish
17	16	Spanish
17	25	Spanish
17	30	Spanish
18	1	Spanish
18	2	Spanish
18	3	Spanish
18	6	Spanish
18	7	Spanish
18	8	Spanish
18	10	Spanish
18	11	Spanish
18	12	Spanish
18	13	Spanish
18	15	Spanish
18	17	Spanish
18	21	Spanish
18	23	Spanish
18	24	Spanish
18	25	Spanish
18	27	Spanish
18	28	Spanish
18	29	Spanish
18	30	Spanish
18	31	Spanish
18	35	Spanish
18	36	Spanish
18	37	Spanish
18	39	Spanish
18	40	Spanish
18	42	Spanish
18	43	Spanish
18	44	Spanish
18	45	Spanish
18	46	Spanish
18	47	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
18	49	Spanish
18	50	Spanish
19	32	Spanish
20	2	Spanish
20	4	Spanish
20	6	Spanish
20	15	Spanish
20	17	Spanish
20	20	Spanish
20	21	Spanish
20	38	Spanish
20	39	Spanish
22	2	Spanish
22	3	Spanish
22	4	Spanish
22	5	Spanish
22	6	Spanish
22	7	Spanish
22	8	Spanish
22	9	Spanish
22	10	Spanish
22	11	Spanish
22	12	Spanish
22	13	Spanish
22	14	Spanish
22	15	Spanish
22	16	Spanish
22	17	Spanish
22	18	Spanish
22	19	Spanish
22	20	Spanish
22	21	Spanish
22	22	Spanish
22	24	Spanish
22	25	Spanish
23	1	Spanish
23	2	Spanish
23	3	Spanish
23	4	Spanish
23	5	Spanish
23	6	Spanish
23	7	Spanish
23	8	Spanish
23	9	Spanish
23	10	Spanish
23	11	Spanish
23	12	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
23	13	Spanish
23	14	Spanish
23	15	Spanish
23	17	Spanish
23	18	Spanish
23	19	Spanish
23	20	Spanish
23	22	Spanish
23	23	Spanish
23	24	Spanish
23	25	Spanish
23	26	Spanish
23	28	Spanish
23	29	Spanish
23	30	Spanish
23	31	Spanish
23	32	Spanish
23	33	Spanish
23	34	Spanish
23	35	Spanish
23	36	Spanish
23	37	Spanish
23	39	Spanish
24	7	Spanish
24	9	Spanish
24	16	Spanish
24	39	Spanish
24	41	Spanish
25	1	Spanish
25	2	Spanish
25	5	Spanish
25	7	Spanish
25	8	Spanish
25	9	Spanish
25	11	Spanish
25	12	Spanish
25	13	Spanish
25	14	Spanish
25	15	Spanish
25	17	Spanish
25	19	Spanish
25	22	Spanish
25	23	Spanish
25	24	Spanish
25	26	Spanish
25	27	Spanish
25	28	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
25	30	Spanish
25	32	Spanish
26	1	Spanish
26	2	Spanish
26	3	Spanish
26	4	Spanish
26	5	Spanish
26	6	Spanish
26	7	Spanish
26	8	Spanish
26	9	Spanish
26	10	Spanish
26	11	Spanish
26	12	Spanish
26	13	Spanish
26	14	Spanish
26	15	Spanish
26	16	Spanish
26	17	Spanish
26	18	Spanish
26	19	Spanish
26	20	Spanish
26	21	Spanish
26	22	Spanish
26	23	Spanish
26	24	Spanish
26	25	Spanish
26	26	Spanish
26	27	Spanish
26	28	Spanish
26	29	Spanish
26	30	Spanish
26	31	Spanish
26	32	Spanish
26	33	Spanish
26	34	Spanish
26	35	Spanish
26	36	Spanish
26	37	Spanish
26	38	Spanish
26	39	Spanish
26	40	Spanish
26	41	Spanish
26	42	Spanish
26	43	Spanish
26	44	Spanish
26	45	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
26	46	Spanish
26	47	Spanish
26	48	Spanish
26	49	Spanish
27	1	Spanish
27	3	Spanish
27	5	Spanish
27	7	Spanish
27	13	Spanish
27	19	Spanish
27	22	Spanish
27	24	Spanish
27	27	Spanish
27	28	Spanish
27	29	Spanish
27	33	Spanish
27	36	Spanish
27	40	Spanish
27	43	Spanish
27	48	Spanish
28	11	Spanish
28	19	Spanish
28	23	Spanish
28	34	Spanish
28	38	Spanish
29	1	Spanish
29	3	Spanish
29	6	Spanish
29	7	Spanish
29	9	Spanish
29	10	Spanish
29	15	Spanish
29	22	Spanish
29	23	Spanish
29	29	Spanish
29	30	Spanish
29	31	Spanish
29	32	Spanish
29	34	Spanish
29	36	Spanish
29	38	Spanish
29	39	Spanish
29	42	Spanish
29	43	Spanish
30	1	Spanish
30	2	Spanish
30	3	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
30	4	Spanish
30	5	Spanish
30	6	Spanish
30	7	Spanish
30	8	Spanish
30	9	Spanish
30	10	Spanish
30	11	Spanish
30	12	Spanish
30	13	Spanish
30	14	Spanish
30	15	Spanish
30	16	Spanish
30	17	Spanish
30	18	Spanish
30	19	Spanish
30	20	Spanish
30	21	Spanish
30	22	Spanish
30	23	Spanish
30	24	Spanish
30	25	Spanish
30	26	Spanish
30	27	Spanish
30	28	Spanish
30	29	Spanish
30	30	Spanish
30	31	Spanish
30	32	Spanish
31	1	Spanish
31	2	Spanish
31	3	Spanish
31	4	Spanish
31	5	Spanish
31	6	Spanish
31	7	Spanish
31	8	Spanish
31	9	Spanish
31	10	Spanish
31	11	Spanish
31	12	Spanish
31	13	Spanish
31	14	Spanish
31	15	Spanish
31	16	Spanish
31	17	Spanish
31	18	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
31	19	Spanish
31	20	Spanish
31	21	Spanish
31	22	Spanish
31	23	Spanish
31	24	Spanish
31	25	Spanish
31	26	Spanish
31	27	Spanish
31	28	Spanish
31	29	Spanish
31	30	Spanish
31	31	Spanish
31	32	Spanish
31	33	Spanish
31	34	Spanish
31	35	Spanish
31	36	Spanish
31	37	Spanish
31	38	Spanish
31	39	Spanish
31	40	Spanish
31	41	Spanish
32	1	Spanish
32	3	Spanish
32	4	Spanish
32	5	Spanish
32	6	Spanish
32	9	Spanish
32	11	Spanish
32	12	Spanish
32	14	Spanish
32	15	Spanish
32	16	Spanish
32	17	Spanish
32	19	Spanish
32	20	Spanish
32	22	Spanish
32	26	Spanish
32	29	Spanish
32	31	Spanish
32	32	Spanish
32	33	Spanish
32	34	Spanish
32	35	Spanish
32	37	Spanish
32	43	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
33	1	Spanish
33	2	Spanish
33	3	Spanish
33	4	Spanish
33	5	Spanish
33	6	Spanish
33	7	Spanish
33	8	Spanish
33	9	Spanish
33	10	Spanish
33	11	Spanish
33	12	Spanish
33	13	Spanish
33	14	Spanish
33	15	Spanish
33	16	Spanish
33	17	Spanish
33	18	Spanish
33	19	Spanish
33	20	Spanish
33	21	Spanish
33	22	Spanish
33	23	Spanish
33	24	Spanish
33	25	Spanish
33	26	Spanish
33	27	Spanish
33	28	Spanish
35	1	Spanish
35	2	Spanish
35	3	Spanish
35	4	Spanish
35	5	Spanish
35	6	Spanish
35	7	Spanish
35	8	Spanish
35	9	Spanish
35	10	Spanish
35	11	Spanish
35	12	Spanish
35	13	Spanish
35	14	Spanish
35	15	Spanish
35	16	Spanish
35	17	Spanish
35	18	Spanish
35	19	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
35	20	Spanish
35	21	Spanish
35	22	Spanish
35	23	Spanish
35	24	Spanish
35	25	Spanish
35	26	Spanish
35	27	Spanish
35	28	Spanish
35	29	Spanish
35	30	Spanish
35	31	Spanish
36	1	Spanish
36	2	Spanish
36	3	Spanish
36	4	Spanish
36	5	Spanish
36	6	Spanish
36	8	Spanish
36	9	Spanish
36	10	Spanish
36	11	Spanish
36	12	Spanish
36	13	Spanish
36	14	Spanish
36	15	Spanish
36	16	Spanish
36	17	Spanish
36	18	Spanish
36	19	Spanish
36	20	Spanish
36	21	Spanish
36	22	Spanish
36	23	Spanish
36	24	Spanish
36	25	Spanish
36	26	Spanish
36	27	Spanish
36	28	Spanish
36	29	Spanish
36	30	Spanish
37	2	Spanish
37	3	Spanish
37	4	Spanish
37	6	Spanish
37	7	Spanish
37	8	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
37	10	Spanish
37	12	Spanish
37	13	Spanish
37	14	Spanish
37	16	Spanish
37	19	Spanish
37	21	Spanish
37	22	Spanish
37	24	Spanish
37	26	Spanish
37	27	Spanish
37	28	Spanish
37	30	Spanish
37	41	Spanish
38	2	Spanish
38	3	Spanish
38	4	Spanish
38	5	Spanish
38	6	Spanish
38	7	Spanish
38	8	Spanish
38	9	Spanish
38	11	Spanish
38	12	Spanish
38	14	Spanish
38	15	Spanish
38	16	Spanish
38	18	Spanish
38	19	Spanish
38	20	Spanish
38	21	Spanish
38	23	Spanish
38	26	Spanish
38	30	Spanish
38	33	Spanish
38	34	Spanish
38	35	Spanish
38	36	Spanish
38	37	Spanish
38	38	Spanish
38	39	Spanish
38	40	Spanish
39	3	Spanish
39	5	Spanish
39	6	Spanish
39	7	Spanish
39	8	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
39	9	Spanish
39	10	Spanish
39	11	Spanish
39	12	Spanish
39	13	Spanish
39	14	Spanish
39	16	Spanish
39	17	Spanish
39	18	Spanish
39	19	Spanish
39	22	Spanish
39	28	Spanish
39	29	Spanish
39	30	Spanish
39	31	Spanish
39	33	Spanish
39	35	Spanish
40	1	Spanish
40	2	Spanish
40	3	Spanish
40	4	Spanish
40	5	Spanish
40	6	Spanish
40	7	Spanish
40	8	Spanish
40	9	Spanish
40	10	Spanish
40	11	Spanish
40	12	Spanish
40	13	Spanish
40	14	Spanish
40	15	Spanish
40	16	Spanish
40	18	Spanish
40	19	Spanish
40	20	Spanish
40	21	Spanish
40	22	Spanish
40	23	Spanish
40	24	Spanish
40	25	Spanish
40	27	Spanish
40	28	Spanish
40	29	Spanish
40	30	Spanish
40	32	Spanish
40	33	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
40	34	Spanish
40	35	Spanish
40	36	Spanish
40	37	Spanish
40	38	Spanish
40	39	Spanish
41	11	Spanish
41	16	Spanish
41	21	Spanish
41	22	Spanish
41	27	Spanish
41	32	Spanish
41	35	Spanish
45	1	Spanish
45	2	Spanish
45	3	Spanish
45	5	Spanish
45	7	Spanish
45	8	Spanish
45	9	Spanish
45	10	Spanish
45	11	Spanish
45	12	Spanish
45	13	Spanish
45	14	Spanish
45	15	Spanish
45	16	Spanish
45	17	Spanish
45	30	Spanish
45	33	Spanish
45	34	Spanish
45	35	Spanish
45	36	Spanish
45	37	Spanish
45	38	Spanish
46	1	Spanish
46	4	Spanish
46	5	Spanish
46	6	Spanish
46	8	Spanish
46	9	Spanish
46	10	Spanish
46	11	Spanish
46	14	Spanish
46	20	Spanish
46	21	Spanish
46	22	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
46	23	Spanish
46	26	Spanish
46	27	Spanish
46	29	Spanish
46	32	Spanish
46	34	Spanish
46	35	Spanish
46	38	Spanish
47	3	Spanish
47	5	Spanish
47	8	Spanish
47	9	Spanish
47	10	Spanish
47	12	Spanish
47	13	Spanish
47	14	Spanish
47	15	Spanish
47	17	Spanish
47	18	Spanish
47	19	Spanish
47	20	Spanish
47	22	Spanish
47	23	Spanish
47	24	Spanish
47	25	Spanish
47	26	Spanish
47	28	Spanish
47	30	Spanish
47	31	Spanish
47	32	Spanish
47	34	Spanish
47	35	Spanish
47	36	Spanish
47	38	Spanish
47	39	Spanish
47	40	Spanish
47	41	Spanish
47	42	Spanish
47	45	Spanish
47	46	Spanish
47	48	Spanish
48	1	Spanish
48	20	Spanish
48	25	Spanish
48	30	Spanish
48	31	Spanish
48	32	Spanish

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
48	34	Spanish
48	37	Spanish
48	38	Spanish
48	40	Spanish
48	42	Spanish
48	44	Spanish
48	45	Spanish
49	1	Spanish
49	2	Spanish
49	3	Spanish
49	4	Spanish
49	5	Spanish
49	6	Spanish
49	10	Spanish
49	11	Spanish
49	13	Spanish
49	14	Spanish
49	15	Spanish
49	16	Spanish
49	18	Spanish
49	19	Spanish
49	20	Spanish
49	22	Spanish
49	23	Spanish
49	24	Spanish
49	28	Spanish
49	30	Spanish
49	32	Spanish
49	33	Spanish
50	6	Spanish
50	10	Spanish
50	13	Spanish
50	15	Spanish
50	17	Spanish
50	19	Spanish
50	20	Spanish
50	21	Spanish
50	22	Spanish
50	23	Spanish
50	26	Spanish
50	28	Spanish
50	29	Spanish
50	30	Spanish
50	31	Spanish
50	32	Spanish
50	34	Spanish
50	36	Spanish

Chicago Precincts with Bilingual Judges

Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.

Ward	Precinct	Language
	50	39 Spanish
	50	40 Spanish

Cook County Precincts with Bilingual Judges		
<p>Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.</p>		
<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
8300008	Chinese	70-Barrington
8300009	Chinese	71-Bloom
8300023	Chinese	72-Bremen
8300028	Chinese	73-Calumet
8300037	Chinese	74-Elk Grove
8300045	Chinese	75-Evanston
7400017	Hindi	76-Hanover
7400018	Hindi	77-Lemont
7600019	Hindi	78-Leyden
8000015	Hindi	79-Lyons
8000033	Hindi	80-Maine
8000040	Hindi	81-New Trier
8000057	Hindi	82-Niles
8000070	Hindi	83-Northfield
8000071	Hindi	84-Norwood Park
8000090	Hindi	85-Oak Park
8200003	Hindi	86-Orland
8200007	Hindi	87-Palatine
8200030	Hindi	88-Palos
8200032	Hindi	89-Proviso
8200038	Hindi	90-Rich
8200046	Hindi	91-River Forest
8200050	Hindi	92-Riverside
8200052	Hindi	93-Schaumburg
8200060	Hindi	94-Stickney
8200062	Hindi	95-Thornton
9300018	Hindi	96-Wheeling
9300027	Hindi	97-Worth
9300031	Hindi	98-Cicero
9300035	Hindi	99-Berwyn
9300043	Hindi	
9300044	Hindi	
9300045	Hindi	
7400004	Hindi/ Spanish	
7400015	Hindi/ Spanish	

Cook County Precincts with Bilingual Judges

Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.

The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.

[The locations of all polling places in Cook County is searchable here.](#)

Precinct	Language	
7400024	Hindi/ Spanish	
7400031	Hindi/ Spanish	
7400036	Hindi/ Spanish	
7400038	Hindi/ Spanish	
7400049	Hindi/ Spanish	
7600024	Hindi/ Spanish	
8000001	Hindi/ Spanish	
8000002	Hindi/ Spanish	
8000005	Hindi/ Spanish	
8000008	Hindi/ Spanish	
8000023	Hindi/ Spanish	
8000028	Hindi/ Spanish	
8000045	Hindi/ Spanish	
8000051	Hindi/ Spanish	
8000056	Hindi/ Spanish	
8000066	Hindi/ Spanish	
8000073	Hindi/ Spanish	
8000078	Hindi/ Spanish	
8000081	Hindi/ Spanish	
8000084	Hindi/ Spanish	
8000089	Hindi/ Spanish	
8000092	Hindi/ Spanish	
9300001	Hindi/ Spanish	
9300004	Hindi/ Spanish	
9300005	Hindi/ Spanish	
9300006	Hindi/ Spanish	
9300007	Hindi/ Spanish	
9300008	Hindi/ Spanish	
9300009	Hindi/ Spanish	
9300012	Hindi/ Spanish	
9300015	Hindi/ Spanish	
9300022	Hindi/ Spanish	
9300029	Hindi/ Spanish	
9300030	Hindi/ Spanish	
9300034	Hindi/ Spanish	
9300038	Hindi/ Spanish	
9300039	Hindi/ Spanish	
9300042	Hindi/ Spanish	
9300049	Hindi/ Spanish	
9300051	Hindi/ Spanish	

Cook County Precincts with Bilingual Judges		
<p>Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.</p>		
<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
9300058	Hindi/ Spanish	
9300060	Hindi/ Spanish	
9300068	Hindi/ Spanish	
9300071	Hindi/ Spanish	
9300077	Hindi/ Spanish	
9300078	Hindi/ Spanish	
7100001	Spanish	
7100004	Spanish	
7100009	Spanish	
7100012	Spanish	
7100025	Spanish	
7100028	Spanish	
7100031	Spanish	
7100035	Spanish	
7100042	Spanish	
7100046	Spanish	
7100050	Spanish	
7100051	Spanish	
7100054	Spanish	
7100056	Spanish	
7100057	Spanish	
7100059	Spanish	
7100061	Spanish	
7200006	Spanish	
7200009	Spanish	
7200012	Spanish	
7200014	Spanish	
7200015	Spanish	
7200021	Spanish	
7200034	Spanish	
7200041	Spanish	
7200043	Spanish	
7200044	Spanish	
7200045	Spanish	
7200052	Spanish	
7200055	Spanish	
7200073	Spanish	
7300001	Spanish	
7300002	Spanish	
7300003	Spanish	

Cook County Precincts with Bilingual Judges		
<p>Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.</p>		
<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
7300006	Spanish	
7300007	Spanish	
7300008	Spanish	
7400006	Spanish	
7400008	Spanish	
7400021	Spanish	
7400022	Spanish	
7400026	Spanish	
7400028	Spanish	
7400032	Spanish	
7400035	Spanish	
7400039	Spanish	
7400041	Spanish	
7400042	Spanish	
7400044	Spanish	
7400048	Spanish	
7400050	Spanish	
7400052	Spanish	
7502002	Spanish	
7502003	Spanish	
7502004	Spanish	
7504004	Spanish	
7504005	Spanish	
7505001	Spanish	
7505003	Spanish	
7505004	Spanish	
7508002	Spanish	
7508003	Spanish	
7508004	Spanish	
7508005	Spanish	
7600002	Spanish	
7600003	Spanish	
7600004	Spanish	
7600005	Spanish	
7600006	Spanish	
7600007	Spanish	
7600008	Spanish	
7600010	Spanish	
7600011	Spanish	
7600012	Spanish	

Cook County Precincts with Bilingual Judges		
<p>Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.</p>		
<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
7600013	Spanish	
7600014	Spanish	
7600015	Spanish	
7600017	Spanish	
7600018	Spanish	
7600020	Spanish	
7600021	Spanish	
7600022	Spanish	
7600023	Spanish	
7600025	Spanish	
7600027	Spanish	
7600029	Spanish	
7600030	Spanish	
7600032	Spanish	
7600033	Spanish	
7600034	Spanish	
7600035	Spanish	
7600037	Spanish	
7600040	Spanish	
7600041	Spanish	
7600044	Spanish	
7800001	Spanish	
7800002	Spanish	
7800004	Spanish	
7800005	Spanish	
7800006	Spanish	
7800007	Spanish	
7800008	Spanish	
7800009	Spanish	
7800010	Spanish	
7800013	Spanish	
7800014	Spanish	
7800015	Spanish	
7800016	Spanish	
7800017	Spanish	
7800018	Spanish	
7800020	Spanish	
7800021	Spanish	
7800024	Spanish	
7800025	Spanish	

Cook County Precincts with Bilingual Judges		
<p>Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.</p>		
<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
7800027	Spanish	
7800028	Spanish	
7800029	Spanish	
7800030	Spanish	
7800031	Spanish	
7800032	Spanish	
7800033	Spanish	
7800035	Spanish	
7800036	Spanish	
7800040	Spanish	
7800041	Spanish	
7800043	Spanish	
7800044	Spanish	
7800045	Spanish	
7800046	Spanish	
7800047	Spanish	
7800048	Spanish	
7900001	Spanish	
7900003	Spanish	
7900010	Spanish	
7900019	Spanish	
7900022	Spanish	
7900025	Spanish	
7900030	Spanish	
7900037	Spanish	
7900047	Spanish	
7900049	Spanish	
7900053	Spanish	
7900056	Spanish	
7900057	Spanish	
7900059	Spanish	
7900060	Spanish	
7900064	Spanish	
7900066	Spanish	
7900076	Spanish	
8000006	Spanish	
8000009	Spanish	
8000018	Spanish	
8000034	Spanish	
8000041	Spanish	

Cook County Precincts with Bilingual Judges		
<p>Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.</p>		
<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
8000047	Spanish	
8000048	Spanish	
8000049	Spanish	
8000053	Spanish	
8000061	Spanish	
8000079	Spanish	
8000086	Spanish	
8200017	Spanish	
8200024	Spanish	
8200055	Spanish	
8300001	Spanish	
8300004	Spanish	
8300042	Spanish	
8300052	Spanish	
8300056	Spanish	
8600001	Spanish	
8600007	Spanish	
8600009	Spanish	
8600031	Spanish	
8600038	Spanish	
8600064	Spanish	
8700001	Spanish	
8700002	Spanish	
8700004	Spanish	
8700006	Spanish	
8700014	Spanish	
8700016	Spanish	
8700032	Spanish	
8700035	Spanish	
8700042	Spanish	
8700056	Spanish	
8700057	Spanish	
8700058	Spanish	
8700060	Spanish	
8700064	Spanish	
8700066	Spanish	
8700069	Spanish	
8900001	Spanish	
8900002	Spanish	
8900003	Spanish	

Cook County Precincts with Bilingual Judges

Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.

The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.

[The locations of all polling places in Cook County is searchable here.](#)

Precinct	Language	
8900007	Spanish	
8900009	Spanish	
8900010	Spanish	
8900011	Spanish	
8900012	Spanish	
8900013	Spanish	
8900014	Spanish	
8900015	Spanish	
8900016	Spanish	
8900017	Spanish	
8900018	Spanish	
8900019	Spanish	
8900020	Spanish	
8900022	Spanish	
8900030	Spanish	
8900031	Spanish	
8900039	Spanish	
8900041	Spanish	
8900045	Spanish	
8900047	Spanish	
8900048	Spanish	
8900049	Spanish	
8900050	Spanish	
8900051	Spanish	
8900052	Spanish	
8900053	Spanish	
8900057	Spanish	
8900059	Spanish	
8900060	Spanish	
8900064	Spanish	
8900069	Spanish	
8900071	Spanish	
8900078	Spanish	
8900080	Spanish	
8900082	Spanish	
8900083	Spanish	
8900085	Spanish	
8900087	Spanish	
8900088	Spanish	
8900091	Spanish	

Cook County Precincts with Bilingual Judges

Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.

The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.

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Precinct	Language	
8900092	Spanish	
8900094	Spanish	
8900095	Spanish	
8900098	Spanish	
8900099	Spanish	
8900100	Spanish	
8900101	Spanish	
9200001	Spanish	
9200002	Spanish	
9200003	Spanish	
9200004	Spanish	
9200005	Spanish	
9200006	Spanish	
9200007	Spanish	
9200012	Spanish	
9200013	Spanish	
9300002	Spanish	
9300003	Spanish	
9300013	Spanish	
9300014	Spanish	
9300020	Spanish	
9300023	Spanish	
9300024	Spanish	
9300028	Spanish	
9300032	Spanish	
9300036	Spanish	
9300040	Spanish	
9300041	Spanish	
9300046	Spanish	
9300050	Spanish	
9300053	Spanish	
9300061	Spanish	
9300063	Spanish	
9300065	Spanish	
9300072	Spanish	
9400001	Spanish	
9400002	Spanish	
9400003	Spanish	
9400004	Spanish	
9400005	Spanish	

Cook County Precincts with Bilingual Judges

Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.

The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.

[The locations of all polling places in Cook County is searchable here.](#)

Precinct	Language	
9400006	Spanish	
9400007	Spanish	
9400009	Spanish	
9400010	Spanish	
9400011	Spanish	
9400012	Spanish	
9400014	Spanish	
9400015	Spanish	
9400016	Spanish	
9400017	Spanish	
9400019	Spanish	
9400020	Spanish	
9500001	Spanish	
9500002	Spanish	
9500003	Spanish	
9500004	Spanish	
9500005	Spanish	
9500010	Spanish	
9500011	Spanish	
9500012	Spanish	
9500014	Spanish	
9500030	Spanish	
9500031	Spanish	
9500032	Spanish	
9500039	Spanish	
9500041	Spanish	
9500042	Spanish	
9500048	Spanish	
9500049	Spanish	
9500050	Spanish	
9500053	Spanish	
9500062	Spanish	
9500068	Spanish	
9500078	Spanish	
9500085	Spanish	
9500094	Spanish	
9500097	Spanish	
9500099	Spanish	
9500112	Spanish	
9500114	Spanish	

Cook County Precincts with Bilingual Judges		
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<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
9500116	Spanish	
9500123	Spanish	
9600001	Spanish	
9600004	Spanish	
9600005	Spanish	
9600009	Spanish	
9600016	Spanish	
9600022	Spanish	
9600029	Spanish	
9600031	Spanish	
9600033	Spanish	
9600037	Spanish	
9600047	Spanish	
9600048	Spanish	
9600049	Spanish	
9600050	Spanish	
9600056	Spanish	
9600064	Spanish	
9600065	Spanish	
9600067	Spanish	
9600069	Spanish	
9600074	Spanish	
9600076	Spanish	
9600077	Spanish	
9600080	Spanish	
9600084	Spanish	
9600088	Spanish	
9600089	Spanish	
9700014	Spanish	
9700017	Spanish	
9700019	Spanish	
9700020	Spanish	
9700024	Spanish	
9700036	Spanish	
9700040	Spanish	
9700043	Spanish	
9700048	Spanish	
9700068	Spanish	
9700096	Spanish	
9800001	Spanish	

Cook County Precincts with Bilingual Judges		
<p>Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.</p>		
<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
9800002	Spanish	
9800003	Spanish	
9800004	Spanish	
9800005	Spanish	
9800006	Spanish	
9800007	Spanish	
9800008	Spanish	
9800009	Spanish	
9800010	Spanish	
9800011	Spanish	
9800012	Spanish	
9800013	Spanish	
9800014	Spanish	
9800015	Spanish	
9800016	Spanish	
9800017	Spanish	
9800018	Spanish	
9800019	Spanish	
9800020	Spanish	
9800021	Spanish	
9800022	Spanish	
9800023	Spanish	
9800024	Spanish	
9800025	Spanish	
9800026	Spanish	
9800027	Spanish	
9800028	Spanish	
9800029	Spanish	
9800030	Spanish	
9800031	Spanish	
9800032	Spanish	
9901002	Spanish	
9901003	Spanish	
9902001	Spanish	
9902002	Spanish	
9902003	Spanish	
9902004	Spanish	
9903001	Spanish	
9903002	Spanish	
9903003	Spanish	

Cook County Precincts with Bilingual Judges		
<p>Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.</p>		
<p>The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.</p>		<p>The locations of all polling places in Cook County is searchable here.</p>
Precinct	Language	
9903004	Spanish	
9904001	Spanish	
9904002	Spanish	
9904003	Spanish	
9904004	Spanish	
9905001	Spanish	
9905002	Spanish	
9905003	Spanish	
9906001	Spanish	
9906002	Spanish	
9906003	Spanish	
9906004	Spanish	
9907001	Spanish	
9907002	Spanish	
9907003	Spanish	
9907004	Spanish	
9908001	Spanish	
9908002	Spanish	
9908003	Spanish	

DuPage County Polling Places with Bilingual Election Judges					DuPage County only provides language assistance in Spanish.
The following polling places have multiple precincts. DuPage has not indicated in which precincts the bilingual judges will be located. DuPage is no longer covered under Section 203 of the Voting Rights Act, which requires bilingual election resources, but the county is providing them voluntarily.					
Poll Name	Address	City	Total Judges	Bilingual Judges	
Addison Links & Tees Golf Facility	950 W Lake St	Addison	8	2	
Lutheran Church of the Master	580 Kuhn Rd	Carol Stream	6	2	
St John Lutheran Church	7214 Cass Ave	Darien	9	2	
Marquette Manor Baptist Church	333 75th St	Downers Grove	7	2	
Historic Log Cabin	1600 S Main St	Lombard	6	2	
The Oak Brook Club	1 Oak Brook Club Dr	Oak Brook	4	2	
Oak Brook Golf Club	2606 York Rd	Oak Brook	6	3	
Wegner School	1180 Marcella Ln	West Chicago	7	3	
Leman Middle School	238 E Hazel St	West Chicago	9	2	
Westmont Community Center	75 E Richmond St	Westmont	7	2	
Hinsdale Lake Terrace Apartments	16w610 Honeysuckle Rose Ln	Willowbrook	7	2	

Kane County Precincts with Bilingual Judges		
Township	Precinct	
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Kane County will station bilingual judges.		Kane County is only required to provide language assistance in Spanish.
Aurora	2	
Blackberry	2	
Elgin	2	
Geneva	2	
St. Charles	2	
Sugar Grove	2	
Aurora	3	
Blackberry	3	
Elgin	3	
Aurora	4	
Dundee	4	
Elgin	4	
Aurora	5	
Dundee	5	
Elgin	5	
St. Charles	5	
Aurora	6	
Dundee	6	
Elgin	6	
Dundee	7	
Elgin	7	
Dundee	8	
Elgin	8	
Aurora	9	
Dundee	9	
Elgin	9	
St. Charles	9	
Dundee	10	
Elgin	10	
Aurora	11	
Dundee	11	
Elgin	11	
Aurora	12	
Dundee	12	
Dundee	13	
Elgin	13	
Dundee	14	
Elgin	14	
Dundee	15	

Kane County Precincts with Bilingual Judges		Kane County is only required to provide language assistance in Spanish.
Township	Precinct	
	15	
	17	
	18	
	18	
	19	
	19	
	20	
	20	
	21	
	21	
	22	
	22	
St. Charles	22	
Elgin	23	
Dundee	24	
Elgin	24	
St. Charles	24	
Elgin	25	
Dundee	26	
Elgin	26	
Dundee	27	
Elgin	27	
St. Charles	27	
Dundee	28	
Elgin	28	
Elgin	29	
Dundee	30	
Dundee	31	
Elgin	32	
St. Charles	32	
Elgin	33	
St. Charles	33	
Dundee	34	
Elgin	34	
Dundee	35	
Elgin	35	
Elgin	37	
Elgin	39	
Elgin	40	
Elgin	42	
Elgin	47	
Elgin	52	
Elgin	58	
Elgin	59	

<p>Lake County Polling Places with Bilingual Election Judges Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the polling places where Lake County will station bilingual judges.</p>	<p>Lake County is only required to provide language assistance in Spanish.</p>
<p>Polling Place</p>	
Beach Haven Tower - RLB	
RLB Cultural Civic Center - RLB	
Calvary Presbyterian Church - Round Lake	
Round Lake Park Village Hall - RLP	
North Point Christian Church - Winthrop Harbor	
Kenneth Murphy Elem School - Beach Park	
The Chapel - Grayslake	
Fremont Public Library - Mundelein	
Community Protestant Church - Mundelein	
Highwood Rec Center - Highwood	
Foss Park Dist. Community Center - North Chicago	
Bonnie Brook Golf Club - Waukegan	
John S. Clark Elem School - Waukegan	
Oakdale Elem School - Waukegan	
St. John's United Church of Christ - Waukegan	
Grace Life Christian Church - Waukegan	
Jane Adams Center	
Living Faith United Methodist Church - Waukegan	
Robert Abbott Middle School - Waukegan	
Park Place - Waukegan	
Lyon Magnet Schhl - Waukegan	
Jesus Name Apostolic church - Waukegan	
Zion Park Dist Leisure Center - Zion	

THE COST (SAVINGS) OF REFORM:

An Analysis of Local
Registration-Related Costs
and Potential Savings Through
Automatic Voter Registration

DOUG CHAPIN AND DAVID KUENNEN

INTRODUCTION

Few election policy issues have captured more recent attention at the state and local level than voter registration. Across the nation, legislatures and local election offices are transitioning to a greater use of technology to assist voters with creating and updating their registration records – whether via portals for online voter registration (OVR) or programs, known as automatic or automated voter registration (AVR), whereby eligible voters are added to the rolls based on motor vehicle or other government data. The trend follows a strong endorsement for registration reform by the Presidential Commission on Election Administration – and in several states has emerged as a bipartisan compromise aimed at both expanding voter rolls and making them more reliable and secure.

Typically, however, these issues are framed in the context of whether they will increase participation and/or create issues regarding the integrity of the voter rolls. Often lost in the discussion is any recognition of the fiscal impacts of registration reform; namely, the degree to which moving away from a predominantly paper-based registration system could result in reduced costs for state and local election offices.

To that end, we constructed and fielded a simple survey, intended to assess what the current landscape looks like for local election offices regarding costs for voter registration. The results suggest that while costs vary from jurisdiction to jurisdiction, the data is consistent with arguments that, in addition to other benefits like making elections more secure, moving away from paper-based registration is a reform that can save states and municipalities resources.

METHODOLOGY

After reviewing previous studies of voter registration and consulting with election officials across the nation, we built a simple survey using Google Forms with the following questions related to paper-based voter registration costs in 2016:

- How many registrations did you process in 2016?
- What were your costs for (full-time) staff related to data entry of paper registration forms?
- What were your costs for staff time, postage and paper needed to follow up on missing information or errors on registration forms?
- What were your costs for paper registration forms (layout, printing, etc.)?
- What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?
- What were your costs related to issuing, counting and notifying voters about provisional ballots necessitated by registration issues?
- What were your costs for duplicate mailings related to duplicate registration entries?
- What were your postage costs associated with forwarding registration forms to the proper recipient (Secretary of State, neighboring jurisdiction, etc.)?

The survey was sent to 420 recipients representing localities in 49 states and the District of Columbia.¹ Using Election Assistance Commission data from the Election Administration and Voting Survey, the pool was chosen from jurisdictions with the largest, median and smallest number of registered voters in each state (“largest 3,” “median 3,” “smallest 3”) and was compared to data on demographics and other characteristics (e.g. minority-language designation under Section 203 of the Voting Rights Act and Census data on race and ethnicity) to ensure that it was a generally representative list of jurisdictions.²

Targeted jurisdictions received the initial survey invitation, along with three follow-up emails seeking and encouraging their responses. To encourage responses from a larger number of states, some jurisdictions received follow-up phone calls as well. Ultimately, we received 66 responses from 34 states broken down as follows:

- 25 from “largest 3” jurisdictions
- 19 from “median 3” jurisdictions
- 22 from “smallest 3” or “smallest with at least 1k or 2k” jurisdictions

Many jurisdictions simply did not respond to the survey, and three declined to participate.

Detailed analysis of these responses is provided below.

¹ North Dakota was excluded as it does not maintain voter registration rolls.

² In 16 states with very small jurisdictions (i.e. where the smallest jurisdictions had less than 1,000 registered voters), we sent surveys to additional jurisdictions with at least 1,000 and 2,000 registered voters. The very smallest jurisdictions (i.e. those with less than 500 registered voters) in those states were excluded altogether.

A NOTE ON COVERAGE AND COMPREHENSIVENESS

A constant challenge in any effort to survey the field for election costs is the lack of any common “chart of accounts” that makes comparisons difficult. Consequently, many of the respondents informed us either that they did not track registration costs at all or that there was no way to break out the categories included in the survey response.

In addition, the wide variation in data policies across the nation made obtaining data difficult in some jurisdictions.

A few localities treated our survey as a request for public records requiring a formal application and/or a fee.³ Any such request was treated as “declined to respond.”

For that reason, one cannot treat the following figures as a reliable estimate of costs in all jurisdictions but rather as a snapshot of certain jurisdictions that can provide background for discussions about the costs and benefits of registration reforms.

SUMMARY OF COSTS - OVERALL

OVERALL	Minimum	Maximum	Range	Median	Mean	Standard Deviation
How many registrations did you process in 2016?	2	564,232	564,230	8,492	65,321.3	109,755.0
What were your costs for (full-time) staff related to data entry of paper registration forms?	\$0.00	\$857,524.41	\$857,524.41	\$26,995.75	\$113,445.64	\$196,615.79
Per unit cost	\$0.0000	\$31.3391	\$31.3391	\$1.9103	\$3.5378	\$5.7436
What were your costs for staff time postage and paper needed to follow up on missing information or errors on registration forms?	\$0.00	\$93,000.00	\$93,000.00	\$1,000.00	\$10,076.84	\$22,475.08
Per unit cost	\$0.00	\$5.00	\$5.00	\$0.06	\$0.51	\$1.09
What were your costs for paper registration forms (layout printing etc.)?	\$0.00	\$55,500.00	\$55,500.00	\$0.00	\$1,432.11	\$8,043.70
Per unit cost	\$0.0000	\$1.1100	\$1.1100	\$0.0000	\$0.0604	\$0.1922
What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?	\$0.00	\$263,000.00	\$263,000.00	\$2,000.00	\$33,514.62	\$60,345.00
Per unit cost	\$0.0000	\$8.0000	\$8.0000	\$0.0763	\$0.6709	\$1.4282
What were your costs related to issuing counting and notifying voters about provisional ballots necessitated by registration issues?	\$0.00	\$450,137.00	\$450,137.00	\$0.00	\$12,740.55	\$71,953.83
What were your costs for duplicate mailings related to duplicate registration entries?	\$0.00	\$20,520.00	\$20,520.00	\$0.00	\$1,182.71	\$4,052.94
What were your postage costs associated with forwarding registration forms to proper recipient (Secretary of State neighboring jurisdiction etc.)?	\$0.00	\$88,916.00	\$88,916.00	\$20.00	\$3,113.84	\$14,783.69

³ One jurisdiction even estimated that the request would take 8 hours to fulfill at a total cost of over \$100.

“LARGEST 3” JURISDICTIONS IN EACH STATE

“LARGEST 3” JURISDICTIONS (25)	Minimum	Maximum	Range	Median	Mean	Standard Deviation
How many registrations did you process in 2016?	6,063	564,232	558,169	95,412	150,287.0	131,146.1
What were your costs for (full-time) staff related to data entry of paper registration forms?	\$0.00	\$857,524.41	\$857,524.41	\$140,000.00	\$229,783.26	\$252,826.32
Per unit cost	\$0.0000	\$9.2374	\$9.2374	\$0.7696	\$2.3577	\$2.8086
What were your costs for staff time postage and paper needed to follow up on missing information or errors on registration forms?	\$296.00	\$93,000.00	\$92,704.00	\$10,000.00	\$26,893.91	\$32,084.30
Per unit cost	\$0.0065	\$1.2690	\$1.2624	\$0.0736	\$0.3193	\$0.4309
What were your costs for paper registration forms (layout printing etc.)?	\$0.00	\$55,500.00	\$55,500.00	\$0.00	\$3,777.03	\$13,426.47
Per unit cost	\$0.0000	\$1.1100	\$1.1100	\$0.0000	\$0.0760	\$0.2765
What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?	\$0.00	\$263,000.00	\$263,000.00	\$63,000.00	\$82,259.85	\$75,611.43
Per unit cost	\$0.0000	\$4.6667	\$4.6667	\$0.4899	\$0.7758	\$1.0425
What were your costs related to issuing counting and notifying voters about provisional ballots necessitated by registration issues?	\$0.00	\$450,137.00	\$450,137.00	\$359.00	\$27,173.41	\$105,649.33
What were your costs for duplicate mailings related to duplicate registration entries?	\$0.00	\$20,520.00	\$20,520.00	\$0.00	\$3,073.10	\$6,412.28
What were your postage costs associated with forwarding registration forms to proper recipient (Secretary of State neighboring jurisdiction etc.)?	\$0.00	\$88,916.00	\$88,916.00	\$800.00	\$7,370.15	\$22,650.66

“MEDIAN 3” JURISDICTIONS IN EACH STATE

“MEDIAN 3” JURISDICTIONS (19)	Minimum	Maximum	Range	Median	Mean	Standard Deviation
How many registrations did you process in 2016?	2	41,876	41,874	5,018	10,678.4	14,252.2
What were your costs for (full-time) staff related to data entry of paper registration forms?	\$0.00	\$57,742.00	\$57,742.00	\$15,958.00	\$23,153.80	\$22,230.76
Per unit cost	\$0.0000	\$31.3391	\$31.3391	\$1.5943	\$5.1325	\$9.2353
What were your costs for staff time postage and paper needed to follow up on missing information or errors on registration forms?	\$0.00	\$5,000.00	\$5,000.00	\$95.47	\$1,303.11	\$1,778.49
Per unit cost	\$0.0000	\$0.4710	\$0.4710	\$0.0394	\$0.1049	\$0.1492
What were your costs for paper registration forms (layout printing etc.)?	\$0.00	\$3,500.00	\$3,500.00	\$0.00	\$278.07	\$899.31
Per unit cost	\$0.0000	\$0.2157	\$0.2157	\$0.0000	\$0.0261	\$0.0610
What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?	\$0.00	\$85,000.00	\$85,000.00	\$0.00	\$9,218.89	\$21,682.81
Per unit cost	\$0.0000	\$4.0236	\$4.0236	\$0.0000	\$0.6992	\$1.1957
What were your costs related to issuing counting and notifying voters about provisional ballots necessitated by registration issues?	\$0.00	\$5,000.00	\$5,000.00	\$0.00	\$687.50	\$1,751.28
What were your costs for duplicate mailings related to duplicate registration entries?	\$0.00	\$500.00	\$500.00	\$0.00	\$102.86	\$189.89
What were your postage costs associated with forwarding registration forms to proper recipient (Secretary of State neighboring jurisdiction etc.)?	\$0.00	\$1,000.00	\$1,000.00	\$25.00	\$152.22	\$321.97

“SMALLEST 3” JURISDICTIONS IN EACH STATE⁴

“SMALLEST 3” JURISDICTIONS (22)	Minimum	Maximum	Range	Median	Mean	Standard Deviation
How many registrations did you process in 2016?	10	15,604	15,594	307	2,415.3	4,159.9
What were your costs for (full-time) staff related to data entry of paper registration forms?	\$0.00	\$120,000.00	\$120,000.00	\$300.00	\$19,463.88	\$42,278.29
Per unit cost	\$0.2545	\$7.6903	\$7.4359	\$3.3113	\$3.5606	\$2.6913
What were your costs for staff time postage and paper needed to follow up on missing information or errors on registration forms?	\$10.00	\$1,000.00	\$990.00	\$200.00	\$246.10	\$298.70
Per unit cost	\$0.0192	\$5.0000	\$4.9808	\$0.5263	\$1.2540	\$1.8130
What were your costs for paper registration forms (layout printing etc.)?	\$0.00	\$250.00	\$250.00	\$0.00	\$22.56	\$65.55
Per unit cost	\$0.0000	\$0.5263	\$0.5263	\$0.0000	\$0.0809	\$0.1738
What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?	\$0.00	\$4,900.00	\$4,900.00	\$0.00	\$472.06	\$1,262.13
Per unit cost	\$0.0000	\$8.0000	\$8.0000	\$0.0000	\$0.5196	\$1.9963
What were your costs related to issuing counting and notifying voters about provisional ballots necessitated by registration issues?	\$0.00	\$1,800.00	\$1,800.00	\$0.00	\$173.84	\$496.98
What were your costs for duplicate mailings related to duplicate registration entries?	\$0.00	\$199.00	\$199.00	\$10.00	\$48.23	\$69.99
What were your postage costs associated with forwarding registration forms to proper recipient (Secretary of State neighboring jurisdictions etc.)?	\$0.00	\$100.00	\$100.00	\$0.00	\$14.67	\$29.61

⁴ This includes target Smallest 3 and Smallest 3 with at least 1k or 2k voter jurisdictions.

TAKEAWAYS FROM THE DATA

Based on this data, it is possible to draw some general conclusions:

1. The biggest potential cost saving involved in a move away from paper-based registration is the savings in staff time necessary to handle such registrations.

This makes sense given how labor-intensive reading, keying and processing these registrations can be – but it is worth noting that some jurisdictions report most if not all of their costs under labor because they don't break out other costs separately. Whatever the reason, however, the results here suggest localities can save an

average of about \$3.54 in labor costs per registration by moving away from paper to another registration method. This carries forward to those localities reporting costs for temporary staff to process registrations close to Election Day; the data suggests that the jurisdictions spent about \$0.67 on average per registration to cover such costs.

2. Some cost savings may not amount to much because localities are only incurring a little cost (or none at all) in some categories under the current system.

A good example of this is the costs associated with printing and layout of registration forms; most respondents reported little or no associated costs because those forms are provided to them for free by the

state. Thus, while there may be some state-level savings resulting from reducing or eliminating such forms, those savings do not seem to flow to the local level.

3. Because of smaller volume, median-sized and smaller jurisdictions are seeing higher per-piece costs and thus might benefit disproportionately from a reduction in such costs.

One clear trend in the data is that smaller jurisdictions are seeing higher per-registration costs, which usually results from reported costs being divided across a small number of registrations. For example, median-sized jurisdictions reported costs of over \$5.00 and smaller jurisdictions reported a cost of over \$3.50 per registration (compared

to about \$2.25 apiece in larger jurisdictions). As a result, while the total cost savings associated with moving away from paper-based registration might be lower in these median-sized and smaller jurisdictions, the relative “bite” of such spending is likely to be disproportionately higher.

4. Even modest per-piece costs add up given the number of registrations involved.

If you total all the costs reported by the 66 respondents to this survey, you get over \$6.58 million – suggesting that there are significant cost savings to be realized by moving away from traditional paper-based registration

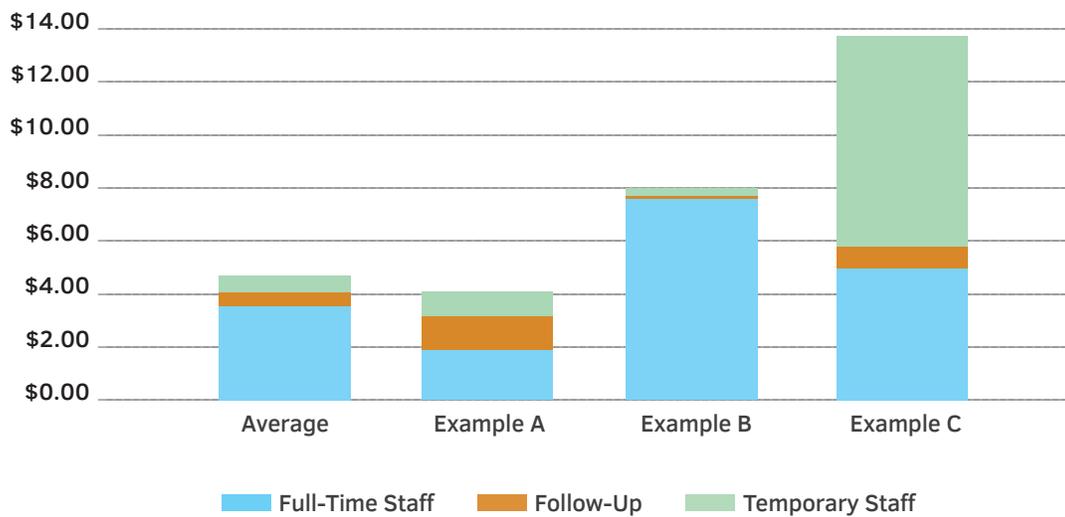
in more than 3,000 localities nationwide. Some of these savings are as small as pennies (or fractions thereof) per piece – but given the registration volume involved these numbers can add up quickly.

COSTS PER REGISTRANT FOR PROCESSING REGISTRATION FORMS

The most promising area for realizing cost savings by transitioning away from paper-based voter registration appears to be in reducing the staff time needed to process the paper forms. Our survey collected data on how much election offices spent per registrant on full-time and temporary staff to process forms, as well as following up on forms with missing information or errors. The table and chart below show how much surveyed jurisdictions reported spending per registrant in 2016 on average in these areas and provides three anonymized jurisdictions as examples to show how these costs can affect different jurisdictions.⁵ Registrations processed online or automatically by the DMV or other government agency should be expected to reduce the number of paper-based registration forms processed and introduce savings to local election offices on a per registrant basis.

	Full-Time Staff	Follow-Up	Temporary Staff	Total
Average	\$3.54	\$0.51	\$0.67	\$4.72
Example Jurisdiction A (~500k registered voters; ~75k registrations processed in 2016; urban; South)	\$1.91	\$1.27	\$0.89	\$4.07
Example Jurisdiction B (~70k registered voters; ~15k registrations processed in 2016; sub-urban/rural; Northeast)	\$7.69	\$0.02	\$0.31	\$8.02
Example Jurisdiction C (~2k registered voters; ~250 registrations processed in 2016; rural; Midwest)	\$5.00	\$0.80	\$8.00	\$13.80

COSTS PER REGISTRANT FOR PROCESSING REGISTRATION FORMS



⁵ The data provided represents real jurisdictions' responses to our survey. The jurisdictions' names and other identifying information have been excluded, as we told respondents that their data would not be published to encourage responses.

COSTS FOR REGISTRATION-RELATED MAILINGS

Many local election offices incur mailing costs related to voter registration that could be reduced by transitioning away from paper-based systems and improved accuracy of the voter rolls. Our survey collected data on how much election offices spent in 2016 on mailings related to duplicate entries in the voter rolls, as well as forwarding registration forms to the proper recipient (e.g. the state election office or neighboring jurisdiction). The table below shows how much surveyed jurisdictions reported spending in 2016 in total in these areas and provides four anonymized jurisdictions as examples to show how these costs can affect different jurisdictions. Registrations processed online or automatically by the DMV or other government agency should be expected to reduce duplicate mailing costs due to improved accuracy and reduce forwarding costs by decreasing the number of paper registrations submitted.

	Duplicate Mailings	Forwarding	Total
Average	\$1,182	\$3,114	\$4,296
Example Jurisdiction D (~800k registered voters; ~95k registrations processed in 2016; urban; Midwest)	\$0	\$5,692	\$5,692
Example Jurisdiction E (~250k registered voters; ~80k registrations processed in 2016; urban/sub-urban; Midwest)	\$4,565	\$6,362	\$10,927
Example Jurisdiction F (~85k registered voters; ~35k registrations processed in 2016; mostly rural; West)	\$200	\$150	\$350
Example Jurisdiction G (~1k registered voters; ~150 registrations processed in 2016; rural; Northeast)	\$130	\$0	\$130

CONCLUSION

While arriving at a specific cost associated with any election activity – including voter registration – is difficult given wide variation in accounting and data collection across localities, the data here validates the common-sense notion that a move away from paper-based registration could eliminate or reduce registration-related costs all the way down to the local level.

Further research is required to determine the total cost savings of a transition away from paper-based registration towards greater computerization of voter registration, whether through OVR, AVR or other approaches – but the preliminary data here suggests localities should see relief – both per-registration and overall – in the level of financial effort required to manage voter registration.⁶

⁶ The authors wish to acknowledge the support for this project from Tova Wang, Director of Research and Policy for the Center for Secure and Modern Elections.

APPENDIX

GUIDE FOR STATE-BASED ORGANIZATIONS DOING THIS ANALYSIS

Step-by-step on state-specific cost analyses

1. Determine what research questions you seek to answer
 - a. Total costs?
 - b. Costs by category (e.g. labor, printing, follow-on effects like provisional ballots)?
 - c. Other?
2. Based on #1, decide on “chart of accounts” – what data items do you seek
 - a. Craft queries so separate categories are cumulative and mutually exclusive
 - b. Think about how to address data not collected
 - i. Give guidance on how to break down salary and other overhead costs
 - ii. Alternate: Ask for estimates or percentages spent on various election tasks
3. Obtain contact info for local election officials –
 - a. State election official may have detailed contact info
 - b. If not available at state, excellent resource is US Vote Foundation Election Official Directory
4. Link localities to demographics from census data, Election Administration and Voting Survey (EAVS)
 - a. County- and locality-level data is usually easy to match
 - i. Population data
 - ii. Ethnoracial data
 - iii. Basic election data from EAVS
 - b. Augment data to see if other factors affect cost
 - i. Section 203 minority language coverage (or state equivalent)
 - ii. Pull reports from EAVS to “reality check” reported data
5. Build questionnaire – experience suggests less than 10 questions is optimal
 - a. Keep response time minimal [Online forms are best and preferable to written responses]
 - b. If possible, provide data for them to verify
 - c. Keep requests short and factual
 - d. Open long-form requests are useful if you want unstructured feedback, but should be bonus
6. Field questionnaire – and provide deadline for response
 - a. If you are going to publish responses, say so
 - b. Even if you are not, get contact info for follow up/ ensure accountability
7. Determine how to handle responses seeking fees for data
 - a. Some counties view data requests as voter record requests
 - b. Your survey may not be subject to such costs if legal obligation to respond exists
 - c. If available, you may want to consider incentives for response – \$\$\$, recognition, etc.
8. Typical response rate
 - a. 10-15% immediately
 - b. another 15-25% with reminders
 - c. NOTE: response rate will be higher if there are legal obligations or other incentives to reply
9. Be prepared for lack of comparability between localities – not all collect this data and those that do often don’t do it the same way
 - a. Issue often isn’t “apples to apples” as much as “fruit salad” – this is nationwide issue
 - b. Getting data that’s comparable across jurisdictions is difficult
 - c. Think about how to identify common themes/ trends even when comparability < 100%
10. Don’t outrun the data – unless you have substantial coverage and comparability, be careful about drawing firm conclusions about average costs/savings
 - a. If categories aren’t exclusive and cumulative, you can’t say A+B=C
 - b. Look at responses to ensure that you have representative data
 - i. Often, larger jurisdictions are overrepresented in data
 - ii. Median/smaller jurisdictions may need more followup
 - c. Conclusions will likely focus more on the data collected vs. what the data represents
 - d. In particular, don’t assume data is representative unless you have substantial coverage



**Written Testimony of Common Cause Illinois
Before the Illinois Advisory Committee
to the United States Commission on Civil Rights**

*Hearing On
Civil Rights and Voting in Illinois
Thursday, March 9, 2017*

Submitted By:
Brian Gladstein, Executive Director
bgladstein@commoncause.org

Appendix B.5: Gladstein

Good afternoon Committee Chair Lineras and Members of the Illinois Advisory Committee to the United States Commission on Civil Rights. My name is Brian Gladstein and I am the Executive Director of Common Cause Illinois (CCIL). On behalf of Common Cause's 27,000 Illinois members and its 700,000 members nationwide, I want to thank the Committee for holding this critical hearing on the status of voting rights in this state, and for allowing us to submit this written testimony. Common Cause is a national nonpartisan advocacy organization founded in 1970 to enable citizens to make their voices heard in the political process. In Illinois and across the country, we are leading the fight to ensure that every eligible citizen has an opportunity to cast a vote, free from discrimination and obstacles – a principle that we believe to be fundamental to a democracy that aims for and professes representation of all.

A Democracy in Peril

As one of the organizations that is out on the front lines, we are sad to report that our democracy is under assault. On the national level, we have seen states move to gut the preclearance protections offered by Section 5 of the National Voting Rights Act, following the United States Supreme Court's shameful decision in *Shelby County, Alabama v. Holder*¹. From Ohio to Texas to North Carolina, many states and local governments have been implementing abhorrent voting practices that had previously been barred for their racially discriminatory impact. Meanwhile, after *Citizens United*², our political systems have become flooded by oversized campaign contributions from a handful of wealthy individual donors and special interest groups. In an interview last spring, NAACP President Cornell William Brooks described the confluence of these two cases as being two sides of the same ugly coin, with "folks who are suppressing and stealing votes before and during an election in collusion with the people buying and selling legislative votes after the election."³

It goes, perhaps, without saying that legal opinions and policy decisions that disenfranchise entire classes of citizens or tend to favor the interests of one group over another shake the confidence in our political system. Indeed, a January 2017 report by a team of researchers from the University of Sydney and Harvard's Kennedy School of Government found that United States citizens have lower levels of faith in the integrity of their elections than any other Western nation.⁴ According to their findings, after the last election, the United States ranked 46th out of 161 countries in believing that their elections were free and fair.⁵ The primary drivers of concern during the 2016 election cycle included (a) gerrymandered district boundaries; (b) discriminatory election laws that make it harder to vote or register; (c) media coverage, including the myths and realities of "fake news;" and (d) the

¹ *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013).

² *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

³ Kathy Kiely, "Why the NAACP Cares About Campaign Cash" (Apr. 13, 2016), available at <http://billmoyers.com/story/why-the-naacp-cares-about-campaign-cash/>.

⁴ Pippa Norris, Alessandro Nai, Holly Ann Garnett & Max Grömping, "Perceptions of Electoral Integrity: The 2016 American Presidential Election" (Jan. 2017), available at <https://www.dropbox.com/s/v59olglbdv62vtv/PEI-US-2016%20Report.pdf?dl=0>.

⁵ *Id.* at 7.

Appendix B.5: Gladstein

corrosive impact of big money in politics.⁶ As a result, the United States, once again, had lower voter turnout rate (56.9%) than virtually every other wealthy nation.⁷

Here in Illinois, we see a complex mix of challenges and opportunities for voters. On the one hand, we have witnessed the cost of our elections skyrocket and the influence and concentration of the political donor class rise exponentially. The 2016 election cycle was the most expensive that this state has ever witnessed – by far – with more than \$134 million having been spent on state legislative races alone.⁸ Given that Governor Rauner has seen fit to make a \$50 million deposit into his campaign fund as a “first installment” two years before the next gubernatorial election and some of the names being raised as his potential opponents are either billionaires themselves or have access to substantial political action committee money, one can only assume that the cost of our elections isn’t decreasing anytime soon.

Researchers have generally noted that individuals that make large political donations tend to be older⁹ and whiter¹⁰ than the average American, and, by and large, they tend to be men¹¹. Studies have further shown that the policy preferences of this particular subset of the populace tend to be sharply different than the preferences that are expressed by other more marginalized groups, including women and people of color.¹² These trends appear to hold true in Illinois. In April 2016, CCIL helped to produce an analysis of the Chicago’s 2015 mayoral race. That report showed that over 90% of the money that the two candidates raised came from donors who gave more than \$1,000 apiece, and that 52% of the money came from outside the City’s borders.¹³ Roughly 80% of the donations to Mayor Emanuel’s campaign came from donors that earned more than \$100,000 per year, even though only 15% of Chicagoans actually earn that much each year.¹⁴ 94% of the Mayor’s donors were white, whereas only 39% of his constituents identify as white.¹⁵ While these figures are disturbing in the abstract, we are extremely concerned that this imbalance has and will force governmental officials to favor the wishes

⁶ *Id.* at 11-12.

⁷ Adam Taylor, “American voter turnout is still lower than most other wealthy nations” (Nov. 10, 2016), available at <https://www.washingtonpost.com/news/worldviews/wp/2016/11/10/even-in-a-historic-election-americans-dont-vote-as-much-as-those-from-other-nations/>

⁸ Scott Kennedy, “2016 Cycle: \$134 Million Spent on State Legislative Races, Plus Another \$39 Million Could Have Been” (Jan. 19, 2017), available at <http://illinoiselectiondata.com/> (also noting that another \$11 million was spent on the Comptroller race).

⁹ Andrew Mayersohn and Anya Gelernt, “Donor demographics: old white guys edition, part I” (June 11, 2015), available at <https://www.opensecrets.org/news/2015/06/donor-demographics-old-white-guys-edition-part-i/>.

¹⁰ Andrew Mayersohn and Anya Gelernt, “Donor demographics: old white guys edition, part I” (June 30, 2015), available at <https://www.opensecrets.org/news/2015/06/donor-demographics-old-white-guys-edition-part-iii/>.

¹¹ Andrew Mayersohn and Anya Gelernt, “Donor demographics: old white guys edition, part I” (June 23, 2015), available at <https://www.opensecrets.org/news/2015/06/donor-demographics-old-white-guys-edition-part-ii/>.

¹² *See generally*, Benjamin I. Page, Larry M. Bartels, and Jason Seawright, “Democracy and the Policy Preferences of Wealthy Americans” (March 2013), available at <http://faculty.wcas.northwestern.edu/~jnd260/cab/CAB2012%20-%20Page1.pdf>

¹³ Sean McElwee, “How Chicago’s White Donor Class Distorts City Policy” (Apr. 28, 2016), available at <http://www.demos.org/publication/how-chicagos-white-donor-class-distorts-city-policy> (finding comparable results in the aldermanic races as well).

¹⁴ *Id.* at 2-4.

¹⁵ *Id.* at 4.

Appendix B.5: Gladstein

of a small number of wealthy donors over the needs of the citizens who elected them into office in the first place.¹⁶

Despite these serious concerns, we are pleased to be able to report to the Committee that Illinois has recently adopted a number of sensible political reforms that are helping to level the playing field for Illinois voters and to ensure that they have the chance to meaningfully participate in the electoral system.

Towards a Model of Universal Voter Registration

If we want to ensure that every eligible Illinois citizen has an equal opportunity to be heard, we must first ensure that they are all participating in their democracy. CCIL and its partners in the Just Democracy Coalition believe that every citizen has a fundamental right to have their vote counted, regardless of whether they are a Democrat, Republican or independent. That is why our coalition has advocated for and celebrated legislation that makes it easier to register to vote. In 2013, Governor Quinn signed legislation allowing Illinois citizens to vote online. Two years later, the State adopted provisions expanding early voting and allowing voters to register to vote at the polling place on Election Day¹⁷. While these provisions go a long way towards strengthening our democracy, there is still more that should be done.

CCIL and its partners are currently working with legislators on both sides of the aisle in the General Assembly, representatives from the Governor's office and key agencies to enact an automatic voter registration (AVR) model in the state that would automatically register eligible Illinois voters (unless they opt out) whenever they interacted with certain state agencies, like Driver Services. A recent national study determined that this proposal would not only modernize our registration system by using accurate and secure electronic voter lists, but it could add over a million eligible Illinois voters to our rolls.

Last year, Illinois passed an AVR bill with broad bipartisan support, but, unfortunately, it was vetoed by Governor Rauner at the eleventh hour. CCIL and the other advocates are working with all of the relevant stake holders to ensure that the measure passes during this legislative session.

Towards a Model of Public Financing for Elections

Although the *Citizens United* case has resolved the question of whether it is possible for wealthy corporate interests to fund the candidate that they believe will best serve their interests, there are alternative models for financing political campaigns that will provide an opportunity for smaller donors to continue to hold politicians accountable. In places like New York City and Los Angeles, communities have used a voluntary public financing model for decades that provides for a six to one public match for qualifying donations up to a defined cap. To be eligible to receive these funds,

¹⁶ See, e.g. David Sirota, "Rahm Emanuel Donors Were Far Richer And Whiter Than Chicago: Study" (Apr. 28, 2016), available at <http://www.ibtimes.com/political-capital/rahm-emanuel-donors-were-far-richer-whiter-chicago-study-2360812> (cataloguing a series a of complaints lodged against the Mayor for policies that purportedly favored the donor class).

¹⁷ Unfortunately, the Election Day Registration provisions of the statute are being challenged in a lawsuit which is currently pending before the United States District Court for the Northern District of Illinois. CCIL is optimistic that that litigation can be resolved without limiting the access to the registration process that Illinois citizens currently enjoy.

Appendix B.5: Gladstein

politicians must first demonstrate that they have met with the electorate by raising a requisite number of small donations. Candidates must also agree to not accept any donations from corporate interests or to violate restrictions on self-funding. These programs help to contain campaign expenditures; ensure that politicians remain in close contact with the people that voted them into office; and provide a pathway for citizens with limited access to capital to support the candidate of their choosing or run for office themselves.

Over the last several years, CCIL has been working closely with its partners in the Fair Elections Illinois (FEI) coalition to bring a small donor matching program to the state of Illinois. A little over two years ago, the FEI coalition was responsible for ballot question that found that eight out of every ten Chicago residents supported the public financing model akin to the model that has been successfully used in New York for years. Building upon that support, the FEI partners have been working to draft and support legislation at the state, county, and local levels that would bring a small donor matching model to Illinois.

Our democracy has not yet been secured; however, we have every reason to look towards a day when every Illinois resident can feel that their voice will be heard, regardless of party affiliation or their access to resources. Once again, we thank the Committee for providing us with a forum to raise our concerns, and we look forward to answering any questions that you might have.

Chicago Lawyers' Committee for Civil Rights

U.S. Commission on Civil Rights Public Meeting | March 9, 2017

Ami Gandhi

Director of Voting Rights and Civic Empowerment

agandhi@clccrul.org

(312) 888-4193

Election Protection Hotline

The nation's largest non-partisan voter protection program

As the nation's largest non-partisan voter protection program, hotline and poll watcher **volunteers have answered thousands of voter questions** and resolved numerous problems at the polls for the 2016 general election.

 **24-hour non-partisan hotline**

English Language

866-OUR-VOTE*

Spanish Language Assistance

888-VE-Y-VOTA

Asian Language Assistance

888-API-VOTE

Locations

Call Center

On-site at polls

**The source of data for this presentation*

Volunteers and Training

Volunteer attorneys and individuals staffed the Election Protection Hotline



Hotline & poll watcher volunteers

Partnerships

Common Cause Illinois

The Illinois Coalition for Immigrant and Refugee Rights

The Mexican American Legal Defense and Educational Fund

Equip for Equality

The Chicago Urban League

Chicago Votes

Black Youth Project 100

Asian Americans Advancing Justice Chicago

The League of Women Voters



Reported issues

Trained to

Understand voter access barriers

Investigate and remedy problematic practices

Provide information on voting rights

Advocate for necessary reforms

Example of issues

Voter intimidation

Language barriers

Lack of access to polling place

Incorrect and unclear voter registration status

Hotline Process Flow

A look at how issues moved from the polling place to our database

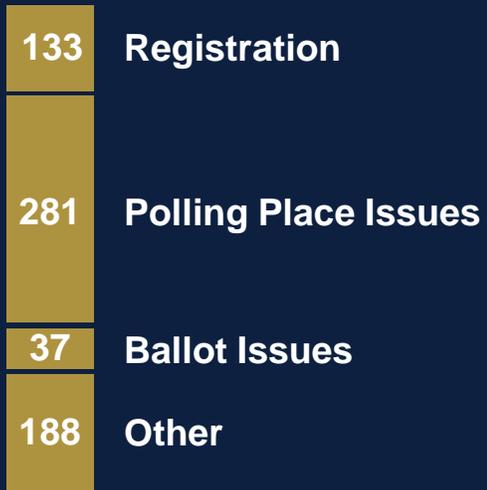


**We collected data on a national level.
Today's focus is on issues in **Illinois**.**

Overview

Voter hotline issues October 17 – November 11, 2016

1083 Illinois Hotline issues



61 Illinois counties represented



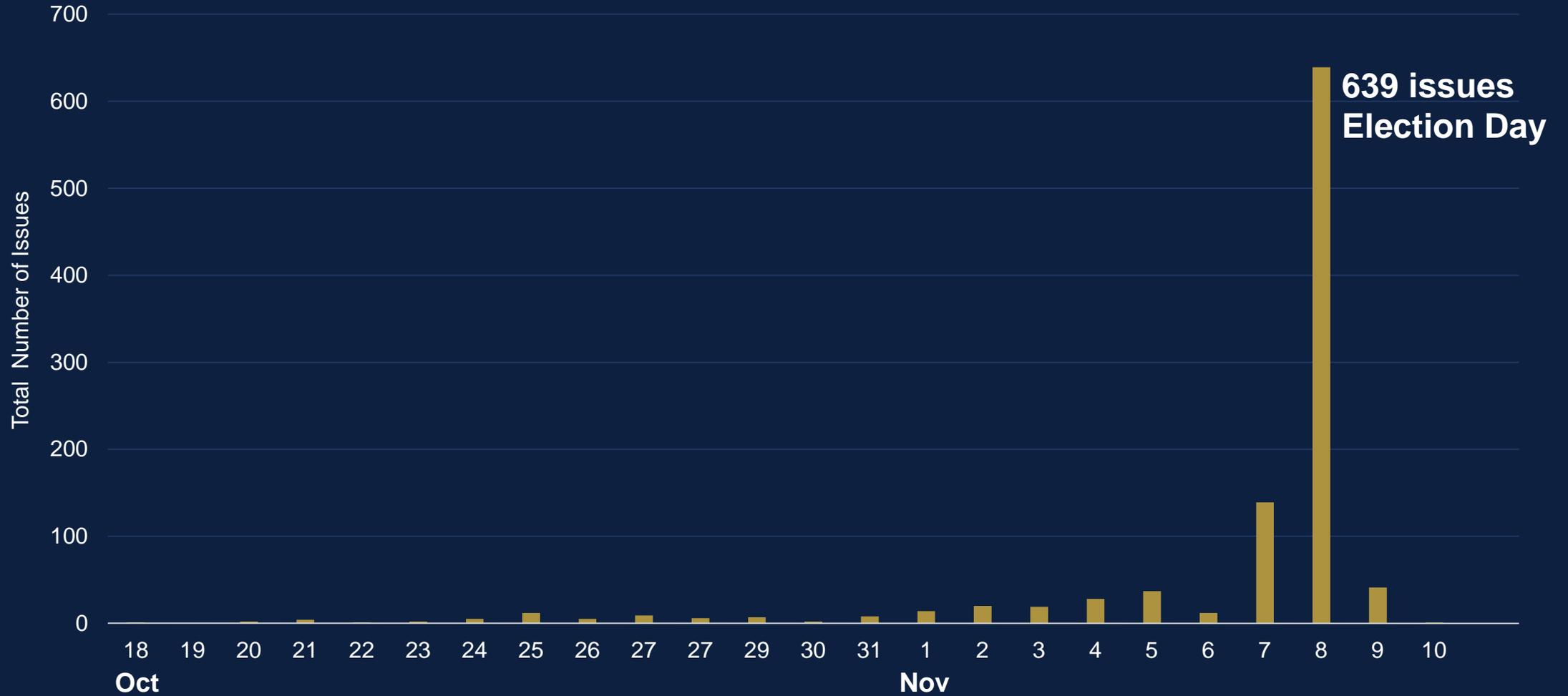
Received calls from 59.8% of 102 IL Counties

392 Issues from people of color



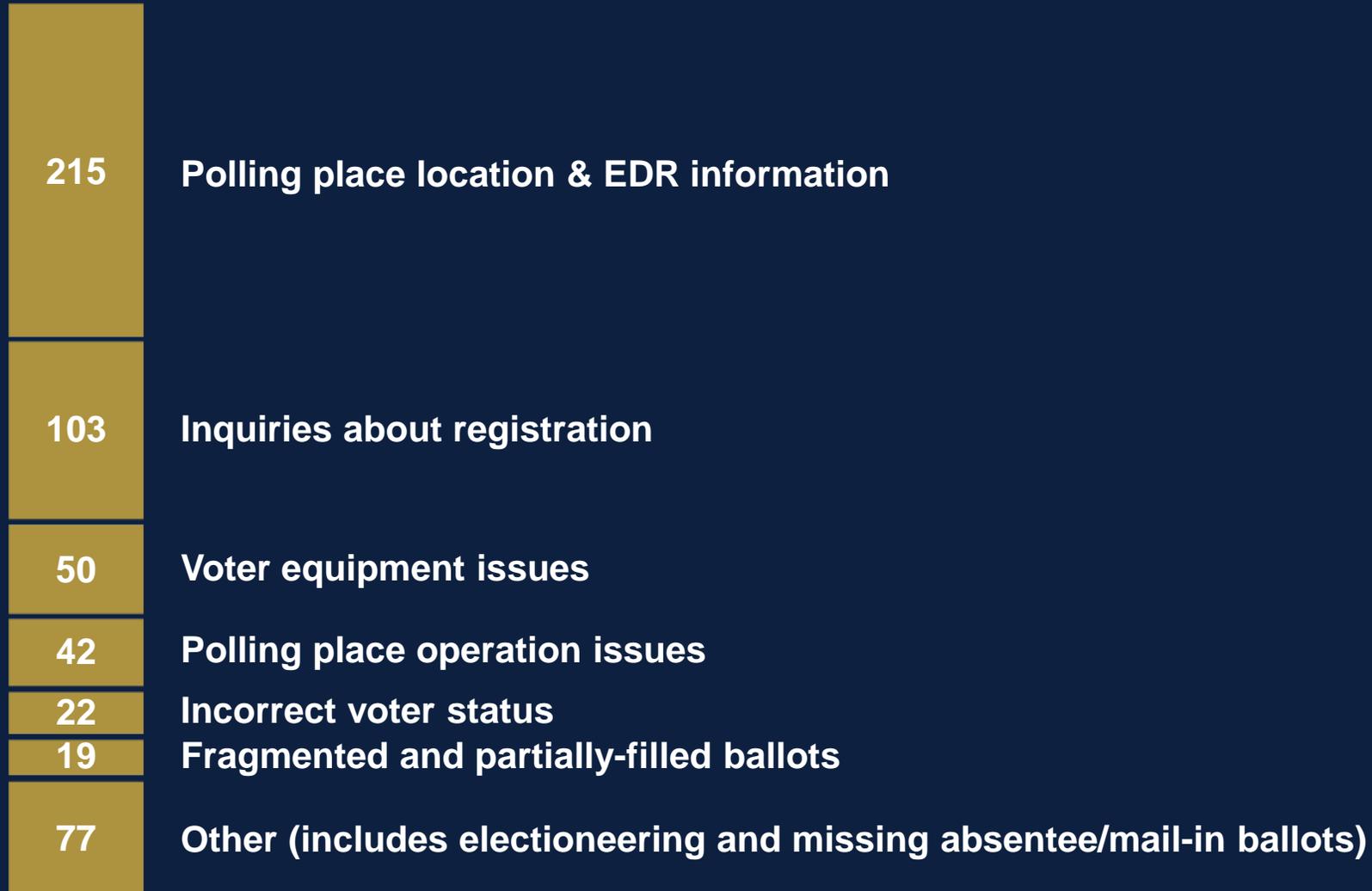
Overview

Voter hotline issues October 17 – November 11, 2016



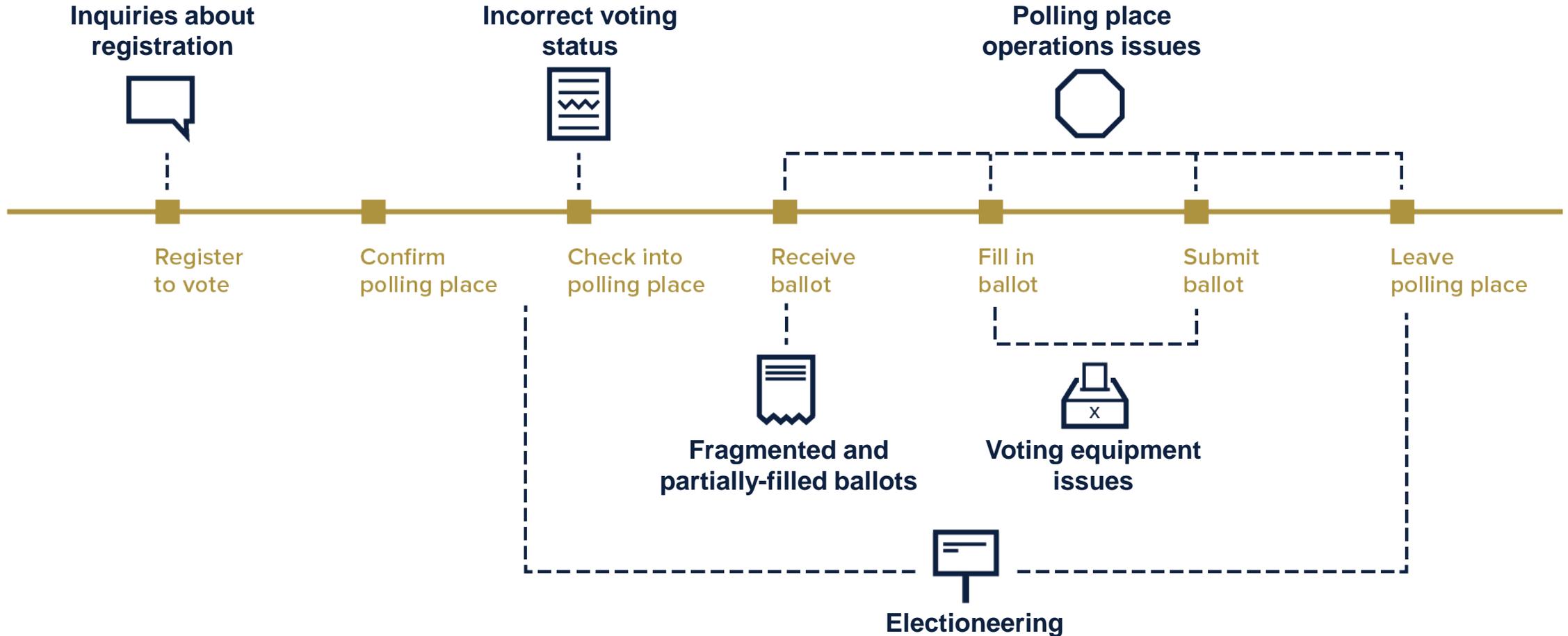
639 Election Day issues

A breakdown of issues on Election Day by category



Voting Experience

The journey to voting at the polls



Possible barriers throughout the entire experience:
Language barriers, voter intimidation, systemic barriers, and missing absentee/mail-in ballots

Inquiries about registration

Database Entry 85932



“ The caller lives in Illinois, but has a Virginia driver’s license and a passport containing a Michigan [address.] She asked if she could still vote in Illinois. I told her that because she lives in Cook County, the polling location in her building will permit Election Day Registration. She will bring her passport, as well as the rental agreement for her apartment.

Inquiries about registration



Lack of clarity in registration procedures and available resources

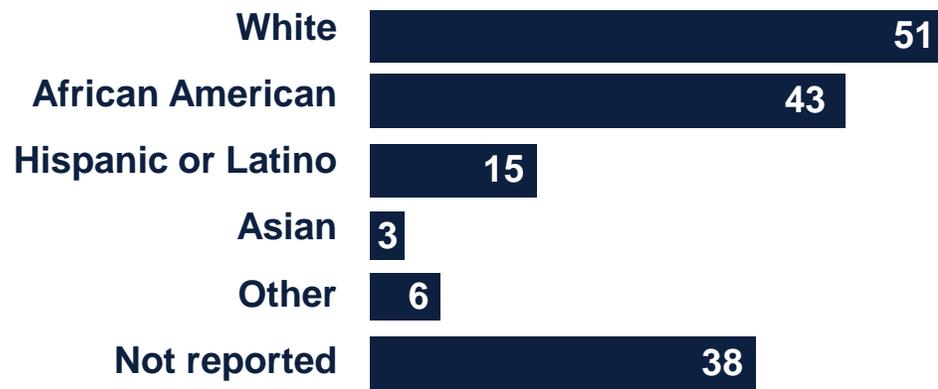
148

Total issues

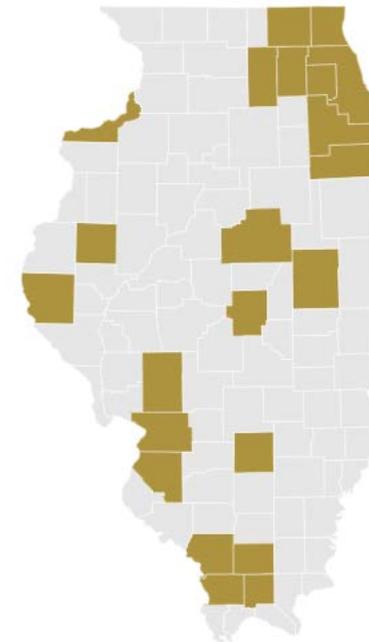
23

Counties Had This Issue

Number of issues reported by race



Number of issues per IL county



78	Cook	1	Macoupin
1	Adams	1	Madison
1	Champaign	2	McDonough
1	Dekalb	1	McHenry
8	DuPage	2	McLean
2	Jackson	3	Rock Island
1	Johnson	8	St. Clair
4	Kane	1	Union
2	Kankakee	5	Will
1	La Salle	1	Williamson
3	Lake	1	Winnebago
2	Macon	9	Not Reported

Electioneering

Database Entry 109886



“ There are two gentlemen who claim to be outside the 100-foot radius and they are campaigning for three judges but they were not outside that radius... I told someone but they did not seem concerned. They were trying to catch as many people as they could. They were just campaigning and using postcards.

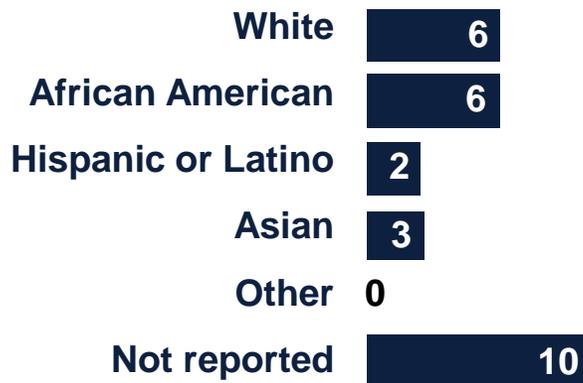
Incorrect voter status



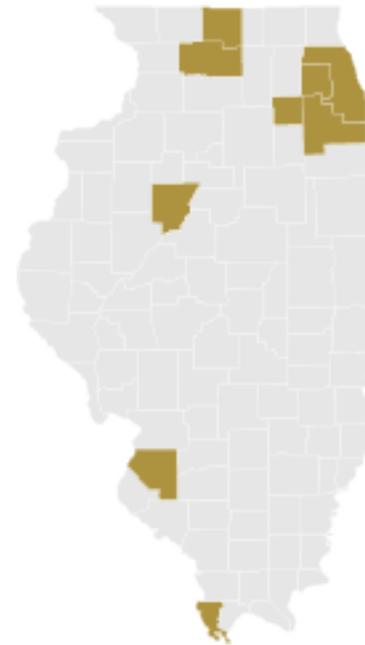
Instances when voter's registration or voting status was incorrect on the rolls

27 Total issues

Number of issues reported by race



9 Counties Had This Issue



Number of issues per IL county

- 15 Cook
- 2 DuPage
- 1 Alexander
- 1 Belleville
- 1 Kendall
- 1 Ogle
- 1 Peoria
- 1 Will
- 1 Winnebago
- 2 Other

Polling place operation issues

Database Entry 95137



“ Did not get to vote because 6:00 AM the poll was [not open] yet. **Waited until 6:35 AM**, but had to leave to vote. Employees were inside but did not come out and tell anyone why they could not go in to vote.

Polling place operation issues

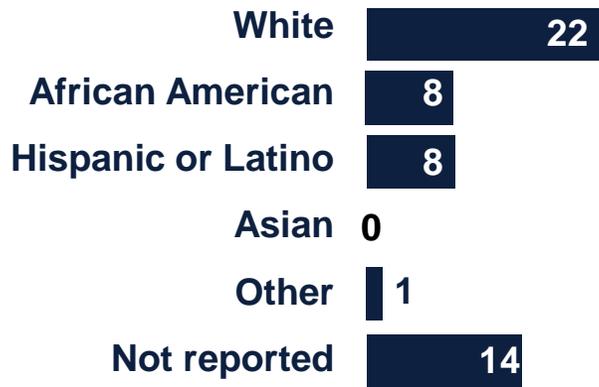


Non-Equipment issues that hinder the voting process.

53 Total issues

6 Counties Had This Issue

Number of issues reported by race



Number of issues per IL county



- 33 Cook
- 5 DuPage
- 4 Will
- 2 Kane
- 1 Winnebago
- 1 Lake

Fragmented and partially-filled ballots

Database Entries 85634 and 106177



“ Had to let the judges know that they were supposed to give both [pages of the ballot] to voters. For the first 6 voters, the judges only gave the candidate ballot.

“ Voter pulled up her sleeve and half of ballot was already completed. Another voter was given a provisional ballot even though they were registered to vote. Only after voter resisted that they were given a regular ballot.

Fragmented and partially-filled ballots

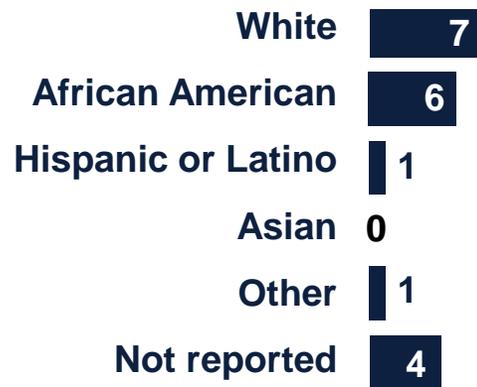


Distributed ballots were missing sections or had filled in entries

19 Total issues

3 Counties Had This Issue

Number of issues reported by race



Number of issues per IL county



- 14 Cook
- 1 Peoria
- 1 Woodford
- 3 Not Reported

Voting equipment issues

Database Entry 109464



“ **Electronic voting will not allow voter to review the first page of the ballot.** She is being told that the ballot was cast, but cannot tell and is unable to review the first page. **Many people now looking at the ballot** and caller is worried that her vote is not being counted. **When the paper printed out it said "voided" but she is told the vote has cast. Voter gone but concerned that the machine is not working for anyone.**

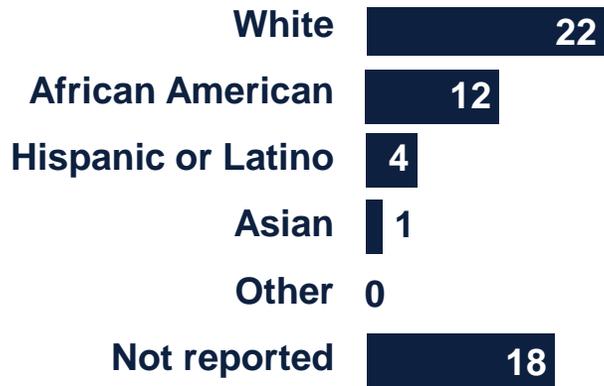
Voting equipment issues

Issues with voting equipment that hinder the voting process



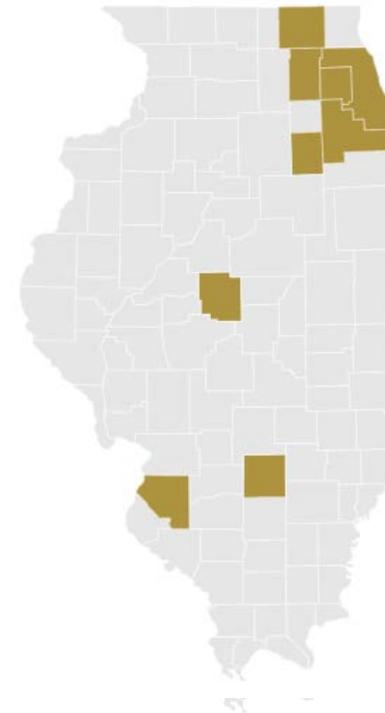
57 Total issues

Number of issues reported by race



9 Counties Had This Issue

Number of issues per IL county



- 41 Cook
- 3 DuPage
- 2 McHenry
- 2 Will
- 2 St. Clair
- 1 Marion
- 1 Kane
- 1 Grundy
- 1 Logan

Other Barriers



- **Voter intimidation and barriers for voters interfacing with criminal justice system**
- **Barriers for voters with disabilities**
- **Barriers for homeless voters**
- **Language barriers**

From issues to reform

A look at how issues moved from the polling place to reform



Election Day Registration



We received hundreds of calls from voters asking about their voter registration status in general and about Election Day Registration requirements specifically. **Voters in every county used this tool. 120,838 voters used Election Day Registration statewide.** We saw the alternative in past elections and in neighboring states—voters were turned away from the polls.

Automatic Voter Registration



Chicago Lawyers' Committee for Civil Rights

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U.S. Commission on Civil Rights – Voting Rights Hearing 3/9/17



David Orr
Cook County Clerk

National Voter Registration Act - 1993



Illinois Refused to Implement National Voter Registration Act (“Motor Voter”)

- National Voter Registration Act (“Motor Voter”) passed in 1993, increasing access to voter registration to millions of people each year
- In Illinois, Gov. Jim Edgar refused to align the state's voter registration standards with federal election law.
- Along with the League of Women Voters and the City of Chicago, we sued Edgar and state officials to force implementation.
- In 1996, the IL governor, attorney general, secretary of state and election board director dropped an appeal to the Illinois Supreme Court.

**Modernize
Agency
Registration**



**Create
Inclusive
Voter List**

**Fill
Gaps**



Modernize Agency Registration

- Every time someone interacts with government, they should have a chance to register to vote
- Harness government transactions into voter registrations



Create Inclusive Voter List

- Share voter data across state lines
 - ERIC, Interstate Crosscheck
- Register the unregistered
- Improve the accuracy of the voter rolls (moved, deceased, name changes)



Fill Gaps

- Make sure no voter falls through
- Election Day Registration
- National Change Of Address
- Pre-registering students

ERIC: Electronic Registration Information Center

- IL successfully joined ERIC which allows states to share data like voter registrations, driver's licenses and deaths
- Clean lists are a critical part of protecting the integrity of the vote and they save money
- Pew Charitable Trusts, Illinois Study:
 - 700,000 people registered at addresses where they no longer live
 - 34,000 deceased individuals to be removed from the voter databases
 - 60,000 voters lived in other states
 - 90,000 duplicate records

Election Day Registration

Main Benefits:

- Encourages participation & reduce barriers
- Provides a safety net to correct registration errors
- Streamlines electronic data and registration operations

Automatic Voter Registration

- In 2015, more than 13 percent of Illinoisans (1,679,582 people) moved
 - 1,081,549 (64%) moved within Illinois and within the same county
 - 318,103 (19%) moved to a different county within Illinois
 - 216,310 (13%) moved to Illinois from another state
 - 63,621 (4%) moved to Illinois from abroad



Mobile Society

In a mobile society, people are constantly moving in and out of the voter pool. People who move each year are largely:

- Low-income (21% move each year)
- African-American (15%)
- Hispanic (13.9%)



Additional threats to our democracy...

Money in Politics

Voter Suppression

Money In Politics

- Supreme Court ruling moved us from one person – one vote to a new reality where money grossly amplifies your speech and influence.
- Potential Reforms:
 - Seattle – Democracy Vouchers
 - California – Limits on Dark Money
 - New York City – Small Donor Matching
 - IL Sen. Daniel Bill proposed small donor matching legislation – SB1424

Voter Suppression

- Voter ID Requirements
- Limit Early Voting
- Gerrymandering –
- Intimidating/threatening opposition

“The arc of the moral universe is long,
but it bends toward justice...”



“The stakes... are too high for government to be a spectator sport.” -
Barbara Jordan



Chicago Lawyers' Committee for Civil Rights

U.S. Commission on Civil Rights Public Meeting | March 9, 2017

Ryan Cortazar

Voting Rights and Civic Empowerment

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History of Language Discrimination & Access



“ More precious even than the forms of government are the mental qualities of our race. . . . They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the . . . infusion of Southern and Eastern European races
—III N.Y. State Constitutional Convention 3012 (Rev. Record 1916).

“ § 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.
—*Katzenbach v. Morgan*

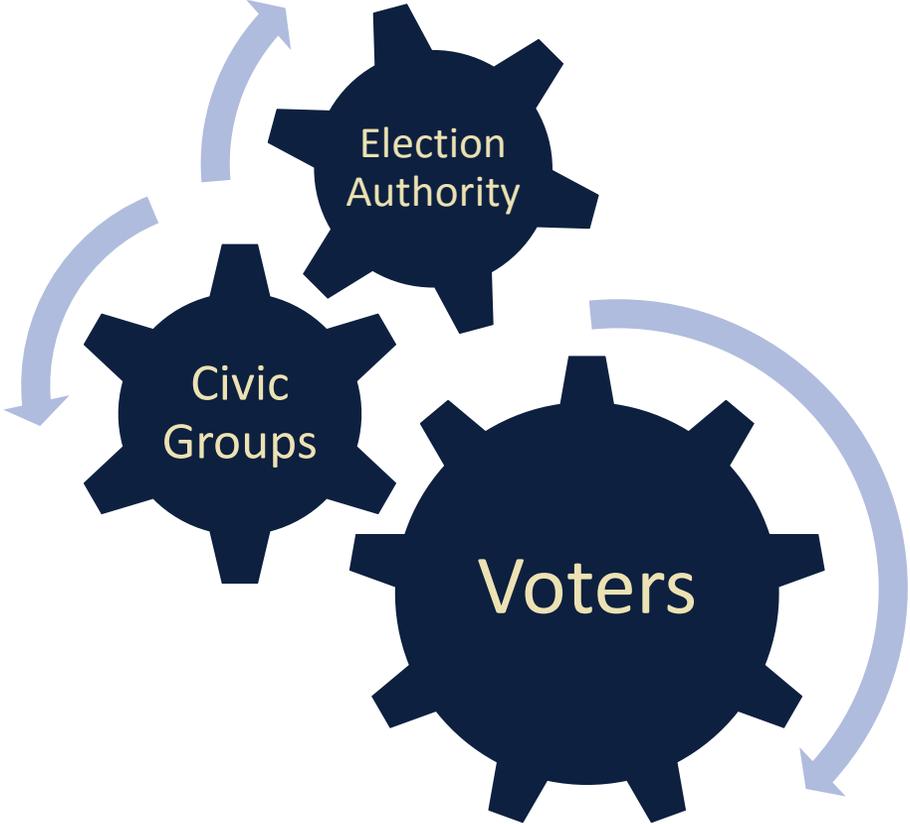
Voting Rights Act



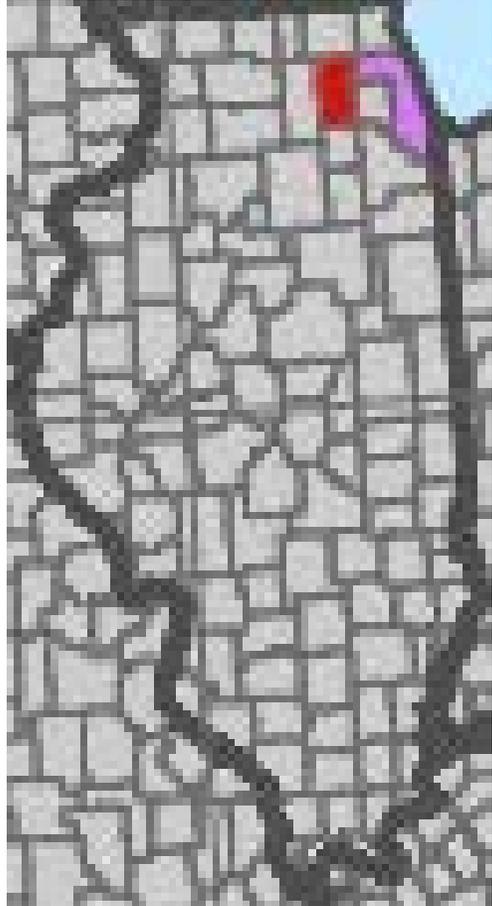
“ A State or political subdivision is a covered State or political subdivision . . . if . . . more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient; . . . more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; . . . and the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

— Section 203

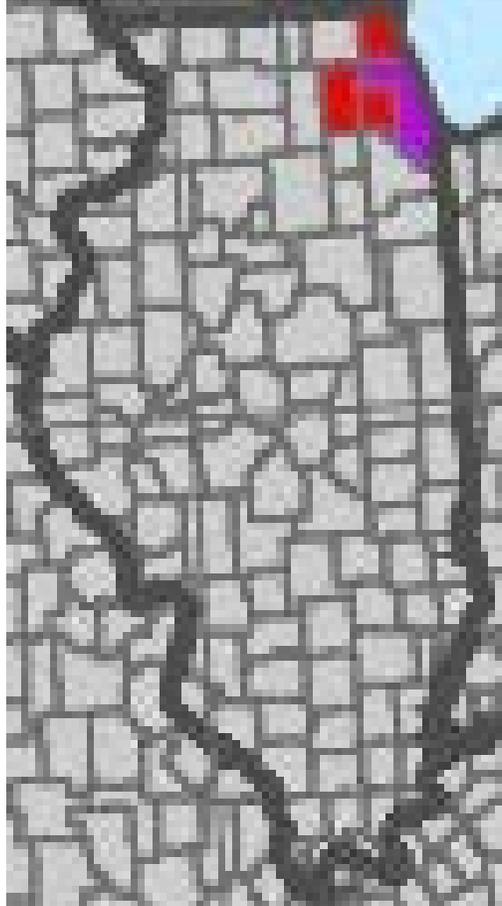
Implementation



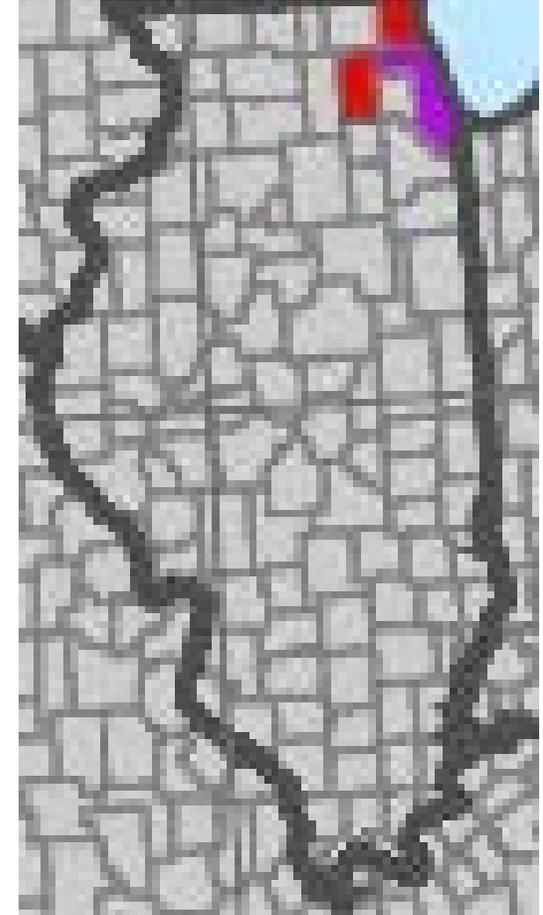
Recent Developments



2002



2011



2016

Paths Forward

Acting Locally & Thinking Globally: Keys to Successful Language Assistance in Elections



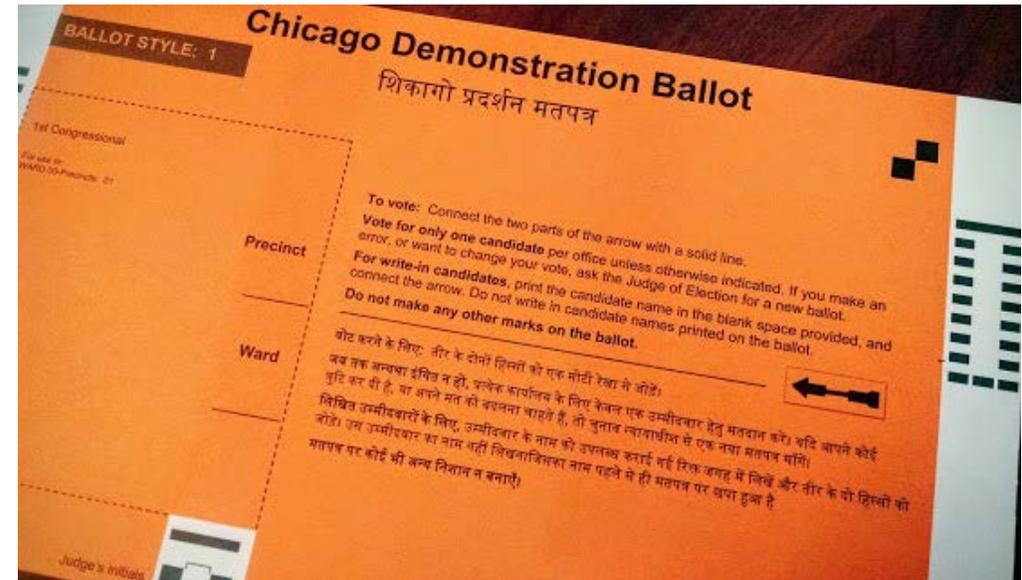
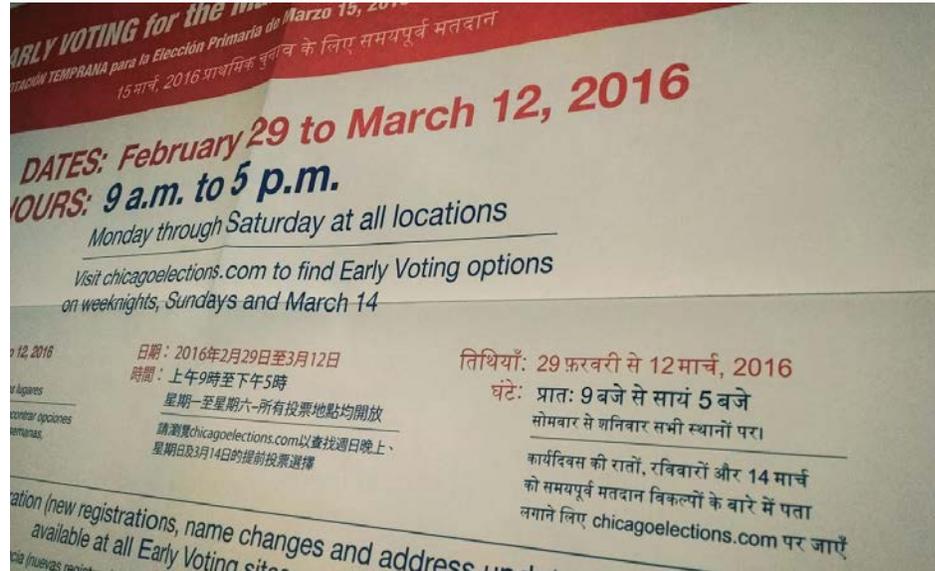
Shobhana Johri-Verma
South-Asian Community Liaison
Chicago Board of Election Commissioners
Since 2014

1. Language Assistance

- Language Liaisons placed at Operational Core
- In Chicago: Part of Community Services
 - Poll Workers
 - Trainers
 - Voter Registration
- Language Liaisons know all facets of operation

2. For Translations: Think Globally

Include every item that needs to be translated for a voter...



... It's not just about a few forms.

For Translations: Think Globally

Never make web users search in English to find a translation.



For Translations: Think Globally

Make your web site fully navigable for every language user.

The screenshot shows the website interface in Hindi. At the top left is the Chicago logo with the text "Chicago Board of Election Commissioners". The main heading is "मतदाताओं, आपका स्वागत है।" (Welcome, Voters!). Below this are language options: "English | Español | Polski | 中文 | हिंदी". A blue navigation bar contains menu items: "मतदाताओं के लिए", "भाग लेने के तरीके", "उम्मीदवारों के लिए", "जमा सूचना", "सुझाव बोर्ड", "समय-सार", "चुनाव परिणाम". The main content area features a large image of three people. Below the image are three call-to-action boxes: "आपकी मतदाता जानकारी: 15 मार्च, 2016 प्राथमिक" (Your voter information: March 15, 2016 Primary), "मतदान के लिए पंजीकरण करें" (Register to vote), and "चुनाव परिणाम" (Election results). At the bottom, there are two columns of links: "सबसे अधिक देखा गया" (Most viewed) and "क्षेत्र निर्वाचन एजेंसियाँ" (Area election agencies).

The screenshot shows the website interface in English. At the top left is the Chicago logo with the text "Chicago Board of Election Commissioners". The main heading is "Welcome, Voters!". Below this are language options: "English | Español | Polski | 中文 | हिंदी". A blue navigation bar contains menu items: "Voting", "Participating", "Running for Office", "General Information", "Election Board", "News", "Election Results". The main content area features a large image of three people. Below the image are three call-to-action boxes: "Your Voter Information: March 15, 2016 Primary", "Register to Vote or Change Address or Change Name", and "Voter Calendar". At the bottom, there are two columns of links: "Top Topics" and "Area Election Agencies".

3. Use Authentic Translations

Authentic translations are best prepared by in-house staff.



Use Authentic Translations

Authentic translations are never made by pressing a button.



Use Authentic Translations

- When in doubt, check the US Election Assistance Commission glossary.
- In the absence of a glossary or definition, use a translation service.
- Have your community partners review the translation service's work.
- When the EAC lacked a glossary, Chicago built one that local organizations reviewed.

4. Fully Partner With Community Groups

- Attend and organize events year-round, not just around elections.
- Include all community groups in formulating policy and recruiting poll workers.
- Be ready to hear and respond effectively to all grievances.
- Build on relations beyond what's required.



Outreach Is a Year-Round Activity



Outreach is a Year-Round Activity



Outreach is a Year-Round Activity



Outreach is a Year-Round Activity



Case Study in the Value of Year-Round Outreach – Part I

Chicago's Voter Engagement Community Forum: Many ideas emerged from the dozen tables. Regardless of age, ethnicity, race, neighborhood or other demographics, participants in the forum picked the same top reforms:

- On-Line Voter Registration
- Election Day Registration
- Civics Education
- Universal Vote Centers



Case Study in the Value of Year-Round Outreach – Part II

With this broad spectrum of support, the Chicago Election Board since then has helped to secure legislation that allowed for:

- On-Line Voter Registration,
- Election Day Registration, and
- Civics Education

... Additionally laws are being developed for the introduction of vote centers.



Acting Locally & Thinking Globally: Keys to Successful Language Assistance in Elections



Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Indiana Advisory Committee to the U.S. Commission on Civil Rights

Date: May, 2018

Subject: Voting Rights in Indiana

The following advisory memorandum results from the testimony provided during the March 02, 2018 meeting of the Indiana Advisory Committee, as well as a web hearing, two community forums, and related testimony submitted to the Committee in writing during the relevant period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. This memo is intended to focus specifically on concerns of disparate impact regarding voting rights. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memo and the recommendations included within it were adopted by a majority of the Committee on May 21, 2018.

Background

The right to vote is one of the most fundamental components of democracy—so important, in fact, that the United States Constitution includes four amendments protecting it.¹ Additionally, the Constitution of the State of Indiana² includes 5 sections protecting and defining the right to vote in Indiana:

Article 2. Section 1. All elections shall be free and equal.

Article 2. Section 2.

(a) A citizen of the United States who is at least eighteen (18) years of age and who has been a resident of a precinct thirty (30) days immediately preceding an election may vote in that precinct at the election.

(b) A citizen may not be disenfranchised under subsection (a), if the citizen is entitled to vote in a precinct under subsection (c) or federal law.

¹ U.S. Const. amend. XV, XIX, XXIV, XXVI. The U.S. Constitution specifies that the right to vote shall not be abridged or denied on account of race, color, or previous condition of servitude (Amend XV); sex (Amend XIX); by any reason of failure to pay poll tax or other tax (Amend XXIV); or on account of age for all citizens age 18 or older (Amend XXVI). More information available at Legal Information Institute, Cornell University School of Law: U.S. Constitution. <https://www.law.cornell.edu/constitution/overview>.

² Ind. Const. art. II, § 1, 2.

(c) The General Assembly may provide that a citizen who ceases to be a resident of a precinct before an election may vote in a precinct where the citizen previously resided if, on the date of the election, the citizen's name appears on the registration rolls for the precinct.

Article 2. Section 4. No person shall be deemed to have lost his residence in the State, by reason of his absence, either on business of this State or of the United States.

Article 2. Section 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

Article 2. Section 14. (c) The General Assembly shall provide for the registration of all persons entitled to vote.

In 1965, the United States Congress passed the Voting Rights Act (VRA).³ Among its key provisions, the VRA prohibits public officials from developing political processes “leading to nomination or election in the State or political subdivision,” which are not “equally open to participation by members of a [protected] class of citizens...”⁴ It also requires that states and counties with a “history of discriminatory voting practices or poor minority voting registration rates” secure “preclearance” – this is, the approval of the United States Attorney General, or a three-judge panel of the District Court of the District of Columbia—prior to implementing any changes in their local legislation.⁵ With the extension of the VRA in 1975, Congress included protections against voter discrimination toward “language minority citizens”.⁶ In 1982, the Act was again extended, and amended to provide that a violation of the Act’s nondiscrimination section could be established “without having to prove discriminatory purpose.”⁷ In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be found in violation of the VRA.

In 1993, Congress enacted the National Voter Registration Act (NVRA),⁸ which was designed to further protect voting right by making it easier for all Americans to register to vote and to maintain their registration.⁹ The Act requires states to allow citizens to register to vote at the

³ Voting Rights Act, Pub. L. 89-110, 79 Stat. 437

⁴ 52 U.S.C. § 10301(b) (previously codified as 42 U.S.C. § 1973 to 1973aa-6)

⁵ Voting Rights Act, Pub. L. 89-110, 79 Stat. 437. Note: Indiana was not named as one of these “preclearance” jurisdictions.

⁶ 52 U.S.C. § 10503 (previously codified as 42 USC 1973aa-1a); *See also*: The U.S. Dep’t of Justice, “The History of Federal Voting Rights Laws,” June 16, 2017, <https://www.justice.gov/crt/history-federal-voting-rights-laws>. (last accessed July 19, 2018)

⁷ *Id.*

⁸ National Voter Registration Act, Pub. L. 103-31, 107 Stat. 77

⁹ U.S. Department of Justice, Civil Rights Division, “About the National Voter Registration Act,” <https://www.justice.gov/crt/about-national-voter-registration-act> (last accessed July 19, 2018) *Hereafter* cited as: *DOJ: About the National Voter Registration Act*.

same time they apply for their driver's license, or seek to renew their license; it also requires the state to then forward the voter's completed registration application to the appropriate election official.¹⁰ In addition, the NVRA requires voter registration support for individuals with disabilities and those seeking public assistance; it requires the option for voters to register by mail; sets forth requirements for how states maintain their voter registration applications; and under certain circumstances, protects citizens' right to vote regardless of a change in address.¹¹

In 2002, Congress passed the Help American Vote Act (HAVA)¹² following the 2000 Presidential Election. The law created mandatory minimum standards in key areas of election administration such as allowing for provisional voting, upgrading voting equipment, and establishing statewide voter registration databases.¹³ It also provides funding to meet these new standards.¹⁴ The Election Assistance Commission (EAC) was also established as a result of the new law.¹⁵ EAC is charged with assisting states regarding HAVA compliance, creating voter system guidelines, and maintaining the National Voter Registration form among other responsibilities.¹⁶

Despite these protections encoded at the state and federal levels, civil rights advocates have alleged a number of voting rights problems in Indiana: mandatory, strict photographic identification; unequal access to early voting; cancellation or deactivation of voter registration; and violations of voter privacy.¹⁷ In April 2008, the U.S. Supreme Court ruled¹⁸ to uphold an Indiana law requiring voters to provide photographic identification at the polls. Since this time, the state of Indiana has faced several additional lawsuits regarding its voting laws:

- On May 02, 2017, private counsel, William Groth, suit against the Marion County Election Board on behalf of Common Cause Indiana and the Greater Indianapolis Branch of the NAACP alleging that voters in the county, which has the largest population of African Americans in Indiana, has had unequal access to early voting citing a violation of

¹⁰ National Voter Registration Act, Pub. L. 103-31, 107 Stat. 77, §5

¹¹ National Voter Registration Act, Pub. L. 103-31, 107 Stat. 77. *See also*: DOJ: *About the National Voter Registration Act*.

¹² Help America Vote Act, Pub. L. 107-252, 116 Stat. 1666.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at §201

¹⁶ *Id.* *See also*: U.S. Assistance Commission, "Help America Vote Act," <https://www.eac.gov/about/help-america-vote-act/> (Last accessed May 21, 2018).

¹⁷ Described throughout the testimony and findings of this memorandum.

¹⁸ *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008). *See also*: Robert Barnes, "High Court Upholds Indiana Law on Voter ID," *Wash. Post* (April 29, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/28/AR2008042800968.html>. (last accessed June 21, 2018)

the First and Fourteenth Amendments to the Constitution and Section 2 of the Voting Rights Act of 1965.¹⁹

- On April 25, 2018, a federal judge ordered the Marion County Election Board to “establish at least two early satellite voting precincts in time for the November General Election.”²⁰
- On August 11, 2017, the Indiana State Conference of the NAACP and the League of Women Voters of Indiana filed a lawsuit against the Indiana Election Division and the Indiana Secretary of State to “prevent unlawful removal of voters from the registration rolls”.²¹ The lawsuit is still ongoing.
- On July 11, 2017, the Brennan Center and co-counsel filed a lawsuit on behalf of the League of Women Voters of Indiana, the Indiana NAACP, and Joselyn Whitticker to prevent Connie Lawson, the Indiana Secretary of State from sharing voter registration information to the Presidential Advisory Commission on Election Integrity.²² The Presidential Advisory Commission on Election Integrity was terminated on January 3, 2018 by President Donald Trump thus ending the lawsuit.²³

In this context, the Indiana Advisory Committee submits this report to the Commission detailing the present state of voting rights in Indiana, as the Commission revisits this topic of national importance.

Overview of Testimony

While cognizant of the ongoing voting rights issues raised by civil rights advocates, the Committee approached this project from a neutral posture. During the public hearings and community forums, the Committee heard from academics, legal professionals, government officials, party representatives, community advocacy organizations, and members of the

¹⁹ *Common Cause v. Marion County Election Board*, No. 1:17-cv-01388-SEB-TAB, 2018 WL 1940300, at 1) (S.D. Ind. Apr. 25, 2018).

²⁰ Dave Stafford, “Judge Orders Early Satellite Voting Precincts for Marion County,” *Ind. Lawyer*, <https://www.theindianalawyer.com/articles/46807-judge-orders-early-satellite-voting-precincts-for-marion-county> (last accessed June 22, 2018).

²¹ NAACP. *NAACP Files Lawsuit against Indiana for Unlawful Voter Purges*, Aug 24, 2017 <http://www.naacp.org/latest/naacp-files-lawsuit-indiana-unlawful-voter-purges/> (last accessed June 21, 2018).

²² Brennan Center for Justice, “League of Women Voters of Indiana, Indiana NAACP, et. al. v. Connie Lawson, et. al.,” May 2, 2018, <http://www.brennancenter.org/legal-work/league-women-voters-indiana-indiana-naacp-et-al-v-connie-lawson-et-al> (last accessed June 21, 2018).

²³ Michael Tackett and Michael Wines, “Trump disbands Commission on Voter Fraud,” *N.Y. Times*, January 3, 2018, <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html> (last accessed June 21, 2018)

community on the status of voting rights in the state of Indiana. In addition, the Committee received a number of written statements offering supplemental information on the topic.

Findings

The following findings result directly from the testimony received, and reflect the views of the cited panelists. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand experience with the topics at hand.

Voter Administration

1. Indiana's strict voter ID requirements may disenfranchise otherwise eligible voters who do not possess the proper photo ID, requiring prohibitive amounts of time and money to obtain the required identification.²⁴ Such disenfranchisement may have a disproportionate impact on the basis of race, color, and other federally protected classes.
 - a. Indiana's voter ID law may disproportionately impact people of color, particularly African Americans and Latinos.²⁵ A 2006 Brennan Center study found that 11 percent of American citizens did not have government issued ID's.²⁶ The Government Accountability Office found that imposing a strict photo ID law decreased turnout overall by two to three percent and that the negative effect was slightly larger among African Americans than Whites.²⁷

²⁴ Joe Micon, Executive Director, Lafayette Urban Ministry Indiana, *Written Statement for the Indiana Advisory Committee to the U.S. Commission on Civil Rights*, March 2, 2018, pp. 1-3. (hereinafter cited as Micon Statement). Note: all written statements are included in Appendix B of this memorandum.

²⁵ Bennion Testimony, *Indiana Advisory Committee to the U.S. Commission on Civil Rights Meeting, Webcast*, Feb. 12, 2018, transcript, p. 7 lines 7-25, [https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155655_transcript_\(2018-03-29-02-27-30\).pdf](https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155655_transcript_(2018-03-29-02-27-30).pdf) (hereinafter cited as *Meeting Transcript I*) Patricia Avery, testimony, *Indiana Advisory Committee to the U.S. Commission on Civil Rights Meeting, Evansville, IN*, Feb. 17, 2018, transcript, p. 4 lines 24 – p. 5 line 20, [https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155670_transcript_\(2018-04-04-04-46-42\).pdf](https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155670_transcript_(2018-04-04-04-46-42).pdf) (hereinafter cited as *Meeting Transcript II*)

Steven Monroy, testimony, *Indiana Advisory Committee to the U.S. Commission on Civil Rights Meeting, Indianapolis, IN*, Mar. 2, 2018, transcript, p. 97 line 16 – p. 98 line 18, [https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155674_transcript_\(2018-04-05-04-51-15\).pdf](https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155674_transcript_(2018-04-05-04-51-15).pdf) (hereinafter cited as *Meeting Transcript III*)

Fraga Testimony, *Meeting Transcript III*, p. 159 lines 8-13

²⁶ Mensz Testimony, *Meeting Transcript III*, p. 30 lines 13-15 see also Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf. (last accessed June 22, 2018).

²⁷ Groth Testimony, *Meeting Transcript III*, p. 11 lines 21-24 Bolling-Williams Testimony, *Meeting Transcript III*, pp. 33 lines 10-12, 34 lines 3-7 Micon Statement at 2.

- b. While voters without proper ID may cast a provisional ballot, voters may not be clear about what additional steps they need to take in order for their vote to be counted.²⁸
 - c. Indiana’s voter ID laws have disenfranchised students because many of them cannot use their student ID to vote. Some public universities have changed their student ID to include an expiration date, thus meeting the criteria for voting; however because qualified IDs must be government-issued, students at private schools have no remedy.²⁹
 - d. Absentee voters who vote-by-mail are not required to produce a valid, government-issued photo ID.³⁰ This was found to be an unexplained inconsistency in the state’s voter ID requirements.³¹
2. The use of the inter-state Crosscheck Program to identify voters who may be registered in more than one state may disenfranchise otherwise eligible voters.³²
- a. One study found that it is not statistically uncommon for two people have the same name and date of birth—a situation which would give rise to a “false hit” in the Crosscheck database.³³
 - b. Some studies suggest that certain racial and ethnic minorities may be disproportionately susceptible to such a “false hit” in the Crosscheck Program, given such populations are more likely to have the same first and last name.³⁴
 - c. A newly amended state law now allows immediate removal of voters; thus, voters are no longer required to receive notification before they are labeled “inactive” if they appear in the Crosscheck Program as registered in more than one state.³⁵

²⁸ Avery Testimony, *Meeting Transcript II*, p. 4 line 24 – p. 5 line 20.

²⁹ Hollis Testimony, *Meeting Transcript III*, pp. 227 lines 24-25, 228 lines 1-7 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 243 lines 18-24.

³⁰ Indiana Sec. of State, Election Division. Voter Information Portal, *Absentee voting*. Available at: <https://www.in.gov/sos/elections/2402.htm> (last accessed June 26, 2018). *See also*: Gerard Testimony, *Meeting Transcript II*, p. 27 line 1.

³¹ Indiana Sec. of State, Election Division, “Photo ID Law,” <https://www.in.gov/sos/elections/2401.htm> (last accessed June 26, 2018)

³² Mensz Testimony, *Meeting Transcript III*, p. 26 line 1 – p. 29 line 21. *Note*: The Secretary of State’s Office submitted comment to the Committee on April 03, 2018 noting it believes there has been a “great deal of misinformation and exaggeration concerning routine, NVRA mandated voter list maintenance.”

³³ Mensz Testimony, *Meeting Transcript III*, p. 26 line 15 – p. 27 line 3.

³⁴ *Ibid.* p. 27 lines 4-13 Amy Gandhi, Director of Voting Rights and Civic Engagement, Chicago Lawyers’ Committee for Civil Rights and Matthew J. Owens, Miner Barnhill & Galland, P.C., Written Statement for the Indiana Advisory Committee to the U.S. Commission on Civil Rights, April 2018, at 6-7. (*hereinafter cited* as Chicago Lawyers’ Committee Statement).

³⁵ Mensz Testimony, *Meeting Transcript III*, p. 27 line 22 – p. 28 line 19. Chicago Lawyers’ Committee Statement at 6-7. Hoyer Testimony, *Meeting Transcript III*, p. 75 lines 11-14. S.B. 442, 120th Leg., 1st Sess. (Ind. 2017).

3. Voter registration

- a. In 2010, Indiana expanded access to voter registration by becoming one of the first few states to implement online voter registration.³⁶ There are now 37 states total that have implemented online voter registration.³⁷
 - b. Indiana is one of thirty-three states that does not have same day voter registration.³⁸ Currently in Indiana, voter registration closes 29-days before each election with the exception of overseas voters and military voters.³⁹
4. Indiana has the shortest voting hours allowed by federal law, from 6 A.M. to 6 P.M; only two other states (Kentucky and Hawaii) close their polls that early.⁴⁰ Short voting hours are especially burdensome for certain demographics potentially resulting in smaller voter turnout.⁴¹
- a. Short voting hours may disproportionately impact citizens with less flexible work schedules or citizens needing to pick up children from school or childcare.⁴²
 - b. Indiana has no “Time off Work” law requiring employers to allow employees to leave work in order to vote or to pay employees who must take time off work to

³⁶ H.B. 1346, 116th Leg., 1st Sess. (Ind. 2009). National Council of State Legislatures, Online Voter Registration. *Overview*. Available at: <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx#table> (last accessed June 26, 2018).

³⁷ *Ibid.*

³⁸ National Council of State Legislatures, “Same Day Voter Registration,” <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (last accessed June 26, 2018)

³⁹ Groth Testimony, *Meeting Transcript III*, p. 13 lines 20- p. 14 line 2

⁴⁰ Ballotpedia, *State Poll Opening and Closing Times (2018)* Available at: [https://ballotpedia.org/State_Poll_Opening_and_Closing_Times_\(2018\)](https://ballotpedia.org/State_Poll_Opening_and_Closing_Times_(2018)) (last accessed June 26, 2018)
Groth Testimony, *Meeting Transcript III*, p. 14 line 19 - p. 15 line 15 Vaughn Testimony, *Meeting Transcript III*, p. 84 line 23 – p. 85 line 7.

⁴¹ Groth Testimony, *Meeting Transcript III*, p. 15 lines 6-7. Hoyer Testimony, *Meeting Transcript III*, p. 75 lines 6-7, p. 85 lines 1-2. Darian Collins Testimony, *Indiana Advisory Committee to the U.S. Commission on Civil Rights Meeting, Gary, IN*, Mar. 31, 2018, transcript, p. 23 lines 2-8, <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155693&cid=247> (hereinafter cited as *Meeting Transcript IV*) *Meeting Transcript IV*.

⁴² Groth Testimony, *Meeting Transcript III*, p. 15 lines 1-7 Monroy Testimony, *Meeting Transcript III*, p. 98 lines 20-23 Celestiano-Horseman Testimony, *Meeting Transcript III*, p. 238 lines 15-24 Maguire Testimony, *Meeting Transcript III*, p. 247 lines 14-19. *Note:* The Secretary of State’s Office submitted comment on April 3, 2018 noting that it is unaware of conclusive evidences that polling place hours coupled with opportunities for early voting and absentee voting by mail serves as an impediment to voting or have a discriminatory impact.

vote.⁴³ The lack of this law may make it especially difficult for low-income voters.⁴⁴

5. Access to early voting in Indiana, especially in-person early voting, raised concern for many panelists. Early voting has long been a critical tool for fair access to the polls, particularly for communities of color and low-income communities.⁴⁵
 - a. In Marion County specifically, before late-April 2018, there was only one early voting location for over 700,000 registered voters leading to exceptionally long wait times.⁴⁶ This made it challenging for voters to cast an early ballot. However, on April 26, 2018 a federal judge ruled that Marion County needed to open at least two early voting sites before the November 2018 election.⁴⁷
 - b. While Indiana state law requires that each three person election board unanimously approves satellite voting in each county, Marion County, the county with the largest African American population in Indiana, had one member who continuously voted against opening an additional early voting location even though the surrounding counties had a much lower ratio of early voting polling places to registered voter.⁴⁸
 - c. Not all voters are eligible to vote-by-mail in Indiana. Existing criteria include having a disability, being above the age of 65, being confined due to illness or injury, or having limited access for transportation to the polls, among others.⁴⁹

⁴³ Groth Testimony, *Meeting Transcript III*, p. 18 lines 3-5.

⁴⁴ The Secretary of State's Office submitted comment on April 3, 2018 noting that it does not believe that the unavailability of "time off for voting" either serves as an impediment to voting or has a discriminatory impact.

⁴⁵ Chicago Lawyers' Committee Written Statement at 7-8.

⁴⁶ Hollis Testimony, *Meeting Transcript III*, p. 230 lines 17-25 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 239 lines 4-9 Harper Testimony, *Meeting Transcript III*, p. 14 lines 4-9.

⁴⁷ Matt Reynolds, *Federal Judge Orders New Early Voting Sites in Indianapolis*, Courthouse News Serv. (Apr. 26, 2018), <https://www.courthousenews.com/federal-judge-orders-new-early-voting-sites-in-indianapolis/>

⁴⁸ Groth Testimony, *Meeting Transcript III*, p. 16 lines 16-25 Vaughn Testimony, *Meeting Transcript III*, p. 83 lines 13-19, 21-23 Hollis Testimony, *Meeting Transcript III*, pp. 229 lines 21-25, 230 lines 10-14 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 239 lines 10-14. The Indiana Secretary of State's Office submitted comment on April 03, 2018 noting it believes that county clerks and election boards are best suited to determine and agree on places for voting and that neither past nor future opportunities for early voting in Marion County serve as an impediment to voting or have a discriminatory impact.

⁴⁹ Indiana Secretary of State. Indiana Election Division, "Absentee Voting, 2018 Election Calendar," <https://www.in.gov/sos/elections/2402.htm>; Hollis Testimony, *Meeting Transcript III*, p. 229 lines 3-8 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 240 lines 8-23 Robinson-Ungar Testimony, *Meeting Transcript II*, p. 11 lines 7-8. The Secretary of State's Office submitted comment on April 03, 2018 noting it does not believe "no-excuse" absentee voting by mail either serves as an impediment to voting or has discriminatory impact.

6. Voting Centers received positive feedback from both panelists and voters who testified as making it more convenient to vote.
 - a. Voting centers allow registered voters to vote at any of the voting centers in their county.⁵⁰ This option provides flexibility for voters to access polls closest to either their homes or workplaces.
 - b. Election expenses may be reduced due to the decreased need for staff, saving the county money.⁵¹
 - c. The election board must unanimously approve any county effort to adopt the voting center model.⁵²
 - d. Voting centers may be particularly helpful for voters who are disabled as it allows them to choose the most easily accessible location.⁵³

7. Despite the success of voting centers, in August of 2017, SB 200 required Lake County, and only Lake County, to consolidate polling centers that had 600 or fewer active voters assigned to the location.⁵⁴
 - a. Lake County has the second largest African American population and the largest Latino population in the state of Indiana in terms of percentage, raising serious concerns about disparate impact.⁵⁵ The Indiana state conference of the NAACP has filed a lawsuit that is still pending.⁵⁶
 - b. The consolidation of polling places in Lake County not only created confusion for voters who were no longer sure where to vote, but required voters who otherwise were able to walk to their polling place, to find some other form of transportation.⁵⁷ The transient community as well as citizens dependent on public transportation were especially burdened.⁵⁸

8. Accurate and consistent training of poll workers is critical to ensuring accessibility and voting procedures are uniform throughout the state. Poll workers who are trained

⁵⁰ Clifton Testimony, *Meeting Transcript III*, p. 225 lines 2-10

⁵¹ Gordon Testimony, *Meeting Transcript I*, p. 7.

⁵² Clifton Testimony, *Meeting Transcript III*, p. 225 lines 13-14.

⁵³ Emlay Testimony, *Meeting Transcript II*, p. 18 lines 9-11.

⁵⁴ Bolling-Williams Testimony, *Meeting Transcript III*, p. 38 line 11 – p. 39 line 22

⁵⁵ Fraga Testimony, *Meeting Transcript III*, p. 155 lines 8-10 Freeman-Wilson Testimony, *Meeting Transcript IV*, p. 4 line 5-15 and p. 5 lines 20-24 Harper Testimony, *Meeting Transcript III*, p. 14 lines 17-24 Bolling-Williams Testimony, *Meeting Transcript IV*, p. 25 lines 23-26 Chicago Lawyers' Committee Statement at 8-9.

⁵⁶ Bolling-Williams Testimony, *Meeting Transcript III*, p. 38 lines 12-23.

⁵⁷ Freeman-Wilson Testimony, *Meeting Transcript IV*, p. 3 lines 28-39.

⁵⁸ Newsome Testimony, *Meeting Transcript IV*, p. 7 lines 21-26

incorrectly may unintentionally disenfranchise voters by denying them access to the polls or not counting their ballot. Examples include:

- a. Accessible voting machines being in an open space depriving the voter of privacy.⁵⁹
 - b. Accessible voting machine not being plugged in or charged.⁶⁰
 - c. Poll workers not being trained on how to use the accessible voting machine.⁶¹
 - d. During the 2016 presidential election, many poll workers were instructed to prioritize counting or checking the absentee lists first before accommodating citizens who turned out to vote in person. At some polling places, this caused long wait times.⁶²
9. Redistricting in Indiana may have a negative impact on the integrity of elections by limiting the competitiveness of Indiana elections.⁶³
- a. Research indicates that the current redistricting plan in Indiana may create a bias that disproportionately benefits Republican candidates.⁶⁴ When districts are drawn to benefit a particular party, it undermines the democratic process, so much so, that some incumbents run unopposed.⁶⁵
 - b. While a local Elections Committee exists to oversee the redistricting process and ensure its fairness, the Committee has reportedly refused to review challenges to some of the proposed redistricting plans, undermining voters' faith in the electoral process.⁶⁶

⁵⁹ Adams Testimony, *Meeting Transcript III*, p. 69 lines 17-23

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Vaughn Testimony, *Meeting Transcript III*, p. 102 lines 2-3 Chicago Lawyers' Committee Statement at 3-4.

⁶³ Vaughn Testimony, *Meeting Transcript III*, p. 87 lines 6-11 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 245 lines 13-18 Maguire Testimony, *Meeting Transcript III*, p. 248 lines 15-25 Bolling-Williams Testimony, *Meeting Transcript IV*, p. 25 lines 13-15 Locker Testimony, *Meeting Transcript II*, p. 8 lines 18-24 Robinson-Ungar Testimony, *Meeting Transcript II*, p. 10 line 23 – p. 11 line 2 Professor Justin Levitt, Associate Dean for Research, Loyola Law School, Written Statement for the Indiana Advisory Committee to the U.S. Commission on Civil Rights, Apr. 30, 2018 (*hereinafter cited as Levitt Statement*) at 4.

⁶⁴ Vaughn Testimony, *Meeting Transcript III*, p. 87 lines 6-14 Groth Testimony, *Meeting Transcript III*, p. 20 lines 6-11 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 245 lines 3-6.

⁶⁵ Celestino-Horseman Testimony, *Meeting Transcript III*, p. 245 lines 2-6 Maguire Testimony, *Meeting Transcript III*, p. 249 lines 9-13 Levitt Statement I Justin Levitt, testimony, *Hearing Before the Census Data Advisory Committee*, Sept. 29, 2009, p. 2-3 (*hereinafter cited as Census Hearing*) Levitt Statement at 4.

⁶⁶ Hoyer Testimony, *Meeting Transcript III*, pp. 79 lines 15-20, 119 line 17 – 120 line 5.

- c. Panelists emphasized that as the next census approaches, it is important for the State of Indiana to get an accurate count of the size and location of minorities and minority communities to ensure fair representation.⁶⁷
 - d. Reforming the redistricting process has never occurred through the legislative process and has only been successful through the ballot initiative.⁶⁸
10. Panelists emphasized the importance of being able to verify the accuracy of election outcomes and to audit election records.
- a. In February 2018, the Center for American Progress released a report⁶⁹ on election security in all 50 states; Indiana received an “F.” The justifications given for the failing letter grade included that “the voting machines do not provide a paper record and fail to mandate robust post-election audits that test accuracy of election outcomes.”⁷⁰
 - b. The Indiana Secretary of State’s Office is currently piloting a multifactor authentication mechanism as advised by the FBI and Department of Homeland Security to prevent vulnerabilities in the future.⁷¹ The state also maintains a decentralized statewide system for tabulating ballots and machines are not connected to each other or the Internet.⁷²
11. The Indiana State Police investigation of the Indiana Voter Registration Project (IVRP), an organization that initiated a registration drive in Indiana in 2016 targeting underrepresented African American communities, may have delayed or hampered legitimate voter registration efforts and incited fear among voters.⁷³
- a. The Committee heard testimony from an individual who tried to register to vote at the Genesis Center in Gary, IN shortly before registration forms were seized in Marion and Lake County.⁷⁴ By the time she checked to see if her registration was

⁶⁷ Monroy Testimony, *Meeting Transcript III*, p. 97 lines 4-6.

⁶⁸ Vaughn Testimony, *Meeting Transcript III*, p. 122 lines 5-10.

⁶⁹ Danielle Root, Liz Kennedy, Michael Sozan, Jerry Parshall, “Election Security in all 50 States,” *Center for American Progress*, February 12, 2018, <https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/> (last accessed June 26, 2018)

⁷⁰ Locker Testimony, *Meeting Transcript II*, p. 9 line 26 – p. 10 line 3

⁷¹ Clifton Testimony, *Meeting Transcript III*, p. 221 lines 9-18.

⁷² *Ibid.* p. 220 lines 7-10.

⁷³ Chicago Lawyers’ Committee Statement at 4-6; Pema Levy, “Pence’s Perch atop Trump’s Voter Fraud Commission at Suppression Efforts,” *Mother Jones*, May 12, 2017, <https://www.motherjones.com/politics/2017/05/how-will-trump-turn-voter-fraud-accusations-voter-suppression/>. (last accessed June 27, 2018). *Note*: In response to this finding, on April 3, 2018, the Indiana Secretary of State’s Office submitted comment claiming that the IVRP investigation resulted in discovery of multiple suspicious registration applications and related arrests.

⁷⁴ Spange Testimony, *Meeting Transcript IV*, p. 27 lines 1-26.

processed and learned it was not, it was too late to register and she was unable to vote in the 2016 presidential election.⁷⁵

12. Access to Information

- a. Education level is an important characteristic in terms of predicting voter turnout.⁷⁶ College youth are much more likely to be registered to vote than non-college youth, thus, there is a need to reach people in high school.⁷⁷
 - b. While Indiana does have a civic education requirement for high school graduation, civics is not subject to a statewide assessment, nor is there a standard curriculum.⁷⁸ Thus, while many schools take initiative to include civic education on their own, there is a lack of uniformity.⁷⁹ Children who do not have access to high quality civic education programs that have been tested and proven effective may not have the same likelihood of political participation.⁸⁰
 - c. Research suggests that minority groups including first- or second generation immigrants, Latinos, African American students, and students of low socioeconomic status may benefit most from high quality civics education.⁸¹
 - d. Research suggests that some communities, particularly immigrant communities, are most likely to participate in the electoral process when they feel both a potential political threat and a sense of possible policy opportunity that can improve the status quo of their community.⁸²
13. Classroom based registration drives are an effective way to get young people registered to vote especially because the registration happens in-person.⁸³ Voter mobilization literature finds that the more personalized the approach, the more effective it is to get people to the polls; this applies to seniors in high school, college students, or other demographics.⁸⁴

⁷⁵ Ibid.

⁷⁶ Bennion Testimony, *Meeting Transcript I*, p. 21 lines 7-8.

⁷⁷ *Ibid.* p. 14 lines 13-23.

⁷⁸ Indiana Department of Education, "Civics Education," <https://www.doe.in.gov/standards/civics-education>. (last accessed June 25, 2018); Indiana Kids' Election, "Curriculum Overview," <http://inkidselection.com/about-the-indiana-kids-election/curriculum-overview/> (last accessed June 25, 2018).

⁷⁹ Bennion Testimony, *Meeting Transcript I*, p. 15 lines 5-21 Campbell Testimony, *Meeting Transcript III*, p. 190 lines 10-14.

⁸⁰ Bennion Testimony, *Meeting Transcript I*, p. 15 lines 5-21.

⁸¹ Campbell Testimony, *Meeting Transcript III*, pp. 187 lines 1-3, 190 lines 1, 18-20.

⁸² Cruz-Nichols Testimony, *Meeting Transcript III*, pp. 172 lines 15-18, 173 lines 4-17.

⁸³ Bennion Testimony, *Meeting Transcript I*, p. 8-9.

⁸⁴ Bennion Testimony, *Meeting Transcript I*, p. 10 Hollis Testimony, *Meeting Transcript III*, pp. 235 lines 20-25, 236 lines 1-4

Recommendations:

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁸⁵ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Indiana Advisory Committee submits the following recommendations to the Commission. The Committee recommends that the U.S. Commission on Civil Rights consider these findings and recommendations in their 2018 Statutory Enforcement Report to Congress and the President.

1. As a part of their 2018 statutory enforcement report on voting rights, the U.S. Commission on Civil Rights should:
 - a. Conduct an analysis of the accuracy of the interstate “Crosscheck” Program currently used by the Indiana Secretary of State to identify voters who may be registered in more than one state. The analysis should also seek to understand whether minority voters are disproportionately falsely identified as being double-registered in the system.
 - b. Review all findings and recommendations contained within this report.
 - c. Further investigate areas of concern within their jurisdiction and take appropriate action to address them.
2. The U.S. Commission on Civil Rights should issue the following formal recommendation to Indiana’s Secretary of State:
 - a. Suspend use of the Crosscheck Program until a more accurate method for identifying voters registered in multiple locations is identified.
 - b. Collaborate with the Indiana Department of Corrections to develop a process by which eligible inmates can register to vote and cast a ballot while incarcerated.
 - c. Encourage County Election Boards throughout the state to increase minority language access at the polls where significant numbers of bilingual or non-English speaking voters reside, even if the population does not yet meet the minimum threshold to require language access under Section 203 of the Voting Rights Act.
3. The U.S. Commission on Civil Rights should issue a formal recommendation to the Indiana Department of Corrections that the Department collaborate with the Indiana Secretary of State to develop a process by which eligible inmates can register to vote and cast a ballot while incarcerated.
4. The U.S. Commission on Civil Rights should issue the following formal recommendation to the Indiana Department of Education:

⁸⁵ 45 C.F.R. § 703.2.(a)

- a. The department should identify and implement civic education standards regarding voting and the electoral process uniformly in public education systems throughout the state.
5. The U.S. Commission on Civil Rights should issue the following formal recommendation to the Indiana Legislature:
 - a. The legislature should establish a bi-partisan committee to draw redistricting lines to ensure a more fair and democratic voting process.
 - b. In the redistricting process, the legislature should count incarcerated individuals at their last known address, rather than in the jurisdiction where they are temporarily, involuntarily confined.
 - c. The legislature should expand voter identification options to include non-government issued IDs. Examples of acceptable identification may include student ID, work ID, or ID from a different state.
 - d. The legislature should expand absentee voting to allow all registered voters to vote by mail if they choose.
 - e. The legislature should extend voting hours until 7 PM to allow more flexibility for eligible voters with more stringent schedules.
6. The U.S. Commission on Civil Rights should issue a formal recommendation to the U.S. Census Bureau to remove all questions regarding citizenship status on the decennial Census until rigorous testing is conducted to determine the impact of such a change.
7. The U.S. Commission on Civil Rights should issue a letter to the Indiana Governor, the Indiana Legislature, and the Indiana Secretary of State's Office urging them to:
 - a. Review the findings and recommendations contained within this report.
 - b. Further investigate areas of concern within their jurisdiction and take appropriate action to address them.

APPENDIX

A. Hearing Transcripts

1. Transcript I: February 12, 2018 Public Hearing (web-based)
2. Transcript II: February 17, 2018 Evansville, IN Community Forum
3. Transcript III: March 2, 2018 Public Hearing, Indianapolis, IN
4. Transcript IV: March 31, 2018 Gary, IN Community Forum

B. Written Testimony

1. Joe Micon, Executive Director, Lafayette Urban Ministry
2. Ami Gandhi and Matthew J. Owens, Chicago Lawyer's Committee for
Civil Rights
3. Jerold Bonnett, General Counsel, Office of the Indiana Secretary of State
4. Kyle Hupfer, Chairman, Indian Republican Party
5. Justin Levitt, Professor of Law, Loyola Law School Los Angeles
6. John Coco, Social Worker, IN Citizen

Voting Rights in Indiana: February 12, 2018
Indiana Advisory Committee to the U.S. Commission on Civil Rights

1 Speaker 1: Please standby. We're about to begin. Good day everyone, and welcome to the
2 US Commission on Civil Rights Indiana Advisory Committee conference call.
3 Today's conference is being recorded. At this time, I'd like to turn the
4 conference over to Ms. Diane Clements-Boyd. Please go ahead.

5 Diane C-B: Thank you, and good afternoon. This meeting of the Indiana Advisory
6 Committee to the US Commission on Civil Rights shall come to order. For the
7 benefit of those in the audience, I shall introduce my colleagues and myself. My
8 name is Diane Clements-Boyd, and I have the privilege of serving as the
9 chairperson of the Indiana Advisory Committee. The following members of the
10 committee also on this call are James Haigh, Billy McGill, Patti O'Callaghan,
11 Ernesto Palomo, and Ellen Wu. Also present are Melissa Wojnaroski, civil rights
12 analyst, and Nicole Winston, civil rights intern.

13 The US Commission on Civil Rights is an independent bipartisan agency of the
14 federal government charged with studying discrimination or denial of equal
15 protection of the law because of race, color, religion, sex, age, disability, or
16 national origin, or in the administration of justice. In each of the 50 states and
17 the District of Columbia an Advisory Committee to the Commission has been
18 established, and they are made up of responsible persons who serve without
19 compensation to advise the commission on relevant information concerning
20 their respective states.

21 Today, our purpose is to hear testimony regarding voting rights in Indiana in an
22 effort to discern if there are discriminatory barriers to voting [inaudible
23 00:02:07]. If speakers begin to veer away from the civil rights questions at hand
24 to discuss possibly important but unrelated topics, I will interrupt and ask them
25 to refrain from doing so. At the outset, I want to remind everyone that this
26 meeting is being recorded and will be transcribed for the public record. I also
27 wish to remind everyone that today's meeting is part one of a three part series
28 the committee will hear on this topic.

29 On Saturday, February 17th, the committee will hold an open community forum
30 to hear from any individual who wishes to share his or her experiences voting in
31 Indiana. This meeting will take place at the Evansville Central Library, 200 South
32 East Martin Luther King Junior Boulevard, Evansville Indiana, 47713. On Friday,
33 March 2nd, the committee has arranged to hear additional panel testimony, and
34 will also accommodate public comment, at Ivy Tech Community College Event
35 Center, 2820 North Meridian Street, Indianapolis, Indiana, 46208. We hope that
36 you will join us for one or both of these meetings as well. We are fortunate and
37 thankful to have such balanced and diverse panelists to share with us at both
38 meetings.

39 I would also like to present the ground rules for today's meeting. This is a public
40 meeting, open to the media, and the general public. We have a very full
41 schedule of people who will be making presentations within the limited time

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1 available. The time allotted for each presentation must be strictly adhered to.
2 This will include a presentation by each panelist of approximately 15 minutes.
3 After all the panelists have concluded their statements, the committee will
4 engage them in questions and answers.

5 To accommodate persons who are not on the agenda but wish to make
6 statements, we have scheduled an open session today at 4:15 Eastern Time. At
7 the appropriate time, when indicated by the operator to do so, anyone wishing
8 to make a statement should press *1 on their phone to request that their line
9 be unmuted. In addition, written statements may be submitted by mail to the
10 US Commission on Civil Rights at 55 West Monroe Street, Suite 410, Chicago,
11 Illinois, 60603, or by email to mwrintern2@usccr.gov. Please call area code
12 312-353-8311 for more information.

13 Though some of the statements made today may be controversial, we want to
14 ensure that all invited guests do not defame or degrade any person or any
15 organization. As the chair, I reserve the privilege to cut short any statements
16 that defame, degrade, or do not pertain to the issue at hand. In order to ensure
17 that all aspects of these issues are represented, knowledgeable persons with a
18 wide variety of experience and viewpoints have been invited to share
19 information with us. Any person or any organization that feels defamed or
20 degraded by statements made in these proceedings may provide a public
21 response during the open comment period. Alternately, such persons or
22 organizations can file written statements for inclusion in the proceedings. I urge
23 all persons making presentations to be judicious in their statements. The
24 Advisory Committee does appreciate the willingness of all participants to share
25 their views and experiences with this committee.

26 Finally, the rules for the question and answer portion of the panel discussions
27 are as follows. The committee may ask questions of the entire panel or
28 individual members of the panel after all panelists have had the opportunity to
29 provide their prepared statements. Advisory Committee members must be
30 recognized by the chair before asking any questions of the participants. In
31 addition, because of the large number of members and short amount of time,
32 each committee member will be limited to one question plus a follow-up. When
33 five minutes are left in the session, the chair will announce that the last
34 question may be asked.

35 Now, so please allow me to introduce the panel. We have with us today Ms.
36 Arusha Gordon, counsel with the Voting Rights Project of the Lawyers'
37 Committee for Civil Rights Under Law, and Dr. Elizabeth A. Bennion, Professor of
38 Political Science at Indiana University, South Bend. Now we will hear from Ms.
39 Arusha Gordon. Ms. Gordon, welcome, and please proceed when you are ready.

40 Arusha Gordon: Thank you. My name is Arusha Gordon, and as mentioned, I'm counsel at the
41 Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law. The
42 Lawyers' Committee for Civil Rights Under Law is a national civil rights

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1 organization founded at the request of President John F. Kennedy in 1963 to
2 help bring the private bar and private attorneys into the fight for civil rights.
3 Today, we work in a variety of areas. First and foremost, we work in voting
4 rights. We also work on education issues, economic justice, criminal justice,
5 housing issues, and hate crimes.

6 The Voting Project of the Lawyers' Committee for Civil Rights Under Law uses
7 both litigation and programmatic efforts in the fight for voting rights. This slide
8 just shows a quick map of some of the litigation we've filed in recent years,
9 although it's not quite up to date, but just to give a quick overview of where
10 we've been working and the kinds of cases we bring.

11 We also help operate Election Protection, which is the nation's largest
12 nonpartisan voter protection coalition. Election Protection has two main goals.
13 The first is voter assistance. Under that bucket, we run three national hotlines;
14 866-OUR-VOTE, which takes calls in English, as well as two other call hotlines,
15 which accept calls in Spanish and then Asian languages. We also run field
16 programs where we send trained volunteers out to polling places on election
17 day to monitor, and observe, and help voters. We also help engage in voter
18 education.

19 In addition, we work on systemic reform and addressing more systemic issues.
20 Part of what we do is we collect the data from our hotlines and our field
21 programs, and that allows us to identify trends in the data, either happening at
22 the local level ... for instance, if a bunch of polling places are having the same
23 issue ... or state wide, or even nationally. That also means that we can engage in
24 advocacy with grassroots partners on the ground.

25 For instance, in 2016 we learned about the raid of a voter registration
26 organization in Indiana prior to the election, and the voter registration
27 organization predominately helped register African American residents. So, we
28 sent a letter to the Secretary of State asking her to take steps to ensure that
29 eligible voters who signed up through the voter registration drives orgainized by
30 that organization, and who were in fact eligible, would not be disenfranchised.
31 Approximately 4,500 residents, mostly African Americans, were potentially
32 impacted by that raid.

33 Next, I wanted to just provide a little bit of an overview of the types of things we
34 hear from Indiana voters. Most of this focuses on the data we collected after
35 the ... in the lead up, and during the 2016 election. This really is taking a look at
36 the database where we collect all our hotline calls, and our reports to our
37 polling place volunteers. The first bucket of issues we really see are registration
38 issues. This really does include a large bulk of the calls we get. Most of our calls
39 are to verify voter registration information. People want to make sure they are
40 still registered. They want to check their polling place. They want to make sure
41 that if they moved, their registration has been updated, et cetera. That's one big
42 bucket of calls we get.

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1 This slide really just shows a few examples from tickets from our database of
2 calls in 2016. This is just kind of a sample of the tickets that are entered by our
3 trained volunteers. For instance, we have voters trying to register to vote in
4 Indiana, but using a New Jersey driver's license, and they're confused about how
5 to complete the registration process. Similarly, someone whose daughter
6 doesn't have a driver's license and is having a hard time submitting the voter
7 registration form, or questions from someone who has moved and isn't sure
8 where to vote.

9 We've also received questions about voter ID issues in Indiana. As folks might be
10 aware, there are four basic requirements under Indiana's photo ID law. In order
11 to vote in Indiana, a regular ballot, your photo ID must: one, display your photo;
12 two, have your name, and the name must conform to your voter registration
13 record; three, it needs to have an expiration date and either be current or have
14 expired sometime after the date of the last general election; and finally, it needs
15 to be issued by the state of Indiana or by the US government.

16 Voters are sometimes confused by those requirements, and give us a call. One
17 question we get is if they have out-of-state IDs, and if they can still vote. Of
18 course, they can't unfortunately. They need to have an ID issued by Indiana or
19 by the US. For instance, a student at a private college in Indiana would not be
20 able to use that ID, because it's a private college, not an Indiana state school.

21 This is just an example of some tickets concerning ID requirements. One person
22 was turned away because he had the incorrect the address on his driver's
23 license, but he was eventually able to vote. What's interesting there is the
24 criteria in Indiana don't actually indicate the address component needing to
25 match, so that's a ticket would probably need to have some additional research.
26 And another voter, who's registered, but doesn't have ID and needs help
27 obtaining ID.

28 Additional issues we see really run a pretty wide range. There's a bunch of
29 issues we'll hear from voters having difficulties accessing the ballot in different
30 ways. A large portion of our calls in 2016 were about early voting, and how to
31 vote before election day ... voters concerned that they would be out of town
32 traveling, and wanted to know where, and when, and how to vote. We also had
33 questions about absentee ballots. A number of callers called us in 2016 because
34 they had requested an absentee ballot but had not received, or had received it
35 right before the deadline, and didn't think they were going to have time to get it
36 back.

37 We also have some voters call in with accessibility issues. This ticket notes that
38 there was an older voter who was handicapped, can't drive to the polling place,
39 is 90% blind and would like to vote absentee, and needs help doing that. We'll
40 also occasionally get calls concerning felony disenfranchisement. This ticket
41 indicates that the caller wanted to know if he could vote, even though he has a
42 conviction. There's also frequently issues at polling places that get reported to

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1 our hotline. Issues of intimidation might include false information, or misleading
2 information. For instance, this caller noted that he had received a text message
3 that the poll is only open from 5:30 to 6:30 PM, which is of course incorrect.

4 We also get some calls concerning the behavior of poll workers, which might be
5 unintentional, or just due to poor training. Sometimes it could be intentional,
6 which raises additional red flags. Two examples of that is one caller called in to
7 report that over 100 voters were turned away and not allowed to vote, even
8 though they were in line by 6 PM. Voters who are in line by the time the polls
9 close are of course allowed to vote. Or another caller reported that when they
10 went to the polls at 6:30 in the morning, the poll worker was telling voters not
11 to quote "waste their time. Just vote a straight ticket," end quote, which of
12 course is inappropriate behavior. In those instances, our trained volunteers
13 would flag those tickets, and we would work with our grassroots partners to
14 report this, and to get the poll worker informed of what they can and cannot be
15 telling voters, and kind of the correct behavior.

16 We also occasionally get calls around broken equipment. In Indiana in 2016, we
17 had a few calls reporting that computers were down at their location ...
18 electronic voting machines, and so that they had to vote by paper ballot, and
19 some voters kind of concerned about whether that would mean ... if their paper
20 ballot would still be counted. Finally, we get calls about long lines. This caller
21 was calling to report a long line at an early voting [inaudible 00:17:29].

22 This chart just gives a breakdown of the different types of issues reported to our
23 hotline. The numbers here are not entirely accurate. As I believe, this only
24 shows one issue flagged kind of at the top of the ticket, and our tickets of course
25 can have more than one issue if someone calls in with both a question about
26 where to register to vote ... sorry, how to register to vote, and also what ID they
27 need to vote on election day. I just wanted to share this though, to give a sense
28 of the fact that really most of our calls are about voter registration, polling
29 places, and then the others kind of break down to ballot issues, which can really
30 be pretty broad, as well as general inquiries.

31 I'll come back to that. Finally, I wanted to just discuss some of the issues
32 currently in Indiana around voting rights. The first one is voter purges. The ACLU
33 filed a lawsuit on behalf of Common Cause Indiana just a few months ago
34 challenging an Indiana law that permits local election authorities to immediately
35 purge the registration of Indiana voters without any kind of written
36 confirmation from the voter, or any kind of notice, or any kind of waiting period,
37 but simply based on a match in the Interstate Voter Registration Crosscheck
38 Program, frequently just known as Crosscheck.

39 Crosscheck is a program administered by the Kansas Secretary of State, Kris
40 Kobach, and has frequently been criticized for being inaccurate and unreliable.
41 One study by a team of researchers at Stanford and Harvard found that
42 Crosscheck incorrectly flags people as potential double voters more than 99% of

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1 the time. The suit filed by the ACLU charges that Indiana's purge procedures
2 based on Crosscheck violate the national voter registration act, which mandates
3 very strict notice and waiting period requirements before a state can remove a
4 voter based on changed residence. There's these checks in place to make sure
5 that a voter is given the opportunity to respond before they are purged from
6 the voter registration rolls.

7 We've also seen a number of issues concerning cuts to polling places and early
8 vote sites. Two lawsuits were filed last year concerning this issue. In May of
9 2017, Common Cause Indiana and two branches of the NAACP filed a federal
10 lawsuit to challenge a law that governs early voting in Marion County. After
11 President Barack Obama narrowly carried Indiana in 2008, due in ... some would
12 argue ... to high African American turnout in the Indianapolis Marion County
13 area, early vote sites in Indianapolis were cut. Between 2000 and 2016, officials
14 reduced the number of early voting stations in Marion County from three to
15 one, which resulted in a 26% decline in absentee votes in the 2016 presidential
16 election. I should also note that early votes are cast via absentee ballots in
17 Indiana.

18 At the same time, officials added two early voting stations to the neighboring
19 Hamilton County, which is populated primarily by White Republicans. Hamilton
20 County saw a 53% increase in absentee voting in 2016. As a result, there is now
21 one early voting station for approximately every 100,000 voters in Hamilton
22 County, but only 1 for every 700,000 voters in Marion County. However, just
23 very recently, last month, the Marion County election board voted to approve a
24 transition to vote centers. Vote centers will allow voters to cast their ballot at
25 any open polling location. The plan is to turn all 300 current polling locations
26 into vote centers on election day in the county. That means the move will do
27 away with the precinct model of voting, and allow voters to go to any polling
28 location, arguably making it more convenient. Several of those centers will be
29 open for early voting as well.

30 There's a number of pros and cons to vote centers. On the positive side, it
31 means citizens of course have more flexibility. They can vote near home, but if
32 they can't make it to the voting center closest to their home, they can also step
33 out from work or school, and just go to the nearest place. They don't have to
34 rush to get back to their precinct or designated polling place. Also, with fewer
35 locations to staff election day expenses can be reduced, and because of the
36 convenience turnout might increase. However, vote centers can also cause
37 confusion if the switch isn't well publicized and explained to the public. The
38 centers also change the traditional civic experience of voting with neighbors at a
39 local school, church, or other polling place.

40 Also last year, in August of 2017, a law was passed requiring Lake County, which
41 is home to the second largest African American population and the largest
42 Latino population in the state, to consolidate polling locations that had 600 or
43 fewer active voters assigned to that location as of November 2016. Senate Bill

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1 220 applied only to Lake County, and would not require any other county in the
2 state to make such provisions. Of the 522 election precincts in the county, more
3 than half are at risk of consolidation. The Indiana State Conference of the
4 NAACP filed a lawsuit against the state arguing that the law violated Section 2 of
5 the Voting Rights Act, which requires equal opportunities for voters, as well as
6 the 14th Amendment to the US Constitution. Both of those cases are ongoing.

7 Finally, one of the hot issues of course in today's conversations about voting
8 rights involves photo ID. Indiana's photo ID law is one of the most stringent laws
9 in the country, and has been in place for some years now. There's been some
10 debate as to the impact of that law. Some researchers have found quote "strong
11 and statistical differences with respect to access to valid photo identification
12 that significantly reduces the opportunity to vote for minority, low income, less
13 educated, and the youngest and oldest residents of Indiana," end quote.
14 Researchers have also found that among eligible voters, 83.2% of Whites in
15 Indiana have the correct credentials to vote compared to just 71.7% of Blacks in
16 Indiana, which is a statistically significant difference.

17 At the same time, other researchers, including Professor Michael Pitts at the
18 University of Indiana have found that Indiana's photo identification law has a
19 relative small overall actual disenfranchising impact on the electorate. But, to
20 dig into this deeper requires a look at exactly what those researchers were
21 examining. For instance, Professor Pitts at the University of Indiana only looked
22 at provisional ballots that were ... at voters who were forced to use a provisional
23 ballot because they didn't have photo ID. It didn't include voters who didn't
24 even try to go to the polls because they didn't have photo ID. So, I'll stop there,
25 and happy to take questions after.

26 Male: Thank you.

27 Diane C-B: Thank you so much, Ms. Gordon. We will now hear from Dr. Elizabeth Bennion.
28 Dr. Bennion, thank you for being here today. When you're ready, please
29 proceed.

30 Dr. Bennion: Thank you very much. It's my pleasure to speak with you today. I am Elizabeth
31 Bennion. I'm a professor of political science at Indiana University, South Bend,
32 where I teach American politics, conduct research on voter registration and
33 mobilization techniques using randomized field experiments, and am engaged in
34 service for our campus, university, and community. Two of the primary service
35 opportunities that I have are as campus director for our American Democracy
36 Project, which is a nonpartisan initiative designed to equip college students with
37 the civic knowledge, skills, and values they need to become engaged citizens
38 and make a meaningful difference in their communities, and also I serve as
39 director of voter services and education for the local League of Women Voters,
40 which is a nonpartisan organization that encourages and formed an active
41 participation in our democracy.

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1 What I want to do is talk just a little bit about what we know from the political
2 science literature, what we know from my own research, and then the kinds of
3 things that we are doing through the American Democracy Project and the
4 League of Women Voters, and what that might mean for the rest of the state,
5 and what challenges we sometimes face in trying to promote active citizenship
6 and electoral engagement across the political spectrum and also across different
7 demographic groups in the state of Indiana. We know, for example, that
8 requiring citizens to register to vote has a negative effect on turnout rates, and
9 that reforms in the voter registration process can lower this barrier. They can of
10 course either make it more difficult, or easier to register, depending on the
11 reform.

12 Civic leaders for many, many decades have attempted to reform the voter
13 registration process to make it less costly with the expectation that more
14 convenience will result in higher registration, and as a result, higher turnout as
15 well. Some of the reforms that we have good evidence actually work include
16 election day registration, which we do not yet have in Indiana, where you can
17 show up at the polls with your proof of identification and proof of residency and
18 register and vote in the same day. Mail based by registration is a very small but
19 positive effect. We do allow people to register in person, by mail, or online in
20 Indiana. Online registration is something that we're beginning to study in a
21 rigorous way. Initial analyses do indicate that it increases registration rates.

22 The latest reform of automatic voter registration is one that would place any
23 citizen who has obtained, renewed, or updated a driver's license or state ID
24 onto the voter rolls unless that voter explicitly opts out of being registered to
25 vote. We would expect that that would increase both registration rates and
26 turnout, because in general programs that somebody has to opt out of, rather
27 than opt in to, have much higher participation rates. In fact, initial assessments
28 of those early automatic voter registration programs find increases in both
29 registration and turnout, and so that might be something for Indiana to consider
30 in the future.

31 A couple of studies that I've done because I try to link my research to my work
32 to educate and engage young people in the politic process with the hope that
33 they will then become lifelong voters, is to think about how colleges and
34 universities can get young people involved in the process. The first step there,
35 because we do require preregistration a month in advance, is to get them
36 registered. One thing that we know is that classroom based registration drives
37 work. This is sitting down with students face to face, talking to them about the
38 importance of registering and voting, and actually having them fill out those
39 forms, turning in those forms for them.

40 This study was 16 campuses with over 1,000 classrooms and about 23,000
41 students, and we found that there was a six percentage point increase in
42 registrations and a good number of those students, about 40%, actually
43 translated that registration presentation into a vote. This is randomly comparing

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1 the control group to the treatment group, and also then looking at their actual
2 voting behavior. We do see that that face to face, personalized approach would
3 be worth the 10 minutes of class time per year that it takes.

4 Email outreach is another approach. It's easier than classroom efforts; however,
5 we see that it is not terribly effective. It will allow a campus to comply with the
6 legal requirement to make registration available to all students who are
7 enrolled and seeking a degree at the institution, but a field experiment that
8 David Nickerson and I conducted, again using randomized treatment with a
9 student directory, and then comparing the group that received these emails
10 linking them to a PDF downloadable mail it in form and those who did not
11 receive those email reminders, found no statistically significant difference. This
12 was a large population of about 260,000 students.

13 So we know that really these face to face approaches work best, and we
14 hypothesize that this would be true whether you're talking about seniors in high
15 school, or college students, or other demographic groups. It's consistent with
16 the voter mobilization literature, which finds that the more personalized the
17 approach you take, the more it works to actually get people to the polls. It's
18 important as we think about different demographic groups, to think about
19 whether or not our outreach and efforts to educate folks about what it takes to
20 register, to educate people about the correct election day, about
21 IndianaVoters.com, and how they find out the answers to those questions that
22 people were calling Arusha and her colleagues to ask, that everybody actually
23 has access to this information, and to these face to face educational approaches
24 in our K-12 system, as well as in higher education.

25 One of the things we wanted to find out was whether we could make email
26 more useful if we linked students directly to the online registration system,
27 because Indiana did adopt that system. There was an opportunity to do a
28 follow-up study. This was in 2010. This time we took a third of the students did
29 not receive these particular emails. There could still be registration tables on
30 their campus, and other registration outreach, but this is the effect of those
31 emails alone ... a PDF form, again, the downloadable, and then a link to the
32 online registration system. Here with about 200,000 students in the study, we
33 found a small but positive effect.

34 If we look only at those students who were not registered before the
35 experiment, we find a 1.27 percentage point increase, so that's a pretty small ...
36 about a third of those folks then actually translated that into an actual vote. So
37 you can see there every 10,000 students, that would only be about 44 votes, but
38 it's cheap, virtually free, to do. It won't hurt, but the big message is that still face
39 to face outreach of educators, but also of civic groups is incredibly important in
40 getting the word out, and making sure that all populations understand that they
41 need to be registered in advance if they are not to lose their access to their
42 franchise.

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1 Our overall vision is a politics 365 vision. This term comes from a chapter in a
2 book that I recently co-edited. This chapter is by Nancy Thomas and Margaret
3 Brower and they look at college campuses that are positive outliers, who vote at
4 rates 5 to 20% higher than predicted based on their demographics. What they
5 find is that it's not just what you do immediately before or during an election
6 season, but the people who vote at the highest rates, the campuses that vote at
7 the highest rates across the board, across demographic groups are campuses
8 that really are having pervasive political learning and engagement being
9 practiced and modeled throughout the year. So peer to peer relationships, peer
10 to faculty relationships, are trusting, they're supportive. Diversity is seen as a
11 valued educational asset with all people contributing their background
12 experiences and life experiences as part of what they discuss and bring to the
13 classroom, with high numbers of students doing study abroad and getting
14 financial support to do that. Pervasive political discussions that are respectful
15 and evidenced based, and open classrooms.

16 This is something we also find in the civic education literature for the K-12
17 education, where we find studies by Diana Hess at Georgetown show that the
18 type of civic education experiences students have in K-12 education, that some
19 are very, very successful in promoting life long civic and political participation. In
20 particular, an open classroom, where a teacher encourages students to discuss
21 and debate controversial ideas, and to hear from everybody, and to practice
22 active listening skills. So this is something that we can promote. There are
23 legislators like Republican Timothy Wesco from Osceola, who recommended a
24 high school requirement of a civics test. And evidence from David Campbell at
25 Notre Dame actually suggests that a high stakes civics test does result in
26 increased civic knowledge, particularly for Latino students and other groups that
27 may not have had as much exposure to that knowledge in the home. So those
28 are other kinds of things to think about what state education policy should look
29 like to make sure that everybody has an opportunity for that civic knowledge.

30 The book I mentioned, and a follow-up book are both freely available online.
31 I've included the links here. There's no charge, so the public can download any
32 of those chapters including some of the research that was mentioned earlier.
33 With League of Women Voters then, we try to think about these lessons, and
34 participate in the high school voter registration project. This is something that
35 can be scaled up. The League has registered about 4,000 this way, by going into
36 the classroom. Also, naturalization ceremonies in South Bend courthouse ... the
37 League has registered approximately, the local League, about 1,000 people who
38 are new citizens and eager to do their civic duty. The League provides
39 nonpartisan voter guides where the candidates themselves enter their
40 responses to a series of policy questions, so that voters can compare them side
41 by side. We also host candidate debates and forums for local, state, and
42 national offices, and lunch with the League, so that people are talking about
43 political ideas and policy issues, and can hear diverse viewpoints once every
44 month. Again, not making it only about election season.

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1 The American Democracy Project is similar. We work on campus and we partner
2 with the League and with other organizations to host debates and debate watch
3 parties for offices like governor, us senate, and president. We host nonpartisan
4 voter registration drives and information tables, answering a lot of those
5 questions as the previous presenter noted folks are calling in about frequently.
6 We also think about that pervasiveness of these political discussions, and have
7 regular pizza and politics series, where we might discuss immigration, gun
8 control, a wide variety of issues ... gerrymandering, and encourage people, and
9 set the ground rules for respectful dialogue and discussion. This is something
10 we'll need to encourage people throughout the state, and throughout the
11 country to practice if we're going to improve the tenor and tone of our politics.

12 Finally, we host civic leadership academies. The topics of these academies,
13 which I think could serve as a model for other places in the state, would be
14 determined by what the community is asking to know about. Here are some of
15 the topics we've covered. Recently, we had a six part series that looked at
16 critical thinking, and how to spot fake news, how to contact elected officials, the
17 legislative process, protesting, and then solving community problems using
18 [inaudible 00:40:58] step by step guide to civic leadership. Then, the community
19 said they wanted to know more about asset based community development,
20 and we developed a three part series.

21 The idea here is to bring in people from diverse groups, and this audience we
22 had members from the local Jewish Federation, from the local Islamic Society,
23 from local churches, as well as a number of activists who are not religiously
24 affiliated but are associated with the local Democratic, Republican, and
25 Libertarian parties, and folks who are unaffiliated and wanting to learn more.
26 The idea here is that they not only get engaged in the electoral process, but also
27 become community leaders. I mentioned that the League has registered about
28 5,000 voters. The American Democracy Project increased our turnout of our
29 students seven percentage points from 2012 to 2016.

30 A few barriers that we have encountered in Indiana while trying to do this work;
31 number one is the new state voter registration form. It was revised to include
32 the receipts that you give to the voter, and you then turn in one to the clerk or
33 the voter registration office, that has the volunteers name and address ...
34 detailed information about exactly who registered that person to vote. The
35 theory behind it is to prevent against any kind of disenfranchisement, not
36 returning the forms, throwing out forms of somebody who you think might vote
37 the wrong way, whatever wrong means. So I think that was the reason for those
38 changes, however, it really is not practical for third party groups, who will not
39 maintain control of their individual form the whole time. Also, if a mistake
40 happens in the voter registration office, and the form is somehow lost, that
41 person, that volunteer, is not threatened with jail time or fines. It really
42 discourages civic groups who are needed to go into communities and register
43 voters. If you're going to do it in a group setting, sometimes the paper forms still
44 do work better than online, and so that discourages registration.

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1 What the League has done, and other civic groups have done is to use the
2 federal form. But, the federal form also asks for information that we don't
3 collect, like your race and your party identification. The voter ID laws have
4 created an additional hurdle for some voters, because not only do we have to
5 get people registered, we also have to get them to the polls, but we also have to
6 see if they have the correct ID. We do have some of the same problems that the
7 previous presenter described in terms of out of state students who have moved
8 into housing, they want to register, they're going to be here at least four years.
9 They want to get engaged in local politics, and think of themselves as a full
10 member of the community, but they don't need to get a new driver's license
11 because they're not driving. They're living on campus. So unfortunately, they
12 have been disenfranchised. Student IDs, because we at Indiana University are a
13 public university, can be used for voter ID, but only if they have an expiration
14 date. That is something we worked to change, and now all Indiana University's
15 campuses for the first time have that expiration date, and so some students
16 may be voting with those IDs for the very first time this year.

17 The other thing that we hear a lot are misunderstandings about felony status.
18 People who've been told that they're permanently disenfranchised, and are
19 unaware that they can get back that right to integrate into society and to be a
20 voting member of society. That's been the biggest problem. We are very
21 thankful for IndianaVoters.com, because it has made it much, much easier to
22 tell people where to go to see when the election is happening, if they're eligible
23 to vote, check their registration status and their polling place, see who's on the
24 ballot. That's been a wonderful thing for voters, and for people doing this kind
25 of work to educate voters.

26 Some of the recommendations that we would have doing this work is to
27 maintain an enhanced IndianaVoters.com. It's great to have the information
28 that it has. Once you get down to trying to find your exact people on your ballot,
29 sometimes at the more local level, you get a list of everybody who is running for
30 a particular council, rather than your own members. The GPS could be
31 enhanced there with some additional work. Maintaining and enhancing online
32 voter registration ... would it be possible to use a social security number or
33 some other number? What we find is that people often do not know their
34 driver's license number, and if they don't have it with them, then that presents
35 a barrier to registering during registration drives. Reduced barriers to
36 registration and participation, such as same day registration or opt out
37 registration. Fighting interference of college student voting. We have less
38 problem with that now than we have in the past, but there are some
39 communities ... I meet a lot with other folks doing this kind of work nationwide,
40 where you have clerks who dump out whole batches of college student
41 registration forms, or invalidate them because a misunderstanding of what the
42 laws are. So that training is critical. Then, finally, just putting safeguards in place
43 for those who are mistakenly purged.

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1 I do not speak, I just want to say, for the state or national League. I know that
2 they have been involved in lawsuits regarding the purge, and the release of
3 voter information, and voter ID, and I would encourage you to contact them
4 directly if you have any questions about those particular issues. Thank you very
5 much, and I'm happy to take questions.

6 Diane C-B: Thank you so much Dr. Bennion. We will now entertain questions from the
7 committee. If there are any questions, if you could please identify yourself, and
8 please pose the question.

9 Patti O.: Diane ... Excuse me, Diane. This is Patti O'Callaghan, and I have a question for
10 Ms. Gordon. Could you hear me okay?

11 Diane C-B: Yes, we can hear you.

12 Patti O.: Okay, thank you.

13 Diane C-B: You may want to speak up just a little bit louder.

14 Patti O.: Yes. Sorry, yes. I got a frog in my voice.

15 Diane C-B: Sure. Thank you.

16 Patti O.: My question is about the opportunity to look again at the constitutionality of
17 Indiana's voter ID law, because when it was upheld before, part of the reasoning
18 was that we did not have a good example of someone actually being harmed. So
19 I was hoping that perhaps through the hotline, that they could have identified
20 some people that were actually harmed by the voter ID law, and now can re-
21 look at that constitutionality issue.

22 Arusha Gordon: Yeah, thank you for the question. I don't know the answer. I think it's a good
23 one, and you're quite correct. In the Supreme Court's decision in Crawford v.
24 Marion County Election Board, the court did find that the petitioners basically
25 failed to provide sufficient evidence to bring what is called a facial challenge to
26 the law, but that they could bring an as applied challenge, so exactly to your
27 point. I don't know the answer. I'm not closely enough involved with our work in
28 Indiana, or the attorneys who brought that case to know if they're looking at it,
29 but I think it's a good question.

30 Female: Thank you.

31 Chris Douglas: Well, this is Chris Douglas. I'll throw a question in. This is for Dr. Bennion. Thank
32 you for testifying. This question of how best to get folks to registered, and
33 voting, and participating has to be done in a context, I assume, that introduces
34 as little bias into that process as possible, which may not be so easy. So I think,
35 for instance, of who has regular and easy access to online registration, that

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1 having the potential of having bias involved. Some of us able to ... operating on
2 a computer throughout the day, it's very easy. Other people who's only access is
3 perhaps through their smart phone, if that.

4 Or automatic registration based on automobile licensing. That, of course, would
5 bias towards those who have their own transportation versus need public
6 transportation. Or on college campuses a bias towards those that are achieving
7 that level of education in contrast to those that perhaps haven't had the
8 opportunity ... that compared to doing something at the high school level,
9 where perhaps there's more uniformity and less opportunity for bias in the
10 system of registration. I wondered if you could comment at all on how these
11 different approaches could introduce bias in the outcome of the registered
12 population?

13 Dr. Bennion: Yes. So we know, for example, that college youth are already much more likely
14 to be registered and to vote than non-college youth. That speaks to the need to
15 reach people before they get to college. That is one of the reasons why the
16 League and other groups are trying to get into high schools and register people
17 in classroom presentations, so that whether or not they have the internet at
18 home, whether or not they're aware of online voter registration, they can get
19 registered in class at that time, and automatically then be eligible for the
20 franchise. One of the things that groups need to do then is to follow up, and
21 students can opt-in for a text message, for example, if they have a smartphone,
22 to get a reminder to vote before election day ... or an email, but very few use
23 those.

24 So reaching the students really does then become something that the teachers
25 need to be involved in. Many teachers are concerned about mentioning
26 anything regarding electoral behavior, because they are afraid of this issue of
27 bias, even if they're scrupulous about saying, "I don't care who you vote for, just
28 vote." Some are uncomfortable doing so, which makes the involvement of third
29 party groups who really are strictly unbiased in these presentations, whether or
30 not they do any kind of policy advocacy on the side, that their voter education
31 work is very unbiased, and they're giving just the information students need ... it
32 makes it incredibly important that we can reach the most diverse group of
33 students possible, because you're absolutely right. We know that a small
34 fraction of Indiana high school students will make it to college, and that those
35 who do are more likely than those who don't to be registered, and to cast their
36 ballots.

37 Chris Douglas: Then, if I could have a follow-up, describing we'll say registration, and
38 education, and the high school environment, you've spoken of some of the
39 qualitative differences that produce better turnout. For instance, open
40 classrooms you mentioned, and perhaps high-stakes tests of some sort. There's
41 a question also in terms of the broader participation in democratic processes, of
42 not just the vote, in terms of the equal ... you know, Indiana's constitution calls
43 for free and fair elections ... so it's not just the actual vote, but it's the whole

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1 democratic participation in terms of how candidates are ... how the political
2 system is structured, and how candidates are selected. Do you see any evidence
3 of how that kind of education ... well, first of all, how uniform is it across the
4 state of Indiana, this kind of civic education, and then, with what influence?

5 Dr. Bennion: Yes. There is no uniform standard for civic education in the state of Indiana, so
6 it's a difficult question to answer. I would expect that the answer is that it's not
7 very uniform at all, and some students get much more of it than others. We
8 know that certain programs have been tested to be effective. For example, the
9 We the People program that spends an entire semester studying the
10 constitution and having students essentially present as if they were presenting
11 at a congressional hearing, answering questions about the constitution ... that
12 that is statistically linked to more voting behavior, as well as broader forms of
13 civic engagement down the road.

14 There are some tested programs like that, but congress over time has cut
15 funding for such programs, and so that filters down [inaudible 00:56:27]
16 individual bar associations [inaudible 00:56:30] in Indiana are supporting those
17 programs, and providing the textbook, and those kids are getting that
18 education, but others are not. There really are not uniform standards, and I
19 think it probably is negatively impacting those children who don't have access to
20 high quality civic education programs that have been tested and proven
21 effective.

22 Chris Douglas: Thank you.

23 Female: Thank you.

24 Ellen Wu: This is Ellen Wu. I have some questions for both speakers. Thank you very much
25 for very informative presentations. I was just wondering if you could fill in a
26 little more ... so this is for either presenter ... if you could fill in a little more
27 context about the Get Out The Vote and voter registration education strategies.
28 Two questions, which is, what is the state of the funding that is available for
29 these initiatives and programs, and where does that funding come from?
30 Secondly, I was just curious about a lot of the examples you gave Dr. Bennion
31 were from the South Bend area, and so whether you could tell us a little more
32 about other ... is there communication between different regions around the
33 state, in terms of these kinds of programs and strategies, and coordination of
34 efforts?

35 Dr. Bennion: Yes. This is Elizabeth Bennion. I'm happy to speak first, and then maybe Ms.
36 Gordon can chime in. For the funding, we would love to have funding of some
37 kind, but I'm really not aware of any. Individual candidates, of course, get
38 funding through their party and donors, but they target only specific voters, and
39 those voters tend to be people who are already voting, because they look at
40 their primary history, and decide those are the people who they want to
41 mobilize. They ignore people from the other party, and they ignore people,

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1 especially young people, who don't have an established voting history. So
2 unfortunately, they're not a reliable way to mobilize new voters, and to
3 introduce people into the political process. They often overlook groups that
4 have lower turnout rates as well, because they're more expensive if you will, to
5 actually turn out. So there are groups that are just getting overlooked in that
6 process.

7 Then, we have civic organizations who will try to do this work, but their reach is
8 limited to ... their efforts are limited to volunteer capacity and how much time
9 individual volunteers will devote to mobilizing. In the case of League of Women
10 Voters, or American Democracy Project, across the board, regardless of
11 partisanship, or in the case of some other groups like NAACP, they might be
12 focused on specific groups. The voter mobilization field experiment literature
13 suggests that having targeted approaches for example, using bilingual
14 canvassers to mobilize Latino populations and Hispanic voters, does seem to be
15 particularly successful, and really reaching out the people. We also see some
16 work by Janelle Wong that suggests that Asian canvassers canvassing Asian
17 neighborhoods, and using a variety of different languages can be successful,
18 have extra impact. There are some researchers looking at these questions of the
19 best way to mobilize people, but they're working with civic groups that are
20 working on a shoestring.

21 In terms of coordination state wide, we do through the National American
22 Democracy Project. We have some national meetings where we can talk with
23 people from other campuses about what's going on. I know a lot of campuses
24 are doing some similar work. Then, through the State League of Women Voters,
25 we have meetings and share information and ideas, and so the national and
26 state League have been ... the national League actually does provide some
27 grants for the high school voter registration project. They're small grants, but
28 they're enough to allow local Leagues to run those projects.

29 Arusha Gordon: Yeah. This is Arusha. I actually don't have too much to add to that. We don't
30 actually run Get Out The Vote or voter registration drives as an organization,
31 although we do of course work in coalition with partner organizations like the
32 League of Women Voters, like NAACP, which do engage in those activities. The
33 one thing I would add is, in general, I think one of the other kind of vehicles that
34 we've seen for getting folks registered is sometimes faith communities.
35 Especially in the African American communities, the large churches will kind of
36 do voter registration after Sunday services or something like that, so just as
37 another kind of player in the field.

38 Diane C-B: Hi, this is Diane Clements-Boyd, and I have a question. Ms. Gordon, you pointed
39 out in your presentation that as it relates to photo IDs, there was a statistically
40 significant disparity in White and Black voters that had I guess voter IDs at the
41 time of an election. I think 83.2 White voters had an ID versus 72.7 Black voters
42 that had an ID. In the Indiana constitution, the prevision that was mentioned
43 earlier, that all elections shall be free and equal, in your opinion, does Indiana's

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1 voter ID law call into question this section of the constitution, and if not, what
2 explains that disparity?

3 Arusha Gordon: Yeah, so-

4 Diane C-B: [crosstalk 01:02:49] either panelist to answer.

5 Arusha Gordon: I think it's a good question, and this kind of gets to the larger conversation
6 around photo ID and the legal challenges. I'm not barred in Indiana, so I couldn't
7 speak about the Indiana constitution or the laws, and I don't know if people
8 have considered that kind of challenge, but it's very similar to kind of the US
9 constitution equal protection clause and the arguments that attorneys have
10 brought in other states around photo ID. Those of course have been successful
11 in some places, and haven't been as successful in others, and of course kind of
12 with the change in administrations, and the change in the makeup of the
13 Supreme Court, one thing that we just keep in mind as advocates bringing these
14 cases is like what happens if you win at the district level, it gets appealed, and
15 then it goes to the supreme court? I think we have to be careful about what
16 suits we bring, but I think you're right. It's important to consider both state
17 constitutional claims as well as federal claims in today's political context.

18 Diane C-B: Thank you. Are there any other questions?

19 Ernesto Palomo: This is Ernesto Palomo. I would like to follow up on a prior question, and first of
20 all to thank you both for your compelling testimony today. Following up on the
21 voter ID issue, what are some of the arguments that worked in other states to
22 combat voter ID [inaudible 01:04:42]?

23 Arusha Gordon: Yeah. I think it kind of depends on ... it's very much case by case. To get to an
24 intentional discrimination argument, looking very closely at which groups are
25 carved out, and sometimes it comes down to ... a lot of the evidence depends
26 on particular communications amongst legislators considering different aspects
27 of a photo ID bill. If for instance, you have an email from a legislator to another
28 member saying something like, "We should ..." for instance, in Texas ... "have
29 gun owners ID should be accepted, but not student ID." If they kind of complete
30 the reasoning behind that, and say, "because we know students, or whatever
31 group, is more likely to vote this way, or is less likely to have this kind of ID,"
32 that's the kind of evidence that really strengthens those cases.

33 What courts look at is are there other mechanisms. So for instance, cases are
34 less likely to be successful in states where there are alternatives. If you can get
35 for instance a free ID by going to your county registrar, or a county official to get
36 a free photo ID, that really makes it harder to bring a successful case challenging
37 these, because there are these alternatives available. But if you have a situation
38 in which the ID costs a certain amount, and you can argue that that bars folks
39 from being able to get that ID and voting, then that's a much stronger case. A lot
40 of the cases, the laws we depend on in the federal context are Section 2 of the

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- 1 Voting Rights Act, which requires equal opportunities to participate in the
 2 electoral process, as well as the 14th Amendment, and the equal protection
 3 clause.
- 4 Diane C-B: Are there any more questions? Committee members?
- 5 Chris Douglas: Yeah. May I ask a second, if nobody else [crosstalk 01:07:27]
- 6 Diane C-B: You may.
- 7 Chris Douglas: This is for either one of you. In terms of best practices nationally, are there any
 8 states or localities that you think are particularly commendable in their, we'll
 9 say general civic commitment and processes to broad voter registration and
 10 turnout, without regard to partisan considerations? Where just there's some
 11 form of civic commitment that appears to drive the forces at work, and that's
 12 reflected in policy ... that we would want to look at? We'll start with Professor
 13 Bennion.
- 14 Dr. Bennion: Right. I think that states like Oregon that are early adopters of vote by mail, and
 15 states that are early adopters of this automatic opt-in opt-out voter registration
 16 are states to look at, because generally what we see is a package of reforms that
 17 either make access to the franchise easier for all people who are American
 18 citizen 18 and over, or make it more difficult for some people who are American
 19 citizens 18 and over to cast their votes and really have that one person one vote
 20 standard of political equality that hopefully Democrats, Republicans,
 21 Libertarians, and Greens, along with Independents, would all agree upon, in
 22 theory anyway. As we look at ballot access, those states that tend to be leaders
 23 in these areas are ones that are good to look more closely at, and look at as
 24 models.
- 25 I will say, just as Ms. Gordon pointed out, some of the literature on voter ID had
 26 contradictory findings, depending on exactly how they measured the barriers.
 27 The same is true even with vote for mail, which seems to create a big boost in
 28 turnout, but part of that boost, later studies showed, may have been a novelty
 29 effect when it's first introduced. Some for the literature on the voter turnout
 30 and how laws affect voter turnout is a bit conflictual, and still developing, versus
 31 the voter registration literature that I shared today that is much more well
 32 established. It's a good idea to look at those reforms, and look at the literature.
 33 In general, we see that reforms designed to increase access to the franchise are
 34 having their intended effect, but that's not always the case.
- 35 Arusha Gordon: This is Arusha. I'll just add a couple things. First, I think it really depends from
 36 state to state, and from policy to policy, kind of best practices. For instance, on
 37 the felony disenfranchisement front, it really varies which state you're in, the
 38 impact of a felony disenfranchisement law. For instance, in Maine and Vermont,
 39 folks who are incarcerated can still vote, and they don't lose that right. Whereas
 40 in other states, it really requires a lot to get your right to vote reinstated.

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1 There's also the difference between having a law on the books, and having it in
2 practice. For instance, Texas actually has a law that's over 30 years old that
3 requires public and private high schools to hand out voter registration
4 applications to eligible students at least twice a year. But there's a difference
5 between having that law in place, and actually having high school administrators
6 carrying that out in a really systemic way.

7 I would also add, again at the best practices and best policies level, I think
8 there's of course the state wide laws, and rules, and regulations, but I think
9 there's a big difference in local election administrators in how they administer
10 their elections. If they go above and beyond in making sure everyone who's
11 eligible to vote is able to register really easy. There's just a lot of discretion at
12 the local level, and so depending on which county you fall in, or which
13 jurisdiction you fall in, I think you can have a very different experience as a
14 voter.

15 Dr. Bennion: Right. I would second that point. I will say one of the things that helped the
16 League of Women Voters with its high school voter registration project was that
17 even though our voter registration officials are partisan, the Republican
18 appointee who happened to be a former student of mine was incredibly helpful
19 in visiting the high school if needed, and answering any questions that the group
20 had about how their particular office would look at a registration form. What
21 would disqualify it, what wouldn't, what do we need to stress to students if we
22 want to know what will they do if something's incomplete, what would the
23 process be, and really presenting to volunteers and working with volunteers to
24 understand that. This case is an example of a good local elected official, in the
25 sense that he didn't care, and wasn't thinking about how those students might
26 vote, but he really did want to work with local civic groups to make sure that
27 everybody who wanted to get on the rolls would be eligible to cast their ballots
28 on election day. That's critical, and it helps if local groups are also asking those
29 questions, because some of the local election officials needed to go back to the
30 election board, ask them, and then that filters down, that kind of lack of
31 knowledge of the rules to the poll workers, who may not be well trained on
32 election day, and might turn people away who should in fact be able to cast
33 their votes. I know that issues of your address not being accurate on the ID, that
34 we have had students report that they were told by a poll worker that that was
35 a problem, when again, as Ms. Gordon pointed out, that's actually not part of
36 the law.

37 Diane C-B: Okay. We have now arrived at the time that we have set aside for public
38 comment. I would now ask the operator if there are members of the public that
39 would like to speak, that we allow them to do so at this time.

40 Speaker 1: Thank you. If you would like to ask a question or make a comment please press
41 *1 on your phone. Please make sure your mute function is turned off to allow
42 your signal to reach our equipment. Again, that's *1 for any questions. We have
43 no questions from the phone audience.

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- 1 Diane C-B: Because there are no questions, we can return to questions and comments from
2 the committee. If there are additional questions that you'd like to pose, there is
3 time to do that.
- 4 Bill McGill: Madam Chair, this is Bill McGill. I just wanted to ask Dr. Bennion the numbers of
5 participants in her civic leadership academy.
- 6 Dr. Bennion: Yes. We had approximately 200 people participate in some of the sessions. We
7 had about 120 people who participated in multiple sessions, and we had ... I
8 believe it was 55 who actually got the certificate, which meant that they were
9 coming back every single week. What we did was just print a certificate that was
10 a civic leadership academy completion certificate, not an academic credential,
11 but something that they could have. It was amazing how many community
12 members were actually looking for that and coming back each and every week.
13 That's with very minimal ... just sending out some emails, and free Facebook
14 ads. So, we feel that this could be a very easy to replicate model across the
15 state, with colleges and universities working with local community partners.
16 Some of our sessions were also at the local public library, and we are going to
17 do a meet the candidates forum with them as well this semester, in addition to
18 our on campus debate.
- 19 Bill McGill: So is there a link that you all have created with the civic leadership academy, or
20 is it something individual to just reach out to you all [inaudible 01:17:32].
- 21 Dr. Bennion: Yes. You could reach out to us. If you looked at the [IUSD 01:17:38] American
22 Democracy Project Facebook page, you would find a lot of those events listed,
23 but we have actual footage of the sessions, which we plan to post online now
24 that we're in the process of updating our website. Those will be available as
25 well. I'm happy to provide detailed agendas for each of those sessions of what
26 topics we had our speakers address, because we'd be happy for people to use
27 those as a starting point for their own academies.
- 28 Bill McGill: All right. Thank you so much. Again, thank you both for your time and valuable
29 presentations.
- 30 Chris Douglas: This is Chris Douglas. I can always ask more questions, but I don't want to
31 monopolize time.
- 32 Diane C-B: Go right ahead, Chris.
- 33 Chris Douglas: Okay. This is for Professor Bennion. The mission of this committee is to advise
34 the national commission on these matters, both with respect to voting
35 disenfranchisement I guess, and then also there's a separate charge that the
36 committee has, and that is to advise the commission on concerns about equal
37 protection of the laws. As we look at Indiana, Indiana had the lowest voting
38 turnout in 2014, and then in 2016 when we had a governor and a senator up for
39 election in addition to of course it being a very important election year, but

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1 Indiana had key offices up, and I think we were very low in our turnout
2 compared to the nation.

3 I think the question I'd ask you as an academic is what factors would you
4 suspect would have produced this poor turnout, and does it raise questions in
5 your mind, should it raise questions about concerns with respect to the missions
6 of this committee?

7 Dr. Bennion: Well, there are a number of demographic characteristics that we know are
8 related to voter turnout, and one of those of course is education level. We need
9 to get more of our citizens graduating high school, and more of our citizens into
10 colleges and universities, in part, if we want to increase voter turnout rates. The
11 other piece there is what kind of education people are getting. In Texas, for
12 example, they have a required one full year of first US government, and then
13 Texas government in their colleges and universities. Many states have
14 requirements in terms of their civic education curriculum K-12. Indiana doesn't
15 have anything like that, that's uniform across the board and really promotes
16 actual civic engagement.

17 I think in part, it seems to me to be a failure of civic education, where people
18 are not developing a civic identity. Where if you have a civic identity, it's not just
19 about civic duty, it's not just about civic knowledge, though both of those things
20 are important. It's not even just about civic efficacy, the belief that your vote
21 will make a difference and you'll be heard. You'll feel sick going to the polls even
22 if there is no competition, because it's part of who you are. That is something
23 that starts in the family. There's no doubt about that, but it also can happen in
24 our schools.

25 I'm a strong advocate for more high quality civic education programs in our
26 schools, as well as after school care and organizations, civic organizations that
27 work with youth, to give people an opportunity for hands on civic engagement.
28 That's what really both of the books that I edited are about, that the best way to
29 learn how to be civically and politically engaged, is to practice. People can be
30 registering voters, and working for campaigns, and doing mock elections before
31 they're even eligible to vote. I think we need not to shy away from that by
32 assuming it's partisan. I host a weekly public affairs show on our local PBS
33 affiliate, and we interview Libertarians, Democrats, Republicans. The same is
34 true with the debates. All of those candidates call to debate with us, and all of
35 them participate regardless of partisanship in our civic leadership academy.

36 If people can see that, and recognize that we should have, and we do have, a
37 shared commitment to civic engagement, I think that message can filter down.
38 There are campuses across the country that are working with junior high and
39 high school students to get them involved in their communities, have them
40 identify local groups who can actually address problems that the students
41 themselves investigate and decide which area they're going to address. The
42 students collect pennies ... pennies, so that all demographic groups can

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1 contribute. It's not about the money, it's about building community. These
2 young people are actually then donating to a particular cause, but they're also
3 getting involved, and volunteering, and those are the kind of programs that I
4 think will make a long term difference, because then we connect your local
5 community problem solving with public policy issues, and let young people
6 know that they need to vote, but not only vote.

7 Again, for me, and perhaps this is predictable as an education, but I think there's
8 good research to back it up, we need to be much more robust in our efforts to
9 produce high quality education for students across the demographic spectrum,
10 and in all of our communities, and we also need to get more people graduating.
11 It does have to do with socioeconomic status too, and we are not the wealthiest
12 of states with the highest median income, and so that negatively impacts us as
13 well. Finally, we do have a lot of local and county positions, as well as state
14 positions, that are not contested. Part of that may be due to gerrymandering.
15 We do see statistically that malapportionment seems to be at play in Indiana,
16 and so all of those could be factors as well.

17 Diane C-B: Before Chris asks another question, I want to get one in there really quickly. It's
18 come to my attention that on a jury selection form that is sent out to a
19 prospective juror, that the question is asked, "I wish to cancel my voter
20 registration." I would like to know ... perhaps Ms. Gordon can answer this, is
21 there a legitimate reason for an administrator of that process to ask a question
22 on a voter registration ... I'm sorry, on a juror form, that I wish to cancel my
23 registration?

24 Chris Douglas: That's shocking to me. I didn't know that.

25 Arusha Gordon: Yeah. I will echo that. I've never heard of that. I don't-

26 Chris Douglas: [crosstalk 01:25:24]

27 Arusha Gordon: Yeah, I don't know. Sorry, I cut someone off.

28 Chris Douglas: I shouldn't have been cutting you off. Madam Chairwoman, where is ... was that
29 down in Evansville, or Indianapolis, or where?

30 Diane C-B: Yes. Actually in the southern part of the state. But I just wondered if you could
31 comment on that, attorney Gordon?

32 Arusha Gordon: Yeah. I think the appropriate statute that one would need to look into is the
33 national voter registration act, which outlines when a registration can be
34 canceled. But I think it raises some real questions, because ... I know in some
35 minority communities, that people don't want to register to vote because
36 they're nervous about getting called for jury duty, and because they can't take
37 the financial hit that that would require. I think that raises some concerns,

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- 1 because I would be curious as to the data behind who is checking that box, why
2 that box is there, who made the decision to put it there, and whether there's a
3 disproportionate impact on the race of jurors who are checking it. But, yeah, I've
4 never heard of that.
- 5 Dr. Bennion: Did you say this is a state form?
- 6 Diane C-B: No, it isn't a state form. It's a county form.
- 7 Dr. Bennion: I'm sorry, which county did you say it was?
- 8 Diane C-B: Posey County.
- 9 Dr. Bennion: Okay. I think one of the things that's very frustrating about that is I've also heard
10 that argument from people, "Oh, I don't want to register to vote because I don't
11 want to get called for jury duty. I hear you get called all the time if you register."
12 The reality is ... not only is that problematic because we'd like them to perform
13 both civic duties, but it also is inaccurate, because these counties are using
14 driver's license, state IDs, department of revenue databases in some cases.
15 They're using a broader source to get the name, and it's not just registering to
16 vote. It seems like a active attempt at disenfranchisement. I don't think the
17 state needs to do things, or a county needs to do things to make it easy for
18 people to move themselves off the voter registration rolls, when we have such a
19 huge problem with turnout as it is, and getting people on those rolls, and to
20 exercise their right and privilege to vote.
- 21 Diane C-B: Thank you. We have one minute left. If there are no further questions-
- 22 Chris Douglas: I might ... can I throw in one last question?
- 23 Diane C-B: Quickly, yes.
- 24 Chris Douglas: I wonder if either of you could comment about ... we've mentioned a jury, how
25 one gets into a jury pool. I was thinking about registration for the draft, and how
26 that was accomplished, or how that is accomplished, if it still is, but certainly, I
27 think that ... can that set any model for how registration for voting can be
28 accomplished?
- 29 Arusha Gordon: [crosstalk 01:29:12] I don't have an answer to that.
- 30 Dr. Bennion: Well, my concern would be that only males are required to register with
31 selective services right now.
- 32 Chris Douglas: Right. So let's assume that whatever's being done for males, then is broadened
33 out.

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- 1 Dr. Bennion: In terms of trying to require people to register?
- 2 Chris Douglas: Certainly it's done in Australia and New Zealand, I think for instance now.
- 3 Dr. Bennion: Right. Right. Yes, that is a topic of an entire seminar, debating that question-
- 4 Chris Douglas: Right.
- 5 Dr. Bennion: ... so I'm not sure in 15 seconds we have time, but that is [crosstalk 01:29:51] we
6 haven't mentioned, which would be mandatory voter registration with fines to
7 enforce it, which is incredible effective in generating extremely high turnout
8 rates, particularly if those fines are enforced, but would be quite unpopular in
9 the US in general, and I'm sure in Indiana in particular.
- 10 Chris Douglas: Thank you.
- 11 Diane C-B: Thank you. Please allow me to thank our panelists, attorney Arusha Gordon,
12 with the Voting Rights Project of the Lawyers' Committee for Civil Rights Under
13 Law, and Dr. Elizabeth A. Bennion, Professor of Political Science at Indiana
14 University, South Bend. On behalf of the Indiana Advisory Committee, we
15 certainly appreciate you providing testimony on the topic of voting rights in
16 Indiana. The information was very informative and enlightening.
- 17 The record will remain open through April 2nd, 2018. If anyone would like to
18 submit written consent, please send to mwrintern2@usccr.gov, or mail to
19 USCCR, address 55 West Monroe, Suite 410, Chicago, Illinois, zip code 60603.
20 Again, please allow me to remind you that today's meeting is part one of a three
21 part series the committee will hear on this topic. On Saturday, February 17th,
22 the committee will hold an open community forum to hear from individuals who
23 wish to share his or her experiences voting in Indiana at the Evansville Central
24 Library, 200 Southeast Martin Luther King Junior Boulevard, Evansville, Indiana,
25 47713. Also on Friday, March 2nd, the committee will hear additional panel
26 testimony and public comment at Ivy Tech Community Event Center, address
27 2820 North Meridian Street, Indianapolis, Indiana, 46208.
- 28 We will follow up with all in attendance to provide the minutes and transcript
29 from this meeting, and a link to access those records. We will also notify
30 everyone when the committee is meeting for discussion, and when the report is
31 ready. Again, I would like to thank our panelists, members of the public, our
32 committee that participated on this web conference. If there is no further
33 business, I will adjourn this web hearing. Thank you very much.
- 34 Female: Thank you.
- 35 Female: Thank you.

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- 1 Female: Thank you.
- 2 Speaker 1: Thank you, and that does conclude today's conference. Thank you for your
3 participation. You may now disconnect.

-Company: USCCR
Conference Title: Indiana Advisory Committee
Conference ID: 3466041
Moderator: Diane Clements-Boyd
Date: February 17, 2018

1 Operator: Good day and welcome to the US Commission on Civil Rights Indiana Advisory Committee
2 conference call. Today's conference is being recorded. At this time I would like to turn the
3 conference over to Ms. Diane Clements-Boyd. Please go ahead.
4

5 Diane Clements-Boyd: Thank you and good morning. This public forum of the Indiana Advisory Committee
6 to the US Commission on Civil Rights, shall come to order. For the benefit of those in the audience,
7 I shall introduce my colleagues and myself. My name is Diane Clements-Boyd and I have the
8 privilege of serving as Chairperson of the Indiana Advisory Committee. The following members of
9 the committee also are in person or on the call. To my left I have Robert Dion. And on the telephone
10 we have Christopher Douglas. And also on the phone is Melissa Wojnaroski, Civil Rights Analyst
11 for the US Commission on Civil Rights.
12

13 The US Commission on Civil Rights is an independent bipartisan agency of the federal government,
14 charged with studying discrimination or denial of equal protection of the law because of race, color,
15 religion, sex, age, disability or national origin, or in the administration of justice. In each of the 50
16 states and the District of Columbia, an advisory committee to the commission has been established.
17 And they are made up of responsible persons who serve without compensation, to advise the
18 commission on relevant information concerning their respective state.
19

20 Today our purpose is to hear testimony regarding voting rights in Indiana and an effort to discern if
21 there are discriminatory barriers to voting in the state. Among the responsibilities of each advisory
22 committee, is to inform the commission of any knowledge of information it has on any alleged
23 deprivation of the right to vote and to have the vote counted by reason of color, race, religion, sex,

1 age, disability or national origin, or that citizens are being accorded or denied the right to vote in
2 federal elections, as a result of patterns or practices of fraud or discrimination, and to advise the
3 commission concerning matters related to discrimination or denial of the equal protection of the
4 laws under the constitution and the effect of the laws and policies of the federal government, with
5 respect to the equal protection of the laws.

6
7 Through this study and consequently, the purpose of the forum today, is to provide the Indiana
8 Advisory Committee testimony and information, to examine voting rights and voter participation in
9 Indiana. Specifically, the committee will examine the extent to which voters in the state have free,
10 equal access to exercise the right to vote without regard to race, color, disability status, national
11 origin, age, religion and/or sex. And whether Indiana in its application of its laws and regulations,
12 is meeting its equal protection obligation in accord with its own constitutional mandate on the topic
13 of free and fair elections.

14
15 If speakers begin to veer away from the civil rights questions at hand, to discuss possibly important
16 but unrelated topics, I will interrupt and ask them to refrain from doing so. At the outset, I want to
17 remind everyone that this meeting is being recorded and will be transcribed for the public record. I
18 also wish to remind everyone that today's meeting is part 2 of a three part series the committee will
19 hear on this topic. On Friday, March 2nd, the committee has arranged to hear additional panel
20 testimony and will also accommodate public comment at Ivy Tech Community College Event
21 Center, 2820 North Meridian Street, Indianapolis, Indiana.

22
23 We invite you to join us for the meeting at Indianapolis as well. Again, the purpose of today's
24 meeting is to hear from the community and aggrieved persons. We are thankful for individuals that
25 have come to provide testimony today. I would also like to provide the ground rules for today's
26 meeting. this is a public meeting, open to the media and the general public. We will base the
27 amount of time for each speaker based on the time available. The time allotted for each

1 presentation will be adhered to. Initially each speaker will be allowed to - up to approximately 15
2 minutes.

3

4 After each speaker has concluded their statement the committee may ask clarifying questions. in
5 addition, written statements may also be submitted by mail to the US Commission on Civil Rights,
6 at 55 West Monroe Street, Suite 410, Chicago, Illinois, or by email to
7 MWROINTERNT@USCCR.gov. Please call (312) 353-8311 for more information. Though some
8 of the statements made today may be controversial. We want to insure that speakers do not
9 defame or degrade any person or any organization. As the Chair, I reserve the privilege to cut
10 short any statements that defame, degrade or do not pertain to the issue at hand.

11
12 Any person or any organization that feels defamed or degraded by statements made in these
13 proceedings, may provide a public response during the open comment period. Alternately, such
14 persons or organizations can file written statements for inclusion in the proceedings. The advisory
15 committee does appreciate the willingness of all speakers to share their views and experiences
16 with this committee. With that, welcome. I'm sorry for that very lengthy statement. But we do have
17 individuals that are here today that will be allowed to present testimony as it relates to voting rights
18 or lack thereof, in the state of Indiana.

19
20 And because there is not a really large crowd here we probably won't have to limit the amount of
21 time at this point. I do have a sign in sheet here. If you have indicated that you would like to speak,
22 I will call your name. I will need you to come to the front here, because this is being recorded, and
23 speak your name and speak directly into, as close as you can, into this microphone, which I'm
24 going to push up a bit. With that I think I can call the first person on this list. We are now going to
25 ask (Patricia Avery) to come forward.

26
27 (Patricia Avery): And I need to speak from here with my back to the people? May I turn my chair this way?

28

1 Diane Clements-Boyd: You certainly can.

2

3 (Patricia Avery): Great. Thank you. First I'd like to...

4

5 Diane Clements-Boyd: State your name.

6

7 Patricia Avery: Oh, I'm sorry. Thank you. I'm Patricia Avery and I'm a resident of Vanderburgh County.

8 And I'd like to thank the commission for allowing us in Vanderburgh County to have an opportunity

9 to comment on this critical issue. In the opening you spoke about laws across the United States

10 and the fact that as a country we are engaged in conversation because there are laws that govern

11 our ability to vote that are guaranteed to us in the Constitution. But as we have seen in the last few

12 years, each state sets its own voter ID laws; it sets its own laws about polling times and access to

13 polling places.

14

15 It sets counties' ability to limit the number of voting places that are open to the public on election

16 day. And the more that I have thought about that, I have thought if the NCAA tournament were

17 carried out in a way that each tournament game was subject to the rules of basketball in that state,

18 fans would never stand for that. They would say that the results of the tournament aren't valid

19 because the rules that the tournament was carried out under, were different in every game. And

20 because we have a patchwork of laws across the country that govern who can vote, that govern

21 when they can vote and that govern how they prove who they are, I think we're very much in that

22 same situation.

23

24 And if NCAA fans would not stand for it, I don't think that we as citizens of Indiana and citizens of

25 any state, should stand for that. In Indiana we have dealt with onerous voter ID restrictions since

26 2006. In 2008 my husband and I and by way of disclosure, my husband is Dennis Avery, a former

27 State Representative, who was in office when that law was passed and voted against it. But we

28 were standing in line to vote early, behind an elderly African American man. He had a stack full of

1 ID in his hand, literally a plastic grocery sack full of ID. And when he went up the people said, we're
2 sorry, that's not enough. You're casting a provisional vote.

3
4 But he didn't know what that meant. He assumed he was done. And we were right behind him so
5 being the kind of person I am, I butted in. And I knelt down by his chair and I said excuse me sir, I
6 want you to understand what's happening. Your vote won't count. And the people in the early
7 voting office got upset. They said of course his vote will count. And I said no, it won't count unless
8 he brings back proper identification. And you know that. And I gave my husband a pleading wife
9 look because I had to get back to work, and he kindly agreed to take this gentleman around to all
10 the places he had to go to gather the identification that was necessary, because it was not as
11 simple as just going to the DMV.

12
13 He needed proof of his address and fortunately he had a bank account that many people don't
14 have bank accounts and so you cannot go to the bank and get a statement with your address. But
15 he was able to take him to the bank, take him back to the DMV and take him back to the Civic
16 Center. If that gentleman had had to accomplish all of that by himself on public transportation, it
17 wouldn't have taken him an afternoon, it would have probably taken him two days. If his income
18 was so low that he couldn't afford the bus fare, if had had to pay the bank to print the statement,
19 think of all the barriers that would have amounted to a poll tax for him to prove who he was so that
20 his vote would count.

21
22 And the beauty of it was he didn't even live in Dennis's district, so it didn't help Dennis in any way,
23 to have taken and helped him. But I - that pointed out to me the need for a checklist that could be
24 provided to individuals who are required to cast a provisional vote under voter ID laws. It would
25 need to be in plain language. I again by way of disclosure, I'm a federal employee, so I understand
26 our laws around plain language. A plain language checklist that says in bold language, for your
27 vote to count you must bring this, this, this and this and they can check when they've gotten it. And

1 then tell them exactly in big letters, the address where they need to bring it by this date, otherwise
2 your vote will not be counted.

3
4 So I just - I think something as simple as that checklist could help individuals like this gentleman,
5 who had we not been right there, would not have understood what he needed to do. But to wrap
6 up, I just want to point out that we can do everything to protect individuals' ability to cast a vote, to
7 have access to polling places to cast a vote, but that is not enough. As has come to the public's
8 attention, we also need to protect the integrity of our voter rolls, to protect that information and our
9 private information, our PII that is stored in voter ID roles, from being hacked. And we need to
10 protect our voter rolls from wholesale purging, that results in people inaccurately being purged from
11 voter rolls. But we also need to protect the integrity of the systems that record our votes.

12
13 Our right to vote isn't meant to just stand alone. It is also the right of our vote to be accurately
14 tallied. And any of us who has ever labored for hours over a document, only to see the system
15 crash and see our document disappear, knows what can happen with any kind of computerized
16 system. And so just in a recent editorial this week, Michael Chertoff and Grover Norquist, discussed
17 the importance and the vital need, to invest in requiring a voter verified paper trail for our elections.
18 So I think that as we consider the civil right of voting, we also need to consider the civil right of
19 having our vote counted accurately.

20
21 And certainly, if (Michael Chertoff) and (Grover Northquist) endorse the need to vote, I think that's
22 clearly a bipartisan issue that we should explore. So thank you so much for the opportunity to talk
23 about our own experience, the situation that we saw firsthand, and the criticality. People say
24 elections have consequences and yes, they definitely have consequences. But without the right -
25 without our right to vote being insured and the right to insure that our vote is properly counted, the
26 consequences of those elections have nothing to do with people who cast the vote. So thank you
27 very much.

28

1 Robert Dion: Thank you.

2

3 Diane Clements-Boyd: Thanks you Ms. Avery.

4

5 Christopher Douglas: I echo the thanks by the way, here.

6

7 Robert Dion: Thank you Chris.

8

9 Diane Clements-Boyd: Next we have Pam Locker with the League of Women Voters. Ms. Locker, please
10 come forward when you're ready.

11

12 Pam Locker: Noisy. My name is Pam...

13

14 Christopher Douglas: May I - this is - I'm sorry to interrupt. This is Chris Douglas. I have a question for
15 the Chairwoman. At the end of the testimony, will have an opportunity to ask questions of the folks
16 giving testimony, or should we do that after they have made their statements?

17

18 Diane Clements-Boyd: After everyone has testified you can ask some clarifying questions. Hopefully
19 we'll...

20

21 Christopher Douglas: Great. Thanks. Thank you.

22

23 Pam Locker: My name is Pam Locker and I am with the League of Women Voters of Southwestern Indiana,
24 and I'm representing them today. Two of the things that we work on at both the national - well at
25 the national, state and local level, are redistricting and voter rights. And we put a big emphasis on
26 redistricting recently. I have a pamphlet here that I would like to share with you. I'm handing that
27 to Bob. Basically an independent - an Indiana Coalition for Independent Redistricting formed about
28 two years, to try to change redistricting in Indiana. We all know that redistricting is the process of

1 redrawing the Congressional and state legislative lines. And in Indiana the General Assembly
2 draws those lines.

3
4 The League of Women Voters is against that process. We would like to see an independent
5 commission. We ask that Indiana establish a citizen led redistricting commission every ten years,
6 consisting of nine members, three republican, three democrat and three unaffiliated. And that by
7 the recommendations of the commission, should require an affirmative vote of at least six members
8 that are subject to legislative approval. We also set some redistricting criteria.

9
10 What happened is that the bills to establish an independent redistricting commission failed. It didn't
11 get hearings. What did pass in Indiana was SB326 which establishes redistricting standards for
12 Congressional and state legislative districts. It basically increases the number of standards that
13 were in effect. IT is now in the House and is likely to pass in the House. We are opposed to that
14 because we feel that it doesn't go as far as it needs to go. Partisan gerrymandering is drawing
15 districts to benefit a particular party or candidate. That happens every ten years.

16
17 Most democrats and republicans engage in gerrymandering. And why is it bad? It's bad because
18 it reduces competition. In 2016 32 of 100 House candidates and 11 of 25 Senate candidates in
19 Indiana, did not have a major party opponent. It discourages voting because people do not vote
20 without competition. Indiana's voter turnout in 2016 was 58%. That was for a Presidential election.
21 The 10th lowest in the nation. So we will continue to work towards amending SB 326 and
22 supporting a summer study committee, and try to get more done in 2019. The other thing that I'm
23 concerned about is expanding voter access.

24
25 And there was a Senate Bill 250 that is now with the House Elections and Apportionment
26 Committee. That bill calls for new excuse absentee voting, which is a step forward in that until this
27 point Indiana voters had to be of a certain age. I am of that age now. It's great. They had to be,
28 you know, going to be out of town. They had to have a reason. And so if this passes the House

1 we will join 27 other states as well as DC, that offer no excuse absentee voting. That would be a
2 good thing.

3
4 On the downside there are ways that it can be made an even better thing. Right now and I assume
5 this will continue, a person needs to use their computer or their smartphone to access the
6 application for no absentee voting. They then need to print that out. A lot of people don't have a
7 printer. Most kids do not have a printer. Most - well college students maybe, but a lot of people
8 don't have access to a printer unless they go to the library. Okay?

9
10 So they have to print that out, sign it and mail it in. Now there are other states that do better than
11 us on absentee voting. For example, there are a number of states that have permanent absentee
12 voting. Arizona, California, DC, Hawaii, Minnesota, Montana, Nevada and New Jersey and Utah.
13 Where once you get on the absentee voting list, once you opt in you will receive a ballot
14 automatically for all future elections. Now Indiana probably wouldn't like that because they would
15 say that oh, people's addresses change. But somehow they manage this in those states. Another
16 thing that is done or could be done, is making it possible for a person to apply for an absentee
17 ballot, via their smartphone, with an online application. And there are several states that allow that.

18
19 Let's see. Right now Louisiana, Florida, Maryland, Minnesota and Utah permit a voter to submit
20 an application entirely online. Arizona has some counties that have online absentee applications.
21 And in Detroit, Michigan voters can request an absentee ballot through a smartphone app. So
22 there are ways to improve the process. And of course the last way would be mail voting; voting by
23 mail, but there are only four states that have that - Oregon, Washington, Colorado and California.
24 And I think we're a long way away from that.

25
26 And then one last thing - election security in all 50 states. The Center for American Progress just
27 released a report on February 12, 2018 as a matter of fact, on election security in all 50 states,
28 defending America's election. And they give Indiana an F. They said that Indiana allows voting

1 machines that do not provide a paper record and fails to mandate robust post-election audits that
2 test accuracy of election outcomes, etc. So this report is available on the Center for American
3 Progress Web site. So that's all I have to say.

4

5 Robert Dion: Thank you very much.

6

7 Pam Locker: You're welcome. Any questions?

8

9 Diane Clements-Boyd: We are going to entertain questions when everyone ((inaudible)). Thank you. Next
10 we have Regina Robinson-Ungar with Our Revolution - Evansville.

11

12 Regina Robinson-Ungar: Thank you. Thank you for giving me the opportunity to speak. I'm Regina
13 Robinson-Ungar with Our Revolution - Evansville. I'm speaking more as a private citizen since we
14 have not run this through our committee. So I would like to echo Ms. Avery's support for a plain
15 language checklist for provisional ballots. As someone who works in a housing agency for low
16 income people, I can comment that getting basic documents like this, is a real challenge. I have
17 helped dozens of women who give birth just over the county line, who have one and two year
18 children without birth certificates, because it's hard to get to Boonville from Evansville, to get your
19 birth certificate.

20

21 And now I have a stash of maybe ten different state and county birth certificate applications, you
22 know, hiding in a secret drawer just to help people get a silly thing like a birth certificate. It's not a
23 small thing to get. Now I would also like to echo support for the League of Women Voters' work
24 with redistricting. And there's a real need to have equitable representative districts. Anyone who
25 looks into the math of this and I think it's much easier to understand when it is presented in visual
26 terms, for people who are not maybe as math savvy as some. When my second grader looks at
27 this visually in some of the simple tutorials that are available online, it's very obvious to him that

1 this is not fair; this is not fair. You're getting a wrong number of this color compared to that color,
2 when you cut the lines in a certain way.

3
4 And there are just equations to make this fair and they exist and it's obvious when you look at them,
5 what is going to work and what is fair and equitable. I would also like to echo support for no excuse
6 mail in ballots and absentee voting. Places that have high voter turnout are models that we should
7 be looking at. Indiana has some of the lowest turnout in the nation and definitely a place that is
8 succeeding for example, Oregon where I believe they have no excuse mail in ballots for everybody.
9 Why are we not looking at that? That's only sensible.

10
11 Finally, in terms of programming of voting machines, I understand and I'm not a computer scientist,
12 but I understand that there is a type of computer programming called open source blockchain
13 programming, in which the - every change, every edit that is made to this computer code, has a
14 time and a source attached to it. So there is no possibility of, if you would say messing with the
15 code, and not having others know about it, that it's obvious, it's open, it's not a company secret.

16
17 And if we are going to use computers to count votes and I think that is efficient and quick, then it
18 should be open source blockchain programmed code. Furthermore, in terms of being truly
19 transparent in terms of earning the trust of every voter, a voter verified paper trail is not - it is what
20 we should have. It can be combined with open source transparent blockchain computer coding.
21 And in order to have both of those, you would just have to have the printers available to show
22 people what they voted for, and have paper trails that can be counted by hand.

23
24 That way anybody, you know, with a fourth grade education, can see for themselves that we are
25 counting, we're counting fairly and if we have any concerns or doubts, we can double-check that.
26 So finally, on a completely separate note, I had the privilege of working as a poll worker in (Ward)
27 County, during the 2016 general election, and we were instructed not to give out provisional ballots
28 kind of as a matter of convenience. I didn't - I understood the desire by the county to get it done

1 and get it done early and fast and not have a dragged out determination of the vote, but on the
2 other hand, it may not have been in the best interest of all of the voters being heard.

3
4 What was definitely not in the best interest of all the voters being heard, was that my county and I
5 believe approximately 17 other counties in Indiana, never did report write in votes. Now they were
6 not of sufficient quantity to change the election or swing the election or anything like that, but write
7 in votes are votes and I wish that those votes had been reported to the state, so that they could be
8 included in the state tally and it's my understanding that they never were, in over a dozen counties.
9 So that is all for now. Thank you.

10
11 Diane Clements-Boyd: Thank you Ms. Ungar.

12
13 Robert Dion: Thank you.

14
15 Diane Clements-Boyd: Okay. We now have (Andrew Emlay), that will come forward. Take your time Mr.
16 (Emlay).

17
18 (Andrew Emlay): Thank you very much. As she said, my name is (Andrew Emlay). It is important to note
19 that I have been - I have cerebral palsy and have had cerebral palsy my whole life, so I deal with
20 ADA issues on a daily basis, especially at polling places and places that I go to vote at. I have
21 been able to vote in the last two presidential elections. What I have noticed at some of the polling
22 places, is that some of the stations that are designed for wheelchair users, sometimes aren't clearly
23 marked that this specific station is to be used for a wheelchair or someone with a physical
24 impairment.

25
26 So sometimes it can be difficult if we're put into a regular polling place whereas we may not have
27 the width we need for the chair, it may not be at the right height. You know, because some of the
28 voting machines when you go to vote at them, are at an angle sometimes. So I just kind of wanted

1 to make those comments and make folks aware that maybe these are some of the changes that
2 we can make across Indiana and other places, to insure that wheelchair users don't have to struggle
3 to read, you know, the ballots. We don't have to - I can read. It's somewhat embarrassing if I ask
4 someone to read something for me.

5
6 So if it's put in a position where I can read it myself, then that poll worker can be relieved to maybe
7 address another issue that's going on at the polling place. So thank you for the opportunity to
8 speak. I appreciate it. Thank you.

9
10 Robert Dion: Thank you.

11
12 Diane Clements-Boyd: Okay. We have several individuals that have signed in, but there was a box to the
13 left that indicated if you would like to speak or not. Perhaps you just forgot to check that box. But
14 I will ask at this time, if there is someone ((inaudible)) that would like to speak. Please let us know
15 that at this time. Everybody raised their hand all at once. Okay. Oh, okay. Oh, so you would like
16 to speak? Okay. We will now ask (Sandra Matthews) to please come forward. Oh, you don't want
17 to speak. Okay. I'm sorry. I misunderstood. Okay. Got it. Now I know what you meant. Sure.
18 Okay. Okay.

19
20 Well right now we have no individuals that want to provide testimony. I note that we are here for
21 about another 50 minutes or so. I'm sorry, 40 minutes. So we can just hang out here...

22
23 Robert Dion: We can pose questions to those who spoke.

24
25 Diane Clements-Boyd: That's right. And Chris, I believe that you did have a few questions for the speakers.

26
27 Christopher Douglas: Yes. Thank you. I think - so for Pam Locker...

28

1 Diane Clements-Boyd: Ms. Locker?

2

3 Christopher Douglas: ...I think it was Pam that gave the statistic from the Center of American Progress
4 that Indiana gets an F on election security. I was wondering if she has any - if she knows how
5 many states got Fs. Did any get As, Bs, Cs? How do we - F of course is very bad. Where do we
6 rank?

7

8 Diane Clements-Boyd: She's checking Chris.

9

10 Robert Dion: Let the record show that an F is bad.

11

12 Christopher Douglas: It sounds very bad. I agree.

13

14 Pam Locker: You know, I'm actually going to have to go to the Web site because I do not have that
15 information at hand.

16

17 Diane Clements-Boyd: If you do not find it, you're more than welcome to provide that in a written response.

18

19 Pam Locker: Okay.

20

21 Diane Clements-Boyd: And we can give you that information.

22

23 Pam Locker: Let me look really fast. And...

24

25 Robert Dion: And even if Indiana were the only F, it would be of note for people who live in Indiana. We
26 want to do something about that.

27

28 Christopher Douglas: That's right. That's right. Well and also...

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Pam Locker: Go ahead. I'm sorry.

Christopher Douglas: Oh. I was just going to observe that I think it's a real issue. Has anybody successfully addressed it or I suspect there is also - this is a significant issue across the US.

Pam Locker: Yes. Probably so and, you know, there are detailed reports on every state, but it would take me a minute to find out where everybody else ranks. But on Indiana for example, I printed out four pages, just looking at various aspects of cybersecurity, the state's voter registration system, post-election audits, ballot accounting. You know, there is just a lot of things that they looked at. So I think it'd be worth looking at that.

And my other statistics, by the way, came from the National Committee of State Legislators, NCSL. They have a very good report on absentee and early voting, dated 8/17/2017.

Diane Clements-Boyd: Any other questions Chris?

Christopher Douglas: Yes. I guess I'll just take this opportunity to ask - this is a - this really could go to anyone, but I'm sort of interested in (Andrew), whose made it seems to me, a really significant effort to be counted. And the committee heard testimony Monday from some academics that - we asked the question why do you think Indiana has such a low voter turnout? And one of the professors said that a significant issue she thinks, is education in Indiana, including civic education.

And I think that in fact really anybody could comment on this, but I'm particularly interested in what civic education people have experienced and (Andrew), since you made a particular effort, I'm curious whether you were informed by any civic education in the past, about voter - about how to participate in democracy or whether you have picked these - this passion and skills up for yourself.

1 Diane Clements-Boyd: Okay. Chris, we'll allow a little bit of that, but we're doing clarifying questions. It's
2 really not our role today, to ask questions of our speakers.

3

4 Christopher Douglas: Okay.

5

6 Diane Clements-Boyd: But if they would like to answer that they may.

7

8 Robert Dion: I'd like to ask (Andy) a question if I can. I'm interested in - you talked about your experience
9 of having voted in the last two presidential elections, and about the - perhaps the less than perfect
10 designation of machines. But I'd be interested in your experience, your personal experience as far
11 as accessibility, parking, getting in and out of the polling places. I know we changed in Vanderburgh
12 County, from precincts to voting centers. And we have made some mistakes as far as making sure
13 that every place is accessible. What would you - what specifically would you suggest - so this is
14 two questions. I'm sorry about that.

15

16 What's been your experience in just getting in and out of these places and how you've been treated
17 and any suggestions for improvement. And then specifically about the machines - how could we
18 do a better job of addressing what you told us about, about them not being clearly marked?

19

20 Female: Please excuse the interruption. If speakers again, for the purpose of recording and the transcript,
21 could please identify themselves before speaking, that would be helpful. Thank you.

22

23 (Andrew Emlay): My name is (Andrew Emlay). To address your point Robert, accessibility for polling
24 places, I have found that a lot of folks with disabilities, once they find a place that's accessible,
25 they'll continue to go to that one polling place, because they know that's accessible; they know
26 they'll never have problems getting in and out of the building. So the place that I've voted at for the
27 last several elections, has been at Washington Square Mall, which, you know, parking is fantastic
28 there, folks are more than happy to open doors for you to get into the building.

1
2 I mean sometimes I think folks are even jealous of me sometimes, because I get taken to the front
3 of the line. You know, I don't know that that's an actual law, but, you know, I get taken to the front
4 of the line and sometimes there's a little bit of confusion from the poll workers, as to which, you
5 know, which voting machine is to be designated for that. Like I said, I believe if it was clearly
6 marked, you know, there would be no issue. I wouldn't have to have somebody escort me. I'd just
7 show them my ID, I'd check in and I'd say oh, you know, this one over here in the corner here is
8 clearly marked with a huge handicapped symbol on it, which probably means that's the
9 handicapped accessible - just like you would designate a restroom, you know, handicap accessible.
10 Do the same thing with your voting machines.

11
12 You know, if you've got one that's, you know, for the sight impaired, the same thing for that. You
13 know? Designate that so the folks that are with the people can clearly see oh, this is where we
14 need to go and there's really no confusion. And it's, you know, really easy to vote, because people,
15 you know, people like to exercise the right, but at the same time they want it to be simplified and
16 as easy as possible. Thank you.

17
18 Female: May I ask a question?

19
20 Diane Clements-Boyd: If you would like to ask a question in regards to what he said.

21
22 Female: Is it marked on your voter registration that you can choose which voting place to go to?

23
24 (Andrew Emlay): I don't know on my license, that it's designated which voting center you go to. I know it
25 used to matter which voting center you went to, based on precinct, but I don't think it really...

26
27 Robert Dion: If you have a voting center, you can go anywhere.

28

1 Female: Oh. I didn't...

2

3 Robert Dion: You can go anywhere you want.

4

5 (Andrew Emlay): Yes, I don't think it - yes, it's not designated by...

6

7 Robert Dion: In ((inaudible)) County you can go anywhere...

8

9 (Andrew Emlay): Which, you know, which definitely makes it easier, because you don't have to remember

10 oh, what was that place I needed to go to, you know, to make sure I go to that specific place. So

11 thank you.

12

13 Robert Dion: I don't know that the US Commission on Civil Rights needs to know about the Washington

14 Square Mall, but because that - on the list of voting centers that's the one that most people flock

15 to. And - exactly. The downside is that folks go there and drive past two or three other places, and

16 find themselves waiting in a long line. So that's one of the - perhaps the disadvantages of the

17 voting center model. But there are some advantages.

18

19 *Christopher Douglas: This is Chris Douglas. I seem to have lost audio.*

20

21 *Operator: And this is the operator. The speakers' line has disconnected. I'll try to reconnect them. It will*

22 *be just a moment.*

23

24 *Christopher Douglas: Okay. Thank you.*

25

26 *Operator: You're welcome.*

27

1 *Melissa Wojnaroski: Thank you. Yes, I'm here too Chris. This is Melissa. We were doing really well for a*
2 *while. I mean I - everything came through great during the testimony.*

3

4 *Christopher Douglas: Yes.*

5

6 *Melissa Wojnaroski: And we sort of trailed off into some conversation I had trouble following. So...*

7

8 *Christopher Douglas: Diane may need to call in again, which...*

9

10 *Melissa Wojnaroski: Yes. Hopefully that call can receive calls as well. That line. Because the operator*
11 *will have, you know, the number that called in before. And hopefully she can just call right back*
12 *out to it. But I don't know. Sometimes conference lines are, you know, can only dial out or whatnot.*

13

14 *Christopher Douglas: Right.*

15

16 *Operator: And this is the operator again. I was unable to get through to anyone at the library who knew*
17 *where Ms. Clements-Boyd is meeting. I'm going to try her cell phone now. Thank you.*

18

19 *Christopher Douglas: Okay.*

20

21 *Operator: This is the operator again. I apologize. I'm not able to get through to Ms. Clements-Boyd. I did*
22 *leave voicemail on her cell phone. Do you have any other suggestions? The phone number for*
23 *the library was a main number and they had no idea where the group was meeting.*

24

25 *Melissa Wojnaroski: Okay. I can tell you that they are at the Evansville Central Library in Browning Rooms*
26 *A and B.*

27

28 *Operator: A and B at the Evansville Central Library.*

1
2 *Melissa Wojnaroski: Central. Yes.*
3
4 *Operator: Okay. I'll try that again. Great. Perfect. Thank you very much. And here I go.*
5
6 *Christopher Douglas: So I assume then that this is - in terms of the recording, this is - they're not - we're*
7 *not going to get further discussion recorded, I assume, is the consequence of this.*
8
9 *Melissa Wojnaroski: Well hopefully - yes, I don't - I mean it seems like yes, I mean if they hung up the*
10 *phone then we, you know, we wouldn't have any way to get any additional recording. I mean we*
11 *got the testimony this morning. So hopefully we get reconnected. I mean I don't know, maybe*
12 *they're just having more of a discussion right now that's not really, you know, all the formal*
13 *testimony people wanted to present. You know, I think we got - I just - I hope - maybe they don't*
14 *realize the phone was hung up.*
15
16 *Christopher Douglas: Right. Right. Well these things happen, so I mean it's like - but the...*
17
18 *Melissa Wojnaroski: Yes. And this is the first time we've tried this kind of remote meeting like this. And so*
19 *we're kind of learning as we go.*
20
21 *Christopher Douglas: Yes.*
22
23 *Melissa Wojnaroski: But I guess, you know, we do need to have some kind of backup so that if we get*
24 *disconnected or whatever, we can make sure to alert people right away. Hopefully we can get*
25 *reconnected right away. Then, you know, if there was anyone who said anything, you know,*
26 *significant to the discussion while we were out, we can ask them to sort of restate the main points,*
27 *so that we get that. Well we're learning as we go.*
28

1 And just so that you know as well, I did - I checked the press release and, you know, this meeting
2 was just advertised as an in person meeting at the library. Really the option to call in was only
3 provided directly to committee members. So the phone conference line at least...

4

5 Christopher Douglas: Nobody else is going to be hanging out there.

6

7 Melissa Wojnaroski: Nobody else - yes, nobody else even had it. It was published in the federal register
8 notice included, actually did include the public call in number. But it was correct. It was the correct
9 number that went out in the federal register. So if anyone saw it from the federal register, they
10 would have had the correct information. But the fliers and press release just advertised it as an in
11 person meeting.

12

13 Christopher Douglas: Well just to fill our time with chat here, the - my observation - the reason I'm so
14 interested in the - I think the impediments to ((inaudible)) are real insignificant for low income people
15 without transportation. And so I don't diminish those whatsoever. My observation is that we also
16 have - that people who don't have those impediments are also not particularly turning out especially
17 well. And that what I think is such an interesting observation there is that everybody that comes to
18 these things, is civically involved. And I'm interested in some of us who are thoroughly educated
19 in how to be civically involved, it was part of our civic education in elementary school and high
20 school.

21

22 And if you have educated some, but not educated everyone equally, then even if they can overcome
23 these impediments, they may not know - they may be at a disadvantage in participating.

24

25 (Crosstalk)

26

1 Operator: Goodness. I'm so sorry, Mr. Douglas. This is (Mara). I wanted to let you know, I was able to
2 get through to someone at the library who is going to go to the room and let them know and make
3 sure that they have the correct dial in phone number, which I gave him. So hopefully...

4

5 Melissa Wojnaroski: Fantastic.

6

7 Operator: Yes. I'm sorry. I'm sorry for the interruption.

8

9 Melissa Wojnaroski: Thank you so much.

10

11 Operator: Of course.

12

13 Melissa Wojnaroski: That's okay. Thank you so much. Sure. I hear what you're saying Chris. Yes.

14

15 Christopher Douglas: So as Regina, for instance, working at the housing agency for low income, she's
16 observing that these documents such as birth certificates, are difficult to get. That is a significant
17 problem. What she could also provide insight into is what is the interest - what is the preparation
18 for civic engagement that she encounters? Is - are people coming to her and saying we really want
19 to vote, but we have these issues? Or is she observing these issues that is impeding their ability
20 to? And I think that both are problems.

21

22 If there - if people are so out of the loop that - and then you compare that to (Andrew) who has
23 dealt with cerebral palsy all of his life and is making it a point to vote and to get to these - and to
24 get to a civic function like this, it's a...

25

26 Melissa Wojnaroski: Right.

27

1 *Christopher Douglas: It's just a very interesting thing to delve into. And I think that ultimately we can*
2 *disadvantage people by not educating them.*

3

4 *Operator: And we have the library meeting room reconnected.*

5

6 *Diane Clements-Boyd: Hello?*

7

8 *Christopher Douglas: Hello.*

9

10 *Melissa Wojnaroski: Hello.*

11

12 *Diane Clements-Boyd: Are you there?*

13

14 *Melissa Wojnaroski: Yes.*

15

16 *Diane Clements-Boyd: I'm sorry. I don't know what happened, but we've had a few people speak. Did*
17 *you hear...*

18

19 *Christopher Douglas: Diane?*

20

21 *Diane Clements-Boyd: Yes?*

22

23 *Christopher Douglas: This is Chris Douglas.*

24

25 *Diane Clements-Boyd: Yes, Chris?*

26

1 Christopher Douglas: The - my observation is that when the recording broke off, that means that - and we
2 may need to identify when exactly that was, but that means that anything that was said there will
3 not have been recorded.

4
5 (Crosstalk)

6
7 Christopher Douglas: (Nicole) or Melissa, do you - can you comment on where we lost the...

8
9 (Nicole): Yes. We were discussing people with a variety of polling locations. And there was about being
10 able to testify - or being able to vote at a variety of different locations, the mall being one of them,
11 and the accessibility of that.

12
13 (Crosstalk)

14
15 Diane Clements-Boyd: Okay. I think...

16
17 Melissa Wojnaroski: I would say we've been offline for probably ten minutes or so, we've been offline.

18
19 Diane Clements-Boyd: Okay. We did have two people that spoke and if they're so inclined, if they would
20 like to come back and provide that information, which I think was very good information. Ms.
21 Ungar? Are you ready? Come on. Sure.

22
23 John Gerard: Hi. This is John Gerard. I'm the Election Supervisor for Vanderburgh County. And I'm
24 responding to one of the things that Ms. Locker stated in her testimony about absentee applications.
25 And she said she needed a smartphone or a computer. And that's really not true. You could just
26 call the election office and request an absentee application and we're happy to mail that out to the
27 person. It is basically filled out and here in Vanderburgh County, we highlight the other areas that
28 aren't filled out, for them, so they can - and we tell them that. Then that - those are the things that

1 have to be filled in. And provide the envelope, but you have to put the stamp on it, to mail it back
2 to us.

3

4 But that is an ease and convenience that every, as far as I know, every election office in Indiana
5 provides.

6

7 Robert Dion: And while you're here, if you don't mind, could you say something about the disposition of
8 provisional ballots? Because the notion was that people aren't being furnished with information
9 about how to follow up.

10

11 John Gerard: Well they are provided a - they should be a provided a (Pro 9) form, which is a state election
12 division form, with that, that does state that some information is needed from them. Seeing that
13 each case is individual, it doesn't really state for you to put that on that, which I think would be an
14 excellent idea to have that on the (Pro 9) form itself, with the other one. But each person who does
15 vote provisionally, is supposed to be provided that (Pro 9) form, which is their right. And states on
16 there that, you know, that something is needed to be dropped off at the election office in that ten
17 day period.

18

19 Robert Dion: Right. In your estimation, would you describe the (Pro 9) form as being in plain language? I
20 don't know what the criteria is.

21

22 John Gerard: Parts of it are, but I think it could be tailored to where it's more specific. And I like the idea
23 of the checkoff list that Ms. Avery testified about.

24

25 Robert Dion: Thanks.

26

1 Christopher Douglas: This is Chris Douglas. I've got a question for John. And thank you for speaking. In
2 terms of getting those absentee ballots and, you know, making that phone call, how is information
3 provided to people to make them aware of this ability?
4

5 John Gerard: That's a good question. I mean I - there are a lot of people who we do get calls from. We
6 do try to open ourselves up and to go to different groups that, you know, make it available that we,
7 you know, for speaking engagements to civic clubs, etc. as well. There is - other than that - other
8 than - I don't know. I can just tell you for the last presidential election, we had 5200 mail in ballots,
9 so I know a lot of times the parties also mail, you know, those out, so we get some of those in.

10
11 But we get enumerable calls, I can't tell you how many, you know, for each election, providing that
12 it's already started this year.
13

14 Christopher Douglas: Is it on the Web site that they can call and...
15

16 John Gerard: It is on our - it is on - I know it is on the Secretary of State's Web site and it is also on I know
17 the Vanderburgh County Web site as well. And we normally provide the form on our Web site as
18 well, with that. But we do also have - do have the election office number there, where they could
19 call us.
20

21 Christopher Douglas: In terms of having a ballot sent out, what do they need to supply in order for you to
22 send that ballot out?
23

24 John Gerard: We just have to have their application in first, sir.
25

26 Christopher Douglas: And that application and I apologize, you may have already covered this, but that
27 application - how is it validated or verifying who they are, as opposed to the voter ID stuff?
28

1 John Gerard: No voter ID, I mean - no ID is needed on absentee mail ballots.

2

3 Christopher Douglas: And so in terms of where the - address to which it can be sent, it could be sent to
4 any address the person requests?

5

6 John Gerard: Correct. The form does have the registration address on it and on the next line on the form
7 it's mail to address if they need to have a second address, or it needs to it's I guess a college
8 student or if they're on vacation someplace, wherever that - yes, it can be anywhere. So you have
9 the registration line where they are registered and then below that is the mail to wherever they
10 would like that ballot sent.

11

12 Christopher Douglas: You know, we're sort of looking at questions of equal protection.

13

14 Diane Clements-Boyd: Chris, this is Diane. There are two other people that need to speak, so I just wanted
15 to make...

16

17 Christopher Douglas: I'm sorry. Oh, my apologies. I'll come back.

18

19 Diane Clements-Boyd: We do have testimony or information coming from Ms. Locker. She did find the
20 statistical analysis of states as it relates to A and F grades. So I'm not sure if you all heard that.
21 So we're going to have her come back...

22

23 Christopher Douglas: No.

24

25 Diane Clements-Boyd: ...to provide that.

26

27 Robert Dion: It's not good Chris.

28

1 Pam Locker: Now we totaled up the grades. There aren't any As, 11 Bs, one CB, 21 Cs, 11 Ds, one CD,
2 three DFs and two Fs. So we are one of the two Fs.

3

4 Christopher Douglas: Nowhere to go but up.

5

6 Pam Locker: Yes, right.

7

8 Diane Clements-Boyd: Thank you Ms. Locker. We're also going to repeat testimony by Regina Ungar, that
9 spoke when the line apparently were not engaged.

10

11 Regina Robinson-Ungar: Hello. This is Regina Ungar. So I had three comments I think when I was here.
12 And I wanted to - I had a note about which counties did not report write in votes for Indiana. And
13 they are 16 counties. They are Clark, Crawford, Fayette, Fulton, Martin, Newton, Noble, Orange,
14 Pike, Posey, Randolph, Rush, Stark, Sullivan, Tipton and Warwick. I believe Warwick is the only
15 one of those that is medium sized. But it matters nonetheless.

16

17 So for my second comment I wanted to mention ranked choice voting as an interesting option for
18 getting the voters will more accurately reported. I don't know that I need to explain what rank choice
19 voting is again, but basically the lowest number of votes received by a candidate would have all of
20 those votes transferred to the voters' next choice candidate. And it would go until a majority of
21 votes was reached and one candidate would win. It's obviously available to be looked up.

22

23 And my third comment was about felon voting and how it is one good thing we are doing right in
24 Indiana and that I have canvased both in Indiana and in Kentucky where felons cannot vote. And
25 that I heard so many stories in just a few days of people who were not able to vote after having
26 served their time in prison. And that it is not a good thing for democracy for helping felons feel
27 included in society and respected by the wider community. And it's generally something we can

1 be proud of in Indiana and support the rights of those with felonies in other states, to have their
2 voting rights restored. Thank you.

3

4 Diane Clements-Boyd: Thank you. Chris, did you have any other questions for any of our speakers?

5

6 Christopher Douglas: Yes. I was curious with the - this is for John. You know, the voter ID laws were in
7 theory, you know, they were promoted I guess, by the Secretary of State at the time, I think on the
8 argument that - arguments about voter fraud. And the absentee voter - I thought it was always very
9 interesting that the absentee voter effort, seems to me to have equal propensity or ease of fraud if
10 that were really a concern. And so the question is why one and not - why was one fraud attempted
11 to be addressed and not the other.

12

13 And I guess for John, as you observe this question, do you think that one form of challenge to the
14 voter is - versus the other form of challenge to the voter reveals any equal protection issues as to
15 who is more facilitated or less facilitated under one system or the other? Does it - should we be
16 concerned as to why - if voter fraud is the issue, why we've approached one and left the other, it
17 seems to me, relatively free from concern.

18

19 John Gerard: I can't answer that question. I have no idea. I just follow the rules of Indiana. The only thing
20 that I will say that we do for the most part, we do have - most of them we have their signature if
21 they do have a license or has been provided on the registration form or whatever. And we do
22 compare that, but that is the only form of reason or whatnot that we look at it for any sort of
23 identification whatsoever. And if there is anything, it's fine, but that is just part of it. We just have
24 to make sure that the application and the voting on the ballot, the signature on their envelope ballot,
25 is the same. And if there's one in the system that all three match.

26

27 Christopher Douglas: John, there was a fellow, and I guess I won't identify it considerably, except there
28 was a documentary some years ago of a fellow in Florida that had significant amounts of timeshare

1 condominiums, huge businesses in it who - he made a claim that he had - that the election in Florida
2 was owed to him. And he said I can't really say why; it would be - it wasn't strictly legal. And I
3 began to wonder would it be possible for somebody with let's say an apartment block or a hotel or
4 where people are rotating in with their timeshare arrangement where people - to make applications
5 on behalf of the voters on who may not know that an application is being made on their behalf and
6 pull in large blocks of absentee ballots and cast them?

7

8 John Gerard: I would see that - I mean those votes could still be challenged by anyone and those are given
9 - those are public record and I know the party chairmen do get records of the - of where they are.
10 So if we saw something - a large amount of absentees in one place, I'm sure it's going to raise red
11 flags for some people to then question that. Being the election official, that's not our job to do other
12 than to maybe raise the concern to someone else, if they wanted to do something about that.

13

14 And once again, they're going to - we're looking at the signatures too, so they would have to be
15 registered in that state. You know, registered with us, you know, if they're voting with that. So I
16 think we have the appropriate protocol so to speak, with that. So to make things as easy as
17 possible, but yet we have a couple of things with that, to try to make sure that fraud doesn't happen.

18

19 Christopher Douglas: And have you seen evidence of fraud personally, in your career, that is attempted
20 voter fraud?

21

22 John Gerard: I know of absentee ballots that have been challenged, yes, for that reason. And - but we're
23 talking about a very, very small number.

24

25 Christopher Douglas: And then aside from that, I hear you on absentee ballots, but have you seen any - I
26 mean have you seen any evidence of attempted fraud?

27

28 John Gerard: No. I have not. No. I have - yes.

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Diane Clements-Boyd: Yes?

Patricia Avery: This is Patty Avery, and I do just want to state for the record, that I don't know if it is the only conviction of in person voter fraud in Indiana, but Indiana Secretary of State, Charlie White was convicted of voter fraud. So I just want to iterate that in person voter fraud is nearly nonexistent. Cases have shown that across the whole country there are what, fewer than a dozen or a couple dozen in person voter fraud attempts across millions and millions and millions of votes. And yet states have enacted these laws. Indiana was a test case for this law, because we are often a test case for these types of laws that are promoted by (ALEC) and that are designed to disenfranchise people.

So I do want to point out that it's a law that addresses a nearly nonexistent problem.

Dennis Avery: Universities.

Patricia Avery: And universities. Excuse me. My husband just pointed out to me that college students because their ID has to match their driver's license, since this law passed, and their college IDs even if they are state universities, they don't have an expiration date. And so for example, here in Evansville, at the University of Southern Indiana, they can't use their university ID to vote. They have to have transferred their driver's license to their dorm address at USI. And what college student bothers to do that?

And so to - for a college student to vote, for them to have to request an absentee ballot from home, is a ridiculous burden. College students should be allowed to vote in their college communities, otherwise you significantly cut their voter participation. And if we want this new generation to participate in elections, we need to facilitate their right to vote. Thank you.

1 Robert Dion: Thank you.

2

3 Diane Clements-Boyd: We have reached the 1:00 hour and we certainly want to thank everyone that came
4 out today and spoke and provided information. And now let me get back on the script here. Please
5 allow me to thank all of our speakers today. On behalf of the Indiana Advisory committee we
6 certainly appreciate you providing testimony on the topic of voting rights in Indiana. The information
7 was very informative and enlightening. The record will remain open through April 2, 2018. If
8 anyone would like to submit written comment, please send to MWROINTERNT@USCCR.gov. Or
9 mail to USCCR, US Commission on Civil Rights, 55 West Monroe, Suite 410, Chicago, Illinois
10 60603.

11

12 Again, please allow me to remind you that today's meeting is part 2 of a three part series the
13 committee will hear on this topic. On Friday, March 2nd, the committee will hear additional panel
14 testimony and public comment at Ivy Tech Community College Event Center, 2820 North Meridian
15 Street, Indianapolis, Indiana 46208. We will follow up with all attendees, with all in attendance, to
16 provide the minutes and transcript from this meeting, and a link to access those records.

17

18 We will also notify everyone when the committee is meeting for discussion and when the report is
19 ready. Again, I would like to thank our speakers and our committee members, for participating this
20 morning. If there is no further business, I will adjourn this public forum. Thank you very much.

21

22 Robert Dion: Thank you.

23

24 Christopher Douglas: Thank you all for participating.

25

26 Operator: Ladies and gentlemen again, that does conclude today's conference. Thank you once again,
27 for your participation.

In The Matter Of:

*INDIANA ADVISORY COMMITTEE US COMM ON CIVIL RIGHTS
PUBLIC MEETING RE: STATUS OF VOTING RIGHTS IN INDIANA*

March 2, 2018

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Min-U-Script® with Word Index

1 APPEARANCES:

2 INDIANA ADVISORY COMMITTEE:
 Diane Clements-Boyd, Chair
 3 Robert Dion
 James Haigh
 4 Patti O'Callaghan
 Tony Kirkland
 5 Billy McGill
 Ernesto Palomo
 6 Tammi Davis
 Christopher Douglas

7

LEGAL PANEL:

8 William R. Groth Page 9
 Jan Mensz Page 21
 9 Barbara Bolling-Williams Page 32

10 ADVOCACY PANEL:

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16 Brandon Clifton Page 217
 Russell Hollis Page 226
 17 Karen Celestino-Horseman Page 236
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18

19 PUBLIC SPEAKERS:

Brandon Herget

20

21 OTHERS PRESENT:

J. Bradley King
 22 Angie Nussmeyer
 Jerry Bonnet
 23 Melissa Wojnaroski
 Nicole Winston

24

25

- - -

1 9:11 o'clock a.m.
2 March 2, 2018

3 - - -

4 MS. CLEMENTS-BOYD: Good morning,
5 everyone. The meeting of the Indiana Advisory
6 Committee to the U.S. Commission on Civil Rights
7 shall come to order. For the benefit of those in
8 the audience, please allow me to introduce my
9 colleagues and myself. My name is Diane
10 Clements-Boyd, and I have the privilege of serving
11 as Chairperson of the Indiana advisory committee.

12 Also joining me are members of the
13 Committee. The following members are present
14 today: Tammi Davis -- and you may want to just
15 raise your hand so they'll know how you are --
16 Robert Dion; Christopher Douglas; James Haigh;
17 Tony Kirkland; Billy McGill; Patty O'Callaghan;
18 Ernesto Palomo; and Ellen Wu is en route, she
19 should be here sometime today; as well as
20 Elizabeth Cierzniak.

21 Also present with us today are Melissa
22 Wojnaroski, Civil Rights Analyst, and Carolyn
23 Allen, Administrative Assistant, and Nicole
24 Winston, Civil Rights Intern. Thank you so much
25 for all you do, staff.

The U.S. Commission on Civil Rights is an

1 independent bipartisan agency of the Federal
2 Government charged with studying discrimination or
3 denial of equal protection of the laws because of
4 race, color, religion, sex, age, disability, or
5 national origin, or in the administration of
6 justice.

7 Please allow me to acknowledge and thank
8 Chair Catherine E. Lhamon and the U.S. Commission
9 on Civil Rights for taking up the issue of
10 assessment of voting rights obstacles and
11 statutory enforcement report for fiscal year 2018.
12 In each of the 50 states and the District of
13 Columbia, an Advisory Committee to the Commission
14 has been established, and they are made up of
15 responsible persons who serve without compensation
16 to advise the Commission on relevant information
17 concerning their respective state.

18 Today, our purpose is to hear testimony
19 regarding voting rights in Indiana, in an effort
20 to discern if there are discriminatory barriers to
21 voting in the state. Among the responsibilities
22 of each Advisory Committee is to inform the
23 Commission of any knowledge of information it has
24 of any alleged deprivation of the right to vote,
25 and to have the vote counted by reason of color,

1 race, religion, sex, age, disability, or national
2 origin, or that citizens are being afforded or
3 denied the right to vote in federal elections as a
4 result of patterns or practices of fraud or
5 discrimination, and to advise the Commission
6 concerning matters related to discrimination or
7 denial of the equal protection of the laws under
8 the Constitution and the effect of the laws and
9 policies of the Federal Government with respect to
10 equal protection of the laws.

11 Through this study and, consequently, the
12 purpose of the forum today is to provide the
13 Indiana Advisory Committee testimony and
14 information to examine any impediments to voting
15 rights and the impact on voter participation in
16 Indiana.

17 Specifically, the Committee will examine
18 the extent to which voters in the state have free,
19 equal access to exercise the right to vote,
20 without regard to race, color, disability status,
21 national origin, age, religion, and/or sex, and
22 whether Indiana, in its application of its laws
23 and regulations, is meeting its equal protection
24 obligation in accord with its own Constitutional
25 mandates on the topic of free and fair election.

1 Today, if speakers begin to veer away from
2 the civil rights questions at hand to discuss
3 possibly important, but unrelated topics, I will
4 interrupt and ask that you refrain from doing so.
5 At the outset, I want to remind everyone that this
6 meeting is being recorded and being transcribed
7 for the public record.

8 Today's meeting is the third in a
9 three-part series of public meetings on the topic.
10 The Committee also heard testimony on the topic
11 via Web conference on February 12th, and held an
12 open comment period in Evansville on
13 February 17th. We are fortunate and thankful to
14 have such balanced and diverse panelists to share
15 information with us at these meetings.

16 I would also like to present the ground
17 rules for today's meeting. This is a public
18 meeting open to the media and the general public.
19 We have a very full schedule of people who will be
20 making presentations without the limited -- within
21 the limited time available. The time allotted for
22 each presentation must be strictly adhered to.
23 This will include a presentation by each panelist
24 of approximately 15 minutes.

25 After all of the panelists have concluded

1 their statements, the Committee members will
2 engage them in questions and answers. To
3 accommodate persons who are not on the agenda who
4 wish to make statements -- but wish to make
5 statements, we scheduled two open sessions today,
6 at 12:00 noon and 4:15.

7 In addition, written statements may be
8 submitted by mail to the U.S. Commission on Civil
9 Rights at 55 West Monroe Street, Suite 410,
10 Chicago, Illinois, 60603, or by e-mail to
11 mwojnaroski@usccr.gov. You may also call
12 312-353-8311 for more information.

13 Though some of the statements made today
14 may be controversial, we want to ensure that all
15 invited guests do not defame or degrade any person
16 or organization. As the Chair, I reserve the
17 privilege to cut short any statements that defame,
18 degrade, or do not pertain to the issue at hand.

19 In order to ensure that all aspects of the
20 issues are presented, knowledgeable persons with a
21 wide variety of experience and viewpoints have
22 been invited to share information. Any person or
23 organization that feels defamed or degraded by
24 statements made in these proceedings may provide a
25 public response during the open comment period.

1 Alternately, such persons or organizations can
2 file written statements for inclusion in the
3 proceedings.

4 I urge all persons making presentations and
5 comments to be judicious in their statements. The
6 Advisory Committee does appreciate the willingness
7 of all participants to share their views and
8 experiences with the Committee.

9 Finally, the rules for questions and answer
10 portions of the panel discussion is as follows:
11 The Committee will ask questions of the entire
12 panel or individual members of the panel after the
13 panelists have had the opportunity to provide
14 their prepared statements. Advisory Committee
15 members must be recognized by the Chair before
16 asking any questions of the participants, please.

17 I would ask that Committee members please
18 identify yourself by your full name, and when
19 asking questions, speak into the microphones.
20 This will assist the court reporter for today,
21 Mr. Lindy Meyer. In addition, because of the
22 large numbers of members and short amount of time,
23 each Committee member will be limited to one
24 question plus a follow-up. When five minutes are
25 left in the session, I will announce that the last

1 question may be asked.

2 So, with that, we are ready for our first
3 panel, and we see that they are all here, and I
4 would like to introduce all of them, and then we
5 will proceed. First we have with us Mr. William
6 Groth, counsel with Fillenwarth Dennerline Groth &
7 Towe, LLP; and we also have with us Jan Mensz,
8 Staff Attorney, ACLU of Indiana; and last but
9 certainly not least, we have Barbara Bolling,
10 attorney and President of the Indiana Chapter of
11 the NAACP.

12 Welcome all of you.

13 MR. MENSZ: Thank you.

14 MS. CLEMENTS-BOYD: We will now hear
15 from Attorney William Groth.

16 Attorney Groth, welcome, and please
17 proceed.

18 MR. GROTH: Thank you, Madam Chair and
19 members of the Committee. I appreciate the
20 invitation to present my views here this morning,
21 particularly with the distinguished fellow members
22 of my panel.

23 Are you picking me up okay, sir?

24 THE REPORTER: Yes.

25 MR. GROTH: All right. Good.

1 As the first speaker at this public meeting
2 to examine voting rights in Indiana, my goal is to
3 provide an overview of Indiana's election laws.
4 I'm planning to examine how Indiana rates in
5 relation to other states in providing access to
6 the ballot box, and I'll look at the impact of our
7 election laws on voter turnout.

8 The six categories of election laws I'll be
9 discussing are: Voter registration; poll closing
10 times; absentee voting, both early in person and
11 mail in; time off work to vote laws; voter ID
12 laws; and partisan gerrymandering. Obviously I
13 won't have time to do justice to any one of those
14 topics, but I'll do the best I can to provide an
15 overview.

16 While I'll be discussing each of these laws
17 or regulations separately, it's important to
18 consider the cumulative burdens imposed by
19 Indiana's overall scheme of electoral regulations
20 and to bear in mind that these rules are imposed
21 by a state legislature which is controlled by the
22 political party in power, which has an incentive
23 to shape the rules of the electoral game to their
24 own benefit. Those aren't my words, those are the
25 words of Justice O'Connor.

1 I'll examine these laws under the
2 theoretical construct used by political scientists
3 that study voter turnout, known as the calculus of
4 voting. That theory holds that a person will make
5 the effort to vote if the probability of one's
6 vote determining the outcome multiplied by the net
7 psychological benefit of seeing one's preferred
8 candidate win is greater than the costs associated
9 with voting. And those costs include both the
10 tangible and the intangible, such as the time,
11 resources and activity needed to overcome the
12 barriers to registering to vote, and to
13 successfully casting a ballot that is assured of
14 being counted.

15 The decision to vote is often a very
16 tenuous one, and it's so tenuous that in many
17 instances, even something as trivial as bad
18 election day weather or the changing of poll
19 locations may dramatically alter turnout. A
20 recent example -- or recent study by the
21 Government Accounting Office found that imposing a
22 strict photo ID law decreased turnout overall by
23 two to three percent, and that the negative effect
24 was slightly larger among blacks than whites.

25 What may superficially appear to be equal

1 costs uniformly imposed by a particular voting
2 regulation can be far more burdensome for
3 African-Americans, Latinos, young people, and
4 those at or near the poverty line, all of whom
5 happen to be traditional supporters of Democratic
6 Party candidates. Those persons are less able to
7 withstand incremental increases in the costs of
8 voting, and may be dissuaded from voting at all if
9 the costs become too great.

10 Let's look at recent voter turnout
11 statistics in Indiana. In 2008, in the general
12 election, 62 percent of registered Hoosiers voted.
13 That year, Marion county, which is where we are,
14 had three operational early voting locations, the
15 only year satellite sites were approved in this
16 county. In 2012, the turnout dropped four percent
17 to 58 percent in the general election. We look at
18 the next off year election in 2014, only 30
19 percent of Indiana's registered voters cast
20 ballots, which was the lowest turnout rate in the
21 nation. And in 2016, 58 percent of Hoosiers voted
22 in the general elections, which put us in 38th
23 place.

24 Now, let's turn to some of the election
25 laws that we operate under in this state that

1 possibly contribute to our rather abysmal voting
2 rates. First, I want to look at voter
3 registration. It may seem like a fairly
4 noncontroversial topic, but it is an important
5 one. Under the Indiana Constitution, back in 1881
6 the General Assembly, or actually -- well, the
7 General Assembly passed an amendment to the
8 Constitution that required that the legislature
9 provide for a uniform registration of all persons
10 qualified to vote.

11 Under Article 2, Section 2(a) of the
12 Indiana Constitution, to register to vote in
13 Indiana, a person must meet basically four
14 qualifications. One is to be a citizen of the
15 United States, to have resided in the precinct at
16 least 30 days before the next election, to be at
17 least 18 years of age on the day of the next
18 general election, and not be currently
19 incarcerated following a criminal conviction.

20 A citizen of Indiana cannot vote without
21 first being registered. Indiana shuts off voter
22 registration 29 days before election day, which is
23 the earliest date permitted by federal law. It's
24 important to note that 34 other states close
25 registration activities nearer to election day, or

1 they have, in the case of North Dakota, no voter
2 registration at all.

3 An increasing number of states, now up
4 to 17, have enacted same-day-registration laws.
5 The six states with the highest voter turnout
6 in 2016 each offered same-day registration. Voter
7 turnout in states with same-day registration was
8 seven points higher than states without that
9 option. And in Oregon, the first state to
10 implement automatic voter registration, which is
11 proactive registration at DMV transactions, saw
12 the highest turnout increase of any state
13 since 2012.

14 So, the evidence suggests that easing voter
15 registration laws, especially adopting same-day
16 registration or some version thereof, leads to a
17 significant increase in participation in the
18 electoral process.

19 Next let's look at poll closing times. By
20 statute, Indiana closes its polls on election day
21 at 6:00 p.m. Only two other states close their
22 polls that early, one being Kentucky, the other, a
23 little more understandable, Hawaii. Twenty states
24 close their polls at 7:00 p.m., four states at
25 7:30, 18 states at 8:00 p.m., and three states

1 leave their polls open until 9:00 p.m. Indiana's
2 early poll closing time is a particularly
3 difficult obstacle for some workers and students
4 with inflexible schedules or families with young
5 children who may have child care responsibilities,
6 and for many persons who live near or below the
7 poverty line.

8 As a Federal District Judge in Pennsylvania
9 recently observed, and I quote, we would be blind
10 to reality if we did not recognize that many
11 individuals have a limited opportunity to go to
12 the polls on election day due to their jobs, child
13 care and family responsibilities, and other
14 weighty commitments. Life does not stop on
15 election day.

16 Next, I want to look at early in-person and
17 mail-in absentee voting. No-excuse -- thank you.
18 No-excuse absentee voting can help mitigate the
19 effects of the closed period of time for voting on
20 election day. The two principal methods of
21 absentee voting in Indiana are early in-person
22 absentee voting, which doesn't require an excuse;
23 the other is mail-in absentee voting, which can be
24 done only under certain conditions. Indiana is
25 one of 37 states that permits no excuse early

1 in-person absentee voting. It must take place, by
2 statute, at the office of the county clerk;
3 however, a county election board can, by unanimous
4 vote, open or authorize the opening of satellite
5 offices for absent -- EIP, early in-person
6 absentee voting.

7 I want to talk briefly about Marion
8 County's experience with that. We last approved
9 satellite voting locations in 2008. That year
10 Indiana's electoral votes were cast for the
11 Democratic Presidential candidate for the first
12 time in 44 years. And ever since then, the
13 Republican-appointed member of the Marion County
14 Election Board has consistently vetoed approval of
15 satellite sites.

16 This has left Indiana -- I'm sorry -- this
17 has left Indiana's most populous county and the
18 one with the highest number and percentage of
19 minority voters with only a single ill-equipped
20 EIP voting site, with little or no free parking.
21 A resident of Marion County must -- without
22 private transportation -- must pay for public
23 transportation to get to the City-County Building,
24 and a person with a private vehicle must pay for
25 parking and the gas to get downtown if they live

1 in one of the outlying townships.

2 Outside of Marion County, satellite sites
3 with easily accessible free parking have been
4 routinely approved. While in 2016 the ratio of
5 EIP absentee voting sites to registered voters in
6 Marion County was one to 715,000 registered
7 voters; in Hamilton County, it was one site per
8 77,000 voters; in Hendricks County, one per 27,000
9 voters; and in Boone County, one per 5,500 voters.

10 The impact of satellite sites on turnout is
11 self-evident. In 2008, with two satellite
12 locations, 73,549 Marion County voters cast an
13 early in-person absentee ballot. Without
14 satellite sites in 2012, that number dropped to
15 39,000, and in 2016, it crept up only slightly, at
16 46,000.

17 I'm presently involved in a lawsuit pending
18 in Federal Court, which contends that the Election
19 Board's refusal since 2008 to approve satellite
20 sites violates the equal protection and First
21 Amendment rights of Marion County voters. That
22 suit asks the Federal Court to enjoin the Board to
23 open at least two satellite locations for the
24 primary election this year, and later for the
25 general. The arguments have been fully briefed,

1 and we're waiting for the Court's ruling as we
2 speak.

3 Real quickly, time-off-work-to-vote laws
4 are on the books in 20 states. Indiana does not
5 have one. We did it one time, and I think it was
6 repealed several decades ago.

7 I could talk a lot about voter
8 identification, if I have time, but I probably
9 will defer some that to perhaps one of my fellow
10 panel members. I did litigate the challenge to
11 Indiana's photo ID law that wound up at the
12 U.S. Supreme Court.

13 We now know that Indiana is one of only
14 seven states with strict photo ID laws. That
15 means that voters without acceptable state-issued
16 photo ID must vote a provisional ballot, and then
17 take additional steps after election day for that
18 provisional ballot to be opened and counted. In
19 Indiana, this involves making a trip to the local
20 office of the Circuit Court Clerk and presenting
21 acceptable ID so the provisional ballot has a
22 chance of being counted.

23 We're still in the minority in terms of
24 having strict ID law. Twenty-four states have
25 nonstrict ID laws, meaning that they'll accept a

1 broader range of identifying documents, and that
2 they don't require any further action by the
3 voter. The voter is permitted to cast a regular
4 ballot, doesn't have to come back or make a second
5 trip.

6 Now, I could talk about the Supreme Court's
7 decision, the ruling in that case by Justice
8 Stevens. It was obviously a splintered vote. A
9 couple of the judges -- this was quite an unusual
10 phenomenon, but one of the judges on the Seventh
11 Circuit and one of the justices on the Supreme
12 Court have -- have publicly expressed doubts as to
13 whether they got that decision right. So -- but
14 unfortunately, the Indiana law spawned a number of
15 copycat laws, and as you know, that's a very hot
16 topic being litigated today in the Federal Courts.

17 And then briefly, I'll wrap it up with just
18 a few comments about gerrymandering. There can be
19 little doubt that extreme partisan gerrymandering
20 affects voter turnout, because voters don't see
21 their votes as mattering where the results appear
22 to be preordained.

23 According to the Cook Political Report, in
24 2016, out of 435 House races, only 33 ended up
25 being competitive, meaning the margin of victory

1 was within ten percent. None of those
2 Congressional races were in Indiana. In 2016, of
3 the 25 Indiana State Senate seats that were up, 14
4 were uncontested, and in the Indiana house, of the
5 100 seats that were up, 32 were uncontested.

6 Political scientists have come up with a
7 new methodology called the efficiency gap, in an
8 attempt to measure the extent to which a plan, a
9 redistricting plan, disproportionately wastes votes
10 from persons supporting a particular political
11 party. It was developed by a political scientist
12 by the name of Stephanopoulos, and McGhee.

13 And the methodology was recently used by a
14 three-judge Federal Court in striking down
15 Wisconsin's 2011 legislative redistricting plan as
16 an unconstitutional partisan gerrymander. As you
17 probably know, that case, Whitford -- or Gill
18 versus Whitford, is pending presently before the
19 U.S. Supreme Court.

20 Applying that efficiency gap methodology to
21 Indiana elections in the past decade, we know that
22 gerrymandering allowed Republicans to win, on
23 average, an additional 11 House seats in elections
24 held this decade, and in the State Senate, even
25 more egregious partisan gerrymandering has

1 produced at least an additional ten seats out
2 of 50 held in elections held this decade.

3 MS. CLEMENTS-BOYD: Mr. Groth?
4 Mr. Groth?

5 MR. GROTH: Yes.

6 MS. CLEMENTS-BOYD: We will certainly
7 come back and possibly ask you additional
8 questions.

9 MR. GROTH: All right.

10 MS. CLEMENTS-BOYD: Thank you.

11 MR. GROTH: I'm wrapping up. That's
12 it.

13 MS. CLEMENTS-BOYD: Okay. Thank you.
14 Thank you so much, Mr. Groth.

15 And now we will hear from a staff attorney
16 for the ACLU, Jan Mensz. Thank you for being
17 here, and when you're ready, proceed.

18 MR. MENSZ: Thank you, Madam Chair,
19 and thank you to the Committee for having me here.
20 Again, my name is Jan Mensz. I'm a staff attorney
21 for the ACLU of Indiana.

22 Just by way of background, the ACLU
23 litigates voting cases both through its chapters
24 and through its national voter rights project.
25 The ACLU of Indiana specifically has been involved

1 in a number of voting and election-related cases,
2 including Crawford versus Marion County Board of
3 Election, which involved, as Mr. Groth mentioned,
4 the voter ID law here in Indiana; Common Cause
5 Indiana versus the Indiana Election Commission,
6 which involved the process for electing judges
7 here in Indiana; and then my personal favorite,
8 the ACLU versus Indiana Secretary of State, which
9 involved the ability to take a selfie with your
10 ballot.

11 So, I'm going to focus on two topics, voter
12 list maintenance, and if I have time, the
13 aftermath of the Crawford decision on photo ID
14 requirements in Indiana.

15 First, when I use the term "voter list
16 maintenance," I'm talking about the process for
17 ensuring voter registration lists remain current
18 and accurate. In 1993, the Federal Government
19 passed the National Voter Registration Act, the
20 NVRA, which is popularly known as the Motor Voter
21 Act, which sought to make both -- make it both
22 easier to register to vote and to require states
23 to do more to identify and remove voters who were
24 no longer eligible to vote.

25 In passing the Act, Congress recognized

1 that, and I quote, restrictive registration laws
2 and administrative procedures were introduced in
3 the United States in the late 19th and early 20th
4 Centuries to keep certain groups of citizens from
5 voting. As examples Congress cited poll taxes,
6 literacy tests, residency requirements, elaborate
7 administrative procedures, and selective purges of
8 voter registration rolls implemented by states to
9 suppress the vote.

10 Congress therefore passed the NVRA to
11 increase the number of eligible citizens who
12 register to vote and to enhance the participation
13 of eligible citizens as voters in elections for
14 federal office, and also to ensure that accurate
15 and current voter registration rolls are
16 maintained. It did this by mandating certain
17 procedures for registered voters -- for
18 registering voters; for example, mandating that
19 voter registration be offered at the DMV when you
20 apply for your driver's license.

21 And also providing procedures for calling
22 voter registration lists, and that's the procedure
23 I'm going to focus on today. The NVRA
24 requirements -- the NVRA gives five reasons why
25 you might remove a voter from a voter registration

1 list. One is by a voter's specific request,
2 another is for a criminal conviction, mental
3 incapacity, death, and change of residence.

4 The NVRA sets forth several requirements
5 concerning how and when a state may review [sic] a
6 voter from the rolls for any of these five
7 reasons, but the two I will focus on are the
8 requirements where the state has objective and
9 reliable information that a voter has changed
10 their residence.

11 The first requirement is that the election
12 official must send a confirmation notice to the
13 voter's registered address, and if the voter
14 responds, that's sort of the end of the matter,
15 and they either confirm their current residence or
16 they respond and say they have in fact moved.

17 But if the voter doesn't respond or the
18 notice is returned undeliverable, the election
19 official must wait two election cycles during
20 which the voter has not -- and those are federal
21 election cycles -- during which the voter has not
22 voted or appeared to vote before they can cancel
23 the voter registration record.

24 The one question that is arguably left open
25 by the NVRA is: What constitutes objective,

1 reliable information that a voter has changed
2 their residence? And the Act really only gives
3 one example, and that's when a person gives --
4 provides registration notice to the -- I'm
5 sorry -- provides change of address notification
6 to the U.S. Postal Service, what's popularly known
7 the COA notice.

8 In this case, the Post Office has the name
9 of the registrant, a prior address where the voter
10 has indicated they no longer live or at least want
11 mail forwarded from. With this information, under
12 the NVRA, an election official could start the
13 notice of waiting period process for removal. But
14 again, even with that information, this important
15 procedural process is applied.

16 The NVRA has been on the books for 25 years
17 now, and we have really seen an uptick in voter
18 list maintenance activity nationally over the last
19 few election cycles. The U.S. Election Assistance
20 Commission, which tracks this data, found that
21 between 2014 and 2016, 16.7 million people, or 8.8
22 percent of all eligible voters, were removed
23 through voter list maintenance efforts. This was
24 an increase of 1.9 million from the previous
25 period, between 2012 and 2014.

1 One of the drivers of this has been a
2 program that was established by the Secretary of
3 State of Kansas, Kris Kobach, which is known as
4 the Interstate Voter Registration Crosscheck
5 program, or simply Crosscheck. That purports to
6 identify voters who have moved to and registered
7 to vote in another state.

8 It does this by comparing certain voter
9 registration information provided by participating
10 states to identify matches. Indiana and about 30
11 other states participate in this program and use
12 it as a basis for removing registrants on the
13 voter rolls. The reliability of the Crosscheck
14 program has been called into question.

15 Crosscheck typically uses the first name,
16 last name and date of birth for registrants to
17 make a match, but studies have shown that
18 statistically it is more common than you would
19 think that two people have the same name and date
20 of birth, something known as the Birthday paradox,
21 and this probability only increases the larger the
22 pool, the sample size that you're working with.

23 So, as a result, Crosscheck is estimated to
24 match 200 unique legitimate voters for every
25 registrant that could be used to cast a double

1 vote, which is a huge error rate. Obviously the
2 chances of getting a false hit depends, in large
3 part, on the commonality of the name.

4 And what's really troubling from a civil
5 rights perspective is that some -- some studies
6 have found that certain racial and ethnic minority
7 populations are more likely to have the same first
8 and last name, making them disproportionately
9 susceptible to a false hit. So, for example, one
10 researcher found that Crosscheck flagged one in
11 six Latinos, one in seven Asian-Americans, one in
12 nine African-Americans as potential double
13 registrants.

14 Indiana uses data from Crosscheck to
15 initiate the process for removing voters from the
16 voter rolls, but until recently, Indiana law
17 required that any removal based on Crosscheck, a
18 Crosscheck match, was subject to election
19 officials sending a confirmation notice and
20 waiting two election cycles before any removal,
21 which is required under the NVRA.

22 In 2017, however, the Indiana legislature
23 passed -- I'm sorry -- in 2016, the Indiana
24 legislature passed the Senate Enrolled Act 442,
25 which eliminated this requirement. It now permits

1 counties to remove a registrant based on a
2 Crosscheck match immediately.

3 The NAACP and the League of Women Voters
4 and Common Cause Indiana filed suit to block the
5 new law. Essentially, the cases argue that the
6 state violated the NVRA by failing to ensure the
7 notice and waiting period procedures are followed
8 whenever Crosscheck is used as a basis for
9 removing a voter from the rolls.

10 The plaintiffs in that case plan to move
11 for preliminary injunction next week and, of
12 course, we -- the ACLU is representing Common
13 Cause Indiana, along with our partners at Demos,
14 which is a voter rights organization in New York,
15 and the law firm of Davis Wright Tremaine and the
16 Voter Rights Project, also located in New York.
17 So, this is a large effort that is in the early
18 stage of litigation right now, but this is an
19 important matter from a policy perspective.

20 And as I mentioned, the voter list
21 maintenance activity has been increasing
22 nationally, and, of course, given the background
23 that historically vote purges have been used in
24 the past as one method for suppressing minority
25 voters, this should cause serious concern, and

1 there's no reason to believe that this isn't still
2 happening today.

3 For example, in an NVRA case in Florida,
4 the state attempted to purge purported noncitizens
5 who it alleged were on the voter rolls. The 11th
6 Circuit ultimately stuck down the law because the
7 purges were occurring within the 90-day window
8 prior to an election, which is prohibited by NVRA,
9 but some of the findings in the case were
10 striking. In that case, 82 percent of the voters
11 purged in Florida were found to be nonwhite and 60
12 percent were Hispanic, and given the country's
13 history of suppressing minority voters, it is
14 vital that we get this right.

15 The NVRA attempts to strike a balance
16 between making voting more accessible and ensuring
17 accurate voter rolls. Unfortunately, we believe
18 Indiana has upset that balance by removing
19 important procedural safeguards for ensuring that
20 voters, whether they're doing so intentionally or
21 not, are not disenfranchised.

22 I'll make a few remarks on voter ID's. As
23 Mr. Groth mentioned, a 2005 Indiana law enacted
24 what was then one of the most stringent voter
25 identification laws in the country. The law was

1 upheld by the Supreme Court in Crawford versus
2 Marion County on the grounds that the burdens it
3 placed on voters was minimal in relation to the
4 state's interest in preventing voter fraud.

5 Ten years later the law remains on the
6 books, though evidence of voter fraud,
7 particularly through impersonation at the polls,
8 remains elusive. Of course, the concern with
9 voter ID laws is that in the attempt to stamp out
10 voter fraud, which hasn't been demonstrated, the
11 laws will reduce voter turnout and disenfranchise
12 people who do not have these ID's.

13 A 2006 Brennan Center study found that 11
14 percent of American citizens did not have
15 government issued ID's, and one example, the 2014
16 Government Accountability Office analysis found
17 that turnout in the 2008 and 2012 general
18 elections suggested that implementation of voter
19 ID laws in Kansas and Tennessee led to a 1.9
20 percentage-point reduction in turnout in Kansas
21 and a 2.2 percentage-point reduction in turnout in
22 Tennessee. Obviously in close elections, this can
23 have a huge impact.

24 What we've seen in Indiana is some evidence
25 of a disparate impact on racial minorities.

1 A 2009 study found 84.2 percent of registered
2 voters -- registered white voters had valid ID's,
3 while 78.2 percent of African-Americans had a
4 valid form of I.D. And one of the reasons the
5 Supreme Court upheld Indiana's law in Crawford was
6 the ability to cast a provisional ballot, which
7 Mr. Groth also mentioned.

8 This has not proven to be an effective
9 failsafe. One study showed that in 2012, only 680
10 provisional ballots were cast due to an issue with
11 the voters' ID's, and only ten percent of those
12 ballots were ultimately counted, which, as
13 mentioned, requires a voter actually going in the
14 week after the election to confirm their I.D. So,
15 we should still be concerned about the
16 effectiveness of this law on suppressing the vote.

17 Voter ID laws have proliferated since
18 Crawford, and so has the litigation. There have
19 been cases in Texas, North Carolina, Wisconsin,
20 North Dakota, and there's a case that's ongoing in
21 Alabama. These cases have produced compelling
22 data on the disparate impact of voter ID laws and
23 their ability to suppress the vote. And although
24 Indiana's law was upheld by the Supreme Court,
25 with the benefit of time and hopefully better

1 research, we hope to get a clearer picture of the
2 effects of the law in this state.

3 And thank you again for having me, and I'll
4 pass this along to the other speakers.

5 MS. CLEMENTS-BOYD: Thank you,
6 Attorney Mensz.

7 And now we will hear from Attorney Barbara
8 Bolling. Welcome, and please proceed.

9 MS. BOLLING-WILLIAMS: Thank you,
10 Madam Chair, and thank you to the entire
11 Commission, Indiana Advisory Committee, on the
12 U.S. Commission on Civil Rights. I am the State
13 President for the NAACP, and as you know, NAACP is
14 not -- can you hear me? -- is not a stranger to
15 litigation when it comes to the rights of our
16 members, which we have found when we are
17 successful representing our members all of -- all
18 over the United States to the citizens' benefit.

19 I want to kind of start talking about some
20 of the issues that my colleagues, my panelists,
21 have talked about are some of the things that we
22 have been fighting for. We have fought in
23 partnership and continue to fight in partnership
24 with the clients of my fellow panelists. We're
25 currently involved in litigation, you know, today,

1 as we speak.

2 I want to talk about, I guess, starting
3 in 2005 just briefly on the matter of the photo
4 ID, which we, again, we're in partnership with
5 that. But just to put a human perspective on
6 that, I represent -- I'm an attorney by
7 profession, and a case that occurred -- two cases
8 in Lake County, one where one of my clients did
9 not have the -- he had been voting for years, he's
10 probably in his '80's, but when it came time to
11 vote, you know, to get the ID that was needed, he
12 didn't have a birth certificate. He was born in
13 the South by a midwife, and typically, older
14 African-Americans, that's the way that -- you
15 know, they were brought up, that their births
16 occurred, and nobody issued a birth certificate
17 for him.

18 So, the one thing that he was told that he
19 could do was to look at the census records and
20 find if he was in a household, listed in a
21 household, that that could be evidence that he
22 could be -- use to obtain a birth certificate.
23 That led him to find out that it was interesting
24 that all of the United States census records are
25 contained in Jeffersonville, Indiana. I don't

1 know if any of you knew that. I certainly didn't
2 know that until that time.

3 Then we had another case of a young lady, I
4 think she was 102, and she had always voted using
5 her husband's military ID. Well, now she needed
6 her own ID, and, of course, she had no birth
7 certificate and couldn't get it. And we were able
8 to assist her by using the clerk of the court. He
9 assisted her in being able to get a birth
10 certificate. How many people are similarly
11 situated but have the contact or share their
12 information with someone who may have some context
13 to be able to assist them on obtaining the
14 necessary ID to be able to vote?

15 Moving up to 2008, we were involved in
16 early voting sites in Lake County when the
17 Republican members of the election board decided
18 to withdraw their approval of early voting sites
19 that took place in the cities of Gary, Hammond and
20 East Chicago, which, if you're familiar with Lake
21 County, those cities contain the largest number of
22 people of color in the county and the second
23 largest in the State of Indiana.

24 And what that was going to do was require,
25 where Marion County is today, that there would

1 only be one place where all of the voters in Lake
2 County could go for early voting, and that would
3 be to our county seat, which is in Crown Point,
4 which is approximately about 15, 20 miles from the
5 northern part the county.

6 For another lawsuit, we had, one of our
7 presidents decided to take a bus -- he was
8 President of Hammond -- to take a bus from
9 Hammond, or public transportation, to get to the
10 county seat. It took -- it was an eight-hour
11 trip. She had to take the bus from Hammond to
12 Gary -- no, from Hammond to the South Shore, then
13 the South Shore over to Gary, to then get on the
14 Gary bus to then take her out to Crown Point.

15 And that was an all-day -- it was an
16 eight-hour trip, and certainly it was an expense
17 to her to have to do this. Imagine if you have
18 children in tow, and a lot of times that's the
19 people who have young children, if they're going
20 to be home, that's what they're going to have to
21 do. They don't have the resources to hire
22 baby-sitters.

23 So, we were involved in that -- in that
24 lawsuit, which we were very successful in keeping
25 those early voting sites open in Gary, Hammond and

1 East Chicago, in addition to the one in Crown
2 Point. And I can tell you the reason why we were
3 successful is that we also have -- we're
4 configured differently than the rest of the state
5 in that we have clerk's offices in those three --
6 courthouses and clerk's offices, which had allowed
7 us to be able to do that.

8 And rolling the clock forward -- that was
9 in 2008. We roll the clock forward to just this
10 past year, in 2016 in Lake County, we had -- now
11 we have 14 early voting sites, and let me tell you
12 this when I say that we help benefit, you know,
13 all of our citizens when we get involved in
14 fighting for our members.

15 None of those new additional early voting
16 sites, none of the 14, out of the original three,
17 are in Gary, Hammond or East Chicago. That lets
18 you know that they're in all of the other outlying
19 areas of Lake County, which is still -- you know,
20 we believe that everybody should have an
21 opportunity to vote, which is why we're fighting
22 for Marion County to also be able to have more
23 than the one early voting site for 700,000 voters.

24 The current ones that we're involved with
25 now -- you've already heard about the Crosscheck,

1 we're involved in that litigation, and you've
2 heard about the litigation that's dealing with
3 Marion County. We have two other litigations that
4 NAACP is currently involved with here in the State
5 of Indiana that's pending.

6 One I'll just state is pretty much over
7 now. That was -- that dealt with the President
8 Trump's executive order creating his Advisory
9 Commission on Election Integrity. Also, as my
10 colleagues mentioned, that there has yet to be
11 found in the entire country evidence of voter
12 fraud, in-person voter fraud. It doesn't exist.

13 Yet, you know, we continue to use that as
14 the reason for the increased activity on
15 infringing on a person's right to vote, you know,
16 to say that we want to make sure that we don't
17 have it. We didn't have it in the first place.
18 You know, it's only just become a burden to
19 society. So, that one, we've challenged the
20 President's Commission requiring all secretary of
21 states around the country to turn over sensitive
22 voter data to that Commission.

23 Well, Indiana has very specific laws, one
24 of the few that protects us, that says, you know,
25 who can -- you know, who can actually receive that

1 voting data, and the President's Commission on
2 Voter Integrity was not one of those people listed
3 in our state statute. And so, we were very
4 successful in that, along with other states,
5 refusing to turn that information -- we have made
6 our Secretary of State refuse to turn it over or
7 to prohibit it. But other states who've refused
8 to turn it over as well, and finally the President
9 just kind of abandoned that commission. So, that
10 was done.

11 So, the other one that remains now is the
12 law that was passed in the last session that dealt
13 with the Lake County Precinct Consolidation law,
14 and what that says was that precincts with less
15 than 600 active voters must consolidate with
16 another precinct. And they cite the fact that
17 that would be better for the County, it would save
18 more money, and just overall, if you have less
19 than 600 voters, you don't need to have all of
20 those precinct sites, voting sites.

21 Well, the problem with that is that if it's
22 such a great thing for Indiana, why is it not the
23 law in the other 91 counties? Why is it only
24 pertaining to Lake County? Well, we know why.
25 It's because the law negatively impacts the cities

1 of Gary, Hammond and East Chicago, and we talked
2 about the makeup, the racial makeup, of those
3 three cities.

4 That would specifically -- well, those
5 three cities also contain the largest portion
6 of -- largest portion of precincts, and if you
7 consolidate it there, it's going to significantly
8 reduce the number of -- the voting strength in the
9 cities of Gary, Hammond and East Chicago with
10 respect to the rest of the County. So, we are
11 challenging the Precinct Consolidation law, one,
12 on an equal protection basis, and two, because,
13 again, it's improperly targeted to minority voters
14 in the determination to just suppress the vote.

15 And just as an aside, you know, we saw this
16 proliferation of lawsuits after the Supreme Court
17 decided to invalidate Section 4 of the Civil
18 Rights Act of 1965, and that preclearance section
19 that was invalidated or determined by the Supreme
20 Court to be unconstitutional has now led to, you
21 know, a lot of lawsuits, especially in the
22 southern states.

23 The preclearance said that before a state
24 could enact a law that may impact on the minority
25 voters in their community, that they had to submit

1 it to the Justice Department for clearance to see
2 if it passes muster. Well, by invalidating that
3 section, now no longer do they have to preclear
4 the law that they're going to enact, but they can
5 go ahead on and enact it, and when it's determined
6 that it is negatively impacting people of color,
7 then now, yes, they still have a remedy that they
8 can sue, but we know that lawsuits are costly and
9 they're timely.

10 So, several election cycles will have
11 passed before a determination was made to
12 invalidate those laws. So, it's because of all of
13 the activity around elections, with the improper
14 purpose of suppressing the vote, that you're going
15 to continue to have litigation, because we're not
16 going to sit by idly and allow -- we won't go
17 quietly into the night, so to speak.

18 And that's my response. Thank you.

19 MS. CLEMENTS-BOYD: Thank you so much,
20 Attorney Bolling.

21 Okay. Now, I think we are ready for
22 questions, and I'm sure that there will be many.

23 So, Patti?

24 MS. O'CALLAGHAN: Oh, sure. Wait five
25 seconds until it turns green; all right.

1 (Laughter.)

2 MS. O'CALLAGHAN: So, thank you. This
3 is -- I'm Patti O'Callaghan, and my question is
4 for Attorney Groth, but I guess actually all of
5 you could address it. Considering the disparate
6 impact of the Indiana voter ID law on minorities
7 and the poor, and also the fact that part of the
8 decision by the Supreme Court was based on the
9 fact that they didn't have somebody who actually
10 had harm, and now we have more time going past and
11 have had people who have had harm, who have not
12 been able to vote because of not having a voter
13 ID, what are the chances of being able to
14 relitigate that decision?

15 MR. GROTH: Well, in the last decade,
16 I've been waiting for somebody to call me or
17 e-mail me and give me a story about how they tried
18 but were unable to obtain a photo I.D. I actually
19 had one person approach me who was not able to get
20 an ID because at a very young age, his mother had
21 put one name on the birth certificate and another
22 name on his Social Security information. So, he
23 had this mismatch. He tried and tried to get his
24 ID and didn't succeed.

25 I ended up filing suit for him. I had to

1 litigate that case for two years. We finally
2 succeeded, only after we forced the state to give
3 him a hearing before withholding an ID from him.
4 We ended up having to call his mother up from the
5 State of Georgia to testify that "Yes, this in
6 fact is my son, and this is what happened, this is
7 why we have this name mismatch."

8 I thought there would be -- and that had a
9 very good outcome, and the state ended up having
10 to pay my attorneys fees. I thought there would
11 be more people come forward, but I'm still
12 waiting, and if the right case presents itself, I
13 maybe need some reinforcements or some help from
14 Jan and his organization, but I could envision
15 possibly a class-action suit being filed, alleging
16 that the statute does have a disparate impact.

17 Of course, that would also involve the
18 necessity of hiring an expert to do a statistical
19 analysis, because it's very complicated. I mean
20 the first round of the challenge was -- you know,
21 took almost four years from District Court filing
22 to Supreme Court decision, and it becomes very
23 expensive to litigate. We don't always have the
24 resources we'd like to have and need, but we're
25 certainly keeping an eye on that situation.

1 MS. CLEMENTS-BOYD: Could I ask a
2 follow-up question to Patti's question? How many
3 aggrieved persons were identified in the Crawford
4 case?

5 MR. GROTH: Well, you know, we -- the
6 mythology that's grown up around that case is that
7 there were -- we didn't present any evidence from
8 any individuals who were harmed by the law, which
9 is simply not true. We had a number of
10 affidavits.

11 And basically I was representing the
12 Indiana Democratic Party and the ACLU was
13 representing Bill Crawford and the NAACP and
14 others, and together we supplied a number of
15 affidavits from people who had, for example, made
16 repeated trips to the BMV to try to get an ID.
17 Barbara mentioned they weren't able to because
18 they didn't have birth certificates.

19 But -- and we submitted an expert affidavit
20 from a professor, a political science professor
21 from IU, who said, "Look, this law is going to
22 impose costs on people that they're not going to
23 be able to afford and deal with."

24 But all of that evidence has kind of gotten
25 lost in the shuffle. I don't know why, but I

1 think part of it is we filed it as a
2 pre-enforcement challenge, not -- you know, the
3 law had not yet taken effect, and that put us kind
4 of behind the eight ball to begin with.

5 But do you have any --

6 MR. MENSZ: Sure. Do you want to ask
7 your question?

8 MS. CLEMENTS-BOYD: I think you can go
9 ahead.

10 MS. DAVIS: Oh, I'm raising my hand
11 for the Chair. I'm sorry. After you all.

12 MR. MENSZ: Yeah, I'll just make a few
13 comments on that. Like I mentioned, there have
14 been new voter ID law cases that have been
15 successful, not necessarily on the same theory
16 that Crawford was based on, which is an
17 unconstitutional burden on right to vote, but on
18 disparate impact under Section 2.

19 But, you know, I think you do need -- like
20 Bill said, there was evidence. Obviously, if you
21 have a law that's been in effect for ten years and
22 you have good statistical evidence, that can even
23 be more compelling, but, you know, I think the
24 more and better research that develops over time,
25 the better probability for a case.

1 I'll just note that it's difficult to
2 show -- and this is more in the realm of a
3 political scientist, but to show -- you know, you
4 can show provisional ballots that are cast and,
5 you know, try to present it as a proxy for how
6 this law had affected voters.

7 But really, the big effect is on people who
8 don't bother voting because they don't have the
9 ID. They don't go to the polls in the first
10 place, and that's difficult to measure. And, you
11 know, the more Indiana specific the data, the more
12 compelling it would be for a case.

13 MS. CLEMENTS-BOYD: Okay.

14 Tammi?

15 MS. DAVIS: Hi. I'm Tammi Davis, from
16 Gary, Indiana by way of East Chicago, Lake County,
17 where we have a whole lot of problems. So, I
18 thank you all for coming down and giving your
19 testimony.

20 I wanted to know if you all could speak to
21 the new real I.D. That seems to be another form
22 of suppression. I myself have gone to renew my
23 driver's license, only to be told that I need to
24 get a real ID -- that's two separate ID's -- but
25 was told by the Indiana BMV that I needed the real

1 ID because it was going to be required in order to
2 fly.

3 So, as we start talking about barriers and
4 the voter ID law, and I was very happy that I
5 worked with Barbara in 2005 and in 2008 to deal
6 with our issues, but can you speak to any thoughts
7 or experience you have relative to the new
8 requirements, because it's going to be required
9 for everyone to have this real ID, and any impact
10 that may have on the requirement to have, you
11 know, this government issued ID in order to vote.

12 Because with the real ID, you have to have
13 a passport and you have to have a birth
14 certificate, whereas with your driver's license,
15 you have one or the other. So, can you all speak
16 to that and any early signs of challenges that
17 that may pose for voters?

18 MS. BOLLING-WILLIAMS: I just wanted
19 to say with respect to that, we know that with any
20 new requirement you're talking dollars, you're
21 talking that it's going to be costly. That was
22 one of the challenges with the voter ID bill, that
23 it was put in the bill that, you know, if a
24 person, you know, needed an ID, that there would
25 not be a charge for it.

1 I don't believe that that's going to --
2 well, it can't be the same case with respect to
3 this real ID if you've got to have a passport,
4 because now you're dealing with the Federal
5 Government, and you can't tell the Federal
6 Government that they don't have to collect their
7 fees, because, you know, you've got to be able to
8 provide a government-issued ID so that the people
9 can vote, so that the people in Indiana can vote.

10 So, you're talking, in essence, another
11 poll tax. That's really what it is. If you don't
12 have the resources to be able to pay the fees that
13 are required, then you're just left out of the
14 process with no recourse.

15 MR. GROTH: I mean I guess I would
16 just add that the real ID law is going to impose
17 additional burdens on folks who want to get a
18 driver's license, and particularly for -- I think
19 for females who, you know, got married and have a
20 different name on their birth certificate and on
21 other papers.

22 You know, my wife and I were looking the
23 other day for our marriage certificate, and we
24 can't find it, and that's going to present a
25 problem for her, and we'll have to order it from

1 the courthouse where we got married, you know, out
2 of state.

3 So, again, it's part of the -- increasing
4 the costs of voting, which is going to exclude a
5 number of people who just can't afford to meet
6 those costs, and it's -- it's very troublesome.

7 MR. PALOMO: Good morning, everyone.
8 This is Ernesto Palomo. I have another question
9 for Mr. Groth. You had talked about the federal
10 lawsuit that you're involved in right now, and you
11 said that the arguments about the satellite sites
12 have been fully briefed. And a couple of
13 questions. One, what's the name of the case? And
14 two, what are the arguments being raised in
15 opposition to your efforts to open up more
16 satellite sites?

17 MR. GROTH: Uh-huh. Thank you. Well,
18 my clients in that case are Barbara's
19 organization, the State, Indiana -- Indiana State
20 NAACP, as well as the Indianapolis Chapter, and
21 Common Cause Indiana. I believe Julia Vaughn will
22 be a part of the next panel. So, those are my
23 clients. We sued the Marion County Election
24 Board, because they're the entity which makes the
25 decision whether or not to open satellite sites.

1 Interestingly, although the law requires
2 unanimity to approve satellite sites, there are
3 three members on the Board, and two are Democrats
4 who are very supportive of opening satellite
5 sites. So, we aren't really getting a lot of
6 opposition from the defendant in that case. They
7 are very much supportive of our objectives.

8 We have do have an opponent, however, and
9 that opponent is the Indiana Attorney General, who
10 has twice attempted to intervene in the case, and
11 we point out that "Look, we're not challenging the
12 constitutionality of the law on its face or as
13 applied anywhere else in Indiana," because
14 everywhere else in Indiana it seems to be working
15 fine, except Marion County. So, Judge Barker,
16 who's the presiding Judge, denied them full
17 intervenor status, but she did allow them to file
18 a Friend of the Court, which they did.

19 So, we'll see what happens. It is fully
20 briefed, and our goal is to -- and I think Judge
21 Barker has indicated she wants to issue an early
22 ruling, so there will be time to -- if she finds
23 in our favor -- to order the opening of a couple
24 of sites before the primary, and then we're hoping
25 for more obviously in the fall.

1 MR. MCGILL: Thank you, Madam Chair.

2 I want to get your name right, because I've
3 heard it multiple times. Is it Groth, or Groth?

4 MR. GROTH: Groth, yeah, G r o t h.

5 MR. MCGILL: Just a question about
6 this calculus of voting which you referred to, but
7 you said North Dakota has no registration at all?
8 And if in fact that's true, then how is it timely
9 validated for participation? I mean what happens?

10 MR. GROTH: Well, I don't know. I've
11 never lived in North Dakota.

12 MR. MCGILL: Oh, well, you -- yeah,
13 you mentioned North Dakota.

14 MR. GROTH: Yeah, but that's right.
15 I'm told -- from what I have read --

16 MR. MCGILL: Oh, okay.

17 MR. GROTH: -- they don't have any
18 voter registration. I guess you just show up and
19 sign your name and you take a ballot.

20 MR. MCGILL: Okay.

21 MR. GROTH: Of course, it's such a
22 lightly populated state that everybody probably
23 knows everybody, too. So, I'm not suggesting
24 necessarily that we do away with --

25 MR. MCGILL: Oh, I was just wondering

1 how, that's all, if in fact -- and how it worked.

2 Mr. Mensz, you referred to eight percent of
3 the population removed from voting polls in
4 various purging processes.

5 MR. MENSZ: The number would be, yeah,
6 the number of voter registration records that have
7 been removed was -- during 2014 and '16 -- would
8 represent 8.8 percent of all eligible voters.

9 MR. MCGILL: But when we're talking
10 about expanding opportunity, we're really
11 restricting it.

12 MR. MENSZ: Right, exactly. And, you
13 know, I'll add the caveat I'm sure some of those
14 are --

15 MR. MCGILL: Certainly.

16 MR. MENSZ: -- you know, you had
17 Mr. Trump's son and daughter, who were double
18 registered, and it is -- it certainly does happen
19 if someone moves to another state and they don't
20 cancel their previous registration. And I think
21 the NVRA acknowledges that, and there have been
22 the efforts to minimize those numbers of double
23 registrations. It's legitimate, but that's why
24 the NVRA has these important protections in place.
25 So, that -- that's not erroneous.

1 MR. MCGILL: And then lastly, Madam
2 Chair, for the Attorney slash President
3 Bolling-Williams.

4 So, it's our contention, then, that
5 consolidation is really only a mask for
6 discrimination, in essence?

7 MS. BOLLING-WILLIAMS: That's all it
8 is, yeah.

9 MR. MCGILL: Thank you.

10 MR. DOUGLAS: Before I ask my
11 question, could you repeat that calculus of voting
12 equation, please?

13 MR. GROTH: I'm not a political --

14 MR. DOUGLAS: This is Chris Douglas.

15 MR. GROTH: I'm not a political
16 scientist, but did I get it right, or close to
17 right?

18 MR. DION: Well done.

19 MR. GROTH: Okay.

20 So, the calculus of voting holds that a
21 person will make the effort to vote if the
22 probability of one's vote determining the outcome
23 multiplied by the net psychological benefit of
24 seeing one's preferred candidate win is greater
25 than the costs associated with voting. And I'll

1 leave any further explication to Professor Dion.

2 MR. DOUGLAS: Then my question is: I
3 think we've heard a lot of very compelling
4 testimony to the impediments to voting as a result
5 of law and regulation that has been established,
6 whether nationally or in the State of Indiana. We
7 had a -- and in some way, if I -- this is a
8 completely different track, understanding that,
9 but there's another question, and that is: Why do
10 people vote?

11 And we had an academic from the University
12 of South Bend, Professor Bennion. I asked an open
13 question about why we have these low rates of
14 voting here in Indiana. What -- what should the
15 Committee look into that would have equal
16 protection ramifications?

17 And her response was low voting is that
18 Indiana has a problem -- that the first thing that
19 she would look to -- and this may just relate to
20 the field of academics that she holds -- that it
21 correlates to Indiana's poor educational levels,
22 and that high education is associated with voting.

23 And my observation is, is that this
24 probabil -- this calculus is interesting to me,
25 because I think that -- and what she was

1 specifically referencing was civic education, and
2 we're going to have the Secretary of Education --
3 oh, the Secretary of Education is not coming.
4 Well, we've established that there are no uniform
5 civic education requirements in the State of
6 Indiana.

7 And my observation is that all of these
8 impediments on the one hand are set up to minority
9 communities voting. What gets the white community
10 or we'll say the majority community voting
11 proactively? And I don't think it's in that
12 calculus.

13 I think that -- when I was in my public
14 education, we had a civics class, "This is how the
15 electoral system works." You maybe participated
16 in student government or what have you, and we
17 were marched down in high school to actually vote
18 on the actual voting machines that we were going
19 to be using. And this is -- you know, this was an
20 affluent suburb, this was Washington Township, and
21 really, the message was, "You vote because you're
22 a good citizen."

23 And so, if we're -- is there an equal
24 protection issue if we don't have that kind of
25 uniform civics provided across that is -- first of

1 all, we want to remove impediments that are
2 unfair. But is that enough if citizens aren't
3 being inculcated with -- educated in and
4 inculcated with participation, how to participate
5 and why to participate?

6 And I don't see it in this calculus. It's
7 not -- you know, I live in a gerrymandered
8 district, for Heaven's sakes. I mean I think so
9 many of us do. I suspect everybody in this room
10 lives in a gerrymandered district, but we all
11 vote. So, I think the gerrymandering is a
12 problem.

13 But the -- for instance, but proactively,
14 what is causing other communities to vote is not
15 just a lack of impediment, and that lack of
16 impediment is important, but is there the civic
17 education taking place that is giving them an
18 advantage, giving those communities an advantage
19 in getting the vote out? And if -- and is there
20 an equal protection issue if you're not providing
21 that civic education uniformly to all communities?
22 I guess you provided the calculus. I guess that
23 might be a question for the ACLU. I don't know.

24 MR. GROTH: Well, yeah.

25 Jan, do you want to take a stab at it?

1 MR. MENSZ: I mean from a strictly
2 legal point, I think that would be a difficult
3 case to make, because equal protection is a
4 difficult way to go about connecting all of those
5 dots.

6 But I would say yeah, voters are motivated
7 by many different things, I think. I've seen
8 voters who are motivated as a protest vote. You
9 know, you might live in a district where you might
10 feel like your vote has no impact, but you are
11 particularly outspoken, and that's part of -- part
12 of why you vote.

13 I think, you know, in the Texas case
14 challenging the voter ID law, there was testimony
15 from people in the African-American community who
16 view voting in person as really the celebration of
17 a long, hard-fought effort to gain the right to
18 vote. So, different communities have different
19 motivations.

20 And yes, it does come down to civics to
21 some extent. I don't think it has to be taught in
22 school. Obviously, looking at your parents voting
23 and their experiences, life experiences in general
24 can motivate voting. So, I think that there's no
25 reason why we shouldn't advocate for a civic

1 education. I think it's a worthy cause.

2 But we do know that these impediments that
3 we've all discussed today have real consequences,
4 and, you know, regardless of how much you think
5 your vote is -- one vote is going to swing an
6 election, the greater the impediments to voting,
7 and that's just going to erode your ability to get
8 motivation to vote.

9 MR. GROTH: Well, you know, I grew up
10 in a small town in Indiana, and -- in the 1950's
11 and '60's -- and we had terrific civic education.
12 It was drilled into our heads, "We do this because
13 this is a duty of citizenship." And I grew -- and
14 it was a very Republican, conservative town. My
15 parents were very conservative. But I got in that
16 habit.

17 But now so many young people are not
18 getting in that habit. They're -- they think it's
19 all ridiculous, and I have to have that argument
20 oftentimes with people who are fellow
21 progressives, "Well, my vote doesn't matter. You
22 know, why should I bother?"

23 And, you know, frankly, there really isn't
24 any good argument for voting except that it's a
25 duty of citizenship, because as I remember Judge

1 Posner, in the Seventh Circuit decision affirm --
2 upholding the voter ID law, said, "Voting doesn't
3 make any sense if you look at it logically." I
4 mean your vote -- what are the chances your vote's
5 going to make a difference? What are the chances?
6 Infinitesimal. So, why does anybody even bother?

7 Well, what I found is -- and we used to
8 have a Democratic Party Chairman here in this
9 county who would always preach to us before
10 elections, saying, "You've got to get the vote
11 out, because the Republicans are going to go and
12 vote because their wallet's on the line every
13 election," because they don't want to be -- they
14 don't want to have their taxes increase. So,
15 you've got that dynamic, too.

16 But gosh, I wish civics education was given
17 greater emphasis. You know, we're doing away with
18 it, it seems, just like we're doing away with arts
19 and culture, and it's -- you have to worry about
20 the future of the country when you see that sort
21 of thing going on.

22 MS. CLEMENTS-BOYD: Now -- I'm sorry.

23 MS. BOLLING-WILLIAMS: I just have to
24 weigh in on this. Yeah, it's a good question to
25 ponder. Certainly we had civics in school when I

1 was growing up in Lake County, and -- but that's
2 only one part. It was mentioned earlier that -- I
3 think by Jan -- that other factors also motivate
4 your desire to vote.

5 I think it's kind of like -- I tell people
6 that it wasn't until I, you know, graduated from
7 high school that I realized, you know, why you had
8 to make good grades, you know, because that's what
9 your parents say. You know, being just -- at that
10 time, you know, our generation was you did what
11 your parents told you to do. You didn't question
12 it, you know, whether you had a reason for doing
13 it or not.

14 And I think that that's how we started out
15 with respect to voting is because they tell you
16 that you should. But as you get older, at least
17 if you get started in the habit of it, then you
18 come to the realization yourself as to why voting
19 is important.

20 And I disagree that it really makes no
21 difference. I think that it makes all of the
22 difference in the world. It exactly -- it truly
23 is the one equalizer. It's one person, one vote,
24 and you've got to make sure -- at least my
25 responsibility is to make sure that the children

1 that I encounter, that I come -- that I, you know,
2 run into, that they understand that.

3 And that's what I tell people is that money
4 may be important for a politician, but money can't
5 vote. Only a person can vote. Money will help
6 you get your message out there, but there are
7 other ways to get your message, too, and you can
8 go door to door, you know, and share your methods.
9 There's a lot of people out there going to door to
10 door. But it is really the great equalizer. It
11 is one person, one vote, and I think that when we
12 give that up or if we downplay it, you know, if we
13 neglig -- make it, you know, negligible, then why
14 are we here?

15 So, maybe I'm a Pollyanna. I don't know.
16 But I truly believe that that's the reason why
17 it's important that we vote. And for all of the
18 people who say, "Well, it doesn't really matter,"
19 then I want you to stay home, because I'm more
20 interested in the people who it does matter to and
21 are going to get out and to the polls and actually
22 cast their vote.

23 MS. CLEMENTS-BOYD: Thank you. We
24 have one more question, as we are approaching the
25 next one.

1 Go ahead.

2 MS. DAVIS: You have to wait a few
3 minutes. Tammi Davis again. You know, listening
4 to my fellow Committee person, one thing that
5 popped in my head was -- and I know how
6 impassioned he is about civic education -- was --
7 which I have not heard discussed, was white
8 privilege and politics, about how one majority
9 race feels more entitled and emboldened to the
10 process in determining the fate of elections than
11 they do for those that are disenfranchised.

12 But since we are before the legal panel, if
13 each of you could just real briefly talk about how
14 can we proactively and progressively, right, get
15 more people involved in the voting process and
16 assist them in not becoming a prey to apathy,
17 because there are so many legal challenges, people
18 don't come forward because they don't want to be
19 scrutinized.

20 Nobody's perfect, so I would suggest that
21 that's another of the reasons why people haven't
22 called you, burning up your phone, Mr. Groth,
23 because they're saying, "Wait a minute. I've got
24 stuff in my background and I don't want you to
25 investigate me to the nth degree."

1 So, in respect of those individuals who
2 will not come forward, how can we be proactively
3 and progressively to meet the challenges that we
4 know are before us, particularly from a legal
5 perspective or a community advocacy perspective?

6 MR. MENSZ: You know, as you -- as we
7 discussed a lot of the cases that we're involved
8 in today, we bring a lot of lawsuits on behalf of
9 organizations that advocate for people who feel
10 maybe disenfranchised or that they can't deal with
11 themselves, like the NAACP and the Common Cause
12 and League of Women Voters. So, from a strictly
13 little perspective, we're capable of bringing
14 lawsuits on behalf of real people, without them
15 being subject to the kind of scrutiny that you
16 mentioned.

17 That said, it is always important and
18 compelling to have real stories behind these cases
19 and not just an organization, and that's why we do
20 collect affidavits, we do -- we research, we
21 need -- we do need some level of a human face to
22 these cases to make a compelling case for a judge.

23 So, you know, there's certainly -- there
24 is -- the lawyers are focused on making the best
25 legal argument. A lot of the other groups that

1 you're going to hear from today are involved with
2 collecting those stories and making sure people's
3 voices are heard.

4 MR. GROTH: And I think that this just
5 emphasizes the importance of organizations like
6 the NAACP and the League of Women Voters and
7 Common Cause, labor organizations, churches, that
8 emphasize the common goal, the common good, not
9 just, "what can I do for myself?" Voting should
10 be looked at not just -- you're not just voting
11 for your own self-interest, you're voting for what
12 is in the common good, and unfortunately, that
13 sort of thinking seems to be on the decline. I
14 hope it -- I hope we turn it around, but -- before
15 it's too late.

16 MS. BOLLING-WILLIAMS: And from a
17 legal perspective, it's important that we have
18 laws that take into account people. Without the
19 Voting Rights Act that was passed, without the
20 Civil Rights Act, without the National Voting
21 Rights Act, then we would not have a basis about
22 the Constitution. We wouldn't have a basis for
23 bringing the challenges when people who may not
24 have immediate access to some privileges, as Tammi
25 says, that others may have, that those laws are

1 there to say, you know, "You can go so far, but
2 only so far, and we're going to put you back. You
3 know, we'll put -- we'll bring you back in check,
4 you know, to make sure that you don't go too far."

5 And I'll leave it at that, because I was
6 going to talk about the Affordable Care Act, but
7 I'll leave that for another day.

8 MS. CLEMENTS-BOYD: Thank you very
9 much, panel. All of your information has been
10 very helpful, I think, to this Committee in
11 helping us to understand this issue specifically,
12 as it relates to voting and the issues that we
13 face in Indiana. So, thank you so much.

14 (Applause.)

15 (Recess taken.)

16 MS. CLEMENTS-BOYD: Thank you all for
17 being here today. I think most of you were
18 probably here in the beginning of the hearing. As
19 you may know by this point, that we are here today
20 to hear testimony on impediments to voting rights
21 in Indiana, and the panel that is currently before
22 us are a number of advocacy organizations in the
23 State of Indiana, and we're so pleased that you
24 could be here to share insight into any possible
25 defamations or impediments to voters in the State

1 of Indiana.

2 So, I will introduce the panel. We have
3 with us Dawn Adams, Executive Director of Indiana
4 Disability Rights; Patsy Hoyer, Co-President of
5 the League of Women Voters of Indiana; and Julia
6 Vaughn, Policy Director of Common Cause Indiana;
7 and Steven Monroe [sic], Legislative Staff
8 Attorney, Mexican American Legal Defense
9 Educational Fund, MALDEF. Now, I hope that I've
10 pronounced your names correctly. I failed
11 horribly in the last session.

12 So, thank you all for being here, and I
13 think we're ready to hear from Ms. Adams.

14 MS. ADAMS: Thank you. I'd like to
15 thank the Committee for the opportunity today to
16 speak on this very important topic.

17 Indiana Disability Rights serves as a state
18 protection and advocacy organization. It is our
19 mission to protect and promote the rights of
20 individuals with disability through empowerment
21 and advocacy. Under the authority provided to the
22 organization under the federal grant Protection
23 and Advocacy for Voting Access, we are charged to
24 ensure full participation in the electoral process
25 for individuals with disabilities.

1 Some of the services we provide include
2 seeking assistance with registering to vote,
3 casting a vote, and accessing a polling place. We
4 know from the available data that people with
5 disabilities compose the largest minority
6 population in the country. According to a report
7 published by Rutgers University, 17.1 percent of
8 eligible voters in Indiana have a disability.

9 Unfortunately, people with disabilities
10 also experience a variety of problems in voting
11 that are unique to the population and are
12 sometimes specific to particular disabilities,
13 leaving voters frustrated and disenfranchised,
14 ultimately resulting in a decrease in voter
15 turnout. In fact, the data reveals that in
16 Indiana, the voter turnout for people with
17 disabilities who were registered to vote was 10.3
18 percent lower than people without disabilities in
19 the 2016 election.

20 Through our work in this area, we have
21 identified that the most egregious of issues that
22 impact voters with disabilities generally fall
23 into two categories: Barriers with casting a vote
24 at polling locations, and factors associated with
25 guardianship. These two areas in particular

1 disproportionately impact voters with disabilities
2 and compound the problems many voters face due to
3 the aggravating factor of the intersectionality of
4 race and ethnicity and disability.

5 First, I'd like to examine some of the
6 common barriers voters with disabilities
7 experience when attempting to cast their vote at a
8 polling location on election day. The Help
9 America Vote Act of 2002 requires at least one
10 accessible voting machine be placed in each
11 polling place, in addition to making the facility
12 physically accessible.

13 The U.S. Government Accountability Office,
14 or GAO, examined a sample of 178 polling places
15 during the 2016 general election cycle and found
16 that 60 percent of those polling places had one or
17 more potential impediments to voting, and roughly
18 89 had an accessible voting system that could
19 impede the casting of a private and independent
20 vote.

21 For example, some voting stations were not
22 set up to accommodate people using wheelchairs,
23 which might have required someone else to help
24 them vote. The most common barriers were steep
25 ramps, lack of signs indicating accessible

1 pathways, and poor parking for CAP services.

2 While data for Indiana in particular is not
3 available, our experience tells us that the
4 problem is similar here as well.

5 In 2016, Indiana Disability Rights launched
6 a toll-free election hotline to assist voters with
7 disabilities in casting their ballots on election
8 day. During the 2016 general election, the
9 organization was contacted by 56 individuals with
10 disabilities reporting barriers to voting. This
11 includes early voting and voters casting ballots
12 on election day. Given that this was the first
13 year for the hotline, we believe these numbers
14 represent only a small number of people who
15 experience barriers when attempting to vote, and
16 that the problem is much larger.

17 Among the reported issues in 2016, during
18 the primary elections, we were notified of a
19 polling center in Vanderburgh County informing
20 people with disabilities to vote somewhere else
21 because the elevator in the polling center had not
22 been repaired. When we conducted further research
23 and heard from other voters that had been
24 negatively impacted by the inaccessible polling
25 center, we learned that this location had not been

1 accessible in previous election cycles.

2 Additionally, one of the recommended
3 alternative polling centers was also not
4 accessible to all voters. We participated in a
5 complete audit of all polling centers in the
6 county, ensuring all locations were accessible
7 during the 2016 general election. Based on the
8 audit findings, the Vanderburgh County Clerk chose
9 to change some of those polling centers to new
10 ADA-compliant locations.

11 Other barriers that directly impact people
12 with disabilities and their right to vote
13 privately and independently stand inside the polls
14 themselves. Each polling location is required to
15 have an ADA-accessible machine available to
16 voters.

17 Some of the reported issues included: The
18 voting machine was not in a private location, but
19 rather, it was placed in a location where other
20 voters could see the person's ballot; the
21 accessible voting machine was not plugged in or
22 charged; the poll workers were not trained on how
23 to even use the accessible voting machine.

24 The challenge with these situations is that
25 the person being punished is the voter. If a

1 location is inaccessible or a voting machine is
2 not functioning properly, the standard solution is
3 to provide a provisional ballot to the voter.
4 These provisional ballots are not accessible, and
5 often the voter will require assistance in
6 completing the ballot, again negating the voter's
7 right to vote independently and privately.

8 Now that we have discussed the barriers of
9 the polling site, I'd like to turn our attention
10 to the impact of guardianship on an individual's
11 right to vote. In Indiana, a person does not lose
12 the right to vote merely because he or she is
13 under guardianship, but through our advocacy work
14 and conversations with individuals with
15 disabilities, we have identified a connection
16 between guardianship and a person with access to
17 voter registration in casting a ballot.

18 We have heard personal stories of guardians
19 refusing to assist their wards in registering,
20 refusing to assist with transportation to a
21 polling location, and even making a person pass a
22 litmus test to show that they know who they are
23 voting for, and why, before allowing them to
24 exercise their right to vote.

25 In Indiana, there is limited data available

1 regarding voters with disabilities, but there is
2 enough for us to hypothesize about the correlation
3 between guardianship and voting. In order to test
4 this theory, we need more data so we can identify
5 the root causes and work strategically to find
6 solutions.

7 Now that I've talked about the barriers of
8 polling sites and the issues with guardianship, I
9 would like to discuss ways we can move forward.
10 We concur with the GAO's recommendation that the
11 Department of Justice study the implementation of
12 federal accessibility requirements in the context
13 of early in-person voting, and make changes as
14 necessary to existing guidance. We also encourage
15 the collection of state-specific data on overall
16 accessibility of polls.

17 The bottom line is that despite there being
18 clear requirements that polling locations be
19 accessible to people with disabilities, barriers
20 still exist that frustrate and prevent voters
21 participating.

22 We would like to see improved training for
23 poll workers to address some of the barriers at
24 the polling locations; require counties to have a
25 thorough and effective polling site audit process

1 to ensure all polling sites are ADA compliant;
2 data collection that examines the connection
3 between being under guardianship and a person's
4 access to voting; and we would encourage the
5 Secretary of State's Office to provide guidance to
6 guardians on the voting rights of their wards.

7 We believe that examining the
8 intersectionality of disability and race and
9 ethnicity would be another important area to
10 explore. And most importantly, we advocate
11 strongly for speaking directly to those
12 individuals with disabilities who have experienced
13 challenges with exercising their right to vote, as
14 well as talking to those voters with disabilities
15 that may not have experienced problems, in order
16 to help identify where resources should be placed
17 to increase access, and thereby increase voter
18 turnout.

19 Thank you.

20 MS. CLEMENTS-BOYD: Thank you,
21 Ms. Adams.

22 We are now ready to hear from Ms. Hoyer.
23 Ms. Hoyer, when you're ready, please proceed.

24 MS. HOYER: Hello, everybody. I am
25 Co-President of the League, as noted, but I would

1 also like to introduce Oscar Anderson, who is my
2 Co-President of the League of Women Voters, who is
3 here to participate as well, though I'm doing the
4 talking.

5 First, I want to give you some context.
6 The League is one of the oldest nonpartisan
7 organizations in the United States. It was
8 organized by the suffragettes because women did
9 not know how to register to vote and they didn't
10 know who to vote for. They were loathe also to
11 vote for whomever their husbands, brothers or
12 fathers suggested. They wanted to know the
13 issues.

14 So, we took -- undertook large registration
15 efforts of women and began the very first forums,
16 and politicians realized that suddenly there was
17 going to be a new force, and had interviews in
18 newspapers. So, at that point, then, that
19 proceeded as the mission of the League. Now,
20 women and men members of the League continue to
21 register voters and work to encourage active
22 participation in government.

23 In Indiana, we have 22 Leagues, and three
24 more that are forming in other counties. The
25 league also works to increase public understanding

1 of major public policy issues, and influence
2 public policy through advocacy for carefully
3 studied, fact-founded positions on which consensus
4 is developed by members. The League began this
5 very early in the '20's, advocating for services
6 for destitute women and children. Since then it
7 has supported many issues: The formation of the
8 United Nations, fair housing and education, clean
9 air and water, and campaigned vigorously for the
10 Voting Rights Act.

11 We agree with previous speakers; voting is
12 one of our most precious rights in America, and it
13 must be guaranteed for all eligible citizens. It
14 is when citizens are truly equal. The League
15 positions reflect this, and the League works to
16 ensure that voting opportunities for eligible
17 citizens for all elections are accessible,
18 convenient and meaningful.

19 In gathering information from our members
20 and Leagues around the state about voting, there
21 have been concerns expressed. We've heard stories
22 earlier about the burden that ID requirements
23 place on some voters to obtain photo ID's because
24 they are elderly and documentation is not readily
25 available, or because they've had to move

1 ten minutes left.

2 MS. HOYER: Oh, all right. Thank you
3 very much. I do think I've hit the highlights.

4 We have supported later voting day hours,
5 same-day registration, amending the law to allow
6 no-fault absentee ballots, which was just defeated
7 in our legislature. Other Leagues have expressed
8 interest in the convenience and possible cost
9 savings of mail-in voting. So, we are very
10 concerned about the issues of purging and how
11 maintaining the rolls are done, and we are
12 absolutely advocating following the Voting Rights
13 Act and not shortening that or abridging the
14 process.

15 Even with the Electoral College, in most
16 elections, the vote is direct. Democracy requires
17 citizen participation, and if citizens are wrongly
18 disenfranchised, the process becomes -- and
19 outcomes are sullied, even if the outcome is what
20 the League would like. And that has been pretty
21 much well covered by Jan Mensz -- or Jan Mensz.

22 League members often poll watch during
23 elections and primaries to identify issues with
24 handicapped individuals and other circumstances,
25 and we may take immediate action at that time.

1 That's just one of the roles that the League is
2 allowed, and we may work broadly and proactively
3 with election boards and county clerks, and some
4 places are much more amenable to changing and
5 looking at their processes than others.

6 The League stresses and uses the tag line,
7 "Your vote counts," and wants voting to be
8 meaningful. Grassroot Leagues across the state
9 have supported restricting in Indiana, most
10 preferably with a citizen commission drawing the
11 lines, and I know that Julia's going to talk about
12 that more in depth. We are in partnership with
13 Common Cause in redistricting efforts.

14 The travesty that occurred when Milo Smith
15 would not allow the Senate Bill 326 to be heard in
16 the House Elections Committee after numerous
17 requests by citizens is a perfect example of
18 cavalier disregard for the citizens' wishes. The
19 League would have liked the bill to be heard, sent
20 to the floor, and passed, but it was not heard at
21 all.

22 And that Speaker Bosma, who is actually my
23 representative, said at the last minute that they
24 wanted to hear what the Supreme Court of the
25 United States decided, and thus would do nothing,

1 is really a terrible disregard for the process
2 here in Indiana, especially after Rep. Smith
3 allowed it to be discussed in committee last year
4 and never called for a vote. Had it been sent to
5 the floor and voted down, at least it would have
6 had discussion.

7 On February 17th -- a slightly different
8 thought here -- the League of Women Voters of
9 Indiana celebrated League President's Day, as it
10 was formed on Valentine's Day in 1920, with a
11 conference, inviting several groups to join us in
12 discussion of getting out the vote beyond
13 registering voters. With us was an attorney who
14 works with people with disabilities, the NAACP,
15 Black Expo. Jennifer had the flu and couldn't
16 make it, but we also invited Farm Bureau. We
17 wanted a wide range of opinions on what to do.

18 It was made clear that there were groups
19 whose members feel despair about government
20 functioning, believe it to be unjust, and that
21 nothing will ever really change; thus voting is
22 worthless. This is supported by a fair amount of
23 academic research, and this issue with the
24 Elections Committee not even hearing the bill or
25 discussing it is viewed by a number of people as a

1 perfect example of "Nothing will ever change and
2 they're not listening to us."

3 We all understand that the chairmen, the
4 committee chairs, do have the right to kill bad
5 bills. Now, what's a bad bill? It depends. Some
6 of them are very clear and obvious, like when
7 the -- several years ago, a House Representative
8 wanted to -- well, whatever -- the Girl Scouts.
9 They were saying that the Girl Scouts were wrong
10 and evil. Well, nobody was interested in pursuing
11 that, and that went away very quickly. Everyone
12 in the legislature, both houses, and the public,
13 thought that was ridiculous, and that was
14 appropriate to die in committee.

15 A bill that is brought by a large number,
16 passed in the Senate, supported by a large number
17 of citizens, and then not heard, it is very
18 difficult then to make people think that they are
19 going to be heard, particularly since it was about
20 redistricting.

21 The concern that minority groups and other
22 groups do not believe that they are heard or that
23 it is worth voting is supported by academic
24 research, and a just-released update to the
25 Brennan report from the '60's reiterates that

1 there are serious divides in the United States by
2 race and income, and that this is a threat to our
3 democracy.

4 So these incremental changes are effective
5 in getting people to not vote, particularly
6 minorities, and we need to look at those and --
7 not part of this Commission, I understand, but the
8 broader issues in our society that are causing
9 these problems. In querying League members and
10 voters around the state about their voting
11 experiences, voters all support early voting, vote
12 centers, provisional ballots should there be a
13 question, and same-day registration.

14 We do appreciate the text to connect to
15 indiana.gov to register young people to vote.
16 This is a great idea. They like to text, they
17 like apps, and this is a great idea. There are
18 others, and we would like to promote that as well.
19 But then actually voting is problematic. Voting
20 must be made convenient, accessible and
21 meaningful. Democracy is not a spectator sport.

22 MS. CLEMENTS-BOYD: Thank you so much.

23 MS. HOYER: Thanks for the time.

24 MS. CLEMENTS-BOYD: And we now have

25 Ms. Vaughn.

1 Welcome, and please proceed when you're
2 ready.

3 MS. VAUGHN: Thank you. Thank you,
4 Madam Chair and members of the Committee. I'm
5 Julia Vaughn, Policy Director for Common Cause
6 Indiana. We have approximately 12,000 members
7 across the state, and are active at the state
8 legislature, advocating for public policies to
9 make voting more accessible to all Hoosiers, in
10 addition to a number of other issues. I began
11 working for Common Cause Indiana in 1995, so have
12 quite a long-term perspective on voting rights in
13 Indiana, and appreciate the opportunity to testify
14 before the today.

15 The first issue that I worked on when I
16 started at Common Cause Indiana back in the
17 mid '90's was the state implementation of the
18 National Voter Registration Act, or the motor
19 voter law. It's important to note that many
20 Indiana lawmakers and other public officials were
21 not supportive of the provisions to expand access
22 to voter registration in new law, and dragged
23 their feet at passing the state laws necessary to
24 implement it. Indiana became the next-to-last
25 state to implement NVRA, but only after litigation

1 was filed to force it. Only the State of
2 Mississippi waited longer than Indiana to
3 implement NVRA.

4 Once it was put into place, the law had a
5 big impact here, at least initially. For several
6 years in the mid to late '90's, Indiana was one of
7 the top states for new voter registrations, but
8 after a few years and a new administration took
9 control of the executive branch of state
10 government, it appeared that adherence to NVRA
11 requirements began to wane.

12 Surveys were done to measure compliance,
13 and groups filed lawsuits to force state agencies
14 serving low-income Hoosiers and people with
15 disabilities to consistently offer voter
16 registration to their clients. Although it's been
17 in place for more than 20 years now, ensuring the
18 state faithfully complies with the law requires
19 vigilance by advocates still today.

20 During the 2017 legislative session, the
21 Indiana General Assembly passed Senate Enrolled
22 Act 442 that allows the state to bypass key
23 provisions of the NVRA when conducting voter list
24 maintenance procedures. Common Cause Indiana and
25 the ACLU Indiana have filed a lawsuit -- another

1 lawsuit has been filed as well -- to stop this
2 practice, because we believe it puts legally
3 registered voters at risk of being purged.

4 While we support efforts to maintain
5 accurate voter rolls, we believe federal law must
6 be followed when performing those functions. Our
7 attorney, Jan Mensz, has testified on this earlier
8 so I won't belabor the point, but did want to
9 include it in my testimony to make clear that the
10 failure to fully embrace policies to make getting
11 and staying registered to vote in Indiana is not
12 new.

13 Early voting is another area where Common
14 Cause Indiana has gone to court to protect the
15 rights of voters to have equal access. Since
16 2009, one partisan appointee to the Marion County
17 Election Board has blocked efforts to provide
18 early voting in locations outside the County
19 Clerk's Office, despite its widespread use and
20 popularity in 2008.

21 Marion County has the largest number of
22 voters in the state, as well as the largest
23 percentage of African-American voters. As early
24 in-person voting has flourished in the suburban
25 and less diverse counties surrounding Marion, it

1 has declined in Marion County, with only one
2 location.

3 Our attorney, Bill Groth, has given you
4 details about this case in his testimony so I
5 won't be repetitive, but do want to reiterate that
6 the early voting law in Indiana, which requires
7 unanimous consent of the Election Board to
8 establish satellite sites, makes it possible for
9 unelected partisan appointees to significantly
10 restrict access to in-person absentee voting.

11 Indiana also has restrictive policies in
12 place that reduce access to absentee voting by
13 mail. Legislation was filed this year at the
14 General Assembly to implement no-excuse absentee
15 vote by mail and permanent absentee status. Both
16 of these common-sense policies failed because of
17 opposition from the Secretary of State's Office
18 that was centered around concerns about vote
19 security. This is disappointing because the
20 evidence suggests that security risk with
21 expanding access to absentee by mail are minimal.

22 It's important to give Hoosiers an
23 alternative to voting on election day because we
24 have the shortest voting hours in the country,
25 with polls open from 6:00 a.m. until 6:00 p.m. We

1 believe those hours should be expanded and that
2 polls should stay open until 8:00 p.m. Many
3 Hoosier voters face long lines when they vote on
4 election day. In fact, a 2013 study found that
5 the average wait time for a Hoosier voter was 13
6 minutes, which was the longest wait time in the
7 Midwest and the 13th longest wait time nationally.

8 To address this, the state must encourage
9 more early voting, both in person and by mail, and
10 look closely at how some election administration
11 policies negatively impact polling place
12 operations. One of those policies, and its impact
13 on the voting experience, came to light on general
14 election day in November 2016. A couple of years
15 prior, the state legislature passed a law
16 requiring the counting of Marion County absentee
17 ballots be done at a central location.

18 In 2016, the Election Protection Project, a
19 national program to protect voting rights, fielded
20 dozens of calls from Marion County voters who
21 faced long lines and lengthy waits because poll
22 workers were prioritizing checking the absentee
23 lists over processing voters in line at the
24 polling place. In fact, when we met with the
25 Marion County Clerk to discuss this problem, we

1 learned that training materials instructed poll
2 workers to prioritize checking lists over
3 processing actual voters.

4 While we sympathize with the very hard
5 place that state law has forced Marion County
6 election administrators into, we will not tolerate
7 voters being forced to wait while administrative
8 tasks that can be delayed are performed. We will
9 be monitoring poll worker training and polling
10 place operations during the 2018 elections to
11 ensure this does not happen again in Marion
12 County.

13 We continue to have concerns about how
14 Indiana's strict voter ID law impacts access in
15 the state. Data collected by the Election
16 Protection Project in 2012 indicated that seven
17 percent of the problem calls they fielded from
18 Indiana involved voter ID issues. Since it is
19 unlikely this law will be repealed, the types of
20 ID that can be used for voting should be expanded
21 to include student ID's and state government work
22 ID's.

23 Here in Indiana, as in many other states,
24 voting right advocates are anxiously awaiting a
25 United States Supreme Court decision in the

1 Wisconsin partisan gerrymandering case. The
2 centerpiece of the Wisconsin case is whether or
3 not the Court will endorse the efficiency gap as a
4 fair, objective measure to use when determining
5 the extent of partisan gerrymandering.

6 When the efficiency gap is used to analyze
7 Indiana legislative districts, it indicates a
8 partisan bias that benefits Republican candidates.
9 We believe partisan gerrymandering is having a
10 negative impact on the ability of Indiana voters
11 to make their electoral voices heard, and will
12 continue to advocate for redistricting reform and
13 support legal strategies to uphold the
14 Constitutional concept of one person, one vote.

15 Voting rights for Hoosiers are under
16 attack. The threat varies considerably depending
17 on where a voter lives, their party preferences,
18 and how often they vote. The threats come from a
19 variety of sources, but can primarily be
20 attributed to partisan political interests seeking
21 to impact election outcomes, and election
22 administrators with conflicting priorities.
23 Advocates for voting rights in the state must
24 maintain constant vigilance to ensure equal voting
25 access for all.

1 In 2014, Indiana experienced the
2 embarrassment of having the lowest voter turnout
3 in the nation, at 28 percent. There were many
4 reasons for this, including too many uncontested
5 and uncompetitive districts because of
6 gerrymandering, and too many administrative
7 obstacles hindering voter participation.

8 But what was most troubling, though, was
9 the reaction from our state election officials.
10 Rather than recognizing the emergency that exists,
11 the Secretary of State and some legislators
12 responded by denying the problem and quibbling
13 about how turnout is being calculated.

14 We need an all-hands-on-deck attitude from
15 all election officials in Indiana to address our
16 low turnout. We need a willingness to try a
17 variety of election reforms to improve turnout.
18 Instead, we have mostly gotten denials that a
19 problem exists, and have seen overblown concerns
20 about security prevent even modest reforms, like
21 no-excuse absentee voting, from moving forward.

22 Voting should be among the most inclusive
23 activities we engage in here in the Hoosier State.
24 We have a long way to go to create a truly
25 accessible and inclusive voting process in

1 Indiana.

2 Thank you.

3 MS. CLEMENTS-BOYD: Thank you,
4 Ms. Vaughn.

5 We now have, last but not least, Mr. Monroe
6 [sic]. Please proceed when you're ready.

7 MR. MONROY: Good after -- good
8 morning, I believe it still is. My name is Steven
9 Monroy, and I am a Legislative Staff Attorney with
10 the Mexican American Legal Defense and Educational
11 Fund. First of all, thank you, Madam Chair for
12 the -- extending the invitation, and members of
13 the Commission, for taking the time to hear our
14 testimony and consider this before preparing a
15 report.

16 The Mexican American Legal Defense and
17 Educational Fund is a national organization.
18 We're both a law firm and an advocacy organization
19 that protects the rights of minority voters across
20 the United States, primarily the Latino community,
21 but also other minority groups. We've had a
22 number of lawsuits over the last 50 years that
23 have expanded the ability to vote, expanded access
24 to education, expanded access to employment,
25 equality and various other types of impact

1 litigation.

2 Our work -- my work specifically as a
3 legislative staff attorney is I advocate
4 throughout the Midwest and also support our
5 litigation efforts in these various areas. Our
6 office is primarily based around the Chicago
7 region, but over the years we have had work in
8 Indiana and a lot of the surrounding states. And
9 a lot of the various issues that are arising that
10 my colleagues here are speaking about are -- come
11 up in all states nationally, including the right
12 to vote, and particularly considering the impact
13 of various policies and voting methods on the
14 minority communities.

15 So, to begin with, I'd like to begin with a
16 few statistics of the Latino population in
17 Indiana. As members of the Commission would
18 probably know is that it is tough to get
19 up-to-date, you know, statistics about exactly
20 right now, in date and time, what the minority
21 population is within the state, or any particular
22 location. Our best source of these statistics are
23 the decennial census, and so, every ten years we
24 have the opportunity to have, you know, a wide
25 outreach to get accurate numbers.

1 And as we're close to the next census, the
2 numbers that we have right now are kind of in the
3 middle of the decade. So, the most up to date
4 right now I have is in 2014. The population --
5 the Latino population in Indiana was 426,000
6 individuals, and the state ranked 21st, around the
7 middle of the nation. In comparison, according to
8 the statistics as well, is that the total
9 population of Indiana at the time was 6,597,000,
10 which equals to about 6.5 percent Latino
11 population.

12 When we're talking about voting rights, the
13 total population of Latinos is not a very good
14 indicator for either political power or
15 representation, because the Latino population,
16 even in comparison to other minority groups, we
17 are -- we have two factors.

18 The first one is that we generally have a
19 younger population, so that even if individuals
20 are citizens born in the U.S. or they're foreign
21 born, the population is generally younger, so that
22 equals to being under the age of 18, most -- you
23 know, for a greater percentage than some other
24 ethnicities, so we have a lower citizen there.

25 The other factor to consider in the Latino

1 voting population is that we also have a large
2 number of, you know, noncitizens in the
3 population, and so, those also decrease the
4 numbers of eligible voters in the Latino
5 community.

6 When we're speaking of the eligible voter
7 population, again, both over 18 and citizens,
8 we're speaking of only 167,000 Latinos in the
9 State of Indiana in 2014, so this is equal to 3.4
10 percent of the state at that time. And as you can
11 see, with the comparison, it was 6.5 percent of
12 the total population and 3.4 percent of the voting
13 age population. So, that is only half of those
14 Latinos are eligible to vote.

15 How this -- how this actually kind of
16 breaks down within the Latino population itself is
17 that about 40 percent of Latinos in 2014 living in
18 the state were eligible voters. So, this leads to
19 the first concern about the demographics in the
20 voting power.

21 The second concern in that is also the
22 distribution. The Latino population in Indiana
23 in 2014, and this trend has pretty much stayed
24 consistent over the last four years, it's really
25 been focused on three different counties, and here

1 in Marion County, 95,000 Latinos; in Lake County,
2 in Northwest Indiana, 40 -- 90,000 Latinos; and in
3 Elkhart County, with 31,000. Again, those numbers
4 were in Marion, about 95,000; Lake County, 90,000;
5 and Elkhart, 31,000. After Elkhart County there's
6 a big drop-off after that in the numbers, so
7 really, the Latino population is concentrated
8 within those.

9 And until the next census, we don't really
10 have an accurate number or estimation of the
11 Latino citizen voting age population in those. We
12 can estimate how it was a couple of years ago, and
13 through, you know, active voting rights litigation
14 there's various ways to estimate it, but we can
15 see just on the exposition of those numbers in
16 those counties, you know, dividing by half, that's
17 pretty much what the Latino population is.

18 And when we're talking about voting rights
19 inside of these different areas, you know, we
20 often think about the impact on Congressional
21 races, on state legislative districts, but equally
22 as important, going down to the levels of local
23 government within the counties, within the local
24 jurisdictions, we really identify where these
25 Latino citizens live, where these Latino

1 populations are, because the impact of voting
2 rights is not just about who is elected, but about
3 the community having their legislative priorities
4 heard. So, we can have better legislation and
5 better representation in government by more access
6 to the vote.

7 That brings me to the major concerns that
8 we work with nationally that apply here to
9 Indiana. The first one, of course, is the access
10 to the vote. The biggest tool that we have in
11 access to the vote is the National Voting Rights
12 Act. The Voting Rights Act was passed in the
13 1960's, updated in the 1980's, and what it does,
14 the most useful tool of it is it prohibits states
15 or local governments or the national government,
16 any form of government, from using an electoral
17 tool or device that disenfranchises or dilutes the
18 votes of minority communities.

19 And those minority communities are
20 classified under the term of protected class, and
21 that protected class is not just Latinos,
22 Asian-Americans, African-Americans, but also
23 includes various -- the various language minority
24 groups as well, or Native-American communities.
25 So, there's a wide variety of different types of

1 ethnicities or groups that have been analyzed and
2 applied to in -- identified and applied to in
3 voting rights litigation over the years.

4 Now, as I was going through and saying
5 local government, that's a huge concern, because
6 if you have a significant Latino population in a
7 school district and you have an elected board or
8 commission, and, you know, just over the years a
9 Latino has never been elected to that for various
10 methods -- reasons, either they've been outvoted
11 by the majority or various other factors, those
12 are opportunities to look in and say, "Is there a
13 different way to restructure the vote?" So,
14 that's one of the key ways that we enforce the
15 Voting Rights Act is through looking at these
16 different elections and methods.

17 In addition to how these are districted and
18 how the boards are organized, we share concerns
19 with my colleagues here on the panel of the access
20 to the votes through polling and through
21 registration. The Voting Rights Act improved very
22 well and has prohibited different election devices
23 of perhaps the way that the polls are structured
24 and where the polls are located, what are the
25 hours that are available, and various ways of how

1 the election's actually administered, and not just
2 the way that the government is organized. Those
3 could also be violations of the Voting Rights Act.

4 In terms of language access, none of the --
5 one of the big tools that we have under this is
6 that under the Voting Rights Act, specific
7 counties that are identified by the national
8 government have to have language access, and the
9 Latino population in Indiana is growing, but yet
10 it is not concentrated to the part where any of
11 them are, you know, on its face, covered under
12 this national law, which makes it more important
13 for elected officials and advocates to really push
14 for language access in these counties.

15 For instance, Lake County, significant
16 Latino population, or Marion County, significant
17 Latino population, but in -- compared to some
18 other counties, such as Cook, for instance, in
19 Illinois, there's -- the laws don't require the
20 same extent to language access, which is why it's
21 very important to kind of push for these materials
22 to be in Spanish. There are groups that are
23 really trying to get this through litigation -- or
24 excuse me -- through legislation and policy versus
25 some of the tools that are not available because

1 of how the community is structured right now.

2 In terms of language -- in terms of the
3 other -- I'll reiterate again, in terms of
4 redistricting, the census is a huge opportunity
5 that's coming up in the next couple of years for
6 the state to really figure out where -- the sizes
7 of the minority communities that are in the state,
8 and then also where they are located. Other
9 states have looked at the different kinds of
10 advisory commissions or boards, you know, such as
11 on the state level, to really kind of push through
12 and organize a push for an accurate census. So,
13 that's one thing that the State of Indiana could
14 do to really get an accurate count of where
15 minority communities live.

16 The -- I would like to -- also I'd like to
17 mention the voter ID, you know, impact after the
18 Marion County case. Of course, it's been about
19 ten years since we have -- it's been about ten
20 years since it's been in place, and we share the
21 concerns of our fellow panelists here that are
22 concerned about the very short list of acceptable
23 documents.

24 When the Supreme Court looked at it, they
25 said that there was no -- you know, there's no

1 opportunity to challenge it on the face so that --
2 because there was sufficient back measures where
3 people could do a provisional poll and then go
4 travel and then do a certification.

5 But in actuality, once we see right here,
6 it really has an impact on the minority voters and
7 certain other communities that, you know, have a
8 harder time not only traveling to get a
9 provisional vote, but when they're actually
10 getting their ID to begin with, getting access to
11 the -- all of the documentation of a driver's
12 license, of everything they need to show for that.

13 So, we really encourage the state to look
14 into other ways of expanding the list of
15 acceptable documentation, whether it's school ID's
16 issued by the school boards or employment,
17 anything else that could match with what other
18 states are working on.

19 And as I -- as my colleague from Common
20 Cause also mentioned, expanding the early voting
21 and opportunity for polling that -- so, the fact
22 that the State of Indiana does not allow voting
23 after -- between that 6:00 and 7:00 o'clock hour,
24 when many people are out of work and have that
25 actual opportunity, is a real problem for, you

1 know, individuals who are not available to vote
2 during the day.

3 So, expanding these different opportunities
4 is very key to ensuring that Latinos in particular
5 have as much opportunity to vote as possible,
6 since -- because of the demographics and the other
7 change, already that -- the actual pool of
8 eligible voters within the community is
9 actually -- is much smaller. And so, being able
10 to provide the access to the vote for those
11 individuals that are qualified to vote really
12 ensures that you have the best amount of
13 representation for the entire community.

14 Thank you.

15 MS. CLEMENTS-BOYD: Thank you so much.
16 Now we have, I'm sure, questions from our panel.

17 Mr. McGill.

18 MR. MCGILL: Yes, I'm Billy McGill.
19 I'm sorry. This is Billy McGill. Ms. Adams,
20 specifically, a disabled person who was told to
21 vote somewhere else is something that caught my
22 attention. What exactly requires -- or
23 constitutes a separate and private voting booth?
24 How is that defined?

25 MS. ADAMS: I'm not sure of the

1 specific definition, but the right to vote --

2 MR. MCGILL: Just what it would look
3 like.

4 MS. ADAMS: Right. It would just --
5 it would just mean that there isn't somebody there
6 that can see what -- how you're voting.

7 MR. MCGILL: Right.

8 MS. ADAMS: And often --

9 MR. MCGILL: In proximity to, in other
10 words?

11 MS. ADAMS: The proximity to other
12 voters, to needing assistance from someone because
13 of lack of accessibility, then that person
14 assisting knows who you're voting for.

15 MR. MCGILL: Sure, I gotcha. I like
16 Ms. Hoyer's comment that voting is not a --
17 democracy is not a spectator sport, so I
18 appreciate that.

19 Ms. Vaughn, does federal law then prohibit
20 instructions to prioritize, whatever that means, I
21 wasn't quite clear. You know, I'm in Fort Wayne,
22 so I'm not as privy to the Marion County lawsuit,
23 but what were they doing with this prioritizing
24 voters, at least that you all alleged?

25 MS. VAUGHN: Oh, in terms of the,

1 yeah, central count? Well, you know, they have to
2 know who has cast an absentee ballot versus who is
3 showing up in person at the polling place, so
4 periodically, lists of those folks who have voted
5 absentee are sent out to the polling places. That
6 is one of the jobs of poll workers is to check
7 those lists and make sure that folks who haven't
8 already voted absentee are voting in person.

9 The problem, I think, in 2016 was we were
10 anticipating high turnout in a presidential
11 election year, and this was the first presidential
12 election year that a central count was required,
13 and there was a lot of pressure on the county to
14 have the election results available as quickly as
15 possible upon the closing of the polls at 6:00
16 o'clock. So, it became this competing priority,
17 "Are we going to be able to have all of our votes
18 counted, including the counts that are required
19 for absentee, and are we going to be able to
20 announce the results as quickly as possible?"

21 And so, unfortunately, the county just
22 erred on the side of being able to announce the
23 results quickly after the closing of the polls,
24 and in -- you know, I -- my husband's a polling
25 place inspector, so he showed me the materials

1 from his training, which clearly told the poll
2 workers, "Prioritize the counting or the checking
3 of the absentee lists."

4 You know, we continue to be challenged in
5 Indiana over what's good for voters and what's
6 good for those who are administering the
7 elections. And I don't want to be too critical of
8 those who are in charge of administering the
9 elections, because I recognize what an incredibly
10 difficult job it is. But clearly in Marion County
11 there was a failure in 2016 in too many polling
12 places, not every, but too many polling places,
13 where voters took a backseat to administrative
14 duties.

15 That's troubling to me. It would seem to
16 me that common sense would tell you that checking
17 the lists can wait. You've got voters lined up in
18 front of you. That has to be your priority. But
19 in too many locations in this city, common sense
20 didn't prevail. People were made to wait, and
21 some of those people simply couldn't wait. They
22 had to leave. So, to be disenfranchised for
23 administrative reasons, to me, is absolutely
24 infuriating, and we just can't tolerate it.

25 So, you know, that's why watchdogs like

1 Common Cause, the League, MALDEF, NAACP have to be
2 vigilant and aware of what's going on. I mean
3 ironically, this problem was translated to me from
4 an organization in Chicago, not even in the State
5 of Indiana. It didn't make the media here in
6 Indianapolis, and I think if people are being made
7 to wait for a lengthy amount of time, that's
8 newsworthy.

9 MR. MCGILL: Sure.

10 MS. VAUGHN: So, you know, we just --
11 I think part of our challenge is educating voters
12 about how to well run a polling place, things
13 that, you know, they should expect, and things
14 that are out of bounds, and that when they happen,
15 they need to be reporting this to the respective
16 authorities, because, you know, again, the rights
17 of voters must prevail.

18 MR. MCGILL: Sure. And then lastly,
19 Madam Chair, Brother Monroe [sic], it's obviously
20 troubling, the underrepresentation of Latinos, but
21 have you -- I know you're in Chicago, but are you
22 aware of any advocacy groups -- I'm sure the
23 League is reaching out, but specifically focused
24 on the Latino population in Indiana and their
25 participation in the process?

1 MR. MONROY: In all honesty, I'm not
2 yet, actually. I was here, and I think my
3 colleague in the League, to discuss ways that we
4 can really reach out and actually have these
5 grassroots. Some of the other states in the
6 region, like Ohio, have a Commission on Latino
7 Issues, and it's very easy to find, you know, who
8 is already advocating for the community on the
9 ground. There's some other groups in Wisconsin
10 and that sort of thing. I think that maybe she
11 can speak a little more to people who are on the
12 ground.

13 MS. HOYER: Oh, I was just going to
14 add that the League has started to work with the
15 Latino Institute, and they have a fairly large
16 group. We are also working -- are going to be
17 working or talking to the Ten One Hundred Group,
18 which is a group of Latinos, and they're
19 looking -- they've collected some money -- to
20 assist Latinos to run for office. So, whether or
21 not they will be successful in -- but they're
22 getting out there, and we are working with them.

23 MR. MCGILL: Thank you, madam.

24 MS. DAVIS: Hi. Tammi Davis, from
25 Gary, Indiana.

1 Having worked with the League of Women
2 Voters Calumet Region and the NAACP, one of the
3 things that I know is that there's always a lack
4 of resources, lack of financial resources, lack of
5 human resources, technological resources. But as
6 the Good Word tells us, our people suffer for lack
7 of knowledge. And collectively, you all are a
8 powerhouse, but how does that power translate to
9 John and Jane Q. Citizen; right?

10 When you do have a lack of resources -- and
11 you can partner together all day long, but still,
12 we're missing so many that don't get the
13 information they need to know about if they are
14 physically or mentally disabled: What do they do
15 when they get to the polls? If they don't have
16 access to the Internet, how will they get it? You
17 know, so how can, creatively, we help get the
18 message out about some of our challenges and
19 getting down to the real advocacy grassroots? How
20 will you get your message to the people that
21 really need to get it, and how might we be able to
22 help?

23 MS. ADAMS: Well, one of the things
24 that we have done -- and we're very proud of the
25 work that we have done over the last two years on

1 this very topic, because we recognize that as
2 well. Part of our -- the work that we do under
3 our grant is we do go out and we educate people
4 with disabilities as to what their rights are.
5 But, you know, going physically to one location
6 and maybe having a group of 10 to 20 people is not
7 going to have a huge impact on the greater group.

8 So, we have developed several videos. We
9 partnered with WFYI, which is our national NPR
10 affiliate, and we have developed several videos
11 that are very well produced, and they're on our
12 YouTube channel. We offer them to County Clerk's
13 Office, we have offered them to our Secretary of
14 State's Office to put on their Web site. We
15 actually have the Cal -- I believe it was the
16 Secretary of State in California found our videos
17 and asked if they could put them on their Web
18 site.

19 So, you know, we're looking at those
20 mediums that people have access to. Our videos
21 are very specific to -- several of them are
22 specific to people with disabilities, but they can
23 translate to other groups as well. It's how do
24 you go? How do you register? What to expect when
25 you get to the poll. And we've also created two

1 videos to assist poll workers to better understand
2 how to work with people with disabilities. So,
3 that has been a very valuable resource.

4 We have also found that combining forces
5 with other groups -- we have worked with different
6 chapters of League of Women Voters to get the word
7 out, and, you know, there's always going to be
8 more power, as you said. As we work together,
9 it's always going to be easier, but as we develop
10 resources and share those resources, I think
11 that's -- you know, that's one approach that we
12 can use.

13 But I think it's very important to look at
14 the mediums that people are looking at today,
15 because it just doesn't work to just travel to
16 small groups and try to deliver -- explain what
17 people's rights are. We've got to have that --
18 use our resources wisely to develop those tools
19 that can be used for several years and that can
20 apply across the grid.

21 MS. DAVIS: As a quick follow-up, I
22 know that the comment period is up until
23 April 2nd, so as a part of your testimony, would
24 you include or e-mail the link to the videos that
25 you have out there to the mrointern2@usccr.gov, so

1 that could be a part of the testimony that we
2 package together?

3 MS. ADAMS: I would be --

4 MS. DAVIS: I think that would be good
5 information to have.

6 MS. ADAMS: -- thrilled to share that
7 with you, absolutely, yes.

8 MS. DAVIS: Yes, we'd appreciate that.
9 Thank you.

10 MS. HOYER: In answer to your
11 question, there are several parts. The state
12 League is an umbrella, and we support local
13 Leagues and their activities, and we are now using
14 a lot more technology. The president of each
15 League, Google group, so we can get information
16 out quickly. We have a Dropbox. This is what --
17 where we can share great ideas, things that people
18 have done in their local Leagues. Communities are
19 different and their resources are somewhat
20 different.

21 That said, for instance, we have -- we do
22 have a high school civics program, and we go to
23 the high schools to register voters, and we work
24 it out with the three county superintendents that
25 we teach one of the government classes, and we are

1 now incorporating a lot more razzle-dazzle. The
2 League of Women Voters is not middle-aged women.

3 (Laughter.)

4 MS. DAVIS: That's right. I was a
5 member.

6 MS. HOYER: So, we are --

7 MS. DAVIS: On board.

8 MS. HOYER: -- on target and we are
9 fun, too. So, we go there, and Tippecanoe County
10 is really leading the way. Last year, before the
11 election, they had a polling place across the
12 street from one of the high schools, so they had a
13 rock band and snacks and balloons and a lot of
14 emotion, and got a lot of publicity, and it was
15 fun. This was in the early voting process.

16 Then this year, they are actually going to
17 have -- still going to do the civics and
18 registering voters there, but they are actually
19 working with the election board, and Tippecanoe
20 County is really quite receptive, and even with
21 the Democrat-Republican mix, going to have polling
22 places, early voting, one day a week in each of
23 the high schools, so that students can easily
24 vote, teachers and staff, and also the public.
25 That will be just -- those will be just one of

1 group and all of us together? So, we are learning
2 and we are beginning to adjust, too, but what you
3 want to do for teenagers and elderly and
4 disabilities, people with disabilities, and small
5 neighborhoods, how you reach them is different.

6 So, really it's a marketing problem. And
7 now we have a marketing person on our board who's
8 going to help, and Oscar is a graphic artist. So,
9 we are looking at how to reach these groups and
10 help people to understand that we're just not
11 middle-aged ladies that do this. We are truly
12 activists.

13 MS. VAUGHN: I would just underscore
14 Dawn's point about building coalitions to work on
15 these issues. You know, there aren't a whole lot
16 of organizations in Indiana that protect democracy
17 as their full-time job, but there's concern among
18 a lot of different organizations:

19 Environmentalists, consumer organizations, senior
20 citizens, folks with disabilities, and we've seen
21 that concern heightened by the 2016 elections.

22 People more and more understand that the nuts and
23 bolts of election laws really matter in terms of
24 who gets elected. So, I'm encouraged that more
25 and more people seem interested and willing to do

1 the hard work of rebuilding our democracy.

2 I would also add that it's disappointing
3 that foundations in Indiana do not fund this kind
4 of work. You know, we're across the street from
5 the largest foundation in the state's offices, the
6 Lilly Foundation. I'm not using its correct name,
7 but, you know, civic -- funding this type of
8 rebuilding of democracy and civic engagement is
9 very important, but no Indiana foundations will
10 touch the kind of work that we do.

11 Thankfully there's an organization -- the
12 Joyce Foundation in Chicago funds our work, a lot
13 of our work on redistricting. But we shouldn't
14 have to go to a foundation in Chicago to fund
15 efforts to strengthen democracy in Indiana.

16 MR. MONROY: Thank you. Very briefly,
17 I just want to kind of second something that
18 Ms. Hoyer mentioned earlier, is that people need
19 to believe that their vote counts, that voting
20 matters. I think the best way, in addition to all
21 of the outreach, is to have more -- to do
22 everything that we can to raise the belief that
23 people's vote matters, that when they go to the
24 polls, it's worth their time.

25 Not just that their vote is going to count,

1 but also that it has an impact, and that goes into
2 redistricting, about whether or not people believe
3 that their votes are going to be wasted. It goes
4 into people -- you know, into communities where
5 people are going to say, "If I'm voting for this
6 Latino community -- or this Latino candidate or
7 this Asian candidate or this African-American
8 candidate, you know, I want to -- I want to know
9 that my vote is going to have a realistic chance
10 of getting this person elected."

11 And a lot of times it happens where people
12 run and it's different election devices that --
13 whether it's because of their -- you know, they
14 don't have enough name recognition, that there's
15 no -- there's not enough different infrastructure
16 built up, that those candidates really are seen as
17 not having a chance.

18 So, it's a mixture of both those different
19 election devices prohibiting people's vote, but
20 any kind of structural reform that can be done to
21 make sure that candidates are seen as, you know,
22 being viable and that the community can actually
23 have their voice heard if it traditionally hasn't
24 had.

25 MS. CLEMENTS-BOYD: Could you keep the

1 mike?

2 MR. MONROY: Yes.

3 MS. CLEMENTS-BOYD: You stated in your
4 testimony that in Indiana, because of the small
5 population of eligible voters, that voters with
6 limited English proficiency don't receive some of
7 the, I guess, materials that are translated, I
8 guess, because of the small numbers, versus a Cook
9 County, Illinois scenario. Is there a threshold
10 that you're aware of that would provide those
11 resources based upon a population?

12 MR. MONROY: So, I apologize if I
13 misspoke. I was trying to get at the legal
14 protection. So, there is a certain threshold, and
15 I don't know it off the top of my head, but I
16 believe it's around ten percent, but I can get
17 that. And that threshold requires that that
18 county -- and it's either county by county or city
19 by city -- that they'll have to require these
20 types of materials by law.

21 Now, a lot of these different places with
22 large Latino populations, or Asians or, you know,
23 other minority groups that need a language
24 translation, a lot of these they're doing the
25 right thing, and the counties or the cities are

1 providing it, but the problem is that if they're
2 not, and if the population is not big enough to
3 require it under federal law, then it kind of
4 lacks that extra like teeth on it to actually
5 require that. But I can get that exact threshold.

6 MS. CLEMENTS-BOYD: Yes.

7 MR. DOUGLAS: I wanted to make -- this
8 is Chris Douglas. I wanted to make a request of
9 everybody, that with respect -- I think all of
10 your organizations have access to people with
11 individual testimony, and perhaps you've provided
12 that in other contexts as well. I think it would
13 be helpful to the Committee -- we have until what
14 date to collect --

15 MS. CLEMENTS-BOYD: April 2nd.

16 MR. DOUGLAS: We have until April 2nd
17 to collect testimony, and I think the report would
18 be very much strengthened by individual
19 experiences. And so, anything that you could
20 supply, I think, would be very, very helpful
21 there.

22 Secondly, with regard to the request, we
23 were going to have a representative of the
24 Department of Education, the Secretary of
25 Education, Superintendent of Education, speak, but

1 we're not now. And what I'm wondering is Patsy,
2 if you'd be willing, if the League of Women Voters
3 would be able to submit some testimony to us that
4 is a little bit of an assessment of the state of
5 civics education.

6 You're going -- the League is going in and
7 doing some civics education in some school
8 districts. It's welcomed. It sounds like it's
9 hand in hand with some school districts. Maybe
10 you have some insight into what the situation is,
11 to the degree that you can across the state, and
12 my observation is that the Indiana Constitution
13 establishes public education as a core mission of
14 this state, and one of the reasons was that edu --
15 public education was to be a real contributor to
16 the foundations of our democracy.

17 And so, I think when our democracy was
18 founded, there was an expectation of how would
19 people be instructed in its practice, and I think
20 that was -- so, I think this concept of education
21 is something that's important that you perhaps
22 could provide the Committee with some insight
23 into.

24 MS. HOYER: We can do that. We can
25 find out what's happening in various counties. We

1 also -- I should add that particularly Oscar has
2 worked with We the People organization, and the
3 League is presenting a League We the People
4 program in various communities, and that's very
5 helpful as well, so -- and we've been able to fund
6 some of that.

7 MR. DOUGLAS: Great. If the League
8 could provide some assessment to the Committee, I
9 think that would be very helpful.

10 MS. CLEMENTS-BOYD: I just want to
11 ask: Are there individuals that have signed up in
12 the public that wish to speak today? Because we
13 are entering into a public comment period.

14 MS. WOJNAROSKI: I have just one.

15 MS. CLEMENTS-BOYD: One; okay. We
16 will take a few more questions, but we certainly
17 want to make time for individuals that want to
18 speak.

19 Go ahead.

20 MS. O'CALLAGHAN: Thank you.

21 This is Patti O'Callaghan. I want to thank
22 you all for your testimony, and each one of you
23 really did list some specifics of things that you
24 would like to see going forward, and I was hoping
25 that their testimony could be available to us. I

1 mean I know we'll have the transcript, but just
2 their individual testimonies would be really
3 helpful for us to have.

4 One of the suggestions that you made,
5 Julia, for the photo ID is the -- you made two, to
6 expand it, the student ID's and the state
7 government ID's, but -- and those are great, and
8 MALDEF also mentioned that, too, but neither one
9 of them get to really the minorities or the poor
10 people. Is there any suggestions that you have
11 for that part?

12 MS. VAUGHN: Well, you know, something
13 other than an ID: A utility bill, a -- you know,
14 other mail from some official source. I mean
15 getting away from this idea that it's got to have
16 a picture, it's got to have an expiration date,
17 and this really narrow, you know, way of proving
18 one's identity, because, you know, when you look
19 at the threat of people impersonating someone else
20 at the polling place, it just -- you know, we have
21 no evidence that it is a real threat.

22 So, I think that we need to work on the
23 other side to make the ID requirement as expansive
24 as possible. So, things like utility bills,
25 something other than, you know, a government

1 issued ID with a photo on it. You know, a lot of
2 students can use their college ID's if they've got
3 the expiration date on them.

4 And so, that just seems like a silly
5 administrative rule that's erecting a barrier that
6 is far higher than this threat of vote fraud. So,
7 we think the state should be far more expansive in
8 the types of government I -- or the types of
9 identification that can be used by a voter to
10 establish their entitlement to vote.

11 MS. O'CALLAGHAN: Great. Thank you.

12 And then also, Patsy, you mentioned not
13 getting a hearing on the gerrymandering bill. Is
14 there any way that we will be able to get some
15 legislation to help redistricting before the next
16 census?

17 MS. HOYER: We will work very hard for
18 that end. There is large support for it in our
19 communities. The League has proclam -- collected,
20 with Julia Vaughn, proclamations from local
21 governments, cities, towns, counties. We have had
22 people telephone, call, show up at marches.

23 I don't know. I honestly don't know. I
24 would like to think so, but it is not -- the
25 response is not commensurate with the effort of

1 people who are interested in doing it, because I
2 have no idea what Milo Smith was thinking or what
3 Brian Bosma was thinking, but the Chairman of the
4 Elections Committee decided not to hear it in
5 committee, and it died.

6 If one person, rather -- looking at it
7 capriciously, can so cavalierly dismiss something
8 without even any discussion that so many people
9 are very interested in, I -- I only hope Milo
10 Smith doesn't back -- I mean I don't --

11 MS. O'CALLAGHAN: You had some -- the
12 process?

13 MS. VAUGHN: Yeah. And it's important
14 to note that the person who killed redistricting
15 reform the past two years will not be coming back
16 to the Indiana General Assembly. He is retiring.
17 We have a number of incumbent legislators who are
18 retiring this year, both Republican and Democrat.

19 So, we're going to have a whole lot of new
20 faces, and hopefully more support, but we intend
21 to make redistricting reform one of the top issues
22 that candidates for our state legislature need to
23 take positions on if they want to represent us
24 inside the Indiana Statehouse.

25 And the other thing that's pending that I

1 think will -- if it turns out the way we hope, I
2 think will serve as a great motivator for Indiana
3 is the partisan gerrymandering case out of
4 Wisconsin, and then there are others pending from
5 other states. Indiana, we have evidence and can
6 show that partisan gerrymandering was conducted
7 in 2011. And I want to make clear that that's not
8 the first time gerrymandering took place in
9 Indiana -- 1991, 2001. Both parties have a long
10 history of manipulating district lines to suit
11 their partisan political purposes.

12 But now we've got academics and attorneys
13 who have worked together to create these objective
14 standards, and if the Supreme Court accepts the
15 efficiency gap as a good objective standard in the
16 Wisconsin case, then similar litigation will be
17 filed here in Indiana, because we've got a really
18 high efficiency gap, just like Wisconsin did.

19 Now, the impact of that will either
20 encourage the General Assembly to get serious
21 about redistricting reform that includes both an
22 independent commission and redistricting
23 standards, or it could possibly have the opposite
24 impact, cause them to dig their heels in and say,
25 you know, "Gerrymandering? What gerrymandering?"

1 So, there's a lot going on in the national
2 landscape that is going to impact redistricting
3 reform efforts in all states. I would just note
4 that what we're trying to do here in Indiana,
5 which is change -- implement redistricting reform
6 through the legislative process has never
7 succeeded.

8 Those states that have reformed
9 redistricting have done it through the ballot
10 initiative. It is extremely difficult to get
11 incumbent legislators to change the law, because
12 gerrymandering has just been a very effective way
13 for them to impact election outcomes. But I think
14 with an assist by the Supreme Court, that could
15 change, and we're counting on that happening.

16 MS. O'CALLAGHAN: Yes.

17 MS. HOYER: I would also like to
18 add -- I mean it certainly will continue to be the
19 number one priority for the League, but when I got
20 involved in this several years ago, nobody really
21 knew what redistricting was or what you were
22 talking about. Now, when you talk to people just
23 around and about, "Oh, yeah, I've heard about
24 that. Oh, yeah, we should do that." So, the
25 general population does know what redistricting

1 is, so we have reached the man on the street, so
2 to speak.

3 MS. CLEMENTS-BOYD: Ernesto?

4 MR. PALOMO: Good afternoon, everyone.
5 This is Ernesto Palomo from Chesterton, Indiana,
6 and I have a follow-up question for Mr. Monroy,
7 similar to the question posed by the Chair.

8 If I understood your testimony correctly,
9 there's only about 167,000 Latinos eligible to
10 vote in Indiana.

11 MR. MONROY: Yes. Let me recheck that
12 just to make -- that's correct, yes.

13 MR. PALOMO: Okay.

14 MR. MONROY: So, 167,000.

15 MR. PALOMO: Okay. And it's -- do you
16 have any statistics on the percentage of eligible
17 voters who actually came out to vote in 2016?

18 MR. MONROY: I don't have that with
19 me, but traditionally nationwide, it's about half
20 of those. So, then thinking of the entire total
21 population, only a quarter of those are actually
22 voting.

23 MR. PALOMO: Okay. And do you know if
24 these statistics are any higher in Chicago, which
25 does have the language access for Latinos?

1 Because even though we might not have the
2 threshold numbers in Indiana to do something about
3 it or force them, but we can at least suggest,
4 especially if there's some, you know, statistical
5 evidence that having that access encourages people
6 to come out and vote.

7 MR. MONROY: I only have it
8 anecdotally that it does, it does affect turnout,
9 that individuals are more likely to vote if they
10 think that their vote is going to count, and also
11 that -- not just that they're turning out to vote,
12 but that they're turning out to vote in that
13 they're bringing the right information with them.

14 So, for instance, in Illinois, we passed
15 same-day registration, so even if people have
16 their address wrong or show up at the wrong
17 polling place, in most cases they can register on
18 that same day so they can get in. And I've
19 personally witnessed people doing election
20 protection, that if they were at the wrong polling
21 place because they had moved and they show up at
22 their new location, you know, it wasn't a problem,
23 because they would just register that same day.

24 And if I may, I have an answer to that
25 language access question. So, it is Section 203

1 of the Federal Voting Rights Act, and it covers
2 individuals in four different circumstances. The
3 first one is if the jurisdiction has more than
4 10,000 people within that language minority group,
5 so whether it's a county or a city, if that
6 election authority has 10,000 people of that group
7 inside of it, then they have to use that lang --
8 they have to provide language access.

9 Also, if there is more than five percent of
10 all voting-age citizens, or if on an Indian
11 reservation it exceeds five percent of all
12 reservation residents, and if the illiteracy rate
13 of the group is higher than the national
14 illiteracy rate.

15 MS. CLEMENTS-BOYD: So, five percent
16 of voting rates?

17 MR. MONROY: Yes, in the case of
18 Latinos, yes, it's five. All groups except for --
19 the only exception is for on an Indian
20 reservation, the Indian reservation, it exceeds
21 five percent of all reservation residents. In all
22 other groups, it's that it exceeds five percent of
23 all citizens of that group.

24 MS. CLEMENTS-BOYD: Okay.

25 Tammi?

1 MS. DAVIS: I always have to wait for
2 this green light. What is your source of data,
3 before I get to my question, that we can have that
4 noted?

5 MR. MONROY: So, for the Section 203,
6 this -- a very good resource for this is on the
7 Department of Justice Web site, they have a
8 breakdown of it. And then there's an actual list
9 of all covered jurisdictions, because the
10 Department of Justice publishes the list. They do
11 the homework for everybody, and actually say,
12 "This is the covered jurisdictions, this is the
13 noncovered."

14 In the other ones, a very good resource of
15 information update is the Pew Research Center, so
16 the statistics I gave were both from the Census
17 Bureau, double-checked through the Pew Research
18 Center. They have a "Latinos in 2016 election,"
19 and the URL basically says, "The Latinos in the
20 2016 election in Indiana."

21 MS. DAVIS: All right. And I think,
22 as my fellow Committee member has emphasized, that
23 the comment period is up until April 2nd, and so,
24 if there is information that you didn't have the
25 time to share today, please feel free to submit

1 your additional volumes of information to us via
2 the e-mail address.

3 But getting to my question, as I mentioned
4 before, people suffer for lack of knowledge, and
5 one thing I do know is that the League of Women
6 Voters, the state, does a very good job in pushing
7 out what's happening with various legislation.

8 But to the point that was made earlier,
9 there are a lot of people that are interested,
10 there are a lot of people that want to get
11 involved, they just don't know. And by the time
12 we hear about something, it's the end of the
13 session and the legislators have come home and
14 say, "Oh, this is what we didn't do." So, that
15 doesn't serve us very well.

16 So, as a part of your follow-up -- I guess
17 we're giving you all some homework, even though
18 we're supposed to be taking notes, but one of the
19 things that I think that I would like to see in
20 terms of being solution oriented is, Ms. Hoyer,
21 you can provide how other organizations can sign
22 onto receive those legislative alerts. I get
23 them, and they're very informational in real time.

24 MS. HOYER: I would like to comment on
25 that. We have initiated this past year a -- an

1 advocacy program, where our issue advocates follow
2 the bills that we think are important, and will
3 immediately send out action alerts at the times
4 during the bill's processing to anyone on our
5 e-mail list. We started with our members, but we
6 also have other organizations that we send those
7 information [sic] to.

8 And we also are using what is available in
9 Indiana now, ping the people that come, and that
10 would give you -- ping your computer when you've
11 signed up to get information on whatever bills you
12 individually want. Our advocates use that and
13 they get that information out.

14 We are sending it now to more organizations
15 for them to relay to their very large members
16 groups, so that it does -- we are working to get
17 that out very fast and not afterwards. We'll hold
18 them accountable afterwards, but we will be -- we
19 will have this information.

20 And we've done that repeatedly with
21 redistricting and said when bills were going to be
22 heard, and asked people to come to Indianapolis as
23 they are able. But we get that out, because we
24 are now calling for people to join us, either as
25 members or just interested citizens, as

1 kitchen-table advocates, because you can do that
2 from your phone or your computer at home.

3 MS. DAVIS: There will be an official
4 transcript of today, and if you're not going to be
5 here for the remainder of the afternoon, I would
6 recommend that you get the transcript. I don't
7 know how you might be able to receive a list of
8 all of the panelists, but I think it would make
9 sense for collaboration purposes that, at a
10 minimum, each of the organizations that have
11 presented before us today should sign up to
12 receive those legislative alerts and tracking.
13 And Nicole might be able to help you with that.

14 MR. DOUGLAS: I think this is for
15 Julia. Bear with me for a moment. I wanted to
16 understand a little bit about your thoughts about
17 ballot security with respect to absentee ballots.
18 It seems as though there's been all of this
19 attention to voter ID, though no evidence of
20 fraud. On the topic of absentee ballots, an alarm
21 went up in my mind when I was watching a Netflix
22 movie, and it was the -- it was a documentary on
23 this individual, the founder, president and CEO of
24 the largest privately owned time share company in
25 the world, based in Florida.

1 And in it, he's at an inaugural ball and
2 he's bragging, and he claims to have been a
3 kingmaker, made a big -- played a big role in the
4 2000 election, and the reporter asks him -- this
5 is footage from the ball -- asks him, "Is that
6 true?" And he said, "I sure did. I got George W.
7 elected President, personally got him elected
8 President." And then the interviewer, in modern
9 day, follows up with him and says, naturally, "How
10 were you personally responsible for the election
11 of George Bush?" And he said, "I -- I'd rather
12 not say, because it may not necessarily have been
13 legal."

14 And I -- so, that, of course, got my mind
15 running. Well, if I were the large -- the
16 president and CEO of the largest time share
17 company in the world, and I've got units of people
18 moving in and out of my facilities, I've got
19 hundreds of units, people moving in and out of my
20 facilities weekly, it seems to me that, well, I
21 could perhaps register them for absentee ballots
22 and do it wholesale.

23 And then more lately I became alarmed with
24 this question of, "Were people dual registered in
25 different states and voting twice?" I thought,

1 "Well, if somebody has succeeded in that fraud,
2 then those voters could show up as voting in two
3 different states."

4 So, all of this is, of course, very
5 hypothetical, et cetera, except that that made me
6 very suspicious of this topic of absentee voter
7 fraud and the fact that we were applying standards
8 where no fraud was evident, and failing to
9 provide -- to apply that where maybe some was
10 possible.

11 But what I hear you saying is a concern
12 that if we apply additional standards in absentee
13 voting, that would be an impediment to voting.
14 And so, I'm weighing this issue in my mind, and I
15 wanted your comment.

16 MS. VAUGHN: Well, last summer the
17 state legislature had an interim study committee
18 on election administration issues, and so, spent
19 quite a bit of time hearing from interested
20 parties.

21 And one of the most interesting pieces of
22 testimony that they took was testimony from county
23 clerks that the current safeguards that are in
24 place, theoretically, to restrict absentee by mail
25 to people who fit into -- I believe it's seven

1 categories: You're homebound, you're taking care
2 of a person who is homebound, you will be out of
3 the county on election day, you will be working
4 for the entire 12 days, it appears that no county
5 in the state is actually enforcing that.

6 So, we are requiring people to fit into a
7 very narrow little category to be eligible to vote
8 absentee, yet there is absolutely no checking up
9 on whether that is an accurate portrayal of their
10 situation on election day. So, my general feeling
11 is laws that aren't being enforced probably
12 shouldn't be on the book.

13 There are people who will refuse to apply
14 for an absentee-by-mail ballot because they don't
15 fit into one of the categories. We don't require
16 people to have any reason to vote in-person
17 absentee, so why do we require people to vote
18 absentee by mail? I just think we need to have
19 the same standards for everybody for all different
20 kinds of voting.

21 Now, I will note that absent the in-person
22 voter fraud that we have not seen yet -- we've
23 implemented one of the moment restrictive voter
24 ID's in the country -- we have prosecuted
25 absentee-by-mail voting. You know, the former

1 Democratic Party Chair of Jennings County,
2 Indiana, was prosecuted, and basically he pulled
3 off the scheme that you saw on Netflix. He had
4 access to the addresses of numerous people who,
5 for whatever reason, weren't -- he knew wouldn't
6 be applying for an absentee ballot, so he did it
7 for them and voted those ballots.

8 I would point out that he was caught, so I
9 think we have safeguards in place, and he was
10 caught primarily because the signatures didn't
11 match. I think we have effective safeguards in
12 place, so let's utilize those and let's get rid of
13 barriers that aren't even being enforced.

14 MR. DOUGLAS: On the topic of early
15 voting, I have a concern about voting that is too
16 early in terms of all voters having access to the
17 same information at the time that they cast their
18 vote. And what I think of in particular was a
19 Senate race a few years ago, where a candidate
20 made some statements in that debate very, very
21 shortly before the election that I think would
22 have affected the way people voted. And so, how
23 early -- how early of early voting before we --
24 before we compromise the integrity of an election
25 in another direction with regard to uniform

1 information at the time of voting?

2 MS. VAUGHN: You know, I think the
3 deadlines that are in place make sense, but I do
4 think it's something that voters, you know,
5 personally are going to have to make a decision,
6 "Is this the appropriate time, three, almost four
7 weeks before the election? Am I prepared with the
8 kind of information that I'm going to need to make
9 an intelligent choice?" So, I guess I would say
10 that the public policies that are in place, I
11 think, are appropriate, but I think voters need to
12 decide.

13 You know, it was amazing to me in 2016 the
14 number of people who seemed to consider the
15 election this endurance race that they had had
16 enough of, and if they would -- they just needed
17 to go cast their ballot because they didn't want
18 to have to think about the election anymore. I
19 find it interesting that people are able to turn
20 off this switch in their brain at a certain point
21 and not think about the election, because
22 obviously I'm sort of consumed by it, but there
23 are people out there able to do that. And so, I
24 guess I think it has to be a personal decision for
25 each voter to make.

1 MS. CLEMENTS-BOYD: Thank you all very
2 much for being here today and providing such a
3 wealth of information. We look forward to pro --
4 if you could provide your written testimonies, I
5 think that would be helpful, as was suggested.
6 So, again, if we could thank our panel for being
7 here.

8 (Applause.)

9 MS. HOYER: Thank you. We'll do our
10 homework and our assignment.

11 MR. DION: Thank you so much.

12 MS. CLEMENTS-BOYD: And we will now
13 transition to the open comment period. If there
14 are individuals that are here that would like to
15 make -- or provide us with testimony or
16 information, we will allow you to do that. If you
17 could limit your statement to three minutes, and
18 we won't be very strict on that, but somewhere
19 around that would be helpful. And if you could
20 just state your name for the court record --

21 MR. HERGET: Sure.

22 MS. CLEMENTS-BOYD: -- the court
23 reporter, please.

24 MR. HERGET: Thank you. My name is
25 Brandon Herget. I am the Deputy State Director

1 for Sen. Joe Donnelly. Joe could not be here
2 today, but he wanted to send me, and he has some
3 prepared remarks that if it's all right, I'll
4 read.

5 MS. CLEMENTS-BOYD: Sure.

6 MR. HERGET: It should be short, and
7 I'll just read it.

8 Dear Indiana Advisory Committee to the U.S.
9 Commission on Civil Rights, when the Supreme Court
10 struck down the Voting Rights Act preclearance
11 coverage formula in Shelby County versus Holder,
12 it undermined a statute which for decades
13 protected Americans from voter discrimination.
14 The Voting Rights Act requires jurisdictions that
15 have a history of voter discrimination to preclear
16 changes to their voting laws with the Department
17 of Justice or U.S. District Court for the District
18 of Columbia.

19 In Shelby County, the Supreme Court
20 invalidated the coverage formula that determined
21 which jurisdictions would be subject to the
22 preclearance requirement. As a result, until
23 Congress enacts an updated coverage formula, the
24 Voting Right Act preclearance requirement has no
25 effect.

1 At the federal level, we need to revitalize
2 this important protection and help ensure
3 Americans can exercise the right to vote. In the
4 Senate, I support the Voting Rights Advancement
5 Act, which would create a new coverage formula and
6 restore the full strength of the Voting Rights
7 Act.

8 Whether it be through the Voting Rights
9 Advancement Act or another piece of legislation,
10 Congress needs to have this important conversation
11 about how to ensure that the Voting Rights Act
12 provides strong protections for Americans across
13 the country. When people are denied the right to
14 vote on a discriminatory basis, our democracy is
15 harmed.

16 In addition, like many of you, I have been
17 incredibly concerned that Indiana voters -- excuse
18 me -- that Indiana's voter turnout in recent years
19 was among the lowest in the nation. As your
20 Committee examines concerns regarding access to
21 voting in our state, I urge you to consider what
22 more can be done to make voting more convenient
23 for all Hoosiers and to make it easier to register
24 to vote.

25 Several years ago, I had the privilege of

1 being able to participate in a civil rights
2 pilgrimage to Selma, Alabama to mark the 50th
3 Anniversary of Bloody Sunday. Joining civil
4 rights leaders in a walk across the Edmund Pettus
5 Bridge to re-enact the historic march was a moving
6 and meaningful experience. I'm inspired by the
7 courageous men and women who have fought for the
8 right to vote and those that continue to fight
9 today to ensure that meaningful participation in
10 our democracy is not denied on a discriminatory
11 basis.

12 Thank you to the members of this Committee
13 for your participation in the important process of
14 identifying and understanding barriers to voter
15 access and participation in Indiana, and I also
16 want to acknowledge all of you people who have
17 contributed and give back. I am hopeful that if
18 we all work together and continue to be engaged,
19 we can protect access to the right to vote and
20 find ways to make it easier for Hoosiers to
21 exercise this important right.

22 Sincerely, Sen. Joe Donnelly.

23 Thank you.

24 MR. DOUGLAS: Thank you.

25 MS. CLEMENTS-BOYD: Thank you so much

1 for bringing that on behalf of Sen. Donnelly.

2 MR. HERGET: And I thank you. I
3 appreciate that.

4 MS. CLEMENTS-BOYD: Are there others
5 here that would like to speak at this time?

6 (No response.)

7 MS. CLEMENTS-BOYD: Okay.

8 MS. O'CALLAGHAN: Madam Chair, I also
9 have a letter from Joe Micon, the Executive
10 Director of Lafayette Urban Ministry, with some
11 written testimony. I have an original copy, and I
12 also have copies for all of the Committee members.

13 MS. CLEMENTS-BOYD: Thank you, and
14 that will go in the record.

15 MS. O'CALLAGHAN: Thank you.

16 MS. CLEMENTS-BOYD: Thank you so much.

17 I think at this time we will break, and we
18 will come back at 1:30, where we will hear from an
19 academic panel. So please, if you are here all
20 day, again, we will resume at 1:30.

21 - - -
22 Thereupon, a luncheon recess
23 was taken at 12:26 o'clock p.m.
24 - - -

23

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25

2 - - -

3 MS. CLEMENTS-BOYD: Well, welcome to
4 the Indiana Advisory Committee to the U.S.
5 Commission on Civil Rights. We have had testimony
6 this morning from advocates, from legal
7 professionals, and as you, I'm sure, know, the
8 U.S. Commission on Civil Rights annually is
9 required to submit to Congress a statutory
10 enforcement report.

11 And this year the Commission chose to study
12 voting rights, and also did request that its
13 Advisory Boards take up the issue as well, and as
14 a result, this Advisory Board voted to study
15 voting rights in Indiana. The U.S. Commission on
16 Civil Rights has studied voting throughout the
17 years since its inception, or when it was voted as
18 part of the 1957 Civil Rights Act, voting rights
19 has been studied. And so, we find ourselves here
20 in 2018 in Indianapolis looking at voting rights
21 in the State of Indiana.

22 So, we are excited to hear information that
23 you are ready to present, and we will have
24 questions for you following your testimony. We
25 have first with us -- let me just introduce the

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1 entire panel. We have Dr. Bernard Fraga,
2 Assistant Professor of Political Science at
3 Indiana University; we also have with us
4 Dr. Vanessa Cruz Nichols, Visiting Assistant
5 Professor of Political Science at Indiana
6 University; and on the end, we have with us
7 Dr. David Campbell, Professor of Political
8 Science, University of Notre Dame. And first, we
9 are going to hear from Dr. Fraga.

10 Dr. Fraga, welcome, and please proceed when
11 you're ready. And I would ask if everyone would
12 please speak into the microphone, it will help our
13 court reporter tremendously.

14 DR. FRAGA: Okay. Thank you very
15 much. I appreciate the invitation to be here, and
16 good afternoon to everyone as well. My name is
17 Bernard Fraga, as was just said, and I'm an
18 Assistant Professor of Political Science at
19 Indiana University. My research focuses on
20 elections and voting in particular, differences in
21 rates of electoral participation that are
22 associated with race, age and other kinds of
23 social identities.

24 So, given my expertise, in my testimony
25 today I want to provide a sort of lay of the land,

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1 or help us understand the landscape, as it relates
2 to race, ethnicity and voter turnout.

3 Specifically, I will outline some of the
4 continuing disparities that we see, disparities
5 that historically have fueled scrutiny of election
6 practices, and perhaps should do so not just in
7 the South, but also in the Midwest, and perhaps
8 even in Indiana.

9 So, I'm going to begin -- I have some
10 slides that I'll be presenting, and I'm going to
11 begin by presenting data on voter turnout rates
12 from 1980 to 2016 in presidential elections broken
13 down by race and ethnicity. So, what you're about
14 to see is information from a Census Bureau
15 administered survey, the current population
16 survey. It's a very large survey that's used to
17 understand unemployment.

18 But also every two years they do a survey
19 where they ask people whether they turned out to
20 vote, and this information is used in a legal
21 context and was cited by Chief Justice Roberts in
22 the Shelby v. Holder decision to say that some of
23 the disparities that we saw historically are no
24 longer present, and therefore we should revise
25 some of our voting laws, specifically the Voting

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1 Rights Act.

2 So, first what we see here on the graph,
3 this is the rate of voter turnout, that's what's
4 on the side there on the one axis, so the rate of
5 voter turnout. This is the percent of individuals
6 reporting that they voted, citizens of voting age,
7 and I've broken it not down to three racial and
8 ethnic groups: Non-Hispanic whites, so the blue
9 line at the top there; African-Americans, Latinos,
10 and then Asian-Americans, and as you can see, this
11 data for Asian-Americans does not go quite as far
12 back.

13 This is national level data and just
14 presidential elections, and we can see a
15 substantial variation in rates of voter turnout
16 from year over year. But I have two things that I
17 would like to note as it pertains to voting
18 rights. First of all, since 1980 we've seen a
19 closure of disparities in participation between
20 the non-Hispanic white population, this blue line
21 again, and African-Americans.

22 Just to give you a sense, in 1980, for
23 example, in the presidential election of that year
24 at the national level, the rate of voter turnout
25 for non-Hispanic whites was 66.2 percent, and for

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1 African-Americans it was 53.9 percent. This is of
2 eligible citizens, voting-age citizens. So, a
3 substantial disparity there of ten percentage
4 points, more than ten percentage points.

5 And for the 2008 and 2012 elections, and
6 for 2012 especially, we see that African-American
7 voter turnout nationally might have exceeded
8 non-Hispanic white voter turnout for the first
9 time on record, and this was noted, and noted by
10 Chief Justice John Roberts as well, in saying that
11 many of these disparities we saw historically have
12 closed.

13 Now, what was not noted and what is
14 striking when looking at this chart is that while
15 there has been a closure of the gap in voter
16 turnout between African-Americans and non-Hispanic
17 whites nationally, for Latinos and Asian-Americans
18 disparities have persisted, and if anything, might
19 have even gotten worse over the years in
20 presidential elections.

21 We see rates of voter turnout for Latinos
22 and Asian-Americans -- and again, this is
23 accounting for citizenship, this is just among
24 citizen Latinos and citizen Asian-Americans of
25 voting age -- 20 percentage points lower rates of

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1 voter turnout for Latinos and Asian-Americans
2 nationally, as compared to non-Hispanic whites.

3 In addition, in the most recent
4 presidential election, 2016, we saw a reopening, a
5 kind of widening of the gap between non-Hispanic
6 whites and African-Americans, again, as well,
7 nearly a five-percentage-point -- or over a
8 five-percentage-point disparity between black and
9 white voter turnout. So, again, saying that while
10 many of these disparities that we thought were
11 resolved in our historic 2008 and 2012 elections
12 might have come back again in 2016.

13 And this is for presidential elections, and
14 often data that's cited is for presidential races,
15 very salient, many voters are aware of what's
16 going on. But if we look at the Midwest only, so
17 only looking at the Midwest, and here I'm calling
18 the Midwest part of the census definition of -- I
19 believe it's east, north, central states, so
20 Wisconsin, Illinois, Indiana and Michigan are
21 included in this measure, we see some patterns
22 that are similar.

23 First of all, the disparities between white
24 and black voter turnout, not as severe.

25 Historically this is just going back to 1980, but

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1 prior to that as well. And in 2016, we see the
2 same kind of widening of turnout disparity, as the
3 black and white turnout disparity is even more
4 severe in the Midwest.

5 But once again, though, there's a big
6 difference between Latino and white voter turnout,
7 and Asian-American and white voter turnout, again,
8 after accounting for citizenship, quite
9 substantial in the Midwest, too. This is not just
10 a phenomenon of the historical South, this is a
11 phenomenon we see in the Midwest as well, saying
12 an area that hasn't been studied quite as much in
13 terms of voting rights, but we see substantial
14 disparities in political participation, which we
15 know if you're not voting, then you can't
16 translate that into political power. So, it's
17 certainly something worth thinking about.

18 Now, this is in presidential elections,
19 again, some of the same patterns that we saw with
20 the national data in the Midwest. But if we look
21 at midterm elections -- and these are very
22 important; we have a midterm election coming up,
23 and this is where much of the political power is
24 vested in Congress. All of the seats of the House
25 of Representatives are up, in addition to many

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1 statewide elections, and about a third of the
2 Senate is up every year.

3 So, midterm elections do matter, not just
4 presidential contests, and here nationally we
5 continue to see substantial disparities year over
6 year in rates of voter turnout for
7 African-Americans compared to whites, and, of
8 course, for Latinos and Asian-Americans compared
9 to whites. Voter turnout has been declining year
10 over year in midterm elections. There are many
11 reasons behind that, but the big point here is
12 that for African-Americans, for Latinos and for
13 Asian-Americans, we saw some of the lowest rates
14 of voter turnout in our most recent midterm
15 election.

16 And this is true in the Midwest as well,
17 where we see substantial disparities, especially
18 between Latino voter turnout-white voter turnout
19 and the Asian-American voter turnout-white voter
20 turnout in the Midwest alone. But again, in 2014,
21 a kind of widening of the gap between black and
22 white voter turnout. So, some of the specific
23 numbers here that I think are worth noting, for
24 example, in the 2006 midterm election, white
25 turnout was the highest it had been since the

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1 1980's. African-American turnout was nowhere near
2 that rate.

3 However, just looking at the Midwest again,
4 in the 2006 midterm election, well non-Hispanic
5 white voter turnout was 53.6 percent, again,
6 citizen, voting-age whites, where
7 African-Americans in the 2006 midterm election was
8 only 48 percent, so a substantial gap there,
9 nearly eight percentage points.

10 And in 2016 we saw a disparity that's
11 perhaps on the order of five percentage points
12 between African-American and white voter turnout,
13 again, nowhere near the differences in turnout we
14 see, where for Latinos and for Asian-Americans,
15 it's, you know, just over half the rate of voter
16 turnout. Half the rate of voter turnout for
17 Latinos and Asians versus whites in the Midwest.

18 Now, this is data, as I said, that's from a
19 very -- you know, the largest voter survey we've
20 run on voter turnout nationally. It's run by the
21 census in coordination with the Bureau of Labor
22 statistics, and it's a very useful survey, 150,000
23 people polled nationwide every election year, and
24 this is basically the best data that we've had
25 historically, going back in time.

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1 However, as academics, when we study voter
2 turnout, we know there are a number of problems
3 with these statistics. There's problems with even
4 the best statistics that we have, going back in
5 time. This uses self-reports by citizens. It is
6 citizens reporting that they voted, and we know
7 that because voting is very important, people
8 might misstate how much they voted, because we
9 have a lot of research to suggest that is the
10 case, so this might not necessarily be a reliable
11 set of measures.

12 In addition, the relatively small sample of
13 minority voters -- that is, nonwhite voters -- is
14 especially acute in certain states. For example,
15 in Indiana we have less than a hundred polled
16 minority voters in the current population survey
17 in a given election year, so that means that our
18 statistics are going to be even more reliable,
19 potentially, when looking at the regional or even
20 state level.

21 And this is an issue that is particularly
22 acute, as I said, in states with a relatively
23 small minority population, like in Indiana,
24 where 80 percent or more of potential voters are
25 non-Hispanic white. So, we have to be very

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1 cautious and we can't actually use surveys like
2 this to study state or substate dynamics, and
3 that's an important kind of blind spot in
4 understanding issues like, you know, voting rights
5 issues, because we just don't have the information
6 and we haven't had the information historically.

7 So, as an alternative, the research that I
8 do often relies on what's termed "voter files."
9 So, voter files are state- and county-maintained
10 lists of registered voters, with individual level
11 turnout data appended. So, when you register to
12 vote, as many of you know already, that's public
13 record, that's something that I can look up.

14 If you're registered to vote in a rural
15 county, like I am, in Bloomington, I can go to the
16 County Registrar of Voters and say, "Let me look
17 at the list of registered voters." This is what
18 campaigns use to do their very fascinating
19 targeting. But the point there is that this can
20 also be a useful tool to understand disparities in
21 participation.

22 Specifically, this is the official count of
23 voters. When you show up to vote in a polling
24 place or mail in a ballot, the county that records
25 poll worker support in the county preserves

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1 information on whether you voted or not. So, it's
2 not self-reporting, it's the official record of
3 who turned out to vote.

4 In addition, we can use statistical models,
5 which I'm happy to talk about in the question and
6 answer, to understand and estimate an individual
7 level of race and ethnicity using census data.
8 Using the official records, we can estimate race
9 and ethnicity, as has been done with other
10 techniques.

11 We can also look at patterns at the state
12 and substate level using voter file data, because
13 it's individual level. We can aggregate that to
14 whatever level we prefer, and therefore understand
15 rates of voter turnout here by race and ethnicity,
16 getting much more in depth than just looking
17 nationally or for a region like the Midwest.

18 So, what I'm going to present to you are
19 statistics about disparities in voter turnout,
20 differences in voter turnout by race and ethnicity
21 in the State of Indiana, since that's the topic
22 we're interested in here, something we can't do
23 with surveys, but we can do perhaps with voter
24 file information. So, we're going to be looking
25 at the three most recent presidential elections,

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1 and the patterns are similar for midterm
2 elections, perhaps more severe in terms of the
3 disparities.

4 And I'm breaking this down by the four
5 counties with the largest share of nonwhite voters
6 in the state: That is, Marion County,
7 Indianapolis; Lake County, with Gary and East
8 Chicago; St. Joseph County, South Bend and
9 Mishawaka; and Allen County, with Fort Wayne, and
10 then I'll provide statistics for the rest of the
11 state, all of the other counties aggregated
12 together.

13 So, these are rates of voter turnout broken
14 down by race and ethnicity in our three most
15 recent presidential elections. They're shown by
16 W, B and L, representing non-Hispanic whites;
17 African-Americans or black voters; and Latinos or
18 Hispanic voters as well. And again, this is
19 turnout of the voting-age citizen population using
20 census data and voter file information.

21 So, I'll start with whites. We see,
22 looking across counties in Indiana, and for the
23 rest of Indiana, where we don't have as detailed
24 of data, rates of voter turnout that in the
25 presidential elections are in the upper 50's to

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1 mid 60's. Not much variation across counties
2 here, either.

3 For example, in Marion County in 2008, we
4 saw white voter turnout at 64 percent, that was
5 relatively high voter turnout here, statewide and
6 nationally, and it declined to 58 percent in 2012,
7 but then increased again to 61 percent in our most
8 recent presidential election. And for example,
9 St. Joseph County, my home county, 66.6 percent of
10 whites turned out to vote according to voter file
11 estimates, 62 percent in 2012, and 63 percent
12 in 2016. So, some variation in turnout, but not
13 very much.

14 Now, looking at African-American voter
15 turnout in Indiana specifically, again, we see
16 disparities that are perhaps more severe than what
17 survey data for the Midwest or nationally
18 suggests. So, in Marion County, for example,
19 Indianapolis, the county with the largest
20 African-American population, 28 percent of
21 eligible voters in 2016, African-American in
22 Marion County.

23 We see lower rates of voter turnout in
24 the 2008 election versus whites, 57.7 percent, a
25 gap that continued in 2012, 52.6 percent of

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1 African-Americans turned out to vote, and then a
2 gap that widened quite substantially in 2016, with
3 less than half of African-Americans eligible
4 turning out to vote in Marion County, 47.4 percent
5 voter turnout for African-Americans in Marion
6 County, again, versus 61.3 percent voter turnout
7 for non-Hispanic whites in Marion County.

8 And this pattern is repeated in other large
9 counties in the state. Lake County, we see the
10 same disparities again growing, in the 2016
11 elections at nearly ten points, and in St. Joseph
12 County, again disparities, where only 36.9 percent
13 of African-Americans in St. Joseph County,
14 primarily concentrated in South Bend, of course,
15 turned out to vote in 2016.

16 Allen County, Fort Wayne, 34.7 percent of
17 African-Americans turned out to vote in 2016,
18 again, versus 62 percent of non-Hispanic whites.
19 Big disparities there, disparities there, even
20 more severe in counties with a relatively small
21 African-American population, areas where
22 African-Americans not elected to office. Perhaps
23 other voting rights issues to investigate there as
24 well, the disparities are even larger.

25 And then, of course, with Latinos, again

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1 looking only at citizen Latinos -- those are the
2 only ones eligible to vote, of course -- of voting
3 age, substantial disparities that are even more
4 severe. In 2016, only 29.8 percent, according to
5 voter file and census estimates, of eligible
6 Latinos turned out to vote in Marion County.

7 Rates of voter turnout for Latinos are
8 somewhat higher in Lake County. Lake County has
9 the largest Latino population in the state in
10 terms of a percentage. Let me make sure I have my
11 statistics correct here. Yes, 15 percent of Lake
12 County eligible voters are Latino; that is,
13 voting-age citizen voters. There, Latino turnout
14 in 2016 was 42 percent, but in St. Joseph and in
15 Allen County, below 30 percent voter turnout for
16 eligible Latinos in our most recent presidential
17 election, a pattern that was mirrored in 2012, and
18 to the same degree in 2008.

19 So, we can translate these disparities to
20 understand them more clearly relative to white
21 voter turn out, what was African-American, what
22 was Latino voter turnout? There we go. Here we
23 can see the turnout gaps, the turnout disparities
24 for African-Americans and Latinos, holding white
25 turnout as kind of the baseline. And this is

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1 interesting for a number of reasons.

2 I'll just point first to African-American
3 voter turnout. As I suggested and as statistics
4 suggested, disparities increased in the 2016
5 election versus 2012 and 2008. Marion County,
6 according to voter-file based estimates and using
7 census data again to estimate individual race, a
8 voter turnout disparity of 14 percentage points,
9 14 percentage points lower voter turnout for
10 African-Americans in Marion County, and this
11 disparity was only 6.4 percent in 2008.

12 In Lake County, rates of voter turnout
13 between African-Americans and whites were nearly
14 even in 2008, only a 0.6-percentage-point
15 difference, so nearly even, but by 2016, that
16 disparity had grown to nearly ten percentage
17 points, 9.2 percentage points, in fact. And in
18 other counties, in St. Joseph County, for example,
19 a gap that was already rather large, 20 percentage
20 points, grew to 26 percentage points, and in Allen
21 County, it grew to 27 percent points from about 20
22 percentage points in 2008.

23 In the rest of the state, we can see these
24 gaps are even larger, once again pointing to the
25 importance of understanding perhaps voting rights

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1 issues that might be occurring outside of these
2 large major counties, but these disparities are
3 severe enough to warrant increased attention in
4 these large counties as well, implying that in
5 terms of voting rights, and specifically in
6 Indiana, and even in counties with the largest
7 share of minority voters, we're continuing to see
8 disparities.

9 These disparities are even larger for
10 Latinos, as I mentioned. They haven't grown quite
11 as much over time. If anything, it looks like
12 some of these might have been resolved in our most
13 recent presidential election, or become smaller
14 somewhat, but still we're talking about 20- to
15 30-percentage-point disparities in Latino turnout
16 versus non-Hispanic white voter turnout in our
17 largest counties, a gap that grows to nearly a
18 40-percentage-point disparity in voter turnout.
19 A 40-percentage-point difference in voter turnout
20 between Latino and non-Hispanic white voter
21 turnout in counties with a relatively small Latino
22 population.

23 So, I'm happy to talk more about the
24 statistics and how they're generated in the Q & A
25 session, but what I think this points to, to

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1 conclude, is persistent and growing disparities in
2 voter turnout by race and ethnicity nationally, in
3 the Midwest, but also in Indiana, even in the
4 counties with the largest percent of minority
5 voters, even where we've seen substantial change
6 in representation for minority voters. So, these
7 racial and ethnic turnout disparities persist, as
8 I said, and perhaps are growing in recent
9 presidential elections.

10 Now, in terms of voting rights, we might
11 ask whether there are specific policies that
12 produce and perpetuate these disparities. These
13 are just statistics that, again, give a lay of the
14 land to understand where the disparities exist and
15 where we might want to pay more attention, but we
16 know that, for example, there have been cutbacks
17 to early voting in some counties in Indiana that's
18 a county-mandated policy. Counties set how many
19 early voting centers exist, and we know that there
20 were cutbacks in 2012 and 2016 in Marion County,
21 for example, and we see disparities in voter
22 turnout at that same time, so this warrants
23 attention perhaps.

24 Also issues like precinct consolidation and
25 polling place consolidation that became -- so,

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1 like in Lake County, with a large Latino and
2 African-American population, we see disparities in
3 participation continuing there, perhaps growing
4 there, so increased attention on the impact of
5 those policies is likely warranted.

6 And finally, Indiana is one of seven states
7 with a strict photo identification requirement in
8 place since 2008. Again, the statistics are not
9 pointing to a causal impact of those policies, but
10 other research on the national level suggests that
11 they may impact disparities in voter turnout,
12 perhaps exacerbating minority versus white
13 disparity in voter turnout that we see. And in
14 Indiana, since we see these disparities as well,
15 it might warrant increased attention to these
16 policies and their impact on participation.

17 So, to me, what this also points to is a
18 unique kind of methodological the research problem
19 that might obscure some of the voting rights
20 disparities that we see, some of the problems we
21 see, which is that we can't just rely on national
22 statistics to point to problems being resolved,
23 maybe not even regional data. We need to get to
24 the state and perhaps even substate level to
25 understand where these disparities exist, and not

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1 assume that all of the issues that we talk about
2 from the 1960's have been resolved. Statistics in
3 fact demonstrate that there are substantial
4 disparities in white versus minority voter
5 turnout, disparities that might be linked to the
6 policies that we know historically have been used
7 to disenfranchise minority voters.

8 That's the presentation I have for you
9 today, and I look forward to your questions.
10 Thank you very much.

11 MS. CLEMENTS-BOYD: Thank you so much,
12 Dr. Fraga.

13 Now we will hear from Dr. Cruz Nichols.
14 Welcome, and please proceed when you're ready.

15 DR. CRUZ NICHOLS: Sure. Thank you.

16 Good afternoon, everyone. Thank you so
17 much for having me here. I'm excited to talk to
18 you all today about civic engagement, and near the
19 end I will also tie in some of the voter
20 intentionality results that I have through my
21 dissertation work and co-authored work that I have
22 with other colleagues, but first, I just want to
23 give you a quick overview of what I mean by civic
24 engagement and the potential paralyzing effects of
25 threatening environments.

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1 So, my research in political science has
2 focused a whole lot on the political psychology
3 behind what it means to feel like a deserving
4 member of a polity, and so, some of my work has
5 focused on, for example, the spillover effects of
6 threatening political environments, those
7 spillover effects of particular policies that
8 maybe enforcing restrictions or maybe enforcing
9 deportations impact people's levels of trust in
10 government.

11 So, there's this piece by Rocha, Knoll and
12 Wrinkle in 2015 where they're looking at trust in
13 local government as well as trust in federal
14 government as it relates to the amount of
15 deportations in one's county, and they looked at
16 that among Latino and white respondents.

17 And there's this sort of redistribution
18 story that takes place, where in areas of greater
19 enforcement and greater deportation is increasing
20 level of trust that white participants have
21 towards their local and federal government.
22 They're seeing deviant members of society, those
23 that are seen as undocumented and illegal, being
24 deported, and they are rewarding their government
25 by trusting their government more.

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1 However, the redistribution story comes in
2 among Latino respondents, and that's both for
3 Latino native-born respondents as well as
4 foreign-born respondents, who are experiencing
5 more cynicism as a result of these deportations,
6 especially surprising because these populations
7 are actually initially more trusting of our local
8 and federal governments, but when introduction of
9 deportations in their counties increases, suddenly
10 their trust decreases, and it can help us perhaps
11 explain the disengagement that we see in these
12 communities. So, keep that in mind as we kind of
13 continue to evolve in this presentation.

14 So, my work that has been published has
15 looked at how there are potential spillover
16 effects from an immigration enforcement
17 environment into people's trust in government
18 health agencies, and so, again, that is just to
19 reiterate that there are these spillover effects
20 of one policy domain to another.

21 And the policy makers need to keep that in
22 mind when they're thinking about the potential
23 unintended consequences of policies that emphasize
24 enforcement, and that in turn they're actually
25 deterring people from health agencies and health

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1 promoting organizations. Trust is essential in a
2 healthy democracy, both for voting rights and for
3 practicing one's full citizenship in other forms
4 of daily life behaviors.

5 So, the takeaway from the initial portion
6 of my presentation is going to be that one's sense
7 of belonging matters for democracy, and policies
8 signal one's sense of belonging. And I would go
9 so far as to say that not just policies, but
10 policy proposals signal one's sense of belonging
11 in an American democracy.

12 The second portion of my presentation is
13 going to go over the often crisis-oriented
14 mobilizing messaging that advocacy groups use to
15 turn out the vote, and so, that is often
16 committing a disservice to minority groups in
17 particular, because they might be signaling too
18 much of a sense of threat in their environment,
19 consequently leading people to take away a sense
20 of fear and a sense of caution, and they could be
21 potentially scared stiff and unable to mobilize,
22 unable to vote if they're only told about the
23 crisis or only told about the threatening policy.

24 So, the takeaway from that second portion
25 of the presentation is going to be that a sense of

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1 efficacy matters for collective action, and for
2 voting rights in particular. So, that's the
3 second portion of the presentation. So, we again
4 want to strive for a more healthy democracy, one
5 in which all members of our community feel that
6 they belong and are able to exercise their
7 complete citizenship access.

8 Okay. So, going back to this idea that
9 policies send signals, policies educate the
10 populace. This is known as an interpretive policy
11 effect, where policies impart lessons of
12 deservingness. And so, Schneider and Ingram have
13 established a lot of work on this, where a policy
14 such as, for example, the GI Bill would signal a
15 sense of deservingness to a military veteran to
16 seek -- to be able to qualify for education
17 benefits. Again, it should signal a sense of
18 deservingness, a positive takeaway.

19 Head Start programs are telling us about,
20 you know, our children being valued in this
21 country and their education being a priority. The
22 same goes with Social Security and health care
23 access in signaling to the particular opportunity
24 that qualifies for those benefits that their
25 health care and their well being matters to this

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1 country.

2 Those policies that might signal a burden
3 or a sense of undeservingness would fall within
4 the realm of surveillance and policing, for
5 example. So, policies such as stop-and-frisk and
6 "Show me your papers," immigration rates, these
7 kinds of policies are punishing particular
8 community members and, again, signaling a sense
9 that they do not belong in a particular area, and
10 it's often related to criminalizing a community.

11 And one of the prime examples of the kind
12 of policy that signals undeserving lessons would
13 be a secure communities program, which was
14 especially heavily enforced after 2008 and is now
15 being again reinvigorated under President Trump.
16 This policy allowed for both local police and
17 federal immigration agents to collaborate more
18 closely with their electronic databases.

19 And so, if somebody was pulled over in a
20 locale, so that they're in a particular city,
21 local police force agents could help enforce
22 immigration policy by detaining these people in
23 their facilities longer than what they may have
24 done previously. And so, by collaborating with
25 the -- not only the FBI, but also ICE agents, that

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1 could expedite some of the deportation process.

2 And so, that's the basic background of the
3 secure communities program. The emphasis was to
4 deport high-priority criminals, meaning those that
5 were committing violent crimes in society, but as
6 it turns out, the types of people that were
7 deported, the majority of them, 80 percent of
8 them, are coming from nonviolent backgrounds, and
9 so, they're being deported for things like not
10 having driver's licenses and traffic violations.

11 And so, this kind of policy program really
12 signaled a sense of undeservingness to immigrant
13 communities, and Latino communities more broadly
14 speaking, that their community needed to be
15 questioned about whether they were truly abiding
16 citizens in our polity.

17 So, with that background information, I
18 want to present to you all an experiment that my
19 team and I ran. This has been published in the
20 Journal of Health Politics, Policy and Law
21 in 2017, and what we did was we randomized
22 participants to a situation where they read about
23 either health insurance or they read about
24 immigration issues, and that -- those were the two
25 word differences in the experimental condition.

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1 We relied on a sample -- a national
2 representative sample of Latino respondents, and
3 this was conducted both via the Web as well as by
4 phone, and participants could choose to see the
5 survey in either Spanish or hear it in either
6 Spanish or English.

7 And so, you would imagine that, again, with
8 the previous conversation that we just had about
9 interpretive policy effects, a health insurance
10 scenario would prime a sense of belonging and
11 should promote a sense of benefits, whereas
12 immigration issues and the topic of immigration
13 should trigger a sense of worry about potential
14 burdens or enforcement that could affect one's
15 family.

16 So, what we found -- what we focused on
17 were the different forms of participation and
18 engagement. The initial question asked, you know,
19 "When you're thinking about making an appointment
20 to see a doctor or a nurse or going to a clinic
21 for health care, with all of the attention to,"
22 and then the two word scenario changes, "are you
23 more likely to use health care services, less
24 likely, or has it not made a difference?"

25 And the kind of behaviors that we looked at

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1 were not only whether they said "yes" or "no" to
2 being likely to make a health care appointment, we
3 looked at whether they avoided daily life
4 activities, things that we should care about,
5 whether we're politicians or whether we're
6 mobilizers, activists or not, things like talking
7 with school teachers or school officials, talking
8 to police and reporting crime, and then finally
9 visiting a doctor or a clinic.

10 The possible ways in which, you know, our
11 results might be heightened, we expected them to
12 be heightened among people who knew somebody that
13 was undocumented, we expected our results to be
14 heightened among people who knew somebody that had
15 been deported, as well as those who were living in
16 more restrictive immigration policy enforcement
17 areas.

18 So, you know, we want you to keep that in
19 mind as we explain our results. These are the
20 folks that are most concerned about immigration
21 policy, and I remind you that our sample included
22 both immigrant and nonimmigrant respondents, but
23 they were all U.S. citizens or resident -- legal
24 residents, so they personally are not affected by
25 deportation policies.

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1 So, as it turns out, we found that in terms
2 of avoiding daily life activities, it was in fact
3 the immigration issues condition that prompted a
4 more -- a greater willingness to avoid that
5 activity. So, as people jump up on this scale,
6 that means they were more likely to avoid those
7 activities.

8 So, there really isn't as much of a
9 difference when it comes to looking at people's
10 responses to talk to school officials whether they
11 were in the health insurance condition or
12 immigration issues condition. There is a small
13 difference between those seeking a health care
14 appointment or attention in a clinic if they were
15 in either the immigration issue or the health
16 insurance condition. The immigration issues are
17 the points that are much more dark and emboldened.

18 And then finally, in the police condition,
19 when we asked them about whether they were willing
20 to report crime to police, the immigration issues
21 condition made people avoid doing so in a much,
22 much greater rate. So, the difference there is
23 about 15 percentage points -- I'm sorry -- six
24 percentage points where they were more willing to
25 avoid reporting crime to police.

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1 And in terms of people -- so, that's with
2 our full sample, but if we look at differences
3 between those who are in welcoming or more
4 expanded immigration policy environments versus
5 those who are in more restrictive immigration
6 policy environments, our results are much more
7 stark.

8 And so, you see that in terms of the
9 reporting crime to police, which is the finding
10 all of the way to the right, that gap is much
11 greater among those who are in the immigration
12 issues condition, so they're thinking of that kind
13 of policy scenario where they're seen as a less
14 deserving group. They're thinking about
15 immigration issues, an area that is threatening to
16 Latino communities. They are more going to avoid
17 reporting crime to police.

18 These results, again -- we -- okay. So,
19 this is whether they knew somebody that was
20 undocumented or not, highlighted on the right end
21 of those graphs, and knowing somebody
22 undocumented, which is all of the way to the
23 right, in fact also shows a much greater gap in
24 the willingness to seek a health care appointment
25 or report crime to police.

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1 So, those concerns of a threatening
2 environment are driving people's reticent behavior
3 and they're disengaging more. And this is whether
4 they knew somebody deported or not. Again, the
5 results are more magnified all of the way to the
6 right.

7 Okay. So, in the main question where we
8 asked them whether they were willing to seek a
9 health care appointment with a medical
10 professional or not, our results were, again, much
11 more -- so, the initial total experiment
12 difference of the full sample, there isn't as huge
13 of a difference, but if we look at it by whether
14 they were in the welcoming or unwelcoming policy
15 environment, the results jump much more
16 dramatically, and so, people are more going to
17 deter, by 12 percentage points, from their -- from
18 seeking a health care appointment if they're in a
19 restricted immigration policy environment.

20 Okay. So, in summary, the first part of
21 the presentation is that cautious citizenship is
22 one where participants are actively assessing
23 whether to engage or disengage from particular
24 encounters with our institutions and our policy
25 infrastructure, which oftentimes takes away -- it

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1 really -- we wonder what effects this has on
2 community policing efforts.

3 So, if people are reading a scenario where
4 they're interacting with police as very
5 threatening, then we have to again remember that
6 with the level of crime that we're seeing reported
7 in these communities and the efforts in which
8 people are making to create safer communities are
9 being undermined by restrictive immigration policy
10 environments that are taking away lessons and
11 signaling to people that they do not deserve --
12 that they are not deserving members of the polity
13 and that they are not valued as those members.

14 So, finally, what do we do in this kind of
15 scenario? In a threatening political environment,
16 how can we empower communities not to cower away
17 from exercising their political voice and voting?
18 So, my dissertation focuses on the use of both
19 threat and opportunity messages.

20 So, generally, mobilizers tend to alert
21 people to a crisis and a situation that they
22 should be aware of, as to why they should hold an
23 elected official accountable, somebody who's
24 proposing a policy that's going to take away your
25 benefits, therefore the world will implode if you

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1 do not take action. That's the typical kind of
2 message that people receive. So, the sort of fire
3 alarms are rung.

4 However, oftentimes by not pointing to
5 possible opportunities and policy changes that
6 could improve the status quo from one where people
7 do not see any reason to feel a sense of possible
8 gain if they expend their efforts to get involved.
9 So, they're only threatened if they see a
10 possibility of loss.

11 If they're both threatened and given a
12 sense of possible policy opportunities that could
13 help improve the status quo of their group, then
14 they are challenged and they are able to better
15 cope with the threat that they will be deported,
16 so they see a potential for gain as well as loss
17 if they don't get involved.

18 So, what I relied on was a national
19 representative sample -- or I'm sorry -- a
20 convenient sample of an on-line survey with a
21 thousand Latino respondents in both English and
22 Spanish. I randomized participants to receive
23 messages that only emphasized a threat or a policy
24 scenario that should trigger a sense of threat,
25 those who received only messages that were

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1 pointing to a possible policy opportunity, and
2 then finally, those who received both.

3 I also replicated my findings with
4 statistical data from the American National
5 Election Study in 2008 and 2012 with a national
6 representative sample of Latinos across the United
7 States, and that involved looking at the intent to
8 vote as well as talking to other friends and
9 family members about politics. So, I'm only going
10 to highlight the experimental results here, but
11 just know that I did replicate my findings with a
12 national representative sample in my dissertation
13 work. So, I'll give that to you all.

14 So, finally, these are the four conditions
15 that respondents were exposed to: Threat only,
16 opportunity, or both coupled, threat and
17 opportunity, and I expected that those were
18 exposed to both a sense of loss and possible gain,
19 or more willing to engage in politics. And I
20 found -- so, I focused on the intent to march,
21 talk, volunteer, as well as vote, and finally, an
22 observed measure of whether they sent an
23 electronic postcard to the U.S. Senators.

24 Just to go over this really briefly, my
25 findings here emphasize that it's in the coupled

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1 condition that people are more willing to say that
2 they are wanting to join a march, that they are
3 wanting to talk about politics with their friends
4 and family, and are overall affected by those
5 three forms of participation: Marching, talking
6 and volunteering.

7 That, again, the coupled condition is what
8 is driving people's willingness to want to
9 participate in these forms of political behavior,
10 and the threat condition is not -- although it's
11 positive, it's not reaching statistical
12 significance, so it's not enough to just point to
13 the crisis or the problem.

14 And this is the visual representation of
15 those findings, so here, again, you'll find that
16 the coupled condition is significant from the
17 controlled condition, and it is driving greater
18 rates of participation.

19 For the measure of contacting an elected
20 official, you'll see that the coupled message, the
21 height column there, is what -- is the message
22 that is triggering the most number of postcards
23 that are sent to their elected official, and that
24 is by state, and this is the actual graphical
25 interpretation of my experimental results.

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1 Here there's a ten-percentage-point
2 difference, nearly, among those participants that
3 were exposed to both the threat and opportunity
4 message, and this is making them more willing to
5 send a postcard. So, you can imagine that with
6 most -- more intense forms of mobilization, we
7 could help people get past that threshold of being
8 too worried about whether their vote or their
9 voice matters. These were simply on-line survey
10 screens.

11 So, just to recap, the spillover effects of
12 threatening political environments matter. They
13 carry away lessons for a community, so whether
14 they belong or not, and crisis-oriented
15 mobilization message are -- messages alone are
16 doing us a disservice, and we should consider the
17 possible sense of efficacy that people are walking
18 away with if they feel that they can't make a
19 change. When their environment is only
20 threatening, that's very problematic, as people
21 are unable to then engage and unable to hold their
22 elected officials accountable.

23 Thank you.

24 MS. CLEMENTS-BOYD: Thank you so much,
25 Dr. Cruz Nichols.

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1 (Discussion off the record.)

2 MS. CLEMENTS-BOYD: Okay.

3 Dr. Campbell, welcome, and when you're ready,
4 please proceed.

5 DR. CAMPBELL: Well, let me begin,
6 first of all, by thanking all of you, members of
7 this Committee, and let me also thank, even though
8 they're not -- of course, not all here now, the
9 other folks who have testified and will testify
10 today.

11 Today I'm going to talk about young people,
12 kids these days, but in general, what I studied is
13 why people do stuff like this. Why do they get
14 together in order to improve our civic lives? And
15 I know this is no small thing for you to serve on
16 a committee like this, and it's no small thing for
17 the League of Women Voters and similar
18 organizations to come and give their time and
19 their expertise. So, I'm grateful for all of
20 that.

21 And I'm grateful for my fellow panelists.
22 As you've seen, you have heard from some of the
23 top scholars, rising stars studying these
24 questions, and it's a real credit, frankly, to the
25 State of Indiana that both of them are affiliated

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1 with Indiana University. And I'm a Notre Dame guy
2 and I'm acknowledging that, so you can take that
3 one and note it.

4 As I said, today I want to talk about kids.
5 Kids these days; right? We all want to complain
6 about kids these days, and, you know, there are
7 dueling public images of young people. On the one
8 hand, we've probably all at some point complained
9 about, lamented, the apathy, and especially the
10 political, civic apathy of young people. We
11 characterize them as being disengaged, staring at
12 their phones and snapping or whatever they do with
13 each other.

14 But on the other hand, we have this other
15 image, and we've all witnessed this over the last
16 few weeks as the country has been captivated by
17 these young people from Parkland, Florida who have
18 demonstrated a tremendous capacity for political
19 involvement and an incredible level of just being
20 articulate, speaking out on behalf of a cause that
21 has obviously touched their lives.

22 And so, today I want to try and kind of
23 reconcile those two images and ask the question of
24 whether young people will vote, and specifically,
25 will they be informed as voters? That's the thing

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1 I want to focus on today is, what is it that young
2 people know?

3 Now, there are many, many factors that can
4 spur political engagement and political knowledge
5 among young people. We know that what goes on
6 within the walls of their homes matters. We know
7 that what goes on inside their churches and
8 mosques and temples, that matters. We know that
9 the clubs and the groups they belong to, that
10 matters. We even know that the social media that
11 so consumes them can matter.

12 But the one I want to focus on today is the
13 one that is most likely to be affected by public
14 policy, and that is what happens inside our
15 schools. So, when I refer to civic education,
16 which will be a recurring term that I'll come back
17 to again and again, I'm referring to, again, what
18 happens inside our schools.

19 Now, I'll begin by noting that there is
20 widespread consensus that our schools ought to
21 provide a civic education. There are many state
22 constitutions, including that of the Great State
23 of Indiana, that justify common or public schools
24 by a reference to those schools' civic purpose.
25 That was mentioned earlier by Christopher Douglas,

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1 I think, in the previous session.

2 But just to underscore that point -- I know
3 you all have this committed to memory, but just in
4 case you haven't, Article 8, Section 1 of the
5 Indiana State Constitution says, "Knowledge and
6 learning, generally diffused throughout a
7 community --" and this is a critical
8 line "-- being essential to the preservation of a
9 free government; it [should] be the duty of the
10 General Assembly to encourage, by all suitable
11 means, moral, intellectual, scientific, and
12 agricultural improvement; and to provide, by law,
13 for a general and uniform system of Common
14 Schools, wherein tuition shall be without charge,
15 and equally open to all." "Knowledge and
16 learning, generally diffused throughout a
17 community, being essential to the preservation
18 of...free government."

19 Now, I should note, and this is important
20 to keep in mind, that civic education as I'm
21 discussing it today is not limited to those common
22 schools, the public schools, as private schools
23 also provide an effective civics instruction to
24 their students. And so, as we're talking about
25 differences across schools in civic education, the

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1 key distinction is actually not public/private,
2 religious/secular, but other things that I'll get
3 into today.

4 It's also worth noting that the civic
5 purpose of schools is actually one of the rare
6 things that liberals and conservatives both agree
7 on. At a time when it is hard to get liberals and
8 conservatives to agree that the sky is blue, they
9 will agree that this is something that our schools
10 ought to be doing.

11 And lest you think that I'm making that up,
12 here are the words of President Barack Obama, who
13 noted that "the loss of quality civic education
14 from so many of our classrooms has left too many
15 young Americans without the most basic knowledge
16 of who our forefathers are or the significance of
17 the founding documents. The risks and the
18 sacrifices made by previous generations to ensure
19 that this country survived war and depression,
20 through the great struggles for civil, and social,
21 and workers' rights. It is up to us, then, to
22 teach them." That's Barack Obama.

23 Here are the words of Ronald Reagan:
24 "Since the founding of this Nation, education and
25 democracy have gone hand in hand...the Founders

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1 believed a nation that governs itself, like ours,
2 must rely upon an informed and engaged electorate.
3 Their purpose was not only to teach all Americans
4 how to read and write, but to instill the
5 self-evident truths that are the anchors of our
6 political system."

7 I might suggest that it would be difficult
8 to find agreement between Barack Obama and Ronald
9 Reagan on a lot of things, but they did agree on
10 this. And I personally -- having written and
11 spoken about civic education for a number of
12 years, I personally have found that while
13 conservatives and liberals, Republicans and
14 Democrats agree that schools should provide a
15 civic education, I do have to admit they often
16 disagree over what exactly that means, or at least
17 what should be emphasized within civic education.
18 So, conservatives are more likely to emphasize
19 civic responsibilities, liberals are more likely
20 to emphasize rights. The good news is you don't
21 actually have to make a trade-off between those
22 two things, you can incorporate both of them into
23 effective civic education.

24 I've also found, however, that there is
25 actually widespread consensus that a civic

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1 education should impart knowledge, and even a fair
2 amount of consensus on just what kids should know
3 as they come out of our schools. Just to give you
4 an example, the Federal Education Department
5 periodically conducts a civics exam as part of
6 what is commonly called the nation's report card,
7 the National Assessment of Educational Progress.
8 You probably know these results, even if you
9 didn't know the name of the exam, because this is
10 how we track, for example, the black-white test
11 score gap.

12 And usually the emphasis is on reading and
13 math, but every few years they also administer a
14 national exam in civics. It's a high-quality
15 exam, and frankly, it doesn't really meet with
16 much controversy. And it's my argument that if
17 we're going to talk about civic education and what
18 we want our young people to be learning in their
19 schools, that's where we should start is where we
20 have consensus on what they should know.

21 Now, that consensus on imparting knowledge
22 to our young people, that's encouraging, and
23 perhaps it's common sense that schools should be
24 in the business of teaching young people what they
25 ought to know; right? You'll probably go home

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1 tonight and say, "This guy from Notre Dame came
2 and said that schools should actually teach kids
3 something they should know? Wow, that's a
4 shocker."

5 And presumably it's not controversial that
6 we would want an informed electorate, so there's
7 plenty of social science research, I could show
8 you plenty of charts and graphs that make the
9 point that the high level of political knowledge
10 is, if you will, a gateway to other kinds of
11 political involvement, voting, but also other ways
12 that people might express their political voice.

13 I am a card-carrying political scientist,
14 so I do need to acknowledge that among my
15 colleagues in the discipline, we do disagree among
16 one another on how much knowledge is actually
17 necessary for a system to be truly democratically
18 responsive, but that disagreement is really a
19 matter of degree, not kind. I've never heard a
20 political scientist argue that "It doesn't matter.
21 Voters know nothing; right? This is how much they
22 should know."

23 So, that leads us to the question, "Well,
24 what do we know about civic education?" Well,
25 first, I want to dispel a couple of myths. Myth

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1 number one: It is a myth that civics is not
2 taught anymore in schools. It is. Forty-nine of
3 the 50 states have state civics standards. The
4 only exception is Iowa, and that's because Iowa
5 has this very unique decentralized education
6 system. So, it's not that Iowa's students aren't
7 receiving a civic education, it's just that their
8 standards are more likely to be set at the
9 district level than at the state level.

10 It is also a myth that civic education is
11 going away, either because of standardized testing
12 or for other reasons. So, it's a myth that No
13 Child Left Behind or similar state level
14 initiatives that brought about the accountability
15 revolution, that sort of pushed aside civics.

16 More accurately, it depends on the state.
17 So, there are some states in which civics has been
18 given fewer resources, probably because it's been
19 crowded out by an emphasis on other subjects. But
20 there are other states that have actually
21 strengthened their civic education requirements in
22 the last few years, including adding high-stakes
23 civics exams in order to graduate from high
24 school, and I'll return to that in a few minutes.

25 If you're curious, just in case you don't

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1 remember, in Gary, Indiana there is a state
2 assessment in civics. It's actually in social
3 studies, so the term "civics" is not used in every
4 state. Here, it's social studies. But it's in
5 grades five and seven, so it's not a high-stakes
6 assessment. You don't have to pass an exam in
7 social studies in order to graduate from high
8 school, but you do have to take these exams
9 earlier on in your education.

10 So, the question, then, is: What makes for
11 an effective civic education? Believe it or not,
12 for many years the conventional wisdom among
13 scholars was that civics courses in high schools
14 didn't actually have much effect on what young
15 people knew about civic and political life. What
16 that really meant is: What they learned in school
17 was far less important, the belief was, than what
18 they learned through other channels: Their homes,
19 their churches, their clubs, et cetera.

20 However -- and this is sort of often
21 forgotten among people like myself who study this
22 stuff -- during this period of what I might call
23 civic education skepticism, there was this very
24 interesting finding that the main study that they
25 all sort of relied on found that there was one

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1 group in the population in particular that did
2 benefit from civic education in the schools, and
3 that one group was African-American students.

4 And this was a study that was done in the
5 mid 1960's, and, of course, that was a time when
6 African-Americans were widely disenfranchised
7 throughout the country, which suggested that
8 schools mattered, or mattered most, when they were
9 compensating for the absence of a civic experience
10 at home. So, I'm going to call that the
11 compensation effect, that schools can compensate
12 for what kids are not learning through other
13 channels.

14 And recently, evidence has begun to
15 accumulate supporting that idea, that schools have
16 this compensation effect. Now, again, you
17 probably think that sounds obvious; right? You're
18 all going to go home tonight and say, "This guy
19 from Notre Dame came and said that schools can do
20 what homes can't."

21 "Well, we already know that."

22 Well, in my world studying civic
23 engagement, that's not what we typically observe.
24 In fact, typically what we find is what is often
25 called the Matthew Effect, from the Biblical Book

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1 of Matthew. You might remember the parable that
2 says, "For to everyone who has will more be given,
3 and he will have abundance." That's typically the
4 way civic education works.

5 And just as a quick example, we know that
6 extracurricular activities can boost young
7 people's civic engagement, but which students are
8 most likely to be engaged in extracurriculars?
9 Well, it's typically those who are of a high
10 socioeconomic status, who have highly educated
11 parents. They are the one who are already most
12 likely to be engaged. Classroom instruction is
13 different, because they can reach every student.

14 Now, today when we look for evidence of
15 compensation for a lack of civic resources in the
16 home, we would not necessarily expect it to find
17 among -- to find it among African-Americans. As
18 Professor Fraga noted, that's a group that
19 actually now has relatively high levels of
20 political engagement, including voter turnout.
21 But we do find lower levels of political
22 involvement, including voting, including political
23 knowledge, among those who have a low
24 socioeconomic status. Usually we use education as
25 our proxy for that.

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1 And we also have reason to believe that the
2 immigrants in the country, who have less
3 familiarity with the American political system,
4 are also likely to have relatively low levels of
5 political engagement -- again, we saw that through
6 Professor Fraga -- and relatively low levels of
7 knowledge of the American system. It doesn't mean
8 they're not knowledgeable about politics. Often
9 they know a lot about politics from their
10 settled-in country, but not necessarily about the
11 U.S.

12 Now, what my research and that of others
13 has found, that the most effective form of civics
14 instruction entails the open discussion of
15 controversial issues in the classroom. When
16 students are exposed to real politics, the cut and
17 thrust, the back and forth, the debate, the pros
18 and the cons of any given issue, they become more
19 engaged, they envision themselves as being
20 participants in the political process, and they
21 also become knowledgeable. They know more stuff
22 because it sticks in their brains, because they
23 remember the experience, because they're exposed
24 to real politics.

25 And in particular, it is students of low

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1 socioeconomic status, those who do not come from
2 homes where they're likely, over the dinner table,
3 to experience that back and forth, the cut and
4 thrust, the debate. They're the ones who benefit
5 most from what is happening inside the classroom
6 when civics is taught that way. Regrettably, it's
7 not often taught that way. It's often taught in a
8 very boring way, with a lot of worksheets, filling
9 in forms and such.

10 My research has also found that having a
11 well designed state-level civics assessment, by
12 which I mean an exam, actually matters, because it
13 incentivizes schools to have effective civic
14 education. In fact, the biggest impact of all is
15 found with a high-stakes civic assessment, a
16 civics exam that is required to graduate from high
17 school.

18 And the biggest effect of all is found
19 among the population most likely to have first- or
20 second-generation immigrants; that is, Latinos.
21 And the effect is most striking within those
22 states that actually added a high-stakes civics
23 exam between 2006 and 2010. In other words, when
24 civics count, we see schools compensating for a
25 relative lack of civic experiences at home.

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1 Furthermore, those effects last past high
2 school. We know that from other work that shows
3 that even years following high school, those who
4 graduated from high school in states that have
5 those high-stakes exams, they still know more
6 about politics, and that's especially true for
7 Latinos, immigrants and Latinos put together.

8 In sum, let me close, what's with kids
9 these days? While civic education is in better
10 shape than conventional wisdom might suggest,
11 there is still room for improvement. Teachers
12 should be encouraged to enliven their classrooms
13 with real-world politics, and civic educators need
14 to be incentivized to provide the most effective
15 civics instruction, especially for those students
16 who need it most.

17 Thank you very much.

18 MS. CLEMENTS-BOYD: Thank you,
19 Dr. Campbell.

20 Okay. Are there any questions for our
21 panel?

22 Dr. McGill, go ahead.

23 MR. MCGILL: Thank you, Madam Chair.

24 This is Bill McGill. I found it
25 interesting, Dr. Fraga, that while on some levels

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1 you saw African-American participation in the
2 electoral process decrease, you've actually seen
3 Latinos increase in some areas, especially in
4 Allen County. Do you think there's a direct
5 correlation, then, between the level of one's
6 political representation and their subsequent
7 participation, and maybe, again, we'll see a
8 little bit more involvement at the Latino level as
9 we're seeing their political empowerment increase?
10 Do you think that --

11 DR. FRAGA: Yeah. So, thank you very
12 much for that question. I think that's a key part
13 of the story, and some of my research also
14 examines the dynamics of political empowerment and
15 how having representation and influence in
16 political decision-making can spur more
17 participation, can spur not just voting, but then
18 running for office, which then creates kind of a
19 cycle, a snowball effect, perhaps, but certainly a
20 cyclical process by which knowledge of what
21 matters encourages you to vote more, which then
22 makes your vote matter more, which then encour --
23 you see the point; right?

24 So, I think that some of what you've seen
25 in a few counties in Indiana, perhaps specifically

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1 with the 2016 election as well -- and I mean this
2 gets back to Professor Cruz Nichols' work as well.
3 I mean there's an interesting story about the kind
4 of rhetoric that's used. But it's certainly seen
5 as an important election for many in the Latino
6 community, and that might spur participation.

7 The question is whether that's going to
8 continue, whether we see that happening the most
9 in counties or in places within the state where
10 Latinos have already achieved some representation
11 of some sort. That might be most clear in
12 somewhere like Lake County, where you have Latino
13 elected officials, and, of course, that's where
14 Latino turnout is the highest already, too.

15 So, there's a question of what should the
16 baseline be? Latino representation in places like
17 East Chicago has been nontrivial for a long period
18 of time. Should we be looking at how much it's
19 changed? But we should certainly be understanding
20 that a key part of the link between turnout and
21 empowerment of turnout, voting rights has to be --
22 you're actually achieving that kind of
23 representation.

24 MR. MCGILL: So, then lastly, Madam
25 Chair, this is to Dr. Cruz Nichols.

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1 If I'm understanding your study, you're
2 saying that the fear of deportation diminishes
3 Latinos' level of participation.

4 DR. CRUZ NICHOLS: Right.

5 MR. MCGILL: It gives what you call a
6 cautious citizenship?

7 DR. CRUZ NICHOLS: Uh-huh, yeah. So,
8 if your family members -- the family's being
9 broken, it's causing them to disengage from
10 different daily life activity behaviors, because
11 that would open up the risk of their family to be
12 questioned and to have their papers shown. And
13 so, people are disengaging from, you know,
14 political participation, but also reporting crime
15 to police and seeking health care coverage because
16 a paper trail would be started.

17 The same is true for the level of
18 enforcement, of policing and serving in other
19 communities of color, where people are disengaging
20 and feeling more cynical about government and more
21 targeted and not as valued as contributing
22 members, and therefore their vote -- why would
23 their vote matter; right? So, there wouldn't be a
24 path of potential opportunity to see the status
25 quo change.

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1 MR. MCGILL: Thank you.

2 MS. CLEMENTS-BOYD: If I can ask one
3 question of Dr. Fraga. I believe it was at the
4 2016 election where the African-American
5 participation rate was at its highest, and -- or
6 was it 2012?

7 DR. FRAGA: 2012.

8 MS. CLEMENTS-BOYD: 2012; I'm sorry.
9 And also, I think the lowest for white Americans.
10 What explains that dichotomy? And perhaps it's a
11 question for Dr. Nichols as well. I don't know,
12 but I found that to be interesting.

13 DR. FRAGA: Yes. I mean I'm looking
14 at the data here to make sure I'm correct on the
15 story, and specifically for Indiana --

16 MS. CLEMENTS-BOYD: Yes.

17 DR. FRAGA: -- I mean you see
18 nationally an increase in black turnout in 2012,
19 and the white turnout was relatively lower, but
20 not lower than it was in 2000. But in Indiana, we
21 saw that pattern where it seemed like turnout was
22 somewhat depressed, and I think that's interesting
23 for a number of reasons that might imply work that
24 the campaigns were doing, work that was going on
25 with, again, their representation and influence in

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1 political decision-making.

2 At a time when you had an African-American
3 leading our country, I think that it was an
4 empowering moment for many in the African-American
5 community, even if the direct policy benefits
6 weren't happening and there were still challenges.
7 And I think that that dynamic shifted
8 substantially in the 2016 election, where there
9 was not an opportunity to have an African-American
10 representation in the same way.

11 So, I think, to me, what's interesting is
12 to imagine how policies can perhaps emphasize or
13 de-emphasize that nature of the two. They get --
14 it seems that things are more combative, right,
15 it's an either/or, a zero-sum game, versus saying,
16 you know, "We can increase participation for
17 everyone, we can engage everybody in the political
18 process." It's not a -- you know, not a game of
19 choosing.

20 MS. CLEMENTS-BOYD: Okay.

21 Dr. Dion.

22 MR. DION: Well, I'd like to extend
23 fraternal greetings as a political scientist and
24 ask a detailed question about voter file.

25 DR. FRAGA: Sure.

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1 MR. DION: But first, a quicker
2 question to Dr. Campbell. There was a state
3 lawmaker not long ago who was sharing the idea
4 around the legislature that maybe every high
5 school student should have to pass the citizenship
6 test in order to get his or her diploma. Would
7 you go that far? I mean that's pretty high
8 stakes.

9 DR. CAMPBELL: Thank you for actually
10 asking the question. I had a little bit in my
11 remarks, but I cut that out, about the citizenship
12 exam. No, I would not support that, and the
13 reason is if you were to only sort of take the
14 surface level of what I said today, Notre Dame guy
15 said, "Test, good. This is a test, it must be
16 good," then that would be your answer.

17 But it's not that simple, because we do not
18 have a case anywhere in the country, in the data
19 that I've looked at, where the exam alone has some
20 sort of magical property to it. It is not the
21 exam, it is having an effective civics curriculum,
22 which is incentivized by an exam that, in turn, is
23 based on the curriculum.

24 The citizenship exam was designed for an
25 entirely different purpose. It is a 100-question

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1 test, of which the individual applying for
2 citizenship is only given a small portion that are
3 really more sort of top-of-the-head, Jeopardy-like
4 questions, "How many Supreme Court Justices can
5 you name?" that sort of thing. It probably tells
6 us something, but it certainly would not
7 reflect -- in my and the opinion of many people
8 who study this stuff, it does not reflect what we
9 would say is a full-body civics curriculum.

10 So, this is a movement around the country.
11 I say it's a good thing that these folks are
12 drawing attention to the need to incentivize good
13 civics instruction, but that is not, I think, the
14 solution. It's too easy, "Let's just take this
15 off-the-shelf test and give it to these kids." It
16 was never designed for that purpose.

17 MR. DION: Okay. I'm sensitive to the
18 idea that the Committee may not want to go too
19 deep into this, but you spelled out the weaknesses
20 of the CPS data, and then you sort of mentioned
21 statistical modeling that allows you to fill in
22 details for the individual level data. Are you
23 merging files, or are you imputing ethnicity, or
24 how do you get that?

25 DR. FRAGA: Sure. So, I mean there's

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1 multiple ways of doing this. The data that you
2 saw today was from a commercial voter file firm,
3 so I purchased under contract with one of the
4 large data vendors that compiles data from every
5 state and sends it to campaigns. So, we purchased
6 a subscription and I entered the data into this.

7 The other way of doing it, which I've done
8 on a smaller scale in places in Indiana, would be
9 to actually acquire the voter file, and then you
10 have the names of every individual and their
11 addresses, and you can use geographic information
12 about the composition of the neighborhood and also
13 census information about the likelihood that
14 someone's a certain race given their last name, to
15 then have a predictive model of what their race is
16 likely to be, and estimate.

17 So, that's -- the Commercial Properties is
18 the same technique, incorporates a little bit more
19 information, and that I have available at a
20 national level and for the entire state, but it's
21 the same principles that we use, it's just that I
22 haven't acquired every single county's data yet in
23 Indiana or every single county in the United
24 States. Does that answer the question?

25 MR. DION: It does. Thank you.

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1 MS. CLEMENTS-BOYD: Yes, go ahead.

2 MS. DAVIS: I'm probably jumping in
3 before Chris because I know he's got 12,622
4 questions for you on these questions, but relative
5 to the voter file that you referenced -- I'm
6 sorry. Tammi Davis from Gary, by way of East
7 Chicago.

8 One of the criticisms that I heard of the
9 voter file is the bad data, the integrity of the
10 data that is included in a lot of these voter
11 files. They would include addresses -- like you
12 could have five individuals that live at the same
13 address with three different telephone numbers,
14 just bad data. So, how heavily is the information
15 contained in the voter files that you have been
16 using to support your statistics that you
17 presented today?

18 DR. FRAGA: Sure. So, I mean that's a
19 really great question, and I think one of the key
20 reasons why I'm using it here, and I relied in the
21 past on commercial data and verified it as well,
22 but relied on commercial data. So, the firm that
23 I work with vets to campaigns. Campaigns have a
24 very high interest in having accurate data,
25 extremely accurate data, because if they misdirect

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1 a piece of mail, then that's wasted money, it's
2 wasted dollars.

3 So, they go through, and this commercial
4 firm actually sort through the voter file and the
5 errors that we might have in the regular state
6 file or the regular county files, right, that are
7 available to the public, and tries to fix those
8 errors. So, when we've looked, right, in terms of
9 who's actually registered to vote, it can become a
10 little bit tricky, but in terms of who's actually
11 voting, that's reasonably reliable information.

12 So, as an example, if I wanted to know how
13 many people are registered to vote -- you notice I
14 didn't talk about registration here. Even though
15 I'm using the registration file, it's people who
16 have been flagged as voting, because at any given
17 time, and as you know, right, there's voter purges
18 going on, there's unreliable information because
19 people move.

20 I don't want to have to deal with any of
21 that. It's just who showed up at the polls? Who
22 was flagged as having voted? Or, sure, even if
23 they've been dropped since then, even if they've
24 moved, did they vote in the election?

25 So, to me, that's -- I mean speaking a

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1 little bit to the reliability, because there's an
2 interest in these firms with having accurate data,
3 and also the places where there might be the most
4 issues, which is who's registered at any given
5 point in time. I'm not using that specific
6 information.

7 MS. DAVIS: Okay. And my follow-up is
8 relative to informing voters; right? And so, we
9 talked about -- there's been a lot of
10 conversations about the students in Florida, which
11 is interesting when they talk about how articulate
12 they are. I'm like, "They should be articulate,
13 they're in school. That shows that our school
14 system is doing their job."

15 But every election, people talk about how
16 we have to inform the voter, we have to inform the
17 voter. So, based upon your research, how does --
18 and some of the data that you've presented today,
19 have you seen in any of the election cycles where
20 there has been an increase of informing the voter,
21 different methodologies of informing the voter,
22 different mediums, and did that really equate to
23 an increase in voter participation?

24 DR. CRUZ NICHOLS: Yes. So, the --
25 when we talk about informing the voter, there's a

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1 lot of work that looks at whether a voter needs to
2 know the specifics of certain policies, or is it
3 enough to just know who are the policy proponents
4 of that policy and who are the policy opponents?
5 And so, that provides a citizen, the typical
6 citizen, who has a lot to manage and many hats to
7 wear in their daily lives, the ability to get
8 signals on the types of policies that are in their
9 benefit and the types of policies that are not.

10 So, even just providing the sense of policy
11 endorsement and policy opposition should be enough
12 to help citizens engage with the kind of policies
13 that they'd want to see. They don't have to know
14 the exact page or section number of a policy. So,
15 that's the sort of shortcuts, the kind of
16 statistics that people rely on.

17 And then Dr. Campbell illustrated, you
18 know, some people debate about how much of that we
19 should really try to promote, but for basic
20 purposes, when mobilizing voters, if you provide
21 them with information about how their community
22 could benefit from that policy, it provides a
23 sense of group identification for them and
24 heightens their level of participation. And
25 that's totally nonpartisan. That can go on either

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1 side of the aisle. If you heighten their sense of
2 identity, that could help promote their level of
3 turnout.

4 But, you know, what I'm focusing on is the
5 kind of messages that we pitch to people, and that
6 we should not only emphasize the sense of fear or
7 sense of threat in their environment, but point to
8 policy hopes and policy gains that could help them
9 see how their involvement could be to change and
10 to help -- to be helping that community.

11 MS. DAVIS: I'm sorry; I just have a
12 quick follow-up. In any of your research, has
13 there ever been a survey that asked a voter why
14 they voted?

15 DR. CAMPBELL: Uh-huh.

16 MS. DAVIS: And as a result of their
17 answers, did any of that come to "Because I
18 received more information," or "because of my
19 citizen engagement class," or, you know, "I was
20 required to take the citizenship in order to
21 become a citizen," just any of -- any of those
22 results that speak to why people said they voted?

23 DR. CAMPBELL: So, there are two ways
24 that that question gets asked, so, one is to ask
25 those who have voted, "Why did you?" And then

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1 another is to ask those who didn't, "Why didn't
2 you?" And we know that those who say they didn't
3 vote often cite what Professor Cruz Nichols was
4 just referring to, kind of the business of their
5 lives. But we also know that a lack of
6 information, or at least their perceived lack of
7 information, is one reason why they won't vote.

8 Now, the side of those who do report
9 turning out to vote, it would be a pretty high
10 hurdle to expect someone in a survey, you know, to
11 just name, "Well, I voted because I took a civics
12 class when I was in high school."

13 But we do know that those folks who report
14 voting to us, everything else about them suggests
15 that they have benefited from effective civic
16 education, whether it's through the schools or
17 through those other channels, because one of the
18 most powerful predictors of whether you voted is
19 simply how much you know about the political
20 system, and that, in turn, is related to how much
21 education you have.

22 Trying to sort out what's the cause and
23 what's the effect, that's really tricky. That's
24 what keeps us all in business. But we know that
25 just as a brute fact, if I know how much you know

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1 about the political system, I can probably make a
2 fair amount of money wagering on whether or not
3 you turned out to vote. And that tells us, I
4 think reasonably so, that efforts for inform
5 voters are worthwhile, even though they can often
6 be a challenge.

7 DR. CRUZ NICHOLS: And just to
8 piggy-back off that, there's a sense of civic duty
9 that is expressed in people's explanation of their
10 willingness to participate and willingness to
11 vote, and scholars like Melissa Michelson and Lisa
12 Garcia Bedolla have looked at how people sense a
13 group attachment.

14 Michael Dawson has looked at this as well,
15 another East Chicago person, where, for minority
16 groups in particular, a sense of expression and a
17 sense of voting as part of a larger group of
18 people, that there's power in numbers, and that if
19 you have a stronger sense of group attachment to
20 your minority group and that you feel that the
21 plight of your group is at stake, that those
22 minority group voters are more likely to turn out
23 when they have that sense of identification
24 emphasized.

25 So, there's not just, you know, having the

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1 highest level degree, it can be compensated,
2 right, that lack of education can be compensated
3 by emphasizing that this, you know, particular
4 policy scenario matters for your group.

5 MR. KIRKLAND: Madam Chair?

6 MS. CLEMENTS-BOYD: Yes.

7 MR. KIRKLAND: I have a question, Tony
8 Kirkland. To -- this is for the panel, any of you
9 can take a shot at it. When do you -- in your
10 research, when do you feel or when do you see the
11 need -- that they'll probably close the gap, in
12 your own opinion? Because all of you all have
13 done different, various types of research, and
14 there's some things you're seeing that we probably
15 haven't been privy to.

16 DR. CAMPBELL: To close the gap on --

17 MR. KIRKLAND: To close the gap on the
18 disparity in voter -- in voting.

19 DR. CRUZ NICHOLS: Well, I actually
20 want to piggy-back off of Dr. Campbell's work to
21 emphasize the role of schools in immigrant
22 families and the role that civic education for
23 immigrant families is huge. There's other work
24 that I've looked at and at least have participated
25 in where we are seeing the bidirectional

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1 socialization of immigrant children teaching their
2 parents about voting rights and how to navigate
3 the political process.

4 So, they're not just teaching their
5 parents, they're translating for their immigrant
6 parents when it comes to, you know, the doctor's
7 office, the Post Office. Or from their teacher,
8 they're helping their parents to understand valid
9 information.

10 And I'll never forget in 2008, I was in
11 Chicago working in a poll, and there was a little
12 child that came in with her mother, and her mother
13 was asking her who she should vote for, and she
14 just gave her a quick spiel of who the candidates
15 were on the ballot, and it was like an
16 eight-year-old or ten-year-old. And so, that is a
17 huge opportunity gap reducer there, where these
18 children are playing a huge role in socializing
19 not only themselves, but their parents and their
20 family members, especially if the parents do not
21 speak English.

22 And then with my work, I would just highly
23 emphasize that activists and those that are trying
24 to turn out the vote not paint a disillusioning
25 scenario where only threat is alerted to folks;

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1 that people need to be made aware of opportunity
2 messages and policy victories and policy advocates
3 that are working in their favor as well to help,
4 you know, people become more willing to see how
5 their participation matters.

6 DR. FRAGA: Okay. So, to answer this
7 question, I think there's -- you know, I study
8 voter turnout. That's what I specialize in, as
9 you guys have seen on this, what I look at.

10 And so, I ask myself this question all of
11 the time, and I think there's two categories of
12 reforms perhaps; right? There's the ones that
13 would have a really big impact but are very, very,
14 very difficult to implement; right? Very
15 difficult to -- you know, what Professor Cruz
16 Nichols was talking about is very difficult to
17 instill as a matter of public policy.

18 I think what Professor Campbell is talking
19 about is on the step in the right direction when
20 he's saying start earlier, right, in a sense. We
21 should do engagement in the schools. I think
22 that'd have a big impact, but also maybe -- it
23 might take time to have an effect.

24 What we were discussing earlier about
25 political empowering, representation, influence

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1 and political decision-making, that might be zero
2 sum, but it's complicated. I think that has a big
3 impact on who votes. You'd have to say that
4 there's a lower level of voter turnout in the
5 developed world. And we know this; right? Very,
6 very low rates of voter turnout, even among
7 registered voters, people who have already gone
8 through the step, still you have 20 to 30 percent
9 of people who don't turn out to vote. You have a
10 huge drop-off in midterm elections.

11 So, to me, it's one of the small things.
12 What are the public policies that we can do? And
13 we learn from other states. We know things like
14 making it easier to register to vote. We have
15 on-line voter registration in Indiana. That's a
16 really big help. I know because when I try and
17 help with voter registration drives, it makes
18 everything a lot easier to do. You can do it on
19 your phone even. It's really great for young
20 people.

21 But then we think about other policies,
22 like permanent absentee ballot status, the fact
23 that you can mail in your ballot, permanently
24 always be delivered a ballot in the mail. Some
25 states do this, Indiana does not. Early voting,

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1 expanding that, making it easier to vote,
2 expanding the hours in which voting is possible.

3 All of these might have a small impact,
4 they're the second category, smaller impact, but
5 also normatively in some sense, you know, why
6 would we want to make voting more difficult?
7 These are easy things to do, and other states do
8 them, and we already know how they can be done.
9 So, let's start with those as well. Let's
10 consider those policies that might have a small
11 impact, but enough of an impact, especially in how
12 we serve communities, to make a difference.

13 MS. CLEMENTS-BOYD: We are running
14 over, so we are going to take the last question
15 from Chris Douglas.

16 MR. DOUGLAS: Well, thank you all.

17 As the panel knows, you're singing my song,
18 and particularly you, Dr. Campbell. The -- I
19 think there are lots of interesting questions that
20 could go back in the history of -- the statistics
21 of participation you cite, and I'm particularly
22 interested in what extends beyond the 1980's and
23 back into the 1970's, '60's and '50's, when public
24 policies that were merged were substantially
25 different than what we have now.

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1 But that's not the direction I'm going.
2 Dr. Campbell, what you describe, I think, is very
3 much what produced me; that is to say, I went
4 through such civic education that was active in
5 the classroom and it required teachers who were
6 well trained and able to conduct it in a way that
7 was completely, for them, devoid of content, while
8 the students engaged in content.

9 And I remember in a science class an
10 environmental exchange project where some students
11 took on the position of the townspeople, some took
12 on the position of the logging company and some
13 took on the position of the environmentalists, and
14 there was this series of debates, and I think it
15 probably ended up with the science, but it really
16 educated us all that there were so many different
17 sides of the story that you had to be able to
18 incorporate into a strong civic program.

19 There's another way in which -- yes.
20 Indiana leads the nation -- in spite of that
21 strong Constitutional provision that you cited,
22 Indiana now leads the nation in diverting funds
23 from those common schools to private schools, and
24 in particularly religious schools, predominantly.

25 And so, from that environment of

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1 integrated, secular public education to religious
2 schools, in that public environment, the
3 imperative with regard to civics seems very clear.
4 What is the public policy imperative? Can't -- is
5 interest one that can be applied to other schools
6 with regards to civics education?

7 DR. CAMPBELL: I know we're running
8 late, so I'll just answer that quickly. As I
9 noted just briefly in my remarks, and I'll just
10 elaborate on a sentence or two, this is actually
11 research that I have done. I am a product of the
12 public schools. My children have attended public
13 schools. I do work for Notre Dame, so you may
14 think that I'm a shill for Catholic schools, but I
15 assure you I am not.

16 The data speak clearly, and that is that
17 particularly Catholic schools, and that's the
18 public of private education in Indiana and around
19 the country, they actually do a very good job with
20 civic education, they really do. Other types of
21 private schools, not necessarily. It depends on
22 the flavor of schools.

23 There are some private schools particularly
24 that are sometimes called Christian academies
25 where at least when it comes to an appreciation

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1 for the civil liberties of underrepresented
2 groups, will toler -- well, tolerance, that term
3 gets thrown around. It means lots of different
4 things to different people, but to us, it means a
5 respect for civil liberties. By "us," I mean
6 political scientists. That's the type of school
7 where you're a little less likely to find an
8 emphasis on that than you would in the public
9 schools or the Catholic schools or in secular
10 private schools.

11 As for what the state can do, it seems
12 reasonable to me that if the state is funding or
13 is partially funding the education of a student at
14 a private school, it then becomes imperative upon
15 the school to fulfill that civic purpose as
16 outlined in the State Constitution, but I suspect
17 that most private educators actually do not
18 disagree with that sentiment.

19 MS. CLEMENTS-BOYD: Thank you so much.

20 This was great. We certainly appreciate
21 all of the statistics, all of the reporting, the
22 research that's gone into your presentation today,
23 and we look forward to actually getting your
24 actual transcripts, as time probably didn't permit
25 our panel to study it carefully.

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1 So, thank you so much, and we will quickly
2 transition to the very last panel for today, which
3 is the government panel.

4 Thank you.

5 MR. DOUGLAS: Thank you.

6 (Applause.)

7 (Recess taken.)

8 MS. CLEMENTS-BOYD: In the interest of
9 time, if our panel would -- or the Advisory
10 Committee would take their seats, please.

11 It's been a long day, and you are our last
12 panel, and we certainly are excited to hear what
13 you have to say as our government -- official
14 government panel for this hearing. We have heard
15 from advocates, we've heard from legal folks,
16 we've heard from academics, which was the last
17 panel, and to round out this discussion, I think
18 it's only prudent that we hear from government,
19 and you all represent government.

20 So, first of all --

21 MS. CELESTINO-HORSEMAN: Madam Chair,
22 may I ask a question? Actually, we represent
23 government and politics, so we have two people
24 from government, two people from politics.

25 MS. CLEMENTS-BOYD: Yes, and we are

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1 aware. We did merge the two groups.

2 MS. CELESTINO-HORSEMAN: So, what I --

3 MS. CLEMENTS-BOYD: So, yes.

4 MS. CELESTINO-HORSEMAN: -- what I was
5 going to ask was: Would you like government,
6 government and then politics, or just go down the
7 line?

8 MS. CLEMENTS-BOYD: I don't think
9 that -- let's see. We have a government and --
10 well, do you want to do government, government?
11 Okay. So, we will start with Mr. Brandon -- let
12 me just introduce the panel, and then we will go
13 starting with the government presentations, and
14 then we'll end with the parties; okay? We have
15 first Brandon Clifton, and he is the Chief of
16 Staff, Indiana Secretary of State.

17 And just following the order that you're
18 seated, we have next Tim Maguire, with the
19 Libertarian Party, the Libertarian Party Chair.
20 Thank you for being here today.

21 MR. MAGUIRE: Thank you.

22 MS. CLEMENTS-BOYD: And next, we have
23 Ms. Karen Celestino-Horseman, representing the
24 Democratic Party of Indiana. And last but not
25 least, we have Mr. Russell Harris, with the

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1 Marion -- Hollis, I'm -- pardon me, Russell
2 Hollis, with the Marion County Clerk's Office.

3 MR. HOLLIS: Thank you.

4 MS. CLEMENTS-BOYD: Thank you for
5 being here.

6 So, we will start with Mr. Clinton [sic],
7 and then we will -- Clifton; I'm sorry.

8 MR. CLIFTON: That's all right.

9 MS. CLEMENTS-BOYD: And then we
10 will -- and these glasses aren't very good. And
11 then we will transition over to Mr. Hollis.

12 When you're ready, Mr. Clifton, please
13 proceed.

14 MR. CLIFTON: Well, thank you.
15 PowerPoint is here today.

16 Forgive me. Before I forget -- before I
17 begin, I was in bed an hour ago, and an hour from
18 now I plan on being in bed again. I've been sick
19 for a few days, so if you can't hear me or if I'm
20 not speaking loud enough, just let me know, as I
21 can't really hear myself talk.

22 So, Tim, why did you move farther away?

23 (Laughter.)

24 MR. CLIFTON: He scooted one down.

25 MR. HAIGH: Yeah, you stay over there

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1 with the panel.

2 MR. CLIFTON: I have a few of our team
3 members here today as well. Secretary Lawson
4 wanted to ensure that we had a balanced and robust
5 discussion and representation on behalf of the
6 office. Angie Nussmeyer is here. She is the
7 Co-Chair of the Indiana Election Division, the
8 Democrat Co-Chair. Brad King is here today as
9 well, the Republican Co-Director, and Jerry
10 Bonnet, our General Counsel, is here with us
11 today, and they'll be available for Q & A.

12 So, I just want to give you a little bit of
13 background about the office. We have four
14 divisions, at Auto Dealer Services Division, the
15 Securities Division, the Business Services
16 Division, and, of course, the Indiana Election
17 Division in the office. Secretary Lawson serves
18 as the Chief Elections Officer, and in partnership
19 with the Indiana Election Division, as I
20 mentioned, Brad and Angie are responsible for the
21 administration of elections on a statewide level.

22 Of course, 92 counties are responsible for
23 the grassroots and on-the-ground administration
24 responsibilities. With -- and then also --
25 forgive me; I meant to say this as well. I

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1 usually don't read notes word for word, but I've
2 been rather full of cough medicine the last
3 several days.

4 So, just an overview of some points I'll
5 talk about today. Of course, the Secretary's role
6 in elections, local voting systems and safety,
7 elections at the state level, processes and
8 protections that are in place, federal election
9 issues, and a little bit about vote centers and
10 technology if we have time for that discussion
11 today.

12 And a big chunk of this -- I'd like to take
13 the opportunity to speak to another advisory
14 panel, a group with constituents, as to why
15 Indiana and why constituents here in the state,
16 Hoosiers, should feel confident in the
17 administration of elections. You know, a lot of
18 discussion out about Russian influence, Russian
19 activity in 2016, and that which is coming here
20 this year, and no doubt in future presidential
21 years as well.

22 However, there should be equal conversation
23 about why states are secure, the efforts that have
24 gone on in the states, and just to -- we need to
25 tell that second half of the story when it comes

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1 to cyber security and elections, because, as we
2 know, a lack of confidence in the elections
3 process and election administration will erode
4 confidence and erode participation as well.

5 So, this first slide, as I said a minute
6 ago, 92 county clerks are responsible for
7 administering elections. There is no statewide
8 system for tabulating ballots here in the state,
9 and machines are not connected to each other, nor
10 are they connected to the Internet. We enjoy a
11 decentralized process here in the state, as is the
12 case across the country as well. And each polling
13 location is staffed by a bipartisan team,
14 alongside the clerk.

15 Bear with me.

16 Votes are counted at the county level, and
17 then they're called or faxed to the Election
18 Division when it's time to report those results.
19 So, we don't -- we -- this decentralized nature is
20 a characteristic of why elections in the state are
21 secure and robust. One of the additional bullet
22 points under that decentralized nature is this
23 manual mechanism to report results on election
24 night.

25 And in addition, one of the major pieces

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1 that both Angie Nussmeyer and Brad King have spent
2 a ton of time on and is really a credit to the
3 State of Indiana, and Hoosiers are well served by
4 their representation, is the leadership that has
5 gone on to develop a multifactor authentication
6 mechanism for county and county staffs to enter
7 into a Statewide Voter Registration System, and to
8 maintain individual records.

9 So, as we're all familiar with multifactor
10 authentications, you get a text, you get a number,
11 you punch that in, as you would, alongside your
12 user name or password, and that's a new concept
13 that's proposed here in the state. We're in the
14 midst of a pilot and believe that multifactor
15 authentication, as we have been advised by the FBI
16 and the Department of Homeland Security, this is
17 really the number one thing that could and will
18 prevent vulnerabilities in the future.

19 So, elections at the state level, we really
20 enjoy the benefit of a great partnership with
21 VSTOP, the Voter System Technical Oversight
22 Program, out of Ball State. They're responsible
23 for certification and testing of election
24 equipment and have really developed a national
25 brand when it come to the service that they offer.

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1 They're here in our backyard, just a little ways
2 away.

3 And as I mentioned a bit ago, the Statewide
4 Voter Registration System, what we call SVRS, and
5 in 2017, the General Assembly appropriated four
6 million for modernization and security, and now we
7 made this appropriation request, and that was
8 developed really before and during the 2016
9 election, but really before we knew the extent of
10 the threat that was out there. So, this -- these
11 appropriations and these additional dollars have
12 gone a long way to secure Indiana and our
13 elections.

14 The Governor's Cyber Security Council, so I
15 just ended a call, alongside Brad and Jerry and
16 Angie. The Governor's Cyber Security Council is
17 one of its kind around the country. It is an
18 initiative across sectors and state government,
19 energy, utility, communications, law enforcement,
20 infrastructure, jobs, you name it.

21 There is an effort underway, and each one
22 of those sectors is built staffed with a council,
23 and elections is one of many that are under the
24 Governor's Cyber Security Council. We're
25 responsible for proposing policy reforms,

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1 researching what is going on around the country
2 when it comes to cyber security.

3 (Message on speaker phone.)

4 MR. CLIFTON: It has been a long day,
5 hasn't it?

6 (Laughter.)

7 MR. CLIFTON: And you ended the day
8 with government. I'm surprised.

9 And then quickly, Senate Bill 327 speaks --
10 it covers some components that seal election
11 equipment after an election, limits the sale of
12 election equipment to certain actors. As we
13 learned I think it was this fall, the DEFCON
14 research that was done in Las Vegas, they were
15 able to acquire machines that were no longer
16 certified, no longer in use, and we just want to
17 make sure that that is the case going forward.

18 And then county -- requiring counties to
19 notify the Secretary's Office in the event that a
20 federal agency contacts them with regard to a
21 probe, a penetration, a compromise. They're -- as
22 we learned under the Critical Infrastructure
23 Designation, the Federal Government would not have
24 notified the states had there been a compromise to
25 their Statewide Voter Registration Systems.

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1 Just out of a pure lack of an appreciation
2 of the complexity of those systems in that they're
3 owned by the states but they're accessed by the
4 counties, so we're required under the statute that
5 locals notify the secretary if they are contacted
6 by a federal agency in the event of a breach.

7 I only have a couple of minutes left of my
8 15 minutes. So, Secretary Lawson is the President
9 of the National Association of Secretaries of
10 State. There's a ton of work that's going on with
11 the Federal Government under the Critical
12 Infrastructure Designation. In that capacity, she
13 serves on the executive committee of the governing
14 council that is responsible for administering the
15 Critical Infrastructure Designation.

16 The Multistate Information Sharing and
17 Analysis Center, responsible really -- this is, in
18 my opinion, the largest benefit of the Critical
19 Infrastructure Designation. That is, not
20 committing the sins of 911 and sharing information
21 and communicating and sharing intelligence. So,
22 by way of this Multistate Analysis Center, we're
23 able to learn how to better communicate
24 information, package it for IT people, for
25 nontechnology people, and Indiana is one of seven

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1 pilots that's participating.

2 We skip ahead and look -- just a couple of
3 words about vote centers. Vote centers, it's just
4 a wonderful opportunity here in Indiana.

5 Thirty-six counties, if my memory is correct, are
6 vote center counties, of the 92. It allows a
7 registered voter to vote at any one of multiple
8 locations in a county, and as a State Senator,
9 Secretary Lawson authored the legislation that
10 enabled vote centers.

11 And I'll leave the rest to your review, but
12 the last comment I'll make about vote centers
13 is -- it's really that last point. County boards
14 must unanimously adopt vote centers, and Secretary
15 Lawson has been a supporter of that standard.
16 Let's come together as both parties and find a way
17 to implement vote centers, as opposed to the
18 majority vote of the Election Board.

19 So, that standard has been examined this
20 year, and it may be examined in years to come by
21 the General Assembly, but at this point, Secretary
22 Lawson still remains firm in her commitment and
23 her recommendation that vote centers be adopted
24 with unanimity.

25 So, I know I'm at 15, probably 16 minutes.

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1 Thank you.

2 MS. CLEMENTS-BOYD: Thank you,
3 Mr. Clifton.

4 Mr. Hollis, please proceed when you're
5 ready.

6 MR. HOLLIS: Good afternoon, everyone.
7 Thank you for your time in allowing us to present
8 to you this afternoon. My name is Russell Hollis.
9 I am the Deputy Director for the Marion County
10 Clerk's Office. I am here on behalf of Clerk Myla
11 Eldridge. She was unable to attend on this
12 afternoon due to some unforeseen circumstances.
13 Without further ado, I will delve into the
14 presentation.

15 I'll give you a mental road map of what you
16 are about to hear. First, I'll give you a brief
17 overview of how we conduct elections in Marion
18 County, then I'll discuss with you some challenges
19 that we face when trying to conduct elections in
20 Marion County, and then finally, I'll mention ways
21 that we deal with those challenges. And I will
22 proceed.

23 So, in Marion County, we have
24 precinct-based voting, so in Marion County we have
25 nine townships. Those townships are further

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1 divided into wards, and those wards are further
2 divided into precincts. We have 600 precincts
3 here in Marion County, and those precincts, on
4 election day, those are located inside of your
5 polling location.

6 A polling location is, you know, any
7 building that can house the public, whether it's a
8 church, a school, a fire station, et cetera.
9 That's where you go on election day, and once you
10 walk into a polling location, you find your
11 precinct, and then you will go to your precinct,
12 present your photo ID, and then the election clerk
13 will find your name in a poll book.

14 Now, as mentioned -- we had two panelists
15 earlier mention issues about photo ID here in
16 Indiana. A valid photo ID, there's four
17 requirements for a valid photo ID. Those four
18 requirements are: It must have a photo, your
19 photo; the second requirement is that it has an
20 expiration date, and there are few exceptions for
21 that expiration date requirement; your name must
22 reasonably conform on your ID as it does in the
23 polling book; and it must be government issued.

24 In Marion County, we deal a lot with high
25 school students as well as college students that

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1 are first-time voters, and so, some of the public
2 school students, whether it's public high school
3 or even public universities, they will use their
4 school ID, and they can use that on election day
5 as long as it's -- as long as it has the photo and
6 it meets the other requirements, such as the photo
7 and expiration date.

8 That's election day voting. Before
9 election day, you have absentee voting. All
10 absentee voting requires the voter to complete an
11 application prior to voting in that type of
12 absentee voting. We have three different kinds of
13 absentee voting here in Marion County.

14 The first kind that I'll briefly talk about
15 is in-person early voting. Any voter can use
16 in-person early voting, and it usually occurs
17 roughly 28 days before election day. You do not
18 need a reason to use in-person early voting, but
19 you must provide a valid photo ID.

20 The second type of absentee voting that we
21 have here in Marion County is the traveling board.
22 The traveling board is a bipartisan team of voters
23 that will assist of voter who is confined to a
24 location; for example, a person who has some sort
25 of a disability and they're confined to their

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1 home, they can take advantage of the traveling
2 board.

3 And then the third type of absentee voting
4 that we use here in Marion County is absentee
5 voting by mail. You must complete the
6 application. There is a list of six or seven
7 check-the-box reasons that you must complete in
8 order to identify a reason why you want to vote by
9 mail, and we always encourage voters to pay
10 attention to the deadlines with respect to
11 absentee voting by mail, and we also include, you
12 know, military voters, we kind of lump that into
13 voting by mail as well.

14 So, that's kind of the current -- a very
15 brief overview of the current landscape of voting.
16 Now I want to talk about challenges that exist
17 today with our current method of voting, and the
18 first challenge that I will highlight deals with
19 access to early voting, access to in-person early
20 voting.

21 In Marion County -- well, Indiana law
22 requires the three-person election board to
23 unanimously approve satellite voting. In Marion
24 County, since 2009, we have not been able to have
25 satellite voting. In 2009, even though it was --

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1 that's a nonelection year, we had a special
2 election that year, and that was the Wishard
3 Hospital referendum.

4 During that referendum, the -- all three
5 members of the election board decided to have --
6 they unanimously approved satellite voting.
7 However, since then and -- since then, it's always
8 been a two-to-one vote. The two Democrats
9 approved satellite voting, the one Republican
10 member has not.

11 Why that is the case, we -- they answer
12 during the election board meetings. Usually it's
13 just an unequivocal "no." There's been no
14 detailed explanation that follows that, but
15 that -- I'm just stating facts here. That has
16 been the case.

17 The impact that that has on Marion County
18 voters is very detrimental. That means there's
19 only one location for early voting in
20 Indianapolis. There are over 700,000 registered
21 voters -- in the 2016 presidential election, there
22 were over 700,000 registered voters here in
23 Indianapolis, where you just have the one
24 location, which is the City-County Building, which
25 is located in downtown Indianapolis.

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1 And for those of you who are familiar with
2 the City-County Building, I'm sure you will agree
3 that parking around the City-County Building is
4 atrocious. In the past, even during the 2012
5 presidential election, you had two surface lots
6 that were located across the street from the
7 City-County Building.

8 Well, those parking lots no longer exist.
9 In the place of those parking lots right now the
10 Cummins new headquarter building, and there is a
11 new apartment complex that's in the other lot.
12 So, parking is -- it's -- it's very, very bad, and
13 that may be putting it lightly.

14 Another thing, another impact that just
15 that one location for early voting has on Marion
16 County voters is that during the last two weekends
17 leading up to the election, there are long lines.
18 During the 2016 presidential cycle, during the two
19 weekends leading up to the election on that
20 Saturday and Sunday, there were lines that wrapped
21 around the building, and that is not -- that is
22 not -- I'm not estimating here. That literally
23 happened.

24 The entrance to the building for early
25 voting is directly off of Delaware Street, close

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1 to the intersection of Delaware Street and Market
2 Street. The line started from that entrance and
3 it ran south to Washington Street, wrapped around
4 the sidewalk on Washington Street, back down to
5 Alabama Street, and at times started to head west
6 on Market Street, towards the entrance again.

7 For voters who were in those lines, they
8 had to wait maybe 45 minutes or so. And we did
9 the best that we could with, you know, the -- I'll
10 say with the hand that we were dealt, but, you
11 know, if we could not be in this predicament of
12 just having one early voting location, I think
13 that would be a huge benefit to our voters here in
14 Marion County.

15 Also, I do want to note on the same topic,
16 the Indy Star, in 2017 they published an article
17 where they kind of looked into some of the numbers
18 with respect to early voting or lack of early
19 voting, and they noted that in Hamilton County,
20 which is the county directly to the north of
21 Marion County, that early -- that absentee voting
22 between 2008 and 2016 increased approximately 63
23 percent during that period of 2008 through 2016.

24 During that same period -- and again, I
25 mention that, you know, in Marion County we have

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1 not had satellite sites during that time --
2 absentee voting decreased by 26 percent. Now, am
3 I saying that satellite sites is directly
4 attributable to voter turnout? That's not what
5 I'm saying. But here, I think there's definitely
6 a strong relationship there.

7 Even if you look at Marion County voter
8 turnout numbers, it kind of supports the
9 sentiments made by the Indy Star as well as other
10 local media. For example, during the 2016
11 presidential election, the number of ballots
12 cast -- and I know there was a panelist earlier
13 who talked about voter turnout, but I'll focus on
14 ballots cast, because the number of registered
15 voters may be impacted by purging voter rolls.

16 So, the number of ballots cast in 2016 in
17 Marion County was 370,498 ballots cast.
18 That's 2016. That's actually less than the number
19 of ballots that were cast in the 2008 presidential
20 election. In 2008, the difference was that we had
21 satellite voting here in Marion County.

22 So, again, I just want to, you know, really
23 highlight that we are kind of hamstrung by state
24 law that requires a unanimous vote by the
25 three-member election board, whereas the other --

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1 our surrounding counties, they've had unanimous
2 votes, but in Marion County, we have not had that.

3 The way that we deal with that, with only
4 having one satellite voting location -- or let me
5 rephrase that. The way that the Election Board
6 in 2018 has tried to deal with that moving forward
7 is that they proposed a solution to that, and
8 that's a vote center and satellite voting
9 resolution, and the Election Board passed that in
10 January of 2018, and it will take effect in 2019.

11 And some of the highlights of that
12 resolution is that it creates a working group, an
13 Election Administration Planning Committee. That
14 Committee will study the transition of vote
15 centers, and that transition will definitely
16 happen with the 2019 pres -- or I'm sorry -- 2019
17 election cycle. All polling locations in 2019
18 will be vote centers, to the extent practicable.

19 Several -- several of those vote center
20 polling places will be open for early satellite
21 voting, and electronic poll books will be used as
22 well. Now, again, I say several. The Election
23 Planning Assistance Committee, they will recommend
24 the number as well as the locations of those early
25 voting locations or those satellite sites.

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1 The benefit of this new vote center
2 resolution is that it will guarantee satellite
3 voting in Marion County for the foreseeable
4 future. For the past decade, the conversation in
5 Marion County has always been, "Why can we not --"
6 or "Why can't we have satellite voting?" That's
7 been the consistent conversation since 2009. Now
8 we're going to shift that conversation to, "How
9 many satellite sites will we have, and where will
10 we have them?" So, I do commend the members of
11 the Marion County Election Board for coming up
12 with a solution to finally move the County forward
13 and move voting into the future.

14 Another challenge that we face here in
15 Marion County is voter education. Some of our
16 young voters, as well as those who were formerly
17 incarcerated, they may not know all of the
18 particulars of voting on election day, registering
19 to vote, things of that nature.

20 The way that we try to address that is that
21 we have a program called, "Why vote?" where we go
22 into the high schools and we educate high school
23 students on voting in Marion County. We let them
24 register to vote as well, and we take an election
25 machine, create a sample ballot, and give them

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1 that opportunity or that experience of casting a
2 ballot, so that they -- when they show up to the
3 polls on election day, they are election ready, or
4 we call it, "Hashtag election ready."

5 That program has been, at least in my
6 opinion, a huge success. It's been -- the high
7 school students, they remember the information
8 that we teach them, and many of them sign up to
9 work the polls on election day, so that they are
10 engaged with civics here in Marion County.

11 And I believe I am beyond ten minutes, so
12 I'll conclude my remarks right here and let my
13 other panelists speak.

14 Thank you for your time.

15 MS. CLEMENTS-BOYD: Thank you so much,
16 Mr. Hollis.

17 And Ms. Horseman --

18 MS. CELESTINO-HORSEMAN: Okay.

19 MS. CLEMENTS-BOYD: -- are you ready
20 to proceed?

21 MS. CELESTINO-HORSEMAN: I am, and I'm
22 going to leave Tim the honor of being the last
23 person between you and the door.

24 (Laughter.)

25 MS. CELESTINO-HORSEMAN: My name is

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1 Karen Celestino-Horseman. I am the representative
2 of the Latino Caucus to the Indiana Democratic
3 State Central Committee. I am here today to
4 address the politics, which means I can say
5 whatever I want.

6 And so, I want to say, first of all, that
7 politics -- I hope you put in your report -- is
8 the biggest factor, the most impactful factor, on
9 voting in lots of different ways. And I think the
10 issue that needs to be addressed here in Indiana
11 is: Is it time to limit the politics? Because it
12 certainly is affecting our voter turnout here.

13 In the 2016 presidential election, Indiana
14 ranked 41st in voter turnout. In the 2014 midterm
15 elections, we ranked 50th. Now, these numbers,
16 voter turnout, usually turns on two things, and
17 the first is that voters have to have a reason to
18 turn out. They -- typically it's because of a
19 candidate, an issue, something along those lines.
20 And the political parties are the ones responsible
21 for getting that kind of enthusiasm and such
22 going.

23 But the other factor that impacts is the
24 ease of voting. Is it difficult to get to the
25 polling place? Am I able to get there between the

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1 hours that you're allowed to vote? Do I have the
2 necessary ID? What do I have to do to get the
3 necessary ID? And this is where the politics of
4 voting comes in. Politics shapes the entire
5 process.

6 Now, here in Indiana, we have a majority of
7 Republicans statewide, and then we have the
8 Democrats, and Democratic voters tend to be more
9 blue-collar, working-class people whose time is
10 more limited, who don't always have all of the
11 same resources, so the political pundits and
12 strategists will tell you that if you want to
13 limit the Democratic turnout, then what you do is
14 make it more difficult for them to vote.

15 Now, for example, polling places are open
16 on election day from 6:00 o'clock a.m. to
17 6:00 o'clock p.m. Imagine that you're a
18 working -- single working mother with children.
19 You've got to get up in the morning, get yourself
20 ready, get the kids ready, get them to school, get
21 to work, get off of work, go to the daycare to
22 pick them up, take them home, and somewhere in
23 there, you're supposed to vote. Now, that's
24 difficult to do.

25 But think about here in Marion County if we

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1 had early voting centers, where people could pick
2 the time that they go in and vote. Now,
3 Mr. Hollis can't tell you the reason why we don't
4 have them, but I can, and that is because in 2008,
5 when Barack Obama ran, we had four satellite
6 voting centers here in Marion County. The lines
7 were out the door. People brought lawn chairs to
8 sit to wait to vote, because that's how badly they
9 wanted to vote.

10 And now, after that, the lone Republican
11 member in this county of nearly a million people,
12 one person stops nearly a million people from
13 being able to get out there and vote at a vote
14 center. Now, that's the politics, and quite
15 honestly, I think it's rather shameful, and I
16 think it's something that we need to address.

17 Now, right now, as Mr. Hollis pointed out,
18 it takes three people. As Mr. Clifton pointed
19 out, the Secretary of State believes it should be
20 unanimous. I think that every county should be
21 able to do vote centers. Right now we do have
22 counties that do vote centers, which what that
23 means is that they have early voting and vote
24 centers.

25 So, those particular counties get a louder

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1 voice in the process, because they have the
2 opportunity for more of their voters to turn out
3 and vote. So, I think that -- I think that what
4 we need to look at here is a change in the state
5 law that allows counties to have vote centers
6 equally amongst them, and not be dependent upon
7 one person, a unanimous board, holding that up.

8 Now, another thing that we have here in
9 Indiana is absentee voting. Now, you heard
10 Mr. Hollis explain about how when you cast an
11 absentee ballot by mail, well, you have to give a
12 reason. Now, there's -- I don't know how many,
13 but there's a list of reasons that you have to
14 give as to why you cannot go to the polling place.

15 And it doesn't have an excuse on there,
16 "I'm a single mother with children." It has on
17 there, "I'm going to be at work 12 hours all day
18 at the time that the poll is open," or something
19 like, "I am a serious sex offender, so I can't go
20 to the polling place." So, you have to do that,
21 and then when you check that box, you have to
22 affirm under penalties of perjury, which there --
23 it's a criminal penalty, that this is true.

24 Now, the Indiana legislature recently had a
25 bill that was offered that would have done away

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1 with that. I mean there are 27 states and the
2 District of Columbia that do not require you to do
3 that. But the Chairman of the committee that was
4 supposed to hear it said, "I don't see any reason
5 to do this, because I don't understand it to be a
6 problem." No one has chosen to prosecute it at
7 this time, but you are forcing people to lie,
8 simply to exercise their Constitutional right to
9 vote.

10 Now, the other issue that comes up is
11 voter ID, and I'm sure you've heard all about the
12 voter ID, and I'm sure you've heard that -- we
13 enacted this voter ID law in Indiana even though
14 we had no documented case of in-person voter ID
15 [sic].

16 As a matter of fact, Mr. Hollis, you can
17 cast a mail-in absentee ballot without having to
18 provide any ID; correct?

19 MR. HOLLIS: That's correct.

20 MS. CELESTINO-HORSEMAN: So, think
21 about it. How much harder it is to vote in person
22 fraudulently than it is if you just mail it in? I
23 mean -- but the reason why is because of the
24 difficulty in getting the ID.

25 Now, in the case, for example, of my

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1 mother, my little 80-year-old mother, I had to
2 take her in to get an identification card. She
3 has a Medicare card. With that Medicare card she
4 can collect thousands and thousands of dollars
5 worth of benefits. But she can't vote with it,
6 because it doesn't have her photograph, it doesn't
7 have an expiration date, that type of thing.

8 So, to get her voter ID, I had to go to
9 Colo -- call up to Colorado, go through all of the
10 steps to get her birth certificate that cost me
11 \$50, then I had to make sure I had a copy of her
12 marriage license to show how her name changed,
13 then I had to have a -- she was in assisted
14 living, so she had no utilities, she had no credit
15 card, she didn't really get any bills. All I had
16 was her lease.

17 So, then I had to come up with some -- that
18 lease along with something else to show that she
19 was actually residing there. And I can tell you
20 this: My mother would not have been able to get
21 that ID if it had not been for me. You know, she
22 could have cast a mail-in absentee ballot, but for
23 my mother, at 80 years of age, who has never
24 missed an election, the idea of not going to the
25 polling place was offensive to her.

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1 So, we have this voter ID in place. If
2 it's here to stay, then it's here to stay, but the
3 least we can do then is to make sure that we have
4 it so that people can actually vote. I mean
5 voting is one of our most essential Constitutional
6 rights. It is the basis upon which the
7 Constitution is built. Yet we try to make it the
8 most difficult right to exercise, and that's
9 ridiculous.

10 Instead of having to have a state-issued ID
11 card with a photograph and an expiration date,
12 let's open it up. Let's make other kinds of
13 identification acceptable. Why does it have to
14 have a paragraph? Like I said, we don't have any
15 documented cases of a person coming in and casting
16 an in-person fraudulent ballot. So, why not let
17 them do something else?

18 You know, we have situations where you have
19 college students. College students at state
20 universities can use their college ID's to vote
21 because they're generated by the state, through a
22 state university. Students at a private
23 university, such as Notre Dame, they can't do
24 that, because it's not issued by the state. So,
25 why do we do that?

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1 Why don't we make it easier for people to
2 go in and vote? Why don't we do things like on
3 election day -- you know, there are over 16 -- I
4 think it's 16 states and the District of Columbia
5 that allow voter registration on election day. We
6 could do something like that.

7 Now, the final thing in the voting impact
8 with politics is the redistricting and
9 gerrymandering, and as we all know, winning
10 elections means power, so if politics can win you
11 the election, it means that it wins you the power,
12 and that's basically what political parties go
13 after; right?

14 So, here in Indiana, we have a super
15 majority in the Indiana House and the Indiana
16 Senate, yet if you look at the Gubernatorial
17 results from 2016, you would see that Governor
18 Holcomb received approximately 1.4 million votes
19 and John Gregg received approximately 1.2 million
20 votes, and that was in a presidential election
21 year with Donald Trump versus Hillary Clinton.
22 So, certainly those numbers don't indicate that
23 there is a super majority of Republicans within
24 this state.

25 So, what happens when you have a district

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1 that is gerrymandered? Well, what happens is
2 this: Hamilton County is an excellent example.
3 It is a safe Republican county, to the point that
4 Democrats don't even run in that county. So, if
5 you draw a district that is so safely Republican
6 you will get Democrats not coming out to vote.

7 If you draw it so that it is so safely
8 Republican, you will also pretty much make sure
9 that the incumbent wins, because who is going to
10 challenge the party system in a strong Republican
11 county like that, when you know that they're
12 behind the incumbent?

13 So, what it comes down to basically, then,
14 is a minority of people elect the representative,
15 and that's not what our institution of voting,
16 what our government, is supposed to be built upon.
17 It's supposed to be built upon everyone being
18 given one voice, one vote.

19 So, the problem, though, with
20 redistricting, then, is that the parties don't
21 trust each other, so neither party wants the other
22 one to redistrict. So, the logical approach would
23 have been, as the legislature was considering most
24 recently, would be to have a third-party
25 commission come in and draw the districts, but

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1 unfortunately, that, too, went by the wayside in
2 the Indiana House.

3 So, those are some of the highlights.
4 Being the political person, I get to say what I
5 think, and I appreciate the opportunity to do
6 that, and I don't know -- I know what the solution
7 should be, but how you get -- because what it
8 would involve to make the change is people giving
9 up power, and people don't usually willingly give
10 up power.

11 Thank you.

12 MS. CLEMENTS-BOYD: Thank you,
13 Ms. Horseman.

14 Mr. Maguire, thank you for being here
15 again, and when you're ready, please proceed.

16 MR. MAGUIRE: No problem. Thank you.

17 Well, thank you for inviting me here today.

18 My name is Tim Maguire. I'm the Chairman of the
19 Libertarian Party of Indiana. As someone who
20 represents thousands of Hoosiers who often feel
21 left out of the political process, I can safely
22 say that I bring a unique perspective to this
23 panel. And I want to thank you guys again.
24 Governing the process of voting is one of the most
25 important duties of government, and I thank you

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1 for giving this important issue your focus.

2 So, first, the easy stuff, and, you know,
3 it's -- a lot of this -- a lot of stuff my
4 colleague just brought up. Voting centers, better
5 access for the poor and disabled, expanded early
6 voting, easier access to absentee voting, better
7 voting hours for working folks, even letting
8 jailed individuals -- or citizens vote.

9 These are obvious solutions to a system
10 that has become embarrassingly outdated, so
11 obvious that I'm shocked that we even have to
12 debate these issues. Just because our current
13 process worked a hundred years ago doesn't -- is
14 not reason enough to resist changing it. Many
15 citizens are denied the right to vote simply
16 because they cannot get away from work, something
17 more and more common in our fast-paced economy,
18 exasperated by the fact that most people don't
19 even work in the same areas that they live.

20 In addition to the important work of
21 informing citizens of the importance of voting, we
22 also need to do a better job of educating citizens
23 on the responsibility to get informed, not only
24 about the issues, but about the candidates on the
25 ballot. I see every election cycle too many

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1 voters arriving at their polling place unaware of
2 many local races that are on the ballot, and even
3 how those local races affect their lives.

4 I appreciated Dr. Campbell's remarks in the
5 earlier panel about educating our youth, but we
6 also need to start educating them about the local
7 government and how that fits into the state
8 government, so they know what they're voting on
9 when they show up and see, "Township Board" or
10 County Councilors" on the ballot. Our state --
11 minimally, our state and county election boards
12 can make this easy by collecting and making
13 available information beyond just the names and
14 offices on the ballot each -- before election day.

15 So, now for the hard stuff.
16 Gerrymandering. I cannot stress enough how
17 destructive this issue has been to the democratic
18 process. Most citizens today have been
19 disenfranchised, and they -- and I run into these
20 people every day. They refrain from voting
21 because they don't believe that their vote will
22 make a difference. Unfortunately, they are not
23 wrong. It is unacceptable to let legislators pick
24 their voters. Voters should be the ones picking
25 their legislators.

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1 Independent and nonpartisan redistricting
2 panels must be granted authority to redraw the
3 lines, with no input or approval required by the
4 bodies that are affected by such changes. The
5 combination of safe districts and straight-ticket
6 voting has resulted in seats being filled by
7 long-time crony politicians who feel no pressure
8 to listen to the will of the voters.

9 Many races in fact end up remaining
10 unopposed in many election cycles, because it is
11 obvious to the other parties that that race is
12 unwinnable. This literally leaves the voters with
13 no choice, no vote, and no voice in that district.
14 This is not how our republic was supposed to work.
15 Unfortunately, I have no faith in our current
16 State House or State Senate to fix this
17 themselves. I fear that they must be forced to be
18 changed by an outside authority.

19 Finally, and most important to the people I
20 represent, I need to address the problems, the
21 partisan election problems, with the election
22 laws, Indiana election laws. Now, I want to make
23 clear that the officials at the Indiana Election
24 Division have been very easy to work with and
25 apply the law as fairly as they can.

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1 It is the laws themselves that they are
2 given by the legislator that I am addressing.
3 Today more than ever, most Americans are unhappy
4 with the offerings of the old parties, yet newer
5 and -- new parties and independents find
6 themselves not only left out, but discriminated
7 against throughout the political process, whether
8 it's a candidate or a voter.

9 The old parties have written the election
10 laws in such a way to make them the only major
11 parties allowed by law, with all of the special
12 privileges that that entails, and then they have
13 set themselves up with different rules than
14 everyone else, which makes it extremely difficult
15 for any other party to supplant them.

16 Some things include the Indiana taxpayers
17 are required to finance the nomination process for
18 major parties, known as the primaries. Minor
19 parties are left out of that process, and they
20 have to organize and self-fund their own
21 nominating conventions. Only major parties are
22 allowed to make appointments to election boards,
23 giving minor parties and independents no voice on
24 how they are to be governed.

25 The voting histories of each voter is made

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1 available, the histories of which indicate which
2 major party the voter chose during the primary.
3 This gives the major parties information about who
4 their voters are, making it easier to fund-raise,
5 get out the vote, even recruit candidates. Since
6 minor parties are not allowed into the primaries,
7 no information about their supporters are
8 available, which gives the major parties an unfair
9 advantage. Even the rules governing access to
10 voter history are different for the major parties
11 than they are for everyone else. I've recently
12 learned that our party will not be allowed access
13 to those -- that information in off years.

14 Even just the complexity of the law has
15 become so convoluted that the average citizen
16 cannot navigate the process of running for office
17 by themselves without the fear of incurring fines
18 or getting kicked off the ballot. The campaign
19 finance manual, which is supposed to make this
20 process easier figuring out that, is 166 pages
21 long. The candidate guide, which, again, is
22 supposed to make this process easier, is 150 pages
23 long.

24 Election officials themselves many times
25 will have to research the law just to answer

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1 something as simple as when and how something
2 should be filed, and answers will differ from
3 county to county. I've heard comment after
4 comment from citizens that the requirements of
5 being a candidate is too difficult, and it's
6 obvious that the law was designed to discourage
7 everyone except the rich and connected from
8 participating.

9 Now, you're here to hear about civil rights
10 and how it relates to voting, so why am I going on
11 and on about laws governing parties and
12 independents and candidates? The least of all --
13 at least a third of all Americans identify as
14 independent. Many more have openly complained
15 about the party that they're currently affiliated
16 with, calling for new parties to be formed. And
17 if you're concerned about low voter turnout,
18 imagine what that -- what this kind of
19 discrimination has on the mind of somebody who
20 wants to participate in a party that's not
21 currently in power.

22 We are guaranteed the right to assemble and
23 form associations in this country, yet citizens
24 who are not affiliated with the two groups in
25 power are openly and legally discriminated against

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1 during the political process. Government
2 discrimination in any form, including on the basis
3 of political affiliation, should never be allowed
4 in a free society, and never in a country that was
5 founded on the ideals of individualism, as was
6 ours.

7 I know this has been a long day for you, so
8 I'm going to leave it there. I look forward to
9 your questions, and again, I want to thank you for
10 your time and interest in this important issue.

11 MS. CLEMENTS-BOYD: Thank you,
12 Mr. Maguire.

13 And now we have time for questions, but I
14 do want to advise the panel that although we do
15 have some extra time, so to speak, that we want to
16 be respectful and mindful of our panel that have
17 been here for more than an hour. So, if we would
18 ask a question, and if you're going to address
19 that question to the entire panel, I would ask
20 that you not ask a follow-up question. But again,
21 we just want to be mindful of our panel.

22 MR. MCGILL: Thank you, Madam Chair.

23 Just one question. Bill McGill, for the
24 record. Mr. Hollis -- no, Mr. Clifton; I'm sorry.
25 So, has Secretary Lawson -- and again, I'm from

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1 Fort Wayne, so I'm not that familiar with a Marion
2 County issue, but has the Secretary -- if I can
3 assume from your statement, but is the Secretary
4 on record saying that voting centers ought to
5 happen in Marion County, or is she staying out of
6 it?

7 MR. CLIFTON: The Secretary is on
8 record saying vote center adoptions should be
9 unanimous, we should come to an agreement, we
10 should find out why one party doesn't support the
11 adoption of a vote center and why the other does.
12 And also, there are counties in Indiana where the
13 Republicans want vote centers but the D's do not.

14 So, we need to strike that balance, and I
15 don't think it's -- with all due respect, I don't
16 think it's sufficient to say, you know, there was
17 a "no" vote. We need to dig deeper about the
18 analysis that went on behind that vote and the
19 discussions that went on between the parties and
20 what the -- you know, why can't we come to an
21 agreement? There is a reason, and I think that it
22 warrants further discussion on what the interests
23 are.

24 MS. CLEMENTS-BOYD: Yes.

25 MR. DOUGLAS: Chris Douglas, and this

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1 is for Brandon. Thank you all. A voter made this
2 observation to me. I spoke with her yesterday.
3 She wasn't able to come and testify. It was a
4 couple that registered to vote. They registered a
5 new address at the BMV in 2015. They voted
6 in 2016. They registered in Marion County, they
7 voted in 2016.

8 In 2017, they -- the couple went to the BMV
9 and changed their address to Henry County, which
10 they believed to be temporary, while he lived with
11 parents and she went abroad as a student, and they
12 did not know that they had changed their voting
13 address, and believed that they did not.

14 Then in February, she -- she read an
15 article on Reddit that 400,000 voters had been
16 purged, and that made her curious, and she went
17 and checked on her Marion County registration, and
18 it was gone. And she immediately reregistered,
19 and within a day or two received a mailed
20 confirmation.

21 They checked -- the husband had done
22 nothing, but he had been pur -- or his
23 registration in Marion County was not valid. I
24 suggested they check their Henry County. No
25 registration there. So, he had been completely

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1 purged.

2 And my observation is, our state
3 Constitution says elections will be free and
4 equal, and aside from the felony component, it
5 says that if you're 18 years old and in essence
6 have been in Indiana 30 days, it doesn't matter
7 where in Indiana, but the impact is if you've been
8 in Indiana 30 days, you're entitled to vote.

9 And there's a point at which, as a veteran,
10 my blood rises when I think somebody who has a
11 right to vote isn't able to vote because of
12 negligence or poor gamesmanship by either party.
13 And so, she was smart enough to go and check the
14 situation out.

15 I am deeply afraid that a great number of
16 people are going to be going to vote and finding
17 that they don't have a registration. And what's
18 more, our Constitution also says that the
19 legislature will provide for registration of all
20 entitled voters. So, what's the answer to this?
21 I mean how does this happen?

22 MR. CLIFTON: Well --

23 MR. DOUGLAS: I mean wouldn't you
24 agree that their rights as Hoosiers have been
25 violated?

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1 MR. CLIFTON: Well, I would agree that
2 it warrants additional review, and I would love to
3 take a look and see what happened with this
4 particular registration, but this happens by way
5 of litigation. You know, Indiana has experienced
6 litigation for not maintaining clean voter rolls,
7 and we do that, we engage in that effort, that
8 bipartisan effort, to seat policy for how voter
9 registration records that are inaccurate, invalid,
10 or if the voter has not voted in two federal
11 elections, how --

12 MR. DOUGLAS: What was inaccurate or
13 invalid about their registration when they were
14 purged? According to the State Constitution, they
15 have a right to vote in their previous residence
16 if -- if they haven't registered there the new
17 one. I don't understand that.

18 MR. CLIFTON: Okay. With all due
19 respect, I would love to take a closer examination
20 of this particular voter, and I could -- I would
21 be happy to follow up, but this is how it happens.
22 It happens by way of litigation. So, Indiana,
23 like I said, has been sued for not maintaining
24 accurate voter rolls, and now that we're engaging
25 in this process, we're also seeing litigation on

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1 the other side as well.

2 So, like I said, the policy by which voter
3 list maintenance is administered in the State is a
4 bipartisan process. That process -- by both
5 Co-Directors of the Election Division, and then
6 administered by the counties. So, the counties
7 are responsible for the final review and
8 examination as to whether that voter registration
9 should be canceled.

10 MS. DAVIS: Tammi Davis, from Gary,
11 Indiana. A question that is constantly -- has
12 constantly come up today, of course, is the
13 voter ID law, and even though Secretary Lawson was
14 not in that position when it came about, and
15 particularly given the role with the National
16 Association, what is your office doing to address
17 the consistent concerns with the costs affiliated
18 with getting the voter ID?

19 And more specifically, there has been
20 suggested that individuals that have to acquire
21 documents for the purpose of getting an ID to
22 vote, that the fees be waived, and so, I haven't
23 heard a lot of conversations about that, so I'd
24 like to hear what your position is on that.

25 MR. CLIFTON: Well, first, let me

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1 begin by saying that Indiana's voter ID law has
2 been challenged with the United States Supreme
3 Court and has survived that challenge because of
4 the way Indiana and the Indiana legislature went
5 in drafting that law, to be inclusive, so that no
6 person was disenfranchised from receiving that
7 identification.

8 And today, no such person has come forward,
9 and I think that's a product of the manner in
10 which this law was drafted. Again, it's any
11 government-issued ID: State, local, federal,
12 passport. You can get a free ID from the BMV.
13 Multiple avenues in which an ID is available.

14 So, perhaps I'm forgetting the premise of
15 your question, but Indiana's voter ID law is --
16 we're constantly looking for ways to be more
17 inclusive. If there are cases in which a person
18 has been unable to get an ID, we want to know
19 about it. So, perhaps you could repeat your
20 question, because I don't think I'm being
21 specific.

22 MS. DAVIS: It's not specific. I'm
23 not sure if you could, but I think that given the
24 amount of time and all of the content and the
25 discussions around voter ID, the office definitely

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1 should be more prepared to address the question as
2 to how to address the concern of the costs
3 affiliated with getting a voter ID.

4 And it has been mentioned that someone can
5 get a free ID, but that has come into question
6 like how free it really is when it costs you bus
7 fare to get to the location in order to get your
8 documents. So, there is always a cost. It's not
9 completely free.

10 MR. CLIFTON: Right. I may also add,
11 you know, after voter ID was implemented, Indiana
12 enjoyed its largest voter turnout ever in 2008.
13 In 2016, Indiana enjoyed the largest number of
14 voters, not by percentage, but of voters in the
15 state. So, we've enjoyed two of Indiana's largest
16 participation years in federal elections after
17 voter ID went into pla -- or photo ID, excuse
18 me -- photo ID went into place.

19 So, I think that participation is
20 increasing, or as the candidates and the issues
21 become more, I guess, stressed, perhaps, is the
22 best word I can come up with, but that is the
23 pivotal driver of what turnout is that we've seen.
24 So, I would love to engage in further conversation
25 with regard to photo ID in Indiana, how to expand

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1 it, what we can do to make it more available, if
2 this panel so makes that decision and that
3 recommendation.

4 MS. DAVIS: Madam Chair, I know we've
5 got government and political. I had a government
6 question and --

7 MS. CLEMENTS-BOYD: Just wait. Hold
8 that. Okay.

9 MS. O'CALLAGHAN: Thank you, Madam
10 Chair.

11 This is Patti O'Callaghan. I thought it
12 might be appropriate to mention for the record
13 that the Republican Party was invited to
14 participate in the panel, too, so I thought we
15 should make that clear. And I want to thank you
16 all for coming, and I did have a question about
17 voter ID, but I think I'll pass at this point,
18 just with your assertion that the Secretary of
19 State Office would look at ways to increase the
20 ability to get photo ID.

21 MR. CLIFTON: Yeah. And again, you
22 know, the law survived Constitutional challenge,
23 and there has been a vigorous effort to challenge
24 the law, and I think that's a credit to Indiana's
25 legislature in drafting that law and being as

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1 inclusive as it has been. I think the law is
2 extremely inclusive, but we're constantly looking
3 for ways to do more.

4 MS. CLEMENTS-BOYD: I would like to
5 ask Mr. Hollis one question briefly. You talked
6 about the travel board that would vote individuals
7 that are confined. Would that include individuals
8 that are in jails?

9 MR. HOLLIS: That does in -- that
10 includes individuals that are in jail that have
11 not been sentenced.

12 MS. CLEMENTS-BOYD: That have not been
13 sentenced?

14 MR. HOLLIS: Correct.

15 MS. CLEMENTS-BOYD: Okay. Thank you.

16 MR. HOLLIS: Can I add a comment
17 about --

18 MS. CLEMENTS-BOYD: Sure.

19 MR. HOLLIS: -- voter ID? Mr. Clifton
20 is exactly right that voter participation
21 statewide has increased since the Bill Crawford
22 lawsuit. However, I do want to point out that,
23 you know, as the Indiana Star article --
24 Indianapolis Star article pointed out in 2017,
25 that that voter participation increase was not

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1 consistent among all 92 counties.

2 The voter participation here in Marion
3 County decreased, and in that article, they
4 interviewed a representative from the Hamilton
5 County Election Board who mentioned that they --
6 her exact quote was that the rise in absentee
7 voting in Hamilton County was largely a result of
8 the addition of two additional early voting sites.
9 Here in Marion County, we lost two early voting
10 sites, so I think that's still a factor in that
11 equation as well.

12 MR. DION: I'm intrigued by this
13 election board business, and I'd like to ask a
14 couple of quick questions. Obviously when the
15 Founders designed this Republic, they were worried
16 about majority tyranny, but also minority factions
17 running to the detriment of the rest of the
18 populace.

19 Isn't it -- can't we all agree that
20 unanimity is an unusually high bar to reach in a
21 democratic arrangement? Unanimity, if it were
22 required, would mean that we wouldn't have the
23 Civil Rights Act of 1964. If we required
24 unanimous agreement, no city government could
25 function.

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1 And so, this notion that unelected election
2 board functionaries can have one holdout and deny
3 other people the opportunity to express their
4 right to vote seems to be not the kind of
5 direction the state needs to go, or a county needs
6 to go.

7 And trust me, all of the members of this
8 Committee are sensitive to the idea of not letting
9 a majority run untrammelled over some minority,
10 whatever it may be. It could be a minor party.
11 We want to be fair to all concerned, but unanimity
12 is an usually high bar. Wouldn't you agree with
13 that, Ms. Celestino-Horseman?

14 MS. CELESTINO-HORSEMAN: Yes.

15 MR. DION: That was my way of asking a
16 question.

17 MS. CELESTINO-HORSEMAN: Yes. You
18 know, and I think that requirement of unanimity is
19 the politics. You have a predominantly -- a very
20 predominant Democratic party here in Marion
21 County, but a single Republican can stop us from
22 having vote centers, stop our Democratic voters
23 from being able to exercise their right to vote as
24 easily as other people.

25 So, when a Secretary -- Mr. McGill, I want

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1 to make clear, because you had prefaced your
2 question saying that the Secretary of State
3 supported early vote centers in Marion County, and
4 your response that you got was that she supports
5 unanimity. Unanimity is what has kept us from
6 being able to have vote centers and early voting
7 like that here in Marion County. So, I would
8 disagree very much with that requirement of
9 unanimity.

10 MR. MAGUIRE: If I could just add to
11 that, and I just want to reiterate again, you
12 know, that's a great point about the unanimous
13 vote. My party is on the ballot. There are three
14 parties on the ballot, and we have no voice on
15 that board.

16 MR. CLIFTON: Again, if I could as
17 well, 36 counties have adopted vote centers
18 unanimously, so over -- what is that, over a third
19 of the counties in the state? So, it is -- it is
20 possible, and every year more and more counties
21 adopt vote centers.

22 What unanimity gives you -- if it be the
23 will of the General Assembly to go in a majority
24 direction, so be it, but what unanimity provides
25 is no matter what happens with the decision to

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1 implement vote centers, everyone is on board, and
2 everyone is supportive and no one can undermine
3 the other for any consequences that result, if
4 there are any.

5 So, as a former county clerk, Secretary
6 Lawson has been in that position of a clerk, has
7 experienced the vulnerability associated with a
8 partisan election board, and respectfully, sir,
9 you know, it's -- the Secretary has been on record
10 multiple times supporting that standard. But it's
11 ultimately the will of the General Assembly, and
12 that has been under discussion almost every year
13 I've been with the office.

14 MS. DAVIS: Well, speaking of the
15 General Assembly, we have a trifecta here in the
16 State of Indiana, and I see a direct correlation
17 between our political parties and the laws, that
18 we continue to fight against discrimination in a
19 matter of other ways. Political parties support,
20 nominate, elect candidates who become our elected
21 officials, who put into legislation the things
22 that we're fighting against today.

23 So, given that we have a trifecta, what are
24 the other political parties doing to combat that?
25 One of the reasons why some people don't vote is

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1 because they don't have faith in the other
2 political parties to put forth candidates that
3 they would vote for, that would be strong enough
4 to give us new leadership, to have new laws and
5 legislation.

6 So, for our political parties that are
7 represented, what can you do differently to
8 address some of the voter apathy and the
9 disenfranchisement that we were seeing here and
10 discussing today?

11 MR. MAGUIRE: Well, I'll take that.
12 We have been trying to work on that, and that's
13 actually one of our biggest goals is to directly
14 challenge the parties in power by putting forth an
15 alternative for the voters. Unfortunately, as I
16 said, you know, the cards are stacked against us
17 and we are running an uphill battle on that.

18 But what we can do better is just
19 continuing to do better at what we've already been
20 doing, is putting forth credible candidates and
21 running as best as we can. I've been focusing on
22 the local elections, because that's our best
23 chances of winning and getting into the system.
24 But I mean we've got to get our citizens to demand
25 from the legislature fair access for all voters.

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1 MS. CELESTINO-HORSEMAN: The
2 Democratic Party is well aware of this problem.
3 It is something that we discuss at our Central
4 Committee meetings, and it is a challenge, because
5 when you have gerrymandered district that are so
6 heavily Republican, it's difficult to get good
7 people to want to go in and become the sacrificial
8 lamb. So, it's difficult to get them to do it.

9 And as Mr. Maguire noted, even amongst the
10 Republicans in those districts, by having them so
11 heavily Republican, it weighs in favor of the
12 incumbent. You can't go out and raise the money
13 that you need, because the incumbent -- people are
14 going to give to the incumbent.

15 So, what we have been trying to do is we
16 have been -- we've been supportive of the efforts
17 to try and do third-party redistricting and stuff,
18 and that looks like that's going to the wayside.
19 But the other thing that we've been trying to do
20 is we are going out and aggressively trying to get
21 candidates at least in those areas where we have a
22 chance.

23 And quite honestly, we think that the
24 current political climate is going to perhaps
25 hopefully open things up. Now, how long is -- we

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1 have a super majority of Republicans in the
2 legislature, so we've got an uphill battle. We're
3 trying to claw back to even numbers, you know,
4 seat by seat, but it will take a while.

5 MR. DOUGLAS: So, this is for you.
6 This is for you again, Brandon. So, you said that
7 there was litigation that -- because voter rolls
8 were inaccurate, that that produced litigation. I
9 just want to be clear about that. Was it that --
10 was the allegation in that litigation that the
11 voter -- the inaccuracies of the voter roll were
12 preventing people from voting who wanted to vote?
13 Because you then said that then we've turned
14 around and now it's a result of purging, in
15 addressing voter rolls, now we have it coming from
16 the other direction.

17 So, you're saying -- if I understand what
18 you're saying, it's like the voter rolls had
19 inaccuracies. The problem with the liti -- was
20 the litigation associated with people not being
21 able to vote who wanted to vote? It that -- was
22 that the source of the litigation, or what was the
23 source of the litigation with regard to the
24 inaccuracies that now this purge is supposed to be
25 addressing?

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1 MR. CLIFTON: The inac -- it was
2 before my time, but I think the original -- the
3 genesis of the original effort to clean voter
4 rolls was deceased voters on the rolls. I don't
5 know and I don't recall. I'd have to call one of
6 my colleagues and counsel --

7 MR. DOUGLAS: Well, go ahead, if he's
8 here.

9 Do you want to --

10 MR. KING: Okay. Members of the
11 Committee, Brad King.

12 MS. CLEMENTS-BOYD: You should
13 probably come up to the mike.

14 MR. CLIFTON: This is Brad King.

15 MR. KING: Thank you, members of the
16 Committee.

17 The litigation that was referred to was
18 brought against Indiana for failing to comply with
19 federal law, the National Voter Registration Act
20 of 1993, which was signed by President Clinton in
21 the early days of his administration. That
22 required essentially two things: The expansion of
23 voter registration opportunities, and voter list
24 maintenance to remove ineligible or inaccurate
25 registration records from the rolls.

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1 Indiana was sued for failing to adequately
2 perform the second function under that statute.
3 In the end, the case was dismissed, but that was
4 in fact the prompting for the litigation.

5 MR. DOUGLAS: So, that litigation
6 failed or was dismissed; is that right? That
7 litigation was dismissed, you said?

8 MR. KING: The state prevailed, that's
9 correct.

10 MR. DOUGLAS: And so -- but there was
11 no -- I mean here we have this -- a picture where
12 people are being purged who have -- who have a
13 right to vote in Indiana. I don't understand how
14 what the office is doing now is advancing the
15 cause.

16 MR. KING: I can speak on behalf of
17 the work that my counterpart, Co-Director
18 Nussmeyer and myself do. We continue to educate
19 the local election administrators regarding the
20 various failsafes and safeguards, that if a voter
21 registration record is canceled or altered in a
22 way that's erroneous, to protect the voter's right
23 to vote.

24 Again, federal law comes into play. Any
25 voter who shows up at a polling place where they

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1 formerly resided, or continue to reside, I should
2 say, is allowed to vote a regular ballot upon
3 making an oral affirmation that they have not
4 changed the residence, that their registration was
5 canceled in error.

6 There are also other safeguards, in the
7 situation that's more complicated, for the voter
8 to cast a provisional ballot, which in Indiana, a
9 voter has up to ten days to provide information to
10 the county election board. They'll sort out the
11 problem so that their vote will count.

12 MR. CLIFTON: Mr. Douglas, if I may,
13 in fairness, you've heard from Republican
14 Co-Director. Would you like to also hear from
15 Angie Nussmeyer, the Democrat Co-Director?

16 MS. NUSSMEYER: Good afternoon. Angie
17 Nussmeyer, Co-Director at the Indiana Election
18 Division, and I would echo Brad's sentiments, but
19 I would also like to point out that "purge" is a
20 four-letter word in my business -- or our
21 business. We do not purge voter registration
22 rolls -- or voter registration records in the
23 State of Indiana.

24 So, to the example that you raised,
25 Mr. Douglas, an individual's registration is

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1 either active, inactive, or canceled. So, we can
2 actually research the reason why those individuals
3 may not have been on the registration rolls,
4 because they would be documented within our
5 Statewide Voter Registration System.

6 Think of it as a very large case management
7 system, where we can go in and actually look to
8 see what may have happened at the county level.
9 In interacting with the BMV, oftentimes there are
10 matches made with individuals who have similar
11 names, the county has to do some research to
12 determine if records are merged, for example.

13 So, there could be a variety of reasons as
14 to why that individual's record may not have been
15 found. It could be the person who was doing the
16 search in the county office didn't perform an
17 exact-match search, or didn't look up by address,
18 or there was an error in the data entry.

19 So, I really would invite you to take up on
20 Brandon's offer to connect that individual with
21 our office so we could do the research for it,
22 because we do not purge a registration record from
23 the system. It's canceled, for the very reason
24 Mr. King stated.

25 MR. DOUGLAS: Okay.

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1 MR. KING: I would briefly add that I
2 agree entirely with what my Co-Director colleague
3 has said. We do not purge, in the old-fashioned
4 sense of that word. That was made illegal under
5 the National Voter Registration Act I referred to.

6 MR. DOUGLAS: Okay.

7 MS. DAVIS: I'm sorry. So, you say
8 you don't use the word "purge." That just sounds
9 like methodology, but when you send the postcard
10 and then it's sent to the address, and then a
11 person has a certain amount of time before they
12 respond, and if they don't respond, then they're
13 sent a second postcard, and then if you don't get
14 a reply, then it's something about after two
15 election cycles, then they're canceled? So, just
16 tell me how you define "canceled" versus "purged,"
17 and the person still can't vote. Isn't it the
18 same result, just a different vocabulary?

19 MS. NUSSMEYER: So, I believe the
20 program that you're referring to is our Statewide
21 Voter List Maintenance Postcard Mailer, which I
22 believe, and Mr. King can confirm whether or not
23 that was a result of the litigation. Was that one
24 of the --

25 MR. KING: The litigation, yes.

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1 MS. NUSSMEYER: Yes. And so, what we
2 do is we send out that postcard to every active
3 voter within the State of Indiana to their
4 residence address, and it requires no action on
5 the voter. If the voter is registered at that
6 address, there's no action taken on that
7 individual's registration record.

8 If that card is returned for a litany of
9 reasons that are defined in Indiana law,
10 essentially USPS undeliverable, but there are
11 stated reasons within state law, then a second
12 card is mailed out to that individual, which
13 allows them to do one of three things.

14 Those one of three things would be: To
15 confirm that they are currently registered at that
16 address that they are registered at; it allows
17 them to cancel their registration in the State of
18 Indiana; it allows them to update their
19 registration within their Indiana county. They do
20 have 30 days to respond, and that's consistent, I
21 believe, with federal law.

22 Is that correct, Brad?

23 MR. KING: That's right.

24 MS. NUSSMEYER: So, it's consistent
25 with federal law. If we do not receive that

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1 second card back within 30 days, or if the card is
2 returned as USPS undeliverable, that individual is
3 marked inactive in our Statewide Voter
4 Registration System.

5 And an individual can flip their inactive
6 to active as long as they vote in any election
7 between two federal general elections. So, take,
8 for example, if a voter was made inactive in
9 January 2018, that individual could vote in the
10 May 2018 election, the November 2018 election, the
11 May 2019 election, the November 2019 election, the
12 May 2020 election, or the November 2020 election,
13 and have their registration flip back to active.

14 If they fail to vote in any of those
15 elections, then they would be marked canceled, but
16 again, their registration record remains in the
17 Statewide Voter Registration System, for the very
18 fact that if they would appear at their polling
19 location on election day, or at an early voting
20 location throughout the State of Indiana, and the
21 poll workers or the county officials can't find
22 their registration because they are -- their
23 registration was canceled, then that person can
24 make an affirmation that "I continue to reside
25 here, even if I told you to cancel my

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1 registration." We will permit you to vote a
2 regular ballot, and that's how that challenge or
3 that issue is overcome at the polling place or
4 during early voting, for example.

5 And Mr. King, I don't know if you have
6 anything further to add.

7 MR. KING: You've covered it
8 comprehensively.

9 MS. CLEMENTS-BOYD: For the sake of
10 our record, if you have the procedure that you
11 just explained that you could provide to the
12 Committee that explains the process for making
13 voters inactive or canceling them, we would like
14 that for the record, if that's possible.

15 MR. DOUGLAS: And we had earlier
16 testimony that I think this -- whatever took place
17 was the result of legislation passed in 2016; is
18 that right, that allows Indiana -- legislation was
19 passed in 2016 allowing counties to remove voters
20 immediately or something like that? You don't
21 know what I'm talking about?

22 MS. O'CALLAGHAN: Crosscheck.

23 MR. DOUGLAS: Was that -- right,
24 Crosscheck or something.

25 MR. CLIFTON: No. Let me --

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1 MR. DOUGLAS: Please.

2 MR. CLIFTON: -- be very clear.

3 Crosscheck is simply a source and a starting point
4 for the process to begin. So, the State of
5 Indiana receives potential registration
6 duplicates -- maybe a better word is available --
7 from Kansas, the Kansas Crosscheck program, and as
8 a result, it begins the process to -- I'm going
9 brain dead, maybe someone else --

10 MR. KING: The Kansas Crosscheck
11 program, as it's referred to in shorthand, is
12 something you may be familiar with from previous
13 testimony, but let me just briefly describe it.
14 It's been operational for more than ten years. It
15 was begun originally with Kansas sharing
16 information with neighboring states to identify
17 duplicate registrations and duplicate voting in
18 those states. It has since expanded to cover the
19 number of areas from year to year, but
20 approximately 20 to 30 states across the country.

21 In Indiana, when we receive information
22 that there may be a voter whose registered in both
23 Indiana and Kansas, we then screen that
24 information to make certain that, to the extent we
25 can of the information available, it's very likely

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1 that it's the same person. But regardless of that
2 initial screening, it's then forwarded to the
3 county that makes the determination as to whether
4 or not, one, the individual should have that
5 record in Indiana go through that inactivation
6 process that the Committee heard about earlier.

7 The change in 2016, which is currently in
8 litigation, was to allow a county voter
9 registration office, once they make that
10 determination that it is the same individual who's
11 registered and perhaps voted in another state
12 after their Indiana registration, to cancel that
13 voter registration record, but the same safeguards
14 I spoke of earlier would apply in that case.

15 MS. CLEMENTS-BOYD: We have to wrap it
16 up.

17 Okay. Thank you all for being here, number
18 one, and we know that we have gone over in time,
19 and if there is a written transcript that you
20 could leave with the committee, that would be
21 appreciated, and some of the protocols and
22 procedures for handling voters that you perceive
23 to be no longer residents of the state or of a
24 certain jurisdiction, if that procedure or process
25 could be shared with the Committee, that would be

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1 beneficial as well.

2 MR. HOLLIS: I have a question, Madam
3 Chair. Can you refresh our memories on when the
4 deadline for public comment or testimony is?

5 MS. CLEMENTS-BOYD: Yes. The record
6 is open until April the 2nd. I'm sorry; the open
7 comment period? Is that what your question is?

8 MR. HOLLIS: Or the period to submit
9 written testimony.

10 MS. CLEMENTS-BOYD: Yes, the record is
11 open until April the 2nd.

12 MR. HOLLIS: Perfect. Thank you.

13 MS. CLEMENTS-BOYD: Thank you so much.

14 I don't know if there are individuals from
15 the public that wish to speak, and I don't think
16 that there are. So, please allow me to thank our
17 panelists. On behalf of the Indiana Advisory
18 Committee, we certainly appreciate you being here
19 today and sharing your information on voting
20 rights, and for your information, this is the
21 third of a three-meeting segment.

22 Please call the Midwest Regional Office at
23 312-353-8311 for more information, and again, the
24 record will remain open until April 2nd of 2018.
25 You may submit a written comment to

1 mwrointern2@usccr.gov, or mail to the U.S.
2 Commission on Civil Rights at 55 West Monroe
3 Street, Suite 410, Chicago, Illinois, 60603. If
4 you did not register, please give your e-mail to
5 Melissa or Nicole, and they will send you a
6 follow-up of the information and the minutes --
7 the transcript for the meeting today and any links
8 to those records.

9 Again, I'd like to thank you for
10 participating, to our panelists, to our dedicated
11 staff, to our Committee, and again, to the Chair,
12 Catherine E. Lhamon, and the U.S. Commission on
13 Civil Rights for their leadership and for taking
14 up this issue as their enforcement priority study
15 for the fiscal year of 2018. And certainly if our
16 public has left, in their absence, we certainly
17 appreciate them being here and testimony that they
18 provided.

19 So, with there being no further business, I
20 will adjourn our meeting for today, and thank you
21 all so much.

22 - - -
23 Thereupon, the proceedings of
24 March 2, 2018 were concluded
25 at 4:31 o'clock p.m.
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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned Court Reporter and Notary Public residing in the City of Shelbyville, Shelby County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Friday, March 2, 2018 in this matter and transcribed by me.

Lindy L. Meyer, Jr.,
Notary Public in and
for the State of Indiana.

My Commission expires August 26, 2024.

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1 Speaker 1: Please stand by, we're about to begin.

2 Good day and welcome to the US Commission on Civil Rights Indiana Advisory
3 Committee conference call. Today's conference is being recorded. At this time, I
4 would like to turn the conference over to Tammy Davis. Please go ahead.

5 Tammy Davis: Thank you, and good morning. This public forum of the Indiana Advisory
6 Committee to the US Commission on Civil Rights shall come to order. For the
7 benefit of those in the audience, I shall introduce my colleagues and myself. My
8 name is Tammy Davis. I have the privilege of serving as the secretary of the
9 Indiana Advisory Committee. Serving along with me are 13 other members that
10 represent various parts of Indiana. Members on the committee that are also on
11 this call are:

12 Diane Clements-Boyd on Indianapolis, who is also the Chair of the Indiana
13 Advisory Committee. We also have Robert Dion, Christopher Douglas, and Ellen
14 Wu. Also present on the call is Melissa Wojnaroski, who is a civil rights analyst
15 with the US Commission on Civil Rights. With more than three members
16 present, we have a quorum to proceed.

17 The US Commission on Civil Rights is an independent, bipartisan agency of the
18 federal government charged with studying discrimination or denial of equal
19 protection of the laws because of race, color, religion, sex, age, disability or
20 national origin, or in the administration of justice. In each of the 50 states and
21 the District of Columbia, an advisory committee to the commission has been
22 established and they are made up of responsible persons who serve without
23 compensation to advise the commission on relevant information concerning
24 their respective states.

25 Today, our purpose is to hear testimony regarding voting rights in Indiana, in an
26 effort to discern if there are discriminatory barriers to voting in the state.
27 Among the responsibilities of each advisory committee is to inform the
28 commission of any knowledge of information it has of any alleged deprivation of
29 the right to vote, and to have the vote counted by reason of color, race, religion,
30 sex, age, disability, or national origin, or that citizens are being accorded or
31 denied the right to vote in federal elections as a result of patterns or practices
32 of fraud or discrimination, and to also advise the commission concerning
33 matters relating to discrimination or a denial of the equal protection of the laws
34 under the constitution and the effect of the laws and policies of the federal
35 government with respect to the equal protection of the law.

36 Through this study, and consequently, the purpose of the forum today, is to
37 provide the Indiana Advisory Committee testimony and information to examine
38 voting rights and voter participation in Indiana. Specifically the committee will
39 examine the extent to which voters in the state have free, equal access to
40 exercise their right to vote without regard to race, color, disability status,

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1 national origin, age, religion, and/or sex, and whether Indiana, in its application
2 of its laws and regulations is meeting its equal protection obligations in accord
3 with its own constitutional mandates on the topic of free and fair elections.

4 If speakers begin to veer away from the civil rights questions at hand to discuss
5 possibly important but unrelated topics, I will have to interrupt and ask them to
6 refrain from doing so. At the outset, I want to remind everyone that this
7 meeting is being recorded and will be transcribed for the public record. I also
8 wish to remind everyone that today's meeting is the final part of a four part
9 series that the committee will hear on this topic. A web conference was held on
10 February 12th, a community forum similar to this one today in Gary, was held in
11 Evansville on February 17th, and on March 2nd, a full public hearing was held in
12 Indianapolis where committee members heard expert testimony from panelists
13 presenting legal, academic, advocacy, government, and political party related
14 perspective. Again, the purpose of today's meeting is to hear from the
15 community, it's leaders and residents, and aggrieved persons. We are thankful
16 for those who have come to provide testimony today.

17 I would also like to present the ground rules for today's meeting. This is a public
18 meeting open to the media and also to the general public. We will base the
19 amount of time for each speaker based on the time available. Initially, each
20 speaker will be allowed up to 10 minutes approximately. After each speaker has
21 concluded their comments, the committee members, and only the committee
22 members can ask clarifying questions. We kindly ask that everyone silence their
23 phones and refrain from talking during the hearing. In addition, written
24 statements may also be submitted by mail to the US Commission on Civil Rights,
25 at 55 West Monroe Street, Suite 410, Chicago, Illinois, 60603. They may also
26 submit written comments via email to mwrintern2@usccr.gov. For more
27 information on submitting written comments, please contact the regional office
28 at 312-353-8311.

29 Though some of the statements made today may be controversial, we want to
30 ensure that speakers do not defame or defame any person or organization. As
31 the presiding officer, I reserve the privilege to cut short any statements that
32 defame, degrade or do not pertain to the issue at hand. Any person or
33 organization that feels defamed or degraded by statements made in these
34 proceedings may provide a public response only during the open comment
35 period towards the end. Alternately, such persons or organizations can file
36 written statements for inclusion in the proceedings. The Advisory Committee
37 does appreciate the willingness of all speakers to share their views and
38 experiences with this committee. Finally, once again, only the committee may
39 ask questions of the individual after he or she has provided their prepared
40 statement. Advisory committee members must be recognized by the presiding
41 officer before asking any questions of a speaker.

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1 Please allow me to thank all of our speakers today. On behalf of the Indiana
2 Advisory Committee to the US Commission on Civil Rights, we certainly
3 appreciate your providing testimony on the topic of voting rights in Indiana. The
4 information will be informative and enlightening. The record will remain open
5 through April 2nd, 2018. Once again, if anyone would like to submit a written
6 comment, please send it to mwrointern2@usccr.gov or mail to USCCR, 55 West
7 Monroe Street, Suite 410, Chicago, Illinois, 60603.

8 And now, we will begin our testimony by individuals that have signed up.
9 Anything else from the committee to add?

10 Chris Douglas: Nope.

11 Tammy Davis: Seeing none, I want to bring forth our first speaker, Mayor Karen Freeman-
12 Wilson, the mayor of the City of Gary.

13 K FreemanWilson: Good morning. First, I want to take this opportunity to greet those members on
14 the phone who are associated with both the Indiana Advisory Council to the US
15 Committee on Civil Rights and, or to the US Civil Rights Commission as well as
16 those who are staff associated with the US Civil Rights Commission. I also want
17 to thank those who are in the room with me, with special congratulations to our
18 own member, Miss Tammy Davis, on her reappointment and on her leadership
19 of this call and this hearing.

20 I am here to talk about something that is very critical in the City of Gary, and
21 something that we have been addressing over the last two years, and that is the
22 structure and the efforts to reduce the number of precincts in the City of Gary.
23 In the State of Indiana, the voting is done by precinct, and each precinct has a
24 representative to an overall precinct organization and they are organized by
25 party. But this really is not really about partisanship at all. It is about how do you
26 count, how do you organize the precincts in a way to remove the barriers to
27 voting.

28 We know that voting turnout all over the country, and certainly Indiana and the
29 City of Gary is no different, has been abysmal. And it appears that the State of
30 Indiana has chosen to use that abysmal turnout as a way to indicate that you
31 should look at the number of people who come out to vote to determine the
32 number of precincts in a city and that has adversely impacted the City of Gary,
33 and so, whereas, in the past, it might have been easy to walk to their voting
34 place, because they have increased the number of people in a precinct and they
35 have determined that who votes in a precinct and not who is registered in the
36 precinct is the litmus test, we have seen the number of precincts go down, and
37 we have seen there be a greater distance between a person's residence and the
38 place that they vote. So, at one point you could walk to your voting place, now,
39 almost everyone is required to take a ride, or to get a ride.

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1 The other impact on that is that the precinct organization often determines any
 2 interim candidates. For instance, if someone resigns or if someone is removed
 3 from office, that vote is determined by precinct. Historically, Gary has had a
 4 significantly sized voting block and has had a lot of impact in determining who
 5 those candidates are on a county-wide basis. Because of the way that they have
 6 now determined the precinct and the number of people who make up a
 7 precinct, we have gone from having over 100 people in a position to vote in the
 8 precinct organization to having less than 70, so that is a significant dilution. I
 9 would say also it is a significant dilution, that if not intended to be
 10 discriminatory, it does have the impact of being discriminatory given the
 11 disproportionate number of African-Americans who reside in Gary versus the
 12 other parts of the county. In fact, Gary has the highest concentration of African-
 13 Americans in Lake County and so, the change in how the precinct organization is
 14 structured and how many people make up a precinct has a disproportionate
 15 impact on African-Americans in the City of Gary.

16 So, I wanted to raise that to the committee. I would like for that to get national
 17 attention. I do know that the NAACP who is one of the co-conveners of this
 18 meeting is keenly aware of that and we have raised this to the level of national
 19 attention, but I believe this is a bipartisan issue that not only the NAACP but the
 20 US Commission should be involved in because it does impact the
 21 disenfranchisement of voters. We have seen a pattern, you've seen voter ID,
 22 you've seen the effort to keep people from voting, not only from voting but
 23 from registering, and I think that this is yet another barrier to keep people from
 24 accessing the ballot box and exercising their right to vote. So, again, thank you
 25 for convening this hearing. Ironically, at the same time of this hearing is a
 26 meeting of the precinct organization that I have to attend, but I did not want to
 27 miss the opportunity to address this august body, and I thank you for that.

28 Tammy Davis: Thank you, Mayor. Committee members, are there any statements or
 29 questions?

30 Ellen Wu: This is Ellen Wu. I have a couple of questions, for-

31 K FreemanWilson: Yes

32 Ellen Wu: the mayor.

33 Thank you, Mayor Wilson. I just had a clarification question and an information
 34 question. And so, I understand you to say that the three things the organization
 35 has resulted in increasing the number of people per precinct, and then lowering
 36 the number of precincts, is that correct.

37 K FreemanWilson: So, yes. It lowers ... yes ma'am. What has happened is it has increased the
 38 threshold for the number of people that make up a precinct. So, previously
 39 there were 300 people in a precinct. Now they're saying, well, you need 600

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- 1 people, and what that does, it creates more distance, and it does reduce the
2 number of precincts as well.
- 3 Ellen Wu: OK, so, while I'm on that, I just wanted to make sure I understood what you
4 said. You had stated that the number of folks had gone from 100 to 70, are you
5 saying there that the number of folks from Gary, is now, could you just clarify
6 that, and then-
- 7 K FreemanWilson: Sure
- 8 Ellen Wu: And then my final question would be, could you give us a sense of how, what is
9 the percentage of Gary that is dependent on public transit, right, so the folks
10 that, the ones who can no longer walk to their precincts, I mean, how many
11 people are we talking about?
- 12 K FreemanWilson: Absolutely. So, when I talk about the reduction of the number from 100, over
13 100, to less than 70, I'm talking about the number of precinct committee
14 people, and so each precinct is represented by a precinct committee person.
15 And so, historically, you have had over 100, I believe the number is actually
16 most recently 102. Now, that number, and it has actually not been reduced
17 permanently, but the Secretary of State has been charged with making that final
18 reduction because it could not be agreed upon at the county level. The final, or
19 the proposed reduction, shows Gary having less than 70 representatives in the
20 precinct organization. And I would, based on my knowledge, and work with the
21 Gary public transit corporation, the number of people who are dependent on
22 public transportation in the City of Gary is approximately 40 percent. The
23 number of people without personal transportation, however, is closer to 60
24 percent.
- 25 Ellen Wu: Thank you very much.
- 26 Tammy Davis: Anything else from any other-
- 27 Chris Douglas: This is Chris Douglas-
- 28 Tammy Davis: Okay. Go ahead Chris.
- 29 Chris Douglas: Yes, this is Chris Douglas. So, what percent of Lake County population does Gary
30 represent and what percent therefore, does it all come out that whatever
31 percent of Lake County, I hear everything that you're saying and respect that.
32 I'm trying to get a sense of how big, I'm down in Indianapolis, how big is Gary
33 compared to Lake County in population [crosstalk 00:19:42]
- 34 K FreemanWilson: Gary represents about 20 percent of Lake County now.

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- 1 Chris Douglas: Okay. Thank you.
- 2 Tammy Davis: Any other committee members?
- 3 D ClemensBoyd: Good morning, good morning Tammy. This is Diane Clemens-Boyd, and just one
4 clarification. I am in Evansville, and not in Indianapolis, but-
- 5 Tammy Davis: Oh, I'm sorry.
- 6 D ClemensBoyd: Thank you again, Tammy, for your hard work in coordinating this forum, and
7 Gary was on our radar when we started this initiative and we know that there
8 was some issues and you've successfully pulled together a wonderful
9 organization of folks to tell us about that. And Mayor Wilson, thank you for your
10 testimony this morning. I have one question and that would be, what has the
11 sense on the ground, the people who have had to go to different precincts or
12 voting centers to vote, were they aware, were they given adequate notification
13 where they could now vote, if their voting location was eliminated, and what
14 was the sense of the voters in Gary as a result of that change?
- 15 K FreemanWilson: I would say that there has been an increasing sense of uncertainty about where
16 to vote, and a lot of that is associated with the fact that much of that
17 information is listed in traditional print newspapers, but people, in fact, many
18 people don't get their information that way. So, because there has been
19 changes, and this has been even separate and apart from the changes in the
20 precinct structure, there has been many changes in voting places, and people
21 often go to the place that they have become accustomed to, and they don't
22 have any updated information about the new location.
- 23 D ClemensBoyd: Thank you.
- 24 Chris Douglas: This is Chris Douglas with another question if I may. And Mayor, this is out of
25 your bally wick, but you've raised the question, and I'm curious whether you
26 happen to have the figures available to you. Do you have any idea in other
27 major cities, in Indianapolis in particular, in Indiana, rather, in particular in
28 Indianapolis, what percent of the population, let's say in Indianapolis, is reliant
29 on public transportation or has no personal transportation? Do you happen to
30 know?
- 31 K FreemanWilson: I do not. I do not, but I can-
- 32 Chris Douglas: Okay.
- 33 K FreemanWilson: I can access that pretty readily.

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- 1 Chris Douglas: That would be great to get that information for some of Indianapolis' other
2 areas.
- 3 K FreemanWilson: Okay. I will take that away as my homework.
- 4 Chris Douglas: Thank you.
- 5 Tammy Davis: So, Chris, as a follow-up, are you looking at that across the state, not just in
6 Gary, but as we put together a report of incorporating the percentage of
7 residents that are on public transportation?
- 8 Chris Douglas: Yes, I think that information could be valuable, very much so, beyond Gary.
- 9 K FreemanWilson: I can get that information for you.
- 10 Tammy Davis: Alright, thank you Chris. Any other committee members?
11 If not, thank you Mayor-
- 12 K FreemanWilson: Thank you.
- 13 Tammy Davis: For your testimony.
- 14 Chris Douglas: Thank you, Mayor
- 15 K FreemanWilson: And thank you to the members of the committee. We appreciate you. Have a
16 great day.
- 17 D ClemensBoyd: Thank you.
- 18 Tammy Davis: Okay. The next person that we have signed up to provide testimony is Thomas
19 Newsome on behalf of NAACP, Gary's NAACP branch. Mr. Newsome?
- 20 TNewsome: I would like to echo what the mayor said that a lot of times people don't know
21 where they are to vote because everything has changed. People come to a
22 voting place and they're no longer voting in that same location and I feel it's a
23 problem primarily with the Gary community because we have a lot of transient
24 population, people who move from one place to another, unlike a lot of the
25 other communities in Northwest Indiana where there's a more stable
26 environment. And because of that, people who want to vote, you put another
27 barrier in their way as to the reason why they don't vote. And a lot of times, a
28 lot of people feel that their vote does not matter, the vote does not count, that
29 things are gonna always be the way that they've always been. And that's my
30 concern, primarily, that we need to have stable precincts, stable places where
31 people know in advance where they are going to go to cast their vote.

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- 1 Tammy Davis: Okay. Any questions from committee members?
- 2 Chris Douglas: Yes, this is Chris Douglas again. Thank you, Mr. Newsome. The Indiana State
3 Constitution, I think, says that virtually that a resident of Indiana is, that
4 anybody who has been in Indiana 30 days as a resident has a right to vote. Do
5 you have, you've said that Gary has more of a transient population, by that, I
6 assume that means people that may have been here ... first of all, I guess, how
7 would you define transient? And then, can you quantify that, that is to say, what
8 percentage do you mean and then also, with regard to the same questions to
9 Mayor Wilson, to the degree that you could provide those percentages for other
10 parts of Indiana, that would be helpful too.
- 11 Tammy Davis: Chris, just want to let you and the other committee members know that the
12 Mayor had to leave. That she mentioned the Gary precinct organization is
13 having a meeting at the same time as our meeting so she has left. But there are
14 some follow-up then we can definitely can circulate that to us when we have
15 our committee conference call.
- 16 Chris Douglas: Right. I guess what I was asking of Mr. Newsome is, I think that, I agree that
17 everybody that has been in Indiana more than 30 days according to our state
18 constitution as a resident, has a right to vote. So, I think, I assume that Mr.
19 Newsome means that a transient population is somebody that has been here at
20 least 30 days, but how long does transient mean? And then, it's helpful to know,
21 if there's a significant impact on people who have a right to vote, that are
22 characterized as transient, it would be helpful to define what transient means
23 and quantify that, if we could, and not just in Gary, but in places like
24 Indianapolis, but certainly Gary.
- 25 TNewsome: Well, what I'm trying to say people move quite frequently.
- 26 Chris Douglas: Right.
- 27 TNewsome: And sometimes [crosstalk 00:28:10]
- 28 Chris Douglas: I respect that statement, the question is, and I would credit that statement, the
29 question is, can we quantify that statement? Can we quantify that in any way,
30 for the report?
- 31 Tammy Davis: Is that a question, Chris, is that a question for him specifically, or is that a
32 question again relative to the residents?
- 33 Chris Douglas: Yes, well it could be for Mr. Newsome if he has access to that data, otherwise, I
34 would say that would be helpful data to have. What do we really mean when we
35 say, yeah-
- 36 TNewsome: At this time, I don't have it.

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- 1 Chris Douglas: If you can provide it, if the committee could request you, if you could help us
2 obtain that data, that would potentially be helpful.
- 3 TNewsome: Okay, thank you.
- 4 Ellen Wu: This is Ellen Wu. Thank you, Mr. Newsome, for your testimony. I just have a
5 related question. I completely recognize the problem you're highlighting here,
6 the problem of transients and then the difficulty with the transient population
7 understanding where to vote, especially if that place keeps changing. And so, I
8 wonder if you could just provide some information about your sense of where
9 people in Gary, in general, get this kind of information? I think the mayor said
10 earlier, that most people don't read print newspapers. And so, I feel that would
11 be a helpful question so we could understand where there might be problems
12 with outreach, especially if this pattern of changing voting locations persists.
- 13 TNewsome: Well, I would assume that they get their information, should get it from their
14 precinct committeemen, who has the obligation to let the voters in this precinct
15 know where they're supposed to vote.
- 16 Ellen Wu: Okay, thank you.
- 17 Chris Douglas: If it's okay, this is Chris Douglas again. Mr. Newsome, are you familiar with, I feel
18 as though we've heard some concerns about although voters getting erroneous
19 information. Are you aware of any such issues?
- 20 TNewsome: No, I'm not. However, if people have some type of issues in their past that they
21 may not want to come to light, they may have given some erroneous
22 information, but I have no knowledge of that.
- 23 Tammy Davis: This is Tammy, if I may add a clarifying point when it comes to transient persons,
24 sometimes we have a tendency to define transient as homeless, and the
25 transient population would also include women, children, families, that have
26 suffered through domestic violence, and they are no longer at their place of
27 residence, but they're staying at a facility where their address, of course, if
28 protected. But that is a population that is in transition, but may also qualify as
29 being transient. So we want to make sure that we take that population of voters
30 into consideration as well when we're talking about reaching those types of
31 populations.
- 32 Chris Douglas: Right, and I think additionally, it's those individuals that may not be homeless,
33 they've been on the street, but are certainly forced to make changes in their
34 housing accommodations. That have a hard time having their address really
35 keep up with them, so to speak. I'm familiar with that, that problem. I'm
36 wondering how we can quantify it. That's all from me. Thank you.
- 37 Tammy Davis: Okay, thank you Chris.
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1 Are there any other questions from the committee with Mr. Newsome, who's
2 representing the Gary NAACP branch?

3 Ellen Wu: This is Ellen Wu, could I just ask one more question? Hopefully it's not a long
4 one.

5 Tammy Davis: Yes, go ahead Ellen.

6 Ellen Wu: Yes, Mr. Newsome, I just wondered if you could briefly tell us about how NAACP
7 in Gary has been trying to address some of these issues.

8 TNewsome: Well, we've constantly gone out for voters registration and different events,
9 we've registered voters. But, I think it remains an issue of, not only getting
10 voters registered to vote, but actually seeing that they do vote, and that they're
11 taken to the polls in order to vote. And so, that's the piece that we're working
12 with so that people votes are not enfranchised, for a lack of a better way of
13 saying it.

14 Ellen Wu: Okay, thank you.

15 D ClemensBoyd: [crosstalk 00:34:29] This is Diane, I have one question for Mr. Newsome. Mr.
16 Newsome, has the NAACP in Gary taken on an outreach to inform the
17 community of the change in voting location?

18 TNewsome: Well, I'll be honest, to my knowledge, I do not know that, but I will follow up on
19 that.

20 D ClemensBoyd: Thank you for your testimony.

21 TNewsome: Thank you.

22 Chris Douglas: This is Chris Douglas. May I ask another question, this is Chris Douglas.

23 Tammy Davis: Go ahead Chris.

24 Chris Douglas: Thank you. And I invite the chairwoman to cut me off if this wanders too far off
25 field, but we've had in other testimony in other locations, a discussion of the
26 importance in civic education and the question I have for you, Mr. Newsome, is
27 as a resident of Gary, or are you a resident of Gary?

28 TNewsome: Yes, I am.

29 Chris Douglas: So, and if you have any perspective on this, can you advise the committee of
30 your observation of the degree to which children in schools are being taught

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- 1 about the democratic process and how to participate in it? The state of civic
2 education as you observe it, in Gary.
- 3 TNewsome: Well, I do work in the Gary school system, I am a Gary teacher. However, I work
4 at the middle school level, and not at the high school level, but we're trying to
5 get into the high schools and register children to vote, especially those who are
6 going to be eligible to vote, by the time they need to register. But, as far as
7 teaching the civics engagement in high school, I'm not privy to that information,
8 cause I don't get a chance to-
- 9 Chris Douglas: So, for consideration sake, I observed that I myself-
- 10 TNewsome: But, I'll tell you one thing, we're going to cause that to be a focus to reach these
11 young people in the high school so that they'll be ready.
- 12 Chris Douglas: I've observed in ... I mention this as comparison just so that you understand the
13 question whether you can observe, make any observations, I don't know
14 whether times have changed, but when I was in elementary school, which was a
15 public elementary school, we had exercises even about presidential elections,
16 and went through mock elections incorporating even the concept of the
17 electoral college, and then in the high school level we were shown even how to
18 vote on the actual voting machine. I'm curious whether that kind of education,
19 whether you are aware of or observed any kind of education like that. It sounds
20 to me like you're not personally aware-
- 21 TNewsome: Well, yes, we have done that in the past. However, I don't know if we're doing it
22 today. And when I came up, I came up through the civil rights era, so the very
23 big push for young people to get engaged in political action.
- 24 Chris Douglas: To the degree that you're understanding, now that you're yourself a teacher, to
25 the degree that you had helped the committee understand what kind of civics
26 training the children in Lake County and Gary get through the school system,
27 that would be valuable to us.
- 28 TNewsome: Well thank you. I think it would be valuable to all of us.
- 29 Tammy Davis: And just additionally to add, Chris, as a part of the outreach for this meeting, we
30 did send invitations to members of the Gary school board as they are now, and
31 there was an invitation to former superintendent Dr. Cheryl Pruitt, who plans to
32 submit written statements.
- 33 Chris Douglas: Great, and if Mr. Newsome can help us with that, and if the superintendent
34 understands that part of the question relates specifically to civics, that would be
35 really great.

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1 TNewsome: Thank you so much for the question. Thank you. Appreciate you. I thank you for
2 the input.

3 Tammy Davis: Are there any other questions for Mr. Newsome?
4 If not, thank you very much for your testimony.

5 TNewsome: Thank you.

6 Tammy Davis: Next we have to speak representing Senator Donnelly's office, Hodge Patel.

7 Hodge Patel: Good morning, my name is Hodge Patel, H-O-D-G-E and then the last name is
8 Patel, P-A-T-E-L. I am Senator Donnelly's State Director. I'm based in
9 Indianapolis, and I've been on his staff for about 11 years. And he asked me to
10 read this prepared statement, and it reads as follows:

11 "Dear Indiana Advisory Committee to the US Commission on Civil Rights,
12
13 When the Supreme Court struck down the Voting Rights Act pre-clearance
14 coverage formula in Shelby County vs. Holder, it determined a statute which, for
15 decades, protected Americans from voter discrimination. The Voting Rights Act
16 requires jurisdictions that have a history of voter discrimination to pre-clear
17 changes to their voting laws with the Department of Justice or US District Court
18 of the District of Columbia. In Shelby County, the Supreme Court invalidated the
19 coverage formula that determined which jurisdictions would be subject to the
20 pre-clearance requirements. As a result, until Congress enacts an updated
21 coverage formula, the Voting Rights Act pre-clearance requirement has no
22 effect.

23 At the federal level, we need to revitalize this important protection to help
24 ensure Americans can exercise their right to vote. In the Senate I supported the
25 Voting Rights Advancement Act, which would create a new coverage formula
26 and restore the full strength of the Voting Rights Act. Whether it be through the
27 Voting Rights Advancement Act or another piece of legislation, Congress needs
28 to have this important conversation about how to ensure the Voting Rights Act
29 provides strong protections for Americans across the country.

30 When people are denied the right to vote on a discriminatory basis, our
31 democracy is harmed. In addition, like many of you, I have been incredibly
32 concerned that Indiana's voter turn out in recent years has been among the
33 lowest in the nation. As your committee examines concerns regarding access to
34 voting in our state, I urge you to consider what more can be done to make
35 voting more convenient for all Hoosiers, and to make it easier to register to
vote.

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1 Several years ago, I had the privilege of being able to participate in the civil
 2 rights pilgrimage to Selma, Alabama, to mark the 50th anniversary of Bloody
 3 Sunday. Joining civil rights leaders in a walk across the Edmund Pettus bridge to
 4 reenact the historic march was a moving and meaningful experience. I'm
 5 inspired by the courageous men and women who have fought for the right to
 6 vote and those that continue to fight today to ensure that meaningful
 7 participation in our democracy is not denied on a discriminatory basis.

8 Thank you to the members of the committee for your participation in this
 9 important process of identifying and understanding barriers to voter access and
 10 participation in Indiana. I also want to acknowledge all of the people who have
 11 contributed feedback. I am hopeful that if we all work together and continue to
 12 be engaged, we can protect access to the rights of voters and find ways to make
 13 it easier for Hoosiers to exercise this important right.

14 Sincerely, Joe Donnelly, United States Senator."

15 Thank you.

16 Tammy Davis: Thank you, Mr. Patel. To the committee members, are there any follow up
 17 questions or comments that he could bring to the Senator?

18 D ClemensBoyd: Thank you for the statement.

19 Hodge Patel: Certainly, and this is gonna be, submitted, it already has been actually, the
 20 statement's been submitted, so, thank you for your time.

21 Tammy Davis: Thank you so much.

22 Chris Douglas: Thank you.

23 Tammy Davis: Okay. Next, we have Mr. Jim Harper.

24 Jim Harper: Good morning, my name is Jim Harper. I am from Valparaiso, Indiana in Porter
 25 County, not too far from here. I am an attorney there, I'm also a candidate for
 26 Indiana Secretary of State. I mention that only because it gives me the benefit of
 27 traveling around Indiana for the last several months and talking to people in
 28 different counties about the voting practices they have, and some of the issues
 29 they have in parts of our state as it pertains to access to the ballot. I know that
 30 one of the topics of this committee hearing is equal protection issues, and as
 31 I've gone around the state, there have been some things that I have seen that ...
 32 a couple of issues in particular that I'd like to talk about that raise equal
 33 protection issues for me, and I hope the committee will consider, because I do
 34 think that some of the things that make it hard for people to vote in certain
 35 localities fall disproportionately on certain parts of our state, and those tend to
 36 be the larger, more urban communities.

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1 I'm sure when the committee was in Indianapolis, you heard complaints and
2 concerns about the early voting situation in Indianapolis. Indiana is fortunate
3 enough to have a process whereby voters can go in person and vote before
4 election day, in the month running up to the election. Unfortunately our state
5 law gives, has allowed certain counties to have far fewer early voting sites than
6 others, so in Marion County, for instance, which is by far the largest county in
7 this state, there is one early voting site, and only one early voting site. If you go
8 to the counties around Marion County, they all have several early voting sites.
9 Up here in Lake County, fortunately, there are several early voting sites. In my
10 county of Porter County, which has about 20 percent of the population of
11 Marion County, there are five or six early voting sites. Also, of course, Marion
12 County happens to be, and I think the committee is right on trying to get the
13 statistics on this, and I don't have them, a county where more people are reliant
14 on public transportation, and so that trip across town or downtown to an early
15 voting site poses a disproportionate burden on a lot of Indianapolis voters.

16 The other issue that I think raises a particular equal protection concern, and that
17 I hope the committee will consider, is the precinct consolidation here in Lake
18 County. The mayor spoke very well to that. I think it is worth noting that the
19 precincts will be consolidated here in Lake County because of a state law that
20 applied only to Lake County. There are, that state law required the consolidation
21 of precincts if fewer than 600 voters, there are precincts across the State of
22 Indiana that had fewer than 600 voters, however, this law applied only to Lake
23 County and I think that, whether intentional or not, there's certainly is a
24 discriminatory impact to that law.

25 It's also worth noting that as the processes going forward now, state statute
26 directs the Secretary of State to develop a plan to consolidate those precincts,
27 and it does concern me that this certainly could happen without the input of
28 people here in Lake County who are directly impacted by the consolidation of
29 precincts. If we're going to consolidate these precincts, the very least, we need
30 to be working with people in our communities, in the communities that are
31 directly affected, to come up with a plan that poses the least disruption to
32 voters, and to make it as easy as possible for individuals who might have limited
33 access to transportation to get to the polls.

34 So I hope that the committee will consider, when they are looking at certain
35 practices around the state, consider the disproportionate impact that some of
36 those practices have on particular counties and how some parts of the state,
37 how it's frankly harder to vote in some parts of Indiana, than it is in other parts
38 of Indiana. And I thank you for giving me just a few minutes to share these
39 concerns with you.

40 Tammy Davis: Thank you, Mr. Harper. Are there any questions for Mr. Harper from any of the
41 committee members?

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- 1 Chris Douglas: This is Chris Douglas. I do have a question.
- 2 Tammy Davis: Alright, go ahead Chris.
- 3 Chris Douglas: So, Mr. Harper, as you have traveled around Indiana, on this question of equal
4 protection, I believe the charter of the committee on this score has a couple of
5 different angles, and one is certainly addressing discrimination along the lines of
6 identified classes, but it also speaks to advising the commission on issues of
7 equal protection of the law, which, and I'm not an attorney, which, I think, can
8 go beyond the question of the identified classes, and as you have circulated
9 about Indiana, the question I have is, does this question of equal protection, do
10 we have an issue in Indiana that is also income based. That is, that people of
11 different levels of income have, that the impact of the laws upon them with
12 regard to voting is disproportionate on different people based on that factor, let
13 alone the other that are already identified as classes.
- 14 Jim Harper: Yes, and I think that if you take the example of the Indianapolis early voting
15 situation, as an example, if you do not have a car, for instance, you're going to
16 have to pay the bus fare to get downtown. If you do have a car, you have to
17 drive to downtown Indianapolis and park, and parking, for instance, I'm
18 fortunate enough, I can to afford to park in downtown Indianapolis, but not
19 everybody can, right? That costs money, and, so I think just as simple as that,
20 the lines around the building, most days for early voting in Indianapolis, can you
21 afford to take a couple hours off of work? Do you even have the option of taking
22 a couple of hours off of work without losing your job? I think economic issues
23 are absolutely part and parcel of this, and I, that certainly can be, putting my
24 attorney hat on, I think that that can be an equal protection issue and I would
25 encourage the committee to pursue that.
- 26 Chris Douglas: Then, may I ask, we sort of discussed the equal protection issues as they apply
27 to our urban populations, can you observe any that apply to rural populations?
- 28 Jim Harper: Well, certainly, a lot of, I'm sorry.
- 29 Chris Douglas: Go ahead, no, please.
- 30 Jim Harper: Well, absolutely, and in a lot of rural communities, because the population is
31 much more sparse, for instance, the voting precincts are also ... it's harder for
32 people to get to precincts because they are further from their house. So, I can
33 walk from my house to my precinct, and that's not a case in a lot of rural
34 communities. Also, a lot of rural communities have adopted vote centers, and
35 I'm sure the committee has come across vote centers in other meetings, but if a
36 community adopts vote centers, it doesn't have to have as many polling places,
37 right? That can lead to further consolidation of polling places and so, whereas,
38 maybe it was a five minute drive to get to your polling place, well, now you have
39 to go to the county seat to get to the polling place, or you have to go to another

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- 1 township to get to a polling place, or whatever it may be, but the vote center
2 statute give local communities a lot more flexibility to consolidate polling
3 places. Rural communities, and I don't know the numbers on this, but have been
4 anecdotally my impression, more likely to adopt vote centers and that can make
5 it ... there's some upsides to vote centers and there are downsides, and one of
6 the downsides is that people have to travel further to get to their polling place.
- 7 Chris Douglas: Thank you.
- 8 Tammy Davis: Any other committee members for Mr. Harper?
- 9 Robert Dion: This is Robert Dion in Evansville.
- 10 Tammy Davis: Hi Robert. Go ahead, you have a question?
- 11 Robert Dion: Hey, I've got a question. I'm wondering if you have something to say about
12 provisional ballots, access to provisional ballots, training regarding provisional
13 ballots, and then, probably most importantly, the disposition after the election
14 of provisional ballots, when and how they get counted.
- 15 Jim Harper: Yeah, I'll be honest with you, Robert, I probably need to do a little more digging
16 on this. I will say that I think provisional ballots need to be of particular concern
17 right now, especially with the voter list maintenance, as it's called, the voter
18 purge, if you will, that occurred in Indiana last year. There are a lot of people
19 who, because of that, are gonna be casting provisional ballots this year, and
20 that's ... I haven't had as many conversations as I need to with people about
21 what the necessary reforms are there, but I think it's really important that we
22 have a well functioning provisional ballot process because I think you're gonna
23 see a bump in provisional ballots in the state this year.
- 24 Robert Dion: That's a good point to note. Thank you.
- 25 Tammy Davis: I'm glad you brought that up, Robert, because I received a call from a volleyball
26 coach, I believe she was in Whitfield, and she spoke of an example that went
27 back to the 2008 election, when she brought several of her volleyball students
28 to go vote, and one person did not have her identification, and she was not
29 allowed to vote, and she was not provided the opportunity to cast a provisional
30 ballot. And just from doing several voting registration drives, I hear too often
31 that those individuals working at the polling locations do not even offer that to
32 people that are coming in to vote. If there is a discrepancy between the name
33 on the polling book and the name on the ID, so education of the poll workers is
34 extremely critical in addition to making sure that the public communication that
35 goes on about voting lets them know that they can cast a provisional ballot. So I
36 thank you for bringing that up. Often times that's not part of our voter
37 education and outreach about educating people about the provisional ballot.

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- 1 Are there any other questions for Mr. Harper?
- 2 Chris Douglas: If there's time, this is Chris Douglas. I do have another questions.
- 3 Tammy Davis: Yes, a one-part question, Chris.
- 4 Chris Douglas: Sure. So, for Mr. Harper, we've heard testimony that Indiana conducted a purge
5 of it's voting rolls because of some past lawsuit that impelled states to clean up
6 their voting rolls and we didn't get much detail on that, and I wondered if that, if
7 you know, as an attorney and a candidate for Secretary of State, whether that
8 past lawsuit was challenging the imperative list to clean up voting rolls so that
9 people who had been denied the ability to vote, could vote, because they
10 weren't previously on the voting roll, and whether now, this purge is instead not
11 going after that aspect, and it is instead is an attempt to use that lawsuit as a
12 justification for attacking the question from a different angle, and that is getting
13 rid of registrations that might just even further impede the ability of people to
14 get onto the roll.
- 15 Jim Harper: I don't know the rational, I mean, I don't know enough about the background of
16 the prior litigation, and I do know the reason we have removed so many people
17 recently is because there's state law that they're acting more aggressive voter
18 list maintenance, as they call it, and part relying on the interstate cross check
19 system, but I don't, I can't tell you whether the motivations for that match up
20 with the public concerns that were raised about the lawsuit. I'm not, I can't
21 answer that for you.
- 22 Chris Douglas: Thank you.
- 23 Tammy Davis: Just as a quick follow up, the issue did come up in our public hearing in the
24 Indianapolis, and it was representative on both sides of the aisle that didn't
25 want to classify it as a purge. They wanted to classify it as making individuals
26 inactive. We don't care how you classify it, if you say somebody is not on the list
27 to vote, I don't care if you call it a purging, inactivation, removal, it's still is an
28 impediment to that individual to be able to vote. And what we didn't get, or at
29 least what I don't recall us getting, is when an individual is classified as inactive,
30 when they go to vote, what happens when they are classified as such. Are they
31 completely removed from the list, which is what we've been told, that if you're
32 inactive, you're not on the list, so when you show up to vote, they'll say, okay,
33 Jane Doe, you're not on the list to vote. And so, we would hope there would be
34 further investigation into exactly where this purging, or this classification of
35 inactivity, is taking our voters.
- 36 Jim Harper: And my conversation is that you can cast a provisional ballot-
- 37 Tammy Davis: If they're being made aware.

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- 1 Jim Harper: Right, if they're being made aware.
- 2 Tammy Davis: That they can cast the provisional ballot. Right.
- 3 Jim Harper: And that's probably the poll worker training point.
- 4 Tammy Davis: Exactly. Are there any other questions for Mr. Harper?
- 5 We have three more speakers, so we want to make sure we get to them. Thank
6 you, Mr. Harper.
- 7 Jim Harper: Thank you.
- 8 Tammy Davis: Our next speaker is Rosa Maria Rodriguez. Rosa?
- 9 Rosa Rodriguez: Again, my name is Rosa Maria Rodriguez, I'm running for state rep in the 2nd
10 District. When this venue was brought to my attention, I was home, and I had
11 no issues. Recently, there have been two activities in my community, and one in
12 Hammond, both times, I was not invited. Now, when I contacted Hammond,
13 they said, it was an oversight. I accepted the apology and I went on. East
14 Chicago just their candidates night, I wasn't invited. Now I want to give you a
15 little background. Twice, I have submitted documentation showing that Mr.
16 Harris, who is my opponent, does not live in our community. I put it before the
17 board, I was turned away because I did not have enough evidence, not that they
18 didn't believe me, I didn't have enough. I was able to prove that he had a
19 homestead, the first time he took the homestead off the day before we went
20 down for the hearing. He continues to live in Indianapolis and I will stand on my
21 insistence, he does not live in my community, he comes to visit. He got his
22 driver's license by giving a letter from his mother. Where us as individuals, we
23 have to bring all types of documentation, this individual was allowed to bring a
24 letter from his mother. It's all documented downstate.
- 25 My issue is that I have discriminated by not being invited. Both times, Mr. Harris
26 got the endorsement, and I recognize that normally they will endorse the
27 incumbent. I have an issue with that. I think it's an unfair process. Many times
28 individuals that are running, they're running on their merit, their passion, but
29 they're charged 200 dollars to speak, and I get it that there are bills to be paid.
30 But I think it's unfair. As a candidate that is running on her own money, I can
31 afford it, but there are those that are qualified and able and wanting to run, but
32 they don't have those fundings and they have to go out and raise money and
33 take money from other people that don't have that money. I think it's unfair.
34 But for me it's personal. The only ones, in my area, is Griffith, Hammond, East
35 Chicago, and Gary. Gary and Griffith invited me. I was endorsed in Griffith. Right
36 now, I'm getting ready to speak before Gary. But East Chicago and Hammond, I
37 feel purposely did not invite me to go speak to the audience that was going to
38 be present, and I was not allowed the opportunity to deliver my message.

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- 1 Tammy Davis: So, just as a point of clarification relative to addressing voting rights, and any
2 deprivation that you have experienced, are you speaking towards the topic as a
3 candidate that has been disenfranchised because it almost sounds as very
4 political party specific, rather than voting rights general specific. So I just want
5 to clarify and make sure that we stay on the topic.
- 6 Rosa Rodriguez: And here's my reason, had I had the opportunity to go speak and talk to the
7 voters, I would have had the chance for them to make a choice. But by not being
8 invited, they were disenfranchised just as much as I was. So it goes both ways.
9 So, again, ... go ahead.
- 10 Tammy Davis: Chris.
- 11 Chris Douglas: This is Chris Douglas calling in from Indianapolis. So, since I'm down in
12 Indianapolis, I don't have a clear picture of what processes you're talking about.
13 When you're saying for instance that these cities, Griffith, East Chicago, Gary
14 and Hammond, had events, are you referring to a particular political party in
15 those cities had events, or there were civic-
- 16 Rosa Rodriguez: Yes.
- 17 Chris Douglas: events that you were not invited? So it was a specific political party that had
18 events to which you were not invited.
- 19 Rosa Rodriguez: Right.
- 20 Chris Douglas: And then, furthermore, to attend those events, at least some of them, or all of
21 them, you'd have to pay 200 dollars in order to speak, is that correct?
- 22 Rosa Rodriguez: Yes. Right.
- 23 Chris Douglas: And you're-
- 24 Rosa Rodriguez: And again, go ahead, I'm sorry, go ahead.
- 25 Chris Douglas: Specifically then, the charter of this committee is then focused on voting rights
26 and impositions on them with respect to, resulting from discrimination on the
27 basis of several identified classes. Are you alleging discrimination on the basis of
28 one of those classes.
- 29 Rosa Rodriguez: I am.
- 30 Chris Douglas: Okay, and I apologize, I'm assuming, based on your name, that you're alleging
31 discrimination on the basis of ethnicity, is that correct, or?

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- 1 Rosa Rodriguez: Yes, and I'm a woman. I know my voice is low, that happens all the time.
- 2 Chris Douglas: It's a lovely voice.
- 3 Rosa Rodriguez: Thank you, thank you. And again, it's not just me, it's getting that messages, the
4 opportunity to other, for the voters to hear the message. By not, if you're gonna
5 have this venue, and these were precinct, Democratic precinct events, it wasn't
6 just a Bingo night. These were those individuals that we depend on to get the
7 message out. And they were not allowed to hear my message in two major
8 cities that I would represent.
- 9 Tammy Davis: Relative to me understanding the process, that that is a process that is led by a
10 political party, and it is not led by legislation, it's not covered by the Voting
11 Rights Act, it is covered by a policy of a specific party, which is really outside of
12 our scope, but it can be duly noted of the issue. The committee agree, or?
- 13 D ClemensBoyd: [crosstalk 01:07:13] Tammy I disagree. I do agree with your observation of that.
14 I think we would have to perform more analysis of the issues that she described
15 to see if it falls within the jurisdiction of the commission and I think I would be
16 hard pressed to say one way or the other right now. I would rather wait and
17 explore some of these issues that she's described, but I don't think its - and
18 maybe you need some clarifying questions, Chris, at this point, but I would just
19 propose that we heard the testimony and that we move on.
- 20 Rosa Rodriguez: Okay.
- 21 Tammy Davis: I would recommend that-
- 22 Chris Douglas: And I'll, I respect -
- 23 Tammy Davis: I'm only saying that, Chris, if I could interject for a second, given the amount of
24 time that we have left and that we have a couple of other speakers, and I know
25 that Miss Rodriguez has another commitment, I think that her testimony should
26 be noted, I do think that it is beyond the scope of what we are focused on,
27 relative to voting rights, however, it's a valid, it's a point of consideration. But, I
28 would like for us to note her testimony, and if we can continue to some of our
29 other speakers.
- 30 Rosa Rodriguez: And I appreciate that. I guess that, you know what, I was just shocked at what
31 occurred, and when you talked about what this venue was gonna be about, I
32 just thought, you know what, maybe somebody can hear me, because-
- 33 Chris Douglas: If I may speak up, I'm sorry, this is Chris Douglas.
- 34 Tammy Davis: Yeah, go ahead Chris.

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- 1 Chris Douglas: I'm comfortable with moving on, but I do think this. That voting rights also
2 includes the ability of populations to be able to vote for candidates that
3 represent them. And if the process isn't delivering candidates that can represent
4 people based on these classes, I think that that does have a voting rights
5 implication. I do think that it may be a little bit, that can be a big separate topic,
6 so I respect very much Miss Rodriguez coming and presenting, I think it does
7 have some relevance, but I also agree that we have a full plate.
- 8 Rosa Rodriguez: And I agree. Thank you so much for hearing me. Thank you.
- 9 Tammy Davis: Thank you, thank you very much.
- 10 Robert Dion: Thank you.
- 11 Tammy Davis: Alright. Next we have to speak is Darian Collins, on behalf of the Gary NAACP
12 branch.
- 13 Darian Collins: Hi. Hi, my name is Darian Collins, and I am the Assistant Secretary and [inaudible
14 01:10:15] chair for the Gary branch NAACP and I just wanted to make a few
15 comments in addition to Thomas Newsome regarding the Gary branch's activity
16 with voting.
- 17 Leading up to the election, the last presidential election, I was personally
18 involved in probably 10 to 12 voter registration drives that took place around
19 the county, most of them primarily concentrated in Gary and a few in
20 Merrillville. We successfully registered over 2,300 voters for that election, and
21 we actually took part in donating money and having vans that were licensed,
22 going around the City of Gary, picking up residents to take them to the polls.
23 This is something that the Gary branch does every major presidential election.
- 24 The way that we can track voting is, we really have it down to a science, and we
25 work with our national office on that. We have what's called the Voter
26 Activation Network System, and we know by house, by block, by precinct. We
27 don't know the person, per se, in that house, but we know the people in that
28 house that went to vote, and if there are so many people in that house that are
29 over the age of 18 that didn't vote, we are able to do that too. To see that data
30 too, so that helps us with our grassroots efforts to working with precinct
31 committeemen, working with local community activists and organizers, going
32 out doing door-to-door activity, getting people more engaged in voting. So, that
33 is one of the tenants of the NAACP, voter engagement, and voter registration,
34 and voter activism. So I just wanted to make those issues known.
- 35 Now, right now, we are very concerned with the, I call it a purge, I would have
36 to agree with Tammy, the purge that just took place. But I do understand that
37 people move, our state is losing residents, so we don't know if some of these
38 people still live in the state. I understand that purge. And honestly, I don't feel

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1 threatened by that. I feel like, if you ... I checked my registration the day it came
2 out. I checked it online, it's active and it's fine. I am trying to get people to
3 understand that voting, it's important. It's a right, it's a right that our community
4 did not have 60 years ago, that we fought very, very hard for and that we want
5 to keep available to everyone. But it's participatory and it's active, so I want
6 people to always check your registration. If you move, go online, or if you're not
7 tech savvy, get somebody who is to go online through their phone and check
8 your registration.

9 So one of the things that our branch is doing leading up to the primary and
10 leading up to the election is that we are vigorously working with people in the
11 area to say, hey, and we're gonna do this a lot through the churches. Have a 4th
12 Sunday, and 3rd Sunday every month where you are checking the registration of
13 your members, you're checking the registration of your neighbors and your
14 community. I hope that we will work with the precinct committeemen and
15 make sure that they are current on the technology that's out there as a way to
16 check registrations and to make sure that people are engaged. They're
17 registered.

18 Now that is different than the issue that the mayor brought up and that the
19 gentleman running for Secretary of State as far as access. I'm not gonna speak
20 on that, I'm not an expert in that area except to say that there should be wide
21 access to voting. It's a primary right of our society and so we shouldn't be
22 restricting it. If anything it should be where it is or more open, and that's not
23 anything based on data, that's just a belief.

24 That's really all that I wanted to say. I'm open to your questions.

25 Tammy Davis: Thank you Miss Collins. Any questions from any of the committee members?

26 I have one. Can you speak to any type of responses that you've had during your
27 get-out-the-vote efforts where any members of the NAACP or members of the
28 community has spoke about some of the challenges that they've had with trying
29 to get the vote?

30 Darian Collins: The main comment that I've heard from people, our senior community is very
31 committed to voting. They want to vote, they don't miss the opportunity to
32 vote, as long as they're healthy, but there are some challenges with trying to get
33 rides to the polls, or trying to make sure a family member or friend picks them
34 up. That's where we have stepped in with helping with our vans, our get-out-
35 the-vote. Last election, Linda Peterson's not here, but I think we had something
36 like three or four vans going around continuously all throughout the day, picking
37 up people to make sure they could get to the polls and vote.

38 We also encourage people to early vote, and again, it's a situation where we tell
39 people if you need a ride to vote, we tell them to call our office or call one of

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1 our representatives so that we can arrange to get them a ride to vote, but I
2 know there is an issue, especially with some of our seniors in the senior citizens
3 buildings, public transportation cuts off pretty early in Gary, I want to say six
4 o'clock, and then there is no public transportation on Sunday, well you can't
5 vote on Sunday, but there's very limited on Saturdays, and so, it can be a
6 challenge. But I know that our organization, and I'm sure maybe others, are
7 offering those rides to people to be able to get them to the polls and to get
8 them to Crown Pointe to early vote.

9 D ClemensBoyd: I have one question for Miss Collins. Miss Collins, in your effort to register
10 people in the Gary community, have you encountered individuals that have
11 been previously incarcerated, that it was their belief that they could no longer
12 vote?

13 Darian Collins: Yes. Yes. And we have dispelled that with them. What I do, and what a lot of us
14 do, we register you whether we know you are clear or not. When it gets to
15 Crown Pointe and gets sent in, if it's not processed ... and what I try to train my
16 people to do is not do the paper vote, do it online. Because then it's automatic,
17 you know within a few days if it's active and accepted. But yes, we have run into
18 a number of people who have been incarcerated and think they can't vote.

19 And, I'm glad that you asked that. I saw something where a young lady who was
20 on, a young lady in Texas, who was on probation with the court, she went to
21 vote during the 2016 election, and in Texas, I guess there's a law, that if you're
22 on probation you can't vote and she voted, and now she's been sentenced to
23 five years in jail. And so, we want to, people tend to read social media more
24 than they do the newspapers, and we want to make sure in our community that
25 we do have people that are on work release, we have people that are on
26 probation, we have people that are in different stages in the criminal justice
27 system. We want to be sure, as long as you are not incarcerated, but even if you
28 are still in the, that umbrella that you can still vote. We want to make sure that
29 our residents know that. And I don't think that's the case in Indiana, right? As
30 long as you are not incarcerated, if you are on release, you can vote, right?

31 D ClemensBoyd: That's my understanding.

32 Darian Collins: Okay, Yeah, okay, but yes, we do run into that.

33 Tammy Davis: Earlier, Mr. Patel brought up a very good point about mentioning the pre-
34 clearance and the Voting Rights Act and so, the State of Indiana are not covered
35 by that, and there are several other states that are not, and just because we're
36 not covered by the pre-clearance section, doesn't mean that we still don't
37 experience some of the same challenges that many states are experiencing,
38 meaning that before they come up with the new law, policy or process, they
39 have to get pre-cleared. That was the way it was. And so, Indiana, like other
40 states, do not have that, and so we, still a lot of things we have to keep our eyes

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1 on to make sure that the policies, like the purging, of going through the voting
2 polls, and the voting centers, the consolidation of our precincts, that those do
3 not provide impediment for people to vote.

4 Darian Collins: And we want to be sure that those prohibitive measures, like that law that's in
5 Texas, don't become a law here in Indiana. We don't want that here, and so, it's
6 on both sides. We want people to register the vote and value the vote, but on
7 the other side, we want to fight those things that are becoming impediments to
8 people having access to the vote.

9 Tammy Davis: Thank you Miss Collins. Any other questions for Miss Collins from the
10 committee?

11 Alright, thank you Miss Collins.

12 Darian Collins: Thank you, thank you so much.

13 Tammy Davis: Alright, our next speaker is attorney Barbara Bolling, who is the state
14 conference president of NAACP conference of branches.

15 Barbara Bolling: Thank you.

16 Tammy Davis: Attorney Bolling?

17 Barbara Bolling: I'm Barbara Bolling-Williams, State President of the National Association for the
18 Advancement of Colored People. I thank you for this opportunity to supplement
19 my prior testimony before this august body. I also welcome you generally to
20 Northwest Indiana, and particularly to my hometown of Gary. We now have the
21 benefit of meeting after the close of the most recent session of the Indiana
22 General Assembly. Given the bills that did pass, the most acclaimed was the
23 extension of alcohol sales, which now includes Sunday sales and a bill about
24 eyeball tattooing. A bill also passed that now allows residents in mental
25 institutions to determine their residency for purposes of voting. I will leave that
26 one up to you to ponder.

27 Certainly, for the residents of Gary, we are happy that the session ended
28 without the passage of House Bill 1315. This bill would have nullified the vote of
29 all Gary voters who went to the polls to cast their ballot for their school board.
30 The school board is an elected body chosen to govern the policy making of the
31 district affecting our children. Last year, the State of Indiana took over the
32 school district and appointed an emergency manager to handle the day to day
33 operations. This critically affected the superintendent, but the school board
34 remained in place. Where is the transparency and accountability? It is the
35 school board that is accountable to the voters. That will be taken away. The
36 emergency manager is accountable to no one but the state. House Bill 1315, if
37 passed, would have changed all of that. The school board would only have been

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1 allowed to meet quarterly. Apparently they meet monthly, the meetings are
2 broadcast over radio live, and televised, thus affording all the people an
3 opportunity to see and hear what is going on.

4 If House Bill 1315 had passed, they would have allowed the school board to only
5 meet quarterly, and the meeting would not have been televised or on radio.
6 This option does not afford parents the opportunity to question or challenge
7 decisions affecting their children. By the time they are made aware of a policy
8 change, it would have already been implemented. For our purposes, I believe
9 that it is also important to talk about what also did not pass.

10 The General Assembly had a real opportunity to move Indiana forward to a full
11 democracy for its citizens. A couple of bills that were introduced regarding
12 redistricting. We saw encouragement when it looked like a bill established
13 guidelines for drawing the district map would have done just that. We were
14 advocating for an independent body to draw the lines, but we were encouraged
15 and willing to settle for common standards at this time. Neither made it to the
16 governor's desk. Bills were introduced that would have expanded opportunities
17 for same day voter registrations, and expansion of voting hours, but they didn't
18 make it either.

19 Because so little meaningful work was accomplished during this past session,
20 the governor has called for a special session, something that has not been done
21 in almost 20 years. This has become a double edge sword. We nervously await
22 to see if they will take up House Bill 1315 in this special session. Precinct
23 consolidation continues to be a real threat to this county. The bill was directed
24 to the people who live in the cities of Gary, Hammond, and East Chicago. It's
25 only purpose is to dilute and suppress votes of people of color where the largest
26 concentration of this population exists in the state, second only to Marion
27 County. No such mandate has been made anywhere else in this state.

28 Let me leave you with the words of Rev. Dr. Martin Luther King, Jr., when he
29 said "A threat to democracy anywhere is a threat to democracy everywhere."
30 Thank you for hearing our voice.

31 Tammy Davis: Thank you, Attorney Bolling. Are there any questions from any of the committee
32 members?

33 D ClemensBoyd: Thank you for your testimony.

34 Barbara Bolling: Thank you.

35 Tammy Davis: Thank you. Oh, I'm sorry. Before you go, I just have one. Because I think it's
36 important to note from the historical perspective in regard to Gary and the
37 NAACP, with some of the voting rights issue. Several years ago there was a

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1 lawsuit that the NAACP was a part of, can you speak to that in general. Was it
2 the voting centers, or the voter ID?

3 Barbara Bolling: Well, we were a part of the voter ID bill, we're challenging it and trying to stop it
4 before it actually passed, I think that was about in 2005. Which of course it did
5 pass and it has since gone up and become the law of the land, and we had the
6 most oppressive voter ID bill in the country until the most recent thing. I think
7 somebody else has kind of knocked us from that infamous pedestal.

8 Following that, we also engaged in expanding our early voting sites. And there
9 was a challenge to close down the early voting sites in the cities of Gary,
10 Hammond and East Chicago, which would have rendered us to have only the
11 voting sites located in Crown Pointe to be our only sole voting site. We were
12 successful in challenging that and from that point, Gary, Hammond and East
13 Chicago were allowed to remain open, and to this day, it has now been
14 expanded to 14. But I do remind people that even with the expansion, there's
15 still only, one voting site in Gary, Hammond, and East Chicago, so I tell you,
16 where did all those other ones go? Okay, so, it benefited everyone.

17 Tammy Davis: Thank you, Attorney Bolling. Okay, we have two last persons, and then we will
18 have to wrap it up, but there is a letter that I need to read, given our time, from
19 Congressman Pete Visclosky's office, if his representative doesn't arrive.

20 So, we will have, is it William Schafer?

21 William Schafer: I'm not speaking [inaudible 01:27:07]

22 Tammy Davis: Oh, okay, you were signed check to speak, so do any of you want to speak?

23 Michaela Spange: I'm speaking.

24 Tammy Davis: Okay, and is it, can you pronounce your name?

25 Michaela Spange: Michaela

26 Tammy Davis: Michaela? And your last name?

27 Michaela Spange: Spangenburg.

28 Tammy Davis: Spangenburg? OK, can you come up here please? And they are from BLM Gary.

29 I'm sorry, can you spell your last name?

30 Michaela Spange: Sure. S-P-A-N-G-E-N-B-U-R-G. For the record, I'm not here on behalf of BLM
31 Gary. I just happen to be affiliated. People may know me from there. I'm just

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1 here today to talk about my experience just as a resident of Gary and someone
 2 who moved to Gary, tried to register to vote, and then had my registration to
 3 vote completely disappear, no record of it.

4 I moved to Gary in July, August of 2015, with my partner. Both of us registered
 5 to vote at an event at the Genesis Center. As folks may know, shortly after that,
 6 of course, the governor of Indiana had the state police seize registrations from
 7 both Marion County and Lake County. After I had heard about that, I went and
 8 tried to check because I hadn't received anything confirming my registration to
 9 vote. I'm from a state where it's just very ... I came from California, and in
 10 California it's very typical to just go to a community event, register to vote
 11 there, with the same types of forms that I registered at the Genesis Center, and
 12 things come to your house, things are copasetic. However, when I did it out
 13 here, nothing happened. After I heard about the registrations being seized, I
 14 then tried to check and see if I had been registered. I had not been, and at that
 15 point it was too late forme to try to re-register to vote. Because of that, I was
 16 not able to register, I was not able to vote in the presidential election.

17 I personally feel that that was very purposeful. Where they seized those
 18 registrations from, Marion and Lake Counties, I think it was very specifically to
 19 target people of color and voters of color and to make sure that the state swung
 20 to Trump instead of other ways that it might have gone as a notoriously pink
 21 state instead of a red state. And when I tried to get answers around this it was
 22 impossible for me to find out what had happened to my registration to vote. As
 23 someone who, at that time, was working 60 hours a week, what could I do? So, I
 24 just wanted to come by and speak today about an experience of general person
 25 trying to move to this area and be able to vote and basically having that vote
 26 stolen from me.

27 Tammy Davis: Thank you, Miss Spangenburg. Are there any questions from any committee
 28 members?

29 Chris Douglas: This is Chris Douglas. I just want to make sure that we have the contact
 30 information for this individual. I think that's a very compelling case. I think that
 31 Indiana's constitution is very clear about who ought to be able to vote, and what
 32 she accounts there I think is extremely disturbing.

33 Melissa: Can you spell out your email address just so that we can read it clearly?

34 Michaela Spange: It's M-E-K-M-E-K-H-I-L@gmail.com.

35 Melissa: Thank you very much.

36 Ellen Wu: This is Ellen Wu. Thank you for your testimony, Miss Spangenburg. May I just
 37 ask, if you recall, when you try to find out what happened to your vote who did
 38 you contact?

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1 Michaela Spange: As I recall, I tried to call some number, I don't remember, obviously it was a very
 2 long time ago. I think I tried to call somebody, but I didn't have anything to tell
 3 them, and they didn't have anything to tell me besides from the deadline to
 4 register has already passed. On their end, they just said there was no evidence
 5 that I had registered to vote. But you know, if you literally take people's
 6 registrations before they're actually put into the system, I guess that's what
 7 happens. I'd also like to note that there is, to my knowledge, no public
 8 accountability around what happened with that. I mean, it was in the news that
 9 those were seized, but when you try to get any answers around that, and
 10 there's no reporting on what happened afterward too.

11 Chris Douglas: This is Chris Douglas. Is there, if one were to investigate this, are you confident
 12 that the registrations that were associated with the Genesis Center were among
 13 those seized. Do we have any ability to confirm that beyond your own ... let's
 14 say, I don't believe this is true, but let's supposed that the registrations fallen
 15 behind a copier at the Genesis Center. I don't believe that's likely the case, but
 16 what we want to determine is any evidence that we can that your registration
 17 was part of a block that was subject to this action.

18 Michaela Spange: Well, both mine and my partner's, my spouses registration, we both have the
 19 same exact problem, we both registered at the same exact time, both at the
 20 Genesis Center, I think possibly with two different, at two different tables there,
 21 or something. Aside from that, I personally have nothing, but I also don't have
 22 the resources to investigate things, so.

23 Chris Douglas: Right, right, thank you.

24 Tammy Davis: Any other questions from committee members?

25 Alright, thank you so much for your testimony, Miss Spangenburg. And just for
 26 clarification, I'm not familiar with BLM Gary, what does-

27 Michaela Spange: Black Lives Matter Gary.

28 Tammy Davis: Oh, wow. Can I take that off my [inaudible 01:33:48]? It could mean anything,
 29 everybody, that's why I asked for clarification. Alright. [inaudible 01:34:01]

30 Okay. Alright, so, we're wrapping up, but I wanna to read the statement that
 31 was emailed to me from Congressman Visclosky's office.

32 "Dear Members of the Indiana Advisory Committee:

33 I write today to thank the members of the Indiana Advisory Committee to the
 34 US Commission on Civil Rights for your dedicated efforts to improve the ability
 35 of all citizens to exercise their fundamental right to vote. I deeply appreciate
 36 your efforts to host community forums throughout our state, including here in

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1 the City of Gary, and to be available to listen to concerns that any person may
2 have about their voting experience, whether it be any challenges people may
3 have with respect to obtaining documents to vote, or having access to voting
4 materials or information, or in traveling to polling locations. I believe that the
5 right to vote is one of the greatest privileges of our democracy. It is also a great
6 responsibility. We all must continue to work to ensure that our elections are fair
7 and accessible so that every eligible voter can participate in our electoral
8 process.

9 At the federal level, I am a supporter and co-sponsor of HR 2978, the Voting
10 Rights Advancement Act of 2017. Introduced by Representative Terri Sewell of
11 Alabama, this legislation would aim to counteract the Supreme Court decision in
12 Shelby v. Holder that undermined key provisions of the Voting Rights Act of
13 1965. I am also a supporter and co-sponsor of HR 12, the Voter Empowerment
14 Act of 2017. Introduced by Representative John Lewis from Georgia, this
15 legislation would aim to encourage increased voter participation by allowing
16 states to send voter registration applications to eligible individuals by requiring
17 states to provide for online and same day voter registration procedures and by
18 permitting universities to act as voter registration agencies for students.

19 Thank you again for your dedicated work and for holding this forum today in the
20 City of Gary. Together, through open communication at forums such as this, and
21 the efforts of the advisory committee and the commission on civil rights, we can
22 all continue to work to improve the ability of all individuals to exercise their
23 essential right to vote and preserve the integrity and foundation of our
24 democracy.

25 Sincerely, Peter J. Visclosky, Member of Congress"

26 And we'll receive a hard copy as well. Are there any other comments from the
27 committee?

28 Seeing none, at this time,

29 Chris Douglas: Nope.

30 Tammy Davis: Oh, go ahead Chris.

31 Chris Douglas: No, I was just saying no and thanking everybody for attending who is there and
32 for providing input.

33 Ellen Wu: Likewise, thank you.

34 Tammy Davis: I want to, alright, I want to thank everyone who that came forward to give
35 testimony. I want to make sure we didn't leave anybody else out. Is there

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1 anybody else who would want to make a comment or provide testimony at this
2 time.

3 Alright, we want to thank our partners and collaborators for helping make this a
4 success. Many thanks to the Gary NAACP branch, I see representatives from the
5 Hammond NAACP branch, League of Women Voters, our state conference of
6 branches of Indiana NAACP, Sigma Gamma Rho sorority, Delta Sigma Theta, our
7 school board members, and our churches. Thank you all. The meeting is
8 adjourned.

9 [inaudible 01:38:28]

10 Do you want it part of the record? Okay. Alright. Is that all we need to do,
11 Melissa? I think that's it. Okay, go ahead.

12 Speaker 15: I just wanted to make a quick announcement. What I tried to pass out is that-

13



• 420 North 4th Street, Lafayette, IN 47901-2213
• Phone (765) 423-2691

• E-Mail: lum@lumserve.org
• Web: www.lumserve.org

March 2, 2018

United States Commission on Civil rights
Midwestern Regional Office
55 West Monroe
Suite 410
Chicago, IL 60603

Good afternoon,

Thank you for the opportunity to provide these witten comments re: voting rights in Indiana.

The Lafayette Urban Ministry is an organization of 46 Greater Lafayette, Indiana area churches. We serve as both a social safety net and advocate for low-income families and children in our community. You may find out more about our organization by visiting our website at www.lumserve.org

We routinely offer voter on-site voter registration to our many clients while they are in our office waiting for services. One of those services is our ID Clinic.

Having valid picture ID is basic to everyone's economic well-being. Without it, one can't secure employment, housing or even public assistance benefits. Without a valid photo ID one can't renew or obtain a driver's license, open a bank account or turn on the water, heat or electric utilities for your home.

Unfortunately, in our post 9/11 world, securing valid ID is a difficult task layered with many levels of heavily scrutinized checks and balances. For those who don't have the resources or wherewithal to navigate this process the consequences can be dire.

At the Lafayette Urban Ministry, our expert ID Clinic staff has developed the knowledge and skill base to navigate the complex rules at state and local ID generating offices, not only in Indiana, but throughout the country. It is a much-needed service that has a real impact in helping individuals to improve their stations in life.

And one important additional benefit of LUM's work is that securing a valid photo ID allows an individual to exercise their constitutional franchise to vote in public elections.

It is our expert observation that Indiana's Voter ID laws enacted by the Republican led Indiana General Assembly in 2005 continues to seriously and significantly suppress the turnout of low-income voters in our community and across the state of Indiana.

The problem is primarily with the barriers and burdens that Indiana has put in place which make it significantly more costly and burdensome to apply for and receive a state issued ID. Even though the ID may, in some cases, be received free of charge, the birth certificate and other documents needed to obtain the ID do have a cost.

Provisional ballots are burdensome as well, requiring voters without IDs to not only make a trip to the polling place, but to their county seat in order for their vote to count.

In 2007 there were 400,000 adults of voting age without state issued IDs. In a typical year, the Lafayette Urban Ministry's ID Clinic has 150 people request help in obtaining for their IDs and paying for the birth certificates and other documents needed to receive their IDs. Many of these voters are in a Catch 22 where they need a birth certificate to receive a state issued ID, but need a state issued ID to receive their birth certificate. We will not be successful in navigating the system for as many as half of our clients.

Prior to the laws enactment there was not a single case of voter impersonation fraud in Indiana's history. The law was clearly a solution looking for a problem, enacted to suppress the turnout of Democrat voters.

Retired U.S. 7th Circuit Judge Richard A. Posner, author of the landmark decision upholding Indiana's voter ID law, now says he was wrong. In his new book "Reflections on Judging" the 1981 Ronald Reagan appointment and one of the most distinguished judges in the land says "I plead guilty to having written the majority opinion." He noted that the Indiana law in the Crawford v. Marion County case is "a type of law now widely regarded as a means of voter suppression rather than fraud prevention."

In a recent Huffington Post interview, when asked whether the court had gotten the ruling wrong, Judge Posner responded: "Yes. Absolutely." Back in 2007, he said, "there hadn't been that much activity in the way of voter identification," and "we weren't really given strong indications that requiring additional voter identification would actually disenfranchise people entitled to vote." The member of the three-judge panel who dissented from the majority decision, Terrance T. Evans, "was right," Judge Posner said.

Retired Supreme Court Justice Stevens, who voted with the 6-3 majority to uphold Indiana's Voter ID law also has regrets about his vote. He has shared that due to the newness of the issue at the time, all the facts and information needed to make an informed decision may not have been

presented to the court.

I wonder if with the passage of time, former Governor Mitch Daniels, who signed the voter ID bill into law, will share similar remorse for disenfranchising Hoosier voters? I wonder if those state legislators who championed this partisan attack on voting rights will ever have the political courage to undo their mistake?

Again, thank you for the opportunity to share our comments.

Sincerely,

A handwritten signature in black ink that reads "Joe Micon". The signature is stylized with a large, looping initial "J" and a long, sweeping underline that extends to the right.

Joe Micon
Executive Director



**TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS
BEFORE THE INDIANA ADVISORY COMMITTEE TO THE
UNITED STATES COMMISSION ON CIVIL RIGHTS
APRIL 2018**

Submitted By:

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I. Introduction

Thank you for the opportunity to submit written comments in conjunction with the recent series of hearings regarding voting rights in Indiana. Chicago Lawyers' Committee for Civil Rights (Chicago Lawyers' Committee) has operated as Chicago's preeminent nonprofit, nonpartisan civil rights legal organization since 1969, and we work to secure racial equity and economic opportunity for all. We provide legal representation through partnerships with nearly 50 member law firms. We also collaborate with grassroots organizations and diverse coalitions to implement community-based solutions that advance civil rights.

The Voting Rights Project of Chicago Lawyers' Committee was established to eliminate, reduce, and prevent barriers to voting for communities of color and low-income residents in Illinois. We advocate for expanded voter access for all communities, regardless of race, ethnicity, socioeconomic, or disability status. A major component of our work is Election Protection, the nation's largest non-partisan voter protection program, which operates the 866-OUR-VOTE hotline and supports companion lines at 888-VE-Y-VOTA and 888-API-VOTE. Election Protection hotline and poll watcher volunteers have answered thousands of voter questions and resolved numerous problems at the polls. That puts us in a unique position to understand voter access barriers, investigate and remedy problematic practices, provide information on voting rights, and advocate for necessary reforms. While our work is primarily focused in Illinois, we also have experience answering calls from Indiana voters to 866-OUR-VOTE, and we are proud to partner with Indiana-based nonpartisan organizations on various voting rights initiatives.



For the November 2016 general election, we trained and deployed hundreds of volunteer attorneys as part of our Election Protection program. Regardless of their diverse political views, our volunteers stand united in the belief that all eligible voters should have access to the polls. Together we answered over 300 calls from voters in Indiana during that election and helped voters with a range of issues, from routine questions about polling place location and hours to more serious reports of voter intimidation and exclusion from the polls. This testimony summarizes concerns that arose before, during, and after election day.

II. Halting of Voting in Marion County and Other Takeaways from the 2016 Election

As mentioned above, most Indiana voters who called our Election Protection hotline during the November 2016 election had inquiries about the location and hours of their polling place, the status of their registration, the type of identification required to vote, and other run-of-the mill issues. Some voters did report more serious problems, such as voter intimidation. On Election Day, we worked with voters and election officials to address many of these concerns.

One issue that we observed, however, especially continues to trouble us and must be resolved before the 2018 elections. On November 8, 2016, a number of Indiana voters called to report that poll workers had halted voting in their precincts, in order to process absentee ballot information—presumably to comply with Indiana Code 3-11.5-4-0.5 or other portions of the Indiana election code, which requires that Marion County count absentee ballots at a central location. This resulted in numerous voters being turned away from the polls as well as delays in election administration. Below is a summary of the relevant calls that we received and our follow-up communications with Marion County election authorities:

- At 7:30 a.m. EST, a caller reported that poll workers at Indianapolis Fire Department Station #16 at 5555 N. Illinois St. stopped voting to process absentee ballots. The voter had been in line for one hour and stood behind about forty other voters. Multiple voters left.
- At 7:39 a.m., a caller reported that poll workers stopped voting at Indian Lake Country Club at 10502 E. 75th St. to count absentee ballots. The voter had been waiting more than one hour. The voter was African American.
- At 7:43 a.m., a caller reported that a polling place at 82nd and Ditch had the wrong poll book. The timing and the description suggests that the polling place may have been updating its rolls based on absentee ballots. The caller reported that the polling place was in an African-American neighborhood.
- At 9:19 a.m., a voter reported that a poll worker stopped voting at Spring Mill Elementary School at 8250 Spring Mill Road to count absentee ballots fifteen minutes after opening. 600 people were in line. The head of the precinct said that they would do this multiple



times throughout the day and that they would close again at 10:00 a.m. The poll was closed for about one hour. The voter was African American.

- At 12:00 p.m., a voter reported that poll workers at Precinct 35 in Liberty Park Elementary at 8425 E. Raymond Street stopped voting to count absentee ballots. The voter waited an hour while the absentee ballots were counted and then left.
- At 12:00 p.m., a voter reported that election workers had apparently stopped voting at New Beginnings Fellowship Church at 2125 N. German Church Road because no one was entering or exiting the polling place.
- At 12:10 p.m., a voter reported that poll workers at Precinct 5 in Broad Ripple Park Family Center stopped voting for 20 minutes to count absentee ballots.
- At 12:52 p.m., a voter reported that Indianapolis Fire Department Station #4 at 8404 Ditch Road did not receive registration information for all voters until 6:45 a.m. and that voters in the precinct had to wait for delivery of these records, causing significant delays. The timing suggests that the precinct may have been awaiting delivery of absentee ballot materials.

After receiving this information, Chicago Lawyers' Committee staff and pro bono attorneys called the Marion County Election Board and spoke with Scott Hohl, chief financial officer of the Marion County Information Services Agency and former chief of staff in the Marion County Clerk's Office. Mr. Hohl stated that the workers were checking the absentee ballots against the poll books as required by law. We asked him to instruct the workers to perform these checks after the polls had closed. Mr. Hohl responded that doing so might delay reporting election results to the media. We then asked him to prioritize voters waiting in line over completing these checks. When confronted with our information that polling places had shut down, Mr. Hohl first stated that this had not occurred, but then suggested that, if a polling place was short on staff, the workers may have stopped voting to process this information. Mr. Hohl reported that absentee information was dispatched twice on Election Day: couriers were dispatched between 6:00 a.m. and 7:00 a.m. and around noon.

The timing of these reports—before work and over the lunch hour, during peak voting hours, particularly for voters of color and low-income voters—has caused concern among voters and advocates about possible voter suppression. Shortly after Election Day, Chicago Lawyers' Committee contacted Common Cause Indiana about this troubling disenfranchisement of voters. We subsequently learned that Marion County had specifically trained its poll workers to prioritize checking absentee ballots over election-day voters. As Common Cause Indiana has stated to this Advisory Committee, we sympathize with the difficult position that Indiana state law forced Marion County election administrators to take. Nonetheless, this procedure violates the rights of election-day voters to cast a ballot without undue burden and must be corrected before the 2018 elections.



As mentioned above, most of the inquiries that we received from Indiana voters in 2016 were about routine matters, such as regarding voter registration and identification needed to vote. However, it is important to note that Indiana laws regarding voter registration, voter ID, and other aspects of elections prevented us from meaningfully helping many such voters resolve these issues on Election Day – resulting in otherwise eligible voters being prevented from voting. Because we also answer calls from voters in Illinois, a state where voters need not present photo identification to vote and where voters have access to Election Day Registration and a variety of other registration options, we noticed the stark difference in access to the polls for Indiana versus Illinois voters.

III. Indiana State Police Investigation of Voter-Registration Group

Access to and fairness of voter registration systems continue to be a major issue in Indiana elections. Throughout the history of our country and the Midwest, voter registration bureaucracies have been put into place specifically to disenfranchise voters of color, including freed slaves and immigrant citizens, in addition to low-income voters of all backgrounds. Vestiges of these discriminatory systems still disenfranchise voters to this day, and improving voter registration access is an important step in healing from this legacy of institutional racism. In addition to obstacles such as early registration deadlines and limited registration options, recent rhetoric perpetuating myths of widespread voter fraud can discourage or even altogether stop voter registration and participation.

The Indiana Voter Registration Project (IVRP) first came to our attention on September 15, 2016, when the Indiana State Police announced an investigation into the group for voter registration fraud in Marion and Hendricks Counties.¹ At that time, Indiana State Police had identified “several instances” of voter registration forms with “missing, incomplete and incorrect information.” It assigned six detectives to the case. Indiana Secretary of State Connie Lawson also warned Indiana voters “to be vigilant and to check their voter registrations to ensure they are accurate,” because the IVRP had “turned in forged voter registration applications” and “was altering already registered voter’s information.”²

One week later, IVRP sent a letter to Secretary Lawson and county election officials that threatened legal action.³ The letter accused Secretary Lawson of “mount[ing] a false and defamatory campaign against the [IVRP], that includes—not only public statements to the news media and

¹ Ind. State Police, “Indiana State Police Investigate Allegation of Fraudulent Voter Registration,” (Sept. 15, 2016), http://www.in.gov/activecalendar/EventList.aspx?fromdate=9/15/2016&todate=9/15/2016&display=Day&type=public&eventid=252693&view=EventDetails&information_id=251502&print=print.

² Ind. Secretary of State, “Fraudulent voter registration applications identified in Indiana Voters urged to check their voter registration information,” (Sept. 15, 2016), <https://calendar.in.gov/site/sos/event/sos-fraudulent-voter-registration-applications-identified-in-indiana-voters-urged-to-check-their-voter-registration-information/>.

³ September 20, 2016 Letter from Patriot Majority USA to Ind. Secretary of State.



others falsely accusing the Project of engaging in registration fraud—but also harassment of the Project’s canvassers.” IVRP also emphasized that, under Indiana law, it was required to submit all voter-registration forms it received, and had “alert[ed] the appropriate elections officials as to any concerns about these forms identified.”

On October 4, 2016, Indiana State Police executed a search warrant on the IVRP’s offices and announced that it would be expanding its investigation from two to nine counties.⁴ Two days later, IVRP announced that it had formally requested that the United States Department of Justice initiate an investigation into efforts by Indiana public officials to suppress African American votes. Indiana State Police then announced that its investigation had expanded to 57 counties (over half the counties in Indiana).⁵

Chicago Lawyers’ Committee did not take a position on the merits of the investigation. However, we were concerned that, whether or not IVRP had violated Indiana law, the investigation might delay registration of thousands of eligible voters. While Indiana State Police investigators speculated that the number of fraudulent registrations might be in the hundreds (a significant number, to be sure), IVRP had submitted many more registrations—over 45,000. We were also concerned that Indiana State Police’s investigation might hamper other, legitimate voter registration efforts and incite fear among voters, particularly because the investigation had been expanded from 2 to 57 counties just a week before the registration deadline.

On October 7, 2016, the national Lawyers’ Committee for Civil Rights Under Law urged Secretary Lawson to publicly address these concerns in advance of the October 11 registration deadline.⁶ In particular, they asked that she identify how many of the 45,000 voter registrations remain to be processed and communicate her procedures for doing so.

Several weeks later, Indiana State Police Superintendent Doug Carter announced that he had “directed all available resources within the Indiana State Police to assist with this investigation,” including more than two dozen detectives.⁷ He expressed “the highest level of confidence there

⁴ Ind. State Police, “Indiana Voter Registration Project Investigation Expands to Multiple Indiana Counties,” (Oct. 4, 2016), http://www.in.gov/activecalendar/EventList.aspx?fromdate=10/4/2016&todate=10/4/2016&display=Day&type=public&eventidn=252923&view=EventDetails&information_id=251746&print=print.

⁵ Ind. State Police, “UPDATE - Indiana Voter Registration Project Investigation Expands from Nine to 57 of Indiana’s 92 Counties,” (Oct. 6, 2016), http://www.in.gov/activecalendar/EventList.aspx?fromdate=10/1/2016&todate=11/30/2016&display=&type=public&eventidn=253004&view=EventDetails&information_id=251836&print=print.

⁶ October 7, 2016 Letter from Lawyers’ Committee for Civil Rights Under Law to Ind. Secretary of State, attached to this testimony.

⁷ Ind. State Police, “Statement from Indiana State Police Superintendent Doug Carter Regarding Possible Voter Fraud,” (Oct. 19, 2016), http://in.gov/activecalendar/EventList.aspx?fromdate=10/19/2016&todate=10/19/2016&display=Day&type=public&eventidn=253362&view=EventDetails&information_id=252100&print=print.



will be County Prosecutors in multiple Indiana counties who will hold a number of people criminally responsible for their actions.”

To date, it appears that only Marion County has initiated a prosecution, charging twelve IVRP employees and the group itself with submitting falsified voter registration applications.⁸ Importantly, Marion County Prosecutor Terry Curry emphasized that the indictment did not allege “a widespread effort to infringe voters, intentionally register ineligible individuals, or to impact the election.” Instead, it alleged that the falsified applications resulted from “a bad business practice,” specifically, a quota system that pressured employees to obtain registrations.

The case appears to be still pending. All eligible voters in Indiana deserve access to fair registration procedures by state and local authorities, as well as much greater clarity about processing of their registrations.

IV. Recent Legal Challenges to Indiana Voting Laws

In the past year, Indiana civil rights and voting rights organizations have filed multiple legal challenges to Indiana voting laws. One case alleges that an Indiana state law amended in 2017 violates the National Voter Registration Act (NVRA) and is causing the erroneous removal of voters from the rolls. Another case alleges that Marion County’s failure to approve satellite early voting locations creates an unequal system of early voting. Yet another case seeks to invalidate a law requiring Lake County to consolidate precincts with under 600 active voters. Both cases allege that voters of color are disproportionately burdened and, in some cases, disenfranchised. Chicago Lawyers’ Committee is not a party to these cases but is monitoring them closely.

1. Common Cause Indiana v. Lawson, No. 17-cv-03936 (S.D. Ind. Oct. 27, 2017)

As Common Cause Indiana, American Civil Liberties Union of Indiana, and others have set forth to this Advisory Committee, Indiana passed Senate Enrolled Act 442 in 2017 to amend Indiana Code § 3-7-38.2-5⁹. Lawsuits filed by these and other organizations allege that the amended law violates the National Voter Registration Act (NVRA) and causes voters to be erroneously removed from the rolls, disenfranchising voters of color in particular. The state’s process for removing voters from the rolls places too heavy a reliance on the Interstate Crosscheck Program (Crosscheck), a voter list comparison program that has been widely criticized¹⁰, namely for (1) its

⁸ Vanessa Williams, “Indiana Voter Registration Group, Employees Charged with Falsifying Applications,” THE WASHINGTON POST (June 9, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/06/09/indiana-voter-registration-group-employees-charged-with-falsifying-applications/?utm_term=.6c61af385c39.

⁹ Ind. Public Law 74:2017 (“SEA 442”), effective July 1, 2017.

¹⁰ See, e.g., November 15, 2017 Testimony by Chicago Lawyers’ Committee for Civil Rights, Common Cause Illinois, and Chicago Votes Before Illinois Senate Telecommunications & Information Technology Committee &



significant security flaws and (2) its inaccurate “matches” that have high numbers of false positives, causing voters to be incorrectly purged from voter rolls – particularly harming voters of color because of the way that Crosscheck “matches” are generated. To make matters worse, the newly amended Indiana law allows immediate removal from the rolls following an unreliable Crosscheck match, depriving voters of the safeguards that the NVRA requires. While voter list maintenance is important to our democracy, it is just as important for list maintenance to be conducted in a fair and legally compliant manner. Another federal lawsuit, NAACP & League of Women Voters of Indiana v. Lawson, No. 17-02897 (S.D. Ind. Aug. 23, 2017), also challenges this problematic Indiana law (Senate Enrolled Act 442).

2. Common Cause Indiana v. Marion County Election Bd., No. 17-cv-01388-SEB-TAB (S.D. Ind. May 2, 2017)

Early voting has long been a critical tool for fair access to the polls, particularly for communities of color and low-income communities. Indiana election law permits early voting at the office of the circuit court clerk and any satellite location established by the county election board.¹¹ Satellite locations must be unanimously approved.¹²

The Marion County Election Board approved two satellite locations for the 2008 general election. Of the Marion County citizens who voted in that election, 19.3% cast early ballots. The election board did not approve satellite locations for the 2012 and 2016 general elections, however, and the number of Marion County citizens who voted early dropped to 10.8% and 12.7% respectively, with a corresponding decrease in the overall number of citizens who voted in those elections.¹³ It also did not approve satellite locations for the midterm elections in 2010 and 2014. In each instance, a majority of the Board voted to approve satellite early voting locations, but the Republican member voted against, defeating the resolution.

After the 2016 election, Common Cause Indiana and the NAACP sued the Marion County Election Board and the Indiana Secretary of State. Failing to approve satellite early voting locations, they allege, violates due process and creates an unequal system of early voting. They also allege that

Illinois House Elections & Campaign Finance Committee, <https://www.clccrul.org/s/2017-11-15-Crosscheck-Testimony-Chicago-Lawyers-Committee.pdf>.

¹¹ See Indiana Code § 3-11-10-26; Indiana Code § 3-11-10-26.3.

¹² Indiana Code § 3-11-10-26.3(b).

¹³ The complaint in this case alleges that failing to approve satellite locations for early voting caused (1) “long lines and wait times for early voting at the office of the circuit court clerk in Indianapolis,” (2) “a dramatic decrease in the number of voters who cast an early in-person absentee vote in 2012 and 2016 as compared to the numbers of voters who voted early in 2008 when satellite locations were approved and used,” and (3) an increase in the number of voters who “cast an in-person ballot on Election Day, thus resulting in increased lines and wait times at precinct polling places.” Complaint ¶ 27. It also observes that “in each county contiguous to Marion County where satellite sites have been approved,” voter turnout has “steadily increased.” Complaint ¶ 30.



this unequal system of early voting disproportionately harms African Americans, because Marion County has the highest percentage of African Americans of any county in Indiana.

Statistics alleged in the complaint reveal a stark contrast between Marion and its neighboring counties. For the 2016 election, Marion County had just one early voting site for its 699,709 registered voters. By contrast, Hamilton County had three, a ratio of one early voting site for every 76,929 voters; Hendricks County had four, a ratio of one early voting site for every 27,476 registered voters; and Johnson County had six, a ratio of one early voting site for every 17,924 registered voters.

Plaintiffs moved for a preliminary injunction in January 2018. A hearing on the motion is scheduled for April.

3. Indiana NAACP v. Lawson, No. 17-cv-00334 (N.D. Ind. Aug. 9, 2017)

In May 2017, the Indiana General Assembly enacted S.B. 220, known as the Lake County Precinct Consolidation Law. The law mandates that Lake County consolidate “small precincts,” defined as precincts with fewer than 600 active voters as of November 1, 2016. Ind. Code Ann. § 3-6-5.2-10. Approximately 294 of Lake County’s 522 precincts are eligible for consolidation.

The NAACP and six Lake County residents have challenged the law under the 14th Amendment’s equal protection clause, the First Amendment, and Section 2 of the federal Voting Rights Act. They argue that consolidating precincts in Lake County—and only Lake County—denies Lake County voters equal protection of the law by unequally burdening their right to vote without any rational basis. It burdens the right to vote, they allege, by causing voter confusion, imposing search costs, forcing voters to travel longer distances to vote, and increasing wait times at the polls.¹⁴ The General Assembly justified these burdens as necessary to reduce election administration costs, but no legislation has been introduced to consolidate the 1,345 “small precincts” in counties other than Lake County.

Plaintiffs also claim that the law disproportionately burdens voters of color, because Lake County has one of Indiana’s largest minority populations, and within Lake County, consolidation would fall most heavily on precincts in three majority-minority cities: Gary, East Chicago, and Hammond. Moreover, according to the complaint, the social and economic conditions of these cities—caused in part by historical and ongoing discrimination—will exacerbate the effects of these burdens. Plaintiffs also outline the harms to low-income voters caused by polling place consolidation.

¹⁴ Additionally, if a voter goes to the wrong precinct and casts a provisional ballot, under Indiana law, the ballot will not be counted, resulting in disenfranchisement. Plaintiffs allege that “[s]tudies of the effects of precinct consolidation in other states have shown that the rate of out-of-precinct voting is 40% higher for voters who experience a change in polling place; turnout was lower among those voters whose polling locations changed; and out-of-precinct voting is far more common among minorities than among non-Hispanic Whites.” Compl. ¶ 125.



Although election administration costs are important to consider when determining whether to consolidate polling places, cost-cutting must not trump the rights of voters who have been disenfranchised in the past and continue to face exclusion from our election systems even today.

A bench trial in this case is currently scheduled for September 2018.

V. Conclusions and Recommendations

Numerous voting barriers can be resolved when lines of communication are open between advocates, voters, election officials, and legislators who formulate election laws and policies. In order to improve election administration, it is essential for election officials and government leaders to earn the trust of voters. Renewed rhetoric about widespread voter fraud threatens to weaken such trust and intimidate voters. We urge government leaders to denounce restrictive voting laws and myths of widespread voter fraud.

Voting rights are intertwined with civil rights more broadly. In our civil rights work, we see that barriers to voting and civic engagement can cause or exacerbate barriers to education, housing, economic stability, and safety. And for community members facing inequities, it is difficult for communities to achieve meaningful change unless there is a mechanism to elect candidates of their choice and hold government leaders accountable. While we focused our remarks today on a few examples of barriers to voter access, we urge the United States Commission on Civil Rights to keep in mind the broader systemic barriers to voting and civic engagement and to continue working with federal agencies, local election administrators and government leaders, and community advocates to address them.

Voting rights are fundamental, not only as an inherently vital part of our democratic system, but also as a means for self-empowerment and self-determination for all of our communities. It is imperative that our laws reflect our values and that our government actively seeks to ensure the full and fair right to vote for all eligible voters.



October 7, 2016

Secretary of State Connie Lawson
Office of the Indiana Secretary of State
200 W. Washington St., Room 201
Indianapolis, IN 46204
Email: constituent@sos.IN.gov
Fax: 317-233-3283

Co-Chairs

Donald J. Rosenberg
John M. Nonna

Secretary

Eleanor H. Smith

Treasurer

Andrew W. Kentz

General Counsel

Nicholas T. Christakos

Secretary Lawson:

We write in regard to the Indiana State Police's ("ISP") ongoing investigation into voter registrations submitted by the Indiana Voter Registration Project ("IVRP"). We are an independent, nonpartisan, nonprofit legal organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in the civil rights efforts of that day. Today, we lead the nation's largest nonpartisan voter assistance hotline with the Election Protection coalition. We are concerned that the timing of this investigation could negatively affect the ability of eligible voters to exercise their right to vote in the upcoming election.

Your office first publicly announced the investigation on September 15, 2016. On Tuesday of this week, ISP announced that it had raided the IVRP's offices—seizing computers, employee cellphones, and registration paperwork—and would be expanding its investigation from two to nine counties. Two days later, IVRP announced that it had formally requested that the U.S. Department of Justice initiate an investigation into "efforts by public officials of the State of Indiana to suppress tens of thousands of African American votes." At 6:13 PM on the same day, ISP reported that its investigation had expanded to 57 counties.

We are not in a position to know whether IVRP has engaged in any actions that violate Indiana law. Instead, we write out of concern that eligible voter registrants not be disenfranchised. It is our understanding that the IVRP has submitted over 45,000 voter registrations for processing. This week, ISP reported that investigators believe that "the total of potentially fraudulent records may be in the hundreds." Even if this number is accurate, the number of legitimate registrations submitted by the IVRP would be over 44,000. No eligible Hoosier should be prevented from registering because of delays caused by this investigation. Both state and federal law require state officials to accept voter registration forms completed by eligible citizens in a timely manner. The Indiana code provides that county voter registration offices "shall send a notice to each person from whom the county voter registration office receives a voter registration application." Ind.



Code § 3-7-33-5(b). If the applicant is eligible to vote, the notice must state the name of the precinct in which the voter is registered and the address of the voter's polling place. *Id.* If the county voter registration office denies the application, the notice must include the reasons for denial. *Id.* The Indiana Voter Registration Handbook instructs, furthermore, that county voter registration offices must attempt to cure defects in voter registration applications. It is a felony for a public official to knowingly omit to perform a duty imposed by Indiana election law. *See Id.* 3-14-4-3.

Co-Chairs

Donald J. Rosenberg
John M. Nonna

Secretary

Eleanor H. Smith

Treasurer

Andrew W. Kentz

General Counsel

Nicholas T. Christakos

In addition, under the National Voter Registration Act, State' are required to "ensure that any eligible applicant is registered to vote in an election" provided that the valid registration form is submitted by, or on behalf of the applicant, by the registration deadline. 52 U.S.C.A. § 20507. The NVRA also mandates that the State must "require the appropriate State election official to send notice to each applicant of the disposition of the application. *Id.* Absent specific evidence that a form – whether submitted by IVRP or anybody else – is invalid, county registrars must process voter registration forms received on or before the October 11 deadline so that those applicants are registered and able to vote in the November 8 election.

In addition, we are troubled by the timing of ISP's actions. Election fraud criminal investigations taking place a week before the registration deadline could foreseeably create a chilling effect, hampering legitimate voting registration efforts and inciting fear among voters. While the State of Indiana has an obligation to guard against fraudulent voter registration, we are concerned that the investigation currently underway could inadvertently disenfranchise the tens of thousands of eligible voters who registered through the IVRP. Even if procedures are in place for preventing disenfranchisement, these voters are doubtless feeling confusion and worry about the status of their registrations. We thus urge you to publicly address these concerns in advance of the October 11 registration deadline. In particular, we ask that you identify how many of the 45,000 voter registrations remain to be processed and communicate your procedures for doing so.

In a press release this week, ISP emphasized that it is "dedicated to protecting the right for all citizens to be able to cast a valid vote regardless of political party affiliation." We ask that the State of Indiana make good on that commitment by providing needed guidance to the tens of thousands of eligible voters who submitted registrations through the Indiana Voter Registration Project.



**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W**

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Suite 400
Washington, DC 20005-2124

Appendix B.2_Gandhi and Owens Statement
Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

You can reach me at (202) 662-8346 or mblanco@lawyerscommittee.org to discuss any of the concerns raised in this letter. Thank you for your attention and anticipated cooperation.

Sincerely,

Marcia Johnson-Blanco
Co-Director, Voting Rights Project
Lawyers' Committee for Civil Rights Under Law

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SECRETARY OF STATE
STATE OF INDIANA
200 W. WASHINGTON STREET, INDIANAPOLIS, IN 46204

April 3, 2018

Ms. Dianne Clements-Boyd, Chair
Indiana Advisory Committee to the
United States Commission on Civil Rights
55 West Monroe Street, Suite 410
Chicago, IL 60603

Re: March 2, 2018 Public Meeting on Status of Voting Rights in Indiana -- submission of
comments and materials

Dear Ms. Clements-Boyd,

The office of the Indiana Secretary of State herewith respectfully submits comments and
materials for inclusion in the record of the Indiana Advisory Committee's March 2nd
2018 public hearing on voting rights in Indiana.

Questions or requests for additional information from the Advisory Committee or staff
are most welcome.

Truly yours,


Jerold A. Bonnet, General Counsel
Office of the Indiana Secretary of State
200 W. Washington St, Room 201
Indianapolis, IN 46204
Office: 317-232-6534
Email: jbonnet@sos.in.gov

Enc.

Office of the Indiana Secretary of State of Indiana
March 2, 2018 Public Meeting on Status of Voting Rights in Indiana – submission of
comments and materials

Comments:

1. The office of the Indiana Secretary of State does not believe, and is unaware of conclusive evidence that Election Day poll opening and closing hours observed in Indiana coupled with opportunities for early voting and absentee voting by mail and travelling board either serve as an impediment to voting or have a discriminatory impact.
2. The office of the Indiana Secretary of State does not believe that the unavailability of “no-excuse” absentee voting by mail either serves as an impediment to voting or has a discriminatory impact.
3. The office of the Indiana Secretary of State does not believe that the unavailability “time off for voting” either serves as an impediment to voting or has a discriminatory impact.
4. The office of the Indiana Secretary of State believes that the best source of information concerning matters subject to ongoing litigation are the court records and official findings and determinations from those proceedings (i.e.: voter ID, voter list maintenance, early voting locations, redistricting and partisan gerrymandering, precinct consolidation etc.).
5. The office of the Indiana Secretary of State believes that there has been a great deal of misinformation and exaggeration concerning routine, NVRA mandated voter list maintenance (see **Attachments A and B**).
6. The office of the Indiana Secretary of State disagrees with blanket assessments that voter fraud does not exist or is not a legitimate matter of public concern (see **Attachment C**).
7. The office of the Indiana Secretary of State believes that county clerks and election boards are best suited to determine and agree on places for voting and that neither past nor future opportunities for early voting in Marin County serve as an impediment to voting or have a discriminatory impact (see **Attachment D**).
8. Dr. Bernard Fraga did not respond to the office’s request (September, 2017) for the research report and data upon which is assessments of the racial impact of voting administration are based. Published research on the impacts of voting regulations on turnout reviewed by the office appear to be inconclusive and even contradictory (see **Attachment E**).

9. Based on the prevailing U.S. Census determination, Indiana does not contain any language minority jurisdictions. However in recognition of the state's Latino population, Spanish language voting guides, notices and forms are produced and distributed throughout the state (see **Attachment F**).
10. At the hearing Ms. Karen Celestino-Horseman implied that in Indiana a serious sex offender could not vote in-person at the polls and indicated that in Indiana a serious sex offender cannot vote absentee by mail. That statement was incorrect. In Indiana a serious sex offender (assuming they are not incarcerated) may vote early in-person at the office of their county clerk, and on Election Day at their precinct poll, except in a case where such person lives in a county where the only precinct poll available is a school. Serious sex offenders are specifically permitted to vote absentee by mail however (see IC 3-11-19-24(a)(12) and IC 35-42-4-14(b)).

Additional Materials:

1. 2018 Indiana Voter Registration Guidebook – (at the request of the Committee)
<http://www.in.gov/sos/elections/files/2018%20VR%20Guidebook.FINAL.pdf>
2. 2018 Indiana Election Administrator's Manual
<http://www.in.gov/sos/elections/files/2018%20Election%20Administrator%27s%20Manual.FINAL.pdf>
3. Attachment A – NVRA Voter List Maintenance Activity.
4. Attachment B – Interstate Voter Registration Crosscheck Activity.
5. Attachment C – Voter Registration Fraud and Abuse.
6. Attachment D – Early In-Person Absentee Voting in Marion County Indiana.
7. Attachment E – Voter Turnout and Minority Status.
8. Attachment F – Spanish Language Voting Guides, Notices and Forms.

Office of the Indiana Secretary of State of Indiana
March 2, 2018 Public Meeting on Status of Voting Rights in Indiana – submission of
comments and materials

Attachment A

1. Media report “Indiana cancels nearly half a million voter registrations” 3/18/2017.
2. WNDU report “28,000 voter registrations”cancelled” in St. Joseph Co. “2/8/2018”.
3. Correspondence from the office of the Indiana Secretary of State to WNDU pointing out inaccuracies in reports of mass cancellations of voter registrations.
4. Correspondence from WNDU apologizing for inaccurate, misleading reporting on voter registration maintenance.
5. NVRA notice from Judicial Watch – alleging Indiana counties were failing to maintain accurate voter registration lists.
6. Lists of 58 Indiana counties where voter registration was 90% or more than the voting eligible population (circa June, 2014).
7. Correspondence from the U.S. Justice Department alleging that many Indiana counties were failing to perform routine voter list maintenance in violation of the NVRA (12/7/2011).
8. Press release announcing dismissal of NVRA litigation and Indiana’s commitment to performing routine voter list maintenance.

Indiana cancels nearly half a million voter registrations

- [Dan Carden dan.carden@nwi.com, 317-637-9078](mailto:dan.carden@nwi.com)

Daniel Carden

- Apr 18, 2017

INDIANAPOLIS — Nearly half a million individuals have been deleted from Indiana's list of registered voters since the Nov. 8, 2016, general election.

Republican Secretary of State Connie Lawson said Tuesday that the removals are part of an ongoing effort to clean up the state's voter records after she determined her predecessors largely ignored the time-consuming task.

"I discovered voter list maintenance was not being done statewide and many outdated voter registrations were still on the rolls," Lawson said. "I made it a priority to ensure our state's list was accurate and that we followed the federal law."

Across Indiana, 481,235 registered voters were purged, or about 10 percent of the state's total.

That includes 28,887 in Lake County, 10,240 in Porter County, 9,425 in LaPorte County, 1,542 in Jasper County and 1,431 in Newton County, according to the secretary of state's office.

The process began in 2014 when Lawson mailed a postcard to every registered voter in the state.

Those returned as undeliverable were sent a second, forwardable postcard in an effort to verify the voter still lived at the address in his or her registration record.

Hoosiers receiving the second postcard who did not take action to update their voter record, or those that again could not be delivered, were marked as "inactive" in the state's voter database.

"Inactive" voters who did not cast a ballot in a 2014, 2015 or 2016 election, or take any action to correct their address, had their registrations cancelled after not voting in November.

Lawson said most individuals who did not participate in those elections should still be registered, unless the state or their county received information the voter has died, is disqualified or no longer living at their address.

Hoosiers can verify and update their voter registration record online at IndianaVoters.com.

"Updating these records will help us create a more accurate picture of voter turnout for the state, which has been reported as inaccurately low due to the large number of outdated registrations, while protecting the integrity of our elections," Lawson said.

Indeed, Indiana's 58 percent voter turnout in the November election would have been 65 percent if the purged individuals were not counted as registered voters.

That would have given Indiana the 16th highest turnout in the country instead of the eighth lowest.

Reader reaction: Love 13; Funny 6; Wow 6; Sad 8; Angry 39

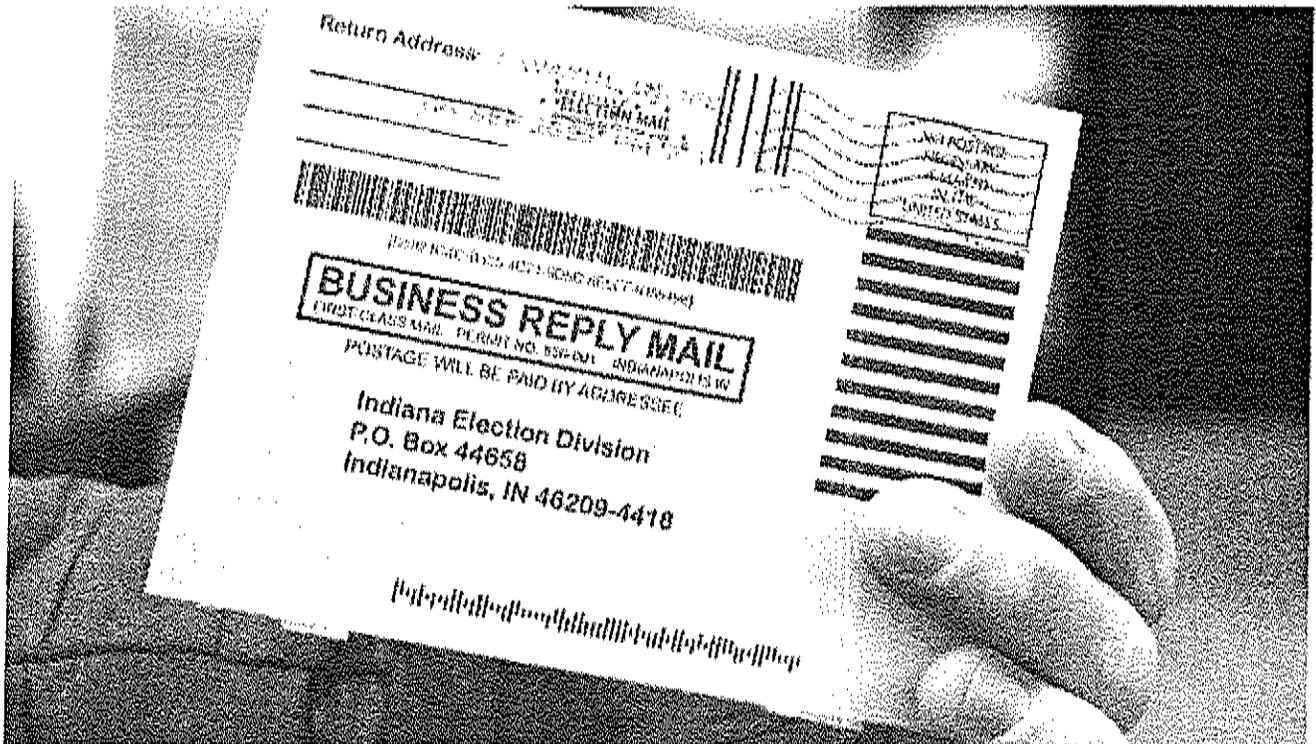
28,000 voter registrations 'cancelled' in St. Joseph Co.

By Mark Peterson |

Posted: Thu 5:06 PM, Feb 08, 2018 |

Updated: Thu 10:16 PM, Feb 08, 2018

The next election could be full of surprises. Not necessarily those associated with counting the ballots—but casting them.



"It is my belief that it is a large number of people that will try to come out and vote this year, and will find out on Election Day that they're no longer allowed to vote," said Jason Critchlow, Chairman of the St. Joseph County Democratic Party.

Some 481,000 voter registration forms were 'cancelled' or tossed out last year across the State of Indiana. About 50,000 of them were in St. Joseph and Elkhart counties combined.

While it's presumed the forms belonged to people who moved, died, or had a name change, the fear is some belonged to folks who just weren't paying attention.

The first potential pitfall in the voter registration purging process is that it was carried out entirely through snail mail.

"It was a post card that people would get in the mail and it would ask you if you were still currently residing at that address, and if you didn't return it back, you got two (additional) mailings sent to you and then if you didn't respond to those, then you were considered a cancelled voter," explained Arielle Brandy, Democratic Party member of the St. Joseph County Voter Registration Board.

In St. Joseph County alone some 28,000 people who failed to respond to the post cards and failed to cast a ballot in the past two general elections lost their voting privileges at the polls in the purge at a time when folks are arguably more focused on phoning things in.

"There are lots of people out there that received this post card in the mail, didn't think it was something that that they didn't look at it they didn't pay attention close to it. My generation, it's a cultural thing it's a generational thing, you know my generation, I can't remember the last time I sent a piece of actual mail from my house, actually put a stamp on something," said Critchlow.

Since Indiana law requires to register a full 30 days before an election Critchlow fears people pinched in the purge won't discover their sidelined status until it's too late. "It is my belief that it is a large number of people that will try to come out and vote this year, and will find out on Election Day that they're no longer allowed to vote."

Checking your voter registration status online is quick and easy at:

indianavoters.in.gov

Indiana's 2018 Primary Election will take place on May 8th and the deadline to register to vote is April 9th.

St. Joseph County Democrats have obtained a list of the people who were purged and plan to go door to door to offer to re-register them in March.

One of the reasons for cleaning up the voter registration rolls is to get a clearer picture of voter turnout. Some have long complained that there are a lot of people on the voter registration rolls who have since moved elsewhere and are skewing the stats.

For instance, Indiana had a 58 percent voter turnout in November 2016, which was eighth lowest in the nation.

When the figure is adjusted with post purge data, the turnout rises to 65 percent and ranks as the 16th highest in the nation.

The purge is also being challenged in federal court in a civil suit filed by the NAACP and the League of Women Voters.

Bonnet, Jerry (SOS)

From: Bonnet, Jerry (SOS)
Sent: Friday, February 09, 2018 5:23 PM
To: 'Mark.peterson@wndu.com'
Subject: WNDU's alarming report on St. Joseph County voter registrations (aired 2/8/2018)
Attachments: 2014 Indiana voter registration data clean up case settlement.pdf; 2014 Indiana counties with over 100 pct voter registration.pdf; 2016 Indiana_Election_Day_Handbook.FINAL.pdf; 2016 Indiana Election Day Protection Handbook.pdf; 2008 Lake County voter registration fraud CNN report.pdf; 2017 Indianapolis voter registration fraud case.pdf; 2012 Indiana complaints about poor voter list maintenance.pdf

Importance: High

Dear Mr. Peterson,

I've been asked to contact you and your news reporting organization on behalf of the Office of the Indiana Secretary of State concerning your 2/8/2018 story/news report titled "28,000 voter registrations "cancelled" in St. Joseph County.

It's my impression is that your report contains numerous specific inaccuracies, the overall conclusions are inaccurate and misleading, and the depth of your research or investigation appears to have been limited to the St. Joseph Democratic party chairman and a Democratic party representative on the county board of voter registration – neither of whom presents as being particularly well informed or unbiased.

Mark, it's not my intention to beat you up about this, but rather to inform you in a friendly way, that the Indiana Secretary of State and the bi-partisan Indiana Election Division are happy to provide accurate information about federal and state law pertaining to state and county voter list management and maintenance, longstanding federal and state voting safeguards (that operate to prevent the type of voter disenfranchisement described in your report) and, important historical perspectives on the state of Indiana's long term effort to centralize, modernize and standardize voter registration recordkeeping. (I will point out that the image in your video of the St. Joseph County Voter Registration Board's mechanical file cabinet crammed with tens or hundreds of thousands of index cards is accurate and illustrative of antiquated, problematic recordkeeping practices that the State has been working for nearly 15 years to improve upon).

First, by way of background - after the problematic, unsettling 2000 Presidential Election (Bush v. Gore) it was widely recognized that voter registration records throughout the nation (mostly managed and maintained by county level boards) had not been well maintained - and were significantly bloated with inaccurate, obsolete and duplicate registrations. This situation was due in part to federal initiatives (such as the National Voter Registration Act (NVRA) commonly known as the "Motor-Voter Act") that made it quite easy for individuals to register to vote (and along with mandated assistance of government agencies, even be registered multiple times at multiple locations). Such laws simultaneously made the cancellation of an obsolete or duplicate voter registration a relatively difficult, time-consuming and bureaucratic exercise for county voter registration offices.

I've attached a few documents to illustrate the problem of inaccurate, oversubscribed voter registration rolls :3 letters of complaint complaints about bloated voter registration rolls; an exhibit from a resulting lawsuit showing that as late as 2014 St. Joseph was one of 14 Indiana counties that that had more active voter

registrations on file then their total voting eligible population (yes, apparently *over 100%* of St. Joseph county residents age 18 and above were registered to vote); reports of “over” voter registration fraud and; a press release about the settlement of a case alleging inadequate voter list maintenance, and detailing Indiana’s commitment to improving the accuracy of the state’s voter registration rolls).

Second, I would like you to be aware that there is a common misconception among people not familiar with the technical aspects of voter registration administration and recordkeeping, that identifying and removing inaccurate, erroneous, obsolete or duplicate voter registration is functionally equivalent to “cancelling” or purging a living, breathing person’s voter registration (also, perhaps at some point you might explain to me why the headline of your story has the word *cancelled* in quotation marks). Voter rights groups and political parties tend to perpetuate this misperception – for political aims. I don’t think I can emphasize strongly enough however, that the removal of an obsolete or duplicate voter registration record is *not* tantamount to cancelling an eligible person’s registration or jeopardizing anyone’s right to vote.

Also I think your sources have misled you on the notion that large numbers of voters are sent post cards which if not taken notice of and responded to, will result in the cancellation of their registration. What’s missing, and important to understand, is that the *only instance* where a notice is sent that a person would need to respond to, is where mail being sent to the address of record is being returned as undeliverable or the voter registration office learns that a person has left a forwarding address. Thus, the only person who can expect to receive a confirmation notice that needs to be responded to is one who’s postal address doesn’t match up with their voter registration record – a situation with ought to be corrected.

Virtually 100% of the registrations cancelled as a result of voter list maintenance activity (i.e. “28,000 voter registration record in St. Joseph County”) are *obsolete*, which is to say that the person named on the registration record has died or moved away, or the registration is a duplicate. The voter registration records that are being cleaned up (or “purged” to use the Democratic party’s preferred pejorative) do not represent or match up to, actual living, eligible voters. During the modern era of voter list up keeping (over the past 15 years or so) the Secretary of State, bi-partisan state Election Division and voter rights groups have carefully monitored Indiana’s updating of county voter registration records (pursuant to federal law, Indiana law, and litigation consent agreements resulting from lawsuits over counties’ poor voter registration record keeping). Cases where people show up at the polls to find that their voter registration has been cancelled as the result of the state’s regular (bi-partisan administered) voter list maintenance are virtually nonexistent. (“I’m sorry Virginia, but voter list maintenance is not a grand conspiracy to disenfranchise eligible voters).

Another inaccuracy in your report I’d like to address is that in the *unlikely event* that an *actual, eligible voter’s* registration is erroneously cancelled (which can *only* be done by the *local* bi-partisan voter registration board) such voter *has not lost their right to vote!* If at any time (including 30 days before an election, when ordinary voter registration is closed) a person should learn that their registration has been cancelled due to confusion or mistake, the only thing they need to do to reinstate their registration is contact their local voter registration office and confirm or update their address. In the alternative, a person whose registration has been cancelled can simply go to an early voting center, or go to their poll on Election Day, or apply for an absentee ballot – any of which will lead to the reinstatement of their registration. No documentation or proof of their address is required. As unbelievable as it may sound, if a person discovers *on Election Day, at the polls*, that their registration was cancelled, all they need to do to reinstate their registration and to vote, is sign a form confirming their address.

You don’t have to take my word - that a person whose registration has been canceled’ s *right to vote* is soundly protected and observed in Indiana. Just take a look at the *2016 Indiana Election Day Handbook*, pages 14 – 17 (copy attached) and the *Indiana Election Day Protection Handbook*, pages 4 and 5 (copy attached). You may also contact the Indiana Election Division (a bi-partisan state agency independent of the office of the Secretary

of State) to confirm Hooser's protected voting rights, to verify information you may receive from local political party representatives, or to learn more generally about voter registration and voter list maintenance in Indiana:

Indiana Election Division

J. Bradley King, Co-Director (R) (317) 233-0929 email: bjking@iec.in.gov

Angelia Nussmeyer, Co-Director (D) (317) 232-3940 email: anussmeyer@iec.in.gov

Finally – about that lawsuit in Marion County you mention. The voter list maintenance activity your report addresses - that the St. Joseph County Democratic party chairman is trying to raise hackles about, is not the subject of the referenced lawsuit. If you had inquired, you would note that the lawsuit is about a 2017 legislative enactment concerning a different voter registration list maintenance program. The lawsuit is about a technical aspect of a multi-state compact for comparison of computer voter registration data to identify voters who may have moved from one state to another without updating their voter registration. On account of the relatively recent legislative change and the upcoming Primacy Election, the Indiana Election Division decided to suspend that program for the time being so that the legal review would not interfere with the upcoming Primary Election. So that case is not a factor in the issue you were investigating and reporting on. Happy to discuss these matters anytime - at your convenience.

Thanks and truly yours,

Jerry Bonnet

Jerold A. Bonnet, General Counsel
Office of the Indiana Secretary of State

Office: 317-232-6534 email: jbonnet@sos.in.gov

Bonnet, Jerry (SOS)

From: Mark Peterson <mark.peterson@wndu.com>
Sent: Wednesday, February 14, 2018 10:11 AM
To: Bonnet, Jerry (SOS)
Subject: RE: WNDU's alarming report on St. Joseph County voter registrations (aired 2/8/2018)

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

I'm still reeling over how things went so awry on February 8, 2018.

I apologize.

The assignment seemed simple enough. The St. Joseph County Democratic Chairman sent a Facebook message asking volunteers to attend a meeting that evening.

It stated that 28,000 voter registrations had been cancelled. He obtained the correlating documentation and was planning to go door to door to said residences on a date in March in response.

We thought 28,000 seemed noteworthy, and perhaps it was an opportunity well in advance of the Primary Election to remind everyone to check their voter registration status and to remind anyone who changed residences of the need to update their registrations.

The flaw in our plan was that the chairman would apparently be unable to state a single legitimate reason for his concerns (as per your correspondence) and his plans to double check the purge in a way that he believed had not happened up to this point.

Ironically, our attempt to promote participation in the democratic process was construed as an assault on its integrity.

There was no malice: that was not our intent.

As for permission to use our piece in any public hearing format that would have to come from station management.

Sincerely
Mark Peterson
News Reporter
WNDU TV



**Judicial
Watch**
*Because no one
is above the law!*

RECEIVED
IND. SECRETARY OF STATE

FEB 09 2012

February 6, 2012

VIA CERTIFIED MAIL

The Honorable Charlie White
Indiana Secretary of State
200 W. Washington St., Room 201
Indianapolis, IN 46204

Mr. J. Bradley King
Mr. Trent Deckard
Co-Directors, Indiana Election Division
302 W. Washington St., Room E204
Indianapolis, IN 46204

**Re: Apparent Violations of Section 8 of the National Voter Registration Act,
42 U.S.C. § 1973gg-6**

Dear Secretary White and Messrs. King and Deckard:

We believe that Indiana is in violation of Section 8 of the National Voter Registration Act ("NVRA"), which requires States to maintain accurate lists of eligible voters for use in conducting federal elections.¹ As you may know, Congress enacted Section 8 of the NVRA to protect the integrity of the electoral process. This letter serves as advance notice that a lawsuit may be brought against you if you do not take action to correct this apparent violation of Section 8 within 90 days. We hope that litigation will not be necessary.

Allowing the names of ineligible voters to remain on the voting rolls harms the integrity of the electoral process and undermines voter confidence in the legitimacy of elections. As the U.S. Supreme Court has stated, "[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process."²

As the top election officials in Indiana, it is your responsibility under federal law to conduct a program that reasonably ensures that the lists of eligible voters are accurate. The following information explains the NVRA violations we allege and the remedial steps you need to take to comply with the law.

¹ NVRA Section 8 responsibility lies with the State of Indiana and your offices. *See US v. State of Indiana*, Consent Decree and Order, ¶ 4, Civil Action No. 1:06-cv-1000-RLY-TAB (S.D. Ind., July 5, 2006); *See also* Ind. Code §§ 3-7-11-1, 3-7-11-2.

² *Crawford et al. v. Marion County Election Board*, 553 US 181, 197 (2008).

The Honorable Charlie White
 Messrs. J. Bradley King and Mr. Trent Deckard
 February 6, 2012
 Page 2

1. The NVRA Requires You to Undertake Reasonable Efforts to Maintain Accurate Lists of Eligible Registered Voters

Under Section 8 of the NVRA, Indiana is required to undertake a uniform, nondiscriminatory voter registration list maintenance program that complies with the Voting Rights Act of 1965. 42 U.S.C. § 1973gg-6(b)(1). Specifically, Section 8 requires Indiana to make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters due to (A) "the death of the registrant" or (B) "a change in the residence of the registrant" to a place outside the jurisdiction in which he or she is registered. 42 U.S.C. § 1973gg-6(a)(4).

This obligation is augmented by the Help America Vote Act ("HAVA"), which among other duties, requires Indiana to "ensure that voter registration records in the State are accurate and updated regularly" and undertake a "system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters." 42 U.S.C. §§ 15483(a)(4) and 15483(a)(4)(A). HAVA also requires that Indiana coordinate its computerized statewide voter registration list with State agency death records. 42 U.S.C. § 15483(a)(2)(A)(ii)(II).

Programs to remove the names of ineligible voters from the official lists of eligible voters must be completed 90 days prior to a primary or general election. 42 U.S.C. § 1973gg-6(c)(2)(A). This year's general election is on November 6, so your list systematic maintenance programs must be both implemented and completed by **August 8, 2012**.

2. Indiana Does Not Appear to be Maintaining Accurate Eligible Voter Lists

Based on our review of 2010 census data and publicly available eligible voter lists, it appears that Indiana is failing to comply with the voter registration list maintenance requirements of Section 8 of the NVRA. For example, it appears that there are more people registered to vote in the Counties of Scott, Spencer, Crawford, Warrick, Tipton, Franklin, Warren, Union, Orange, Brown, Hancock, and Newton than there are adults over the age of 18 living in each county. Even if every single eligible voter in these counties were registered to vote, the eligible voter lists would still appear to contain the names of voters who have either moved out of the county or are dead. This is particularly troubling in light of the 2006 consent decree between your state and the U.S. Department of Justice. As you know, that order requires the State of Indiana to take enforcement action against counties that fail to maintain accurate eligible voter lists.

The above information strongly suggests Indiana has not been maintaining its eligible voter lists and is therefore in violation of the NVRA. Equally importantly, your apparent failure to maintain accurate, up-to-date voter registration lists creates a risk that elections in November 2012 and beyond may lack the integrity required by the NVRA and undermine public confidence in the electoral process. We are hopeful that you will outline and begin implementation of a reasonable compliance program quickly.

The Honorable Charlie White
Messrs. J. Bradley King and Mr. Trent Deekard
February 6, 2012
Page 3

3. Failure to Comply with NVRA Subjects You to Lawsuits and Financial Costs

As you may know, a lawsuit may be brought against you under the NVRA if you fail to correct these violations within 90 days of your receipt of this letter. You are receiving this letter because you are the designated chief state election officials under the NVRA.

While you may be aware that U.S. Attorney General Eric Holder has prioritized enforcement of Section 7 of the NVRA, which seeks to expand opportunities to register to vote, the Attorney General has not demonstrated any similar interest in prioritizing enforcement of the list maintenance provisions of Section 8 of the NVRA. Nonetheless, Section 8 is an important counterpart to Section 7. The two provisions represent a carefully crafted compromise by the U.S. Congress to increase both voter registration **and** the integrity of voter rolls. In passing NVRA, Congress authorized a private right of action to enforce the provisions of the NVRA, including Section 8. 42 U.S.C. § 1973gg-9(b). Congress also authorized awards of attorney's fees, including litigation expenses and costs, to the prevailing party. 42 U.S.C. § 1973gg-9(c). Consequently, if we initiate a lawsuit under the NVRA and the court finds you in violation, you will be responsible for paying our attorney's fees, costs, and litigation expenses.

4. Avoidance of Litigation

In order to avoid litigation, we hope you will promptly initiate efforts to comply with the NVRA so that no lawsuit will be necessary. We ask you to please respond to this letter in writing no later than 45 days from today, or by March 22, 2012, informing us of the compliance steps you are taking. Specifically, we ask you to: (1) conduct a systematic, uniform, nondiscriminatory program (or take action under such an existing program) to remove from the list of eligible voters the names of persons who have become ineligible to vote by reason of death or change in residence; and (2) complete this program no less than 90 days prior to the November election. In addition, we also ask you to begin all other steps outlined above for routine list maintenance between now and the November election. If you have already taken steps to maintain the accuracy of your eligible voter list that correct the problems described above in part 2 of this letter, please identify those steps in detail and advise us of the results of those efforts.

Finally, pursuant to the requirements of the NVRA, please make available to us all pertinent records concerning "the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency" of Indiana's official eligible voter lists during the past 2 years. 42 U.S.C. § 1973gg-6(i).

We hope our concerns can be resolved amicably. However, with the November 2012 election on the horizon and in light of the importance of Section 8 of the NVRA to ensuring the integrity and legitimacy of the electoral process, we must emphasize the importance of

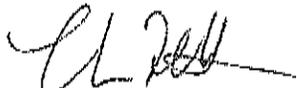
The Honorable Charlie White
Messrs. J. Bradley King and Mr. Trent Deckard
February 6, 2012
Page 4

timeliness. Accordingly, if we believe you do not intend to correct the above-identified problems, a lawsuit seeking declaratory and injunctive relief may be necessary.

We look forward to your timely response.

Sincerely,

JUDICIAL WATCH, INC.



Thomas J. Fitton
President

cc: J. Christian Adams, Esq.
Election Law Center

Case 1:12-cv-00800-WTL-TAB Document 89-1 Filed 06/03/14 Page 2 of 4 PageID #: 1109

State	Jurisdiction	Total County Population 18+	Enter the total number of persons in your jurisdiction who were registered and eligible to vote in the November 2012 general election. QA1a	QA1a/pop 18+
IN	CRAWFORD COUNTY	8,255	9253	112%
IN	WARRICK COUNTY	45,347	50011	110%
IN	FRANKLIN COUNTY	17,204	18602	108%
IN	SCOTT COUNTY	18,271	19345	106%
IN	TIPTON COUNTY	12,258	12958	106%
IN	UNION COUNTY	5,588	5869	105%
IN	ORANGE COUNTY	14,905	15556	104%
IN	CLARK COUNTY	85,643	88632	103%
IN	WARREN COUNTY	6,498	6694	103%
IN	BROWN COUNTY	12,097	12415	103%
IN	ST. JOSEPH COUNTY	201,889	205144	102%
IN	VANDEBURGH COUNTY	141,069	142904	101%
IN	NEWTON COUNTY	10,940	11037	101%
IN	HARRISON COUNTY	30,211	30367	101%
IN	MARTIN COUNTY	7,880	7877	100%
IN	BOONE COUNTY	42,852	42711	100%
IN	DEARBORN COUNTY	37,772	37490	99%
IN	HAMILTON COUNTY	204,962	202290	99%
IN	RIPLEY COUNTY	21,323	20976	98%
IN	HOWARD COUNTY	63,794	62479	98%
IN	HANCOCK COUNTY	53,129	52002	98%
IN	FLOYD COUNTY	57,817	56463	98%
IN	STARKE COUNTY	17,735	17315	98%
IN	SPENCER COUNTY	16,065	15685	98%
IN	POSEY COUNTY	19,711	19073	97%
IN	ALLEN COUNTY	264,542	255023	96%
IN	PIKE COUNTY	9,957	9428	95%
IN	WHITE COUNTY	18,613	17561	94%
IN	DELAWARE COUNTY	94,243	88841	94%
IN	MADISON COUNTY	100,759	94969	94%
IN	PULASKI COUNTY	10,040	9460	94%
IN	OHIO COUNTY	4,821	4542	94%
IN	DUBOIS COUNTY	31,637	29772	94%
IN	FAYETTE COUNTY	18,358	17219	94%
IN	MARION COUNTY	687,395	641301	93%

Case 1:12-cv-00800-WTL-TAB Document 89-1 Filed 06/03/14 Page 3 of 4 PageID #: 1110

IN	CLAY COUNTY	20,584	19142	93%
IN	FOUNTAIN COUNTY	13,096	12174	93%
IN	LAPORTE COUNTY	86,327	80202	93%
IN	PARKE COUNTY	13,399	12434	93%
IN	VERMILLION COUNTY	12,351	11417	92%
IN	DEKALB COUNTY	31,487	29089	92%
IN	LAKE COUNTY	369,720	340520	92%
IN	RUSH COUNTY	13,026	11990	92%
IN	HENDRICKS COUNTY	110,719	101791	92%
IN	BLACKFORD COUNTY	9,714	8927	92%
IN	GIBSON COUNTY	25,562	23368	91%
IN	KNOX COUNTY	30,040	27460	91%
IN	WASHINGTON COUNTY	21,108	19290	91%
IN	MORGAN COUNTY	52,433	47710	91%
IN	GRANT COUNTY	54,632	49629	91%
IN	JOHNSON COUNTY	106,248	96306	91%
IN	JACKSON COUNTY	32,528	29424	90%
IN	PORTER COUNTY	126,912	114627	90%
IN	CARROLL COUNTY	15,312	13763	90%
IN	LAWRENCE COUNTY	35,434	31816	90%
IN	SWITZERLAND COUNTY	7,828	7020	90%
IN	WABASH COUNTY	25,177	22557	90%
IN	BENTON COUNTY	6,594	5903	90%
IN	OWEN COUNTY	16,634	14835	89%
IN	VIGO COUNTY	85,658	76269	89%
IN	HUNTINGTON COUNTY	28,591	25257	88%
IN	RANDOLPH COUNTY	19,645	17312	88%
IN	MONROE COUNTY	118,315	104161	88%
IN	JEFFERSON COUNTY	25,327	22186	88%
IN	JENNINGS COUNTY	21,008	18365	87%
IN	JASPER COUNTY	25,125	21953	87%
IN	WELLS COUNTY	20,988	18301	87%
IN	BARTHOLOMEW COUNTY	59,663	51940	87%
IN	ELKHART COUNTY	143,526	124933	87%
IN	WHITLEY COUNTY	25,373	22053	87%
IN	SULLIVAN COUNTY	16,717	14489	87%
IN	FULTON COUNTY	15,677	13538	86%
IN	WAYNE COUNTY	52,695	45072	86%
IN	KOSCIUSKO COUNTY	58,207	49349	85%
IN	MARSHALL COUNTY	34,798	29441	85%
IN	PERRY COUNTY	15,453	13074	85%
IN	NOBLE COUNTY	35,068	29631	84%
IN	CLINTON COUNTY	24,304	20403	84%
IN	DAVISS COUNTY	22,830	19045	83%
IN	MONTGOMERY COUNTY	29,264	24239	83%
IN	GREENE COUNTY	25,430	20878	82%
IN	SHELBY COUNTY	33,887	27816	82%



U.S. Department of Justice
Civil Rights Division

Voting Section - NVRA
950 Pennsylvania Ave. NW
Washington, DC 20530

RECEIVED
IND. SECRETARY OF STATE

DEC 16 2011

Charles P. White

December 7, 2011

The Honorable Charlie White
Secretary of State
200 W. Washington Street, Room 201
Indianapolis, Indiana 46204

Dear Secretary White:

We write to you as the chief elections official for the State of Indiana to request information concerning your State's compliance with Section 8 of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-6 ("NVRA").

Among the requirements imposed by Section 8 of the NVRA is an obligation that States ensure that eligible citizens who properly register to vote are timely placed on the voter rolls, and that registered voters who are no longer eligible to vote in the jurisdictions are timely removed from the voter rolls. In particular, Section 8(a)(4) of the NVRA, 42 U.S.C. § 1973gg-6(a)(4), mandates that, in the administration of voter registration for federal elections, each State must, on a uniform and nondiscriminatory basis, "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of - (A) the death of the registrant; or (B) a change in the residence of the registrant"

As part of our nationwide efforts to assess compliance with the NVRA, we reviewed state data submitted to the U.S. Election Assistance Commission ("EAC") for the period from November 2008 through November 2010. See "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2009-2010: A Report to the 112th Congress," dated June 30, 2011, and related databases available on the EAC's website (www.eac.gov). According to our analysis of the data reported to the EAC, as well as information available from the 2010 Census, active voter registrations exceed the voting age population in 10 percent or more of Indiana's counties. In addition, a large percentage of Indiana's counties did not report undertaking certain standard and expected list maintenance activities.

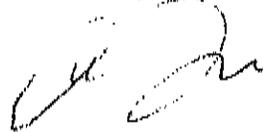
10/12

-2-

We write to you to request a copy of your State's current voter registration list in electronic format. Please include, at a minimum, voters' full names, dates of birth, addresses, dates of registration, voter history, and social security number (if available), on a compact disc in a comma-delimited file format or as a Microsoft Access database file. We are requesting this information under the statutory authority found in 42 U.S.C. §1974b. Please provide as well information on the specific measures that have been taken in your State to ensure compliance with the requirement in Section 8 of the NVRA that the State undertake a general program that makes a reasonable effort to remove ineligible voters from the registration list, including all list maintenance activities and the dates on which they occurred.

Please provide this information no later than four weeks from the date of this letter. The materials may be sent by overnight express service to Voting Section, Civil Rights Division, Room 7254 - NWB, U.S. Department of Justice, 1800 G Street N.W., Washington D.C. 20006 or by United States Postal Service to Voting Section, Civil Rights Division, U.S. Department of Justice, Room 7254 - NWB, 950 Pennsylvania Avenue N.W., Washington D.C. 20530. You can also email your response to voting.section@usdoj.gov. If you have any questions regarding our request, please contact Christy McCormick at (202) 305-0609 or Russ Nobile at (202) 307-1190. We very much appreciate your cooperation in our nationwide efforts to monitor the progress of NVRA compliance.

Sincerely,



T. Christian Herren, Jr.
Chief, Voting Section

cc: The Honorable Greg Zoeller, Attorney General of Indiana

22/2

Judicial Watch, True the Vote Historic Indiana Lawsuit Forces Statewide Clean-Up of Voter Registration Lists, Permanent Changes in Election Law Procedures

AUGUST 07, 2014

Lawsuit ends after Secretary of State admits, "one in eight voter registrations contains inaccurate information," begins massive voter registration clean-up process

(Washington, DC) – After two years of litigation, Judicial Watch and True the Vote announced today that on June 4, 2014, a District Court judge approved their Motion to Dismiss an election integrity lawsuit against the State of Indiana, signaling a major victory in their efforts to force the state to clean up its voter registration lists and overhaul its list-maintenance procedures.

The Judicial Watch/True the Vote motion came within days after Indiana Secretary of State Connie Lawson conceded that, "at least one in eight voter registrations contains inaccurate information." On May 21, Lawson announced via a press release that her office would send out address confirmation postcards to 4.4 million registered Hoosier voters in order to "identify outdated and inaccurate voter registration information to improve the accuracy and integrity of Indiana's voter registration list." The mailing will cost an estimated \$2.1 million and will be followed by a second mailing if necessary according to Lawson.

In their Motion to Dismiss, Judicial Watch and True the Vote applauded the state's actions saying:

Plaintiffs were pleased to learn that Defendants' most significant act of NVRA [National Voter Registration Act] Section 8 compliance in several years – the statewide address confirmation mailing to all voters – is now underway. In light of this, Plaintiffs now believe there are more productive uses of their time and Defendants' time than continuing to litigate the Count I claim over Indiana's Section 8 maintenance efforts.

In addition to the statewide clean-up of voter registration lists, Judicial Watch and True the Vote filed their historic June 2012 lawsuit, the Indiana legislature passed an election reform law incorporating a number of measures the suit had sought. The July 2013 measure included:

- A provision empowering the Indiana Secretary of State to break ties and decide matters whenever the Election Division Co-Directors "are unable to resolve a dispute between themselves regarding" the Indiana Election Division's budget, expenditures, or contracts.
- A provision specifying that county officials could remove the names of deceased persons from the voter rolls "after receiving a copy of an obituary, notice of estate administration, or other notice of death" published in a newspaper.
- A provision requiring the Indiana Department of Health to obtain out-of-state citizen death information monthly from the State and Territorial Exchange of Vital Events (STEVE) System and the Electronic Verification of Vital Events (EVVE) System, both administered by the National Association for Public Health Statistics and Information Systems (NAPHSIS).
- A provision requiring the state to obtain the Social Security Death Index (SSDI) on a monthly basis to remove voters who have died and to provide deceased registered voters to counties each month, tasks to be performed by the Secretary of State if the Co-Directors fail to do so.
- A provision requiring the state to provide counties with the names of voters who move each month so they can be removed from the rolls or updated as appropriate.

- A provision requiring the state to use the U.S. Post Office's National Change of Address (NCOA) Service to identify registered voters who have moved, and to requiring the state to enter the Interstate Voter Registration Crosscheck (IVRC) Program to identify and remove registered voters who have moved from Indiana to other states.

The action by the legislature came on the heels of a precedent-setting December 2012 decision by U.S. District Court Judge William T. Lawrence finding that Judicial Watch and True the Vote members had standing to challenge Indiana's alleged violations voter list maintenance requirements of the NVRA.

It was the first federal court decision granting citizens and non-government groups the ability to sue in federal court to enforce Section 8 of the NVRA. Robert D. Popper, Judicial Watch's senior attorney who served as deputy chief of the voting section at the Justice Department's civil rights division, said that during his tenure the George W. Bush administration in its final three years filed five lawsuits over improper maintenance of voter rolls. By comparison, Popper said, "there's been not a single lawsuit" from the Obama administration.

Eventually Judge Lawrence ruled that the lawsuit had effectively been mooted out by Indiana's election integrity reforms that came after the lawsuit's filing. This decision, coupled with the Indiana Secretary of State's voter registration list clean-up moves prompted Judicial Watch and True the Vote to dismiss their lawsuit, concluding the litigation.

"We are pleased that our lawsuit forced the State of Indiana to fix its broken system for protecting the integrity of the electoral process," said Judicial Watch President Tom Fitton. "It took a federal lawsuit to spur the state legislature to reform Indiana's electoral process and force Secretary of State Lawson to finally clean the badly outdated Indiana voter rolls. This is a major victory for Hoosier voters as well as voters nationwide. From the public interest perspective, it would have been counter-productive to continue to battle after Indiana gave us what we wanted. We will, nevertheless, remain vigilant in case Indiana officials again violate the law and put Indiana's elections at risk. And it is shameful that President Obama's politicized Justice Department won't do its job and force states to clean up voting lists. Instead, Eric Holder and his allies are fanatically focused on attacking commonsense election integrity measures such as voter ID. What a disgrace it is that

Judicial Watch and True the Vote is required to do basic law enforcement work to clean up elections that the Eric Holder's Justice Department won't do because of the administration's misguided racial politics and radical ideology. The Obama Justice Department is a clear and present danger to the integrity of our nation's elections."

According to True the Vote founder Catherine Engelbrecht, "Despite the length of time this litigation took to come to an acceptable close, Indiana voters can now rest assured that common-sense voter roll maintenance procedures are in place and working in the interests of all. True the Vote hopes this episode serves as a strong example for the power that regular citizens have in demanding their rights as voters be protected."

According to the Pew Report published in 2012: "[N]early 2 million dead people still registered to cast ballots, about 3 million eligible to vote in two or more states and millions more that are inaccurate, duplicate or out of date. The alarming figures were published this week in a report issued by the non-partisan Pew Center on States. It reveals that approximately 24 million active voter registrations in the United States are no longer valid or have significant inaccuracies. The problem, apparently, is an outdated registration system that can't properly maintain records."

Leading Judicial Watch's and True the Vote's representation in court were Judicial Watch attorneys Paul Orfanedes and Chris Fedeli, and Election Law Center attorney J. Christian Adams. David Langdon and Joshua Bolinger of Langdon Law, LLC served as local counsel.

Judicial Watch's examination of data published in 2013 capturing 2012 voter rolls and population data showed that at least 11 states plus DC had substantially out of date voter rolls, with multiple counties where the number of registered voters exceeded the total voting age population.

Sign up to get the latest from Judicial Watch all the
time!

Office of the Indiana Secretary of State of Indiana
March 2, 2018 Public Meeting on Status of Voting Rights in Indiana – submission of
comments and materials

Attachment B

1. Correspondence from the office of the Indiana Secretary of State to the Brennan Center explaining Indiana's position with respect to registrants who have moved out of the state and registered to vote in another state.
2. Overview of Indiana "Fail-Safe" voting provisions.
3. Communications from the Office of the Indiana Secretary of State explaining voter list maintenance procedures and statutory safeguards in place allowing a voter who's registration has been erroneously marked "inactive" or "cancelled" to update and re-activate their registration to active status anytime (including on Election Day) and vote a regular ballot.

SECRETARY OF STATE
STATE OF INDIANA
200 W. WASHINGTON STREET, INDIANAPOLIS, IN 46204
WWW.SOS.IN.GOV

July 13, 2017

Myrna Pérez
Deputy Director, Democracy Program
Brennan Center for Justice at NYC School of Law
120 Broadway, Suite 1750
New York, NY 10271

Sascha Rand
Quinn Emanuel Urquhart and Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

Re: Correspondence Regarding the National Voter Registration Act

Dear Ms. Pérez and Mr. Rand,

I am writing on behalf of the Office of the Indiana Secretary of State in response to your correspondence dated May 25, 2017 regarding certain provisions contained in Indiana Senate Bill 442¹ and the National Voter Registration Act of 1993 ("NVRA"). With respect to your concerns and inquires regarding the NVRA, please note that this response to your inquiry is *informal*, because the Indiana Secretary of State is not the state's chief election official for NVRA administration and compliance. The Indiana General Assembly has designated the (bi-partisan) Co-Directors of the Indiana Election Division as the "chief election official" responsible for coordination of state responsibilities under NVRA.² Due to Co-Director's autonomy as state NVRA officials, the Secretary of State does not have authority to acknowledge your correspondence as a sufficient, timely or actionable 52 U.S.C. § 20510(b) pre-litigation notice.

¹ Ind. Public Law 74.2017. In pertinent part, IC 3-7-38.2.-5 "Submission of names to change of address service; voter information from other states" *as amended*, effective July 1, 2017.

² IC 3-7-11-1.

Following is an informal review of Indiana's participation in the Interstate Voter Registration Crosscheck ("IVRC") program, and interpretation of SB 442 and the NVRA which may serve to inform your views and allay concerns your constituencies may have.

As you are aware, under the NVRA, states are required to ensure that accurate and current voter registration rolls are maintained.³ Also, expanded state collaboration in improving the accuracy of voter lists was among the key recommendations of the 2013-2014 bi-partisan Presidential Commission on Election Administration.⁴

Based on data from the U.S. Census Bureau and the Council of State Governments, approximately 150,000 Indiana Residents move *out of* the state and approximately 147,000 residents of other states move *into* Indiana each year.⁵ According to Indiana demographic and voter registration statistics, in recent years about 65% of the state's population was registered to vote. Factoring the population moving out of state annually with the percentage of registered voters indicates that nearly 100,000 individuals registered to vote in Indiana moved to some other state in 2016. Among the myriad of details accompanying an interstate move, it's unlikely that notifying the appropriate Indiana County voter registration official of one's departure would be high priority. Presumably however, a number of registered voters moving from Indiana complied with ubiquitous motor vehicle registration bureau laws, and obtained new driver's licenses or state ID cards in the states they'd moved to and, on account of the NVRA, were prompted to register to vote in their new home states.

As a result of the ordinary, predictable movement of people from place to place, voter state voter rolls become oversubscribed with tens of thousands of duplicate or multiple registrations each year. Over periods of years due to the innocent, cumulative effect of natural migration patterns a state's voter rolls can become bloated by hundreds of thousands of obsolete registrations. Contrary to views of critics of IVRC such as Rolling Stone Magazine investigative journalist, Greg Palast, cited in your letter, Indiana's participation in IVRC is not motivated by obsessive concern over the potential for double voting.⁶ Indiana's bi-partisan NVRA officials do not employ IVRC for partisan effect or as a "weapon of voter suppression". The state of Indiana and its county voter registration offices do not treat proposed IVRC matches as vote fraud suspects or the IVRC program as the basis of a criminal investigation. Such suggestions are baseless. Over the past 15 years the Office of the Indiana Secretary of State has continuously utilized HAVA funds and state appropriations to conduct multilingual voter registration, awareness and participation programs – applying over one million dollars to the effort during the 2015 and 2016 election cycles.

³ 52 U.S. Code § 20501 (b)(4).

⁴ The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration (January, 2014) <https://bipartisanpolicy.org/the-presidential-commission-on-election-administration/>

⁵ See: <http://www.stats.indiana.edu/topic/population.asp> and http://www.in.gov/sos/elections/files/2016_General_Election_Turnout.pdf.

⁶ Greg Palast, The GOP's War on Voters, ROLLING STONE, Aug. 24, 2016, <http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-voters-w435890>.

By legislative directive, Indiana first participated in the annual “Kansas” IVRC program in 2015 and thereafter in 2016 and 2017. IVRC is performed by Indiana’s NVRA officials (the Co-Directors of the Indiana Election Division) who also operate Indiana’s Statewide Voter Registration System (SVRS). Evaluation of IVRC “raw data” and dissemination of select or filtered data to county voter registration offices is one of multiple functionalities of Indiana’s SVRS. Indiana’s NVRA officials develop and implement operating procedures for state voter list maintenance activities, which include the IVRC program.

Indiana’s IVRC “Matching” Standards and Procedures

Throughout its participation in IVRC, Indiana’s NVRA officials have concurred that reliable matching of individuals among a large population of several state’s voter registrations requires precise, logical matching of *more* data than a first name, last name and date of birth. Indiana’s NVRA officials set the rules for evaluating proposed “matches” and have never permitted voter registration offices to cancel voter registrations based solely on first name, last name and date of birth matching. As applied by Indiana’s NVRA officials, IC 3-7-38.2-5 (prior to and as amended) does not operate to lower existing standards for voter registration matching. IVRC match criteria for post July 1, 2017 proposed matches were amended by state NVRA officials to be even *more* exacting and reliable.⁷

Indiana’s SVRS methodology for evaluating raw IVRC match data has always been a matter of public record and is designed to only identify potential registration matches that are *highly likely* to be one and the same individual - and to reject any potential match in any instance where the available data is insufficient or contains inconsistent data points.

Indiana’s SVRS evaluates IVRC “raw data” utilizing strict criteria and methodology requiring *exact* matching of *full* first name, *full* middle name or consistent middle initial, *full* last name, *full or consistent* suffix, *exact* date of birth *and* an exact match of at least one additional unit of data. In virtually all cases the available additional data is the last four digits of a Social Security Number. Only matches meeting this high standard, which *Goel and Meredith* (2017)⁸ classify as “*likely to be a case of the same person registered in two different states*” qualify to be forwarded, on an individual basis, to county voter registration offices. County voter registration offices are directed to then determine on an individual basis, with no limitation on use of additional information or investigation, if a proposed match identifies a specific individual registered to vote in their jurisdiction who *subsequently* registered to vote in another state.

⁷ See: <http://www.in.gov/sos/elections/2397.htm> , <http://www.in.gov/sos/elections/2398.htm> and <http://www.in.gov/sos/elections/4103.htm>.

⁸ Goel, S , Meredith, M., Morse, M., Rothschild, D., & Shirani-Mehr, H. *One Person, One Vote: Estimating the Prevalence of Double Voting in US Presidential Elections*. <https://scholar.harvard.edu/morse/publications/one-person-one-vote-estimating-prevalence-double-voting-us-presidential-elections>

Indiana's IVRC matching criteria and procedures (before and after July 1, 2017) are significantly more rigorous than the criteria and procedures employed in any of the states cited in your letter as examples of "error prone" crosscheck programs.⁹

Basis for Cancellation of a Confirmed Duplicate Voter Registration

In specific instances such as a voter's death, criminal conviction, mental incapacity, failure to vote, USPS notice of change address, or failure to respond to a voter registration confirmation mailing, the NVRA provides directives for voter list maintenance. Though NVRA applies specifically to a variety of situations, it does not prohibit immediate cancellation of a duplicate *previous* voter registration based upon reliable, uniform, nondiscriminatory, information received from a voter registration official who has accepted a *subsequent* registration. NVRA *requires* states to conduct a general program that makes a reasonable effort to remove the names of ineligible voters upon their written confirmation of a change of address to a location outside the registrar's jurisdiction.¹⁰ The Indiana General Assembly and Indiana's NVRA officials have adopted the position that a voter registration application, signed and affirmed under the penalty of perjury constitutes a registrant's authorization to cancel previous registrations.

It's expected when a registered voter moves from one place to another and subsequently registers to vote, that the voter will report their previous address on the application and that the official taking the new registration will inform the registration authority for the former address - who will proceed to cancel the now obsolete previous registration. It's not expected that a voter registration office, upon being informed by another voter registration official, that a voter has moved and re-registered, must then contact the voter to seek permission to cancel the registration in their jurisdiction, or wait two election cycles before acting. Voter registration official-to-official voter list maintenance activity triggered by, and based on the conscious, affirmative action an individual takes to change or update their voter registration is the longstanding, accepted practice and was not overruled by the NVRA.

The NVRA protects a person's right to cast a vote, which is highly important. The NVRA does not however, entitle a person to be simultaneously registered to vote in two or more locations. Cancellation of a voter's previous, obsolete, registration as a result of the submission and acceptance of a *new registration application* is distinct from (NVRA governed) voter list maintenance based solely on a change of residence.¹¹ IVRC procedures which result in the positive identification of a specific person currently registered in one state who is, and *will remain* (subsequently) registered to vote in another, does not operate as voter disenfranchisement or suppression.

⁹ See **Attachment A**, analysis of news accounts of IVRC program activity in FL, GA, ID, KY, NC, OH, OR, VA, WA.

¹⁰ 52 U.S.C. § 20507(d)(A); See: *Federal Election Commission's Guide to Implementing the National Voter Registration Act*, p. 5-5, <https://www.eac.gov/assets/1/28/Implementing%20the%20NVRA--Report%20to%20State%20and%20Local%20Election%20OE.pdf>.

¹¹ In the *distinct* case where an individual has changed residence (only) a change of residence confirmation mailing would need to include information on how they can remain eligible to vote - by registering to vote at their new residence per 52 U.S.C. § 2507 (d)(2)(B).

The number of persons who move from one state to another and become registered to vote each time they move is significant and Indiana's NVRA officials believe that the IVRC procedures employed to confirm duplicate registration matches are compliant, very reliable, uniform and non-discriminatory. While it's possible that any voter list maintenance program might result in the erroneous cancellation of a voter's registration, fail-safe voting options in Indiana significantly mitigate the risk of disenfranchisement. The NVRA as implemented in Indiana provides that in the event a voter learn at the polls on Election Day that their registration was canceled due to registration information received from another jurisdiction, they need only provide an oral or written affirmation of their continued eligibility and residence in the jurisdiction in order to cast a regular ballot.¹² Indiana *does not* require a voter to cast a provisional ballot in such case.

For additional information on IVRC and all of Indiana's voter list maintenance activities, please contact the Indiana Election Division, 301 W. Washington St. Room 302, Indianapolis, IN 46204-2767, telephone: 317-232-3939, email: elections@iec.in.gov.

Truly yours,

Jerold A. Bonnet, General Counsel
Office of the Indiana Secretary of State

cc: Indiana Election Division

Enc.

¹² IC 3-7-48-5.

Attachment A

Review of Articles Cited as Evidence of the Unreliability of Interstate Voter Registration Crosscheck Matching Data

1. *Virginia Offers Lessons for Voter List Maintenance*, Jonathan Brater, Brennan for Justice, November 25, 2013, <https://www.brennancenter.org/analysis/virginia-offers-lessons-voter-list-maintenance> see also: *Chesterfield Registrar Delays Purge of Voter Rolls – Registrar Cites Errors on List; Democrats Want all Localities to Wait*, Jim Nolan, Richmond Times Dispatch, October 9, 2013.

Numerous problems with the process the Virginia State Board of Elections followed (circa 2013) in its first attempt to utilize IVRC data were evident. Voter list maintenance activities were not suspended 90 days before an election, a sound methodology for evaluating and confirming potential matches was not employed and presentation of data fostered confusion between previous and subsequent registrations. Indiana does not conduct voter list maintenance within 90 days of an election. Indiana's SVRS employs a multifactor confidence analysis to identify only very likely duplicate registrations which are presented to county election offices in a format requiring confirmation of potential matches on an individual basis.

2. *Florida No Longer Part of a Controversial National Voter Data Project*, Jon Greenburg and Amy Sherman, Miami Herald, April 4, 2014, <http://miami-herald.typepad.com/nakedpolitics/2014/04/florida-no-longer-part-of-controversial-national-voter-data-project.html>.

Apparently Florida election officials attempted to update its voter registration rolls "en masse" using "raw" interstate crosscheck data which included potential matches based on incomplete and inconsistent data. There is no indication that Florida undertook to develop and implement acceptable standards for evaluating preliminary IVRC data. Unlike Florida, Indiana's NVRA officials took the time and effort to develop and implement a reliable system to evaluate and screen preliminary IVRC data.

3. *The GOP's Stealth War on Voters*, Greg Palast, Rolling Stone, Aug. 24, 2016, <http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-voters-w435890>.

Mr. Palast's highly selective reporting on IVRC programs suggests that election officials in participating states are obsessed with voter suppression and willfully disregard the NVRA and other applicable laws. Mr. Palast's conclusion that IVRC programs are conducted in bad faith, illegally, recklessly, with racial animus and in absolute secrecy, while fascinating and sensational, is not

supported by obvious facts and readily available data. Numerous inquiries among election officials and voter registration offices in IVRC states were made in an attempt to confirm Mr. Palast's report that states viewed IVRC matches as "suspects" and statement that "state after state told us their lists of suspects were part of a criminal investigation". No basis for his claims could be found.

Indiana's IVRC is administered transparently, by a bi-partisan team of state election officials, utilizing methodology that eliminates from consideration any potential duplicate registration match with a less than full, exactly matching data set. Indiana does not conduct voter list maintenance "just before Election Day", does not ignore inconsistent data in proposed matches, would not match 'James Willie Brown with James Arthur Brown, James Clifford Brown or James Lynn Brown. Nor would Indiana summarily match all "Garcias", Washingtons, Tans, Lees, or Nugyns.

4. *Elections Officials told Rick Scott he Was Dead and Couldn't Vote*, Lloyd Dunkelburger, Herald-Tribune, June 4, 2012, <http://politics.heraldtribune.com/2012/06/14/scott-mistakenly-declared-dead-on-voting-rolls/>.

This article cites the apparent misuse of IVRC data for the cancellation of a voter's registration less than 90 days before an election based on inconsistent and mismatched data. Also, upon learning of the erroneous cancellation on Election Day, the individual was required to cast a provisional ballot. Though it's not clear what the source of information that led to the cancelation was, to the extent that IVRC data was involved, obviously that Florida either did not screen potential matches at all, or relied on evaluation criteria that identified a match despite available inconsistent or non-matching data. As noted previously, Indiana's IVRC procedures would not accept a individuals with different middle names, inconsistent suffixes or insufficient data, as matches. Indiana does not allow voter list maintenance to be conducted less than 90 days before an election and Indiana would not require an individual, who believes they were incorrectly removed from a voter roll to cast a provisional ballot.

Overview of "Fail-Safe" Voting Provisions

A) Executing Fail-Safe Provisions at the Polls with Paper Poll Book- No Electronic Poll Book

- 1) Voter on poll list but has moved within the precinct*- Voter checks box "address changed" and writes new address next to old address on poll list. (IC 3-7-39-7)
- 2) Voter on poll list but voter moved less than 30 days (within last 29 days) before the election anywhere within Indiana**- Voter is permitted to vote in precinct of former residence after completing a VRG 4/12. No "oral affirmation" is permitted. Poll worker also distributes a new VRG-7 and asks voter to complete application. (IC 3-10-11-6 and 10)
- 3) Voter on poll list but moved at any time in the past within same county and same congressional district**- Voter is permitted to vote in precinct of former residence after signing VRG 4/12 or making an oral affirmation to the poll clerks who write affirmation in poll book and initial the writing. Poll worker also distributes a new VRG-7 and asks voter to complete application. (IC 3-10-12-4)
- 4) Certificate of Error (COE)- Issued when county has made a mistake (voter in wrong precinct, for example). A copy of the COE is filed by the clerk with other election material for the precinct when material is returned. A COE may be issued any time after the printing of the poll books. If error discovered prior to printing the poll books the county may simply correct the VR records. (IC 3-7-48-1, 2 and 3)
- 5) Registration record cancelled but voter continues to reside at address- Voter makes oral or written affirmation that the voter continues to reside at an address the VR record shows voter as cancelled. An oral affirmation must be made to the poll clerks who write affirmation in poll book and initial the writing. Poll clerks have voter sign the back of the poll list. (IC 3-7-48-5)
- 6) Voter's name not on poll list but voter has receipt from Full Service Agency (FSSA, BMV, DOH)- If VRG-6 receipt shows voter submitted application during the registration period and county has no record of rejecting the application from the voter, then voter fills out a new VRG-7 at the poll and votes a regular ballot. Poll worker adds note to back of poll list where voter signs and places application in the back of poll book (IC 3-7-48-7 and 8)
- 7) Voter on poll list but name has changed*- Voter signs new name next to old and checks box "name changed." The name change becomes "effective immediately." (IC 3-7-41-2)

makes an oral affirmation, the election division recommends that it be documented on a VRG 4/12 or, if the electronic poll book has the ability to do so, the election division recommends that voter records be updated with moves within the same county and same congressional district if captured on the electronic poll book by poll workers.

- 4) Certificate of Error (COE)- Issued when the county has made a mistake. A COE need only be issued after the downloading of voter information into the electronic poll book for the election. The VR record may simply be corrected before that time. Confirmation of a COE to the polls may be made via the electronic poll book. (IC 3-7-48-1, 2 and 3; IC 3-7-29-6(c))
- 5) Registration record cancelled but voter continues to reside at address- Voter writes affirmation that voter continues to reside at the same address shown on the canceled VR record on a blank VRG 4/12. If voter makes an oral affirmation before the poll clerks, the poll clerks document the affirmation on a blank VRG 4/12 and initial it. (IC 3-7-48-5(d)[new]) *The election division recommends that it be documented on a VRG 4/12 or, if the electronic poll book has the ability to do so, the election division recommends that voter records be updated with moves within the same county and same congressional district if captured on the electronic poll book by poll workers.*
- 6) Voter's name not on poll list but voter has receipt from Full Service Agency (FSSA, BMV, DOH)- If VRG-6 receipt shows voter submitted application during the registration period and county has no record of rejecting the application from the voter, then voter fills out a new VRG-7 at the poll and votes a regular ballot. (IC 3-7-48-7 and 8)
- 7) Voter on poll list but name has changed*- Voter writes change on a blank VRG 4/12 and the poll clerks initial it. (IC 3-7-41-2(c)[new]) *If the electronic poll book has the ability to do so, the election division recommends that voter records be updated with name changes captured on the electronic poll book by poll workers.*

*Note: All name changes and address changes are now processed as "corrections" and not as "updates." (IC 3-7-33-5(a))

** In some circumstances a voter who moves may not be able to cast a vote for all candidates in a municipal election or on all public questions in their precinct of former residence. Please contact the election division for additional guidance.

Bonnet, Jerry (SOS)

From: Warycha, Valerie
Sent: Tuesday, October 31, 2017 2:38 PM
To: Warycha, Valerie
Subject: Indiana Secretary of State Connie Lawson Op-Ed: Upholding voter roll laws



Office of the Indiana Secretary of State

200 W. Washington St. Indianapolis, IN 46204

Indiana Secretary of State Connie Lawson
Op-Ed: Upholding voter roll laws
WORD COUNT: 1003

Recently, my office and I have come under attack for following federal and state law regarding voter rolls. Misinformation is being spread by various groups that if your name matches the name of a voter in another state or if you fail to vote, you will be removed from the rolls. Others have said voter list maintenance targets minority and low income voters. None of this is true!

Since I became Secretary of State, I have worked to ensure Indiana has clean data when it comes to our voter rolls. The public demands clean and accurate data when it comes to financial records, health records and vital statistics. Voter lists are no different.

Each election Hoosiers take notice that our rolls needs an update. We get calls from widowed spouses and parents whose child moved away from home years ago. These voters want to know why their loved one's name is still on the rolls. They not only find it upsetting to see a long gone loved one's name on the pollbook, but it also undermines their faith in our elections.

In 2016, a group issued a report that our voter rolls contained numerous inaccuracies including voters who were well over 100 years old and couldn't possibly be alive. Members of the public were concerned when they heard this. At that time, I reminded the public of our voter list maintenance efforts and assured Hoosiers we were taking corrective action. Hoosiers were relieved to know we were taking measures to improve the accuracy of the state's voter rolls.

In addition to improving voter confidence, clean voter rolls reduce election costs and provide accurate turnout results. Counties with bloated voter rolls are forced to spend more money to purchase extra equipment, secure additional locations and pay for election workers. Allowing invalid registrations to remain on the rolls distorts the reality of actual voter participation and turnout.

In 2016, the official voter turnout in Indiana was 58% of all registered voters, despite a record number of voters turning out to vote. Yet it is estimated if the voter list maintenance conducted this year had taken place before the 2016 general election, Indiana's turnout would have been about 65% - among the best in the nation.

Along with the bi-partisan members of the Indiana Election Division, bi-partisan county election boards and county clerks, I am working to ensure Indiana has clean and accurate voter rolls. We are doing this according to federal and state law, and to date, not one voter has contacted my office to say they were improperly removed.

No one has been removed because their name matches a voter in another state. We do compare Indiana's data to voter registrations in other states, but a simple match of a name or a name and date of birth is not enough for a match. Indiana has developed measures of protection against false matches. Before a county is even given a potential match, to research and consider, the record is subject to a detailed comparison that assigns points for matches in name, social security numbers and driver's license number. A first name, last name and date of birth match only equals 55 points, 20 points short of a potential match. A middle name is only 5 points, so that is still not enough.

If a record reaches the 75 point threshold, then it is provided to the county to determine if the record is a match and the registration in the other state is more recent. The county may consider all information provided and perform whatever additional investigation the county deems necessary to determine if there is a match. If the county is unable to determine that the records match, or that the registration in the other state is more recent, that is the end of the process and the record stays on the rolls.

In addition, no one has been removed because they didn't vote or due to their ethnicity or income. The state of Indiana does voter list maintain in a uniform and non-discriminatory manner following the federal rules that require voter list maintenance and the procedures spelled out in the law.

Every other year, postcards are mailed to Hoosier voters. If the postcard is returned due to inaccurate information, which indicates the voter is no longer qualified to vote at that address, a second forwardable postcard is mailed to the forwarding address. The second postcard ask the voter to update their registration information. If the voter fails to respond, the record will be marked inactive. Once a record is marked inactive, it is not removed from the rolls unless the voter misses the next two federal elections or otherwise fails to confirm their address is correct.

As I close, I want to address the uncertainty that clouds voter list maintenance across the country. In states that are attempting to comply with federal law, like Indiana, activist groups are suing to keep maintenance from being done. In states that are not participating, activist groups are suing to force the process. Performing voter list maintenance is the law according to the National Voter Registration Act.

This law was a compromise that required voter registrations to be available at government offices such as the BMV and voter list maintenance to be performed. We enforce the registration portion of the law uniformly but not the voter list maintenance piece. Last week I testified on Capitol Hill and encouraged Congress to clarify this expectation for the states and to uphold the compromise of the National Voter Registration Act. I am optimistic they will weigh in and I commend the efforts of state election officials around the country who are continuing to work hard in the face of this uncertainty.

Voter list maintenance is about updating voter information to be current and ensuring confidence in our electoral process. Our electoral process is central to our system of government. Therefore, we must take every action to protect the integrity of our elections.

Sincerely,
Connie Lawson
Indiana Secretary of State



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STATE OF INDIANA
 200 W. WASHINGTON STREET, INDIANAPOLIS, IN 46204
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Hon. Gregg Harper
 2227 Rayburn HOB
 Washington, DC 20515

October 25, 2017

Representative Harper,

Thank you for allowing me to speak to the Committee on House Administration earlier today. I greatly appreciate the opportunity to share Indiana's experience with voter list maintenance practices, and I hope the committee found my testimony informative. To that end, a question was raised about a segment of my prepared remarks, and I would like to address that at this time.

Indiana is a member of the Interstate Crosscheck program, which is a starting point and a tool used to aid in continuous voter list maintenance. The program is often misunderstood by those unfamiliar with its structure, so I will explain how the program works in Indiana.

First, the program identifies *potential* voter registration matches between Indiana and other state participants. Pursuant to bipartisan policy adopted for the program's administration, Indiana developed measures of protection against potentially false matches. Before a county is even given a potential match to research and consider, the state subjects the potential match to a detailed comparison of the records and assigns points to matching criteria in the records (last name, date of birth, driver's license number, etc.). The points must total at least 75 before it is eligible for upload into Indiana's Statewide Voter Registration System (SVRS) interstate worklist for the county to consider. If the potential match is not assigned the minimum score, the record is not populated in the county worklist.

If a potential match meets the 75 point threshold, the county voter registration official may view the match in SVRS, and the county – not the state – makes a determination of whether the record is a match and whether the registration in the other state is more recent than the Indiana registration. The county may consider all the information provided via SVRS and may perform additional investigation the county deems necessary to determine whether there is an actual match. A matching first name, last name and date of birth is not enough to reach 75 points. If the county is unable to determine the records match, or that the registration in the other state is more recent, the record is not cancelled.

Below are the point values assigned for different matching fields:

Field	Points Assigned for Match	Comment
SSN Last 4	10	
Full SSN	40	
DLN/SID	50	
DOB	25	
Last Name	15	



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First Name	15	
Middle Name	5	
Suffix	5	
ZIP Code (first 5)	5	
Street Address 1	10	
Previous Last Name	15	Included in calculation for Indiana Bureau of Motor Vehicles matches only.
Previous Street Address 1	10	Included in calculation for Indiana Bureau of Motor Vehicles matches only.
Previous ZIP Code (first 5)	5	Included in calculation for Indiana Bureau of Motor Vehicles matches only.

It bears mentioning that when the decision is made to cancel a registration record, it is made at the local level and in a bipartisan fashion. All county offices have employees of both parties working on maintenance, and each county election board is comprised of a Republican, a Democrat, and the county clerk. All decisions made by a county election board must be unanimous, and a unanimous decision is, therefore, a bipartisan decision.

Finally, a question was raised about how many voters must be disenfranchised in order for an actual matching registration to be correctly removed from the voter rolls. I will simply say that it is my goal as Indiana Secretary of State to allow all eligible Indiana citizens the right to vote, which is why my office is continuously engaging in voter education, outreach, and turnout initiatives.

Of the 481,235 records removed during Indiana's voter list maintenance activities, not one voter has contacted my office to say they were improperly removed. Maintaining accurate voter rolls and enfranchising a greater number of Americans are not mutually exclusive. I am proud of the way Indiana protects each vote and conducts voter list maintenance. I am glad to have spoken with you on voter list maintenance today.

If I may be of further service to the committee, do not hesitate to reach out.

Very respectfully,

Connie Lawson

Connie Lawson
Indiana Secretary of State

Bonnet, Jerry (SOS)

From: Hauer, Ian (SOS)
Sent: Wednesday, April 19, 2017 2:33 PM
To: Bonnet, Jerry (SOS)
Subject: FW: Indiana prepares for future elections by cleaning up its voter roll

Ian Hauer
Deputy Communications Director
 Indiana Secretary of State
 200 W. Washington St.
 Indianapolis, IN 46204
 (317) 234-9682

From: Warycha, Valerie
Sent: Tuesday, April 18, 2017 11:11 AM
To: Hauer, Ian (SOS) <IaHauer@sos.IN.gov>
Subject: Indiana prepares for future elections by cleaning up its voter roll



Office of the Indiana Secretary of State

200 W. Washington St. Indianapolis, IN 46204

News Release

FOR IMMEDIATE RELEASE

Indiana prepares for future elections by cleaning up its voter roll

After a complicated 4 year process required by federal law, Indiana can finally remove outdated voter registration information

INDIANAPOLIS (April 18, 2017) — In 2014, Indiana began its latest effort to keep the voter registration lists accurate. While removing inaccurate voter list information is required by federal law, this work was formerly done almost entirely at the county level and not all county voter registration offices had the funding to do this work on a regular basis. To ensure that voter list maintenance work was done uniformly throughout Indiana by all counties, Indiana Secretary of State Connie Lawson asked the General Assembly to fund a comprehensive statewide voter list maintenance program. Under this program, current voter registration records are checked to confirm that voters still live at the address indicated on their record. Voters are also given the opportunity to update outdated or incorrect information on their registration records.

Thanks to the funding provided by the General Assembly, the nonforwardable postcards were sent to voters throughout Indiana in 2014. The postcards from this mailing that were returned to the Indiana Election Division with an "unknown or insufficient address" were used to identify voter registration records which could have outdated or inaccurate information. A second forwardable postcard was then sent to each of the voters whose first postcard was returned. The second postcard asked these voters to take action by updating their registration information. Hoosiers who did not update outdated voter registration information had their record at this address marked as "inactive". As a result, if these "inactive" records were not updated or if the voter did not vote from that address at any election held in 2014, 2015, or 2016, that registration record was canceled after the November 2016 general election.

Under federal or state law, no voter registration record is "inactivated" or canceled simply because a voter does not vote from that address for a certain number of years. Once an individual is registered, the voter's name stays on the list at that address indefinitely even if the voter never casts a ballot. The voter's name is only removed when counties receive information that the voter is deceased or otherwise disqualified, the voter requests that the registration be cancelled or if the voter's address is identified as incorrect through the voter list maintenance process. If a voter is registered at the address where the voter now lives, the voter list maintenance process has no effect on the ability of that voter to cast a ballot.

"When I became Secretary of State, I discovered voter list maintenance was not being done statewide and many outdated voter registrations were still on the rolls," said Secretary Lawson. "I made it a priority to ensure our state's list was accurate and that we followed the federal law. While this federal law requires a slow process that has taken over 4 years, our state is finally in the rhythm of doing regular voter list maintenance and Hoosiers are starting to see the results. Updating these records will help us create a more accurate picture of voter turnout for the state, which has been reported as inaccurately low due to the large number of outdated registrations, while protecting the integrity of our elections."

To date, 481,235 voter registrations have been canceled through this process statewide. This number represents the voter registration records that were identified by the 2014 voter list maintenance process as inactive. The voter list maintenance process continues, both at the state and county levels. Another comprehensive address confirmation mailing was sent to voters throughout Indiana in 2016 to identify potentially inaccurate records for removal after the 2018 general election. County voter registration officials continue to do voter list maintenance work every day by updating voter registration information of voters who have moved, died or had a name change.

We can all be proud of the work which these county clerks and other voter registration officials do quietly every day to improve the election administration process.

Hoosiers who wish to register, update or verify their voter registration information can do so online at www.indianavoters.com.

-30-

Media Contacts - Valerie Warycha 317-233-8655 or vwarycha@sos.in.gov

Office of the Indiana Secretary of State of Indiana
March 2, 2018 Public Meeting on Status of Voting Rights in Indiana – submission of
comments and materials

Attachment C

1. Media report “ Indiana voter group registered a felon, non-U.S. citizen and a dead person, police say” Indianapolis Star 6/9/2016.
2. Media report “Thousands of voter registration forms faked, officials say” CNN 10/10/2008.

<https://www.indystar.com/story/news/politics/2017/06/09/voter-registration-group-charged-falsifying-registrations/384244001/>

Indiana voter group registered a felon, non-U.S. citizen and a dead person, police say

Tony Cook, Statehouse Bureau Published 12:36 p.m. ET June 9, 2017 | Updated 9:41 a.m. ET June 12, 2017

A felon, a minor, a non-U.S. citizen and even a dead person were among those police say an Indiana voter registration group signed up in the months leading up to the 2016 presidential election.

The group's canvassers also made up or forged information on scores of voter registrations, sometimes paying vagrants with cigarettes or pocket change to fill out the forms, police say.

Now, the group and many of its employees are facing felony charges, Marion County Prosecutor Terry Curry announced Friday.

The Indiana Voter Registration Project and 12 of its workers — including a manager — are accused of submitting falsified applications in Marion and St. Joseph counties.

The charges come after a 10-month state police investigation that included a raid of the group's nondescript, largely unfurnished offices on Meridian Street near Fall Creek.

The group submitted registrations for people who didn't exist or who later told detectives they never filled them out, according to 167 pages of charging documents and probable cause affidavits. Among those people were a felon, a non-U.S. citizen, a minor and a woman who lived in Florida.

In at least one case, detectives discovered a registration for a St. Joseph County man who had been dead for six years, the affidavit says. Two other deceased individuals also were discovered among the registrations the group submitted.

Canvassers told detectives they were pressured to collect 10 applications per shift or risk losing their jobs, according to the affidavit. Supervisors advised the canvassers, who were paid \$50 to \$75 a day, to meet their quotas "by any means necessary," the affidavit says.

One canvasser told police she and a fellow employee would have a "bum" fill out voter registration forms during each of their shifts. The bum's reward was a cigarette, she said according to the affidavit.

Another canvasser admitted he went to the public library and looked up information in a phone book to complete his forms.

Curry, a Democrat, emphasized in a statement announcing the charges that officials were not aware of any evidence that fraudulent ballots were cast in the 2016 election.

"We do not believe this was a widespread effort to infringe voters, intentionally register ineligible individuals, or to impact the election," he said. "Instead we allege that a bad business practice led to illegal actions by the local association and these twelve individuals."

Still, the group's activities caused problems for some voters whose information was used without their permission, according to the affidavit. Police had to advise individuals to check their registration status to make sure they weren't disenfranchised and one man told detectives he experienced trouble voting because his name was listed four times in the county's voter rolls.

State police began investigating the Indiana Voter Registration Project in August after county election officials noticed irregularities on some of the thousands of registrations submitted by the group.

Detectives later served a search warrant on the group's Indianapolis office and confiscated computers. Detectives also found that the group's purported office location in Gary was actually a vacant lot, according to a police affidavit.

IndyStar reported last year that the group has ties to Patriot Majority USA, a so-called "dark money" group that is not required to disclose its donors.

The group's leader, Craig Varoga, has worked on former President Bill Clinton's campaign and led independent expenditure efforts to help re-elect then-Senate Majority Leader Harry Reid.

Varoga and two women who served as spokeswomen for the group in the past did not immediately respond Friday to messages from IndyStar.

In the affidavit released Friday, police said the voter project's payroll information traced back to Block By Block, Inc., a Washington, D.C. group closely associated with Field Strategies and the Ardleigh Group.

Field Strategies, a company that provides voter turnout services, has worked with labor unions and campaign committees that work to elect Democrats to the U.S. House and Senate, according to its website.

The company declined to comment.

The Indiana Voter Registration Project faces two felony charges, one for procuring or submitting false, fictitious or fraudulent voter registration applications and another for counterfeiting. If convicted, the court could fine the group \$10,000.

Holiday Burke, 25, who is described as the group's verification director, faces the same charges.

Eleven other employees are charged with procuring or submitting false, fictitious or fraudulent voter registration applications and perjury. They are:

- Glynn Parish, 52
- Dallila Alexander, 37
- Makayla Colbert, 19
- Valerie Franklin, 47
- Kylee Garrett, 36
- Tiara Kurtz, 25
- Claude Nash, 37
- Tina Pace, 43
- Tonya Trotter, 38
- Kiziah Tyler, 20
- Jasmin L. Young, 32

If convicted, they face a penalty of six months to 2½ years behind bars and a \$10,000 fine.

<http://www.cnn.com/2008/POLITICS/10/09/acorn.fraud.claims/index.html>

Thousands of voter registration forms faked, officials say

Updated 2:17 p.m. EDT, Fri October 10, 2008
From Drew Griffin and Kathleen Johnston
CNN Special Investigations Unit

- **STORY HIGHLIGHTS**
- Liberal activist group filed 2,000 fraudulent voter forms, Indiana officials say
- They included names of the dead and Jimmy Johns, a restaurant
- Elections Board in northern Indiana has stopped processing 5,000 forms

CROWN POINT, Indiana (CNN) -- More than 2,000 voter registration forms filed in northern Indiana's Lake County by a liberal activist group this week have turned out to be bogus, election officials said Thursday.

The group -- the Association of Community Organizations for Reform Now, or ACORN -- already faces allegations of filing fraudulent voter registrations in Nevada and faces investigations in other states.

And in Lake County, home to the long-depressed steel town of Gary, the bipartisan Elections Board has stopped processing a stack of about 5,000 applications delivered just before the October 6 registration deadline after the first 2,100 turned out to be phony.

"All the signatures looked exactly the same," Ruthann Hoagland, a Republican on the board. "Everything on the card filled out looks exactly the same."

The forms included registrations submitted in the names of the dead -- and in one case, the name of a fast-food restaurant, Jimmy Johns. Sally LaSota, a Democrat on the board, called the forms fraudulent and said whoever filed them broke the law.

"ACORN, with its intent, perhaps was good in the beginning, but went awry somewhere," LaSota said.

Over the past four years, a dozen states have investigated complaints of fraudulent registrations filed by ACORN. On Tuesday, Nevada authorities raided an ACORN office in Las Vegas, Nevada, where workers are accused of registering members of the Dallas Cowboys football team. And the group has become the target of Republican attacks on voter fraud, a perennial GOP issue.

A subsidiary of the group was paid \$800,000 by Democratic presidential candidate Barack Obama's campaign to register voters for the 2008 primaries, and ACORN's political wing endorsed Obama back in February. But Obama's campaign told CNN that it "is committed to protecting the integrity of the voting process," and said it has not worked with ACORN during the general election.

Brian Mellor, an ACORN attorney in Boston, said the group has its own quality-control process and has fired workers in the past -- including workers in Gary. But he said allegations that his organization committed fraud is a government attempt to keep people disenfranchised.

We believe their purpose is to attack ACORN and suppress votes," Mellor said. "We believe that by attacking ACORN, they are going to discourage people that have registered to vote with ACORN from voting."

CNN was unable to reach ACORN officials in Gary and in Milwaukee, Wisconsin, where the group's Indiana operation is based. Offices in both cities were empty when reporters visited.

Lake County elections officials have set aside all 5,000 of the ACORN-submitted applications in what Hoagland called the "fake pile" for later review. But she said every one will be reviewed before the election to make sure no legitimate voters are skipped.

There has been no evidence of voter fraud yet, because voters have yet to go to the polls. But elections officials say they will be sending their information to prosecutors, who will determine whether any investigation will begin.

"We have no idea what the motive behind it is," she said. "It's just overwhelming to us."

Office of the Indiana Secretary of State of Indiana
March 2, 2018 Public Meeting on Status of Voting Rights in Indiana – submission of
comments and materials

Attachment D

1. Media report “Marion County Election Board to expand early voting, switch to vote centers in 2019” Indiana Business Journal 1/24/2018.
2. Media report “ Marion County Election Board look to expand voting options in 2019” WISH-TV 1/25/2018.
3. Office of the Indiana Secretary of State staff notes on media reports that early voting in Marion County in 2016 impeded voting or had a discriminatory impact compared to other Indiana counties 8/5/2017.
4. Media report “ Aging voting machines in Marion County creating concerns” Fox-59 12/24/2013.
5. Media report “5 Marion County precincts didn’t open for Primary” The Indy Channel 5/8/2007.
6. Media report “Marion Co. struggles with Election Day problems” WTHR 5/8/2007.

<https://www.ijb.com/articles/67212-marion-county-to-expand-early-voting-switch-to-vote-centers-in-2019>

Marion County to expand early voting, switch to vote centers in 2019

Hayleigh Colombo January 24, 2018

Voters in Marion County will have more options starting with the 2019 elections due to long-debated changes approved Wednesday that expand early voting and create vote centers in the county.

The Marion County Election Board unanimously approved a bipartisan proposal that would convert the county's traditional polling places to vote centers starting with the 2019 primary election. That way, Marion County registered voters can use any of 300 vote centers, rather than only a designated polling place.

The county currently has about 300 polling sites, with some serving more than one precinct. A great majority of them will remain as vote centers.

The proposal also expands the use of early voting in the county, taking effect in 2019. It also creates electronic pollbooks to be used county-wide.

It creates an Election Administration Planning Committee, which will develop a plan to designate several of the vote centers as early satellite voting sites.

Democratic Marion County Clerk Myla Eldridge said the resolution was "one of the most monumental bipartisan agreements achieved in the history of Marion County" and that it will "revolutionize how we vote."

"No longer will a voter have to vote using a provisional ballot because he or she showed up to the wrong polling place on Election Day," Eldridge said. "No longer will a voter have to struggle to find a parking spot in downtown Indianapolis during early voting because the only place to vote was in my office inside the City-County Building. Those days will soon be over. Passing this resolution is an enormous win for our voters, and a win for Marion County."

The Republican member of the board, Melissa Thompson, said in a statement that she was "excited about the prospect of moving Marion County forward in how we administer elections and the role that technology can play in that process."

Thompson had previously proposed switching to vote centers, which Democrats had first been against because they were worried that the number of sites would be reduced.

"This conversation is long overdue and I am glad that both parties have come together in a bipartisan way to increase security, innovation and greater access to voting," Thompson said.

The changes comes after a previous impasse over early voting in Marion County between the two major political parties.

In May 2017, Common Cause and the NAACP filed a federal lawsuit alleging that Marion County's single location for early voting provided unequal access for voters and that it was discriminatory and caused voter suppression.

Not everyone was cheering the agreement. Julia Vaughn, executive director of Common Cause Indiana, said "I think it's an interesting proposal but I really wish they would have included the public as they were making this decision."

"It's a really big change," Vaughn said. "I'm confused about the motivation. In every other county that has made the switch to vote centers, it has reduced the number of polling places. I'm real worried that while we say we're going to keep the same number today, when it comes to 2019 and this is actually implemented, that will change."

Vaughn said she "hopes voters will ask some hard questions and ensure that voting access is actually improved instead of the process being made less accessible."

<http://wishtv.com/2018/01/25/marion-county-election-board-looks-to-expand-voting-options-in-2019/>

Marion County Election Board looks to expand voting options in 2019

By [Eric Feldman](#) | Published: January 25, 2018, 11:00 a.m.

INDIANAPOLIS (WISH) — In 2019, Marion County voters could have a major change in how they vote in elections. The county election board took the first steps to expanding the places you can vote.

There are nearly 300 sites for you to vote right now, and you go wherever you are assigned based on your precinct.

But with vote centers you'd be able to go to any of the 300 sites.

The Marion County Election Board approved the formation of a committee to work out the framework to make this change possible for the 2019 election.

Marion County leaders said a change to vote centers could make your voting process easier.

"Wednesday's vote provides an opportunity to expand how we do voting here in Marion County," said Russell Hollis, the deputy director of the Marion County Clerk's office.

The steps taken by the election board would allow you to vote at any of the 300 polling sites around the county, instead of the one assigned to you. Supporters say a hope to shorten lines and make voting more convenient.

"It's definitely a move in the right direction," said Katherine Macy, with the organization Vote Easy Indy.

One criticism of vote centers is that typically the number of places for you to vote drops. So, you can go anywhere but it may end up being farther from where you live.

But in 2019, the election board said it will not reduce the polling sites.

"The advantage of keeping every polling location the same as the vote centers is to increase the access to voting for our Marion County residents as well as to avoid voter confusion," said Hollis.

There's also a plan to expand early voting. Right now you can only go to the City-County Building, which some say poses a problem.

"It's very hard with that one location, because it's located in downtown Indianapolis without a lot of parking," said Macy.

In 2019, the plan is for at least six early voting sites open for the general election.

“There’s so many reasons why someone will need early voting from work requirements where they work twelve hour shifts to people like my mother who is 69 years old and would have a hard time standing in line,” said Macy.

The election board will need to vote again at some point to officially make these changes for 2019. There will be open meetings and discussion before a vote is taken.

Earlier Wednesday, Indiana Secretary of State Connie Lawson sent 24-Hour News 8 the following statement about the vote:

I’ve heard from voters all over the state that they love the convenience of voting at any location in the county and the additional early voting opportunities. I believe the voters of Marion County will appreciate this flexibility too.

In addition, vote centers save taxpayers money. They reduce the cost of purchasing voting equipment and voting locations. I applaud the work of Marion County leadership for developing a vote center plan that will serve the county well. It takes lots of compromise and hard work to develop an innovative plan that provides convenience to voters and potential costs savings to the county.”

But proponents for early voting say while a step in the right direction, questions do remain.

“My big question at this point is what are we going to do for 2018,” asked Macy.

On the topic of 2018, former Marion County Clerk Beth White said implementing vote centers would be impossible for the midterm election because of all the new training needed.

But early voting, she says, would be entirely possible.

Vote Easy Indy hosted an event about early voting hosted at the Universalist Church in Indianapolis. Two of the three Marion County Election Board members spoke.

For a change to take effect a vote must be unanimous, and in the past the sole Republican on the board has voted no.

And many in the crowd of about 75 wanted to know why the board’s current Republican wouldn’t vote for an expansion.

“We have to weigh and balance opinions across our entire party and there are some people who are very adamant about early voting and there are people who are not,” said Melissa Thompson, the Republican on the Marion County Election Board.

Proponents of early voting point out it has increased in some of the Republican-controlled counties surrounding Marion County and question why it hasn’t happened here.

Thompson did say compromising is key, and that’s why the board could move forward with early voting in 2019 and adding voting centers.

8/15/2017

Office of the Indiana Secretary of State

Staff notes on the 8/13/17 Indianapolis Star article on Marion County early voting.

“Republicans Limiting Early Voting in Marion County, Letting it Bloom in Suburbs by Fatima Hussein”

The thrust of the story

In the 2016 General Election, Marion County (“MC”) (represented as predominately Democrat and African-American) had just one site for early in-person absentee voting. Absentee voting in Marion County is compared to Hamilton County (“HC”) (represented as a “Republican stronghold”) which had three sites for early in-person absentee voting.¹ In the 2016 General Election 18.5% of MC voters voted absentee while 34% of H.C. voters voted absentee.²

The article’s primary thesis is: a) the lower percentage of absentee voters in MC was the result of the lack of early voting location options; b) there’s a significant number of MC voters who are unable to vote on Election Day (or absentee by mail) and therefore early in-person absentee voting is their only option (in other words there are a significant number of voters in MC who’s only voting option is early in-person absentee voting – if that option is too inconvenient they won’t – or effectively can’t, vote at all and; c) therefore MC’s operation of just one early in-person absentee voting location effectively suppresses even disenfranchises voters – most of which are African Americans and would vote for Democrat candidates.

The secondary thesis of the article (what the IndyStar identifies as it’s “investigation”) is speculative, startling and inflammatory: state and local Republican Party operatives, through control of the legislative process and by local action, exercise nefarious control over the number of sites for early voting available in any given county, and does so a manner calculated to depress the African- American and Democrat vote, thus enhancing the Republican Party vote.

The author contends that state law requiring unanimous consent of the members of a county election board on plans for additional early voting sites and locations – is the keystone of an illegal conspiracy to deprive minority and Democrat voters of their franchise. The particular actions cited are the votes of Republican Marion County Election Board members in 2010, 2012, 2014 and 2016 elections against plans for additional early voting sites.

¹ Marion County provided early in-person absentee voting at two auxiliary count clerks offices “satellite sites” in only one general election (November, 2008). The laws pertaining to early in-person absentee voting at satellite county clerk’s offices and vote center county voting centers has been in constant flux before 2008 and since. In the 2017 General Assembly Session over 30 bills concerning voting were introduced.

² The author avoids consideration of the issue that absentee voting consists of mailed ballots, traveling board ballots, military and overseas ballots and early in-person ballots. The effect the number of sites has on early in-person absentee voting and overall voter turnout out ***cannot be accurately assessed*** without data on the breakdown the types of absentee ballots. According to the Indiana Election Division counties are not required to report the breakdown of absentee ballot types to the state. The extent to which counties have this data, or that it could be constructed from election records is not known.

The author assumes, without much analysis, that there is a positive correlation between the rate of absentee voting and overall voter turnout (i.e. higher absentee voting = higher overall turnout and lower absentee voting = lower overall turnout). Based on that *assumption*, the author further argues that the rate of absentee voting has a direct and positive correlation to the number of sites for early in-person absentee voting. Based on combining the assumptions, the author concludes that overall voter turnout is directly and positively correlated to the number of early voting sites.

Though county level voter turnout data for each bi-annual election from 1990 through 2016 is available on the Indiana Election Division's website, the author based her conclusions on data from only two elections (2008 and 2016). Analysis of a broader sampling of election turnout data calls the author's conclusions about the relationship between early voting centers and voter turnout into question.

Available voter turnout data (based on the number of registered voters) does not support the assumption that a higher percentage of voters in counties with more than one site for early voting will turn out and vote compared to counties with just one site for early voting. It has been established that the number of voter registrations on a county's list is not equal to the number of individuals eligible to vote in an election. Due to registration enhancing "motor-voter" laws, restrictions on removing duplicate or obsolete voter registrations and local variations in voter list maintenance, the numbers of voter registrations in a county (which is used to calculate "voter turnout") is inflated. For example, in 1997 the number of "registered voters" in Hamilton County exceeded the U.S. Census Department's estimate of the voting eligible population. Evidence of significantly inflated voter registration lists has been the subject of litigation and settlements involving voter list maintenance in Indiana.

The article speculates that the availability of multiple early voting sites result in higher percentages of voter turnout, and that the availability of just one early voting site suppresses voter turnout. Because the number of voter registrations on the day of an election is used to calculate voter turnout, the degree to which a county's voter list is inflated is an important factor if voter turnout in one county is to be compared to turnout in another county.

Between 1992 and 2016ⁱ the population of Hamilton County increased by 260%. One would expect the number of voter registrations to track population. However, during that period the number of voter registrations increased by 315%. Between 1992 and 2016 the population of Marion County increased by 18%. During that period the number of voter registrations in the county increased by 50%. This suggests that the voter registration lists in both counties are significantly inflated and that the ratio of voter registrations to actual voters is higher in Marion County than in Hamilton County. The rate of voter turnout in a county over a series of elections is a more meaningful factor for comparing voter participation between counties. Averaging voter turnout in Hamilton and Marion Counties in the past seven Presidential Elections (excluding the highest and lowest figures (atypical elections) – which were the same in both counties (1992 – Clinton v. Bush and 2000 Bush v. Gore) indicates that over several elections, notwithstanding changes in election laws and other factors, voter turnout as a percentage of registered voters tends to be quite consistent in both counties. Over five "typical" presidential elections, voter turnout in Marion County consistently fell within a range of 53% to 59% with the average

turnout being 55% of registered voters. Over the same five elections voter turnout in Hamilton County fell within a range of 69% to 75% with the average turnout being 71% of registered voters. Within the ranges, higher and lower voter turnout in both counties are consistent in 4 elections and mismatched by just 1 % in one election.³ In both counties, in the same 5 elections, the variation in the ratio of in-person to absentee votes correlated with respect to being higher or lower than average but, varied to a much higher degree. This indicates that for Hamilton and Marion Counties while the number of people casting absentee votes varied between elections, sometimes by a significant margin, there was almost no variation in the average total vote turnout.

This analysis supports the argument that the two additional early voting sites in Hamilton county in the 2016 General Election *did not* accompany an increase in overall (expected) voter turnout (based on an average of 5 recent elections) similarly the data shows that the availability of just a single early voting site in Marion County in 2016 *did not* serve to depress the expected overall voter turnout (based on the same 5 election average). In the 2016 General Election the overall turnout both Marion County and Hamilton County was 2% less than the average voter turnout over the 5 elections looked at.

A reasonable conclusion is that while people may or may not, participate in early voting when and where it is available, the availability or non-availability of early voting site options neither enhanced or deterred voting on Election Day.

The article does not consider other, independent factors likely to affect absentee and overall voter turnout.

Statutory county election board dynamics

The statutory requirement that county election boards must unanimously approve certain decisions (such as additional early voting locations) cuts both ways. In 2010-2016 the Republican Marion County election board member indeed blocked a proposal for additional satellite early voting sites. In the years that Hamilton County has had satellite early voting sites, the proposals for the number of sites and locations could have been blocked by the Democrat election board member. If the author's theory (and generalization) that African-Americans predominately face barriers to voting absentee or on Election Day and that African-Americans predominately vote Democratic is correct, then by logic, state and local Republican operatives, accused of being "laser focused on suppressing African-American and Democrat votes" would exercise the right to block additional early voting sites in every county.

Additional early voting site location selection dynamics

As was experienced in Lake County in the previous decade, when a single political party has authority to approve any number of additional early voting sites and their locations, the decisions

³ In the 2012 General Election voter turnout was 1% higher than the average voter turnout in the 5 Presidential elections that were compared (2016, 2012, 2008, 2004 and 1996). Note: in 2008, the single election in which Marion County had 3 early voting sites, overall turnout matched, but did not exceed the average voter turnout over the 5 elections compared.

made tend to favor the party making the decisions and disadvantage the “minority” party. The result of uniform statutory requirement that county election boards be in unanimous agreement on early voting sites and locations is that both political parties agree on plans for additional early voting sites and their locations. In the case of any county that provides early voting sites in addition to the clerk’s office, or counties that utilize vote centers, both political parties had to approve of those plans.

Days and hours the County Clerk’s office and other early voting sites are open if available

The article compares absentee voting statistics for the 2008 and 2016 General Election in Hamilton County, which had 3 early voting sites and Marion County which had one early voting site, and claims that the higher percentage of early voters in Hamilton County is attributable to the convenience of 2 additional voting sites.

During the statutory period for early in-person absentee voting prior to the 2016 General Election, early voting at the Marion County clerk’s office was available for 27 consecutive days (7 days a week) open for voting a total of 247 hours.

The Hamilton County clerk’s office was open only 22 days (19 weekdays + 3 Saturdays, no Sundays) for a total of 190 hours.

One of the additional early voting sites in Hamilton County was open 55 hours spread over 9 weekdays and 3 Saturdays – no Sundays). The other Hamilton County early voting site was open 50 hours spread over 8 weekdays and 3 Saturdays, no Sundays).

In Marion County there were 21 days in which a person could vote as early as 8 am and 7 days a voter could vote as late as 8 pm.

In Hamilton County (among all three sites) there were 18 days in which a person could vote as early as 8 am. The latest time for early voting in Hamilton county was 7 pm – which was available on just 6 days. 7 pm voting was not available at every early voting site on each of the 6 days, for example the Hamilton County clerk’s office which normally closed at 4:30 pm, was open till 7 pm on three Wednesdays and one Thursday. Voting was available at the clerk’s office on 3 Saturdays between 9 am and 4 pm and at the two other locations between 10 am and 3 pm.

Availability of public transportation

Marion County has an extensive, inexpensive, city-county wide public transportation system which operates 7 days a week. Public transportation is not available in Boon, Hamilton, Hendrix and Johnson Counties.

Number of poll workers, voter check-in and poll book system and number of voting machines available for use – i.e. wait times.

No significant waiting to vote was reported in Marion County. In Hamilton County wait times at the clerk’s office were reported to range from 30 minutes to + 2 hours. Wait times at the 2 additional voting locations were reported to average 2 hours and at times exceed 3 hours.

Options, convenience and efficiency for voting on Election Day

On the day of the 2016 General Election Marion County had over 294 voting sites distributed over the county's 402 square miles. On the same day in Hamilton County there were 130 voting locations distributed over the county's 403 square miles. On averages Marion County had one voting site for every 1.37 square miles. Hamilton County has one voting site for every 3.1 square miles. The significantly larger number of Election Day voting locations in Marion County (and availability of public transportation) suggests that it is more convenient to vote in Marion County on Election Day than in Hamilton County, and thus fewer voters in Marion County would need to rely on early in-person absentee voting than in Hamilton County.

Numerous factors can impact absentee voting and overall turnout:

1. The number and locations of sites for voting on Election Day.
2. Effects of population growth and local demographics.
3. Availability of public transportation and individual transportation and schedule issues.
4. Greater or lesser availability of parking.
5. Typical wait times (i.e.: the number of poll workers and voting machines available for early in-person absentee voting and voting on Election Day.
6. Local finances and investment in voting system infrastructure.
7. Claims of foreign tampering, fake news and a "rigged" system.
8. Electronic poll book system use.
9. Vote center election systems.
10. Presidential versus mid-term elections.
11. Impact of state and national "marquee races" and local races of high interest.
12. Election board disputes based on the location of early voting locations rather the principle of whether or not a county will have more than one site for early voting.
13. Perceived importance of the "civic experience" of voting with neighbors at the same time at a local school, church or other polling place.\
14. Inflated voter registration lists, resulting from voters moving at high rates and level of voter list maintenance artificially lower voter turnout statistics.

¹ The 1992 – 2016 range was selected based on ready availability of voter registration and turnout data.

<http://fox59.com/2013/12/24/aging-voting-machines-in-marion-county-creating-concerns/>

Aging voting machines in Marion County creating concerns

Posted 4:48 PM, December 24, 2013, by [annkeilfox59](#), Updated at 04:52PM, December 24, 2013

Concerns are being raised about the age of the voting equipment used in Marion County that dates back to 2000. The Marion County Clerk, who is responsible for elections, has said the equipment is failing, but she has also been accused of delaying a decision to purchase replacement equipment.

"It does not make any sense to continue to buy batteries that are not made anymore for a piece of equipment that doesn't work very well anyways," said Marion County Clerk Beth White.

White said the voting equipment takes an hour to boot up, often breaks, and is no user-friendly.

Last year, her office spent \$123,000 on hardware costs, and that expense is just part of the 2012 \$850,000 service and maintenance contract.

"I understand the parties are nervous about the timing. I get that," said White.

"I'm not sure about Beth White. She has spent most of her public comment time trying to delay any type of solution or longer term solution so hopefully cooler heads can prevail," said Kyle Walker, Marion County Republican Party Chairman.

Walker said he was interested in the purchase of new voting equipment that could be used in 2014, but there has only been public conversation and a study completed on the investment that began in January.

White believes a replacement of the fleet would cost more than \$11.5 million, which is what was spent last time.

One consideration that could lighten the burden on the county is an equipment lease or a loan.

Marion County has 600 precincts and includes 645,000 registered voters.

"What we have is an aging fleet of voting machines, so anything they do in the short-term, short of buying new machines, is going to be a sort of stop-gap," said Walker.

It is unclear if White, who is running for higher office, will hand over the purchasing responsibility to her successor. She claims while some voting machines may not turn on and others may have malfunctioning ballot readers, she promised an accurate 2014 election cycle.

"If we even have a 10 percent failure rate on election morning, or 5 percent, that is significant. That is a dramatic administrative challenge for us, and these are the things we're approaching," said White.

The Marion County Election Board is expected to ask for bids from the handful of companies that supply voting machines at the end of January. The decision has been delayed already.

Mayor Greg Ballard and the Indianapolis City County Council will be responsible for budgeting the purchase or lease once the election board has decided on a bid winner.

<https://www.theindychannel.com/news/politics/5-marion-county-precincts-didn-t-open-for-primary>

5 Marion County Precincts Didn't Open For Primary

Other Polling Places Start Late; Many Workers Fail To Show

About 150 workers failed to be at Marion County polling places for at least part of Tuesday's primary election, delaying voting at some sites for hours and preventing any voting at five precincts.

About the same number of inspectors also failed to collect election materials -- including ballots and other supplies -- on the night before, said Marion County Clerk Beth White, who was overseeing her first election.

White said she believed fewer than 100 of the county's 917 precincts failed to open as scheduled at 6 a.m. Tuesday. Many of the delayed precincts opened late -- after noon in a few cases -- but five precincts never opened when voting ended at 6 p.m.

White said the county's election board did not ask a court to extend voting hours because, in part, the county's voting machines weren't programmed to operate past 6 p.m.

She said accepted blame for many of the delays, which primarily were in southern Marion County.

"One voter who has not been able to vote is one too many," White said. "I know that, and I take responsibility for that. No one is more frustrated about that than I am."

In the last few elections, Democrats bitterly criticized the previous county clerk, Republican Doris Anne Sadler, when polls didn't open or machines didn't work properly.

With White, a Democrat, at the helm, many of the same problems are evident. In some cases, keys used to unlock voting machines were not delivered.

Republicans called for an investigation.

Marion County Clerk Beth White

"This is a travesty. We absolutely should have an investigation into Beth White -- (Indianapolis Mayor) Bart Peterson's handpicked person, who is now the county clerk -- (and) her absolute lack of leadership and failure to plan," said Tom John, chairman of the Marion County Republican Party.

Precinct workers and voters were frustrated by Tuesday's problems.

"We have precincts that didn't open on time. Poll workers were never assigned locations," said Jennifer Ping, vice-chair of the Marion County GOP. "Voters were disenfranchised by not being able to vote at 6 o'clock. I view that as gross incompetence on our new clerk's part."

Peterson, a Democrat, said November's election would be better.

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<https://www.wthr.com/article/marion-co-struggles-election-day-problems>

Marion Co. struggles with Election Day problems

PUBLISHED: MAY 8 11L 2007 - 5:54PM (EDT) UPDATED: MAY 27 11L 2007 - 4:51PM (EDT)

Tuesday's primary saw some upsets, although the big story was in Marion County, where some poll workers' failure to turn up led to problems at numerous polling places.

Four incumbent mayors out

Four incumbents were ousted Tuesday. In Martinsville, Phil Deckard beat out incumbent Mayor Shannon Buskirk with 57 percent of the vote in the Republican primary. In New Castle, former mayor Sherman Boles beat out incumbent Tom Nipp with 54 percent of the vote in the Democratic primary.

Carmel Mayor Jim Brainard looks like he will hold on to his seat, fending off a challenge from John Koven in the Republican primary. In Crawfordsville, Charlie Coons beat out incumbent John Zumer. In Kokomo, Rick Hamilton beat out Mayor Matt McKillip with 57 percent of the vote in the Republican primary.

Marion County voting woes

Voters in Marion County, meantime, suffered through some of the worst Election Day problems in years.

According to election officials, 135 precincts opened late and five never opened at all. Newly elected Democratic County Clerk Beth White says 150 inspectors failed to show and she failed to prepare.

"I take responsibility for not having a contingency plan. I know now that 917 is not enough to recruit. We need quite a few more because we will have this kind of problem at the last minute," she said.

At 4:00 am, election workers rushed to distribute the boxes, sometimes leaving them in empty polling places or with workers not trained or authorized to run voting machines. The county's election board did not ask a court to extend voting hours because, in part, the voting machines were not programmed to operate past 6:00 pm, she said.

"I've never seen an election like this," said Marilyn Mayfield, poll worker.

"One voter who has not been able to vote is one too many. I take responsibility for that. No one is more frustrated about that than I am." said White.

Republicans are not sympathetic, especially since White strongly criticized predecessor Doris Ann Sadler for similar problems. Tuesday night, Republicans held a news conference during which they denounced White's performance.

"We have seen a complete and utter lack of leadership and complete unprepared and inability to plan by mayor Peterson's hand-picked Marion County clerk." said Tom John, Marion County GOP Chairman.

"This is a hard job. Doris Ann had a hard job and now I see just how hard," said White.

Mayor Bart Peterson is supportive of White. "We will all figure it out over the course of the next few days and there will have to be a better job done by everyone I think in the fall election," he said.

But Tom John warns this election may not be over. "Candidate challenges are a distinct possibility and I think we need to brace for that over the coming weeks." He added. "This election may be in doubt. We may have to spend a million dollars on a new election. That's frightening."

Voters angry

Voters who faced waits or other problems were disgusted.

"I think this is a crock. I suppose they've lost their way," said voter Charlie Van Treese.

Some polls opened several hours late. More than a dozen hadn't opened by mid-day. By mid-afternoon some were still closed. No one knows how many voters were turned away.

"It is never right for a citizen of any party not to get to vote," said Neil Topliff, voter.

White said she took responsibility for what happened. "If anybody wants to call me incompetent, that's their business," White said.

- Compiled from reports by Rich Van Wyk and Mary Mitz. The Associated Press contributed to this report

Office of the Indiana Secretary of State of Indiana
March 2, 2018 Public Meeting on Status of Voting Rights in Indiana -- submission of
comments and materials

Attachment E

1. Correspondence from the office of the Indiana Secretary of State requesting Dr. Fraga's research and data (9/25/2017). Not responded to.
2. Exerpt from Dr. Fraga's upcoming text: *The Turnout Gap: Race, Ethnicity, and Political Inequality in a Diversifying America*.

The Turnout Gap also confronts an emerging narrative regarding election laws and their potential to suppress minority voting. High minority turnout can and does occur even in the face of tremendous institutional barriers; in fact, minority turnout is often highest in the very places where restrictions are most severe...

3. Paper abstract and review: *Candidates or Districts? Reevaluating the Role of Race in Voter Turnout*, Fraga, Bernard L. *American Journal of Political Science*, Volume 60, Number 1, 1 January 2016, pp. 97-122(26).
4. Media report: "Why did trump win? More whites – and fewer blacks – actually voted" by Bernard L. Fraga, et al., *Washington Post*, May 8, 2017.
5. Report: *State Election Laws and Their Impact on Individual Minority Voter Turnout*, Rauch, Jessica T. Indiana Department of Political Science, October, 2016.

The previous literature pertaining to election reforms affects on voter turnout has had mixed findings ... (p.43).

Even though most of the literature and popular news stories focus on how voter identification laws affect groups of racial minority voters, I was not able to find any indication of that in my analysis. (p.43).

Bonnet, Jerry (SOS)

From: Bonnet, Jerry (SOS)
Sent: Monday, September 25, 2017 3:54 PM
To: 'fatima.hussein@indystar.com'
Subject: Satellite voting research from IU

Dear Ms. Hussien,

The study of voting in Marion County by Professor Bernard Fraga – discussed in your article today is certainly of interest to state election officials. I cannot locate the article on-line, and Dr. Fraga has not responded to my email inquiry. Do you have a copy of the article I could look at, or would you kindly advise where I can obtain a copy?

Thank you,

Jerry Bonnet

Jerold A. Bonnet, General Counsel
Office of the Indiana Secretary of State

Office: 317-232-6534

[One-page Summary]

The Turnout Gap:

Race, Ethnicity, and Political Inequality in a Diversifying America

Why do some racial/ethnic groups vote more than others? Are there policies and institutions that boost, or suppress, minority voting? Does low voter turnout mean that elections do not reflect the wishes of all Americans? *The Turnout Gap* addresses these questions, examining rates of voting for Whites, African-Americans, Latinos, and Asian Americans from the pre-Civil War era to the present. Finding that the longstanding gap between minority and white voter turnout has *not* closed, Bernard L. Fraga takes a close look at contemporary disparities in voting rates, leveraging geographic and temporal variation to document where and when we see voting rates reach parity between racial/ethnic groups.

In so doing, the book challenges the conventional wisdom and suggests that there are broad patterns of consistency in who votes across racial/ethnic groups: when a particular group is seen as having the potential to drive election outcomes, citizens from that group are more likely to turn out to vote. Socioeconomic disparities do not explain this phenomenon, nor differences in voter eligibility. Instead, the root cause of low minority turnout is the fact that, in most elections and in most places, African Americans, Latinos, and Asian Americans are perceived to be a less electorally relevant force than non-Hispanic Whites. *The Turnout Gap* also confronts an emerging narrative regarding election laws and their potential to suppress minority voting. High minority turnout can and does occur even in the face of tremendous institutional barriers; in fact, minority turnout is often highest in the very places where restrictions are most severe.

The Turnout Gap indicates that the power of the vote can win out when politicians make a point to engage the minority electorate. However, the book also demonstrates the consequences of *not* remedying this political inequality: American elections are not representative of the wishes of all Americans, especially in 2016 and other recent elections. The continuing demographic transformation of America will not necessarily lead to political equality for minority citizens; it is instead up to politicians, parties, and citizens themselves to realize and mobilize the tremendous potential of all Americans.

Candidates or Districts? Reevaluating the Role of Race in Voter Turnout

Author: Fraga, Bernard L.

Source: American Journal of Political Science, Volume 60, Number 1, 1 January 2016, pp. 97-122(26)

Publisher: Wiley-Blackwell

DOI: <https://doi.org/10.1111/ajps.12172>

Abstract:

Leading theories of race and participation posit that minority voters are mobilized by co-ethnic candidates. However, past studies are unable to disentangle candidate effects from factors associated with the places from which candidates emerge. I reevaluate the links between candidate race, district composition, and turnout by leveraging a nationwide database of over 185 million individual registration records, including estimates for the race of every voter. Combining these records with detailed information about 3,000 recent congressional primary and general election candidates, I find that minority turnout is not higher in districts with minority candidates, after accounting for the relative size of the ethnic group within a district. Instead, Black and Latino citizens are more likely to vote in both primary and general elections as their share of the population increases, *regardless of candidate race*.

<https://journalistsresource.org/studies/politics/elections/minority-voter-turnout-research>

The role of race in voter turnout

By [Bernard L. Fraga](#)

As the 2016 presidential election nears, both Republicans and Democrats have courted minority voters – a group that is [growing](#) and [politically important](#). Black and Hispanic people make up the country's two largest minority voting blocs and, as such, are especially important in close races. Various news agencies and other political observers have explored the question of [whether](#) [co-ethnic](#) candidates can mobilize voters of color without winning over voters of color, who generally, according to a [recent survey](#), identify as Democrats or independents.

Over the years, political scientists have studied the voting habits and behaviors of racial and ethnic minorities. One area of focus is voter turnout. While the minority population has increased – the Hispanic population alone grew [nearly 50 percent](#) from 2000 to 2014 — voter turnout among minority groups does not seem to be keeping up. It has long lagged behind that of white voters. In 2014, for example, the voting rate for non-Hispanic white adults was 45.8 percent while the rate was 39.7 percent for black adults and 27 percent for Hispanics, a [gap](#) [that](#) [has](#) [widened](#) [in](#) [recent](#) [years](#), [as](#) [the](#) [table](#) [below](#) [shows](#). A decade previously, voting rates for those groups were 48.8 percent, 42 percent and 30.8 percent, respectively.

So, as political parties work to attract diverse voters, what factors influence whether they will show up at the polls on Election Day? Are minority populations more likely to vote if a candidate on the ballot is of the same race or ethnicity? Researcher [Jonathan Fraga](#) of Indiana University looked at these issues in a 2015 study published in the *American Journal of Political Science*. For the study, “[Do Political Parties Respond to Minority Turnout? Evidence from the 2000s](#),” Fraga took data collected from a nationwide voter registration database and combined it with data on congressional candidates. He analyzed congressional general and primary elections from 2006, 2008 and 2010 to gauge turnout among demographic groups.

Key findings from his study include:

- Having a political candidate of the same race or ethnicity on the ballot does not, by itself, prompt a larger voter turnout among minority groups.
- Turnout is often greater for minority voters when they live in a congressional district where their racial or ethnic group represents the majority of the citizen voting-age population (CVAP). For black and Hispanic voters specifically, turnouts are higher when each group makes up a larger portion of the electorate – regardless of the race of the candidates listed on the ballot.
- When no black congressional candidate is on the ballot, the general-election turnout for black voters is, on average, 40 percent in a district where black people make up 10 percent of the citizen voting-age population. The turnout is considerably higher — an average of 49.3 percent — in a district where black people are 50 percent of the voting-age population.
- In the absence of a Hispanic candidate, the general-election turnout for Hispanic voters is 6.4 percentage points higher in a voting district where Hispanic people make up 40 percent of the voting-age population compared to a district where they comprise 10 percent of the voting-age population.

This study builds upon previous research to show that the racial and ethnic makeup of an electorate is linked to minority-voter turnout. The author recommends further research to explore the cause of the trend. He suggests that these results be considered when evaluating plans to change voting districts. “Considering [voter] participation as well as demographic representation calls for a new metric to judge what is fair when crafting district boundaries,” Fraga states. He also notes that as the nation’s minority populations grow, voting districts will become more diverse, which could result in future changes in political participation.

Related research: A 2013 study published in the *American Journal of Political Science* looks at how preregistration, or the registration of youth before they reach voting age, influences voter turnout. A 2014 study from the University of South Carolina suggests that the Democratic Party and civil-rights organizations can play an important role in mobilizing black voters if they strengthen their organizational features. A 2014 study by Harvard University offers insights about voter participation in presidential primaries and caucuses.

https://www.washingtonpost.com/news/monkey-cage/wp/2017/05/08/why-did-trump-win-more-whites-and-fewer-blacks-than-normal-actually-voted/?utm_term=.648f5691d2f2

Why did Trump win? More whites — and fewer blacks — actually voted.

By Bernard L. Fraga, Brian Schaffner, Jesse Rhodes and Sean McElwee
By Bernard L. Fraga, Brian Schaffner, Jesse Rhodes and Sean McElwee

Monkey Cage Analysis
May 8, 2017

Why did Trump win — and Clinton lose — the 2016 U.S. presidential election? That's been debated widely, to understate the case. Nominees include each campaign's ground game, messaging, FBI Director James B. Comey's last-minute letter to Congress, and defections from the "Obama coalition."

Here, we offer new data to show that shifts in which racial groups went to the polls may have made the difference.

Using data from the voter file vendor Catalist and information from the U.S. Census Bureau, we examine the change in turnout rates for different racial/ethnic groups between 2012 and 2016. Black turnout declined dramatically; white turnout increased noticeably; and Latino and Asian American turnout went up even more. In the key swing states of Michigan, Wisconsin, and Pennsylvania, those shifts were especially strong. How strong? Without those shifts in turnout from various racial and ethnic groups, these pivotal states might have gone not to Trump but to Clinton — giving Clinton an electoral college victory.

How we did our research

It is surprisingly difficult to estimate levels of voter turnout by race. Unlike the forthcoming report from the Current Population Survey, Catalist's estimates are based not on self reports but on actual turnout records. Since most states do not ask voters about their racial/ethnic background, Catalist usually estimates this information from the voter's name and neighborhood.

According to recent research, Catalist correctly predicts race/ethnicity about 91 percent of the time. Further, we use Catalist's estimates of voter race for both 2012 and 2016. If

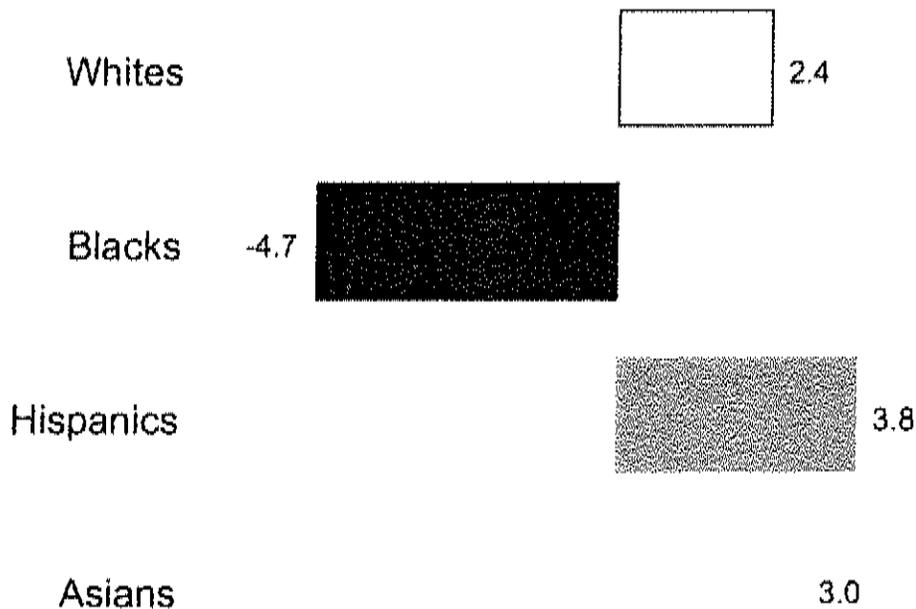
Catalist's estimates are wrong, they're likely wrong in a consistent way — and so any differences we find in the electorate's racial composition are accurate.

The denominator we use to calculate turnout rates is an estimate of the citizen voting-age population (CVAP) by race in November 2012 and November 2016, respectively. To construct this estimate, we use the Census Bureau's Population Estimates Program data to calculate the voting-age population in each state by race, and then use American Communities Survey information on citizenship rates to remove the (often substantial) noncitizen population for each racial/ethnic group.

How voter turnout by race changed between 2012 and 2016

Nationally, turnout rates for these racial/ethnic groups changed noticeably from 2012 to 2016, as you can see in the figure below.

Change in turnout rates by race (2012 to 2016)



-6 -4 -2 0 2 4 6
Change in % of group voting from '12 to '16

Turnout data provided by Catalist. Voter race is estimated in most states.
Figure by Bernard Fraga, Sean McElwee, Jesse Rhodes, and Brian Schaffner.

Voter turnout among whites — the racial/ethnic group most strongly in Trump’s corner — increased by 2.4 percentage points in 2016 compared to 2012. In stark contrast, turnout among African Americans — the group most loyal to Hillary Clinton and the Democratic Party — fell by 4.7 percentage points nationally. Latinos and Asian Americans, both groups that are generally Clinton supporters, were more likely to vote — by 3.8 and 3.0 percentage points, respectively.

These national averages obscure important patterns. Here's what stands out: while the decline in black turnout was stark across the board, it was sharpest, on average, in the states that determined the outcome of the election. Black turnout fell by 4.3 percentage points in non-battleground states in 2016 compared to 2012. But it fell by 5.3 percentage points in states where the election was decided by a margin of less than 10 points.

Given how important African Americans are to the Democratic coalition, the swing-state collapse of black turnout seriously hurt Clinton.

Let's take an even closer look at particular states. The figures below show states where at least 3 percent of the population was African American or Latino, and shows the changes in African American and Latino voter turnout rates between 2012 and 2016.

As you can see, the national average hides dramatic differences among states. For example, as we've said, the African American turnout rate fell by 4.7 points nationally. But in Michigan and Wisconsin — two key Midwestern states where, to analysts' surprise, Trump won — black turnout fell by more than 12 points.

Similarly, overall white turnout increased by only 2.5 points nationally. But in several states it surged by more than 5 points. In the critical battleground state of Florida, white voter turnout jumped by 4 points — and black turnout fell by 4 points. Trump won Florida by a margin of just 1.2 points.

At the same time, Latino voter turnout jumped especially in Connecticut, Florida and Illinois. Nationally, as noted above, the increase was 3.8 points. But in Florida it went up 5.4 points — which may suggest the Clinton campaign did effectively mobilize Latino voters there.

Just as notably, in Texas the Latino turnout rate was up by 4.9 points, a state never expected to be close. But Trump won Texas by only nine points, a dramatic drop from

Romney's 16 point victory in 2012. And Arizona's 2.7-point increase in Latino turnout helps to explain why Trump won that state by only 4.5 points, half of Romney's 9 point margin in 2012.

Were these changes in voter turnout enough to decide the race?

To find out, we used the Cooperative Congressional Election Study to estimate the 2016 presidential vote choices of whites, African Americans, Latinos, and Asian Americans in each state. Then we set the turnout rates of each of these groups to their 2012 level, while keeping everything else as it was in 2016. You can see the results in the figure below.

But if groups had gone to the polls at the same rates as in 2012, Clinton would likely have won Michigan, Pennsylvania, and Wisconsin in 2016 — though in the last two cases by razor-thin margins.

If we changed nothing but the turnout rates of various racial and ethnic groups, in Michigan, the actual Clinton loss by .2 percentage points would have become a victory by 1.5 percentage points. Clinton's actual loss by 0.7 percentage points in Pennsylvania would have been a 0.5 percent victory. And instead of Trump winning Wisconsin by 0.8 points, Clinton would have won by 0.1 percent. Clinton's electoral college total would have been 278 votes, putting her in the White House.

Of course, these measures are estimates and subject to error. Interpret cautiously. But what's clear is that the jump in white turnout in key swing states and drop in black turnout may well have handed the presidency to Trump.

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Disclosure: A portion of this research was supported by Demos. This post is part of a broader project investigating voter turnout in 2016 and the possible role of voter suppression.

STATE ELECTION LAWS AND THEIR IMPACT ON INDIVIDUAL MINORITY
VOTER TURNOUT

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Submitted to the faculty of the University Graduate School
in partial fulfillment of the requirements
for the degree
Master of Arts
in the Department of Political Science,
Indiana University

October 2016

Accepted by the Graduate Faculty, Indiana University, in partial fulfillment of the requirements for the degree of Master of Arts.

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Acknowledgements

I would like to thank several professors for helping me obtain my masters degree from IUPUI. Without them I would not have completed my degree in a timely fashion. The members of my thesis committee especially have been instrumental. I am indebted to Aaron Dusso, Amanda Friesen, and John McCormick for their comments on my thesis to help improve it to where it is today.

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This thesis examines recent changes in state level voting laws and their effect on the turnout rate of different minority group voters. Individual states are in charge of conducting their own elections as well as having their own requirements for registering voters and early voting. There is no federal law or constitutional mandate that requires states to have similar election laws, but The Voting Rights Act of 1965 tried to ensure the laws passed do not disproportionately exclude certain citizens from the ability to vote. Because of this attempt to not exclude minority groups, election laws can vary widely by states and impact citizens of some minority groups. Some states have chosen to pass laws that make registering and voting more complicated, while others have tried to ensure that both are as easy as possible for each and every citizen. Voting laws can have negative consequences for many groups. Minority populations are often thought to be hit the hardest by many of these election reform laws. Some states have been passing more restrictive laws since 2000 and again in 2013 after section 4(b) of the Voting Rights Act was ruled unconstitutional by the United States Supreme Court. This variance in election laws across states and across election years gives a perfect arena to further evaluate the potential effect. This analysis will look at comparing states from 2006 to 2014 in order to determine the effect of restrictive voting laws on turnout.

Aaron Dusso, Ph.D., Chair

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Introduction

The effects of election reforms on citizens are not trivial and should be properly understood. The government is involved in every citizen's life in one way or another and because of this the changing of election laws has a real impact on a citizen's ability to vote. Different election reforms can affect different groups of citizens. With the possibility of groups not being affected the same, the reforms need more study and this thesis adds to the overall research of election reforms. Election laws can focus on many different aspects of an Election; but of specific importance to this thesis are early voting reforms, voter registration reforms, and photo identification reforms.

The previous research on election reforms looks primarily at how turnout was affected in aggregate. There does appear to be conflicting findings on just who was affected and by how much. Different research methods and models are utilized to explore these research questions. The research does fall short in its understanding of how minority citizens are specifically affected.

Even in the short time since major changes started happening in regards to election reforms there has been a lot of activity. The versions of election reforms in modern history started happening in the 1970s. One of the biggest boost to election reforms came after the passage of the Help America Vote Act (2002). This law required states to meet certain standards and in order to meet them they would potentially need to pass legislation. The second boost to election reforms being passed was the Supreme Court case Crawford V. Marion County. This case affirmed that Indiana's requirement for government issued photo identification was constitutional and could be allowed to

continue. Many more laws have been passed and they will be discussed later in this thesis.

There has been turbulence in election reforms in recent years and months. The controversy and misunderstandings surrounding different election reforms makes for an important thesis topic and discussion. This thesis will look to answer two hypotheses specifically.

Hypothesis 1: In states with strict voter identification laws, the lower a state's aggregate education level, the lower voter turnout will be.

Hypothesis 2: In states with strict voter identification laws, the larger the minority population, the lower voter turnout will be.

A dataset was created to address these questions. This dataset contained data from the Census Bureau, Bureau of Labor Statistics, and the Almanac of American Politics. Regression analysis was used to test the hypotheses. In order to drill down to the level of detail I wanted I used interactions of key variables. By using a three-way interaction I was able to find the exact group of people most affected by requiring photo identification to vote.

Election reform research is every changing and will require additional study. It seems every year or even month a new state passes an election law or gets told their law is unconstitutional by a judge. The variation in scope and strictness of reform laws makes this topic one that will need to be constantly studied to ensure minority or disadvantaged citizens are not being impacted at a higher rate than the rest of citizens.

Chapter 1

History of Election Reforms

Since the first election in 1788, the United States has seen suffrage expand numerous times to allow new groups of people to vote, but not everyone chooses to exercise this right every election. While the choice to participate or not is a personal one, it can often be more difficult because the processes of getting registered and voting on Election Day are too cumbersome. In other words, the hurdles to voting can be quite high for some individuals.

Election administration is up to the individual states, but there are a few laws that the federal government has passed in which every state must follow. Having state legislatures in charge of their own laws regarding voting registration, absentee voting, early voting, and any other form of election administration means there is the potential for differences in the laws across states. States also allow the officials in charge of administering elections to be elected, possibly complicating the idea that they can be impartial and ensure all citizens are able to vote. Even with having officials in charge of election administration; elections have not been without their problems.

Lines at polling places throughout the years on Election Day are not unheard of. The issue coming to light in more recent years is the fact that some lines are getting much longer and are increasingly happening in areas dominated by minorities. These lines can reach as great as 5 hours in some areas. (Famighetti, Melillo, Perez 2014). There was also one election center in Northern Chicago during the 2014 election where the last voter did not cast his ballot until three a.m. on Wednesday. The voter that was last in line said he

was not going to be denied his right to vote and knew that was a sentiment others at the end of the line shared (Ford and Bowen 2014).

There were long lines at polling places in many different states in many different years; but there was also a long recount scandal during the 2000 election in Florida that delayed the official results of the presidential election for a little more than a month and caused other changes to happen. The other major controversy in Florida was the issues of the butterfly ballot. There were too many candidates to fit on one side of the ballot and the decision was made to put them on different pages so that when the ballot was opened each candidate's name alternated lines. This type of ballot was tough to read for many voters and they had a hard time knowing exactly for whom they cast their ballot. The problem with the ballots put the election results into question. When the vote totals came in on Election Night and George W. Bush and Al Gore were within a small margin of each other, there needed to be a recount. These butterfly ballots then made it hard for some counties to decide for whom the voter truly voted or if the vote was actually intended for another candidate. This election was so controversial and contentious that it needed to be decided by the Supreme Court of the United States of America (Toobin 2002). Luckily for voters, Congress passed the 2002 Help America Vote Act (HAVA) not too long after realizing the deficiencies in the electoral system after the disastrous 2000 election.

The Help America Vote Act (HAVA) of 2002 created new minimum election standards that all states were required to follow. HAVA also created the Election Assistance Commission (EAC), which is tasked with assisting the states with compliance with HAVA on top of distributing the funding that each state receives to help meet the

new minimum standards. HAVA requires that each state enact six procedures and programs: updated and upgraded voting equipment, statewide voter registration databases, voter identification procedures, provisional voting, voting information, and administrative complaint procedures. Indiana was the first state to take the HAVA voter identification requirement a step further and required identification of all voters. This law was challenged and was appealed all of the way to the U.S. Supreme Court where it was upheld as being constitutional (Larocca and Klemanski 2011).

Also as a result of HAVA, polling places are required to have at least one voting machine accessible to voters with disabilities and needed to try getting more electronic voting systems instead of the often confusing punch card or lever machines that have been used by many locations in the past. States were also required to make their voter registration databases electronic and regularly maintain their lists by purging ineligible voters. First time voters are also now required to show identification when casting their first ballot. They are able to show identification without photos, such as a utility bill with a matching address to what is on the registration roll or a birth certificate. Voters who are not on the registration lists but believe they are properly registered are permitted to vote via provisional ballot that is then certified by state officials. In 2004 there were approximately 1.9 million provisional ballots cast and 1.2 million (64.5%) were subsequently counted (Weiser 2006).

Many media outlets published personal stories of individuals that experienced less than ideal voting conditions in recent elections. Long lines seemed to be a major problem of the 2004 presidential election. One news story reported a student waited in line from 1:30 pm till 11:00 pm when she was finally able to cast her vote.

“Ground zero for long waits was Gambier, Ohio, where two electronic voting machines served 1,170 voters. The polling place had to stay open until 4 a.m. to accommodate everyone. Rita Yarman, deputy elections director in Knox County, which includes Gambier, says early voting would have helped. “I think it would be wonderful,” she says. “We’re certainly hopeful that that comes about.” So is Maggie Hill, 21, a student from Maryland who registered to vote at her Kenyon College address in Gambier because her vote for John Kerry mattered more in Ohio. She got in line to vote at 1:30 p.m. and finally got to cast a ballot at 11. “I think I would consider doing the early voting” next time, she says. “There were just too many people” (Drinkard 2004).

During the 2012 general election there was another account of a voter having to wait a long time, although this was for an early voting line that required 8 hours of waiting before being able to cast a ballot (Peters 2013). There is another report that stated voters at a precinct in Miami-Dade County in Florida were turned away from early voting because too many people showed up wanting to cast a ballot, and the precinct could not handle that many people. These voters were required to come back on Election Day if they wished for their vote to be counted.

“The elections office in Miami-Dade County has reopened after shutting its doors to voters who waited in long lines for an absentee ballot. Deputy Supervisor Christina White says election officials were overwhelmed by the crowd Sunday. With limited staff and one printer, election officials decided to shut down the main office. Voters banged on the front doors and demanded to vote, prompting staff to reopen the office about an hour later. White says, “We heard them loud and clear” (Associated Press 2012).

In September of 2005 the Commission on Federal Elections released a report that was tasked with finding problems from both the 2000 and 2004 elections, and subsequently give recommendations for fixing those issues. Former President Jimmy Carter formed the commission with members from both parties hoping their recommendations would lessen the burden of voting some citizens experience. The report they released was titled “Building Confidence in U.S. Elections,” and it found the 2000

election had problems with “flawed voter registration lists, obsolete voting machines, poorly designed ballots, and inadequate procedures for interpreting disputed votes” (pg1). The recommendations were based on where they felt HAVA was falling short and where it was truly helping voters. This report opened local officials eyes, by clearly indicating that changes were needed in how elections were administered. Even after passing HAVA, elections only seemed to marginally improve in some areas, but the larger problem remained. Many polling locations across the country were able to shorten wait times because of new electronic voting machines and their ability to make reading the ballot easier (EAC pg3). Simultaneously, the first presidential election after HAVA was passed was in 2004, and it brought to light other issues that were not addressed in the legislation. These problems included voter registrations not being processed in time, absentee ballots not being mailed out in time, long lines at some polling places, improper requests for identification, concerns about partisan registration purges of registration lists, and different procedures across states for counting provisional ballots (EAC pg3).

Voting in elections is one of the ways people can decide what they want for the future of the United States. This civic responsibility has become easier for some than it has for others. Even when some citizens want to vote, they are unable to because they are often met with either voting or registration restrictions passed in their state. Voting restrictions can be present in many election laws. One example of a voting restriction is requiring a government issued photo identification to vote. A driver’s license/identification card or military id would also work, but it has to have a picture and an expiration date (as well as address that matches registration rolls). States have been offering the non-driver’s license identification cards for free but it does still require the

citizen to go to a Bureau of Motor Vehicles office to obtain one. A second voting restriction is taking away the right for felons to vote. Tolbert et. al. (2008) found that by giving felons full voting rights turnout goes up by 3.6 percent. Each state decides on their own if and when felons can vote. It can range from never losing the right to vote (Maine and Vermont) to having to apply to have voting rights restored (Florida, Iowa, etc).

The Alabama NAACP has brought suit against the state of Alabama because they see the new voter identification law discriminating against African-American and Latinos in the state. The NAACP's claim is that the passage of this law disenfranchises African-American and Latino's to try and fix the voter fraud problem the proponents of this law see happening in elections. Also involved in the lawsuit is the fact the state closed 31 DMV locations that had populations that are heavily minority. With the DMV offices closing, the citizens of these counties are required to travel to another county to get a proper identification card to vote often requiring more time and cost than they are able to afford (Roth 2015).

A similar set of arguments was set forth when the U.S. Justice department challenged a voter identification passed in Texas. The state of Texas argued that the law will "guard against voter fraud and protect public confidence in elections." Civil rights groups and the Justice Department feel the law is passed with the intent to suppress certain types of voters (Barnes 2014). With an increase in the number states passing voting laws, there is a need for more research on the effects these laws are having on electoral participation.

Just as Alabama and Texas have had recent laws passed requiring voter identification, North Carolina has had to deal with voter identification controversy. In 2013, the state legislature passed their bill requiring all voters to provide photo identification in order to cast a ballot. Their photo identification law meant that an eighty-six year old woman who newly moved to North Carolina from New Hampshire was not issued an identification card at first because all of her documents did not match because some had her married name and that did not match her birth certificate. In North Carolina, a ninety-four year old woman who had been voting for seventy years and was a civil-rights pioneer was required to make eleven trips to state agencies just to comply with the new law and be able to vote (Berman 2016).

There is considerable popular concern regarding the effects these laws are having, with citizens and politicians both offering up their own claims and theories. However, these typically lack systematic research or comprehensive data to corroborate their assumptions. It is important to figure out if a link does exist between the most restrictive voting laws and turnout among minority groups. If minority groups do in fact have lower turnout in states with the most restrictive voting and registration laws, there will need to be a real discussion of alternative methods of election reform that ensure this representative democracy will continue to be representative of all groups of citizens. With the statistical data that is gained in this report it will be a first step to finding the best election reforms to get a high turnout that is among the highest in developed countries.

The United States often claims to be a model democracy for other countries around the world when it comes to voting. Having citizens wait in long lines, require

government issued photo identification, or require them to jump through many hoops to only register to vote sets a troubling example. Figuring out if this is the case will require an in depth look into election reforms and discover if they are the true culprit behind any inequality of turnout that may exist. The analysis of this thesis will specifically use interaction variables as the way to drill down and see specific groups affected by election reforms. This was the most effective way to see all of the factors affecting a citizen's ability to turnout and vote.

Modern day election reforms started in the early 1970s in Maine, Minnesota, Ohio, and Wisconsin by enacting Election Day registration (Ansolabehere and Konisky 2006). Maine's adoption of Election Day registration was met with little resistance in a bipartisan measure passed in 1973. The legislators in office at the time only saw it as "part of a routine revamping of the state's election laws" (Adams 2011). Ohio (in 1977) and Oregon (in 1975) repealed their Election Day registration laws (Ansolabehere and Konisky 2006). Ohio voters repealed their law just months after the legislature passed it (Initiative & Referendum Institute 2014). In 1993 the National Voter Registration Act (NVRA) was passed to make it easier for voters to register by adding the ability to register at driver's license bureaus, public assistance agencies, and mail-in registration. Idaho, New Hampshire, and Wyoming adopted Election Day registration "to avoid having to implement the National Voter Registration Act" (Ansolabehere and Konisky 2006) in time for the 1994 election.

Before the 2000 presidential election, Oregon found it more beneficial to execute an all-mail-in election, beginning in 1998. Congress wanted to build on the NVRA and in 2002 passed the Help America Vote Act of 2002 (HAVA). This act was intended to

improve state election administration. It specifically spelled out rules that states would be required to implement. The first of these is that it mandated within-state uniformity on balloting systems and second that all new voters in states would need to show identification. Indiana was the first state to take the HAVA voter identification requirement a step further and required identification of all voters. This law was challenged and was appealed all of the way to the U.S. Supreme Court where it was upheld as being constitutional (Larocca and Klemanski 2011). In 2011, the state of Washington followed Oregon's lead and instituted an all-mail voting system, and in 2013, Colorado decided to try the same thing. Scholars have yet to fully examine the effect that these changes have had on participation due to how recently they have been implemented.

After the 2012 presidential election, President Barack Obama signed an executive order to create a commission to study the problems voters face during elections and also give recommendations to help make administering elections more efficient. The 2012 commission had a similar task as the commission set forth by former President Jimmy Carter in 2005. This 2012 commission gave their final recommendations to President Obama on January 22, 2014. The commission's primary findings were that elections were problematic because of a lack of resources, outdated voting technology, and long lines. The overall biggest problem was voters having to stand in long lines to cast their ballots on Election Day. Depending on the election location the long lines could be caused by poll worker mismanagement limited or misallocated resources, and long ballots.

In addition to the commission created by President Obama, there have been independent organizations working to understand specific electoral problems. One such group is the Brennan Center for Justice. The Brennan Center for Justice at New York University Law School is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. Famighetti, Meillo, and Perez's (2014) report for the Brennan Center researched why some voters were experiencing long lines on Election Day and to what extent those long lines are affecting the voters. The report found that the long lines during the 2012 election were seen more often when minority groups were present. They found that in the three states that were studied, (Florida, Maryland, and South Carolina) "race had a statistically significant relationship with line length and resource allocation" (pg.20).

The issues of the 2000 election were caused by clerical and technology problems that some saw as minor problems; but nevertheless there was a national movement towards reforming the electoral process as a whole (Gronke, Galanes-Rosenbaum, Miller 2008). These five problems are only the tip of the iceberg when looking at the deficiencies in the election process. They are evidence that there are much bigger problems that need further examination also. With election turnout far below the ideal level of 100% there needs to be research into factors that are prohibiting voters from participating.

Election Law/Requirements

Throughout United States election history it is understandable that election laws have evolved over time. With growing number of people being a part of the electorate as well as evolving voting technology new and different election laws and requirements will

be needed. As these laws change it is important to take some time to discuss how the laws differ from state to state.

Voter Registration

There are four requirements a citizen must meet in all states before they are eligible to register to vote. First, the voter must be a citizen of the United States and a legal resident of the state and county in which they are seeking to cast a ballot. Second, citizens must be at least eighteen years of age when voting or seventeen and a half when registering. The third requirement is the voter cannot be serving a sentence for a felony conviction. The fourth and final general requirement is that the voter is not declared mentally incompetent (Hardaway 2008). These are not all of the requirements that a voter has to fulfill to be registered to vote. There are state laws that can differ that need to be satisfied as well.

After these initial requirements, states are able to pass additional conditions as long as they do not alter the above requirements. One of these most common additional requirements states decide on is if the voter needs to be registered before Election Day or if they are able to register on Election Day and still vote the same day. States often have a cutoff date (typically around 30 days prior to Election Day) by which the citizen must have their form turned in to be eligible to vote in the next election.

The registering process is not the same across all states and can provide some confusion and problems. There has been evidence that individuals, who have had fewer opportunities in prior years to register, are the ones most likely to take advantage of registering on Election Day or closer to Election Day (Highton 2004 pg. 509). For

example, take two individuals that are alike in every way except that one is 20 years old and one is 60 years old. For the upcoming presidential election, the 20-year-old will be eligible to vote for the first time, and as a result, the he or she will have had only one opportunity to register, whereas the 60-year-old will have had decades of opportunity to do so. In addition, the 20-year-old will also be more likely to register closer to the election when media coverage is greater and registration drives are happening more frequently. Closing the registration window further out from Election Day may mean the difference between registering or not for young people. In contrast, the 60-year-old will have already had numerous times to register in his or her life up to this point, and the impact of closing registering further from Election Day will matter less. Thus, earlier closing dates have a larger effect on newly eligible voters (Highton 2004).

Research on Election Day registration has found strong evidence supporting the claim that it helps increase turnout. For example, Tolbert et al. (2008) found an increase of 4.5 percent in states with same day registration, while Wolfinger and Rosenstone (1980) predicted that turnout will increase 9 percentage points if Election Day registration is allowed. Brians and Grofman (2001) had three central findings in their article when they studied Election Day registration. These three findings are average turnout increased by about four percentage points where Election Day registration was adopted, there is a weaker relationship between reduced closing dates and greater turnout once effects of Election Day registration are specified, and finally that the middle class reaps the greatest turnout benefits from Election Day registration. Finally, Ansolabehere and Konisky (2006) found that a state requiring registration before an election does lower turnout among citizens.

The introduction of “motor voter” laws has also been shown to help turnout (Highton 2004). Most citizens need to go to a motor vehicle agency for a driver’s license, renew car registration, or get an identification card. Being able to register to vote at a place where most individuals are required to visit already has made the personal non-monetary cost of registering decrease enough that registering is not seen as a big problem (Wolfinger and Hoffman 2001). Some agencies are required to ask everybody that visits their Bureau or Department of Motor Vehicles if they are registered or would like to register to vote. This is a more active way of registering voters and has seen the best results in increasing voter registration (Highton and Wolfinger 1998). A more passive approach allows citizens to register to vote and have registration forms available at BMVs, but do not ask each person that comes into the agency. This more passive way of using “motor voter” laws did not individually have effects that were distinguishable from zero (Highton 2004).

Voter Photo Identification

The central issue to the research question discussed in this thesis is the burden that obtaining and using photo identification puts on voters during elections. Laws requesting or requiring identification of any kind have been in effect within the United States beginning in the 1950s. South Carolina was first by requesting that voters show any kind of identification but a photo was not required. Between 1970 and 1980 Hawaii, Texas, Florida, and Alaska joined South Carolina wanting their voters to show identification. Georgia joined Indiana as the “first states to require photo identification and required anybody that did not have proper identification to vote on a provisional ballot and return

to an election office within a few days with the proper identification for the vote to count” (NCSL 2015).

As discussed briefly before, these laws were then taken to court on the grounds that they were unconstitutional. In 2008 the U.S. Supreme Court took up the case of Indiana’s voter identification law and found it to be constitutional, which allowed it to go forward and be implemented for the 2008 election. William Crawford, a Democratic member of the Indiana House of Representatives, is the lead plaintiff in the case while the election board of Marion County where Indianapolis is located is the defendant. The Court’s opinion appeared to rest on the lack of evidence supporting the claim that these laws disproportionately burden certain segments of our society (*Crawford v. Marion County* 2007). The lawyer that represented the plaintiff, William Crawford, failed to bring even one witness from the state of Indiana to testify that this law put an undue stress on their ability to vote. There were many around the country that saw this lack of a witness as a fatal flaw that ensured the Supreme Court would side with the state of Indiana and rule the voter identification law to be constitutional. Following this decision, a number of states adopted similar identification laws to Georgia and Indiana.

Additionally, there is research behind the challenges a Voter-ID law may impose on voters. As of October 2014, 31 states require voters to present an identification card when casting a ballot. The other 19 states only require a signature that is then checked against the signature on file (Underhill 2014). An assumption by voter identification proponents is that most people will go to a motor vehicle agency for any number of reasons and can also get a photo identification card, but this is not always the case. These laws can place a significant burden on low-income individuals (Hersey 2009). These

lower socio-economic status citizens are more likely to not drive, not have the time to go to a motor vehicle agency because of work, not have the required documentation to obtain an identification card, and live in an area that the DMV is being shut down and consolidated with other areas requiring citizens to travel much further distances to get proper identification. This was most notably happening in Alabama where 34 DMV locations were being closed and opponents felt they were specifically targeted because they were in the lowest socio-economic areas and therefore would have the greatest difficulty traveling to the new location (Marsh 2015).

Using the 2006 Cooperative Congressional Election Study, Stephen Ansolabehere was able to look at questions that asked respondents to self-identify if they were ever turned away from voting because of not having proper identification. He was able to determine that the problem of non-voting because of photo identification is very rare. This survey was a collaborative project among 37 universities and yielded a national sample of 36,500. The survey “included a battery of questions to gauge Election Day practices; a handful of questions probed the use of voter identifications” (Ansolabehere 2007).

Mycoff, Wagner, and Wilson (2009) looked at both aggregate and individual level data while utilizing the 2006 Cooperative Congressional Election Study. They wanted to examine how the strictness of the state’s voter identification affects individual turnout. For looking at the strictness of voter identification laws, the authors utilized a six-point scale, but also used a dummy variable where one equals a photo identification card is required and zero where no photo identification is required (pg. 122). They concluded

that “state voter identification requirement laws have no significant effect on state-level turnout” (pg. 123).

The problem that past research has is that it focuses on aggregate level turnout. This can cause it to miss significant variance in smaller segments of the population, such as Latinos, Asian-Americans, and the poor (Alvarez, Bailey, and Katz 2008; Vercellotti and Anderson 2006). Alvarez, Bailey, and Katz found it beneficial to use the same data and theoretical framework as Vercellotti and Anderson. They both used the Census CPS Voter Supplemental data; but Alvarez, Bailey, and Katz decided to look at the data between 2000 and 2006. By only looking at one year at a time, Alvarez, Bailey, and Katz felt that Vercellotti and Anderson were not able “to correctly estimate the causal effect of voter identification requirements by utilizing the differences between states that changed their requirements and those that did not” (Alvarez, Bailey, Katz 2008).

Given the wide range of election laws across the states, in particular voter identification laws which range from requiring no identification in 17 states to full government-issue photo ID in 18 states; one can think of this as a spectrum that places the most restrictive states like Indiana on one end to states that require nothing like California on the other. A state can choose to not require or request any identification when voting, making it the least restrictive identification law utilized. The most restrictive identification laws are in Georgia, Indiana, Kansas, Mississippi, North Dakota, Tennessee, Virginia, Texas, and Wisconsin. The least restrictive identification laws are in Alaska, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Missouri, Montana, New Hampshire, Oklahoma, and Utah. These lists do not include the states that have an all-mail election. For example a voter that is registered by the registration deadline will be

able to go to their polling place on the day of the election and cast a ballot without needing to show either a driver's license or a utility bill. Since there is nothing a voter needs to do additionally on Election Day it is the least restrictive voter identification law.

The other end of the spectrum is when a state requires photo identification of all voters and does not allow a ballot cast unless they show proper photo identification from a government entity. There are also instances where a state could choose to require identification but not photo identification. This lies in the middle of the spectrum since it is a bit more restrictive than not requiring identification but not as restrictive as requesting photo identification and making the voter sign an affidavit if they do not possess the proper form. By looking at each state and their individual voter identification laws, it will become apparent if minorities are disproportionately affected, as they are not able to attain the proper identification required by law.

Chapter 2

Methods of Voting

Early in-person voting is done by the voter ahead of the actual Election Day, but still requires the citizen go to a local election office or satellite locations if the state offers it (Gronke, Galanes-Rosenbaum, and Miller 2008). Early voting began in Texas in 1963, but did not take its current form right away nor was it called early voting; instead opting for absentee voting. In 1963, a singular temporary voting center was utilized in the counties where the county seat was not in the largest town in the county. Any voter at this time was also required to have a valid reason why they could not vote on Election Day and needs to vote early. From there, in 1987 a Texas legislator introduced legislation abolishing requiring a reason why the voter needs to cast a ballot early. In 1991, legislation was passed in the Texas legislator making changes that resemble more of the current early voting laws. First, this legislation changed the name from absentee voting to early voting. A second change was the local election official's ability to set up numerous temporary voting stations in non-governmental places that are allowed to have shorter hours than normal Election Day times (Haag).

The most restrictive of early voting laws are when the state only allows in-person early voting a two weeks or less before the election; just as Florida, Hawaii, Illinois, Louisiana, Maryland, North Carolina, Oklahoma, Texas, Utah, West Virginia, Wisconsin, and Washington DC. California, Nebraska, and Vermont have some of the least restrictive early voting laws; allowing early voting more than four weeks out from Election Day. On the opposite side is Oklahoma who has one of the most restrictive early voting laws. Their early voting is only available the Friday, Saturday, and Monday before

Election Day. Table 1 gives a complete list of each states election laws as of compiling the dataset for this thesis.

Table 1. Election Reform Laws by State

State	Early Voting Law	Voter ID Law	State	Early Voting Law	Voter ID Law
Alabama	No early voting	Photo ID	Arkansas	2 to 4 weeks	
Alaska	2 to 4 weeks	Non-photo ID	California	More than 4 weeks	No ID
Arizona	2 to 4 weeks	Non Photo ID	Colorado	2 to 4 weeks	Non-photo ID
Connecticut	No early voting	No ID	Nebraska	More than 4 weeks	No ID
Delaware	No early voting	Non-photo ID	Mississippi	No early voting	Photo ID
Florida	Less than 2 weeks	Photo ID	North Carolina	Less than 2 weeks	?
Georgia	2 to 4 weeks	Photo ID	North Dakota	No early voting	Non-photo ID
Hawaii	Less than 2 weeks	Photo ID	Ohio	2 to 4 weeks	Non-photo ID
Idaho	No early voting	Photo ID	Oklahoma	Less than 2 weeks	Photo ID
Illinois	Less than 2 weeks	No ID	Oregon	All mail system	No ID
Indiana	No early voting	Photo ID	Pennsylvania	No early voting	No ID
Iowa	No early voting	No ID	Rhode Island	No early voting	Photo ID

Kansas	2 to 4 weeks	Photo ID	South Carolina	No early voting	Photo ID
Kentucky	No early voting	Non-photo ID	South Dakota	No early voting	Photo ID
Louisiana	Less than 2 weeks	Photo ID	Tennessee	2 to 4 weeks	Photo ID
Maine	No early voting	No ID	Texas	Less than 2 weeks	Photo ID
Maryland	Less than 2 weeks	No ID	Utah	Less than 2 weeks	Non-photo ID
Massachusetts	No early voting	No ID	Vermont	More than 4 weeks	No ID
Michigan	No early voting	Photo ID	Virginia	No early voting	Photo ID
Minnesota	No early voting	No ID	Washington	All mail ballot	All mail ballot
Mississippi	No early voting	Photo ID	Washington DC	Less than 2 weeks	Non-photo ID
Missouri	No early voting	Non-photo ID	West Virginia	Less than 2 weeks	No ID
Montana	No early voting	Non-photo ID	Wisconsin	Less than 2 weeks	?
Nebraska	More than 4 weeks	No ID	Wyoming	No early voting	No ID
Mississippi	No early voting	Photo ID			
Missouri	No early voting	Non-photo ID			
Montana	No early voting	Non-photo ID			

Source: State boards of election, National Conference of State Legislatures, Early Voting Information Center at Reed College

Methods of Voting Statistics

Throughout all of the elections and years of study it has been difficult to get accurate numbers on how many voters are using which methods. Using one data source as opposed to another means the findings of the research could be completely different and not match any other findings. This often causes confusion and conflicting results that can be hard to figure out where they fit in the larger body of election research. Research by Alvarez, Levin, and Sinclair in 2012 found that a total of 64% of respondents to the 2008 Survey of the Performance of American Elections cast their ballot on Election Day, making it the most used form of voting. Following Election Day voting, 18 percent of respondents reported they voted early in person and another 18 percent voted absentee by mail. This survey provided a “comprehensive national assessment of voter experiences with electoral process” and was composed of surveys from 200 respondents in each of the 50 states. Being able to get actual data on how many voters use each method has not been easy throughout the years (Alvarez, Levin, Sinclair 2012). While Alvarez, Levin, and Sinclair conducted their research, they looked at different approaches and all of the different methods that were used. Some of the early studies used county-level election and census data to look at which demographic variables of voters were tied to use of certain methods of voting. With surveys, researchers are able to avoid inference problems from trying to explain individual tendencies from aggregate data (Alvarez, Levin, Sinclair 2012). Researchers have not been able to get complete accurate data from states on how many voters use different methods of voting because often then states will not keep track themselves or they will lump categories together and not make distinctions

among them. An example of this would be counting all absentee votes and votes cast early at a polling location all as absentee votes and not distinguishing the difference. In place of having actual numbers, researchers have had to use proxy measurements, and that is why national surveys are often the next best option.

However, in four states, more than 50 percent of voters said that they used the vote by mail option: Oregon (97 percent), Washington (86 percent), Colorado (61 percent), and Arizona (54 percent). In another 10 states, more than 20 percent of all ballots were cast by mail. Finally, five states had voters report that more than 50 percent voted in person before the election: Tennessee (63 percent), Texas (62 percent), Nevada (62 percent), North Carolina (53 percent), and New Mexico (52 percent). For their analysis, Alvarez, Levin and Sinclair (2012) used data from the 2008 Survey of the Performance of American Elections.

Of the people who do use in-person early voting, research finds that partisans are significantly more likely to utilize this option (Stein 1998, Stein & Garcia-Monet 1997). Voters that utilized the early voting options were better informed and were more engaged in a campaign (Gronke and Toffey 2008). Early voting for these partisans gives them the opportunity to work on the campaigns and get out the vote of other citizens on Election Day (Gronke and Toffey 2008). In addition, individuals that have a high interest in politics and strong ideological alignments are most likely to vote early-but they are also the voters that will show up in general to vote on Election Day (Giammo and Brox 2010). Alvarez, Levin, and Sinclair (2012) found that the voter with the highest probability of utilizing the early vote mode is greatest among liberal, well-educated, older, male, and strong partisan voters. The older voters are already at a higher risk of participation and

often have the time to go and vote early to avoid any lines on Election Day. Strong partisans as well are already the most likely to participate so they would have increased incentive to early vote and maybe volunteer for their preferred candidate on Election Day. For a voter that is well educated they would have the ability to learn any new technology or will do the research to figure out how elections are administered in their state.

Tolbert et. al (2008) examined eight different types of voting reforms in order to determine their effect on turnout. These eight types were mail voting, photo identification requirements, Election Day holidays, restrictions on felons voting, statewide computer registration database, in-person early voting, Election Day registration, and no-excuse absentee voting. Of these types of voting, increases in turnout were seen only in felon voting, and Election Day registration showed significant signs that they truly increased voter turnout over time. When keeping other variables constant, the felon voting law reforms produced a 1.8 percentage-point increase in turnout in states with only modest felon voting laws; and a 3.6 percentage-point increase when felons are given full voting rights (Tolbert et. al 2008). Looking at these numbers puts forth the idea that election reforms alone are not enough to increase turnout. There must also be structural changes in elections to improve competitiveness and give voters a reason to be involved and want to turn out to vote. Often looking at just changes in turnout in relation to determine the effectiveness of election reforms will not be enough to find causation. There always needs to be consideration of the political climate to ensure it is the election reform that is causing the turnout change.

Some research has shown that no-excuse absentee voting does not always translate to greater turnout and is instead only a convenience for the voters who face longer commute times when voting in person (Giammo and Brox 2010, Gronke 2008). Numerous studies have also shown that early voting does not increase the voter's likelihood of turning out across the board (Gronke 2008). Similarly, research by Giammo and Brox (2010) showed that any increase in voting is not long lasting and has a bit of a novelty feel when first introduced and that feeling will recede after the election. One study does show that the voting by mail method is the one type of convenience voting that has a positive impact on voter turnout (Gronke 2007). For some election administrators and politicians it does not matter who is early voting as long as the goal of increasing turnout is met. The other side may think that even if turnout is increased slightly, the benefit is not worth the extra cost incurred by the state. The more people that utilize early voting the fewer issues may appear on Election Day. Early voting can reduce the internal cost of voters on Election Day voting by cutting down on the long lines (Giammo and Brox 2010).

Minority Electoral Participation and Voting Regulations

Increasing turnout among all groups should be the goal of election reforms, but legislators need to make sure that the turnout is not being swayed in favor of the groups already turning out in the greatest number. With groups such as older individuals, whites, and more wealthy citizens, already making up a large percentage of the electorate, it is important to make sure election reforms are increasing the level of minority turnout to similar levels of other groups. Rigby and Springer (2011) look at variance in the demographic makeup of the electorate. They found that there is a predicted decrease in

the proportion of voters turning out among the poor after a state implements in-person early voting. This can possibly be explained by different mobilization efforts in states with early voting (Rigby and Springer 2011). There are some states that have an over representation of certain groups of people on the registration rolls while others have an under representation of some groups. This over or under representation of people means voter registration rolls have a preexisting bias toward different groups. Any of the inequality effects to registration are associated with preexisting bias in the state voter registration rolls when the electoral reforms are adopted (Rigby and Springer 2011). For example if the state's registration rolls has an equal amount of rich and poor citizens the registration reform enacted will have no effect. On the other hand, if the state has registration rolls that are skewed to one group the registration reform will have a more equalizing impact. In the case of having more rich voters registered than poor voters, a registration reform in a state with skewed rolls will mean the number of each group registered will be closer (Rigby and Springer 2011).

This effect of the bias has an even more significant impact in those states that have more stratified registration rolls (Rigby and Springer 2011). Conversely, other work has shown that all voting reforms across the board exacerbate the socio economic biases in the election system (Berinsky 2005, Berinsky et.al 2001, Hershey 2009). If the voter was already planning to vote then having the ballot sent to them and having more than just Election Day to fill it out means they will be more apt cast a ballot (Berinsky et. al 2001).

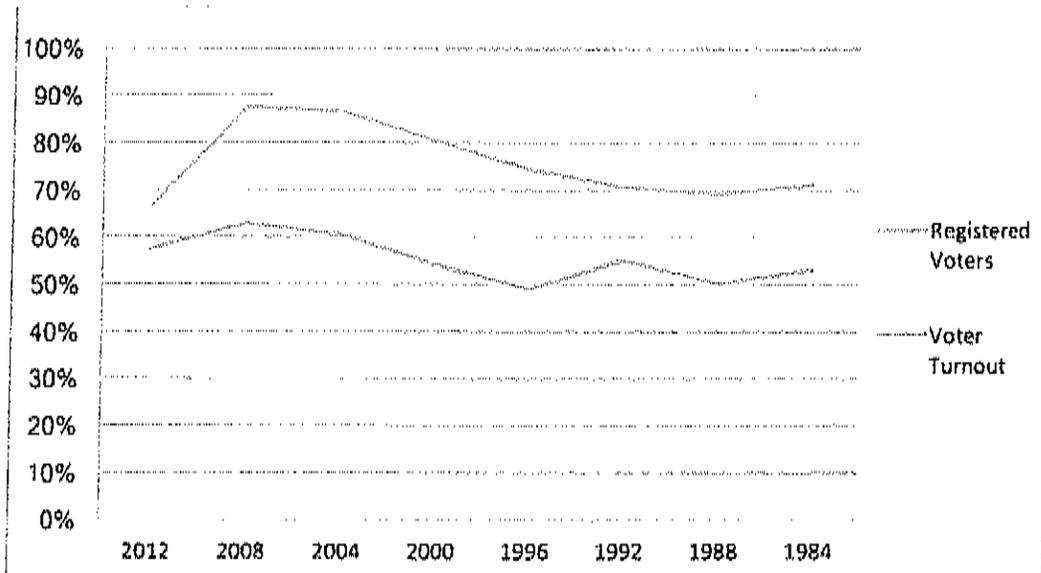
Whereas research has shown that some election reforms help increase the inequality in some reforms it is not the only answer research has found. There has been

research that found the largest decrease in voting inequality has been observed when implementing Election Day registration in the states that already have a high registration bias (Rigby and Springer 2011). Motor voter laws do not produce as large a decrease in inequality as Election Day registration; but it is the only election reform that Rigby and Springer found that did decrease inequality (Rigby and Springer 2011). Election Day registration also did not show any improvement in equality among educational levels (Knack and White 2000). There is so much conflicting research that it is hard to know what really is happening. Findings can depend on anything from what years are being studied, is it looking at voters in the aggregate as opposed to voters on the individual level, or is it looking at only a few states as opposed to all states together. These different rates of participation across different research sets up this thesis and future research to look at how each reform affects turnout as well as the equality of the groups that are turning out across the country.

Graph 1 provides statistics on the total registered voters and voter turnout of all ethnicities. Graph 2 provides statistics on the reported voting turnout of different ethnicities. Finally, graph 3 provides statistics on the reported registered voters of different ethnicities.

Minority Groups Registration and Voting

Graph 1. Total Registered Voters and Voter Turnout



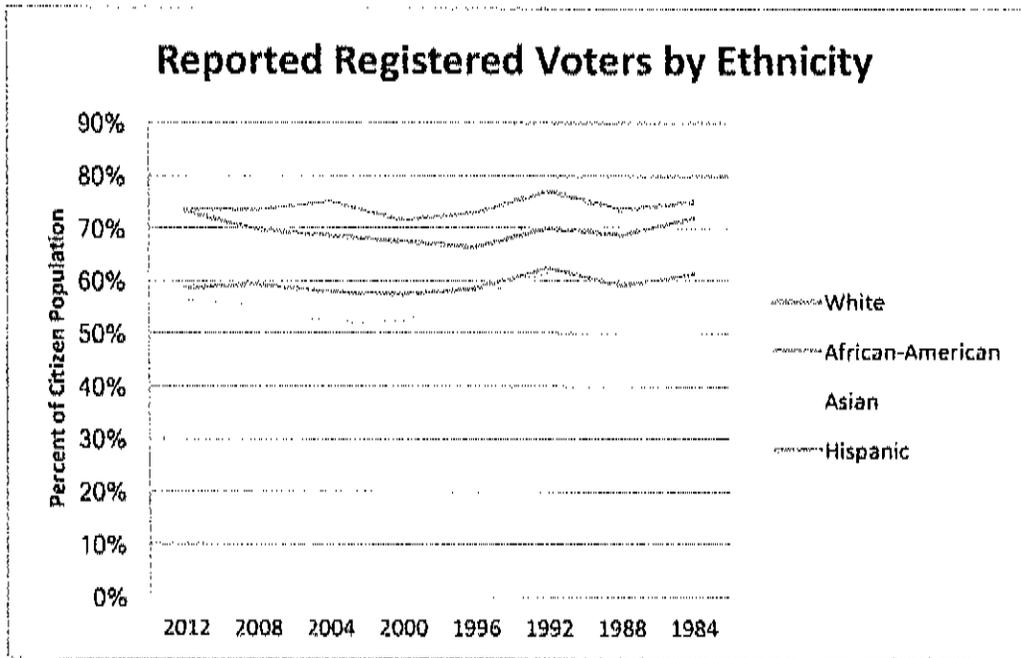
Source: Associated Press Election Research Group, George Mason University

Graph 2. Reported Voting by Ethnicity



Source: U.S Census Current Population Survey

Graph 3. Reported Registered Voters by Ethnicity



Source: U.S. Census Current Population Survey

As shown in the table above members of minority groups do not turnout to vote as much. It is important to try and get traditionally low participating groups to the polls where one can have the greatest impact. Previous research has been mixed on how election reforms affect minority populations and because of these conflicting results it is important to revisit and try and discover if new data helps to flesh out a more concise answer.

Chapter 3

Data and Methods

In order to test the two hypotheses, I have collected state-level data from multiple sources between 2006 and 2014 and combined them into one dataset. The years 2006 to 2014 were chosen because they provided the most reliable and complete data. Unfortunately, some variables were not readily obtainable for years prior to 2006 for every state. While it would have been great to get data for many more years, it does not seem that it would be necessary. Mostly, these extra years do not contain enough changes in voting laws for it to be worthwhile to analyze with the later years. The changes in voting laws really started being passed at an accelerated pace around 2010. Twenty-one states have passed some form of voting restriction legislation since 2010. With these changes happening over time, and not just in one specific year, the data is better able to show the long-term effects of any election changes.

The dependent variable in the analysis is the voter turnout in each state in each year. The turnout variable is titled Voter Eligible Population Turnout, and it represents an estimate of a person's eligibility to vote regardless of voter registration status in an election. Voting Eligible Population (VEP) is the most accurate and widely used form of turnout statistics, and for this data set, it was gathered from the United States Elections Project website which is run by Michael McDonald (McDonald, State Turnout Rates).

VEP has become the most used turnout measure for state-level analysis. Previous research used voting age population (Burnham 1982, 1985, 1987; Nie and Verba 1972; Piven and Cloward 1989, 2000; Rosenstone and Hanson 1993; Teixeira 1987; Mitchell and Wlezien 1995; and Wolfinger and Rosenstone 1980), but that was primarily due to

scholars not being able to find other options (Holbrook and Heidbreder 2010). Using voting eligible population removes the ineligible citizens that are counted when looking at voting age population. The citizens that are immigrants or felons that are not able to vote are not included in VEP turnout percentages. The alternative option is to use voting age population, but this measurement includes all citizens whether or not they are actually allowed to vote. For some states, the population of immigrants and felons can be very high and will in turn make the voting age population turnout statistic not accurate. As a result, McDonald's voting eligible population turnout statistics were used for this analysis.

The primary independent variable for testing my hypotheses is one measuring the restrictiveness of states voter identification laws. I specifically focus on the requirement that voters show photo identification in order to cast a ballot. This will consist of a three-point scale indicating real differences between each form of requiring photo identification and coded as 0 for no id required, 1 for any identification requested or required (no photo needed) including utility bills, and 2 for photo identification requested or required.

Using a three-point scale to classify photo identification laws is not the only way this has been measured in past research. In Larocca and Klemanski's (2011) analysis, they classify state's photo identification laws in four groups. These groups were; non-photo identification requested, non-photo identification required, photo identification requested and photo identification required. While it is understandable to want to analyze the non-photo identification variable by if the identification is requested or required, the requirement is not a stark enough difference to warrant making this distinction. To look at the photo identification variable on the three-point scale, it will show the results from

the distinct differences of not having a law at all, voting with non-photo identification, and a photo identification being involved. This also ensures there are enough cases in each category that any results will be more representative.

The major part of this thesis' analysis comes from interaction variables between key control variables. The photo identification variable is used in all of the interactions. The first interaction is between the photo identification laws in the state and the percentage of citizens that are white in the state. This variable has a low point of 22.7% in Hawaii in 2010 and a high point of 95.6% in Vermont in 2006. The second interaction measures the interaction between the photo identification law and the education variable (labeled, less than college). The United States Bureau of Census has kept a wealth of data on citizen's education levels. The analysis of this thesis looked at state's education levels and measured the percentage of the population with less than a completed college degree. Citizens that are poor or part of a minority make up a greater percentage of the people completing less than a college degree. With this in mind, it is important to see how the photo identification law affects these groups specifically. In West Virginia in 2006, 83.5% of the population had completed less than a college degree; making it the least educated state in the data set. Massachusetts in 2014 had 59.7% of its citizens completing less than a college degree; making this the most educated state in the data set. A third interaction analyzed photo identification and state median household income. State median household income numbers ranged from a low of \$37,173 in Mississippi in 2012 to a high of \$78,632 in New Jersey in 2006¹. By using these interaction variables it

¹ The bivariate correlation between education and income is -.756. Because it is above -.7 there is a strong relationship between the education and income variables.

allows this work to pinpoint very specific instances where these variables affect voter turnout, unlike past research that takes a broader view.

After covering some of the key independent variables, it is important to discuss the control variables that were also used in the analysis. For the control variables, data was gathered from the U.S. Census Bureau extensive data sets. The census does a complete count of citizens in the United States every 10 years, and because of this, the numbers for 2010 are exact counts and the other years are estimates based on these years. In this analysis, the first control variable is a measurement for minority speakers. This variable (Non-English Speakers) measures the percentage of citizens in the state that do not speak English as a majority in their home. The percentage of non-English speaking citizens was at its highest at 44.3% in California and at its lowest at 2.2% in West Virginia in multiple years as well.

Often voter turnout can also depend on if there is a presidential or governor's election (Panagopoulos 2011; Fraga and Hersh 2010). With this in mind, I created dummy variables for each type of election. The first was coded one if the state had a gubernatorial race that year and zero otherwise, and the second dummy was coded one if the year was a presidential election year and zero otherwise. This information was obtained from the New York Times website.

To ensure partisanship and unemployment were accurately measuring what they should, steps were taken to normalize these variables. Normalizing a variable is most useful when looking at measurements over the course of many years and trying to make sure nothing else is driving the variance. So for a state's partisanship, it may be

problematic to just use the percent of the vote that the Republican presidential candidate received each election. The issue is that part of what drives that number is how well the individual Republican candidate did that year. In other words, the idiosyncrasies of the individual election will play a part. In order to try and eliminate that, it is a better idea to look at how much more or less a state is Republican during that election, which is likely to be less dependent on the particular candidate or election year. To find this you subtract the overall national vote for the Republican candidate from the statewide vote for the Republican candidate. This will produce a scale that measures the partisanship of a state that is independent of how well any particular Republican presidential candidate did in a given year. Therefore, in the following models, partisanship is a scale that runs from -19.42% to 25.64%, where high numbers indicate a state that is more Republican in partisanship than the national percentage during the Presidential election, and low numbers indicate a state that less Republican in partisanship than the national percentage. The same normalizing was done for the state's unemployment rates. The national unemployment rate was used for the normalizing. The unemployment rate was at its highest in Nevada in 2010 at 13.5%, and was lowest in Hawaii in 2006 at 1.9%. These unemployment rates were found in the Bureau of Labor Statistics.

Results

Table 2. Effect of Voter Identification Laws from 2006 to 2014

	Model 1	Model 2	Model 3
Photo Identification Law	.4832063 (.8999926)	2.59025 (4.519866)	117.5527 (73.12816)
Percent with Only a High	-0.155038	-.1481462*	.4826148

School Degree	(.2346879)	(0.0923121)	(1.577595)
State Median Household Income	.0001637 (.0000959)	.0001674* (.0000954)	.0005297 (.0018018)
Governors Election	1.205575 (.7797547)	1.233049 (.8027394)	1.248169 (.7649659)
Presidential Election	19.80164*** (.8288937)	19.81939*** (.844775)	19.87016*** (.7846147)
State Unemployment Percentage	.5184898 (.3748786)	.5217372 (.377856)	.5257602 (.3764883)
Percentage Female	-1.750524* (.8736805)	-1.749862* (.8775022)	-1.258634 (.9591702)
Percentage Non-English Speakers	-0.1623725 (.1080162)	-.1585539 (.1077257)	-.1976442 (.1127701)
State Partisanship	-0.2389816* (.0996675)	-.2383296* (.100824)	-.2348681* (.1015415)
Percent White	.1752128** (.0631778)	.2045322* (.0923121)	.1608245* (.0684857)
Photo Identification Law X White		-.0280824 (.064237)	
Photo Identification Law X Less than college			-1.583606 (.9935905)
Photo Identification Law X State Median Household			-.0016055 (.001184)

Income			
Photo Identification Law X			.0000216
Less than college X State			(.0000168)
Median Household Income			
Constant	122.545*	119.5376*	49.81826
	(57.42396)	(56.9875)	(113.2653)

* = $p < .05$, ** = $p < .01$, *** = $p < .001$

This study investigates the effects of election laws on individual turnout, specifically looking at voter identification laws. Table 2 presents results after estimating three OLS regressions. Model 1 is the basic model without any interactions. This is presented in order to provide a baseline from which to understand the results of Models 2 and 3. Only the Presidential Election variable was seen as significant at the .001 level in Model 1. When a Presidential Election is present, a state can expect that their voter turnout will increase 19 percentage points. Percentage of the state that is white is significant at the .01 level. As the percentage of the state that is white gets larger, the larger the turnout. Photo Identification Law, Percent with Only a High School Degree, State Median Household Income, Governors Election, State Unemployment Percentage, and Percentage Non-English Speakers variables did not show statistical significance. The percentage of females in the state was significant at the .05 level. The larger the proportion of the state that is female, the smaller the turnout will be. Also, state partisanship was significant at the .05 level. As the state becomes more Republican in their partisanship, the smaller the turnout will be.

Only examining Model 1 would result in the deduction that voter identification laws do not have any effect on voter turnout. Having no interactions in Model 1 makes it a broad view of variables that may affect turnout but therefore it does not explore the exact cross section of variables and types of people where the voter identification laws are having the most effect. I do not expect wealth areas to be effected, but the areas where people have fewer resources will be affected. The model without interactions lumps all areas together, which might hide the effect we expect to be seen in certain areas. If only one variable is examined, it can be easy to think there is no relationship to the dependent variable. If the variable is combined with another, it could show a relationship that could have been completely missed if not looked at further. A three way interaction model in particular is great at really drilling down and seeing what cross section of the variables will show which voters are most affected by requiring photo identification. With using dummy variables it will lump any differentiation in the variable together, but with the interaction it will separate out the differences and show exactly where the problem is. For example, a dummy variable of state median income will lump rich and poor states together, but in the interaction it will separate those states out and show the differences between those two different income groups.

In Model 2, having a presidential election was also significant in increasing turnout at the .001 level. Percentage of the state that is white is significant at the .05 level. As the percentage of the state that is white gets larger, the larger the turnout. The percentage of females in the state was significant at the .05 level. The larger the proportion of the state that is female, the smaller the turnout will be. Also, state partisanship was significant at the .05 level. As the state becomes more Republican in

their partisanship, the smaller the turnout will be. The coefficient of partisanship in Model 2 is $-.2383$. With the coefficient being negative, it means that as the state increases its percentage of citizens with Republican partisanship, their turnout will decrease $.2383$ percent. The variable state partisanship measures how Republican the state is, and the coefficient of this variable within Model 2 means that every one percentage point increase in a state's Republican partisanship will result in a decrease of $.24$ percentage points. Looking at Model 2 in Table 2, the coefficient for the interaction between photo identification and white shows that when the photo identification variable equals zero (not requiring an identification of any kind) and the larger the proportion of whites in the state, the larger the turnout will be. This result is opposite of the effect of the state partisanship. For every one-percentage point increase in the number of whites in a state voter turnout will increase $.20$ percentage points. Photo Identification Law, Percent with Only a High School Degree, State Median Household Income, Governors Election, State Unemployment Percentage, and Percentage Non-English Speakers variables did not show statistical significance

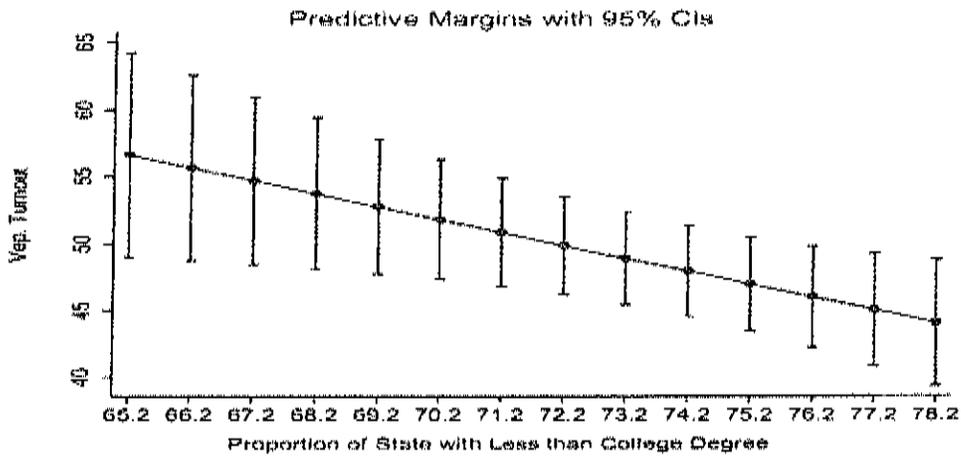
The biggest findings are seen in Model 3. Photo Identification Law, Percent with Only a High School Degree, State Median Household Income, Governors Election, Percent Female, State Unemployment Percentage, and Percentage Non-English Speakers variables did not show statistical significance. On the other hand, state partisanship was significant at the $.05$ level. Just as in Model 1 and Model 2, as the state becomes more Republican in their partisanship, the smaller the turnout will be. Percentage of the state that is white is significant at the $.05$ level. As the percentage of the state that is white increases, the larger the turnout. For this model, a three-way interaction between the voter

identification variable, percent of the state that has less than a college diploma, and the state's median household income was included. A three-way interaction variable helps to pin point the cross-section where a voter will be most affected by voter identification laws. In this case, it was to see what group of people is most affected by requiring photo identification in order to vote.

Interpreting two-way interactions can be challenging in the best circumstances, which makes the three-way interaction in Model 3 nearly impossible to fully understand from coefficients in a table like those found in Table 2. Therefore, I have included two figures that will allow me to isolate states with strict voter identification laws and then look at how turnout changes as either their aggregate education levels or aggregate income levels change. By looking at Figure 1, it is easier to see the three-way interaction is significant. The confidence intervals do not overlap in the figure. By not overlapping, there is a significant difference between the two estimates resulting in a decrease in turnout. When a state has about 65 percent of its people with less than a college degree, their turnout will be about 57 percent. When a state has about 78 percent of its citizens with less than a college degree, their turnout will be about 44 percent. That's a drop of 13 percentage points that is attributable to citizens with a lower education attainment living in a state that requires showing a photo identification to vote. For example, Indiana requires showing a photo identification, which Iowa does not. They both have similar overall educational attainment, with about 75 percent of their populations having a college degree. But because of the voter identification law in Indiana, one would expect Iowa to have about a 13 percent higher turnout rate than Indiana. Figure 2 shows that if the state does not require any identification to vote, there is no discernable statistically

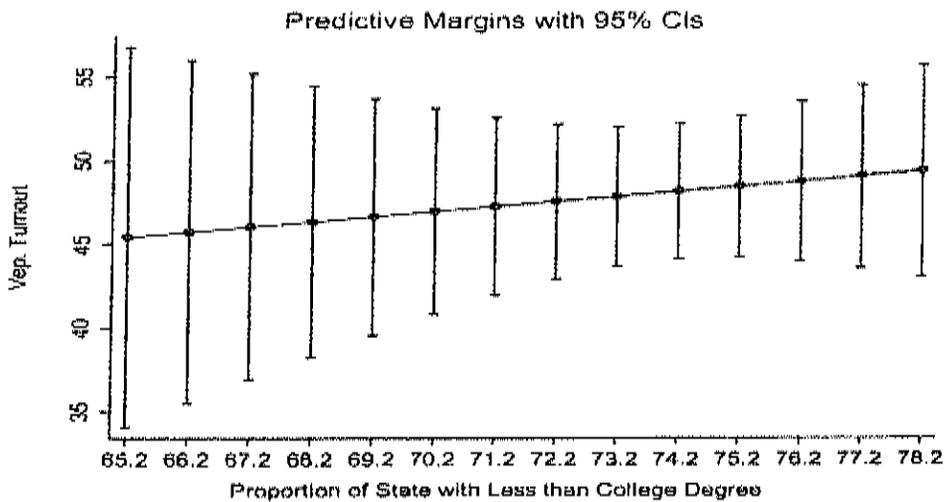
significant difference in turnout between voters with less than a college degree and a post graduate degree no matter the state they live.

Figure 1. Effects on Election Turnout of Strict Voter ID Requirements with Higher Percentage of Lower Educated in the State



Note: State level education from 90th to 10th percentile; Voter ID set to value of 2, and median state income set to \$44000, which is the 10th percentile.

Figure 2. Effects on Election Turnout of No Photo Id Required with Higher Percentage of Lower Educated in the State



Note: State level education from 90th to 10th percentile; Voter ID set to value of 2, and median state income set to \$44000, which is the 10th percentile.

Conclusion and Discussion

I began this thesis discussing all the problems citizens could potentially come into contact with while registering, voting early, or voting on Election Day. The voting reform that has shown to be the toughest barrier for some citizens to overcome is when states require photo identification to vote. Different media sources have done a great job of reporting on the problems voters have encountered, as well as reporting on the tactics and laws that have been passed in hope of fixing the voting system in states across the country. These stories of the different problems included potential voters needing to take significant time to travel to a license branch to obtain a photo identification card or having to wait in lines for hours at the polling places. State legislatures have been trying to make their elections “more fair” but all have a differing opinion on what that means. With all of these differences, it presented an interesting empirical question to be studied further. The potential for these differences to cause groups of voters to be disenfranchised gives great reason to further investigate. States requiring photo identification to vote is the newest of the reforms and therefore had the greatest chance of really affecting turnout rates in some states.

The previous literature pertaining to election reforms affects on voter turnout has had mixed findings. These mixed findings made it good to further the study. For my analysis, I looked at all of the state laws passed from 2006-2014 that pertained to election reforms. In doing this I was able to ensure all of the election reforms were accounted for and coded accordingly. For the demographic variables, the Census datasets were utilized.

This thesis does confirm some of the previous research findings while also shedding light on where the previous research fell short. Hypothesis 1 (saying that in states with strict voter identification laws, the lower a state's aggregate education level, the lower voter turnout will be) was confirmed based on the analysis, while hypothesis 2 (saying that in states with strict voter identification laws, the larger the minority population the lower voter turnout will be) was not affirmed. Because of inconsistent results throughout the years, it can only be determined that this research will not answer the question about election reforms and turnout decisively enough to enact change based on its results, but instead will provide additional another piece of the puzzle and can help to further discussion of requiring photo identification to vote. This theses analysis was able to show that while voter turnout did not decrease in the aggregate due to a state having a strict voter identification laws, it did have an effect on voters in states with the strictest voter identification laws that had the lowest education levels. A state with a larger population of lower educated citizens could expect to see lower turnout if they required voters to have a government issued photo identification to cast a ballot. It is important that there does seem to be an effect on turnout for the lower educated group of voters. Even though most of the literature and popular new stories focus on how voter identification laws affect groups of racial minority voters, I was not able to find any indication of that in my analysis. The effect of requiring photo identification to vote seems instead to be more about the social class the voter is a member of than what race or ethnicity they identify with.

My analysis was hampered a bit based on the lack of data prior to 2004. The internet and online record keeping are becoming almost second nature to state

governments, and therefore finding all of the information needed will make further studies of election reforms less time-consuming and more accurate. By adding more cases, any analysis of election reforms will be strengthened and would allow the effects of new identification laws to settle a bit and see if the turnout of many groups is truly changed because of the law or if it is just an anomaly election year that does not truly explain overall turnout going forward.

It is really hard to say if there would be policy implications based on the results of this thesis. When passing these laws, it seems that political science literature is thrown out of the window in exchange for what the party in power thinks will help them get reelected. There are think tanks and organizations, such as The Brennan Center, which are dedicated to monitoring the effects of election reforms and putting forth recommendations on how to fix these problems. Right now election reforms are a hot button issue in many state governments and the media. It is my hope that this analysis will lend a hand to furthering the conversation on their effectiveness. Election reforms are an every evolving topic and can only be helped by continuous study to ensure there are no consequences that make voting exponentially tougher for specific citizens to exercise their civic duty of voting.

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CURRICULUM VITAE

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Education

Bachelor of Arts – Political Science
Purdue University degree, earned at
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Master of Arts – Political Science
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Professional Experience

Institutional Research Coordinator
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Warehouse Associate
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November 2011-August 2013

Conferences Attended

Indiana Association of Institutional Research (INAIR) - Presented

...

Office of the Indiana Secretary of State of Indiana
March 2, 2018 Public Meeting on Status of Voting Rights in Indiana – submission of
comments and materials

Attachment F

1. Correspondence from Brad King, Co-Director, Indiana Election Division and Dale Simmons, Co-Legal Counsel, Indiana Election Division concerning Spanish language versions of Indiana election guides, notices and forms.
2. 2018 Indiana Voter Information Guide (Spanish).
3. 2018 Indiana Voter's Bill of Rights (Spanish) (large format posted at each poll).
4. Indiana Voter ID Information (Spanish) (large format posted at each poll).
5. Indiana Voter Registration and other election forms (Spanish).
6. Federal Register Vol 76, No. 198 Department of Commerce Bureau of Census. Voting Rights Act Amendments of 2006, Determinations under Section 203.

Bonnet, Jerry (SOS)

From: King, Brad
Sent: Monday, April 02, 2018 10:12 AM
To: Bonnet, Jerry (SOS)
Cc: Kline, Brandon; Simmons, Dale
Subject: Re: CRC Indiana Advisory Committee report on voting rights

Jerry,

No, it is not. Every precinct in county in Indiana has a posted Spanish version of the Voter's Bill of Rights, while the website contains a voter information guide and other material in Spanish.

Likewise, according to the latest census bureau data, no Indiana county contains at least 5 per cent of persons whose primary language of fluency is Spanish, which is the threshold for requiring ballots and election material to be provided to voters who speak a language.

I have no information in the demographic information (as opposed to election information) referenced. The State Library Census Data Center would be a source for that.

Brad - J. BRADLEY King
Division Chief - Director
Indiana Election Division
317-232-3939
Sent from my iPhone

> On Apr 2, 2018, at 9:10 AM, Bonnet, Jerry (SOS) <jbonnet@sos.IN.gov> wrote:

- >
- > Gentlemen,
- >
- > I am working on some response comments to the CRC committee's public hearing last month. The Latino voting rights advocate (from Illinois) implicated that Spanish language voting instructions were not available in any Indiana counties - and that "a handful" of Indiana counties had at least 10% Latino voting eligible population.
- >
- > Is that accurate - comments?
- >
- > Thanks,
- >
- > Jerry B.
- >
- > Sent from my iPhone

Bonnet, Jerry (SOS)

From: Simmons, Dale
Sent: Monday, April 02, 2018 10:34 AM
To: Bonnet, Jerry (SOS); King, Brad; Kline, Brandon
Subject: RE: CRC Indiana Advisory Committee report on voting rights
Attachments: Sec. 203LangMinorityCoveredJurisdictions.pdf; ABS-IN PERSON (2018 revision Spanish version).pdf; VRG-7 (2014 revision) 2018 Spanish version.pdf; ABS-MAIL (2018 revision Spanish version).pdf; VRG-11 (2014) Spanish version.pdf; 14 - 2018 Photo ID Chute Poster Spanish.pdf; 21 - 2018 Voters' Bill of Rights - Spanish.pdf

Jerry,

Many "Latinos" (a person of Latin American origin or descent) are proficient in English. Perhaps the advocate means that there are 10% who are not proficient in English and that materials are required to be provided in Spanish?

In any event, language minorities are measured by the census to a standard set forth in Section 203 of the Voting Rights Act and language minority jurisdictions are certified by the Director of the Bureau of the Census. The standard set forth in that Act as well as the jurisdictions certified by the Director are set forth in the Federal Register (see attached).

Indiana had no county that met the 5% threshold described in this law for any language minority.

That said, Indiana does provide Spanish language forms and publications (see attached) for use by our office as well as counties. We post voter registration and absentee forms in Spanish on indianavoters.com (<https://indianavoters.in.gov/MVPHome/PrintDocuments>).

Dale R. Simmons
Co-General Counsel
Indiana Election Division
(317) 232-3929
(800) 622-4941
Fax (317) 233-6793
www.in.gov/sos/elections

-----Original Message-----

From: Bonnet, Jerry (SOS)
Sent: Monday, April 02, 2018 9:11 AM
To: King, Brad <bking@lec.IN.gov>; Kline, Brandon <BrKline@sos.IN.gov>; Simmons, Dale <dsimmons@iec.IN.gov>
Subject: CRC Indiana Advisory Committee report on voting rights

Gentlemen,

I am working on some response comments to the CRC committee's public hearing last month. The Latino voting rights advocate (from Illinois) implicated that Spanish language voting instructions were not available in any Indiana counties - and that "a handful" of Indiana counties had at least 10% Latino voting eligible population.

Is that accurate - comments?

Generalidades del voto

Requisitos del voto

- Usted tiene derecho a votar en una elección de Indiana si:
- Es ciudadano de los Estados Unidos de América y residente de Indiana.
- Tiene por lo menos 18 años de edad en las elecciones generales el 5 de noviembre de 2016.
- No está incapacitado por sentencia de muerte o inhabilitado por un delito.
- Ha vivido en el distrito electoral donde vota durante 30 días, con un mínimo, antes de la elección y a menos se haya hecho las repeticiones para votar cuando uno de los siguientes procedimientos de "fall safe".
- Está registrado para votar.

Para registrarse para votar, simplemente visite www.indiana.gov/elections y siga los pasos en línea a completar el formulario VREG-7 (Reserva/Votado) en su condado o municipalidad con las placas indicadas y convalidación.

Ciudadanía electoral

- 09 de abril de 2018: Cierre la inscripción de votantes para las elecciones primarias del 2018.
- 10 de abril de 2018: Primer día para votar de manera anticipada para las elecciones primarias de 2018.
- 30 de abril de 2018: Fecha límite para las solicitudes de votante ausente por correo o por correo electrónico para las elecciones primarias de 2018.
- 06 de mayo de 2018: Día de la elección primaria.
- 06 de octubre de 2018: Se abre el inscripción de votantes para las elecciones generales de 2018.
- 10 de octubre de 2018: Primer día para votar anticipado en persona para las elecciones generales de 2018.
- 18 de octubre de 2018: Fecha límite para solicitar un boleto para votar en un recuento para las elecciones generales de 2018.
- 06 de noviembre de 2018: Día de las elecciones generales.
- Las solicitudes de registro de votante por correo deben tener el sello postal en o antes de las fechas de votación más tempranas, las solicitudes de lista deben por correo o antes de las 2:00 pm en las fechas de votación más tempranas.

Más información

- Para obtener información de registro de votante o la información de inscripción de votante, por favor visite www.indiana.gov/elections o llame al Hoosier Voter Hotline al 1-866-IND-VOTE (366-361-4662).
- Si usted está interesado en unirse a un partido electoral el día de las elecciones, comuníquese con el oficial del secretario de su partido del condado o el secretario de la corte del circuito. Los miembros electorales son acompañados por un boletín, la cual sirve de evidencia al condado. Los miembros de 16 y 17 años de edad también pueden votar después a una

Identificación fotográfica

Identificación fotográfica

El condado debe proporcionar identificación fotográfica emitida por el polígrafo antes de emitir un voto, excepto en caso de votación ausente por correo o voto de voto. La ID debe seguir los siguientes criterios:

- Se ID debe mostrar su fotografía.
- Su nombre en la identificación debe coincidir con su registro de votante.
- Contendrán un número que sea idéntico a cualquier otro se muestran ejemplos de nombres que coinciden con "Robert John Crew":

• Robert John Crew	• Rob John Crew
• Robert J. Crew	• Rob J. Crew
• Robert Crew	• Rob Crew
• R. John Crew	• John Crew
• R. J. Crew	• J. Crew

- Su ID debe tener una fecha de caducidad y una expiración y debe caducar dentro de algún momento después de la fecha de la última elección general o primaria (108 de noviembre de 2016).
- Ciertos identificadores militares y de veteranos son aceptables hasta la caducidad o fecha de caducidad "indefinida" son aceptables.
- Su ID debe ser emitido por el Estado de Indiana o el gobierno de los Estados Unidos de América o por alguna entidad reconocida como:

En la mayoría de los casos, una licencia de votante de Indiana, tarjeta de identificación fotográfica de Indiana, identificación militar o pasaporte de los Estados Unidos de América son documentos aceptables como su tarjeta de ID para votante emitida por DMV.

Si usted no puede o no desea presentar una identificación emitida con estos requisitos entonces puede usar una boleta provisional. Si usted usa una boleta provisional tiene hasta el momento ID debe después de la elección para hacer un verificación para la jurisdicción del condado y proporcionar la documentación necesaria a fines de los 15 días que le corresponden a un caso.

Existen excepciones para los votantes, aquellos con una objeción religiosa para ser fotografiados y los programas que están en estado de emergencia por el estado donde también se encuentra el distrito electoral.

Si usted no tiene una identificación fotográfica válida puede obtener una tarjeta de identificación fotográfica de Indiana en forma gratuita en cualquier oficina del Bureau of Motor Vehicles que emita licencias para conducir y tarjetas de identificación.

Para obtener más información, visite www.PhotosID.in.gov o llame al DMV al 1-800-333-6069.

Votación en ausencia

Votación en ausencia

Como votante registrado en Indiana usted es elegible para votar en ausencia en persona en un oficina de la Junta Electoral del condado con un mínimo 78 días antes de la jornada electoral.

Para poder votar en ausencia por correo, debe corresponder uno de los siguientes puntos:

1. Usted tiene una expectativa específica, razonable que se aumente del condado el día de las elecciones durante el total de 12 horas en que las urnas están abiertas (6 hora a 18 pm).
2. Usted tiene una discapacidad.
3. Usted tiene, por lo menos, 65 años de edad.
4. Usted tiene obligaciones oficiales electorales durante un distrito electoral.
5. Usted tiene programado trabajar en un lugar laboral de trabajo durante el total de las 12 horas en que las urnas están abiertas.
6. Usted está siendo confinado debido a una enfermedad o lesión o está siendo confinado a un individuo limitado debido a una enfermedad o lesión durante el total de las 12 horas en que las urnas están abiertas.
7. Se le impide votar debido a una discapacidad religiosa o fiesta religiosa durante el total de las 12 horas en que las urnas están abiertas.
8. Usted es un participante en el programa estatal de coincidencialidad de la vivienda.
9. Usted es un miembro de las fuerzas armadas o un oficial de seguridad pública en el condado es elegible para votar en un distrito electoral o municipal o cualquier otro distrito con un procedimiento (véase el IC 10-33-11 o IC 10-33-12).

Cualquiera de estos criterios al del condado puede ser suficiente para votar en ausencia por correo y la solicitud es aprobada se le emitirá una boleta para votar en ausencia para las elecciones.

Para votar ausente por correo de votar usted debe tener los requisitos de inscripción con los puntos 7 a 9 arriba indicados. La votación le será expedida por correo para votar en ausencia por correo que le envíen con una boleta.

Accesibilidad

La ley estatal requiere que los sitios de votación y las operaciones de votación sean accesibles a los votantes discapacitados y discapacitados. Si usted necesita asistencia para votar puede contactar a alguien que le ayude (puede ser un amigo o un familiar) o un trabajador electoral de cada punto de votación principal o una disponible para asistencia.

Si usted desea presentar una objeción sobre la accesibilidad de un lugar de votación o si se le negó el derecho al voto o para reportar posibles actividades electorales ilegales, por favor llame a la línea de votantes Hoosier Hotline al 1-866-IND-VOTE (366-361-4662) o a la Indiana Election Division Hoosier Hotline al 1-866-632-4411.



AVISO IMPORTANTE A LOS VOTANTES:

Después que usted entre al sitio electoral, la ley estatal requiere que muestre una **identificación fotográfica** antes de firmar la lista electoral y emitir un voto.

Si no tiene su identificación fotográfica consigo puede entrar a este sitio electoral y votar por "boleta provisional".

Su identificación fotográfica debe cumplir con los siguientes requisitos:

1. **Mostrar su nombre** que debe cumplir con el nombre de su registro de votante; (conformarse NO significa idéntico)
2. **Mostrar su fotografía;**
3. **Incluir una fecha de caducidad** indicando que el documento aún no ha caducado (o vencido *después* del 8 de noviembre de 2016, la fecha de las últimas elecciones generales), con excepción de ciertas identificaciones militares de veteranos; y
4. Ser emitidos por los **Estados Unidos de América** o el **Estado de Indiana**.

Nota: La dirección de su identificación fotográfica NO tiene que coincidir con la dirección de su registro de votante.

VERIFIQUE AHORA MISMO PARA ASEGURARSE DE QUE USTED TIENE SU IDENTIFICACIÓN FOTOGRAFICA CONSIGO





SOLICITUD DE VOTO EN AUSENCIA POR CORREO ÚNICAMENTE Para las elecciones del _____ / _____ / 2018
 Formulario del Estado 53368 (R14 / 10-17) Indiana Election Division (IC 3-11-4-2; 3-11-4-5.1, 3-11-10-24)

(ABS-POR CORREO)

INSTRUCCIONES: Completar y devolver la solicitud de modo que sea recibida por la junta electoral del condado por lo menos 8 días antes del día de las elecciones. **PLAZOS DE ENTREGA:** Para las elecciones primarias del 6 de mayo de 2018, el plazo de entrega para que el condado RECIBA es el 30 de ABRIL de 2018 ANTES DE LAS 11:59 p.m. Para las Elecciones generales del 6 de noviembre de 2018, el plazo de entrega para que el condado RECIBA es el 29 de OCTUBRE de 2018 ANTES DE LAS 11:59 p.m. PUEDE ENVIARSE POR CORREO, FAX O ENTREGADA PERSONALMENTE. NO ENVÍE ESTE FORMULARIO POR CORREO ELECTRÓNICO. Si usted recibe esta solicitud completada de un votante deberá presentar la solicitud completada con el condado a Indiana Election Division antes del mediodía, 10 días después de haberla recibido o antes del plazo de entrega del voto en ausencia, whichever occur first. Usted deberá suministrar la fecha en la que recibió la solicitud completada en el casillero 5.

Condado de residencia:

1. INFORMACIÓN SOBRE EL SOLICITANTE DEL VOTO EN AUSENCIA

Nombre (por favor en letra de molde o imprenta) _____ Fecha de nacimiento (mm/dd/aa) _____ Últimos cuatro dígitos del número de Seguro Social (Completar este casillero en optativa.)
 No tengo un número de Seguro Social

Cambio de nombre (Si usted cambió su nombre desde que se registró para votar, por favor escriba en letra de molde su NOMBRE ANTERIOR para autorizar una actualización de su registro del votante)

Dirección del registro (Número y calle) _____ Ciudad/Pueblo, Estado, Código Postal _____ Teléfono (opcional) _____

2. DIRECCIÓN POSTAL DE ENVÍO DEL VOTO AUSENTE (Por favor envíelo por correo al voto ausente para la elección a esta dirección si es distinta a la dirección del registro.)

Dirección postal (número y calle) _____ Ciudad/Pueblo, Estado, Código Postal _____

3. ELECCIONES PRIMARIAS ÚNICAMENTE

De acuerdo con la ley del estado, usted debe solicitar una boleta electoral de un partido político (importante para votar en una elección primaria). Usted puede votar sobre una pregunta pública sin votar una boleta electoral del partido político, si un referéndum (pregunta pública) se lleva a cabo el mismo día de las elecciones primarias. Yo solicito el voto del partido político, una mayoría de cuyos candidatos por los que he votado durante la última elección general o por quien tengo intención de votar en las próximas elecciones generales:

PARTIDO DEMÓCRATA PARTIDO REPUBLICANO No deseo votar en las primarias de ninguno de los partidos pero deseo votar sobre una PREGUNTA PÚBLICA ÚNICAMENTE

4. RAZÓN PARA VOTAR UN VOTO EN AUSENCIA POR CORREO

- Tengo una expectativa específica, razonable de estar ausente de un condado el día de las elecciones durante las 12 horas completas en que los comicios están abiertos.
- Estoy restringido a mi residencia, una institución para el cuidado de la salud, o a un hospital debido a una enfermedad o lesión durante las 12 horas en que están abiertos los comicios.
- Estaré cuidando a una persona restringida a una residencia privada debido a una enfermedad o lesión durante las 12 horas en que están abiertos los comicios.
- Soy un votante discapacitado. **NOTA:** Si usted no pueda hacer una marca en la boleta o firmar el sobre de seguridad de la boleta deberá comunicarse con la junta electoral del condado para procesar su solicitud.
- Soy un votante de 65 años de edad como mínimo.
- Tendré ocupaciones relacionadas con las elecciones oficiales fuera de mi distrito electoral.
- Tengo programado trabajar en mi sitio usual de empleo durante las 12 horas completas en que los comicios permanecen abiertos.
- No puedo votar en los comicios personalmente porque observo una disciplina religiosa o no he recibido religiosamente durante las 12 horas completas en que los comicios permanecen abiertos.
- Soy un votante alejado para votar de acuerdo con los procedimientos "ball-site" en IC 3-10-11 a 3-10-12.
- Soy miembro de las fuerzas armadas o un oficial activo de seguridad.
- Soy un "delincuente sexual grave" (según se define en IC 35-42-4-14(a)).
- No puedo votar debido a la falta de disponibilidad de transporte a las urnas.

Comuníquese con la junta electoral de su condado si desea votar por voto ausente personalmente en el condado o frente a una junta de viajes; si usted desea que su poder notarial afecte la solicitud por usted o se encuentre en el Programa de Confidencialidad del Fiscal general.

Juro o afirmo bajo las multas por perjurio que toda la información descrita en esta solicitud es verdadera a mi mejor saber y entender. El perjurio es punible por encarcelamiento de hasta 2 años y medio, una multa de hasta \$10,000, o ambos.

Firma del votante (o la persona designada para firmar por las votantes con discapacidades que no es capaz de firmar) _____ Fecha de la firma (mm/dd/aa) _____

NOTA: 5. SI USTED RECIBIÓ ESTA SOLICITUD COMPLETADA DEL VOTANTE, ESCRIBIR LA FECHA EN QUE FUE RECIBIDA: _____ / _____ / 20

6. INFORMACIÓN DE LA PERSONA ASISTENTE DEL SOLICITANTE DEL VOTO POR AUSENCIA

Nombre (por favor en letra de molde o imprenta) _____ Fecha de nacimiento (mm/dd/aa) _____ Teléfono (día) _____ Teléfono (noche) _____

Dirección del registro (Número y calle) _____ Ciudad/Pueblo, Estado, Código Postal _____ Dirección postal (si es distinta a la dirección de la residencia) _____ Ciudad/Pueblo, Estado, Código Postal _____

Juro o afirmo bajo las multas por perjurio que no soy el empleador del votante, un oficial de la unión del votante, o un agente del empleador o sindicato del votante y tengo conocimiento o razón para creer que la persona que entrega la solicitud (1) es elegible para votar o efectuar un voto en ausencia o (2) no completó y firmó correctamente la solicitud.

Firma de la persona asistente del votante con la solicitud _____ Fecha de la firma (mm/dd/aa) _____

PARA USO EN LA OFICINA ÚNICAMENTE

Fecha (mm/dd/aa) _____ Distrito electoral _____ SI No (El solicitante tiene requerido suministrar documentación adicional a la oficina del registro del votante del condado pero aun no lo ha hecho?)



SOLICITUD DE REGISTRO PARA EL VOTANTE DE INDIANA
 Formulario del Estado 54509 (R8 / 10-17)
 División Electoral de Indiana

(VRG-7)

Para información sobre las elecciones ver: www.indianavoters.com

Usted puede usar esta solicitud para: Efectuar la solicitud para el registro del votante en Indiana o cambiar su nombre y dirección en su registro o transferir su registro si se muda de su distrito electoral.

Para registrarse usted debe: Ser un ciudadano de los Estados Unidos de América, tener 18 años de edad, como mínimo, el día de la próxima elección general o municipal; haber vivido en su distrito electoral durante 30 días, como mínimo, antes de las próximas elecciones y no estar encarcelado actualmente después de haber sido encontrado culpable por un delito.

Si usted está registrándose para votar en Indiana por primera vez y envía esta solicitud por correo tendrá que suministrar documentos adicionales sobre la residencia antes de votar. Si el condado puede ignorar su número de tarjeta de conductor o seguro social con un registro identificatorio existente de Indiana que posea el mismo número, nombre y fecha de nacimiento que usted suministre en la solicitud entonces ha cumplido con el requisito. Usted también puede cumplir con este requisito suministrando una prueba de residencia con esta solicitud o en cualquier momento hasta el día de las elecciones. La prueba de residencia puede cumplirse presentando: (1) una COPIA de su identificación fotográfica válida y actualizada o (2) una tarjeta de servicios públicos actual, estado bancario, cheque del gobierno, cheque de sueldo o documento del gobierno mostrando su nombre y dirección a la dirección que usted suministró en esta solicitud. Por favor no envíe los originales. Cubra cualquier información relacionada con la cuenta con un marcador permanente.

COMPLETAR TODOS LOS CASILLEROS CORRESPONDIENTES CON TINTA AZUL O NEGRA. NO ENVIAR EL FORMULARIO POR FAX O EMAIL DESPUÉS DE COMPLETARLO.

Enviar por correo o entregar personalmente la solicitud completada a su oficina de registro del condado (las direcciones se encuentran al reverso de este formulario) o al Indiana Election Division (División electoral de Indiana).

Casillero 4: Dirección de la residencia; Escribir en letra de imprenta (print) la dirección donde usted vive. Si su dirección es una ruta rural, incluir el número de buzón (caja postal). Si su residencia no tiene una dirección o número de calle, escriba una descripción breve de su ubicación en el Casillero 4 o anexe un mapa.

Casilleros 10 u 11: Si usted marca "no" respondiendo a cualquiera de las preguntas en los Casilleros 10 u 11, no complete este casillero.

Casillero 12: Número de identificación del votante: Se requiere que usted suministre su número de licencia de conductor de Indiana como fue emitida por el Indiana Bureau of Motor Vehicles. Si usted no tiene una licencia de conductor de Indiana, suministre los últimos cuatro dígitos de su número de seguro social. Si usted no tiene un número de licencia de conductor de Indiana ni un número de seguro social deberá indicar "Ninguno".

Casillero 14: Esta solicitud no puede procesarse sin la firma original del votante en esta sección.

Vencimiento de la solicitud: Esta solicitud deberá estar malasellada o entregada personalmente a la oficina del registro para el votante de su condado antes de los 29 días precedentes a la próxima elección. Si usted no cumple con esta fecha de vencimiento su solicitud será procesada cuando se reabra el registro.

Casillero 15: Si usted o Indiana Election Division no presentan esta solicitud a la oficina de registro para el votante de su condado, la persona que acepte la custodia de la solicitud (con excepción de un miembro del mismo grupo familiar) deberá completar esta certificación antes de presentar la solicitud a la oficina de registro para el votante del condado o al Indiana Election Division antes del mediodía 10 días después del recibo o la fecha de vencimiento de la solicitud, cualesquiera ocurra primero.

Aviso de reconocimiento: Se le enviará un aviso de parte de la oficina para el registro del votante de su condado reconociendo el recibo de su solicitud. El aviso le informará si su solicitud ha sido aprobada por la oficina para el registro del votante del condado. Si su solicitud está incompleta se le pedirá información adicional. Si usted no recibe un aviso dentro de los 30 días de la presentación de esta solicitud, comuníquese con la oficina para el registro del votante de su condado.

Indiana Election Division
 302 West Washington Street, Room E204
 Indianapolis, IN 46204-2743
 Teléfono: (317) 232-3939
 Número gratuito (Indiana únicamente): (800) 622-4941
www.in.gov/sep/elections

RECIBO DEL SOLICITANTE DE LA PERSONA QUE ACEPTA LA CUSTODIA DE UN FORMULARIO COMPLETADO PARA EL REGISTRO DEL VOTANTE
 (no un recibo del condado con el propósito del registro del votante)

NOTA: Si usted acepta un formulario completado de otra persona, para poder presentar su registro para que sea tomado en cuenta, usted deberá presentar el formulario completado a la oficina para el registro del votante de su condado o al Indiana Election Division antes del mediodía 10 días después del recibo o la fecha de vencimiento de la solicitud, cualesquiera ocurra primero.

Yo acepto custodia de esta solicitud completada el _____/_____/20__

Por favor separar y entregar el recibo de arriba al solicitante si usted está aceptando custodia de una solicitud completada.

1	<input type="checkbox"/> Nuevo registro <input type="checkbox"/> Cambio de dirección (Ver Casillero 6) <input type="checkbox"/> Cambio de nombre (Ver Casillero 13)	2	Condado de Indiana donde usted vive:	PARA USO DEL CONDAO ÚNICAMENTE	Fecha de procesamiento	Municipio/ Distrito electoral	Número de rastreo del condado
3	Sexo <input type="checkbox"/> Femenino <input type="checkbox"/> Masculino	Apellido		Primer nombre	Segundo nombre o inicial		Signo Jr. Sr. II III IV
4	Dirección de la residencia (No número de casilla postal) si no hay dirección escriba una breve descripción o anexe un mapa.			Número de apartamento	Ciudad / Pueblo	Estado IN	Código postal
5	Dirección postal, si es distinta a la del Casillero 4, si es la misma, escriba "MISMA"			Número de apartamento	Ciudad / Pueblo	Estado	Código postal
6	Dirección anterior del registro del votante			Condado	Número de apartamento	Ciudad / Pueblo	Estado Código postal
7	Fecha de nacimiento (mm/dd/aa)		8	Número de teléfono (Opcional)		9	E-mail (Opcional)
10	¿Usted es un ciudadano de los Estados Unidos de América? <input type="checkbox"/> SI <input type="checkbox"/> No	11	¿Tendrá 18 años de edad como mínimo el día o antes del día de la elección? <input type="checkbox"/> SI <input type="checkbox"/> No	12 Establecer un Número de identificación del votante- El solicitante debe suministrar un número o indicar "Ninguno". Suministrar sus 10 dígitos del número emitido de licencia de conductor de Indiana. Si usted no tiene una licencia de conductor de Indiana entonces suministre los últimos 4 dígitos de su número de seguro social aquí. Si usted no tiene ninguno de ellos, marque "Ninguno". <input type="checkbox"/> Número de licencia de conductor de Indiana o número de tarjeta identificatoria del Bureau of Motor Vehicles <input type="checkbox"/> Últimos 4 dígitos del número de Seguro Social <input type="checkbox"/> Ninguno			
13	Si usted cambió su nombre ¿cuál era su nombre antes del cambio? Si usted no cambió su nombre no responde a esta pregunta.	Apellido	Primer nombre	Segundo nombre o inicial		Signo Jr. Sr. II III IV	
14	Autorizo mi registro de votante en cualquier otra dirección a ser cancelado. Juro o afirmo que: • Soy un ciudadano de los Estados Unidos de América. • Tendré 18 años de edad, como mínimo, en las próximas elecciones generales o municipales. • Hebré vivido en mi distrito electoral durante 30 días, como mínimo, antes de la próxima elección. • No estoy actualmente en prisión después de haber sido condenado por un delito. • Toda la información arriba señalada y todas las otras declaraciones en este formulario son verdaderas. Entiendo que si firmo esta declaración sabiendo que no es verdadera estoy cometiendo perjurio y puedo ser multado hasta \$10,000, encarcelado hasta tres años o ambas.			15 DECLARACIÓN DE ACEPTACIÓN CERTIFICADA A ser completada por una persona que acepte la custodia de la solicitud completada antes de presentarla a la oficina para el registro del votante del condado o al Indiana Election Division. No corresponde a una persona que acepte un formulario del miembro del grupo familiar. Afirmo bajo juramento por perjurio que he aceptado la custodia de esta solicitud completada del solicitante el (insertar fecha): _____/_____/20__			
Firma del solicitante			Fecha (mm/dd/aa)		Nombre en letra de molde		
Si el solicitante no puede firmar la solicitud debido a una discapacidad, la persona que escribe el nombre del solicitante en el renglón de arriba a pedido del solicitante deberá suministrar su nombre y dirección a continuación.			Nombre		Dirección		Dirección de la residencia
			Dirección		Número de teléfono (Opcional)		
			Firma				

Si usted acepta un formulario completado de otra persona deberá suministrarlo a la oficina para el registro del votante del condado o al Indiana Election Division antes del mediodía 10 días después del recibo o vencimiento del registro, cualesquiera ocurra primero.



SOLICITUD DE VOTO EN AUSENCIA EN PERSONA ÚNICAMENTE

Para las elecciones del ____/____/20__

(AUS-EN PERSONA)

Formulario del Estado 53389 (R12 / 10-17); Indiana Election Division (IC 3-11-4-2; 3-11-4-5.1; 3-11-10-28; 3-11-10-26.3)

PARA USO DE LA JUNTA ELECTORAL DEL CONDADO ÚNICAMENTE

Distrito electoral	DOCUMENTACIÓN ADICIONAL	¿El solicitante tiene requando suministrar documentación adicional sobre la residencia a la oficina del registro del votante del condado pero aún no lo ha hecho? <input type="checkbox"/> Sí <input type="checkbox"/> No
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INSTRUCCIONES PARA EL VOTANTE: El votante (o persona asignada por el votante con discapacidades que no puede firmar) debe FIRMAR la solicitud abajo presentada.

Si usted está solicitando como el apoderado especial del votante deberá anexarse una copia del poder notarial a esta solicitud. Si usted no tiene un apoderado especial y está discapacitado físicamente para firmar la solicitud, llame a la Junta electoral del condado para recibir asistencia. Algunos votantes que se han registrado por primera vez en Indiana, y lo hicieron por correo, tienen el requerimiento de suministrar documentos adicionales de residencia. La junta electoral del condado le puede informar si esto le corresponde a usted. Esta solicitud se usa para votar en persona en una oficina del circuito judicial (u oficina satélite), o la oficina de la junta de elecciones y registro. Si se le solicita que se le envíe por correo un voto en ausencia, use el formulario AUS-CORREO. Si usted es un votante restringido que solicita se le envíe un voto en ausencia, use el formulario AUS-JUNTA DE VIAJES. Si usted es un miembro del programa de confidencialidad de la dirección del Fiscal general, use el formulario AUS-FISCAL GENERAL. Si usted es un votante que se encuentra en el exterior o es parte de los servicios uniformados (fuerzas armadas), use el formulario FPCA.

1. INFORMACIÓN SOBRE EL SOLICITANTE DEL VOTO EN AUSENCIA

Nombre (por favor en letra de molde o impranta)	Fecha de nacimiento(mm/dd/aa)	Últimos cuatro dígitos del número de Seguro Social (Completar este casillero es optativo) _____ <input type="checkbox"/> No tengo un número de Seguro Social.
Cambio de nombre (Si usted cambió su nombre desde que se registró para votar, por favor escriba en letra de molde su NOMBRE ANTERIOR para autorizar una actualización de su registro del votante):		
NOMBRE ANTERIOR:		
Dirección del registro (número y calle)	Ciudad/Pueblo, Estado, Código Postal	Teléfono (Optativo) ()

2. COMPLETAR ESTA SECCIÓN DE LA SOLICITUD PARA VOTAR EN LAS PRIMARIAS

De acuerdo con la ley del estado, usted debe solicitar una boleta electoral de un partido político importante para votar en una elección primaria. Sin embargo, usted puede votar sobre una pregunta pública sin votar una boleta electoral del partido político, si un referendium (pregunta pública) se lleva a cabo el mismo día de las elecciones primarias. Yo solicito el voto del partido político, una mayoría de cuyos candidatos por los que he votado durante la última elección general o por quien tengo intención de votar en las próximas elecciones generales: (marcar un casillero)

PARTIDO DEMÓCRATA PARTIDO REPUBLICANO

No deseo votar en las primarias de ninguno de los partidos políticos pero deseo votar sobre una PREGUNTA PÚBLICA

Juro o afirmo bajo las multas por perjurio que toda la información descrita en esta solicitud es verdadera a mi mejor saber y entender.

Firma del votante (o la persona designada para firmar por los votantes con discapacidades que no es capaz de firmar) X	Fecha de la firma (mes, día, año) ____/____/20__
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3. INFORMACIÓN DE LA PERSONA ASISTENTE DEL SOLICITANTE DEL VOTO POR AUSENCIA:

Nombre (por favor en letra de imprenta o molde)	Fecha de asistencia ofrecida al solicitante ____/____/20__	
Dirección de la residencia (número y calle)	Ciudad/Pueblo, Estado, Código postal	Teléfono (día) ()
Dirección postal (número y calle) (si es distinta a la dirección de la residencia)	Ciudad/Pueblo, Estado, Código postal	Teléfono (noche) ()
Juro o afirmo bajo las multas por perjurio que no soy el empleador del votante, un oficial de la unión del votante, o un agente del empleador o sindicato del votante y tengo conocimiento o razón para creer que la persona que entrega la solicitud: (1) es inelegible para votar o efectuar un voto en ausencia o (2) no completó y firmó correctamente la solicitud.		
Firma de la persona asistente del votante con la solicitud X	Fecha de la firma (mes, día, año)	
Multa por perjurio: Una persona que hace una declaración falsa, material bajo juramento o afirmación sabiendo que la declaración es falsa o no creyendo que es cierta comete perjurio que es punible por encarcelamiento hasta 2 años y medio, una multa de hasta \$10,000, o ambos.		



SOLICITUD DE REGISTRO PARA EL VOTANTE DEL CONDADO DE INDIANA
Formulario del Estado 55442 (10-13)
Comisión electoral de Indiana

(VRG-11)

Para información sobre las elecciones ver: www.indianavoters.com

Usted puede usar esta solicitud para: Efectuar la solicitud para el registro del votante en Indiana o cambiar su nombre y dirección en su registro o transferir su registro si se muda de su distrito electoral.

Para registrarse usted debe: Ser un ciudadano de los Estados Unidos de América, tener 18 años de edad, como mínimo, el día de la próxima elección general o municipal, haber vivido en su distrito electoral durante 30 días, como mínimo, antes de las próximas elecciones y no estar encarcelado actualmente después de haber sido encontrado culpable por un delito.

Si usted está registrándose para votar en Indiana por primera vez y envía esta solicitud por correo tendrá que suministrar documentos adicionales sobre la residencia antes de votar. Si el condado puede igualar su número de tarjeta de conductor o seguro social con un registro identificatorio existente de Indiana que posea el mismo número, nombre y fecha de nacimiento que usted suministra en la solicitud entonces ha cumplido con el requisito. Usted también puede cumplir con este requisito suministrando una prueba de residencia con esta solicitud o en cualquier momento hasta el día de las elecciones. La prueba de residencia puede cumplirse presentando: (1) una COPIA de su identificación fotográfica válida y actualizada o (2) una boleta de servicios públicos actual, estado bancario, cheque del gobierno, cheque de sueldo o documento del gobierno mostrando su nombre y dirección a la dirección que usted suministró en esta solicitud. Por favor no envíe los originales. Cubra cualquier información relacionada con la cuantía con un marcador permanente.

COMPLETAR TODOS LOS CASILLEROS CORRESPONDIENTES CON TINTA AZUL O NEGRA. NO ENVIAR EL FORMULARIO POR FAX O EMAIL DESPUÉS DE COMPLETARLO.

Enviar por correo o entregar personalmente la solicitud a:
Oficina de registro para el votante del Condado

Casillero 4: Dirección de la residencia: Escribir en letra de imprenta (módica) la dirección donde usted vive. Si su dirección es una ruta rural, incluir el número de buzón (caja postal). Si su residencia no tiene una dirección o número de calle, escriba una descripción breve de su ubicación en el Casillero 4 o anexe un mapa.

Casilleros 10 u 11: Si usted marca "no" respondiendo a cualquiera de las preguntas en los Casilleros 10 u 11, no complete esta solicitud.
Casillero 12: Número de identificación del votante: Se requiere que usted suministre su número de licencia de conductor de Indiana como fue emitido por el Indiana Bureau of Motor Vehicles. Si usted no tiene una licencia de conductor de Indiana, suministre los últimos cuatro dígitos de su número de seguro social. Si usted no tiene un número de licencia de conductor de Indiana ni un número de seguro social deberá indicar "Ninguno".

Casillero 14: Esta solicitud no puede procesarse sin la firma original del votante, en esta sesión.

Vencimiento de la solicitud: Esta solicitud deberá estar malaseada o entregada personalmente a la oficina del registro para el votante de su condado antes de los 29 días precedentes a la próxima elección. Si usted no cumple con esta fecha de vencimiento su solicitud será procesada cuando se reabra el registro.

Casillero 15: Si usted o Indiana Election Division no presentan esta solicitud a la oficina de registro para el votante de su condado, la persona que acepta la custodia de la solicitud (con excepción de un miembro del mismo grupo familiar) deberá completar esta certificación antes de presentar la solicitud a la oficina de registro para el votante del condado o a la Indiana Election Division antes del mediodía 10 días después del recibo o la fecha de vencimiento de la solicitud, cualesquiera ocurra primero.

Aviso de reconocimiento: Se le enviará un aviso de parte de la oficina para el registro del votante de su condado reconociendo el recibo de su solicitud. El aviso le informará si su solicitud ha sido aprobada por la oficina para el registro del votante del condado. Si su solicitud está incompleta se le pedirá información adicional. Si usted no recibe un aviso dentro de los 30 días de la presentación de esta solicitud, comuníquese con la oficina para el registro del votante de su condado.

Indiana Election Division
302 West Washington Street, Room E204
Indianapolis, IN 46204-2743
Teléfono: (317) 232-3939
Número gratuito (Indiana únicamente): (800) 822-4941
www.in.gov/elections

RECIBO DEL SOLICITANTE DE LA PERSONA QUE ACEPTA LA CUSTODIA DE UN FORMULARIO COMPLETADO PARA EL REGISTRO DEL VOTANTE (no un recibo del condado con el propósito del registro del votante)

NOTA: Si usted acepta un formulario completado de otra persona, para poder presentar su registro para que sea tomado en cuenta, usted deberá presentar el formulario completado a la oficina para el registro del votante de su condado o a la Indiana Election Division antes del mediodía 10 días después del recibo o la fecha de vencimiento de la solicitud, cualesquiera ocurra primero.

Yo acepto custodia de esta solicitud completada el ____/____/20__.

Nombre en letra de molde

Dirección de la residencia

Por favor separar y entregar el recibo de arriba al solicitante, si usted está aceptando custodia de una solicitud completada.

1	<input type="checkbox"/> Nuevo registro <input type="checkbox"/> Cambio de dirección (Ver Casillero 4) <input type="checkbox"/> Cambio de nombre (Ver Casillero 13)	2	Condado de Indiana donde usted vive:	PARA USO DEL CONDADO ÚNICAMENTE	Fecha de procesamiento	Municipio/Distrito electoral	Número de rastreo del condado
3	Sexo <input type="checkbox"/> Femenino <input type="checkbox"/> Masculino	Apellido	Primer nombre	Segundo nombre o inicial	Sujeo Jr. Sr. II III IV		
4	Dirección de la residencia (No número de casilla postal) si no hay dirección escriba una breve descripción o anexe un mapa.		Número de apartamento	Ciudad / Pueblo	Estado IN	Código postal	
5	Dirección postal, si es distinta a la del Casillero 4, si es la misma, escriba "MISMA"		Número de apartamento	Ciudad / Pueblo	Estado	Código postal	
6	Dirección anterior del registro del votante		Condado	Número de apartamento	Ciudad / Pueblo	Estado	Código postal
7	Fecha de nacimiento (mm/dd/aa)		8	Número de teléfono (Opcional)		9	E-mail (Opcional)
10	¿Usted es un ciudadano de los Estados Unidos de América? <input type="checkbox"/> Sí <input type="checkbox"/> No	11	¿Tendrá 18 años de edad como mínimo el día o antes del día de la elección? <input type="checkbox"/> Sí <input type="checkbox"/> No	12 Establecer un Número de identificación del votante. El solicitante debe suministrar un número o indicar "ninguno". Suministrar sus 10 dígitos del número emitido de licencia de conductor de Indiana. Si usted no tiene una licencia de conductor de Indiana entonces suministre los últimos 4 dígitos de su número de seguro social aquí. Si usted no tiene ninguno de ellos, marque "Ninguno". <input type="checkbox"/> Número de licencia de conductor de Indiana o Número de tarjeta identificatoria del Bureau of Motor Vehicles <input type="checkbox"/> Últimos 4 dígitos del número de Seguro Social <input type="checkbox"/> Ninguno			
13	Si usted cambió su nombre ¿cuál era su nombre antes del cambio? Si usted no cambió su nombre no responda a esta pregunta.	Apellido	Primer nombre	Segundo nombre o inicial	Sujeo Jr. Sr. II III IV		
14	Autorizo mi registro de votante en cualquier otra dirección a ser cancelado. Juro o afirmo que: • Soy un ciudadano de los Estados Unidos de América. • Tendré 18 años de edad en las próximas elecciones generales o municipales. • Hebré vivido en mi distrito electoral durante 30 días, como mínimo, antes de la próxima elección. • No estoy actualmente en prisión después de haber sido condenado por un delito. • Toda la información arriba señalada y todas las otras declaraciones en este formulario son verdaderas. Entiendo que si firmo esta declaración sabiendo que no es verdadera estoy cometiendo perjurio y puedo ser multado hasta \$10,000, encarcelado hasta tres años o ambos.			15 DECLARACION DE ACEPTACION CERTIFICADA A ser completada por una persona que acepte la custodia de la solicitud completada antes de presentarla a la oficina para el registro del votante del condado o a la Indiana Election Division. No corresponde a una persona que acepte un formulario del miembro del grupo familiar. Afirmo bajo multa por perjurio que he aceptado la custodia de esta solicitud completada del solicitante el (Insertar fecha): ____/____/20__			
Firma del solicitante		Fecha (mm/dd/aa)		Nombre en letra de molde			
Si el solicitante no puede firmar la solicitud debido a una discapacidad, la persona que escribe el nombre del solicitante en el recibo de arriba a pedido del solicitante deberá suministrar su nombre y dirección a continuación.		Nombre		Dirección		Número de teléfono (Opcional)	
Firma		Dirección de la residencia					

Si usted acepta un formulario completado de otra persona deberá suministrarlo a la oficina para el registro del votante del condado o a Indiana Election Division antes del mediodía 10 días después del recibo o vencimiento del registro, cualesquiera ocurra primero.



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DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 110921996-1557-01]

Voting Rights Act Amendments of 2006, Determinations Under Section 203

AGENCY: Bureau of the Census, Department of Commerce.
ACTION: Notice of determination.

SUMMARY: As required by Section 203 of the Voting Rights Act of 1965, as amended, this notice publishes the Bureau of the Census (Census Bureau) Director's determinations as to which political subdivisions are subject to the minority language assistance provisions of the Act. As of this date, those jurisdictions that are listed as covered by Section 203 have a legal obligation to provide the minority language assistance prescribed by the Act.

DATES: *Effective Date:* This notice is effective on October 13, 2011.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Ms. Catherine M. McCully, Chief, Census Redistricting Data Office, Bureau of the Census, United States Department of Commerce, Room D1K 8H019, 4600 Silver Hill Rd, Washington DC 20233, by telephone at 301-763-4039, or visit the Redistricting Data Office internet site at <http://www.census.gov/rdo/>.

For information regarding the applicable provisions of the Act, please contact T. Christian Herron, Jr., Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254-NWB, 950 Pennsylvania Avenue, NW., Washington, DC 20530, by telephone at (800) 253-3931 or visit the Voting Section internet site at <http://www.justice.gov/crt/about/vot/>.

SUPPLEMENTARY INFORMATION: In July 2006, Congress amended the Voting Rights Act of 1965, Title 42, United States Code (U.S.C.), 1973 *et seq.* (See Pub. L. 109-246, 120 Stat. 577 (2006)).

Among other changes, the sunset date for minority language assistance provisions set forth in Section 203 of the Act was extended to August 5, 2032.

Section 203 mandates that a state or political subdivision must provide language assistance to voters if more than five (5) percent of voting age citizens are members of a single-language minority group and do not "speak or understand English adequately enough to participate in the electoral process" and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade. When a state is covered for a particular language minority group, an exception is made for any political subdivision in which less than five (5) percent of the voting age citizens are members of the minority group and are limited in English proficiency, unless the political subdivision is covered independently. A political subdivision is also covered if more than 10,000 of the voting age citizens are members of a single-language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade.

Finally, if more than five (5) percent of the American Indian or Alaska Native voting age citizens residing within an American Indian Reservations (and off-reservation trust lands) are members of a single language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade, any political subdivision, such as a county, which contains all or any part of that Indian reservation, is covered by the minority language assistance provision set forth in Section 203. An American Indian

Reservation is defined as any area that is an American Indian or Alaska Native area identified for purposes of the decennial census. For the 2010 Census, these areas were identified by the federally recognized tribal governments, Bureau of Indian Affairs, and state governments. The Census Bureau worked with American Indian tribes and Alaska Natives to identify statistical areas, such as Oklahoma Tribal Statistical Areas (OTSA), State Designated Tribal Statistical Areas (SDTSA), and Alaska Native Village Statistical Areas (ANVSA).

Pursuant to Section 203, the Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions of Section 203. The state and political subdivisions obligated to comply with the requirements are listed in the attachment to this Notice.

Section 203 also provides that the "determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court." Therefore, as of this date, those jurisdictions that are listed as covered by Section 203 have legal obligation to provide the minority language assistance prescribed in Section 203 of the Act. In the cases, where a state is covered, those counties or county equivalents not displayed in the attachment are exempt from the obligation. Those jurisdictions subject to Section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with Section 203. The previous determinations under Section 4(f)(4) of the Voting Rights Act remain in effect and are unaffected by this determination. (See Title 28, Code of Federal Regulations, part 55, Appendix (2010)).

Dated: October 5, 2011.
Robert M. Groves,
Director, Bureau of the Census.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010

State and political subdivision	Language minority group
Alaska:	
Aleutians East Borough	Aasian (Filipino).
Aleutians East Borough	Hispanic.
Aleutians West Census Area	Asian (Filipino).
Bethel Census Area	Alaska Native (Inupiat).
Bethel Census Area	Alaska Native (Yup'ik).
Dillingham Census Area	Alaska Native (Yup'ik).
Nome Census Area	Alaska Native (Inupiat).
Nome Census Area	Alaska Native (Yup'ik).
North Slope Borough	Alaska Native Tribe—Tribe not Specified.
North Slope Borough	Alaska Native (Inupiat).

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
Northwest Arctic Borough	Alaska Native (Inupiat).
Wade Hampton Census Area	Alaska Native (Inupiat).
Wade Hampton Census Area	Alaska Native (Yup'ik).
Yukon-Koyukuk Census Area	Alaska Native (Aleaskan Athabascan).
Arizona:	
Apache County	American Indian (Navajo).
Apache County	American Indian (Pueblo).
Cocconino County	American Indian (Hopi).
Cocconino County	American Indian (Navajo).
Cocconino County	American Indian (Yuma).
Maricopa County	American Indian (Tohono O'Odham).
Maricopa County	Hispanic.
Mohave County	American Indian (Yuma).
Navajo County	American Indian (Hopi).
Navajo County	American Indian (Navajo).
Pima County	American Indian (Tohono O'Odham).
Pima County	American Indian (Yaqui).
Pima County	Hispanic.
Pinal County	American Indian (Tohono O'Odham).
Santa Cruz County	Hispanic.
Yavapai County	American Indian (Yuma).
Yuma County	American Indian (Yuma).
Yuma County	Hispanic.
California:	
State Coverage	Hispanic.
Alameda County	Asian (Chinese).
Alameda County	Asian (Filipino).
Alameda County	Hispanic.
Alameda County	Asian (Vietnamese).
Colusa County	Hispanic.
Contra Costa County	Hispanic.
Fresno County	Hispanic.
Glenn County	Hispanic.
Imperial County	Hispanic.
Kern County	Hispanic.
Kings County	Hispanic.
Los Angeles County	Asian (Asian Indian).
Los Angeles County	Asian (Chinese).
Los Angeles County	Asian (Filipino).
Los Angeles County	Hispanic.
Los Angeles County	Asian (Japanese).
Los Angeles County	Asian (Korean).
Los Angeles County	Asian (Other Asian—Not specified).
Los Angeles County	Asian (Vietnamese).
Madera County	Hispanic.
Merced County	Hispanic.
Monterey County	Hispanic.
Napa County	Hispanic.
Orange County	Asian (Chinese).
Orange County	Hispanic.
Orange County	Asian (Korean).
Orange County	Asian (Vietnamese).
Riverside County	Hispanic.
Sacramento County	Asian (Chinese).
Sacramento County	Hispanic.
San Benito County	Hispanic.
San Bernardino County	Hispanic.
San Diego County	Asian (Chinese).
San Diego County	Asian (Filipino).
San Diego County	Hispanic.
San Diego County	Asian (Vietnamese).
San Francisco County	Asian (Chinese).
San Francisco County	Hispanic.
San Joaquin County	Hispanic.
San Mateo County	Asian (Chinese).
San Mateo County	Hispanic.
Santa Barbara County	Hispanic.
Santa Clara County	Asian (Chinese).
Santa Clara County	Asian (Filipino).
Santa Clara County	Hispanic.
Santa Clara County	Asian (Vietnamese).
Stanislaus County	Hispanic.

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COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
Tulare County	Hispanic.
Ventura County	Hispanic.
Colorado:	
Costilla County	Hispanic.
Denver County	Hispanic.
Rio Grande County	Hispanic.
Connecticut:	
Bridgeport town	Hispanic.
East Hartford town	Hispanic.
Hartford town	Hispanic.
Meriden town	Hispanic.
New Britain town	Hispanic.
New Haven town	Hispanic.
New London town	Hispanic.
Waterbury town	Hispanic.
Windham town	Hispanic.
Florida:	
State Coverage	Hispanic.
Broward County	Hispanic.
Hendee County	Hispanic.
Hendry County	Hispanic.
Hillsborough County	Hispanic.
Lee County	Hispanic.
Miami-Dade County	Hispanic.
Orange County	Hispanic.
Osceola County	Hispanic.
Palm Beach County	Hispanic.
Polk County	Hispanic.
Hawaii:	
Honolulu County	Asian (Chinese).
Honolulu County	Asian (Filipino).
Honolulu County	Asian (Japanese).
Maul County	Asian (Filipino).
Illinois:	
Cook County	Asian (Asian Indian).
Cook County	Asian (Chinese).
Cook County	Hispanic.
DuPage County	Hispanic.
Kane County	Hispanic.
Lake County	Hispanic.
Kansas:	
Finney County	Hispanic.
Ford County	Hispanic.
Grant County	Hispanic.
Seward County	Hispanic.
Maryland:	
Montgomery County	Hispanic.
Massachusetts:	
Boston city	Hispanic.
Chelsea city	Hispanic.
Fitchburg city	Hispanic.
Holyoke city	Hispanic.
Lawrence city	Hispanic.
Lowell city	Hispanic.
Lynn city	Hispanic.
Quincy city	Asian (Chinese).
Revere city	Hispanic.
Southbridge town	Hispanic.
Springfield city	Hispanic.
Worcester city	Hispanic.
Michigan:	
Clyde township ¹	Hispanic.
Hamtramck city	Asian (Bangladesh).
Hartford city	Hispanic.
Mississippi:	
Attala County	American Indian (Choctaw).
Jackson County	American Indian (Choctaw).
Jones County	American Indian (Choctaw).
Kemper County	American Indian (Choctaw).
Leske County	American Indian (Choctaw).
Neshoba County	American Indian (Choctaw).
Newton County	American Indian (Choctaw).

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
Noxubee County	American Indian (Choctaw).
Scott County	American Indian (Choctaw).
Winston County	American Indian (Choctaw).
Nebraska:	
Colfax County	Hispanic.
Dakota County	Hispanic.
Dawson County	Hispanic.
Nevada:	
Clark County	Asian (Filipino).
Clark County	Hispanic.
New Jersey:	
Bergen County	Hispanic.
Bergen County	Asian (Korean).
Camden County	Hispanic.
Cumberland County	Hispanic.
Essex County	Hispanic.
Hudson County	Hispanic.
Middlesex County	Hispanic.
Passaic County	Hispanic.
Union County	Hispanic.
New Mexico:	
Bernalillo County	American Indian (Navajo).
Bernalillo County	American Indian (Pueblo).
Bernalillo County	Hispanic.
Catron County	American Indian (Pueblo).
Chaves County	Hispanic.
Cibola County	American Indian (Navajo).
Cibola County	American Indian (Pueblo).
Doña Ana County	Hispanic.
Eddy County	Hispanic.
Grant County	Hispanic.
Guadalupe County	Hispanic.
Harding County	Hispanic.
Hidalgo County	Hispanic.
Lea County	Hispanic.
Luna County	Hispanic.
McKinley County	American Indian (Navajo).
McKinley County	American Indian (Pueblo).
Mora County	Hispanic.
Rio Arriba County	American Indian (Navajo).
Rio Arriba County	Hispanic.
San Juan County	American Indian (Navajo).
San Miguel County	Hispanic.
Sandoval County	American Indian (Navajo).
Sandoval County	American Indian (Pueblo).
Santa Fe County	American Indian (Pueblo).
Socorro County	American Indian (Navajo).
Socorro County	American Indian (Pueblo).
Socorro County	Hispanic.
Taos County	Hispanic.
Valencia County	American Indian (Pueblo).
Valencia County	Hispanic.
New York:	
Bronx County	Hispanic.
Kings County	Asian (Chinese).
Kings County	Hispanic.
Nassau County	Hispanic.
New York County	Asian (Chinese).
New York County	Hispanic.
Queens County	Asian (Asian Indian).
Queens County	Asian (Chinese).
Queens County	Hispanic.
Queens County	Asian (Korean).
Suffolk County	Hispanic.
Westchester County	Hispanic.
Pennsylvania:	
Berks County	Hispanic.
Lehigh County	Hispanic.
Philadelphia County	Hispanic.
Rhode Island:	
Central Falls city	Hispanic.
Pawtucket city	Hispanic.

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COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
Providence city	Hispanic.
Texas:	
State Coverage	Hispanic.
Andrews County	Hispanic.
Atascosa County	Hispanic.
Bailey County	Hispanic.
Bee County	Hispanic.
Bexar County	Hispanic.
Brewster County	Hispanic.
Brooks County	Hispanic.
Caldwell County	Hispanic.
Calhoun County	Hispanic.
Cameron County	Hispanic.
Castro County	Hispanic.
Cochran County	Hispanic.
Concho County	Hispanic.
Crane County	Hispanic.
Crockett County	Hispanic.
Crosby County	Hispanic.
Culberson County	Hispanic.
Dallas County	Hispanic.
Dawson County	Hispanic.
Deaf Smith County	Hispanic.
Dimmit County	Hispanic.
Duval County	Hispanic.
Ector County	Hispanic.
Edwards County	Hispanic.
El Paso County	American Indian (Pueblo).
El Paso County	Hispanic.
Floyd County	Hispanic.
Fort Bend County	Hispanic.
Frio County	Hispanic.
Gaines County	Hispanic.
Garza County	Hispanic.
Glasscock County	Hispanic.
Gonzales County	Hispanic.
Guadalupe County	Hispanic.
Hale County	Hispanic.
Hanford County	Hispanic.
Harris County	Asian (Chinese).
Harris County	Hispanic.
Harris County	Asian (Vietnamese).
Hidalgo County	Hispanic.
Hockley County	Hispanic.
Hudspeth County	Hispanic.
Jim Hogg County	Hispanic.
Jim Wells County	Hispanic.
Karnes County	Hispanic.
Kenedy County	Hispanic.
Kinney County	Hispanic.
Kleberg County	Hispanic.
La Salle County	Hispanic.
Lamb County	Hispanic.
Live Oak County	Hispanic.
Lynn County	Hispanic.
Martin County	Hispanic.
Maverick County	American Indian (Kickapoo).
Maverick County	Hispanic.
Medina County	Hispanic.
Midland County	Hispanic.
Mitchell County	Hispanic.
Moore County	Hispanic.
Nolan County	Hispanic.
Nueces County	Hispanic.
Ochiltree County	Hispanic.
Parmer County	Hispanic.
Pecos County	Hispanic.
Presidio County	Hispanic.
Reagan County	Hispanic.
Reeves County	Hispanic.
Refugio County	Hispanic.
Runnels County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
San Patricio County	Hispanic.
San Saba County	Hispanic.
Schleicher County	Hispanic.
Scurry County	Hispanic.
Sherman County	Hispanic.
Starr County	Hispanic.
Sutton County	Hispanic.
Swisher County	Hispanic.
Tarrant County	Hispanic.
Terrell County	Hispanic.
Terry County	Hispanic.
Titus County	Hispanic.
Travis County	Hispanic.
Upton County	Hispanic.
Uvalde County	Hispanic.
Val Verde County	Hispanic.
Ward County	Hispanic.
Webb County	Hispanic.
Wiliacy County	Hispanic.
Wilson County	Hispanic.
Winkler County	Hispanic.
Yoakum County	Hispanic.
Zapala County	Hispanic.
Zavala County	Hispanic.
Utah:	
Salt Lake County	Hispanic.
San Juan County	American Indian (Navajo).
Virginia:	
Fairfax County	Hispanic.
Washington:	
Adams County	Hispanic.
Franklin County	Hispanic.
King County	Asian (Chinese).
King County	Asian (Vietnamese).
Yakima County	Hispanic.
Wisconsin:	
Milwaukee City	Hispanic.

¹ Clyde Township in Allegan County.

[FR Doc. 2011-26293 Filed 10-12-11; 8:45 am]
BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation
Technical Advisory Committee; Notice
of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 25, 2011, 9:30 a.m., in the Herbert C. Hoover Building, Room 3864, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov no later than October 18, 2011.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit

written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 27, 2011 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482-2813.

Statement by Indiana Republican Party Chairman Kyle Hupfer
United States Commission on Civil Rights Indiana Advisory Committee Hearing
March 2, 2018
Indianapolis, Indiana

On behalf of the Indiana Republican Party, I thank the United States Commission on Civil Rights and, in particular, the Indiana Advisory Committee, for the opportunity to submit a written statement for your consideration. The strength of our communities, at the local, state and national levels, depends on active participation among citizens and we believe the conversation you are having today is an important one. Thank you for including us.

As a political party organization, our primary objective is, of course, to win elections. We want individuals who ascribe to the principles and tenets of the Indiana Republican Party and of the Republican National Committee to be leading the charge to provide solutions to our problems and deliver positive results on behalf of our electorate.

Therefore, driving turn-out and encouraging Hoosiers to vote is a priority for our organization. Our candidates do not get the privilege of governing unless Hoosiers exercise their right to vote in both primary elections and general elections. To that end, we spend significant resources in both time and dollars to encourage early and absentee voting. In fact, almost any discussion about turn-out efforts revolves around the phrase, “AB/EV,” for absentee balloting/early voting. We want Hoosiers to vote and do our part to make that happen.

But beyond that, of a more paramount importance than winning elections, we are firm believers that an informed and active citizenry produces better results and better outcomes for citizens themselves. Therefore, we are committed to civil discourse and civic engagement at every level – that’s why we in Indiana call ourselves “The Party of Purpose.” We stand with Governor Eric Holcomb, the leader of our Indiana Republican Party, who recently announced the foundational pillar of his administration saying, “Civility doesn’t mean we put all our differences aside, but it demands that we listen to and respect people, their ideas and different points of view other than our own. Being civil towards each other will not erase our differences, but it may help us keep our compass pointed not to what divides us—but to solving our common problems.” While political rhetoric can sometimes become heated and perhaps less than civil, we certainly strive to stay true to this pillar every day.

Additionally, we recognize the dire need for civic education as essential to inspiring in Hoosiers from every geography and of every demographic a sense of duty and responsibility to themselves and their neighbors to get involved. For that reason, we have made it a priority to visit classrooms and campuses across the state to engage with those who can’t yet vote to hopefully inspire greater confidence in their representation and help lead them to be more civically minded and civically engaged. And we are engaging in communities that have historically been ignored by Republicans, as well. We are seeing the fruits of that labor with increased attendance at our events and hope that trend continues into and through Election Day 2018.

It is with those goals in mind that we will continue to “get out the vote” on Election Day and do what we can as a political party to engage our fellow Hoosiers in the noble calling of public service and active civic participation, including in our political processes, in our candidate selection, and in voting. Again, I thank you for the opportunity to submit to you this testimony and wish you the best in the drafting of your report.



Justin Levitt
Associate Dean for Research
Professor of Law
213.736.7417
justin.levitt@lls.edu

**Written Testimony of
Professor Justin Levitt,
Loyola Law School, Los Angeles**

**Before the
Indiana Advisory Committee to the U.S. Commission on Civil Rights**

Voting Rights in Indiana: Redistricting

April 30, 2018

Chair Clements-Boyd and distinguished Members of the Advisory Committee, thank you for the invitation to offer this testimony. I am sorry that I was not able to join you in person for the hearings in February and March, but I thank you for the ability to participate nevertheless, even from a distance and at some remove.

My name is Justin Levitt. I am a Professor of Law and the Associate Dean for Research at Loyola Law School, in Los Angeles.¹ I teach constitutional law and criminal procedure, and I focus particularly on the law of democracy — which means that I have the privilege of studying, analyzing, and teaching the Constitution from start to finish. From the first words of the Preamble to the final words of the 27th Amendment, our founding document is concerned with how We the People are represented: what we authorize our representatives to do, what we do not permit our representatives to do, and how we structure authority to allow our representatives to check and balance each other in the interest of ensuring that the republic serves us all.

My examination of the law of democracy is not merely theoretical. I have returned to Loyola from serving as a Deputy Assistant Attorney General helping to lead the Civil Rights Division of the U.S. Department of Justice. There, I had the privilege to support the Division's work on voting rights, among other issues. Before joining the Civil Rights Division, I had the chance to practice election law in other contexts as well, including work with civil rights institutions and with voter mobilization organizations, ensuring that those who are eligible to vote and wish to vote are readily able to vote, and have their votes counted in a manner furthering meaningful representation. My work has included the publication of studies and reports; assistance to federal and state administrative and legislative bodies with responsibility over elections; and, when necessary, participation in litigation to compel jurisdictions to comply with their obligations under federal law and the Constitution. And of particular relevance to the topic below, I maintain a website attempting to explain and track the redistricting process and the

¹ My comments represent my personal views and are not necessarily those of Loyola Law School or any other organization with which I am now or have previously been affiliated.

course of related litigation for statewide districts (both state and federal) across the country; that website is available at <http://redistricting.ils.edu>.

I have previously had the privilege to address committees of the Indiana state legislature on redistricting matters, and the privilege to address both the Commission on Civil Rights and state Advisory Committees to the Commission on elections issues of various kinds. It is a distinct pleasure to offer additional assistance to this esteemed advisory body.

It is my understanding that you have already heard from various experts and other witnesses with respect to several issues that may confront Hoosiers in the election process, including witnesses presenting various concerns with voters' ability to cast ballots that may be counted. Several such controversies have confronted Indiana recently, with associated concerns about the degree to which burdens may fall unevenly on communities already underserved. Those controversies include disputes over the particular means by which individuals are asked to identify themselves at the polls, the particular means by which voter registration rolls are maintained, the establishment of sufficient sites for in-person absentee voting (also known as "early voting"), and the extent of the "chute" for purposes of closing time and access to pollwatchers, among others. There are also aspects of the current structure which may present barriers just as meaningful, or more meaningful, without generating the same degree of public controversy, including equitable access to the ballot by citizens formerly disenfranchised by conviction, citizens with language difficulties, younger voters and elderly voters, or citizens with disabilities. And, naturally, I expect that the committee will have heard about affirmative opportunities to assist individuals in exercising the right to vote by building bridges, and not merely by tearing barriers down.

To avoid duplication of those other witnesses' efforts, I also understand that you would prefer that I focus my particular remarks on a different portion of the electoral system: specifically, on the redistricting process that speaks to the representation that Hoosiers receive apart from the mechanics of casting and counting ballots. By focusing on redistricting, I do not mean to offer a judgment about its relative priority in Indiana. Similarly, by foregoing for the time being discussion of these other topics relevant to election administration, I hope that I do not communicate in any way that I believe these topics to be less important.

With respect to redistricting, I'll offer one additional caveat: unfortunately, I have not had recent opportunity to extensively research the redistricting of county or municipal offices in Indiana, and the extent to which that redistricting has or has not complied with federal voting rights law. It may well be that particular controversies or challenges have been revealed in contests over local redistricting in the state, in litigation and beyond, and their absence in this testimony is more a product of my recent schedule than any assessment of the merit of those challenges.

In statewide redistricting — redistricting for state legislative and congressional office — Indiana has something of a distinction. Along with Delaware, Iowa, Nebraska, and Utah, I believe that Indiana is one of only five states free from litigation related to statewide redistricting in both the 2000 and 2010 redistricting cycles. That is both notable and commendable.

That said, I do not believe that the absence of litigation over the redistricting process necessarily proves that all is well, or that Indiana has thoroughly insulated itself from future concerns with respect to ensuring equitable representation. I would like to use this opportunity to highlight three redistricting issues in particular, and to recommend that the Advisory Committee consider them in its report.

First, Indiana is likely to be buffeted by the same winds buffeting other jurisdictions around the country reflecting the controversy over the Census. On March 26, 2018, the Secretary of Commerce indicated his intent to place a question on the decennial Census asking each and every individual about their citizenship, ostensibly to improve the enforcement of minority voting rights (albeit in the face of strong opposition from civic groups actually engaged in the enforcement of minority voting rights). In a profound and profoundly disturbing departure from prior Census practice, Secretary Ross made this determination without first testing its likely impact. And in the present political climate, based on increasing levels of concern with collecting citizenship information even on less salient and far lengthier surveys, many advocates for minority representation fear that elevating the prominence of a citizenship question on the decennial Census will substantially depress Census response. Indeed, the concern is that response will be depressed not only among noncitizens (including those lawfully present), but among communities with heightened levels of distrust of the federal government, including many minority citizens.

Depressed response to the decennial Census risks damage to the Census Bureau's only constitutional mandate: the responsibility — the very first express responsibility articulated of any federal administrative body in the federal Constitution — to count each individual in the country. But depressed response to the decennial Census also risks damage to the representation of Hoosiers. Within the state, inaccurate Census data will distort the equality of representation also guaranteed by the Constitution. And among the states, inaccurate Census data will reward states with ample outreach to their more marginalized populations at the expense of those who forego such outreach. Indiana currently has nine congressional districts, and if the Census accurately records relative growth patterns across the country, it is expected to retain nine congressional districts in 2020. If, however, Census participation in Indiana is disproportionately depressed by the addition of a citizenship question and the lack of compensatory state outreach, under extreme conditions, Indiana could lose its ninth congressional seat. And if such an outcome did not accurately reflect Indiana's population, Hoosiers statewide would suffer.

I would therefore encourage the Advisory Committee to recommend that the Census Bureau forego the additional citizenship question, at least in the absence of the normal degree of rigorous testing to determine the impact of such a change to the conduct of the decennial Census. And, in the event that the Census Bureau does not change course, I would also encourage the Advisory Committee to recommend that Indiana engage representatives of underserved populations to undertake compensatory outreach to those communities, to foster full participation in the Census despite community fears.

Second, Indiana is a state in which legislators are offered the opportunity to draw the districts in which they compete for re-election, and thus far, they have pursued this process

without any meaningful guidance in either state statute or the state constitution. This is an unstable state of affairs. The process of drawing legislative lines affects the interests of individual legislators, the interests of political parties, and the interests of represented communities — or, put differently, the public good. When legislators personally are able to set the lines by which they are elected, there arises a natural temptation to conflate the three, even when those officials act with the purest of motives. That is, even conscientious elected representatives might be tempted to draw electoral lines that insulate their districts from effective challenge and promote their party's fortunes — because they believe themselves and their party best able to serve their constituents.

Such temptations — whether fueled by self-interest or zealous advocacy — weaken the democratic process and blunt the voice of the electorate. By drawing district lines to promote individual and party security, legislators with a hand in the districting process become enmeshed in the task of building districts based on favored constituents and disfavored ones. That is, representatives become involved in the business of choosing their constituents, rather than the other way around.

Just as important is the way that this process looks to the public. Even if some individuals choose to forgo self-interested temptation, a system that encourages legislators to design their own districts with a free hand fosters the public perception that improper self-dealing is at work, which can further erode trust in civic institutions. This may be part of the reason that Todd Rokita, when serving as Secretary of State, made redistricting reform one of his signature issues.

The fact that Indiana legislators are in charge of the process lends extra suspicion to recent electoral maps — suspicion that might not be warranted were the maps produced by different means. In 2001, for example, the redistricting process was subject to split partisan control; Democrats controlled the state House and gubernatorial mansion, and Republicans controlled the state Senate. The resulting maps reflected rough overall partisan balance, but in a way consistent with a stark bipartisan, incumbent-protective gerrymander. Of 100 districts in the resulting state House map, 50 were drawn so that they leaned toward one major party or the other by an average of 30 percentage points, and so it is perhaps unsurprising that those 50 seats were wholly uncontested by one or the other of the major political parties.

In the most recent redistricting, Republicans had control of each legislative house and also the gubernatorial mansion. And the resulting maps reflect a stark pro-Republican bias — more skewed than between 88 and 96 percent (depending on slight variations in the particular measure deployed) of a set of plans analyzed nationwide over several decades. And though a partisan gerrymander usually produces more seats marginally more competitive than an incumbent-protective gerrymander, of 100 seats up for election in 2012, 32 were wholly uncontested by one of the major political parties.

These political outcomes might not breed quite as much concern about self-dealing if legislators were not drawing the lines of their own districts. In many cases, constituents are undoubtedly pleased with the representation they receive, and return incumbents to office by healthy margins. And in order to represent particular distinctive communities, it will often be

necessary to link like-minded voters together, which will result in districts that are less competitive. Moreover, individual legislators have shown that it is certainly possible to win an election in districts slanted toward the opposing party. Still, when legislators are in charge of the redistricting process, it is difficult to explain the electoral patterns exclusively in terms that put the public interest foremost.

The pressures and incentives of incumbency also raise serious concerns with respect to minority communities. In this past redistricting cycle, incumbents in several states sought to gain or preserve partisan advantage through redistricting plans or other electoral changes targeting voters based on their race or ethnicity. The fact that race or ethnicity may serve as a ready shorthand for perceived partisan preference does not make the targeting of such voters any less pernicious.

Nor is partisan gain the only reason to be concerned about incumbents' potential manipulation of minority representation in the redistricting process. Almost thirty years ago, a case from my adopted hometown made the point in vivid fashion:

When the dust has settled and local passions have cooled, this case will be remembered for its lucid demonstration that elected officials engaged in the single-minded pursuit of incumbency can run roughshod over the rights of protected minorities. The careful findings of the district court graphically document the pattern—a continuing practice of splitting the Hispanic core into two or more districts to prevent the emergence of a strong Hispanic challenger who might provide meaningful competition to the incumbent supervisors . . .

But the record here illustrates a more general proposition: Protecting incumbency and safeguarding the voting rights of minorities are purposes often at war with each other. Ethnic and racial communities are natural breeding grounds for political challengers; incumbents greet the emergence of such power bases in their districts with all the hospitality corporate managers show hostile takeover bids. What happened here—the systematic splitting of the ethnic community into different districts—is the obvious, time-honored and most effective way of averting a potential challenge. Incumbency carries with it many other subtle and not-so-subtle advantages, and incumbents who take advantage of their status so as to assure themselves a secure seat at the expense of emerging minority candidates may well be violating the Voting Rights Act. Today's case barely opens the door to our understanding of the potential relationship between the preservation of incumbency and invidious discrimination, but it surely gives weight to the Seventh Circuit's observation that “many devices employed to preserve incumbencies are necessarily racially discriminatory.”

Garza v. County of Los Angeles, 918 F.2d 763, 778–79 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part) (internal citations omitted).

Even if these particular tensions have not been prominent points of contestation in Indiana's recent statewide redistricting maps, Indiana is not immune from the “more general

proposition” reflected not only in the *Garza* case, but in redistricting battles across the country. I would therefore encourage the Advisory Committee to recommend that Indiana revisit its redistricting process, to place the redistricting authority primarily beyond the temptation of individual self-regard. There is room to ensure that redistricting is undertaken by a body reflecting the diversity of the state and with meaningful independence from the legislature, without taking either politics or politicians entirely out of the process. And there is room to ensure that redistricting is undertaken with this meaningful independence without squeezing all discretion from the body with the pen, to account for communities — including minority communities — that may not conform neatly to preconceived arithmetic expectations. Several other states already offer different reasonable approaches to the problem, and further innovations are constantly afoot. Indiana need not merely rely on forbearance by those with the largest inherent conflict of interest.

Finally, I would like to raise the issue of the interaction of imprisoned populations with the redistricting process. I have earlier mentioned concerns about a substantial coming inaccuracy in the Census count, reflecting populations that may refuse to answer the Census call. The issue I raise now is distinct, and has to do with an existing inaccuracy likely to be replicated once again in 2020: not about *who* will be counted, but about *where*.

The vast majority of persons counted by the Census will be counted at a “usual residence” they consider “home”: the address that they would also consider their permanent legal, electoral, and social residence. A few have a “usual residence” that is different from “home,” but where they are generally intertwined with the community where they lay their heads when the Census comes calling. But the 2.2 million individuals who are incarcerated in the United States were counted by the Census Bureau in 2010 at locations where they had involuntarily been placed. Unlike all other sojourners who are away from “home” on Census Day, incarcerated individuals do not meaningfully interact — indeed, are not permitted to meaningfully interact — with the communities to which they were assigned by the Census Bureau. Individuals incarcerated in Village Township do not eat at the restaurants of Village Township, shop in Village Township stores, attend Village Township movie theaters, or use Village Township roads, sidewalks, or public transportation. While incarcerated, they are not affected by Village Township county or municipal codes and cannot attend Village Township public meetings. They may be confined in a location physically adjacent to Village Township residents, but most Village Township residents will not likely consider them “neighbors.”

Moreover, individuals who are transferred to a correctional facility often have little in common with more usual “usual residents” of the area. Incarcerated individuals — disproportionately minorities — are often from a demographic and socioeconomic background quite distinct from those who live in the neighborhood. For example, a recent study found that there are at least seven Indiana counties where the proportion of African-Americans in the incarcerated population is more than ten times larger than the proportion of African-Americans in the surrounding county.

Under Indiana law, the simple fact of incarceration does not change a person’s electoral residence. But it will change the district to which they are assigned, distorting representation in several ways. For example, the Constitution requires that local, state, and federal districts be

drawn such that district populations are approximately equal. When the population tally counts incarcerated individuals where they are confined, districts are built on the backs of “ghost constituents,” with no meaningful ability in most states to influence their purported representatives, directly or indirectly. These individuals and the communities where they are truly from, accordingly, lose representation; in certain circumstances, the dilution may give rise to a claim under the Voting Rights Act.

On the other side of the coin, the non-incarcerated residents of districts with prisons garner unduly disproportionate influence. For example, in Lake County, Tennessee, after the most recent census, 87% of the population of one County Commissioner district was allotted to a local correctional facility. As a result, the 344 non-incarcerated residents of the district receive the same voice on county policy as the approximately 2500 or 2600 individuals in each of Lake’s two other districts.

Even when correctional facilities do not distort representation, they may well distort the candidate pool. Many jurisdictions allow voters throughout the jurisdiction to vote on candidates, but require the candidates to be from geographic districts of approximately equal size. If such districts are drawn to include large correctional facilities, there may be districts with no individuals eligible to run as candidates.

Sometimes, these factors align. In Anamosa, Iowa, after the 2000 Census, 1300 of the 1358 individuals allotted to City Council ward 2 were incarcerated there, giving the 58 other residents of that ward strikingly disproportionate political power. And after subtracting individuals ineligible to run for city council, that also left the ward strikingly few potential officeholders. In the 2005 municipal election, ward 2 had no candidates on the ballot, and only three voters, total. The winner, selected with two write-in votes, did not even vote for himself.

Though Anamosa’s situation is an extreme, the practice of counting incarcerated individuals where they are confined does democratic damage everywhere. This explains why more than 200 known counties, cities, and school boards in at least 30 states — including the City of Terre Haute and Vigo County — have attempted to correct or otherwise compensate for the 2010 Census tally, usually adjusting local population totals to account for populations in correctional facilities when drawing their own districts.

The solution that avoids representation distortion — in both state and local districts — is to tally incarcerated individuals in the communities to which they are most closely connected on Census Day. That location is not where they are involuntarily confined, but rather where they were from before the government intervened: where their relatives and friends and support systems are often located, where their children may live, where they are most likely to return when they are released from incarceration, and where their inclusion will illuminate and not distort the snapshot of the true local community. Indiana law already provides that a person’s electoral residence does not change when that individual is incarcerated; redistricting should reflect the same principle.

Four states, representing 65 million people, have already decided to adjust Census reports to tally incarcerated individuals for redistricting purposes at their last known address. I would

encourage the Advisory Committee to recommend that Indiana do the same, both for its own statewide districts and for local subdivisions, which may suffer from the democratic distortion to an even greater degree.

I hope that these short thoughts will serve the Advisory Committee as it continues its essential work. I would be happy to answer any additional questions that the Committee may have, and I certainly hope to be more available to speak with the Committee in the course of future deliberations. I thank the Committee once again for the opportunity to present this perspective, and wish you the best of luck in your endeavor to better protect the voting rights of all Hoosiers.

BRENNAN
CENTER
FOR JUSTICE

Testimony of

**Justin Levitt, Counsel
Brennan Center for Justice at NYU School of Law**

**Before the
Census Data Advisory Committee**

September 29, 2009

Good morning, distinguished Committee members. Thank you for the opportunity to speak at this very important hearing. My name is Justin Levitt, and I am an attorney at the Brennan Center for Justice at NYU School of Law. The Brennan Center is a non-partisan organization that unites scholars and advocates in pursuit of a vision of inclusive and effective democracy. Toward that end, the Center's Democracy Program promotes reforms that eliminate barriers to full and equal political participation and that foster responsive and responsible governance.

In particular, the Brennan Center has been at the forefront of research and advocacy on redistricting reform, both in the Midwest and across the country. We have extensively studied redistricting practices nationwide, analyzed both successful and unsuccessful attempts at redistricting reform, and produced materials to educate the public about the benefits and consequences of various redistricting methods. We have testified with respect to proposed redistricting legislation, and assisted advocates and elected officials in drafting such legislation. In addition, we have participated as *amici curiae* in many of the major cases addressing the use of redistricting for partisan gain or at the expense of minority voters.

We are very pleased that the Committee has chosen to scrutinize publicly how Indiana draws the boundaries for its congressional and state legislative districts. We commend you for prioritizing this critically important process, and for airing this debate before the next redistricting cycle is fully upon us. We commend Secretary of State Todd Rokita, as well, for recognizing the importance of the issue, and for drawing public attention to opportunities for change in the process. We further urge the Committee to ensure that action — that is to say, meaningful reform — follows in a manner as timely as these hearings.

Today, I hope to briefly lay out an overview of the need for reform and some of the more important components that effective reform should incorporate. I will describe the structure of the current system by which Indiana district lines are drawn, noting especially the potential for legislators to influence their own districts' boundaries, and the risks of such a system. I will also briefly lay out alternative structures for drawing district lines that are in place in other states, some of which may prove to be useful models.

I will then propose several specific elements that I suggest should guide you in considering reform, directed at addressing the concerns above: meaningful independence, meaningful diversity, meaningful guidance, and meaningful transparency. We feel strongly that there is no single redistricting archetype that fits all 50 states — a system for Indiana must consider the unique demographics and political issues that confront Hoosiers. Still, we hope that the basic principles we focus on today can provide useful guidance as your deliberations continue.

Indiana’s redistricting system

Each state’s redistricting system is slightly different, in both design and implementation. As you know, in Indiana, the state legislature has primary responsibility for drawing the lines of both state legislative districts and Congress, subject to gubernatorial veto. For congressional districts, if the legislature cannot agree on a plan by the end of the session in the year that census data is released, a “backup commission” is convened to take over the process: the commission consists of the Senate and House majority leaders, the chairs of the Senate and House apportionment committees, and one gubernatorial appointee. The only further constraints on the process are governed by federal constitutional and statutory law.

The net effect of the particular manner in which Indiana’s redistricting system has developed is that, as you know, many Hoosier legislators become extensively involved in determining the bounds by which they and their congressional colleagues are elected. Moreover, this process often unfolds in ways not readily transparent to the public.

Such a process contains substantial flaws. The process of drawing legislative lines affects the interests of individual legislators, the interests of political parties, and the interests of represented communities — or, put differently, the public good. When legislators personally are able to set the lines by which they are elected, there arises a natural temptation to conflate the three, even when those officials act with the purest of motives. That is, even conscientious elected representatives might be tempted to draw electoral lines that insulate their districts from effective challenge and promote their party’s fortunes — because they believe themselves and their party best able to serve their constituents.

Such temptations — whether fueled by self-interest or zealous advocacy — weaken the democratic process and blunt the voice of the electorate. By drawing district lines to promote individual and party security, legislators with a hand in the districting process become enmeshed in the task of building districts based on favored constituents and disfavored ones. That is, representatives become involved in the business of choosing their constituents, rather than the other way around.

Just as important is the way that this process looks to the public. Even if some individuals choose to forgo self-interested temptation, a system that encourages legislators to design their own districts fosters the public perception that improper self-dealing is at work.

The appearance of rampant self-interest is driven, in part, by visible outcomes: districts are drawn in bizarre shapes, and elections are won with overwhelming margins. Neither factor

would likely be as worrisome, alone or together, if legislators were not themselves responsible for drawing their own districts. However, with the structural opportunity for self-interest, it looks to many as if the contest has been rigged.

First, consider the appearance of Indiana's legislative districts. In the abstract, a district's shape yields little information about the population therein. Communities conducive to coherent representation rarely emerge in neat geometric patterns. Moreover, fair and effective representation sometimes calls for combining pockets of specific populations into irregularly shaped districts. However, some of Indiana's legislative districts take twists and turns so strange that it appears that the most compelling reason for the district's shape is simple electoral advantage; elections in those districts, often without any major-party challenger, lend support to the intuition that the districts have been drawn to protect particular insiders. If legislators were not themselves involved in constructing the districts, the shapes themselves would give rise to less suspicion. But when legislators draw districts in a process lacking any meaningful transparency, and the districts zig and zag for no obvious reason to produce lopsided majorities, it is natural to assume that the districts are intentionally designed to undermine effective political challenge.

Second, Indiana's recent electoral outcomes also feed the intuition that the districts are drawn for self-protection. After the last redistricting, for example, 50 out of the 100 state House races were not contested by one of the major parties in the 2002 elections. This is worth repeating: *half* of the seats in the state House were not even challenged after the last redistricting, by either Republicans or Democrats. This is at least in part because, on average, those 50 districts were drawn so that they leaned toward one party or the other by an average of 30 percentage points. With districts so heavily slanted, it is not surprising that it is difficult to find candidates willing to mount a meaningful challenge.

As with district shape, the lack of effective competition might not be quite as disturbing if legislators were not drawing their own lines. In many cases, constituents are undoubtedly pleased with the representation they receive, and return incumbents to office by healthy margins. And in order to represent particular distinctive communities, it will often be necessary to link like-minded voters together, which will result in districts that are less competitive. Moreover, legislators like Ron Herrell have shown that it is certainly possible to win an election in districts slanted toward the opposing party, even outside of the portions of southern Indiana where party affiliation is more flexible. Still, half of the House districts without so much as a challenger is an alarming rate for those concerned with democratic choice, and when legislators are in charge of the process, it is difficult to explain the lopsided district composition and the resulting lopsided elections in terms that put the public interest foremost.

Alternatives

There are many alternatives to the status quo already successfully implemented in other states. Some of these alternatives concern the process by which individuals are selected to draw district lines, or guidelines governing where the lines are to be drawn, or both.

Who draws the lines

Five states, for example, employ an advisory commission to help advise the legislature on where state legislative lines should be drawn. The most widely analyzed of these is in Iowa, where the legislature's bureau of nonpartisan civil servants, normally responsible for legal drafting, budget analysis, and technical advice, is charged with preparing drafts of redistricting plans. This bureau prepares a draft redistricting map, which the legislature may accept or reject as is, but may not modify. If the map is rejected, the nonpartisan bureau will try again, with another opportunity for the legislature to vote up or down without change. If the legislature rejects two sets of plans, and the nonpartisan bureau returns with a third map, the legislature is then, on the third try, able to accept, reject, or modify the plan it has given. Since the procedure was put in place in 1980, the Iowa legislature has not used its authority to draw its own maps from scratch on the third attempt.

Other states put even more distance between individual legislators and the redistricting process. For example, seven states — Arkansas, Colorado, Hawaii, Missouri, New Jersey, Ohio, and Pennsylvania — draw state legislative districts with so-called “politician commissions,” distinct from the legislature but on which elected officials may serve as members.¹ Each is designed differently. In Arkansas and Ohio, specific elected officials have designated seats on the commission.² In the other states, the legislative or party leadership nominates commissioners, usually with balanced numbers from each party, and sometimes with a role for the Governor or Chief Justice of the state Supreme Court to select nominees or appoint additional commission members.

Six other states — Alaska, Arizona, California, Idaho, Montana, and Washington — draw state legislative districts using an independent commission, with regulations limiting direct participation by elected officials.³ No member of these commissions may be a legislator or public official; each state also prohibits commissioners from running for office in the districts they draw, at least for a few years after the commission completes its work. Some of the states further limit commission members' direct link to the legislature: Arizona and California, for example, also bar legislative staff from serving on the commission; California, Idaho, and Washington bar lobbyists from serving on the commission as well.

Though each of these states attempts to ensure that commissioners are not beholden to particular legislators, that does not mean that the legislature has no role in the process: each of the above models preserves some ability for either the legislative leadership or the legislature as a whole to select individual commissioners or modify commission lines on the margin. The objective is not to remove politics entirely from the process, but rather to insulate politicians with the most direct self-interest from the appearance that their own personal or partisan fortunes are put ahead of the well-being of their constituents.

¹ Hawaii and New Jersey also draw their congressional districts through “politician commissions.”

² In Arkansas, the commission consists of the Governor, Secretary of State, and Attorney General. In Ohio, the commission consists of the Governor, Secretary of State, and State Auditor, as well as one member chosen by each major party's legislative leadership.

³ Arizona, Idaho, and Washington also use independent commissions to draw congressional districts. California allows its legislature to draw congressional districts; Alaska and Montana have only one congressional representative, and therefore do not need to draw district lines.

Where the lines are drawn

Other states also present different models for giving guidance to whichever entity is tasked with drawing the district lines, beyond the bare constraints of federal law. Indiana currently presents virtually no criteria for the redistricting process, beyond what federal law requires. Such a blank slate is decidedly outside of the national norm.

Nineteen states, for example, ask redistricting bodies drawing state legislative districts to consider preserving “communities of interest” — communities that share common features relevant to the legislative enterprise.⁴ This represents an important means to enhance vigorous representation, making it easier for legislators to speak for distinct groups of constituents with shared preferences, rather than collections of voters with little in common. Such communities are flexibly defined: in Kansas, for example, map drawers are asked to consider “[s]ocial, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation.”⁵ Montana’s guidelines are similarly broad: “Communities of interest can be based on trade areas, geographic location, communication and transportation networks, media markets, Indian reservations, urban and rural interests, social, cultural and economic interests, or occupations and lifestyles.”⁶ Alabama adds the helpful reminder that “[i]t is inevitable that some interests will be recognized and others will not, [but] the legislature will attempt to accommodate those felt most strongly by the people in each specific location.”⁷

There are also several coarse proxies for representing communities of common interest that frequently appear in state redistricting guidelines. For example, thirty-eight states require some accounting for political boundaries — county, township, municipal, or ward lines — in state legislative districts; thirteen states impose the requirement on congressional districts. Municipal boundaries, in particular, often approximate shared legislative interests; depending on the state, county or township lines may have a similar function. Most often, state laws that require consideration of political boundaries in redistricting leave flexibility in the mandate, instructing the redistricting body to maintain political boundaries “to the extent practicable.”

Almost as many states — thirty-four in all — use an even rougher proxy for common interest, by requiring their legislative districts to be reasonably “compact”; thirteen states require congressional districts to be compact as well. Here too, state law is usually flexible, without a precise definition of “compactness.” Most courts and commentators understand compactness to refer to a district’s geometric shape; in general, a district in which constituents live more or less near each other is considered more compact than one in which they do not, and a district with a regular convex shape is considered more compact than one with multiple extended tendrils.

⁴ Eight states do the same for their congressional districts. In general, fewer states articulate distinct criteria for drawing congressional lines, simply because the congressional districting process is seldom reflected in state constitutions or statutes.

⁵ See Guidelines and Criteria for 2002 Kansas Congressional and Legislative Redistricting, at <http://skyways.lib.ks.us/ksleg/KLRD/Redistrct/documents/Guidelines.pdf>.

⁶ Mont. Districting and Apportionment Comm’n, Criteria and Operational Guidelines for Legislative Redistricting, April 18, 2001, at <http://tinyurl.com/montanacomunities>.

⁷ Ala. Reapportionment Comm. Guidelines for Legislative, State Bd. of Education & Congressional Redistricting, § IV, at <http://www.legislature.state.al.us/reapportionment/Guidelines.html>.

When compactness is further specified, as it is currently in six states, proposed measures can generally be sorted into three categories. Arizona and Colorado, for example, elevate the importance of contorted boundaries, and focus on the district's perimeter. Michigan and Montana instead focus on dispersion, or the degree to which a district spreads from a central core. California elevates the importance of citizen housing patterns in relation to the district's boundaries, giving more flexibility for district tendrils if they exist in sparsely populated areas. And Iowa embraces both a boundary measure and a dispersion measure, without establishing a preference between them.

Fourteen states, many in the Midwest, supplement the criteria above with a “nesting” requirement, tying the district lines of a state's two legislative houses to each other. In states with a nesting requirement, the districts of the upper house are constructed by aggregating multiple lower house districts (usually two or three), or the districts of the lower house are constructed by subdividing each upper house district. In contrast, without nesting, as in Indiana, the districts of each legislative house are wholly independent; they may follow the same boundary lines, but they need not do so.

In addition to the above criteria, several states attempt to limit the impact of partisanship in the redistricting process. Eight states — California, Delaware, Hawaii, Iowa, Idaho, Montana, Oregon, and Washington — prohibit their redistricting bodies from drawing state legislative districts in order to “unduly” favor a candidate or political party; all but California do the same for Congress.⁸ Five states — Arizona, California, Iowa, Idaho, and Montana — attempt to implement the restriction by precluding the consideration of the residence of an incumbent in drawing district lines. Arizona and Washington instruct their redistricting bodies to design districts so that competition is affirmatively encouraged, when practicable, and when doing so would not detract from other state priorities.⁹

Several of the states above also limit the use of further political data, which I understand has received significant attention here in Indiana. Iowa, Idaho, and Montana purport to preclude the use of partisan voter history in drawing districts; New Jersey allows the use of voter history but declares that it may not support deviations from other districting principles; and Arizona states that “[p]arty registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance” with other priorities.¹⁰

In considering limits on the use of partisan voter data, it is important to remember that it will almost always be necessary to consider such data in assessing responsibility under the Voting Rights Act. Only with partisan voter history is it possible to tell if racially polarized voting exists to an extent that incurs liability under the Act; if so, only with partisan voter history is it possible to know whether a particular remedy will likely be effective. The Voting Rights

⁸ Idaho's formulation of the requirement is that counties may not be divided in order to protect a party or incumbent. IDAHO CODE § 72-1506(8). If a county must be divided for other reasons (including the equal population mandate), however, it is not clear that a redistricting body would be precluded from drawing these lines for partisan benefit.

⁹ ARIZ. CONST. art. IV, pt. 2, § 1(14)(F); Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, 208 P. 3d 676, 686-87 (2009); REV. CODE WASH. § 44.05.090(5).

¹⁰ ARIZ. CONST. art. IV, pt. 2, § 1(15).

Act’s mandate will therefore supersede state law restricting the use of political data, at least in regions where minority populations present the possibility of Voting Rights Act obligations.

It is also worth noting that restricting partisan voter data does not result in “neutral” partisan consequences, even if it is assumed that those who draw the lines do not understand the partisan implications of their decisions, with or without precise data. Every decision about where to draw the lines will have partisan consequences, most of which are predictable. Recent research by Dr. Michael McDonald of George Mason University, for example, suggests that in several states, a strict constraint to produce maps that follow county boundaries or that maximize certain assessments of compactness will result in plans that produce a statewide partisan imbalance — even to the extent of favoring the state’s minority party with a predictable statewide legislative majority. These sorts of effects will not always be the same nationwide, and it may be that similar constraints produce different results in Indiana. The general point, however, holds: drawing district lines that are ostensibly blind to partisan consequences is not a way to produce districts that achieve partisan fairness.

Prospects for reform

The above overview was intended to lay out the basic landscape for redistricting, in Indiana and beyond. There is much in the current process to generate substantial public suspicion, and much in the process elsewhere in the way of commendable alternatives. I know that various proposals have also been floated in Indiana in the past, many with positive attributes. I would like to close by highlighting four components of the redistricting process in particular that we believe to be crucial in the effort to restore constituents’ faith in the fairness of the districting exercise. All of these aspects can be implemented in various ways either through constitutional change or through statutory reform within the current constitutional structure.

First, an independent process. We have already described the appearance of impropriety that results when legislators are intimately involved in drawing their own district lines. For the benefit of the institution as a whole, and for the public good, we encourage the Committee to suggest placing redistricting authority beyond the temptation of individual manipulation. The authority responsible for redistricting in Indiana — and just as important, the staff supporting that process — should be meaningfully independent from undue legislative influence.

We stress the limiting adjective “meaningful” with the understanding that cosmetic independence will not suffice. Meaningful independence means freedom from obligation, influence, and possibly even ex parte contact. Furthermore, meaningful independence may require multipartisan balance to enforce.

There are at least two further substantial caveats to implementing a system that guarantees those who draw the district lines some measure of independence. First, I am not suggesting simply importing wholesale the procedure of another state. Elements of many of these systems discussed above might be productively deployed in Indiana, but they will likely need to be adapted somewhat to Indiana’s particular political climate. Differences between states are meaningful for their redistricting institutions as well.

Two, the fact that Hoosiers should benefit from a meaningfully independent redistricting body does not mean that the state should be carved into neat automated rectangles or circles. District lines serve a community only when they reflect the community, and communities do not evolve with mathematical exactitude. There will still be ample need for political compromise: the arbiters of district lines will be called upon to seek fair and equitable representation for racial and ethnic minorities, and grant representation to real communities of interest spread out in irregular fashion. Independence does not attempt to take the politics entirely out of the redistricting process. Nor, indeed, does it attempt to eliminate politicians' role. The difference is that, in a body with independence, those with a particular incentive to lock out competent challengers are not given unfettered access to the keys.

Second, a diverse representative body. The need to reconcile competing and complementary interests in the redistricting process demonstrates the second element of success: the redistricting body must be meaningfully diverse. An independent body that is designed in an exclusionary fashion is not likely to represent an improvement on the status quo. Those responsible for drawing district lines must reflect ample geographic, racial, and political diversity, so as to prevent charges of self-dealing similar to those that have found a foothold in the current system, but on a group level rather than an individual level. That is, the redistricting body must be sufficiently diverse to be legitimate in the eyes of the citizens districted by its action. There is, naturally, no lawful formula that will guarantee diversity across all dimensions. Nevertheless, in a body of substantial size, with some part of the selection process in the hands of those with a political incentive to foster diversity, it should be possible to provide a rich array of constituent representation.

Third, meaningful redistricting criteria. We recommend a diverse and independent redistricting body, because without the right set of arbiters, well-tailored goals will fail to produce desirable results. Similarly, without a set of meaningful and workable goals, the ideal group of line-drawers will be left unmoored. A redistricting body must be guided by specific criteria, to adequately assess whether any given plan has succeeded in achieving the public good.

Certainly, any attempt to draw district lines must at least conform to applicable federal law. This includes the Constitutional equipopulation requirement, and the obligation to justify disparities even within a 10% deviation.¹¹ It also, of course, includes all of the protections of the Voting Rights Act. However, even within these bounds, there are endless permutations of district lines. Any redistricting body requires further agreed-upon criteria to guide its choices and render them legitimate in the eyes of the population.

There are many available options. Some present affirmative requirements, such as the mandate to hew to pre-existing political geography, to develop districts that are reasonably compact, or to draw lines in order to further the representation of particular communities of interest. Others are negative injunctions, such as the obligation to avoid drawing lines in order to disadvantage a particular incumbent or challenger. One stands out as particularly important in the context of the current conversation in Indiana: given our American political commitment to the fundamental principle of majority rule, it is necessary to pay some attention to the likely

¹¹ See, e.g., *Cox v. Larios*, 542 U.S. 947 (2004).

partisan balance of a redistricting map, so that a minority of the state's population does not reliably and durably control the majority of the legislature.

The need for clear governing criteria should not be confused with a demand that the criteria in question dictate a particular result. It is a common, but mistaken, instinct to attempt to bind a redistricting body to maximizing one or two readily quantified factors; such a mandate usually produces undesirable unanticipated consequences in particular portions of a state. Rather, the criteria should retain enough flexibility to allow trusted decisionmakers — the diverse and independent redistricting body mentioned above — to apply the overall state priorities to peculiar local circumstances, sensibly and in the broader public interest.

Fourth, meaningful transparency. At the moment, most citizens feel excluded from the redistricting process, which concerns not merely public policy, but the aggregation of group interests that are the foundation of all policy discussions. Communities are splintered and electoral fortunes tailored, by and large, without meaningful opportunity for input.

The legislature should commit to making the redistricting process more transparent in 2011 and 2012, with the components common to basic due process protections: public hearings and open meetings, and the opportunity to respond to drafts before they are enacted. The redistricting body should endeavor to make data and even redistricting software broadly available, and allow citizen members of the public to submit full or partial proposals, to inform the primary body's deliberations. These are modest steps indeed for a process so fundamental to democratic representation.

* * *

In reviewing the way in which Indiana's districts are drawn, this Committee has set itself a commendable and necessary task. Citizens strongly support the need to promote independent decisionmaking and remove the taint of potential self-dealing. We believe that the state will be well served by truly meaningful reform, and wish the Committee well in its efforts. As with other states across the country, the Brennan Center stands ready to assist the people of Indiana and their representatives with comparative research, legal analysis, and drafting of particular provisions — among other services — in the interest of furthering redistricting reform. I thank you very much for your time — and I am more than happy to answer any questions that you may have.

From: John Cocco
Sent: Monday, April 30, 2018 9:08 PM
To: Christopher Douglas
Cc: Melissa Wojnaroski; Diane Clements; Eric David
Subject: Re: Testimony Regarding Voting Rights

Hello Chris,

I apologize for the late reply. As I'm sure Eric can attest, the time I had available to respond to you during our business hours was quickly consumed by urgent matters with some of our clients. I do, however, very much appreciate your work on this topic as well as the efforts you are making to include perspectives from diverse and disadvantaged populations.

I have worked in mental health and addictions since 2007, and specifically in reentry since 2011. I have a Master of Social Work, and I am in the qualifying exam phase of my doctorate in social work. Throughout my entire experience in social work I have seen a pervasive trend toward a denial of civil rights to this population. This denial is not overt, but rather is couched in a myriad of problematic systems which entrap or exclude people, particularly those who have been incarcerated.

My experience working with individuals returning to the community from incarceration has shown me that they lead very complicated lives upon their release. At best, they are able to find stable housing, employment, and connect to services within days or a few weeks of their return to the community. At worst - and far more common - they struggle through a series of barriers to achieve these goals. For instance, many do not have state issued identification upon release. More than that, they lack the documents required to secure such identification, such as a birth certificate, social security card, or official mail sent to their address. Indiana's requirements to have identification in order to vote means that many of our clients are unable to do so for at least a while after their release. Furthermore, in my experience many of our clients do not vote because they are under the impression they are not allowed to do so due to their convictions. I have had dozens of conversations, at least, informing them they are able to vote and many of them refuse to believe me until I pull up information to contradict their beliefs. On at least two occasions I have had conversations with clients in the BMV branch at the counter with the BMV worker explaining why they should choose to register to vote when they get their identification card or driver's license. In addition to their lack of awareness, many do not believe their vote matters. Their experience with the faceless and seemingly arbitrary criminal justice system becomes representative of *all* government, and they feel as powerless in the voting booth as they did in the courtroom. Finally, many of our clients lead somewhat transient lives during their first months out of incarceration, and are so consumed with the daily stressors they experience that they do not take the time to change their address on their registration or take notice of where they should be voting. Even if they were to do so, or if they had not moved, work schedules and transportation difficulties often make voting too much of a chore for them to make the effort.

This may be beyond the scope of your request, but I would like to make a few suggestions for possible reforms. First, I would like to see an "opt out" rather than an "opt in" process for voter registration. That is, people would be automatically registered when obtaining or renewing their state issued identification cards or driver's licenses unless they consciously chose not to be. Second, adopt a system like that in Oregon, where every registered voter is mailed a ballot prior to election day which can be completed and returned by mail. Oregon has seen consistently high voter participation due to the adoption of this method. Third, a consistent

campaign by criminal justice entities to inform people who are - or have been - incarcerated that they retain the right to vote once they are no longer incarcerated. Fourth, reforms could be made to the BMV system whereby people who have authenticated Indiana Department of Correction identification can automatically be given a state ID card. If we were certain enough of a person's identity to incarcerate them for years in our prisons, we can be certain enough of their identity to give them a state ID upon their release.

I hope you found this information to be helpful. In my experience, the more easily my clients - and others like them - are able to reintegrate into society, the more likely they are to go on to live full, productive, and crime-free lives. From my perspective, protecting their rights only serves to protect our own. I welcome any further questions or requests for information that you might have, and I am grateful for the opportunity to contribute to this discussion.

Sincerely,

John P. Cocco, MSW LSW

**Indiana Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights Contact

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This advisory memorandum is the work of the Indiana Advisory Committee to the U.S. Commission on Civil Rights. The memorandum, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this memorandum and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

Voting Rights *and the* Kansas Secure and Fair Elections Act



A Briefing Report of the
Kansas Advisory Committee to the
U.S. Commission on Civil Rights

March 2017

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. These committees are composed of state/district citizens who serve without compensation; they are tasked with advising the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction. Committees are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state or district's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states/district.

Acknowledgements

The Kansas Advisory Committee would like to thank each of the panelists who presented to the Committee during the January 28, 2016 meeting of the Kansas Advisory Committee, and the members of the public who either submitted written testimony or who spoke during the period of public comment. The Committee would also like to thank the Topeka and Shawnee County Public Library for hosting the public event.

The Committee is also grateful to Elizabeth Kronk-Warner, former Chair of the Kansas Advisory Committee, who presided over the 2016 hearing; and former Committee members Marsha Frey, Michael Abrams, Janell Avila, Laurie Johnson, Robert Mandel, and Charles Scott who assisted in the project planning and hearing preparations.

**Kansas Advisory Committee to the
U.S. Commission on Civil Rights**

The Kansas Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the voting requirements outlined in the Kansas Secure and Fair Elections (S.A.F.E.) Act, and the potential disparate impact such requirements have on the basis of race, color, age, religion, or disability. The committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Kansas. The contents of this report are primarily based on testimony the Committee heard during a public hearing on January 28, 2016 in Topeka, KS.

This report details civil rights concerns relating to the SAFE Act's key requirements that: (1) voters provide documentary proof of citizenship upon registering to vote; and (2) that voters present photographic identification at the polls. Primary concerns included inconsistent training and implementation, resulting in individuals with valid identification being turned away at the polls; insufficient voter education to ensure that voters are aware of the new documentation requirements and how to fulfill them; circumstances under which individuals may be charged a fee to obtain the required documentation to vote; the potential for disparate impact on the basis of a number of federally protected classes; and the importance of weighing measures intended to prevent voter fraud against the potential for voter disenfranchisement. From these findings, the Committee offers to the Commission recommendations for addressing this problem of national importance.

**Kansas Advisory Committee to the
U.S. Commission on Civil Rights**

Mildred Edwards, *Chair, Kansas Advisory Committee*, Topeka

Kirk Perucca, *Vice Chair, Kansas Advisory Committee*, Prairie Village

Russell Brien, Oskaloosa

Ron Holt, Wichita

Mark Dodd, Topeka

Jennifer Ng, Lawrence

Steven Gieber, Abilene

Phyllis Nolan, Louisburg

Martha Hodgesmith, Lawrence

Ewa Unoke, Kansas City

Kristy Lambert, Prairie Village

Gabriela Vega, Manhattan

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I. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These advisory committees advise the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction.

On January 28, 2015, the Kansas Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to conduct a study of the civil rights impact of voting requirements in the state. Specifically, the Committee sought to examine whether the state's 2011 Secure and Fair Elections (SAFE) Act¹ disparately discourages or denies citizens of their right to vote on the basis of race, color, age, religion, national origin, or other federally protected category in local and/or federal elections.

On January 28, 2016, the Committee convened a public meeting in Topeka, Kansas to hear testimony regarding the implementation and civil rights impact of the Kansas SAFE Act. The following report results from the testimony provided during this meeting, as well as testimony submitted to the Committee in writing during the related period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. The focus of this report is specifically on concerns of disparate impact resulting from voting requirements in Kansas on the basis of race, color, age, religion, national origin, or other federally protected category. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. The Committee adopted this report and the recommendations included within it on February 22, 2017.

¹ K.S.A. 25-208a, 25-2203, 25-2352 & 25-3203 & K.S.A. 2010 Supp. 8-1324, 25-1122, 25-1122d, 25-1123, 25-1124, 25-1128, 25-2309, 25- 2320, 25-2908, 25-3002, 25-3104, 25-3107 & 65-2418. Full text available at http://www.kslegislature.org/li_2012/b2011_12/measures/hb2067/ (last accessed June 02, 2016).

II. BACKGROUND

A. The United States Voting Rights Act

Following the end of the American Civil War in 1865, the U.S. Constitution was amended to abolish slavery and to grant citizenship to former slaves.² On February 3, 1870, the Fifteenth Amendment to the Constitution was ratified to guarantee that the right of [male] citizens of the U.S. to vote “shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.”³ Despite this proclamation, throughout much of the subsequent American history, state and local jurisdictions resistant to extending voting rights to African American citizens utilized techniques such as gerrymandering; and instituted discretionary, often inconsistently applied requirements such as poll taxes, literacy tests, vouchers of “good character,” and disqualification for “crimes of moral turpitude” in order to suppress the African American vote.⁴ In addition, terrorist organizations such as the Ku Klux Klan and the Knights of the White Camellia used harassment and violence to keep African American voters away from the polls. As a result, by the year 1910 nearly all black citizens in the former Confederate States were effectively excluded from voting.⁵

In response to such continued voter intimidation and suppression, on August 6, 1965—nearly 100 years after the ratification of the Fifteenth Amendment—President Lyndon B. Johnson signed the Voting Rights Act⁶ (VRA) into law. Among its key provisions, the VRA prohibits public officials from “drawing election districts in ways that improperly dilute minorities’ voting power.”⁷ It also requires states and counties with a “history of discriminatory voting practices or poor minority voting registration rates” to secure “preclearance” – that is, the approval of the U.S. Attorney General, or a three-judge panel of the District Court of the District of Columbia –

² U.S. Const. amend. XIII – XIV.

³ The Library of Congress Web Guides: Primary Documents in American History. *15th Amendment to the Constitution*, <https://www.loc.gov/rr/program/bib/ourdocs/15thamendment.html>. (last accessed June 28, 2016).

⁴ The U.S. Dep’t. of Justice, Introduction to Federal Voting Rights Laws. *Before the Voting Rights Act*. Updated August 6, 2015. Available at: <https://www.justice.gov/crt/introduction-federal-voting-rights-laws> (last accessed July 12, 2016). Hereafter cited as “DOJ: *Before the Voting Rights Act*.”

⁵ DOJ: *Before the Voting Rights Act*. Updated Aug. 6, 2015, <https://www.justice.gov/crt/introduction-federal-voting-rights-laws> (last accessed July 12, 2016).

⁶ 42 U.S.C. §§ 1973 - 1973aa-6.

⁷ Cornell Univ. Sch. of Law: Legal Info. Inst., *Voting Rights Act*. Wex., https://www.law.cornell.edu/wex/voting_rights_act (last accessed July 12, 2016).

prior to implementing any changes in their current voting laws.⁸ According to the U.S. Department of Justice Civil Rights Division, soon after the VRA was passed, “black voter registration began a sharp increase,” and as a result, the “Voting Rights Act itself has been called the single most effective piece of civil rights legislation ever passed by Congress.”⁹

With the extension of the VRA in 1975, Congress included protections against voter discrimination toward “language minority citizens.”¹⁰ In 1982, the Act was again extended, and it was amended to provide that a violation of the Act’s nondiscrimination section could be established “without having to prove discriminatory purpose.”¹¹ In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be found in violation of the VRA.

On June 25, 2013, in a historic decision (*Shelby County v. Holder*), the U.S. Supreme Court ruled the formula used to determine which states should be subjected to “preclearance” requirements under the VRA was outdated and thus unconstitutional.¹² This ruling effectively nullified the preclearance requirement—a core component of the VRA—until Congress agrees upon a new formula. According to the Brennan Center for Justice at the New York University School of Law, as of March 25, 2016, at least 77 bills to restrict access to registration and voting have been introduced or carried over from the prior session in 28 states.¹³ Though across the country state efforts to expand voter access have outpaced restrictive measures overall, in November of 2016, 17 states (including Kansas) had restrictive voting laws in effect for the first time in a

⁸ Cornell Univ. Sch. of Law: Legal Info. Inst., *Voting Rights Act*. Wex., https://www.law.cornell.edu/wex/voting_rights_act (last accessed July 12, 2016).

⁹ The U.S. Dep’t of Justice, Intro. to Fed. Voting Rights Laws. *The Effect of the Voting Rights Act*. Last Revised June 19, 2009, <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0> (last accessed July 14, 2016).

¹⁰ The U.S. Dep’t of Justice, History of Fed. Voting Rights Laws. *The Voting Rights Act of 1965*. Updated Aug. 8, 2015, : <https://www.justice.gov/crt/history-federal-voting-rights-laws> (last accessed July 14, 2016). Hereafter cited as “DOJ: *The Voting Rights Act of 1965*.”

¹¹ DOJ: *The Voting Rights Act of 1965*.

¹² *Shelby County, Ala. v. Holder*, Attorney General 679 F. 3d 848. https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf (last accessed July 21, 2016) See also: John Schwartz., *Between the Lines of the Voting Rights Act Opinion*. The N.Y. TIMES. June 25, 2013, http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?_r=2& (last accessed July 21, 2016).

¹³ Brennan Center for Justice at the N.Y. Univ. Sch. of Law. *Voting Laws Roundup 2016*. April 18, 2016 <https://www.brennancenter.org/analysis/voting-laws-roundup-2016>. (last accessed July 21, 2016) Hereafter cited as “*Voting Laws Roundup 2016*.”

presidential election, and the U.S. held its first presidential election in more than 50 years without the full protections of the Voting Rights Act.¹⁴

The right to vote is one of the most fundamental components of democracy—so important, in fact, that the U.S. Constitution includes four amendments protecting it.¹⁵ Established under the Civil Rights Act of 1957, as part of its core mandate, the U.S. Commission on Civil Rights is directed to “[i]nvestigate formal allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin.”¹⁶

Throughout its history, the Commission and its Advisory Committees have released numerous reports on the state of voting rights in the U.S.¹⁷ The Commission’s hearings on voting rights throughout the American South between 1959 and 1961 have been said to have given critical support to proponents of the VRA, aiding in its 1965 passage.¹⁸ Despite these protections, leading up to and including in the 2016 election cycle, academics and advocates alike have called concern to a number of state-legislated voting restrictions that they say are likely to disproportionately disenfranchise voters of color. In this context, the Kansas Advisory Committee submits this report to the Commission detailing the present state of voting rights in Kansas, and urges the Commission to revisit this topic of national importance.

¹⁴ *Voting Laws Roundup 2016*.

¹⁵ U.S. Constitution, Amend. XV guarantees the right to vote “regardless of race, color, or previous condition of servitude”; Amendment XIX guarantees that the right to vote will not be denied “on account of sex”; Amend. XXIV guarantees that the right to vote will not be denied “by any reason of failure to pay poll tax or other tax”; Amend. XXVI guarantees the right to vote for all citizens aged 18 years or older.

¹⁶ *Voting, 1961 Comm’n on Civil Rights Rep.*, Foreword, p. xv, <http://www.law.umaryland.edu/marshall/usccr/documents/cr11961bk1.pdf> (last accessed July 21, 2016).

¹⁷ See Univ. of Md. Francis King Carey School of Law: Thurgood Marshall Law Library: *Historical Publications of the United States Commission on Civil Rights*, http://www.law.umaryland.edu/marshall/usccr/subjlist_index.html (last accessed July 21, 2016).

¹⁸ The Leadership Conf.: U.S. Comm’n on Civil Rights, <http://www.civilrights.org/enforcement/commission/?referrer=https://www.google.com/?referrer=http://www.civilrights.org/enforcement/commission/> (last accessed July 21, 2016).

B. The Kansas Secure and Fair Elections (S.A.F.E) Act

Voter identification requirements are among the most common type of voting restriction employed by states today.¹⁹ In April 2008, the U.S. Supreme Court ruled to uphold an Indiana law requiring voters to provide photographic identification at the polls (*Crawford v. Marion County Election Board*).²⁰ As of the writing of this report, 10 states have instituted voter identification requirements identified by the National Council of State Legislators as “strict,” and an additional 22 states have “non-strict” voter identification requirements.²¹ Proponents of voter identification requirements claim they are necessary to protect against voter fraud.²² Opponents argue that voter identification (ID) laws are unnecessary and disproportionately disenfranchise African American and Latino voters, who may be less likely to own a qualifying ID.²³

On April 18, 2011, Kansas Governor Sam Brownback signed the Kansas SAFE Act into law.²⁴ Introduced by Kansas Secretary of State Kris Kobach, the Act combines three distinct voter identification requirements: (1) newly-registered Kansas voters must prove U.S. citizenship when registering to vote; (2) voters must show photographic identification when casting a vote in person; and (3) voters must have their signature verified and provide a full Kansas driver’s license or non-driver ID number when voting by mail.²⁵

¹⁹ *Voting Laws Roundup 2016*.

²⁰ *Crawford v. Marion County Election Board*, 128 S. Ct. 1610, 1611 (2008); see also Robert Barnes, *High Court Upholds Indiana Law on Voter ID*, THE WASH. POST., April 29, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/28/AR2008042800968.html>.

²¹ The Nat’l Conf. of State Legislatures: Voter Identification Requirements | Voter ID Laws. Updated July 27, 2016., <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last accessed Aug. 4, 2016) (“*Strict*” ID requirements indicates that voters without acceptable ID must vote on a provisional ballot and take additional steps after election day for their votes to be counted. “*Non-strict*” identification requirements indicates that voters may cast a ballot and have it counted without additional action on the part of a voter. For example, a voter may sign an affidavit of identity, a poll worker may vouch for the voter’s identity, or election officials may verify the voter’s signature after the close of Election Day).

²² Peter Hancock, *Kobach debates voter ID laws with KU law professor*. LAWRENCE JOURNAL WORLD, (Sept. 10, 2015), <http://www2.ljworld.com/news/2015/sep/10/kobach-debates-voter-id-laws-ku-law-professor/>.

²³ Sarah Childress, *Why Voter ID Laws Aren’t Really About Fraud*. FRONTLINE (Oct. 20, 2014), <http://www.pbs.org/wgbh/frontline/article/why-voter-id-laws-arent-really-about-fraud/>.

²⁴ Press Release: *Kansas Secure and Fair Elections (SAFE) Act Signed by Governor* (April 18, 2011), https://www.kssos.org/other/news_releases/PR_2011/PR_2011-04-18_on_SAFE_Act_Signing.pdf.

²⁵ Kobach, Kris. *A Guide to Kansas Secure and Fair Elections (SAFE) Act*. 2016, https://www.sos.ks.gov/forms/elections/A_Guide_to_SAFE_Act.pdf (last accessed July 27, 2016) Hereafter cited as “*Kobach SAFE Act Guide, 2016*.”

Kansas' requirement that voters demonstrate U.S. citizenship in addition to producing photo ID makes Kansas law among the strictest voter identification requirements in the nation. Kansas and Arizona then requested that the Election Assistance Commission add state-specific instructions to the federal form for voter registration that would require those registering with the federal form in those States to provide documentary proof of their United States citizenship. Pursuant to the National Voter Registration Act²⁶ and Help America Vote Act,²⁷ the federal form is maintained by the Election Assistance Commission.²⁸ The Commission denied the request. Kansas and Arizona then brought suit against the Election Assistance Commission, which has resulted in the following court challenges and decisions:

- In November 2014, the 10th Circuit Court of Appeals ruled that the states (Kansas and Arizona) cannot require the Election Assistance Commission to approve the request to add citizenship documentation of voters who use the federal form to register. In June 2015, the U.S. Supreme Court declined to review the case, upholding the 10th Circuit's ruling.²⁹
- In January 2016, Brian Newby, the newly appointed Executive Director of the Election Assistance Commission and a former county elections official in Kansas, approved the renewed requests by Kansas, Alabama, and Georgia to update their voter registration instructions on the federal registration form to include the states' requirement for documentary proof of citizenship.³⁰ This decision was widely criticized as outside Newby's authority as Executive Director.³¹
- The League of Women's Voters has also challenged Mr. Newby's decision in the District Court. In June 2016, the U.S. District Court for the District of Columbia denied an injunction to prevent Mr. Newby and the Election Assistance Commission from

²⁷ Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002).

²⁹ *Kobach v. U.S. Election Assistance Comm'n*, 6 F. Supp. 3d 1252 (10th Cir. 2014); see also Ken Klukowski, *SCOTUS: States Can't Require Proof of Citizenship to Vote Using Federal Form*, BREITBART, June 17, 2013, <http://www.breitbart.com/big-government/2013/06/17/states-can-t-require-proof-of-citizenship-to-vote-supreme-court-says/>. Jesse Byrnes, *Supreme Court Denies States' Request for Proof of Voter Citizenship*, THE HILL (June 29, 2015, 8:11 PM), <http://thehill.com/blogs/ballot-box/246497-supreme-court-denies-states-request-for-proof-of-voter-citizenship>.

³⁰ Declaration of Brian Dale Newby. Case No. 1:16-cv-00236-RJL. Exhibit 2. February 21, 2016, <http://www.politico.com/f/?id=00000153-09c8-de04-af73-cfcb7e040001> (last accessed Aug. 3, 2016).

³¹ Statement by Vice-Chair Thomas Hicks, February 2, 2016, http://www.eac.gov/assets/1/workflow_staging/Documents/7829.PDF (last accessed Aug. 3, 2016).

enforcing the decision to approve Kansas, Alabama, and Georgia's requirement for documentary proof of citizenship on the federal voter registration form.³² The Plaintiffs then appealed this order to the D.C. Circuit Court. The D.C. Circuit reversed the District Court and entered an injunction for the course of the litigation, so the decision to implement the revised federal form in Kansas has not taken effect, and is still in litigation.³³

Amid continued legal struggles to implement proof of citizenship requirements for voter registration in Kansas, in January 2013, the State began implementing a "bifurcated voting system, in which individuals who register to vote using the federally approved voter registration form are allowed to vote in federal elections, but not state elections."³⁴ However, on January 15, 2015, Shawnee County District Judge Franklin Theis struck down this bifurcated system, ruling that "a person is either registered to vote or he or she is not. By current Kansas law, registration, hence the right to vote, is not tied to the method of registration."³⁵ Secretary of State Kris Kobach said, "We don't anticipate this decision is going to be the final word on the subject."³⁶ Indeed, despite Judge Theis' 2015 ruling, on July 12, 2016, Secretary Kobach received administrative approval to enact K.A.R. 7-23-16, "a temporary regulation that seeks to formalize his two-tiered voter registration system."³⁷

In May 2016, U.S. District Judge Julie Robinson ruled the Kansas "proof-of-citizenship requirement violates a provision of the National Voter Registration Act that requires 'only the minimum amount of information' to determine a voter's eligibility," and thus cannot be

³² See Brennan Center for Justice at the N.Y.U. Sch. of Law. *League of Women Voters v. Newby*, D.D.C. July 28, 2016, <https://www.brennancenter.org/legal-work/league-women-voters-v-newby> (last accessed Aug. 4, 2016).

³³ *League of Women Voters of the United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).

³⁴ Mark Johnson, *Developments in Kansas Election Law and Voting Rights Law*. U. of Kan. Sch. of Law. May 19, 2016. p. 04., <https://law.ku.edu/sites/law.ku.edu/files/docs/recent-developments/2016/johnson-materials.pdf> (last accessed Aug. 1, 2016) Hereafter cited as: *Developments in Kansas Election Law*. See also: Fernanda Santos, & John Eligon, *2 States Plan 2-Tier System for Balloting*, THE N.Y. TIMES. Oct. 12, 2013, at A1 http://www.nytimes.com/2013/10/12/us/2-states-plan-2-tier-system-for-balloting.html?pagewanted=1&_r=2 (last accessed Aug. 1, 2016).

³⁵ Edward Eveld, *Judge Rules Kris Kobach Can't Operate Two-Tier Election System in Kansas*, THE KAN. CITY STAR, Jan. 15, 2016, <http://www.kansascity.com/news/politics-government/article54933870.html>. Hereafter cited as: *Judge Rules Kris Kobach Can't Operate Two-Tier Election System in Kansas*.

³⁶ *Judge Rules Kris Kobach Can't Operate Two-Tier Election System in Kansas*.

³⁷ Kan. Admin. Regs. § 7-23-16 (temporary) See also: *What's the Matter with Kansas and the National Voter Registration Form?* (Hicks 2016).

enforced.³⁸ Unless reversed by a higher court, this decision is to affect voters who register using either the Kansas registration form, or the federal voter registration form.

The legal battle regarding Kansas' voter identification and citizenship verifications requirements remains ongoing. The Committee sought through this project to gather direct testimonial evidence, and document the concerns and experiences of Kansas voters in exercising their fundamental right to freely elect their leaders.

³⁸ Lisa Wagner, *Judge Blocks Kansas' Proof-Of-Citizenship Voting Registration Requirement*, NPR AMERICA, (May 18, 2016), <http://www.npr.org/sections/thetwo-way/2016/05/18/478496140/judge-blocks-kansas-proof-of-citizenship-voting-registration-requirement>.

III. SUMMARY OF PANEL TESTIMONY

The panel discussion on January 28, 2016, at the Topeka and Shawnee Public Library in Topeka, Kansas included testimony from diverse academic experts; legal professionals; community advocates; state elected officials; and individual community members directly impacted by voting requirements imposed under the Kansas SAFE Act.³⁹ At the direction of the Committee's bipartisan members, panelists were selected to provide a diverse and balanced overview of the civil rights issues impacting voters in Kansas. Testimony included the perspective of both proponents and opponents of the Kansas SAFE Act, including that of Kansas Secretary of State Kris Kobach, the legislation's author, who testified in person. However, despite an active search and many outreach attempts, the Committee was unable to identify any Kansas-based community organizations or community groups to testify in support of the SAFE Act.⁴⁰ True the Vote, a "nonpartisan voters' rights and election integrity organization,"⁴¹ was able to send a representative from its Texas office to speak about the importance of preserving election integrity more broadly. No local community organizations in Kansas were identified to speak in support of Kansas' voting requirements, and no individuals in support of these requirements presented themselves to speak during the period of public comment. Regrettably, this lack of participation from community representatives in support of Kansas' voting requirements prevented the Committee from obtaining the full range of intended perspectives.

The Committee notes that where appropriate, all invited parties who were unable to attend personally were offered the opportunity to send a delegate; or, at a minimum, to submit a written statement offering their perspective on the civil rights concerns in question. The Committee did receive a number of written statements from the public offering supplemental information on the topic, which are included in Appendix B. It is in this context that the Committee submits the findings and recommendations following in this report.

A. Voter Identification and Proof of Citizenship

Under the Kansas SAFE Act, voters may obtain a free, non-driver photo ID from the Kansas Division of Vehicles,⁴² and a free, certified copy of an individual's birth certificate from the

³⁹ The complete agenda from this meeting can be found in Appendix A.

⁴⁰ *Note:* The Committee sought community input, not affiliated with any particular political party

⁴¹ True the Vote, <https://truethevote.org/aboutus> (last accessed July 29, 2016).

⁴² See: *got voter ID? Valid Forms of Photographic Identification*. Kansas Secretary of State, Election Division. 2012., <http://www.gotvoterid.com/valid-photo-ids.html#idlist> (last accessed Aug. 18, 2016). Hereafter cited as "*got voter ID? Photographic Identification*."

Kansas Office of Vital Statistics, to serve as proof of citizenship⁴³ after swearing under penalty of perjury that the documentation is for voting purposes only. Despite these accommodations, throughout the testimony, the Committee heard numerous concerns regarding reasons why legitimate voters may be disenfranchised by these documentation requirements. Such reasons include: (1) inconsistencies in implementation and training; (2) insufficient voter education efforts; (3) the level of burden for citizens to obtain required documentation; and (4) a lack of provision for those born out of state to obtain free documentation.

1. Implementation Training and Consistency

Testimony throughout the Committee's hearing yielded three primary concerns regarding inconsistencies in implementation that may disenfranchise eligible voters under the SAFE Act.

The first is the erroneous assessment of fees for required documentation. Disability rights advocate Mr. Michael Byington testified, "I've worked with a number of people trying to get the [Kansas] birth certificate, and in almost all cases they have attempted to charge them."⁴⁴ He recalled one specific situation, when he accompanied a client who was both visually and hearing impaired to the Kansas Department of Motor Vehicles (DMV) in order to obtain a photo ID for voting purposes. Although his client explained that the ID was for voting purposes, the staff attempted to charge her \$17 for the service. When Mr. Byington reminded the staff person of the SAFE Act provision allowing for free photo identification for voting purposes, the staff reportedly replied, "I think I heard something about that law. And there's probably some form...but I wouldn't have the foggiest idea of where it is. That will be \$17."⁴⁵ Mr. Byington testified that he and his client insisted on waiting until the clerk was able to locate the appropriate form. Mr. Byington reported, "About an hour later my client walked out of that booth and out of that office with her ID and she hadn't had to pay for it. But had I not been there with the knowledge that I had of the laws, she would have definitely been charged the \$17."

In such situations, panelists argued any fees incurred for retrieving required voter identification may effectively stand as a poll tax, which is unconstitutional under both the 14th and the 24th

⁴³got voter ID? Voter Registration (No Citizenship Documents).

⁴⁴ Byington Testimony, Hearing before the Kansas Advisory Committee to the U.S. Commission on Civil Rights, January 28, 2016. Hearing Transcript, p. 120 line 20 – p. 121 line 23. Available at: [http://www.facadatabase.gov/download.aspx?fn=Meetings/2016-268-135169_transcript_\(2016-04-21-03-50-24\).pdf](http://www.facadatabase.gov/download.aspx?fn=Meetings/2016-268-135169_transcript_(2016-04-21-03-50-24).pdf) (last accessed March 10, 2017). Hereafter cited as: "Transcript"

⁴⁵ Byington Testimony, *Transcript*, p. 261line 02 – p. 264 line 05.

Amendments to the U.S. Constitution.⁴⁶ Mr. Byington concluded, “that is very clearly the way in this country, we have for many years defined a poll tax and a poll tax is not constitutional, it’s not legal, and it’s not patriotic.”⁴⁷ Panelist Richard Levy, Distinguished Professor of Constitutional Law at the University of Kansas School of Law, emphasized even small fees associated with voting may raise related constitutional concerns. Referencing the U.S. Supreme Court decision in *Harper v. Virginia Board of Elections* (1966), he noted the amount of a poll tax is irrelevant to the discussion: “The Court just said paying a tax is not correlated to your qualifications to vote, period.”⁴⁸ In delivering the 1966 majority opinion on *Harper v. Virginia Board of Elections*, Justice William O. Douglas said:

We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax.⁴⁹

Other concerns regarding improper training and implementation include poll workers erroneously rejecting voter identification that is in fact valid under the SAFE Act. Panelist Carrie O’Toole of the Potawatomi Tribal Council testified she had been denied the right to use her tribal ID as acceptable identification when voting. “It happened by chance that the election officer was sick and missed her training,” Ms. O’Toole explained. So when she presented her tribal identification card to vote, the election officer asked for a driver’s license instead. When Ms. O’Toole informed the election officer that a tribal ID is an approved form of government-issued identification under the Kansas SAFE Act, “she didn’t know anything about it. So it was very frustrating and I was so flustered and in shock that I forgot to ask for a provisional ballot to vote.”⁵⁰ During her testimony, Ms. O’Toole also noted on the same day she was denied the right to use her tribal ID to vote, she observed an election official also deny a military veteran the right

⁴⁶ U.S. Const. amend. XIV, guarantees all people “equal protection of the laws.” Cornell U. Sch. of Law, Legal Info. Inst., <https://www.law.cornell.edu/constitution/amendmentxiv> (last accessed Sept. 14, 2016); U.S. Const. amend. XXIV, prohibits the establishment of poll taxes directly. *See* <https://www.law.cornell.edu/constitution/amendmentxxiv>. *See also*: Byington Testimony, *Transcript*, p. 263 line 08 – p. 264 line 17; Davis Testimony, *Transcript*, p. 131 lines 07 – 12.

⁴⁷ Byington Testimony, *Transcript*, p. 261 line 02 – p. 264 line 05.

⁴⁸ Levy Testimony, *Transcript*, p. 50 line 20 – p. 51 line 10.

⁴⁹ *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) (No. 48.), <http://caselaw.findlaw.com/us-supreme-court/383/663.html> (last accessed Sept. 15, 2016).

⁵⁰ O’Toole Testimony, *Transcript*, p. 79 line 24 – p. 80 line 17.

to use his military ID to vote.⁵¹ Ms. O’Toole now volunteers at the polls to help ensure such errors are not repeated. “We have worked very hard to get people to do the Native vote...I feel it’s been very important for my elders and my community members that [they] take the time to be involved in this process.”⁵²

Similarly, former State Representative Ann Mah described a number of other situations in which poll workers erroneously rejected voter identification that should have been accepted.⁵³

1. During the 2012 elections, voter ID’s were reportedly rejected at multiple polling locations in Wichita, because the address on the ID did not match the voting address.
2. A voter attempted to vote using her temporary (paper) driver’s license, along with her old driver’s license as ID. The poll worker would not accept her temporary license, so she was forced to vote on a provisional ballot. Because her permanent license did not arrive before the canvas date, her vote was thrown out.
3. A voter was told to vote using a provisional ballot because the poll worker would not accept his suspended driver’s license (which he still possessed) as valid identification.
4. Poll workers rejected a veteran’s Department of Veteran Affairs service card because it had no address on it.
5. Poll workers rejected a Wichita State University ID as acceptable voter identification.

In her written testimony submitted to the Committee, Ms. Mah asserted that under the SAFE Act, each of these individuals identified should have been permitted to vote with the presented identification, though they were denied due to poll worker error.⁵⁴

Finally, the Committee heard testimony that proof of citizenship documentation is sometimes lost in the voter registration data transfer between the Department of Motor Vehicles (DMV) and county elections officials. Douglas County Clerk Jamie Shew testified that in 2014, his county implemented an outreach program to contact voters who were in suspense due to a lack of documentation.⁵⁵ As the election drew nearer, county staff made personal phone calls to such voters, in an effort to get them to complete their registration. Mr. Shew testified, “The majority

⁵¹ O’Toole Testimony, *Transcript*, p. 80 line 18 – p. 81 line 04.

⁵² O’Toole Testimony, *Transcript*, p. 82 line 16 – p. 83 line 22.

⁵³ Mah Written Testimony, pp. 03 – 06 (Appendix B.1).

⁵⁴ Mah Written Testimony, pp. 03 – 06 (Appendix B.1).

⁵⁵ Shew Testimony, *Transcript*, p. 169 lines 11 – 24.

of the applicants, almost 60 percent, had registered through the DMV. They had presented their documentation, and somewhere it didn't show up to our office, and when we called them they were frustrated because -- they're like, 'I've already done this. Why am I doing this a second time?'"⁵⁶ Mr. Shew lamented that due to such frustration, many voters gave up and are deterred from voting all together—a concern that may disproportionately impact young voters.⁵⁷ He said, "We also know that administrative challenges are the largest impediment to the participation of younger voters. In 2014 we found out the largest group of voters in suspense were 18 to 24 years of age, and they are also the quickest to say 'Forget it. I've got stuff going on.'"⁵⁸

2. Voter Education

In addition to the importance of properly training election officials and state service employees, the Committee heard testimony about the need to educate the voting public on the SAFE Act's new requirements. Referring to the Supreme Court Case *Crawford v. Marion County Election Board*, former Kansas Representative Ann Mah noted "voter education was a critical issue in [the Court upholding] the voter ID law in Indiana."⁵⁹ She asserted other states instituting new voter ID requirements, such as Indiana, Georgia, and Missouri, spent millions of dollars educating voters on their new requirements. She wrote, "Missouri, for example, spent \$13 million over the first few years of the law."⁶⁰ In contrast, following the passage of the SAFE Act, Kansas reportedly budgeted \$60,000 in 2012 and only \$200,000 in 2013 for voter education.⁶¹ As a member of the Kansas legislature during the passage of the SAFE Act, Representative Mah recalled:

I asked for a copy of the Secretary's voter education plan for voter ID. During the hearings he said that they would rely primarily on free media and legislators to inform individuals of the changes. Other states have had to use broader media and not just low-volume radio stations. This was a real weak spot in the plan. It took Georgia years to meet the court's concerns. Kansas' education plan was minimal. A case in point. Wichita had a ballot initiative in early 2012. The Secretary of State started the public ads just two

⁵⁶ Shew Testimony, *Transcript*, p. 169 lines 11 – 24

⁵⁷ Shew Testimony, *Transcript*, p. 169 lines 11 – 24

⁵⁸ Shew Testimony, *Transcript*, p. 169 line 25 – p. 170 line 06

⁵⁹ Mah Written Testimony p. 02 (Appendix B.1)

⁶⁰ Mah Written Testimony p. 02 (Appendix B.1)

⁶¹ Mah Written Testimony p. 02 (Appendix B.1)

weeks prior to the vote. There is no way someone born out of state or without an ID could comply in time to vote. Later I learned that 45 ballots were rejected for no ID.⁶²

Other panelists also highlighted the need for increased voter education support, noting the efforts of nonprofits and advocacy groups to fill in where the state's efforts to educate voters have fallen short. Dr. Glenda Overstreet of the Kansas NAACP testified that despite her long standing commitment to voting, in the previous election she found out nearly 60 days after the election was over that her advance ballot was not counted.⁶³ She said, "I then stayed resolved to the fact that we constantly have to continue to keep our membership educated on the changing laws," a commitment that the NAACP in Kansas has taken on.⁶⁴ She continued, "It's part of an education process that we have to get out to combat some of these requirements that we're seeing that prove to be cumbersome."⁶⁵

3. *Level of Burden*

In *Crawford v. Marion County Election Board*, the U.S. Supreme Court held that reasonable burdens on voting can be constitutional. In discussing this ruling, Panelist Richard Levy, Distinguished Professor of Constitutional Law at the University of Kansas, School of Law noted the ruling was in response to a facial challenge—meaning it was an overall challenge to Indiana's voter identification law, without regard to how the law had been applied.⁶⁶ Professor Levy explained the burden to establish in order to win a facial challenge in court is especially high, "and the Court emphasized that in *Crawford*."⁶⁷ As such, he testified an "as applied" challenge may result in a different outcome, "particularly for those voters it's especially difficult to meet the photo ID requirement."⁶⁸ Specifically, Levy recalled "the Indiana law contained a lot of alternative ways of identifying yourself and proving who you were that not all of which required that you actually have a photo ID...for example, you can submit...a utility bill with

⁶² Mah Written Testimony p. 02 (Appendix B.1).

⁶³ Overstreet Testimony, *Transcript*, p. 86 lines 04 – 19.

⁶⁴ Overstreet Testimony, *Transcript*, p. 86 line 20 – p. 87 line 06; p. 99 line 15 – p. 100 line 08; p. 104 line 17 – p. 105 line 21.

⁶⁵ Overstreet Testimony, *Transcript*, p. 99 line 15 – p. 100 line 08.

⁶⁶ Levy Testimony, *Transcript*, p. 22 line 21 – p. 23 line 24; A "facial challenge" is distinguished from an "as applied" challenge, which challenges a particular application of a law, without necessarily challenging the law itself.

⁶⁷ Levy Testimony, *Transcript*, p. 22 line 21 – p. 23 line 24.

⁶⁸ Levy Testimony, *Transcript*, p. 22 line 21 – p. 23 line 24.

your name and address on it...part of the Court's reasoning was it was so easy to prove who you were under Indiana law that it couldn't really be a burden."⁶⁹

In contrast, Kansas voter ID requirements under the SAFE Act are significantly more rigorous than the Indiana requirements reviewed under *Crawford*. In Kansas, voter identification must be government-issued, contain a photograph, and must not be expired.⁷⁰ The requirement that individuals provide documentary proof of citizenship upon registration adds an additional burden on would-be voters. As Professor Levy testified, "proving citizenship is more difficult than getting a photo ID, so the burdens are arguably more severe."⁷¹ Therefore, he suggested that in particular "the proof of citizenship requirement for voter registration in the Kansas SAFE Act is more vulnerable to a Constitutional challenge under *Crawford*."⁷²

Indeed, several panelists highlighted the individual burden the SAFE Act requirements may impose on individual voters. Marge Ahrens of the League of Women Voters commented, "it takes little to drive away those who have limited power already."⁷³ Examples of such burdens include:

- Douglass County Clerk Jamie Shew testified in order to meet eligibility requirements for state elections, his office found "it can take up to two months to get your birth certificate."⁷⁴
- Former State Representative Ann Mah explained because Kansas is a rural state, many would-be voters may have to travel great distances to counties where IDs can be acquired.⁷⁵ She noted only 33 counties have full-time DMV locations where citizens could obtain IDs to vote, leaving 72 counties without full-time DMV offices to provide voter IDs.⁷⁶

⁶⁹ Levy Testimony, *Transcript*, p. 51 line 18 – p. 52 line 11.

⁷⁰ Some exceptions apply. For example, persons over age 65 may use an expired identification. For complete list of acceptable photographic identification, see: *got voter ID? Photographic Identification*.

⁷¹ Levy Testimony, *Transcript*, p. 23 lines 20 – 22.

⁷² Levy Testimony, *Transcript*, p. 23 lines 16 – 19.

⁷³ Ahrens Testimony, *Transcript*, p. 142 lines 01 – 08.

⁷⁴ Shew Testimony, *Transcript*, p. 168 line 17 – p. 169 line 10.

⁷⁵ Mah Written Testimony, p. 01 (Appendix B.1).

⁷⁶ Mah Written Testimony, p. 02 (Appendix B.1)

- Mr. Shew recalled that in 2014 he spoke to a 90 year old woman with no proof of birth because she was born at home. Her response to the enhanced requirements was, “I don’t have the energy for all that. I guess I voted most of my lifetime. I’m done.”⁷⁷ Mr. Shew testified the complexity of the forms and requirements is a deterrent for Kansas citizens who have been “confused by the process,”⁷⁸ especially for those citizens with low literacy levels.⁷⁹
- Mr. Kip Elliot of the Disability Rights Center of Kansas explained individuals in hospitals and residential care or nursing facilities may not have family or other support persons who can help them apply for identification documents, such as a birth certificate, they may be missing.⁸⁰ In addition, staff may not be available to take them to the appropriate facilities, particularly in rural communities.⁸¹ Mr. Elliot did note during one election cycle, Secretary Kobach sent staff out to a rural facility with him to help with registration; however, it is not clear the office would have the capacity to provide such assistance on a regular basis.⁸²

In addition to the burden on individuals, testimony indicated voter registration requirements under the SAFE Act have also created a substantial burden on community groups and local elections agencies.⁸³ Civic organizations and local election agencies have reportedly struggled to support citizens working to satisfy voter registration requirements. Marge Ahrens testified despite the many years of experience that the League of Women Voters has in conducting voter registration outreach, the effectiveness of their efforts has declined significantly.⁸⁴ She noted,

Prior to implementation of the SAFE Act the League of Women Voters of Kansas and in nine communities registered voters at events which particularly targeted the underrepresented, schools, community organizations, churches. We frequently were registering people in public venues such as public libraries. And since that time there is a

⁷⁷ Shew Testimony, *Transcript*, p. 170 line 17 – p. 171 line 02.

⁷⁸ Shew Testimony, *Transcript*, p. 170 lines 07 – 16.

⁷⁹ Shew Testimony, *Transcript*, p. 168 lines 17 – 23.

⁸⁰ Elliot Testimony, *Transcript*, p. 73 line 16 – p. 74 line 18.

⁸¹ Elliot Testimony, *Transcript*, p. 73 line 16 – p. 74 line 18.

⁸² Elliot Testimony, *Transcript*, p. 76 lines 06 – 14.

⁸³ King Testimony, *Transcript*, p. 123 – 125; Davis Testimony, *Transcript*, p. 130 – 132; Ahrens Testimony, *Transcript*, p. 142 – 143; Shew Testimony, *Transcript*, p. 166, p. 173.

⁸⁴ Ahrens Testimony, *Transcript*, p. 135 line 09 – p. 138 line 24.

major shift. and I know this from the first-hand reports of the League presidents and voter service chairs across the state of Kansas.⁸⁵

Ms. Ahrens described the difficulty of registering voters at such public events in the wake of the SAFE Act, because the process now requires documentation most people do not have on hand, and some do not have easily accessible.⁸⁶ She predicted that such events “are going to become less and less frequent because they're not any of any benefit. People really cannot register at these tables.”⁸⁷ She concluded, “We maintain that all government processes need to be accessible and understandable. And now we believe that the complexity and confusion of the laws have created so much uncertainty that the registrant is in fact threatened.”⁸⁸

Cille King of the League of Women Voters, also spoke to this phenomenon. Ms. King claimed while working on an initiative to reach out to voters on the suspense list, some people simply “said that they no longer wanted to vote.”⁸⁹ Ms. King documented the “great deal of volunteer time” devoted to help citizens finish their registration, lamenting that “getting citizens registered to vote should not be harder than getting them informed.”⁹⁰

County elections officials have also faced significant burdens in order to ensure all eligible voters are able to register. Mr. Shew specified Douglas County spent more than \$30,000 on outreach and assistance to people working to satisfy voter requirements under the SAFE Act.⁹¹ Ms. Ahrens testified 105 counties have tried to help citizens with incomplete registrations, at a cost of approximately \$5 per attempt.⁹² Many smaller and rural counties may not be able to afford such expenses.

In his testimony, Secretary Kris Kobach dismissed concerns regarding the SAFE Act’s increased documentation burden on voters. He stated, “The photo ID part, I don’t think it’s a burden to reach into one’s wallet or one’s purse and pull out a photo ID. Someone could argue that you’re exerting calories when you’re doing that, and there is some process. I don’t think that’s a

⁸⁵ Ahrens Testimony, *Transcript*, p. 136 lines 08 – 19.

⁸⁶ Ahrens Testimony, *Transcript*, p. 136 line 16 – p. 138 line 18.

⁸⁷ Ahrens Testimony, *Transcript*, p. 141 lines 04 – 07.

⁸⁸ Ahrens Testimony, *Transcript*, p. 138 lines 19 – 24.

⁸⁹ King Written Testimony, p. 01 (Appendix B.2).

⁹⁰ King Written Testimony, p. 01 (Appendix B.2).

⁹¹ Shew Testimony, *Transcript*, p. 173 lines 09 – 13.

⁹² Ahrens Testimony, *Transcript*, p. 142 line 24 – p. 143 line 02.

burden.”⁹³ With respect to the additional requirement of proving citizenship upon registration, Kobach said, “Is this step a burden? I guess it depends on how you define burden. Someone might say that it is to find your birth certificate or your passport and take a picture of it with your phones and email it in or send it in or carry it in. I don’t think it’s significant.”⁹⁴ Kansas Representative Jim Ward challenged this assertion, citing the 40,000 citizens on the suspended voter list due to lack of documentary proof of citizenship. “It is a burden for these voters for the ID part. And 40,000 people in Kansas would definitely disagree with the Secretary and say that this is a burden for them to participate.”⁹⁵ Even if many Kansas citizens are able to produce their documents with relative ease, testimony before the Committee overwhelmingly indicated at least some groups may face a substantial burden in obtaining the documentation required under the SAFE Act. Senator Faust-Goudeau lamented, “these 13 years of being in the legislature, I too have seen that voting...the whole process has diminished and [gone] backwards; we’re going backwards.”⁹⁶

4. Voters Not Born in Kansas

Despite provisions in the SAFE Act allowing for free identification documents for voting purposes, the Committee heard testimony that some individuals may actually incur a cost in order to obtain the required documentation. For example, a number of panelists pointed out that the SAFE Act provides only Kansas birth certificates for free.⁹⁷ Voters who were not born in Kansas must pay the applicable fee in the state of their birth in order to secure a certified copy of their birth certificate. Ms. Cheyenne Davis, Field and Political Director for the Kansas Democratic Party, testified, “For some people who have lived out of state or were born out of state and they do not have their birth certificate, the cost of that is [equivalent] to a poll tax.”⁹⁸ Douglass County Clerk Jamie Shew testified his office contacted the appropriate agency in each state in order to inquire as to such costs. Their inquiry revealed fees ranging from \$7 to \$45, with an average cost of \$20.⁹⁹

⁹³ Kobach Testimony, *Transcript*, p. 234 lines 16 – 21.

⁹⁴ Kobach Testimony, *Transcript*, p. 235 lines 01 – 20.

⁹⁵ Ward Testimony, *Transcript*, p. 236 line 21 – p. 237 line 06.

⁹⁶ Faust-Goudeau Testimony, *Transcript*, p. 225 lines 01 – 04.

⁹⁷ Shew Testimony, *Transcript*, p. 167 line 04 – p. 168 line 16; Byington Testimony, *Transcript*, p. 121 lines 08 – 23.

⁹⁸ Davis Testimony, *Transcript*, p. 131 lines 07 – 12.

⁹⁹ Shew Testimony, *Transcript*, p. 167 lines 04 – 18.

In addition to the potential for the SAFE Act's proof of citizenship requirement to stand as a poll tax for Kansas citizens born out of state, Mr. Shew noted broader concern regarding equal protection. He noted under the Act, "one group of citizens...gets something that other groups of citizens do not have."¹⁰⁰ Citing the Help America Vote Act (HAVA), he testified that "each person should have equal, fair access just like any other voter regardless of your circumstances."¹⁰¹ He concluded, "if one group of citizens gets a free birth certificate, all citizens should get a free birth certificate."¹⁰² Accordingly, Mr. Shew noted as of 2014, his county began paying for birth certificates for any resident born out of state who needed the documentation for voting purposes.¹⁰³ Similarly, panelist Marge Ahrens of the League of Women Voters testified her organization had also purchased out of state birth certificates for Kansans who could not afford them, in order to help them complete their registration.¹⁰⁴ Mr. Shew cautioned, however, such initiatives vary by county, and many counties do not have the resources to provide this type of support.¹⁰⁵

B. Voter Participation

Throughout the hearing, the Committee received testimony from a number of panelists citing concern the challenges described above have already resulted in an actual decline in rates of voter participation and voter registration in Kansas since the passage of the SAFE Act. Panelist Doug Bonney of the Kansas Chapter of the American Civil Liberties Union (ACLU) testified that "there is at least preliminary evidence that after Kansas' strict photo ID requirement took effect on January 1, 2012, voter participation in Kansas dropped significantly."¹⁰⁶ The Committee notes in September 2014, the U.S. Government Accountability Office (GAO) released a report entitled "Elections: Issues Related to State Voter Identification Laws."¹⁰⁷ In it, the GAO reported results of an analysis it did of voter turnout in Kansas and Tennessee. The

¹⁰⁰ Shew Testimony, *Transcript*, p. 167 line 19 – p. 168 line 02.

¹⁰¹ Shew Testimony, *Transcript*, p. 168 lines 03 – 16.

¹⁰² Shew Testimony, *Transcript*, p. 168 lines 03 – 16.

¹⁰³ Shew Testimony, *Transcript*, p. 167 lines 19 – 24.

¹⁰⁴ Ahrens Testimony, *Transcript*, p. 142 lines 18 – 23.

¹⁰⁵ Shew Testimony, *Transcript*, p. 185 lines 01 – 10.

¹⁰⁶ Bonney Testimony, *Transcript* p. 67 lines 17 – 20.

¹⁰⁷ U.S. Government Accountability Office. Elections: Issues Related to State Voter Identification Laws [Reissued on Feb. 27, 2015], <http://www.gao.gov/products/GAO-14-634>. (last accessed July 27, 2016). Hereafter cited as: *GAO Elections: Issues Related to State Voter Identification Laws, 2015*.

analysis concluded voter turnout had indeed decreased in Kansas between the 2008 and the 2012 general elections to a greater extent than turnout decreased in selected comparison states, and the decrease was attributable to changes in the state’s voter ID requirements.¹⁰⁸ The GAO also found race and age disparities in the demographics of those affected: turnout was reduced by larger numbers among African Americans and young voters between the ages of 18 and 23 than other groups during this time period.¹⁰⁹

On the other hand, Senator Steve Fitzgerald, Vice Chair of the Elections and Ethics Committee in the Kansas Senate, attributed the enthusiasm for the 2008 national election to the historic nature of the election of the first African American president, combined with national get out the vote efforts.¹¹⁰ He testified the diminished enthusiasm in 2012 was more in line with historical norms in Kansas, rather than being attributable to the implementation of any provisions of the SAFE Act.¹¹¹ The Senator did offer that the Elections Committee had been presented with concerns regarding disenfranchisement, though he did not believe the assertions were “substantive” and the questions raised had not been either “proved or disproved.”¹¹²

1. Voter Turnout

In written testimony submitted to the Committee, Nathaniel Birkhead, Assistant Professor of Political Science at Kansas State University, explained the link between strict voter identification requirements and depressed voter participation:

In political science, the most common way to understand voter turnout is to focus on the costs of voting (things that make it harder to vote) and the benefits of voting (things that voters expect to receive if their preferred candidate wins). One of the most consistent findings in political science research is that turnout drops when the costs of voting go up, and that turnout goes up when the costs of voting go down.¹¹³

Professor Birkhead wrote:

¹⁰⁸ *GAO Elections: Issues Related to State Voter Identification Laws, 2015. Note: the Kansas S.A.F.E. Act was enacted in April of 2011.*

¹⁰⁹ *GAO Elections: Issues Related to State Voter Identification Laws, 2015.*

¹¹⁰ Fitzgerald Testimony, *Transcript* p. 191 line 11 – p. 194 line 14.

¹¹¹ Fitzgerald Testimony, *Transcript* p. 191 line 11 – p. 194 line 14.

¹¹² Fitzgerald Testimony, *Transcript* p. 196 line 20 – p. 197 line 08.

¹¹³ Birkhead Written Testimony, p. 01, lines 28-32 (Appendix B.3).

While no research has looked at Kansas' voter ID laws specifically, the consensus in scholarly research is that voter ID laws present a substantial cost to voting, and as such depress turnout. In particular, the costs associated with voter ID laws tend to have disproportionate impact among the poor, uneducated, and young...the ultimate impact...is to make the electorate unrepresentative of the state's citizens.¹¹⁴

Professor Birkhead went on to note that "Kansas' voter registration and voter ID laws are among the most demanding in the country."¹¹⁵ Although as of the time of his writing, no empirical studies had been conducted to specifically assess the impact of Kansas' voter identification requirements on voter turnout in the state, Professor Birkhead referenced an empirical study that had been conducted of Georgia's voter identification requirements, which he noted are "similar to Kansas both in the requirement that voters are able to furnish a photo ID, and similar in what forms of photo IDs are valid."¹¹⁶ This analysis found "the Georgia voter ID statute had a suppressive effect among those lacking IDs: there was an across the board drop in turnout of 6.5% among those without IDs."¹¹⁷ In other words, "about 24,692 registered voters in Georgia were turned away due to the photo ID statute that is similar to Kansas."¹¹⁸

In reviewing this empirical research, the Committee notes that in addition to imposing voter photo identification requirements similar to Georgia, the Kansas SAFE Act also requires that voters show proof of citizenship upon registration. This additional requirement is unique to only two states in the country (Kansas and Arizona) and its impact has not yet been empirically studied. In response to these concerns, Senator Faust-Goudeau spoke about her efforts to introduce legislation to increase voter participation, and the political apathy and opposition she has faced from Secretary Kobach.¹¹⁹

2. *Suspense Voters*

In addition to the potential direct impact on rates of voter participation and voter registration, the Committee heard concern that many citizens in Kansas who have turned out to vote in recent

¹¹⁴ Birkhead Written Testimony, p. 01, lines 10-15 (Appendix B.3).

¹¹⁵ Birkhead Written Testimony, p. 02 line 27 – p. 3 line 02 (Appendix B.3).

¹¹⁶ Birkhead Written Testimony, p. 04, lines 16-24 (Appendix B.3) *See also*: Hood, MV III, and Charles S. Bullock III. 2012. "Much Ado About Nothing? An Empirical Assessment of the Georgia Voter Identification Statute." *State Politics and Policy Quarterly* 12(4):394-14.

¹¹⁷ Birkhead Written Testimony, p. 04, line 31 – p. 5 line 05 (Appendix B.3).

¹¹⁸ Birkhead Written Testimony, p. 04, line 31 – p. 5 line 05 (Appendix B.3).

¹¹⁹ Faust-Goudeau Testimony, *Transcript* p. 223 line 20- p. 228 line 20.

elections have not had their votes counted. Attorney Mark Johnson explained that under the SAFE Act, voters who register without proof of citizenship are placed on a “suspense voter” list, and must prove their citizenship within 90 days or be purged from the list and required to restart the voter registration process.¹²⁰ Secretary Kobach testified that most people on the suspense list never finished registering simply because they had moved, and that purging the list is a necessary way to decrease cost from sending those people reminders.¹²¹ Similarly, panelist Catherine Engelbrecht of True the Vote, suggested the 90-day rule for purging the suspended voters list is a valuable step in encouraging voters to fix registration in a timely manner and that it “bolsters confidence” in “election integrity.”¹²²

In contrast, Mr. Bonney of the ACLU raised concern regarding the large number of people on Kansas’ suspense voter list. He noted by September 2015, there were 37,000 voters on the suspense list.¹²³ Of those, “almost 32,600 were on the suspense list because they had not provided or because bureaucrats could not find documentary proof of citizenship for the voter registrants.”¹²⁴ Mr. Bonney testified those 32,600 people “equal 2 percent of all the registered voters in Kansas...When a law causes 2 percent of voter...registrants to go into suspense, that law is having a direct and damaging effect on voter participation in the state....”¹²⁵ Mr. Bonney also noted a disparate impact on the basis of both political affiliation and age, with 58 percent of those on the suspense voter list due to a lack of citizenship documentation being politically “unaffiliated” and 40 percent being under the age of 30.¹²⁶

3. *Provisional Voting*

Under the SAFE Act, voters on the suspense voter list due to incomplete documentation or those without approved photo ID at the polls may vote using a provisional ballot, and submit their missing documentation at a later time in order to have their votes counted.¹²⁷ In a written

¹²⁰ Johnson Testimony, *Transcript* p. 150 line 20 – p. 161 line 01.

¹²¹ Kobach Testimony, *Transcript* p. 233 lines 03 – 16.

¹²² Engelbrecht Testimony, *Transcript* p. 152 line 16 – p. 153 line 08.

¹²³ Bonney Testimony, *Transcript* p. 68 lines 06 – 11.

¹²⁴ Bonney Testimony, *Transcript* p. 68 lines 06 – 11.

¹²⁵ Bonney Testimony, *Transcript* p. 69 lines 10 – 18.

¹²⁶ Bonney Testimony, *Transcript* p. 68 lines 20 – 25; *See also*: Smith Testimony, *Transcript*, p. 31 lines 19 – 21 & p. 32 lines 18 – 19.

¹²⁷ State of Kansas County Election Manual. Section D, Provisional Voting, pp. 85 – 86, [https://www.kssos.org/forms/elections/County%20Election%20Manual%20\(Combined\).pdf](https://www.kssos.org/forms/elections/County%20Election%20Manual%20(Combined).pdf) (last accessed February 1, 2017).

statement to the Committee, former State Representative Ann Mah noted before the 2012 election, the Shawnee County Election Commission would provide a list of the names of citizens who voted with provisional ballots because they were lacking photo identification. Representative Mah would then contact these voters to advise them about how to meet eligibility requirements and ensure their votes were counted. After the 2012 general election, Representative Mah requested these same lists. She testified:

When [Secretary] Kobach found out, he made me go to the district court to get the list. When the district court ordered him to give me the list, he went to federal court to try and stop me. When the federal judge ordered him to give me the list, Kobach got a law passed to stop any future requests of the names of those who voted provisional ballots. Now no one can help those who vote [by] provisional ballots understand what has happened and how to make their votes count.¹²⁸

Marge Ahrens of the League of Women Voters raised additional concern regarding the use of provisional ballots. She noted voting with a provisional ballot poses another threat to voter participation because provisional ballots are not confidential and can be read by poll workers.¹²⁹ “It completes the breach of trust between a democratic government and all of its citizens around the most essential signature of a democracy, the right to vote and to the privacy of that vote for all.”¹³⁰ She argued this breach of privacy “means a great deal when you live in a small community.”¹³¹

Ms. Leanne Chase, a poll worker for both Sedgewick and Butler Counties, spoke of concern regarding long lines at the provisional ballot tables, because so many people did not have the required documentation.¹³² She noted she lives in a small county, and poll workers know their neighbors, but could still not allow them to vote because they did not have a photo ID.¹³³ She mentioned provisional voting is particularly difficult on parents, who were trying to get their children ready for school the next day, yet were told after waiting in line to vote they would have to return downtown in the next few days to provide their documentation for their provisional ballot to count.¹³⁴

¹²⁸ Mah Written Testimony, p. 06 (Appendix B.1).

¹²⁹ Ahrens Testimony, *Transcript* p. 141 lines 17 – 24.

¹³⁰ Ahrens Testimony, *Transcript* p. 143 lines 10 – 15.

¹³¹ Ahrens Testimony *Transcript* p. 141 lines 22 – 24.

¹³² Chase Testimony, *Transcript*, p. 253 line 18 – p. 255 line 03.

¹³³ Chase Testimony, *Transcript*, p. 253 line 18 – p. 254 line 04.

¹³⁴ Chase Testimony, *Transcript*, p. 253 line 18 – p. 255 lines 04-14.

Overall, testimony before the Committee indicated that although no empirical research exists to evaluate the impact of the SAFE Act on voter turnout in Kansas, preliminary data in the state as well as comparison empirical research in other states indicate stricter voter identification requirements result in lower voter turnout—and Kansas’ voter ID requirements under the SAFE Act are among the strictest in the nation. Furthermore, a lack of access to suspense voter lists, and the purging of those lists after 90 days, may make it more difficult for county officials to assist voters in completing the requisite documentation. Finally, privacy concerns relating to the required use of a provisional ballot may additionally deter eligible voters from participating. Further study in each of these areas is necessary to ensure the rights of all eligible Kansas citizens to vote, and to have their vote counted.

C. Civil Rights and Disparate Impact

As a Federal Advisory Committee focused specifically on matters of civil rights, the Committee took particular note throughout the hearing of concerns panelists raised regarding evidence of both discriminatory intent and disparate impact. Constitutional Law Professor Richard Levy of the University of Kansas School of Law explained that “Because the S.A.F.E. Act’s requirements are facially neutral as to race or national origin, it will be treated as discriminatory for constitutional purposes only if there is proof of discriminatory intent, which may be proved by a stark pattern of disparate impact or by the circumstances surrounding the adoption of the act.”¹³⁵ Professor Levy also noted, however, that Section 2 of the Voting Rights Act (VRA) goes beyond these constitutional protections in that it “prohibits state laws or requirements that *result* in discrimination without regard to *intent* or *purpose*.”¹³⁶ The Committee heard testimony that raised concern regarding both potential discriminatory intent and disparate impact in relation to the SAFE Act, each discussed below.

1. Improper Intent

In his testimony, Professor Levy emphasized that constitutional challenges based on discriminatory intent are often difficult to demonstrate, because contemporary policymakers are unlikely to openly declare discriminatory intent while writing, introducing, or discussing new laws or regulations.¹³⁷ Professor Levy further explained that under some circumstances,

¹³⁵ Levy Written Testimony, pp. 06 – 07 (Appendix B.4).

¹³⁶ Levy Written Testimony, pp. 07 – 09 (Appendix B.4).

¹³⁷ Levy Testimony, *Transcript* p. 16 line 24 – p. 17 line 14.

procedural irregularities can be considered evidence of discriminatory intent.¹³⁸ In this light, the Committee notes Secretary Kobach is the only Secretary of State in the nation with the authority to prosecute voter fraud—a fact which Dr. Glenda Overstreet of the Kansas NAACP testified may indicate exactly such a procedural irregularity raising questions of improper intent.¹³⁹

In addition, Professor Levy raised question about the structure of the SAFE Act itself, in that its requirement for proof of citizenship at the time of voter registration only applies after July 1, 2013.¹⁴⁰ As such, while this requirement may affect some older voters who moved from out of state after this date, “it applies to everyone who wasn't 18 as of July 1st, 2013.”¹⁴¹ He concluded, “that might create a problem under the 26th Amendment if that's viewed as discrimination or if you could prove that there was an intent to exclude younger voters, perhaps because of their political affiliations or leanings.”¹⁴²

Finally, concern regarding the intent of the SAFE Act stemmed from testimony regarding recent cases of voter fraud in the state. Secretary Kobach himself testified every allegation of voter fraud his office has prosecuted since receiving prosecutorial authority in 2015 has involved individuals who have voted twice, often in two or more different jurisdictions.¹⁴³ Instead of focusing on preventing problems with such “double-voting” however, attorney Mark Johnson testified much of the debate around the adoption of the SAFE Act was focused on preventing undocumented immigrants from registering to vote: “In the spring of 2011 the advocates of the SAFE Act told the legislature that voter impersonation was rampant and untold numbers of aliens were voting.”¹⁴⁴ However, Mr. Johnson asserted that the cases of voting fraud that have been identified have not substantiated this concern.¹⁴⁵ He concluded, “We have to determine

¹³⁸ Levy Testimony, *Transcript* p. 16 lines 06 – 23; Levy Written Testimony, pp. 06 – 07 (Appendix B.4).

¹³⁹ Overstreet Testimony, *Transcript* p. 115 line 14 – p. 115 line 09; p. 87 lines 07 – 15; *See also*: Bonney Testimony, *Transcript* p. 67 lines 02 – 13.

¹⁴⁰ Levy Testimony, *Transcript*, p. 24 line 13 – p. 25 line 04.

¹⁴¹ Levy Testimony, *Transcript*, p. 24 line 13 – p. 25 line 04.

¹⁴² Levy Testimony, *Transcript*, p. 24 line 13 – p. 25 line 04.

¹⁴³ Kobach Testimony, *Transcript*, p. 249 lines 03 – 10; *See also*: Leiker, Amy Renee. “Wichita man pleads guilty in Kansas voter fraud case.” *The Wichita Eagle*, May 4, 2016. Available at: <http://www.kansas.com/news/local/crime/article75545277.html> (last accessed December 30, 2016).

¹⁴⁴ Johnson Testimony, *Transcript*, p. 155 lines 14 – 21.

¹⁴⁵ Johnson Testimony, *Transcript*, p. 156 – 157; p. 158 lines 06 – 18.

whether the [stated] rationale for the legislation has been borne out by the facts.”¹⁴⁶ “There have been no cases filed involving aliens voting in Kansas.”¹⁴⁷

2. *Disparate Impact*

Testimony from a majority of panelists throughout the Committee’s hearing indicated concern that in addition to a general deterrent effect, the Kansas SAFE Act may pose a disproportionate burden on a number of specific groups of citizens, many of whom fall into federally protected classes. Examples from the testimony illustrate such concern below:

Age

- Dr. Michael Smith compared U.S. census tract data with available data on suspense voters in Kansas and found a significant relationship between the age of citizens in each county and the number of suspense voters.¹⁴⁸ University campuses were particularly likely to have high numbers of suspense voters—The University of Kansas had the highest percentage of suspense voters of any census tract in the state.¹⁴⁹
- Mr. Doug Bonney of the Kansas ACLU testified that in September 2015, voters under the age of 30 made up about 15 percent of registered voters in Kansas, but more than 40 percent of those on the suspense voter list because they were lacking citizenship documentation.¹⁵⁰
- Ms. Marge Ahrens discussed how prior to the SAFE Act, the League of Women Voters of Kansas registered young people in public venues such as libraries and high schools; however, with the proof of citizenship requirement there is little value in those efforts because young voters no longer possess the required documentation and may not know how to acquire it.¹⁵¹ Ms. Ahrens further testified that “high school registration turnout...is very low across the state. Young adults and the poor move more than any group, and they have the weakest hold on their documents of any group.”¹⁵²

¹⁴⁶ Johnson Testimony, *Transcript*, p. 155 line 22 – p. 156 line 06.

¹⁴⁷ Johnson Testimony, *Transcript*, p. 157 lines 17 – 18.

¹⁴⁸ Smith Testimony, *Transcript*, p. 40, line 09 – p. 41 line 25.

¹⁴⁹ Smith Testimony, *Transcript*, p. 35 lines 12 – 24.

¹⁵⁰ Bonney Testimony, *Transcript*, p. 68 lines 12 – 25.

¹⁵¹ Ahrens Testimony, *Transcript*, p. 137 lines 03 – 11.

¹⁵² Ahrens Testimony, *Transcript*, p. 137 lines 11 – 16.

- Mr. Jaime Shew testified that “administrative challenges are the largest impediment to the participation of younger voters. In 2014 we found out the largest group of voters in suspense were 18 to 24 years of age, and they are also the quickest to say, ‘Forget it. I’ve got stuff going on.’”¹⁵³
- Mr. Michael Byington testified that the SAFE Act identification requirements disproportionately burden people who struggle with mobility, including the elderly, for whom it is more difficult to access transportation to get an ID and more difficult to manage all of the required documentation.¹⁵⁴

Sex

- Ms. Cheyenne Davis, a Field and Political Director for the Kansas Democratic Party, testified “if [women] have changed their names, then that is reflected in a paper trail that could be scattered across the country.”¹⁵⁵ Ms. Davis described her work with one woman who paid \$75 for her birth certificate from another state. She then had to get her marriage decree, and divorce decree—both from different states—in order to complete her registration.¹⁵⁶ Similarly, Representative Jim Ward testified about a bill he proposed to combat the fact that “women [are] disproportionately affected by the documentation requirement” due to marriage and divorce changes in name.¹⁵⁷
- Elle Boatman wrote that it can be difficult or nearly impossible for transgender/gender non-conforming people to obtain documentation that reflects their legal/preferred name and gender identity, and the process for changing these documents is complex and cost-prohibitive. This leaves transgender/gender non-conforming people at risk of experiencing violence and rejection at their polling place if their identification does not “look” like them.¹⁵⁸

¹⁵³ Shew Testimony, *Transcript*, p. 169 line 25 – p. 170 line 06.

¹⁵⁴ Byington Testimony, *Transcript*, p.120 lines 03-19.

¹⁵⁵ Davis Testimony, *Transcript*, p. 131 line 13 – p. 132 line 04.

¹⁵⁶ Davis Testimony, *Transcript*, p. 131 line 13 – p. 132 line 04.

¹⁵⁷ Ward Testimony, *Transcript* p. 217 line 19 – p. 218 line 04.

¹⁵⁸ Boatman Written Testimony, p. 01 (Appendix B.5).

- Mr. Jamie Shew testified that single parents, who are most often women, reported an inability to find the time to maneuver bureaucratic requirements to obtain the required documentation.¹⁵⁹

Disability

- Mr. Michael Byington testified that the SAFE Act identification requirements disproportionately burden people who struggle with mobility, including the elderly, people with mental or physical disabilities, or those with visual or hearing impairments, for whom it is more difficult to access transportation to get an ID and more difficult to manage all of the required documentation.¹⁶⁰ Mr. Byington pointed out that, “if you’re blind or visually impaired significantly, you’re probably going to have to hire someone to help you locate that document if you need it for purposes of voter registration.”¹⁶¹
- Mr. Jamie Shew and Mr. Kip Elliot each cited concern for people with mental illness or physical disabilities who are living in assisted living or skilled nursing facilities.¹⁶² For these individuals, access to transportation and funds is difficult, though they may not meet requirements for permanent advanced voting, which is often reserved for people who medically cannot leave their residence.¹⁶³

Race/Color

- Dr. Michael Smith provided evidence there is a correlation between census tracts with high African American populations and an increase in the number of suspense voters, suggesting that African American voters are likely disproportionately represented on the suspense voters list.¹⁶⁴
- Disability rights advocate Mr. Michael Byington described his work with one African American individual, who was born outside of Kansas in the southern U.S. in the 1930s. This gentleman told Mr. Byington, “they just weren’t very careful about maintaining birth certificate records for people of ... my skin tone back in the 1930s when I was

¹⁵⁹ Shew Testimony, *Transcript*, p. 170 lines 07 – 16.

¹⁶⁰ Byington Testimony, *Transcript*, p. 261 line 02 – p. 264 line 05.

¹⁶¹ Byington Testimony, *Transcript*, p.120 lines 10 – 15.

¹⁶² Shew Testimony, *Transcript*, p. 164 line 14 – p. 165 line 16; Elliot Testimony, *Transcript* p. 73 line 06 – p. 74 line 25.

¹⁶³ Shew Testimony, *Transcript*, p. 164 lines 14-23; Elliot Testimony, *Transcript* p. 73 line 06 – p. 74 line 25.

¹⁶⁴ Smith Testimony, *Transcript*, p. 42 lines 01 – 05.

born.” Mr. Byington reported this man “ended up simply not registering to vote because he could not get the birth certificate.”¹⁶⁵

The following categories are not expressly protected under current federal civil rights law; however, the Committee notes the Commission’s mandate includes the authority to study and report on *all* citizens “being accorded or denied the right to vote in federal elections as a result of patterns or practices of fraud or discrimination.”¹⁶⁶ Testimony indicated the following categories may intersect with other federally protected categories or otherwise threaten election integrity.

Income/Poverty

- Dr. Michael Smith provided evidence indicating there was a relationship between high levels of voters below the poverty line and more suspense voters. This evidence suggests the SAFE Act’s proof of citizenship requirement may disproportionately impact low income voters.¹⁶⁷ Dr. Smith also suggested this relationship may indicate a disproportionate impact on communities of color, but it is difficult to disassociate race from poverty in the data.¹⁶⁸
- Mr. Shew testified that citizens without permanent homes had greater difficulty obtaining and keeping track of documents required to vote.¹⁶⁹
- Ms. Ahrens indicated that “persons of limited means” are most often overburdened by the SAFE Act’s identification requirements.¹⁷⁰ Ms. Ahrens also indicated that “young adults and the poor move more than any group, and they have the weakest hold on their documents of any group.”¹⁷¹
- Dr. Smith’s analysis suggested young voters in high-poverty census tracts may be less likely to provide the follow up documentation necessary to complete their registration once they are placed on the suspense voter list.¹⁷²

¹⁶⁵ Byington Testimony, *Transcript*, p. 121 lines 12 – 23.

¹⁶⁶ 45 C.F.R. § 703.2; see also 42 U.S.C. § 1975(a)(1).

¹⁶⁷ Smith Testimony, *Transcript*, p.42 lines 06 – 13.

¹⁶⁸ Smith Testimony, *Transcript*, p. 42 lines 01 – 13.

¹⁶⁹ Shew Testimony, *Transcript*, p. 165 17 – 22.

¹⁷⁰ Ahrens Testimony, *Transcript*, p. 142 lines 01 – 04.

¹⁷¹ Ahrens Testimony, *Transcript*, p. 137 lines 14 – 22.

¹⁷² Smith Testimony, *Transcript*, p. 59 line 08 – p. 61 line 14.

Political Affiliation

- Dr. Smith found that suspense voters were “far more likely to be unaffiliated and far less likely to register as Republican.”¹⁷³ Furthermore, suspense voters tend to be concentrated in certain census tracks, such as in Johnson County, suburban Kansas City, Sedgwick County/Wichita, Shawnee County, and Douglas County.¹⁷⁴

Mr. Davis Hammet, a community member who spent time volunteering to assist with voter registration drives in the state, explained that for many Kansans citizens, the SAFE Act requirements appear reasonable, and it may be difficult for some to understand why strict identification requirements could be a problem.¹⁷⁵ However, the disparities in impact on marginalized communities are stark. He explained, “it’s very difficult...for white, affluent men to understand why it would be a problem for a photo ID or birth certificate.”¹⁷⁶ However, in many communities, “just stopping and asking someone to fill out a form is incredibly difficult.”¹⁷⁷ After the registration form is completed, he said, “If you could just see people’s faces, a low-income single mom who you’re trying to register to vote and you tell her that she’s going to have to go home and do all this extra work just to vote....I just wish every legislator could see that face looking back at them through this legislation.”¹⁷⁸ He noted apathy and disenchantment with the political system are high in many marginalized communities because of legislation such as the SAFE Act which makes people feel disempowered,¹⁷⁹ and “advances the structural oppression and the advantages of certain people.”¹⁸⁰

D. Addressing Voter Fraud

The integrity of the U.S. electoral system is both a central tenet of democracy and essential to the protection and advancement of civil rights. Such integrity requires equal consideration to ensuring both that (1) no individual is fraudulently afforded the right to vote; and that (2) no eligible citizen is unduly denied the right to vote as a result of discrimination. The Committee

¹⁷³ Smith Testimony, *Transcript*, p. 31line 18 – p. 32 line 22.

¹⁷⁴ Smith Testimony, *Transcript*, p. 55.

¹⁷⁵ Hammet Testimony, *Transcript*, p. 125 line 21 – p. 126 line 24.

¹⁷⁶ Hammet Testimony, *Transcript*, p. 126 lines 01 – 25.

¹⁷⁷ Hammet Testimony, p. 127 lines 08 – 18.

¹⁷⁸ Hammet Testimony, p. 128 lines 02 – 11.

¹⁷⁹ Hammet Testimony, p. 127 lines 08 – 18.

¹⁸⁰ Hammet Testimony, p. 129 lines 04 – 15.

heard testimony indicating that, at times, such concerns can appear to be in conflict with one another, and thus must be carefully balanced. In his testimony, Kansas Secretary of State Kris Kobach noted: “I think we have an ethical duty to ensure that every election is decided fairly...the Secretary of State needs to make sure it’s [both] easy to vote and hard to cheat.”¹⁸¹

In considering evidence of both voter fraud and voter disenfranchisement, supporters and critics of the SAFE Act agreed that even small discrepancies in electoral integrity can have a significant impact on election outcomes, and thus on the foundation of our democracy. Secretary Kobach testified, “we have many close elections in Kansas where...it was decided by just two or three or six votes and those elections if you have even just a handful of votes that are cast by individuals who were not eligible to vote residing in a different state, you have a stolen election.”¹⁸² Similarly, one could reasonably conclude that just a handful of disenfranchised voters could also swing the outcome of an election. Representative Ward noted, “Every vote matters...we are very competitive in the senate elections, and very competitive in the house elections across the state and we will continue to be.”¹⁸³

1. National Significance

The Committee notes small variations in voter access and participation have in fact determined electoral outcomes at all levels of government. The 2016 U.S. presidential election was decided by less than one percent of the vote in a few key swing states—outcomes in Wisconsin and Pennsylvania were determined by 0.7% of the vote; Michigan was determined by just 0.2% of the vote.¹⁸⁴ These three states together carried enough electoral votes to define the outcome of the presidential election. While Kansas is not typically considered to be a swing state in national elections, proponents of the SAFE Act have suggested its use as a model for voting requirements across the country.¹⁸⁵ Accordingly, the Committee finds the discussion of appropriately balancing concern regarding voter fraud with the need to maintain open and unfettered access to the polls to be one of critical national importance.

To this end, testimony provided as part of this Committee’s inquiry, as well as secondary review of available evidence suggests the number of eligible voters turned away from the polls in

¹⁸¹ Kobach Testimony, *Transcript*, p. 249 lines 03 – 21.

¹⁸² Kobach Testimony, *Transcript*, p. 249 lines 03 – 21.

¹⁸³ Ward Testimony, *Transcript*, p. 219 line 17 – p. 220 line 03.

¹⁸⁴ The Cook Political Report, updated Jan. 2, 2017. *2016 Popular Vote Tracker*, <http://cookpolitical.com/story/10174> (last accessed Jan. 31, 2017).

¹⁸⁵ Kobach Testimony, *Transcript*, p. 244 lines 01-09; Engelbrecht Testimony, *Transcript*, p. 144 line 18 – p. 145 line 02; p. 148 lines 06 – 12.

Kansas due to a lack of required identification or a failure to provide documentary proof of citizenship may far exceed the number of documented cases of voter fraud. Secretary Kobach himself testified that in the November 2012 elections, 532 out of the 1.2 million ballots cast in Kansas were cast on provisional ballots that were not counted due to a lack of required photo identification.¹⁸⁶ In comparison, the Secretary alleged 231 cases of voter fraud in the 13 year period between 1997 and 2010.¹⁸⁷ In May 2016, the Associated Press reported that 18,373 individuals have been denied voter registration at Kansas motor vehicle offices due to the state's proof of citizenship requirement.¹⁸⁸ This is compared to evidence that in Kansas just three noncitizens have attempted to vote in federal elections and approximately 14 have attempted to register between 1995 and 2013.¹⁸⁹ In reviewing this evidence, U.S. District Judge Julie Robins concluded "even if instances of noncitizens voting cause indirect voter disenfranchisement by diluting the votes of citizens, such instances pale in comparison to the number of qualified citizens who have been disenfranchised by this law."¹⁹⁰

Those who continue to raise concerns regarding voter fraud have cited errors in voter registration data as evidence that voter fraud may be significantly more widespread than it appears.¹⁹¹ Following the 2016 presidential election, President Donald Trump contended 3-5 million undocumented individuals voted illegally in the election, costing him the nation's popular vote. He promised a federal investigation in response.¹⁹² In January 2017, NBC News reported that a

¹⁸⁶ Kobach Testimony, *Transcript*, p. 202 line 09 – p. 203 line 13. *Note: According to Secretary Kobach, 838 provisional ballots were cast; however, 306 of those voters later presented the required ID so that their ballots would be counted.*

¹⁸⁷ Kobach Testimony, *Transcript*, p. 240 lines 17 – 21; *Note: other panelists testified that earlier claims of the Secretary alleged 21 cases of fraud during this timeframe. See: Bonney Testimony, Transcript*, p. 93 lines 04 – 10. *Note: in an email to the Committee on 2/9/17, Rep. Ann Mah offered the following clarification: "There were 231 reports to the previous Secretary between 1997 and 2010. Most were just anecdotal and did not even get investigated. Only a few turned out to be actual cases that were worthy of investigation."*

¹⁸⁸ Roxana Hedgeman, *Judge says Kansas can't require citizenship proof to vote*, ASSOCIATED PRESS, May 17, 2016. <http://bigstory.ap.org/article/105ca12809694ca98e7ad9e0faad7b81/judge-says-kansas-cant-require-citizenship-proof-vote> (last accessed Jan. 31, 2017).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ John Gibbs, *Voter Fraud Is Real. Here's The Proof*. THE FEDERALIST, Oct. 13, 2016, <http://thefederalist.com/2016/10/13/voter-fraud-real-heres-proof/> (last accessed Jan. 31, 2017).

¹⁹² Daniella Silva, *President Trump Says He Will Ask for 'Major Investigation' into Unsubstantiated Allegations of Voter Fraud*. NBC NEWS, POLITICS, Jan. 25, 2017 (last accessed Jan. 31, 2017).

2012 Pew research study¹⁹³ did find “millions of invalid voter registrations due to people moving or dying, but the report’s author, executive director of the Center for Election Innovation and Research David Becker, said in late November 2016 that the study found no evidence of voter fraud.”¹⁹⁴ The NBC report also cited Heather Gerken, a professor of law at Yale University and expert on election law, who explained that people moving out of state or grieving the loss of a loved one are unlikely to take time to call election officials to update the affected registration.¹⁹⁵ She noted, “to equate that with voter fraud is irresponsible...they’re completely different issues.”¹⁹⁶

2. *Potential Solutions*

To both preserve election integrity and ensure the greatest possible access for eligible citizens to vote, varying provisions across states may offer compromises that could appropriately balance election integrity and voter access concerns. Some examples include:

- automatic voter registration, available in seven states as of December 2016;¹⁹⁷
- same day voter registration, available in 16 states as of January 2017;¹⁹⁸
- online voter registration, available in 34 states and the District of Columbia as of January 2017 (including Kansas);¹⁹⁹

¹⁹³ Inaccurate, Costly, and Inefficient: Evidence that America’s Voter Registration System Needs an Upgrade. *The Pew Center of the States: Election Initiatives, Issue Brief*. Feb. 2012, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoterregistrationpdf.pdf (last accessed Jan. 31, 2017) [Hereafter cited as: *America’s Voter Registration System Needs an Upgrade, 2012*]

¹⁹⁴ Daniella Silva, *President Trump Says He Will Ask for ‘Major Investigation’ into Unsubstantiated Allegations of Voter Fraud*. NBC NEWS, POLITICS, Jan. 25, 2017 (last accessed Jan. 31, 2017).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ National Conference of State Legislators: Automatic Voter Registration. Dec. 8, 2016, <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx> (Last accessed Jan. 31, 2017).

¹⁹⁸ National Conference of State Legislators: Same Day Voter Registration. Jan. 11, 2017, <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (last accessed Jan. 31, 2017).

¹⁹⁹ National Conference of State Legislators: Online Voter Registration. Jan. 31, 2017, <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx> (Last accessed Feb. 1, 2017).

- “non-strict” voter identification laws that allow at least some voters without acceptable identification to vote using alternative verification methods, such as signing an affidavit declaring their identity; available in 22 states as of September 2016.²⁰⁰

Senator Faust-Goudeau testified she introduced legislation, Senate Bill 333, which would “allow individuals to register to vote and check a box saying that they are a Kansas citizen and then the Secretary of State’s office would cross reference with the vital statistics office to ensure that that individual had actually been born in the State of Kansas.”²⁰¹ In addition, the Senator also introduced legislation which would allow same day voter registration, though reportedly at the direction of Secretary Kobach, the Chairman of the Ethics and Elections Committee would not allow her a hearing on the proposed legislation.²⁰² Finally, she also introduced legislation to allow college students attending school out of state to get their advanced ballots early, “similar to what we allowed those in the military to do.”²⁰³

Representative Jim Ward suggested that Kansas voters should sign an affidavit stating under penalty of perjury that they are a citizen and a resident of the State of Kansas; such a statement should serve as sufficient proof of citizenship to register and vote.²⁰⁴ Currently, the federal voter registration form requires exactly such an oath.²⁰⁵ Proponents of the SAFE Act have cautioned, however, that signing an affidavit may not be sufficient in an increasingly mobile society, and that confusion may lead non-citizens to fill out a form even if they are not eligible.²⁰⁶ Catherine Engelbrecht of True the Vote suggested international norms support a more rigorous demonstration of proof of identity in order to register and vote. She noted both Mexico and Canada require voters to document their citizenship prior to voter registration.²⁰⁷

Despite this difference, and perhaps in part due to the fragmented system whereby each state maintains its own voting requirements in consultation with the Elections Assistance

²⁰⁰ National Conference of State Legislators: Voter Identification Requirements | Voter ID Laws. Sept. 26, 2016, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last accessed Jan. 31, 2017).

²⁰¹ Faust-Goudeau Testimony, *Transcript*, p. 223 line 24 – p. 224 line 07.

²⁰² Faust-Goudeau Testimony, *Transcript*, p. 227 lines 01 – 18.

²⁰³ Faust-Goudeau Testimony, *Transcript*, p. 227 line 19 – p. 228 line 09.

²⁰⁴ Ward Testimony, *Transcript*, p. 217, lines 11 – 18; *See also*; Bonney Testimony, *Transcript*, p. 93.

²⁰⁵ Merrit Kennedy, *Court Blocks Proof of Citizenship Requirement in 3 States*. NPR NEWS: THE TWO-WAY. Sept. 10, 2016. Available at: <http://www.npr.org/sections/thetwo-way/2016/09/10/493405211/court-blocks-proof-of-citizenship-requirement-for-voters-in-3-states> (last accessed Jan. 31, 2017).

²⁰⁶ Engelbrecht Testimony, *Transcript*, p. 148 – 149, p. 187.

²⁰⁷ Engelbrecht Testimony, *Transcript*, p. 149 line 21 – p. 150 line 10.

Committee,²⁰⁸ current U.S. data presented by the Pew Center on the States suggests that more than 24 percent of the voting eligible population of the U.S. is unregistered, compared with just seven percent of the voting eligible population in Canada.²⁰⁹ As noted in the previous section of this report, inaccuracies in voter registration records are most commonly cited as evidence that the U.S. electoral system is widely vulnerable to fraud. Thus, the maintenance of complete and accurate voter registration rolls is perhaps the single most important strategy for addressing election integrity concerns. Yet, as Secretary Kobach pointed out in his testimony, every state has different voter registration requirements, and one state, North Dakota, has no voter registration at all.²¹⁰ The Pew study suggested the U.S. voter registration system could be improved through three key strategies: (1) comparing voter registration lists with other data sources; (2) using data matching techniques to improve accuracy; and (3) establishing new ways for voters to submit their data directly online, minimizing manual data entry and the resulting costs and errors.²¹¹

An international review of the voter registration structures and requirements of other democracies around the world, published by the “nonpartisan electoral reform organization” FairVote, suggested most national governments take a much more active role than the U.S. in ensuring all citizens are accurately registered: “the international norm is a process of government-mandated automatic voter registration of every citizen who reaches voting age.”²¹² FairVote’s review explores how “other major, well-established democracies concretely manage to build comprehensive, inclusive, accurate voting rolls that leave no voters behind while ensuring a high level of privacy.”²¹³ Canada, for example, uses data sharing agreements between federal agencies to allow individuals to check a box when they file their taxes, apply for citizenship, or file a change of address notice with the post office, which will automatically register them to vote or update their voter registration information with Elections Canada.²¹⁴ The

²⁰⁸ 52 U.S.C. § 205.05, §205.08

²⁰⁹ *America’s Voter Registration System Needs an Upgrade*, 2012, p. 08.

²¹⁰ Kobach Testimony, *Transcript*, p. 235 lines 01 – 14.

²¹¹ *America’s Voter Registration System Needs an Upgrade*, 2012, p. 09.

²¹² Eve Robert, *Voter Registration: An International Perspective* Right to Vote Initiative. FairVote Research Report. p. 01, <http://archive.fairvote.org/rtv/Universal%20Voter%20Registration-4-21-09.pdf> (last accessed Jan. 31, 2017) [*Hereafter cited as: FairVote: An International Perspective*].

²¹³ *FairVote: An International Perspective*, p. 01.

²¹⁴ *FairVote: An International Perspective*, pp. 09 – 10.

country has also utilized door-to door- enumerations,²¹⁵ school based registration drives,²¹⁶ and birthday cards mailed directly to electors turning 18,²¹⁷ to ensure maximum registration among the voting-eligible population. In much of Europe and Latin America, a civil registry system combined with the issuance of national citizen IDs allows for the efficient maintenance of highly accurate voter rolls.²¹⁸ At the conclusion of its review of international voting standards, FairVote determined. “the U.S. System could be improved by allowing room for federal level supervision (or certification) of the voter lists (in a European fashion), or interoperability of voters between states...of all the democracies studied, only the U.S. has no national lists or standards for voter registration.”²¹⁹

The Committee takes very seriously its commitment to ensuring that *neither* fraud *nor* voter disenfranchisement presents a threat to the integrity of U.S. elections in Kansas or on the national stage. Where appropriate, the Committee remains open to reviewing rigorous and verifiable evidence suggesting either has been compromised. As the President’s concerns regarding voter fraud launch the topic to the forefront of national discussion, the Committee urges caution that both fraud protection measures and potential voter disenfranchisement must be considered in tandem, and their impacts weighed against one another.

²¹⁵ *FairVote: An International Perspective*, pp. 03 – 05.

²¹⁶ *FairVote: An International Perspective*, pp. 15 – 16.

²¹⁷ *FairVote: An International Perspective*, pp. 16 – 17.

²¹⁸ *FairVote: An International Perspective*, pp. 09 – 10.

²¹⁹ *FairVote: An International Perspective*, 19; see also 52 U.S.C. § 20505 (*The national mail-in voter registration form developed by the Federal Election Assistance Commission (updated 2006) allows individuals to register by mail in most states for federal elections using a single form. However, instructions for completing the registration and required accompanying documentation vary by state. Wyoming does not accept mail registration, and New Hampshire uses the federal form only as a request for their own mail-in registration form*), <https://www.usa.gov/register-to-vote#item-212998>. (last accessed Feb. 1, 2017).

IV. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.²²⁰ The Kansas Advisory Committee heard testimony that the State's 2011 Secure and Fair Elections Act may disproportionately disenfranchise voters on the basis of race, color, sex, age, disability, and national origin. In addition, the Committee heard concerns regarding the need to find reasonable ways to prevent voter fraud and maintain the integrity of all elections at the local, state, and federal levels.

Below, the Committee offers to the Commission a summary of concerns identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to the State of Kansas and to the nation as a whole.

A. Findings

1. Provisions within the SAFE Act allow citizens seeking identification documents for the purposes of voting to receive such documents from the appropriate state agency for free. However, in practice, a number of eligible citizens may be required to pay for their documents. Any such instances may effectively be compared to a poll tax, which is unconstitutional under both the 14th and 24th Amendments:
 - a. Insufficient training for state workers may result in confusion regarding who is eligible for free documentation and how to process the free applications; and
 - b. Voters requiring identity documents from states other than Kansas must pay the applicable fees from the relevant state agency; there are no provisions to allow Kansas voters to obtain required out-of-state documents free of charge.
2. Improper or insufficient training of poll workers has resulted in eligible voters being turned away because the poll workers were unaware that the identification provided is in fact considered "acceptable" under the SAFE Act requirements. Such examples include military ID, tribal ID, current but suspended drivers' licenses, and state university photo IDs, among others.

²²⁰ 45 C.F.R. § 703.2.

3. Inefficient transfer of registration information between state agencies such as the department of motor vehicles and county elections officials, has resulted in data loss. Such data loss has resulted in citizens facing requests to submit the same identification documents multiple times, creating confusion and deterring eventual voter participation.
4. The level of voter education implemented in Kansas to inform citizens about new identification requirements under the SAFE Act was significantly less than similar efforts in other states, and may have resulted in eligible citizen's failure to comply with the new law.
5. Kansas' proof of citizenship and voter ID requirements under the SAFE Act are the strictest in the nation, and may impose a substantially higher burden than that which has been previously challenged in the U.S. Supreme Court. Community groups, local elections officials, and individual citizens all reported struggling to comply with the requirements.
6. The current consensus in political science research is that stricter voting requirements result in lower voting participation. Preliminary analysis of voter turnout data in Kansas indeed suggests that voter participation declined following the implementation of the SAFE Act.
7. Preliminary analysis of suspense voter lists and those required to vote using provisional ballots due to a lack of required documentation suggest as many as two percent of registered voters may not have their votes counted. The purging of suspense voter rolls after 90 days makes it difficult to follow up with suspense voters and to accurately identify the populations affected.
8. A number of panelists suggested the Kansas SAFE Act may have been written and implemented with improper, discriminatory intent. Evidence of such intent included:
 - a. Procedural irregularities – Secretary Kobach is the only Secretary of State in the country with prosecutorial authority over alleged cases of voter fraud;
 - b. The Act's proof of citizenship requirement only applies to voters who registered to vote in Kansas after July 2013, disproportionately affecting young voters (all who turned 18 after this date), and perhaps having a disproportionate impact on the basis of political affiliation; and
 - c. All current, documented cases of voter fraud in Kansas involve individuals illegally voting in multiple jurisdictions; yet no provisions of the SAFE Act address this particular type of fraud.
9. Testimony indicated the SAFE Act may disparately impact voters on the basis of age, sex, disability, race, income level, and political affiliation.

10. Balancing the need to ensure voting integrity with all eligible citizens' democratic right to participate free and fair elections is a topic of critical national importance. The U.S. is currently the only major democracy without a standard voter registration system at the national level. Differences in voting requirements between states, as well as an analysis of international standards of best practices, may provide positive solutions for properly addressing both election integrity and voter access concerns moving forward.

B. Recommendations

1. The U.S. Commission on Civil Rights should conduct a national study on voting rights in the U.S. Such a study should include:
 - a. An analysis of changes in state voting laws and related changes in voter participation following the 2013 U.S. Supreme Court *Shelby County v. Holder* decision;
 - b. An analysis of the feasibility and potential impact of establishing a uniform, national voter registration system for all elections; and
 - c. An analysis of current allegations of voter fraud and its related evidence; such a review should include a cost/benefit analysis comparing evidence of voter fraud with evidence of voter suppression, including concerns regarding potential fees associated with required identity documents, poll worker training, and public education efforts.
2. The U.S. Commission on Civil Rights should issue the following formal recommendations to the U.S. Congress:
 - a. The U.S. Congress should establish a working committee to study the impact of the 2013 U.S. Supreme Court decision *Shelby County v. Holder* including a review of any changes in state voting laws and related changes in voter participation since the ruling;
 - b. According to the results of this study, the Congress should develop an updated formula to identify which states require continued review under the Voting Rights Act, and introduce appropriate legislation to implement the new formula; and
 - c. The working committee should then conduct an analysis of the feasibility and potential impact of establishing a uniform, national voter registration system.
3. The U.S. Commission on Civil Rights should issue the following, formal recommendations to the U.S. Department of Justice, Civil Rights Division, Voting Section:

-
- a. The Division should conduct a thorough review of the requirements imposed under the Kansas SAFE Act to assess their compliance with applicable federal law including but not limited to: the Voting Rights Act, the Help America Vote Act, and the National Voter Registration Act; and
 - b. If such a review reveals areas of noncompliance or conflict with federal law, then the Division should take appropriate enforcement action to correct them.
 4. The U.S. Commission on Civil Rights should issue a letter to the U.S. Election Assistance Commission, to the Kansas Governor, and the Kansas Legislature urging them to:
 - a. Review the findings and recommendations contained within this report; and
 - b. Further investigate identified areas of concern within their jurisdiction and take appropriate action to address them.

V. APPENDIX

A. Hearing Agenda: January 28, 2016

B. Written Testimony:

1. Ann Mah, Former Representative, Kansas State Legislature
2. Cille King, League of Women Voters
3. Nathaniel Birkhead, Kansas State University Department of Political Science
4. Richard Levy, University of Kansas School of Law
5. Elle Boatman, FaceoOfTrans.com, WiTCoN

U.S. COMMISSION ON CIVIL RIGHTS



The Impact of the Secure and Fair Elections (S.A.F.E.) Act on Individual Civil Rights in Kansas

Hosted By:

The Kansas Advisory Committee to the U.S. Commission on Civil Rights

Date:

Thursday January 28, 2016

Time:

9:00 a.m.—5:15 p.m.

Location:

Topeka and Shawnee County Public Library

1515 SW 10th Avenue,
Topeka, Kansas 66604

The Kansas Advisory Committee to the United States Commission on Civil Rights is hosting a public meeting to hear testimony regarding civil rights concerns related to voting requirements in the State. This meeting is free and open to the public.

- *Opening Remarks and Introductions (9:00am-9:15am)*
 - *Panel 1: Academic (9:15am-10:30am)*
 - *Panel 2: Community (10:45am-12:00pm)*
 - *Open Forum I (12:10pm-12:30pm) ****Recently added***
- *Break (12:30pm-1:30pm)*
 - *Panel 3: Voting Rights (1:30pm-2:45pm)*
 - *Panel 4: Elected Officials (3:00pm-4:15pm)*
 - *Open Forum II (4:20pm-5:00pm)*
- *Closing Remarks (5:00pm-5:15pm)*

The Committee will hear public testimony during the open forum session, as time allows. Please arrive early if you wish to speak. For more information please contact the Midwestern Regional Office of the U.S. Commission on Civil Rights.

U.S. COMMISSION ON CIVIL RIGHTS

Midwestern Regional Office
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State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.

Agenda

Opening Remarks and Introductions (9:00am-9:15am)

Panel 1: Academic (9:15am-10:30am)

Dr. Nathaniel Birkhead, Kansas State University
Professor Richard Levy, University of Kansas
Dr. Michael Smith, Emporia State University

Panel 2: Community (10:45am-12:00pm)

Doug Bonney, Kansas ACLU
Kip Elliot, Disability Rights Center of Kansas
Lieutenant Colonel (Ret.) Robert Morse
Carrie O'Toole, Prairie Band Potawatomi Tribal Council
Dr. Glenda Overstreet, Kansas NAACP

Open Forum I (12:10pm-12:30pm) (**Recently Added**)

Break (12:30pm-1:30pm)

Panel 3: Voting Rights (1:30pm-2:45pm)

Marge Ahrens, League of Women Voters
Catherine Engelbrecht, True the Vote
Mark Johnson, Partner, Dentons US LLP
Jamie Shew, County Clerk for Douglas County

Panel 4: Elected Officials (3:00pm-4:15pm)

Senator Oletha Faust-Goudeau
Senator Steve Fitzgerald
Secretary of State Kris Kobach
Representative Jim Ward

Open Forum II (4:20pm-5:00pm)

Closing Remarks (5:00pm-5:15pm)

Comments on Kansas Voting Laws for the Kansas Committee
of the
U.S. Commission on Civil Rights

These comments on Kansas voting laws are being provided to the Kansas Committee of the USCCR in preparation for the hearing on the Kansas voter ID law. I understand that data shows that voting in Kansas took a larger than expected dip following implementation of the law in 2012. I was in the Kansas House of Representatives during the passage and implementation of that law and served as the ranking Democrat on the House Elections Committee. I am writing to provide information you may find helpful in your deliberations and better understand the impact of the Voter ID law on Kansas voters and elections.

This document is a compilation of issues raised in HB 2067 (the S.A.F.E. Act), passed in 2011, that might be violations of federal law, the Constitution, or simply raise barriers to voting. They are divided into the categories of voter identification, advance voting, and the impact of the law on voters and procedures.

I have already submitted to the Committee comments presented September 2, 2015, to the Kansas Secretary of State's office regarding proposed regulation changes to the Kansas proof of citizenship law. In Kansas we have more than 32,000 voter registrations being held in suspense because registrants did not provide proof of citizenship. I would suggest the committee consider investigating that law as well.

VOTER IDENTIFICATION:

All voters have to provide a government-issued photo ID at the polls. The poll workers verify that the person is the one on the ID. If there is no photo ID or the poll workers believe it is not a valid ID, a provisional ballot may be cast and a valid ID provided prior to canvass. Some voters are exempted from the ID requirement, such as those on permanent disability, military out of the area on duty, or those with religious objections.

1. At first, I thought there might not be much of a case to appeal our voter ID law, since several states already have a photo ID requirement. But in reviewing what the Supreme Court said were the key requirements for an acceptable photo ID law in the Indiana case and what the courts required in Georgia, it appears we do not meet requirements.
2. In Georgia, there were concerns about how far a person had to travel or how much time it took or how much planning was needed to get the free ID they might to vote. Georgia had to set up a location in every county to provide free IDs. Distance to travel to obtain that ID was also considered, but not in Kansas. Being a rural state, people can live quite a distance from the one city in the county where an ID may be obtained. Not every county has an office providing IDs that is open full time.
3. People trying to get a free photo ID to vote after 1/1/2012 were told they had to have a birth certificate to get the ID. This can be an extra burden, especially for the elderly, poor, or those born out of state.

4. Voter education was also a big issue in states implementing voter ID requirements. Indiana, Georgia, and Missouri spent millions educating voters on the voter ID law. Missouri, for example, spent \$13 million over the first few years of the law. The Supreme Court noted that voter education was a critical issue in approving the voter ID law in Indiana. Kobach budgeted \$60,000 in 2012 and only \$200,000 in 2013. I asked for a copy of the Secretary's voter education plan for voter ID. During the hearings he said that they would rely primarily on free media and legislators to inform individuals of the changes. Other states have had to use broader media and not just low-volume radio stations. This was a real weak spot in the plan. It took Georgia years to meet the court's concerns. Kansas' education plan was minimal.
5. A case in point. Wichita had a ballot initiative in early 2012. The Secretary of State started the public ads just two weeks prior to the vote. There is no way someone born out of state or without an ID could comply in time to vote. Later I learned that 45 ballots were rejected for no ID.
6. I asked the Division of Motor Vehicles (DMV) how many counties had locations where you could get an ID to vote. At that time there were only 33. That means that over 70 counties have no full-time DMV and those wanting a voter ID could have to travel to another county to get one.
7. To document some of the problems people are having with voter ID compliance I talked with a nursing home supervisor in Peabody who worked hard to get her residents the IDs they need to vote. She has 51 residents. About 75% of them voted. But only 9 had IDs and only 2 had the birth certificates needed to get a voter ID. The residents came from Kansas, six other states and Korea. Many had no family contact and she didn't know where to start to find the birth certificates. They only get \$62 a month stipend, so paying for an out-of-state birth certificate would be a burden at best and poll tax at worst. Then even if they can get the documents, they have to travel 15 miles to the next town to the DMV. She hated to see them lose their right to vote, but she couldn't spend all the hours necessary to get them their photo IDs. I mentioned this situation in an elections committee hearing. In response, Secretary Kobach sent Eric Rucker to Peabody to fix the situation. Even after that attempt, not every resident was able to get a photo ID. Several just gave up trying – and their right to vote. I visited with another nursing home in Paola with similar concerns. That's just the tip of the iceberg.
8. Here is the Peabody nursing home director's story about how it went when Eric Rucker came from Secretary Kobach's office to fix the situation in 2012:
"Okay, after 2 of the 3 days of ID processing with Marion County, here is an update. It took 2 ½ hours yesterday with 3 of our staff to process 6 clients ID's plus 1 hour of driving time with a driver. We were not told they needed SS#'s on any of the forms and they were necessary. Every time there was a typo upon entering the info the system said they had performed an illegal operation and shut down. They had to call Topeka each time to reset.
Today, Marion County came out to process the out-of-state births. They took pics and took the information with them to send to the SOS's office. There they will process (investigate for authentication). The County office was not sure how long this would

take or if the client's would have an ID in time to vote at the August 7 election. In the 6 months that we have been working on the persons without ID, a dozen and a half with ID's have expired. Secretary Kobach was on KFDI Monday as saying Kansas had avoided the glitches other States have had by being proactive. Ha! I am exhausted with this entire process as I am sure you are. Each year, with new admissions and expired ID's, this is going to be a mess.”

When the director asked Mr. Rucker what would happen with all the other nursing homes in the state that he would not be going to, he said that it was their legislators’ job to get them the information they needed.

9. It is clear that what information voters get at the polling place if they have to vote a provisional ballot for no photo ID is inconsistent place to place. Some report they received a note saying they had to bring in a photo ID prior to the canvass. Others did not.
10. In a situation in the 2014 primary, a local senior residence (Brewster Place in Topeka) reported that seniors without IDs were not allowed to vote a provisional ballot. Two years after implementation, this kind of lapse in training of poll workers is not acceptable.
11. In the Supreme Court’s decision on the Indiana voter ID law, it noted that there may be a case brought forward by seniors born out of state, who would have particular difficulty obtaining IDs. That is still the case in Kansas.

VOTER ID AND ADVANCE VOTING:

To advance vote in person, it is the same as voting on election day at the polls in terms of showing ID. If you have no ID, you may cast a provisional ballot and provide an ID prior to the canvass date. To request an advance ballot by mail, you have to provide a driver’s license number, non-drivers ID number, or a photocopy of any of the IDs identified in KSA 25-2908. If you send the request in without proper ID, you have to provide it prior to the canvass date. If you need to make a photocopy, you can get one made for free at any state office.

1. Other court cases have noted that requiring voters to get an ID to the election office by the canvass date can be an issue. We extended the canvass date three days (from the Friday following the Tuesday election to the Monday following a Tuesday election), but it still may be short in a court’s mind, especially when the voter is located in another city than the county election office. I think Indiana is the state where the court said 10 days should be allowed to get IDs to the election office.
2. Requiring photo ID to get an advance ballot adds a new burden for those who cannot get out to vote. You are only excused from the photo ID requirement if you have a permanent disability ballot (or meet one of the exclusions in KSA 25-2908).
3. The law will not allow you to put a social security number (SSN) on the advance ballot request as proof of identity. County clerks tell me that they can get everything they need to know about you from your name, address, and the last four digits of your SSN.

SSN is the easiest thing for voters to come up with and most have one. If we just kept the last four digits of the SSN as an identifying feature, it would eliminate the cost and burden of folks who don't have an ID getting one to get an advance ballot.

4. Indiana does not require a photo ID and that was the state Kobach cited as his model. During testimony, Kobach said many times our voter ID law would be like Indiana's and easily meet a court challenge. That was not true and the difference in advance ballot handling is just one example.
5. There are now extra burdens to returning a mail ballot to the election office. If you have someone return it for you, you both have to sign an affidavit designating who is to return it. That was not required prior to the S.A.F.E. Act. There are penalties if everything is not done correctly, trying to use intimidation to keep people from returning ballots for someone else.

IMPACT OF THE VOTER ID LAW:

Once the voter ID law started in 2012, it did not take long to feel the impact.

1. I made a point in the House Elections Committee about the burden of getting a birth certificate for a photo ID for those born out-of-state. To cover up this issue, Kobach said that those born out-of-state, or those for whom the state of Kansas had no birth certificate, could get a free photo ID at the county election office. The election office is supposed to have a camera there, take your picture, and Kobach's office will make an ID. The interesting thing is that all you have to do to get this ID is sign an affidavit. The same accommodation is not made to the rest of those born in Kansas. Further, there was no education/information made public about this opportunity, so no one really knows about it. And the counties are all across the board about how they implement it. In Douglas county they will actually go to your house to take your photo and make the ID themselves. My point is help from county to county in any aspect of the law varies widely.
2. As you can imagine, the first year of the voter ID law saw its issues due to lack of education and lack of training of poll workers. Here are just a few of the reports sent to me regarding what was happening at the polls in the 2012 and 2014 elections.
 - A voter said she had her temporary (paper) driver's license along with her old driver's license when she went to vote. The poll workers would not accept the paper ID and made her vote a provisional ballot. Since her permanent license did not arrive before the canvass date, her vote was thrown out. There are tens of thousands of Kansans in this situation at any given time. The truth is, they are supposed to accept this document at the polls. So, again, there is no consistent enforcement of the law across the state.
 - In 2012, IDs were rejected at multiple polling locations in Wichita because the address on the ID did not match the voting address. That is not a requirement of the law. You can, in fact, even use an out-of-state driver's license. The only thing the photo is to be used for is to match name and face.
 - An elderly woman's only ID was a photo of herself in her military uniform taped to her walker. She had no other ID so her provisional vote was eventually thrown out.

- Two elderly residents at an Osage county nursing home had no valid ID. At the polls on election day they were made to vote provisional ballots and their ballots were thrown out at the county canvass. The county clerk contacted relatives to help, but the gentlemen had no photo IDs and no way to get one on time.
- A voter refused to show his ID as a protest, and was told that when he filled out his provisional ballot that was all he had to do and that his vote would count. He didn't know he had to provide an ID prior to the canvass in order for his vote to count. What voters are told when they vote a provisional ballot varies widely across the state.
- In Marion County they told voters of provisional ballots that they had to have their IDs in by the Friday after the election. They should have given them until Monday, the canvass date. So not all county election officials knew what the law said.
- Three residents of the same facility took expired drivers licenses to vote. All were under the age of 65, so an expired license would not have been a valid ID for any of them. The white resident was allowed to vote a regular ballot, but the Hawaiian and the Mexican-American voters were made to vote provisional ballots. The two provisional ballots would have ultimately been thrown out since they had no other IDs.
- A voter told me he had to vote a provisional ballot because his license was suspended and he had no other valid photo ID. There are thousands of Kansans with suspended licenses at any time. The truth is, if you were allowed to keep your suspended license, they are to accept it. But many times it is confiscated. You can get a free photo ID from the DMV in this situation, but, again, you need a birth certificate, and no one tells these suspended drivers what is available to them.
- A veteran presented his Department of Veterans Affairs service card but it was rejected by poll workers because it had no address on it. He was told they wouldn't take anything but a driver's license. In another instance they rejected a Wichita State University ID, which was also a legal photo ID. There has been a dispute about taking high school IDs. It is hard to tell how many poll officials across the state have a different understanding of what constitutes a valid photo ID.
- A nursing home in Wichita reported that they took a resident to the DMV three times to get an ID, but could not provide enough proof she was a citizen.
- A voter in Carbondale did not have his driver's license current at the time he voted. He voted a provisional ballot, but figured his ballot would be thrown out because he worked in Topeka and could not get the documents needed in time to get a valid ID. I asked him to go through his wallet and we found a Topeka city bus pass with a photo. I faxed it to the Osage county election office and they took the ID. Had I not intervened on his behalf, his vote would have been thrown out. Neither he nor the poll workers were aware the bus pass would be valid for voting. Even the county election official had to check with the Secretary's office to verify that it would.
- The Topeka Rescue Mission reported that 50% of the women staying there have no ID and 15% of men. They would have a difficult time getting the underlying documents to get a birth certificate and then a photo ID. And they have no

transportation to get to the DMV. The Lawrence shelter said that 20% of their residents have no IDs. The Kansas City Rescue Mission said that 40% of their residents have no ID. The Saline Rescue Mission reported that they help get the birth certificates, but they have to get to the DMV by bus and they don't give them bus tokens.

- In Shawnee county, a student who did not provide a driver's license number on his absentee ballot request was told he had to have the information back by 7 pm on election day. He actually had until the canvass date. I heard this same story from two other students who had mistakenly put their school address on the outside of the envelope instead of their home voting address.
 - For non-drivers, a trip to the DMV to get a state ID can be a burden. One disabled Kansan told me a harrowing story of waiting hours (not unusual) to get his ID. With his health issues, he almost gave up. He had resources to help him get through it, but not everyone does.
3. Prior to the 2012 general election, I contacted the Shawnee County election commissioner about getting the names of those who were made to vote a provisional ballot for lack of photo ID. I wanted to be able to contact them and advise them they needed to take action to make their votes count. The county election commissioner said it would be no problem. They routinely gave out those lists. After the 2012 general election I requested the list. When Kobach found out, he made me go to the district court to get the list. When the district court ordered him to give me the list, he went to federal court to try and stop me. When the federal judge ordered him to give me the list, Kobach got a law passed to stop any future requests of the names of those who voted provisional ballots. Now no one can help those who vote provisional ballots understand what has happened and how to make their votes count.
 4. In the 2012 primary and general elections, there were 787 ballots thrown out for no voter ID. In the 2014 primary and general elections there were 427 ballots thrown out. I did some calculations of the votes thrown out in Kansas for no photo ID compared to Georgia in 2012. Kansas had several times more votes thrown out than Georgia, based on numbers voting and votes thrown out. I credit lack of education and disparate implementation of the law across the state for so many votes being thrown out.

WHAT COULD BE DONE?

There are a number of measures that could be taken to alleviate the problems created by the Kansas S.A.F.E. Act voter ID requirements. Here are just a couple:

1. Do not require those voting a provisional ballot for lack of photo ID at the polls to provide an ID prior to the canvass date. In order to vote a provisional ballot the voter must fill out a voter registration form. That means they have to provide a driver's license number or a social security number, their address, their birth date, and a signature swearing they are who they say they are. If the election office finds all that information valid and the signature matching the one on file, they should have their vote counted without additional effort.

2. Expand the types of valid IDs accepted. In other states, like our neighboring state, Missouri, there are a number of IDs that are accepted that are not government-issued photo IDs.

On a final note, Secretary Kobach has been given prosecutorial powers over election crimes. He has stated that in October he will announce some cases he is filing. He says they are cases where people voted in two places. Interestingly, these are cases that would not be prevented under the S.A.F.E. Act.

I hope this has been helpful in understanding the situation with voter ID in Kansas. If you have questions, please contact me.

Ann Mah
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Statement to the Kansas Commission on Civil Rights, January 28, 2016 addressing the burden of the SAFE Act on an organization that helps Kansans register to vote.

I am Cille King, with the League of Women Voters of Lawrence-Douglas County. Our local League has, over the years, been very active in registering Kansas citizens to vote. In the fall of 2013, we learned that the statewide voters in suspense list was growing into the thousands due to the requirement to provide proof of citizenship to register to vote.

We discussed our desire to contact those in suspense with the Douglas County clerk's office. We requested and received from them an electronic list of those in suspense. This suspense list of October 30, 2013, had 827 people, of which 55 % were under 25 years of age. Douglas County is the home of the University of Kansas and Haskell Indian Nations University which explains why our young voters in suspense are so greatly represented on the suspense list.

Our League committee developed a narrative for telephone calls and email contacts. Only some of the names on the suspense list had accompanying phone numbers. We checked the phone book for matching last names and addresses to find 30 – 40 additional numbers.

University of Kansas email addresses were found by entering the names (one by one) into the KU's email search.

We had **little identifiable success** with calling or email efforts. The majority of phone calls went to message machine (we left a message of the problem and a call back number), some didn't have a message machine, and some were no longer working numbers. There were a few people who answered the phone or called back. They responded that they would take care of it, and a few said that they no longer wanted to vote. Of those who said they would take care of it, some remained on the suspense list a month later. No one responded to our emails. So, we didn't know if it was our message or a letter from the County Clerk, or some other reason when some eventually provided their proof of citizenship.

Later we expanded to using facebook and text messaging, with the same lack of response.

The most effective means, we found, was to talk with the voter, personally.

The weekend before the November 2014 election, we paired up and went **to people's homes** to help them finish their registration. We concentrated our efforts on the student housing around the KU campus, and an area of low-income housing on the north central side of the city. We went to 115 homes and helped 30 of those people finish their voter registration. Some documents we carried to the county clerk, some we watched as the voter took an image of his document and emailed it to the county clerk, and some we learned had finished by checking the voter rolls after the files had been updated, following the statewide canvass.

All this takes a great deal of volunteer time. Over an hour was spent to achieve each successful home visit. Countless hours are spent with the telephone calls, emails, facebook and text messages. League and member resources are consumed by this effort which reached so few of those Douglas County residents with incomplete voter registrations.

Our Leagues want all citizens to be informed and voting. Getting citizens registered to vote should not be harder than getting them informed.

Respectfully, Cille King, League of Women Voters Lawrence-Douglas County; cilleking@gmail.com

1 Thank you for the invitation to participate in the Kansas Advisory Committee to the US
2 Commission on Civil Rights' hearing to discuss the important matter of Kansas' Voter ID laws.
3 I regret being unable to offer my oral testimony at the hearing, though appreciate the opportunity
4 to submit my written testimony.

5 My name is Nathaniel Birkhead, and I have a PhD in Political Science (Indiana University
6 2012). I am an Assistant Professor of Political Science at Kansas State University, where I have
7 been since 2012. Some of my published research focuses state legislative elections, voter
8 behavior, and citizen participation. Thus, I am qualified to offer this testimony, which is an
9 attempt to summarize the extensive body of research that addresses turnout and voter ID laws.

10 While no research has looked at Kansas' voter ID laws specifically, the consensus in the
11 scholarly research is that **voter ID laws present a substantial cost to voting, and as such**
12 **depress turnout.** In particular, the costs associated with **voter ID laws tend to have**
13 **disproportionate impact among the poor, uneducated, and young.** This makes the electorate
14 older, better educated, and more affluent than the state's population. Thus, the ultimate impact
15 of voter ID laws is to make the electorate unrepresentative of the state's citizens.

16 Political scientists have long viewed citizen participation in elections as the most critical form of
17 political activity. Not only does voter participation convey legitimacy to elections results, but
18 also ensures responsiveness of politicians to voters. As V.O. Key once wrote, "The blunt truth is
19 that politicians and officials are under no compulsion to pay much heed to classes and groups of
20 people that do not vote."¹ As such, there is a large and thorough body of political science
21 research dedicated to understand the factors that may increase or decrease political participation
22 by its citizens.

23 In what follows, I begin with a brief discussion of what political scientists know about things that
24 influence citizens' decisions to vote in an election, in a general sense. I will then proceed to a
25 more specific discussion of the political science research on voter ID laws.

26

27 *Citizens Vote Less when the Costs of Voting Are High*

28 In political science, the most common way to understand voter turnout is to focus on the costs of
29 voting (things that make it harder to vote) and the benefits of voting (things that voters expect to
30 receive if their preferred candidate wins).² One of the most consistent findings in political
31 science research is that turnout drops when the costs of voting go up, and that turnout goes up
32 when the costs of voting go down.

33 The most substantial costs associated with voting have been poll taxes and literacy tests, which
34 many former states Confederate states enacted following the Civil War and the end of

¹ Key, VO. 1949. *Southern Politics in State and Nation*. New York: Vintage. Pg., 527

² Hershey, Marjorie. 2009. "What We Know about Voter ID Laws, Registration, and Turnout,"
PS: Political Science and Politics. 42(1), 87-91.

1 Reconstruction. Poll taxes often required some payment to register to vote, while literacy tests
 2 required potential voters to demonstrate their reading and math skills before being allowed to
 3 vote. These standards were not meted out equally, however, as many states including a number
 4 of “grandfather clauses” that prevented blacks access to the ballot, while still allowing some poor
 5 or illiterate whites to vote.³ These costs on voting had very real implications for voter
 6 participation: poll taxes in the South depressed turnout by nearly 15 percentage points, while
 7 literacy tests depressed turnout by about 9 percentage points.⁴ The implications of this research
 8 clearly show that citizens respond to the costs associated with voting, and tend to stay home
 9 when the costs are too high. Moreover, the effects of poll-taxes and literacy tests were not held
 10 equally across a state’s citizenry – blacks and poor whites were disproportionately affected by
 11 them.

12 Potential voters are also sensitive to costs as they attempt to register. Reforms that have
 13 attempted to make the voter registration process easier have had significant effects. For
 14 example, in states where driver’s license agency employees asked clients if they’d like to register
 15 to vote, turnout was about 5 percentage points higher in states where driver’s license agencies
 16 simply made registration materials available.⁵ Thus, actively encouraging people to register to
 17 vote had a real and significant impact on individuals’ decisions to vote.

18 Moreover, this active voter registration program particularly boosts the turnout rates among
 19 groups who are typically less likely to vote. These active voter registration programs benefitted
 20 the “young, the residentially mobile, and those with lower levels of education.”⁶ By contrast,
 21 states with less active voter registration programs – that is those with a higher cost to registration
 22 – had less participation by the less educated and the young. Thus, not only do all citizens
 23 respond to the costs of voting, but some groups of citizens are *particularly* sensitive to the costs
 24 of voting. As such, these costs prevent the electorate from being wholly representative of the
 25 state’s citizenry.

26

27 *Voter ID Laws Present a Significant Costs to Voting*

28 Kansas’ voter registration and voter ID laws are among the most demanding in the country.
 29 Since 2013, to register to vote, Kansas requires that citizens furnish proof of US citizenship –
 30 necessitating a passport, birth certificate, or naturalization papers – before being added to the

³ Highton, Benjamin. 2004. “Voter Registration and Turnout in the United States.” *Perspectives on Politics* 2(September):507-15. Rosenstone, Steven J and John Mark Hansen. 2003.

Mobilization, Participation, and Democracy in America New York: Longman.

⁴ Springer, Melanie J. 2012. “State Electoral Institutions and Voter Turnout in Presidential Elections, 1920-2000” *State Politics and Policy Quarterly* 12(3): 252-83.

⁵ Knack, Stephen. 1995. “Does ‘Motor Voter’ Work?” *Journal of Politics* 57(August): 796-811.

⁶ Highton, Benjamin and Raymond Wolfinger. 1998. “Estimating the Effects of the National Voter Registration Act of 1993” *Political Behavior* 20(June):79-104.

1 record. **Kansas and Arizona are currently the only two states in the country that require**
2 **such documentation.**

3 Once a voter has been registered, they must show photographic identification to vote in person,
4 and unless the person is 65 or older, the photo ID must be current and have an expiration date on
5 it. As Hershey writes, this restriction “poses no additional costs to registrants with a current
6 driver’s license, state ID, passport, or other appropriate ID.” However, for those who do not
7 have a current suitable ID, the process of acquiring one – by furnishing social security card, birth
8 certificate, proof of residency, and so on – imposes financial costs as well as requiring time,
9 information, and transportation. Moreover, the burden of acquiring these non-drivers’ license ID
10 cards is often large, as people who need them do not have driver’s licenses and likely do not
11 have access to public transportation in their county.

12 To put these requirements in context, **Kansas is one of only 9 states to have what the National**
13 **Conference of State Legislatures calls a “Strict Photo ID” requirement.** That is, the ballot
14 will not be counted unless the voter furnishes a photo ID at the polling place, or else casts a
15 provisional ballot and provides a valid form of ID to the county election officer. By contrast, 14
16 states have what the NCSL terms “Non-strict, non-photo ID requirements,” where the most
17 common practice is to ask voters without an ID to sign an affidavit affirming that they are the
18 person listed on the record (as in Connecticut, Delaware, Kentucky, Michigan, and several other
19 states).⁷ Moreover, *16 states do not require a document to vote.* Thus, we clearly see that the
20 costs associated with voting in Kanas are quite high, and indeed far higher than in most other
21 states.

22

23 *Voter ID Laws Decrease Turnout*

24 To my knowledge, no political science research project has focused on Kansas’ voter ID laws,
25 specifically. However, as states began passing voter ID laws in the early 2000s, several studies
26 have analyzed their impact on turnout. There are a number of different approaches to studying
27 these effects – from aggregate elections analysis to a number of different survey instruments.⁸

⁷ “Voter Identification Requirements” 1/4/2016. National Conference of State Legislatures.
<http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> Accessed 2/12/2016.

⁸ Alvarez, R. Michael, Delia Bailey, and Jonathan N. Katz 2008 “The Effect of Voter Identification Laws on Turnout.” Social Science Working Papers 1267R, California Institute of Technology; Barretto, Matt A, Stephen A Nuño, and Gabriel R. Sanchez 2009 “The Disproportionate Impact of Voter-ID Requirements on the Electorate” *PS: Political Science and Politics* 41(1):111-16. Vercellotti, Timothy and David Andersen. 2006. “Protecting the Franchise, or Restricting it?” Paper presented at the annual meeting of the American Political Science Association, Philadelphia, PA.; Mycoff, Jason D., Michael W. Wagner, and David C. Wilson. 2009. “The Effect of Voter Identification Laws on Aggregate and Individual Level Turnout.” *PS: Political Science and Politics* 41(1):121-26.

1 Rather than analyzing the strengths and weaknesses of each study, I will focus on the most
2 methodologically sophisticated, as they offer the most reliable conclusions.

3 Individual level survey results show that, in general, voter ID laws reduce turnout. Alvarez,
4 Bailey, and Katz show that voter ID laws make registered voters less likely to turn out on
5 election day. Moreover, the stricter voter ID laws are, the less likely citizens are to vote. As
6 Alvarez et al note “stricter requirements – more than merely presenting a non-photo
7 identification card – are significant negative burdens on voters, relative to a weaker requirement,
8 such as merely signing a poll-book.” Erikson and Minnite find similar results in their analysis:
9 going from “lax to severe voter ID requirements is associated with a couple of percentage points
10 less in the voting rate.”⁹

11 While these results are reliable, survey results do come with their own limitations. Simply,
12 citizens often fill out surveys inaccurately. For example, they may report that they voted, despite
13 not having done so. Alternatively, they may report having a government ID, but not actually be
14 able to furnish one. Ultimately, the best way to determine if voter ID laws restrict turnout is to
15 move beyond survey results to focus on actual shifts in official recorded votes.

16 The best analysis of the impact of voter ID laws comes from Hood and Bullock¹⁰, who relied on
17 data from the state of Georgia as ID laws were implemented between the 2004 and 2008
18 elections. The Georgia voter ID law is similar to Kansas’, both in the requirement that voters are
19 able to furnish a photo ID, and similar in what forms of photo IDs are valid. Hood and Bullock
20 analyzed the voter registration and history database, which the state of Georgia cross-referenced
21 with DMV records, indicating which registrants had either a valid driver’s license or state ID
22 card. This database is incredibly unique, and offers the ideal research design to determine how
23 voter ID laws influence voter behavior. We do not need to worry about citizens misreporting
24 voting, nor do we need to worry about citizens’ accuracy in being able to furnish a state ID card.

25 Hood and Bullock are able to determine which citizens voted in 2004 before the ID laws went
26 into effect, they are able to determine which citizens voted without a state ID. They are able to
27 make a similar evaluation in 2008, after the voter ID laws went into effect. Thus, they are able to
28 clearly identify which citizens were still able to vote, and which citizens were disenfranchised by
29 the voter ID laws. Simply put, the Georgia database that Hood and Bullock gained access to is
30 the gold standard for examining the voter ID laws’ impact.

31 Their analysis found that the Georgia voter ID statute had a suppressive effect among those
32 lacking IDs: there was an across the board *drop in turnout of 6.5%* among those without IDs.
33 They ultimately conclude that “turnout in Georgia in 2008 would have been four-tenths of a
34 percentage point higher” if the photo ID statute had been blocked by the courts. Put another

⁹ Erikson, Robert S. and Lorraine C. Minnite 2009. “Modeling Problems in the Voter Identification-Voter Turnout Debate” *Election Law Journal* 8(2): 85-101.

¹⁰ Hood, MV III, and Charles S. Bullock III. 2012. “Much Ado About Nothing? An Empirical Assessment of the Georgia Voter Identification Statute.” *State Politics and Policy Quarterly* 12(4):394-14.

1 way, Hood and Bullock estimate that about **24,692 registered voters in Georgia were turned**
2 **away due to the photo ID statute that is similar to Kansas’.**

3 Again, the preponderance of evidence – whether from government issued surveys like the
4 Current Population Survey (CPS) or from official government records like Georgia’s files –
5 show that voter ID laws have a clear suppressive effect on the voting eligible population.

6

7 *Voter ID Laws on Disproportionately Decrease Turnout by the Poor and Uneducated*

8 Several empirical studies listed above have shown that the costs of registering to vote, and
9 voting, do not equally effect all citizens’ voting behavior. Rather, the costs are
10 disproportionately felt by some groups – the less educated, poor, and young – than by other
11 groups.¹¹

12 Though racial and ethnic minorities are affected by voter ID laws, the empirical estimates are
13 mixed. Some studies show that blacks are disproportionately affected. Barreto et al found that
14 black registered voters were less likely than whites to have a valid state-issued ID. Similarly, the
15 laws may not always be enforced consistently: Alvarez et al found that a much higher proportion
16 of black voters were asked for identification in 2007 and in the 2008 Super Tuesday events than
17 white voters were. By contrast, Hood and Bullock’s analysis of Georgia found that whites were
18 slightly more demobilized than blacks by the new law, though we should note that this may have
19 been due to higher than average get-out-the-vote drives by the Obama campaign in 2008 that
20 disproportionately mobilized black voters.

21 **A consistent finding across these studies is that the poor and uneducated of all races and**
22 **ethnicities tend to be adversely effected.** Alvarez et al show that registered voters with lower
23 levels of income or education are less likely to turn out to vote when the voter ID laws are more
24 restrictive. These findings are corroborated by Erikson and Minnite, and by Vercellotti and
25 Anderson. Moreover, it is always important to emphasize that blacks and Latinos tend to have
26 lower socio-economic status than whites. As such, while racial and ethnic minorities are not
27 disproportionately targeted by voter ID laws, they nonetheless are still heavily influenced.

28 To conclude, the evidence shows clearly that voter ID laws demobilize citizens. The higher the
29 cost of registering to vote, and the higher the cost of being able to cast a vote, the less likely
30 citizens are to turn out. Again, estimates based off the government’s official records in Georgia
31 show that over 24,000 voters were turned away by the restrictive voter ID law. While it is
32 unclear the extent to which these laws demobilize racial and ethnic minorities, a robust finding is
33 that the increased costs of voting disproportionately demobilize the poor and uneducated. **The**
34 **result is that strict voter ID laws, such as Kansas’, create an electorate that is more affluent**

¹¹ Jackson, Robert A., Robert D. Brown, and Gerald C. Wright. 1998 “Registration, Turnout, and the Electoral Representativeness of the U.S. State Electorates.” *American Politics Quarterly* 26(July):259-87; Avery, James M. and Mark Peffley. 2005. “Voter Registration Requirements, Voter Turnout, and Welfare Eligibility Policy.” *State Politics and Policy Quarterly* 5(1):47-67.

- 1 **and educated than its state's citizens are.** This unrepresentative electorate creates a system
- 2 where policy written by elected officials represents the concerns of the electorate, rather than the
- 3 concerns of all the state's citizens.

KANSAS ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

**The Impact of the Secure and Fair Elections (S.A.F.E.) Act
on Individual Civil Rights in Kansas**

January 28, 2016

Constitutional (and Statutory) Issues Surrounding the S.A.F.E. Act

by
Richard E. Levy*

Introduction

I want to thank the Advisory Committee for giving me the opportunity to discuss the important issues raised by the Kansas Secure and Fair Elections Act (the S.A.F.E. Act). Although I have personal views about these issues, I will endeavor to put those views to one side, so as to offer a neutral account of the issues raised by the act and the applicable legal principles. My goal in so doing is to provide the committee with a framework it can use to analyze the complex legal issues raised by the act.

The S.A.F.E. Act imposes three sets of requirements that affect the exercise of voting rights: (1) new voters must submit proof of citizenship at the time of registration; (2) voters must provide a photo ID at the polling place; and (3) additional verification steps must be taken to submit ballots by mail. In practice, the first two requirements present more serious legal questions. To the extent that the proof of citizenship and photo ID requirements make it more difficult for some people to participate in elections, they may violate constitutional and statutory provisions that protect the right to vote. In general terms, the validity of such requirements depends on the nature and extent of the burden they impose on the right to vote and whether those burdens are justified by sufficiently important state interests.

In the context of specific constitutional and statutory provisions, however, determining the validity of the S.A.F.E. Act raises a variety of complex questions, not all of which are within the purview of the Advisory Committee. To assist the Advisory Committee in navigating these complex issues, I will summarize and explain the applicable legal principles. The key principles are set forth as a series of “bullet points” in the executive summary, which is followed by a more detailed discussion of each principle. Please note that I have not attempted to conduct or provide comprehensive research into lower court decisions addressing similar issues.

* J.B. Smith Distinguished Professor of Constitutional Law, University of Kansas School of Law. Name, title, and affiliation are provided for purposes of identification only. I do not speak for the University or the Law School and all views, statements, or positions articulated in this document are solely my own.

Executive Summary

- **The S.A.F.E. Act’s proof of citizenship and photo ID requirements may be invalid if they (1) discriminate by restricting the right to vote based on impermissible classifications or (2) impose excessive burdens on the right to vote without sufficient justification.**
- **In constitutional challenges based on improper discrimination, voting requirements that use a “suspect” (race) or “quasi-suspect” (gender) classification are nearly per se invalid, but other classifications are valid so long as they are reasonably related to a legitimate state purpose.**
- **Because the S.A.F.E. Act’s requirements are facially neutral as to race or national origin, it will be treated as discriminatory for constitutional purposes only if there is proof of discriminatory intent, which may be proved by a stark pattern of disparate impact or by the circumstances surrounding the adoption of the act.**
- **Section 2 of the Voting Rights Act (VRA) does not require proof of discriminatory intent, but rather prohibits voting requirements that have the effect of restricting the right to vote because of race, which is determined in light of the totality of circumstances, including multiple factors.**
- **Laws that impose undue burdens on the right to vote may violate the Constitution irrespective of discrimination, with the applicable level of scrutiny dependent upon the severity of the burden.**
- **Although the Court upheld photo ID requirements in *Crawford v. Marion County Election Board* and the same framework would apply to the requirements of the S.A.F.E. Act, the result in *Crawford* is not controlling if, as applied to some voters, the S.A.F.E. Act’s requirements impose more severe burdens on the right to vote.**
- **Even requirements that neither discriminate on the basis of race nor impose severe burdens may be invalid if they serve illegitimate purposes or are unrelated to the state’s legitimate interests in conducting free and fair elections.**

Discussion

- **The S.A.F.E. Act’s proof of citizenship and photo ID requirements may be invalid if they (1) discriminate by restricting the right to vote based on impermissible classifications or (2) impose excessive burdens on the right to vote without sufficient justification.**

The conduct of free and fair elections for positions of public trust is essential to our system of democracy. Accordingly, the right to vote is considered fundamental and is subject to a variety of protections reflected in constitutional amendments, Supreme Court precedents, and statutory provisions. The state can and indeed must regulate the voting process in various ways, but state laws or regulations that improperly impair or impede the right to vote are invalid. Broadly speaking, the requirements of the S.A.F.E. Act implicate two types of voting rights claims: discrimination claims and impermissible burden claims.

Discrimination claims focus on the *nature of the classification* used in determining the ability to vote. In other words, they assert that voting requirements have the purpose or effect of restricting the right to vote based on improper classifications, such as race. Some constitutional amendments, notably the Fifteenth, Nineteenth, and Twenty-Sixth Amendments explicitly prohibit the denial or abridgment of the right to vote on account of race, gender, and age (for citizens over 18 years of age). Thus, statutes, regulations, or other requirements that violate these amendments are per se invalid. More broadly, the Equal Protection Clause of the Fourteenth Amendment also prohibits improper classifications that limit the right to vote. *See generally Reynolds v. Sims*, 377 U.S. 533 (1964) (holding that the Equal Protection Clause incorporates a one person-one vote principle). In addition, § 2 of the Voting Rights Act (VRA), 52 U.S.C. § 10301 (formerly codified at 42 U.S.C. § 1973), prohibits voting practices that have the effect of denying or abridging the right to vote on account of race.

Impermissible burden claims focus on the *extent of the impairment* imposed by a voting requirement. In other words, they assert that voting requirements impose excessive burdens that improperly prevent people from voting (without regard to whether the requirement uses improper classifications). Thus, for example, the Twenty-Fourth Amendment prohibits the imposition of a poll tax as a condition of voting in federal elections and the Supreme Court has held that the Equal Protection Clause prohibits poll taxes for state or local elections. *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966). More generally, reasonable regulations that impose only incidental burdens on the right to vote are generally valid, but requirements that impose severe burdens are invalid unless they are justified by especially compelling reasons. *See Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). In addition, some federal statutes, such as the National Voter Registration Act (NVRA), are intended to make it easier to vote. *See* 52 U.S.C. §§ 20501-20511 (formerly codified at 42 U.S.C. §§ 1973gg-1 to 1973gg-10) (requiring states to allow eligible persons to register to vote in federal elections when applying for or renewing a driver’s license).

As pending litigation suggests, the proof of citizenship and photo ID requirements of the S.A.F.E. Act are subject to both kinds of legal challenge and both kinds of challenge implicate both constitutional and statutory provisions. *See* Complaint for Declaratory and Injunctive

Relief, *Cromwell v. Kobach*, No. 2:15-cv-09300-JAR-GLR (D. Kan. Sept. 30, 2015), available at 2015 WL 5731924; *Belenky v. Kobach*, No 2013-CV-001331, (Shawnee County District Court), at <https://public.shawneecourt.org/PublicAccess/publicAccess/publicAccess/?goto=caseLookup>. I will discuss the principles that apply to a discrimination claim first, followed by the principles that apply to an impermissible burden claim. It is important to note that the validity of both types of claims depends on an assessment of the facts—specifically (1) how the law’s requirements affect voting rights in practice; (2) the purposes and motives behind the law; and (3) the extent to which the law is justified by valid concerns about voter fraud.

- **In constitutional challenges based on improper discrimination, voting requirements that use a “suspect” (race) or “quasi-suspect” (gender) classification are nearly per se invalid, but other classifications are valid so long as they are reasonably related to a legitimate state purpose.**

In general terms, discrimination claims based on equal protection and related constitutional provisions are determined using “ends-means scrutiny.” Under this form of analysis, courts consider (1) whether the ends or purposes of state action are valid; and (2) the means chosen (i.e., the classification) are sufficiently related to those ends. Conventionally, this type of scrutiny may be more or less deferential to the state, depending on the nature of the classification and whether the classification burdens fundamental rights. The focus here is on the nature of the classification—the burden on fundamental rights will be discussed below in connection with analysis of impermissible burden claims.

The law does not treat all people equally and all laws must classify in some way—even murder laws treat murderers differently from non-murderers. Courts are usually very deferential to the state’s policy judgments, and ordinary classifications are subject to a form of scrutiny known as the “rational basis test.” Under this form of scrutiny a law is valid so long as the state’s purpose is “legitimate” and the classification is “reasonably” or “rationally” related to it. The rational basis test is usually extraordinarily deferential—courts accept any plausible purpose for a law (without regard to whether it was advanced at the time of the state action) and any means that policy makers might plausibly believe would further that purpose. *See F.C.C. v. Beach Communications*, 508 U.S. 307, 313 (1993) (“In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.”). In some cases, however, the Court has applied what appears to be a less deferential form of the rational basis test when state action appears to be motivated by animus against a politically unpopular group, which is not a legitimate purpose. *See Romer v. Evans*, 517 U.S. 620 (1996); *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985); *U.S.D.A. v. Moreno*, 413 U.S. 528 (1973).

Because the rational basis test is usually easy to satisfy, parties challenging a law typically try to convince the courts to apply heightened forms of scrutiny, which include both “strict scrutiny” and “intermediate scrutiny.” Strict scrutiny applies to classifications that are inherently suspect, such as race and national origin.¹ To survive strict scrutiny, the state must provide clear

¹ In this context, national origin refers to ethnicity or ancestry, not citizenship. Voting rights can clearly be limited to U.S. citizens.

and convincing proof that the purpose is “compelling” and that the use of the classification is “necessary” and/or “narrowly tailored” to the attainment of that purpose. *See, e.g., Johnson v. California*, 543 U.S. 499, 505 (2005) (“Under strict scrutiny, the government has the burden of proving that racial classifications ‘are narrowly tailored measures that further compelling governmental interests.’”) (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995)). To satisfy this test, there must be strong evidence to show that the interest is compelling and that it was the true purpose of the law. Likewise, the classification must also be necessary in the sense that there are no non-discriminatory alternatives and narrowly tailored in the sense that it cannot be over inclusive (reaching more cases than necessary to fulfill its purpose) or under inclusive (omitting cases that would fulfill its purpose). Although there are some exceptions, strict scrutiny is very difficult to survive and usually results in the invalidation of a law.

As its name suggests, intermediate scrutiny falls somewhere between the rational basis test and strict scrutiny. It requires an important governmental purpose and the classification must be substantially related to that purpose. *See, e.g., Craig v. Boren*, 429 U.S. 190, 197 (1976) (“To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.”). In practice, the application of intermediate scrutiny may be more or less strict, depending on the context. *Compare United States v. Virginia*, 518 U.S. 515 (1996) (applying stricter form of intermediate scrutiny to invalidate Virginia Military Institute’s males-only admissions policy), *with Nguyen v. I.N.S.*, 533 U.S. 53 (2001) (applying deferential form of intermediate scrutiny to uphold more rigorous citizenship requirements for foreign born children of unmarried U.S. fathers than of unmarried U.S. mothers).

In the context of voting requirements, however, there are specific constitutional amendments prohibiting discrimination based on race (the Fifteenth Amendment) and gender (the Nineteenth Amendment). Accordingly, if the S.A.F.E. Act denies or abridges the right to vote because of race or gender, then it is likely per se invalid, without regard to whether it survives strict or intermediate scrutiny. In any event, its requirements have been defended as nondiscriminatory, and there is no suggestion that they would be valid if they do in fact discriminate on the basis of race or gender. Thus, the critical issue for purposes of this type of claim is whether the act’s requirements discriminate on the basis of race or national origin.

It is important to note that the Supreme Court has explicitly rejected the application of heightened constitutional scrutiny to several classifications potentially implicated by the S.A.F.E. Act, including the poor, the elderly, and the disabled. Thus, although there were some indications in some cases during the 1950s and 1960s that the Supreme Court was prepared to apply heightened scrutiny to laws discriminating against the poor, it refused to recognize wealth as a suspect classification in *Dandridge v. Williams*, 397 U.S. 471 (1970) and *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Not long thereafter, the Court held that age is not a suspect classification, upholding a state’s mandatory retirement age for law enforcement officers. *See Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976). Likewise, the Court declined to recognize disability as a suspect classification in *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), although it nonetheless held that the denial of a zoning variance to a group home for adults with developmental disabilities violated even the rational basis test because it was based on animus.

Accordingly, the principal discrimination claim at issue in the S.A.F.E. Act relates to race or national origin. There is no suggestion that the act discriminates on the basis of gender, and any disproportionate burden on the poor, the elderly, or the disabled would not be invalid unless it is motivated by animus against those groups (see below).

- **Because the S.A.F.E. Act’s requirements are facially neutral as to race or national origin, it will be treated as discriminatory for constitutional purposes only if there is proof of discriminatory intent, which may be proved by a stark pattern of disparate impact or by the circumstances surrounding the adoption of the act.**

The S.A.F.E. Act is “facially neutral” in the sense that it does not explicitly incorporate classifications based on race, national origin, gender, or other “suspect” characteristics. Accordingly, any discrimination claims are based on “disparate impact”; i.e., the claim that the proof of citizenship or photo ID requirement disproportionately burdens racial and ethnic minorities.

The Supreme Court has held, however, that the Constitution prohibits only intentional discrimination. Thus, facially neutral laws that disproportionately burden racial and ethnic minorities are unconstitutional only if it is shown that they were adopted for the purpose of excluding minorities. *See, e.g., Washington v. Davis*, 426 U.S. 229 (1976) (upholding use of high school diploma and test scores to determine promotions notwithstanding racially disproportionate impact); *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45 (1959) (upholding English literacy requirement for voting in the absence of proof of discriminatory intent or application). In practice, it may be very difficult to prove that facially neutral laws were adopted with discriminatory intent.

In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the Court discussed how to prove discriminatory intent in the context of a disparate impact claim. First, the disparate impact itself may create an inference of discriminatory intent, especially if the pattern cannot be explained by other, race-neutral reasons. *See, e.g., Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (concluding that drawing city boundaries into an irregular twenty-eight-sided figure that excluded all but a few of its 400 black voters without excluding a single white voter reflected intentional discrimination); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (licensing program for laundries applied to deny all applications by Chinese Americans while granting licenses to all but one white applicant violated equal protection). This sort of proof requires a particularly clear pattern that cannot be explained on other grounds; it is not sufficient to show a statistical probability that race is a factor. *See McCleskey v. Kemp*, 481 U.S. 279 (1987) (rejecting equal protection challenge to capital punishment notwithstanding statistical analysis demonstrating that race was a significant factor in the imposition of the death penalty); *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979) (concluding that although veteran’s preference beneficiaries were over 98% male, the statistical pattern did not establish discrimination based on sex because the desire to benefit veterans was a legitimate alternative explanation for the disparity).

Second, the courts may consider the procedural and substantive context of the challenged action, including:

- “The historical background of the decision . . . particularly if it reveals a series of official actions taken for invidious purposes”;
- “[t]he specific sequence of events leading up to the challenged decision”;
- “[d]epartures from normal procedural sequence”;
- “substantive departures . . . particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached”; and
- “[t]he legislative or administrative history . . . especially where there are contemporary statements by members of the decision making body, minutes of its meetings, or reports.”

Arlington Heights, 429 U.S. at 267-68. Because it seems unlikely that the S.A.F.E. Act’s disparate impact, standing alone, would be sufficient to establish discriminatory intent, the Advisory Committee will need to consider these factors to determine whether the S.A.F.E. Act violates equal protection or the Fifteenth Amendment.

In addition, if there is an especially bad fit between the requirements of a law and its alleged purposes, that may suggest that those purposes are a mere pretext, masking an improper purpose. The Supreme Court has applied this sort of reasoning in cases like *Romer v. Evans*, 517 U.S. 620 (1996), and *United States v. Windsor*, 133 S. Ct. 2675 (2013), concluding that laws adversely affecting homosexuals or same sex couples were based on “animus” and therefore invalid because the sweep and scope of the laws were so far removed from the supposedly legitimate justifications advanced on their behalf. *See also Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) (applying similar reasoning to conclude that denial of zoning variance was based on animus against adults with developmental disabilities). Although the Supreme Court has not used this sort of analysis to determine whether a facially neutral law discriminates on the basis of race, it has done so in regard to religious discrimination, in which facially neutral laws are also subject to the rational basis test unless there is proof of discriminatory intent. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (concluding that a city’s ban on animal sacrifice was motivated by religious discrimination because the scope of the ban did not match the city’s asserted health and safety or animal cruelty justifications).

Whether the S.A.F.E. Act reflects a discriminatory intent for purposes of constitutional claims based on equal protection or the Fifteenth Amendment may not be a critical question, however, because § 2 of the Voting Rights Act (VRA) provides greater protection against voting requirements with a racially disproportionate impact.

- **Section 2 of the Voting Rights Act (VRA) does not require proof of discriminatory intent, but rather prohibits voting requirements that have the effect of restricting the right to vote because of race, which is determined in light of the totality of circumstances, including multiple factors.**

The Voting Rights Act (VRA), originally adopted in 1964, provides additional protections against voting requirements, practices, and procedures that limit voting rights on the basis of race. Although the VRA was adopted pursuant to Congress’s authority to enforce the Fourteenth and Fifteenth Amendments, the Supreme Court has made clear that this power includes the

power to provide some protections that go beyond the protections of the Amendments themselves. Thus, for example, although the Supreme Court held in *Lassiter* that an English literacy requirement did not violate the Fifteenth Amendment, it also upheld the authority of Congress to prohibit the imposition of literacy requirements for students who have completed the sixth grade in American schools where the language of instruction was English. *See* 52 U.S.C. § 10303(e); *see also Katzenbach v. Morgan*, 384 U.S. 641 (1966) (upholding original version of this provision as within the scope of congressional power to enforce the Fourteenth and Fifteenth Amendments).

Of particular relevance here is § 2(a) of the VRA, as amended, 52 U.S.C. § 10301(a), which prohibits the adoption or application of any requirement that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color”² This provision prohibits state laws or requirements that **result** in discrimination without regard to **intent** or **purpose**. To underscore this point, § 2(b) further specifies that:

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Subsection (b) also provides that “[t]he extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered,” but adds a proviso that “nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.”

In practice, courts analyze § 2 claims using a two part framework in which plaintiffs must show:

- (1) That a challenged requirement imposes a discriminatory burden because “members of a protected class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice”; and
- (2) The burden is linked to social and historical conditions that have produced or currently produce discrimination against members of the protected class.

See, e.g., Veasey v. Abbott, 796 F.3d 487 (5th Cir. 2015) (upholding district court’s determination that Texas photo ID law violated § 2); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014), cert. denied, 135 S. Ct. 1735 (2015) (granting preliminary injunction against some parts of North Carolina elections reforms and affirming the denial of a preliminary injunction against other parts of the law because the plaintiffs had not shown irreparable harm).

In making these determinations, courts often consider several factors identified in the Senate Report accompanying the VRA, which the Supreme Court endorsed in *Thornburg v. Gingles*, 478 U.S. 30 (1986). These factors include:

² The validity of this provision was unaffected by *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), which invalidated the formula for determining the scope of the VRA’s “preclearance” requirements and thus rendered those requirements unenforceable. The preclearance requirements would not have applied to Kansas in any event.

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals;
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Id. at 36-37 (quoting S. Rep. No. 97-417, at 28-29 (1982)). Two other factors identified in the report (but not on the numbered list) are “whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group” and “whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.” *Id.*

Because it is easier to establish a violation of § 2 than to establish a violation of the Fourteenth or Fifteenth Amendment, and because courts generally prefer to avoid resolving unnecessary constitutional questions, the success of any discrimination claims will likely depend primarily on the application of § 2. If there is a violation of § 2, then the analysis of constitutional claims of discrimination is unnecessary. *See Veasey v. Abbott*, 796 F.3d at 513-14 (finding it unnecessary to address claims that Texas photo ID law requiring proof of citizenship imposed unconstitutional burdens on the right to vote). On the other hand, if the evidence is insufficient to show a violation § 2, then it is highly unlikely that the evidence would prove intentional discrimination.

- **Laws that impose undue burdens on the right to vote may violate the Constitution irrespective of discrimination, with the applicable level of scrutiny dependent upon the severity of the burden.**

The second type of voting rights claim focuses on the burdens imposed by voting requirements. Some burdens, such as a poll tax, are per se invalid. Other burdens may violate the Equal Protection Clause of the Fourteenth Amendment.³ Although there might be an argument that photo ID or registration requirements are a form of poll tax if it costs money to comply, the United States Court of Appeals rejected that claim in *Veasey*, 796 F.3d at 514-17, and it will not be further discussed here. The discussion that follows considers the analysis of equal protection claims based on the burdens imposed by the S.A.F.E. Act’s voter registration and photo ID requirements.

³ When regulation of political parties and primaries is involved, burdens on the right to vote may also implicate freedom of political association, which is guaranteed by the First Amendment. In addition, courts sometimes treat the right to vote as protected by due process. The analysis of freedom of association or due process claims does not differ materially from the equal protection analysis.

Although most challenges to the burdens imposed by voting requirements arise under the Equal Protection Clause, the focus of such claims is not the nature of the classification incorporated in the requirement, but rather the burden it imposes. As the Court explained in *Reynolds v. Sims*, 377 U.S. 533, 566 (1966), “the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators.” Thus, [d]iluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race” *Id.* Although *Reynolds* involved vote dilution as a result of legislative districts of unequal population size, a similar principle applies to other regulations that may burden the right to vote, including restrictions on voter registration or casting ballots.

Nonetheless, the Court has also recognized that federal, state, and local governments must regulate the electoral process and that such regulations will inevitably impose some burdens on some voters. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (reasoning that “[c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections” and that “[e]lection laws will invariably impose some burden upon individual voters”). As a result, the “rigorousness” of scrutiny “depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” *Id.* at 234. Under this approach, requirements that impose “severe restrictions must be narrowly drawn to advance a state interest of compelling importance,” but “the State’s important regulatory interests are generally sufficient to justify” “reasonable, nondiscriminatory restrictions.” *Id.* (internal quotation marks and citations omitted).

In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Court applied this framework to a photo ID requirement, although the precise meaning of the framework was the subject of disagreement between the plurality opinion and concurring Justices. The plurality treated the test as creating a sliding scale of scrutiny under which the more severe the burden the greater the degree of rigorousness applies. The concurring justices, however, viewed *Burdick* as establishing that the rational basis test would apply unless a restriction was “severe” in which case strict scrutiny applied. Regardless of their disagreements about the meaning of the *Burdick* framework, the plurality and concurring opinion agreed that the plaintiffs in that case failed to establish that the photo ID requirement in question imposed sufficient burdens to justify elevated forms of scrutiny, and upheld it as a reasonable measure to prevent voter fraud.

- **Although the Court upheld photo ID requirements in *Crawford v. Marion County Election Board* and the same framework would apply to the requirements of the S.A.F.E. Act, the result in *Crawford* is not controlling if, as applied to some voters, the S.A.F.E. Act’s requirements impose more severe burdens on the right to vote.**

Both plurality and concurring opinions in *Crawford* emphasized that the case involved a “facial” challenge to the Indiana photo ID requirement and that the plaintiffs in that case had made no showing that the requirement would prevent a large number of people from voting or severely burden their right to do so. In view of these limiting factors, the result in *Crawford* is not necessarily controlling as to the S.A.F.E. Act’s requirements.

First, the plurality in *Crawford* emphasized that the law was being challenged “on its face,” i.e., without regard to its application in a particular case. Ordinarily, parties challenge the validity of a law or regulation “as applied” to them or their conduct. Such a challenge focuses on the specific application and the remedy would be to prevent prohibit the unconstitutional application of the law, without necessarily invalidating the law itself. In such a challenge, the argument is that the law’s unconstitutional sweep is so broad that it must be invalidated as a whole. As the Court emphasized in *Crawford*, the standards for a successful facial challenge are especially difficult to meet. For example, it cited *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008), which described the standard as follows:

[A] plaintiff can only succeed in a facial challenge by “establish[ing] that no set of circumstances exists under which the Act would be valid,” i.e., that the law is unconstitutional in all of its applications.” . . . While some Members of the Court have criticized [this] formulation, all agree that a facial challenge must fail where the statute has a “ ‘plainly legitimate sweep.’ ” (citations omitted).

Although the facial challenge failed in *Crawford*, a parties whose voting rights are burdened might be able to challenge the law as applied to them, which requires a lesser showing. *See Lee v. Virginia State Board of Elections*, (E.D. Va. December 18, 2015), available at 2015 WL 9274922 (concluding that a facial challenge to state’s photo ID law was foreclosed by *Crawford*, but allowing an as-applied challenge to go forward).

Second, if the burdens imposed by the S.A.F.E. Act are more severe, or if there is better evidence that its provisions prevent or impede the right to vote, a higher level of scrutiny may apply and the state’s justifications may be insufficient. This point is most clear with respect to the proof of citizenship requirement for voter registration, insofar as the Indiana law did not impose such a requirement. In practice, proof of citizenship may be more difficult than obtaining a photo ID, especially insofar as under the S.A.F.E. Act, obtaining a driver’s license (which is a valid photo ID) does not of itself establish citizenship. Media accounts suggest that tens of thousands of voter registrations have been held in suspense because of the proof of citizenship requirements and that the Secretary of State’s office has sought to remove individuals from the list of voters whose registration is held in suspense (which would require them to register again). If accurate, these accounts might suggest that, as applied to some voters, the degree of burden imposed by the proof of citizenship requirement is more severe than the burden imposed by the photo ID requirement in *Crawford*. Nonetheless, it is unclear whether this burden would be severe enough to trigger higher levels of scrutiny.

The same point also applies to the S.A.F.E. Act’s photo ID requirement, if it is more difficult to satisfy than the requirement in *Crawford* or there is more evidence that it prevents some people from voting or otherwise imposes severe burdens on the right to vote. Ultimately, however, the success of any such challenge, even an as-applied challenge, would likely depend on proof that the photo ID requirement imposes a severe burden on some voters.

It should be noted that any effort by the state to require proof of citizenship to register and vote in federal elections would be preempted by the National Voter Registration Act, which requires states to accept registrations using a federal form that does require proof of citizenship, *see Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012), but that federal law does not apply to state

elections. The resulting dual system of registration and voting in national and state elections raises some distinctive state law issues, *see Belenky v. Kobach, supra*, which are beyond the scope of the Advisory Committee’s inquiry.

- **Even requirements that neither discriminate on the basis of race nor impose severe burdens may be invalid if they serve illegitimate purposes or are unrelated to the state’s legitimate interests in conducting free and fair elections.**

The Supreme Court’s cases also indicate that even nondiscriminatory laws that do not impose severe burdens may violate equal protection if they serve improper purposes or are unrelated to the state’s legitimate interests in the integrity of elections. Thus, for example, in *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966), the Court invalidated a poll tax in a state election, concluding that—even if the burden imposed was minimal—“a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard” because “[v]oter qualifications have no relation to wealth nor to paying or not paying this or any other tax.” In the context of the S.A.F.E. Act, limiting the franchise to citizens and preventing voter fraud are certainly legitimate purposes and the act’s requirements would appear to be related to them.

Nonetheless, there may be a constitutional problem if those purposes are a pretext for some other, improper goal. First, animus towards a politically unpopular group, if established, would be an illegitimate purpose. Second, and perhaps more pertinent, voter requirements intended to secure partisan political advantage would presumably be invalid. In *Crawford*, for example, the plurality observed that “[i]t is fair to infer that partisan considerations may have played a significant role in the decision” to adopt a photo ID requirement and that “[i]f such considerations had provided the only justification for a photo identification requirement, we may also assume that [it] would suffer the same fate as the poll tax at issue in *Harper*.” 553 U.S. at 203. Nonetheless, the plurality went on to state that “if a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators.” *Id.* at 204. Thus, the plurality concluded that the state interests identified as justifications for the photo ID requirement were “both neutral and sufficiently strong to require us to reject petitioners’ facial attack on the statute.” *Id.*

As with the other aspects of the *Crawford* decision, this analysis may not be controlling in this case, particularly if there is an as-applied challenge and the evidence of a partisan purpose is stronger.

**Written Testimony of Elle Boatman, Founder and Creative Director of FaceOfTrans.com,
co-Founder of WiTCoN**

I think that the culmination for transgender people regarding the SAFE Act is the rejection they are likely to experience at their polling center, which is ultimately the end result of a number of barriers that trans people face in obtaining accurate, legal identification documents. It can be difficult or even impossible for transgender people to obtain photo ID that accurately reflects their legal/preferred name, gender identity, or even their appearance.

Firstly, the legal process for a trans person changing their name is often intimidating and cost-prohibitive. Even if one does manage to legally change their name, obtaining updated documents can be a nightmare of bureaucratic red tape. In Kansas, updating your name on your license is a two-step process (two trips to court and one to the DMV) and the process for updating your gender is a completely separate process which requires a physician's note. Many trans people in Kansas are unable to access a health care professional willing to provide the required medical documentation. Accurate birth certificates can often be impossible for trans people to obtain as many states severely restrict or do not allow you to update birth certificate information.

An incident in West Virginia was made famous due to DMV clerks denying service to trans women based on their appearance, telling them that they would have to remove any and all makeup and wigs before they would be allowed to be photographed. I personally know a trans woman, my fiancée, who was turned away from her polling place in Wichita because her license photo did not look enough like her.

In short, the SAFE Act has immense potential to put a transgender person in a very uncomfortable and possibly dangerous situation. The trans person is unduly required to "out" themselves to not only the polling official but to everyone within hearing range of the conversation, and they will still most likely be wrongly turned away and unable to vote for all of their trouble

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Barriers to Voting in Louisiana



A Briefing Paper by the
Louisiana Advisory Committee for the
United States Commission on Civil Rights

June 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Louisiana Advisory Committee to the
U.S. Commission on Civil Rights**

The Louisiana Advisory Committee to the U.S. Commission on Civil Rights submits this briefing paper detailing civil rights concerns associated with barriers to voting in Louisiana. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Louisiana. The contents of this report are primarily based on testimony the Committee heard during hearings on November 15, 2017 in Grambling, Louisiana and December 6, 2017 in Baton Rouge, Louisiana.

This report documents civil rights concerns raised by panelists with respect to barriers to voting throughout the state of Louisiana and discusses possible strategies for improving voter access in Louisiana. Based on the findings of this report, the Committee offers to the Commission recommendations for addressing this issue of national importance. The Committee recognizes that the Commission has previously issued important studies about voting and civil rights nationwide and hopes that the information presented here aids the Commission in its continued work on this topic.

**Louisiana State Advisory Committee to the
U.S. Commission on Civil Rights**

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Background

For its FY2018 statutory report¹, the United States Commission on Civil Rights chose to assess voting rights obstacles in the United States and examined the U.S. Department of Justice's voting rights enforcement efforts following the 2006 reauthorization of the Voting Rights Act², including the impact of the *Shelby County*³ decision, as well as the proliferation of restrictions on voter access.⁴

The authorizing statute of the Commission mandates the creation of an advisory committee in each of the 50 states and the District of Columbia, including the Louisiana Advisory Committee (Committee).⁵ The Committee is tasked to advise the Commission in writing of any knowledge of any alleged deprivation of voting rights.⁶ The Committee is also tasked to advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁷

The Louisiana Advisory Committee, through majority vote at a meeting held on September 5, 2017, found the topic of the Commission's FY2018 Statutory Report to be of mutual interest, and sought to examine barriers to voting in the state of Louisiana which may have a discriminatory impact on voters based on race, color, disability status, national origin, and/or the administration of justice.

The Committee sought to discover what obstacles to voting, if any, exist in Louisiana. Additionally, the Committee questioned the impact, if any, of the *Shelby County* decision, which held Section 4(a) of the Voting Rights Act as unconstitutional, eliminating the preclearance requirement for changing voting laws in the state of Louisiana. The Committee also sought to discover the proliferation, if any, of restrictions on voter access in the state of Louisiana.

This brief and the recommendations included within were adopted by a majority of the Committee on June 1, 2018.

¹ 42 U.S.C. § 1975 (c)(1); The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

² Pub.L. 88-352, 78 Stat. U.S.

³ 570 U.S. 2 (2013)

⁴ U.S. Comm. on Civil Rights, News Release, June 19, 2017.

⁵ 42 U.S.C. § 1975 (a)

⁶ Charter for the U.S. Comm. on Civil Rights Louisiana Advisory Committee, Sec.4

⁷ *Id.*

EXECUTIVE SUMMARY

Congress adopted the Voting Rights Act of 1965⁸ (VRA) to end the “blight of discrimination in voting... [which had] infected the electoral process in parts of our country for nearly a century.”⁹ Section 5 of the VRA required certain states and localities to obtain federal approval before implementing any change in a voting practice or procedure.¹⁰ To obtain approval, known as *preclearance*, covered jurisdictions had to demonstrate that a voting change neither had the purpose nor the effect of discrimination based on race, color, and/or membership in a language minority group.¹¹ Covered jurisdictions had the burden of proof in demonstrating the absence of discrimination.¹² Section 5 applied to nine states, including the state of Louisiana, in their entirety. Section 4(b)¹³ of the VRA contained a coverage formula that identified which jurisdictions were subject to Section 5 preclearance.

In 2013 the United States Supreme Court in *Shelby County v. Holder*¹⁴ invalidated Section 4(b) of the VRA using the rationale that the formula was outdated, therefore, an impermissible standard by which to subject any jurisdiction to the preclearance requirements of Section 5. The *Shelby County* ruling paralyzed Section 5 of the VRA until Congress revises the formula of Section 4.

Without the protections of Section 5, Louisiana voters must wait until they are aggrieved before seeking judicial intervention. Lawsuits prompted by voting restrictions, once handled administratively by the Justice Department, must now be addressed through more expensive and less efficient litigation. Once such case in Terrebonne Parrish, Louisiana, alleged the use of at-large voting as a means to maintain a racially segregated 32nd Judicial District Court.¹⁵ Despite comprising 20 percent of the parish electorate, no Black candidate had ever been elected in the face of opposition in the district under the at-large system.¹⁶ The District Court held the at-large voting system had discriminatory or dilutive effect, in violation of the VRA.¹⁷

This briefing paper results from the testimony provided during the November 15, 2017 hearing held on the campus of Grambling University and the December 6, 2017 meeting held in Baton Rouge, Louisiana, and related testimony submitted to the Committee during the open period of public comment.

⁸ Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2000)).

⁹ *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966).

¹⁰ 42 U.S.C. § 1973c (2000).

¹¹ 42 U.S.C. § 1973c(a) (2012).

¹² *Georgia v. United States*, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. § 51.52(a) (2005) (hereafter cited as “Section 5 Procedures”).

¹³ 42 U.S.C. § 1973b(b) (2000). Transferred to 52 U.S.C. 10303.

¹⁴ *Shelby County v. Holder*, 570 U.S.529, 133 S. Ct. 2612 (2013).

¹⁵ *Terrebonne Parish Branch NAACP, et al. v. Edwards, et al.* 274 F.Supp. 3d 395 (2017).

¹⁶ *Id.*

¹⁷ *Id.*

Introduction

The Fourteenth and Fifteenth Amendments to the Constitution guaranteed citizens the right to vote free of discrimination. There has, however, been a history of efforts to render the guarantee meaningless. An understanding of this history is relevant to an understanding of the progress of minorities in Louisiana under Federal voting laws, and the obstacles which they face in achieving full and free participation in the electoral and political process.

The Reconstruction program of 1867 took power away from the white Southern governments and gave it to the military rulers of the five military districts established.¹⁸ Under the Reconstruction legislation these military rulers, within a year, registered more than 700,000 African-Americans to vote, slightly more than the number of whites then registered in the South.¹⁹ The temporary suffrage arrangements in the reconstruction legislation, coupled with the lack of clarity as to the application of the 14th Amendment to the franchise, Congress proposed the 15th Amendment, which was ratified on March 30, 1870.²⁰ This Amendment contains the declaration that the right to vote “shall not be denied on account of race, color, or previous condition of servitude.”²¹

Despite these protections, African-American voting and political participation was hindered by harassment and intimidation and subject to exploitation. Testimony collected by a subcommittee of the U.S. House of Representatives Committee on Elections in the Louisiana contested election cases of 1868 showed that

*over 2,000 persons were killed, wounded and otherwise injured in Louisiana within a few weeks prior to the presidential election; that half the state was overrun by violence; midnight raids, secret murders, and open riot kept the people in constant terror until the Republicans surrendered all claims, and the election was carried by the (white) democracy.*²²

The African-American’s tenuous foothold in politics in the South essentially ended with the Compromise of 1877, in which Southern Democrats helped resolve a contested presidential election by supporting Republican Rutherford B. Hayes, with the understanding that demands of white southerners would be looked upon with more favor than they had been in the past.²³ Democratic white supremacists quickly moved to consolidate power. The 1890 Mississippi Constitutional Convention adopted the scheme of requiring, as a requisite for registration, a “reasonable” interpretation of the Constitution to eliminate the African-American voter without

¹⁸ Act of March 2, 1867, Pub. L. 68, 14 Stat. 428; William Dunning, *Reconstruction, Political and Economic 1865-1877* (Harper Torchbook, 1962), pp. 54-59.

¹⁹ John Franklin, *Reconstruction: After the Civil War* (Chicago, University of Chicago Press, 1961), p. 80.

²⁰ Franklin, *Reconstruction: After the Civil War*, pp. 83-84.

²¹ U.S. Const. Amend. XV.

²² Report of the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States, Rep. No. 41, 42nd Congress, 2nd Session, pt. 1, at 21-22 (1872).

²³ Vann Woodward, *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction* (1951).

overtly violating the 15th Amendment.²⁴ This scheme, known as the Mississippi Plan, was quickly adopted in other Southern States. To avoid disenfranchising whites, many states passed a so-called grandfather clause. The effect of which was to permit certain classes of individuals, defined so as to exclude African Americans, to register permanently within a specified period without the necessity of meeting literacy or other tests.²⁵

Between 1895 and 1910 other Southern States set up similar qualifications for voting, and new ones such as the “good character” tests, they enacted disenfranchising constitutions which required the payment of a poll tax, they set up property qualifications for registration, and they required applicants to pass literacy and “civic understanding” tests.²⁶ By 1900, the African-American vote in the South virtually had disappeared. Figures from Louisiana attest to the efficacy of the methods used to disenfranchise the minority vote. In Louisiana in 1896, there were 130,334 African-Americans registered to vote; in 1900, after adopting a new constitution with aspects of the Mississippi Plan, there were only 5,320.²⁷ In an effort to circumvent the 15th Amendment and eradicate minority participation in the political process, many states adopted the most formidable barrier of all – the white primary.²⁸

By 1944, after more than half a century of African-American disenfranchisement, the Supreme Court voided as unconstitutional the white primary,²⁹ however when one form of voting discrimination was identified and prohibited another sprang up in its place.³⁰ Discriminatory measures such as voucher requirements, at-large voting, redistricting, poll taxes, literacy tests, and citizen tests persisted.

Eventually through legislation and Congressional action, reforms were made:

- 1957 The Civil Rights Act of 1957³¹ authorized the U.S. Attorney General to file lawsuits on behalf of Americans denied the right to vote.
- 1960 The Civil Rights Act of 1960³² made collection of state voter records mandatory and authorized the U.S. Justice Department to investigate and access the voter data and history of all states in order to carry out Civil Rights legislation.
- 1962 In *Baker v. Carr*³³, the Supreme Court ruled that Constitutional protection extended beyond absolute deprivation of the franchise (re-districting falls under the equal protection clause.)
- 1964 The ratification of the 24th Amendment³⁴ outlaws poll taxes nationwide.

²⁴ V. Wharton, *The Negro in Mississippi* (Harper Torchbook, 1965), pp. 214-215.

²⁵ U.S. Commission on Civil Rights, *Freedom to the Free*, pp. 57-58 (1963).

²⁶ V.O. Key, *Southern Politics*, pp.578-618 (1949).

²⁷ Woodward, at 85. By 1904, African American voter registration in Louisiana was a mere 1,342.

²⁸ *Id.* at 84.

²⁹ *Smith v. Allwright*, 321 U.S. 649 (1944).

³⁰ *South Carolina v. Katzenbach*, 383 U.S. 301, 311 (1966).

³¹ Pub. L. 85-31, 71 Stat. 634, (enacted Sep. 9, 1957).

³² Pub. L. 86-449, 74 Stat.89, (enacted May 6, 1960).

³³ 369 U.S. 186 (1962).

³⁴ U.S. Const. Amend. XXIV.

- 1964 The Civil Rights Act of 1964³⁵ made discrimination on the basis of race, national origin, gender, or religion in voting illegal.
- 1965 The Voting Rights Act of 1965³⁶ prohibited any election practice that denied the right to vote to citizens on the basis of race and forced jurisdictions with histories of voter discrimination to submit any changes to its election laws to the government for Federal approval prior to taking effect.

Despite the passage of the Voting Rights Act it became apparent that guaranteeing equal access to the polls would not eliminate other racially discriminatory voting practices such as voting dilution. These types of practices are known as second-generation barriers and they create obstacles to minority voting through racial gerrymandering and redrawing of legislative districts in an “effort to segregate the races for purposes of voting.”³⁷ Another barrier is the system of at-large voting instead of district-by-district voting in a voting district containing a large number of minority voters. At-large voting effectively eliminates the votes of the minority population and cuts down the right to vote just as effectively as denial of access to the ballot.³⁸

In *Shelby County v. Holder*³⁹ Chief Justice Roberts, writing the opinion for the majority said “[V]oting discrimination still exists; no one doubts that.”⁴⁰ Despite that observation, the Supreme Court in *Shelby* declared unconstitutional the coverage formula set out in Section 4(b) of the Voting Rights Act of 1965. Without that formula, Section 5 cannot be enforced and the preclearance protections against changes to voting laws are immobilized. According to the Court, the tests and devices that blocked ballot access have been forbidden nationwide for over 40 years...yet the Act has not eased §5’s restrictions or narrowed the scope of §4’s coverage formula...”⁴¹ This observation belies the fact that between 1982 and 2006, the Department of Justice blocked over 700 voting changes based on a determination that the changes were discriminatory and that the changes blocked by preclearance were “calculated decisions to keep minority voters from fully participating in the political process.”⁴²

The effects of the *Shelby* decision were swift, just three years after the Courts decision, 14 States had new voting restrictions in place for the first time in a presidential election.⁴³ Numerous states have enacted strict Voter ID laws, and felons (who are disproportionately racial and ethnic minorities) struggle to regain the franchise.

³⁵ Pub. L. 88-352, 78 Stat. 241, (enacted July 2, 1964).

³⁶ Pub. L. 89-110, 79 Stat. 437, (enacted Aug. 6, 1965).

³⁷ *Shaw v. Reno*, 509 U.S. 630, 640 (1993).

³⁸ *Shaw*, 509 U.S. at 640-641.

³⁹ *Shelby County v. Holder*, 570 U.S. 2 (2013).

⁴⁰ *Id.* at 2 (2013)

⁴¹ *Id.* at 3.

⁴² H.R. Rep. 109-478, at 21 (1965).

⁴³ Brennan Center for Justice, New Voting Restrictions, <https://www.brennancenter.org/new-voting-restrictions-america>. Last accessed September 15, 2017

On August 17, 2017, a federal court ruled that Louisiana’s use of at-large voting for electing five members to the 32nd Judicial District Court violated the Voting Rights Act of 1965 and the U.S. Constitution.

Issues and Findings

Polling Locations and Location Selection

In Louisiana, the Parish Board of Election Supervisors is the authority in each parish (county) that has the power to create election precincts. The same body selects the polling locations and submits the suggested locations to the Secretary of State’s office for approval.

As stated by Angie Rogers, the Commissioner of Elections for the state of Louisiana, during her testimony on December 6, 2017, “[Louisiana] law requires that every precinct is assigned a polling place.” Currently, however, there are 3,904 precincts and 2,068 polling locations in Louisiana, indicating that on average two precincts are served by one polling location.⁴⁴

That there are about only half as many polling locations than there are election precincts is because the Parish Board of Election Supervisors has the authority (with the approval of the Secretary of State) to consolidate polling locations. Merging polling locations implies that a particular polling location serves more than one precinct. According to testimony of Dr. Joshua Stockley, Professor of Political Science at the University of Louisiana - Monroe, on November 15, 2017, Louisiana Parish Boards of Supervisors had eliminated 103 polling places since 2012.⁴⁵ This means that these 103 polling places are merged with other existing polling places, and that most voters who used to vote at these 103 now-closed polling places need to travel longer distances to the new polling places assigned to them.⁴⁶

Cost considerations are a justification provided for consolidating polling locations. Kyle Ardoin, then-First Assistant to Secretary of State Tom Schedler, stated “We have budget concerns,” and “[the cost of operation is] approximately \$1,300 per polling location.”⁴⁷ While closing of a polling location seems to generate of \$1,300 of savings to the state⁴⁸, the reduction in the number of polling locations handicaps voter participation.

This concern was highlighted by the testimony of Senator Karen Peterson, who gave the example of the Pontchartrain Park area of New Orleans, and indicated that “Today, the only polling place for the area’s precincts are (sic) located at Chef Menteur Highway at the Union Baptist Theological

⁴⁴ Kyle Ardoin, testimony, *Hearing before the Louisiana Advisory Committee*, Baton Rouge, LA, Dec. 6, 2017, transcript, pp.177 (hereafter cited as BR Hearing Transcript).

⁴⁵ Joshua Stockley, testimony before the Louisiana Advisory Committee, hearing, Grambling, LA, November 15, 2017, transcript, p. 1 (hereafter cited as GR Hearing Transcript).

⁴⁶ *Id.*

⁴⁷ Ardoin Testimony, *BR Hearing Transcript*, pp. 192-93.

⁴⁸ *Id.*

Seminary. This location is not easy for many residents to get to and represents a reduction in polling places in the area.”⁴⁹

This point was also emphasized by Carl Galmon, a board member of the National Voting Rights Museum and Institute, who stated that the residents in the election precinct of the Pontchartrain Park area, who have no access to transportation, now need to walk over 1.5 miles to vote because of the reduction in the number of polling locations.⁵⁰

Kyle Ardoin, in his rebuttal testimony, observed that “[Secretary of State’s office] quickly did the search with the local governing authority and no one could find what she was talking about.”⁵¹ He added that “But we did find another instance similar there... The precinct was moved two miles because the entity either didn’t want the polling location there anymore or the local governing authority felt like it was serving people best in that new location. And I find it hard to believe that in Orleans, the Clerk of Court, the City Council, the Mayor, would try to disenfranchise people.”⁵²

This statement of Mr. Ardoin underlines the lack of clarity related to the decision-making process regarding the polling locations. The statement implies that the City Council and the Mayor have the authority to determine the number of, and the location of polling locations. Elsewhere during the same testimony, Mr. Ardoin explained that

*“Polling locations are selected by each Parish’s local governing authority, then submitted to the Secretary of State’s office for review to ensure compliance with state and federal laws. [The local governing authority] comprises of the Registrar of Voters, the Clerk of Court, a Republican Member, a Democratic Member, both assigned by their own Parish parties; and then the Governor gets an appointee. So there are five members. Everything happens within that unit.”*⁵³

These conflicting statements regarding who has the authority in determining the polling locations reflect the arguably less-than fully-transparent nature of the decision-making process and may contribute to the confusion and frustration of voters.

Another important aspect of consolidating polling locations is that the added burden of traveling to a now-farther-away polling location falls disproportionately on low-income voters who have less time and fewer resources that can be devoted to traveling in order to exercise their right to vote.

Louisiana Secretary of State Tom Schedler wrote that “During the December 6th hearing, information was provided to the Commission that Louisiana’s polling locations were distributed disproportionately using race and/or income as the determining factor. Louisiana law, not demographics, mandates the number and location of Louisiana’s polling locations.”⁵⁴ The Secretary of State refers to the testimony of Ms. Jhacova Williams, however her testimony did not

⁴⁹ Sen. Karen Peterson, Testimony, *Hearing before the Louisiana Advisory Committee*, Transcript, p. 26.

⁵⁰ Carl Galmon, Testimony, *Hearing before the Louisiana Advisory Committee*, telephonic hearing, April 23, 2018, p.11 (hereafter cited as *Tel Hearing Transcript*).

⁵¹ Ardoin Testimony, *BR Hearing Transcript*, pp. 193.

⁵² *Id.*

⁵³ *Id.* at 179.

⁵⁴ Louisiana Secretary of State Tom Schedler to Louisiana Advisory Committee, January 16, 2018 (hereafter cited as Schedler letter).

conclude that race and/or income were used as factors that determine polling locations.⁵⁵ Rather, it concluded that the number of polling locations in a geographical area is correlated with the socio-economic attributes of those geographical areas, such as racial composition and income.⁵⁶

Put differently, although the law dictates that only the number of registered voters should be related to the number of polling locations in a geographical area such as a precinct, a census tract, or a Parish, a statistical analysis of the data from Louisiana shows that the racial make-up of an area is a predictor of the number of polling locations in that area.

The testimony of Ms. Williams as well as her subsequent analysis show shows that the number of polling locations per 1,000 registered voters in a census tract is negatively related to the number of black residents in that census tract.⁵⁷ This indicates that there are fewer polling locations per voter in a geographical area if that area has more black residents. This in turn implies that black residents face longer travel distances to reach a polling location.

As indicated above, the Parish Board of Election Supervisors has the authority to determine the polling locations and as well as to make the decision to close and merge existing polling locations (with the approval of the Secretary of State). Parish Board of Election Supervisors is composed of the Registrar of Voters, the Clerk of Court, a Representative of the Republican Party, a Representative of the Democratic Party and the Governor's Appointee.

The Clerk of the Court is an elected member. The Registrar of Voters, on the other hand, is appointed by the governing authority of each parish for a life-time appointment. That is, the Registrar of Voters cannot be removed from office once appointed; thus he/she has no accountability to voters. Therefore, the structure of the Board of Election Supervisors implies that three of the five of its members (The Registrar of Voters, Governor's Appointee, and the Representative of one of the major parties) may capture the decision-making process related to polling locations. This means that it is particularly important to create mechanism that would allow significantly more transparency and accountability.

Early Voting

Louisiana statutory law provides for early voting periods prior to each election.⁵⁸ The early voting period is anywhere from 14 days to 7 days before each election, from 8:30a.m. to 6:00p.m., except on Sundays and legal holidays.⁵⁹ Any registered voter may choose to cast their vote during the

⁵⁵ Jhacova Williams Testimony, *BR Hearing Transcript*, p. 9.

⁵⁶ *Id.* at 16.

⁵⁷ The analysis employs 1,124 census tracts in 64 parishes in Louisiana, adjusting for differences in per capita income, population density, and the proportion of senior citizens between census tracts, as well as accounting for unobserved between-parish differences (parish fixed-effects). A census tract is a small geographical unit determined by the U.S. Census Bureau. Thus, socio-economic information on the residents in each census tract is available from official government sources. Census tracts are designed to fall within the boundaries of a single county, and in Louisiana the average census tract includes about three election precincts.

⁵⁸ La. Rev. Stat. Ann. §18:1309.

⁵⁹ Secretary of State, Attachment 7: Early Voting, Louisiana Voters' Bill of Rights and Voting Information p.1

early voting period.⁶⁰ Early voting is held at each parish's Registrar of Voters and additional specifically designated polling locations in each parish.⁶¹ Information on early voting locations and dates are available via the Secretary of State's www.GeauxVote.com website and mobile app.

Early voting periods are integral to protecting the right to vote, by enabling flexibility, accessibility, and convenience for registered voters to exercise their franchise.⁶² Early voting can also be helpful to registrars in preparing for an election day, by providing early indicators of likely election day turnout.⁶³ Last, early voting is helpful for clarifying eligibility issues before election day. For example, a representative from the Advocacy Center testified that a disabled early voter was not allowed to cast a ballot during the early election period, but after an opportunity to clarify her eligibility, that same person was allowed to vote on election day.⁶⁴

Louisiana voters, consistent with voters nationwide, appear to be increasingly utilizing early voting options.⁶⁵ In 2008, early voters constituted 15% of the total votes cast.⁶⁶ In 2012, early voters constituted 18% of the total votes cast, increasing to 26% of total votes cast in 2016.⁶⁷

The Louisiana State Advisory Committee received testimony indicating barriers to early voting across the state. These barriers included the locations available for early voting, the periods of time allocated to early voting, and the accessibility of early voting.

Early Voting Locations

There are 92 early voting locations in Louisiana, covering 3,904 precincts within 64 parishes (counties).⁶⁸ The Secretary of State noted that two additional early voting locations in Bossier and LaFourche parishes will be available in Spring 2018, for a total of 94 early voting locations.⁶⁹ According to Senator Karen Peterson (D-New Orleans), there are four early voting locations each in the three most populated parishes of East Baton Rouge, Jefferson, and Orleans.⁷⁰ Caddo parish, which is the fourth most populated parish, has only one location for 260,000 residents.⁷¹ The

⁶⁰ Id.

⁶¹ Secretary of State, "Early Voting,"

<https://www.sos.la.gov/ElectionsAndVoting/Vote/VoteEarly/Pages/default.aspx> (last accessed May 26, 2018).

⁶² Diana Kasdan, *Early Voting: What Works*, Brennan Center for Justice at New York University School of Law, Oct. 31, 2013 available at: https://www.brennancenter.org/sites/default/files/publications/VotingReport_Web.pdf

⁶³ Dr. Kareem Crayton, Testimony, *Hearing before the Alabama State Advisory Committee*, Transcript, Alabama SAC Hearing p. 60

⁶⁴ Susan Meyers Testimony, *BR Hearing Transcript*, p. 100

⁶⁵ Philip Bump, "America Keeps Voting Earlier – And It Keeps Not Affecting Turnout Very Much", The Washington Post, Dec. 29, 2016, at: https://www.washingtonpost.com/news/the-fix/wp/2016/12/29/america-keeps-voting-earlier-and-it-keeps-not-affecting-turnout-that-much/?utm_term=.5bab91914610

⁶⁶ Ardoin Testimony, *BR Hearing Transcript*, p.100.

⁶⁷ Id.

⁶⁸ Id. at 177.

⁶⁹ Id. at 178.

⁷⁰ Sen. Peterson Testimony, *BR Hearing Transcript*, pp. 25-26.

⁷¹ Id.

remaining parishes have anywhere from one to three early voting locations, serving “as many as 200,000 residents” each.⁷²

Most of the panelists agreed that Louisiana does not have sufficient locations for early voting and that the state’s failure to secure additional early voting locations frustrates exercise of the right to vote.⁷³ Testimony indicated that the lack of early voting locations undermines the convenience of offering early voting in the first place. The distance to an early polling location can impact the elderly, the disabled, and the poor.⁷⁴ Even if a person can travel to an early voting location, the lack of sufficient locations can lead to long lines and wait times.⁷⁵ Carol Deville from the League of Women Voters testified that although the city of Lafayette is the fourth largest city in the state, Lafayette only has one early voting location.⁷⁶ She said “Eleven other parishes smaller in population in Lafayette, including St. Martin and St. Mary Parishes have more than one early voting station.”⁷⁷ The lack of sufficient early voting locations may also be correlated with minority populations in those areas.⁷⁸ Nationwide, studies indicate that areas with higher minority populations have fewer early polling locations.⁷⁹

Kyle Ardoin testified budgetary issues prevent opening additional early voting locations.⁸⁰ Early voting locations, unlike election day voting locations, must have a hardwire connection to the internet to check a person’s eligibility to vote in the state’s database.⁸¹ According to Ardoin, to open a new early voting site would cost approximately \$30,000-\$60,000 and approximately \$10,000 annually thereafter to maintain the site.⁸² However, the Secretary of State is interested in pursuing technology that would enable early voting anywhere in the state, instead of requiring a person to cast their early ballot in their parish of residence. .⁸³

Early Voting Periods

Early voting in Louisiana ends seven days before election day and does not include Sundays or legal holidays. Where a legal holiday falls within the early voting period, an additional day is added to the beginning of the early voting period under new legislation supported by the Secretary of State.⁸⁴

⁷² *Id.*

⁷³ This appears to be consistent with, but also distinct from, testimony indicating that the closure or “merging” of election day voting locations is a barrier to voting for certain populations.

⁷⁴ Sen. Peterson Testimony, *BR Hearing Transcript*, pp. 25-26.

⁷⁵ *Id.*

⁷⁶ Carol Deville Testimony, *BR Hearing Transcript*, pp. 73-75

⁷⁷ *Id.*

⁷⁸ Williams Testimony, *BR Hearing Transcript*, pp. 13 and 36.

⁷⁹ *Id.*

⁸⁰ Ardoin Testimony, *BR Hearing Transcript*, pp. 186-187.

⁸¹ *Id.* at 184-185

⁸² *Id.* at 212

⁸³ *Id.* at 177

⁸⁴ Ardoin Testimony, *BR Hearing Transcript*, p. 207.

There appears to be broad community support for allowing early voting on Sundays.⁸⁵ Senator Karen Peterson testified that many other states allow early voting on Sundays, which has provided a “successful opportunity for participation.”⁸⁶ The representative of Secretary of State’s office, testifying in his personal capacity, argued that allowing early voting on Sundays would deprive staff of “their day of worship,”⁸⁷ though he also acknowledged that different faiths may worship on different days, such as Fridays and Saturdays.⁸⁸

There also appears to be support for longer early voting periods in general.⁸⁹ Several states provide for a continuous early voting period up until election day.⁹⁰ Testimony indicated that people generally don’t know when the early voting period is. If “early voting . . . just went straight up to election day, people might actually know if it’s a couple of days before voting, they could go.”⁹¹ Nonprofits, like the Power Coalition, can provide support in the form of transportation or childcare with more predictable and extended early voting periods.⁹²

The Secretary of State’s office testified that staffing and budgets prevent extending the early voting period. The office lacks sufficient staff to extend the early voting period up to election day. “[W]e’re, basically, performing two elections every election, the early voting and election day. And to mix the two would create havoc in the system,” and would require double to triple the number of employees.⁹³ Any extension of the time period for early voting would also impinge on staff time required to prepare military and overseas ballots.⁹⁴ The Secretary of State’s office also cited the cost of early voting. The Secretary of State is required to pay for any overtime costs incurred by the local Registrars of Voting related to early voting, as well as the daily cost of \$150/day for poll commissioners who assist the registrars.⁹⁵ Early voting for the 2016 Presidential election cost the state approximately \$600,000.

Accessibility

Testimony indicated several barriers in early voting for those with disabilities.⁹⁶ Louisiana law provides that a physically disabled person can have the assistant of their choice in voting.⁹⁷

⁸⁵ Sen. Peterson Testimony, *BR Hearing Transcript*, p. 60.

⁸⁶ *Id.* at 25.

⁸⁷ Ardoin Testimony, *BR Hearing Transcript*, pp. 207-208..

⁸⁸ *Id.* at 207.

⁸⁹ Sen. Peterson Testimony, *BR Hearing Transcript*, p. 60; and Ashley Shelton Testimony, *BR Hearing Testimony*, p. 89.

⁹⁰ Sen. Peterson Testimony, *BR Hearing Transcript*, p. 60.

⁹¹ Deville Testimony, *BR Hearing Transcript*, p. 79.

⁹² Shelton Testimony, *BR Hearing Transcript*, p.89

⁹³ Ardoin Testimony, *BR Hearing Transcript*, p. 186

⁹⁴ *Id.* p. 207

⁹⁵ *Id.* pp. 205-206

⁹⁶ Peterson Testimony, *BR Hearing Transcript*, p. 23; Deville Testimony, *BR Hearing Transcript*, p.72; Meyers Testimony, *BR Hearing Transcript*, p. 94.

⁹⁷ Meyers Testimony, *BR Hearing Transcript*, p.68.

Early voting locations can also present difficulties for the physically disabled. Carol Deville from the League of Women Voters testified that the one available location for early voting in Lafayette, due to a large turnout and building design, required voters to use the interior evacuation stairwell to access the voting machines on the third floor.⁹⁸ People who were not visibly disabled or lacked disability ID were required to stand in long lines in the stairwell to vote.⁹⁹ The two small elevators could not handle the volume and the lobby was crowded with people in wheelchairs and with canes.¹⁰⁰ There were also “insufficient handicapped accessible parking spaces.”¹⁰¹ Though the League of Women Voters of Lafayette is working with the city-parish authorities to address these concerns before the next gubernatorial election in 2019, all early voting locations should be assessed for their compliance with the Americans with Disabilities Act and HAVA.

Additional Early Voting Issues

Testimony also indicated several issues, which do not appear to be limited to early voting in particular. First, Carol Deville testified that at least 31 irregularities were noted due to improperly recording of early votes in one precinct’s registry.¹⁰² In addition, testimony indicated that similar to election day voting staff, early voting staff from the Registrars of Voters need additional training.¹⁰³

Same Day Voter Registration

Federal law requires that in federal elections the registrant must be registered “not later than the lesser of 30 days, or the period provided by State law, before the date of the election.”¹⁰⁴ In other words, states may allow anything from same day registration up to a thirty-registration requirement prior to federal elections. Louisiana’s current deadline for all elections is thirty days for mail-in or in-person registration, and twenty days for online registration.¹⁰⁵

⁹⁸ Deville Testimony, *BR Hearing Transcript*, p.75.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 77.

¹⁰³ Meyers Testimony, *BR Hearing Transcript*, p.99.

¹⁰⁴ 52 U.S.C.A. § 20507(a)(1)(A)-(D).

¹⁰⁵ La. R.S. 18:135(A)(1) (30 days for mail or in-person registration); La. R.S. 18:135(A)(3) (20 days for online registration). See also <https://www.sos.la.gov/ElectionsAndVoting/RegisterToVote/Pages/default.aspx>. Louisiana implemented online registration in 2009 and, at the time, was one of only three states to allow online registration. Testimony of Kyle Ardoin, Dec. 6, 2017 Hearing Transcript p167. See La. R.S. §18:115.1 for electronic registration details.

As of December 2017, Louisiana has 2,976,092 registered voters.¹⁰⁶ The most recent demographic breakdown (utilizing 2010 census data and 2014 registration data) shows the following percentages of eligible citizens were registered: 96.4% of eligible African American females; 97.7% of eligible white females; 81.2% of eligible white males; and 78.1% of eligible African American males.¹⁰⁷

Testimony before the Committee identified several barriers that the registration process in Louisiana creates for voting. Senator Karen Carter Peterson noted that many states have same day registration and that the thirty-day close period is too long.¹⁰⁸ She recognized that Louisiana was at the forefront of online registration and has fraud protections for that, but in terms of the “close” of registering voters, the State is not leading as it could.¹⁰⁹

Mr. Ron Wilson of the NAACP Legal Defense and Education Fund and Civil Liberties Union of Louisiana echoed these sentiments. He testified that the 30-day registration requirement was “one of the biggest barriers” to voting.”¹¹⁰ He noted that this practice did not “encourage the franchise . . . and is discouraging the right to vote instead of encouraging it. The access to the poll isn’t made easy [in Louisiana], isn’t made uncomplicated here.”¹¹¹ Finally, Mr. Galmon, a board member of the National Voting Rights Museum and Institute, noted that the waiting period for registration prevented voting.¹¹²

Senator Peterson and Messrs. Galmon and Wilson all recommended permitting same day registration in Louisiana to encourage more voter participation.¹¹³ Same day registration is the ability to register to vote and vote at the same location on the same day. Currently, there are seventeen states, plus the District of Columbia, that have some form of same-day registration.¹¹⁴ Louisiana’s Election Code recognizes that shortening the time between the close of registration and the election “may be more convenient to voters and increase citizen participation in the electoral process” but that current technology cannot adequately protect “the integrity of the electoral process.”¹¹⁵

The Code provides that in the event of new technologies or advancements in practices, the Secretary of State may present a request to the Legislature and they can move the date

¹⁰⁶ Ardoin Testimony, *BR Hearing Transcript*, p. 173.

¹⁰⁷ Ardoin Testimony, *BR Hearing Transcript*, p. 173.

¹⁰⁸ Peterson Testimony, *BR Hearing Transcript*, p. 60.; *See also* Galmon Testimony, *Tel Hearing Transcript*, pp. 12-13 (noting that many states permit same day voter registration).

¹⁰⁹ Senator Peterson also commented how the State looks to other states for areas such as gambling, smoking, and other areas but in terms of voter registration it has not. (Page 60-61)

¹¹⁰ Ron Wilson Testimony, *Tel Hearing Transcript*, p. 20.

¹¹¹ *Id.*

¹¹² Galmon Testimony, *Tel Hearing Transcript*, pp. 12-13.

¹¹³ Galmon Testimony, *Tel Hearing Transcript*, pp. 12-13, 24; and Peterson Testimony, *BR Hearing Transcript*, p. 60.

¹¹⁴ National Conference of State Legislatures, *Same Day Voter Registration* (Mar. 27, 2018), available at <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>. *See also* Brennan Center, *Automatic Voter Registration and Modernization in the States* (April 11, 2018), available at <https://www.brennancenter.org/analysis/voter-registration-modernization-states> (explaining the different types of same day registration).

¹¹⁵ La. R.S. § 18:135.1(a)

accordingly.¹¹⁶ Mr. Galmon testified that the registration technology is currently sufficient to prevent fraud,¹¹⁷ and state officials have repeatedly recognized that voter fraud in Louisiana is not a significant concern.¹¹⁸

The primary concerns with permitting same day registration are ensuring the person is properly eligible to vote and the possibility of voter fraud. To safeguard against these concerns, many states use the provisional ballot for same-day registrants, which provides a mechanism to “hold” the ballot until the verification process can be completed.¹¹⁹ Louisiana could require provisional ballots for same-day registrants and could improve its registration fraud detection technology.¹²⁰

Other Voter Registration Issues

While the 30-day waiting period between registration and voting is the largest registration-related barrier to voting in Louisiana, other registration practices also prevent exercise of the franchise. Mr. Wilson testified that Louisiana was often not complying with the National Voter Registration Act because citizens were not given information about registration when applying for public benefits. “[T]housands and thousands of African American voters were not being provided with access to this information [which is] a barrier to access to voting.”¹²¹

¹¹⁶ La. R.S. § 18:135.1(a)

¹¹⁷ Galmon Testimony, *Tel Hearing Transcript*, pp. 12-13.

¹¹⁸ Sue Lincoln, *Voter suppression or voter depression?*, WRKF 89.3 (Aug 21, 2017) (Secretary of State Tom Schedler stated: “Do I think voter fraud occurs? Yeah. To a large degree? No. Matter of fact, the only fraud that we usually see is in small jurisdictional elections, and you know what it involves? A paper ballot.”), available at <http://wrkf.org/post/voter-suppression-or-voter-depression>; Dede Willis, *Elections Chief says no evidence of voter fraud in Louisiana*, KNOE News (Jan. 26, 2017) (Tom Schedler, announced that “Louisiana did not have any widespread irregularities or allegations of fraud” during the 2016 presidential election), available at <http://www.knoe.com/content/news/Elections-chief-says-no-evidence-of-voter-fraud-in-Louisiana-411805135.html> (Amber Phillips, *Trump’s Voting Commission was doomed from the start*, The Washington Post (Jan. 4, 2018) (Secretary of State Schedler denying that significant voter fraud exists in Louisiana), available at https://www.washingtonpost.com/news/the-fix/wp/2018/01/04/trumps-voter-fraud-commission-was-doomed-from-the-start/?noredirect=on&utm_term=.b9bacaefe02d; Amber Phillips, *Why Louisiana is refusing to hand over voter registration data to Trump’s election probe*, The Washington Post (July 7, 2017) (Secretary of State Schedler denying that significant voter fraud exists in Louisiana), available at https://www.washingtonpost.com/news/the-fix/wp/2017/07/06/why-louisiana-is-refusing-to-hand-over-voter-registration-data-to-trumps-election-probe/?utm_term=.7769e76d8d41; Mark Ballard, *Louisiana refuses to provide personal information to President Trump’s voter fraud task force*, The Advocate (July 3, 2017) (“State elections officials acknowledge that occasional voter cheating slips through the protections, but point to numerous studies and audits that show fraud is not widespread.”), available at http://www.theadvocate.com/baton_rouge/news/politics/elections/article_453c7736-601e-11e7-b7ec-9391c8cf59cd.html;

¹¹⁹ <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> A chart is provided showing what each state does to ensure no fraud occurs, whether it’s “conditional voting” like California, or provisional ballots like Illinois. Additionally, some of the states that allow same-day registration only permit it at their main offices, or a permanent polling location so information can be verified.

¹²⁰ Peterson Testimony, *BR Hearing Transcript*, pp. 60-61.

¹²¹ Wilson Testimony, *Tel Hearing Transcript*, p24. See also Marsha Shuler, *5th Circuit Rules in Motor Voter Lawsuit*, The Advocate (Dec. 2, 2014) (discussing court ruling that the Secretary of State had failed to provide appropriate registration information to people seeking public assistance), available at http://www.theadvocate.com/baton_rouge/news/politics/elections/article_e880d5f6-fb00-5aea-9828-2fc25354959f.html;

Furthermore, registration is also difficult for people recently released from incarceration. Ms. Weeks testified that the registration process for people recently released from prison is arduous and that many don't even know how to access the ability to register (or re-register) to vote.¹²² She noted that many private organizations, such as campaign and non-profit voting groups, simply focus on "Get Out The Vote" campaigns rather than voter registration, especially when not in a presidential election year.¹²³

Finally, Ms. DeVille stressed that for seniors the problems with registration as a mail-in or online system revolved around one key area - ability. Many seniors find the forms unreadable because of the size of the print, and they do not know how to access the online voting registration system.¹²⁴ For them, the problem of registration, or re-registration, lies in the access to methods.

Purging Voter rolls also requires re-registration. "Essentially, Louisiana routinely compares voter rolls with various databases, such as death and incarceration records. Several cards are mailed to voters suspected of having moved. If the cards bounce back, state elections officials start looking closer. That's when the voter's name is checked against the list of those who haven't voted in the past two federal elections, Schedler said. The voter who still hasn't answered state queries goes on an inactive list but can still vote. Showing up for an election removes the voter from the inactive list. For those who continue not to vote, further correspondence is sent. *If the voter is officially purged, he or she would have to re-register, though not on an election day*, to regain the ability to cast a ballot, Schedler said. "But by that point, you've received a lot of mail and communications," he added.¹²⁵

Voter Identification Requirements

Louisiana is one of thirty-four states to require voters to show some form of identification at the polls.¹²⁶ In order to vote in Louisiana a person must present the following identification at his or her polling location:

- (1) Louisiana driver's license
- (2) Louisiana special identification card (available for free)
- (3) or other "generally recognized picture identification card that contains the name and signature of the applicant."¹²⁷

¹²² Reilly Testimony, *BR Hearing Transcript*, pp.103-104.

¹²³ Deville Testimony, *BR Hearing Transcript*, p. 104.

¹²⁴ *Id.* at 105.

¹²⁵ Underhill, *Voter Information*, http://www.theadvocate.com/baton_rouge/news/courts/article_5425cb4a-ed99-11e7-ad6e-038b5a7880ec.html

¹²⁶ National Conference of State Legislatures, *Voter Identification Requirements: Voter ID Laws*, available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

¹²⁷ La. R.S. § 18:562(A)(2); Testimony of Kyle Ardoin, First Assistant to the Secretary of State, Attachment #1 to Dec. 6, 2017 Hearing p3; Information Pamphlet For Election Day Voting, pp30-31; Ardoin Testimony, *BR Hearing Transcript*, pp 173-174.

The Louisiana Legislature recently required that beginning in January of 2019 all public postsecondary education institutions issue student's identification cards that meet the voter identification requirements.¹²⁸ Commissioners retain sole discretion to determine whether a photo identification qualifies under the law.¹²⁹

If a voter does not have proper identification, he or she “shall complete and sign an affidavit, which is supplied by the secretary of state . . . which affidavit shall include the applicant's date of birth and mother's maiden name. If the applicant is unable to read or write or is otherwise unable to complete the affidavit due to disability, the applicant may receive assistance in completing the affidavit and the commissioner shall make a notation on the affidavit. The applicant may receive the assistance of any person of his choice, including a commissioner . . .”¹³⁰ This affidavit alternative to a photo identification was pre-cleared by the Department of Justice in 1997.¹³¹ For the 2016 Presidential election cycle, roughly 3,000 affidavits were submitted, and this number has remained constant over time.¹³²

The office of the Secretary of State trains poll workers on voter identification requirements, and the affidavit alternative, through a uniform curriculum that includes the seventy-seven page Informational Pamphlet on Election Day Voting¹³³ as well as an Election Day commissioner training video.¹³⁴ The affidavit alternative is mentioned in Section VI.B. on page 2 of the “Early Voting Louisiana Voter’s Bill of Rights and Voting Information,” which is a seven page poster placed at every polling location.¹³⁵

Testimony before the Committee identified several ways in which Louisiana’s voter identification requirements create barriers to voting. First, Carol DeVille, from the League of Women Voters of Lafayette, noted that her organization received a number of complaints that voters were being turned away when they did not present a photo identification and were never offered the affidavit as an alternative method of identification.¹³⁶ She believed this was occurring because of overcrowding, lack of poll worker training, or because the poll workers had personal beliefs that may be influencing their decisions.¹³⁷

Election officials and poll workers often believe they have discretion to deny the vote to people without an identification, contrary to state law.¹³⁸ Ms. DeVille stressed that there needed to be additional poll worker training regarding the affidavit option and additional methods of oversight

¹²⁸ La. R.S. § 17:3351(J).

¹²⁹ Op.Atty.Gen., No. 02-0372, October 25, 2002.

¹³⁰ La. R.S. § 18:562 (A)(2);

¹³¹ Schedler Letter, p. 3.

¹³² *Id.*

¹³³ *Id.* The Informational Pamphlet is Attachment #3 to the letter and Identification of Voters is covered in Section 5:03 at pp30-31. The Instructional Video is Attachment #4 to the letter.

¹³⁴ Schedler Letter, p3.

¹³⁵ *Id.* at p. 4; and Attachment #7.

¹³⁶ Deville Testimony, *BR Hearing Transcript*, p.78; See also Katy ReckDahl, *Few take advantage of a Louisiana law allowing them to vote without an ID*, The New Orleans Advocate (Nov. 21, 2015) (interviewing individuals that were not told about the affidavit alternative or provided and affidavit even when requested).

¹³⁷ Deville Testimony, *BR Hearing Transcript*, p. 97.

¹³⁸ ReckDahl, “*Few take advantage.*”

to ensure voters were not turned away due to lack of photo identification.¹³⁹ First Assistant to the Secretary of State, Kyle Ardoin, testified that the state had not received any verifiable complaints of voters being turned away for lack of identification.¹⁴⁰ Because there have been no formal complaints, the Secretary's office does not know of the specific problems to remedy, either in administrative or training capacities.

Second, voter identification requirements present unique barriers to certain groups of people that may have issues with their identification. For example, victims of domestic violence that may be at a shelter or moving may not have a photo identification with their permanent residence.¹⁴¹ Another group are those that the gender/name on the ID does not match how they present at the polls or if a name has changed due to marriage or otherwise.¹⁴²

Finally, the voter identification requirement dissuades many people, particularly the poor and African Americans, from even attempting to vote. Mr. Wilson of the NAACP Legal Defense and Education Fund and Civil Liberties Union of Louisiana testified that the low participation rate of voters in poor and African American communities was tied to the voter identification requirement.¹⁴³ He believed that the cost of the voter identification created a barrier but did not address that Louisiana provides a free identification option.

Provisional Ballots

A provisional ballot is typically used to record a vote when there are questions about a voter's eligibility, e.g., the voter does not appear on the registration rolls or is voting in the incorrect parish or polling location. The general and guiding principle for provisional ballots is that no person seeking to vote is ever "turned away." The Help America Vote Act requires that provisional ballots be available in federal elections.¹⁴⁴ A provisional ballot is to be used whenever a voter arrives at a polling location and states they seek to vote in that election and are eligible to vote in that election.¹⁴⁵

Louisiana allows the use of provision ballots for four categories of voters:

- 1) A voter whose name does not appear in the Precinct Register or Supplemental Precinct Register and who is not authorized to vote by an election official.
- 2) A voter who is challenged and a majority of the commissioners determine that the challenge is valid;
- 3) 3) a voter who votes in a federal election during court ordered extended poll hours;

¹³⁹ Deville Testimony, BR Hearing Transcript, p. 97.

¹⁴⁰ Ardoin Testimony, BR Hearing Transcript, pp. 174, 194.

¹⁴¹ DeVille Testimony, BR Hearing Transcript, p.91.

¹⁴² DeVille Testimony, BR Hearing Transcript, p. 97.

¹⁴³ Wilson Testimony, *Teleconference*, p. 22-23.

¹⁴⁴ 42 U.S.C. § 15482.

¹⁴⁵ 42 U.S.C. §15482(a).

- 4) Any inactive voter who cannot affirm that they moved outside the parish less than three (3) months before the election and is not eligible to vote in the election.¹⁴⁶

But Louisiana allows for provisional voting only in federal elections.¹⁴⁷ It is one of the few states that categorically does not permit provisional voting in non-federal elections.¹⁴⁸

There was no testimony regarding the training poll workers received regarding provisional balloting, but provisional balloting is discussed in the Informational Pamphlet on Election Day Voting given to poll workers.¹⁴⁹ The use of provisional ballots is also mentioned in Section IV.B.2 of the “Early Voting Louisiana Voter’s Bill of Rights and Voting Information,” which is a seven-page poster placed at every polling location.¹⁵⁰

There was testimony from several witnesses that lack of provisional voting in non-federal elections presents a barrier to voting. Senator Peterson noted that the lack of provisional voting in state elections is an obstacle to voting rights.¹⁵¹ Ms. DeVille from the League of Women Voters and Ms. Meyers from the Advocacy Center also noted the lack of provisional voting as an obstacle to voting rights.¹⁵² Ms. DeVille mentioned the “verification call” that poll workers are supposed to make to verify when a voter is not listed, is not always an option in rural areas because of lack of cell service, etc.¹⁵³ They also testified that because provisional ballots are permitted in federal elections but not in non-federal elections, there was significant confusion among poll workers and provisional ballots may be denied even in federal elections. They recommended better voter education and better training for poll workers.¹⁵⁴

Incarceration and the Vote

The Legal Structure: Felon Disenfranchisement

The Louisiana Constitution of 1973 expressly denies the right to vote to those “under an order of imprisonment for conviction of a felony.”¹⁵⁵ Until 2018, statutory law further stated that “Under an order of imprisonment’ means a sentence of confinement, whether or not suspended, whether

¹⁴⁶ Schedler Letter, Attachment #3; *See also* La. R.S. § 18:566(A).

¹⁴⁷ La. R.S. § 18:566(A).

¹⁴⁸ National Conference of State Legislatures, *Provisional Ballots*, available at <http://www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx>.

¹⁴⁹ Schedler Letter, Attachment #3, Provisional voting is covered in Part 8, pp. 67-72.

¹⁵⁰ Schedler Letter Attachment #7.

¹⁵¹ Sen. Peterson Testimony, BR Hearing Transcript, pp. 20-21.

¹⁵² DeVille Testimony, BR Hearing Transcript, pp. 96-97, 102.

¹⁵³ *Id.* at pp. 101-02.

¹⁵⁴ *Id.* at pp. 96-97.

¹⁵⁵ La. Const. Article I, §10(A), which reads, in full: “Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony.”

or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled.”¹⁵⁶

In 2018, the Louisiana Legislature amended the law restricting voting rights to allow those who have not been incarcerated for the previous five years to regain the right to vote regardless of their probation or parole status.¹⁵⁷ Taking effect on March 1, 2019, this new law will allow anyone who has not been incarcerated at any time during the previous five years to submit a form from the Department of Corrections confirming that status to the registrar of voters¹⁵⁸. Specifically, it restores the vote after the “person submits documentation to the registrar of voters from the appropriate correction official showing that the person has not been incarcerated pursuant to the order within the last five years.”

Prior to implementation, the new law contemplates coordination between the Department of Public Safety and Corrections and the Secretary of State to develop forms to allow those affected to meet the requirements, specifically to allow them to certify to voter registration officials that they meet the eligibility requirements.

Under the prior law still in effect until March 1, 2019, the Department of Public Safety and Corrections is obligated to provide notice of the conditions surrounding the restoration of the right to vote. Testimony before the Commission indicates that this system may not have worked as well as it could have because the individual has been required to submit proof that supervision has ended along with the voter’s registration forms.¹⁵⁹ Restoring the vote to those eligible after five years will require better coordination between the Department of Public Safety and Corrections and the Secretary of State, as well as with Registrars of Voters.

When R.S. 18:2 was enacted in 1975, only about 2000 people were denied the right to vote by virtue of supervision,¹⁶⁰ but as of December 31, 2017, 71,117 Louisianans were unable to vote despite having served all the terms of their prison confinement.¹⁶¹ This is in addition to the 33,739 people serving prison terms on December 31, 2017.¹⁶² In total, on December 31, 2017, over 100,000 Louisiana residents were unable to vote due to a felony conviction. Norris Henderson, Executive Director of VOTE, testified that 30-35% of those denied the right to vote never went to prison at all, but instead are serving sentences consisting entirely of probation.¹⁶³ Because the new law has yet to go into effect, there is no way to anticipate how many people will benefit from these legislative changes.

¹⁵⁶ La. Rev. Stat. Ann. 18:2(8).; La. Rev. Stat. Ann. 18::102 (A)(1).

¹⁵⁷ HB 265, xxxth Leg, xth Sess. (La. 2018). enrolled May 18, 2018.

¹⁵⁸ The new law provides limited exceptions, for those convicted of “a felony offense of election fraud or any other election offense,” as well as for those under interdiction for mental incompetence. Those individuals do not regain their right to vote after the conclusion of five years.

¹⁵⁹ Norris Henderson Testimony, BR Hearing Transcript, pp. 147-148.

¹⁶⁰ *Id.* at p. 160.

¹⁶¹ Louisiana Department of Corrections Briefing Book, <http://doc.louisiana.gov/briefing-book>, accessed April 20, 2018.

¹⁶² *Id.*

¹⁶³ Henderson Testimony, BR Hearing Transcript, p. 140.

The Consequences of Felon Disenfranchisement

Testimony before the Committee addressed some of the adverse consequences upon Louisiana residents. Dr. Joshua Stockley of the University of Louisiana at Monroe estimated that approximately 80% of the parolees/probationers currently ineligible to vote are African American, compared with about 32% of the population of the state. This disproportionate racial impact can affect communities and the very concept of proportional representation. If many members of a community are unable to vote, they are denied the opportunity to be governed by people who might best serve their interests.

Other evidence indicates that the ability to vote makes for better citizens and stronger communities. Norris Henderson testified as much when he said, after helping a returning citizen register to vote, that the “guy was, like man, I’m a citizen now.”¹⁶⁴ Hamilton-Smith and Vogel declare that “Research strongly supports the notion that ex-felons who are able to re-enters society with stable work and familial relationships are less likely to engage in criminal activity.”¹⁶⁵

Allowing more formerly incarcerated individuals to vote at an earlier time should facilitate their re-entry into their communities. The success of this initiative will depend on the ease with which they can complete the registration process.

Pre-trial Detention Disenfranchisement

Pre-trial detainees are those who have been arrested, are awaiting trial (usually in parish jails), and have therefore not been found guilty. While statewide numbers are not readily available, as of March 2, 2016, 90% of the population of Orleans Parish Prison (1591 people) were awaiting trial.¹⁶⁶ Pretrial detainees are entitled to the presumption of innocence, including the right to vote if they are otherwise eligible.

Because the jail is not a permanent address for those awaiting trial, meaningful access to the ballot would have to allow voting in the voter’s home precinct and not at the address of the jail – whether by absentee ballot, early voting, or other technology. In addition, because many are not registered to vote, registration would have to be available.¹⁶⁷

Testimony of Sen. Karen Carter Peterson suggests that polling places and voting machines are not fully available in jails.¹⁶⁸ Nor is the opportunity for absentee voting. Norris Henderson testified that absentee voting can be a challenge for people in jail because the ballots must be certified by the sheriff, mailed to the Registrar of Voters on a timely basis, and many people in jail are not

¹⁶⁴Henderson Testimony, BR Hearing Transcript, p. 148.

¹⁶⁵ Hamilton-Smith and Vogel, *supra*, p. 414.

¹⁶⁶ Vera, “Most People in OPP Have Not Been Tried or Convicted”, <https://www.vera.org/publications/new-orleans-jail-population-quarterly-report/new-orleans-whos-in-jail-and-why/new-orleans-who-039-s-in-jail-and-why-new-orleans-whos-in-jail-and-why-most-people-in-opp-have-not-been-tried-or-convicted>, accessed April 23, 2018.

¹⁶⁷ Henderson Testimony, BR Hearing Transcript, p. 139.

¹⁶⁸ Peterson Testimony, BR Hearing Transcript, pp. 36-38.

aware of their right to vote.¹⁶⁹ In addition, the delays surrounding absentee voting may mean that by the time the ballot arrives after it was ordered, the voter may have been released from jail and not able to receive it.¹⁷⁰

Recommendations

Polling Locations

1. The Office of the Secretary of State should list on its Voter Portal web site (<https://voterportal.sos.la.gov>) the names of the five members of Parish Board of Election Supervisors for each Parish. The web site should include easily-accessible information on (i) the election precincts in each parish, including a map showing the exact boundaries of the precincts, (ii) the number of residents by race in each precinct (iii) the number of registered voters by race in each precinct, (iv) the location of each polling place pertaining to each precinct (regardless of whether the polling place is inside or outside of the precinct.)
2. The information listed in (1) should be made available to the public in machine-readable form. This should include not only the current information but also past information so that an analysis of the evolution of the patterns can be made by the public.
3. Any potential decision by the Parish Board of Election Supervisors related to any alterations of precinct boundaries, including adding or merging precincts, as well as any potential decision regarding polling locations should be announced to the public through the office of the Secretary of State. The Secretary of State should also ensure that all voters who can potentially be impacted by the contemplated change are notified by mail and by electronic media.
4. A public hearing with at least a month of advanced notice about the proposed changes listed in (3) should be held to obtain public's comments on the proposed changes regarding precincts or polling locations.
5. Any decision made by the Parish Board of Election Supervisors about precincts or polling locations, following the steps listed in (3) and (4) should include a document that explains the justification of the decision, along with a statement on how each member voted on the proposed change. This information should be posted on the Secretary of State's Voter Portal site mentioned in (1) above.
6. Secretary of State who has the authority to approve or disapprove the recommendation made by the Parish Board of Election Supervisors should provide an opinion (justification) for his/her approval/rejection decision, which should be included in the same web site along with the recommendation made by the Parish Board of Election Supervisors on the matter.

¹⁶⁹ See also Lanie Lee Cook, "Inmates awaiting trial have right to vote, but few do in Lafayette, other Louisiana parishes, officials say," *Acadiana Advocate*, November 13, 2015, http://www.theadvocate.com/acadiana/news/politics/elections/article_c90053b5-1804-5110-afa7-d76c4a18f702.html, accessed April 23, 2018.

¹⁷⁰ Henderson Testimony, BR Hearing Transcript, p. 138.

Early Voting Locations

1. The state of Louisiana should continue its efforts to make early voting accessible through new technologies and where possible, prioritize new locations for early voting in underserved areas.

Early Voting Periods

1. The state of Louisiana should make early voting more predictable for voters through allowing voting on Sundays and establishing more consistent and extended early voting periods.

Early Voting Accessibility

1. The state of Louisiana should affirmatively ensure that all early voting locations are ADA and HAVA compliant.

Additional Early Voting Recommendation

1. The state of Louisiana should make early voting more predictable for voters through allowing voting on Sundays and establishing more consistent and extended early voting periods.

Same Day Voter Registration

1. The Committee recommends that the Louisiana legislature remove the registration waiting periods in La. Rev Statute § 18:135(A) and permit same-day registration. The Committee suggests that same day registrants be required to vote with provisional ballots.

Voter ID Requirements

1. The Committee recommends improved poll worker training regarding identification requirements and the affidavit alternative.

2. The Committee recommends that the poll books/election rolls include two boxes next to the registrants' name: "ID provided" or "affidavit offered/signed."

3. The Committee recommends that the Secretary of State increase its community outreach and education regarding voter identification requirements and the affidavit alternative. This could be done through increased public service announcements, clear signage at the polls, heightened prominence on the Geaux Vote app, and partnerships with community organizations to increase community awareness.

Implications

There are several implications from the Committee's recommendations that merit further consideration. The first is the capacity and number of poll workers in Louisiana. Increased training of poll workers presumes that there are a sufficient number of poll workers at each location and that each actually undertakes to watch the training video and read the training manual. The second, broader implication, is the problematic nature of a photo identification-based voting system. Any such system may dissuade eligible voters from even attempting to vote. Without extensive outreach regarding the affidavit alternative, and extensive training of poll workers, this barrier is heightened.

Provisional Ballots

1. The Committee recommends that the legislature amend La. Revised Statute §18:566 to permit provisional ballots in all elections and not merely federal elections.
2. The Committee recommends that the Secretary of State increase poll worker training regarding the use of provisional ballots.
3. The Committee recommends that the Secretary of State increase community outreach and education regarding the availability of provisional ballots. This could be done through increased public service announcements, clear signage at the polls, heightened prominence on the Geaux Vote app, and partnerships with community organizations to increase community awareness.

Implications

The Committee's recommendations implicate concerns over the number and capacity of poll workers that merit further consideration. Increased training of poll workers presumes that there are a sufficient number of poll workers at each location and that each actually undertakes to watch the training video and read the training manual.

Felon Disenfranchisement

1. The vote should be restored immediately upon release from incarceration. This will require legislative action.
2. Officials should ensure that the documentation necessary to allow voter registration of those eligible is readily available, easy to complete and process, and does not provide further obstacles to registration.
3. To facilitate voting registration, Department of Public Safety and Corrections officials should provide notification and assistance with voter registration as soon as that right becomes available.
4. A sentence that does not include incarceration should not result in the loss of voting rights. This will require legislative action.

5. Voting should be made available in all parish jails to those eligible to vote. The voters should be eligible to vote in their home precinct and not at the address of the jail.
6. Voter registration should be simplified and offered in all jail and prison facilities.

Appendix

Summary of Public Briefing Testimony¹⁷¹

The Louisiana SAC held a public forum at Grambling State University, Grambling, Louisiana, on November 15, 2017, and conducted a public hearing at the Louisiana State Capitol in Baton Rouge on December 6, 2017. The SAC heard further testimony in a public meeting on April 23, 2018.

The first panel at Grambling State University on November 15, 2017 included Lemmy Akoma, Professor of Political Science and Public Administration at Grambling State University; Devissi Muhammad, History Professor at Grambling; Cheryl Mango-Ambrose, History Professor at Grambling; and Joshua Stockley, Political Science Professor at the University of Louisiana at Monroe.

Dr. Akoma testified as to historical barriers to African-American's exercising the franchise in Louisiana. Dr. Akoma spoke about how the enactment of the 1898 Louisiana Constitution established literacy tests, requirements of property ownership, and residency requirements disenfranchised people of color and the poor. These barriers continued to exist for decades until the Voting Rights Act of 1965. Dr. Akoma spoke about continuing barriers today including residence and ID requirements and the disenfranchisement of people on probation and parole. Dr. Akoma testified that these barriers create a sense among those impacted that their vote does not count and those individuals become discouraged and cease to participate. Dr. Akoma testified to the need for programs to teach high school students the importance of voting as well as programs that make it easier for students in secondary schools to vote. Dr. Akoma acknowledged progress in changes to the law that allow university students to use their university issued ID at the polls.

Dr. Muhammad testified about the systematic disenfranchisement of African-Americans in Louisiana following the Reconstruction period. Dr. Ambrose testified to the phenomenon of young, African-American men and women not being engaged in the franchise nor understanding the importance of exercising their vote.

Dr. Stockley provided an overview of redistricting and important considerations necessary in future redistricting decisions. He also spoke about barriers that exist in early voting procedures created by the limited hours early voting locations are open. He also pointed out the barriers created by voter registration deadlines that cut off either 20 or 30 days prior to election day depending if a person is registering online or by mail. Dr. Stockley pointed out that Louisiana does not offer same-day registration although 15 states and the District of Columbia have done so successfully and, by doing so, have increased voter turnout on election day.

Dr. Stockley also testified to the issue of felony disenfranchisement noting that about 72,000 residents are denied access to the polls because they are on probation or parole and that about 80%

¹⁷¹ The Summary is meant to condense the testimony received by the Committee. Please see *BR Hearing Transcript*, *GR Hearing Transcript*, and *Tel Hearing Transcript* for full text.

of those residents are black. Dr. Stockley also testified to inconsistencies in the implementation of voter ID requirements where some poll workers require certain photo identification beyond what Louisiana law requires, thus, discouraging or prohibiting eligible voters from casting their ballot.

The second, and final panel, at Grambling included Representative Patrick Jefferson from District 11 of the Louisiana House of Representatives; Dr. Richard Gallot, President of Grambling State University; and Jennifer Hill from the Women's Democratic Club of Northwest Louisiana.

Representative Jefferson spoke about the need to be vigilant to any changes to voting processes that may be introduced after the Shelby County decision. Jennifer Hill testified to the efforts of the Women's Democratic Club of Northwest Louisiana to register people to vote and engage people living in poverty to participate in voting. President Gallot testified regarding current litigation in Terrebonne Parish challenging the at-large district for electing district court judges. President Gallot also testified to other barriers to voting including voter ID laws, public perspectives on the value of voting, and racial bias.

The first panel at the December 6, 2017, hearing at the Louisiana State Capitol included Jhacova Williams, a Ph.D. candidate in Economics at Louisiana State University and Karen Carter Peterson, Louisiana State Senator and Vice Chair of the Democratic National Committee for Civic Engagement and Voter Participation.

Jhacova Williams testified regarding her research into the current and historical cultural attitudes and historic events affect the political behavior and economic outcomes of blacks in the South as well as the determinants of polling locations within Louisiana communities. Ms. Williams stated that data shows there is lower voter turnout among blacks than whites in Louisiana and her research focuses on the factors that impact voter turnout of those who are already registered to vote. Ms. Williams concludes that in census tracts that have a higher percentage of black residents have fewer polling places – for every 10% increase in black resident population there is a 1.2% fewer polling places within a census tract. Comparing income disparities, Ms. Williams concludes that for every 10% increase in per capita income, there is nearly a 1% increase in the number of polling places within a census tract. Therefore, census tracts with a higher percentage of blacks have fewer polling locations and census tracts with a higher percentage of poor people have fewer polling locations.

Ms. Williams also analyzed the number of polling locations on a parish level and concluded that for every 10% increase in black residents on the parish level, there was a 7% decrease in the number of polling locations. Examining income disparity, Ms. Williams concluded that for every additional \$1,000 in income per capita, there is a 7% increase in the number of polling places. Ms. Williams also examined voting machine allocation per parish and concluded that for every 10% increase in black residents there were 9 fewer voting machines. She concluded income disparities as well in that for every \$1,000 increase in per capita income, there were about 10 more voting machines in that parish. Ms. Williams suggested that in order to ensure fair access to voting, policymakers should examine voting resource allocation in Louisiana to ensure that everyone, regardless of race or income, have sufficient number of polling locations and voting machines.

Senator Peterson focused on voting rights obstacles, impact of the decision in Shelby, and restrictions on voter access. Senator Peterson stated that Louisiana does not allow provisional ballots in state elections, restrictions on reimbursement to volunteers who give elderly and disabled voters rides to polling places, restrictions on felons, and limitations places on providing assistance in voting. Senator Peterson stated that the State's current reliance on the ABC Advantage voting machine puts the security and accuracy of elections in Louisiana in question due to proven security failures with these machines.

Senator Peterson also testified regarding the statistics of felony disenfranchisement in Louisiana in that more than 71,000 Louisiana citizens are denied the right to vote because they are on probation or parole. That number is 1 out of every 33 adults. Louisiana's rate of felony disenfranchisement is almost three times the national average and disproportionately impact African-Americans.

Senator Peterson also stated that only those who are physically disabled or illiterate can get assistance in voting. Individuals with invisible physical or mental disabilities cannot, and the paperwork and certification required for those who do qualify as disabled is intimidating and confusing.

As for early voting procedures in Louisiana, Senator Peterson testified that there are too few early voting locations in Louisiana and the window for casting an early vote is too narrow. No early voting locations are open on Sunday and all close seven to fourteen days prior to election day. As for early voting locations, Senator Peterson testified that while there are 3,904 precincts open around the state on election day, there are only 97 early voting sites serving all 64 parishes. Louisiana's three largest parishes with populations around 500,000 (Orleans, Jefferson, and East Baton Rouge) have only four early voting locations per parish. Caddo Parish, the fourth largest in population at 260,000 residents only has one early voting location. Thus, most early voters have to drive a considerable distance to cast their vote which is a deterrent for those without cars, elderly, disabled, or for those who cannot take the time off work. Those who make it to early voting locations are often faced with long lines and wait times due to insufficient number of alternative locations. This is another deterrent for those who are able to make it to the early voting location.

Senator Peterson also commented there is a lack of polling locations, particularly noting the lack of a location in Pontchartrain Park in New Orleans – the first major black subdivision in the city.

The second panel at the December 6, 2017, hearing in Baton Rouge included Susan Meyers, Director of Policy and Community Engagement at the Advocacy Center of Louisiana; Carol Deville, President of the Louisiana League of Women Voters; Nia Weeks, Director of Policy and Advocacy for Women with a Vision; and ...

Susan Meyers outlined some recent positive legislation concerning access to voting for people with disabilities including less burden on individuals needing assistance in voting. As of January 2018, voters needing assistance due to disability will now only have to sign a statement provided by a poll worker and no longer need third-party verification of disability. There has also been legislative changes so disabled individuals can serve as poll workers and e-mail voting procedures for voters with disabilities.

Ms. Meyers described reports by clients of the Advocacy Center where disabled voters not allowed voting assistants of their choice and poll workers making competency determinations on a disabled person's ability to vote at the polling location. The denial of an assistant of choice is a barrier. Ms. Meyers gave an example of someone with extreme anxiety may be unwilling to vote with a stranger assistant or someone with a communication problem being forced to use an assistant who they cannot communicate with. Furthermore, there is a prohibition in the Louisiana administrative code that bars workers at developmental centers from assisting residents of those centers in voting. Frequently, it is those employees who the residents are most comfortable with as assistants.

Another issue Ms. Meyers addressed is lack of accessibility at some polling locations. Also, Louisiana has a high rate of institutionalization of people with disabilities and those residents rely on the institution to gain access to the polls which, often, is not being facilitated.

Carol Deville reported recorded observations of members of the League of Women Voters. Ms. Deville stated there is lack of accessibility for early voting in Lafayette Parish as there is only one early voting location that has insufficient space to accommodate voters. The Lafayette early voting polling location also had inadequate elevators for the disabled as well as inadequate handicapped parking spaces.

Ms. Deville also spoke about voting irregularities that were reported by a poll worker in a New Orleans run-off election as well as problems with voting machines. Ms. Deville recommended more training for poll workers, more poll watchers available to observe the voting process, extending early voting to election day, more public information about the availability of early voting and mail-in ballots. Ms. Deville also recommended replacing all of the aging voting machines throughout the state.

Nia Weeks spoke about the work her organization does on mobilizing the vote. Ms. Weeks stated that Louisiana has almost a million African-American voters of which 56% are women. However, only about 32% of the 56% are frequent voters. Ms. Weeks stated that transportation is a barrier to voter participation and that polling locations frequently change in New Orleans from election to election. Potential voters often do not know where to go vote. Taking the time required to vote is also a barrier for many people who are employed – especially when taking the time results in losing income in a low paying job. Ms. Weeks also stated that limited early voting locations, only four in New Orleans, is a barrier to voting. Those locations are only open from 8:00am to 5:00pm.

Ms. Weeks testified about the issue some voters face when they present differently than their gender or picture on their ID. Homeless and migrant populations face barriers in registration because they lack a stable address.

The testimony in the third panel came from Bruce Really and Norris Henderson of VOTE (Voice of the Experienced) and Ashley Shelton of the Power Coalition.

Ms. Shelton (Power Coalition) testified that due to the state's failure to train and inform poll workers and registrars, Latino and Vietnamese voters face serious barriers to voting. In addition, polling places are often relocated without providing adequate notice and information to the communities they serve.

In the Latino and Vietnamese community there have been persistent problems with access to the vote and voter registration. Ms. Shelton discussed voting barriers for naturalized citizens in Louisiana. According to Ms. Shelton, a lack of training for state actors like registers exacerbate voting access for naturalized citizens. These challenges result from an 1874 law that is still on the books requiring naturalized citizens to provide citizenship documents when registering to vote. Other potential voters are not required to go to such lengths. Instead, they need only swear that they are U.S. citizens. Naturalized citizens faced a second class status for 142 years. While this law was changed in 2016, non-profits representing Asian American and Latino voters (like VAYLA) have documented how naturalized citizens are still facing discrimination at the polls. These citizens are denied the right to register to vote. Many officials do not realize the law has changed and Registrars still turn away citizens on the basis of this outdated law.

For the Vietnamese and Latino community, this is part of a larger problem related to a lack of transparency and understanding in immigrant communities when it comes to voting laws. In many ethnic communities where English is a second language, the laws related to voting rights are often poorly understood. In some circumstances, poll workers either do not know the law or lack bilingual language skills. Further, although as a matter of federal law, voters have the right to bring someone of their choice into the booth with them if they need help voting, for example in order to translate, often election officials do not know this. We provide individuals with fliers from Section 208 of the Voting Rights Act to clarify this.

These existing problems are exacerbated by the regions continued vulnerability when it comes to extreme weather. Natural disasters and climate change have impacted many communities in Louisiana. Due to flooding, polling locations are often changed or moved without providing adequate notice to the communities they are in. What complicates this challenge is that many voters are also displaced and the information they need to vote is not available to them. Many voters in areas where flooding occurred (parishes like Livingston, East Baton Rouge, and Ascension) needed support and information in order to find their polling place. Another example of this occurred in Pontchartrain Park where the polling place was changed on election day, seriously compromising the ability of voters in this community to exercise their rights to vote. Moving the polling location out of a community commons space where it has existed for generations erected barriers for those seeking the right to vote.

She also discussed streamlining elections and expanding training for poll workers.

Bruce Reilly of VOTE testified that due to a complex history of racist voting regulations and a contemporary lack of training and transparency in government, people who have criminal convictions face barriers to voting access.

In Louisiana, people who have criminal convictions, even those only on parole or probation, face major systematic barriers in their right to vote. People who have been incarcerated and even those who have only been on probation have a difficult time obtaining the right to vote after being convicted. Mr. Reilly discussed in detailed the fact that people on probation (not parole) were guaranteed a right to vote in the Constitution. The right can be suspended while under an order of imprisonment. Mr. Reilly spent some time discussing the history of what it means to be “under an

order of imprisonment” by examining the radicalized history of constitutionally protected voting rights in the state of Louisiana. Mr. Reilly highlighted how after a campaign to restore voting rights to people on parole and probation in the state of Rhode Island, he ultimately lost his right to vote by coming to Louisiana and matriculating to Tulane Law School. He discussed how he is currently the plaintiff in a voting rights case (VOTE v. Louisiana). Some of the direct barriers that individuals face in terms of voting rights related to the inefficiency of bureaucracy. Those individuals who cycle off of probation and parole are not automatically reported to the Secretary of State and the registrar. Individuals may bring their documents proving that they are no longer on probation from one government office to another. Government actors in the bureaucracy are also misinformed about the law as it related to those on probation and parole. And they often provide wrong information to those seeking confirmation of the right to vote.

Norris Henderson of VOTE provided testimony indicating that those who have been incarcerated face intractable difficulties in reinstating their voting rights. He recommends increased transparency and broad based educational initiatives to alert formerly incarcerated persons that they have a right to vote.

For 42 years the Constitution of Louisiana prohibited formerly incarcerated persons from voting. In 1976, this was defined in an expansive way to include individuals who were not on probation and parole. Since 1975, over 630,000 people have been released from corrections in the state of Louisiana and these individuals have all been disenfranchised by the current law.

Part of the problem is that there is no governmental agency that educates formerly incarcerated persons about how to restore their right to vote. There is no information on the secretary of state’s website about how to restore the right to vote. In addition, inquiries to the parish Registrar’s office yielded contradictory and incorrect information. And because the information is uncertain, formerly incarcerated persons do not want to take the risk of illegally registering to vote and being sent back to prison for it.

Another aspect of the problem lies in the failure of government bureaucracy to update its records. When a formerly incarcerated person attempts to register to vote, often their application is flagged. If they cannot produce documentation to the contrary, then they are disenfranchised.

Mr. Henderson cited some positive changes in the community including posting notice on the Registrar’s office in Orleans Parish indicating that formerly incarcerated persons have the right to vote. And VOTE has also done outreach in the community to educate formerly incarcerated persons about their potential right to vote. Another initiative involves doing voter registration in jails with the certification of the Sheriff and getting absentee ballots to people in jail who have not been convicted.

Restoring voting rights may also have other positive impacts on the community and on formerly incarcerated persons and individuals. In on Florida study on restoring the right to vote, researchers learned that of the 30,000 people whose voting rights were restored, only 10% of them engaged in recidivism and the majority of that recidivism was related to administrative sanctions.

Mr. Henderson also discussed having election day in the middle of the week on a workday. In other jurisdictions, election day is a holiday. Mr. Henderson speculated that there might be more turnout in terms of voting if election day as a holiday. He also spoke about extending early voting periods.

Kyle Ardoin, First Assistant to the Secretary of State, Tom Schedler testified in the fourth panel. Mr. Ardoin cited the passion and commitment of the state poll workers and agency staff in Louisiana, particularly in terms of providing access to the vote after Hurricane Katrina.

Louisiana has a top down system. This means that the state government works collaboratively with the Clerks of Court and appointed Registrars in the 64 parishes in the state. In his testimony, Mr. Ardoin intends to highlight the legislative and technological changes that the Secretary of State's office has made in terms of removing barriers to voting access. The Secretary of State has undertaken the following initiatives:

- In April of 2009, the State of Louisiana implemented voter registration online. The online application is a new endeavor and Louisiana is one of only three states in the nation that has adopted it.
- In July of 2010, the Secretary of State's Office launched its online clearing house for all election related information: the voter portal. Voters can input their name, last name, zip code, and date of birth then receive personalized information about registration and polling locations. There is also a mobile platform version of this tool.
- In April of 2011, the Secretary of State's Office created a social media presence to reach new demographics.
- In September of 2011, Louisiana became the first state to provide election information through an online smart phone app, GeauxVote. It permits users to check registration status, find polling places, review what is on the ballot, and view election results. It also provides information related to early voting.
- The Secretary of State's office is in the process of requesting new voting machines and equipment. The office is particularly interested in equipment that provides an audit trail. This is of course subject to finances.
- The outreach division of the Secretary of State has undertaken a campaign to reach voters. In fiscal year 2016-17, this division conducted 179 voting events with 59 of the 64 Parishes. The events hosted included educational information, private elections, voting machine demonstrations, and voter registration drives. It also conducted social media and email outreach to voters as well.

To register to vote in Louisiana, an individual must be at least 16 years old, reside in the Parish in which he or she is seeking to vote, not be under an order of imprisonment for conviction of a felony, and not be under a judgment for full interdiction for mental incompetence or partial interdictions with suspension of voting rights. Voters can register online at the Secretary of State's

website, in person at the Registrar of Voter's office or Office of Motor Vehicles, and in public assistance agencies or armed forces recruiting offices, or by mail. Applicants must have a Louisiana driver's license, a Louisiana special ID card, or Social Security number. Applicants can also be verified with a copy of current valid photo identification or a current utility bill, bank statement, government paycheck or other document. Louisiana has 2, 976, 092 registered voters. At polling places, voters are asked for a photo identification card. If a voter lacks such identification, he or she may vote by completing and signing the voter affidavit. Disabled voters and senior citizens have the opportunity to vote by mail for elections.

Louisiana's voting hours on Tuesday election days are from 6:00 a.m. to 8:00 p.m. Voting hours on Saturdays are from 7:00 a.m. until 8:00 p.m. Early voting is seen days long from 8:30 a.m. to 6:00 p.m. Louisiana's polls are open for 14 hours. Only New York State's polls are open longer.

The Committee received additional testimony on April 23, 2018 from Carl Galmon, a resident of New Orleans who is on the Board of Directors of the National Voting Rights Museum and Institute in Selma, Alabama and Ron Wilson,

Mr. Galmon testified to problems of access to polling locations of African-Americans in New Orleans. He gave the example of Pontchartrain Park in New Orleans. Pontchartrain Park is the oldest black subdivision in New Orleans and it had three voting locations prior to Hurricane Katrina – one at the golf clubhouse, one at Bethany Church, and one at the Lutheran Church. After Katrina those three locations were merged into one that is a mile and a half away at the corner of Press Drive and Chef Menteur Highway. Mr. Galmon also testified to activities of the Secretary of State's Office after Hurricane Katrina that discouraged people from voting – such as publication of notices that they had registered in another state and publication in the Times-Picayune newspaper challenging thousands of voters.

Transcripts, Statements, and Documents

1. [Transcript of Testimony gathered at Grambling University of November 15, 2017](#)
2. [Testimony of Joshua Stokley, Grambling University, November 15, 2017](#)
3. [Transcript of Testimony gathered at Baton Rouge Hearing, December 6, 2017](#)
4. [Transcript of Testimony provided by Ron Wilson and Carl Galmon, April 23, 2018](#)
5. [Louisiana Secretary of State Submissions and Final Statement](#)

To access the files, control + click to follow the link. All files can also be found on the Federal Advisory Committee Database, found at www.facadatabase.gov. Follow the link for United States Commission on Civil Rights - Louisiana Advisory Committee – Meetings - Documents.

**Louisiana Advisory Committee to the
United States Commission on Civil Rights**



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Voting Rights in Maine



Report of the
Maine Advisory Committee to the
U.S. Commission on Civil Rights

April 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

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Letter of Transmittal

**Maine Advisory Committee to the
U.S. Commission on Civil Rights**

Members of the Commission

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Debo P. Adegbile

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Karen K. Narasaki

Patricia Timmons-Goodson, *Vice Chair*

Michael Yaki

Mauro Morales, *Staff Director*

The Maine Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, "Voting Rights in Maine." The report was adopted by the Advisory Committee by a unanimous vote of 10 to 0.

Sincerely,

Diane Khiel, *Chairperson*

Maine Advisory Committee

Maine Advisory Committee

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Portland

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Acknowledgments

The Maine Advisory Committee thanks all of the participants in the April 2018 briefing for sharing their expertise. This report could not have been possible without the guidance and support of Barbara de La Viez, the designated federal official assigned to the Maine Advisory Committee. The Committee thanks Evelyn Bohor and Ivy Davis for their support of the Committee. In addition, the Committee greatly appreciates the contributions of intern Elizabeth Boyle.

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I. EXECUTIVE SUMMARY

The Maine State Advisory Committee to the United States Commission on Civil Rights examined the recent election law changes in Maine in support of the Commission's 2018 Statutory Enforcement Report. The Committee examined election law changes and identifies whether there were efforts to suppress the vote.

The Committee had a briefing on March 21, 2018. It invited experts and knowledgeable individuals to provide information to the Committee to help it better understand voting rights in Maine. The Committee heard from the Maine Secretary of State and representatives from the ACLU of Maine, Disability Rights Maine, the League of Women Voters of Maine, the Maine Heritage Policy Center, and the Portland Branch of the Maine National Association for the Advancement of Colored People.

This review was timely because the day before the briefing the Senate Intelligence Committee released its draft recommendations to address the Russian interference in our 2016 election. The Senate Intelligence Committee offered recommendations for securing American elections from foreign attacks, encouraging states to secure voter databases and to purchase voting machines that produce paper ballots; it also called for better cooperation between state and federal elections officials before November's midterm elections.

The Committee learned that in-person voter fraud is non-existent in Maine. In fact, the state has a statutory, regulatory, and community commitment to participation in elections. It has some of the most inclusive and protective voting laws in the country, making it one of the most democratic states in the United States. Its residents may register to vote on Election Day, there is no photo identification requirement, and those convicted of crimes are not deprived of the franchise.

To ensure Maine continues its commitment to broad participation, the Committee recommends that Maine adopt Automatic Voter Registration. The Committee also recommends that the State continue to allow same day registration.

The Committee also concludes that because voter fraud is essentially nonexistent (there has been only one case of voter fraud prosecuted in over 30 years)¹, there is no basis for imposing Voter ID requirements. It makes additional conclusions about the importance of student voting, the franchise for incarcerated individuals, access to polls for people with disabilities, and election integrity. These can be found in the Assertions and Themes and Conclusions section of the report.

¹ Ann Luther Testimony, testimony before the Maine Advisory Committee to the U.S. Commission on Civil Rights, Mar. 21, 2018, transcript, (Addendum on Photo ID), (hereafter cited as *2018 Transcript*).

II. INTRODUCTION

Maine, like many states, has contemplated making several changes to its election laws in recent years. It also has a changing electorate, which is growing older and more diverse every year. The Maine State Advisory Committee to the United States Commission on Civil Rights, in support of the Commission’s Statutory Enforcement Report in 2018, sought to examine these election law changes and any efforts to suppress the vote. The Committee had a briefing on March 21, 2018; it invited experts and knowledgeable individuals to provide information to the Committee to help it better understand voting rights in Maine.² The efforts of the Advisory Committee could not be timelier; the day before the briefing the Senate Intelligence Committee released its draft recommendations to address the Russian interference in our 2016 election, including a recommendation that states take steps to vote by rapidly replacing outdated and vulnerable voting machines.³

III. BACKGROUND

“Th[e] right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies.”⁴ The fundamental right to vote for all citizens over the age of 18 is constitutionally guaranteed by the 15th, 19th, and 26th Amendments. These Amendments prohibit franchise discrimination on the basis of race, sex, and age respectively. Nonetheless, various legal and procedural obstacles historically hindered the exercise of this right for certain groups. As a result, equal access to the polls for many voters developed slowly. Federal civil rights legislation enacted during the civil rights movement sought to correct this imbalance, not only by guaranteeing that individuals have the right to vote regardless of their minority status, but also by ensuring they can exercise it by casting a ballot.

Despite great progress in the decades that followed, many recent changes in election laws enacted by state and local governments, as well as Supreme Court decisions, have created or caused barriers to voting for communities of color and other protected groups.

² Appendix I, Agenda

³ Appendix II. “Russian Targeting of Election Infrastructure During the 2016 Election.” Submission by Secretary of State Matthew Dunlap, March 21, 2018.

⁴ Lyndon B. Johnson, President of the United States, Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act (Aug. 6, 1965) (transcript available at <http://www.presidency.ucsb.edu/ws/?pid=27140>).

1. Voting Rights in the United States

The 15th Amendment provides that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,” and that, “Congress shall have the power to enforce this article by appropriate legislation.”⁵ The Amendment was ratified in 1870 and interpreted narrowly by the Supreme Court only to prohibit laws that used race as a qualification or pre-condition for voting.⁶ As a result, many states enacted various legal and procedural obstacles to prevent Black voters from participating in elections for decades after its ratification. Using techniques such as voter literacy tests, poll taxes, voucher requirements, and grandfather clauses, these states continued to disenfranchise people of color with impunity. In a recent decision by the Supreme Court, Chief Justice Roberts succinctly concluded that, “the first century of congressional enforcement of the [15th] Amendment . . . can only be regarded as a failure.”⁷

The 19th Amendment prohibits discrimination by denying persons the right to vote on the basis of gender.⁸ The 26th Amendment prohibits denying persons over the age of 18 the right to vote on the basis of age.⁹ The Voting Rights Act (VRA) of 1965 sought to correct racially discriminatory practices by prohibiting laws that had the effect of denying or abridging voting rights on the basis of race.¹⁰ This legislation increased voter participation by people of color in part because it included a “preclearance requirement” for certain states and counties that used discriminatory tests and had low voter turnout and registration during the 1964 Presidential Election. The preclearance requirement was a prophylactic measure against state legislation that hindered minority access to polls by requiring specific jurisdictions to submit proposed changes to their voting procedures to the Attorney General or a panel of federal judges for approval. If a state or district wished to remove themselves from the pre-clearance requirement, they could bring a “bailout” action at the U.S. District Court for the District of Columbia.¹¹

⁵ U.S. CONST. amend. XV, §§ 1-2.

⁶ *See, e.g.,* *United States v. Reese*, 92 U.S. 214 (1876).

⁷ *Northwest Austin Municipal Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 197 (2009).

⁸ The 19th Amendment was written by Susan B. Anthony and Elizabeth Stanton, leaders of the National Woman Suffrage Association, after a long and arduous fight for gender equality at the polls. Despite being first introduced in 1878, the amendment was not ratified until 1920.

⁹ It was ratified in 1971 as a response to youth activism during the Vietnam War. Proponents of the amendment argued that youth who were old enough to serve in the military and die for their country should be old enough to vote. Congress and the rest of the country agreed resoundingly.

¹⁰ *See* Voting Rights Act of 1965, 52 U.S.C. § 10301 (a)-(b) (1965). Despite its scheduled expiration date of 1970, the VRA has been amended five times to date: 1970, 1975, 1982, 1992, and 2006. The 2006 amendment stamped the VRA with a 25-year extension until it is to be reviewed for additional amendments. The major provisions of the VRA include Section 2, Section 3, Section 4, Section 5, Section 203, and Section 208.

¹¹ *Id.* at § 5.

When Congress reauthorized the VRA in 2006, it noted in its findings that there had been “significant progress” regarding “minority” voter registration, turnout, and representation in Congress.¹² In Alabama, for example, there was almost a 50 percent disparity between White and Black voter registration in 1965. By 2012, Black voter registration was only seven percent less than White voter registration. Additionally, one percent more Blacks than Whites actually voted in 2012. Congress stated clearly, however, that the VRA still served a vital purpose at the time of reauthorization. “[T]he evidence before Congress reveals that 40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution.”¹³ However, there was not always unanimous support for extending the VRA. Senate reports soon began to emerge in which the minority expressed concern over a lack of findings of relevant differences between the covered and uncovered districts and extending the VRA for an additional twenty-five years.¹⁴ The final report makes this dissension apparent, featuring qualms from the minority regarding the unfair geographic reach of the law as well as a limited protection afforded only to majority-minority districts.¹⁵ The constitutionality of this reenactment was challenged in *Northwest Austin Municipal Utility District No 1. v. Holder* in which the Supreme Court made clear that the preclearance stipulation and coverage formula raised significant questions regarding their constitutionality.¹⁶ The Court suggested that the discriminatory practices which Section 5 was created to monitor may no longer exist in the covered districts, and Section 4(b) was based on outdated evidence that could no longer be used in the 21st century.¹⁷

The next challenge to the 2006 VRA reenactment came in 2013 in the Supreme Court case of *Shelby County v. Holder*.¹⁸ In *Shelby*, the Court struck down the coverage formula of the preclearance requirement. The Court reasoned that unequal treatment of states under federal law threatens principles of federalism and equal sovereignty, holding that a federal law should not apply to some states differently than others unless very particular circumstances require it to do

¹² Fannie Lou Hamer, Rosa Parks & Coretta Scott King, Voting Rights Act Reauthorization and Amendments Act of 2006, 109 Pub. L. No. 246, §2(b)(1), 120 Stat. 577 (2006) (amending the Voting Rights Act of 1955, 52 U.S.C. § 10301 (1965)), available at <http://www.gpo.gov/fdsys/pkg/STATUTE-120/html/STATUTE-120-Pg577.htm> (last accessed March 2, 2018).

¹³ *Id.* at § 2(b)(7).

¹⁴ S. Rep. No. 109-295, at 25-26 (2006).

¹⁵ Nathaniel Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 Yale L.J. 174, 191 (2007).

¹⁶ *Northwest Austin Municipal Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 204 (2009). *See also* William S. Consovoy & Thomas McCarthy, *Shelby County v. Holder: The Restoration of Constitutional Order*, CATO Supreme Court Review, at 39.

¹⁷ *Id.* at 40.

¹⁸ *Shelby County v. Holder*, 570 U.S. 529 (2013).

so. In order to be constitutional, “a departure from the fundamental principle of equal sovereignty requires showing that a statute’s disparate geographic coverage is sufficiently related to the problem that it targets.”¹⁹ The Court concluded that “[n]early 50 years later, things have changed dramatically.”²⁰ “[V]oter registration and turnout numbers in the covered States have risen... There is no longer such a disparity.”²¹ The Court further explained that although the 15th Amendment gives Congress power to craft legislation to protect voters of color, it “is not designed to punish for the past; its purpose is to ensure a better future.”²² The Court concluded that the preclearance formula was unconstitutional and invited Congress to adjust the coverage formula to current registration and turnout data. Since this decision, states have been prematurely exonerated from their coverage through bailout procedures and have created photo ID requirements, closed polls in areas with large minority populations, and stopped or curtailed early voting.²³

As background for this report, we reference a student voting case decided by the Supreme Court. In the 1979 case of *Symm v. United States*,²⁴ the Court Symm’s practice of refusing to register college dormitory residents to vote unless they established that they would live in the community after graduation violated the 26th Amendment. The *Symm* case involved a tax assessor (Symm) who helped register students, at a local predominantly black college, to vote. The local college where the tax assessor was helping was a predominately black college. A federal district court ruled that Symm violated the Constitution and the 26th Amendment. The Supreme Court upheld this decision, holding that college students can choose to vote in their home state or in the state where they attend college and they should not face any intimidation or retaliation. Furthermore, the Maine Supreme Judicial Court had already ruled that college students could list a dormitory as their primary residence. Despite this ruling, some Maine elected officials have repeatedly sought to intimidate college students by continuing to propose legislation that would be discriminatory towards, and restrict the voting rights of, college students and deny out-of-state students’ right to vote in Maine.

2. Voting Rights in Maine

Maine has been relatively progressive in the field of voting rights access and has boosted strong numbers of voter turnout, having 72.8 percent of the voter eligible population vote in the 2016

¹⁹ *Id.* at 542.

²⁰ *Id.* at 547.

²¹ *Id.* at 551.

²² *Id.* at 553.

²³ Consvooy, *supra* at 61.

²⁴ *Symm v. United States*, 439 U.S. 1105 (1979).

election.²⁵ In 1831, Maine became one of the first states to work towards establishing a secret ballot, eliminating handwritten ballots, and mandated ballots be on white, not colored, paper. Maine was the third New England state to ratify the 19th Amendment in 1919, preceded by New Hampshire and Massachusetts.²⁶ In 1913, part of the Maine Progressive Era, reforms included creating the Initiative and Referendum, the Maine political party primary, and the People’s Veto.²⁷ Significant voting challenges also occurred in the early 21st century. In *Doe v. Rowe*,²⁸ a seminal Americans with Disabilities Act (ADA) voting rights case, the United States District Court of Maine found that the clause of the Maine Constitution that barred persons “under guardianship for reasons of mental illness” from voting was unconstitutional. They found this clause to be a violation not only of the ADA but also a violation of the 14th Amendment.²⁹ The case was later cited by the U.S. Supreme Court in *Tennessee v. Lane*.³⁰

In 2003, Maine House Paper No. 470 was introduced to lower the voting age to 17; today, young people may register to vote at 17 and vote in primaries if they will turn 18 by the general election.³¹ In that same year, Maine House Paper No. 159 was proposed to deny those “convicted of murder or a Class A crime or a crime in another jurisdiction that is comparable to murder or a Class A crime” from voting while they are incarcerated, but that effort failed.³² In 2009, there was a grassroots movement in Portland to allow lawful permanent residents the right to vote in municipal elections, which failed but was reintroduced in January of 2017.³³

To register to vote in Maine, you must be a resident in Maine, be a U.S. citizen, and be at least 17 years old. Additionally, Maine permits absentee voting and early voting, it has same-day voter registration, and it does not have any voter identification laws.³⁴ Furthermore, Maine is one of two states that allows incarcerated citizens full voting rights.³⁵

²⁵ *Maine Shoots to 2 in Nation for Voter Turnout*, U.S. News and World Report (Mar. 17, 2017), <https://www.usnews.com/news/best-states/maine/articles/2017-03-17/maine-shoots-to-2-in-nation-for-voter-turnout>

²⁶ <https://www.usconstitution.net/constamrat.html#Am19>

²⁷ H. Legis. Rec., 118-1013, 2nd Sess. (Me. 1998) (http://maine.gov/legis/lawlib/lld/statprovqipv/elegrec_1998-03-19_hp_ph1760-1762.pdf)

²⁸ *Doe v. Rowe*, 156 F. Supp. 2d 35 (D. Me. 2001).

²⁹ *Id.*

³⁰ *Tennessee v. Lane*, 541 U.S. 509 (2004).

³¹ *Primary Voting at Age 17*, Fairvote (last visited June 6, 2018),

http://www.fairvote.org/primary_voting_at_age_17#facts_17_year_old_primary_voting

³² *The History of Immigrant Voting Rights in Maine*, Immigrant Voting Project, Democracy For All (July 28, 2009),

<https://www.portlandmaine.gov/DocumentCenter/View/1156>

³³ Randy Billings, *Idea to Allow Noncitizen Immigrants to Vote Faces Hurdles*, The Portland Press Herald (Jan. 16, 2017), <https://www.pressherald.com/2017/01/16/idea-to-allow-noncitizen-immigrants-to-vote-in-portland-faces-hurdles/>

³⁴ *Voting in Maine*, Ballotpedia, https://ballotpedia.org/Voting_in_Maine

³⁵ *Criminal Disenfranchisement Laws Across the United States*, Brennan Center for Justice (June 5, 2017), https://www.brennancenter.org/sites/default/files/analysis/Criminal_Disenfranchisement_Map.pdf

A new voting system, known as ranked-choice voting, was passed by voters in November 2016, and it continues to be refined to conform with the Maine Constitution.

A. Ranked-Choice Voting

Mainers voted in favor of ranked-choice voting (RCV), also known as preferential voting, in November of 2016. Under this system, voters rank the candidates on the ballot. If there are four candidates, then the voter ranks each one, one through four, with number one being their first pick. Ballots are then counted and the candidate with the majority of the votes wins. If there is no majority winner, then the candidate with the least number of votes is eliminated, and votes are reallocated to the electorate's second choice.

The Maine Supreme Judicial Court ruled, on May 23, 2017, that RCV is unconstitutional for state-level general elections; it offered no opinion on the use of RCV in primaries and federal elections. In a unanimous opinion, the Court ruled that the system violates a provision of the Maine Constitution that allows elections to be won by pluralities — and not necessarily majorities — of votes. The Legislature subsequently passed a law that would delay the implementation of ranked-choice voting in primaries and federal elections until 2021.³⁶

Maine voters responded to the Legislature by using the People's Veto, which is permitted under the state Constitution, to place a referendum on the June 2018 ballot. The referendum would overturn the parts of the 2017 law that delay the implementation of ranked-choice voting in primaries and federal elections until 2021; this allows RCV to be used immediately in the June 2018 primaries.

Now that the question is on the ballot for June 12, 2018, the parts of the 2017 law delaying implementation are on hold, and Mainers will decide if the legislature's delays will stand. Even if the People's Veto fails to pass in June, 2018, ranked-choice voting for party primary contests to be decided the same day will be used.

At the 11th hour, however, an apparent typographical error was found in the new law, which threatened a constitutional crisis unless the discrepancy is reconciled within the new law. The day before the Committee voted on the report, April 17, 2018, the Maine Supreme Judicial Court ruled in favor of RCV, allowing it to be used in the June primary.³⁷

³⁶ An Act to Implement Ranked-choice Voting in 2021, H.D. 1137, 128th Leg. (Me. 2017).

³⁷ Maine Senate v. Sec'y of State, 2018 ME 52, ¶ 33.

Advantages

RCV has garnered support from voting rights groups in Maine such as the Maine League of Women Voters, which stated: “It allows voters to vote for their favorite candidate without fear of helping elect their least favorite candidate. It minimizes strategic voting and eliminates the spoiler effect.”³⁸ Advocates believe that preferential voting will increase voter turnout by helping reduce the partisan divides that have occurred over the past few years. Supporters of RCV believe that it “increases civility” in the voting and election processes. RCV requires candidates to reach out to a broader base and forces them to speak to constituents of both political parties with the goal of eliminating some of the intense partisanship that plagues the country. To date, 11 cities throughout the U.S. that have implemented RCVs.³⁹ Where they have been implemented, only 5 percent of the electorate thought that the candidates criticized each other “a great deal of the time” but in jurisdictions without RCV, that number was 25 percent.⁴⁰ Furthermore, 42 percent of respondents in California cities using RCV believed that the 2013 campaigns in California were less negative, whereas 28 percent of respondents without RCV found this to be true.⁴¹ Arguably, this voting style eliminates the possibility of a victorious spoiler candidate. Supporters also herald RCV and its majority system of voting for “hold[ing] the powerful accountable.”⁴²

Studies have shown that when the electorate uses RCV, an overwhelming majority (87 percent) found it easy to understand.⁴³ Fifty-two percent of Maine voters supported it in 2016, as did the state Democratic Party.⁴⁴

Ireland and Australia use RCV in national elections. Maine will be the first state to use it. Perhaps it is used in U.S. cities and not more broadly because it is easy to centralize ballot counting in cities, people live closer together, and the technology to count is readily available. For example,

³⁸ Peter White, *Should We Vote for Candidates in Order Preference?*, Newsweek (Oct. 2016), available at <http://www.newsweek.com/should-we-vote-candidates-order-preference-514528>

³⁹ *Ranked Choice Voting / Instant Runoff*, Fairvote (last visited May 30, 2018), http://www.fairvote.org/rcv#where_is_ranked_choice_voting_used

⁴⁰ *Ranked Choice Voting in Practice*, Ranked Choice Voting Civility Project, FairVote (2014), <https://fairvote.app.box.com/v/APSA-Civility-Brief-2015>

⁴¹ *Id.* at 2

⁴² Howard Dean, *Howard Dean: How to Move beyond the Two-Party System*, The New York Times, Oct. 2016, available at <https://www.nytimes.com/2016/10/08/opinion/howard-dean-how-to-move-beyond-the-two-party-system.html>

⁴³ Francis Neely, *An Assessment of the ranked-Choice Voting in the San Francisco 2004 Election*, Public Research Institute, San Francisco State University (May 2005), available at <https://fairvote.app.box.com/v/2004-SF-rcv-assessment>

⁴⁴ *Maine Question 5 – Allow Ranked-Choice Voting – Results: Approved*, The New York Times (Aug. 1, 2017), <https://www.nytimes.com/elections/results/maine-ballot-measure-5-allow-ranked-choice-voting>

some parts of Maine choose to hand-count the votes while others do not. In cities, all jurisdictions use the same technology, which allows the counting process to be streamlined.

Disadvantages

Opponents of RCV argue that it decreases turnout rates and would lead to more errors when voting.⁴⁵ Many believe that it may be a confusing process, not only for the candidates to advocate but also for the electorate.⁴⁶ Additionally, many towns in Maine still choose to hand-count the votes, and opponents argue that the ranking system will be too confusing for people to record by hand.⁴⁷

There is ongoing debate about RCV's effects on voter turnout. While supporters argue that RCV gives the electorate more meaningful choices and thus increases turnout, opponents have argued the opposite. A study from Minneapolis, Minnesota examining 13 wards found that more affluent and white voters turned out at a higher rate than those of differing socioeconomic and racial backgrounds, despite the implementation of RCV.⁴⁸

As stated, RCV has faced its fair set of obstacles in Maine for a more specific reason –that its use in general elections on the state level has been deemed unconstitutional: the Maine Constitution states that a candidate can win office with a plurality, not necessarily a majority, of votes, but RCV hinges on candidates receiving a majority in order to win. Thus, it would be necessary for Maine to amend its constitution before voting on implementing this preferential voting system for state-level general elections.

3. Voter Suppression Efforts in Maine

Maine's voting laws are relatively unrestrictive and aim to accommodate and encourage voting; however, there have been regular and concerted false allegations of voter fraud committed by college students and persons of color. Investigations have not supported these claims; yet, efforts to suppress these voters have been undertaken at the highest levels of Maine government. The

⁴⁵ Jason McDaniel, *Ranked Choice Voting Likely Means Lower Turnout, More Errors*, Cato Unbound, Dec. 2016, available at <https://www.cato-unbound.org/2016/12/13/jason-mcdaniel/ranked-choice-voting-likely-means-lower-turnout-more-errors>

⁴⁶ Marina Villeneuve, *Maine Lawmakers At odds over Future of Ranked Choice Voting*, The Associated Press (Oct. 2017) available at <https://bangordailynews.com/2017/10/17/politics/maine-lawmakers-at-odds-over-future-of-ranked-choice-voting/>

⁴⁷ Doug Chapin, *Thank But No Thanks: Some Maine Towns Prefer Hand-Counting to New Machines*, University of Minnesota Libraries (March 2013), available at <http://editions.lib.umn.edu/electionacademy/2013/03/18/thanks-but-no-thanks-some-main/>

⁴⁸ Lawrence Jacobs & Joanne Miller, *Ranked-choice Voting: By the Data, Still Flawed*, StarTribune (Feb. 2014), available at <http://www.startribune.com/ranked-choice-voting-by-the-data-still-flawed/245283691/>

details of some of these efforts to suppress voters are described in the Assertions and Themes Section of the report.

IV. ASSERTIONS AND THEMES FROM MARCH 2018 BRIEFING

Maine has a statutory, regulatory, and community commitment to participation in elections. It has some of the most inclusive and protective voting laws in the country, making it one of the most democratic states in the United States. Its residents may register to vote on Election Day, there is no photo identification requirement, and those convicted of crimes are not deprived of the franchise.

Voter Suppression

Despite Maine’s commitment to broad participation, there are “remarkable...[but] predictable, attempts to prevent eligible voters from exercising their most basic democratic rights.”⁴⁹ There are a couple of methods of voter suppression: legislative and government official action.

1. Legislative Efforts

Voter Identification: Every legislative session since 2011 has seen the introduction of virtually the same boilerplate legislation requiring a voter to show a photo ID. A photo ID bill was defeated in the first session of the current legislature; Governor LePage, “in defiance,”⁵⁰ introduced virtually an almost identical bill in the second session. To date, no photo ID bill has passed.

Same Day Voter Registration: For 45 years, Maine voters have had the right to register in person, anytime up to and including Election Day. In 2011, however, the Maine state legislature repealed the same-day registration law. A People’s Veto campaign by voting rights activists successfully reversed the repeal by a 60 percent margin. To date, there has been no attempt to again repeal same-day registration.

Student Voting: Legislation has been repeatedly proposed in Maine that would establish a higher proof-of-residency standard for students residing in campus housing.

⁴⁹ Zachary Heiden Testimony, *2018 Transcript*, p. 27.

⁵⁰ Luther Testimony, *2018 Transcript*, p. 21.

2. Actions by Government Officials

In 2011, Maine Secretary of State Charles E. Summers, Jr., “launched an attack on Maine college students who had registered to vote, sending them threatening correspondence that was likely to deter them from exercising their voting rights.”⁵¹ This effort was prompted by Secretary Summers against 206 University of Maine students after allegations made by the then-chair of the Maine Republican Party, Charles Webster, who claimed, without any actual evidence, that students had voted illegally. An investigation of these allegations failed to produce any evidence of illegal voting or registration by any of these students. Nonetheless, Secretary Summers sent a letter to 191 of the students warning them that they might be violating Maine motor vehicle laws by not registering their vehicles in Maine. Secretary Summers did not enclose any instruction material or forms for registering vehicles or updating registrations with the letters; instead, he enclosed a “Voter Request to Cancel Registration” form that was created solely for the purpose of being sent to students.⁵²

In 2012, Mr. Webster was “more directly involved in efforts to intimidate and harass voters.” As noted in the background section, Mr. Webster claimed that “there were dozens, dozens of black people who came in and voted on Election Day.”⁵³ Webster’s proposed method for rooting out the “dozens of black people” was to send postcards to newly registered voters in certain rural areas with the intent to use any undeliverable postcards as proof of improper voter registration.⁵⁴

On November 7, 2016, the day before the general election, without any evidence, Governor Paul LePage issued a statement accusing Maine college students of committing voter fraud. The Governor alleged that students were voting in both Maine and other states and threatened “students who voted in Maine with investigation and prosecution for offenses related to motor-vehicle registration and ownership, which have nothing to do with the eligibility requirements for voting.” He also implied that the financial aid of students who vote in Maine may be jeopardized. The only group targeted was students.

In February 2018, Mayor Shane Bouchard of Lewiston sent a letter to newly registered voters. He warned residents, “If you drive a car in Maine, you are required to obtain a Maine driver’s license

⁵¹ Heiden Testimony, *2018 Transcript*, p. 28.

⁵² *Id.*

⁵³ Kristen A. Lee, *Maine GOP boss claims ‘hundreds’ of unfamiliar Black Voters flooded rural polls on Election Day*, *New York Daily News* (Nov. 15, 2012), <http://www.nydailynews.com/news/politics/maine-gop-boss-cites-mystery-black-voters-article-1.1202472>

⁵⁴ John Richardson, *Maine ACLU Warning Feds about Webster Comments*, *The Portland Press Herald* (Nov. 16, 2012), <https://www.pressherald.com/2012/11/16/maine-aclu-fears-voter-intimidation-by-republican-chairman>

within thirty days of establishing residency. Driving without a Maine license more than ninety days after establishing residency is a crime under Maine law.”⁵⁵ Essentially, Mayor Bouchard threatened voters with prosecution for not registering their motor vehicles or obtaining Maine driver’s licenses. While there is no disagreement that all drivers in Maine must comply with the motor vehicle laws, there is nothing in those laws that bear upon someone’s eligibility to vote in Maine. In a March 2018 letter to the Mayor, Secretary of State Dunlap rejected the action and responded: “The inaccuracies of your correspondence are undone by the lack of connectivity ... and were not derived from concerns about how Americans participate in democracy. Framing it thusly only arouses unfounded fear in the minds of the voting public, and is a disservice to the public discourse.”⁵⁶

Access to Polls for People with Disabilities.

Maine continues to confront barriers that impact voters with disabilities. The issues include physical barriers, training election officials, and voter education. The types of barriers and obstacles to voting are often things that are readily remedied.

Physical accessibility to polling places is a persistent concern for Mainers with disabilities.⁵⁷ The access problems include inadequate dedicated parking, curb problems, signage issues, as well as steps and high thresholds that make it impossible for a person using a wheelchair to enter the polling station. The Maine Secretary of State works collaboratively with disability groups to survey polling places for accessibility. A recent survey of polling stations found that 15 percent had either steps, high thresholds of several inches, or missing or inadequate ramps, which meant they were completely inaccessible or unsafe to a voter using a wheelchair or a person with a mobility issue using a walker or other device.

There are also barriers when poll workers and election officials are not adequately trained on the rights of these voters. In the past, despite legal provisions that specifically allow assistance, there are challenges by election officials to disabled voters requesting assistance from another person and challenges to the rights of voters on the basis of guardianship.

Felon Enfranchisement

Maine is one of only two states in the country that offers incarcerated citizens full voting rights (both during and after incarceration), *i.e.*, people eligible to vote are not disenfranchised because

⁵⁵ See Appendix III.

⁵⁶ See Appendix IV.

⁵⁷ Richard Langley Testimony, *2018 Transcript*, p. 37.

of a criminal conviction. There have been legislative efforts, however, over the last several years to curtail these rights. To date, these efforts have not prevailed.

Laws in other states that prevent felons from voting are deeply rooted in our country's troubled racial history and have a disproportionate impact on minorities.⁵⁸ This is true in many states; the magnitude of prisoner and ex-felon disenfranchisement elsewhere in the United States has serious implications for democratic process and racial inclusion. A study released in 2010 of New York's constitutional history traces that state's current felony disenfranchisement law to a century-long effort to keep African-American citizens out of the voting booth.⁵⁹

Ranked Choice Voting

Maine will be the first state to implement Ranked Choice Voting, which was passed by a citizens' referendum but has encountered challenges to its constitutionality under the Maine Constitution.

Election Integrity

Election security is a central issue in the public discussion about elections. Maine is continually examining and improving its election security protocols to ensure that its voting systems are protected from interference. In fact, "examining and improving our security protocols and insuring that each vote is counted accurately and verifiably has always been [Maine's] stock and trade."⁶⁰

Automatic Voter Registration

Automatic voter registration system (AVR), as the name implies, automatically registers eligible citizens to vote whenever they interact with government agencies, most notably the department of motor vehicles. Eleven states and the District of Columbia have AVR and it is gaining momentum – 19 states introduced automatic registration proposals in 2018.

Coalitions, which include the League of Women Voters of Maine, support new mechanisms to assist in voter registration, including AVR. These coalitions were part of driving AVR forward in Oregon, Alaska, and Connecticut and paid close attention to the language of the bills to ensure that the new systems of registration did not negatively impact underrepresented communities.

⁵⁸ See generally Erika L. Wood, *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice (Dec. 16, 2016), <https://www.brennancenter.org/publication/florida-outlier-denying-voting-rights>

⁵⁹ *Id.*

⁶⁰ Statement of Secretary of State Matthew Dunlap. Available on file.

V. CONCLUSIONS

Voter ID Laws Disenfranchise Eligible Voters and Are Unnecessary and Expensive

According to a report by the Government Accountability Office, between 5 percent and 16 percent of eligible voters do not have the required government ID. This GAO study concluded that between presidential election years 2008 and 2012, voter participation fell in states where photo ID was implemented. More eligible voters are dissuaded from voting than ineligible voters are prevented from casting votes. Moreover, the impact of Voter ID laws is more severe on the elderly, ethnic minorities, and low income voters.⁶¹ Ann Luther of the League of Women Voters told the Committee that this could total twenty thousand voters in Maine's Presidential Election.⁶²

Voter ID laws are designed to address one exceedingly rare kind of voter fraud -- impersonating someone else at the polls. So rare is this phenomenon that a study conducted by Justin Levitt, a professor at the Loyola Law School in Los Angeles, found that out of the more than one billion votes cast between 2000 and 2014 in the U.S., there were 31 credible cases of fraud.⁶³ The Brennan Center for Justice notes that this number is likely high as it counts all credible cases, not only the ones that were prosecuted or which resulted in convictions.

Because voter fraud is essentially nonexistent, there is no cost-benefit to imposing Voter ID requirements. Moreover, when photo ID legislation was debated in the 125th Legislature, then-Secretary of State Charles E. Summers, Jr. convened the 2012 Elections Commission, which found, that “[t]he Commission, by a 4 to 1 vote, finds that the negative aspects of a Voter ID law outweigh its potential benefits and recommends that a Voter ID system not be pursued in Maine.”⁶⁴

Moreover, for people with disabilities and the elderly, who already find voting to be a challenge, there is no basis for creating another barrier to engage in civic life in a meaningful way.⁶⁵ The cost of obtaining documents and the burden of finding readily available public transportation are seemingly small obstacles that are magnified in the rush leading up to election-day.

⁶¹ *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, The Brennan Center for Justice (Nov. 2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

⁶² Luther Testimony, *2018 Transcript* (Addendum on Photo ID).

⁶³ Debunking the Voter Fraud Myth, The Brennan Center for Justice (Jan. 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>

⁶⁴ 2012 Elections Comm'n, Report of the 2012 Elections Commission, at 6

⁶⁵ Maine's elderly population is increasing. See <http://www.maine.gov/dhhs/oads/trainings-resources/documents/STATEPLANONAGING2016-2020DRAFT.pdf> (noting that “Since the last State Plan on Aging for 2012-2016, Maine's elderly population has increased dramatically. Maine's population has the highest median age in the United States.”).

Same Day Voter Registration Encourages Voter Turnout

Maine adopted same day voter registration in 1973. Prior to 1973, Maine ranked 21st among the states in voter turnout. By 2000, Maine ranked 3rd. Maine has consistently been in the top 5 states for voter participation during the entire period since.

In fact, in 2008, the five states with the highest voter turnout all had Election Day registration. The nine states with Election Day Registration had, on average, a voter turnout more than 7 percent higher than other states. Maine's turnout was more than 9 percent higher than other states.

The value of same day voter registration is clear when looking at the numbers: tens of thousands of Maine voters register during the last five days, including Election Day. In 2008, 55,806 voters registered during that period.⁶⁶ In 2010, 19,382 voters registered during that period.⁶⁷ The Legislature should not attempt to eliminate same day voter registration.

Student Voting

Government actions and deliberate misinformation may be causing confusion on the part of prospective student voters, leading to voter suppression. Legislation has been repeatedly proposed in Maine that would establish a higher proof-of-residency standard for students residing in campus housing. Treating some college students differently than others based on a purely practical choice of housing accommodations seems to be a violation of their Constitutional right to equal protection under the law, although students are not a protected class. For example, if an eligible student lived in a college dorm, she would have to meet the higher residency test. If the same student lived in a private apartment or off-campus home, she would be allowed to register under the same test as any other Maine resident. Such disparate treatment does not pass even a minimal definition of equal protection. Maine should not diminish these established rights.

The proposal that students should face additional voter registration barriers just because they live in college housing is inconsistent with the basic democratic principles of allowing all citizens to exercise the right to vote. It may also open the door to other forms of threat and intimidating messages to these or other voters. Maine should not diminish these established rights.

⁶⁶ Luther Testimony, *2018 Transcript*.

⁶⁷ *Id.*

Access to Polls for People with Disabilities

While Maine continues to confront voting barriers for people with disabilities, there is clearly collaboration between the Secretary of State and disability rights advocacy groups. These groups recommend that municipalities hire poll workers with disabilities and build relationships with existing disability resources to help review the accessibility of facilities, develop plans for compliance, and develop best practices for working with voters with disabilities.

Additionally, there should be training for poll workers, election officials, and others concerning the requirement that municipalities make reasonable modifications to afford equal opportunity to voters with disabilities and that people with disabilities have the right to get help with voting and to decide who will help them vote. A person with a disability can get help from a friend, family member, caregiver, service provider, or almost anyone else of his or her choosing except an employer or union member; he/she can also ask a poll worker for assistance with voting. Moreover, poll workers should be advised that they may not challenge the right of an individual to vote on the basis of guardianship status.

There also should be assistance provided to precincts to develop plans to provide physical and communication access consistent with the Americans with Disabilities Act and the Help America Vote Act.

Franchise for those Incarcerated Strengthens Social Ties and Commitment

In providing incarcerated citizens with the right to vote, Maine recognizes that there is no government interest served by felon disenfranchisement – much less a compelling one. Moreover, “the argument that allowing prisoners to vote would be costly and impractical is ethically unjustifiable. Similarly, the fact that prisoners lose many freedoms does not imply they should lose all their civil rights.”⁶⁸

There is evidence that continuing to recognize the citizenship of criminal offenders offers a viable pathway to rehabilitation and “responsible participation in civil society.”⁶⁹ Among the sentencing options criminal offenders face, loss of citizenship is not one. So long as citizenship pertains, so should the right to vote.

⁶⁸ <https://felonvoting.procon.org/view.resource.php?resourceID=000283> (citing Jeff Manza, PhD, Professor of Sociology and Political Science at the Institute for Policy Research at Northwestern University, and Christopher Uggen, PhD, Distinguished McKnight Professor of Sociology at the University of Minnesota, *Locked Out: Felon Disenfranchisement and American Democracy*, 2006).

⁶⁹ Mandeep K. Dhimi, *Prisoner Disenfranchisement Policy: A Threat to Democracy?*, *Analyses of Social Issues and Public Policy* (Vol. 5) (2005), at 5.

Election Integrity

Our democracy rests not only on the integrity of our election process, but also on the public confidence that citizens have in our elections. Voting systems must be secure, accurate, recountable, accessible, and transparent. “[V]oters tend to be more confident when they don’t wait a long time to vote, when they encounter polling place officials who seem competent, and when they vote in person rather than by mail.”⁷⁰

Maine has a generations-long record of professional, nonpartisan, voter-friendly administration of elections at both the state and municipal level – the town and city clerks are among the most recognized and trusted government officials in Maine’s communities.

Maine should join the other 23 states in subscribing to ERIC, the Electronic Registration Information Center, which can help states maintain accurate registration rolls when voters move between states.

Automatic Voter Registration

Maine should adopt Automatic Voter Registration (AVR). When done correctly, AVR helps “modernize the current paper-based systems with systems that use electronic government data to identify and register eligible Americans to vote.”⁷¹ Moreover, AVR can create governmental efficiencies by “standardizing a single unified change of address system for the benefit of multiple participating state agencies.”⁷²

⁷⁰ *Voter Confidence*, MIT Election Data and Science Lab, <https://electionlab.mit.edu/research/voter-confidence>

⁷¹ Luther Testimony, *2018 Transcript*.

⁷² *Id.*

APPENDICES

Appendix I



Maine Advisory Committee
U.S. Commission on Civil Rights

Briefing on Voting Rights

Wednesday, March 21, 2018

Lewiston City Hall, 27 Pine Street in Lewiston, ME 04240

AGENDA

- I. Welcome and Introductions** 12:45 p.m.
- II. Briefing**
- Panel One: Secretary of State 1:00 p.m.
Matthew Dunlap, Secretary of State, Maine
- Panel Two: Advocates 1:45 p.m.
Terry Brown, Director of Communications, Maine Heritage Policy Center
Zachary Heiden, Legal Director, ACLU of Maine
Ann Luther, Past President, League of Women Voters of Maine
- Panel Three: Advocates 2:50 p.m.
Richard Langley, Deputy Director, Disability Rights of Maine
Kristen Aiello, Managing Attorney, Disability Rights Maine
Rachel Talbot Ross, Past President, Portland Branch, Maine NAACP
- III. Public Comment Session** 4:00 p.m.
- IV. Adjournment**



MATTHEW DUNLAP
SECRETARY OF STATE

Appendix II

STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

Secretary of State Matthew Dunlap Briefing Comments to the Maine Advisory
Committee to the United States Commission on Civil Rights
City Council Chambers, Lewiston, Maine
March 21, 2018

The model of democratic self-governance through voting is elegant in the simplicity of the idea. Making it work requires thought, transparency and accountability; making it *available* has, historically, been where the fight has occurred. In Maine, the Legislature has bent to the work of voter access with zeal, and as a result, we have some of the most accessible elections in the nation.

Since 1973, we've allowed eligible voters to register up to and including Election Day, and in 1999, we stopped asking people to fill out affidavits to obtain an absentee ballot. These and countless other measures consistently result in Maine having among the highest voter turnout for elections in the country: In the last two presidential election cycles, turnout of voter-age eligible citizens exceeded 70%.

Still, we see challenges to making sure all voters are properly informed of their access to the ballot. Earlier this month, I responded to an official letter from the City of Lewiston, sending notice to voters who registered to vote on Election Day that outlined the many obligations of Maine citizenship. While not incorrect in stating that Maine citizens who have established residency are routinely expected to register their vehicles and update their licenses, among other obligations of establishing residency, what was not included in his letter was any information that ties these requirements to voting. Maine residents who are U.S. citizens and have reached the age of majority have an unquestionable right to vote. Other laws regarding residency requirements are not derived from concerns about how Americans participate in their democracy. Framing it thusly only arouses unfounded fear in the minds of the voting public, and is a disservice to the public discourse.

Last year, as a member of the now-defunct Presidential Advisory Commission on Election Integrity, I became similarly concerned that some of my fellow commissioners were seeking to disenfranchise voters under the guise of improving the security of the voting process. The commission was established by executive order in May of 2017 to answer monster-under-the-bed questions about "voter fraud," but the implicit rationale for its creation appears to have been to substantiate President Trump's startling claims that up to 5 million people voted illegally in 2016. Chaired by Vice President Pence, the commission had the chance to answer questions about potential fraud and to highlight best practices to enhance voter confidence in our election systems. Instead, the commission cloaked itself in secrecy – even from its own members.

I feel strongly that recommendations for changes in public policy – whether you agree with them or not – ought to come through an open, public discussion where any American can weigh in. To that end, I filed a lawsuit to obtain the working documents of the commission, but still have not received any response that might shed light on the goals and work of the commission’s leadership. That quest is ongoing.

Parallel to the goal of accessibility for the voter is the importance of voter confidence in the administration of the election and the security of the process. In Maine, we adhere to a robust chain of custody of the ballot, to a degree that we can describe with authority the transit of a ballot from the moment it comes off a printing press to when it is finally tabulated and secured in a tamper-proof container under seal.

Election security, especially electronic security, has become a central issue in the public discussion about the conduct of our elections and the public’s confidence in them. Examining and improving our security protocols and insuring that each vote is counted accurately and verifiably has always been our stock in trade. Maine’s best practices are reflected in recommendations offered forth by the U.S. Senate Intelligence Committee, which came to us just this week. The narrative of those recommendations is a coda of how Maine’s legislature has crafted election law.

Of course, we shouldn’t pat ourselves on the back too much. As a former commercial cook, I remember well the charge that any cook is only as good as the last meal they prepared. Going forward, we must continue to question and test our processes and as much as possible provide to the public the assurance that our elections are decided by the voters, and not by any outside influence.

In a few months, Maine will be implementing ranked-choice voting on the largest scale the method has ever witnessed. Our current protocols of security and custody will serve the implementation and tabulation of this election very well. It is our conviction that when the tabulation for the June primary nominations are certified, they will enjoy the highest level of public confidence.

That confidence is crucial to the success of the election process. The late charges of meddling in our elections by foreign actors has threatened to greatly undermine the confidence of the public in our democratic processes. I, for one, applaud the U.S. Department of Homeland Security for their outreach these past several months to the several secretaries of state and other chief elections officers, to brief us on their observations and to open lines of communication, utilizing our offices as partners, instead of as adversaries. The strength of these partnerships and the diligence of local elections administrators will undoubtedly result in enhanced public confidence in elections management.

We should not hesitate to argue, disagree and challenge ourselves and each other in this process. Only in the crucible of accountability through discernment and debate will we develop policies and methods that deserve the public support they need to be trusted and successful.

RUSSIAN TARGETING OF ELECTION INFRASTRUCTURE DURING THE 2016 ELECTION

SUMMARY OF DRAFT SSCI RECOMMENDATIONS

The Senate Select Committee on Intelligence has examined evidence of Russian attempts to target election infrastructure during the 2016 U.S. elections. The Committee has reviewed the steps state and local election officials take to ensure the integrity of our elections and agrees that U.S. election infrastructure is fundamentally resilient. The Department of Homeland Security, the Election Assistance Commission, state and local governments, and other groups have already taken beneficial steps toward addressing the vulnerabilities exposed during the 2016 election cycle, including some of the measures listed below, but more needs to be done. The Committee recommends the following steps to better defend against a hostile nation-state who may seek to undermine our democracy:

1. Reinforce States' Primacy in Running Elections

- States should remain firmly in the lead on running elections, and the Federal government should ensure they receive the necessary resources and information.

2. Build a Stronger Defense, Part I: Create Effective Deterrence

- The U.S. Government should clearly communicate to adversaries that an attack on our election infrastructure is a hostile act, and we will respond accordingly.
- The Federal government, in particular the State Department and Defense Department, should engage allies and partners to establish new international cyber norms.

3. Build a Stronger Defense, Part II: Improve Information Sharing on Threats

- The Intelligence Community should put a high priority on attributing cyber attacks both quickly and accurately. Similarly, policymakers should make plans to operate prior to attribution.
- DHS must create clear channels of communication between the Federal government and appropriate officials at the state and local levels. We recommend that state and local governments reciprocate that communication.
- Election experts, security officials, cybersecurity experts, and the media should develop a common set of precise and well-defined election security terms to improve communication.
- DHS should expedite security clearances for appropriate state and local officials.
- The Intelligence Community should work to declassify information quickly, whenever possible, to provide warning to appropriate state and local officials.

4. Build a Stronger Defense, Part III: Secure Election-Related Systems

- Cybersecurity should be a high priority for those managing election-related systems. Basic but crucial security steps like two-factor authentication for those logging into voter databases can improve the overall election security posture. States and localities should also take advantage of DHS offerings, to include DHS's network monitoring capabilities.

- The Committee recommends DHS take the following steps:
 - Working closely with election experts, develop a risk management framework that can be used in engagements with state and local election infrastructure owners to document and mitigate risks to all components of the electoral process.
 - Create voluntary guidelines on cybersecurity best practices and a public awareness campaign to promote election security awareness, working through the U.S. Election Assistance Commission (EAC), the National Association of Secretaries of State (NASS), and the National Association of State Election Directors (NASED).
 - Expand capacity to reduce wait times for DHS cybersecurity services.
 - Work with GSA to establish a list of credible private sector vendors who can provide services similar to those provided by DHS.

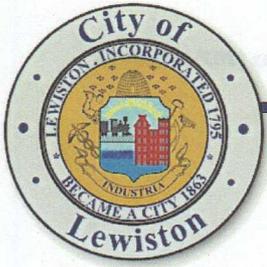
5. Build a Stronger Defense, Part IV: Take Steps to Secure the Vote Itself

- States should rapidly replace outdated and vulnerable voting systems. At a minimum, any machine purchased going forward should have a voter-verified paper trail and no WiFi capability. If use of paper ballots becomes more widespread, election officials should re-examine current practices for securing the chain of custody of all paper ballots and verify no opportunities exist for the introduction of fraudulent votes.
- States should consider implementing more widespread, statistically sound audits of election results.
- DHS should work with vendors to educate them about the vulnerabilities of both the machines and the supply chains.

6. Assistance for the States

- The Committee recommends Congress urgently pass legislation increasing assistance and establishing a voluntary grant program for the states.
 - States should use grant funds to improve cybersecurity by hiring additional Information Technology staff, updating software, and contracting vendors to provide cybersecurity services, among other steps.
 - Funds should also be available to defray the costs of instituting audits.

Appendix III



EXECUTIVE DEPARTMENT

**Shane D. Bouchard
Mayor**

February 5, 2018 Dear

Resident:

I would like to thank you for registering to vote in last fall's municipal election. Participating in elections is an important measure of a vibrant local community and we are proud of the high level of participation we see in local elections.

I would also like to remind you that along with the right to vote in state and local elections come certain duties and responsibilities. By registering to vote in Lewiston, you have declared residency in Maine, which has consequences for compliance with other Maine laws. If you drive a car in Maine, you are required to obtain a Maine driver's license within thirty days of establishing residency. Driving without a Maine license more than ninety days after establishing residency is a crime under Maine law. In addition, if you own a vehicle here, state law also requires you to register that vehicle in Maine within thirty days of establishing residency. Finally, by declaring Maine as your voting residence, you may be treated as a resident of Maine for income tax purposes and be subject to Maine income tax law.

If you are a new resident to Lewiston and Maine, I would again like to welcome you to our community and thank you for your participation in our civic life.

Sincerely yours,

Shane D. Bouchard
Mayor

Appendix IV



MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

9. March 2018

The Honorable Shane Bouchard, Mayor
City of Lewiston
27 Pine Street
Lewiston, ME 04240

Dear Mayor Bouchard,

I have come into receipt of a communication distributed by your office to U.S. citizens residing in the City of Lewiston regarding the administrative processes they accessed in order to vote in the November election last. In this communication, which was sent under your hand, you outline in assertive terms the many obligations of citizenship, including but not limited to the payment of excise taxes for vehicle registration, obtaining a Maine driver's license, etc. It is to be understood by this reader that the recipients consist primarily of voters who registered on Election Day and who may have come from different municipalities. While the letter's contents are indeed factual, I must observe that the respective processes are not relational; construing them as such leaves the right to vote as subordinate to bureaucratic checklists – which neither the constitution nor the statutes contemplate – and further, it does seem to be a rather awkward way to welcome new residents to a community.

In contemplating this, we take our guidance from the United States Supreme Court in *Symm v. United States* (439 U.S. 1105 (1979)), which held that denying college students the presumption of *bona fide* residency is a violation of the 26th Amendment to the Constitution.

In voter registration, we understand that residency is something that is established, not chosen; one way to indicate your residency is to register to vote. So is obtaining a driver's license, purchasing a home, renting an apartment, or a host of other routine actions a citizen takes when settling somewhere. But the key in Maine law is found in 21-A MRSA § 112 paragraph 1: "The residence of a person is that place where the person has established a fixed and principal home to which the person, whenever temporarily absent, *intends to return* (emphasis mine)." Election law assumes that residency is that place where you plan on returning to – and leaves to fate the possibility that those plans may change. Practically all of Maine law contemplates this, and further, that compliance with the obligations you cite takes not a little time and effort. Most importantly, those requirements were not crafted with the intent to pose as barriers that must be overcome before a citizen can exercise the right to vote, as described in *Symm*.

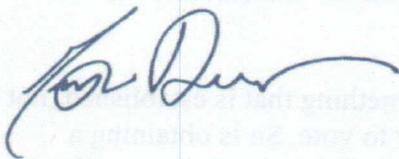
While you cite the requirements in law accurately, what is not included is any information that ties these requirements to voting. U.S. citizens who have reached the age of majority have, in the State of Maine, an unquestionable right to vote. If one does not obtain or update a Maine driver's license, it will almost certainly cause problems for the holder, to be sure. Such inconveniences include being called by Superior Court for jury service in a county in which you no longer live (which I know something about; it happened to me – because I hadn't updated my driver's license!), not receiving important notices from the Bureau of Motor Vehicles, letters from the judicial system, and, as you note, the potential to run perpendicularly to the law. But not updating a driver's license or failing to register a vehicle doesn't prevent one from voting.

Compliance with the laws you cite depends on the individual. There is no mechanism in law to cross-reference the voter file with tax information, vehicle registration, or driver's license information. To do so would be a Herculean task, even if anyone had the clear authority to engage in such a regulatory action. Enforcement of these laws occurs, when applicable, upon receipt of a complaint or during the course of an investigation. I do not believe, in the context of voter participation, that offering foreboding warnings of dire consequences from failing to oblige administrative requirements attendant to establishing residency can be construed as anything other than an effort to discourage our fellow Americans from participating in their constitutional right to self-governance – whether you intend that to be the message or not.

In short, the accuracies of your correspondence are undone by the lack of connectivity between the several titles of Maine law from whence they have been retrieved, as the discrete policy objectives of the penalties you cite were to ensure compliance with motor vehicle and tax laws, and were not derived from concerns about how Americans participate in their democracy. Framing it thusly only arouses unfounded fear in the minds of the voting public, and is a disservice to the public discourse.

I am happy to entertain any questions you may have; and I am thankful for you to consider my observations for what they are intended to be: friendly assistance to a fellow public servant. In that spirit, I am and shall remain

Very sincerely yours,



Matthew Dunlap
Secretary of State

cc: Lewiston City Council, Sen. Nathan L. Libby, Rep. James R. Handy, Rep. Roger Jason Fuller, Rep. Jared F. Golden, Rep. Heidi E. Brooks

Voting Rights in New Hampshire



A Report of the
New Hampshire Advisory Committee to the
U.S. Commission on Civil Rights

March 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

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**New Hampshire Advisory Committee to the
U.S. Commission on Civil Rights**

Letter of Transmittal

New Hampshire Advisory Committee to the
U.S. Commission on Civil Rights

Members of the Commission
Catherine E. Lhamon, Chairperson
Debo P. Adebile
Gail Heriot
Peter N. Kirsanow
Davie Kladney
Karen K. Narasaki
Patricia Timmons-Goodson, Vice Chair
Michael Yaki

Mauro Morales, Staff Director

The New Hampshire Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, "Voting Rights in New Hampshire." The report was adopted by the Advisory Committee by a unanimous vote.

Sincerely,

JerriAnne Boggis, Chairperson
New Hampshire Advisory Committee

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Observations and Conclusions	23

Voting is the foundation of our government, our society, and our way of life. Without the right to vote, we have no say in the decisions that affect our lives every day, decisions that range from...educating our children, keeping our air and water clean, caring for the sick, building roads and bridges, responding to natural disasters, to decisions about how we will engage with other countries and cultures around the world.¹

Introduction

“Th[e] right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies.”² The fundamental right of all citizens over the age of 18 to vote is constitutionally guaranteed by the 15th, 19th, and 26th Amendments. These Amendments prohibit franchise discrimination on the basis of race, sex, and age respectively. Nonetheless, various legal and procedural obstacles historically hindered the exercise of this right for certain groups. As a result, equal access to the polls for many voters developed slowly. Federal civil rights legislation enacted during the civil rights movement sought to correct this imbalance, not only by guaranteeing that individuals have the *right* to vote irrespective of their minority status, but also by ensuring they can *exercise* it by casting a ballot. Despite great progress in the decades that followed, however, many recent changes in election laws enacted by state and local governments have created barriers to voting for minority groups.

New Hampshire, like most of the country, has changed its election laws in recent years. It also has a changing electorate that is growing older and more diverse every year. The New Hampshire State Advisory Committee to the United States Commission on Civil Rights sought to examine these election laws to see how New Hampshire’s changes affect its voters—looking particularly for any evidence suggesting these changes might have a disparate impact on voters of color. The Committee held a roundtable session on September 30, 2013 and a briefing meeting on May 22, 2014 to address the issue. It invited experts and knowledgeable individuals to share information with the members of the Committee to help them better understand how to

¹ Transcript of the briefing before the U.S. Commission on Civil Rights by the New Hampshire State Advisory Committee, *Voting Rights in New Hampshire*, Sept. 25 2013 [hereinafter cited as 2013 Transcript] (statement by Joan Ashwell) at 184.

² Lyndon B. Johnson, President of the United States, Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act (Aug. 6, 1965) (transcript available at <http://www.presidency.ucsb.edu/ws/?pid=27140>).

protect voting rights in New Hampshire. This report details the Committee’s findings and recommendations.

Background

1. Voting Rights in the United States

The 15th Amendment provides that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,” and that, “Congress shall have the power to enforce this article by legislation.”³ The Amendment was ratified in 1870 and interpreted narrowly by the Supreme Court only to prohibit laws that used race as a qualification or pre-condition for voting.⁴ As a result, many states successfully enacted various legal and procedural obstacles to prevent Black voters from participating in elections for decades after its ratification. Using techniques such as voter literacy tests, poll taxes, voucher requirements, and grandfather clauses, these states continued to disenfranchise people of color with impunity. In a recent decision by the Supreme Court, Chief Justice Roberts succinctly concluded that, “the first century of congressional enforcement of the [15th] Amendment . . . can only be regarded as a failure.”⁵

The 19th Amendment prohibits discrimination by denying persons the right to vote on the basis of gender.⁶ The story behind its ratification is the long and arduous history of the woman’s suffrage movement. Women had actively campaigned for suffrage since 1848, when the first Woman’s Rights Convention met in Seneca Falls, New York. The amendment was written by Susan B. Anthony and Elizabeth Stanton, leaders of the National Woman Suffrage Association, an organization formed specifically to push for a Constitutional amendment granting women the right to vote. Despite being first introduced in 1878, the amendment was not ratified until 1920—42 years later—after decades of failed attempts to pass it through Congress.

³ U.S. CONST. amend. XV.

⁴ *See* *United States v. Reese*, 92 U.S. 214, 218 (1875) (noting that “[i]t is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment”).

⁵ *Northwest Austin Municipal Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 197 (2009).

⁶ *See* U.S. CONST. amend. XIX.

The 26th Amendment prohibits denying persons over the age of 18 the right to vote on the basis of age.⁷ It was ratified in 1971 as a response to youth activism during the Vietnam War.

Proponents of the amendment argued that youth who were old enough to serve in the military and die for their country should be old enough to vote. Congress and the rest of the country agreed resoundingly. The 26th Amendment was ratified three months and eight days after it was submitted to the states, making it the fastest ratification of any amendment.

The Voting Rights Act (VRA) of 1965 sought to correct racially discriminatory practices by prohibiting laws that had the *effect* of denying or abridging voting rights on the basis of race.⁸ This legislation was very successful. Joan Ashwell, an election law specialist with the League of Women Voters in New Hampshire, informed the Committee that the VRA increased voter turnout and limited disenfranchisement of voters of color nationwide. “Overall, the 37 years from 1965 to 2002 saw a huge expansion of access for citizens to be able to vote across [the United States].”⁹ When Congress reauthorized the VRA in 2006, it noted in its findings that there had been “significant progress” regarding “minority” voter registration, turnout, and representation in Congress.¹⁰ In Alabama for example, there was almost a 50 percent disparity between White and Black voter registration in 1965. By 2012, Black voter registration was only seven percent less than White voter registration.¹¹ Additionally, one percent more Blacks than Whites actually voted in 2012.¹² Congress stated clearly, however, that the VRA still served a vital purpose at the time of reauthorization. “[T]he evidence before Congress reveals that 40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination

⁷ See U.S. CONST. amend. XXVI.

⁸ See Voting Rights Act of 1965, 42 U.S.C. § 1973(a)-(b) (1965).

⁹ 2013 Transcript (statement by Joan Ashwell) at 186.

¹⁰ Fannie Lou Hamer, Rosa Parks & Coretta Scott King, *Voting Rights Act Reauthorization and Amendments Act of 2006*, 109 Pub. L. No. 246, §2(b)(1), 120 Stat. 577 (2006) (amending the Voting Rights Act of 1965, 42 U.S.C. § 1973 (1965)), available at <http://www.gpo.gov/fdsys/pkg/STATUTE-120/html/STATUTE-120-Pg577.htm> (last accessed July 2, 2014).

¹¹ The gap could be smaller. As a percentage of the population, twice as many Blacks did not respond to the survey than non-Hispanic Whites (22 percent versus 11 percent respectively), but based on received responses, only 9 percent of Blacks were unregistered, versus 13 percent for non-Hispanic Whites. See U.S. Census Bureau, *Voting and Registration by Race in Alabama*, 2012, available at http://thedataweb.rm.census.gov/TheDataWeb_HotReport2/voting/voting.html?GESTFIPS=2&INSTANCE=Nov+2012 (last accessed July 1, 2014).

¹² *Id.*

following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution.”¹³

The VRA was successful in part because it included a “preclearance requirement” for certain states and counties that used discriminatory tests and had low voter turnout and registration during the 1964 Presidential Election.¹⁴ The preclearance requirement was a prophylactic measure against legislation that hindered minority access to polls by requiring specific jurisdictions to submit proposed changes to their voting procedures to the Attorney General or a panel of federal judges for approval.¹⁵ If a state or district wished to remove themselves from the pre-clearance requirement, they could bring a “bailout” action at the U.S. District Court for the District of Columbia.¹⁶

In 2013, the Supreme Court struck down the coverage formula of the preclearance requirement in *Shelby County v. Holder*.¹⁷ The court reasoned that unequal treatment of states under federal law threatens principles of federalism and equal sovereignty. A federal law should not apply to some states differently than others unless very particular circumstances require it to do so. In order to be constitutional, “a departure from the fundamental principle of equal sovereignty requires showing that a statute’s disparate geographic coverage is sufficiently related to the problem that it targets.”¹⁸ The court concluded that “[n]early 50 years later, things have changed dramatically.”¹⁹ “[V]oter registration and turnout numbers in the covered States have risen. . . . There is no longer such a disparity.”²⁰ The court further explained that although the 15th Amendment gives Congress power to craft legislation to protect voters of color, it “is not designed to punish the past; its purpose is to ensure a better future.”²¹ The court concluded that

¹³ 120 Stat. 577 §2(b)(7).

¹⁴ 42 U.S.C.A. §1973b-c (2012); for a complete list of states and counties covered by the preclearance requirement at the time the law was struck down by the Supreme Court, *See* U.S. Department of Justice, *Jurisdictions Previously covered by Section 5 at the Time of the Shelby County Decision*, http://www.justice.gov/crt/about/vot/sec_5/covered.php (last accessed July 1, 2014).

¹⁵ *See Id.* §1973c.

¹⁶ *See Id.* §1973b(a).

¹⁷ *See Shelby County v. Holder*, 133 S. Ct. 2612, 2631 (2013).

¹⁸ *Id.* at 2622 (citing *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009)).

¹⁹ *Id.* at 2625.

²⁰ *Id.* at 2627.

²¹ *Id.* at 2629.

the formula was unconstitutional, but invited Congress to adjust the coverage formula to current registration and turnout data.

2. Voting Rights in New Hampshire

New Hampshire has a long and proud electoral history on both a federal and state level. On the national stage, New Hampshire receives a great deal of attention because it is a swing state and holds the first presidential primary election. This primary operates as a testing ground for presidential candidates from both parties. The state also enjoys very high turnout from its electorate. In the 2012 Election, New Hampshire ranked fourth out of 50 states and the District of Columbia in turnout of their voter eligible population at 70.9 percent.²²

On a state level, New Hampshire has a strong preference towards local governance through an active citizenry. It has the second largest legislature in the country after the U.S. House of Representatives. This “General Court” is composed of a Senate and House of Representatives that have 24 and 400 members respectively.²³ With a population of about 1.3 million people, each member represents an average of 3,250 individuals—only about 2,000 of which are eligible to vote. This structure allows all of New Hampshire’s citizens to be close to their representatives and their governing body. These members are not professional politicians, but rather come from a variety of occupations. They are only paid \$200 per term plus travel expenses—a remarkably small stipend relative to the importance of their responsibility.²⁴ It is a testament to New Hampshire’s sense of civic engagement.

New Hampshire has a unique voting rights history. Although the VRA’s preclearance requirement predominantly applied to southern states, eight towns and two unincorporated areas in New Hampshire were also subject to the VRA’s preclearance requirement. They had used literacy tests and reported lower voter turnout and registration during the 1960s. Just prior to the *Shelby County* decision, however, New Hampshire became the first and only state to bail out of

²² New Hampshire came in behind Minnesota at 76.1 percent, Wisconsin at 73.2 percent, and Colorado at 71.1 percent. See Nonprofit VOTE, *America Goes to the Polls 2012*, 2012, <http://www.nonprofitvote.org/documents/2013/03/america-goes-to-the-polls-2012.pdf> (last accessed July 1, 2014) [hereafter cited as Nonprofit VOTE 2012] at 7.

²³ New Hampshire Almanac, *State Government Overview*, <http://www.nh.gov/nhinfo/stgovt.html> (last accessed Jul. 1, 2014).

²⁴ *Id.*

its preclearance requirements before a three judge panel.²⁵ An investigation by the Attorney General revealed “no law implicating racial discrimination in voting.”²⁶ At the time the requirement was imposed on New Hampshire, six out of the ten towns subject to the requirement did not have a single voter of color. Therefore, even though they used literacy tests, they could not have been put in place with the intention of disenfranchising voters of color. The parties stipulated that, “[New Hampshire] likely would have been successfully able to demonstrate that the covered towns had no known history of intentional racial discrimination in voting at the time of coverage.”²⁷

Several other federal acts are applicable to New Hampshire’s election procedures including the Help America Vote Act (HAVA), which requires every state to have a centralized voter database.²⁸ New Hampshire created such a database before the 2006 election and continues to maintain it through local election officials. David Scanlan, New Hampshire’s Deputy Secretary of State, explained to the Committee that “[the] list is still maintained at the local level by local supervisors. . . . They’re the only ones with authority to add names to the checklist and remove names.”²⁹ HAVA also requires accessible voting for persons with disabilities, including the ability to vote independently and in private. All polling places must be acceptable under the standards set forth by the American with Disabilities Act. To satisfy the requirements of this Act, each state in compliance with HAVA provisions receives funding from the Election Assistance Commission.³⁰

Finally, New Hampshire is also subject to the Military and Overseas Voter Empowerment Act (MOVE). MOVE helps overseas military personnel and citizens who live abroad to vote. It requires that absentee ballots be delivered 45 days in advance of an election to the voters that have requested one. It also requires that ballots be deliverable electronically. Mr. Scanlan

²⁵ *New Hampshire v. Holder*, No. 1:12-CV-01854, at *20 (D.D.C. Mar. 1, 2013) http://www.justice.gov/crt/about/vot/misc/nh_cd.pdf (last accessed July 1, 2014).

²⁶ *Id.* at 13.

²⁷ *Id.* at 15.

²⁸ *See* Help America Vote Act of 2002, Pub. L. No. 107-252, 2002. (116 Stat. 1666) <https://www.eac.gov/assets/1/6/HAVA41.PDF>.

²⁹ 2013 Transcript (statement by David Scanlan) at 168.

³⁰ *See* 42 U.S.C. § 15403 (2014).

explained, “For those voters that ask, we deliver their ballot by email, and then the voter is responsible for printing the ballot off, marking it and then physically mailing it back.”³¹

In recent years New Hampshire has enjoyed a pristine record of complying with federal voting rights requirements. Federal jurisdiction is only triggered when there is a federal candidate’s name on a ballot or if there are any voter registration issues. Suspected cases of vote buying, bribery, impeding voter participation through the dissemination of false information, and voter fraud will then trigger an investigation. Mark Zuckerman, Assistant U.S. Attorney and election officer for the District of New Hampshire, reported to the Committee that in the 14 years that he has been with the U.S. Attorney’s Office, he has not found a single federal violation of voting rights.³²

³¹ 2013 Transcript (statement by Scanlan) at 170.

³² Transcript of the briefing before the New Hampshire State Advisory Committee to the U.S. Commission on Civil Rights, *Voting Rights in New Hampshire*, May 22, 2014 [hereinafter cited as 2014 Transcript] (statement by Mark Zuckerman) at 10.

Findings of the New Hampshire State Advisory Committee

1. Voter ID Law

There are many types of voter fraud such as multiple voting, impersonating a voter, and voter intimidation. There are also many types of voter registration fraud such as registering someone who is deceased, someone who is not a U.S. citizen, or someone who is a convicted felon in the course of serving a prison sentence. In recent years, many states have started requiring voters to present photo identification at the polls or during registration to prevent individuals from impersonating other voters on Election Day. This problem is generally known as “voter impersonation fraud,” but is criminalized under New Hampshire’s election laws as “wrongful voting” along with most other acts of voter fraud.³³

In 2012, New Hampshire enacted a voter ID law to protect against voter impersonation fraud. The law requires that voters show an acceptable form of identification when going to the polls.³⁴ Unless the voter is over 65, any ID that has been expired for 5 years or more will not be accepted. Although many states have passed very strict voter ID laws, New Hampshire’s voter ID law is flexible in a few ways. First, if the voter has a different type of ID not specifically allowed by the law, it is up to the discretion of election officials whether or not to challenge them. Second, if the voter has no ID whatsoever, but can be vouched for by election officials, they still may vote. Third, if a voter shows up without a valid form of ID and no one can vouch for them, they must sign an affidavit in front of election officials before voting. The Secretary of State and the Attorney General of New Hampshire then investigate them. The Secretary of State mails the voter a verification letter to the address provided at the time of voting. This letter must be returned by the voter within 90 days in a prepaid envelope to confirm their identity. If they do not return the letter, the Attorney General will pursue a further investigation, which typically entails a phone call or a visit to the address listed.

Even if a voter has to sign an affidavit, their vote is counted on the day of the election. New Hampshire does not use provisional ballots, which are counted after they are verified. There is no

³³ See N.H. REV. STAT. ANN. § 659:34 (2013).

³⁴ See N.H. REV. STAT. ANN. § 659:13 (2013). Acceptable forms of identification include a driver’s license, non-photo ID from a DMV, voting ID, passport, military ID, and certain types of student IDs.

delay in counting votes cast with an affidavit. The Secretary of State's office "stressed when [the] legislature was considering the bill that . . . no qualified voter be turned away from the polls. So if a person was able to register to vote, they should have a way to be able to then vote [even without an ID]."³⁵

The panelists were split on whether or not the law detrimentally affected New Hampshire election processes. The League of Women Voters (the League) was critical of the law both in principal and because of its effect on the 2012 election. They claimed that the law is offensive. Joan Ashwell, election law specialist for the League, concluded that "New Hampshire treats every citizen who tries to vote as a probable felon."³⁶ "Many people will also be intimidated or offended by the fact that they will be investigated after their election because they lack a photo ID," she said.³⁷ The League also noted that wait lines increased from 2008 to 2012 because of the voter ID law, with the average voter in New Hampshire waiting 60 percent longer.³⁸ Finally, they questioned whether a lack of public understanding of the new ID law led people to believe they were not able to vote. Liz Tentarelli, co-president of the League, cited examples of voter confusion to the Committee. "I think the saddest question [the League] received was . . . from a woman who said she had a driver's license but didn't have a military ID or a passport, so could she still vote? [She was under] the perception she had to meet all of these requirements."³⁹

Mr. Scanlan, New Hampshire Deputy Secretary of State, disagreed regarding the effect the law had on state and federal elections. He testified that the vast majority of voters were aware of the new law and able to comply with it. "[T]he reality was that the number of voters that showed up to the polls [in 2012] that had to fill out an affidavit to obtain [a ballot] was about three quarters of one percent."⁴⁰ He also noted that the law did not have a substantial deterrent effect on turnout. "Statewide," he said, "the numbers drop[ed] very slightly [from] 2008. So the numbers were almost identical in . . . turnout."⁴¹ This conclusion is in accord with a national study, which showed that turnout in New Hampshire only dropped 1.5 percent from 2008 to 2012.⁴² However,

³⁵ 2013 Transcript (statement by Scanlan) at 229.

³⁶ 2013 Transcript (statement by Ashwell) at 189.

³⁷ *Id.* at 193.

³⁸ *Id.*

³⁹ 2013 Transcript (statement by Liz Tentarelli) at 174.

⁴⁰ 2013 Transcript (statement by Scanlan) at 199.

⁴¹ *Id.* at 205.

⁴² Nonprofit VOTE 2012 at 8.

he also mentioned that, particularly for local elections, “the percentage of voters coming through forgetting their ID is slowly creeping up.”⁴³ “[T]here is a certain degree of protest taking place, where people just intentionally did not show their IDs and are requiring the AG’s office to follow up.”⁴⁴

Ms. Radke, the Vice President of the New Hampshire City and Town Clerks’ Association, provided similar testimony. In the town of Bedford, 15,000 people are registered to vote and about 11,000 of them voted in 2012. “In 2008 . . . [it was] the same. About the same number of people voted”⁴⁵ She also noted that only 48 of these voters did not have their IDs and had to sign an affidavit. There was little evidence which suggested either that voters were not aware of the law, or that the law had a detrimental effect on turnout.

However, there is little evidence that voter fraud is a substantial problem in New Hampshire. At the time of the September 2013 roundtable, the Attorney General’s investigators had only contacted about half of the 4,000 individuals who signed an affidavit in the 2012 Presidential Election; however, “they [had] not found . . . any instances of voter impersonation fraud [in the first 2000 investigations].”⁴⁶ From 2000 until 2012, New Hampshire had a total of only two documented cases of voter fraud. Caitlin Rollo, political and research director of Granite State Progress Education Fund, testified that this makes a statewide voter fraud percentage of .0003 percent.⁴⁷

Similar voter registration fraud investigations from past elections have yielded no confirmed instances of fraud.⁴⁸ New Hampshire has a provision requiring those who register to vote to provide photo ID. In the case an individual does not present a photo ID when registering, New Hampshire law requires similar investigatory procedures as for its voter ID law.⁴⁹ None of these investigations has revealed any instances of voter registration fraud. In a 2010 state general election, for example, there were 23,512 persons who registered to vote on Election Day. Forty-

⁴³ 2014 Transcript (statement by Scanlan) at 14.

⁴⁴ *Id.* at 21.

⁴⁵ 2013 Transcript (statement by Lori Radke) at 204.

⁴⁶ 2013 Transcript (statement by Ashwell) at 211.

⁴⁷ 2014 Transcript (statement by Caitlin Rollo) at 93.

⁴⁸ See Attorney General’s Office of New Hampshire, *Voter Fraud Investigation Report 2006; 2008; 2010*, New Hampshire’s Secretary of State, <http://sos.nh.gov/Miscellaneous.aspx> (last accessed Jul. 1, 2014).

⁴⁹ See N.H. REV. STAT. ANN. § 654:12 V (a)-(f) (2012).

eight of those individuals did so without a photo ID and were therefore investigated by the Secretary of State and Attorney General. All but four individuals mailed back the required letter to the Secretary of State that confirmed their identity. The remaining four individuals were eventually cleared by investigators: one had gone away to college in another state, one had accidentally submitted a registration with errors in her contact information, one had moved since registering to vote, and one had an incorrect address because of a clerical error.⁵⁰

In light of the incredibly small size of the problem, many question whether the law is worth the cost: both in terms of money and the risk of making it more difficult for the people of New Hampshire to vote. Mr. Scanlan reported that there is a cost to generating the mailing, paying the postage, and employing staff from the Secretary of State's office to begin the voter verification process. Although exact numbers are not yet available, the League estimated that each investigation costs around \$360. Mr. Scanlan also noted that "there was a tremendous workload placed on the Attorney General's office as a result of having to follow up on all of those verification mailings."⁵¹ Furthermore, in the actual cases of voter fraud mentioned above, Ms. Rollo noted that, "In both instances, the existence of the voter ID law did not stop the voter fraud from happening, nor did it help identify it after the fact."⁵²

a. At Risk Populations

IDs other than driver's licenses are acceptable under New Hampshire's voter ID law. Groups that are less likely to have driver's licenses, however, are more likely to be burdened by the law because they will need to obtain a different form of identification. As such, access to the polls may be more difficult for the elderly, the disabled, and the homeless. For these individuals, it can be more cumbersome to obtain an alternative form of ID because many of them lack transportation and tend to be poorer.

⁵⁰ Matthew G. Mavrogeorge, Assistant Attorney General of New Hampshire, *Voter Fraud Investigation Report-2010*, Jul. 11, 2011, <http://sos.nh.gov/Miscellaneous.aspx> (last accessed Jul. 1, 2014).

⁵¹ 2014 Transcript (statement by Scanlan) at 16.

⁵² 2014 Transcript (statement by Rollo) at 94.

New Hampshire is an aging state. Between 2000 and 2010, New Hampshire had the second largest increase in median age of a state of 4.0 years, just behind Maine with an increase of 4.1.⁵³ It now has the fourth highest median age in the United States with 41.1 years.⁵⁴ As a percentage of their population, 44.2 percent New Hampshire is over 45 years old, and 13.5 percent is over 65.⁵⁵ Sylvia Gale, a board representative of the New Hampshire Citizens Alliance for Action and an elected member of the New Hampshire House of Representatives, testified that many elderly persons are unjustly burdened by the law as a consequence of acting responsibly, “having given up their driving privileges years ago in the interest of the safety of themselves and others.”⁵⁶

The voter ID law also burdens the homeless and impoverished. Kevin Kintner, program director for New Horizons for New Hampshire—the largest homeless shelter in New Hampshire— informed the committee that a little over ten percent of the 900 people that are sheltered annually do not have any form of ID.⁵⁷ They are also more likely to lose an ID because they have to keep everything with them at all times. The process to get an ID then becomes much more difficult. He gave two examples of New Hampshire residents who struggled to obtain a photo ID in order to vote because, ironically, they lacked identification necessary to get that ID. Kintner reported that in order to get a photo ID, you need two forms of ID, but “there is a frustrating Catch 22. . . . [T]he most standard way of getting a birth certificate or Social Security card is to have a photo ID.”⁵⁸ He asserted, “Losing your ID should not mean a loss of your personhood, should not mean a loss of your citizenship.”⁵⁹

Furthermore, simply being poor might be an obstacle to obtaining an ID. “The ID itself may have a cost, but prior to that there might be notary fees when accompanying letters and signatures are required . . . [or] travel fare when one needs to go somewhere in person. Not every municipality or county across the country works the same way when it comes to copying a birth certificate, and fees, again, may apply.”⁶⁰ Many of these individuals have avoided going to doctors and

⁵³ See David Brooks, *Granite State’s Median Age Tops Florida*, The Telegraph, May 15, 2011, <http://www.nashuatelegraph.com/news/919366-196/granite-states-median-age-tops-floridas.html> (last accessed July 2, 2014) [hereinafter Granite State’s Median Age].

⁵⁴ *Id.*; see also Appendix A for a map depicting the United States median age by state in 2010.

⁵⁵ Granite State’s Median Age.

⁵⁶ 2014 Transcript (statement by Sylvia Gale) at 88.

⁵⁷ 2014 Transcript (statement by Kevin Kintner) at 50-52.

⁵⁸ 2014 Transcript (statement by Kevin Kintner) at 54-55.

⁵⁹ *Id.* at 57.

⁶⁰ *Id.* at 55-56.

dentists because they cannot afford them, and therefore do not have many records to draw from when applying for a social security card.

The disabled suffer many of the same problems that the elderly and impoverished do. At least 11 percent of the national population has disabilities.⁶¹ Adults with disabilities face high rates of unemployment and poverty relative to people without disabilities. According to the most recent survey of the U.S. Census Bureau, people without disabilities are two-thirds more likely to be employed full-time over people with severe disabilities. While earnings and income rates are lower for people with disabilities, poverty rates are higher. Approximately 28.6 percent of people with severe disabilities aged 15 to 64 lived in poverty, while 14.3 percent of people without disabilities were impoverished.⁶²

b. Future Requirements and Recent Legislation

Further changes to the law are set to take effect in September of 2015. One controversial provision mandates that voters who do not bring their photo IDs to the polls, in addition to signing an affidavit, will also have their photo taken for the purpose of the subsequent investigation.⁶³ Scanlan told the committee that the “digital image of the voter will then be kept on file in the event that the Attorney General feels like they have to follow” up on any verification mailings.⁶⁴

Currently, the law is set to be paid for with funds taken from New Hampshire’s election fund, which is supplied by the federal government under the Help American Vote Act (HAVA). It is not clear whether this is a permissible use of the funds. Under HAVA, states must use the funds to put them in compliance with HAVA requirements, such as maintaining an accessible voter system that adheres to the ADA and fulfilling the requirements of the Military and Overseas Voter Empowerment Act (MOVE). After a state has done so, leftover funds may be used only

⁶¹ Rebecca Schleifer, *Disabled and Disenfranchised*, Huffington Post, Sept. 5, 2012, http://www.huffingtonpost.com/rebecca-schleifer/disabled-voting-rights_b_1853234.html (last accessed July 7, 2014).

⁶² Matthew W. Brault, *Americans with Disabilities: 2010, Household Economic studies, Current Population Report*, United States Census Bureau, Jul. 2012, <http://www.census.gov/prod/2012pubs/p70-131.pdf> (last accessed July 7, 2014) at 12.

⁶³ See N.H. REV. STAT. ANN. § 659:13 I(c)(2) (2013) (effective September 1, 2015).

⁶⁴ 2014 Transcript (statement by Scanlan) at 15.

“to improve the administration of elections for Federal office.”⁶⁵ Although states are left considerable discretion in how they choose to spend the money, it is not clear that the cameras improve the “administration of elections” or, assuming they do, if they may be used for general elections as well.⁶⁶

2. Access for Disabled Voters

Voters with disabilities face greater challenges when voting. They require physical access to polling places, technology to allow them to vote privately and independently, and transportation to and from the polls. They also can face attitudinal barriers at the polls from election officials. Incidents were reported to the Committee of disabled voters not being offered handicapped accessible voting machines and election officials not understanding how to assist them without violating their right to vote independently and in private. Julia Freeman-Woolpert, outreach advocacy director at the Disabilities Rights Center, explained that “there still remain many obstacles to voting privately and independently [for disabled people]. There are still town halls in New Hampshire that have barriers to access, making it more difficult to register. Some polling locations . . . still have some barriers to physical access . . . and there are still many attitudinal barriers that discourage or prevent people with disabilities from voting, especially people with mental disabilities.”⁶⁷

There have been scattered incidents of voting rights violations for disabled individuals in New Hampshire. Ms. Woolpert reported the results of a survey given by the Disabilities Rights Center to disabled voters after the 2012 Primary and 2013 municipal elections. She reported that occasional specific problems would come up for these voters. For example, one polling location had a locked door to the separate handicapped accessible entrance while another location prevented a disabled person’s representative from being allowed in the booth with the voter. But the survey results also showed more systemic problems in both elections. In the 2012 Primary, seven of the 94 voters with disabilities surveyed, 18.9 percent, reported then were unable to vote

⁶⁵ See Help America Vote Act of 2002, Pub. L. No. 107-252, §251(b)(2), 116 Stat 1666, 1667 (2002), available at http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF.

⁶⁶ *Id.*

⁶⁷ 2014 Transcript (statement by Julia Freeman-Woolpert) at 37.

privately and independently.⁶⁸ In the 2013 municipal elections, 100 percent of disabled voters were unable to vote privately and independently because none of the polling locations had the accessible voting system set up.⁶⁹

HAVA provided \$16.8 million to New Hampshire to assist disabled citizens in voting in federal elections. For state and local elections, Title II the Americans with Disabilities Act (ADA) requires these same standards be maintained. New Hampshire uses a telephone/fax voting system to accommodate blind individuals and satisfy some of these requirements. Guy Woodland, former Senior Vice President for the New Hampshire Association for the Blind, explained to the Committee that financial considerations have led to the use of older technology for handicapped voters. “[T]he Secretary of State did not accept the recommendation of the persons with disabilities who were brought together to make a decision. They decided to go with a technology that was old . . . a telephone/fax.”⁷⁰ This technology, however, can easily be replaced. The accessible voting system was not purchased by the state, but is leased annually.

Mr. Woodland has been legally blind for 45 years.⁷¹ He presented his concerns about New Hampshire’s Accessible Voting System to the Committee and problems he has encountered when trying to vote in the city of Concord. Sometimes this system is not set up in all polling locations and sometimes it does not ensure that disabled voters can vote privately and independently. Since 2007, Mr. Woodland has only been able to vote privately and independently twice. The remaining times the city of Concord has not been equipped to allow him to vote by himself and the only alternative was to have someone with vision vote for him. Mr. Woodland emphasized that there is a lot at stake for New Hampshire. “There are probably 50,000 people in New Hampshire living with blindness or failing vision,” he said, “So that is a significant number of our population.”⁷²

⁶⁸ Disabilities Rights Center Survey, 2012 Primary Voting (annexed to Disabilities Rights Center, Inc. to U.S. Commission on Civil Rights, June 3, 2014 [hereinafter cited as DRC letter].

⁶⁹ Disabilities Rights Center, Selected Findings from November 2013 Survey of Polling Places (Local Elections) (annexed to DRC letter).

⁷⁰ 2014 Transcript (statement by Guy Woodland) at 46-47.

⁷¹ Guy Woodland, *Technological Glitch Kept Me from Voting*, Concord Monitor, Jun.30, 2012, <http://www.concordmonitor.com/news/4393171-95/accessiblevotingsystem-concordward7> (last accessed July 2, 2014).

⁷² 2014 Transcript (statement by Woodland) at 47.

Cindy Robertson, a Senior Staff Attorney at the Disabilities Rights Center, presented similar testimony pertaining to the accessible voting system. For many local elections, the handicapped accessible voting machine is simply not put up, which is an ADA violation. Otherwise it is slow and difficult to manage. It took her 25 minutes to cast her ballot. Trying to vote for a write in candidate was extremely difficult over the phone. She also testified about the attitudinal barriers by some election officials. “[T]here was a lot of anger expressed by the poll workers about having to use, to set up, and to basically aggravate themselves with this machine when few people used it Why can’t people just have someone with them? Why can’t we just help them vote? Why do we have to do this?”⁷³ For many disabled citizens, however, the availability of absentee voting is not a sufficient alternative for exercising this fundamental right. Mr. Woodland told the Committee, “[I]t is frustrating. All I want to do . . . is to go into the polling booth . . . [and] be able to access voting privately and independently; and I feel, as a citizen, I should have that right.”⁷⁴

3. Voter Registration

Registering to vote in New Hampshire is different from most other states. New Hampshire requires voters to register in person up to 10 days before an election at the clerk’s office or at the polls on Election Day. “This is the only state in the country that requires citizens to register to vote in person, with an election official, and provide documents to prove identity, domicile, and citizenship.”⁷⁵ The one exception to this is if you are registering absentee because of a physical disability, religious belief, military service or temporary absence.⁷⁶ These are the only reasons for which an individual may register and vote absentee in New Hampshire. In this case voters may register by mail, but neither absentee nor regular registration is available online. As of June 2014, only 20 states permit online voter registration.⁷⁷

There is no portable voter registration in New Hampshire. Any resident that moves, even if between cities in the same county, will need to re-register again in person in order to vote. The

⁷³ 2014 Transcript (statement by Cindy Robertson) at 43.

⁷⁴ 2014 Transcript (statement by Woodland) at 49.

⁷⁵ 2013 Transcript (statement by Ashwell) at 188.

⁷⁶ See N.H. REV. STAT. ANN. § 657:1 (2006); § 657:2 (2010).

⁷⁷ Sophie Lehman, *Nebraska to Allow Online Voter Registration*, Nonprofit VOTE, Apr.1, 2014, <http://www.nonprofitvote.org/nebraska-allow-online-voter-registration/> (last accessed July 2, 2014).

League recommends modernizing the centralized voter database so that voters can change their registration information the day they move. “[B]ecause of the statewide database that we do have, you ought to be able to, that day, simply change your address [and] get assigned from one polling district to another.”⁷⁸ Mr. Scanlan testified that the centralized voter database could be cross checked with the national change of address list to track who has moved out of state, and that the Secretary of State’s office is currently working on it.⁷⁹ Updating and modernizing this database could facilitate the purge and help create a portable voter registration system.

Every ten years inactive voters are “purged” from New Hampshire voter registration lists. Individuals who have not voted in any election in the past four years and have not registered since the last state general election will be purged.⁸⁰ The purge most likely contributed to increased wait times at the polls in 2012. In 2011, “there were roughly 100,000 names that were removed from that list. So typically what happens is [large bulks] of those voters re-register then on the day of the election.”⁸¹ It takes “about 20, 25 minutes to register each person individually,” which substantially added to the wait times at certain polling precincts.⁸² For example, Member Elliott-Traficante was an election official in Concord on the day of the election. She reported that in her Ward, 400 people went through this same day registration process out of the 2,700 people who voted. That means about 15% of all voters in that Ward had to spend at least 20 extra minutes at the polls.

Unique registration procedures have led to some criticism. The League testified that some individuals wrongly believed they were unable to register to vote. “We even found some senior citizens were confused . . . they said[,] [‘]but I don’t drive anymore, I don’t have a car so I can’t register it, so I can’t register to vote now that I’ve moved to this new town.[’] And that’s just wrong.”⁸³ New Hampshire is not subject to the 1993 National Voter Registration Act.⁸⁴ This act requires states to adhere to certain registration procedures for federal elections, including

⁷⁸ 2013 Transcript (statement by Tentarelli) at 226.

⁷⁹ 2013 Transcript (statement by Scanlan) at 209.

⁸⁰ See N.H. REV. STAT. ANN. § 654:39 (2010).

⁸¹ 2013 Transcript (statement by Scanlan) at 208.

⁸² 2013 Transcript (statement by Ashwell) at 206.

⁸³ 2013 Transcript (statement by Tentarelli) at 176.

⁸⁴ National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77 (1993)

<http://www.gpo.gov/fdsys/pkg/STATUTE-107/pdf/STATUTE-107-Pg77.pdf> (last accessed July 2, 2014).

registering to vote when voters register their car. New Hampshire, however, is exempt from the Act because they permit voter registration on Election Day.

4. Training for Election Officials

The Secretary of State's office administers the state and federal elections in New Hampshire. They work with about 6,000 local election officials who run the polls. The Secretary of State's office and other agencies offer training opportunities and resources for election officials, including live training, publications, and online resources. Prior to state elections in every even year, the Secretary of State's office will do about 20 training sessions on the road for election officials. It also trains users of the centralized voter database. "[W]e have a training facility here in Concord with computer stations where we bring supervisors of the checklist and town clerks in . . . and . . . train them in depth on how to use the system."⁸⁵ The list is then maintained exclusively by these local officials. No training for these election officials, however, is required under New Hampshire's election laws.

The League was concerned for the preparedness of election officials for exactly this reason. "We also know it's not required and many people don't go. . . [H]aving an informed and active citizen body participating in government is important, and . . . misinformation or no information is a danger to our democracy."⁸⁶ There were incidents of election officials misguiding voters. Ms. Rollo informed the Committee that in one case an election official denied a member of the New Hampshire House of Representatives a ballot because he or she did not have a photo ID. Neither the official nor the member, however, was aware of the affidavit option and as a result the member did not vote.⁸⁷ The Disabilities Rights Center also reported that in 2013, multiple polling locations did not set up their accessible voting system because they thought it was not required for municipal elections.⁸⁸ These examples show the importance of having proper training for election officials, particularly in light of complex and changing election laws.

5. Public Access

⁸⁵ 2013 Transcript (statement by Scanlan) at 220.

⁸⁶ 2013 Transcript (statement by Tentarelli) at 183.

⁸⁷ 2014 Transcript (statement by Rollo) at 112.

⁸⁸ Disabilities Rights Center, Selected Findings from November 2013 Survey of Polling Places (Local Elections) (annexed to DRC letter).

Public awareness of election procedures is critical to effective civic participation, especially in New Hampshire where there are complex and changing voting laws. Mr. Scanlan emphasized that the Secretary of State's office had made a concerted effort to educate the public prior to the 2012 election. "[T]he Secretary of State's Office was very aggressive in the press . . . [we did] many interviews in print media, television, [and on the] internet."⁸⁹ However, he also noted that since that push, "there has been no effort really to educate or inform that . . . [voters will] also need [their ID] for local elections."⁹⁰

Many speakers were concerned that New Hampshire was not doing enough to educate the public. Ms. Ashwell of the League emphasized that, "Education in New Hampshire is particularly important because the election laws in New Hampshire are very complicated. They're more complicated than the election laws in almost any other state."⁹¹ "[T]he simple fact is that when election law changes, and the public is confused, democracy is damaged . . . [but] [t]he law that passed early in 2012 contained only minor directives for Secretary of State to conduct a public education campaign."⁹² It does not include any funding for educating the public. Based on questions the League received and outreach efforts to the community, they felt that "confusion reigned."⁹³

Ms. Tentarelli did not consider the media effort alone to be sufficient given the options available to states in conducting voter education. "I'm not sure that newspaper articles are the way to reach much of the voting public," she said, "[T]here are many other states that direct a lot of effort in the 30 days leading up to an election to voter education. Some states distribute voter guides, some states send out sample ballots. We don't do that in New Hampshire."⁹⁴

The League and the Granite State Progress Education Fund, among other nonprofits, have helped educate voters in recent elections. The League "issued press releases, letters to the editor encouraging voters . . . [and] explaining the ID requirements. . . . [They] also published fliers in Spanish."⁹⁵ The League trained people to give presentations on registering and voting, and went

⁸⁹ 2013 Transcript (statement by Scanlan) at 199.

⁹⁰ 2014 Transcript (statement by Scanlan) at 14.

⁹¹ 2013 Transcript (statement by Ashwell) at 184.

⁹² 2013 Transcript (statement by Tentarelli) at 176.

⁹³ *Id.* at 174.

⁹⁴ 2013 Transcript (statement by Tentarelli) at 177.

⁹⁵ *Id.* at 174.

around the state giving presentations on election procedures to groups as small as two and as large as 60 people. They also held a webinar with 52 towns to present a power point presentation with a template for these towns to create voter information webpages.⁹⁶ They feel, however, that these public outreach efforts should be the responsibility of the state. The Granite State Progress Education Fund created a website that educates voters about their rights and provides a short public service announcement video in English, Spanish, and French.⁹⁷

There is currently no federal requirement for New Hampshire to publish any voter information in any language other than English. Under VRA Section 203, states and political subdivisions that have over 5 percent of voting age citizens from a single language minority group must provide language assistance for these groups.⁹⁸ This percentage is taken from the most recent census data and published in the federal register. As of October of 2011, none of New Hampshire's jurisdictions fell into this requirement.⁹⁹

Ms. Gale discussed the growing need for language assistance in New Hampshire to accommodate an increasing population of color in certain areas. "Demographically over the past 25 to 30 years there have been a rapidly increasing number of Spanish-speaking individuals and famil[ies] moving into the greater Nashua area, relocating from more than 24 different countries throughout South, Central, and Latin America and the Caribbean. At this time, some would estimate that as many as 17 percent of Nashua families with school-aged children speak primarily Spanish at home."¹⁰⁰

New Hampshire is experiencing similar diversification statewide. In 2000, only 1.7 percent of New Hampshire's general population was Hispanic or Latino, 1.3 percent Asian, and 0.7 percent Black.¹⁰¹ By 2012, Hispanics comprised 3 percent of the population, followed by Asians at 2.4

⁹⁶ 2014 Transcript (statement by Tentarelli) at 126-27.

⁹⁷ See "You have a Right to Vote," *Granite State Progress Education Fund*, www.NHvoterprotection.org (last accessed July 2, 2014).

⁹⁸ See Voting Rights Act of 1965, 42 U.S.C. § 1973aa-1a (1975).

⁹⁹ Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 198, 63602 (Oct. 13, 2011), <https://www.gpo.gov/fdsys/pkg/FR-2011-10-13/pdf/2011-26293.pdf>.

¹⁰⁰ 2014 Transcript (statement by Gale) at 89-90.

¹⁰¹ U.S. Census Bureau, *Census 2000 Summary File*, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF1_DP1 (last visited July 2, 2014).

percent and Blacks at 1.4 percent.¹⁰² Currently, the Secretary of State's office does not provide language assistance on its own accord. If such population trends continue, however, certain areas of New Hampshire will become subject to the VRA's federal language assistance requirement, possibly by the next census in 2020.

¹⁰² U.S. Census Bureau, *2008-2012 American Community Survey*, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP05 (last visited July 2, 2014).

Observations and Conclusions

For the purposes of guaranteeing equal access to voting, New Hampshire does a tremendous amount right. The Committee is encouraged by New Hampshire's consistently high turnout and commitment towards making sure everyone's vote is counted on Election Day. Nonetheless, the Committee finds five areas in which New Hampshire voting procedures could be improved: voter identification, voter registration, voting absentee, training of election officials, and public awareness.

1. Voter ID Laws

The Committee notes the polarizing character of voter ID laws and is aware that the New Hampshire legislature is still, to some extent, experimenting with the limits of these laws to find the most effective and least burdensome way of preventing voter fraud. The Committee is also encouraged to hear that, in the aggregate, the voter ID requirements did not greatly affect voter turnout between the 2008 and 2012 presidential election. Nonetheless, the Committee has found no evidence that voter fraud is being perpetrated in New Hampshire and questions whether the law as it stands is an efficient use of resources. This concern will be even more pressing in upcoming elections starting in 2015, when photographic evidence will be required as part of the affidavit for voters without an ID. The Committee questions whether, in light of little evidence, it is worth the fiscal cost to New Hampshire to purchase cameras that run the risk of potentially intimidating or dissuading voters from coming to the polls

2. Voter Registration

The Committee finds that certain registration procedures are inefficient and cumbersome, and could potentially impact the ability of voters from being able to vote on Election Day.

The Committee recommends updating New Hampshire's centralized voter registration database to facilitate "the purge" and to allow for a mobile voter registration system. Residents of New Hampshire who move close to Election Day should not be forced to reregister in order to vote, especially if moving within the same county. As mentioned above, New Hampshire is the only state that requires voters to register in person. Requiring residents to do so close to the time of an election while they are in the process of moving from one place to another is too burdensome.

There should be, at a minimum, a mail in option for residents and ideally, the ability for residents to update their registration online.

3. Voting Absentee

Obtaining an absentee ballot in New Hampshire can only be done in very particular circumstances. Loosening such requirements may improve voter turnout.

4. Training of Elected Officials

The Committee is concerned with New Hampshire's training requirements for election officials, particularly in light of its rapidly changing election laws. Although it is encouraged by the training available to election officials through government and non-government agencies, the lack of any mandatory training for these officials creates risk of misinforming the public about voting requirements and, at worst, makes voters believe they cannot vote.

5. Public Education

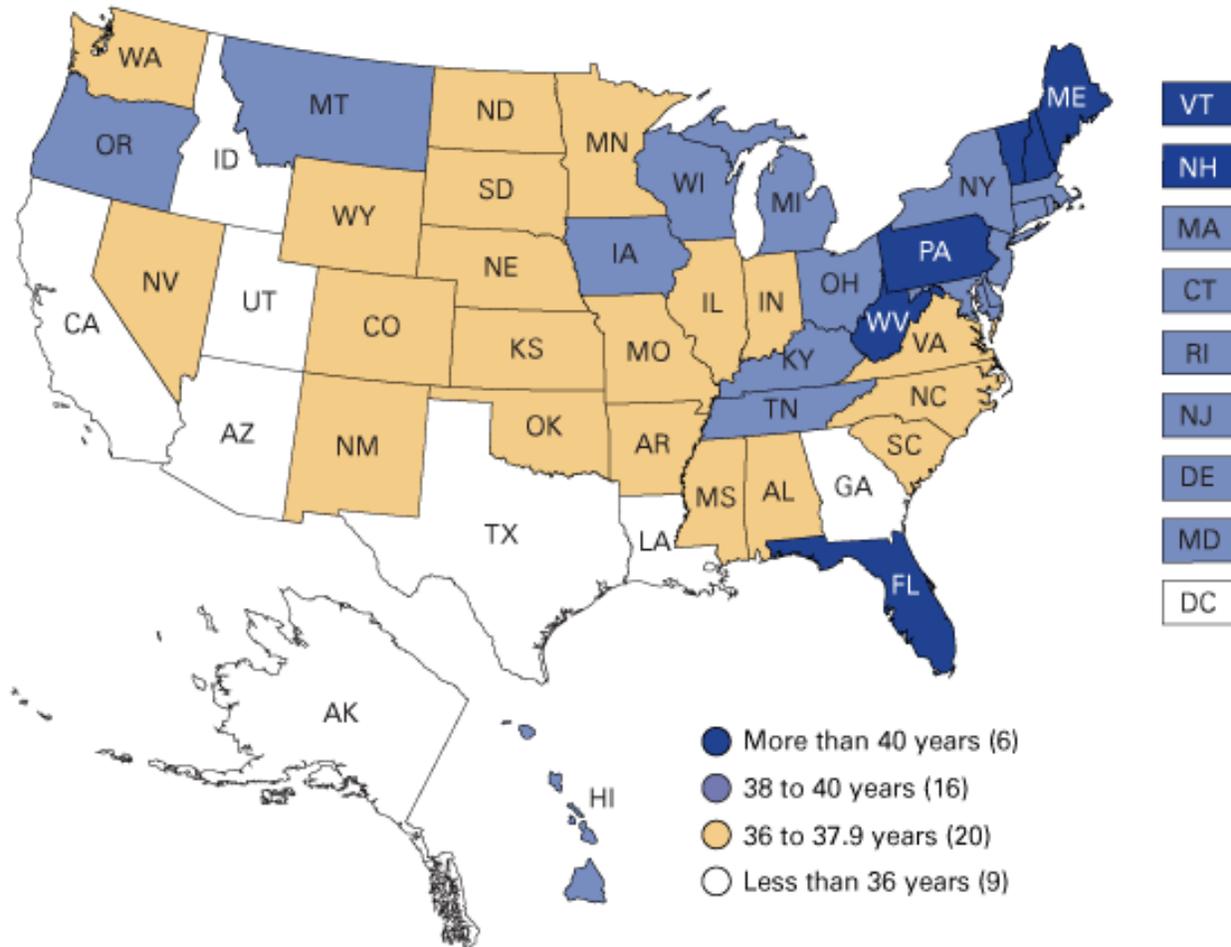
The Committee is concerned with two issues pertaining to public education: first, whether the general public is being appropriately informed of the changes to New Hampshire election laws in a timely and clear manner and second, whether there is equal access for non-English speaking New Hampshire voters to these education materials.

The Committee finds that the Secretary of State's media outreach is insufficient to keep up with changing election laws, particularly close to election times.

The Committee recommends that the Secretary of State's office offer all election procedure explanatory documents and training materials in both Spanish and English to account for the state's shifting demographics, and be open to publishing these same materials in other languages as needed.

Appendix A:

Median Age by State: 2010



According to the 2010 census, New Hampshire has the fourth oldest median age in the country of 41.1 years. It follows Maine, 42.7 years; Vermont, 41.5 years; and West Virginia, 41.3 years. The median age for the United States is 37.2 years.¹⁰³

¹⁰³ U.S. Census Bureau, *2010 Census Summary File 1*, available at <https://www.census.gov/2010census/news/press-kits/summary-file-1.html> (last visited July 2, 2014).

Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Ohio Advisory Committee to the U.S. Commission on Civil Rights

Date: May, 2018

Subject: Voting Rights in Ohio

On January 17, 2018, the Ohio Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) elected to undertake a study of voting rights in the state. Specifically, in support of the Commission’s 2018 Statutory Enforcement Report on voting rights in the United States, the Committee sought to review related testimony received during a Committee briefing in 2006 to: (1) determine the extent to which voting rights concerns raised in 2006 remained challenges in Ohio in 2018; and (2) identify any new voting rights concerns that may have surfaced in Ohio since that time. As part of its review, the Committee held additional briefings on March 2, 2018 and March 9, 2018. Panelists who had presented to the Committee in 2006 on the topic of voting rights were invited to return to update their testimony. Additional panelists currently involved in voting administration and advocacy were also invited to participate.¹

The following advisory memorandum results from a review of the testimony provided to the Committee in 2006, combined with the additional testimony obtained in 2018. It begins with a brief background of the issue to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This memorandum focuses on the right of all eligible U.S. Citizens to participate in free and fair elections, to vote, and to have their vote counted. While other important topics may have surfaced throughout the Committee’s inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memorandum and the recommendations included within it were adopted by a majority of the Committee on May 24, 2018.

Background

The right to vote is one of the most fundamental components of democracy—so important, that the U.S. Constitution includes four amendments protecting it.² Established under the Civil Rights Act of 1957, as part of its core mandate, the U.S. Commission on Civil Rights is directed to “[i]nvestigate formal allegations that citizens are being deprived of their right to vote and have

¹ Please see Appendix for meeting agendas and complete list of speakers.

² U.S. Const. amend. XV, XIX, XXIV, XXVI. *Note:* Amendment XV guarantees the right to vote shall not be abridged or denied on the basis of “race, color, or previous condition of servitude”; Amendment XIX guarantees that the right to vote will not be abridged or denied “on account of sex”; Amendment XXIV guarantees that the right to vote will not be abridged or denied “by any reason of failure to pay poll tax or other tax”; Amendment XXVI guarantees the right to vote will not be abridged or denied on account of age for all citizens 18 years or older.

that vote counted by reason of their color, race, religion, or national origin.”³ Throughout its history, the Commission and its Advisory Committees have released numerous reports on the state of voting rights in the U.S.⁴

The Committee notes that the Commission is presently conducting a study of voting rights in the United States nationally, in fulfillment of its 2018 statutory enforcement report to be submitted to Congress and the President. As part of this study, the Commission has requested that its advisory committees consider undertaking studies on voting rights in their respective jurisdictions. In this context, the Ohio Advisory Committee submits this memorandum to the Commission regarding the present state of voting rights in Ohio.

Overview of Testimony

In considering this study the Committee sought balanced and diverse input from involved stakeholders representing all relevant perspectives. During each of the 2006 and the 2018 hearings, the Committee invited testimony from academic experts, county voting officials, state level elected officials representing both major political parties, and community advocates.⁵ All invited parties who were unable to attend personally were offered the opportunity to send a delegate, or to submit a written statement offering their perspective on the civil rights concerns in question. During the 2006 hearings, the Committee was able to achieve reasonably diverse and inclusive participation from each of the aforementioned parties. During the Committee’s 2018 revisiting of the topic, however, despite numerous outreach attempts, no representative from the office of the Ohio Secretary of State chose to participate, and the Committee was unable to secure Republican representation from the current Ohio Legislature. The Committee acknowledges these limitations in the perspectives that follow.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,⁶ the Ohio Advisory Committee submits the following findings and recommendations to the Commission regarding voting rights in Ohio. These findings and recommendations are intended to highlight the most salient civil rights themes as they emerged from the Committee’s inquiry. In recognition of the Commission’s continued study of this topic, in lieu of providing a detailed discussion of each finding presented, the Committee offers a general outline of themes, along with appropriate

³ Voting, *1961 Comm’n on Civil Rights Rep.*, Foreword, p. xv, <http://www.law.umaryland.edu/marshall/usccr/documents/cr11961bk1.pdf> (last accessed July 21, 2016).

⁴ See *Historical Publications of the United States Commission on Civil Rights*, Univ. of Md. Francis King Carey School of Law: Thurgood Marshall Law Library, http://www.law.umaryland.edu/marshall/usccr/subilist_index.html (last accessed July 21, 2016).

⁵ The complete agenda and minutes from this meeting can be found in Appendix B.

⁶ 45 C.F.R. § 703.2 (2018).

additional resources, as topics of reference for the Commission’s 2018 statutory enforcement report. The complete meeting transcripts are included in Appendix A for further reference.

The following findings result directly from the testimony received, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand knowledge of the topics at hand.

1. Voter discrimination can be thought of in two separate but related and equally important categories: voter denial, and vote dilution.
 - a. Voter denial includes practices that impede eligible voters from casting their vote or from having their votes counted, such as strict voter ID requirements and limits on early and absentee voting.⁷
 - b. Vote dilution refers to practices that may weaken the strength of some groups’ votes, “particularly groups that are defined along lines of race or ethnicity,”⁸ such as gerrymandering.
2. Voting is regarded as a fundamental right and has been acknowledged as such by the U.S. Supreme Court since the 19th century.⁹
 - a. Based on the standard set forth by *Crawford v. Marion County Election Board*,¹⁰ if voting regulations burden voting rights, the court may consider the severity of the burden, the number of people affected, and the potential for disparate impact.¹¹ The state then must justify the burden by demonstrating that it serves an important regulatory interest.¹²
 - b. Section 2 of the Voting Rights Act, as amended in 1982, allows a claim to be made of race discrimination based on a result that is discriminatory, regardless of intent.¹³

⁷ See Daniel Tokaji, *Testimony Before the Ohio Advisory Committee to the U.S. Commission on Civil Rights*, Mar. 2, 2018, Transcript, p. 3 lines 10-15; p. 4 lines 14-26. Available at: <https://www.facadatabase.gov/committee/meetingdocuments.aspx?flr=155584&cid=268>. (Hereafter cited as *2018 Transcript I*). Note: after October 2018, transcripts will be available under the historical documents of the Committee, <https://facadatabase.gov/committee/histories.aspx?cid=268&fy=2018>. Also available at Appendix E.

⁸ Tokaji Testimony, *2018 Transcript I*, pp. 3 lines 16-23, 4 lines 14-20.

⁹ Tokaji Testimony, *2018 Transcript I*, p. 3 lines 20-31; Kerstin Sjoberg-Witt Testimony, *2018 Transcript I*, p. 13 lines 21-28.

¹⁰ 553 U.S. 181 (2008).

¹¹ Tokaji Testimony, *2018 Transcript I*, p. 5 lines 10-31, pp. 25 line 35-26 line 16 (citing *Crawford v. Marion County Election Board*, 553 U.S.).

¹² *Ibid*.

¹³ Voting Rights Act, Section 2, 42 U.S.C. § 1973; see also Tokaji Testimony, *2018 Transcript I*, p. 5 lines 27-39.

3. Voting practices and requirements in the United States vary widely from state to state.¹⁴
 - a. Variance in election law results in confusion and misinformation.¹⁵ For example, differences in voter ID laws between states may leave voters confused as to what is required in Ohio.¹⁶ Individuals with felonies on their record are permitted to vote immediately upon completion of their sentence in Ohio, but not in other states.¹⁷ This may lead many such individuals to be unaware of their right to vote, and may disproportionately impact people of color.¹⁸
 - b. There has been a significant increase in election related litigation in the United States since 2000.¹⁹ Litigation and resulting frequent changes in voting laws may contribute to voter and poll worker confusion regarding voting requirements.²⁰ Changes are particularly damaging when rules are modified shortly before an election.²¹ The Ohio Secretary of State's Office has reportedly not allocated any funding to voter education to make voters aware of the changes in 2018.²² "Community groups and nonprofit organizations have had to stand in the gap to provide voters with information about the mechanics of how, where, and when to vote."²³

4. Poll worker training

¹⁴ Tokaji Testimony, *2018 Transcript I*, p. 21 lines 11-35.

¹⁵ Kathleen Clyde, *Testimony Before the Ohio Advisory Committee to the U.S. Commission on Civil Rights*, March 9, 2018, Transcript p. 14 lines 9-15 (Hereafter cited as *2018 Transcript II*). Available at: <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155585&cid=268>. Note: after October 2018, transcripts will be available under the historical documents of the Committee, <https://facadatabase.gov/committee/histories.aspx?cid=268&fy=2018>. Also available at Appendix E. See also: Camille Wimbish, Director, Ohio Voter Rights Coalition, *Written Statement for the Ohio Advisory Committee to the U.S. Commission on Civil Rights*, March 1, 2018, at 2. (Hereafter cited as Wimbish Statement). Available at Appendix F(a).

¹⁶ Clyde Testimony, *2018 Transcript II*, p. 14 lines 9-15.

¹⁷ Wimbish Statement at 3.

¹⁸ Catherine Turcer Testimony, *2018 Transcript I*, p. 12 lines 6-12; Clyde Testimony, *2018 Transcript II*, p. 14 lines 9-15.

¹⁹ Tokaji Testimony, *2018 Transcript I*, p. 4 line 27 - p. 7 line 2; Clyde Testimony, *March 9, 2018 Transcript*, p. 8 line 13 - p. 9 line 2; Paul Moke, *Testimony Before the Ohio Advisory Committee to the U.S. Commission on Civil Rights*, meeting, Columbus, OH, Mar. 16-17, 2006, Transcript, p. 25 lines 1-5. (Hereafter cited as *2006 Transcript*) p. 23. Available at Appendix B.

²⁰ Such concern is ongoing. See, e.g., Tokaji Testimony, *2006 Transcript*, p. 19 lines 7-23 (discussing the state's voter ID requirements) Wimbish Statement at 2.

²¹ Damschroder Testimony, *2006 Transcript*, p. 259 line 8-22.

²² Turcer Testimony, *2018 Transcript I*, p. 11 lines 6-12, p. 23 lines 22-33 Gresham Testimony, *2006 Transcript*, p. 77, lines 16-21.

²³ Wimbish Statement at 2.

- a. State law requires poll workers to be trained every three years, and voting location managers to be trained before every federal primary election.²⁴ However, some counties implement additional training for poll workers.²⁵
- b. Franklin County trains poll workers before every election.²⁶ Franklin County also allows its poll workers to practice their roles the weekend before an election, and to be trained in specialized roles, to avoid an overload of information during the trainings.²⁷
- c. In 2006, the Secretary of State’s Office testified that funding was available for poll worker training, though only 14 counties had utilized those funds.²⁸ The Secretary’s office did not provide updated testimony in 2018.

5. Voters with Disabilities

- a. Individuals with disabilities, particularly those who may reside in institutional settings, are often unaware of their voting rights.²⁹ Increased education is needed.³⁰
- b. The Committee heard testimony about individuals who are hospitalized outside of their county having difficulty getting access to absentee ballots to which they are entitled.³¹
- c. Ohio has a number of provisions such as curbside voting, accessible voting machines, and allowances for personal assistance that improve the accessibility of most polling locations.³² Poll worker and voter education remain the most important factors in making sure these accommodations are properly implemented.³³ One panelist recommended establishing a disability liaison at each polling location rather than training every poll worker, because the amount of information conveyed to poll workers can be overwhelming.³⁴

²⁴ Ohio Rev. Code § 3501.27(B).

²⁵ Leonard Testimony, *2018 Transcript II*, p. 5 lines 9-16.

²⁶ Leonard Testimony, *2018 Transcript II*, p. 5 lines 9-23, 33-42.

²⁷ *Ibid.*

²⁸ Cassandra Hicks Testimony, *2006 Transcript* at 153.

²⁹ Sjoberg-Witt Testimony, *2018 Transcript I*, p. 13 lines 12-20; p. 23 lines 34-38.

³⁰ *Ibid.*

³¹ *Ibid.* pp. 16 line 27 – p. 17 line 21.

³² *Ibid.* p. 17 lines 22-40, p. 15 lines 14-19; Leonard Testimony, *2018 Transcript II*, p. 6 lines 1-23. *Note:* such provisions indicate a significant improvement; 2006 testimony before the Committee indicated that almost 25% of polling places throughout the state were not accessible to people with disabilities. *See 2006 Transcript*, p. 14 lines 15-21.

³³ Sjoberg-Witt Testimony, *2018 Transcript I*, p. 17 lines 22-40, p. 15 lines 24-34, p. 23 line 38 – p. 24 line 22; Pederson Testimony, *2018 Transcript I*, p. 25 lines 18-22; Willis Testimony, *2006 Transcript*, p. 100.

³⁴ Sjoberg-Witt Testimony, *2018 Transcript I*, p. 24 lines 18-22.

- d. In an effort to ensure that all polling places are accessible, some polling locations have been consolidated.³⁵ This has led to transportation issues as voters must travel longer distances to vote.³⁶
 - e. Signature matching as a form of identity verification may present a barrier to individuals with disabilities who either cannot sign their name or whose signature may vary significantly from time to time.³⁷ Currently there is no accommodation for such individuals outside of designating a power of attorney for voting.³⁸
6. Provisional voting in Ohio
- a. Ohio has seen a number of cases regarding the counting of provisional ballots since 2004.³⁹ One panelist noted that Ohio is one of the top states in the country for the number of provisional ballots and the number of ballots that are thrown out.⁴⁰ If provisional ballots are not counted, the voter has no right to challenge that decision.⁴¹ In close races, provisional ballots can have a significant impact on the outcomes of the election.⁴²
 - b. Franklin County developed an envelope for provisional ballots that includes a template to indicate to the voter which items must be completed in order to ensure the ballot will be counted.⁴³ This has resulted in a reduction in the number of ballots being ruled invalid.⁴⁴
 - c. Boards of Elections may make varying efforts to count provisional ballots; however, they are limited by the Secretary of State's Office as to what information they can access in an effort to validate ballots and count them.⁴⁵
 - d. In 2012, one house race was decided by just four votes.⁴⁶ In this election, the local Board of Elections threw out votes because of data entry errors affecting provisional ballots, even though voters provided the correct information.⁴⁷

³⁵ Sjoberg-Witt Testimony, *2018 Transcript I*, p. 15 lines 20-24.

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 18 lines 1-9.

³⁸ *Ibid.*

³⁹ Tokaji Testimony, 2018 Panelist Presentations I, Slide 23. Available at Appendix E; Tokaji Testimony, *2018 Transcript I*, p. 7 lines 10-26; Clyde Testimony, *2018 Transcript II*, p. 8 lines 8-9.

⁴⁰ Clyde Testimony, *2018 Transcript II*, p. 8 lines 32-38; p. 10 lines 17-18.

⁴¹ Gresham Testimony, *2006 Transcript*, p. 78.

⁴² *Ibid.*

⁴³ Leonard Testimony, *2018 Transcript II*, p. 6 lines 34-44.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* p. 22 lines 18-40.

⁴⁶ Clyde Testimony, *2018 Transcript II*, p. 9 lines 5-18.

⁴⁷ *Ibid.*

7. Early and Absentee Voting

- a. In Ohio, all counties are permitted only one location for early, in person voting, with limited hours, regardless of the county's population.⁴⁸ This disproportionately results in long lines for voting in urban, more densely populated counties who must accommodate more voters.⁴⁹
- b. In 2014, Ohio passed a bill (S.B. 205 (2014)) stating that absentee ballot applications may only be mailed by the Secretary of State if the legislature appropriates money to do so.⁵⁰
 - i. This has disproportionately affected urban counties that have traditionally sent out absentee ballot applications as a way to encourage early voting in order to lessen problems with long lines and crowded conditions that do not affect more rural voters.⁵¹
 - ii. This same bill also instituted "hyper-technical" rules that disqualify ballots for paperwork errors "such as writing a name in legible cursive instead of print, omitting a zip code from an address, or missing a single digit from a social security number."⁵²
- c. Limitations on absentee mail-in voting and early voting may also disproportionately affect African American voters⁵³ and people with disabilities⁵⁴ who tend to gravitate toward such alternative voting provisions.
- d. Absentee ballots are tracked and processed at the county level.⁵⁵
 - i. Voter ability to track receipt of their ballot may help to improve voter confidence in early voting.⁵⁶

⁴⁸ See Ohio Rev. Code Ann. § 3501.10(C) seemingly limits early voting to the county clerk's office ("The board of elections may maintain permanent or temporary branch offices at any place within the county, provided that, if the board of elections permits electors to vote at a branch office, electors shall not be permitted to vote at any other branch office or any other office of the board of elections."); See also: Turcer Testimony, *2018 Transcript I*, p. 10 lines 15-21; Clyde Testimony, *2018 Transcript II*, p. 9 lines 21-26.

⁴⁹ Turcer Testimony, *2018 Transcript I*, p. 10 lines 15-25; Clyde Testimony, *2018 Transcript II*, p. 9 lines 21-26.

⁵⁰ Wimbish Statement at 2.

⁵¹ Turcer Testimony, *2018 Transcript I*, p. 10 lines 26-37; Wimbish Statement at 1.

⁵² Wimbish Statement at 2. See also: Clyde Testimony, *2018 Transcript II* p. 18 line 32 – p. 19 line 40.

⁵³ Clyde Testimony, *2018 Transcript II*, p. 10 lines 8-16.

⁵⁴ Pederson Testimony *2018 Transcript I*, p. 24 line 32 – p. 25 line 17.

⁵⁵ Leonard Testimony, March 9, *2018 Transcript* p. 16 line 28 – p. 17 line 8.

⁵⁶ *Ibid*; Wimbish Statement at 1.

- ii. There is currently no reporting to the Secretary of State’s Office on tracking or processing of absentee ballots.⁵⁷
 - iii. Some concern was raised that counties may be inconsistent in how they count provisional and absentee ballots.⁵⁸
- e. Ohio introduced no fault absentee/early voting in 2008.⁵⁹ Previously, early voting had been available only to those with demonstrated need.⁶⁰ Individual counties have made efforts to advertise and educate voters about this opportunity. 40% of voters in Franklin County cast their ballots early in 2016, and the County spent \$245,000 on advertising to announce the opportunity.⁶¹ Aggressive advertising for early and absentee voting has helped to reduce long lines at the polls on Election Day in Franklin County.⁶²

8. Voter Registration

- a. As of 2017, Ohio allows citizens to register to vote online.⁶³ While this provision has been lauded as a positive expansion of voter access, it was noted that online registration requires a driver’s license or state ID.⁶⁴ This requirement excludes eligible voters who may not have a state ID or driver’s license such as students temporarily residing in Ohio who have not obtained a state ID, the elderly, Ohioans with disabilities, individuals living in poverty, those who do not drive, and others.⁶⁵
- b. Ohio closes voter registration 30 days before an election, the longest time allowed under federal law.⁶⁶ Same day voter registration and automatic voter registration are directly correlated with voter turnout.⁶⁷ States with same day registration

⁵⁷ Leonard Testimony, *2018 Transcript II*, p. 16 line 36 – p. 17 line 8.

⁵⁸ Clyde Testimony, *2018 Transcript II*, p. 19 lines 20-40.

⁵⁹ Clyde Testimony, *2018 Transcript II*, p. 8 lines 11-12.

⁶⁰ *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012). The 6th Circuit Court invalidated the differential treatment of voters; differential treatment of military and overseas workers from other voters with respect to early voting was not justified. See Tokaji Testimony, *2018 Transcript I*, p. 7 lines 27-39. 2018; Panelist Presentations I, slide 24.

⁶¹ Leonard Testimony, *2018 Transcript II*, p. 4 lines 3-19.

⁶² *Ibid*, p. 23 line 34 – p. 24 line 2.

⁶³ *Ibid*, p. 7 lines 12-18; Turcer Testimony, *2018 Transcript I*, p. 22 lines 14-34; Wimbish Statement at 1.

⁶⁴ See requirements at Secretary of State: Register to vote or update your voter registration information: <https://olvr.sos.state.oh.us/> (last accessed June 15, 2018)

⁶⁵ Clyde Testimony *2018 Transcript II*, p. 10 lines 1-7.

⁶⁶ 52 U.S.C. § 20507(a)(1); See also: Ohio Secretary of State, Register to vote and update your registration: What is the registration deadline? <https://www.sos.state.oh.us/elections/voters/register/#gref> (last accessed June 15, 2018).

⁶⁷ Clyde Testimony, March 9, 2018 Transcript, p. 14 lines 22-29.

reportedly have 5-10% higher voter turnout than Ohio.⁶⁸ In 2016, Ohio saw its lowest voter turnout as a state since 2000 for a major presidential election.⁶⁹

- c. Ohio previously allowed same day registration and early voting for one week, between 35 and 30 days prior to an election.⁷⁰ Once known as “Golden Week” this opportunity has been canceled.⁷¹
- d. Ohio is currently one of the most aggressive states in purging voter registration rolls.⁷²
 - i. If a voter does not participate in a general election, the local Board of Elections is to mail a postcard asking the voter to confirm registration status and address.⁷³ If the voter does not respond to the postcard, or vote in the next two election cycles, the voter’s registration is canceled with no further notice.⁷⁴
 - ii. If a citizen attempts to vote after his or her voter registration has been canceled, he or she is given a provisional ballot.⁷⁵ The provisional ballot is *not* counted for the present election cycle; however, the envelope containing the provisional ballot, if completed properly, can double as a voter registration form, re-registering the voter for the *next* election cycle.⁷⁶
 - iii. Ohio has canceled the voter registration of more than two million voters since 2011 for failure to vote in two consecutive elections.⁷⁷ Litigation challenging this process as a violation of the National Voter Registration Act is currently pending before the U.S. Supreme Court.⁷⁸
 - iv. Canceling voter registration of those who have not voted in at least two election cycles may disproportionately impact African American voters and voters from urban areas,⁷⁹ as well as others living in poverty, those without a permanent home, and individuals with disabilities, “who may

⁶⁸ Ibid.

⁶⁹ Ibid. p. 9 lines 32-34.

⁷⁰ Ohio Rev. Code Ann. §§ 3509.01, 3511.10.

⁷¹ Tokaji Testimony, *2018 Transcript I*, p. 21 lines 22-26; p. 7 lines 27-39; Wimbish Statement at 1-2.

⁷² Turcer Testimony, *2018 Transcript I*, p. 9 line 36 – p. 10 line 15; Wimbish Statement at 1.

⁷³ Clyde Testimony, *2018 Transcript II*, p. 12 lines 3-23; Turcer Testimony, *2018 Transcript I*, p. 19 line 28 – p. 20 line 9; Wimbish Statement at 1.

⁷⁴ Ibid.

⁷⁵ Clyde Testimony, *2018 Transcript II*, p. 13 lines 8-14.

⁷⁶ Ibid.

⁷⁷ Ibid. p. 9 lines 35-42, p. 10 line 13.

⁷⁸ Ibid, p. 9 lines 35-42; Tokaji Testimony, *2018 Transcript I*, p. 7 line 40 – p. 8 line 11; Wimbish Statement at 1.

⁷⁹ Turcer Testimony, *2018 Transcript I*, p. 9 line 36 – p. 10 line 15.

find it difficult to vote and perhaps only vote in presidential elections as a result.”⁸⁰

- v. Infrequent voters are moved to an “inactive” list prior to their registration being canceled.⁸¹ In 2016, 13% of registered voters (approximately 1 million people) were deemed “inactive.”⁸² These voters did not receive information from the Secretary of State’s Office about vote by mail, in contrast to “active” registered voters,⁸³ raising concerns about equal treatment. There was also concern that voters flagged as “inactive” were disproportionately black voters.⁸⁴
 - vi. Funding available for new voting machines is proposed to be based on the number of registered voters.⁸⁵ Large cancelations of voter registration may impact the funding available in the most affected counties.⁸⁶
 - vii. Some panelists indicated that choosing not to vote is an exercise of First Amendment rights to free speech, and should be protected as such.⁸⁷
- e. It is important for the Secretary of State to maintain accurate voter rolls.⁸⁸
- i. Advocates and legal experts have noted vehicle registration changes, death records, and change of address notifications are more reliable indicators of a voter’s continued eligibility than failure to vote in two consecutive elections.⁸⁹
 - ii. In 2016 Ohio joined the Electronic Resource Information Center, an interstate data sharing service sponsored by the Pew Center, which reportedly may improve the accuracy of voter rolls.⁹⁰
- f. Ohio maintains a state wide voter database so that if a voter moves from one county to another, both counties are notified.⁹¹ The voter is removed from the

⁸⁰ Sjoberg-Witt Testimony, *2018 Transcript I*, p. 18 lines 19-28.

⁸¹ Turcer Testimony, *2018 Transcript I*, p. 11 lines 39-41.

⁸² Turcer Testimony, *2018 Transcript I*, pp. 11 line 39 – p. 12 line 5; Clyde Testimony, *2018 Transcript II*, pp. 9 lines 27-34; Wimbish Statement at 2.

⁸³ *Ibid.*

⁸⁴ Clyde Testimony, *2018 Transcript II*, p. 9 lines 27-34.

⁸⁵ Clyde Testimony, *2018 Transcript II*, p. 10 lines 18-24.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*; p. 13 line 35-p. 14 line 3; Turcer Testimony, *2018 Transcript I*, p. 9 line 36 – p. 10 line 15.

⁸⁸ Leonard Testimony, *2018 Transcript II*, p. 12 lines 25-36.

⁸⁹ *Ibid.*; Tokaji Testimony, *2018 Transcript I*, p. 20 lines 11-39.

⁹⁰ Wimbish Statement at 1.

⁹¹ Leonard Testimony, *2018 Transcript II*, pp. 17 line 18 – p. 18 line 10.

rolls in their old county and added to the roll in their new county.⁹² There is no such tracking system available at the national level.⁹³

9. Voting Administration

- a. Ohio permits a number of forms of voter identification, including utility bills, government checks, and pay stubs.⁹⁴ This is less strict than many other states and helps to facilitate voter access.⁹⁵
- b. Voting machines in Ohio are aging, and funding for new machines is currently not in the state's capital budget.⁹⁶ Without state funding, wealthier counties with the funding to updates or replace their machines will have an advantage over counties with fewer resources.⁹⁷
- c. Franklin County has addressed previous concerns about long lines and voting machine shortages by expanding the number of machines from 2,800 in 2004 to 4,735 in 2018.⁹⁸ These machines also include a voter-verifiable paper trail.⁹⁹
- d. In addition to increasing the number of voting machines to address problems with long lines, some counties have moved from a precinct based voting system to a location based voting system, allowing voters to report to any location in their precinct.¹⁰⁰
- e. The use of electronic poll books, allowing voters to sign in at any table (rather than requiring them to sign in at the table corresponding to their last name), has also helped to reduce lines at polling sites.¹⁰¹
- f. While the integrated use of technology has largely been well received as a positive solution to several voting challenges, a tension exists in balancing the use

⁹² Ibid.

⁹³ Ibid.

⁹⁴ See Ohio Secretary of State, Elections and Voting, Identification Requirements:

<https://www.sos.state.oh.us/elections/voters/id-requirements/#gref> (last accessed June 15, 2018).

⁹⁵ Turcer Testimony, *2018 Transcript I*, p. 9 lines 1-10; Sjoberg-Witt Testimony, *2018 Transcript I*, p. 18 lines 15-16; Wimbish Statement at 1. See also: National Conference of State Legislatures, Voter Identification Requirements | Voter ID Laws, available at: <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last accessed May 17, 2018).

⁹⁶ Turcer Testimony, *2018 Transcript I*, pp. 10 line 38 – p. 11 line 5.

⁹⁷ Ibid.

⁹⁸ Leonard Testimony, *2018 Transcript II*, p. 3 lines 16-29.

⁹⁹ Ibid.

¹⁰⁰ Ibid, pp. 3 line 26 – p. 4 line 2, p. 23 lines 31-34.

¹⁰¹ Ibid, pp. 4 lines 20-29, p. 23 lines 33-34, p. 24 lines 3-14.

of such technology with security concerns, economic limitations,¹⁰² and public education.¹⁰³

10. Districting

- a. Panelists expressed concern about gerrymandering in Ohio. In the current redistricting plan, the state's 11th congressional district is 80% Democratic and 52% African American.¹⁰⁴ One panelist suggested that, "Race was almost certainly the predominant factor in drawing this district and its boundaries almost certainly could not be defended as necessary under the Voting Rights Act."¹⁰⁵
- b. Ohio will place a bipartisan measure on the ballot in the spring of 2018 that would reform the process for drawing the state's congressional districts.¹⁰⁶

11. Election security

- a. Testimony indicated that there is little evidence of voter fraud generally, and noncitizens voting in U.S. elections specifically.¹⁰⁷
- b. It is difficult to impose proof-of-citizenship requirements related to voting because "we don't have a national system for determining with precision who is and is not a citizen."¹⁰⁸ Courts have historically not supported laws that treat natural born and naturalized citizens differently for the purposes of voting.¹⁰⁹
- c. At least two panelists noted significant risk of foreign nationals and foreign powers interfering with U.S. elections generally and in Ohio specifically.¹¹⁰
- d. One panelist recommended hiring a dedicated cyber security director at the Secretary of State's office, advised by a bipartisan council of security experts,

¹⁰² Clyde Testimony, *2018 Transcript II*, p. 16 lines 9-16; Moke Testimony, *2006 Transcript*, pp. 27-28; Turcer Testimony, *2006 Transcript*, p. 38.

¹⁰³ Moke Testimony, *2006 Transcript*, pp. 27-29; Jeff Jacobson Testimony, *2006 Transcript*, pp. 166-168.

¹⁰⁴ Tokaji Testimony, *2018 Transcript I*, p. 8 lines 12-34.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, p. 21 lines 27-35. *Note: this ballot measure was passed by Ohio voters in May of 2018. See: Wilson, Reid, Ohio voters pass redistricting reform initiative. The Hill*, May 8, 2018. Available at: <http://thehill.com/homenews/state-watch/386839-ohio-voters-pass-redistricting-reform-initiative> (last accessed June 15, 2018).

¹⁰⁷ Dan Tokaji, Associate Dean for Faculty, Charles W. Ebersold & Florence Whitcomb Ebersold Professor of Constitutional Law, The Ohio State University, Moritz College of Law, Written Statement for the Ohio Advisory Board to the U.S. Commission on Civil Rights, May 14, 2018, pp. 1-4. (Hereafter cited as *Tokaji Statement*). Available at Appendix F.

¹⁰⁸ Tokaji Testimony, *2018 Transcript I*, p. 27 lines 16-29.

¹⁰⁹ *Ibid.* lines 4-16 (discussing *Boustani v. Blackwell*, 460 F. Supp.2d 822 (N.D. Ohio 2006)). *See also:* Tokaji Testimony, *2006 Transcript*, pp. 20-21.

¹¹⁰ Tokaji Testimony, *2018 Transcript I*, pp. 26 line 34 – p. 27 line 3; Clyde Testimony, *2018 Transcript II*, pp. 10 lines 25-30, p. 15 lines 37-42.

election officials, and voter advocates. However, recent cuts at the Secretary of State's office may make hiring such a position difficult.¹¹¹

- e. Electronic voting machines in Ohio contain a paper trail for auditing purposes.¹¹² However, one panelist noted that poll workers do not always show the paper trail to voters for verification.¹¹³ Paper ballots were noted as more secure and more economical than electronic.¹¹⁴
- f. While audits currently exist to ensure that vote tabulation is accurate in Ohio, these audits are not required under state law.¹¹⁵ Random, external audits, not conducted by the Secretary of State or a nonpartisan office, are important to ensure fair and reliable outcomes, and to increase public confidence so that citizens will vote.¹¹⁶
- g. Voting security and equipment maintenance is currently the responsibility of the administering county.
 - i. In Franklin County security measures include not connecting voting machines to the internet; locking machines and sealing them with tamper evident seals; and holding live ballots under double lock and key at the Board of Elections.¹¹⁷
 - ii. Voter registration information is sent to the Secretary of State over the internet and could potentially be susceptible to cyber-attack.¹¹⁸ In Franklin County, the Board of Elections maintains duplicate records.¹¹⁹ The county also collaborates with the Department of Homeland Security for cyber security efforts.¹²⁰

12. Voter Intimidation

- a. The Committee heard testimony that in 2012 intimidating billboards warning of jail time and large fines for voting offenses were predominantly placed in African American neighborhoods.¹²¹

¹¹¹ Clyde Testimony, *2018 Transcript II*, p. 16 lines 1-8.

¹¹² Turcer Testimony, *2018 Transcript I*, p. 9 lines 24-35.

¹¹³ *Ibid.*, p. 11 lines 29-36.

¹¹⁴ Clyde Testimony, *2018 Transcript II*, p. 16 lines 9-16.

¹¹⁵ *Ibid.*, p. 16 lines 17-21.

¹¹⁶ Turcer Testimony, *2006 Transcript*, p. 39.

¹¹⁷ Leonard Testimony, *2018 Transcript II*, p. 15 lines 10-36.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Clyde Testimony, *2018 Transcript II*, p. 9 lines 3-5; Clyde 2018 Testimony, Panelist Presentations II, Slide 11. Available at Appendix E.

- b. In 2016, there were reports of men riding around in pickup trucks at the polls threatening voters in Summit County Ohio.¹²² One panelist noted that harassment at the polls is prohibited under state and federal law; however, “harassment” is not defined.¹²³

13. Language Access

- a. Section 203 of the Voting Rights Act requires that certain jurisdictions¹²⁴ provide all election materials that are available in English in the applicable minority language as well. This includes registration or voting notices, forms, instructions, assistance, ballots, and other materials.¹²⁵
- b. Currently there are no jurisdictions covered under Section 203 in Ohio.¹²⁶ However, the Committee heard testimony that Franklin County may be nearing the federal threshold for coverage in Spanish and Somali in some precincts, and should be preparing multilingual voting materials accordingly.¹²⁷
- c. The Franklin County Board of Elections has one Somali employee who is able to assist Somali voters.¹²⁸

14. Partisanship: The Committee heard significant testimony about the detrimental effect of partisan infighting in the U.S. election system and voter participation.¹²⁹ Negative campaign ads and partisan infighting discourage voters from participating.¹³⁰

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports

¹²² Clyde Testimony, *2018 Transcript II*, p. 9 lines 19-22.

¹²³ Rosenfeld Testimony, *2006 Transcript*, p. 87.

¹²⁴ Jurisdictions under Section 203 include where the number of U.S. citizens of voting age is a single language group is more than 10,000; or, is more than 5% of all voting age citizens; or, On an Indian reservation, exceeds 5% of all reservation residents; and the illiteracy rate of the group is higher than the national illiteracy rate. Voting Rights Act, Section 203, 52 U.S.C. § 10503. *See also*: The United States Department of Justice, Civil Rights Division. *About Language Minority Voting Rights*, “Section 203 Coverage Formula.” Available at: <https://www.justice.gov/crt/about-language-minority-voting-rights> (last accessed May 17, 2018). (Hereafter cited as *About Language Minority Voting Rights*).

¹²⁵ *About Language Minority Voting Rights*, “Legal Requirements.”

¹²⁶ *About Language Minority Voting Rights*, “Covered Jurisdictions.”

¹²⁷ Leonard Testimony, *2018 Transcript II*, p. 18 lines 15-26.

¹²⁸ *Ibid*, p. 7 lines 1-11.

¹²⁹ Moke Testimony, *2006 Transcript*, p. 33; Clyde Testimony, March 9, 2018 Transcript, p. 11 lines 14-20.

¹³⁰ Clyde Testimony, *2018 Transcript II*, p. 14 lines 16-21; Leonard Testimony, *2018 Meeting Transcript II*, p. 14 lines 31-42.

of the Commission to the President and the Congress.¹³¹ In keeping with these responsibilities, and in light of the testimony heard on this topic, the Ohio Advisory Committee submits the following recommendations to the Commission. The Committee recommends that the U.S. Commission on Civil Rights consider these findings and recommendations in their 2018 Statutory Enforcement Report to Congress and the President.

1. As part of their 2018 statutory enforcement report on voting rights, the U.S. Commission on Civil Rights should:
 - a. Review available data regarding the (in)frequency of voter fraud generally and noncitizen voting specifically, and promote and disseminate accurate information about the (in)frequency of these crimes.
2. The U.S. Commission on Civil Rights should issue the following formal recommendations to the Ohio Governor and Legislature:
 - a. Remove current requirements and prohibit future requirements resulting in the discarding of otherwise legitimate provisional and absentee ballots for trivial errors such as writing legibly in cursive rather than in print, omitting a zip code from an otherwise complete address, or missing a digit in a social security number.
 - b. Expand opportunities for early and absentee voting, including on weekends and evenings; resist efforts to curtail early voting especially for partisan or racial advantage; and establish early voting centers on the basis of population served, rather than limiting centers to one per county.
 - c. Revisit state legislation prohibiting harassment and voter intimidation at the polls; ensure appropriate enforcement to protect voters and clarify definitions of prohibited behaviors.
 - d. In collaboration with the disability rights community, establish an alternative identification verification option for individuals with disabilities who are unable to produce matching signature verification.
3. The U.S. Commission on Civil Rights should issue the following formal recommendations to the Ohio Office of the Secretary of State:
 - a. Increase public awareness and education campaigns for voters, particularly in the areas of ID requirements, early and absentee voting opportunities, and any areas of recent election law change.

¹³¹ 45 C.F.R. § 703.2 (2018).

- b. In conjunction with local advocates and the disability rights community, conduct an assessment of the voting process in Ohio to ensure: (1) all aspects are accessible; and (2) effective training is provided to all election officials and poll workers about the rights of people with disabilities and how to provide an accessible voting experience. Where possible, a disability liaison should be assigned to each polling location.
 - c. Encourage jurisdictions that have a substantial non-English speaking population to begin expanding multilingual voting materials and supports, even if they do not yet meet the federal threshold for required language accessibility.
 - d. Prohibit the discarding of otherwise legitimate ballots for trivial errors such as writing legibly in cursive rather than in print, omitting a zip code from an otherwise complete address, or missing a digit in a social security number; and issue and enforce consistent guidelines such that all counties apply the same standards in verifying and counting ballots.
 - e. Hire a dedicated cyber security director advised by a bipartisan council of security experts, election officials, and voter advocates to address concerns regarding foreign interference with electronic voting records.
 - f. Train poll workers to encourage voters using electronic polling machines to verify their ballots on the corresponding paper trail.
 - g. Allow Boards of Elections the broadest leeway possible to verify and count absentee and provisional ballots; and refrain from restricting applicable verification sources.
 - h. Take steps to ensure voting officials and their staffs remain nonpartisan in their approach to voting rights and voting administration.
4. The U.S. Commission on Civil Rights should issue the following formal recommendation to the Ohio Department of Rehabilitation and Correction:
 - a. Provide universal and systemic notification of the right to vote to people with felony convictions upon their release from prison.
5. The U.S. Commission on Civil Rights should make all other recommendations and requests of the appropriate public officials to address and correct the findings in this memorandum to ensure voter enfranchisement.

Appendix

- A. 2006 Hearing Agenda
- B. 2006 Transcript
- C. 2018 Hearing Agendas
- D. 2018 Invited Speakers
- E. 2018 Hearing Record
 - a. Transcript I: March 02, 2018
 - b. Panelist Presentations I: March 02, 2018
 - c. Transcript II: March 09, 2018
 - d. Panelist Presentations II: March 02, 2018
- F. Written Testimony
 - a. Wimbish, Ohio Voter Rights Coalition
 - b. Disability Rights Ohio
 - c. Tokaji, Voter Fraud Response, May 14, 2018

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CIVIL RIGHTS COMMITTEE TO ASSESS VOTING RIGHTS PROGRESS

"Ohio's Preparedness for the 2006 Elections"

FOR IMMEDIATE RELEASE

The Ohio Advisory Committee to the United States Commission on Civil Rights will convene a **briefing on Thursday, March 16, 2006, from 1:15 p.m. to 5:15 p.m. and on Friday, March 17, 2006, from 9:30 a.m. to 1:00 p.m.**, at the Ohio Civil Rights Commission, 1111 E. Broad St., Columbus, OH. The purpose is to find facts and assess the current state of voting access in the state.

In light of recent federal and state legislation, including the Help America Vote Act and Ohio House Bill 3, the Ohio Advisory Committee voted to hear testimony from experts about how these statutes will improve voter access, and the manner in which the statutes have been or will be implemented. The Committee also expects to hear testimony regarding other aspects of voting access in Ohio. Panelists include State Sen. Jeff Jacobson, Franklin County Board of Elections Director Matthew Damschroder, Common Cause Ohio Executive Director Sam Gresham, and Moritz College of Law Professor Daniel Tokaji. A full agenda is attached.

The Chairman of the Ohio Advisory Committee, Lynwood Battle of Cincinnati, will introduce the presenters and moderate the panels. Members of the Ohio Advisory Committee include former U.S. Attorney Sharon Zealey, Ohio Civil Rights Commission Chairman Aaron Wheeler, and Toledo College of Law Professor David Harris. A full list of members is attached. All members will engage the presenters in a question and answer session at the end of each panel. In addition, an open session is scheduled at the end of each day of testimony: 4:45 p.m. on Thursday and 12:30 p.m. on Friday.

As directed by Congress, the U.S. Commission on Civil Rights has established committees in the 50 U.S. states and the District of Columbia, comprised of volunteer citizens who advise the Commission on state-level civil rights issues.

AGENDA

“Ohio’s Preparedness for the 2006 Elections”

**OHIO ADVISORY COMMITTEE
TO THE
UNITED STATES COMMISSION ON CIVIL RIGHTS**

**THURSDAY, MARCH 16 – FRIDAY, MARCH 17, 2006
OHIO CIVIL RIGHTS COMMISSION
1111 E. BROAD ST.
COLUMBUS, OH 43205**

Thursday, March 16

- Introduction** 1:15 p.m. to 1:30 p.m.
Lynwood Battle, Chairman
- Panel 1** 1:30 p.m. to 3:00 p.m.
Daniel Tokaji, Moritz College of Law
Paul Moke, Wilmington College
Catherine Turcer, Ohio Citizen Action
- Panel 2** 3:15 p.m. to 4:45 p.m.
Samuel Gresham, Common Cause
Peg Rosenfield, League of Women Voters
Sue Willis, AXIS
- Open Session** 4:45 p.m. to 5:15 p.m.

Friday, March 17

- Panel 3** 9:30 a.m. to 10:45 a.m.
Cassandra Hicks, Office of the Secretary of State
Jeff Jacobson, State Senator
Aaron Ockerman, State Street Consultants
- Panel 4** 11:00 a.m. to 12:15 p.m.
Michael Vu, Cuyahoga County Board of Elections
Matthew Damschroder, Franklin County Board of Elections
Keith Cunningham, Allen County Board of Elections
- Open Session** 12:30 p.m. to 1:00 p.m.

Ohio Advisory Committee to the U.S. Commission on Civil Rights

Lynwood L. Battle, Jr., *Chairperson*
Cincinnati

Cassandra A. Bledsoe
Cleveland

Diane E. Citrino
Solon

Dilip D. Doshi
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Sharon J. Zealey
Cincinnati

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BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS
OHIO ADVISORY COMMITTEE

* * *

"OHIO'S PREPAREDNESS FOR THE 2006 ELECTIONS"

* * *

Ohio Civil Rights Commission
1111 East Broad Street
Columbus, Ohio 43205
March 16, 2006

* * *

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OHIO ADVISORY COMMITTEE

* * *

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James Francis

Thomas C. Rogers

Sharon Zealey

Dilip Doshi

Cassandra Bledsoe

Jad Humeidan

Diane Citrino

* * *

David Mussatt, Civil Rights Analyst

Carolyn Allen, Administrative Assistant

* * *

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1 THURSDAY AFTERNOON SESSION,
2 MARCH 16, 2006.

3 - - -
4 P R O C E E D I N G S
5 - - -

6 CHAIRMAN BATTLE: I have a brief opening
7 statement just to convene us officially, and then we'll go right
8 into our first introduction to our panel.

9 This meeting of the Ohio Advisory Committee for
10 the U.S. Commission on Civil Rights shall come to order.

11 For the benefit of those of you in the audience I
12 won't introduce myself and my colleagues, because you just heard
13 that as we went around, those of you who came in, so I won't
14 repeat that.

15 Also present with us today are David Mussatt,
16 Civil Rights Analyst from the Midwestern Regional Office in
17 Chicago. And Carolyn Allen, who is the administrative
18 assistant.

19 Not with us is the director of the Midwestern
20 Regional Office, Connie Davis, who sends her regrets. And also
21 is very tuned into what we do all the time and with her constant
22 support.

23 I'd like to also express my appreciation on
24 behalf of the Advisory Committee to Michael Payton, the

1 Executive Director of the Ohio Civil Rights Commission.

2 And our friend and fellow committee member,
3 Pastor Aaron Wheeler, who chairs the Commission.

4 We greatly appreciate, as always, their
5 willingness to host this meeting and admire the hard work that
6 they continue to do themselves, and also their staff in
7 coordinating the meeting logistics with our logistical staff,
8 our regional staff.

9 We're here today to conduct for the purposes of
10 gathering -- conduct a briefing for the purpose of gathering
11 information on voting access in Ohio.

12 And in addition to studying voting issues in the
13 state, the jurisdiction of this committee also includes
14 discrimination or the denial of equal protection of the laws
15 because of race, color, religion, age, sex, disability or
16 national origin, or in the administration of justice.

17 Information that relates to the topic of the
18 meeting will be especially helpful to this Advisory Committee.

19 Proceedings of this meeting, which are being
20 recorded by a public stenographer, Cheryl Edwards, will be sent
21 to the Commission for its advice and consideration.

22 And the Advisory Committee may also decide to
23 investigate this subject further and issue a report at a later
24 date on the topic.

1 At the outset I want to remind every one present
2 of the ground rules. This is a public meeting open to the media
3 and the general public.

4 We have a very full schedule of people who will
5 be making presentations within a very limited time that we have
6 available.

7 The time allotted for each presentation must be
8 rather strictly adhered to. This will include a presentation by
9 each participant, followed by questions from committee members.

10 And to accommodate those persons who have not
11 been invited, but wish to make statements, we've scheduled an
12 open period today at 4:45, and tomorrow at 12:30.

13 Anyone wishing to make a statement during the
14 period should contact David Mussatt for that scheduling.

15 Written statements may be submitted to committee
16 members or staff here today, or by mail to the U.S. Commission
17 on Civil Rights at 55 West Monroe Street, Suite 410, Chicago,
18 Illinois.

19 And the record of this meeting will close on
20 April 1st.

21 Though some of the statements made today may be
22 controversial, we want to ensure that all invited guests do not
23 defame or degrade any person or any organization.

24 In order to ensure that all aspects of the issues

1 are presented, knowledgeable persons with a wide variety of
2 experience and view points have been invited to share
3 information with us.

4 Any person or any organization that feels that he
5 -- that they have been defamed or degraded by statements made in
6 these proceedings should contact our staff during the meeting
7 so that we can provide a chance for public response.

8 Alternately, such persons or organizations can
9 file written statements for inclusion in the proceedings.

10 I urge all persons making presentations to be
11 judicious in their statements. The Advisory Committee does
12 appreciate the willingness of all participants to share their
13 views and experiences with this committee.

14 And with that we will move to our guests and
15 panelists.

16 Panel No. 1, beginning with Daniel Tokaji from
17 the Moritz College of Law. Followed by Paul Moke, from
18 Wilmington College. And last, Catherine Turcer, of the Ohio
19 Citizens Action.

20 Mr. Tokaji.

21 MR. TOKAJI: Mr. Chairman, thank you very
22 much for having me today. And thanks to all the members of the
23 committee for having me here today.

24 My name is Dan Tokaji. I'm an Assistant

1 Professor of Law at the Ohio State University's Moritz College
2 of Law. I am also the Associate Director of Elections Law, at
3 the Moritz Program at the law school.

4 My main goal today, because I know you're going
5 to be hearing a lot of speakers, and I know that there are a
6 whole lot of issues pertaining to voting rights in Ohio to
7 discuss today.

8 My main goal is to try to provide some kind of
9 structure by which you can take in information and analyze these
10 issues around the various problems that have emerged in Ohio's
11 past elections, especially the 2004 elections. As well as those
12 that we can expect to arise in the future, particularly as the
13 result of some significant changes in both federal law and state
14 law.

15 What I'd like to start by doing is going through
16 a list of issues that emerged, and in fact that resulted in
17 litigation during the 2004 election.

18 Next to talk about some of the changes in federal
19 law that will be coming into play as a result of deadlines in
20 Help America Vote Act that Ohio will be required to meet in
21 these elections season, the 2006 election season.

22 And, finally, to talk a bit about something that
23 I'm sure is likely to be a focus of attention for several of the
24 speakers today, the new changes to state law which have just

1 recently been enacted by the Ohio legislature, as a part of Bill
2 Sub H.B. 3, which makes quite a number of changes, some of which
3 I'll address in my remarks today.

4 In providing this information, and I will discuss
5 a lot of problems that I think have serious voting rights
6 implications in past elections. I want to do my best to
7 highlight those problems without being an alarmist.

8 I think these are problems that require serious
9 attention. I'm very concerned especially about some of the
10 aspects of H.B. 3 that I think are likely to cause problems for
11 voters, as well as for poll workers and election officials in
12 its first implementation this coming year.

13 And I think what we all need to do is sit down
14 and think intelligently, carefully about these issues and what
15 we can do to make things better, including what we can do for
16 the voters about some of the new issues and obstacles, frankly,
17 that are likely to arise in the upcoming election.

18 Let me start by giving an overview of the major
19 issues of contention when it comes to voting rights that emerged
20 in the 2004 election.

21 And I break these down into seven major
22 categories. In each of these categories we did see litigation
23 before, during, and in some cases after the 2004 election.

24 I'm going to give a very brief overview here. I

1 brought with me some copies of something I've written on the
2 subject, which will give a more detailed explanation of these
3 issues, I'd be happy to make these available to the commission
4 and any members of the commission who would like one.

5 So seven issues that emerged in the 2004
6 election: The first and the one that of course received the
7 greatest attention in the wake of the 2000 election was voting
8 machines, voting technology.

9 Approximately 70 percent of Ohio's voters used
10 pre-scored punch card voting machines in the 2000 election.
11 This is the same kind of hanging chad device that resulted in so
12 many problems in Florida in 2000.

13 Social science evidence since then has
14 demonstrated that this type of technology results in more lost
15 votes, so-called residual votes, under votes and over votes than
16 other kinds of voting machines.

17 It has an especially negative impact on people of
18 lower education levels, and tends to have a greater impact on --
19 a greater negative impact that is on people of color.

20 All in all, in the 2004 election, as I mentioned,
21 the vast majority, 70 percent or so of Ohio citizens were still
22 using this kind of technology, even though many other states
23 have made the transition to more reliable voting equipment.

24 My estimate is somewhere in the neighborhood of

1 40- to 55,000 votes were lost as a result of the use of this.
2 Not enough by itself to have affected the result of the
3 election, given the approximately 119,000 vote margin, as
4 between Bush and Kerry in the State of Ohio.

5 But it can easily be seen how in a closer
6 election, as was the case in Florida four years ago, this could
7 have been determinative.

8 Now, we're right now in the midst of a transition
9 to newer voting technology. And there have been a great deal of
10 concerns raised about that new voting technology, especially
11 electronic voting machines.

12 Where this is -- this is one of the areas I'll
13 talk a bit about later, where HAVA made significant changes to
14 which the State of Ohio has to adapt.

15 Second issue, registration. We had a lot of
16 controversy about registration forms, what forms would and
17 wouldn't be accepted in the 2004 election.

18 The one that probably got the most attention was
19 an initial decision by the Secretary of State's office to refuse
20 to accept forms that were on paper weight less than 80 pounds,
21 very heavy stock paper weight, something like the cover -- the
22 cover of this booklet I have in front of me, as opposed to the
23 ordinary paper that we use.

24 That decision ultimately was rescinded

1 fortunately, in my opinion, but is not clear whether there were
2 registration forms that were denied as a result of that, and
3 thus people who were not allowed to vote.

4 Also issues in the election, which I won't
5 discuss in detail here, had to do with the treatment of
6 registration forms, which were incompletely filled, either
7 because a particular box was not checked off, or because Social
8 Security numbers or driver's license numbers weren't -- weren't
9 included.

10 Third issue, and this was a big one, provisional
11 voting. The most controversial issue, and here as in many other
12 states, was probably the Secretary of State's decision to reject
13 provisional ballots entirely if they were not cast in the
14 correct precincts.

15 There was -- there was litigation on this subject
16 in which the Secretary of State's office ultimately prevailed.
17 Federal Court of the Sixth Circuit concluding that the state was
18 not required to accept provisional ballots that were cast in the
19 so-called wrong precinct.

20 And there were a number of provisional ballots
21 not counted. I'm not sure that we have a precise number for
22 this, but we do know there were quite a few that were not
23 counted as a result of people mistakenly going to the wrong
24 precinct and casting a provisional ballot there.

1 The fourth issue, ID requirement. This is an
2 area in which there's actually been a change in law since 2004.
3 But in 2004 for the first time the Help America Vote Act's ID
4 requirements were in place, applicable to first time voters, who
5 registered by mail on or after January 1st, 2003.

6 There were issues regarding what to do with votes
7 cast by people who don't have the proper ID at the polling place
8 in this election.

9 As well as with what kinds of identification will
10 be considered acceptable for those voters who were affected by
11 this requirement.

12 The fifth issue, challenges to voter elevator
13 eligibility. There were two kinds of challenges that were at
14 issue in the 2004 election, pre-election challenges and Election
15 Day challenges.

16 As for the pre-Election Day challenges there were
17 some 35,000 voters who were challenged by the Republican Party
18 prior to the election that was subsequently narrowed to 23,000,
19 but under the somewhat cumbersome procedures then required by
20 Ohio election law, these folks would have been required to
21 attend mass hearings to assess their eligibility. That was
22 enjoined by a Federal court.

23 There was also litigation regarding Election Day
24 challenges, where party representatives have the ability to

1 challenge voters' qualifications on that day.

2 I won't go through the long detailed story, but
3 there were actually four court orders issued against Ohio's
4 Election Day challenge procedures, all four of which were
5 ultimately reversed on appeal.

6 Sixth issue, polling place operations. In some
7 places, especially right here in Franklin County, as well as
8 Knox County, we had extremely long lines at the polling place on
9 Election Day, some voters waited three or four hours, or in Knox
10 County even more to cast their vote.

11 I think there are a lot of complicated reasons
12 for it, but I hope we can prove that those kinds of lines are
13 simply unacceptable in a democracy that is advanced, or is
14 supposed to be advanced.

15 Another issue regarding polling place operations,
16 disability access. According to an Election Day survey
17 conducted for the Election Assistance Commission, only about 76
18 percent of polling places were physically accessible to people
19 with disabilities, and I think that's probably a high end
20 estimate, which means that there were at least 1500 that were
21 not.

22 I'd also note that in that survey data was not
23 even reported back by the state on accessible voting technology
24 for visually impaired people. But I suspect it would be a very

1 low number if data had been reported back by the state insofar
2 as access to blind voters goes.

3 The seventh and final issue is recounts and
4 contests. Now, fortunately the margin was wide enough there was
5 not a recount requested by the losing presidential candidate,
6 but there might have been some serious issues having to do with
7 recounts along the lines of those we saw in Florida's 2000
8 election, as well as the contests, including a question as to
9 whether the entire process could have been completed by the so
10 called Safe Harbor Day, the date by which all litigation and
11 controversies over elections are required to be completed as a
12 result of -- under federal law, in order for that state's
13 electorates to be counted according to the voters' intent.

14 Now, having outlined those seven issues I also
15 want to move now to some of the changes, and they are very
16 significant that are required by federal and state law.

17 We've got three big deadlines that are upon us
18 now in 2006 as a result of the Help America Vote Act.

19 The first deadline has to do with the replacement
20 of punch card and lever voting machines. As I mentioned 70
21 percent of voters in 2004 used punch card machines,
22 approximately 70 percent.

23 New technology has to be in place in all of those
24 jurisdictions by the 2006 election. That's because Ohio was one

1 of the 30 states that accepted money under Title I of the Help
2 America Vote Act, which the state obligated itself to replace
3 that technology.

4 The second requirement that comes into play,
5 which is under the Help America Vote Act is the Disability
6 Access requirement.

7 As of this election season, the 2006 election
8 season, there must be at least one unit at each polling place
9 that is accessible to people with disabilities, including
10 visually impaired voters.

11 And those voting machines have to ensure privacy
12 and independence for disabled voters. I'm hopeful, but not
13 certain that that requirement will be complied with in this
14 election.

15 One of the complicating issues has been the
16 state's requirement that electronic voting machines generate
17 voter verifiable paper audit trails. I know that's been a very
18 controversial issue, it's one that I try to avoid today.

19 But that requirement has -- has -- let me put it
20 as neutrally as I can, created some challenges in terms of
21 complying with HAVA's disability access requirement in Ohio as
22 well as many other states.

23 The third big requirement that comes into play,
24 this may be the least noticed one, but I think it's probably

1 the most significant one.

2 The statewide voter registration data base, this
3 is a requirement of HAVA to come into play this year in all
4 states. Every state has to have a statewide registration list
5 that's accessible by election officials in all of the counties.

6 A lot of attention over the past six years has
7 been given to voting machines, but a study by Cal Tech and MIT
8 actually found registration issues were probably a bigger source
9 of lost votes in the 2000 election, than were voting machines.

10 So the idea behind this requirement of HAVA's
11 statewide data base requirement is to improve our list. I have
12 to say that I'm very worried that at least in the short term
13 this requirement may have the opposite effect.

14 That there are going to be some problems and some
15 voters in particular who go to the polling place on Election Day
16 in 2006 and find their names aren't on the list due to glitches
17 in the statewide registration data base.

18 Now, there are some -- one of my big pet peeves,
19 I have to say, about Ohio's election system, since I've been
20 studying it over the past three or four years, has been the lack
21 of publicly available information or the lack of transparency
22 into the election system and statewide registration data bases,
23 and exactly how much progress the state and local government's
24 are making in this area.

1 And it's been one of the areas in which I -- I
2 think frankly there's been a lack of transparency. I do think
3 the Secretary of State's office, to its credit, has made some
4 improvements in this area recently.

5 They've improved their web site, which for many
6 people is a portal into seeing how they can conduct their
7 operations. But I will have to say -- I realize I'm reaching
8 the end of my time, but I'll cut it short.

9 MS. TURCER: Go ahead.

10 MR. TOKAJI: Okay. There is some
11 information that's now available on the Secretary of State's web
12 site about the implementation of a statewide registration data
13 base, but I frankly just have not been able to find out enough
14 about what the state has been doing to make an informed
15 judgement about how well the state's statewide registration data
16 base is going to work in 2006. And I hope that this is
17 something that this committee is able to do some inquiry into.

18 Finally let me talk a bit about H.B. 3. This is
19 the state law that was enacted just this year, we'll be making
20 major changes to the state's election system.

21 I think there are some positive things in the
22 bill. There are also some things that I think are going to
23 cause some serious difficulties for voters, as well as for poll
24 workers and election officials.

1 You're going to be hearing more about this I'm
2 quite confident from other speakers, so I'm not going to talk
3 about all aspects of this 400 some page bill.

4 I want to focus on three areas that are areas of
5 particular concern to me, and then I'd encourage this committee
6 to consider looking into.

7 One of them is the ID requirement that's newly
8 enacted as part of this bill. Under this requirement, in order
9 to cast a regular ballot, voters must show either state issued
10 photo ID, a photo military ID, or some sort of documents with
11 the voters name and current address, such as utility bill, or
12 government document showing the voter's name and current
13 address.

14 If -- if you don't have one of those documents
15 you can cast a provisional ballot, if you either provide the
16 last four digits of your Social Security number, or sign an
17 affidavit saying that you don't have any of these documents, or
18 don't have any of these things.

19 I think there is -- the provisions regarding the
20 circumstances under which provisional ballots get counted are
21 extremely complicated.

22 I'm a lawyer who specializes in this area and I'm
23 hard pressed to understand the details of this bill. I frankly
24 shutter to think -- that may be too strong a phrase, but I'm

1 quite concerned about what's going to happen.

2 This has to get implemented by poll workers and
3 elections officials, are they going to understand the details of
4 this law, are we going to see inconsistencies across counties as
5 to how provisional ballots get counted.

6 I think one thing that I'd be quite confident of
7 is that we're going to see a whole lot more provisional ballots
8 cast in 2006 and subsequent Ohio elections.

9 More people under this bill are going to be
10 channeled into the provisional ballot pathway, as opposed to
11 casting regular ballots.

12 When you have more provisional ballots, what that
13 means is there are going to be more things for parties to fight
14 over, there's going to be more risk of inconsistencies as
15 between counties.

16 And there is less likelihood that the results of
17 elections will be actually finally determined on election night.
18 In other words, it's quite likely that we're going to see Bush
19 versus Gore type controversies spilling past Election Day,
20 because of the increased number of provisional ballots.

21 A second major challenge -- change, has to do
22 with challenges to voter eligibility. I think there is a good
23 change here, which is the elimination of partisan -- that is
24 party appointed challengers, but challenges by poll workers or

1 election judges as they are sometimes called are still allowed.

2 One provision I'm especially worried about is one
3 that allows for voters whose eligibility is challenged on the
4 grounds of citizenship to be required to produce naturalization
5 papers if they are naturalized citizens.

6 Imagine a 75 year old grandmother immigrated from
7 China many years ago who has voted successfully for many years
8 being asked to show her naturalization papers at the polling
9 place.

10 Some of these voters may have lost or misplaced
11 naturalization papers. They do have some time after the
12 election within which they can bring them in.

13 But I'm very worried that this is going to
14 provide a recipe for racial and ethnic profiling at the polling
15 place.

16 Third big change has to do with recounts and
17 contests with post election procedures. The law raises the fee
18 for recounts from 10 to \$15 per precinct.

19 I personally think that that's a reasonable
20 change given that the amount had been kept to \$10 for quite
21 sometime. I realize there may be differences of opinion on that
22 issue, but I think that's a reasonable change.

23 I am worried about the elimination of contests
24 for federal elections. Under H.B. 3 a contest can no longer be

1 brought if one disagrees with the election results.

2 For example, because one thinks that fraudulent
3 or unregistered voters have cast ballots in this election, or if
4 there were some other kind of cheating or malfeasance. We saw
5 this for example in Washington, highly contested Washington
6 gubernatorial race where a number of voters were alleged to have
7 cast votes who were not in fact eligible.

8 There are no longer any state contest provisions
9 for federal elections, that is United States House or U.S.
10 Senate or presidential elections.

11 Now, what the law says is that, well, the federal
12 provisions regarding contests for control, problem is there
13 aren't any, at least there aren't any that allow for a judicial
14 resolution of contests. I suppose one could go directly to
15 Congress in a contested house or Senate race.

16 But I'm very concerned that this is going to
17 lessen rather than increase the reliability of election results,
18 and therefore public confidence in elections.

19 I've said plenty, and I appreciate your taking
20 the time to listen to me.

21 I want to close by summarizing what I think the
22 big issues to look out for in 2006 are, changes in voting
23 technology; statewide voter registration data base; the
24 implementation of the ID requirement; challenges to voter

1 eligibility; and elimination of contests in federal elections.

2 These are all issues that could have serious
3 voting rights implications. And I'm pleased that this committee
4 is here taking testimony on these and other issues. Thank you
5 so much for having me.

6 CHAIRMAN BATTLE: Mr. Moke.

7 MR. MOKE: Thank you, Mr. Chairman, and
8 members of the committee.

9 My name is Paul Moke, I'm a Professor of Social
10 and Political Studies at Wilmington College in Wilmington,
11 Ohio.

12 Wilmington is a small college associated with the
13 Society of France, which is Quakers. I'm the author of two
14 published articles on voting rights in Ohio.

15 And have joined Dan Tokaji in litigation
16 involving punch card ballots in Ohio on behalf of the American
17 Civil Liberties Union, and that legal action, which is known as
18 Stewart versus Blackwell, is currently on appeal in the Sixth
19 Circuit in Cincinnati.

20 This afternoon I'd like to briefly examine three
21 aspects of voting reforms in Ohio that may prove problematic in
22 the coming months.

23 And the three aspects that I want to look at in a
24 little bit of detail with you involved first, voting technology.

1 Second, the racial gap in lost votes. And, third, the
2 implications of these two problems for democracy in Ohio more
3 generally.

4 Before I launch into these three issues I want to
5 put all three into some broader context.

6 First, Ohio is a battle ground state. And it did
7 not emerge as a battleground politically just in the 2004
8 presidential election.

9 In fact, since the Civil War, only one
10 presidential candidate has one the White House without winning
11 Ohio.

12 And to the benefit of those who aren't historians
13 that one person was John F. Kennedy in 1960.

14 So to the voters of this state, to the candidates
15 themselves, and to an anxious nation, maintaining the fairness
16 of elections in Ohio is of the utmost importance.

17 But elections in Ohio may be headed for a stormy
18 future, and the dynamics of this storm aren't hard to
19 understand.

20 First, nearly every county in Ohio will be using
21 new voting technology in 2006.

22 Second, every voter in the November election will
23 be subject to a new set of more restrictive requirements for
24 voting that arise out of the House Bill 3 reforms.

1 And, third, the differences in voting outcomes
2 between the two parties have been so narrow in high profile
3 contests in recent years in Ohio that the margin of victory may
4 be within the so-called margin of litigation, prompting the
5 parties to take these issues to court.

6 Taken together these dynamics are putting great
7 responsibilities on the shoulders of poll workers and local
8 election officials.

9 These officials are going to need to educate
10 voters about how to use the new equipment. And there is a
11 definite learning curve both for the officials, for the poll
12 workers, and for the voters about how to use the new equipment.

13 Poll workers are going to have to be trained in
14 how to set up the equipment; how to run it at the polls; and
15 additionally on top of that they are going to have to implement
16 the 400 pages of new reforms that's under House Bill 3.

17 Among those, as Dan indicated, are the new voter
18 ID requirements, and new rules concerning provisional ballots.
19 And let me just take a minute to amplify briefly on what Dan had
20 to say about those two issues.

21 First, with respect to voter ID, we need to be
22 clear that the voter ID concerns not just the identity of the
23 would be voter, but it also includes a current address
24 requirement.

1 And that current address needs to square with the
2 information in the registration material, such that if a voter
3 moves within a precinct and still goes to the proper precinct to
4 vote, but uses an ID that has the old address, that voter will
5 not comply with the new rule.

6 Second, as to provisional ballots, one of the big
7 and hotly disputed issues in the 2004 election in court
8 concerned the question of what is the definition of the word
9 jurisdiction in the federal Help America Vote Act as it applies
10 to Ohio.

11 Specifically, the question was the voter has to
12 vote in the proper jurisdiction, but what does that mean? Does
13 it mean the State of Ohio? Does it mean the county? Does it
14 mean the precinct?

15 In House Bill 3, the General Assembly defined the
16 word "jurisdiction" in the most narrow way it could have.
17 Meaning that the voter has to vote in the proper precinct, or he
18 or she will be casting an invalid vote.

19 So the polling workers are going to have to
20 implement these somewhat specific and complex rules at the
21 polling place.

22 Now, these reforms are requiring a lot of new
23 work for poll workers at precisely the time when well trained
24 and capable poll workers are becoming increasingly difficult to

1 find.

2 The penalty for non-compliance with these rules
3 for would be voters is utter disenfranchisement. And as others
4 have argued for people of color, for the disabled, for the
5 elderly, and for the poor, these costs may be particularly
6 severe.

7 Now, with respect to voting technology, as Dan
8 has indicated, for the past 15 years voters in Ohio have used
9 three primary voting systems. The punch card system, which was
10 the predominant system. The optical scan system, which works
11 like an SAT exam, where you darken what you want in the way of
12 your choice. And the first generation of the electronic touch
13 system, which were used here in Franklin County.

14 The Secretary of State has publicly acknowledged
15 that these three systems have very different error rates. Some
16 systems were more prone to over-voting than others.

17 And the difference was that those systems gave
18 voters a warning when they were making mistakes and gave them a
19 chance to fix what was wrong with the ballot.

20 Whereas, other systems like the punch card system
21 did not have that capacity.

22 And so the punch card system gave rise to
23 approximately three times more over votes than under votes than
24 the other systems did.

1 To its credit Ohio, like other states in the
2 country, are using federal money to replace these antiquated
3 systems.

4 But according to the latest information available
5 on the Secretary of State's website, there are eight counties in
6 Ohio that are falling behind in terms of the implementation of
7 this new equipment.

8 These eight counties have been referred to as
9 staging counties by the Secretary, meaning I suspect that there
10 should have been a process of getting us up to speed, and they
11 are behind everyone else.

12 The three counties are Allen, which is the Lima
13 area; Franklin; Hamilton; Licking, Madison, Mahoning over in
14 Youngstown; Summit; and Williams County up in the northwest
15 corner of Ohio.

16 And these eight counties include some of the most
17 populous areas of the state.

18 At this juncture we don't know if those counties
19 are going to have their systems up and running fully by the
20 primary on May the 2nd, but we do know to the extent that they
21 are behind that makes it more difficult for them to do the
22 public education function that needs to take place prior to the
23 primary.

24 The second issue that I want to address with you

1 concerns the racial gap in lost votes, the title of my most
2 recent paper.

3 Voters experience difficulties with the election
4 process, and statistically persons of color are more likely to
5 encounter problems with registration, problems with voter
6 identification, problems with the use of voting technology, and
7 problems with the overall voting process. And this is what
8 political scientists have referred to as the racial gap in lost
9 votes.

10 In my study of the 2000 Presidential election
11 here in Ohio, I zeroed in on three counties; Hamilton,
12 Montgomery and Summit, and compared over vote rates for inner
13 city precincts that were predominantly black with other
14 precincts that were predominantly white.

15 And the data showed unequivocally that there were
16 seven to nine times more over votes cast in the inner city
17 precincts of those three Ohio cities than in the largely white
18 precincts.

19 And these problems are not merely historical
20 remnants. According to a survey that was just released by the
21 Elections Assistance Commission, the Federal EAC, following the
22 2004 election there were substantial disparities based on race,
23 language and class, across a broad array of nuts and bolts
24 aspects of elections.

1 Specifically, the Elections Assistance Commission
2 study showed that jurisdictions that had low levels of education
3 and income, had higher levels of inactive voting -- voter
4 registration, lower levels of voter turnout, higher numbers of
5 provisional ballots cast, higher levels of over votes, higher
6 levels of under votes.

7 And most importantly for me, lower levels of
8 voting poll workers per polling place in these areas, compared
9 to other parts of the state.

10 So the very people who are most likely to
11 encounter the most problems at the polling place are voting in
12 places where they don't have the assistance they need. And that
13 is troubling.

14 These finds highlight the importance of local
15 officials in the elections process. And it underscores for me
16 the need to reform our voting system so that each one of the
17 precincts, each of the over 11,000 precincts in this state is
18 similarly situated with respect to trained poll workers and
19 competent people to help voters vote.

20 Finally, let me just address a few comments with
21 respect to the third issue, which concerns how do we get a
22 neutral process for elections administration in Ohio, and what
23 does this mean for democracy.

24 In an influential book entitled Democracy and

1 Distrust, the late Professor John Hart Ely, was former dean of
2 Stanford Law School, discussed the constitutional problem of
3 conflict between in-groups and out-groups when it comes to
4 political participation.

5 And the problem as Ely saw it was that when the
6 political party that's in control makes rules for elections that
7 systematically benefit its own side, then courts have a
8 responsibility to step in and use the power of judicial review
9 to create an even playing field.

10 And since the beginning of our Republic the
11 political parties have played games with political processes
12 and set up the process to benefit themselves.

13 Think back to American history in terms of the
14 Jackson era and the spoil system, or even the erection of Jim
15 Crow laws in the south, again motivated by groups that were
16 trying to structure the process in their favor.

17 This may be an inevitable part of the human
18 condition, but as the struggles in the last 15 years say over
19 the motor voter law or partisan gerrymandering or even House Bill
20 3 show democracy itself may become the loser.

21 Let's take a look just briefly at the motor voter
22 bill from the early '90s and compare it with House Bill 3.
23 Both of these laws were passed in circumstances of great
24 partisan conflict.

1 It was virtually all Republicans voting one way
2 and all Democrats voting the other way, both in the U.S.
3 Congress and the Ohio General Assembly.

4 The goal of the motor voter bill was to minimize
5 barriers to political participation and enfranchise millions of
6 Americans, largely lower class people and people of color who
7 weren't registered.

8 And although it facilitated greater levels of
9 registration on the part of these groups, the bill was largely
10 disappointing in the sense that it didn't lead to large numbers
11 of new actual voters at the polling place.

12 But in the case of H.B. 3 the goal was to
13 minimize voting fraud and achieve finality in the voting
14 process, in ways that Dan has explained to us.

15 But in research by the Ohio League of Women
16 Voters shows that the predicate for House Bill 3, which was
17 avoiding fraud in the voting process, is simply not there.

18 Out of the over nine million votes cast in the
19 2002 and 2004 elections in Ohio collectively, in only four
20 cases, that's four cases out of over nine million, did the local
21 board of elections and county prosecutors decide to bring legal
22 actions for voter fraud, four cases out of nine million.

23 It's difficult to avoid the conclusion, any
24 other conclusion than that the underlying motivation for House

1 Bill 3 was vote suppression, and in that sense I find it
2 troubling.

3 It's similar to what's going on with partisan
4 gerramandering in Ohio and elsewhere in the country where
5 legislators are choosing their own constituents, rather than
6 vice-versa.

7 In conclusion, let me just say that one of the
8 central teachings of American political history is that today's
9 in-group, tomorrow will become an out-group.

10 And it's in the long term best interest of
11 political parties to strike compromises on this issue, to
12 maintain fairness and impartiality when it comes to voting, but
13 when the party cannot or will not do this, then it's incumbent
14 upon the court to step in as referees of the political process
15 to guaranteeing neutrality and fairness.

16 And it's in that sense that this Advisory
17 Committee and the U.S. Commission on Civil Rights have an
18 important role to play in fact finding and investigation.

19 I thank you.

20 CHAIRMAN BATTLE: Thank you. Ms. Turcer.

21 MS. TURCER: Hello everybody, I'm Catherine
22 Turcer, I'm with a group called Ohio Citizens Action.

23 And I suspect that like many voters I thought
24 about election administration, you know, two times a year when

1 it came time to go to the Primary poll and when it came time for
2 the General Election.

3 I didn't think a lot about it before Election
4 2000, I was really focused on money and politics and campaign
5 finance reform.

6 And when I thought about civil liberties in this
7 context I was really thinking about redistricting and the
8 stacking of districts.

9 And I thought about the color of money and, you
10 know, meaning if the white wealthy are the biggest contributors
11 what does this mean for social policy.

12 But the chad provided a wonderful opportunity,
13 and, you know, it was an opportunity to say, well, wait a
14 second, we voters really need to start thinking, are these
15 systems accountable, does my vote count. Do the votes of my
16 neighbors count and what do we actually need to do to improve
17 the system.

18 What are the responsibilities of the Secretary of
19 State? What are the responsibilities of poll workers? What are
20 my responsibilities as a voter?

21 So if we think about the past few years this has
22 been a wonderful opportunity for a whole conversation for the
23 entire country and for Ohio to think about, well, what's going
24 on and how do we re-energize the system.

1 I see this kind of conversation that we're having
2 today as a beginning of re-energizing. Now, so far we've heard
3 some really depressing facts and we do need to prepare for
4 Election 2006 and think about what's happened in this public
5 conversation.

6 And I'd really like to take a minute to talk
7 about kind of what has happened for the public in this process.

8 During the implementation of the Help America
9 Vote Act I was invited by the Ohio Secretary of State to serve
10 on the Help America Vote Act State Planning Commission.

11 The State Planning Commission's goal was much
12 like your goal, you -- you get together and listen to testimony
13 about what possible problems are, how we should actually -- how
14 should the state actually implement HAVA. What about how should
15 money be extended? What are the resources that voters need?
16 What about voter education?

17 Once again very exciting, right?

18 But unfortunately what happened is that it became
19 an area for people to explain what their issues were. For
20 example, the League of Women Voters came and they really talked
21 about the need for better voter education, better polling
22 education.

23 They talked a lot about the need for appropriate
24 auditing. So to make sure that the voting apparatus was

1 actually right, and proper auditing systems.

2 We had wonderful disability advocates that
3 addressed what is -- most of us are able-bodied, what is it like
4 to not be able to get into your polling location.

5 How long has ADA been around, you know, American
6 Disabilities Act has been around forever, you know. What the
7 heck is going on that people still can't get in to actually
8 vote.

9 And so this was a wonderful opportunity to talk
10 about what is going on.

11 However, what happened is, you know, we convened
12 for a few times, we heard the testimony, but it really didn't
13 become as much as you might expect part of the plan.

14 And as the Help America Vote plan evolved the
15 public did not continue with this process. There was not -- the
16 State Planning Commission did not continue.

17 So I think as we think about policy development
18 we need to think about where is the public left out of this.
19 If we go back, think about House Bill 3, for example, no one
20 came and testified in favor of voter identification.

21 No one came and said, hey, you know, I want to
22 see naturalization papers, if somebody looks a little like they
23 might not actually be a citizen. So we need to really bring
24 this back to voters and really assess what's going on.

1 And one of the things as we think about social
2 policies and policies that are happening in the State of Ohio,
3 we need to think about the legislative process.

4 Of course this is just one area, but we need to
5 think about the way the bills are just ran through. Now, I'll
6 take for example something that's a little outside of this, but
7 for example yesterday there was an open records bill, something
8 that most of us care a lot about, good open accountable
9 government.

10 And in this particular case the bill was voted
11 out of committee, little side bars here and there, voters -- the
12 people in the room could actually see what the amendments were,
13 but we couldn't look at the gestalt, where we couldn't look at
14 the whole bill as a package before the committee voted on it,
15 and it was on the house floor that afternoon.

16 This is also what happened with House Bill 3,
17 where, yes, there was a long period that House Bill 3, the first
18 version was available.

19 But all of the amendments were really discussed
20 in a private context. In the context that were inside the
21 legislative rooms away from public hearings.

22 And so as we think about improving the system,
23 and I suspect we'll be making legislative changes in the
24 upcoming years, we need to think about more open government.

1 And I encourage processes like this where we're
2 having a conversation about how the public gets left out of
3 this.

4 And also encourage our legislators across the
5 country to slow the train down. Take time to really hear what
6 people think and what voters are concerned about.

7 I also think that we need to think about the
8 other thing that happened in House Bill 3, which is not
9 something that either of these gentlemen addressed, was it
10 actually -- House Bill 3 removed a provision for systematic
11 random audits of the computerized voting systems.

12 Now, okay, think about this, how many of you have
13 gone to your computer and you're sitting there and you're typing
14 away and all of a sudden, oh, yeah, it didn't quite work or it's
15 gone, you pushed the wrong button, something went -- computers
16 are inherently buggy they just are.

17 You want them -- you know you want them to be
18 reliable, but garbage in, garbage out. So there is that whole
19 issue.

20 We need to have an appropriate auditing system.
21 It's good that it's actually part of the law and not a Secretary
22 of State directive, as the Secretary of State of course is an
23 elected official who should be accountable to the voters of
24 course, but is a partisan official as well.

1 So, you know, it's one of those things that
2 happened so if we think about the physical barriers to voting,
3 for example, now we need to go beginning in November, since they
4 didn't highlight this, beginning in November 2006 we're going to
5 need to go in with some way to prove who we are, which is an
6 obstacle for the poor, for the elderly.

7 And seems like most of us sitting at this table,
8 of course we have a driver's license in our wallet or purse,
9 it's somehow hard to imagine that there are folks that don't
10 have a way to prove they are who they are.

11 But we are special, you know, we are -- we are
12 privileged and it's easy to forget that.

13 Those are physical barriers. But we need to
14 remember the psychological barrier, which is a barrier, what if
15 my vote just does not count, and does not count because they
16 removed appropriate auditing.

17 And so as we examine the policies that have been
18 established and we think about Election 2006, we need to really
19 encourage voter education.

20 For example, bring information to the, you know,
21 the very, you know, everybody we know, we need to let you know
22 as many -- as many ways as we possibly can in the upcoming year,
23 bring information so you can prove who you are.

24 And then we need to let them know which specific

1 IDs work, because of course you can't use a birth certificate,
2 who here would have assumed a birth certificate.

3 I mean something that -- what about a passport,
4 that does not work either. But there are specific ones that
5 they want and specific ones that don't work. So we need to make
6 sure we educate the public as best we can.

7 We also need to think about poll worker
8 education. And -- and also we need -- voters will be receiving
9 in the mail part of House Bill 3, including information advising
10 them of their polling location, where their precinct is actually
11 located.

12 And also -- and also encourages them, you know,
13 if you know there are any problems it gives a phone number and
14 website and that kind of thing.

15 But we need to remember as we think about access
16 most of us have a home computer. Most of us have internet
17 access.

18 Once again we have to think about the digital
19 divide. And so we need to think about how we are informing
20 people and have it not just be electronic.

21 We need to find ways to actually get out to the
22 citizenry and really let them know what to expect during 2006,
23 which is possibly longer lines, because I need to prove who you
24 are, possibly longer lines because I need to show you how the

1 machine works.

2 And then finally longer lines because you want to
3 be absolutely sure that you are at the right location, or your
4 vote will not count. And thank you.

5 CHAIRMAN BATTLE: Thank you, Ms. Turcer.
6 And thank all of you.

7 I'm sure that the committee members will have
8 some questions and I appreciate your testimony.

9 And with that, Tom Rogers.

10 MR. ROGERS: I have a question concerning
11 voter ID.

12 Did any studies determine most people with
13 driver's licenses renew their driver's license every four years,
14 if they have a change of address, make it then.

15 What percentage of the people move, you'll have
16 these people coming in, these are the privileged people, and
17 what kind of clamoring do you expect, I expect them to say, hey,
18 I can't vote, because I just moved.

19 MR. TOKAJI: I do want to clarify one point
20 mentioned in Professor Moke's and my testimony.

21 For driver's licenses this provision was actually
22 changed at the 11th hour in the bill in a favorable direction.

23 For driver's licenses voters may cast a regular
24 ballot even if it has an old address, so long as it's a current

1 and valid driver's license.

2 Now, military ID it's got to have the current
3 address. And if it's documentary identification, for example,
4 utility bill, bank statement, government check, but it's got to
5 have your current address.

6 I'm not a big fan of H.B. 3 as you can probably
7 tell by my testimony, but this is one aspect of it that was
8 improved for the better at the last minute before it was
9 passed.

10 MR. ROGERS: Is car registration considered?

11 MR. TOKAJI: Car registration is not among
12 the list of documentary identification. Let me just double --
13 let me take that back, it says other government document. So
14 that's not specifically mentioned, but it might be considered by
15 officials and other government documents that might be
16 considered acceptable.

17 MS. TURCER: The one thing that I would say
18 is that I suspect it may be confusing to poll workers that you
19 would accept the ID, but the address would be incorrect.

20 Now, one of the reasons that was changed at the
21 last minute had to do with the fact that the DMV does not
22 require you, if you move you're supposed to inform them that
23 you've moved, but you can keep the same ID just as -- even if an
24 address is wrong for four years.

1 So that was highlighted to the legislature. And
2 so they said, well, then okay, you know, that's fine as long as
3 it's you and the address isn't correct.

4 But you can see a poll worker thinking this is
5 very peculiar, right. So what I worry about is equal protection
6 kind of thing where one county does one thing, and one precinct
7 does it one way, another one does it a different way.

8 CHAIRMAN BATTLE: Others? Yes, Ms. Ramos.

9 MS. RAMOS: In this question about ID, you
10 mentioned that the military would have an address, did you say
11 that?

12 MR. TOKAJI: That's the requirement of the
13 law that it has to be military identification that shows the
14 voters' name and current address.

15 MS. RAMOS: The military does not show it,
16 that's why I find it curious when you say that.

17 MS. TURCER: No. Actually -- I actually
18 highlighted it.

19 MS. RAMOS: My other question is I
20 understand what you say about assistance in the polls. I was on
21 the Board of Elections in the '04 election, some of the things
22 you talked about did not happen or happened very rarely, so I
23 kind of get concerned.

24 You don't have poll workers. Right now people

1 are looking for poll workers for May, you can't find them. Part
2 of that falls with as citizens we are not volunteering to do
3 that.

4 We're talking about motivation of voters, because
5 you do have training classes, you have training classes for
6 presiding judges and poll workers.

7 Does not do you any good if you don't have poll
8 workers. What do you motivate them with, higher salary? They
9 are not exactly high paid for 12 hours by the time you divide it
10 up. I don't want to get up at 7:00 in the morning and work till
11 7:00 at night for what they are getting.

12 Part of this is the motivation of the citizens.
13 I was very interested in what you said, you did the motor voter,
14 it didn't have an impact on the voters themselves.

15 Again they did it because it was sort of put on
16 them, but the responsibilities comes back to some of this and I
17 don't know how you do that, because obviously some of them
18 weren't paying attention to what happened with the house bill --
19 nobody showed up, they didn't show up for other things.

20 Somehow we have to get a little further than
21 that, because what you're talking about are mechanics of the
22 voting system.

23 And, yeah, there's a lot of problems with it.
24 The chad system, it just amazes me, because we went through in

1 Green County, and we had very few, we never had problems with
2 it.

3 I really trust it more than the electronic, we
4 can count them precinct by precinct. You can almost see where
5 the changes are.

6 You can come down to a precinct and find out what
7 the mistake was. Without verifiable electronic voting all you
8 do is count the same votes over, and that scares me, that scared
9 me from the very beginning.

10 There is nothing as a recount in electronic
11 unless you have a verifiable paper trail, all you're doing is
12 counting the exact same thing again.

13 MR. TOKAJI: Well, you've got a verifiable
14 paper trail in Ohio for better or for worse.

15 I completely agree with your points regarding
16 poll workers, I mean it's a huge problem, not just in Ohio,
17 especially urban areas, but throughout the country we just don't
18 have enough qualified poll workers.

19 And one of the things I'm really worried about
20 with H.B. 3 is it's going to make life a lot more difficult for
21 poll workers.

22 What's going to be the unintended consequence of
23 that, these poll workers who are a scarce resource already, are
24 likely to get driven away, because the job is going to become

1 more complicated, more difficult for them.

2 So I don't have any good -- great suggestions. I
3 think one thing we could consider is an Election Day holiday,
4 which would free up more human resources for people to volunteer
5 at the polls.

6 A lot of the poll workers that we see are retired
7 people, and thank goodness they are willing to do this. But if
8 we were able to get another larger pool through an Election Day
9 holiday that might get us a more qualified pool, but more
10 additional qualified workers.

11 MR. MOKE: I think many of your points are
12 well taken and I agree with them. I note that in both the case
13 of the federal HAVA legislation and House Bill 3, buried in the
14 details of both are provisions calling for in one case more
15 college students to get involved, in motivating them financially
16 to serve as poll workers.

17 And the other case, even high school students.
18 H.B. 3 talks about people 17 and older being able to serve as
19 poll workers.

20 With respect to one of your other points, just
21 briefly about the punch cards, this is a copy of what the ballot
22 will look like in those counties that have optical scan systems
23 with the E&S model, those are quite numerous in Ohio.

24 And I don't know if you can see too well, but

1 it's asking you to darken in your preference. Like on the SAT
2 exam. But if voters say do an "x" instead of darkening in or if
3 they circle instead of darkening in, that can lead to some
4 issues.

5 The other issue that can arise is a stray mark
6 over here on the corner, you notice that this is the code, and
7 this stray mark over here where the computer is reading the code
8 can also lead to the ballot coming back out of the reader.

9 And so the good news is the ballot will come out
10 of the reader and the voter will be told there is a mistake
11 here. But again poll worker assistance comes into play here,
12 helping them understand exactly what the instructions are and
13 what to do.

14 CHAIRMAN BATTLE: Yes, Ms. Zealey.

15 MS. ZEALEY: I have a couple of questions of
16 the two professors.

17 With your familiarity with House Bill 3, what
18 notice requirements are there that voters receive notice of
19 their exact polling place prior to the election, that there will
20 be new technology used, and how they might educate themselves on
21 how to use it, and what types of identification are okay and
22 which will not be allowed?

23 MS. TURCER: There -- there is a requirement
24 for even numbered, you know, even numbered general elections

1 that so would not apply for this primary or next primary or the
2 following -- following general election.

3 But the voters be sent a card giving their
4 precinct information and giving the, you know, website,
5 precinct information, polling location. Also what congressional
6 district you're in, what legislative races, so that you would
7 know what district you were in.

8 It does not -- it did not include something that
9 said what the exact things you have to bring to the polls, so
10 that is an issue.

11 MR. TOKAJI: They fortunately took
12 Catherine's advice on that one. There were a lot of last
13 minutes changes to the bill.

14 You have to pardon me if it sometimes takes us a
15 little while to look up the specific provisions, so we can
16 provide accurate information.

17 Catherine is right on the rest, the notice which
18 is to be provided in 60 days, and this is just for federal
19 elections, just so it will just be 2006, just 2008, includes the
20 day of the election, location of the polling place, and a
21 reminder of the identification requirement. So I think that
22 provision is a good one.

23 MS. ZEALEY: And the reminder of the
24 identification requirement will specify what types of ID are

1 approved?

2 MR. TOKAJI: Correct.

3 MS. ZEALEY: Okay.

4 MR. TOKAJI: This is section 3501.19 of the
5 Ohio Revised Code.

6 MR. MOKE: One other answer to your question
7 concerns the issue of educating voters concerning the election
8 technology, in several of the counties near where I live, I've
9 been in conversation with voting officials and they are focusing
10 primarily on the primary, in terms of voting education efforts.

11 They have shopping malls, stores. And I was
12 probing them a little bit concerning the fall, exactly what
13 kinds of voter education outreach efforts were planned for the
14 fall election.

15 And at least at this point it appears that the
16 focus is going to be more on the primary, and less on the fall
17 election, which troubles me because we're looking at turnout
18 rates 35, 30 percent in the primary. And far higher rates,
19 maybe 60, 65 percent in the fall.

20 So you're dealing with kind of a group of people
21 who won't participate in the primary, but will be voting for the
22 first time on the new equipment in November. And I think we
23 need some outreach for that group, too.

24 MS. ZEALEY: I have another question, just

1 one quick question.

2 It seems as though the allocation of voting
3 machines and the allocation of the numbered poll workers is
4 really key, because if you could saturate every polling place
5 with those two things you wouldn't have any lines.

6 How is that going to be supervised, is there any
7 plan, and is that plan public so that if it's insufficient to
8 provide sufficient protection for voters that it can be
9 challenged prior to 2006 elections?

10 MR. TOKAJI: This was obviously a huge
11 problem, especially here in Franklin County during the 2004
12 election, in which we had actually a couple of problems.

13 One, we didn't have enough voting machines here,
14 period. And those that we had weren't allocated in the most
15 fair and effective possible way.

16 Now, part of the difficulty -- the inherent
17 difficulty here is predicting how many voters will turn up to
18 each polling place.

19 And I don't envy the job that boards of elections
20 and directors of elections has to do. I believe you'll have Mr.
21 Damschroder testifying tomorrow. I'm sure that's one of the
22 questions that you can direct to him.

23 Broadly speaking to answer your question, it's
24 done on a localized basis. We have boards of elections with

1 equal numbers of Republicans and Democrats on them. And I think
2 the idea behind that is a sound one.

3 The two parties can keep an eye on each other to
4 make sure that the allocation of voting machines and poll
5 workers among precincts are fair.

6 Getting back to the point I made to my initial
7 testimony, and one to your questions properly keys into
8 transparency is key that these decisions be made public so that
9 voters who are concerned that the allocation of either people or
10 machines isn't right, have a chance to raise those concerns, and
11 for those concerns to be remediated in advance of the election.

12 MS. ZEALEY: Thank you.

13 CHAIRMAN BATTLE: Ms. Bledsoe, followed up
14 by Mr. Francis.

15 MS. BLEDSOE: My question is for the
16 disability requirement.

17 You're saying that there should be one unit of
18 accessibility, what does that look like, apart from
19 accessibility to the location, what should the unit look like?

20 MR. TOKAJI: I think you're quite right to
21 point out the fact that there's really two distinct kinds of
22 disability access issues when we're talking about the voting
23 process.

24 The first is the physical access to the polling

1 place itself, which means among other things having ramps and
2 adequate pathways for people in wheel chairs or other assisted
3 devices.

4 The second really has more to do with other types
5 of disabilities, such as visual impairment, manual dexterity
6 impairments, in some cases cognitive impairments that may limit
7 people's reading ability.

8 What's most important and what HAVA quite clearly
9 requires there be at least one unit that has an audio
10 component for people visually impaired or have cognitive
11 impairments that hinder their abilities to read, so those people
12 can vote privately and independently without assistance at the
13 polling place.

14 And most contemporary direct or core electronic
15 voting machines have that capacity. There are also some that
16 have the capacity to provide certain kinds of assistive devices
17 for people with manual dexterity limitations, so-called zip and
18 puff tubes that allow people to vote in that manner.

19 I don't know when it would be a good thing to
20 inquire into. I'm more optimistic about having the
21 accommodation for people with visual and cognitive impairments,
22 that is audio capacity, than I am with manual dexterity
23 impairments.

24 I've not been able to find a whole lot of good

1 information about what's going on in Ohio. I think that's a
2 good thing to inquire into with election officials who will be
3 testifying tomorrow.

4 MR. MOKE: I wanted to add just one other
5 response to Sharon's earlier question, if I may.

6 I reside in a rural county in Ohio, but last week
7 I went through several hours of training concerning the new
8 equipment, and I thought I would share with you just briefly how
9 our county is planning to implement the machines in terms of
10 precincts.

11 They are taking the old punch card machine, the
12 stand, and gutting it, but keeping the same stand and that will
13 have like privacy shields.

14 And so the voter will take the ballot, fill it
15 out there, and then go to the reader, and there will be one
16 reader per precinct.

17 So in the past there would have been maybe five
18 photomatic voting machines in the precincts. Now there's just
19 going to be one reader. So there will be a line at the reader.

20 And then once a ballot is kicked back by the
21 machine due to say an over vote, then the voter is going to have
22 to return back to the first station with the new ballot to
23 correct it and then go to the end of the line.

24 It is my understanding that there is a formula

1 for the allocation of the voting machines, but again I think
2 Dan's answer is correct, you should probably ask that of the
3 officials testifying here tomorrow exactly what that formula is.

4 CHAIRMAN BATTLE: Mr. Francis.

5 MR. FRANCIS: I think I have more of a
6 statement than question.

7 I voted Tuesday in the City of Dayton, we had
8 income tax renewal and we voted on these new machines.
9 Fortunately for us it was an extremely, extremely low turnout
10 for this vote.

11 But as I entered the polling station every person
12 entering the station, a poll worker had to get up and go with
13 that person to the new machines to show them how to work it.

14 Now, can you imagine what's going to happen in
15 these primaries and whatnot when you've got hundreds of people
16 waiting to get in at the same time, and everyone of them having
17 to have instructions on how to operate these machines?

18 They are going to be lined out the door, I
19 guarantee you, unless some training is done, you know, with
20 citizens in various areas, it has to be done.

21 CHAIRMAN BATTLE: Comments, panelists?

22 MR. TOKAJI: Yeah, I think that's a great
23 point and it happens any time you implement new voting equipment
24 you've got to have voter education along with it.

1 In places in the past that have made the
2 transition, where it's been most successful and best received by
3 the public have been those that did exactly the kind of public
4 education you suggested.

5 For example, having stations at shopping malls
6 and where people -- places where people regularly go where they
7 can see the new machine, where it's not completely unfamiliar
8 when they go to the polls for the first time. Good point.

9 MR. MOKE: I agree, you're making a very
10 good and strong point. And just wanted to add that under the
11 original state of Ohio HAVA plan, in the budget there were
12 monies allocated for public education on the new machines.

13 And I think it would be a good question to ask of
14 Ohio officials tomorrow exactly how much money is there for that
15 process.

16 I can tell you in my own county just the other
17 day I got a call from the director of our board of elections
18 asking if I knew a college student who could help the Board of
19 Elections staff because they are so overwhelmed getting ready
20 for this primary, and going around to the shopping centers with
21 the equipment in the next month to demonstrate how to use it.
22 So I'm in the process of organizing that.

23 But I think it just kind of raises the question
24 about resources for that purpose, both now and especially in the

1 fall.

2 CHAIRMAN BATTLE: Reverend Wheeler, followed
3 by Ms. Citrino.

4 MR. WHEELER: First of all, for the record I
5 was on the Secretary of State's committee along with Ms. Turcer,
6 HAVA committee, so I just want that to be reflected in the
7 record.

8 And, secondly, we have a lot of homeless people
9 in this state, my concern is how do you handle that situation
10 when they are homeless?

11 And then No. 2, in that same vain we have many
12 migrant workers, how do you address those issues in the state?

13 MS. TURCER: It is a significant problem.
14 One of the things that they do allow is the use of an address,
15 let's say you have the Faith Shelter, I'll just give a name,
16 that is the place that -- what is home, home is where you return
17 to.

18 So if that is a place that you intend to return,
19 the problem is how can I put this, so that you can come up with
20 an address as a homeless person if you're willing to use one of
21 -- whether it's a social services, or homeless shelter so that
22 those are options for somebody who is homeless.

23 It does provide a problem of course, because what
24 happens, remember when we were talking about the reminding

1 people that, hey, this is your polling location, bring these
2 IDs, these are your districts.

3 Well, what happens is if that card for example
4 goes to a location and let's say the Faith Mission is like,
5 well, we don't know this person, or the postman gets tired of
6 delivering a hundred of these things, or whatever, it somehow
7 gets lost in the shuffle, then that homeless person is left with
8 doing a provisional ballot.

9 Then you also have the issue then the next thing
10 is what about the homeless person, is that person likely to have
11 ID, you get to that issue. And I think that we all know the
12 homeless person is unlikely to have ID.

13 MR. TOKAJI: I have very little to add to
14 that. Under the law someone should be able to cast a regular
15 ballot if they provide for example a government check with the
16 address to which they are registered, like the example of the
17 Faith Shelter.

18 Now, there are going to be a lot of homeless
19 people who are not going to have that. And those people are
20 going to end up casting provisional ballots, which they can do
21 in either one of two ways, either providing the last four digits
22 of their Social Security number. If they don't have a Social
23 Security number by signing an affidavit saying that they are who
24 they said they are.

1 I think one of the big things to watch is the
2 procedures for determining whether and how those provisional
3 ballots get counted.

4 And this is one of the areas of the law that I
5 find as I mentioned in my earlier testimony extraordinarily
6 confusing.

7 I'm sure even the most conscientious election
8 officials will find it confusing as well, and I think it's
9 something we all have to keep an eye on in this and subsequent
10 elections.

11 CHAIRMAN BATTLE: Ms. Citrino.

12 MS. CITRINO: When you mentioned the
13 Disability Act, you said there were two components with what the
14 voting booth itself was going to look like. The other part was
15 actually getting into the building.

16 And given that so many buildings are not
17 accessible, including courthouses and older buildings such as
18 elementary schools, which have been polling places, what is
19 being done about having the building itself be suitable as a
20 polling place?

21 MR. TOKAJI: One of my colleagues who is a
22 disability rights expert with Cloker (spelled phonetically)
23 actually wrote a comment on precisely this question several
24 months ago.

1 Ohio has to its credit made some funds available
2 to -- to improve the accessibility of polling places through
3 such things as ramps to go over stairs.

4 Her calculation, however, as I mentioned earlier
5 we've got about at least 1500 polling places in the state that
6 are not accessible to -- to people with mobility impairments and
7 other physical impairments.

8 Her calculation was the amount of money -- and I
9 can't remember the number off the top of my head, I can
10 certainly get it for you afterwards, was not nearly going to be
11 sufficient to meet those needs.

12 MS. CITRINO: So are we violating the Help
13 America Vote Act?

14 MR. TOKAJI: We're violating -- actually
15 we're violating the ADA. And there's an access to handicap
16 document that even predated the ADA, and Section 504 of the
17 Rehabilitation Act that requires accessibility by federally
18 funded entities.

19 So I would say with considerable confidence that
20 there are many counties in the state not presently complying
21 with ADA.

22 MS. CITRINO: Is there monetary remedies to
23 people who are denied access to vote because they are not able
24 to enter the polling place?

1 MR. TOKAJI: I believe the answer to that
2 question is, yes, under Title II of the Americans with
3 Disability Act, someone could go into -- I know they can get
4 injunctive relief and attorneys fees. And I believe that one
5 could also pursue a monetary remedy, but I'd have to check that
6 to make sure.

7 MS. CITRINO: Is there any state remedy?

8 MR. TOKAJI: I can't answer that question
9 off the top of my head.

10 MR. TOKAJI: There may be some state law
11 that parallels the ADA and would provide similar remedies. I
12 don't know off the top of my head, that's a good question.

13 CHAIRMAN BATTLE: Yes, Ms. Ramos.

14 MS. RAMOS: You talked several times about
15 provisional voting and I know that you seem -- it seemed like
16 there was a problem with that.

17 Provisional voting, is it not until they can
18 verify the information because you call, I know the board of
19 elections takes those and calls to make sure the address is
20 right, the person is there.

21 I'm sure it's not the best way to do it, but it
22 does allow the person to vote, they are not denied the right to
23 vote and they confirm it. I feel there is something on that,
24 tell me why.

1 MR. TOKAJI: Let me be clear, I think that
2 certainly provisional ballots are better than no ballots at all,
3 all right.

4 That if the idea behind provisional ballots --
5 and Paul touched on this in his testimony, is recommended by the
6 Carter Ford Commission, which convened in 2001 to study the
7 problems that emerged in Florida and other states.

8 And what the Carter Ford Commission noticed is,
9 hey, there's a lot of people's names who don't appear on
10 registration lists.

11 Where that's the case we ought to allow those
12 people to cast a provisional ballot and then we can subsequently
13 verify they are registered, I totally agree with that, I think
14 it was a good change in the law.

15 I wish that Congress, touching on the point that
16 Professor Moke mentioned, had been clear about provisional
17 ballots being counted even if cast in the wrong precincts, but
18 that was a good change in the law.

19 My problem with H.B. 3, and I'd be concerned
20 about H.B. 3, is that it channels a lot of folks who had
21 previously cast regular ballots into the provisional ballot
22 pathway, in particular those who don't have the proper forms of
23 identification when they appear at the polling place, or certain
24 voters who are challenged, right.

1 So provisional ballots are certainly better than
2 no ballot at all. They are not as good as what is a regular
3 ballot.

4 And what's going to happen once H.B. 3 is
5 implemented is a lot of people who in past years would have cast
6 regular ballots are now going to be casting provisional ballots.
7 It's uncertain how many of those ballots at the end of the day
8 will actually be counted.

9 What is certain is that by channeling people from
10 the regular ballot pathway into the provisional ballot pathway
11 is going to mean that the results of elections is going to be
12 less certain, and that the margin of litigation will be wider
13 and that we can -- we're facing the prospect of more contested
14 elections afterwards, because more people are being channeled
15 from the regular ballot pathway into the provisional ballot
16 pathway.

17 MS. RAMOS: And I guess that's where I guess
18 I'm not quite certain, because you only have ten days to verify,
19 I believe ten days in which to verify provisional ballots.

20 So even if they are routed that way, and what
21 you're saying -- doesn't the board of elections have to keep
22 track of those and they have to account for those?

23 So I'm trying to see where you think that they
24 are going to be not counted I guess.

1 MR. TOKAJI: Well, a lot in every election
2 are not counted.

3 MS. RAMOS: That's because they are not
4 verifiable.

5 MR. TOKAJI: -- Or because --

6 MS. RAMOS: -- That was the second part to
7 this, as long as the boards of elections can confirm, will that
8 statewide data base serve as that, too, so that if you vote
9 somewhere different within counties that they can also verify
10 for purpose of casting a ballot, provisional ballot?

11 MR. TOKAJI: If it functions properly the
12 statewide registration data base will deal with some of these
13 problems, that is the first category that I mentioned, right.

14 People who appear at the polling place finds that
15 their names for whatever reason aren't on the list, hopefully it
16 will make it easier in the long run to track those people down.

17 But for a lot of other voters, particularly those
18 who don't have ID, that's not germane to the problem at hand.

19 MS. TURCER: One of the reasons I worry
20 about provisional ballots had to do with the committee hearings
21 on House Bill 3.

22 One of the things that was asked of the Secretary
23 of State's Office was, all right, we know how many provisional
24 ballots were cast, and we know how many were certified as

1 appropriately cast ballots, so that they counted, if you want to
2 call it that.

3 What were the reasons? What were the reasons
4 that the rest of them were in fact not, you know, found to be
5 valid?

6 And this is material that was never provided to
7 the committee by the Secretary of State's office. And it was
8 requested repeatedly.

9 Now, we can only assume that, you know, we can
10 all make different assumptions, but it definitely worries me
11 that at least some of the counties didn't review the provisional
12 ballots, other than to go, yea, yea, nay, nay.

13 There was not the thoughtfulness that we'd be
14 able to say we didn't accept this one because the address was
15 not right, we didn't accept this one, because we just never
16 received a voter registration, we don't know.

17 MR. MOKE: One of their -- one other aspect
18 of your question concerns the issue of which provisional ballots
19 are going to count, and which will not count.

20 And part of the fault here, if there is fault to
21 be found lies in HAVA. Because the language -- the original
22 language in HAVA was pretty vague concerning that part of the
23 law.

24 And if you look back, as Dan was saying, to the

1 original Ford Carter Commission back in 2002, what they were
2 saying was, well, we ought to allow a voter to cast a
3 provisional ballot if he or she is not in the right precinct,
4 but the ballot they get would count with respect to say
5 statewide issues, or federal issues, not local school board
6 issues that would be precinct specific.

7 But Ohio in H.B. 3 has rejected that approach and
8 has instead said that you have to vote in the proper precinct,
9 otherwise the entire ballot, including federal issues isn't
10 going to be counted.

11 MS. TURCER: And I think we need to remember
12 that there are multiple precincts at the same polling location.

13 CHAIRMAN BATTLE: Mr. Doshi.

14 MR. DOSHI: The question is related to the
15 identification, you said you require valid and current driver's
16 license, one of the options you have in the driver's license is
17 opting out a Social Security number.

18 And the reason is I ask that, I had opted not to
19 put my Social Security number on my current and valid driver's
20 license when up for renewal.

21 Well, they would not accept any other kind of
22 identification other than a Social Security card. I had to
23 literally go back, I told them I give my United States passport
24 to prove I'm a citizen.

1 It will not do, you have -- you have to get the
2 Social Security card. I hold current driver's license, all I'm
3 asking you, to renew it they said nothing they can do, go to the
4 Social Security office, get the Social Security form filled out
5 by the officer there, bring the paper, we'll accept that.

6 I don't know if this kind of suggestion, would it
7 be acceptable or would we still have the same problem?

8 MR. TOKAJI: I mean I'll tell you what
9 should happen and what I'm worried about in terms of what will
10 happen.

11 What should happen is that if you've got a
12 current and valid identification, including a driver's license,
13 even if it's a driver's license that does not have your Social
14 Security number on it you should be allowed to cast your regular
15 ballot.

16 I'm concerned that that proviso won't be applied
17 as written, or that it will be applied disparately, different
18 voters will be treated differently at the polling place.

19 We of course in this country have a long history
20 of facially neutral requirements being applied disparately, and
21 discriminatorily toward certain groups of voters, especially
22 based on race or ethnicities.

23 MR. DOSHI: I may have to fill out more
24 papers.

1 MR. TOKAJI: Well, come see me if that
2 happens.

3 CHAIRMAN BATTLE: Mr. Humeidan.

4 MR. HUMEIDAN: I have a couple of
5 questions, the first in line with what was just asked.

6 If you mentioned that somebody's citizenship was
7 challenged, they have to prove that they are a naturalized
8 citizen, what if somebody's citizenship is challenged, but they
9 are not a naturalized citizen, they were a U.S. born citizen,
10 they have an accent and they look a little different, what would
11 they have to do in that case?

12 MR. TOKAJI: Here's the series of questions
13 that's been provided, if someone is challenged on the grounds
14 that you are not a citizen: Are you a citizen of the United
15 States? Second, are you a native or naturalized citizen?
16 Third, where were you born? Fourth, what official documentation
17 do you possess to prove your citizenship, please provide that
18 documentation.

19 Now, what the provision provides is that if
20 someone said, at least as I understand it, if someone is saying
21 they are a native born citizen, my interpretation of this
22 provision is that they are obligated to take that person's word
23 for it.

24 But if you say they are a naturalized citizen

1 then you've got to provide that documentation. Of course as I
2 mentioned in response to the last question, what the law says is
3 one thing, how it's applied is quite another.

4 And I'm really worried about this provision in
5 particular being applied on a discriminatory basis. I also
6 think there may have been constitutional issues surrounding
7 disparate treatment of native born, as opposed to naturalized
8 citizens.

9 MR. HUMEIDAN: Is there a standard system
10 that is used or is it at the discretion of the poll workers?

11 And in line with that is there -- House Bill 3
12 seems like its standardizing some of the election issues
13 statewide, is there any money allocated to training the poll
14 workers to make sure that the training is standardized across
15 the state and all of these new laws and regulations are enforced
16 deeply across the state, rather than being treated differently
17 in every county?

18 MR. TOKAJI: I'll let Catherine take the
19 question about funding. I'll take the first part of your
20 question saying that this is one of the issues.

21 There is a great deal of discretion on the part
22 of election judges. As I read in the statutes, a caveat as to
23 who may challenge.

24 Once a challenge is made I think the discretions

1 are limited as to what they can and can't require. But at the
2 front end there is a lot of discretion.

3 One can very easily see this discretion being
4 used in a discriminatory way, and in a way that intimidates or
5 is meant to intimidate certain classes of voters, especially
6 racial and ethnic minorities.

7 MS. TURCER: And I was going to say much
8 like you were talking about, there is traditional poll worker
9 training. There is additional monies made available due to HAVA
10 because of the new voting apparatus.

11 And in fact tomorrow morning I would spend some
12 time asking representatives of the Secretary of State's office
13 about how that money is actually being expended and giving
14 examples, and asking more specific kinds of questions about what
15 are the directives the Secretary of State is actually giving to
16 make sure that each of the counties administer all of this in
17 the same way, so there is equal protection across the state.

18 So I would use that as an opportunity to ask them
19 how they are actually going to implement it.

20 MR. DOSHI: For the disability I'm very
21 concerned. There are 1500 polling places that don't meet the
22 requirements.

23 On the other hand how many -- do we have the
24 statistics as to the number of disabled bodies registered in the

1 State of Ohio?

2 MR. TOKAJI: I don't have that information.
3 I think there is somebody on the next panel who will be able to
4 provide you with that information.

5 MS. TURCER: Sue will. Sue is from AXIS, is
6 on the next panel, she'll talk about disability issues.

7 I think it's an important thing to think about,
8 especially as the population is aging our mobility questions are
9 going to get bigger and bigger.

10 CHAIRMAN BATTLE: We really appreciate your
11 thoughtful testimony from all of you this afternoon, you
12 certainly helped frame a very important issue for all of us.
13 And on behalf of the committee we do thank you.

14 MR. TOKAJI: Thank you for having us.

15 CHAIRMAN BATTLE: We're going to take a 15
16 minute break and we'll reconvene at 3:20.

17 (Off the record at 3:05 p.m.)

18 (Back on the record at 3:22 p.m.)

19 CHAIRMAN BATTLE: We'd like to thank our
20 next panelists for being with us today. We have, Mr. Gresham,
21 Sam Gresham from Common Cause. Peg Rosenfeld from League of
22 Women Voters. And Sue Willis from AXIS.

23 And we'll begin with Mr. Gresham.

24 MR. GRESHAM: My name is Samuel Gresham,

1 and I am Acting Executive Director for Common Cause-Ohio.

2 Common Cause is a nonpartisan, nonprofit advocacy
3 organization founded in 1970 by John Gardner, as a vehicle for
4 citizens to make their voices heard in the political process and
5 to hold elected leaders accountable to the public interest.

6 Our mission is to strengthen public participation
7 and faith in the institution of government; to ensure that
8 government and the political processes serve the general
9 interests, rather than special interests; to curb the excessive
10 influence of money on government, decisions and elections; to
11 promote fair elections and high ethical standards for government
12 officials; and to protect the civil rights and civil liberties
13 of all persons.

14 Now, with nearly 300,000 members and supporters
15 and 38 state organizations, Common Cause remains committed to
16 honest open and accountable government, as well as encouraging
17 citizen participation in democracy.

18 In Ohio Common Cause has served for more than 30
19 years of working to make government operate better and to be
20 held accountable to the citizens of Ohio.

21 On behalf of our more than 10,000 members and
22 supporters in Ohio, I would like to thank you for this
23 opportunity to share some of our concerns about the electoral
24 processes and the systems in Ohio.

1 Some Ohioans have come to think of their voting
2 like the proverbial Forrest Gump, a box of chocolates, you never
3 know what you're gonna get.

4 This fall Ohioans will see even more changes; new
5 voting machines coming on line; absentee voting available to
6 everyone; the requirements were resulting from House Bill 3, and
7 the continuing implementation of HAVA.

8 These changes will be implemented in a difficult
9 environment with regards to trust in the political process.

10 I'm going to talk about the legislative aspect.
11 I know some of the presenters this morning dealt on big picture
12 issues. I'm going to deal with the specifics of the
13 implementation and potential effect of the legislation.

14 There are two primary bills I'm going to talk
15 about, that is H.B. 34, which passed October 19th, '05. And the
16 second piece I'm going to talk about, which is H.B. 3, which was
17 passed on January 26th, '06.

18 I want to start with House Bill 3, and talk about
19 the no fault absentee component of that and some of the problems
20 that may arise as to no fault absentee component.

21 If you remember a few years ago there had to be a
22 rational reason why you got an absentee ballot, some sort of
23 circumstance prevents you to vote.

24 That's no longer true. As a result of that

1 activists and community strategists and politicians will change
2 their approach to how they deliver to the polls.

3 If you understand now under H.B. 234 we have 35
4 days in which a person can vote. And they can vote by going to
5 the board of elections, or getting an absentee ballot through
6 the mail.

7 They can actually go down to the board of
8 elections and they can do it. Now, 60 to 90 days out they will
9 actually be able to vote. And a few days after that we've been
10 told five days after -- I mean registered, and five days
11 processing, they will be able to vote.

12 So within that 35 day period they may be able to
13 register and vote. Now, from an activist's standpoint that
14 changes the whole approach to how we deliver people to the
15 polls.

16 Now, what happened with that, that's a great
17 advantage and we appreciate that. But then we come back in
18 House Bill 3, and the boards of elections were asking for
19 satellite offices. They wanted satellite offices, because they
20 were anticipating if we have H.B. 234, we have absentee ballots,
21 there will be people coming in.

22 Unfortunately in H.B. 3 they did provide but for
23 one satellite office. So that says Cuyahoga County can only
24 have one office.

1 In Franklin County Matt Damschroder told us, he's
2 the Executive Director of the Board of Elections, they want to
3 open up six satellite offices, which would have facilitated over
4 that 35 day period, possibility of more people voting.

5 Under the current rules on H.B. 3 we won't be
6 able to do that, they can have only one satellite office.

7 Now, I want to dwell on that for a little bit,
8 because I think most of the 527's on both sides of the aisles
9 will see this as a tremendous opportunity to get the idea of
10 people who are hard to get in and vote and register.

11 I think in that 90 day period you'll see before
12 the election a lot of activity, and they're going to be taking a
13 lot of people in.

14 Had they prevailed in adding satellite offices we
15 would have had less of what we consider congestion or less
16 problems with people executing their vote.

17 I think you're going to see long lines at the
18 boards of elections, specifically in the small communities.
19 You're going to see long lines within that 35 day period.
20 People coming in early trying to get their voting done.

21 The next subject I want to go to is on House Bill
22 3, but you've had enough discussion on that, and that was on the
23 identification. I'm sure everybody who has spoken before you
24 talked about identification.

1 But I want to come at identification from a
2 different perspective. And the different perspective I'm
3 concerned about is the poll worker.

4 Now, you have asked the poll worker to change his
5 or her role. They were simply people who were processing people
6 in through the election process, you know, basically if the
7 signature matched.

8 Now they are now compliance officers. They will
9 have to determine which piece of evidence that that person
10 brought in is in compliance with the standards for voting in the
11 State of Ohio.

12 That in itself will create a set of dynamics that
13 we never experienced before in the city and across this state.

14 People may not be as accurately or as much
15 informed about the new process and procedures on identification.
16 So we anticipate -- which I talked to earlier that we anticipate
17 that you will see some boards of elections with long lines.

18 I think you will also see the increased
19 utilization of long lines as a result of dealing with the issue
20 of do you have the proper identification.

21 Now, there are scenarios that will fall outside
22 of that. But I don't want to dwell on what it does to elderly
23 people who live in assisted living.

24 I'm thinking about primarily those people who are

1 sitting there and have to make that decision. I have a young
2 man I used to go to the poll with, and I know Wee-Wee is going
3 to have a problem, because when Wee-Wee comes he does not know
4 that he has to have these new requirements and he's going to
5 make a fuss in the polling place about the credibility of his
6 information. And I think you're going to see that in more
7 places than you believe.

8 The other aspect I want to talk about is the
9 return of processing the voter registration application.

10 There's a new rule that says if I send the
11 application out to you and it bounces back, and its
12 undeliverable your registration is flagged. And when you come
13 in there is a bit more scrutiny that you will now have to have.

14 Well, that's going to complex things, because
15 people are going to assume that they are registered to vote.
16 And if the cards come back there's no way that they know that
17 they've been flagged. So there is going to be a complexity in
18 that issue.

19 Now, to compound that even more under H.B. 3 we
20 went from four notifications of elections and qualifications of
21 elections down to three.

22 Now, I want you to think, we're introducing new
23 rules, and that you have absentee ballots, a no fault voter.
24 Now we have new requirements that people can vote that have to

1 have these ID requirements.

2 We now have reduced the number of notifications
3 they will get from four to three. So if you just take those
4 three things alone, there is going to be less knowledge known
5 about the process than anything else.

6 Now, we anticipate from Common Cause that the
7 Governor's race is going to be a highly contested race in
8 November of 2006. It will not be won by a landslide, it will be
9 a close election.

10 These three variables that I just talked to you
11 about will play into that election now. The 35 days no fault
12 absentee ballot, the fact is now that people working in the
13 polling place have to now become compliance workers with regard
14 to the evidence that we have, and now we reduced the
15 notification.

16 Now, there is one other thing that didn't happen
17 was an allocation of resources to these boards of elections to
18 educate people about the new requirements that are going to
19 happen.

20 We lobbied for those things, but it did not
21 happen, it was not in the offering.

22 The next subject I'd like to talk about is
23 provisional ballots. Provisional ballots will now increase
24 exponentially, because of the identification requirements and

1 the types of things you will have to do.

2 Fortunately in some communities it will not be a
3 separate ballot, it will be on the electronic machine.

4 But our concerns about the provisional ballot
5 really falls in three areas. One, the rationale and that we're
6 going to see more, but your ballot is held in a no man's land
7 limbo for ten days until they decide whether it's a legitimate
8 ballot or not.

9 And then further than that if they decide it's
10 not a legitimate ballot, you don't have the requirements, you
11 have no right to challenge, you can't come in and challenge.

12 So in essence if I go out to the polling place
13 and I go in and I have to end up with a provisional ballot,
14 there is a ten day window there that I don't know whether my
15 ballot counted or not.

16 And by exponentially increasing the number, the
17 effect will be the delay, the count on the actual election
18 results.

19 If you have a close election, and you have 15, 20
20 percent of the outstanding ballots are provisional that could
21 have a significant effect on that outcome of that election.

22 Because of these new rules that we have now we
23 expect an exponential increase in the number of ballots.

24 Now, may not be a big thing to you when I say

1 this, recounts and the aspect of recounts within the Democratic
2 process, that is I as a potential candidate believe that I have
3 an opportunity to run for office, and then the election comes up
4 to be close.

5 And what it costs me under House Bill 3, we
6 increase the cost from \$50 per precinct -- I mean from \$10 per
7 precinct to \$50 per count.

8 So now as a candidate that's a five time -- five
9 fold increase in the cost, if I have a recount now that I have
10 to pay, we don't think that's fair and we think it was too
11 large, but again it will affect the Democratic process in the
12 State of Ohio.

13 Now, there is a series of offenses that have now
14 been raised in their criminality in the affect that it has on
15 the person.

16 Offenses concerning the declaration of candidacy
17 and the petition and declaration and attempt to be a write-in.
18 And nominating petitions and other petitions increasing from a
19 misdemeanor first degree to a felony -- to a fifth degree
20 penalty for knowingly, directly and indirectly engaging in
21 certain offenses concerning any declaration of candidacy,
22 petition declaration of intent to be a write-in candidate,
23 nominating petitions and other petitions for the purpose of
24 being a candidate.

1 Now, if you don't follow those procedurally let's
2 take for an example in southern Ohio there was a gentleman that
3 didn't get enough signatures to get on the ballot and run for
4 Strictland's seat.

5 Now, under this law, what does that mean, if he
6 you know, that the issues associated with that we're
7 criminalizing.

8 Further interference with an election has moved
9 from a misdemeanor to a fifth degree. Campaigning near the
10 voting place is now no longer a misdemeanor.

11 Now, the one that interests me the most is the
12 signature and circulation. And I think my analogy of Forrest
13 Gump, chalked full of nuts, this is a great example of it, it
14 says requires a person seeking to propose a state law,
15 constitutional amendments by initial petition that referred to
16 voting by any law and any item by a referendum to obtain the
17 signatures of a thousand people.

18 Before it was only a hundred, before submitting a
19 proposal for constitutional amendment. In a measure to be
20 referred to with the summary, require a voter signature in the
21 initiative petition to be the original ink, provide that only
22 the initiative petition containing a voter's original, prohibits
23 persons from circulating any initiative petition, unless this
24 person is a resident of Ohio. That wasn't true before.

1 Prohibits a person from signing initiative or referendum, unless
2 the person is a registered elector.

3 That means they have to be registered to vote in
4 the State of Ohio. For homeless people who may have done some
5 of that work prior, it would be difficult for them now to do
6 this work.

7 Then it sets up a whole series of rules, and I'll
8 paraphrase them, I won't read them for you. It says if you are
9 given a petition and you don't turn that petition in within the
10 first time frame you have a warning against you.

11 If you do it three more times it moves up. It
12 creates a whole new range of law associated with registration
13 and petition drives. It drives up the potential penalty for it.

14 Now, you say to yourself what's the net effect?
15 The net effect is it puts a chill over people who now want to
16 get involved with the petition process.

17 It puts a chill on people who want to do --
18 circulate petitions for people for the candidates of office,
19 because of the new legal requirements.

20 I mean if you don't get the petition back into a
21 certain source within 24 days that's a clock that's ticking
22 that's associated with you.

23 I'm sure someone talked about the process of what
24 it does to have to go for training, and if you are a for profit

1 entity you have to register and now you have to go for training.
2 I think that has a chilling effect.

3 It's interesting if you look at the culture of
4 people who are associated with the political process in our
5 country, particularly those who are at the grass roots level,
6 they do it because they believe in the process.

7 They do it because they want to fundamentally
8 make changes. I think the difficulty that these new sets of
9 legislation, it will deter good people, because of now the
10 criminality aspect of what we've done to the law.

11 I don't know if I would let my sons or my
12 daughter go do this type of activity now, and naively they make
13 a mistake, naively they do something wrong, but now it has
14 escalated within the context of how they can be penalized for
15 that.

16 It says to me I don't know if my father is going
17 to let my mother work at the polling place next year, because
18 there is going to be so much pressure on her to work, she's a
19 volunteer, because of all these new rules.

20 Now, I'd like to close by thanking you for this
21 opportunity and leave you with remarks of one of our great
22 citizens, Groucho Marx.

23 Groucho Marx says politics is the art of looking
24 for trouble, finding it everywhere, diagnosing it incorrectly,

1 and applying the wrong remedies.

2 I think House Bill 3 is a good example of what
3 Mr. Marx was talking about. We didn't find the right animal and
4 when we did we put six legs on it, and it's running around in
5 our country now and people are shocked about what it will do to
6 them, and to the electoral process.

7 Now, I offered a little levity there, but I think
8 you need to understand how people see the State of Ohio at a
9 long distance lens.

10 I was in North Carolina, I was in Washington,
11 D.C., I was in Baltimore, they think we are the most scandalous
12 criminal corrupt state in the union. I mean we're the new
13 Florida.

14 And I think in the context of the politics that
15 we are involved with and the rule-making in the State of Ohio I
16 hope I've shed a little light on some of the complexities and
17 some of the potential problems.

18 Now, I'll close. This is not new to the people
19 who made the legislation. We stayed up late at night, all of
20 the people on this panel, all of the people back here trying to
21 convince them in individual meetings, grabbing them in the halls
22 during lobby days, but they still persisted in that approach in
23 putting this legislation together.

24 We have more than a hundred years of experience

1 of people who are involved in our organizations, and we believe
2 Ohio this fall, this November, will be on the plate of the
3 center of America, and we hope that these rules don't disappoint
4 us. We hope that these rules don't embarrass us. We hope that
5 these rules don't make us look bad.

6 But our projection, if we do not modify them or
7 do something we are going to look exceedingly bad.

8 Thank you very much.

9 CHAIRMAN BATTLE: Thank you. Ms.
10 Rosenfeld.

11 MS. ROSENFELD: It's been pointed out that
12 some of people can't hear us, hard to believe with Sam.

13 It may strike you that some of us are a little
14 obsessed with House Bill 3, and you're right. I've spent the
15 last year and-a-half of my life on this bill trying to get it
16 modified and when we couldn't get it modified and when we
17 couldn't get it amended trying to get it defeated, and you can
18 see how successful we were.

19 I just want you to see what we're talking about.
20 This is the bill, and this is printed on two sides. So this is
21 what we're talking about.

22 While it was going through the legislature, it
23 started out as a 27 page bill. Then it went to 625 pages. Then
24 it went to 603. Then it went to 400. Every hearing was a new

1 bill, and we ended up with this.

2 You have a copy of my notes on this, this is a
3 ten page guide I did that just to tell what's happened with this
4 bill, it's enormous and that's why we are all so obsessed.

5 I just -- some of this you've heard. Let me --
6 this is one I don't think people talked about, I expect Sue
7 will, about the new requirement, attorney-in-fact, which I have
8 to say I'm not an attorney, I had never heard of this before.

9 We've always had the provision that people who
10 need assistance in voting can have the help of the person of
11 their choice, so long as it's not a candidate, employer, union
12 official, or poll workers, and you could have assistance.

13 Well, this is saying that -- I don't know what kind
14 of disability, if you can't sign your own name, that you get an
15 attorney-in-fact.

16 And the process for doing this is just I think
17 unbelievably complicated. So they made it more difficult for
18 people with disabilities to be able to vote.

19 It's been mentioned that you can no longer go to
20 state courts if you think there is fraud in an election, you
21 have to go to Federal court.

22 But the state is the one who defines what's
23 fraud, but we can't go to state court if we see something
24 happening out there.

1 Restrictions on petitions as Sam mentioned,
2 there are all sorts of things just making it harder to use
3 elections to make things happen the way they should.

4 Write-in candidates -- candidate write-ins,
5 because they become adamant at the last minute. So for a long
6 time you could just write in someone's name. I was once written
7 in as mayor, well, they stopped counting those.

8 And I can understand, they were having to count
9 Mickey Mouse and Donald Duck, Peg Rosenfeld.

10 So they said you had to turn in something saying
11 you intended to be a write-in candidate ahead of time, fine, you
12 had to do that ten days before the election.

13 Well, now they made it longer, now it's up to 62
14 days before the election, which pretty much means we're not
15 going to have a lot of write-ins, which was the intent.

16 Ex-felons can't circulate petitions. You have to
17 be a registered Ohioan to circulate petitions. You can only put
18 one proposal per petition, so you can't have like we had last
19 fall with the Ron amendments.

20 And then again you have this -- you have to have
21 this attorney-in-fact for somebody with a disability to sign a
22 petition.

23 Restrictions on voting, and then we get into this
24 documentary stuff for citizenship. One that I've talked about,

1 my father was in the Air Force, so this came to my mind, if you
2 were born in Wies Baden, Germany because your father was in the
3 Air Force, you are a native born American citizen, but you have
4 no documentation to prove you're a U.S. citizen. You just don't
5 have it.

6 But when they ask you for those questions and
7 they ask where were you born you're going to say Germany. And
8 they are going to say, well, where is your naturalization, well.

9 Satellite voting and ballot on demand are
10 restricted. As Sam talked about the ballot on demand could be
11 very important if you need to print ballots, because voting
12 machines break down or something, if you can print ballots on
13 demand at a precinct no, you can only do it now with
14 restrictions. You have to be able to number them consecutively,
15 and they've really made it impossible.

16 Harassment at the polls is prohibited, but it
17 isn't defined. That seems to me to kind of open everything up.

18 Jurisdiction is the precinct not the county. I
19 maintain to this day the National Voter Registration Act, the
20 Motor Voter Act defined it as county, and that was what we
21 should be using. We lost that one.

22 This ID, required for everyone at every election,
23 including absentee voting. So think about that, if you're -- if
24 you want to vote by absentee, I immediately think about when my

1 mother was living, who was 95, and who didn't have an Ohio
2 driver's license, didn't have a bank account, didn't have a
3 utility bill, she was in a nursing home, I paid all of those
4 things with her, so she didn't have any of these forms of
5 identification.

6 Now, she could have used the last four digits of
7 her Social Security number, but she couldn't go to the Board of
8 Elections with additional ID to have proof who she was, I think
9 she would have been disenfranchised.

10 And if you are home bound and you don't have a
11 driver's license, and you have to make a copy of one of these
12 other things, I don't know about you, but I don't think too many
13 home bound people have a xerox machine in the basement.

14 So they are home bound, they have to go out of
15 the house to go get a copy of their utility bill in order to be
16 able to vote by absentee ballot. That they need to do, because
17 they can't get out.

18 Provisional ballots, we've gone through. Do you
19 know there are three different forms that are going to have to
20 be filled out for each provisional ballot? Don't you want to be
21 in line behind the provisional ballot person while the poll
22 worker helps them fill out the forms.

23 Okay. Restrictions on voter registration, if you
24 are paid to do voter registration, we did get them to modify it

1 a little bit, you can now continue to send them to the Secretary
2 of State or to any board.

3 But you have to take this training program and
4 you have to send a copy of the affirmation that you did the
5 training. That form has to accompany any voter registrations
6 that you send into a board of elections. I don't know what
7 happens if you don't do that.

8 Whether they refuse to take the registrations or
9 whether they arrest you or -- I don't know, but it's a felony if
10 you don't do this.

11 And, oh, paid -- because I asked about this, paid
12 for doing registrations includes if you are a bank teller, and
13 you have a stack of voter registration forms on the counter, and
14 so say in the month of September anybody who comes in to cash a
15 check or something, you say would you like a voter registration
16 form, you are assisting in registration. You must have taken
17 the training and filled out all of this stuff or it's a fifth
18 degree felony.

19 If you say, sure, I'll mail it in for you, you
20 are assisting in registration. And if you're paid, and paid
21 does not mean that this is your full-time job, it means you work
22 at a college and you're helping freshmen register to vote, well,
23 because the college pays you and part of your, you know, sort of
24 on the side is helping registration, you're being paid to

1 register.

2 I know it does not make any sense at all, but I
3 specifically asked the sponsor about that.

4 Ex-felons may not register voters. An ex-felon
5 in Ohio can register to vote, but you may not be a fully
6 participating person, you may not register voters, you may not
7 circulate petitions.

8 And then let's just run through the things that
9 are not in this bill.

10 There is nothing in here about poll worker
11 training. There is not really anything serious about voter
12 information requirements. There is a requirement that the
13 Secretary do something.

14 Voting machine security, there is nothing in
15 here. There is nothing in this bill that's been pointed out
16 earlier about a random hand count to make sure that the machines
17 are recording votes accurately.

18 Recounts and -- there are deadlines put in the
19 bill for when a recount must be completed or when a challenge
20 must be addressed, but there's nothing in the bill about how you
21 meet that deadline.

22 It just says must be done by this date. But it
23 doesn't give you any, you know, back from that, how you get --
24 if you're not done by that date you're done, period, even if you

1 haven't finished everything you should have done.

2 It isn't specified in the law that the voter
3 verified paper audit trail is the official count when you
4 compare.

5 There is nothing in the bill to safeguard against
6 people inadvertently or however being deleted from the voter
7 registration list.

8 Study in Cleveland, some people very laboriously
9 went through and found people disappeared off the polling lists
10 between September and November, and I think they were
11 inadvertent.

12 It's very easy if you've got a long list to just
13 hit the wrong button. But these folks are disenfranchised.
14 There is nothing in this bill to provide some mechanism for
15 preventing that.

16 There is nothing in it on accessibility of any
17 kind. And there is no enforcement. Other than that it's just a
18 peachy king bill.

19 As I say, if you wonder why we're obsessed maybe
20 this gives you some idea of the bad things that this bill is
21 going to -- so my answer to are we going to be ready for the
22 post `06 elections, the answer is no.

23 CHAIRMAN BATTLE: Thank you. Ms. Willis.

24 MS. WILLIS: Good afternoon. I would first

1 like to tell you all that I direct the AXIS, A-X-I-S, Center for
2 Public Awareness of People with Disabilities within the State of
3 Ohio. We are a federally funded project awarded out of the
4 Developmental Disability Council.

5 I've had this project for 15 years and travel
6 across the state to meet with all kinds of disability groups,
7 not any one population.

8 So the things I am going to talk about this
9 afternoon all apply across the board, whether blind, deaf, have
10 a mobility impairment.

11 And I also work with many of the large disability
12 organizations, Governors Council, Independent Living Center, UCP
13 and the like.

14 So believe me voting has been one of our major
15 discussion points over the last several years. I'm going to try
16 and tell you what we feel are important about those things.

17 I'm not going to talk a whole lot about House
18 Bill 3, I think that's pretty well been covered.

19 We believe that people with disabilities, a lot
20 of them in general don't realize, don't understand, are never
21 informed that voting is their right, just as it is every other
22 citizen.

23 Because many folks live in group homes or are
24 sheltered in some way they don't always get the awareness that

1 the typical population gets.

2 So one of our priorities in the last couple of
3 years at least has been to let people know about their rights to
4 vote, no matter their disability.

5 Even a lot of people say, well, if you don't have
6 the right kind of cognitive ability or mental capacity, you
7 can't vote, and that is not true. So we're trying to get the
8 word out and get people registered.

9 I will say that this little kink here about
10 offering registrations is going to really hurt us, because we
11 try and put registration forms at every Jobs and Family Service
12 office, every county Board of MRDD, all of your BBR offices.

13 And as people come in we sincerely ask them are
14 you registered to vote. We need to find out what this is going
15 to do to us and our people who are asking us questions.

16 We've also asked them to not just ask once, but
17 to repeatedly do that kind of questioning, so that if people
18 moved, if they've changed their name and they don't understand
19 the process that they are kept up to date on being registered to
20 vote.

21 I think one of the problems probably in not
22 making people with disabilities aware is they become so
23 encumbered with their daily living skills, whether it be going
24 to the grocery, or finding the right home, accessibility issues,

1 we often forget to build them into the community and do what
2 everybody else does, so it might take a little more time and
3 effort, but we feel it's valuable.

4 I heard someone question earlier about the
5 numbers of people with disabilities in Ohio who vote. It's a
6 very, very -- at least at this day and time, it's very difficult
7 to judge.

8 We know that there are over two million people
9 with disabilities, adults in the State of Ohio. However, when
10 you register or when you go to the polls you are not asked to
11 check off do you have a disability.

12 So the only way we've been able to count numbers
13 is through our organizations, and informally ask how many of
14 your people have registered to vote.

15 And we're coming up with only about 30 percent,
16 it's very low. 30 percent of those people get to the polls, or
17 are even registered and may not get to the polls.

18 So we need to as a constituency work on getting
19 those people to the polls.

20 We know that a lot of things that the typical
21 population does become more of a burden for people with
22 disabilities, even getting to the poll.

23 Transportation is an issue across the board with
24 these people with disabilities. So we need to start looking at

1 everything that disenfranchises a voter is doubly important to a
2 person with a disability.

3 Takes me twice as long, and I have my own van
4 with a lift, I don't have to rely on a driver and someone to
5 take me in and out.

6 So I'm just saying that we need to make the
7 process as easy for people with disabilities as it is for
8 everyone else who walks through the doors.

9 And of course we touched upon this before, but
10 accessibility issues, and I'm speaking right now of physical
11 access are extreme.

12 I have to tell you my experience with the
13 SOS Office, Secretary of State's office, in that three or four
14 years ago we were working with some very good people at the
15 office making headway perhaps on how to improve the process, get
16 things squared away in terms of accessibility.

17 But as each of those people began to get in tune
18 with what the disability community needed, they moved them up to
19 another position and we got another person.

20 We have been through I don't know how many people
21 now. And I will tell you that we are very disappointed,
22 aggravated, whatever, at them not listening to this large
23 population of what we feel are entitled voters.

24 Very recently, in fact I think it was late last

1 summer, the Secretary of State finally appointed an ADA
2 coordinator.

3 ADA started in 1990, we should have had an ADA
4 coordinator for all of that time. So we just got one. And he
5 appointed a group of five or six people to work with this ADA
6 coordinator to figure out these disability issues. He just
7 left it in their hands.

8 I will tell you that it has been extremely hard
9 to get any information out of that group, to get any numbers out
10 of that group.

11 I went to their meeting last week, only three of
12 them were even there. I don't feel that we are really being
13 listened to and our problems being addressed.

14 I asked about HAVA money for making places
15 accessible. Because I know we've got limited funds, I can't
16 tell you exactly what that was. And I was told that we have in
17 Ohio 11,000 polling sites, not precincts, but actual places.

18 Now, if we have 11,000 and we know a massive
19 number of them were not accessible, we should have been using
20 that money, but when I asked have we used up all of our money
21 yet, he said, oh, no, we have a lot of money left over.

22 Now, what are we doing with that money, we need
23 to be fixing those places.

24 I do know that this little committee sent to

1 every county board of elections a booklet. They took a document
2 designed by the Department of Justice, people who wrote a lot of
3 the ADA and the Department of Justice created, it's on the
4 website specifically for accessibility of polling places.

5 Well, this little group thought it was too long
6 and too cumbersome, so they decided to shorten it, make it
7 smaller type.

8 They took out things like restrooms, in other
9 words they took a federal document, which we all should be
10 following it, and kind of made it into their own document.

11 And they sent that to every county board to do
12 their own assessment. You take this document and you tell us
13 what's wrong.

14 Well, I can tell you from experience that many
15 things can be misjudged in reading things like that, you know,
16 someone might judge a doorway, and I mean measure it and say
17 this one is 36, someone else might say it's close. So we'll say
18 it's close and it passes.

19 I'm not assured that even those counties who did
20 receive the document are making their places accessible. To get
21 any funds at all they turn back a grant request to the SOS
22 office, and they have agreed to only give money to temporary
23 changes.

24 Like if there is a step in a building they will

1 buy a portable ramp, they don't want to put money into a
2 building that they don't really own.

3 Now, if they are public buildings they should
4 have been right to begin with based on ADA. If they are
5 private buildings and there are other things wrong, I think we
6 need to be looking for a different location.

7 Someone mentioned this morning we still have 1500
8 that aren't right. I can't tell you that that's an accurate
9 number, but from people that I talk to that does not surprise
10 me. Many, many things can make a place accessible.

11 And while I'm on it we'll talk about the new
12 equipment a little.

13 The Debolt equipment and the ES&S equipment are
14 accessible units that people with disabilities can use, probably
15 any of the units that are out of sight, you don't need to go to
16 one special unit.

17 The optical scan equipment however needs a unit
18 that is accessible. So I don't know how counties are setting
19 those up or what they are using as their accessible units.

20 If any of you have ever tried to fill in those
21 little circles you know that for many people with disabilities
22 that's an impossibility, they still have that concern because
23 absentee ballots are going to be little tiny circles.

24 I'm not sure we're going to be able to accomplish

1 that. But anyway the concern about having an ADA unit in every
2 site is taken care of because of the new equipment.

3 The only concern would be if a person needs an
4 adaptation from what we're calling them, accommodations to that
5 piece of equipment, such as the little thing you blow in, almost
6 anyone who's blind, deaf, physical mobilities, et cetera, could
7 use the equipment.

8 But if it is someone who totally wants to vote on
9 his or her own, go in there and vote on his own, and the only
10 way he can make a mark or push a button is through a blow tube,
11 according to law, that is a reasonable accommodation and the
12 polling site should have that available.

13 We know that is not going to happen this go
14 round.

15 How would they know ahead of time, all that stuff
16 has not been worked out. But we do need to look at the people
17 who do come in to vote, are any of them asking for anything
18 beyond what is on-site, and make plans in the future to take
19 care of those individuals.

20 I want to mention a little bit about the
21 attorney-in-fact provision that is written in the House Bill 3.

22

23 We have looked and looked and looked at that
24 language, because we talked and talked our heads off and didn't

1 get anywhere.

2 In fact I sat with Senator Coglein the day before
3 it passed, the way we are reading it currently the
4 attorney-in-fact is meant to be an alternate, it does not have
5 to be the only way a person could sign.

6 So if a person comes in to put their signature in
7 the book, and let's say they have been used to using a stamp or
8 making their mark or having their assistant sign for them, if
9 those are things they do in their typical lifetime, day to day
10 living, those are their legal ways of signing, those are
11 accepted.

12 But we're afraid that the poll workers are going
13 to read attorney-in-fact in the document and they are going to
14 point fingers at those people and say if you don't have your
15 attorney-in-fact you cannot vote.

16 Ohio Legal Rights Service works a lot with the
17 disability community, they have read this language, had their
18 attorneys read it and read it.

19 They are saying that is an option only, and if
20 there are any cases brought forth they'll be glad to take them
21 to court, but we're hoping that doesn't happen.

22 That does bring to mind, though, we are very
23 concerned about poll worker training. And I've heard it brought
24 up before, if we can get more of that 30 percent, more than the

1 30 percent of people with disabilities to the polls, will the
2 poll workers be able to work with them efficiently and
3 effectively in a respectful manner, get them through the voting
4 process. We don't think they are getting any training in those
5 efforts.

6 Once again the little group told me that they
7 were all given, I don't know if they were given or they bought
8 it, there is a 45 minute video that was produced for people with
9 disabilities in the work place.

10 And they said, well, every county has one, all of
11 the people have to look at it, you have to know what's in it and
12 then we do further training.

13 I've talked with people in Franklin County and
14 nobody has ever seen that video. And I don't think that between
15 now and voting day they are going to get to look at that video.
16 And it's simply a stepping stone. It's not all of the things
17 you would need for interactive.

18 So what does a poll worker do who's never had to
19 experience someone coming up who is nonverbal, how to act, how
20 do you react and handle that person.

21 And before I think, we've had low numbers and we
22 could probably work it out. But if we're going to go out there
23 and make an effort to get more people voting, we already have
24 lines of people with the new equipment and all of these other

1 things, how are those people going to be taken care of.

2 And I don't want to use the excuse, well, let
3 them vote absentee. I don't buy that one. I want to vote like
4 everyone else votes. It's almost fun to go to the polls and see
5 your neighbors and talk about this and that.

6 So poll worker training, and again we have HAVA
7 money to be doing that, and we just don't think it's getting
8 done.

9 Some of the things that we have concerns about
10 are not really in law, but we from time to time term them best
11 practices. To me it's almost the logical things that you do.

12 And I know I'll probably use 2004 as a prime
13 example, because we lived through that one and it was long and
14 laborious.

15 But our lines here at least in Franklin County
16 were extensively long, we had no accommodations for people with
17 disabilities to be standing there for two hours.

18 It would have been a simple thing in my mind to
19 have some folding chairs available, a park bench, whatever.
20 You cannot take a person -- even a person who does not have a
21 significant disability sometimes and make them stand for those
22 periods of time. I think we need to be looking at simple
23 accommodations.

24 I, for one, it was pouring down raining that day

1 if some of you remember, I could not be in that line in the
2 pouring down rain outside in this power wheel chair, it's just
3 not a good thing to do. So I went home and came back twice
4 until the line shortened.

5 Is there not some way we could take -- we do this
6 at other movies and we take numbers, and we know when to come
7 back. Is there some process we could put in place.

8 Many people with disabilities who got there and
9 couldn't be in line for one reason or another could not come
10 back as I could, they didn't have a driver or whatever.

11 So we lost people who had to go home, people who
12 had to take their medications because there was not a drinking
13 fountain around or people with diabetes who had to eat a snack,
14 but if they left their spot in line you might as well go to the
15 back again.

16 I think best practice would have us look at some
17 easier solutions to accommodating people. And I think this will
18 probably go across the board to a lot of audiences, not just
19 people with disabilities.

20 Many of our other issues have been brought up
21 before, I want to make one more mention, though, of the ID
22 requirements.

23 Remember that across the board people with
24 disabilities have the low incomes and do not have a typical ID

1 or whatever in their pocket.

2 I've heard it said, well, everybody is going to
3 need one of those, just go get one. Well, even \$5 to some
4 people on SSDI or other minimum wage, they just don't have it.

5 We have to make sure that ahead of time people
6 know what they can bring with them and I don't see that
7 happening. The information about what to do before they arrive
8 at the polls I don't think is out there.

9 So I thank you for your attention.

10 CHAIRMAN BATTLE: Thank you, panelists.
11 Questions, committee? Yes, Tom.

12 MR. ROGERS: I can envision a poll worker
13 getting over taken with his power, and my concern is how are you
14 going to protect the poll worker, somebody will become irate and
15 say I can't do this.

16 MR. GRESHAM: Do you know at the Senate
17 hearing I said that. I said you are putting these people at
18 risk. If they don't know the new requirements there are going
19 to be some incidents.

20 I can say to you we're going to monitor H.B. 3
21 and where we find examples like that there is going to be a lot
22 of litigation if this thing blows up, not only from good
23 government perspective, but from individuals.

24 MR. ROGERS: Are you going to provide police

1 officers at each poll?

2 MR. GRESHAM: I don't think so.

3 MS. ROSENFELD: One thing I suspect will
4 help this fall is the election protection program that was put
5 in place for the 2004 election.

6 A lot of volunteers, both lay people and
7 attorneys who had people out at polling places to help voters,
8 ended up helping poll workers.

9 Because they -- some of them were better trained
10 and knew what the rules were, and in fact my guess is at least
11 for this election the election protection people would probably
12 be the people who short of calling the cops, would step in and
13 help the poll workers, know what the rules are, and B, kind of
14 quiet things down. But, yeah, I think we could have some
15 serious problems.

16 CHAIRMAN BATTLE: Yes, Ms. Presley.

17 MS. PRESLEY: I'm still hung up on this
18 absentee voter ID and how in the world would that play out.

19 I don't understand how will they want you to fill
20 out the form and send along a copy of your ID?

21 Now, and I'm not speaking for everyone, but with
22 a person with a disability, if they were trying to send in
23 absentee, well, that means you're going to have to go out
24 somehow and get a copy, put it in, it just makes things that

1 much harder.

2 While they took off the restriction they don't
3 have to say why they need it or that they have a disability,
4 they still made it twice as hard to get the documentation to
5 prove who they are.

6 MS. ROSENFELD: It was -- it's House Bill
7 234, and it was put in. It started off as a nice little bill,
8 which we initially supported to allow 17 year olds to work at
9 the polls, which I think was an excellent idea and did get
10 affected and will be in effect.

11 But at the last minute they amended this quite
12 deliberately to offset the Ron Amendment that was on the ballot
13 last fall, to allow no excuse absentee voting.

14 But they put the ID requirement on I'm sure
15 because they knew they were going to put an ID requirement into
16 House Bill 3.

17 And so if they were going to have -- you would
18 have to show ID to vote in person, they didn't want to let you
19 vote absentee without ID or everybody would be voting absentee.

20 And they -- I don't think they -- they either
21 don't think through the implications from this stuff, or they
22 don't care.

23 MR. GRESHAM: I would support that they
24 don't think through, but enough of us told them that we thought

1 that these things would happen.

2 We think 30 percent of seniors will be
3 disenfranchised as a result of this requirement. They are not
4 going to be able to vote and it's going to deter them from
5 voting and they won't vote, because it's going to become more
6 complex.

7 But I want to let you know there is going to be a
8 lot of litigation, there is going to be a lot of people in court
9 if this thing blows up the way it plays out the way it will.

10 There will be a lot of people in court. This
11 group, a couple other groups, the lawyers, if it plays out it
12 becomes more complex than what we had in 2004 and 2002, and we
13 end up having riots at polling places.

14 I mean people go berserk. I hope that does not
15 happen. I know some communities where there are polling places
16 that will happen, because they didn't know that you needed an
17 ID, they didn't know the litany of things you could have as an
18 option to this.

19 And they are going to say you have to vote
20 provisionally, and that man will say I never had to vote
21 provisionally, what does that mean.

22 Again, we come back to the poll worker is sitting
23 there having to deal with this, they will get more abuse, I can
24 tell you that now.

1 CHAIRMAN BATTLE: Yes, Mr Doshi.

2 MR. DOSHI: One thing that seems like you
3 may need to consider is the language. I'm sure there are
4 citizens in this city that are not English speaking. I wonder
5 if there is any provisions for ballots for them?

6 MS. ROSENFELD: No. Ohio does not have --
7 we have no precincts with a sufficient number of anyone that we
8 have that we come under the alternative language rights for
9 federal law.

10 MS. WILLIS: But I will say that the
11 equipment that we purchased can be adapted to other languages if
12 the need for that is proven and it's a relatively simple
13 process, so when you go in you tell what language and they key
14 it in.

15 MS. ROSENFELD: Yeah, once it's set up.
16 But Ohio does not meet any of the language requirements at this
17 point.

18 MR. GRESHAM: Let me add to that. In the
19 Voting Rights Act one of the issues in controversy now is
20 Section 203. There is a provision that we have to, that's the
21 part that needs to be renewed next year, we have to have those
22 bilingual portions.

23 In meeting with some of the constitutional people
24 Steve Chavet (spelled phonetically), Cincinnati Chair of the

1 Constitutional Committee, House of Congress, they are not sure
2 they are going to allocate dollars to make those types of things
3 happen, where you can have multiple languages.

4 It's not -- as Peg points out, it's not a big
5 issue here, but in Texas, California, Florida, it's a big issue.

6 MR. DOSHI: There are a lot of Somalians
7 here.

8 MS. ROSENFELD: They are not citizens yet,
9 that's the difference.

10 MR. DOSHI: 2008?

11 MR. GRESHAM: 2008, yes.

12 MS. ROSENFELD: I think it's five percent
13 within -- within the county or within the precinct. I'm not
14 sure, but we haven't hit the five percent.

15 MR. GRESHAM: Threshold.

16 MS. ROSENFELD: Threshold in any county.
17 The closest we were coming was maybe Lorain County was Spanish
18 speaking people.

19 But we have not hit the threshold, and I have to
20 tell you in all honesty election officials are not going to do
21 it until required by law.

22 MR. DOSHI: If it's less than five percent
23 than the general population they don't have to do anything?

24 MS. ROSENFELD: No. Now, some places may do

1 it voluntarily, particularly maybe put out some voter
2 information in alternative languages.

3 But I don't think they are going to put the
4 ballots in any other language until they have to.

5 MR. DOSHI: If it's that simple,
6 translation, and the machines are capable of doing it?

7 MS. WILLIS: If the county boards are saying
8 their money is so tight, which they've all been saying they
9 don't even have a person to go do it. But it is true that the
10 equipment, and when they looked at the equipment they purchased
11 that it could be adapted.

12 MS. ROSENFELD: The electronic screen.

13 MR. GRESHAM: Can I add one more point I
14 don't think we thought about, and I think it's important in this
15 period of democracy, electronic machines are great marvels, they
16 do wonderful things, it costs a lot to maintain, okay. They
17 cost a lot to maintain.

18 Montgomery County got a bill for \$119,000 from
19 the person doing their machines just for annual maintenance
20 service.

21 Now, I want you to think, you go down to Hocking
22 County, you go down to Darke County, you go down to Allen County
23 and you say you've got a \$119,000 bill to maintain these
24 machines, these people don't have the money.

1 Now, fundamentally there is a disconnect. The
2 disconnect is elections are county managed, but they are
3 statewide and federal in focus.

4 The most important election is the presidential
5 election, but they don't give them any money. If the county
6 commissioners don't come up with their money or state, HAVA is
7 the first pot of money they've had in a while --

8 MS. ROSENFELD: -- Ever.

9 MR. GRESHAM: Ever. Fundamentally it's a
10 disconnect. It's not seen as a national issue. It's seen as a
11 county issue.

12 And when the dominoes roll they say, well, the
13 county commissioners can decide what they want to do, but
14 they've got a chicken here that's going to come home to roost.

15 They have all of this technology, and if 50
16 percent of their machines go down what's going to happen? Who
17 can afford to pay for this?

18 MS. ROSENFELD: Have any of you read in the
19 Dispatch, and I don't know whether it's been in other papers
20 around the state, Fairfield County has already said they need a
21 50 percent increase in their personnel in the office.

22 Now, this only means four people, but they only
23 have eight, and they want four new people. And they need -- I
24 forget how many tens of thousands of dollars for support for

1 their new machines. And the county commissioners say, no, we
2 don't have it.

3 And so I mean it's hitting right now. They need
4 the support and they are getting these contracts, and they are
5 -- they say we don't have the money, well, get it from your
6 county commissioners. Well, where do you get it out of.

7 MS. WILLIS: And I don't remember ever
8 hearing when we heard all of these pitches from these companies
9 selling equipment about how expensive their service contracts
10 would be.

11 So now we have counties like Fairfield who say
12 we'll go out and hire our own repair technicians, but my
13 question is we fought so hard to have secured equipment, and
14 people working on equipment that knew what they were doing, if
15 we go out and start hiring our own maintenance folks what does
16 that do to the security of these pieces of equipment.

17 MR. DOSHI: The worry is they will not be
18 heard.

19 CHAIRMAN BATTLE: Ms. Ramos.

20 MS. RAMOS: We've been hearing about all of
21 the shortcomings of this bill, give me some idea, some solutions
22 or something, recommendations you think could happen.

23 It seems like all we hear is what its
24 shortcomings are.

1 And I want to clarify the military born overseas,
2 you made a comment about them coming back, my understanding is
3 those children born overseas have to apply when they are 18.

4 MS. ROSENFELD: No, no. If a parent was a
5 U.S. citizen they are U.S. citizens.

6 MS. RAMOS: There is certain documentation
7 they have to go through.

8 MS. ROSENFELD: They would have a birth
9 certificate.

10 MS. RAMOS: At 18 they have to apply for
11 certain -- Tom may know.

12 MR. ROGERS: People I know born overseas and
13 come back when they turn 18, they have a choice which country
14 they want to be a citizen of.

15 MS. ROSENFELD: I have two children, not
16 anymore, who are dual citizens. My daughter lives in Canada,
17 her children are American citizens, they have American passports
18 and they are Canadian citizens.

19 Now, to get a passport for them, she had to go
20 take their birth certificates and actually had to take them to
21 get their passports.

22 MS. RAMOS: You do have to declare it at 18.

23 MS. ROSENFELD: They are dual citizens for
24 life. They changed the law in the mid '90s. I think it was to

1 allow dual citizens, because that was the law. I remember a
2 college friend of mine who had to choose her citizenship when
3 she became of age.

4 MS. RAMOS: Anyway, like I said I just
5 wonder what kinds of recommendations that you had. I heard she
6 definitely -- Ms. Willis say she didn't like absentee ballots.

7 I think for a lot of disabled that couldn't get
8 around that would be -- excuse me, I've got allergies, I'm
9 having a hard time. So there has got to be another way.

10 Now, trying to make each place accommodating, I
11 think is kind of different because we forget about some of the,
12 I guess, restrictions we have, you know. Polling places are
13 also subject to who wants to have polling places.

14 So sometimes that is a problem and I think one of
15 our people here mentioned that the building can be old, but you
16 have to go out and look for some of those, and the schools don't
17 always want you in there, some churches don't want you in there,
18 and you have to find places, because you can't own the buildings
19 and have a place.

20 MS. ROSENFELD: If it's a public building
21 they have to allow it, public buildings by law have to allow you
22 to have a polling place in there, which is schools.

23 MR. GRESHAM: Libraries.

24 MS. RAMOS: That's what I'm saying, give me

1 some recommendations to some of the things you see as barriers,
2 some recommendations of what could be done to overcome some of
3 these shortcomings.

4 MR. GRESHAM: I'll start with the
5 handicapped issue. House bill 312 that's making its way through
6 the process now that will put more teeth into the question you
7 just raised. We're debating that now and people are working on
8 it.

9 HAVA still has some requirements saying you have
10 to have accommodations, you have to do that. So somewhere
11 between the reality of being on the ground in a town and the
12 rules that's where we got to stand, we can't say otherwise.

13 Now, let me go to some of the other things. I
14 want you to go back, in the other system you went to register to
15 vote you had an ID or some documentation, you were on the rolls,
16 you signed your signature. When you got to the election place
17 all you had to do was sign your signature.

18 There could be some contests, you know, everybody
19 does not sign their signature generally the same way. You got
20 your piece of paper, you went over to the voting machine and
21 voted, you walked out of the door.

22 Now, the best way to call it is it's becoming
23 seemingly complex, and the dynamics of that is now what the
24 police call a compressed 30 seconds, within that compressed 30

1 seconds a whole lot of things could go wrong, because now people
2 will behave in certain ways.

3 So my solution to you quite clearly if you look
4 at all of the things they put in place, I have to ask the
5 fundamental question, do you want people to vote. And do you
6 want them to vote in large numbers.

7 And when you do that analysis and extract that
8 out backwards, based on what you have now, based on what has
9 been legislated in House Bill 234 and House Bill 3, the
10 fundamental question you have to ask, and we've asked this
11 question, do you want it?

12 And you wouldn't want to know the answer that we
13 got, you don't. You don't want to know what they said to us
14 when we asked that question.

15 So there are things you can do. But now poll
16 worker money, No. 1 on my list, training for poll workers.
17 Second thing is even with the new rules let everybody know, put
18 it on television, put it on radio, put in the newspaper.

19 You know 90 days out nobody should be surprised
20 that within that 35 day window you have to register to vote.
21 They should not be surprised about any of the requirements.
22 It's an educational program.

23 Now, what we've decided to do as a good
24 government organization, is to put educational programs

1 together, because if the government won't do it we have to do
2 it. We have to find ways.

3 As the League of Women Voters, as AXIS, as Common
4 Cause, to put educational programs in these communities, so
5 people, particularly poor people, particularly disenfranchised
6 people, they are the least ones to get it.

7 You have to put those educational programs in
8 place. If I can do two things, give poll workers, give Franklin
9 County, give Cuyahoga County money to train their poll workers,
10 I won't change the rules. And give them marketing and media
11 money, those are two things I would ask, because I can't change
12 the law.

13 MS. ZEALEY: Would you also include as part
14 of your recommendation to increase the number of poll workers at
15 the location where there's been high turnout in the past?

16 MR. GRESHAM: Yes. Mr. Rogers, you may have
17 been joking, certain places I think you better put police
18 officers, you may have situations out there that may potentially
19 blow up.

20 MS. ZEALEY: Ms. Rosenfeld, my father is in
21 the precise situation that your mother was prior to her demise,
22 and I fear that as someone who is both elderly and disabled,
23 he's wheelchair bound, that he will not be able to vote unless
24 we obtain the state identification.

1 He was denied the right to vote in Alabama as a
2 graduate student many, many years ago, he's 93 now, by a
3 literacy test, they asked a question what is meant by in fee
4 tail --

5 MR. GRESHAM: -- What is that?

6 MS. ZEALEY: It's a very legalistic archaic
7 real estate term.

8 MR. GRESHAM: I've never heard it. We all
9 failed that.

10 MS. ZEALEY: I've been a lawyer for 21 years
11 and I've seen it probably three times in my entire career. But
12 he was denied the right to vote, and he was born in Georgia
13 where they didn't issue birth certificates for African Americans
14 in 1913.

15 So if he was denied the right to vote in 2006,
16 it's not so much that I fear for someone else's safety, I fear
17 he wouldn't survive it, because he would be so enraged that he
18 might keel over.

19 And so I want to do what I can to prevent the
20 situation where senior citizens and disabled persons of Ohio
21 cannot exercise their right to vote.

22 So he has no bills, he has -- his driver's
23 license is expired. He cannot attach anything that you
24 mentioned to his absentee ballot, which he's typically filled

1 out in the past.

2 So how do citizens that fall into his category do
3 anything other than get a state identification, if they can get
4 that?

5 MS. ROSENFELD: Oh, well, my favorite one,
6 the alternative is a bank statement. Are you real keen to send
7 a xeroxed copy of your bank statement to the Board of Elections
8 with your name, address, how much money you have in the bank and
9 name of the bank and the account number. Anything else you'd
10 like to have?

11 MS. ZEALEY: I guarantee you my father would
12 never do that.

13 MS. ROSENFELD: I hope not. This bill has
14 been very bad for my blood pressure.

15 MS. WILLIS: We're not sure what other items
16 people can take. It's probably going to take people trying to
17 do this proffering that they can't do it, in order to show
18 people this isn't right.

19 Because I think there are more of those people
20 out there than they recognize. There are a lot of people who
21 just don't have like your father appropriate documentation.

22 MS. ROSENFELD: They can use the last four
23 digits of their Social Security number, but then it's up to the
24 Board as the earlier panel was saying, the Board of Elections

1 then decides whether this matches with their voter registration,
2 whether the Social Security number is on their voter
3 registration.

4 Mine isn't, I've been registered in the same
5 place for 40 years, no way I'd give them my Social Security
6 number.

7 Would you ask your father if he wouldn't mind
8 being a test case.

9 MS. ZEALEY: I know a good lawyer, too.

10 CHAIRMAN BATTLE: Mr. Wheeler.

11 MR. WHEELER: Mr. Chairman, thank you. You
12 know, seems like just yesterday that people were being knocked
13 down the stairs for the right to vote, and I can think of
14 Reverend Fred Selsbrook right out of Cincinnati, so many sad
15 cases, and here we are back in 2006 talking about the right to
16 vote.

17 My concern at this time is those that are
18 disabled. The -- I heard 1500 polling places, 1500. Now,
19 that's just a guess I understand, estimate of where people might
20 not be afforded the opportunity to go in and have the greatest
21 right that they have as a citizen of this nation, is the right
22 to vote.

23 Is there somebody that comes out monthly with
24 some kind of chart or something that says we have done 50 more,

1 we have 1450 more to go. Who's doing that? And if not, why
2 not.

3 So that all of these people will have an entre'
4 to vote, then we may as well be back in Alabama holding people
5 out, because they had no way in, because they do not have
6 accessibility.

7 MS. WILLIS: What I've been told, and I get
8 told very little by that little group at the Secretary's office,
9 is that every county board of elections took the checklist which
10 our state made up, not the federal checklist, to their sites and
11 measured and judged and sent back an approved list of their
12 sites.

13 With ones that needed help they put down requests
14 for funding to fix them, temporary fixes. My concern is did
15 they do it right, is anybody checking up on it?

16 If they use something temporary -- this was the
17 great case, I had a friend last year who went to a school to
18 vote, she got there and big step at the door.

19 She got back home and called the Legal Rights
20 Office who contacted the school, oh, we have a ramp but it's
21 down in the basement, nobody put it out today.

22 Now, I mean, these are just not logical thinking
23 people. So how do we know that they are doing it right, I'm not
24 sure that they are.

1 And if they need more things done, why aren't we
2 using that HAVA money that is sitting in a pot that was
3 specifically addressed to be used for accessibility.

4 MR. WHEELER: Mr. Chairman, if I may, to the
5 committee here, I think that's one thing that I would like to
6 see on the agenda is where are we at with the 1500 places that
7 the disabled are not to go, do not have entrance into.

8 That we might really look at that as apart of a
9 new civil rights, because it's keeping people out. And I think
10 that somebody should be reporting that to the public, because
11 everybody deserves a right to vote.

12 And if it's within their county I think it's a
13 county responsibility and state responsibility and a federal
14 responsibility to afford people that greatest right of all.

15 So I wish that would be one concern that we would
16 look at the disabled.

17 MS. RAMOS: I have one question. I want to
18 address this, I know that the new machines most all of them are
19 portable.

20 And my understanding was when they were getting
21 the machines they would be able to be taken out, that's the
22 reality of it was you could carry it out to the curb and let
23 people vote, so you have not run into whether they've done that
24 or not?

1 MS. WILLIS: I asked about that last week.
2 While that was a big selling point, in reality the Debolt
3 machines can't be taken to the car.

4 The ES&S machines could be if they just took one
5 and just left it as the only machine, I mean it couldn't be used
6 in the room, it would have to be used strictly to take out to
7 the cars.

8 So I asked the committee how many places in Ohio
9 do you think were really going to do curbside voting, because
10 you can't get in. He told me six in the entire state, he told
11 me six. I just --

12 MS. RAMOS: Six machines?

13 MS. WILLIS: Six places, six voting places,
14 that is all he knew about.

15 MR. GRESHAM: There are 11,000 voting
16 places.

17 MS. WILLIS: That's all he knew about.
18 Because I was also asking if I need curbside voting how do I
19 get someone's attention to bring me a machine, or how do I go
20 about doing that.

21 And he said, well, we're going to put in little
22 door bells. Now, I don't know where they are going to put these
23 little door bells that I can reach from my car, but that was one
24 of the answers, so that we don't have to move our equipment

1 around, because our equipment, we'll have people lined up
2 waiting to use it, we'll just bring out an optical scan to your
3 car, that's the way we'll have to do it.

4 MS. ROSENFELD: They don't have optical
5 scans?

6 MS. RAMOS: Electronic machine supposedly,
7 they were going to be able to pick them up and --

8 MS. WILLIS: -- That's what we were told.

9 MS. ROSENFELD: -- go look at it when you go
10 to vote --

11 MS. RAMOS: -- We used them -- we used them
12 -- I'm sorry, we used them portably at like the county fairs for
13 people to try, so I know they were portable, but I just wanted
14 to know how in reality they were used and maybe there aren't a
15 lot of counties using them now.

16 MR. GRESHAM: You trigger something called
17 chain of custody, which really becomes a legal problem. Where
18 was that machine during the process of voting.

19 It really becomes a problem. Now, since you
20 opened that door electronically the issue of chain of custody
21 with the cartridges that come in from the electorate out in the
22 ballot is an issue, but it's going to be a bigger issue in the
23 future.

24 And it's going to be a bigger issue in the future

1 because if I can magnetically hit that cartridge with something
2 that changes the reading on that, I mean by going -- you know
3 for everything you go into that's good there is an unattended
4 consequence.

5 I can tell you stories, CDs, eight tracks, all of
6 that kind of stuff really is going to be an issue as we get more
7 technology involved in the process.

8 You know, people say you can do it retail, you
9 can do a little retail manipulating on the voting system. But
10 if you get it in electronic capacity you have wholesale capacity
11 now of being able to wholesale change a whole lot of numbers,
12 and in critical places you can do that.

13 There's advantages to technology, there are
14 advantages to punch card from the standpoint of voter
15 confidence.

16 What all of this does, these impediments, these
17 newer pieces of equipment tend to reduce the number of people
18 who want to participate, it's now too much work.

19 CHAIRMAN BATTLE: Mr. Doshi, I think you
20 have the final question.

21 MR. DOSHI: Just that in answering to
22 Chairman Wheeler was saying for 1500 polling stations that need
23 to be upgraded, you mentioned there is about 1.4 million
24 disabled, does that responsibility lie on our shoulders or some

1 shoulders that they be brought into participation in this
2 voting, whose responsibility is it? There are people who are
3 eligible to vote, but they are simply not tuned in or plugged in
4 the system?

5 That's a huge number, I'm shocked really of that
6 many disabled people.

7 MS. ROSENFELD: I do know the National Voter
8 Registration Act, Motor Voter, which is 10, 12 years old
9 requires that every agency that provides services to people with
10 disabilities must also provide voter registration services to
11 the clients that they serve, and they are not doing it.

12 MS. WILLIS: No, they are not doing it.
13 And if often times they may have some registration forms
14 somewhere in the office, no one knows where they are.

15 People are typically never asked, are you
16 registered, that's why we were really wanting to talk to the
17 agencies, the organizations, but then Peg brought up this.

18 MS. ROSENFELD: They are exempted from this.

19 MS. WILLIS: They are exempt, well, people
20 are going to be afraid if they read that then.

21 MS. ROSENFELD: They are exempted very
22 specifically, they are called designated agencies.

23 MS. WILLIS: I would think and I don't know
24 how the system works, but even a letter from the Secretary of

1 State's office as a reminder to all of these organizations,
2 every county board, every agency, they should get a letter
3 reminding them that this is apart of their duty and it's not
4 being done.

5 MS. ROSENFELD: And we know it's not done
6 because they do have to report to the Secretary of State, I
7 think it's every two years. And he in turn has to report to the
8 now EAC in Washington, because they report to Congress, the
9 effect of the law.

10 And one of the things they have to report is how
11 many registrations they are getting county by county, agency by
12 agency. And that report shows they are not getting any
13 registrations from these agencies.

14 MS. WILLIS: And I can't make it strong
15 enough that for people with disabilities any of these added
16 activities, be it registration or something else adds that much
17 more to what they are doing in their lives just to get through
18 day by day.

19 I'm not making excuses, but I think oftentimes
20 that people at the agencies, just voting goes on the back
21 burner, because we got to get these people a job, we've got to
22 get them health insurance, we've got to get them this and that,
23 so they don't make it a priority.

24 MR. GRESHAM: I don't think you understood

1 how profound your question was. In its narrow sense you're
2 talking about one group, but in its broader sense we have a
3 track record already.

4 As we introduce technology into the economic
5 system, as we introduce it in the political system, as we
6 introduce it into a culture, there are people instantly
7 disenfranchised, instantly disenfranchised, because they don't
8 have the capacity to manipulate the systems, they don't
9 understand them.

10 Now, hopefully that will diminish as the
11 population, civil rights generation gets older, some of us are
12 afraid of computers, and maybe the youth.

13 But they have a problem, too, they don't have a
14 high level of concentration. Young people who are technology
15 oriented don't have a high level of concentration, they don't
16 want to do anything that takes too long.

17 The politics of America has hijacked our
18 democracy, the politics of America. And separate those two,
19 because democracy has ideas, the politics is where the guts and
20 this thing, how it really operates.

21 But the ability to win, the manipulating the
22 system has made democracy for some people a sham. And for us
23 ideally as a psyche we're going to have to deal with this,
24 because we go off to the foreign countries and say, hey, look at

1 us, 29 percent of the people vote, all of these rules people
2 have to do, those that want to vote.

3 I think our psyche, our own comfort level of our
4 own propaganda is going to have to say inside of us we have to
5 check that.

6 Now, we made that decision. All of these people
7 on this side of the table made that decision. We want this
8 thing to stand for what it really is, and for it to be what it
9 should be for everybody that's why we're over here. We could be
10 making money doing all sorts of other things.

11 The point becomes if you can do one thing begin
12 to chip away at this naive idea that our democracy is perfect
13 and it works for everybody at the highest level.

14 In fact they are making it worse for a whole
15 group of people. Look at what computers have done to
16 disenfranchise people, if we introduce that technology into our
17 democratic process it's doing the same thing to a degree if
18 we're not conscience. Thank you.

19 CHAIRMAN BATTLE: We really appreciate your
20 testimony on the panel, it's been very enlightening, practical
21 examples and illustrations particularly.

22 And with that, we will close this portion of our
23 hearing this afternoon and thank you very much.

24 David, do we have members of the public?

1 DR. MUSSATT: Yes.

2 CHAIRMAN BATTLE: Give us a minute to
3 change up then you can come forward.

4 (Brief recess taken.)

5 CHAIRMAN BATTLE: Public session now
6 convenes.

7 We are back together as a committee. Is this
8 joint testimony or just one?

9 MR. WRIGHT: I didn't know he was going to
10 say anything.

11 CHAIRMAN BATTLE: One at a time. If you
12 would limit your remarks to five minutes each that would be
13 appreciated. If you would state your full name and spell it for
14 the record that would be also appreciated.

15 MR. WRIGHT: Stewart Wright, S-T-E-W-A-R-T,
16 W-R-I-G-H-T. I live here in Columbus. I'm particularly
17 concerned about the registration process and statewide
18 registration system, and I wanted to make you aware of some
19 publications I just downloaded from the internet.

20 Those of you going home tonight might be able to
21 look them up on the internet. I have one copy of each and maybe
22 people from out of town I can leave these with them and pass
23 them around tonight if you don't have anything to do, and then
24 you'd have some good questions to ask from the Secretary of

1 State's office.

2 This one vote comes from the Brennan Center for
3 Justice, New York University, in New York.

4 MR. DOSHI: What's the web site?

5 MR. WRIGHT: www.BrennanCenter,
6 B-R-E-N-N-A-N, C-E-N-T-E-R.o-r-g.

7 And the title of this publication is making the
8 list and it's just issued, it's copyrighted 2006. And what they
9 did was they surveyed all 50 Secretary of State offices, and
10 compiled the information about how they do these, what do you do
11 with the four digits of the Social Security number, and what do
12 you do with the driver's license number that we're asking for,
13 and is specified in HAVA.

14 What they find is that some states are using them
15 to try to make voting easier, and they say some states are
16 trying to make voting harder.

17 If you ask which is Ohio, I think they will say
18 they don't know, because this report from the same place --

19 CHAIRMAN BATTLE: -- Sir, would you pull the
20 microphone closer and speak into it.

21 MR. WRIGHT: -- Here's a report from the
22 same place from Ohio, and for a lot of the questions it says we
23 didn't get a response. And so this would be easy to print out,
24 it's only four pages.

1 The last is the voter registration form, so there
2 are three pages of information and references, you can go
3 elsewhere.

4 Then the other thing I have is from the U.S.
5 Public Policy Committee of the Association for Computing
6 Machinery. And the title of that is Statewide Data Base of
7 Registered Voters, Study of Accuracy, Privacy, Usability,
8 Security and Reliability Issues.

9 And it I'm afraid does not have numbered pages,
10 but it's fewer than ten, I think. And I think they have some
11 very good requirements we should ask about. Could I leave these
12 with one of you?

13 CHAIRMAN BATTLE: David.

14 MR. WRIGHT: Can you circulate to as many as
15 possible. I will try to come back tomorrow and will make some
16 copies.

17 DR. MUSSATT: Do you have an electronic
18 version if I e-mail you?

19 MR. WRIGHT: At the bottom is my e-mail
20 address.

21 DR. MUSSATT: We usually communicate
22 electronically, I can probably get it that way the best.

23 MR. WRIGHT: Could I have your e-mail
24 address?

1 DR. MUSSATT: Sure.

2 MR. WRIGHT: I think I'm done.

3 CHAIRMAN BATTLE: Thank you, Mr. Wright.

4 Sir.

5 MR. FRY: I'm Phil Fry.

6 CHAIRMAN BATTLE: Spell it for us.

7 MR. FRY: P-H-I-L, Fry, F-R-Y. I'm with a
8 citizen action group called CASE, Citizens Alliance for Secured
9 Elections.

10 And I'm not sure what you wanted to be doing with
11 the information you collect from here. I wanted you to know
12 that we have -- we contact our members routinely through a Yahoo
13 group.

14 If there is something that can be done where you
15 would like activists involved, we can reach a hundred to 200
16 people pretty quick. And we're not organized in a traditional
17 way, we're a loose affiliation of activists.

18 That means we're a herd of cats, but a lot of
19 them are very, very dedicated and they are spread throughout the
20 state and through other states, and are doing a lot of good work
21 here and there.

22 So if -- and it's actually four groups in Ohio,
23 CASE; and a group called J30, up in Cleveland, Ohio; Vigilance,
24 another one in greater Cleveland, coalition for something, I

1 don't remember the name.

2 But we want to help, and if through this effort
3 you come up with something where you can use activists, we want
4 to help with that.

5 Second thing I wanted to say was I sent out a
6 survey question to all of the boards of elections a couple of
7 weeks ago. I'm keeping it really simple, two questions; what's
8 your budget?

9 I see the budgets going up in some counties,
10 especially with the new equipment, being surprised at some of
11 these people. And I just wanted to see what was happening.

12 And the other question I had didn't relate to
13 that, but it was about they are supposed to be posting the
14 results of the elections at the precincts. So I was asking them
15 if they were -- so I've only gotten back about 20 replies about
16 the budget.

17 And I've got two or three people in there who
18 don't have a budget for 2006. And several who don't have a
19 budget for 2008, or the programming may be a five percent
20 increase for 2008.

21 So, in other words, and some may be decreased, I
22 don't know how they are doing that. But what I can tell you
23 from this is the counties don't know, they are not analyzing the
24 system, they don't know what's going to happen, they are not

1 able to plan for it.

2 And so I think that in addition to all of the
3 process problems we've talked about, there is a lot of other
4 infrastructure problems that are right there, and we're not
5 seeing them yet, but they are going to be there.

6 The third thing I wanted to say, the last thing,
7 is a little more complicated, but it has to do with the
8 mentality of elections.

9 And it was something that I'd like to get across
10 to our legislators and Boards of Elections and I think in an
11 abstract sense they appreciate it, but in a practical sense they
12 don't.

13 And before, I've got a master's degree in
14 physics, I've worked in that area, I've done a lot of analysis
15 of all kinds of things.

16 What you do in physics or any kind of thing like
17 that, you have a situation and you have a new variable you're
18 throwing into it, you don't know how it's going to affect the
19 overall picture.

20 Well, the easiest thing to do is to look at it
21 and look at it and say look at extremes, look at this end and
22 look at it from the other end and sometimes you can tell a lot
23 from that.

24 Well, if you look at the cost of doing a recount,

1 which was \$10 and went to \$50 a precinct, if you look at that as
2 the answer, you say what happens if we raise it to \$10,000.

3 Well, nobody would ever do a recount, nobody
4 could afford it. And that would give elections officials all
5 kinds of reasons to not worry about things, because there is not
6 going to be a recount.

7 If you did it the other way, you put it back to
8 zero and said you can have recount on demand, what would that
9 do? Well, they looked at me like I'm a nut, but I really
10 suggested that.

11 Because what that means is boards of elections
12 could not possibly afford to have a recount, they can't turn
13 around every time somebody wants a recount and do it.

14 They have to have the process of counting votes
15 very transparent, very diligent and very open so that everybody
16 knew exactly what was going on and was comfortable with it.

17 It would have to include an audit process. When
18 it got done people would say I'm not asking for a recount I
19 just saw everything that happened, it was all transparent.

20 So I advocate that the recounts should be
21 doubled, I think it would solve a lot of problems. Nobody is
22 going to do that. But I still think that's how we need to
23 think, and that's all I've got.

24 CHAIRMAN BATTLE: Thank you very much for

1 your testimony.

2 Let me also mention to you that you and the
3 members of your group can write to us through the Chicago
4 office, and the record of this meeting will be held open until
5 April the 1st, so you don't have to limit your testimony to this
6 time and place, they can add to your testimony and send it to
7 Chicago.

8 MR. FRY: I'll do that.

9 CHAIRMAN BATTLE: Thank you very much for
10 your time.

11 MR. FRY: Thank you.

12 CHAIRMAN BATTLE: Any other testimony?

13 (No response.)

14 CHAIRMAN BATTLE: We stand adjourned until
15 tomorrow morning.

16 (Thereupon the hearing adjourned at 5:08
17 p.m.)

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CERTIFICATE

- - -

I, Cheryl D. Edwards, Certified Professional Reporter, and Notary Public in and for the State of Ohio, do certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on March 16, 2006, and carefully compared with my original stenographic notes.

That I am not an attorney for or relative of either party and have no interest whatsoever in the outcome of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 31st day of March, 2006.

Cheryl D. Edwards,
Notary Public in and for
the State of Ohio
My commission expires 11/05/08

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BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS
OHIO ADVISORY COMMITTEE

* * *

"OHIO'S PREPAREDNESS FOR THE 2006 ELECTIONS"

* * *

Ohio Civil Rights Commission
1111 East Broad Street
Columbus, Ohio 43205
March 17, 2006

* * *

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OHIO ADVISORY COMMITTEE

* * *

Lynwood L. Battle, Jr., Chairperson

Aaron Wheeler, Sr.

Altagracia Ramos

Roberta B. Presley

James Francis

Thomas C. Rogers

Sharon Zealey

Dilip Doshi

Cassandra Bledsoe

Jad Humeidan

Diane Citrino

* * *

David Mussatt, Civil Rights Analyst

Carolyn Allen, Administrative Assistant

* * *

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1 Friday Morning Session,
2 March 17, 2006.

3 - - -

4 P R O C E E D I N G S

5 - - -

6 CHAIRMAN BATTLE: Good morning, everyone.

7 This meeting of the Ohio Advisory Committee to the U.S.
8 Commission on Civil Rights will come to order.

9 For the benefit of those of you who are in the
10 audience I'll introduce myself and my colleagues.

11 First, my name is Lynwood Battle, and I'm from
12 Cincinnati and am chairperson of the Advisory Committee.

13 Members of the committee who are with me from the
14 right, and then the names of the members from my right are Tom
15 Rogers; Roberta Presley; Jad Humeidan; Dilip Doshi; Cassandra
16 Bledsoe; Aaron Wheeler; Sharon Zealey; Grace Ramos; James
17 Francis; Diane Citrino.

18 And we are all very happy to be here in Columbus,
19 Ohio for these hearings.

20 Also with us are David Mussatt, the Civil Rights
21 Analyst of the Midwestern Region. And Carolyn Allen, the
22 administrative assistant.

23 And I'd like to also introduce and express
24 gratitude to G. Michael Payton, the Executive Director of the

1 Ohio Civil Rights Commission, and Pastor Aaron Wheeler, who is
2 seated to my left, who chairs that commission, for their
3 hospitality. We appreciate very much their willingness to host
4 this meeting and admire the hard work that they do and their
5 staff has done in coordinating the meeting, in particular the
6 logistics with our regional staff.

7 In addition, we had in attendance yesterday and
8 again today with us Leonard Hubert, from the senior staff of
9 Governor Taft. And we certainly appreciate his work and the
10 fact that he has been with us from gavel to gavel.

11 We are here to conduct a briefing for the purpose
12 of gathering information on voting access in Ohio. In addition
13 to studying the voting issues in the state, the jurisdiction of
14 this committee includes discrimination or denial of equal
15 protection of the laws because of race, color, religion, sex,
16 age, disability or national origin, or in the administration of
17 justice.

18 Information that relates to the topic of this
19 meeting will be especially helpful to this Advisory Committee.
20 Proceedings of the meeting, which are being recorded by a public
21 stenographer, Cheryl Edwards, will be sent to the commission for
22 its advice and consideration.

23 The advisory committee may also decide to
24 investigate a subject further and issue a report on the topic.

1 At the outset I would like to remind everyone of
2 the ground rules.

3 This is a public meeting open to the media and
4 the general public. We have a full schedule of people who will
5 be making presentations within the limited time we have
6 available.

7 The time allotted for each presentation must be
8 rather strictly adhered to. This will include a presentation by
9 each participant, followed by questions from committee members.

10 To accommodate persons who have not been invited,
11 but wish to make statements, we've scheduled an open period
12 today beginning at 11:45 -- correction, today at 12:30. Anyone
13 wishing to make a statement during that period should contact
14 David Mussatt for that schedule.

15 Written statements may also be submitted to the
16 committee members or staff here today, or by mail to the U.S.
17 Commission on Civil Rights in Chicago, Illinois.

18 The record of this meeting will close on April
19 the 1st.

20 Though some of the statements today may be
21 controversial, we want to ensure that all invited guests do not
22 defame or degrade any person or organization.

23 And in order to ensure that all aspects of the
24 issues are represented, knowledgeable persons having a wide

1 variety of experience and viewpoints have been invited to share
2 this information with us.

3 Any person or any organization who feels that
4 they have been defamed or degraded by statements made in these
5 proceedings should contact our staff during this meeting, so
6 that we may provide a chance for a public response.

7 Alternately, such persons or organizations can
8 file written statements for inclusion in the proceedings.

9 I urge all persons making presentations to be
10 judicious in their statements. The Advisory Committee does
11 appreciate the willingness of all participants to share their
12 views and experiences with this committee.

13 Our first panel this morning is composed of
14 Cassandra Hicks, who is from the office of the Secretary of
15 State, I believe General Counsel. Jeff Jacobson, a state
16 Senator from Ohio. And Aaron Ockerman, of State Street
17 Consultants.

18 So we will begin with Ms. Hicks from the
19 Secretary of State's office.

20 MS. HICKS: Thank you very much. Good
21 morning to everyone, members of the committee and guests.

22 I'm here as the general counsel for the Ohio
23 Secretary of State, J. Kenneth Blackwell. And I'm honored to be
24 here to give you some information regarding Ohio's important

1 role in voter education, voter registration and implementation
2 of the Help America Vote Act.

3 I'm going to give you a brief outline of
4 information and I've provided packets for members of the
5 committee to view, which contain information on Ohio's current
6 standards for applying the Help America Vote Act to procedures,
7 which have to be transitioned in Ohio for compliance by May 2nd,
8 which is Ohio's first federal election in 2006.

9 CHAIRMAN BATTLE: Ms. Hicks, if I could
10 interrupt you for one second, I did forget one thing. For those
11 of you who will have written statements this morning, if you
12 would kindly speak directly into the microphone and slowly read
13 your statement, because it is being recorded for the record, and
14 would be very helpful to Cheryl if she does not have to go
15 blazing through the recitations.

16 MS. HICKS: Okay. Thank you very much, and
17 I will make sure Cheryl does not have too difficult a time with
18 my information.

19 I'm here representing Secretary of State J.
20 Kenneth Blackwell, as I indicated, to provide you some
21 information on where Ohio currently is in implementation of the
22 Help America Vote Act.

23 As a result of the challenges faced in the
24 General Election of 2000, Congress approved and President Bush

1 signed into law on October 29th, 2002, the Help America Vote
2 Act. The acronym that is used to describe the Act is called
3 HAVA, for Help America Vote Act.

4 This legislation creates federal funding and
5 guidelines with the states to replace punch cards and lever
6 operated voting equipment with electronic machines that would
7 more accurately reflect the intention of the voter.

8 In addition, HAVA requires that the states
9 provide for a centralized statewide voter registration data
10 base, in order to prevent voter fraud, and more easily manage
11 changes required to keep the voter registration information
12 current.

13 HAVA also provides grant funding opportunities to
14 improve accessibility for the disabled at polling locations, and
15 to increase voter education on a local level.

16 Each of these requirements has a fulfillment
17 deadline and a penalty associated with it if compliance is not
18 met. All funds released to the state by the federal government
19 under HAVA are subject to an annual audit.

20 In addition, the grant funds assessed by Ohio
21 counties are subject to monitoring by the Ohio Secretary of
22 State, through an internal audit mechanism.

23 HAVA also establishes guidelines for provisional
24 voting options used in situations where a voter's name is not on

1 the polling location poll book in the county which they reside.

2 The offering of a provisional ballot to any voter
3 who requests one ensures that any eligible voter is not denied
4 the opportunity to vote.

5 However, poll workers are required to inform the
6 voter if he or she is not in the correct precinct to cast the
7 provisional ballot. For the provisional ballot to count it must
8 be cast in the correct precincts where the voter resides.

9 The U.S. Department of Justice has granted the
10 authority to enforce the provisions of HAVA. And to review and
11 determine what penalties, if any, will be enforced for a
12 state's failure to meet HAVA deadlines.

13 At least currently 50 percent of the states were
14 in compliance with HAVA's schedule as of January 1st, 2006.

15 Compliance requirements are dependent upon the
16 state's first federal election in 2006. Some of the reasons
17 that have prevented certain states from getting into compliance
18 include a lengthy process for determining the vendors who would
19 supply voting equipment; the time it takes to manufacture large
20 numbers of voting equipment; possible cumbersome procedural
21 requirements at the local and county level; and some counties or
22 states may have not met requirements to receive federal funding;
23 and because of the expense involved in the transition to
24 electronic equipment most states are requiring the use of

1 federal funding in order to implement HAVA.

2 The Department of Justice is required to consider
3 reasons for non-compliance, along with a state's detailed plan
4 and time line on achieving compliance prior to enforcing any
5 sanctions against the state for failure to comply with HAVA
6 deadlines.

7 The Ohio Secretary of State began an
8 implementation program and time line to meet HAVA designated
9 goals soon after the Act was passed in 2002.

10 The first step in analyzing the requirements was
11 to determine how the state could obtain HAVA funding. The
12 office immediately created teams to work on specific areas, such
13 as HAVA Funding; determination of equipment suppliers for voting
14 machines; and also the establishment of the first statewide
15 voter registration data base, based upon utilization of county
16 records into a centralized data base accessible by the SOS, or
17 the Secretary of State's office.

18 Much of that work was completed during the first quarter
19 2002, and completed finally for determination of HAVA compliance
20 by review and audit of our office in 2005.

21 The Secretary of State' office uses an RFP
22 system, or Request For Proposal, in determining what vendors
23 would be eligible to comply with requirements for selections of
24 voting equipment.

1 The State of Ohio submitted its first state plan
2 to the 2000 Election Commission by 2003. By the third quarter
3 of 2003 RFPs his were being reviewed and narrowed down to a
4 group of four contenders for voting machine equipment.

5 Contracts were initially drafted after the RFP
6 process was initially completed. And by early 2004 the
7 Secretary of State had three vendors who were committed to
8 contractual obligations to provide voting equipment for the
9 Secretary of State's office.

10 In this manner we introduced a process of
11 determining how we would have voting equipment included along
12 with voter education, poll worker training, election supplies,
13 and a voter education program that would be complete before the
14 first election in 2006. This was included within the pricing
15 structure established for contracts for vendors.

16 The pricing and services agreement, negotiations
17 resulted in the most comprehensive package of voting machine
18 services and equipment developed by any state to date, with the
19 lowest prices in the nation for DRE, or direct recording
20 devices, machines which are normally known as touch screen
21 voting devices.

22 Around this time the legislature was considering
23 the option of also having a paper receipt for each voter to have
24 a guarantee as to how his vote was recorded electronically by

1 the machine.

2 House Bill 262, which became effective May 7th of
3 2004, required that Ohio's voting machines would have a voter
4 verified paper audit trail.

5 And of course the government, we like acronyms,
6 so we have the acronym for that as VVPAT, Voter Verified Paper
7 Audit Trail.

8 Another round of negotiations with the vendors
9 who were supplying voter equipment was necessary in order to
10 comply with this legislation for the VVPAT.

11 Eventually amendments to the original contract
12 for voting equipment were completed to include the VVPAT and an
13 additional piece of equipment utilized as a printer to be
14 utilized for voting equipment for the 2006 elections.

15 All approved vendors received their certification
16 for their voting machines and VVPAT devices on both the federal
17 and state level in 2005.

18 In 2005 as well HAVA funds were released to
19 purchase the new voting machines. In addition, there was some
20 separate steps established because of many concerns regarding
21 the use of electronic voting machines.

22 The Secretary established three separate
23 procedures to review administrative tasks associated with the
24 administration of the election, and to mitigate possible voting

1 equipment systems or technology issues arising from the use of
2 new technology.

3 The procedures were designed to enhance the
4 ability of election procedures to address particular equipment,
5 possible malfunctions, and to identify any risk factors, which
6 could be eliminated or diminished with technical or
7 administrative action on the part of an election official.

8 An additional system which our office created is
9 called IV&V, Independent Verification and Validation.

10 This new system was not only to verify election
11 procedures, but also to verify that the equipment functioned as
12 warranted by the manufacturer and suppliers of the new machines.

13 The IV&V process began in the summer of 2005, and
14 is continuing and will be completed prior to the May primary,
15 2006.

16 This process involves our office contracting with
17 independent technical consultants not associated with the
18 equipment or the state to validate the functions of the new
19 machines.

20 In addition, in 2005 the Secretary of State's
21 office was able to complete the centralized voter registration
22 data base in Ohio. Therefore, that component of HAVA
23 requirement was met by December 9th, 2005.

24 In addition to voting machines and the voter

1 registration data base, county boards of elections also had the
2 ability to apply for grant funding to the Secretary of State in
3 order to improve accessibility for voters who are disabled at
4 polling places.

5 These funds have been available for fiscal years
6 2003, `04, and `05. The amount of the funds are determined by
7 the Secretary of Health and Human Services at the federal level.

8 The process included counties providing a plan
9 for improvement for facilities that were not accessible to the
10 handicapped. This stipulation that a permanent fix at a private
11 facility could not be approved as part of the process was
12 utilized as part of the grant project in the event that a
13 private facility elected not to be a polling place at some point
14 in the future.

15 But temporary or semi-permanent fixes can be done
16 at private facilities. Many of the improvements were temporary
17 or a portable nature, something that could be used on voting day
18 and put in storage afterwards by the elections officials.

19 Funds are also available for the boards of
20 elections to train election officials and poll workers and
21 volunteers in requirements for accessibility for voting by
22 individuals with disabilities.

23 At this time 14 counties have utilized funding
24 available in this program. After 2005 we have had other issues

1 relating to provisional voting, as well as absentee voting.

2 As a result there is now additional legislation
3 where we have bills in Congress as well trying to amend the
4 other state's requirements for HAVA to include a VVPAT.

5 At this point at least 39 states have enacted or
6 have pending legislation on this subject.

7 In Ohio the subject of absentee voting has come
8 up and again in 2006. As a result we have House Bill 234, which
9 became effective January 27th, 2006, which has made some
10 significant changes in the area relative to absentee voting.

11 Electors no longer have to state a reason to vote
12 absentee. However, there are more stringent requirements in the
13 application process. There are nine pieces of mandatory
14 information that are required before the absentee ballot can be
15 issued.

16 If any of the nine pieces of information are not
17 within the absentee ballot information, Boards of elections
18 officials are required to notify the applicant for an absentee
19 ballot of the missing information.

20 Additionally, new sections in the law allow most
21 absentee voters to cast a second ballot provisionally in their
22 precinct polling places on election day.

23 As a result the Board must determine prior to
24 counting absentee ballots which ballot will be counted, the

1 absentee one, or the provisional one.

2 Because of new procedures affecting absentee
3 ballots, the Board can defer counting absentee ballots until the
4 official canvas, and by doing so this will provide them
5 additional time to determine which absentee ballots are eligible
6 to be counted.

7 Because of significant election official concerns
8 on the subject of issuing and counting absentee ballots, as well
9 as new procedures to cast provisional ballots on election day,
10 another piece of legislation was amended as well, and created
11 another bill, amended Substitute House Bill 3, which has some
12 provisions that are effective in May, and other provisions
13 effective June 1st, 2006.

14 One example that will affect both elections
15 forthcoming is the processing and counting valid absentee
16 ballots prior to the close of the polls, this is now
17 permissible.

18 Amended Substitute House Bill 3, also addresses a
19 requirement and definition for photo identification when
20 appearing at the polls to vote.

21 As you can see, the process of reviewing Ohio's
22 election and voter registration provisional balloting and
23 absentee balloting laws may not be done.

24 At this point part of the Secretary of State's

1 responsibility is to notify county officials who must implement
2 these new changes of these requirements and to assist them with
3 training poll workers and election officials to ensure that
4 voters are properly educated on the new laws as they come into
5 effect.

6 We appreciate the hard work that is done at the
7 county level by our poll workers, the bipartisan teams of
8 persons who must work together really throughout the year, and
9 not just on election day, to make sure that we have fair
10 impartial and efficient elections in Ohio.

11 The Secretary of State's Office has tried to
12 provide a guide post to comply with federal requirements, as
13 well as state requirements. And in addition has as its utmost
14 obligation, to make sure that elections in Ohio are fair, and
15 equitable and that voters' votes count.

16 We believe we do an admirable job in this
17 process, in conjunction with our county officials and are happy
18 and proud to continue the work of the Secretary of State.

19 Thank you very much.

20 CHAIRMAN BATTLE: Thank you, Ms. Hicks.

21 Next speaker on our panel is State Senator Jeff
22 Jacobson.

23 SENATOR JACOBSON: Thank you. My name is
24 Jeff Jacobson, I represent the Dayton area. And at the outset

1 I'm happy to note two of my friends from our community are here,
2 and I'm glad to have them as part of the Advisory Commission
3 here today.

4 I've been in the General Assembly for 14 years
5 and served four of those years as chair of the Elections
6 Committee of the House.

7 I was also on the elections study committee that
8 in 2001 recommended against converting from punch cards to DREs.

9 Was also primary instigator and a member of the
10 Joint Committee on Ballot Security that did adopt if not the
11 first, one of the first in the nation, a requirement that DREs
12 contain a paper audit trail.

13 It was a bipartisan effort strongly resisted, it
14 should be noted by the Secretary of State's office. But we have
15 generally been happy with the way that it's worked out since
16 then.

17 I've also served as a member of the Montgomery
18 County Board of Elections.

19 I would just like to back up and say how did --
20 to address how did the General Assembly arrive at the point we
21 did this two year period, and especially this year in adopting
22 the changes to Ohio law that were adopted in House Bill 3.

23 And I'd like to start out by going back to 2000
24 when I believe there was unjustifiable and I think manufactured

1 complaints about punch cards. We here in Ohio have had them and
2 worked with them successfully.

3 In fact, Mr. Francis will remember the very
4 closely contested election for Dayton Mayor back in `93, where
5 we actually did go in as both parties, it was a 200 vote margin.

6
7 We went back, both parties together and reviewed
8 one precinct where we held it up and looked for hanging chads,
9 and we found only one change and we did not disagree one time
10 between the observers from both campaigns.

11 And at the conclusion after looking at that one
12 precinct the decision was made by those contesting the outcome
13 of the election that the punch cards had worked and they were
14 not likely to find significant changes in voting by continuing
15 the process, and the process was discontinued.

16 We also had a statewide election decided in 1990
17 by 1,234 votes on punch cards, for nearly all of it without
18 either side suggesting that in any way our ballots were not
19 appropriately recording people's views.

20 That is frankly why I resisted and others the
21 change over to DREs. However, that decision was made in part by
22 the decisions at the federal level on HAVA.

23 Update and fast forward to the 2004 election, and
24 there were a lot of pressures on the system. And I think the

1 credit for making the system work so well in Ohio goes to our
2 bipartisan boards of elections.

3 And to the extent to which you all have not had
4 direct observation contact with the way boards of elections do
5 their work, I would tell you that the things that you heard
6 about how Ohio's election, quote, might have been stolen, are
7 completely and utterly fictitious, and I think a disgrace to our
8 national body politic the fact that so much effort has gone into
9 promoting this myth.

10 And I will say this, they essentially for one
11 main reason, although I could go on for quite a long time, the
12 one main reason is the boards of elections have equal numbers of
13 Democrats and Republicans.

14 What they mostly do is watch each other, perhaps
15 they don't watch each other when they go to the facilities on
16 their own, but short of that if one is touching a ballot there
17 is someone else watching the ballot. If a Republican goes over
18 in a corner a Democrat wants to know why, if not being assigned
19 to them directly.

20 It works, it's interesting, it's almost like the
21 old doctor of mutual destruction, both sides knows the other is
22 watching, so neither tries.

23 I'm not saying they would try, but even if they
24 were tempted to try no one tries, because they know they are

1 under a microscope the entire time.

2 And anyone who suggests to you otherwise at a
3 minimum is insulting the Democrats who work at the Board of
4 Elections to suggest they would have been party to allowing the
5 Republicans under their noses to steal an election, and I think
6 it's a disgrace.

7 And frankly that's why you see no leaders of the
8 Democratic party joining in the condemnation, because they
9 appoint through the Secretary of State's office the members of
10 the Board.

11 And then the members of the Board appoint the
12 Democrats and Republicans that work there.

13 Despite the positive work of our Boards of
14 elections they were strained tremendously by very real voter
15 fraud that happened in Ohio.

16 And while you have heard that there were only
17 four instances of proven voter fraud of casting ballots, there
18 were thousands of instances of fraudulent registrations that
19 were caught by local boards of elections, that were caught by,
20 you know, turned over by investigators or prosecutors.

21 I could provide you with documentation and
22 citations to the number of articles that appeared, and there
23 were unfortunately to say three major actors in that.

24 The first was ACORN, Association of Community

1 Organizations for Reform Now, which submitted blatantly false
2 registrations in a number of counties, and additionally deprived
3 500 voters, more than 500 voters of their right to vote in the
4 2004 election by failing to turn in their cards at all until
5 after the deadline in October.

6 In addition to that, The Americas Coming Together
7 was equally implicated in registrations, including among some
8 1,284 suspicious voter applications in Cuyahoga County, they
9 registered a Jive Turkey, Sr.

10 There was also a number of instances connected to
11 the NAACP National Voter Fund. But what's important to say here
12 is a lot of this was caught.

13 And what you need to ask yourself and what we
14 need to ask ourselves is, okay, these were caught. Registering
15 Dick Tracy, George Foreman, Jeffrey Dahmer, Mary Poppins might
16 be obvious enough that somebody might say, wait a minute, is
17 this really registration or registering the same person at, you
18 know, dozens of different addresses has happened, might be
19 something that appears to be fraudulent and would allow someone
20 to pull it and look further.

21 Should the fact that the boards were diligent and
22 caught these kinds of instances and turned them over to
23 prosecutors cause all of us to say, that's great they got all of
24 the problem.

1 Is it possible in government work that we are a
2 hundred percent fool proof. Change the name from Jeffrey Dahmer
3 to Jeffrey Jacobson, and one could possibly throw that
4 registration to each of 88 counties without anybody batting an
5 eyelash.

6 And I think that was our fear that not all
7 registrations that may be fraudulent were done in such an easy
8 to detect manner.

9 Now, at this point I would say they aren't all
10 necessarily attempts to defraud the system. I think frankly the
11 fact that we pay by the signature, and by the registration card,
12 we allow that as a method of payment, encourages those who are
13 incentivized to provide more registration cards, perhaps to do
14 so without actually contacting real voters to do it. I'm not
15 saying all do it, but clearly quite a few did.

16 And they seem to be connected with voter
17 registration drives that paid by the card or by the signature.
18 If they had been paid by the hour I would have had no problem,
19 and I think you could have said, please, work a hundred hours,
20 here's our expectation of you, and I think here's how much you
21 make and I think you would have had fewer cards that would have
22 had problems.

23 But in any case, we tried to change the law in
24 that the Secretary of State in his capacity, his group that is

1 trying to put a ballot amendment out, took us to court and
2 actually succeeded in obtaining a temporary restraining order,
3 which I think permitted fraud to continue to happen.

4 I'm disappointed the case is not decided and is
5 yet pending.

6 We went forward, though, and in the context of
7 the bills that we considered, and the suggestion we considered
8 for election reform had to ask the question, what do you do with
9 voter registration irregularities.

10 And frankly you can't ask people to show up once
11 and prove who they are when they register, so that they can come
12 back a second time to vote.

13 Now, sometimes people register at a government
14 office, you see them right in front of you, other times you
15 don't.

16 We didn't want to stop people from having the
17 opportunity to register in the easiest way possible. But we
18 wanted to make sure that they were actually real voters, and
19 that they really were voting one time.

20 The best way to do that we felt was to require
21 voter identification.

22 The idea of voter identification is not ours, it
23 belongs properly to the members of Congress that in a bipartisan
24 fashion voted for the Help America Vote Act.

1 In that bill they required for the first time new
2 registrants who are voting the first time to show up and provide
3 identification.

4 Democrats and Republicans both felt that some
5 voters should not be able to cast their ballot without first
6 producing evidence that they are who they claim to be.

7 That passed in a bipartisan fashion without the
8 objections that said people will be disenfranchised. So if it's
9 good enough for some voters the extension to all voters should
10 not be seen as unprecedented or improper or outrageous as it has
11 been suggested.

12 And in fact Ohio's permissible identification
13 forms goes beyond those provided in the HAVA law for first time
14 registrants.

15 HAVA only allows certain kinds of identification,
16 copies of bank statements, utility bills, government checks, pay
17 checks.

18 And we also went further and we allowed that you
19 could do it, you could provide evidence of your Social Security
20 number without producing documentary evidence.

21 So for example if you're someone who knows the
22 last four digits, or you can look at your card and tell people
23 the last four digits, but you don't have anything with your
24 address on it, you can use that number to allow your ballot to

1 be verified and counted.

2 We believe that our system will survive court
3 scrutiny. The Georgia one that has been overturned by their --
4 by a local or district Federal court only allowed picture photo
5 ID that's it.

6 They did not allow non photo ID with address or
7 -- excuse me, government ID with address, but not photos, they
8 did not allow current utility bills or bank statements or the
9 like, you know.

10 Those who get Social Security checks or letters
11 from Social Security, things like that, all of those things
12 permissible by us are not permissible in Georgia. We do believe
13 that ours is better.

14 We did our best to make it as free and open as
15 possible, but still to ensure that those who register are real
16 and those who vote, vote only one time.

17 Because it is fair to say that someone who votes
18 twice or votes illegally harms the civil rights of those who
19 vote correctly and once.

20 In addition I think it's important to mention
21 that the Carter Baker Commission headed by Jimmy Carter, former
22 president, and Jim Baker, former Secretary of State, bipartisan
23 effort, endorsed the idea of voter identification last year and
24 provided major impetus as well to our efforts.

1 In addition to the work we did here, there were a
2 number of other important things that we did in the context of
3 House Bill 3. I would be happy to discuss them further if
4 people have questions, and I'm sure members will.

5 The one thing I would like to say is a
6 disappointment that I have, the State provided five million
7 dollars in appropriations for poll worker training and voter
8 education, this was provided in 2003, by the decision that we
9 made -- as part of the decision that we made on adopting paper
10 trails.

11 Because of the decision to adopt paper trails it
12 delayed the implementation of the direct recording electronic
13 devices.

14 Meaning that I think originally that the
15 Secretary of State was hoping to have those available for the
16 2004 election, but it took until sometime about a year ago
17 before machines were available and certifiable that would have
18 allowed the use of direct touch screen voting, and the removal
19 of the punch card machines.

20 That's when the money was needed. The money was
21 needed to educate voters not how to use a punch card, not how to
22 be happy about their ballots, but how to work with the new
23 machines.

24 For example, I have heard that those who have

1 started working on new election equipment in early elections
2 this year, and you may, some of you may have experienced this,
3 each time a new voter comes in a member of the polling team,
4 those working at the poll worker team, will take the individual
5 over and explain to him how to vote.

6 That would be a good subject, would have been a
7 good subject for voter education funds to be used for.

8 Unfortunately the voter education funds were
9 spent for the most part in 2004 before we had made any
10 conversion.

11 They were spent on commercials that I think were
12 more designed to promote the candidacy or future candidacy of
13 our Secretary of State, than they were to educate voters about
14 anything important to voters.

15 There was absolutely no call for the spending of
16 that money in 2004. And I would tell you that if you look at
17 Ohio's profile, and I have information should you wish it from
18 the Legislative Service Commission, Ohio spent more than
19 Pennsylvania on voter ads.

20 And no other state that is comparable to ours
21 spent a penny of their HAVA funds that we can tell on television
22 advertising that was designed, quote unquote, to educate
23 voters.

24 Florida, Georgia, Illinois and Michigan -- we

1 have no information returned from Illinois, but Michigan spent
2 not one penny on this.

3 Florida did not track the data specifically, but
4 we are not aware of any. We looked through, done our own
5 research, and Michigan said they did not use any, Georgia did
6 not use any.

7 Even if it were to be used on television
8 advertising, now when people are faced with new machines and new
9 rules, it should have been safe for now.

10 And unfortunately to our disappointment it was
11 used in the process at that time when there was nothing new
12 about which voters should have been educated about. That to me
13 is something that the commission should be aware of.

14 With that I'm happy to delve into any details the
15 commission is interested in, and to answer any questions you may
16 have.

17 CHAIRMAN BATTLE: Thank you, sir. Mr.
18 Ockerman.

19 MR. OCKERMAN: Chairman Battle, and members
20 of the Ohio Advisory Committee.

21 My name is Aaron Ockerman, as has been noted, and
22 I am the legislative agent for the Ohio Association of Election
23 Officials, or OAEO, which as Senator Jacobson noted, is a
24 bipartisan organization which represents Ohio's 88 county boards

1 of elections.

2 In my capacity I represent the OAE0 before the
3 Ohio General Assembly on all legislation affecting elections.
4 And over the past five years I have lobbied over 50 pieces of
5 legislation before the Ohio General Assembly, none of them being
6 more important than House Bill 3 from the 126th General
7 Assembly.

8 My goal today is to discuss a little bit of the
9 history of H.B. 3 you've now heard quite a bit about, hopefully
10 outline some of the more important aspects of the bill, make you
11 aware of the OAE0's involvement in the legislation, and try to
12 answer any questions that you may have.

13 I hope you find the information useful as you ask
14 questions about the conduct of elections here in Ohio.

15 House Bill 3 was introduced on January 24th, 2005
16 and sponsored by Representative Kevin DeWine, a Republican from
17 Fairborn, Ohio.

18 It's also worth noting that a companion piece of
19 legislation, Senate Bill 3, was introduced by Senator Kevin
20 Coughlin, a Republican from Cuyahoga, Falls on that same day.

21 And has been noted before by other panelists,
22 House Bill 3 was a relatively small piece of legislation, as
23 introduced largely geared towards assisting Ohio in changing its
24 laws to better reflect the Help America Vote Act. And part of

1 it was to help address some problems that arose out of the 2004
2 election.

3 But as it was introduced as its been noted, it
4 was about 22 pages long, it dealt with a couple of areas, the
5 first was procedures for casting and counting provisional
6 ballots, which has been a subject for discussion for this
7 committee.

8 One thing of importance to note is that it
9 codified what constitutes a vote for optical scan voting
10 technology.

11 And I know yesterday you were all shown an
12 optical scan ballot and the question was kind of posed what do
13 you do if someone circles a name, as opposed to filling in the
14 oval? What do you do if someone puts an "x" or check mark or
15 writes yes next to a candidate.

16 House Bill 3 clarified how those votes are to be
17 handled. For years that was done by the Secretary of State
18 through directive. The legislature basically codified that, put
19 into state law the procedures for counting those optical scan
20 ballots. They did a similar thing several years ago for punch
21 cards in Ohio.

22 And we think that was a very positive step in
23 House Bill 3 to help clarify for the public and election
24 officials what constitutes a vote on that technology.

1 It also required election officials to post
2 certain information at the polling location, that was also part
3 of the Help America Vote Act.

4 It codified the fact that there would be a
5 statewide voter registration data base that has also been
6 discussed here.

7 It codified, as Senator Jacobson noted, the
8 requirement that was outlined in HAVA, that first time mail
9 registrants provide certain identification when they show up to
10 vote.

11 It updated the amount of money that a county can
12 recoup for a non-automatic recount, and I'll get into that a
13 little bit later.

14 And it also defined jurisdiction for purposes of
15 Ohio elections as the precinct within which a voter lives, as
16 opposed to a county, as has been suggested here as well.

17 So that was all of the as introduced version of
18 House Bill 3.

19 And although that bill as introduced was not
20 without controversy, it certainly would take on quite a bit
21 more, add a little meat to the bones as it went through the
22 committee process.

23 By the time the bill left the House Elections
24 Committee, it had gone from 22 pages to 374 pages and now

1 included numerous changes to voter registration, the elections
2 calendar and campaign finance amongst other things.

3 While our association did not support a hundred
4 percent of these changes, there were several in this version
5 that I think deserve recognition here as they pertain to access
6 to the polls.

7 One of the things that was discussed yesterday
8 was the new requirement that voters receive notification in the
9 mail telling them about the location of their precincts,
10 providing them with other information as to the election dates.

11 It did remove challengers from the polling
12 locations, that was a big problem as has been noted here in Ohio
13 in 2004.

14 We worked very closely with the General Assembly
15 to try to have those challengers removed and replaced them with
16 observers.

17 So now political parties or candidates or folks
18 interested in election can register with their board of
19 elections to observe an election at a polling location, but they
20 no longer have a right to challenge a voter. That was certainly
21 an issue as I noted that was hot in 2004.

22 Very importantly to our association, it opened up
23 Ohio's absentee voting law so voters could request an absentee
24 ballot without having to state a specific reason.

1 Later on that was incorporated into another
2 piece of legislation, House Bill 234. The bill increased the
3 penalties for interfering with voters as they waited in line at
4 a polling location and prohibited the harassment of folks as
5 they waited in line. That was something that also came into
6 play in `04.

7 It required polling locations to be equipped with
8 precinct finders to assist voters in finding their correct
9 precinct as has been noted, because jurisdiction was defined in
10 a very narrow way.

11 The General Assembly thought it was important if
12 someone showed up at the polls and was not on the voter roles
13 the poll worker could then ask them what's your address and the
14 voter could provide that poll worker with their address.

15 The poll worker would then have basically a
16 street list or a precinct finder where they could find that
17 person's address and refer them to the correct precinct, so that
18 we could make sure they were voting in the proper location, so
19 we could make sure their vote is counted. I thought that was an
20 important step.

21 Finally it now required Boards of elections to
22 conduct a public vote on the allocation of voting machines, so
23 as to eliminate the appearance of impropriety in the placement
24 of voting machines.

1 I think it's worth noting as Senator Jacobson
2 noted, we are a bipartisan organization, it consists of two
3 Republicans and two Democrats.

4 The legislature basically said when it comes down
5 to allocating voting machines around your county that is now
6 going to be a public meeting, take place in a public meeting
7 with public vote by all four members of the Board of Elections,
8 so that the public is aware of the distribution of those
9 machines and there is the elimination of at least the appearance
10 that one party might have tried to rig the allocation of voting
11 machines. I thought that was important as well, something we
12 had supported.

13 And while the bill was substantially different,
14 obviously it was as introduced, more changes were certainly in
15 store for it as it made its way through the Senate.

16 And a couple of things I wanted to point out
17 about the Senate version that were pertaining directly to
18 access, first one was the creation of an attorney in fact
19 provision. I think you heard a little bit about that yesterday
20 afternoon, for handicapped voters who are unable to physically
21 make their marks or sign their names.

22 I think it's worth noting that I sat in a room
23 with a lot of disability advocates and talked extensively about
24 this particular provision, not all of the folks in the disabled

1 community were happy with this, some of them were.

2 There was some discussion and some debate within
3 that community as to the effectiveness as to this particular
4 provision.

5 I think it's worth noting the General Assembly
6 agreed and Senator Coglin in his remarks on the floor of the
7 Senate noted this is a starting point, it's a tool not available
8 to this group, the disabled community, prior to House Bill 3.

9 It's now available to them, and it's not perfect,
10 but it's certainly a starting point and certainly better than
11 having nothing on the books.

12 I don't know if you got into a discussion
13 yesterday about the Geauga County situation, but there was a
14 voter up there who was unable to make their mark or sign their
15 name, they were not able to have their spouse or designate
16 someone to sign it for them, so they were effectively barred in
17 participating in that portion of that Democratic process.

18 What we attempt to do in H.B. 3 is rectify that
19 and provide the means for them to participate. To that extent
20 we acknowledge it's not perfect, but it's certainly a start,
21 something that was not there prior to H.B. 3 and something that
22 I believe we'll continue to discuss and debate in the General
23 Assembly.

24 The other important thing to note and I think

1 this was mentioned yesterday, the General Assembly codified a
2 long standing Secretary of State directive that allows homeless
3 persons to designate homeless shelters as an official place of
4 residence for voting purposes, so long as that homeless person
5 intends to return back to that shelter.

6 So I think that was a very positive step, it's
7 been a directive, defacto law in the state. But the General
8 Assembly took the affirmative step of codifying that particular
9 provision.

10 Obviously it also included the new voter
11 identification requirements that you heard much about, and I'm
12 sure we'll continue to have discussion about.

13 With regard to those requirements it should be
14 noted my association declined to take a position for or against
15 that provision.

16 We found upon surveying our membership that
17 opinions as to the necessity and wisdom of requirement vary
18 greatly. Some said why did it take them so long to do this, why
19 are they just now getting around to doing this. And other
20 people said they must be out of their minds for doing this.

21 So clearly we had a conflict as to a unified
22 position. Instead we decided we would offer the senators and
23 representatives information as to how the provisions would
24 affect the administration of elections from a more technical

1 standpoint.

2 And I'm happy to say that the Senate did make
3 some changes based upon our recommendations, so we are happy
4 about that.

5 All in all it's worth noting that the OAE0 was
6 very supportive of many of the changes incorporated in H.B. 3.
7 And while the ID requirements drew much of the attention and
8 debate, elections officials worked quietly to ensure that other
9 less controversial, more technical issues were addressed in a
10 satisfactory manner.

11 And to a large extent we believe that they were,
12 and we'll let others groups who have more consensus on issues
13 debate the merits of the ID requirement.

14 One other bill of note to this committee is House
15 Bill 312, which is sponsored by Representative Clyde Evans. The
16 bill would ensure that the availability of handicapped parking
17 spaces at polling locations, our association reviewed the bill
18 and offered some suggestions for improvement to better
19 accomplish the goals of the sponsor.

20 And I've been told that it might be voted out of
21 committee as early as next week. Turns out House Elections is
22 not meeting next week, so probably the week after. But that's
23 something you should be aware of.

24 If the committee would indulge me, I'd like to

1 address a couple issues that came up yesterday that I could lend
2 clarity to.

3 One issue that came up was the new provision in
4 H.B. 3 that increased from \$10 to \$50 the amount a county can
5 recoup for recounts. I think Professor Tokaji noted very well
6 that particular provision had not been updated since 1950, so I
7 guess we kind of bristle at the suggestion that this is somehow
8 barring or prohibiting people from requesting a recount.

9 I would say \$50 in 2006 is a good bargain
10 compared to \$10 in 1957. Those are only non-automatic recounts
11 in Ohio. If a contest is within a half a percent there is an
12 automatic recount that takes place that no one is charged for.

13 These are only recounts that fall outside of that
14 margin, and that are requested by a candidate or a political
15 party. So I think that's worth noting.

16 I also don't want this committee to be left with
17 the impression the new direct recording electronic machines are
18 not audited or checked in any fashion, certainly they are.

19 There is extensive logic and accuracy testing
20 that is performed on the machines, and later this morning when
21 Matt Damschroder, the Director of Franklin County Board of
22 Elections testifies I would encourage you to ask him.

23 They've been using these machines for over ten
24 years in Franklin County and he can tell you all about the

1 exhaustive and extensive testing that takes place on the
2 machines and auditing on the machines.

3 I know that yesterday the statement was made,
4 well, you should be distrustful of those machines, because we
5 worked on our home computers, had them crash and lost
6 information.

7 I can assure you comparing these voting machines
8 to your home computers is kind of like comparing an Indy car to
9 a Yugo, it's just not the same.

10 And I would certainly encourage you as you delve
11 into these issues to work with your local boards of elections,
12 take a good look at these machines and find out exactly what
13 makes them tick. I think you'll be pretty surprised.

14 And as Senator Jacobson and Ms. Hicks also noted,
15 we now have a requirement for a paper trail in Ohio, so that
16 these machines don't just record your vote electronically, they
17 also record it on paper.

18 So there is a way during a recount situation for
19 us to compare the two to make sure that the votes were tabulated
20 correctly.

21 Also worth noting is the fact that in Ohio,
22 tabulating votes electronically is not a new concept, we've been
23 doing it for almost 40 years now in Ohio.

24 When you cast a punch card ballot that is merely

1 the method of casting the ballot, they are counted later on by a
2 tabulator that electronically scans and reads those punch cards.

3 And the results are given to the election
4 officials and relayed to the public electronically.

5 So really the only thing that has changed here is
6 the method by which the ballot is cast. It's now cast
7 electronically, but it's tabulated electronically in the same
8 manner it always has been, that's worth noting as well.

9 That's not to say the machines are infallible or
10 perfect, but it's worth noting they've been exhaustively tested
11 by secretary of states offices and found to hold up under much
12 duress.

13 Another issue was the challenge to citizenship
14 which came up yesterday. I think Mr. Doshi was particularly
15 interested in that particular concept. Worth noting is that
16 that particular provision was not originally conceived in House
17 Bill 3.

18 It's been on the books for a while in Ohio where
19 a poll worker can challenge based on citizenship, residents or
20 age of the voter. That's been around for a while now and
21 elections officials are not aware of any problems that arose
22 because of that particular provision.

23 If it's something that the General Assembly
24 thinks needs to be revisited as we explore all of these issues,

1 we are certainly happy to entertain discussions about that. But
2 if asked you will hear most elections officials say that's not
3 caused problems at the polling locations in the many years it's
4 been in place.

5 The issue of general readiness of elections
6 officials to take on the challenge of implementing House Bill 3,
7 of implementing new voting technology, of bringing our elections
8 in to the 21st century.

9 I know a lot of questions were asked as to how
10 ready will our poll workers be, how ready will our Board of
11 Elections be, it's an excellent, excellent question and I
12 certainly ask you to probe the members of the next panel as to
13 readiness.

14 I will say this, it is challenging, yes, is it
15 impossible, absolutely not. Many people predicted gloom and
16 doom and despair of the 2004 election, what will happen here in
17 Ohio when we were bombarded by huge turnouts and massive
18 scrutiny and we survived.

19 It was not a perfect election by any means, but
20 here's a secret, there are no such things as perfect elections.
21 They are always a very human endeavor at their heart, no matter
22 how fancy the technology humans still conduct elections and
23 humans are infallible and so are elections.

24 That does not mean we shouldn't strive for

1 perfection, but certainly we withstood the pressure of '04.
2 People predicted again doom and gloom in the last general
3 election where half of the counties used new voting technology
4 for the first time, but the system held up again and we made it
5 through.

6 It was not easy, it's never easy to run a good
7 election, and we certainly welcome the scrutiny, we welcome the
8 questions, we need to be tested and we need to be tried, we need to
9 be challenged to perform better.

10 But I would just ask you as you delve into these
11 questions to bear in mind that there will always be
12 imperfections in elections. But the best we can do is strive
13 for perfection and expect the best of ourselves as election
14 officials.

15 And I think if you take a good look at Ohio's
16 past we have a strong and rich tradition of running good
17 accurate fair elections in Ohio.

18 And so we certainly welcome this committee's
19 work, we hope you can build upon the many, many inquiries that
20 have been made into Ohio's voting system, particularly since
21 2000, and we welcome that scrutiny, and we welcome the
22 opportunity to work with this committee.

23 So thank you very much, and I'd be happy to
24 answer any questions from the panel.

1 CHAIRMAN BATTLE: Thank you very much, Mr.
2 Ockerman. We're going to be a little bit longer than we
3 planned. We started late, we'll end up with the members and
4 panelist to go until 11:00 for the questions. I'm sure we have
5 some that our members would like to propose.

6 And who has the first question? Ms. Citrino.

7 MS. CITRINO: Ms. Hicks, you mentioned that
8 50 percent of the states were in compliance with HAVA, is Ohio
9 in compliance at this time?

10 MS. HICKS: Basically in terms of that date,
11 that was January 1st, 2006, there actually may be more states in
12 compliance now.

13 But Ohio is planning to be in compliance by the
14 May 2nd election, primarily the only things we are left to do
15 since we have gotten all of our equipment, we are doing training
16 now, doing implementation and delivery of equipment for those
17 locations that have not received equipment.

18 So in terms of the centralized voter
19 registration voter data base that was done in December, so we
20 fully expect to be in compliance by May 2nd.

21 MS. CITRINO: What about the requirement in
22 HAVA that disability access be throughout the state? We were
23 told yesterday that Ohio's only about 76 percent in compliance
24 with access for people with mobility impairments, and we haven't

1 heard much about training for people.

2 An example was brought up yesterday of, for
3 example, a non-verbal voter, what kind of provisions have been
4 made to make these 1500 places that are not accessible, that's
5 the estimate we had yesterday, what's the plan by May to have
6 those be accessible?

7 And what's the plan for training people how to
8 deal with someone who presents with a disability when they come
9 to the polls?

10 MS. HICKS: I don't think the figure of 1500
11 is correct, actually. But I would say in terms of what the
12 process is that our office uses, we have in accordance with law,
13 we have a disability coordinator that works for the Secretary of
14 State's office in conjunction with the Board of Elections, there
15 is information that he provides.

16 And also we have the ability to go out to
17 locations and assist with issues regarding permanent or
18 temporary fixes for disability access.

19 We have, as we indicated, a grant program
20 available to the counties for permanent or semi-permanent or
21 temporary fixes for particular locations.

22 And we have utilized our field staff that works
23 with the Secretary of State's office to go out and assist
24 county officials in that regard if they need assistance.

1 For the purpose of contacting our office,
2 we do have the ability to go out, provide information if anyone
3 has a question regarding a particular polling place, or if an
4 election official has a question whether or not they should move
5 to another polling location.

6 One of the things that we have been advising for
7 older locations that are permanent, are being considered by the
8 board officials for being used in this election, we have
9 basically told them in a lot of locations they need to go to a
10 more modern newer facility and consider non-traditional
11 facilities.

12 Sometimes we begin to use locations and we have
13 always used them, and many elections officials are concerned
14 about information that has been communicated to a voter about a
15 change in a polling place.

16 But when you consider that an older location
17 simply may not have, it will be too expensive to change the
18 location in terms of what modifications are required, even with
19 our assistance, the county may not have enough money to build a
20 ramp or to repave a parking lot or to do those types of things.

21 We have suggested other locations and have
22 assisted counties in finding other locations for the election.
23 I don't have an exact figure as to how many locations, but we
24 get a regular report weekly on inquiries that are being assessed

1 of our coordinator, who does work with the disability community
2 and elections officials trying to find additional locations.

3 The 1500 figure sounds high to me, I can get back
4 with the commission in terms of where we are now in March,
5 relative to the number of inquiries that we have had, and where
6 our information shows we are on that.

7 MS. CITRINO: What about training for people
8 when somebody presents with an unusual or a different kind of --
9 needs assistance, what kind of training is in place for the poll
10 workers to help people?

11 MS. HICKS: As required by law we have
12 disability units that are available for certain types of
13 disabilities. Certainly the vendor equipment does take into
14 consideration certain types of disabilities.

15 The other person that we used as coordinator can
16 provide assistance in the event there is a particular question
17 about a person who is multiply handicapped and there is
18 something that they have not been aware of at the polling
19 location about being able to work with that person.

20 They have the ability to contact our office, work
21 with our disability coordinator and find out other information
22 associated with the use of the machine or that equipment.

23 MS. CITRINO: Are you talking about that
24 day?

1 MS. HICKS: No. Prior to. We work with the
2 boards everyday on these kinds of issues, that's why we have a
3 disability coordinator.

4 So in terms of particular questions about the use
5 of the new equipment, if there is a county getting new equipment
6 realizing some counties have been using equipment since last
7 year, if there is questions about a particular type of
8 disability how that person can be made accessible, how the
9 facility can work to get accessibility into the facility, the
10 officials who are there have the ability to contact our office
11 at any time.

12 Or with regard to our particular training program
13 we have training DVDs, and CDs, information they can get from
14 our office on use of disability equipment and about disabled
15 voters.

16 CHAIRMAN BATTLE: Ms. Ramos.

17 MS. RAMOS: I have a couple of questions and
18 I tell you what, three of them are you can answer as you choose.

19 One is what are we doing about voter education?
20 Yesterday a lot of the questions were how are you reaching the
21 people, educating how to vote, what they need to bring on voting
22 day, if there is certain things they have to bring.

23 So what are the plans to do this, to outreach
24 into the community?

1 And then the other one is again following up on
2 the disability, I understood when the machines were being
3 purchased that one of the things was you could take the machines
4 curb side, I guess curb side voting for the disabled, what kind
5 of procedures do you have in place for that?

6 I have one other.

7 MS. HICKS: I'm going to probably offer to
8 share this with Aaron. But with regard to our responsibilities,
9 the Secretary of State's Office, we are offering a disability
10 coordinator at the state level.

11 However, with regard to particular issues that
12 come up at a polling location or within the authority of the
13 board of elections, there are staff members who actually work
14 with individual issues on a daily basis, because that's what's
15 done at the local level.

16 The Secretary of State at the state level can
17 give guidelines and information, and we provide training
18 materials to local officials.

19 The actual day to day breaks in terms of what
20 needs to be done specifically for a voter, either prior to the
21 election or on election day, actually happens with the officials
22 at the polling place and boards of elections in that county.

23 Specifically, though, we do have information
24 relative to which we've sent out to counties already on the

1 voting units that can go curb side.

2 We actually have had -- and I reviewed
3 information from inquiries at the board level where that asked
4 for demonstration of these units, we've taken them out to show
5 them how they can be used in a regular vehicle that is not
6 disability equipped, how they can be used in a van that had
7 been motorized, the person is maybe in a wheel chair.

8 Or if they are not able to get out of the
9 vehicle, how they can be put inside. The unit weighs I think
10 between 16 to 14 pounds, and it can be used on a lap or it can
11 be used on a platform, so the person can't have pressure on
12 their lap with the unit, they can put it on a platform in order
13 to use it that way. We provided information to the counties
14 about those kinds of units.

15 We have units that are certified, able to be
16 purchased by the counties.

17 MS. RAMOS: Is there a requirement that each
18 county or each precinct -- what are the requirements?

19 MS. HICKS: The requirements are they have
20 disability access at the polling location. There are certain
21 units they can choose from, depends upon the vendor that they
22 actually select as to what type of equipment may be used at that
23 polling location.

24 Some counties have precinct counts, some have

1 DRE, some have touch screen machines.

2 Aaron may also want to offer some information
3 about what county officials are doing.

4 MR. OCKERMAN: Chairman Battle, and Mrs.
5 Ramos, thank you very much for that question, I'll defer a lot
6 to the election officials who are coming in later this morning
7 as far as specifics.

8 I will tell you generally, though, as far as
9 voter education is a priority for my folks right now. Because
10 as I indicated the technology can be fancy and flashy, but if
11 the voters can't work it, it's not a lot of good.

12 Generally speaking, every county having new
13 equipment is right now in the process of very aggressively going
14 around their county and getting in front of every civic
15 organization that they can, putting up demonstration units at
16 libraries.

17 They made the county fair rounds last summer and
18 fall with the new voting technology. I think the goal really is
19 if we can get a hundred percent of our voters to vote that
20 machine or see that machine prior to May that would be
21 spectacular.

22 That won't happen. The goal of every county is
23 to get out to as many groups, civic organizations, libraries,
24 public places, malls, as was indicated yesterday and really try

1 to educate those voters about that new technology and how it
2 works.

3 As far as what's required by law as far as
4 disability voting goes, I think Ms. Hicks was a hundred percent
5 correct, the Help America Vote Act and not anything the state
6 has required, actually requires one handicapped accessible
7 voting unit per polling location.

8 Which means as was indicated yesterday that's
9 basically an audio device that voters who cannot see or have
10 other physical impairments will be able to vote independently
11 on.

12 And that's the standard that's been held up is
13 the privacy of that voter, and are they able to privately cast a
14 ballot.

15 That's the goal that's been on everyone's mind, I
16 know certainly the Secretary of State since we went down the
17 road with the vendors and started exploring the technology.

18 MS. RAMOS: So you're saying outreach voter
19 education is only within the realms of the boards of elections,
20 how is it being funded? That would be a serious problem, and I
21 want to know what's happening with funding, too.

22 MS. HICKS: Well, we actually have a
23 partnership in this area. As I indicated with regard to the
24 contracts for vendors that sell voting equipment to the State of

1 Ohio, as part of the contractual requirements we incorporated
2 hours of voter education and training into the contract
3 requirement for the vendor.

4 So what Aaron was talking about having this
5 display of equipment at county fairs and shopping malls, having
6 mobile displays that can go around to churches and schools and
7 those things, vendors have allowed demo machines to be used in
8 that regard as part of their responsibility under the contract,
9 to provide voter education about the machines.

10 There are DVDs and displays about how to use the
11 voting machine, there are pamphlets about how to use the
12 machines.

13 But one of the things we were encouraging
14 counties to do, if at all possible, is to make sure that the
15 equipment actually touched the voters, potential voters who
16 could come out so they could see and feel the machine.

17 It's one thing to have a pamphlet, but as Aaron
18 accurately pointed out, it's another thing to see the machines
19 you heard about.

20 You can go to the library, we had it at the Ohio
21 State Fair, all the vendors participated in that local event.
22 They've been very helpful in providing equipment at those
23 locations.

24 But the state actually has that as part of the

1 contract for vendors to participate in county fairs, the
2 counties have gotten grant money to do voter education programs
3 for voters in their local areas.

4 SENATOR JACOBSON: Two quick comments.
5 First of all, we're required as part of the spending -- or
6 excuse me, required as part of the decision in House Bill 3 to
7 do voter ID, that the county boards notify before the next three
8 federal elections, meaning November `06, and then in the
9 Primary, and in November of `08, reminding voters of the ID
10 choices and the requirements to provide identification.

11 Secondly, as to training and education, of the
12 HAVA funds we did appropriate five million split equally between
13 the county boards and the Secretary of State's office.

14 The county boards, I'm not aware of what they've done
15 with it, whether they used it or how they've used it. And as I
16 said the bulk of the Secretary of State's money was spent in
17 `04.

18 CHAIRMAN BATTLE: Ms. Bledsoe.

19 MS. BLEDSOE: Ms. Hicks, so that I can have
20 clarity, you talked about grant funding, the grant funding,
21 could you go over what type of funding that was, was that for
22 public education?

23 And you also said only 14 counties applied for
24 it. Do you have a list of those 14 counties?

1 MS. HICKS: I certainly can provide a list.
2 I didn't come prepared with that information today.

3 The grant funding I referred to with regard to
4 the 14 counties that applied for funding was with regard to
5 funding for handicapped accessibility or disability locations
6 that could be permanently or semi-permanently improved for
7 access for disabled voters.

8 That is a separate funding or separate grant
9 process from HAVA funding associated with voter education and
10 education of election officials and poll workers.

11 CHAIRMAN BATTLE: Ms. Zealey.

12 MS. ZEALEY: Thank you, Mr. Chairman. My
13 question is for Ms. Hicks.

14 With regard to the Secretary of State's office
15 and constitutional responsibilities, I can think of three major
16 areas where the local boards of education would look to your
17 office for answers, and for leadership, training, interpretation
18 and guidance in voter education.

19 If I want to see the Secretary of State's
20 blueprint for what's going to happen this year in the May
21 election and the November election, where can I find that
22 information?

23 You mentioned for example DVDs available for
24 disability coordinators at the local level. I'm interested in

1 completing our record to the extent that you're very limited in
2 the time that you have here today to answer specific questions.

3 I'm interested in getting, if you will, a full
4 blueprint of what is planned for this year's election. And then
5 I have a follow-up question, if you will.

6 MS. HICKS: Generally, with regard to the
7 state's plan for HAVA implementation, if you go to the Secretary
8 of State's website, we started our first state plan in 2003, and
9 we have updated it based upon elective changes, such as the
10 VVPAT requirement and other things that have impacted how we
11 implement the Help America Vote Act.

12 So the current state plan has information in it
13 as to the Secretary of State's overall state implementation of
14 HAVA. So that provides some information for a general overall
15 background as to what the state is involved in.

16 If you would like specific information I can
17 provide you particular documentation at a later date if there is
18 something that specifically you want us to hone in on.

19 MS. ZEALEY: I'm not just thinking about
20 HAVA, but House Bill 234 and House Bill 3.

21 With regard to training for example, do you have
22 a training module that's planned for poll workers that you can
23 share if that's computer based, or if it's in writing, something
24 of that nature?

1 Also on voter education, both the timing of when
2 it will go out to the voters and what it will contain in terms
3 of concrete information.

4 And then my follow-up question is regarding
5 interpretation and guidance on provisional ballots. The two
6 questions I think that were profoundly important in 2004's
7 election were when would the poll workers give a provisional
8 ballot to a voter, and how would that ballot then be determined
9 to be counted, that it is in fact a ballot stole?

10 And if you could address those two issues on
11 interpretations and guidance of how that will happen in 2006,
12 how does a poll worker determine whether to give someone a
13 provisional ballot.

14 Or even more severe, tell them that's all they
15 are entitled to get. And then how is that ballot then
16 determined to be valid or not.

17 And if that is also in writing, I'd like some
18 direction to the Secretary of State's interpretations on those
19 issues.

20 MS. HICKS: I think specifically with regard
21 to your questions on 2006 processes, one of the benefits of
22 having experiences in 2004, we did get a lot of information and
23 input in a number of sectors relative to provisional voting,
24 other than what was provided in HAVA.

1 With regard to the new election we've had several
2 law changes, as Senator Jacobson referenced, which now affects
3 provisional voting that did not exist in 2004.

4 The primary way that the Secretary of State gives
5 information to boards of elections and county officials on
6 interpretation is through one source is a directive from the
7 Secretary of State's Office.

8 Another source are advisory memorandums relative
9 to new changes that have occurred in law. We have submitted
10 information informing them of both the changes in 234 and House
11 Bill 3, and I can provide you copies of that.

12 It is a guide post, provides them what the law is
13 now, how it is to be interpreted and when it becomes effective.

14 It also advises them that there will be future
15 information forthcoming relative to other components of House
16 Bill 3, which go into effect at a later date. Those two
17 documents I can provide you.

18 Regarding your previous comments relative to
19 voter education and training, as I indicated before we have a
20 partnership with the counties with regard to voter education.

21 We have one component of voter education,
22 certainly the county officials have other things that they do,
23 which are not necessarily dictated by the Secretary of State,
24 and voter education.

1 I can provide you the module of training
2 information that we provided, which poll workers would get and
3 election officials are required to provide this information
4 within a certain number of days prior to the election.

5 So the Secretary of State has, if you will, the
6 basic model. And then the local boards of election can build on
7 that if they will, as long as it's consistent with the basic
8 training.

9 MS. ZEALEY: Correct, correct. Because
10 there also may be local issues that would appear on the ballot
11 associated with that particular election, not addressed at our
12 level.

13 So we provide basic information as to what the
14 laws are relative to provisional voting or absentee voting, but
15 how they go into other areas, which are not covered, because
16 they are not affected in the entire state, they may be only a
17 local issue, can be added to the training information that we
18 provide them.

19 CHAIRMAN BATTLE: Mr. Wheeler.

20 MR. WHEELER: Thank you very much, Mr.
21 Chairman.

22 Yesterday I was very concerned and I still am
23 today about the disabled. Between today and just go back 40, 50
24 years ago, people having the right to vote, accessibility, I

1 understand there's approximately 11,000 voting places in the
2 State of Ohio.

3 And I heard something a few minutes ago, the
4 machines can come out to the curb to assist people that are
5 disabled.

6 Do we know exactly how many machines we have?
7 Because apparently what I'm hearing, what I heard yesterday was
8 just a few for the whole state, and I was hoping I'm wrong.
9 That we might be able to address that concern.

10 Does anyone keep up with a report with this, is
11 there a reporting mechanism from the county or Secretary of
12 State's office?

13 MS. HICKS: Specifically with regard to how
14 many machines there are I don't have an exact number for you.
15 I can tell you what they are required to be with regard to
16 disability units.

17 There is a disability unit required for every
18 polling location. The number of machines that we currently have
19 in the state is also now designated to be one machine for every
20 175 voters.

21 MR. WHEELER: Can that be certified some
22 kind of way that's in place, so when people go nobody has to be
23 turned around, is that certified some kind of way?

24 MS. HICKS: It is part of documentation that

1 we have provided to the counties, and certainly I can provide
2 you the information that we have submitted to the county boards
3 of elections that they are required to follow.

4 MR. WHEELER: Okay.

5 CHAIRMAN BATTLE: And with additional
6 information that's going to be provided, I'll just repeat the
7 record of these proceedings will remain open until April the
8 1st, so if additional information can be provided that would be
9 appreciated before that time.

10 Other panelists have questions?

11 MR. DOSHI: Much of the things of the
12 discussion has been about mechanics of voter education and it is
13 incumbent upon the citizens to be educated and to actually
14 participate in the process.

15 My concern is to the disabled community again.
16 Yesterday I learned there are 1.4 million unregistered disabled
17 American voters in our state.

18 Whose responsibility is it, is it our officials
19 doing something about getting them to participate? If they are
20 not participating in the process that means they are not
21 worrying about that at all in bringing them in the process,
22 actually what do we do about that? I hope it's not that hard of
23 a question.

24 SENATOR JACOBSON: First of all, I would

1 state that number must be a flat number, because --

2 MR. DOSHI: It's Ohio.

3 SENATOR JACOBSON: It's not possible, we
4 only have 11 million citizens. If you take a look at the number
5 of citizens age to be registered, and those and the number that
6 are registered, I don't think it's possible to have -- I don't
7 think it's possible for that to have been -- for that to have
8 been an accurate Ohio number.

9 There may be a number, a large number of people
10 in Ohio who have not registered, it's not all because of
11 disability. I'd be happy to review the information, take a look
12 at it.

13 What I would say is that the government, the
14 legislature as well as the federal government has provided a
15 number of different registration methodologies, including the
16 requirement that governmental offices that they ask and require
17 people about the registration status and encourage them to
18 register to vote.

19 Obviously in America we have the right not to
20 participate should we chose to do so as well. So no one is
21 compelled to register. We don't offer benefits only to those
22 who register to vote or do anything of that sort, because people
23 have the right to choose to participate or not to.

24 I would -- I have heard the reports that not

1 everyone is enforcing it, in other words that not everyone was
2 supposed to be asking is asking.

3 But hopefully those are handled by reporting it
4 to the supervisors and the elected officials that are ultimately
5 responsible for the operation of those particular government
6 offices, but I do believe the information is on the books and
7 the requirements are there that we do outreach in the
8 appropriate fashion.

9 MS. HICKS: An additional comment I'd like
10 to make, which really happens not only just in federal
11 elections, but every election and Aaron is aware of this as
12 well.

13 We always work with our county officials, because
14 they will request certain information from us relative to
15 information that should go out to nursing homes to assist the
16 care living facilities, to senior centers, to hospitals, et
17 cetera.

18 And we have encouraged them through
19 communications with our office, both in writing and orally, we
20 talk to elections officials on a daily basis, it's important,
21 and other election officials go out and they go out to community
22 centers and places where persons are not able to come in and get
23 information about voter registration.

24 This particularly comes up during the months when

1 voter registration forms are due prior to an election. So if
2 travel is even involved, associated with a person leaving the
3 polling location or their place of work in order to go out to a
4 person who's not able to get information on voter registration
5 that is encouraged and we have our election officials do that.

6 We have them provide information in community
7 centers and other locations where persons may not fit the
8 definition legally of having a disability, but they may have an
9 inability to get to the information regarding voter
10 registration.

11 The forms are brought to them so they can get
12 registered to vote. In addition we have information that we
13 send out through our field representatives, when we get requests
14 like this, we do that with the Secretary of State's office to
15 take voter registration forms out.

16 MR. OCKERMAN: I certainly agree with the
17 comments made by both panelists. A lot of this falls on local
18 folks to implement, make sure it's happening.

19 Just as with the case with any other
20 relationship, there are counties where the county boards of
21 elections have a very strong relationship with the disability
22 community, at the local level there are other counties where
23 it's not as strong, but certainly to the extent as an
24 association we can encourage our folks to work at the local

1 level that they know in the disabled community.

2 We always do that, we encourage them to
3 strengthen the relationships to reach an understanding of what
4 the needs are on both sides, and hopefully work together in a
5 very strong fashion to accomplish the benefits and goals that
6 you outlined.

7 CHAIRMAN BATTLE: Ms. Citrino, followed by
8 Ms. Ramos.

9 MS. CITRINO: Thank you, Chairman Battle.
10 I have two separate comments.

11 First, a follow up on what Pastor Wheeler said.
12 We were told yesterday that while each polling location would
13 have an accessible voting machine there, that that was different
14 from curb side voting, in that there were only six locations
15 statewide where curb side voting was going to be made available.

16 So when you provide the information if you could
17 clarify the difference. We understand they are going to be
18 accessible machines, but we also want to know about curb side
19 voting.

20 And, two, Senator Jacobson, you mentioned that
21 the change was made to require verification in absentee ballots,
22 you felt that because verification was necessary for first time
23 voters, that verification really would be acceptable to extend
24 to all voters.

1 And a lot of the concern yesterday was about
2 elderly people in maybe assisted living facilities where they
3 are not having something with their address on it or utility
4 bill, they don't have a drivers license.

5 Could you address what provisions have been made
6 for people who are in that situation, because there was a
7 considerable concern that those people would not be stopped from
8 voting by absentee ballot.

9 SENATOR JACOBSON: Thank you. First of all,
10 often what happens to the absentee ballot area with assisted
11 living or nursing home facilities is the balloting does not take
12 place by mail, it takes place by poll workers coming out prior
13 to the election to the facility.

14 If in fact they hire additional people from the
15 Board for the -- prior to the elections, and they will go to the
16 facilities and personally in person get the absentee requests
17 and then personally come back with the ballot and assist these
18 individuals in voting.

19 And so it allows for much, you know, a much
20 better form of identification to be made by the fact that you
21 are there at their location and you can personally verify that
22 they live where they say they do, which is very different.

23 I would also point out that most people in those
24 facilities are probably receiving some form of government

1 assistance.

2 They are either receiving Social Security, or
3 some -- if not Medicare or something of the like, and so they
4 will be getting communications or some documentation of that,
5 which would allow them to be assisted.

6 We are certainly not required to make people send
7 in something that discloses all of their personal information.
8 But they will have the documentary evidence.

9 But the assumption is in these facilities as it
10 works now, the owners, managers, the personnel of the facilities
11 assist their residents with the voting process.

12 That's frankly why this takes place the way it
13 does, because the owners or the managers of the facilities have
14 set this up over time with the boards of elections to allow
15 their residents special access to voting procedures.

16 CHAIRMAN BATTLE: Ms. Ramos.

17 MS. RAMOS: I want to be sure I clarified
18 the fact of the optical scanning that was brought up yesterday.
19 I noticed on this map there are many counties in Ohio that use
20 optical scan.

21 Yesterday there was a concern about x's, you
22 brought up circles, are those counted? I want to know are they
23 counted if they have circles, x's or anything else. I want to
24 be sure to clarify that, and also stray marks, something was

1 brought up also.

2 MR. OCKERMAN: Chairman Battle, and Ms.
3 Ramos very good and excellent question.

4 There are actually -- for the committee's
5 information there are many states actually that are actually
6 considering to meet the requirements of HAVA that the entire
7 state use optical scan voting technology.

8 I would note that Ohio I think rightly allowed
9 the counties to make a decision as to which type of voting
10 equipment they wanted to use.

11 But to the extent that those circles or x's or,
12 you know, people -- it's funny, I'm not sure Mr. Cunningham is
13 going to be here unfortunately, but if you ask a county that
14 uses optical scan equipment how creative their voters can get
15 when it comes to marking their optical scan ballots, I think
16 you'll be surprised by some of the marks they get.

17 What the General Assembly did was codify what had
18 been the common practice through the Secretary of State's
19 directive for a long time with regard to those particular marks.

20 And in House Bill 3, in that piece of legislation
21 they actually enumerate which mark constitutes a valid vote. I
22 think Ms. Rosenfeld can give you more information.

23 We had a number of conversations, she was the
24 first one that told me that these marks actually go back several

1 Secretary of States, and they worked I assume with their local
2 boards to try to determine which marks were most commonly made.

3 The only requirement the General Assembly put was
4 they were made in a consistent fashion. And I think the
5 important thing there is for purposes of determining the voter's
6 intent, sometimes we'll get a ballot that are all x's, and there
7 is a circle.

8 Well, you know what, as an election official how
9 do we determine what that means. So I think the General
10 Assembly in giving guidance to counties said that you should
11 examine the marks that are made, determine whether or not they
12 meet the criteria set forth in law, and determine whether or not
13 they were made in a consistent fashion that would allow you to
14 screen the voter's intent, based on those marks. I hope that
15 answers your question.

16 MS. RAMOS: Okay.

17 CHAIRMAN BATTLE: Mr. Humeidan, followed by
18 Ms. Bledsoe.

19 MR. HUMEIDAN: I have a comment and a couple
20 of quick questions.

21 The first comment is in regard to the statement
22 that Senator Jacobson made, some of the comments about the voter
23 registration fraud.

24 I personally during the last elections worked

1 with the NAACP Voter Funds and Americans Coming Together, for
2 them to reach out into the community of new citizens.

3 I think both of these organizations and other
4 organizations should be commended for the work they did. I hope
5 these organizations are given the opportunity to defend
6 themselves and make comments about -- comments about the
7 statement that was made.

8 Obviously there was some issues, but I hope that
9 these organizations again are commended for the work they did.
10 They did a lot of great work within the immigrant community,
11 within the community of new citizens.

12 My questions are with regard to the
13 identification. We're looking at the chart that was given to us
14 and it says that voters can use their Social Security number,
15 for the last four digits of the Social Security number.

16 Are we requiring voters or registrations to have
17 Social Security numbers on them? I know at one time that wasn't
18 a requirement, it was a form but it was an optional thing. Are
19 we requiring that now? Is that how it's going to be verified?

20 And the other question is, we've heard some
21 issues about discrepancies in some of the ways the laws are
22 implemented on the county level and are the Board of Elections
23 working together to make sure that all of these issues are
24 resolved and the same training is being conducted to all poll

1 workers statewide, so all of the rules are implemented the same
2 way across the state.

3 SENATOR JACOBSON: Before the answer is
4 given I do need to apologize, I have to go. I'm solely
5 responsible for picking up a child in 15 minutes, and my wife
6 will deprive me of all of my civil rights if I fail to show up
7 up at the appropriate time.

8 So thank you very much and I look forward to
9 working with you in the future.

10 CHAIRMAN BATTLE: Thank you.

11 MR. OCKERMAN: Chairman Battle, and Mr.
12 Humeidan, a couple again very good questions.

13 The first on Social Security numbers. That is
14 not a required form. Under the Help America Vote Act, I believe
15 we are now required to ask for some kind of identifying number,
16 which can be either a driver's license number or the last four
17 numbers of the Social Security number.

18 And then that will be entered into the statewide
19 voter registration data base, which will help us determine
20 whether if there is a Jad Humeidan who is registered in Franklin
21 County, and one registered in Hamilton County. There will be a
22 differentiator within that data base. But it's not required
23 that you disclose your full Social Security number on that form.

24

1 We then under HAVA now have an arrangement
2 through our Bureau of Motor Vehicles, through the Social
3 Security Administration where we can have access to those
4 identifying numbers, that we can then balance against each other
5 in order to make sure that one voter's profiles matches the
6 profile with Social Security Administration's. So I think
7 that's how that particular instance would work.

8 And did you want to clarify anything else?

9 MS. HICKS: That's good.

10 MR. OCKERMAN: Okay. With regard to
11 statewide standards and how they are being applied locally, this
12 is something that we always -- it's the beauty and the detriment
13 of our system, is that despite federal intervention, despite
14 greater standards from the state elections, fortunately we
15 believe are still administered at the local level, and we think
16 that's the real strength of our system here in Ohio.

17 That local boards of elections are able to
18 respond to local problems, local circumstances, local instances
19 and relate directly with their voters, so we think that's a real
20 strength.

21 But at the same time as you noted it does give
22 some flexibility, it does allow them some opportunity to deviate
23 slightly in their administration of elections.

24 I would say that I think it's our belief that

1 working with the Secretary of State on these new standards and
2 directives that they'll be issuing, I think you will find that
3 as boards of elections go through, and I encourage you to ask
4 this of the boards this afternoon, you will find that they will
5 work very hard to adjust their policies and procedures to
6 reflect those state standards.

7 And it's my belief that so long as those
8 policies, those local policies fall under the umbrella of the
9 directive, which falls under the umbrella of state law, which
10 could fall under the umbrella of the federal law, I think we are
11 protected from arguments that counties are disparately applying
12 the law.

13 So there will always be a certain amount of
14 flexibility just by the nature of our system, which again I
15 think is our strength.

16 But I would say so long as the counties acting
17 within the overall structure of those state's standards I think
18 they are safe, and I think the voters should be secure they have
19 a fair application of the law.

20 CHAIRMAN BATTLE: Final question, Ms.
21 Bledsoe.

22 MS. BLEDSOE: My question goes to ID
23 requirements and the comments that were made by Senator
24 Jacobson, when he said that we are now requiring people to send

1 in information that would disclose their personal information.

2 I look at your requirements of a bank statement,
3 a pay check, to me are disclosing personal information. Had
4 there been any thought for those persons who may send in a bank
5 statement or a pay check what will be done to protect the
6 privacy of those people who will mail theirs in, and how will
7 those be disposed of and protected for those individuals?

8 In my opinion that is extremely personal. Thank
9 you.

10 MR. OCKERMAN: I would -- I will defer a
11 little bit maybe to Cassandra, and defer more to the boards who
12 come in and talk specifically about how they will handle that
13 from a legal perspective.

14 The requirement is only that they disclose
15 certain information, that being a name and address for
16 verification purposes.

17 So while you may send in a bank statement there
18 is nothing that stops that person from redacting all of the
19 other information, other than their name and address.

20 That's really what the General Assembly is
21 requiring us to gather for identification purposes. So the
22 citizen should not feel compelled to send in personal
23 information, other than their name or address.

24 Now, if that information does come into the board

1 of elections I'm not sure how exactly that will be disposed
2 with. I will again defer to the county boards who are here
3 later this morning who might be able to answer that question.

4 MS. HICKS: It's unfortunate that Senator
5 Jacobson left, because as a legislative requirement ID
6 information is something that was discussed I think
7 significantly in the legislature.

8 It's not something that the Secretary of State's
9 office promoted. So you have a legitimate concern that
10 information could be communicated to an individual at a board of
11 elections or some other office with the state that was not
12 really intended to be provided, simply because a person is
13 trying to comply with the law.

14 I think that's very, very serious. And in terms
15 of what we can do about that, I think that our directives and
16 information as we develop the process is to direct the boards
17 how to handle this, will have to address mitigation and
18 providing the correct information to citizens that they did not
19 need to send anything else in, other than a statement that says
20 National City Bank, it says the address of the bank, looks as
21 though it's on the bank information, but all of the other
22 information can be taken out simply with a magic marker or with
23 some other information or some other device that can mark out
24 the information that is not critical.

1 Because verification of name and address is what
2 the law is. However, I think that you demonstrated one of the
3 problems with being able to have a good purpose, but actually
4 once you put the information together it may be overly broad in
5 terms of its application.

6 So I think that's going to be something that's
7 going to be a project for us at the state and local levels to
8 make sure we put this information in a format where people who
9 are bombarded with the information do not send us information
10 that includes Social Security numbers, full numbers, those kinds
11 of things, or include information on bank accounts, or other
12 information not required to be sent in for voter registration.

13 CHAIRMAN BATTLE: We appreciate the time
14 that our panel has given to this and certainly our members have
15 had a lot more information and clarified some things.

16 Ms. Hicks, would you be able to get to us the
17 information concerning the SOS directive, or directions of the
18 advisory memo and training module that you mentioned, could you
19 do that for us next week so that we can have that?

20 MS. HICKS: Yes, absolutely, you'll have
21 that prior to your April 1st cut off time.

22 CHAIRMAN BATTLE: Excellent, excellent.

23 We'll still be okay, members, time wise. We'll give
24 ourselves 15 minutes with the indulgence of the next panel and

1 we should be able to adjourn as scheduled at 1:00. Thank you.

2 (Thereupon a brief recess was taken.)

3 CHAIRMAN BATTLE: I'd like to thank the
4 panel for being with us. The committee is now reconvened.

5 And with us for this panel we have Michael Vu, of
6 the Cuyahoga Board of Elections; Mr. Matthew Damschroder of the
7 Franklin County Board of Elections; and a stand in for Mr.
8 Cunningham, who's unable to be here, who is from the Ohio Honest
9 Elections Commission, Mr. Cliff Arnebeck.

10 We will begin with Mr. Vu.

11 MR. VU: Thank you, Mr. Chairman and
12 Committee Members. Thank you for this opportunity to convey the
13 work of the Cuyahoga County Board of Elections to ensure the
14 franchise of over one million registered northeast Ohioans.

15 Your request to speak on our preparation for
16 preparedness for the 2006 elections brings to the surface the
17 need to become more aware of how recent federal and state
18 legislation has affected local election officials' ability to
19 conduct elections, and how we will prepare to meet voters at the
20 polls.

21 My name is Michael Vu, Director of the Cuyahoga
22 County Board of Elections.

23 Cuyahoga County is the 15th largest election
24 district in the United States with a diverse demographic.

1 Cuyahoga County is home to 1.4 million residents. Of those 31
2 percent of the population is non-white.

3 The median age of county residents is 37.3 years.
4 19 percent of the population does not have a high school
5 diploma, and only 15 percent have their bachelor's degree.

6 As part of my testimony I have included the data
7 the Board of Elections has compiled to be able to address the
8 state of our county in a more systematic fashion.

9 The demographic information provides some insight
10 to the overall diversity of Cuyahoga County, as compared to
11 Montgomery County in Maryland, and Fulton County in Georgia.

12 Let me just discuss Cuyahoga County's work in the
13 past two years since the 2004 Presidential Election, which will
14 help convey how we are able to better serve our voters.

15 OUR RECOMMITMENT EFFORTS

16 Since 2004 the Cuyahoga County Board of Elections
17 has recommitted to its electors that we will improve the
18 election system to be able to ensure that legal votes will be
19 counted.

20 What have we done to accomplish this
21 recommitment?

22 First, the Board of Elections in compliance with
23 the Help America Vote Act of 2002, passed by Congress, will have
24 in place electronic voting units, which will make more

1 definitive the voter's intent and allow accessibility for
2 persons with a disability.

3 Like many jurisdictions across our country, for
4 the first time in our history, the Cuyahoga County Board of
5 Elections is able to have redundancy in safeguarding our votes.

6 Beyond complying with the Help America Vote Act,
7 the introduction of new technology in the voting equipment
8 environment allows us the capability to serve those who may not
9 be proficient in the English language by providing the ballot in
10 their primary language at a relatively cost effective method.

11 Since my arrival to the Cuyahoga County in August
12 of 2003 from Salt Lake County, Utah, an analysis was conducted
13 on when Cuyahoga County would fall under Section 203 of the
14 Voting Rights Act Minority Language Provisions.

15 As in many jurisdictions Cuyahoga County has a
16 vibrant and dynamic Hispanic population and we are projected to
17 fall under the Voting Rights Act of 1965's Minority Language
18 Provision by 2010 to 2013.

19 Our polling locations have been surveyed and
20 those that require temporary equipment, installations to make
21 them more accessible on Election Day, in order to be compliant
22 with HAVA stipulations, have been ordered and will be in place
23 for the May 2nd Primary Election.

24 In September of 2004 we implemented a new voter

1 registration system, which has allowed the agency to enter a new
2 era of greater accuracy in processing voter registration cards
3 and expediting the retrieval process of each voter registration
4 card.

5 We have scanned over a million voter registration
6 cards and have attached these images to the voter's electronic
7 record.

8 This is significant since we are now better able
9 to manage each voter's record and identify and correct errors
10 with several key strokes, instead of the traditional and manual
11 approach of hunting for the proverbial hard copy.

12 This move to a new voter registration management
13 system protected the franchise of tens of thousands of new
14 registered voters, including thousands of voters from minority
15 groups.

16 We were able to create an accurate poll book so
17 that voters were able to cast a regular ballot, rather than a
18 provisional ballot.

19 We were also able to cross reference registration
20 information for voters who cast a provisional ballot quicker and
21 more accurately.

22 The system also helped quicken the response to
23 calls from poll workers requesting information regarding a
24 voter's correct precinct.

1 As we look to the elections of 2006, the question
2 beckons, are we prepared? Yes, we are prepared for the Primary
3 Election and subsequent elections in 2006.

4 In fact, with the implementation of the touch
5 screen voting system we have additional ways to ensure a voter's
6 franchise.

7 From this point forward the touch screen voting
8 system will eliminate over voting, which averaged .08 percent,
9 and .96 percent in Cuyahoga County for general elections in the
10 years 2001, 2002 and 2003.

11 However, this over vote range does not accurately
12 portray what was happening at the precinct level. On the
13 precinct level the data indicates that several dozen to several
14 hundred precincts, depending on the election were consistently
15 higher than the one percent over voting benchmark and have gone
16 as high as 10.48 percent.

17 The touch screen system will allow for a review
18 of the ballot before the ballot is cast. The system will also
19 alert a voter if a race has been under voted.

20 This system function replaces the voter education
21 initiatives dedicated to over voting and under voting and allows
22 elections officials to dedicate much needed resources to other
23 areas of concern.

24 With new technology will allow visually impaired

1 voters access to touch screen voting system with minimum help
2 and allow them to actually cast a ballot on their own. This
3 function was not available under the punch card voting system.

4 A voter education and communication plan has been
5 set where over a million dollars will be expended to ensure
6 proper training of our 7,000 poll workers, and educating the
7 million registered voters on the new laws and the voting system.

8 Over the course of 2006 we will complete over a
9 thousand demonstrations of our new voting system. To date our
10 countywide voter education campaign has completed over 436
11 demonstrations. And will complete an additional 250 events
12 between now and May 2nd, 2006.

13 In the next several weeks we will launch a new
14 website, which will make it more functional and user friendly
15 for Cuyahoga voters and other constituencies.

16 Our communication plan will include paid
17 advertising with our local newspaper, billboards and advertising
18 on mass transit systems.

19 We have a suite of newly designed brochures and
20 will be mailing an Official Voter Information Guide, similar to
21 2004, on how and where to go to vote to every registered voter
22 in Cuyahoga County.

23 RECENT STATE LEGISLATION

24 Since the 2004 Presidential Election much has

1 occurred in the enacting of legislation that will have a direct
2 affect on our ability to administratively conduct elections. We
3 talked about that a little earlier with the prior group.

4 In 2005 H.B. 234 was passed, which allowed for no
5 fault absentee voting and placed new requirements on voters to
6 write the last four digits of their social security number,
7 driver's license or some form of identification on their initial
8 application and upon returning their voted ballot.

9 There are some concerns on how to
10 administratively handle that when it gets down to the Board of
11 Elections.

12 The Board of Elections this past week passed our
13 policy on how we will handle absentee applications and ballots,
14 which are missing the new required information.

15 This includes sending them a letter and
16 contacting them by phone after the 10th day by phone if
17 necessary and if the phone is provided.

18 By examination the Cuyahoga County Board of
19 Elections believes absentee voting will increase each year. In
20 the 2004 General Election we saw over 100,000 applications
21 submitted, which was over a 10 percent increase from the 2000
22 Presidential Election.

23 Most recently the Governor signed H.B 3, which
24 drastically changes the administration of election. Many of

1 these changes were beneficial to complying with federal mandates
2 and updating antiquated legislation.

3 However, others became a cause for concern,
4 including the requirement for voters to show identification
5 before being issued a ballot.

6 PITFALLS & PRATFALLS

7 It must be noted that with all the preparations
8 that comes with conducting an election, there are variables that
9 are simply out of our control.

10 The number one issue that will play a significant
11 role in the success of the 2006 elections will be our poll
12 workers.

13 As you may know poll workers are in fact daily
14 citizens who have been kind enough to volunteer their time to
15 participate on Election Day. They are not full-time employees
16 as some may believe.

17 With the aging population we recognize that a new
18 population of young and energetic people must be recruited and
19 work alongside our existing poll workers.

20 However, a new standard of quality is being
21 conveyed across the United States to carry out the elections for
22 2006.

23 To assist our efforts, Cuyahoga has a very
24 successful student poll worker program, which now has grown

1 large enough to encompass 10 percent of our poll worker
2 population.

3 However, we see additional efforts must be made
4 on a federal and state level to increase the level of support
5 and awareness on this issue.

6 THE FUTURE OF THE VOTING RIGHTS ACT

7 The residents of Cuyahoga County, in the State of
8 Ohio, have had their voting franchise protected and expanded
9 through the Voting Rights Act of 1965.

10 Although Ohio is not a state covered by Section 5
11 of the Voting Rights Act, the residents of this state have
12 benefitted from those states that are covered by Section 5 of
13 the Voting Rights Act.

14 During redistricting of congressional districts
15 and at the precinct level there is an awareness of which
16 redistricting plans have violated the Voting Rights Act, such as
17 at-large districts for federal office.

18 The Voting Rights Act of 1965 has given minority
19 groups the ability to challenge redistricting plans legally.
20 The ability to legally challenge a district boundary has in
21 itself assisted in the franchise of minority groups.

22 Although the specific provisions of the Voting
23 Rights Act that are set to expire will not occur in 2006, let me
24 convey the support I have with the renewal of these sections.

1 To give it a personal touch my family and I have
2 benefitted from these provisions, as well as millions of United
3 States citizens.

4 I encourage you to support these provisions to
5 assist voters who desire to exercise their franchise in the
6 polls, but who may need accommodations in doing so.

7 This concludes my testimony. I would be more
8 than happy to answer any questions that you may have.

9 CHAIRMAN BATTLE: Thank you, Mr. Vu. Mr.
10 Damschroder.

11 MR. DAMSCHRODER: Good morning, Mr.
12 Chairman, and ladies and gentlemen of the Committee.

13 I am Matthew Damschroder and I have held the
14 position of Director of the Franklin County Board of Elections
15 since 2003.

16 The Franklin County Board's elections
17 administration jurisdiction includes the State's capital and
18 largest city, Columbus, and has the second highest number of
19 registered voters in the state.

20 I am pleased to address the State of Ohio's
21 preparedness for the 2006 federal, state and local elections
22 from the perspective of Franklin County.

23 Since 1992 Franklin County voters have cast their
24 ballots using the Danaher Electronic 1242 Electromechanical

1 Voting Machine.

2 This early version of direct recording electronic
3 or touch screen voting provided many of the voter protections
4 required by HAVA, and not afforded by other systems, including
5 the protection of over-voting, which is one of the most frequent
6 errors found with punch cards and optical scan.

7 Because of the requirements for audio ballot
8 capabilities and the certification to 2002 FEC voting machine
9 systems standards, the Franklin County Board knew immediately
10 upon HAVA's enactment that its current system would have to be
11 replaced in time for the first federal election of 2006.

12 Then in early summer of 2004 the Ohio General
13 Assembly sent Franklin County's voting system into further
14 obsolescence when enacting the voter verifiable paper audit
15 trail for all electronic voting systems beginning in 2006.

16 It was this voting system, the same one that has
17 been used since 1992 that was used during the 2004 General
18 Election.

19 Despite increases in population and voter
20 registration, few additional machines have been purchased since
21 1992.

22 Both the requirements of HAVA and for the VVPAT
23 rendered the purchase of additional machines economically
24 impractical.

1 It was this shortage of voting machines, a
2 shortage of at least 1,000 to 1,500 machines that resulted in
3 long lines on November 8th, 2004, when confronted with an
4 increase in voter turnout equivalent to almost 25 percent more
5 individuals casting ballots at the polls on Election Day,
6 compared to the record setting turnout for the Bush v. Gore
7 Presidential Election of 2000.

8 At the risk of rehashing what is past, much of
9 what has been said today, and even more about what has been
10 written about the long lines of Franklin County, only some of
11 this information has been correct and much has been incorrect.

12 Question: Were there long lines in Franklin
13 County? Yes.

14 Question: Were the long lines the result of
15 the county's insufficient inventory of voting
16 machines? Yes.

17 Question: Does the Board bear fault
18 in placing just more than 2800 voting
19 machines from its 2900 machine inventory in the
20 field on Election Day? Yes.

21 Question: Could the Board have done a
22 better job forecasting precinct by precinct
23 turnout in order to determine voting machine
24 allocation? Yes.

1 Question: Were the long lines limited to
2 minority majority precincts, or historically
3 Democrat leaning precincts? No.

4 In fact, there were long lines in every part of
5 the county. My wife waited two hours to vote in our east
6 Franklin County suburb of Bexley.

7 Republican friends of my then deputy director,
8 Mike Hackett, waited to vote for three hours in the affluent
9 west Franklin County suburb of Upper Arlington.

10 In fact, the last precinct to close in Franklin
11 County was not a minority majority or democrat leaning precinct,
12 it was in a Republican leaning northeast Columbus precinct near
13 New Albany.

14 I say this not to downplay the seriousness of
15 long lines, but to underscore the fact that voters of all
16 demographics experienced long lines on Election Day 2004.

17 Question: Were voting machine allocation
18 decisions based upon partisan intentions to
19 disenfranchise African-Americans or Kerry voters?

20 No.

21 In fact, an employee of the Board of Elections
22 who is also a member of the County Democrat Controlling
23 Committee drew up the allocation plan in, the same manner as he
24 had allocated machines for previous elections.

1 His plan based voting machine allocation on two
2 factors; the first, predicting turnout based upon the objective
3 factor of previous voter turnout data.

4 And the second predicting turnout based upon the
5 subjective factor of estimating how many inactive voters would
6 turn out in urban precincts with bloated voter roles, and how
7 many active voters would turn out in high growth suburban
8 precincts.

9 Question: Did I personally hide 1000 voting
10 machines in my basement and garage? No.

11 And in fact if you saw my garage I can barely fit
12 my Honda Accord in it.

13 Question: Did I abandon my post at the
14 Board's office at any time on Election Day to
15 meet with President Bush, Secretary Blackwell and
16 Karl Rove on Air Force One to receive orders to
17 implement Plan B? No.

18 To its credit the Franklin County Board of
19 Elections has answered these and other questions and charted a
20 positive course for the future, including our plan for the May
21 2006 transition to a new direct recording electronic voting
22 system with voter verifiable paper audit trail, and the
23 implementation of the identification and other requirements of
24 H.B. 3 for November.

1 First we have an increased inventory of voting
2 machines, we have increased our voting inventory from 2900
3 machines to 4200 machines for the Primary, and almost 4600
4 machines for the General Election.

5 Relative to voting machine education, the
6 Franklin County Board has established an aggressive schedule of
7 voting machine demonstrations through direct voter outreach,
8 dedicating one full time employee to this sole task.

9 Our motto is that wherever two or more registered
10 voters are gathered, there we should be.

11 Even though the new technology is not
12 dramatically dissimilar from our previous system, we cannot
13 permit unfamiliarity and inhibitions to become barriers to
14 voting.

15 Second, Franklin County has partnered with its
16 voting system vendor and will soon announce a state of the art
17 educational web site, including an interactive section fully
18 simulating the voting experience, including audio ballot
19 capability for the benefit of all Ohio counties using the same
20 ES&S electronic voting system.

21 And finally Franklin County has been the leader
22 in creating an innovative multi-county collaborative approach to
23 mass voter education featuring a \$500,000 media campaign
24 including direct mail, newspaper inserts, radio spots, and

1 television advertisements focusing on familiarizing voters with
2 their new electronic voting technology in Central Ohio.

3 Relative to poll worker education the Franklin
4 County Board has partnered with the International Foundation for
5 Election Systems, and the Pollworker Institute, recipients of a
6 U.S. Election Assistance Commission grant to study pollworker
7 education, to establish a model pollworker training program,
8 that includes the use of written manuals, verbal instructions,
9 interactive review tools, role playing, hands on demonstration,
10 and take home videos, including the introduction of an
11 innovative, pass-fail instructional website planned for
12 November.

13 To prepare for the new technology the Board has
14 spent the last two years expanding the pool from which we draw
15 pollworkers through participation in our Association's
16 successful lobbying effort to permit public employees to take a
17 penalty free day from work to serve as a poll worker.

18 And winning statutory authority to use 17 year
19 old high school students as pollworkers. As well as
20 establishing our Champions for Democracy Program to recruit poll
21 workers from the ranks of the county's corporate and civic
22 communities.

23 It is valuable to note that last fall more than
24 20 percent of our poll workers were either public employees or

1 champions from the private sector.

2 And this May will feature more than 600 high
3 school students at the polls following a wildly successful first
4 run with high-schoolers last fall. That's almost one high
5 school student per precinct.

6 To help build voter confidence in the
7 electronically recorded election results the board plans on
8 giving the voter verifiable paper audit trail, meaning by using
9 it as an auditing tool during the official canvas of votes.

10 We are planning to randomly select the number of
11 machines that has the highest statistical probability of
12 uncovering a countywide error and auditing the electronic
13 results from those machines using the voter verifiable paper
14 audit trail.

15 In addition, we plan to post to the web the
16 electronic audit log, including ballot images. This will allow
17 any one, anywhere to independently audit Franklin County's
18 election results on their own without having to make public
19 records requests that are both expensive for the public and time
20 intensive for the board.

21 Finally Franklin County has partnered with the
22 Elections Sciences Institute to create a first ever line by line
23 review of the source code for the voting system that we have
24 selected.

1 It's interesting to note that even the federal
2 government in the certification process in Ohio with Board of
3 Voting Machine Examiners does not do a line by line review of
4 the source code.

5 To assist voters with the identification
6 requirements of House Bill 3, Franklin County is redesigning its
7 voter identification card to include detailed information about
8 the identification required to vote at their precinct, as well
9 as the information necessary to request a no excuse absentee
10 ballot.

11 Additionally, we will expand our multi-county
12 media campaign into the General Election to include voter
13 identification requirements.

14 As required, but not funded by House Bill 3, we
15 will mail to every registered voter in Franklin County an
16 informational guide on the voter identification requirements
17 prior to the November election.

18 This mailing will also remind the voter of
19 his/her voting location, provide voting machine instructions,
20 and may also include a sample ballot.

21 Each of Ohio's 88 county boards of elections are
22 ready to meet the challenges of 2006. Many counties
23 successfully implemented HAVA compliant voting systems in 2005.

24 The rest of us will do so in May of this year.

1 And we will successfully implement the identification and other
2 requirements of House Bill 3.

3 Ohio voters can be proud that their county boards
4 of elections are staffed with elections professionals who are
5 dedicated and do their job because they care about their
6 neighbor's right to vote.

7 We are not lazy bureaucrats or country bumpkins.
8 We are experienced at getting cash blood out of budgetary
9 turnips and expert builders with worn out tools.

10 While additional funding would be beneficial for
11 additional voter education, pollworker training, and the
12 unanticipated increased operating expenses of new voting
13 systems, the imminent lawsuits, legislative tinkering and
14 partisan manipulations of the system for political purposes
15 clearly will not be beneficial.

16 Whether for good or for ill, HAVA and House Bill
17 3 are law. Making late changes, whether through legislation,
18 administration directive, or judicial decree, will not assist us
19 in accomplishing our statutory obligations, much less build
20 voter confidence.

21 Imagine trying to implement a pre-election
22 procedural directive after half of your poll workers have been
23 successfully trained, much less enforce a judicial decision
24 issued after the polls have opened on Election Day.

1 We call respectfully call upon the political
2 stakeholders, whether politicians, political parties or
3 advocates to join us in our task to educate voters on the new
4 protections and requirements of HAVA and House Bill 3, instead
5 of using these same protections and requirements as weapons of
6 political gain.

7 Honorable Committee Members, Franklin County and
8 our fellow Ohio elections officials are prepared for Election
9 2006.

10 CHAIRMAN BATTLE: Thank you, Mr.
11 Damschroder. Mr. Arnebeck.

12 MR. ARNEBECK: Thank you very much, Mr.
13 Chairman, and members of the Commission. I appreciate very much
14 the opportunity to give testimony.

15 My name is Cliff Arnebeck, I am chairman of a
16 group called Ohio Honest Elections Campaign. This campaign was
17 created by a group called the Alliance for Democracy, after the
18 2004 election, for the purpose of addressing issues of the
19 integrity of that election, particularly with respect to the
20 presidential contest. We funded and staffed the lawsuit before
21 the Ohio Supreme Court contesting the outcome of that election.

22 In addition, the Alliance for Democracy brought
23 an action or a motion to intervene in a case that the Ohio
24 Democratic Party had filed on election day here in Franklin

1 County asking that all possible means be taken to enable people
2 to vote because of the long lines.

3 The suit also applied to Knox County, which is
4 where Kenyon College is located, and the lines were even longer,
5 6, 8, 10 hours long.

6 The judge said this is unacceptable and ordered
7 both counties to do whatever could be done, including making
8 paper ballots available.

9 Now, Director Damschroder made a bunch of
10 statements about Franklin County.

11 One of the things Franklin County had asked the
12 Secretary of State for permission to do in view of their knowing
13 that there weren't enough machines before the election, was to
14 have a paper ballot alternative. The Secretary of State said,
15 no.

16 On the shortage of machines, was there a
17 different impact of the shortage of machines in the inner city,
18 high performance Democratic precincts, than in other precincts,
19 yes.

20 Indeed there were fewer machines in prior
21 elections in those precincts, which that was not the case in
22 Republican oriented precincts.

23 The fact that the precincts that had the worst,
24 disproportionately worst situation, longer lines were

1 predominantly African-American.

2 Given our history of discrimination in this
3 country leads one to say, let's investigate why this happened,
4 and let's make sure it was not intentional.

5 Because certainly as Mr. Damschroder said these
6 things can happen. Simply as an example in the 2000 election Al
7 Gore had withdrawn from Ohio, he quit.

8 And that is the -- that is the race, that is the
9 competitive race that normally will bring out people to vote.

10 In the 2004 election Kerry was in it to the end,
11 highly competitive race, people were highly motivated to vote.

12 It's quite possible that the reason that the Afro
13 American voters suffered disproportionately long lines is not
14 that many turned out in the 2000 election, and that was the
15 basis for predicting turnout in the 2004 election and that's
16 possible.

17 But we did not have bipartisan hearings either in
18 a legislative body or in a court where these questions were
19 asked, and these matters were decided on an objective basis.

20 I got involved in the 2000 election on behalf of
21 the Alliance for Democracy, challenging an illegal \$7 million
22 attack using corporate money on a Supreme Court justice.

23 It was illegal, it was extraordinary, it was
24 intended to affect the outcome of the election. This has been

1 litigated over a period of five years, it's now all done.

2 It's been addressed by the Federal court, the
3 State court and the Ohio Elections Commission, and they found
4 that it was illegal, illegal corporate money. It was a
5 defamatory -- knowingly defamatory attack on this Democratic
6 justice.

7 The reason I bring this up is first of all, I was
8 not involved in that as a partisan. The Democratic party did
9 not litigate. I was involved in litigating on behalf of a
10 non-partisan 501 (C)(3) organization.

11 The point is that partisan interests will use --
12 will cross the line. And it was this theory of magic words, a
13 magic words interpretation of the Constitution, Buckley versus
14 Veleo that was being used to say we can do this.

15 I think it was a frivolous argument, but it was
16 done. It was done with the intent of affecting the election.

17 My point for you would be that there is nothing
18 more important to the preservation of civil rights as we develop
19 them in this country, than preserving the honesty and integrity
20 of our court system, and these kinds of attacks by a segment of
21 the business community on the independence of the courts, is a
22 very fundamental attack on the civil rights of all Americans.

23 In regard to the 2004 election, I wasn't involved
24 in the Kerry campaign. I was involved in litigating once again

1 on behalf of the Alliance for Democracy, against the continuing
2 use of illegal corporate money in the Ohio Supreme Court race.

3 The Chamber of Commerce through its group called
4 Citizens for a Strong Ohio spent \$3 million in support of the
5 Republican candidates for the court, 3 of the 4 Republican
6 candidates for the court.

7 After the election I was advised by the founder
8 of the Alliance for Democracy, Ronny Dugger, who wrote the
9 article, landmark article in 1988, New Yorker Magazine, in which
10 he said with the advent of electronic voting machines we have a
11 new vulnerability to fraudulent manipulation of voting.

12 And this is sort of a landmark introduction of
13 this into the main stream media.

14 In his article he points out that there is a
15 history of this. There is a history of folks being so
16 passionate about getting their guy elected that fraudulent means
17 have been used.

18 All right. We talked to -- right after the
19 election he said he thought that this election had been
20 manipulated, and we proceeded on a plan, how should we
21 investigate this.

22 At the same time a guy named Bob Fittrakis, who
23 was a Professor of Political Science at Columbus State
24 University, and former international inspector, monitor of

1 elections, began -- initiated some hearings.

2 So we had hearings of folks, two hearings in
3 Columbus, hearing in Cleveland, a hearing in Cincinnati, where
4 we took testimony under oath with a court reporter. And I would
5 like to submit that to you for your consideration.

6 People told their stories, and there are some
7 rather dramatic stories that were told.

8 A woman in Cleveland stood up and told about the
9 fact how she had never voted before, she had -- her family had
10 come from the south, and I believe it was her grandfather had
11 been lynched because he had voted.

12 And because of that historical thing in her
13 background she had never voted, she always carried that fear.
14 And she said she brought with her to this hearing a woman who
15 had persuaded her that this election is so important you need to
16 vote.

17 And then she described her voting experience,
18 which had problems.

19 There were people in Cincinnati who talked about
20 all kinds of things, corporations releasing employees to go to a
21 campaign event that got televised.

22 People being paid to vote multiple times.

23 A woman from Warren County where there was a
24 supposed homeland security alert that closed down or removed the

1 press from monitoring, she said in 2000 there were no signs for
2 Al Gore for president.

3 If you were a Democrat, you were laying low
4 because it was just not a friendly climate. She said in 2004
5 there were lots of Kerry signs.

6 She said it was totally unbelievable to her,
7 based upon just seeing what was going on that Kerry got no more
8 votes than Gore in 2004, go not more votes than Gore got in 2000
9 in Warren County, because of the demographic changes that were
10 occurring there.

11 In Franklin County the big problem was the long
12 lines, and it was different between white and black areas. So
13 there were definite problems.

14 The lawsuit that we filed challenging the outcome
15 of the election was not based upon voter suppression, it was
16 based upon anomalies in the results that were suggestive of the
17 movement of votes, probably at the county level, the tabulator
18 level, in a number of counties that were sufficient to have
19 changed the outcome of the election.

20 The suit also relied upon the fact that besides
21 these anomalies there were exit polls that showed that Kerry won
22 in Ohio substantially, and he won the popular vote nationally.

23 These polls were not done by amateurs, these
24 polls were done by Warren Matovsky, who is the originator of

1 exit polling. He's the person that conducts exit polling in
2 foreign countries where people because of the imperfections of
3 governmental process are worried about fraudulent manipulation
4 of elections, and the exit poll is one of the important tools,
5 to say this was an honest election.

6 At the same time these questions arose -- oh, in
7 regard to our exit polls. Perhaps on the assumption that we
8 have a system that has a high level of integrity and
9 sophistication, the practice in our exit polls is to adjust the
10 polls to reflect the actual reported results in the course of
11 the evening.

12 So the exit polls that show that Kerry won Ohio
13 and won nationally the popular vote, were the polls that were in
14 place and broadcast up to about 12:30 at night on Election Day.

15 In the morning if you tuned in and looked at the
16 exit polls you would see the adjusted exit polls. Based upon
17 the exit poll data, which is just as strong and compelling and
18 well founded as the exit polls that our government relied upon
19 to challenge the vote in the Ukraine for president, that is good
20 data. And that was a key part of our case.

21 Now, what is the problem with the process that we
22 have, if there is an issue about the integrity of an election,
23 as important as president for the United States, what is the
24 process we go through to address that.

1 John Conyers urged the chairman of the Judiciary
2 Committee, a Republican, Sensenbrenner to hold hearings to
3 permit the minority and majority to subpoena witnesses and to
4 gather evidence, so that we could hear from Matt Damschroder, we
5 could hear from Mr. Vu, we could hear from folks and get to the
6 facts and feel confident that the apparent problems had a good
7 explanation and we could be satisfied we are getting the right
8 results.

9 The majority would not cooperate. John Conyers
10 conducted two hearings, one in Washington at which I was
11 privileged to testify, and another in City Council chambers here
12 in Columbus.

13 Took testimony and prepared what's been described
14 as one of the most important congressional reports in history, a
15 hundred and some pages describing what went wrong in Ohio.

16 In addition to excellent work done by the staff
17 of that minority in the House Judiciary Committee, that report
18 cites to the Moss versus Bush lawsuit for many of its facts.

19 It also cites to articles from the free press
20 which, was publishing internationally on the internet all of the
21 data we were gathering in these hearings and from other means,
22 Statistical analysis, anomalies, exit polls, et cetera.

23 The most frightening thing to me as a lawyer and
24 a citizen is that we had a certification of such an important

1 office without the chairman of the Republican Party or the
2 Secretary of State of Ohio, or Karl Rove coming before the
3 committee and answering questions, you know, was there a
4 strategy to suppress the votes? Was there some kind of a plan
5 to -- did you have a contract with somebody to -- you used the
6 vulnerability of our electronic voting system to change the vote
7 and affect the outcome.

8 And you can say, well, what's the point of that,
9 if they did it they lied. The point is that we have a process
10 of cross examination. We have a process of discovery. And we
11 have criminal laws that say when you take an oath before a
12 committee or a court of law and commit perjury you're
13 compounding whatever offense you've already committed.

14 We didn't have any of that as part of giving this
15 assurance of integrity to our elections.

16 Senator Jacobson talked about -- I forget the
17 word he used, but a disgrace in reference to both the litigation
18 in the 2000 election and the litigation in the 2004 election.

19 With respect to the 2000 election, there is no
20 question that there was an intentional plan to disenfranchise
21 African American voters in Florida, knowing that they were
22 eligible to vote.

23 There was a contract, there was a process. I
24 believe the Civil Rights Commission investigated this, but there

1 was no prosecution. There was no accountability.

2 Paul Crudman, writing an article about elections
3 and what happened in Ohio, August 19th, 2005, made the statement
4 that the significance of Florida was that the political
5 operatives learned that there was no penalty for cheating.

6 As a consequence in the 2002 election there was
7 more cheating in Georgia. And in 2004 there was even more
8 cheating in Ohio.

9 He described Ken Blackwell as a person who made
10 Katherine Harris look like a wonderful Secretary of State.

11 So we have a serious problem with our elections.
12 We have a concerted attack upon the civil rights of all
13 Americans that has not been properly investigated. It's not
14 been prosecuted where there are clear violations.

15 I'd be happy to answer any questions.

16 CHAIRMAN BATTLE: Members, questions for the
17 panel? Mr. Doshi.

18 MR. DOSHI: Just to pick up on the last
19 statement, what happens if -- if there is a violation cited in
20 this election? What are the remedies to correct any chance of
21 correcting the election?

22 MR. ARNEBECK: Are you talking about for
23 2006?

24 MR. DOSHI: Yes.

1 MR. ARNEBECK: First of all, House Bill 3,
2 it was excellent testimony, the bill went from 22 pages to 300
3 pages, those added pages did not come from gentleman like Mr. Vu
4 or Mr. Damschroder. It didn't come from League of Women Voters,
5 Ohio Citizen's Action, Common Cause, the various grass roots
6 organizations that exist to remedy these problems we had in
7 2000, 2004.

8 They came from consultants, I assume from
9 Washington for the Republican Party, who said this is what we
10 need to permit suppressing votes and rigging votes to the extent
11 that it's necessary in the next election.

12 What the bill does among other things is
13 eliminate the right of Ohio citizens to contest federal
14 elections.

15 Here we have a history of impropriety, a history
16 of apparent fraud in the election process, and certainly a
17 history of whether intentional or not, significantly different
18 effects on minority voters than majority voters.

19 And you're taking away one judicial mechanism for
20 contesting that, how can that make any sense.

21 One of the important points that Mr. -- Senator
22 McCain has made is that if you're talking about reform, it
23 better be bipartisan, otherwise be suspect. This transition
24 from 22 pages, not totally uncontroversial.

1 For example, HAVA says if a person registered to
2 vote by mail, and did not provide verification of identity, then
3 when they come to vote they must provide that identification of
4 identity.

5 A very limited requirement. The expansion of
6 that requirement to require ID from everybody is a way to slow
7 down the lines.

8 And in the hands of partisan people with partisan
9 intent, it could be used as an instrument to disproportionately
10 slow down and force people into provisional voting, to
11 discourage their voting as it may serve a partisan interest.

12 This bill, House Bill 3, was called publicly a
13 voter suppression bill by the League of Women Voters. League of
14 Women Voters is not a radical organization, it's not a partisan
15 organization. It was passed on a totally partisan basis, not a
16 single Democratic voted for it, three Republican votes against
17 it.

18 It's not a reform bill, it's a destructive bill.

19 Will people like Mr. Vu and Mr. Damschroder be
20 able to work with it and make it manageable, hopefully, with
21 perhaps the assistance of the courts.

22 But this civil rights advisory group should be
23 making a record of the fact that this is partisan, and it's not
24 just Ohio, it's coming right out of Washington.

1 It's based upon the same filaceous allegations
2 that were made by Mr. Jacobson here against the NAACP National
3 Voter Fund, Americans Coming Together, AFL-CIO and ACORN.

4 These people did a wonderful job of having --
5 getting people to register to vote for the 2004 election.
6 These are not fraudulent organizations.

7 NAACP was founded for the purpose of reducing the
8 number of lynchings in the south. It has the most imminent
9 distinguished and conservative record of any organization in
10 this country, as far as I'm concerned.

11 And I was privileged to represent them in
12 defending against a racketeering suit filed by Republicans at
13 the instance of the Lucas County Republican Party on direction
14 from political operatives in Washington to file that for
15 partisan purposes. It's totally hog wash.

16 CHAIRMAN BATTLE: Reverend Wheeler.

17 MR. WHEELER: You know I deal with civil
18 rights each and every day of my life being Chairman of the Ohio
19 Civil Rights Commission, and you have quite an argument Mr.
20 Arnebeck.

21 But my question is, well, first of all both of
22 the county administrators, I really appreciate your feedback
23 today from my home county of Cuyahoga, very diversified county,
24 also Franklin.

1 And I noticed that you in your presentation, you
2 showed New Albany had long lines and Upper Arlington and
3 Berwick. You were trying to show that it was uniform in effect,
4 all of the problems were all over the county.

5 And then I'm hearing from what Mr. Arnebeck is
6 stating today that it was -- stuff happened that depressed the
7 public.

8 And I'm trying to figure out what's the nexus
9 data?

10 I have to say I'm a preacher in this county, and
11 that one may have got by me, I'm trying to understand. And also
12 received one of the highest awards from the NAACP, Ben Hooks, my
13 good friend, but I'm trying to understand if there is some
14 wrong, we want to right it. So help me out with that please.

15 MR. DAMSCHRODER: An excellent question
16 Reverend Wheeler. As I mentioned in my testimony, I don't
17 reference those other parts of Franklin County in which there
18 were long lines to in any way downplay the negative effect of
19 long lines on any registered voter.

20 But rather to try to dispel the urban myth that
21 the only people in Franklin County that had to wait in long
22 lines at any time on Election Day were African-Americans or
23 Democrats.

24 There were three issues that our ward has

1 identified -- board has identified as issues that caused long
2 lines, the general shortage of voting machines, period.

3 We went into the election knowing that, and we
4 did our best, as Mr. Arnebeck mentioned, by asking the Secretary
5 of State if there would be an opportunity to put a secondary
6 voting system into place, and the Secretary of State said no.

7 The other issue was turnout. I mean we had
8 literally 25 percent more people on Election Day between 6:30 in
9 the morning and when the polls closed at night, 25 percent more
10 people at the polls than in 2000. And those 25 percent of the
11 people were all over the county.

12 But as a result of the Franklin County show for
13 the first time in almost ages, a Democratic candidate for
14 president carried the county by 50,000 votes, the turn out was
15 primary in Democratic precincts.

16 Also the issue that led to the long lines and
17 that I believe was the cause of what individuals view as the
18 Board's taking, as Mr. Arnebeck mentioned, taking machines out
19 of historically Democrat or African American precincts was that
20 as you know, Reverend Wheeler, Franklin County is a growing
21 county, and we had 33 -- if I remember the number correctly, 33
22 more precincts in 2004 than in 2000, but the same number of
23 voting machines.

24 So those voting machines had to come from

1 somewhere. And so we did our best to -- based upon evaluating
2 previous turnout, to say this, we have to put machines in Canal
3 Winchester or the far east, Reynoldsburg, out towards Brice
4 Road, we had to put machines out there somewhere, they have to
5 come from somewhere, and there is not -- most of those machines
6 came from central city Columbus.

7 But also I think it's important to note it was
8 not limited to central city Columbus. The City of Westerville
9 had a net reduction of 30 voting machines total. We tried to be
10 as equitable as possible using the objective standard of
11 historic turnout as our guide.

12 In some cases we got it right, some cases we got
13 it wrong. And the impact of too few voting machines,
14 unprecedented turn out caused people to have to wait all over
15 Franklin County.

16 MR. VU: If I can respond, Cuyahoga had long
17 lines, too. They may not have been as systemic as in Franklin
18 County.

19 But let me just give you a description of the
20 number of voting we had. We had over 10,000 voting units on
21 election day.

22 Now, we have 1,400 precincts, but we have over a
23 million registered voters during that 2004 election, and we
24 still had long lines.

1 And I went out to some of these locations and I
2 knew things were going all right within the building election
3 day, but I wanted to know whether Rome was burning out there.

4 So I went out to some of these facilities, and
5 one of the things I noted most was although there were long
6 lines, there was just one long line.

7 Now, there are a number of precincts in a polling
8 location, and one of the things I recognized was voter behavior.
9 Voter behavior when they get to a polling location is to stand
10 in a line.

11 So when they see a person stand they don't go to
12 the other voting precinct tables that may be empty. They go to
13 the one they believe they should go, because others are
14 congregating around that table, knowing they may potentially be
15 in a different line, or different table. That's one of the
16 things that I recognized.

17 The question is how are we prepared since 2004,
18 and I think that's what this committee wants to hear is, No. 1,
19 for us in Cuyahoga County with the new technology, we now have
20 the ability to expand all of the different various electronic
21 voting machines to encompass that everyone can use the same
22 machine, as opposed to dedicated machines, because we were
23 running on a punch card system, for a specific precinct, because
24 of Ohio's law and statutory rules on rotational ballots.

1 That is, Reverend, you cannot vote on the same
2 voting unit as potentially Chairman Battle, because of the
3 rotation factor, you belong to different precincts. That's one
4 significant issue in our preparations in moving forward with
5 HAVA in using electronic voting devices.

6 The other issue in Cuyahoga County we face, we
7 believe we need more devices. We are going to 10,000 punch card
8 units to only 5,407, a little over 50 percent of what we
9 currently had. We believe we need another 900 voting machines,
10 we're working with county commissioners to provide that.

11 I think it's going to go a long ways in the way
12 of how we vote as a community. I think we have to simplify it.
13 And of course House Bill 3, there are some good prohibitions in
14 there, but there are also some others, and identification is one
15 of those that I consider as an alarming red flag for us in
16 future elections.

17 In 2000 the issue was the swinging chad, the
18 intent of the voter essentially. And then 2004 is long lines.
19 This issue of what the next issue is going to be for 2008 or
20 2006 is not known yet, it remains to be seen, but something will
21 be coming down the pipe.

22 It's for local elections officials, as well as
23 state officials to try to anticipate what those items may be.
24 No one anticipated that there may be long lines.

1 We actually anticipated if we were able to
2 purchase 600 more voting devices prior to the election, Franklin
3 County was not in that, having that capability, since they had
4 specific types of voting devices and the Secretary of State
5 apparently did not have that contingency plan in place, which
6 all elections officials know Plan B needs to be in place.

7 CHAIRMAN BATTLE: Ms. Ramos.

8 MS. RAMOS: Some of the implication was that
9 it was purposely done to disenfranchise certain voters, but on
10 the boards of elections I do believe -- I believe every county
11 has two Democrats, two Republicans.

12 So in Franklin County did the allocation of these
13 machines not have to go through the Board, and the workers were
14 doing it, although most of the workers are also split in the
15 same ratio?

16 And so the implication would be that the Board
17 would be purposely doing this. And I find that, you know, kind
18 of hard to think that the board purposely approves not
19 allocating machines properly.

20 MR. DAMSCHRODER: Excellent question. And
21 in Franklin County, the chairman of our Board of Elections is
22 also the Chairman of the local county Democratic Party.

23 And all of our full-time employees are equal
24 numbers of Republicans and Democrats.

1 In the prior testimony, House Bill 3, the actual
2 decision of voting machine allocation was not an issue that was
3 discussed or decided by the Board members, in terms of
4 discussion actually taking vote, it was decided at the staff
5 level.

6 And as I mentioned in my testimony it was
7 actually a member of the County Democrat Central Committee that
8 was in charge of making that allocation.

9 And again as I mentioned with my answer to
10 Reverend Wheeler, we just didn't have enough machines and
11 allocated them as best as we knew how.

12 CHAIRMAN BATTLE: Ms. Presley.

13 MS. PRESLEY: Thank you, Mr. Chairman. My
14 question is for Mr. Vu.

15 There was an article in the Cleveland Plain
16 Dealer, indicating that we have a few employees that still are
17 working for the County Board of Elections who have been
18 indicted.

19 And the questioned about why they are still
20 working, it was indicated that there was a discrepancy in the
21 decisions that they made.

22 But I guess I'm still questioning why they are
23 still working. And what is your take on how we are going to
24 resolve some of these issues.

1 Because those people have felony charges and not
2 only misdemeanors, but felony charges.

3 MR. VU: I understand. It can only go so
4 far, because of the individuals that are now having these legal
5 concerns addressed personally to them.

6 Why are they working at the Board of Elections,
7 continues to work at the Board of Elections, the process that we
8 see and the Board members as well as myself have stated for the
9 record, for the public to know we have confidence in our staff.

10 That we have -- that during the time frame of the
11 `04 presidential recount that's what the issue is, is that we
12 had all met and addressed the same issue.

13 Now -- and worked through the various procedures,
14 we had talked about these procedures, and talked with the staff
15 regarding those procedures.

16 And everyone in the audience that were witness --
17 who were witnesses and challengers were present. There is
18 nothing at this time that has indicated that these individuals
19 have not only followed the processes and procedures that have
20 been outlined for the past 23 years, these again, the same
21 procedures that we had conducted for the presidential recount,
22 were the same processes and procedures that we had conducted for
23 the past 23 years, including the week prior to that recount,
24 because we had recounts other than the presidential recount that

1 year.

2 There is nothing that we have seen that I've
3 heard, that I've touched, that I felt that indicates that these
4 individuals had done anything wrong than following the
5 procedures that have been in place.

6 And that's pretty much the reason why we had
7 stated for the public we have a hundred percent confidence in
8 the way they handled themselves during the recount.

9 CHAIRMAN BATTLE: Yes, Ms. Zealey.

10 MS. ZEALEY: Thank you, Mr. Chairman. I'm a
11 lawyer and I love to go to court, especially to trial. But I
12 like even more to prevent problems.

13 And while we have this vast pool of knowledge
14 here, it seems to me that it's a perfect opportunity for any of
15 you to make recommendations on how to address the long lines
16 that we know will be present in 2006, because of the new
17 technology and the new ID requirements, and any other problems
18 that are preventing them, what are your recommendations?

19 MR. DAMSCHRODER: From Franklin County's
20 perspective I think that there are a number of proactive things
21 the Board of Elections can do.

22 For us beginning with a larger inventory of
23 voting machines is first. Franklin County is adding more than
24 \$2 million of local funds to the state and federal funds in

1 order to procure more machines than the Secretary of State had
2 initially designated for us.

3 Same thing goes for what Michael is trying to do
4 in Cuyahoga with his commissioners.

5 For us with our voter education campaign,
6 television campaign, try to give voters information and tools
7 they need before election day, so that they remember to bring
8 that piece of ID with them, train poll workers, et cetera.

9 And funding is a major component of that. That
10 was mentioned in the previous panel by Aaron Ockerman and Ms.
11 Hicks of the Secretary of State's Office, of one of the
12 strengths in Ohio's system is that it's local based.

13 One of the weaknesses of that system is that it's
14 locally funded. And the same dollars we compete for to run
15 elections are the same dollars we compete for to pave roads and
16 fund social services and all the competing interests at the
17 local level.

18 So from the funding standpoint I think that's a
19 critical issue, as well to address a couple of the issues that
20 Michael mentioned.

21 One of the things Franklin County is doing with
22 the relatively long lines is we are trying to reduce the number
23 of multiple precincts, the cuing issue Michael raised, when
24 someone shows up at a church with two precincts they stand in

1 line.

2 When in reality if there were better cuing
3 options that line would be cut in half immediately by going to
4 two different tables.

5 So dividing those locations up by more facilities
6 we are able to solve that cuing issue.

7 There is a number of things that we are doing.
8 And I think similar to what I said at the end of my testimony, I
9 think the biggest thing that we can do, whether it's this
10 committee, boards of elections or organizations politicing is
11 that the law is what it is, and focus all of our energies on
12 educating the voters and giving them the tools, instead of
13 trying to tinker with the rules at the last minute.

14 The thing that will undermine voter confidence
15 and cause long lines on election day that will be a federal
16 court that pipes out a decision Monday afternoon saying stop
17 everything you told your poll workers to do over the last five
18 weeks and doing something different.

19 That \$500,000 you spent on TV telling the voters
20 to bring that to the polls, they don't need that, they need
21 something else, that's what undermines voter confidence and
22 causes problems on election day.

23 If there's going to be litigation let it be in
24 June or July, not October.

1 So my hope would be that we all rally to the
2 cause of giving the voters the education and tools that they
3 need.

4 MR. VU: I've always considered election
5 reform as happening on a number of levels. Of course there is
6 the federal, state and local level.

7 Local level in being able to control that aspect
8 of it. We have tried everything that we can in resources and
9 time to better ourselves in the way we conduct elections
10 internally at the Board of Elections.

11 That's one of the reasons we invested \$350,000 to
12 scan in every registration card we had in the building, and tie
13 it with the electronic record.

14 That way if you fill out a registration card and
15 instead we enter it in incorrectly, we have the ability to bring
16 up the registration card and correct it on our end.

17 The other items I think we have to recognize as
18 local elections officials is that we are not the professional in
19 everything. Yes, we are professionals in conducting election
20 administration. However, we need to recognize we are not the
21 experts in the IT field or marketing field.

22 We need to utilize and be aware that we need to
23 utilize the resources we have in our communities. Cuyahoga
24 County is working with Case Western University professors of

1 engineering, as well as Cleveland State University engineering,
2 as well as working with our agencies within Cuyahoga County to
3 better ourselves and our understanding of what this new
4 environment that we are going into, whether it be electronic
5 voting or whether it be House Bill 3 or other aspects of
6 marketing even, and advertising.

7 That's one of the reasons why we projected out
8 years in advance. In fact, 2003 it would probably take at least
9 a million dollars to educate the public into transition into
10 implementing Help America Vote Act, namely the new electronic
11 voting devices.

12 As well as now absentee application and
13 identification that they need to bring per House Bill 234, as
14 well as those requirements in House Bill 3 for voters at the
15 polling location.

16 We are doing everything that we can possibly, but
17 I think the biggest thing is more awareness we can do as local
18 elections officials to understand the nature of things that we
19 may not be professionals in.

20 MR. ARNEBECK: I'd like to suggest that
21 whatever the commission can do, that is the Civil Rights
22 Commission, to send a signal that irregularities will be
23 carefully investigated and prosecuted is a very important part
24 of correcting the problem, and restoring trust of the American

1 public in our voting system.

2 Do you have subpoena power?

3 CHAIRMAN BATTLE: Not this committee. But
4 the Commission.

5 MR. ARNEBECK: Civil Rights Commission does.
6 I would suggest that you recommend in view of the problems and
7 give them the Conyers report that are evident in Ohio, the
8 United States Civil Rights Commission convened an investigation
9 and issued subpoenas and holds hearings to fully explore the
10 problems.

11 I have confidence that there are people -- the
12 people will come up with very good explanations for the problem.

13 And people will be satisfied that it was not intentional.

14 And remedies will develop out of that
15 investigation no matter what the law is to better enable those
16 who administer the law to avoid these problems in the future.

17 I don't know how we deal with partisan
18 government. People who have taken an oath of office to uphold
19 the Constitution and to serve the public, and who pervert that
20 power of office, that incredible power of office, to try to
21 manipulate the laws in government to the disadvantage of the
22 general public.

23 That's what happened in Ohio. And it's possible,
24 because we have one party control. And so you don't have

1 bipartisanship.

2 This House Bill 3 is totally partisan. So I
3 can't persuade the Republican legislature or the Republican
4 governor to pass a law that eliminates these ID requirements,
5 which are not valid, they are not in the public interest.

6 We have a history, and we've gotten along many,
7 many years with the signature, it works. And there is no better
8 system for identifying the person coming to vote, than the
9 person who's registered.

10 I personally looked at voting books, and I've
11 seen whether it's clear someone voted fraudulently, because the
12 signature bears no relationship to the signature in the book.

13 So if someone says we want to assure the
14 identification of the voter, we want to avoid fraud, enforce the
15 procedure we had in place, it's very easy for a fraud to come up
16 with phony ID, so this bill does not address voter fraud. It
17 is a voter suppression bill.

18 The only remedy that I'm aware of is to go to
19 court and point out to the court that there is a history here,
20 there is a partisanship here, and there was no testimony, there
21 was no evidence to support this requirement, and there is no
22 requirement in HAVA.

23 This is a partisan thing, a way to create long
24 lines or be able to suppress, discourage people from voting.

1 Same thing with the Secretary of State's interpretation of
2 provisional voting, which has now been carved into statute in
3 House Bill 3.

4 HAVA does not say your vote will count only if
5 it's cast in the right precinct. It says it should be counted
6 if it's cast properly within the jurisdiction. The jurisdiction
7 is the County Board of Elections in Ohio. So that ought to be
8 changed.

9 We have been using the election laws in Ohio
10 through partisan officials. Secretary of State is a Republican,
11 he was the co-chair of the Bush campaign, he's been using that
12 office to tilt the process in a partisan way.

13 The court should address that, politically we
14 should address that. But the commission would do a great
15 service if it would hold hearings, issue subpoenas, make people
16 testify under oath.

17 So that when people, if they contemplate lying,
18 they'll face potential ultimately the sanction of perjury
19 prosecution.

20 CHAIRMAN BATTLE: Mr. Doshi. And the final
21 question will be Mr. Humeidan.

22 MR. DOSHI: I'm being a little analytical, I
23 can't help being an old scientist here.

24 The long lines that are a matter of reading the

1 instructions also, how long it's going to take somebody to read
2 and interpret and then vote.

3 Are there statistics how long it takes for an
4 individual on average to cast a vote based on that? But I
5 believe the number of machines, if we had long lines if I take
6 ten minutes, he takes 15 minutes, you're going to have long
7 lines, no matter how many machines you have. The more the
8 better. We need some statistics that help us understand the
9 mechanics of it.

10 MR. DAMSCHRODER: Mr. Doshi, you're exactly
11 correct. And with the new electronic voting systems for the
12 first time ever we'll actually have meaningful statistics as
13 part of that system.

14 There is a legal time audit log that takes a time
15 stamp of all the transactions during the day. So we'll be able
16 to know, let's say an election where there's low turn out of the
17 hundred people that voted, these many people voted in the
18 morning and what time these people voted in the afternoon, etc.,
19 and how long the average time was for them to vote.

20 The time that it takes to vote is a significant
21 factor in determining the long lines, and also in making machine
22 allocation decisions.

23 I did not mention in my testimony, but you may
24 recall in 2004 the City of Columbus, in addition to the federal

1 races, 12 judicial seats, your state representatives and
2 everything else, the City of Columbus had ten very lengthy
3 construction bond issues on the ballot, in addition to Issue 1,
4 school levies and local options, things like that.

5 Part of what also caused those long lines is
6 people walked in and knew who they were voting for president,
7 but got bogged down when they started reading about sewage and
8 millage and that kind of stuff with the bond issues.

9 So in the future we'll be actually able to use
10 real data, like the time it takes to vote and determining
11 machine allocation.

12 The General Assembly however has taken away part
13 of our discretion in machine allocation as part of House Bill 3,
14 and said two different things.

15 One is that the minimum number of machines in a
16 precinct has to be 1 to 175. One machine for everyone 175
17 actual voters of the most recent gubernatorial election. That
18 has to be your minimum.

19 And then the minimum countywide has to be 1 to
20 175 of your current registration. So there will be less
21 discretion, even though we have better statistics. But there
22 will be a base line that will be established from previous turn
23 out.

24 CHAIRMAN BATTLE: Mr. Humeidan.

1 MR. HUMEIDAN: I actually have a few
2 questions, so I'll ask them all and give you a chance to respond
3 to them.

4 As far as the long lines, though, I'll let you
5 know I live in a predominantly Republican precinct, and there
6 was long lines. I voted and there was about a three hour line.

7 But I think the net effect on the voters was
8 somewhat disproportional, because not everybody has the
9 privilege to take 3 or 5 hours out of their day or take the
10 whole day off so they can wait in line to vote.

11 I think even though there was long lines
12 everywhere throughout Franklin County and other counties, I
13 think the net effect on the voters was disproportional.

14 So anticipating long lines because of the new
15 technology, again is there a Plan B for election day? That's my
16 first question.

17 And then my second question is what is Franklin
18 County and Cuyahoga County doing for trying to get the voters
19 hands-on the voting machines before election day.

20 I know that there is a media campaign, there is
21 different programs, but I think it's different when somebody
22 gets to touch the machine, gets to use the machine and see it,
23 than to see it on TV or on a website.

24 The third question is what is your progress on

1 curb side voting and accommodating disabled voters in both of
2 your counties?

3 MR. DAMSCHRODER: Great questions. In
4 terms of Plan B for this election year there is two issues, our
5 association actively works with the General Assembly to
6 eliminate the 11 restrictive rules on absentee voting.

7 We believe that there will be a significant
8 increase in individuals choosing to vote by mail during the 35
9 days before the election, instead of waiting until election day.
10 That will help individuals who don't have the flexibility to
11 take time off work or have some other reasons.

12 So we believe that the no fault and no excuse
13 absentee voting will help as part of reducing the long lines.

14 In addition as one of the things that we will
15 have, because Franklin County will be going away from the punch
16 cards for absentee and provisional voting to optical scan for
17 absentee voting, we will for the first time have the ability to
18 print ballots on demand at our office and take them to precincts
19 that are experiencing -- if they are experiencing long lines or
20 some kind of machine failure.

21 That was part of what Judge Marbley wanted us to
22 do in 2004 at 7:35 in the evening, but was largely impractical
23 because of the kind of paper voting system we had at the time.

24 Now, in Franklin County Plan B will be if there

1 is long lines, machine failures, we'll be able to take ballots
2 in our office out to those precincts, we'll have voters to vote
3 more quickly.

4 In terms of the voting machine demonstrations we
5 have what we view as a pretty aggressive voting machine
6 demonstration campaign, where we have one full-time person
7 that's all he's doing every day, every night, taking machines
8 out into the community.

9 And we have other folks that do it with him when
10 there is conflicts, those are posted to our website, promoted by
11 the groups that were attending.

12 We decided instead of setting up shop in a high
13 traffic area, although that's one solution, we wanted to work
14 through existing groups to use their PR mechanisms to promote
15 our presence.

16 In addition to that we also will advertise that
17 in the local newspapers, not the Columbus Dispatch, but local
18 suburban community newspapers that are going to be at the
19 Whetstone Library demonstrating the machines.

20 And then in terms of curb side voting with
21 Franklin County, with the advent of voter verified paper audit
22 trail and our vendors solution to that, we will not be able to
23 provide the electronic voting for curb side voting.

24 I think from talking to Michael, I don't want to

1 steal too much of his thunder, I think they'll use -- in
2 addition to putting electronic voting in the precincts they'll
3 use optical scan for curb side voting.

4 Because Franklin County, which is different from
5 Cuyahoga County, the number of split precincts, of our decision
6 of going electronic was putting paper in the precincts increases
7 the likelihood the voter will vote the wrong ballot, and be
8 disenfranchised.

9 So we are working with the disability community
10 to try to really -- for those who need curb side voting, to
11 really encourage them to come to the Board of Elections during
12 the 35 days prior to the election, or they can receive
13 additional assistance or use the no fault ballot at home.

14 All of our machines in the precinct are fully ADA
15 accessible with the ADA value component.

16 MR. VU: As far as Plan B goes, No. 1, we'll
17 have what's known as an election day technician inside our
18 polling locations. This will be beyond the two Democrats, two
19 Republicans for each precinct for poll workers. That election
20 day technician is slowly to review and direct and greet voters
21 as they come inside the polling location, get them to the right
22 precinct.

23 Their responsibility is to also deal with the
24 voting machines themselves and relate any problems in that case,

1 if there are potentially any supply issues they have.

2 The Board of Elections in Cuyahoga County breaks
3 down the county into six zone stations. Each zone station is
4 essentially a place where all supplies are kept.

5 We will also have 63 individuals roving around
6 the county to expedite the process of getting materials to them.

7 As Director Damschroder has stated we will be
8 using optical scan, not only as a method for curb side voting,
9 but as a method for backup measures if things get long that we
10 can actually turn towards those optical scan ballots.

11 We also have the ballot on demand should we run
12 out of the optical scan, as well as utilizing the services of a
13 printer close to Cuyahoga County.

14 I know that counties are going to one specific
15 vendor in Dayton, whereas ours is located right next to Cuyahoga
16 County.

17 As far as the voters hands-on, and of course the
18 whole notion no fault absentee will assist in people voting.

19 And as I testified we had a hundred thousand
20 people out of a million registered voters, hundred thousand
21 people casting and or requesting an absentee ballot.

22 I don't think during that time frame they'll have
23 changes that a hundred thousand people had a reason that were
24 gone from the polling location.

1 So we see that as increasing and that will
2 eliminate some of the long lines.

3 However, we eliminate all of the lines
4 potentially determining how the contested races are and the
5 interest in that.

6 Of course Cuyahoga County, myself, I am for
7 having early voting. Of course that was a constitutional
8 amendment, that was posed before voters and the voters cast nay
9 on the issue.

10 With regard to hands-on instructions on these
11 voting machines, again, as I indicated in my testimony we will
12 be over 650 demonstrations on these events.

13 We have gone to major area malls in -- I don't
14 know if you've been to Cleveland recently, but the malls, major
15 malls that I consider major, of course I'm a recent transplant
16 from the west, but Tower City; we've been to Beachwood Mall;
17 we've been to North Olmstead Mall; and Strongsville Mall.

18 So we have the urban and suburban flavor in all
19 of these to where we can test these machines out, serves dual
20 purposes, No. 1, for the voters to have hands-on experience of
21 the machines and understanding and anticipating if we will have
22 problems and what those problems may be so we can mitigate them.

23 We've been to CSU Convocation Center for all the
24 basketball games demonstrating the devices. We are at 85

1 percent of demonstrating devices at all War Club Meetings,
2 working with political parties demonstrating these at all senior
3 centers, as well as hospitals, banks.

4 Those are the things that we have in place. We
5 will have a Super Sunday where we will be at Hinan's, which I
6 don't know if there is a Hinan's in Columbus or not, but grocery
7 stores.

8 There is Tops, Giant Eagles, Hinan's, Davis, all
9 of these types of supermarkets we will be at one day to
10 demonstrate these devices.

11 Going back to the malls. We were there for a
12 full week, from -- starting in Tower City from Wednesday to
13 Friday, other malls we were there from Friday to Sunday.

14 We kind of take the same motto as what Director
15 Damschroder had stated, we will be on every street corner with
16 these devices to be able to demonstrate them to the public.

17 Again, part of this we will have our interactive
18 website so the voters have an ability, if they can't physically
19 touch the unit, they have an ability to interactively understand
20 and conceptually understand how it will work. It's all main
21 stream technology, it's not main stream in the voting system
22 aspect of it yet.

23 But we have an aggressive communication and voter
24 education fund, and we mapped that out. In fact I talked on a

1 daily basis with one of my administrators who addresses
2 specifically voter education and a communication plan.

3 We have -- we just took on ten individuals,
4 temporary workers for the Board of Elections whose sole purpose
5 is for demonstrating the devices.

6 As well as we have a staff of five on top of that
7 whose sole purpose is for community outreach.

8 CHAIRMAN BATTLE: Thank you, gentlemen. We
9 really appreciate the time and thoughtfulness that you put into
10 preparing for this testimony.

11 We will now move into the open session. David,
12 do we have any members of the public who have signed up?

13 MR. MUSSATT: We have one. Anybody else?
14 Two.

15 CHAIRMAN BATTLE: So two. We'll give you
16 time to leave the table and then we'll ask you gentlemen one at
17 a time to come forward. Thank you again, so much, we appreciate
18 it.

19 (Off the record at 1:06 p.m.)

20 (Back on the record at 1:12 p.m.)

21 CHAIRMAN BATTLE: We are reconvened. Mr.
22 Galfan, would you introduce yourself, and you have five minutes.

23 MR. GALFAN: Thank you, Mr. Chairman.

24 My name is Marty Galfan. I'm a staff

1 representative of Congressman Dennis Kucinich, I work in the
2 Lakewood district office.

3 And I want to thank you all for being here. I
4 think it's very important that you're here to hear all of the
5 things you've heard the last couple days about what's really
6 going on in Ohio's election process.

7 The people you heard from, election officials for
8 instance, they have to answer to the law, H.B. 3, HAVA, and
9 that's important that they do their best to make sure that
10 voting is fair here in Ohio and that everything goes as smoothly
11 as possible.

12 But you all answer to a higher authority, you
13 answer to the U.S. Civil Rights Commission. You're part of that
14 as an advisory committee and also to the Constitution of this
15 country.

16 We have clauses in our Constitution, we have
17 protections in our Constitution for voters, equal protection
18 clause.

19 That's not there for no reason. That's there
20 because there were a hundred years of our Republic when
21 African-Americans were enslaved and denied the right to vote.

22 We have a hundred a years of women being denied
23 the right to vote. We have close to 200 years of our Republic
24 when young people were drafted into wars that couldn't vote for

1 the people who sent them to war.

2 There is a history of voter suppression, it's not
3 just the Constitution was not the only way it was resolved, and
4 the Constitution didn't solve all of the problems.

5 Since the equal protection clause and the 13th,
6 14th, and 15th Amendments, poll taxes were charged, literacy
7 tests were enforced on people to suppress the vote.

8 It's a history that has gone on in this country
9 since the beginning. And from what you've heard for the last
10 couple of days there is still voter suppression going on.

11 And it's really up to you to hear that, to digest
12 it and to communicate it to the Commission, to the U.S. Civil
13 Rights Commission, because they are there for a reason, they are
14 there because of our equal protection clause and other laws in
15 the United States to protect the voters and make sure we have
16 fair elections.

17 Now, I know you've heard from one of the framers
18 of H.B. 3, and he told you that there is fraud going on, that
19 there are people who might be registering to vote under false
20 names. He mentioned George Foreman for instance.

21 My dad used to bowl with George Foreman, he was a
22 pretty respectable bowler, but he was no heavy weight champion.
23 Guy named George Foreman, you know.

24 There are people who have similar names, and I

1 think that it's incumbent on the election boards to make sure
2 they have 30 days from the deadline of registration until the
3 election day, and a lot of people register before election day,
4 election boards have large staffs, probably not large enough,
5 they'll argue, but they do have large staffs.

6 They also have the county prosecutor at their
7 disposal. The 88 county prosecutors in Ohio are there to answer
8 calls from directors of elections boards, that's their job in
9 part.

10 So if there is fraud going on it should be taken
11 care of. But I don't think we need to suppress votes, suppress
12 voters, to inhibit voters, to make it more difficult to vote.

13 I think the direction of our election laws in
14 this country from the Constitution to the Voting Rights Act to
15 the other laws that have been passed historically have been to
16 make voting easier for people.

17 You heard the testimony -- and before H.B. 3,
18 too, for the last several years during the late elections of the
19 last few years, things have been happening that make voting
20 harder for people, and H.B. 3 makes it even harder.

21 I respect the Board of Elections, I know they do
22 a good job. They are going to do the best they can, but in many
23 ways their hands are tied.

24 It's important you're here hearing what's going

1 on in Ohio. You have a responsibility to communicate that to
2 the Civil Rights Commission.

3 The Civil Rights Commission has an obligation
4 under the law and Constitution to make sure that votes are not
5 being suppressed, voters are not being intimidated.

6 That it's easy for the people of this country,
7 the citizens of this country to vote, to exercise their
8 democratic rights.

9 It shouldn't be hard for them. They shouldn't
10 have to pay money to make copies to get the vote out. Voting
11 should be as free as walking and breathing and living their
12 lives, it should not be made difficult.

13 We do have excellent county employees who can
14 check the veracity of registrations, that is their job, they do
15 it all the time, they do a good job.

16 The people need to be able to vote in a way that
17 makes it easier for them, not harder. And so I hope that you
18 take this all back to the Civil Rights Commission and make sure
19 this is all heard and digested and they understand what is going
20 on in Ohio, so that something can be done to make voting easier,
21 that's the bottom line, we need to make voting easier, not
22 harder.

23 Thank you for allowing me to testify, or to
24 comment I should say.

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CERTIFICATE

- - -

I, Cheryl D. Edwards, Certified Professional Reporter, and Notary Public in and for the State of Ohio, do certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on March 17, 2006, and carefully compared with my original stenographic notes.

That I am not an attorney for or relative of either party and have no interest whatsoever in the outcome of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 31st day of March, 2006.

Cheryl D. Edwards,
Notary Public in and for
the State of Ohio
My commission expires 11/05/08

- - -

U.S. COMMISSION ON CIVIL RIGHTS



Voting Rights in Ohio (pt. I)

Hosted By:

The Ohio Advisory
Committee to the U.S.
Commission on Civil
Rights

Date:

Friday March 2, 2018

Time:

11: 30am-1: 00pm EST

Audio:

- ◆ Dial: 877-741-4240
- ◆ Conference ID: 7829359

Visual:

Register at—
[https://cc.readytalk.com/r/
kyos4gwgpp5&eom](https://cc.readytalk.com/r/kyos4gwgpp5&eom)

U.S. COMMISSION ON CIVIL RIGHTS

Regional Programs Unit
55 West Monroe
Suite 410
Chicago IL, 60603

Phone: 312-353-8311
Fax: 312-353-8324
Online: www.usccr.gov

The Ohio Advisory Committee to the United States Commission on Civil Rights is hosting a public, online panel discussion regarding voting rights in the state. The meeting agenda is as follows:

Opening Remarks (11:30 am)

Panelist Presentations (11:35am-12:45pm)

- *Daniel Tokaji, Associate Dean Ohio State University Moritz College of Law*
- *Catherine Turcer, Executive Director, Common Cause Ohio*
- *Kerstin Sjoberg-Witt, Director of Advocacy, Disability Rights Ohio*

Open Forum (12:45pm-1:00pm)

Adjournment (1:00pm)

Members of the public will be invited to speak during the open forum period provided. Toll free public access information is listed to the left. This is the first in a two part series on the topic. The second meeting will take place Friday March 9, 2018 from 12:00-1:30pm EST. Please contact the Regional Programs Unit for more information.

This study is in support of the Commission's 2018 Statutory Enforcement Report on voting rights in the United States. The Ohio Committee will issue findings and recommendations in a report to the Commission after all testimony has been received.

U.S. COMMISSION ON CIVIL RIGHTS



Voting Rights in Ohio (2nd Session)

Hosted By:

The Ohio Advisory Committee to the U.S. Commission on Civil Rights

The Ohio Advisory Committee to the United States Commission on Civil Rights is hosting a public, online panel discussion regarding voting rights in the state. The meeting agenda is as follows:

Date:

Friday March 9, 2018

Opening Remarks (12:00 pm)

Panelist Presentations (12:05 pm – 1:15 pm)

Time:

12:00 pm-1:30 pm EST

- Edward Leonard, Director, Franklin County Board of Elections
- Rep. Kathleen Clyde, Ohio House of Representatives
- Senator Frank LaRose, Ohio Senate
- Representative, Office of the Ohio Secretary of State (pending)

Audio:

- ◆ Dial: 877-718-5095
- ◆ Conference ID: 6801605

Open Public Comment (1:15 pm – 1:30 pm)

Visual:

Register at:
<https://cc.readytalk.com/r/ray86wto2gj&eom>

Adjournment (1:30 pm)

Members of the public will be invited to speak during the open comment period. Toll-free public access information is listed to the left. This is the second in a two part series on the topic. The first meeting took place Friday March 2, 2018 from 11:30 am – 1:30pm EST. Please contact the Regional Programs Unit for more information.

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The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights and reporting annually on federal civil rights enforcement. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: in our 7th decade, a continuing legacy of influence in civil rights. For information about the Commission, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).

Ohio Advisory Committee the U.S. Commission on Civil Rights

Voting Rights in Ohio, March 2018 Panelist Outreach Report

- **Panelists March 2, 2018**
 - Daniel Tokaji, Associate Dean, Moritz College of Law, Ohio State University
 - Catherine Turcer, Common Cause Ohio
 - Kerstin Sjoberg-Witt, Disability Rights Ohio
- **Panelists March 9, 2018**
 - Edward Leonard, Director, Franklin County Board of Elections
 - Representative Kathleen Clyde, Ohio House of Representatives (D)
- **Others Invited**
 - Jon Husted, Ohio Secretary of State (no response)
 - Jack Christopher, General Counsel, Office of the Ohio Secretary of State (declined)
 - Matthew Damschroder, Deputy Assistant Secretary of State, Ohio Office of the Secretary of State (declined)
 - Office of the Press Secretary, Ohio Secretary of State (no response)
 - Senator Frank LaRose, Ohio Senate (R) (withdrew)
- **Written Testimony**
 - Daniel Tokaji, Associate Dean, Moritz College of Law, Ohio State University
 - Kerstin Sjoberg-Witt, Disability Rights Ohio
 - Camille Wimbish, Ohio Voter Rights Coalition

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 Operator: Thank you for standing by. Good day and welcome to the US Commission on
2 Civil Rights Ohio Advisory Committee conference call. Today's conference is
3 being recorded. At this time, I'd like to turn the call over to Ms. Diane Citrino.
4 Please go ahead, ma'am.

5 Diane Citrino: Thank you. This meeting of the Ohio Advisory Committee to the US Commission
6 on Civil Rights shall come to order. For the benefit of those in the audience, I'm
7 going to introduce my colleagues and myself. I am Diane Citrino, an attorney
8 working in Cleveland Ohio and the Chair of the Ohio Advisory Committee.
9 Members of the committee on this call are Scott Gerber, Mark Strasser, Edith
10 Thrower and David Tryon. Also present on the call is David [Guerreras 00:00:52],
11 a civil rights analyst for the commission.

12 The US Commission on Civil Rights is an independent, bi-partisan agency of the
13 federal government charged with studying discrimination, denial of equal
14 protection of the laws or in the administration of justice because of race, color,
15 religion, sex, age, disability or national origin. In each of the 50 states and in the
16 District of Columbia, an advisory committee to the commission has been
17 established and they are made up of responsible people who serve without
18 compensation to advise the commission on relevant information concerning
19 their respective states.

20 Today, our purpose is to hear testimony regarding voting rights in Ohio. If
21 speaker veer away from this topic to discuss possibly important, but unrelated
22 topics, I'm going to interrupt and ask them to refrain from doing so and to get
23 back on track. I want to repeat what we just heard that this meeting is being
24 recorded and will be transcribed for the public record. I also want to remind
25 everyone that this is a two-part series. This is part one. We will also hear
26 testimony on Friday, March 9th, from 12:00 to 1:30 pm Eastern Standard Time.
27 We hope you will join us for that meeting as well. We are fortunate and thankful
28 to have such a balanced and diverse group of panelists to share with us at both
29 of our meetings.

30 I also just want to briefly go through the ground rules for today's meeting. This
31 is a public meeting open to the media and general public. We have a very full
32 schedule of people who will be making presentations within a very limited time.
33 The time allotted for each presentation is going to be strictly adhered to. This
34 will include a presentation by each panelist of about 15 minutes. After all the
35 panelists have concluded their statements, the committee members will engage
36 in questions and answers. I will ask our committee members and recognize you
37 and you will ask verbally some questions.

38 To accommodate people who are not on the agenda, but wish to make
39 statements, we have scheduled one open session today at 12:45. At that time,
40 when indicated by the operator to do so, anyone wishing to make a statement
41 should press *1 on their phone to request that their line be unmuted. In
42 addition, written statements may be submitted by mail to the US Commission

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 on Civil Rights at 55 West Monroe Street, Suite 410, Chicago, Illinois, 60603, or
2 by email to ... I'm going to spell this. mwojnaroski@usccr.gov. You can call 312-
3 353-8311 for more information or if you missed that email.

4 Some of the statements today may be controversial. We want to make sure that
5 all the invited guests do not defame or degrade any person or any organization.
6 Again, as chair, I reserve the privilege to cut short any statements that defame,
7 degrade or don't pertain to the issue at hand. In order to ensure that all aspects
8 of the issues are represented, knowledgeable people with a wide variety of
9 experience and viewpoints have been invited to share information with us.
10 Anybody who feels defamed or degraded by statements made in these
11 proceedings may provide a public response during the open comment period.
12 Alternately, such people can file written statements for inclusion in the
13 proceedings. The advisory committee appreciates the willingness of all
14 participants to share their views and experiences with this committee.

15 Finally, again, the rules for the question and answer portion to the panel are as
16 follows. The committee may ask questions of the entire panel or individual
17 members of the panel after all the panelists have had the opportunity to
18 provide their prepared statement. Advisory committee members must be
19 recognized by the chair before asking any question of the participants. In
20 addition, because of the large number of numbers and short amount of time,
21 each committee member will be limited to one question plus a follow up. When
22 five minutes are left in the session, I will announce that the last question can be
23 asked.

24 With that, thank you all for being on this call. We're going to start with Daniel
25 Tokaji, Associate Dean, Ohio State University Moritz College of Law. Dean Tokaji,
26 please begin. Thank you.

27 Daniel Tokaji: Thank you very much. It's a pleasure and an honor to participate in this hearing
28 and to share information with all of you and learn from all of you about the
29 state of voting rights in Ohio. I'm going to trust, unless someone tells me
30 otherwise, that you're able to see the slide that I'm presenting on the screen.
31 You should currently see a slide that reads Voting Rights in Ohio with my name,
32 Daniel P. Tokaji below it.

33 What I'm going to do over the course of my remarks this morning is to provide
34 an overview of developments focusing especially on what's been going on here
35 in Ohio in the area of voting rights over the past 12 years or so. It will come as
36 no surprise to those of you who know me that I have strong opinions on some
37 of these things, but for the most part in this presentation, at least in my opening
38 remarks, I'm going to try to keep it descriptive, so talk about what's been
39 happening in the area of voting rights and in particular to talk about lawsuits
40 pertaining to the right to vote in the State of Ohio.

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1 Of course, if you want me to offer my normative views on these subjects, I'd be
2 happy to do so in the question and answer section. Here's the way that I'm
3 going to break down my remarks today. You should now see a slide that says
4 Voting Rights in Ohio with three topics under them. First, I'm going to provide
5 some of the national context for what's been going on starting with a little bit of
6 history and going into some of the developments in recent years throughout the
7 country. This is important by way of context because Ohio is a part of and
8 indeed an important part of an ongoing national conversation about the
9 meaning, import and enforcement of the right to vote.

10 Next, I want to turn to two different kinds of voting rights claims. First, what are
11 commonly referred to in the literature, the scholarly literature as vote denial
12 claims. This is ... I'll describe ... Has to do with a claim that certain practices
13 impede people from casting a vote or from having their votes counted. I'll talk
14 about vote denial cases in Ohio, which there have been many over the past 12
15 years or so.

16 I'll then turn briefly, more briefly, to the subject of vote dilution in Ohio. Vote
17 dilution refers to practices that don't actually prevent or impede people from
18 casting a vote, but may weaken the strength of some people, in particular, some
19 groups' votes, particularly groups that are defined along lines of race or
20 ethnicity. Let me begin with a bit of context. Whenever we talk about the right
21 to vote in Ohio or anywhere else, it's important that we recognize at the outset
22 why it is so important, why it has been regarded as a fundamental right at least
23 by the Supreme Court since the 19th century.

24 "The political franchise of voting," the court wrote way back in 1886, "is
25 regarded as a fundamental political right because it is preservative of all rights."
26 The idea here is that none of our other interests are safe unless we're able to
27 cast our votes, have them counted and have them weighted in a way that's
28 equal to those of other citizens. To the extent that we're not able to vote or that
29 the votes of some citizens or groups of citizens are diluted, we are that much
30 less citizens because we're not able to protect our interests through the political
31 process and through our government.

32 The irony of this statement, particularly if you look to the date, is that at the
33 very time that this sentence was written establishing the right to vote as
34 fundamental, the voting rights of African Americans throughout the states of
35 the former Confederacy were being systematically denied through a variety of
36 now infamous practices, literacy tests and often threats and actual violence
37 were used to prevent African Americans, especially in the South, from voting.
38 This is a reminder that all of us should take to heart that the rights that exist in
39 the books of law on the pages of our statute books or even in Supreme Court
40 opinions. That's one thing, but the law as it actually is implemented on the
41 ground is quite another.

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1 In other words, there's often a difference between the law as written and what
2 is actually happening in the real world that is important for us to keep in mind.
3 We see in this history ... Of course, I know this is familiar to you, so I'm not going
4 to waste everyone's time by going through all of it. There have been ebbs and
5 flows with respect to the right to vote over the years. We had an initial period of
6 expansion after the Civil War with the 14th and 15th Amendments followed by
7 its weakening and systematic deprivation of the rights to vote of African
8 Americans throughout the South followed by the Voting Rights Act.

9 I'll continue the story into the present era, but the big point here is that voting
10 rights don't necessarily move in a straight line. Sometimes we see periods of
11 stasis or even regression followed by periods of progress. These are the two
12 main kinds of voting rights claims in Ohio and around the country that I'm going
13 to be addressing in my remarks.

14 Historically, vote denial, which is as I mentioned earlier refers to impediments
15 to voting or having one's vote counted included poll taxes, literacy tests.
16 Nowadays, some other practices, like voter ID laws, restrictions on early and
17 absentee voting have been challenged on the grounds that they improperly,
18 illegally deny the vote. Vote dilution, as I mentioned, refers to practices that
19 weaken the strength of a political group like at large elections or gerrymandered
20 districts. This too has been a big concern, especially in recent years.

21 A historical example of vote denial is the poll tax, which the courts struck down
22 in *Harper v. Virginia*. Nowadays, we think of the poll tax as a device that was
23 used to exclude African Americans from voting, which it most certainly was, but
24 the court's rationale actually didn't depend on racial discrimination, but on the
25 fact that it excluded people based on their wealth or poverty, which the court
26 said isn't [inaudible 00:13:59] to the ability to participate in democracy.

27 Moving forward towards the modern era, and this year is the nationwide
28 picture, what we've seen in the last several years, as this graph by my co-author
29 ick [Hasten 00:14:14] shows, is a pretty substantial increase in the quantity of
30 election litigation nationwide going from just around 100 or even less in the
31 years proceeding 2000 to a lot more, up to 361 in 2004, which of course was a
32 very big year here in Ohio especially. In the high 200s or low 300s in recent even
33 numbered years, that is election years.

34 We've seen overall an increase in litigation in the last 18 years or so, which is in
35 small part due to the Florida 2000 election and to the *Bush v. Gore* opinion even
36 though it's not been cited by the Supreme Court in the intervening years. That
37 decision and the Supreme Court's intervention in that election has I think had a
38 lot to do with the fact that we've seen a lot more election cases. In *Bush v. Gore*,
39 the court relied on the equal protection principle that you see here. "Having
40 once granted the right to vote on equal terms, the state may not, by later
41 arbitrary and disparate treatment, value one person's vote over that of
42 another."

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1 Many of the cases that we've seen in recent years have to do with alleged
2 violations of this principle of equality. We've also had Congress of course get
3 into the act most notably through the Help America Vote Act of 2002, which
4 enacted various reforms to the way that elections are run and managed in the
5 United States, including improvement to voting technology, a requirement of
6 state-wide registration with a limited voter identification requirement. Some
7 states, as I'll discuss, have gone much further, and a requirement that
8 provisional ballots be available under some circumstances including where
9 voters appear at the polls and find that their names aren't on the list.

10 In the courts, the most significant case, at least the most significant decision
11 from the Supreme Court that we've seen in the last several years is the Supreme
12 Court's decision in Crawford v. Marion County Election Board. That decision
13 upheld against the [inaudible 00:16:30] equal protection challenge, Indiana's
14 photo ID law. There was, however, no majority opinion in that case. The justices
15 were basically divided into three groups, which meant that there was no opinion
16 for the court. However, most justices in the Crawford case articulated this
17 standard, which is sometimes referred to as a Anderson Verdict Crawford
18 Standard, named based on the cases from which it derives.

19 This is basically a form of a balancing standard that lower courts, including those
20 in the Sixth Circuit, have applied in challenges to a variety of voting practices,
21 where the court will determine the character and magnitude of the burden on
22 voting. That includes whether it particularly affects certain groups including
23 poor people or people of color if there's a severe burden then strict scrutiny
24 applied. Most of the time courts have found that there's not a severe burden,
25 but that doesn't mean the state is necessarily off the hook in defending its
26 restrictions or burdens on voting.

27 The state must still justify the burden by showing that it serves an important
28 regulatory interest. In addition to these claims under the Constitution, we've
29 seen in Ohio and other states over the last several years a number of claims
30 alleging race discrimination and in particular, race discrimination in violation of
31 Section 2 of the Voting Rights Act.

32 Section 2 of the Voting Rights Act was originally adopted as a part of the original
33 Voting Rights Act in 1965 in response to the activism of Dr. King, who you see
34 here among many others. It was amended in 1982. Before 1982, Section 2, like
35 the 15th Amendment to the United States Constitution was understood to
36 require intentional race discrimination, Section 2 as amended in 1982 allowed a
37 claim to be made of race discrimination based upon a result that is
38 discriminatory. It says that practices that result in the denial or abridgment of
39 the vote on account of race violates Section 2.

40 As I'll discuss in a few moments, we've seen a lot of cases in recent years under
41 Section 2 especially since the Supreme Court's decision in Shelby County a few
42 years ago that effectively stopped the pre-clearance requirements of a different

1 section of the Voting Rights Act, Section 5. Here's the language from Section 2
2 that I mentioned earlier. Note that it prohibits practices that result in a denial or
3 abridgment of the right of any citizen to vote on account of race or color.

4 Sub-section B of Section 2 requires courts to look at the totality of the
5 circumstances. The effect of this is that we tend to have very contextual
6 decisions that look a lot at the history of discrimination in voting and other
7 areas within a particular state as well as the practice's connection to social or
8 historical circumstances that may result in race based disparities and access to
9 the vote.

10 I just want to mention a few of the recent cases from other states by way of
11 providing context for what's been going on in Ohio since after all courts often
12 look to other courts when they're trying to figure out what the law means and
13 how it should apply. These are three of the biggest ones in the last few years. In
14 North Carolina, the 4th circuit enjoined a law imposing various restrictions on
15 the vote. This was a law that was adopted by that North Carolina legislature
16 shortly after the Shelby County decision. In addition to imposing voter ID, it
17 limited opportunities for early voting and same-day registration and imposed
18 other restrictions.

19 The court in its opinion found that these requirements were targeted with
20 almost surgical precision at practices, voting opportunities that were used by
21 African Americans and on that basis, they just struck it down as intentionally
22 discriminatory. By contrast, in Wisconsin, the 7th Circuit in an opinion by Judge
23 Easterbrook, upheld a voter ID law that Wisconsin had adopted, although the
24 [inaudible 00:21:25] Circuit also upheld another lower court ruling in a different
25 case that made it easier for people to get the required ID.

26 Finally, in Texas, there's ongoing litigation regarding that state's voter
27 identification law. The district courts and later the 5th Circuit struck down one
28 version of Texas' voter ID law as being in violation of Section 2 of the Voting
29 Rights Act, although that litigation is still ongoing. We've also seen, again
30 focusing on the nationwide perspective, a lot of activity lately on vote dilution
31 and in particular the revival of so-called racial gerrymandering claims. This is
32 another area where the nationwide developments have some implications for
33 Ohio, as I'll discuss later.

34 I'm not going to go through all of these three cases in detail, but in Alabama,
35 Virginia and in North Carolina, the court has either allowed equal protection
36 claims to proceed or in the Cooper Case actually struck down districts on the
37 grounds that they're impermissible racial gerrymanders. The claim in particular
38 was that African American voters have been packed into districts that race was
39 the predominant factor and that compliance with the Voting Rights Act didn't
40 justify these concentrated African American districts. You see here the two
41 districts that were struck down in the Cooper case of the state of North

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1 Carolina. These by the way are also districts that were subject to racial
2 gerrymandering challenges way back in the 1990s in the Shaw v. Greenoak case.

3 Now, I want to shift our focus more specifically on what's been going on in Ohio
4 and we've had of course a lot of litigation over voting practices in Ohio,
5 particularly in the 2004 election when these and other areas were the subject of
6 both controversy and litigation. Turning towards the present because I know
7 this was the subject of a hearing many years ago, we've continued to see
8 litigation over various topics in Ohio. I want to specifically focus on three of
9 them.

10 One of them is provision voting, where there have been various cases over the
11 years, including the Sandusky County Democratic Party case, which upheld
12 against a challenge under the Help America Vote Act, Ohio's rule against
13 counting provisional ballots cast in the wrong precinct. However, in a
14 subsequent case, [inaudible 00:24:30], the 6th Circuit held that it likely violates
15 the equal protection clause to treat some of those wrong precinct provisional
16 ballots differently from others.

17 Then in a 2012 decision, the 6th Circuit held that it violates both equal
18 protection and due process to reject ballots that were cast in the correct
19 location meaning the correct polling place even if the voter went to the wrong
20 precinct table within that polling place. The bottom line here is that the court
21 has been applying that balancing test from Anderson Verdict Crawford that I
22 mentioned earlier looking very contextually at the burdens imposed by the
23 practices and balancing that against the state's interest. Most recently, we've
24 seen litigation over the counting of provisional ballots. The 6th Circuit reversed
25 the decision of the lower court that had enjoined some of the restrictions on the
26 counting of provisional ballots in the [inaudible 00:25:41] litigation.

27 Turning to the second area, early and absentee voting, this has also been an
28 area where there's been a lot of activity over the years. Again, not mentioning
29 all of these cases, but in Obama For America v. Husted in 2012, the 6th Circuit
30 invalidated the differential treatment of voters, in particular the differential
31 treatment of military and overseas voters as opposed to other voters with
32 respect to in-person absentee voting, as we call it here, what everybody else
33 calls early voting, finding that that distinction wasn't justified.

34 We've also seen a lot of litigation here in Ohio over the so-called Golden Week,
35 which was established effectively by statutory amendments back around 2004
36 and later eliminated by the state legislature. The 6th Circuit had upheld
37 effectively the elimination of Golden Week although there was a settlement in
38 another case, NAACP v. Husted, which allowed early voting in weekends prior to
39 the election.

40 The final case from Ohio that I want to mention under the heading of vote
41 denial is a case under the National Voter Registration Act, I should mention that

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1 I am counsel for the plaintiffs in this case. This is the law that's commonly
2 known as Motor Voter, although it has a number of other requirements in
3 addition to requiring the voter registration opportunity be made available at
4 motor vehicle, public assistance and disability offices. Among the requirements
5 is that it limits the circumstances in which voters may be removed from the
6 roles.

7 The case in which I'm one of the attorneys for plaintiffs and is currently before
8 the Supreme Court argues that Ohio's practice of initiating the removal process
9 based solely on a person's failure to vote in the previous two years is a violation
10 of the NVRA. The Supreme Court heard argument on this case earlier this year
11 and were expecting a decision by the summer.

12 I'm going to just briefly ... Because I know I'm about out of time ... Going to turn
13 to the subject of vote dilution. We haven't had any racial gerrymandering
14 challenges in Ohio yet, but it's certainly conceivable that we could. This is a
15 current redistricting plan in Ohio, which as you'll note, includes 12 districts from
16 which Republicans have been elected since they were drawn [inaudible
17 00:28:20] from which Democrats have been elected. One of those districts, the
18 11th Congressional District, which is an 80% Democratic district roughly
19 speaking and about a 52% African American district, at least at the point where
20 it was drawn, this is a district that I think is quite likely subject to a racial
21 gerrymandering challenge under the Cooper decision out of North Carolina that
22 I mentioned earlier. Race was almost certainly the predominant factor in
23 drawing this district and its boundaries almost certainly could not be defended
24 as necessary under the Voting Rights Act.

25 For proponents of redistricting requirements, there's a bit of good news here,
26 which will provide a nice segue, I'm sure, to Catherine's presentation. There will
27 be a measure appearing on the ballot this spring that would reform the process
28 for drawing the state's congressional districts. There have been several attempts
29 at redistricting reform over the years including a 2012 measure that I was
30 involved in. Back in 2015, the process for drawing state legislative districts and
31 this May, a measure will appear on the ballot that would reform the process for
32 drawing the congressional districts, a new process that I suspect would do much
33 better in terms of preventing vote dilution and other practices that might be
34 deemed a violation of either the constitutional or statutory right to vote.

35 Sorry if I've gone over, but I will stop there and turn it over to Catherine.

36 Diane Citrino: Thank you Dean Tokaji. This is Diane Citrino, the chair, introducing now our next
37 presenter, Catherine Turcer. She's the Executive Director of Common Cause
38 Ohio. Catherine has served on Ohio's Help America Vote Act advisory
39 committee. Since 2012, she's helped coordinate a non-partisan election
40 protection program in Ohio, which is done in coordination with the Lawyers
41 Committee for Civil Rights Under Law. Catherine, please take it away.

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1 Catherine T.: Hi everybody. I'm so pleased to be able to talk to you today about voting in
2 Ohio. Common Cause has been around since Watergate. We've focused on
3 being the people's lobby, and we're really committed to accessible elections and
4 the notion that everyone should be able to have a voice and have open and
5 accountable government. I thought I'd start out with what are some things that
6 actually we do fairly well? Ohio has actually bucked the national trend of strict
7 voter ID. Ohioans can still use a number of different forms of identification
8 including usual license, that kind of thing.

9 You can also use a utility bill. We also have a period of what we think of as early
10 in person voting. It's actually in the law called no fault absentee voting, and
11 approximately one third of Ohioans actually take advantage of this early vote
12 period. Ohioans can register to vote and update their voter registration. That
13 started January this year. We have that ability to do that fairly easily, which is
14 very important. The other thing that I think we should always think about is that
15 folks who are not incarcerated are permitted to vote. Those are some of the
16 things that I think Ohio actually does well.

17 When we think of that early voting in person period, that is something that
18 really came about because citizens were collecting signatures. They put pressure
19 on the state legislature and the legislature in 2005 instituted this early vote
20 period. There are a number of different times where the actions of citizens have
21 made a difference in our ability to vote. I know Dan hit on a number of different
22 lawsuits. The tail of voting in Ohio often has a lot to do with all of these different
23 lawsuits.

24 As we think about election administration in Ohio, I also think there's some
25 things that we actually do fairly well. We do have truly bi-partisan election
26 administration like Noah's Arc, the Democrats and Republicans vote two by two,
27 which in fact leads to greater accountability. You don't have a person of one
28 party examining or doing audits. Everything's two by two. The fact that we have
29 voter verified paper audit trails on the touchscreens, it enables voters to
30 confirm their vote and helps people feel more confident.

31 The other thing that's fairly new is that voters are now able to track receipt of
32 their absentee ballot. If you were going to vote by mail, you can actually see,
33 "Okay, I put an application in. Now it's on its way. It'll be to me in a few days.
34 You can see where in the process it is." This has actually helped to improve
35 voter confidence.

36 I started with what are we doing well and what are the good things? Dan Tokaji
37 hit on the fact that we have a stricter purging standard in Ohio right now. I
38 called use it or lose it. We are one of the most aggressive states for purging
39 voters from the voter roll for not actually going to vote. The Secretary of State,
40 Jon Husted, has established this practice where they mail a postcard to voters
41 who haven't voted within a two-year period asking them basically to confirm

1 their registration. Voters who fail to respond or vote within the following four-
2 year period are removed from the roll.

3 What does this actually mean? In advance of 2016's election, tens of thousands
4 of voters, primarily African Americans from urban areas, were removed from
5 the voter roll despite actually still being eligible to vote. As we know, people are
6 much more excited about voting when it comes to presidential elections. Not
7 choosing to vote can actually be a way to exercise your first amendment rights
8 as well. I'm not sure what's going happen. My guess is if you have questions
9 about how things are going with the case, we'll find out about that. I'd ask
10 questions to Dan about this, but we really have to wonder. The aggressive
11 purging, does it actually violate the National Voter Registration Act? Does it
12 violate the Help America Vote Act?

13 We will find out, but there were certainly people all over the state who went to
14 vote that didn't have any sense that it was a use it or lose it kind of situation
15 that found that in fact they could not cast a vote. One of the things that I see as
16 problematic when it comes to voting in Ohio is that all the counties are treated
17 equally, but the voters are not necessarily treated equally. For example, all
18 counties are permitted to have only one location for early in person voting
19 hours. They're limited hours. They have basically what you would think of as
20 business hours and then they extend it just a little bit and there's some
21 weekend hours that final weekend.

22 Because each county has this kind of situation, what happens is there are very
23 long lines at urban boards of elections especially on the weekend before
24 presidential elections because of course a smaller county, a less populace
25 county just doesn't have the same kind of needs as the more populace counties.

26 The other thing to think about is several urban counties have traditionally set
27 absentee ballot applications, vote by mail applications to voters every year as a
28 fairly ... It's a cost effective way. You encourage early voting. Makes it a lot
29 easier actually on election day, but in 2014, the state legislature passed a bill
30 and under our new law, absentee ballot applications can only be made by the
31 Secretary of State if the legislature appropriates the money to do so.

32 This adversely impacts folks in those urban counties because of course they're
33 more likely to participate in really long lines and to have the problems that you
34 have with those long lines, where people get discouraged. They make choices
35 about leaving and they don't have as easy access as the more rural voters. There
36 are some other challenges that Ohio's facing. I'm going to talk about those very
37 quickly.

38 Our voting machines are aging. We would like to have new voting machines.
39 There is in fact a bill that was proposed to help fund new funding apparatus, but
40 it is not part of the capital budget, which is not the traditional way we do these
41 things. Basically, you have to pass the capital budget, but you don't actually

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1 have to pass one that just focuses on the voting machines. It can be very helpful
2 to actually have that in the capital budget. I'm a little worried about whether
3 this will come to fruition or not, which can have an impact on voters all over. It
4 can adversely impact some counties over others just because of resources that
5 the counties are able to bring to bear to purchase those machines.

6 The other thing is because of lawsuits and back and forth and some of the
7 changes of voting rules over time, we actually do need to have good education
8 and information coming from the Secretary of State's office. Especially now that
9 we have this online voter registration, we should be able to have good
10 education coming from the Secretary of State's office, but last year in the state
11 operating budget funds, there were zero dollars, no funds were set aside for
12 voter registration.

13 The other thing to highlight is the electronic poll books, which can make things
14 move much more smoothly, can also create problems. In Montgomery County
15 Daton area in 2016, there was a lot of confusion with these new electronic poll
16 books or e-poll books. It led to these really long lines. The election before,
17 they'd had a similar problem in Hamilton County, where Cincinnati is. The state
18 legislature is actually considering reducing the number of poll workers. There's a
19 tail of voting that has to do with all of the different lawsuits that happen, but
20 there are on a regular basis truly, truly awful bills proposed that we need as
21 election advocates to push back on and to be sure that our legislatures are
22 really thoughtful about any changes they make.

23 One of the recent changes that they made ... [inaudible 00:39:52] about a year
24 and a half, so not too recent. There was a legislation basically changing it so you
25 had to have a driver's license from Ohio, which would have adversely impacted
26 college students and young people. Simple changes that they think about
27 making can make a difference. Then there are some simple changes that could
28 actually make voters have more confidence and be invited into voting.

29 One thing that we have and that we mentioned earlier is these voter verify
30 paper audit trails, which can be really useful for auditing purposes. The voter
31 can confirm how they voted, make sure that it was cast correctly, identify
32 problems with the machine and yet poll workers do not actually show this part
33 of the machine to people who've come to vote. A simple change if ... Obviously,
34 we're going to these new machines. It could be we'll be doing optical scans, but
35 it seems like even when we put something good in place and we pass legislation
36 to address better auditing, some of the simple thing is not included.

37 I realize this impacts all voters, but certainly many of the populace counties
38 have these optical ... They don't have optical scan machines. They have these
39 touch screen machines. The other thing to know is infrequent voters are moved
40 to an inactive list. Before they're actually pulled from the roll, they're moved to
41 the inactive list.

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1 In 2016, 13% of registered voters were deemed to be inactive. This means that 1
2 million voters did not receive information about vote by mail, so they were
3 treated completely differently, where you would think, "Hey, these are voters
4 who are not participating. We don't really know why, but we want to invite
5 them into the process, not make it more difficult."

6 We also need to be thinking about much better education for Ohioans so that
7 they know they can vote even if they have a felony on their record. No state is
8 truly an island. There are states around us where people who have felonies on
9 their record are not permitted to cast a ballot. Here in Ohio, if you are not
10 currently incarcerated, you can actually go and vote. Unfortunately, there's
11 some misinformation about this that it is a real barrier to people, especially for
12 those voters of color.

13 I think we've come a long line ... Tripping over my own tongue everybody, sorry.
14 We've come a long way since the long lines of 2004, but sometimes I worry that
15 we've gotten just far enough away from it that we start to think about reducing
16 poll workers and we start to think about making changes that are not in the
17 voters best interest. As we move forward, I think we need to do this in as
18 transparent a way as possible. We need to have these kinds of conversations so
19 that voters understand what information is out there.

20 My biggest ... I'm going to leave you with this. My biggest takeaway that I hope
21 I'm leaving you with is that we need much better education about voting
22 coming out of the Secretary of State's office and boards of election. I'd like to
23 say thank you very much again. I'm going to hand it over. Diane.

24 Diane Citrino: Thank you Catherine. That was a wonderful presentation, very inspiring. I'm
25 going to now ask our final panelist, Kerstin Sjoberg-Witt, Director of Advocacy
26 and the Assistant Executive Director at Disability Rights Ohio, to present. She
27 directs and manages all client advocacy work at Disability Rights Ohio, which
28 covers a wide range of issues from discrimination to access to services to
29 investigating abuse and neglect for persons with disabilities. She's also actively
30 involved in systemic litigation including two class actions pending in Ohio. With
31 that, I'd like to turn it over to you.

32 Kerstin S-W.: Thank you Diane, and thanks to the committee for having me here today to talk
33 about voting and what the experiences and issues that Ohioans with disabilities
34 face when it comes to exercising that fundamental right to vote. Just a little bit
35 about us as an organization, we are a not for profit. Our mission is to advocate
36 for the legal and civil and human rights of people with disabilities in Ohio. We're
37 also what's called the protection advocacy system and the client assistance
38 program. Those are programs that are designated by the governor. We've been
39 designated as the protection advocacy system and client assistance program
40 since their inception in the '80s. We've kept that designation even through a
41 name and structural change when we moved from Ohio Legal Rights Service,

1 which is an independent state agency, to our not for profit status in 2012 as
2 Disability Rights Ohio.

3 We received federal grant dollars to do most our work and some private
4 foundation dollars as well. Our work, we advocate without cost to our clients on
5 a wide range of issues as Diane noted earlier. One of those is of course voting
6 work. One of our federal grants is specific to voting. It was money that was set
7 aside when the Help America Vote Act was passed and it's the Protection
8 Advocacy for Voting Assistance, or PAVA, grant. That allows us to dedicate some
9 of our resources solely to the issue of voting rights. We have other funding that
10 we can use to also advocate for individuals based on other eligibility criteria, but
11 we primarily use our PAVA grant for voting related work.

12 I think Catherine pointed out a really important aspect, which is voter
13 education. That's one of the things we focus on a lot with our PAVA grant. We
14 do a lot of education outreach to voters with disabilities. We try to go to places
15 where they are and particularly places where they may have been isolated from
16 society because it's an institutional setting like a psychiatric hospital. We also
17 operate a voter hotline and provide individual client advocacy on a as needed
18 basis. When it's appropriate to do so, we engage in systemic policy advocacy
19 with the administration or the legislature as appropriate and occasionally
20 litigation when necessary as well.

21 How do voting rights fit into disability rights? Obviously, the right to vote is a
22 fundamental. Right to vote should not be taken away and we should not create
23 barriers that unduly interfere with the ability to exercise that. The Americans
24 With Disabilities Act, which many of you I'm sure are familiar with, was passed
25 not just to eliminate discrimination in its normal discriminatory intent form, but
26 also to remove barriers from participation in society. Its goal was indeed the full
27 participation of people with disabilities in all areas of society, which obviously
28 voting is a key aspect of that.

29 There are broad protections already under federal law beyond even the
30 Americans With Disabilities Act, although voting rights that has been discussed
31 earlier also do protect the access to the ballot by people with disabilities.
32 Obviously, implementation practice is not always as smooth as the laws
33 themselves and some antiquated notions about the capabilities of persons with
34 disabilities still persist and provide barriers as well.

35 We've focused our work at Disability Rights Ohio on trying to address the voting
36 barriers that people with disabilities have faced in Ohio, and we've seen a
37 couple of issues emerge over the last decade that I'd like to touch on. One of
38 them is stereotypes and the potential for discrimination in our own constitution.
39 You may have heard recently that there was a modernization committee looking
40 at our constitution, which was a great idea. We have some antiquated language
41 in there.

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1 This is one example of some very antiquated and offensive language in our
2 constitution. It's one of the only outright exclusionary aspects for voter
3 qualification in the Ohio Constitution. It says that, "No idiot or insane person
4 shall be entitled to the privileges of an elector." We advocated with the
5 modernization commission to remove that language from our Ohio
6 Constitution. We noted that it conflicts with federal laws that protect the right
7 to vote and pointed out just how [inaudible 00:49:21] the concept of capacity to
8 vote is.

9 There's been very little case law or research on this issue, but to the extent that
10 there has been, it's generally found that voting is primarily emotional rather
11 than rational and to try to identify whether someone has the capacity to vote is
12 virtually impossible to do and we should not be making presumptions about
13 someone simply because they have a disability, but they don't have the capacity
14 to vote.

15 While many of the members of the commission agreed with us, unfortunately
16 for a variety of other political reasons I'm sure, that change was not made. We
17 were not successful. Fortunately, even though these antiquated and offensive
18 terms exist in our constitution, the impact in Ohio law in practice is fairly
19 minimal to non-existent. There's only one Ohio statute that even addresses this
20 issue and it allows for probate court judges to adjudicate someone incompetent
21 for the purposes of voting and it actually even theoretically limited individuals
22 subject to involuntary hospitalization in a psychiatric hospital.

23 As a general rule, we have never seen a situation where a probate court actually
24 exercised his authority. However, in recent years, there have been some
25 changes to application forms that an individual can fill out to ask that a guardian
26 be appointed for an individual and those new application forms in some courts
27 ... Not all the probate courts use the same form ... Have a check box about
28 voting and we have a concern.

29 We've not yet seen it rise to an actual issue, but a concern that someone could
30 make the argument in the future that if that box is checked and the person
31 seeking guardianship of someone else thinks that they shouldn't be able to vote,
32 the fact that they are then later appointed as guardian even if that issue is never
33 discussed or addressed or evaluated in any manner in the guardianship process,
34 that they would try to exclude them from the ability to vote. We would argue
35 that that would be a significant violation of their fundamental right to vote and
36 of due process. So far, we haven't seen that, and we hope not to, but we do
37 raise it as an issue to be aware of.

38 Stereotypes and misinformation abound when we go out to speak with
39 individuals with disabilities and many of them have care providers as well. One
40 of the most common things we hear is that they don't believe a person can vote
41 because they have a guardian. That's simply not true. Having a guardian has no

1 impact on your ability to vote unless you have been adjudicated and competent
2 for purposes of voting, which I just discussed how that generally never occurs.

3 Other misconceptions out there, if you can't verbally communicate, how can
4 you understand enough to vote? Again, people with disabilities, some of them
5 may communicate in a different way. Could be because they're deaf and they
6 use American Sign Language. It could be because they have another disability
7 that impacts their verbal communication, but they are quite capable of
8 reasoning and speaking and understanding and making their wishes known in
9 other ways if we provide them the capacity to do so through assisted
10 technology or other methods of communication.

11 Another misconception is if you're blind, how could you independently
12 complete a ballot? Obviously, there are many forms of technology that can
13 make that happen independently and presumptions about individuals that are
14 blind still unfortunately exist. Moving on then to some of the barriers that have
15 been noted over the years, polling locations, I have to say that Ohio has made
16 significant progress in having physically acceptable polling locations. Part of the
17 way they went about doing this was using the Help America Vote Act money in a
18 positive way. I want to give some credit to the Federal Trade States Office for
19 doing that over the last decade.

20 Another way that they went about it, which had some negative impact as well,
21 is actually combining polling locations to ensure that they were using locations
22 that were already accessible and they didn't have to make temporary
23 modifications for the election itself. That has unfortunately led to polling
24 locations being further away and transportation more difficult. Within polling
25 locations themselves, again, they're generally accessible although because of
26 the way machines are set up, they are sometimes too close together and hard
27 to access particularly for people using wheelchairs.

28 This dovetails with the next issue. If poll workers need more information on how
29 to work with people with disabilities, how to set up a polling location and how
30 to use the machines effectively, there's not a lot of data on the experience of
31 the voters with disabilities, but the limited data that's available from some
32 informal surveying we've done and some work done by Self-Advocates
33 Becoming Empowered, a group called SABE, they've identified issues with poll
34 workers and the set up of polling locations.

35 Moving on ... I see I'm starting to run out of time. Voting information and
36 registration information needs to be accessible to people with disabilities and
37 until recently the Secretary of State's website was not accessible for individuals
38 that would use screen access software so generally individuals with a vision
39 impairment, but it could include individuals that don't use a mouse, for
40 example, and need to use other types of software in accessing electronic
41 information on a computer.

1 We filed a lawsuit on behalf of the National Federation of the Blind. In early
2 2017, the court ordered the Secretary of State to fix their website to make it
3 accessible. Recent testing by the National Federation of the Blind shows that
4 much of the website is now accessible including the new online registration and
5 the Secretary of State's office is continuing to work to remediate any few
6 existing problems.

7 Another issue in that same lawsuit was related to ballots in our absentee paper
8 ballot system. Those paper ballots, the reliance on paper ballots had a
9 discriminatory impact on people that were blind and that they need electronic
10 means to complete the ballot.

11 There are electronic ballot marking tools, but the state initially was resistant to
12 implementing that. We litigated that up to the 6th Circuit and soon after the 6th
13 Circuit basically set our case to go forward. The Secretary of State decided to fix
14 the problem and has now ordered all counties to implement an accessible ballot
15 marking tool by the November election of this year.

16 Another area that is a problem generally, but obviously impacts voting is just the
17 lack of adequate accessible transportation. Many individuals with disabilities
18 rely on others for transportation. There's often few public transportation that's
19 available in many voting areas.

20 As I noted earlier, many people with disabilities have spent at least a short time,
21 if not a long portion of their life in an institution, thousands of individuals have
22 spent some portion of their time in institutions. For some, that's long term, like
23 in a nursing home or individuals with developmental disabilities. There's about
24 5,000 that are in institutions for developmental disabilities, but some of that is
25 just short term, emergency hospitalization or shorter term stays in a psychiatric
26 hospital.

27 Ohio actually has some pretty good procedures in general for people that are
28 hospitalized on election day and aren't able to get to the polls, but we have
29 identified through our work a problem for voters who are hospitalized outside
30 of their county, which is primarily individuals in psychiatric hospitals because of
31 the way in which our psychiatric hospitals are set up across the state. We
32 identified this first in 2012 when a young woman who'd been recently
33 hospitalized outside of her county called us. She had requested an absentee
34 ballot, but not received it. We were trying to help her vote. We had to file an
35 emergency lawsuit, which we won, but unfortunately, even with that win, the
36 problems still persisted as we discovered in 2016.

37 Since that time, we have worked with the Secretary of State's office to try to fix
38 the issue, and I say we've narrowed the gap significantly, but it has not been
39 fully resolved. In the November 2016 election, the Secretary of State did start a
40 new process, a new directive to county boards and a new form that would allow
41 individuals that were hospitalized outside of their county to get a ballot. The

1 Secretary of State was providing direction to the boards of election on how to
2 do that.

3 The provision, this option is very narrow. It only allows individuals who have
4 been hospitalized after the absentee ballot deadline, which is the Saturday at
5 noon prior to election day, to use this process. Interestingly enough, that is
6 much more narrow than the actual statutory language that allows for voting
7 when someone has an unexpected hospitalization.

8 We have argued that this does not comply with the Americans With Disabilities
9 Act, which requires modification to state policies in order to ensure access to
10 the ballot. In the general election 2016, we had calls from over 20 hospitals
11 from individuals that were facing the situation and helped about 50 individuals
12 by providing them advice on this process. Many were able to resolve it on their
13 own with working with their county boards of election, but for about 13
14 individuals, we had to get directly involved and work with the Secretary of
15 State's office to get them access to a ballot. Those were all resolved. They were
16 allowed to vote, but unfortunately many people never even call us. They don't
17 know about this process or even if they do, the form is so narrow and restrictive
18 that they may not realize they can access it. We still have this problem today.
19 We're working to try to fix it, but the current status is that we have this rigid
20 deadline and no process for accommodations under the Americans With
21 Disabilities Act as needed.

22 That's a good segue then to just looking at what kind of means for
23 accommodation there are and what people might need in order to access the
24 polls. Obviously, the Americans With Disabilities Act, it provides that
25 modification to policies and practices should be made to ensure equal access.
26 I've talked about the most significant issue we've worked on in that area, but
27 some other things that individuals with disabilities might need in order to vote
28 include a personal assistance with voting.

29 As a general rule, this works fairly well. They may have a family member, friend
30 or service provider that can help them vote or they can access help at the polls
31 with two poll workers one from each party assisting them. Occasionally, we run
32 into problems because service providers are mistaken as an agent of their
33 employee and that's prohibited under state law, but as a general rule, it works
34 fairly well.

35 There's other things that have been done to try to make voting more accessible,
36 curbside voting for example, accessible voting machines. All of these are great
37 tools that the State of Ohio has put into place to help ensure access to the
38 ballots. Really it comes back down then to making sure that there's good poll
39 worker education and voter education so that people know that these tools are
40 available and how to access them.

1 One thing that we've also seen a problem with is the interactions. Some people
2 with disabilities may have trouble physically signing their name or their
3 signature may significantly vary from time to time when they sign it because of
4 their disability. It's important that there be alternative options beyond the very
5 narrow option of designating a power of attorney for voting, which Ohio law
6 also permits. Individuals should be allowed to use other options for signing their
7 name if they're not physically able to do so. That's an area where we've had to
8 do significant education and advocacy on a case by case basis to help individuals
9 vote.

10 Unfortunately, even with all the progress over the years in general with people
11 with disabilities getting into the workplace and becoming full participants of
12 society, there is still a disproportionate number of individuals with disabilities
13 that are lower income and many living in poverty. There is a disproportionate
14 impact of all of the barriers that go along with poverty when it comes to voting.
15 We've talked a lot about identification laws. Just the cost of getting photo
16 identification can sometimes be problematic for individuals with limited means.
17 The lack of access to affordable public transportation is certainly a barrier to
18 voting whether it's in person early voting or day of election voting.

19 Lack of permanent housing or homelessness is an issue as well. You certainly
20 can vote even if your residence is a homeless shelter, but it does make it more
21 challenging and many individuals are not aware of how they can go about doing
22 that. There's talk about the voter purge efforts. That's certainly a problem that
23 often disproportionately impacts individuals that are living in poverty that may
24 move around, may not receive their mail, may not vote in every election and
25 certainly people with disabilities, who may find it difficult to vote and perhaps
26 only vote in presidential elections as a result. They're going to be impacted by
27 this as well and it then creates a new barrier because now they have to go
28 through the process of re registering to vote.

29 Just to wrap up then, I mentioned earlier that we have a voter hotline. Every
30 general election and some primary elections as well, we're open for our voter
31 hotline the same hours as the polls. We have staff that are trained to answer
32 pretty much any of the most common questions, which is usually where am I
33 registered to voting? What polling location should I go to? We have attorneys all
34 day long available to follow up on legal concerns.

35 This has been a pretty successful model. We get dozens of calls in every major
36 election. Last election, we had about 60 calls on a variety of issues and were
37 able to help most people solve and resolve their problem quickly. I just wanted
38 to share one success story from the last election that we had a ... Last
39 November, so the last general election. We had an individual, I've given you the
40 link to our success story on our website. He was in an institution for individuals
41 with development disabilities. He wanted to vote. He asked the staff to help him
42 get to the polls. For whatever reason, they were telling him that the elections
43 had already happened the day before.

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1 He called us and we got on the phone with the staff, and we called the person in
2 charge of the institution and we kept following up until we got confirmation
3 from him that he had indeed been taken to vote. He was obviously quite excited
4 that he had been able to vote and that we were able to help him. There's a
5 picture of him here holding the phone that he used to call us, and a link to the
6 story about this individual and how we were able to help him vote. Thank you
7 for having me participate, to speak about the experience of voters with
8 disabilities. I'd be happy to answer any questions that the committee have.

9 Diane Citrino: Great. Thank you very much. Thank you to all three of our panelists. This was
10 very informative. I'm going to now first turn it over to members of the
11 committee, who can ask questions to our panelists. When that questioning
12 period is over, which will be about 10 minutes of committee member questions,
13 it will be turned over to the public for comment and questions. I believe we
14 have three members of the committee on the call. Is there someone who has a
15 question?

16 Edith Thrower: This is [crosstalk 01:06:04].

17 Scott Gerber: Hi Diane, this Scott. Go ahead Edith. You can go before me.

18 Edith Thrower: Good afternoon everyone. This is Edith Thrower. I have a question of the second
19 panelist. You may have said this, so pardon me if you did and have to repeat it,
20 but I would like to know. I'm really curious about the purging of electors who
21 have not been active ... I believe you said in a period of four years ... From the
22 election rolls or rosters or records of municipalities or counties in Ohio.

23 I kind of understand ... I kind of like it and I kind of don't because it could serve
24 as an incentive to get people to voting or not. The flip side of that is that you're
25 removing people from voting records and there's really no good reason for it.
26 My question is what is the purpose, strategy or logic behind purging the
27 records? You may have said it, so again excuse me if you did.

28 Catherine T.: Hello, this is Catherine. I'm guess that Dean Tokaji will actually be able to add
29 more to this point. Basically, what the Secretary of State does is that if someone
30 doesn't vote within a two-year period, they basically ask them to confirm their
31 registration. If that voter doesn't respond or cast a ballot within the following
32 four years, they're removed from the voter roll. It's a six-year period. The reason
33 that the Secretary of State actually goes through this process, or at least this is
34 what he said and actually a lot of this makes sense, is that the voter rolls end up
35 having a lot of people who did not inform the board of election and the
36 Secretary of State that they moved.

37 What happens is you just get so many different people on there who are not
38 actually voters. It becomes more difficult to actually manage the election, so
39 having what they call clean voter rolls so that you know who the voters are, it
40 just makes it easier to manage. The folks that argue that people should be taken

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1 off the roles fairly quickly because they don't participate are thinking, "How can
2 we make our database, our voter rolls as clear and as easy as possible to make
3 election management as simple as possible?"

4 The folks like me that are like, "Well, wait a second. Use it or lose it, let's give it
5 a little bit more time. Let's see what we can do try to bring folks into the
6 process." I feel for the people that are concerned about those voter rolls, but at
7 the end of the day, voting is a fundamental right. Telling people who actually
8 registered and believe that they're registered, that they cannot return to voting
9 so quickly is problematic. Dan, is there something you wanted to add?

10 Diane Citrino: Dean Tokaji, can you address that?

11 Daniel Tokaji: Sure. Let me respond to this from a legal perspective. As I mentioned earlier,
12 but want to reiterate, I am one of the attorneys for the plaintiffs, respondents in
13 the case regarding this issue that is currently before the Supreme Court. That's
14 the Husted v. A. Philip Randolph Institute Case. Of course, as with all of my
15 remarks, what I'm going to say represents my own views. I'm not speaking on
16 behalf of the Ohio State University or any other institution of which I'm a part.

17 As a matter of law, the National Voter Registration Act, also known as Motor
18 Voter, was designed to ensure not only that registration opportunities were
19 made available, but that people weren't purged from the rolls without a very
20 good reason. One of the good reasons, of course, is that someone has moved.
21 The argument of the Secretary of State's office throughout the course of this
22 case has been primarily that they are using the failure to vote as a proxy for
23 having moved. That in our view is contrary to the plain language of the National
24 Voter Registration Act, which says that you can't remove people by virtue of
25 their failure to vote. Moreover, if the state's goal is to remove people from the
26 registration [inaudible 01:11:08] actually moved, there are much better ways of
27 doing that.

28 For example, you could rely on information from another state database like the
29 Motor Vehicle records, which show that somebody has moved from one place
30 to another. You could rely on information from another state. If Indiana, for
31 example, were to provide information through a national information sharing
32 system and these things do exist that tells Ohio that someone has moved from
33 Ohio to Indiana. You could use that as a basis for initiating the removal process.
34 Ohio or local boards of election could also send a mailing and if that mailing is
35 returned as undeliverable because the person is believed to have moved, then
36 Ohio could use that as a basis for initiating the removal process. As you all know,
37 county boards of elections frequently do send information to voters. What Ohio
38 can't do in our view is use the failure to vote as a proxy for having moved and on
39 that basis initiate the purge process.

40 Diane Citrino: Great, thank you. I'm going to allow ... I believe I heard Scott Gerber from the
41 commission.

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1 Scott Gerber: Yes, thank you.

2 Diane Citrino: Wanted to ask a question?

3 Scott Gerber: Yes, thank you, Diane, and thanks to the panelists for such wonderful
4 presentation. I have a comparative and normative question to all of the
5 panelists. The US commission is studying voting rights at the national level. Ohio
6 is obviously a critical state in presidential elections in particular. I just wondered
7 if people could give us a sense of how Ohio compares to other states in terms of
8 our approach to voting rights making it easy, making it too difficult, and then
9 how Ohio is doing now as compared to ten years ago or whatever. Any thoughts
10 on that would be appreciated.

11 Daniel Tokaji: It's a great question. Why don't I lead off with some preliminary thoughts? I
12 guess the first caveat I'd provide is that it can be really difficult to compare
13 states because each state has its own electoral ecosystem. The way people vote
14 from state to state tends to vary quite a lot. For example, there are some states
15 in which a lot of people rely on early voting, some states in which very few
16 people do, where some are in the middle on that point.

17 I think there are some respects in which we're doing okay. For example, we
18 have avoided the imposition of a strict government-issued photo ID
19 requirement in contrast to states such as Texas, Wisconsin, and Indiana. I think
20 that is a good thing. We've avoided that barrier to voting. On the other hand,
21 Ohio's practices regarding purges compare unfavorably to most other states.

22 On the front of early voting and, in particular, same day registration, we've
23 actually moved backwards in the last few years. There was a period of time
24 during which we had a window for same day registration and early voting, the
25 so-called Golden Week between 35 and 30 days before the election, which has
26 been taken away.

27 There's been progress in some respects, but in others, we've moved backwards.
28 A final note on the subject of vote dilution and manipulation of redistricting,
29 there's some good news there. I think it's really quite extraordinary that
30 Democrats and Republicans in the Ohio legislature were able to come together
31 on both state and legislative redistricting and most recently congressional
32 redistricting. That has important voting rights implications. I guess the bottom
33 line is it's a mixed bag, progress on some things, but regression in other areas.
34 There are some places where we're better than other states, but others where
35 we're worse.

36 Diane Citrino: This is Diane Citrino. I'm sorry to interrupt. I'm going to get back to this and
37 allow Catherine and Kerstin to comment on this question, but first because we
38 have a mandated by public publication that the public portion of this is to start
39 at 12:45, I'm going to check with the operator to see if there are members of
40 the public who would like to ask a question or make a statement. If not, we will

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1 return ... We will ask this public portion to be ... This will be for a set of period of
2 time and then we are going to return so Catherine and Kerstin, you can have a
3 chance to think on that and also I will give an opportunity to Mark Strasser to
4 ask any questions they have. I'd like to check with the operator, is there anyone
5 on the line who would like to ask a question or make a statement?

6 Operator: Thank you ma'am. If you'd like to signal for a question on the phone, please
7 press the star key followed by the digit one. Again, it is *1 to signal. Please be
8 sure your mute function's on to allow that signal to reach our equipment. We'll
9 pause just a moment to assemble our roster.

10 Diane Citrino: Thank you.

11 Operator: There are currently no questions in queue. Again, *1 to signal.

12 Diane Citrino: Okay, well then we will go back to Catherine. If you, followed by Kerstin, would
13 like to comment on the question Scott Gerber has posed.

14 Catherine T.: This is Catherine. I think that Dan covered it very well. I think the fact that we
15 have a fairly long period of early vote is quite good. The fact that we don't have
16 strict voter ID is one of the things that I think Ohio does well. One of the things
17 that we didn't cover in a lot of detail ... I alluded to it ... Is that there are many
18 times that the state legislature ... There will be bills there to make things more
19 difficult. There has been a tug of war back and forth on how best to invite
20 people into the process or basically make things a little bit harder for people to
21 vote. It wasn't that long ago that there was legislation ... We're talking about
22 2011, where it would have greatly reduced early vote. It would have made just
23 much stricter voter ID. There were a variety of different problems with this new
24 election law.

25 Voters collected signatures to stop the legislation in its path to do what they call
26 a referendum. Ohio's one of those direct democracy states. Fortunately, the
27 legislature of their own volition basically polled the legislation. They went
28 through a legislative process to make sure it wasn't implemented, but it is a bit
29 of an arm wrestling to keep the advances that we make.

30 Also, when I think about how long it took for us to get online voter registration.
31 Generally, online voter registration would have made life much easier during
32 2016 and would have made it much easier for folks to participate and that was
33 not implemented until January 1 of this year. You think to yourself, "Wait a
34 second. What's going on that it took so long." There just is always a struggle.

35 Diane Citrino: Great. Kerstin, if you have some comments?

36 Kerstin S-W.: I think, as I had mentioned earlier, Ohio has done several things using their Help
37 America Vote Act funding, for example, to help increase physical accessibility,
38 polling locations. We've had success and opened a better dialog I believe with

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1 the Secretary of State's office on accessibility issues for electronic information
2 and things like the new online voter registration have moved forward in its new
3 fashion in that respect. Even at the local level, we've had some dialog with
4 county boards of elections, for example, the Franklin County Board of Elections
5 reached out to us recently. They're looking at getting new machines. It was
6 talked about earlier. There's variable machines in Ohio.

7 Before they decided on what type of machines to get, they wanted input from
8 the disability community about accessibility and usability features. We were
9 able to pull together some stakeholders to go and meet with the board of
10 elections and even view some of the possible options with the board of
11 elections. I think there's been an increasing willingness to consider accessibility
12 issues generally and an ability to work with the local and state officials on many
13 issues, not withstanding the fact that we still have disagreements on some of
14 the items such as the out of county hospitalization issue that I talked about
15 earlier. I think the dialog is there and we have been able to resolve most of our
16 smaller issues even if we can't always make the wider policy changes that we
17 may want.

18 Speaker 8: To follow up on that, I just had a quick follow up. We heard about the lack of
19 money for training of poll workers. I would imagine that would affect people
20 with disabilities in Ohio particularly. Can you, Kerstin and Catherine, address the
21 funding issue and what impact that has or doesn't have?

22 Catherine T.: This is Catherine. One of the things that I was surprised about last cycle when
23 they did the operating budget that the secretary basically zeroed out his budget
24 saying that basically setting aside no funding for voter education. When we start
25 to think about what that means and the challenges, for example, for counties
26 that may need to have good voter education so that you're able to administer
27 these elections more smoothly and you get accurate accounts and all of those
28 kinds of things are problematic.

29 We also need to think about, well, it's possible that, in fact, the legislature will
30 move the bill that will give some funding for machines, but we also know that
31 the whole conversation about reducing the number of poll workers is all about
32 saving some money. It's all about the cost of poll workers. It continues to be a
33 challenge to make sure that we make democracy a priority for funding.

34 Kerstin S-W.: This is Kerstin. Just to follow up on that, I actually did not know about the
35 zeroing out of funding until Catherine mentioned it today, but I agree that it's
36 very problematic to not have any money directed towards voter education,
37 especially with the many different ways to vote and the changes that have
38 happened over the years. With respect to poll workers specifically, in our not
39 very scientific, but the data that's available to, surveys, as well as information
40 gathered by the organization SABE, poll worker education was identified and
41 poll workers interactions were identified as one of the most prevalent problems
42 in terms of maybe ... It was a wide range. Some individuals, it was a matter of

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 the poll worker not being real adept at using the exceptional machine. It could
2 be a matter of how the polling location had been set up because, again, they
3 were not thinking about accessibility in terms of moving around and using the
4 machines. It may have been simply a feeling that they were not being treated
5 with respect or that they were taking up too much time.

6 There were a variety of different experiences and some of those are a little bit
7 hard to get at even with training. My understanding is the Secretary of State's
8 office actually does have some pretty good videos for training poll workers and
9 interacting with individuals with disabilities, but it's not clear to me whether
10 those are used consistently in the poll worker trainings across the different
11 county settings. We don't really have that information directly. The last time I
12 personally was in a poll worker training was a decade ago and my recollection is
13 there was very little training, if any, on interacting with people with disabilities
14 and the amount of information that is packed into that training is kind of
15 overwhelming really for someone if they aren't a poll worker, many times for
16 newer poll workers.

17 I think fortunately we do have a lot of people who are dedicated to being poll
18 workers and at least know the basics of the process. It may be one way to deal
19 with the problem of access for people with disabilities would be to think about
20 having disability liaisons at polling locations, a poll worker that had a little extra
21 training and emphasis on that, rather than trying to train every poll worker on
22 every issue.

23 Diane Citrino: Thank you. I'm going to just ask the operator one more time to just make sure
24 there's no member of the public who has dialed in. Can you check for us,
25 please?

26 Operator: Yes, ma'am. We have had someone signal. We have a S.C Patterson with Self-
27 Advocates Becoming Empowered.

28 Diane Citrino: Okay. Ms. Patterson, would you like to ask a question or make a comment at
29 this time?

30 S.C Patterson: Yes, I would. Can you hear me?

31 Diane Citrino: Yes.

32 Essie Pederson: Great. I would just like to comment on the fact that I think that this hearing and
33 this committee is covering a very important topic. I have learned a great deal
34 about the systems and the process and the changes that have been made. What
35 Self-Advocates Becoming Empowered has looked at is how the individuals who
36 are using those processes, systems, equipment [inaudible 01:26:41] not ideal,
37 they have had a good voting experience. We have been collecting data for the
38 last eight years about these experiences and we're getting more and more. I
39 know that you had some interest in progress that Ohio has made. Just a little

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1 thing about people's disabilities to indicate progress or our difference is that this
2 year, the method of voting that people were using, the polling location
3 [inaudible 01:27:15] % of Ohioans that we interviewed said the polling location
4 is it.

5 For the absentee mailed-in ballots, it was 40% [inaudible 01:27:24] that the
6 average voter, there are about one third of them that voted early with people
7 with disabilities is only 58% in Ohio that are doing that. It is higher than that
8 nationally. It is one third nationally, but in Ohio, it's lower. I think Kerstin's done
9 an excellent job of pointing out some of the barriers as to why that is
10 happening.

11 With all these changes and the evolution, the important thing to pick up here is
12 that people are gravitating towards using the absentee mail-in ballot and early
13 voting more and they're pulling away from the polling locations because in
14 2014, 80% of the voters used the polling location. I think that's a significant
15 change. I encourage the fact that the technology be looked at very closely and
16 the absentee ballot be looked at very closely, so that people can understand it
17 as well as read it.

18 I have a lot more information I could cover, but I just wanted to mention the
19 way people were voting. Overall, the people with disabilities have that thought
20 about their voting experience. There are a need for improvements as the poll
21 worker to increase the training, include their training. That's all bits and pieces
22 that can be tested out later, but overall, Ohio has made progress. Thank you.

23 Diane Citrino: Thank you, Ms. Patterson. Along with everyone on this call, I do want to remind
24 you that if you like, you may submit a written statement by mail to the US
25 Commission on Civil Rights at 55 West Monroe Street, Suite 410, Chicago,
26 Illinois, 60603, or by email to mwojnaroski@usccr.gov. The phone number, if
27 you didn't catch that, is 312-353-8311, where you can get information on how
28 to do that. I'd now like to return to Mark Strasser or David Tryon to see if you
29 have a question. Mark?

30 Mark Strasser: Yes. I wanted to ask Dean Tokaji, you had mentioned that if there was an
31 imposition of a sphere of burden on voting, that'd be enough to trigger a strict
32 scrutiny. I was trying to figure what would [inaudible 01:30:07] or trigger the
33 severe burden. Is it the number affected, the degree of dilution or how hard it's
34 voting or what do they do?

35 Daniel Tokaji: It's really a great question. I can't say that the cases both within the 6th Circuit,
36 where we are here in Ohio or around the country has been entirely clear or
37 consistent on that question. Let me relate to you some of the things that courts
38 have looked at in determining the severity or substantiality on the burden. One
39 thing that they've looked at is how much does it affect an individual voter? You
40 could have a practice, let's say requiring that you have a permanent address on
41 file, that affects a relatively small number of voters, but affects them in a

1 significant way, where homeless people would be quite dramatically affected,
2 effectively unable to vote if that kind of requirement were imposed.

3 The severity of the burden upon individuals is one thing. Number two is the
4 number of people affected, something that courts have also looked at, is it
5 1,000 people? Is it 10,000 people? Is it 100,000 people who might be affected?
6 Then a third thing that courts have looked at is whether the effect bears heavily
7 on particular groups of voters? That could be, for example, groups that are
8 defined by race. A practice that has a disparate racial impact might be looked on
9 with greater skepticism or that disproportionately affects less affluent people as
10 did the poll tax struck down back in Harper. That would be another group.

11 We might also look with special disfavor on voting burdens that have a
12 disparate impact on a partisan basis, for example, practices that
13 disproportionately exclude Republicans or Democrats from voting, especially if
14 those barriers to voting or burdens on voting have been adopted by the other
15 party. Those are not an exclusive list, but some of the things that courts have
16 looked to in trying to measure the severity of the burden.

17 Diane Citrino: We have just time for ... We're actually out of time, but I want David Tryon to
18 have a chance to ask a question. If whoever answers it could try and be as brief
19 as possible, that'd be great. David.

20 David Tryon: Thank you Diane. By the way, it is pronounced try-on.

21 Diane Citrino: [crosstalk 01:32:56].

22 David Tryon: That's okay. Dean Tokaji, I had a question for you relating to the representation
23 of the plaintiffs in the case of Boustani v. Blackwell that you were involved in.
24 Recently there's been concerns of foreign interference with our elections and
25 others have expressed concerns about non-citizens voting, whether
26 intentionally or unintentionally, and thereby diluting the votes of citizens. At the
27 same time, the judge in the Boustani v. Blackwell case indicated that the
28 different requirements for naturalized and native-born citizens created the
29 unlawful potential for disenfranchising eligible citizens for "not looking quite
30 American." I wonder if you have any recommendations in how we can make
31 sure that all eligible citizens can vote and at the same time protect the value
32 of citizens' votes from dilution caused by non-eligible votes, for example, by
33 non-citizens who vote either intentionally or unintentionally?

34 Daniel Tokaji: It's a great and a very important question. It's funny. As it happens, I'm going to
35 be participating in a conference that's going on at McGeorge Law School in
36 Sacramento today. I'll be participating by video, which is on the very subject of
37 foreign interference with our elections. It is a major concern, one that in some
38 respects goes well beyond the scope of our discussion today, but I do think that
39 there is a significant risk of foreign nationals and, in particular, agents of foreign
40 powers, one in particular, attempting to and a risk of possibly their succeeding

1 in interfering with our elections. I think that is a really important issue. Distinct
2 from the question that you're really focused on of non-citizen voting, how can
3 we make sure that only citizens are voting in the elections?

4 The Boustani case, in which I should again say I was co-counsel and the views
5 expressed are my own, was challenging a peculiar rule that the Ohio legislature
6 adopted by statute many years ago ... I believe it was around 2005 ... Where
7 non-citizens if challenged at the polls were ... I'm sorry, I should restate that.
8 Naturalized citizens, people who claim to be naturalized citizens, if challenged at
9 the polls were actually required to provide their certificate of naturalization in
10 the event of a challenge. This isn't the kind of document that most people who
11 are naturalized citizens walk around with.

12 The Supreme Court has long looked with disfavor on rules that treat naturalized
13 citizens less favorably than people who were born in the United States as US
14 citizens. The court in the Boustani case said that discrimination against
15 naturalized citizens as compared with native born US citizens was
16 impermissible. That said, I don't really think that there's a lot of evidence to
17 support the conclusion that we have a massive problem of non-citizens voting in
18 our elections given the considerable risks that any non-citizen, especially one
19 who's here illegally, would take by exposing himself or herself in that way. It's
20 not to say that it's never happened, but actual non-citizen voting based on the
21 evidence that we have available to us doesn't appear to be a huge problem.

22 One of the difficulties, however, is that we don't really have a national system,
23 for better or for worse, for determining with precision who is and is not a
24 citizen, which makes it very difficult either to verify that someone is or to verify
25 with any degree of certainty that they are not a citizen, unless they're
26 somebody who's actually in the process within the immigration and
27 naturalization system. I throw that out as an issue, but again, I think there's a
28 danger of overstating the magnitude of the problem in an era where we've seen
29 at least in some quarters a return of a rather alarming nativist sentiment.

30 David Tryon: But I understand you discounting that, but you haven't answered my question.
31 Is there a way to solve that concern by some people while still preserving the
32 rights of everyone to vote?

33 Daniel Tokaji: I think I have answered it. I said it's a difficult problem.

34 Diane Citrino: [crosstalk 01:38:01]. I'm going to have to interrupt. I'm sorry to interrupt, but
35 we are out of time. I would really love to have written supplements, especially
36 since you're presenting on this topic or discussing this topic, Dean, later today. If
37 you would be ... Anyone who would like is welcome to submit written
38 comments and the members of this panel can also submit written questions to
39 the panelists because the record is going to remain open through April 9th,
40 2018. Please send those to email on the screen, mwojnaroski@usccr.gov or mail
41 to the committee at 55 West Monroe Street, Suite 410, Chicago, Illinois, 60603.

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 I want to remind everyone there is another panel meeting on Friday, March 9th,
2 from 12:00 to 1:30 pm Eastern Standard Time. We will follow up with everyone
3 in attendance to give minutes and the transcript from this meeting and a link to
4 access those records. We will also notify everyone when the committee is
5 meeting for discussion and when the report that results from this hearing is
6 ready. I want to thank wholeheartedly everyone, the public, the members of
7 this committee and most especially the panelists for your outstanding
8 presentations and your participation today. It is so necessary and so
9 appreciated. Thank you very much. Let's say that ends this. This meeting is now
10 adjourned. Thank you.

11 Daniel Tokaji: Thank you Diane.

12 Speaker 12: Thank you.

13 Operator: Thank you, ma'am. It does conclude today's call. Thank you for your
14 participation.

15

Ohio Advisory Committee *to the* U.S. Commission on Civil Rights

Voting Rights in Ohio
March 2, 2018



Agenda

- **Welcome and Introductions (11:30-11:35am, EST)**
- **Panel Presentations (11:35am-12:25pm)**
 - Daniel Tokaji, Associate Dean, Ohio State University Moritz College of Law
 - Catherine Turcer, Executive Director, Common Cause Ohio
 - Kerstin Sjoberg-Witt, Director of Advocacy, Disability Rights Ohio
- **Committee Questions and Answers (12:25 - 12:45 pm)**
- **Open Comment (12:45-1:00pm)**
- **Adjournment (1:00pm)**



Ohio Advisory Commission to the
U.S. Commission on Civil Rights

Voting Rights in Ohio

Daniel P. Tokaji
March 2, 2018



THE OHIO STATE UNIVERSITY

MORITZ COLLEGE OF LAW

Voting Rights in Ohio

- National Context
- Vote Denial in Ohio
- Vote Dilution in Ohio

“[T]he political franchise of voting...
is regarded as a fundamental political
right, because [it is] preservative of
all rights....”

- *Yick Wo v. Hopkins* (1886)

Voting Rights History

1776 – Only white men with property could vote

1868, 1870 – 14th and 15th Amdts

1870s-1900 – Southern states disenfranchise blacks

1920 – 19th Amdt gives women right to vote

1957, 60 & 64 – Weak voting rights laws enacted

1964 – Just 29% of blacks in the South registered

1964 – 24th Amdt prohibits poll taxes in fed elections

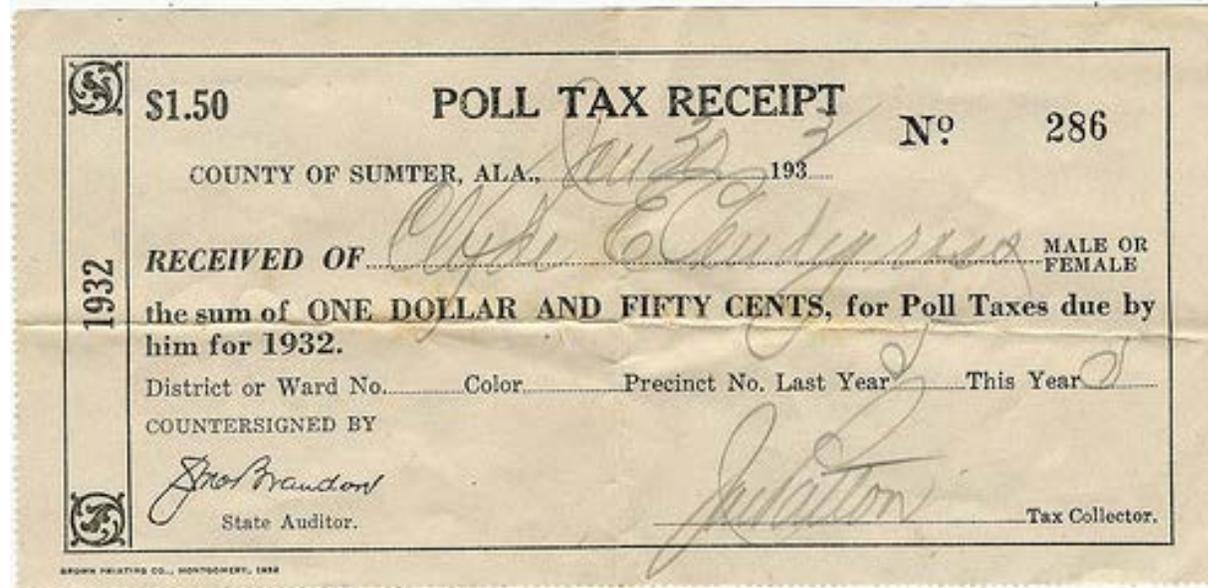
1965 – Voting Rights Act eliminated literacy tests and other barriers to voting, required preclearance of voting changes.

1982 – Voting Rights Act strengthened.

Vote Denial & Vote Dilution

- **Vote Denial** – Impediments to voting or counting of votes.
(e.g., poll taxes, literacy tests, voter ID)
- **Vote Dilution** – Practices that weaken the strength of a political group
(e.g., at-large elections, gerrymandering)

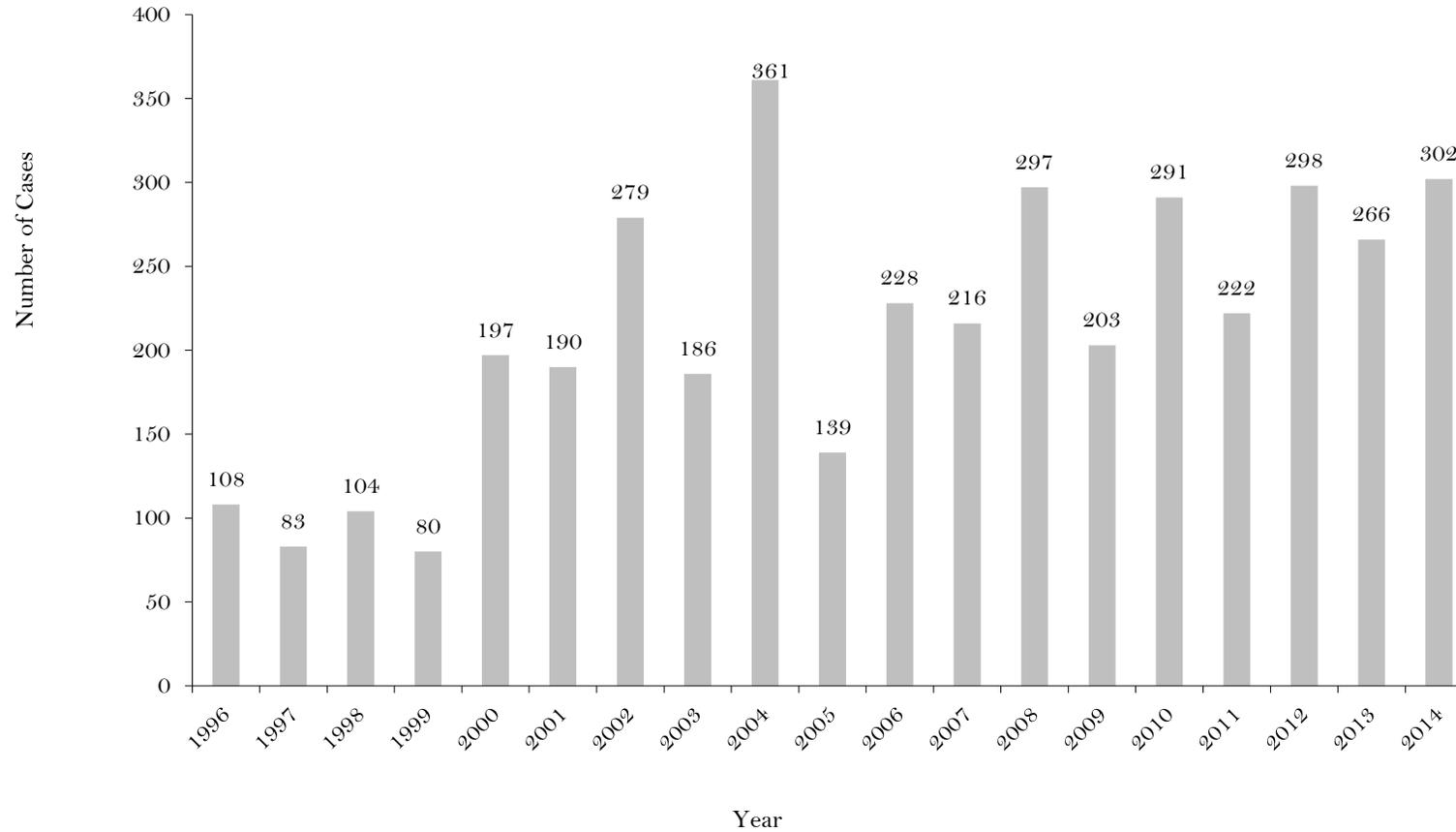
Harper v. Virginia (1966)



- Struck down \$1.50 poll tax under Equal Protection Clause, citing “fundamental” character of the right to vote.
- Wealth isn’t germane to ability to participate in democracy

Election Litigation: 1996-2014

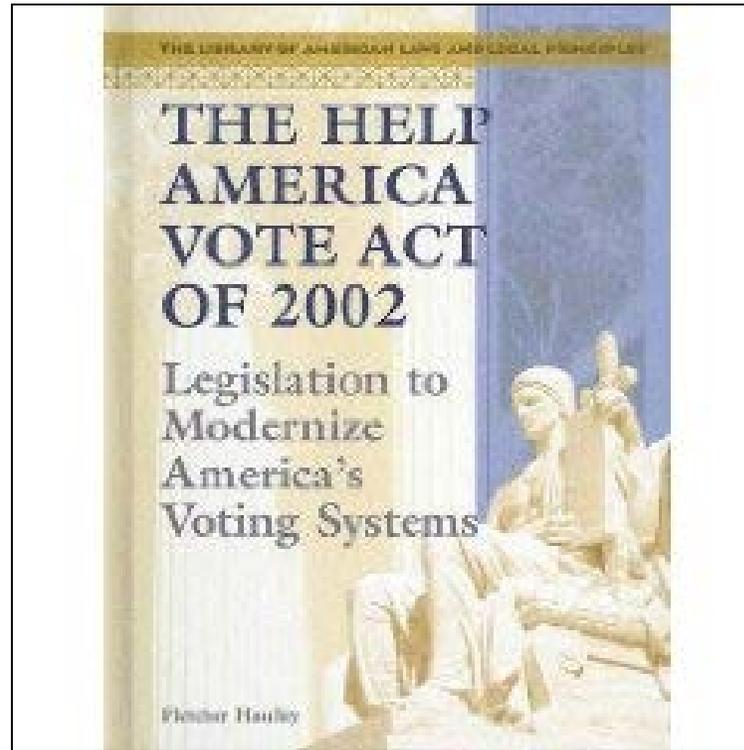
Pre-2000 Average: 94/yr Post-2000 Average: 246/yr



Source: Richard L. Hasen, *Election Law's Path in the Roberts Court's First Decade: A Sharp Right Turn but with Speed Bumps and Surprising Twists*, 68 *STANFORD LAW REVIEW* 1597, 1630 (2016).

Bush v. Gore (2000)

“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another”



- Voting Technology, §§ 101-06, 301
- Statewide Registration Lists, § 303(a)
- Voter Identification, § 303(b)
- Provisional Voting, § 302

Crawford v. Marion County Elec. Bd. (2008)



Upheld Indiana's law requiring most voters to present photo ID against a facial challenge under the Equal Protection Clause.

The Equal Protection Standard

Anderson-Burdick-Crawford

- Determine the “character and magnitude” of the burden on voting.
- If there’s a “severe” burden, then strict scrutiny applies.
- If burden isn’t severe, then the state’s important regulatory interests may justify.



Race Discrimination



- Race discrimination claims under Fourteenth and Fifteenth Amendments require *intent*.
- Section 2 of the VRA (as amended in 1982) requires only a discriminatory *result*.

Section 2 of the VRA

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which **results in** a denial or abridgement of the right of any citizen of the United States to vote on account of race or color... , as provided in subsection (b) of this section.

Section 2 of the VRA

(b) A violation of subsection (a) of this section is established if, based on the *totality of circumstances*, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Vote Denial

Recent Cases on Voting Burdens

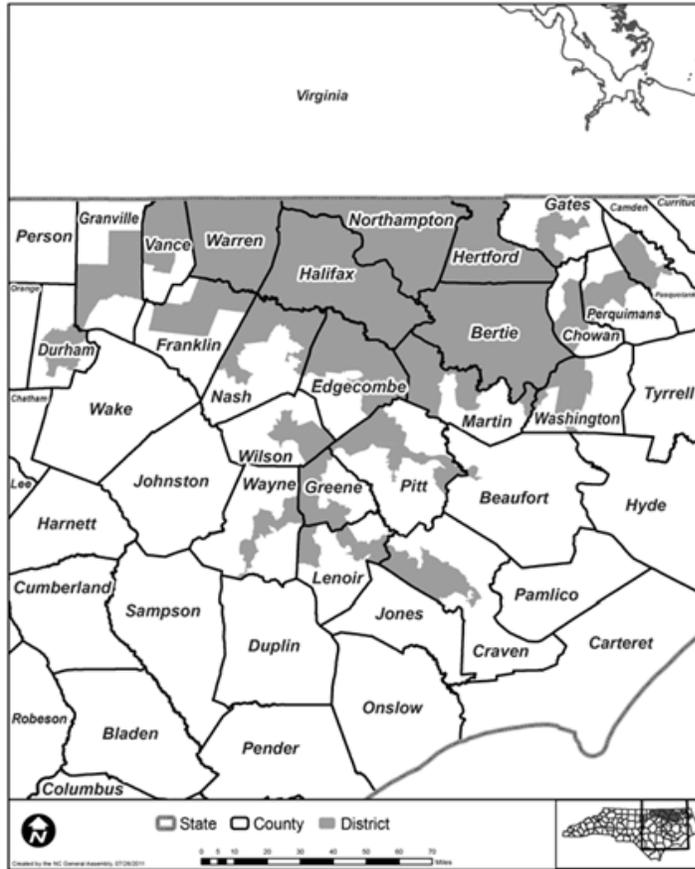
- **North Carolina:** 4th Circuit enjoined law imposing ID, limiting the means of voting, finding that it was intended to discriminate based on race. *NAACP v. McCrory*
- **Wisconsin:** 7th Circuit upheld WI voter ID law, as well as an order making it easier to get ID. *Frank v. Walker*
- **Texas:** 5th Circuit invalidated TX voter ID law as racially discriminatory in violation of Voting Rights Act. *Veasey v. Abbott*

Vote Dilution

Racial Gerrymandering Cases

- *AL Leg. Black Caucus v. AL* (2015) allowed EPC claim to proceed, rejecting argument that population equality was predominant factor
- *Bethune-Hill v. VA BOE* (2017) allowed EPC to proceed, holding that districts need not have bizarre shape for race to be predominant factor.
- *Cooper v. Harris* (2017) struck down two congressional districts under EPC, holding race was predominant factor and VRA didn't justify.

Cooper v. Harris (2017)



1st CD



12th CD

Voting Rights in Ohio

- National Context
- **Vote Denial in Ohio**
- Vote Dilution in Ohio

Ohio 2004



Election Administration Issues

- Voting Technology
- Provisional Voting
- Voter Registration
- Voter Identification
- Challenges to Voter Eligibility
- Long Lines at the Polling Place
- Recounts and Contests

Ohio: Provisional Voting

- 2004: 6th Cir. ruled that HAVA doesn't require counting of provisional ballots cast in wrong precinct. *Sandusky County Dem. Party*.
- 2006: Consent decree requires counting of provisionals cast in wrong precinct or otherwise deficient *due to poll worker error*. *NEOCH v. Blackwell*.
- 2011: Ohio S. Ct. interprets Ohio law to require rejection of wrong-precinct provisionals. *Painter*.
- 2011: 6th Cir. holds that it likely violates EPC to reject some right location, wrong-precinct provisionals, while counting others. *Hunter v. Hamilton County*.
- 2012: 6th Cir. holds that it likely violates EPC and DPC to reject right location, wrong precinct provisionals, but not to reject *wrong location*, wrong precinct provisionals. *NEOCH*.
- 2014: OH legislature enacted restrictions on the counting of some provisional ballots.
- 2016: USDC invalidated some of the restrictions, but the 6th Cir. reversed. *NEOCH*

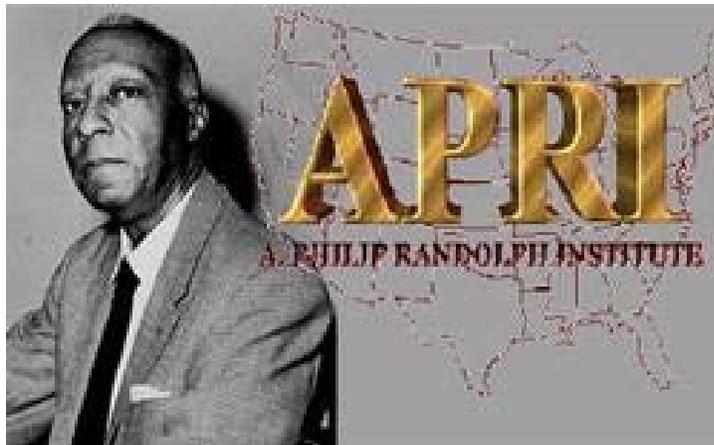
Ohio: Early & Absentee Voting

- 2011: Ohio legislature eliminated in-person early voting Fri-Mon before Election Day.
- 2012: 6th Cir. invalidated differential treatment of voters using in-person early voting during the three days before Election Day. *Obama for America v. Husted*.
- 2014: Ohio legislature voted to eliminate same-day registration and early voting 35-30 days before Election Day (“Golden Week”), and placed other restrictions on counting of absentee ballots.
- 2014: 6th Cir. enjoined restrictions on same day registration and early voting but SCOTUS stayed. *NAACP v. Husted*
- 2016: USDC enjoined restrictions on early voting but 6th Cir. mostly reversed. *NEOCH, ODP v. Husted*.

National Voter Registration Act of 1993

- **Regulates voter registration in federal elections.**
- Requires that voter registration opportunities be offered at motor vehicle, public assistance, and disability offices (§§ 5, 7)
- Limits the circumstances in which voters may be removed from the rolls (§8)

*A. Philip Randolph Institute v. Husted**



- If a voter hasn't voted in prior two years, Ohio initiates the process of removing them from the rolls.
- 6 Cir. held that this process violates NVRA.
- SCOTUS heard argument in Jan. 2018

* I'm one of the attorneys for plaintiffs.

Voting Rights in Ohio

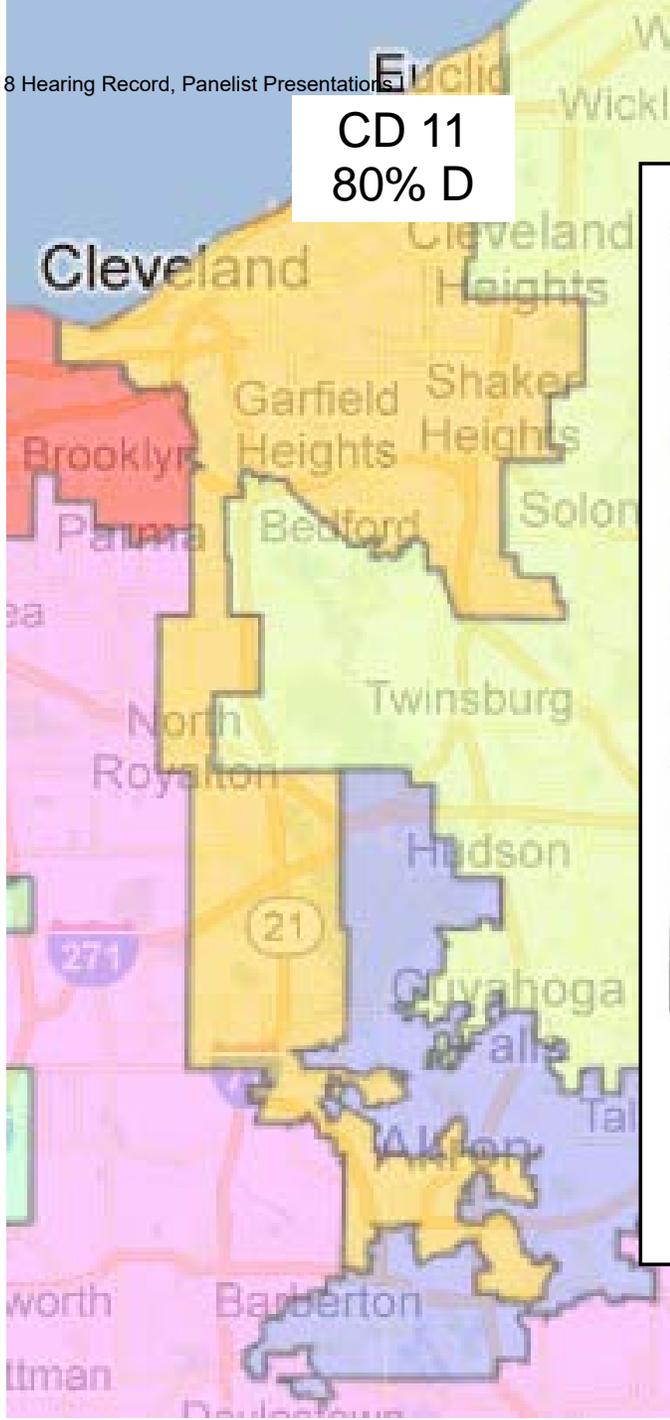
- National Context
- Vote Denial in Ohio
- **Vote Dilution in Ohio**

Ohio U.S. House Districts 2012-2020

16 Districts:
12 Republican
4 Democratic



CD 11
80% D



Ohio SJR 5

Congressional Redistricting Reform

(132nd General Assembly)
(Substitute Senate Joint Resolution Number 5)

A JOINT RESOLUTION

Proposing to amend the version of Section 1 of Article XI that is scheduled to take effect January 1, 2021, and to enact Sections 1, 2, and 3 of Article XIX of the Constitution of the State of Ohio to establish a process for congressional redistricting.

Ohio Redistricting Reform

- 2005: Reform Ohio Now initiative emphasized competitive districts, defeated 70-30%
- 2012: Voters First Ohio initiative created nonpartisan commission, emphasized fairness and competitiveness, defeated 62-37%
- 2015: Legislative referendum created bipartisan redistricting commission for state districts, approved 71-29%.
- 2018: Legislative referendum creating multi-step process with criteria for congressional districts, will appear on May ballot...

Catherine Turcer

Common Cause Ohio

cturcer@commoncause.org

[@CatherineTurcer](#)



Elections in Ohio

Ohio is doing several things well when it comes to voting access:

- Ohio has bucked the national trend of strict voter ID. Ohioans can use a number of different forms of voter identification including state identification and utility bills.
- Ohio has 29 day “no-fault absentee voting” which is often called Early In-Person voting. Approximately one-third of Ohio voters take advantage on this Early Vote period.
- Ohioans can now register to vote and update their voter registration online.
- Ohioans who are not incarcerated are permitted to vote.

Election Administration

Ohio is doing several things well when it comes to election administration:

- Ohio has truly bipartisan election administration. Like Noah's Arc, Democrats and Republicans go two by two which leads to more accountability.
- Touch screen voting apparatus have voter verified paper audit trails enabling voters to confirm votes and help with audit procedures.
- Voters are now able to track receipt of their absentee ballots which has helped improve voter confidence.

Purging Ohio's Voter Rolls



Use it or lose it

- Ohio is one of the most aggressive states for purging voters from the voter rolls for failing to vote. Ohio Secretary of State Jon Husted has established a practice of mailing a postcard to voters who do not vote within a two year period, asking them to confirm their registration. Voters who fail to respond or vote within the following four years are removed from the rolls without further notice.
- In advance of the 2016 election, tens of thousands of voters (primarily African Americans from urban areas) were removed from the rolls, despite still being eligible to vote.

Does aggressive purging violate the National Voter Registration Act of 1993 and the Help America Vote Act of 2002? It's now in the hands of the US Supreme Court.



In Ohio, all counties are often treated equally rather than all voters.

- All counties are permitted to only have one location for Early In-person voting with limited hours. This leads to long lines at urban Boards of Elections especially on the weekend before presidential elections.
- Several urban counties had traditionally sent absentee ballot applications to voters every year as a cost-effective way to encourage Early Voting. In 2014, the state legislature passed Senate Bill 205. Under this new law, absentee ballot applications can only be mailed by the Secretary of State if the legislature appropriates the money to do so.

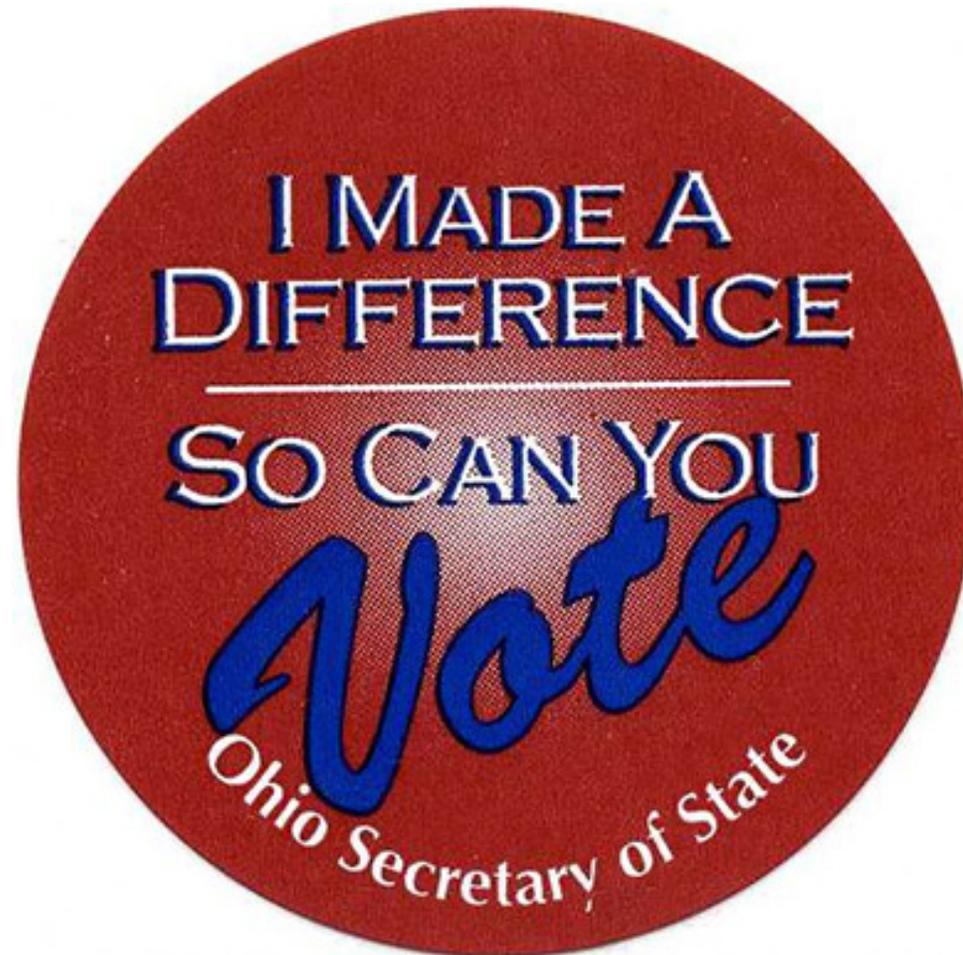
Other challenges that Ohio is facing

- Ohio's voting equipment is aging. Most of the apparatus was purchased following the passage of the Help America Vote Act. Old voting equipment increases the likelihood of failures and crashes. This can lead to long lines and lost votes on Election Day. Older voting machines may also be less secure. Ohio Secretary of State Jon Husted would like \$118 million to replace voting apparatus but there is not funding for new machines in the capital budget.
- Frequent changes to voting rules can be confusing and there were no funds set aside for voter education in the state operating budget.
- Electronic poll books can make Election Day much easier but confusion about how to use them led to long lines in Montgomery County in 2016.
- The state legislature is considering reducing the number of poll workers (Senate Bill 21).

Some simple changes could make a difference

- Voters using touch screen voting apparatus should be clearly informed that they can confirm their votes on the voter verified paper audit trail as part of the review by the poll workers.
- Infrequent voters should receive election information including changes in polling locations. Many voters only vote during presidential elections and are deemed inactive so that they don't receive election updates. In 2016, 13% of registered voters were deemed inactive. This means that one million voters didn't receive absentee ballot.
- We need better education so that Ohioans know that can vote even if they have a felony on their record. Misinformation about felon disenfranchisement is a real barrier especially for people of color.

We've come a long way since the long lines of Election 2004 but we need to find ways to truly invite voters to the polls.



Barriers to Voting

Experiences of Ohioans
with disabilities



We have the
legal right of way.

Disability Rights Ohio



- Not-for-profit
- Mission: to advocate for the legal, civil and human rights of people with disabilities
- Ohio's designated protection and advocacy system (P&A) and client assistance program (CAP)

Voting Work



- PAVA grant and other federal funding available to advocate on voting rights
- Strong emphasis on educating people with disabilities about their rights
- Voter hotline, and individual client advocacy
- Systemic policy advocacy and litigation when necessary

Stereotypes and Discrimination



- Discriminatory voter qualification language in Ohio Constitution
- “No idiot, or insane person, shall be entitled to the privileges of an elector.”
- State statute: “adjudicated incompetent for the purpose of voting”



Stereotypes and Misinformation

- “If you have a guardian, you can’t vote”
- “If you can’t verbally communicate, how can you understand enough to vote?”
- “If you are blind, how can you independently complete a ballot?”

Lack of Accessibility



- **Polling locations**
- **Voting information and registration**
- **Ballots**
- **Inadequate accessible transportation**



Institutional Isolation

- **Thousands of individuals with disabilities spend some or all of their lifetime in institutions**
- **Long term isolation from community**
- **Short term disruption from community**
 - **Emergency hospitalization**
 - **Psychiatric hospitalization**

Need for Accommodation



- Modifications to Ohio voting policies
- Personal assistance with voting
- Curbside voting
- Access to voting machines
- Assistive technology
- Signature options

Disproportionate Impact of Poverty



- **Costs of photo identification**
- **Lack of access to affordable transportation**
- **Lack of permanent housing/homelessness**
- **Impact of Ohio's recent voter purge efforts**

Voter Hotline



- **DRO operates a voter hotline for every general election in Ohio**
- **Open same hours as the polls**
- **Staff trained to answer common questions (e.g., where do I vote?)**
- **Attorneys follow up on any legal concerns**

Success Story



He wanted to vote. We made it happen.



<http://www.disabilityrightsohio.org/news/he-wanted-to-vote-we-made-it-happen-advocacymatters>

Questions?



Kerstin Sjoberg-Witt

Director of Advocacy and Assistant Executive Director

ksjoberg-witt@disabilityrightsohio.org

Committee Dialogue

Ohio Advisory Committee to the U.S. Commission on Civil Rights

- Diane Citrino, Chair
- Cassandra Bledsoe, Vice Chair
- David Forte, Vice Chair
- Subodh Chandra
- Catherine Crosby
- Scott Gerber
- Emerald Hernandez
- Kevin McDermott
- Robert Salem
- Lee Strang
- Mark Strasser
- Edith Thrower
- David Tryon

Panelists

- Daniel Tokaji, Associate Dean, Ohio State University Moritz College of Law
- Catherine Turcer, Executive Director, Common Cause Ohio
- Kerstin Sjoberg-Witt, Director of Advocacy, Disability Rights Ohio



Open Forum

Press *1 on your phone to indicate to the operator that you would like to speak. The operator will place you in queue and open your line when it is your turn.

Please remember this meeting is being recorded.

Thank you for your participation!



Questions?

For more information please contact:

U.S. Commission on Civil Rights
Midwest Regional Office
55 W. Monroe, Suite 410
Chicago IL 60603
312-353-8311

To submit additional testimony in writing please email
Melissa Wojnaroski at mwojnaroski@usccr.gov by April 9, 2018



Next Meetings:

The Committee will hold a second hearing on this topic:

- **Friday, March 9, 2018**, from 12:00 pm – 1:30 pm EST.
 - audio, dial: 877-718-5095, conference ID: 6801605
 - visual: <https://cc.readytalk.com/r/ray86wto2gj&eom>

To submit additional testimony in writing please email
Melissa Wojnaroski at mwojnaroski@usccr.gov by April 9, 2018



Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 Operator: Thank you for standing by. Good day and welcome to the US commission on civil
2 rights, Ohio advisory committee conference. Today's conference is being
3 recorded, and at this time, I'd like to turn this call over to Diane Citrino, please,
4 go ahead ma'am.

5 Diane Citrino: Thank you. This meeting of the Ohio advisory committee to the US commission
6 on civil rights shall come to order. For the benefit of those listening, I'm going to
7 introduce myself, and my colleagues on the call. I'm Diane Citrino, an attorney
8 working in Cleveland, Ohio, and the chair of the Ohio advisory committee.

9 Members of the committee on this call are Cassandra Bloodstone, David Forte,
10 Scott Garber, Mark Strasser, Edith Thrower, and David Tyron. Also, present on
11 this call are David Moussatt, chief of the regional program unit for the US
12 commission on civil rights, and Melissa Wojnaroski, a civil rights analyst.

13 The US commission on civil rights is an independent, bi partisan agency of the
14 federal government, charged with studying discrimination or denial of equal
15 protection of the laws, or the administration of justice, because of race, color,
16 religion, sex, age, disability, or national origin. In each of the 50 states and the
17 District of Columbia, an advisory committee to this mission has been
18 established, and these commissions are made up of responsible people who
19 serve without compensation, to advise the commission on relevant information
20 concerning their respective states.

21 Today, our purpose is to hear testimony regarding voting rights in Ohio. If the
22 speakers begin to veer away from the civil rights questions at hand, to discuss
23 possibly important but unrelated topics, I will interrupt them, and ask them to
24 refrain from doing that. I want to remind everyone this meeting is being
25 recorded, and will be transcribed for the public record. Today's meeting is part
26 two, of a two part series, the committee is going to hear on this topic.

27 We heard testimony last Friday, from a distinguished panel, and we are very
28 excited to welcome today's speaker, Edward Leonard, director of the Franklin
29 County Board of Elections, and Representative Kathleen Clyde, of the Ohio
30 House of Representatives. We had scheduled Senator Frank Larose, of the Ohio
31 Senate to speak, but unfortunately he was unable to make it today. We also
32 reached out repeatedly to the Ohio Secretary of State's office, but hey declined
33 to participate in this hearing. We are fortunate, and thankful to have the people
34 we have, they are exceptional panelists, and we're very excited to hear what
35 they have to say.

36 I'd also like to present the ground rules for today's meeting. This is a public
37 meeting, open to the media, and the general public. We have a strict timeframe
38 for making these presentations, we expect the panelists to speak about 15
39 minutes each, after both the panelists have concluded their statements, the
40 committee members will ask questions and answers. To accommodate people
41 who are not on the agenda, but wish to make a statement, or as ka question,

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1 we've scheduled one open session today, and that will after the questions from
2 the committee are answered.

3 We expect this open session, and question and answers for the public, to be no
4 later than 1:15. So, if the committee members are still asking questions, we will
5 stop at 1:15 to allow the public to participate. The way they will do that is when
6 the operator will get on the phone, and anyone wishing to make a statement
7 should press *1 on their phone, to request that their line be unmuted. In
8 addition, people can submit written statements by mail to the US commission
9 on civil rights, located at 55 West Monroe Street, Suite 410, Chicago, Illinois
10 60603. Or by email to Melissa [inaudible 00:04:27] and her email is going to be
11 on the screen but, I'm gonna spell it for you right now. It's
12 MWOJNAROSKI@USCCR.gov. You also can call 312-353-8311 for more
13 information.

14 Although some of the statements made today may be controversial. We want to
15 ensure all invited guests [inaudible 00:04:56] defame, or degrade any person, or
16 organization. Again, as the chair I reserve the right and privilege to cut short any
17 statements that defame, degrade, or don't pertain to the issue at hand. We
18 have some very knowledgeable people here, with a wide variety of experience,
19 and viewpoints. If anyone on this call does feel defamed, or degrade by the
20 statements, they can provide a public response during the open comment
21 period, or alternatively can file written statements for inclusion in the
22 proceedings.

23 We really appreciate the willingness of all participants to share their views and
24 experiences with the committee. Finally, during the question and answer
25 portion, the committee members may ask questions of both panelists, or of one
26 panel member individually, after the prepared statements by both of them have
27 been concluded. You must be recognized by the chair before asking any
28 question of the participants, and in addition, because of the large number of
29 members, and short amount of time, each committee member will be limited to
30 one question plus a follow up.

31 So, at this time I am going to turn the meeting over to our first panelist, Edward
32 Leonard, the director of the Franklin County Board of Elections. Thank you so
33 much for joining us. Please proceed Mr. Leonard.

34 Ed Leonard: Alright, well good afternoon. I'd like to thank the committee for the opportunity
35 to share some insights into the voting process here in Franklin County. As you
36 mentioned, my name is Ed Leonard, I'm director of the Franklin County Board of
37 Elections, and I've been in this role since September of 2016, but prior to
38 becoming director, I've been in a number of positions in Franklin County
39 government, both administrative and elected. Including, I served as deputy
40 director of the Board of Elections from March of 1998 through March of 2001.

41 To tell you a little bit about Franklin County, in addition to being the home of
42 the state capital, and the Ohio State University, it has a population of a

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1 1,264,000. We have 853,000 registered voters. Has a median income about
2 56,000, 16% of our population live below the poverty line, and 90 % of our
3 residents have a high school degree or higher, and 39% have a Bachelor's
4 degree or higher. All those statistics come from the Census Bureau from the 19,
5 or 2016 update.

6 But, it's my understanding from the invitation to speak today that the
7 committee was seeking an updated testimony, to identify the extent to which
8 concerns raised in 2006, have been addressed, and any new concerns that may
9 be present. In preparation of this discussion, I reviewed the testimony given by
10 Franklin County's then director, Matt [inaudible 00:08:07], who's by the way
11 now deputy Secretary of State, for the Secretary of State, Jon Husted.

12 And in that testimony, he had reviewed the following areas, and they included
13 voting machine shortages, long lines on election day, some of the protections
14 that were in place to prevent over voting, some of our poll worker training
15 efforts, and so I'm going to address those issues as well as a few others. As the
16 then Director [inaudible 00:08:36] mentioned in 2006, the Board of Elections
17 was in the process of implementing a new voting machine system for
18 placement, that would greatly expand the number of voting machines available
19 for placement at the various voting locations in Franklin County. By the general
20 election of 2006, Franklin County had over 4,600 voting machines, versus the
21 2,800 machines that were in the field on the election day in 2004.

22 Today Franklin County has 4,735 [inaudible 00:09:11], touch screen voting
23 machines with a voter verifiable paper audit trail. These machines are allocated
24 based on a formula of one machine per every 175 active voters. The increased
25 number of available voting machines ,has clearly had a positive impact on
26 reducing lines at the polling locations, but there are some other factors that
27 have contributed to significantly reducing lines at the polls on election day. the
28 first factor is the change from a precinct based voting, to a location based
29 voting.

30 Allow me to explain that a little bit. We've always had voting locations with
31 multiple precincts in a location. Prior to 2006, a voting location with multiple
32 precincts, would have a separate voting area for each precinct, a separate set of
33 poll workers, a separate set of paper poll books, a separate set of machines, and
34 those constraints, resolving from the limitations of the voting technology at the
35 time, would lead to a voter potentially going to the wrong precinct check in
36 table, and then being told that they were at the wrong precinct, and then having
37 to start that process over again at the correct precinct check in table.

38 Also, based on that scenario that there could be a line forming at one precinct
39 location, while there'd be no one else in line, and there'd be plenty of machines
40 available at another precinct within that same location. Because of the new
41 technology, Franklin County spearheaded that move to location based, which
42 then allowed a voter to still vote based on their correct precinct, but they would
43 just check in at one table, they could be assigned to any machine in the location,

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1 and given their correct ballot style to cast their vote. So, today most counties
2 are voting on that location, rather than precinct based system.

3 Another factor that helped reduce the lines is the introduction of no fault
4 absentee, or early vote centers. Prior to 2006 absentee was only reserved for
5 individuals for instance who were 65 years of age or older, or had some physical
6 disability, or infirmity, or they had to be absent from the county on election day.
7 Today, any voter can request an absentee ballot, or vote at an early vote center,
8 in that 28 days leading up to election day. Over each successive election cycle,
9 more and more people have utilized that early vote option, either by mail, or in
10 person.

11 In Franklin County in 2016 Presidential election, nearly 83,500 voters cast their
12 vote at an early vote center, and another 142,000 cast their ballots by mail. So,
13 just shy of 40% of all of our voters who cast a vote in 2016 general election, cast
14 that ballot before election day. That equates to 225,700 voters who didn't
15 show up at the polls, they cast their vote early. So, we continue to heavily
16 advertise early vote options to encourage voters to vote early in an effort to
17 reduce the strain on the voting locations on election day. In the 2016 general
18 election cycle, Franklin County Board of Elections spent over \$245,000 in radio
19 and TV advertising on both mainstream, as well as targeted media outlets.

20 Finally, the poll book, and poll pads we've added to speed up the process with
21 which we process voters on election day, and in the early vote center. With the
22 swipe of an ID, or a few keystrokes of a persons last name, the electronic poll
23 book can quickly pull up that person's information, allow them to sign the poll
24 pad, and then quickly be assigned to a voting machine. So, there's no more long
25 lines behind paper poll books for one segment of the alphabet, while there's no
26 line for the other segment. So, in our vernacular we say, it's any line, any time.
27 So, this is how we've processed voters on election day, that does speed up that
28 process, because you don't just have voters waiting in a line for the poll book
29 any longer.

30 The concerns that were expressed in 2006, on preventing over voting. The
31 concern regarding over voting, is an issue that we're certainly mindful of, but we
32 don't see it as a huge problem in Franklin County. The current [inaudible
33 00:14:07] touch screen technology that we have in Franklin County, for both
34 election day voting, and the early vote center, doesn't allow a voter to over vote
35 in a race. The contests are programmed in the software for the number of
36 choices that are permitted in that contest. So, if it's a vote for one, or vote for
37 two, or vote for three, whatever the case may be.

38 If the voter attempts to vote for more than the allowable number of candidates
39 in a contest the machine is going to alert them that they're attempting to vote
40 for more candidates than that are permitted, and that they have to deselect a
41 candidate before they can select another candidate. An absentee over voting is
42 still a possibility because voters are voting on a paper ballot, and in the
43 presidential election of 2016, only 228 over votes among the 165,000 paper

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1 ballots that were cast in that election were actually over votes. So, it's a
2 relatively small number.

3 As Franklin County looks at new voting systems, controls to prevent, or
4 minimize over voting will be a factor, that we're going to consider in evaluating
5 each system. Typically touch screen systems don't allow voters to select more
6 candidates than the contest allow, and the precinct level scanners that we've
7 seen among the new optical scans systems warn a voter of an over vote
8 situation, and then allow that voter to correct that potential over vote.

9 The other issue that was addressed in 2006 that we'll speak about is poll worker
10 training. We recognize that our poll workers are often times the only
11 representative of the Board of Elections that a voter will ever see. So, it is
12 critically important that we train those poll workers to provide the best, and
13 most accurate service to the voter. By statute poll workers must receive training
14 once every three years, and voting location managers must receive training
15 before every federal primary election. In Franklin County we go well above that
16 standard. We have poll workers trained before every election.

17 Franklin County created a system of specialization of roles in the polling
18 locations, and I know that we're not alone in that practice, but by having certain
19 positions perform certain functions, such as a roster judge, paper judge, or a
20 machine judge, or voting location manager, we can refine the training to cover
21 those subjects, and those tasks that are pertinent to that role, rather than
22 opening up a fire hose of information at every task, for every position, for every
23 poll worker. So, that specialization allows us to refine our training.

24 The training manual that we've produced has actually won awards for its
25 design. We've worked with design professionals to assist us in its creation. It
26 gets updated every election, and we have a separate manual for a primary, and
27 a separate manual for general. It's tabbed for its specific role, so it makes it
28 easier for that poll worker to find the information that replies just to their
29 responsibilities. When actually Department of Justice representatives visited
30 Franklin County before the 2016 general election, they were very impressed
31 with our training materials, and we regularly get requests from other counties
32 about our manual.

33 One of the programs we're particularly proud of is the practice makes perfect
34 where poll workers come in on the last weekend before the election to brush up
35 on various election related skills. So, we have various stations throughout the
36 office, that address provisional balloting requirements, setting up voting
37 locations, setting up the poll pads, opening and closing the polls, just to give
38 those poll workers that opportunity to brush up on their skills. We're beginning
39 to incorporate video to evaluate our poll worker trainers, and to create short
40 web videos, that will serve as a refresher resource to review if they can't make it
41 to a practice makes perfect, it will allow those poll workers to brush up on their
42 skills when they feel they need to.

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1 One area that wasn't addressed in much detail in 06, was the steps being taken
2 to accommodate disabled voters. The IT staff at the Board of Elections created a
3 software tool that allows us to document the ADA compliance of all of our
4 voting locations, and this tool allows us to document, including photographs,
5 any equipment that the Board of Election will need to bring to the site on
6 election day to make an otherwise non compliant location, become an ADA
7 compliant location, including where that equipment's gonna need to be placed
8 by our poll workers, so that they can make sure they put the equipment in the
9 right place to make the location compliant. We've actually won a national award
10 for that software from the election center. Also the state of Iowa asked to
11 borrow that software, and they won an award from the national association of
12 Secretary of States for the software that they borrowed from us.

13 The current [inaudible 00:19:22] machines actually do provide greater
14 accessibility for those with disabilities to vote, including an audio ballot for the
15 visually impaired. We've gone through the voting machine process, or as we go
16 through that process for new voting machines, we have been proactively
17 including disability advocacy groups to ensure that we solicit feedback on the
18 new voting systems, and how they may affect those with disabilities. Just before
19 I arrived at the Board of Elections, or just as I was arriving, we made
20 adjustments to the early vote center, to improve the accessibility of the building
21 for those with disabilities. The most notable of those were to install motorized
22 door openers, and made sure that those were installed in a way that made it
23 most accessible to those with disabilities.

24 For a number of years now the Board of Elections has worked with Democracy
25 Live to facilitate greater access for those with disabilities, including an online
26 sample ballot that is easier to access, and is ADA screened reader friendly. The
27 next phase with Democracy Live will be the implementation of a remote ballot
28 marking system, whereby a disabled voter will be able to receive and mark their
29 ballot on their computer screen.

30 Finally, we are currently undergoing a redesign of our entire board of Elections
31 website, and working with the [inaudible 00:20:49] Center to that end. It will be
32 a website that is more disability friendly, more info on the homepage, fewer
33 drop down boxes, less drilling down to find the information that you need.

34 Finally, we wanted to discuss a few things that the board has done to improve
35 the voters experience. In the past years we saw a high number of provisional
36 ballots being ruled invalid, and the Franklin County Board of Elections developed
37 a ballot ... For the provisional ballot envelope, we developed a template that
38 rests atop that provisional ballot envelope to indicate to the voter, which items
39 must be completed to ensure the ballot will be counted. This template's
40 reduced a number of errors, and the number of ballots being ruled invalid
41 because a certain item was left incomplete on a provisional ballot envelope. As
42 with the training manual, we had a lot of Ohio Counties who've asked for that
43 template, so that they can implement it in their counties with that same goal in
44 mind.

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1 New Board offices have aided voters to access our services and make use of the
2 early vote center, because we're now located in a more suburban part of
3 Columbus, as opposed to being downtown. Being downtown was an
4 impediment, sometimes a deterrent to some voters, who didn't want to deal
5 with downtown traffic, or all the one way streets in downtown Columbus. This
6 new location on a major east/west thoroughfare. The BOE is on a bus line,
7 there's plenty of parking, easy access, and a larger space to accommodate the
8 vote center. We have an ever growing Somali population in Franklin County. It's
9 second only to Minneapolis, St. Paul. The Board has a Somali employee that
10 works for us on a seasonal basis, during the early vote season, and is able to
11 assist Somali voters in getting set up on the machines, and so forth.

12 Finally, I'd like to mention the online voter registration allows voters who have a
13 drivers license to register online, and allows a voter who's already registered to
14 update their registration online. It still doesn't surpass the old fashioned pen
15 and paper in terms of number of registrations, but it is increasing significantly.
16 So, a great deal's happened since the last time this committee discussed these
17 issues in 2006. A great many strides have been made to improve voter
18 experience, and improve voter confidence in the election process.

19 I know my fellow election officials throughout the state take great pride in
20 executing their responsibilities of conducting fair and accurate elections, and
21 will continue to do so. Is there a need for more resources, absolutely. But, we
22 will continue to work with our partners at the state, local, and federal level to
23 ensure that our elections are accurate and secure. I want to thank this
24 committee for their interest in the matter, and allowing me the opportunity to
25 share these insights today.

26 Diane Citrino: Great. Thank you so much Mr. Leonard. We really appreciate that, and we're
27 glad you're able to stay and answer questions after we hear from our next
28 speaker, Representative Kathleen Clyde, of the Ohio House of Representatives.
29 Representative Clyde please go ahead.

30 Kathleen Clyde: Thanks Diane, and thank you for inviting me to be her today. I'm very honored
31 to get to share some of my thoughts and experiences. As was stated, I am in my
32 fourth term in the Ohio House of Representatives. I represent District 75, and
33 northeast Ohio. I am the ranking minority member on the government
34 accountability and oversight committee, which is where election related
35 legislation comes through the legislature. I, full disclosure am a 2018 candidate
36 for Ohio Secretary of State. I've just a quick road map of what I will talk about
37 today. I would like to review some issues from 2006. I'd like to give an update
38 on law and practice changes since 2006, improvements, and also still some
39 problem areas. Then an update on election issues that have come up during
40 various cycles, and issues that continue to be problems, or areas to monitor
41 going forward.

42 So getting right to it, reviewing 2006 issues. Of course, we had the problem of in
43 2004 we had Secretary of State Ken Blackwell issue a decision that voter

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1 registrations that were on not the correct form of card stock would not be
2 accepted for voter registration purposes. That was a very controversial decision
3 that received national attention. We had mass voter challenges in the 2004
4 presidential election. We had a problem with not enough voting machines being
5 deployed, and we had very long lines in 2004. The last voter in the country was
6 actually a college student in Ohio who voted at around 4 a.m., the day after
7 election day, after waiting in line for more than nine hours.

8 We've had big provisional ballot problems in Ohio, in 2004, in 2006, and we've
9 had litigation almost every election cycle about this. A new complex voter ID
10 requirement was enacted in 2005, despite broad opposition to that
11 measure. The new no excuse needed absentee voting was enacted in 2005.
12 Although, the in person early voting didn't start in practice till 2008.

13 So a quick update on law and practice changes since 2006. Again, we've had
14 many problems in our election system. We've had since 2006, the no excuse
15 needed absentee voting, although there have been many attempts to cut, or
16 limit absentee no fault voting in Ohio, we have had many lawsuits trying to keep
17 days and hours available for Ohio voters, specifically around the last three days
18 of early voting, and whether those would available to voters. The good news is
19 that we were successful, and those days continue to be available. We had a bill
20 that came through the legislature and passed on a part line vote, that cut off the
21 first week of early voting, and we've had trouble maintaining evening, and
22 weekend hours for early voting. That has been won through litigation, although
23 that continues to be something that well need to monitor.

24 When it comes to our ID law in Ohio, I think that there is an improved comfort
25 level with the law. I think voters, and poll workers, are familiar now with its
26 different provisions in the last 12 years that it's been in place, but we still are
27 experiencing challenges. There's challenges for student voters and meeting the
28 requirement. In Ohio, it's actually okay to use your concealed carry license for
29 ID, but not your student ID card. Homeless Ohioans can vote provisionally
30 without ID, and have their vote counted, but hat is only because of a victory in
31 court.

32 We have had provisional ballot issues, some setbacks. We've had legislation
33 passed on party line votes, making it harder to cunt some provisional ballots.
34 But we've also had victories in court that have helped us to count groups of
35 those ballots, but really there's been little meaningful change in the numbers
36 cast, and the numbers thrown out. We are one of the top states in the country
37 for the number of provisional ballots we have, and unfortunately the number
38 that get thrown out.

39 We've had issues with absentee ballots. Again we've had some setbacks. We've
40 had legislation passed on party line votes that have made it harder to count
41 absentee ballots, but we've had some victories in court limiting some of those
42 problems, although there's been little meaningful change in the numbers cast
43 and thrown out. We've had 38 voting restriction bills introduced in the

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1 legislature since 2011, and 13 of those bills have passed, and then signed into
2 law.

3 Turning now to the 2012 election. In that election we saw intimidating
4 billboards, targeting African American neighborhoods, and near voting
5 locations. We saw State House Democrats actually get more votes than the
6 State House Republicans, but they only won 40% of the seats. We had a State
7 House race that was decided by only four votes, and unfortunately the
8 Republicans in the legislature refused to count votes in that contest, and that
9 contest gave the Republicans a veto proof super majority.

10 We saw votes get thrown out in that situation because of a Board of Elections
11 data entry error, and the voters social security, it didn't match what the voter
12 provided on their provisional ballot envelope, so it was thrown out, even though
13 the voter provided the right information. We had a young marine who was in
14 training, and voted with an absentee ballot, but didn't send back both ballot
15 envelopes, so his ballot was not counted. We had a man who wrote his birth
16 year on his birthdate, and was off by one digit, his vote was not counted. And
17 there are many, many, many more examples of votes thrown out in that
18 election.

19 In 2016, more recently we had voter intimidation at the polls. An example from
20 Summit County, we had reports of men riding around in pickup trucks, at the
21 polls threatening people. We unfortunately still are only allowed to have one
22 early voting site in each Ohio County, that is able, that is what passed through
23 legislation. Because of that, we have early lines at our early vote locations,
24 especially as you get up close to election day. Again, we have counties that have
25 15,000 people, and counties in Ohio that have over a million people, but each
26 county is only allowed to have one early vote location.

27 We had vote by mail applications mailed to Ohio voters. It was made public that
28 it would be to every registered Ohio voter to try to encourage vote by mail in
29 the 2016 election, but actually one million registered eligible voters were
30 excluded from that mailing because they were deemed inactive, and were being
31 set up for Ohio's unlawful purging process, which disproportionately affects
32 black voters. Our turn out in 2016 was our lowest voter turn out as a state since
33 the year 2000. We had 64% of Ohioans turning out to vote in a major,
34 presidential election.

35 Some other current issues. We have a case out of Ohio pending before the
36 United States Supreme Court. We have, unfortunately the state of Ohio has
37 purged over two million voters from the voter roll since 2011, simply for not
38 voting in a few elections. That process was challenged by voter advocates, and
39 actually a voter who is from my house district, a veteran Larry Harmon. That
40 case, we won at the six circuit level, and that purging was deemed unlawful. Our
41 Secretary of State appealed to the United States Supreme Court, and we are
42 awaiting a decision with about 2 million Ohio voters hanging in the balance.

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1 We also have a new, online voter registration system, which began after the last
2 presidential election. It's new as of 2017. Unfortunately, it does exclude Ohioans
3 who do not have a driver's license, or a state photo ID card. So, that
4 unfortunately, some groups of Ohioans are not as able to participate in online
5 voter registration. Homeless Ohioans, those in poverty who do not drive, or
6 have an ID card, and it impacts the young, the elderly, and disabled Ohioans
7 without photo ID.

8 Issues that continue to be a problem or issues to monitor as we go forward.
9 Early voting is just a very controversial method of voting in Ohio, and is under
10 constant attack. For example, we have had voters have to wait in long lines. We
11 have had hours, and days be cut, and we see efforts to make it harder for the in
12 person early voting process, which is favored by African American voters in
13 Ohio. We continue to see people disappearing from the voter rolls. Other states
14 have moved to automatic voter registration, which has really improved the
15 situation for increasing the number of registered voters, but Ohio [inaudible
16 00:37:42] of voter registration innovation has yet to take that reform seriously.

17 We continue to have a large number of provisional ballots being thrown out in
18 each election. We need new voting machines in Ohio. Many counties have
19 machines that are a decade old, or older. Unfortunately counties have been cut
20 pretty significantly in their funding from the state, so county coffers are low.
21 The state has not yet passed funding for new machines, and one proposal
22 currently being considered bases the machine allocation amounts on registered
23 voters, but purging has depleted registration numbers and could unfairly impact
24 funding.

25 We've also seen government Russian government attacks on our voting system.
26 This is certainly a civil rights issue for all Americans. Ohio was targeted in the
27 2016 election, and there are reports that the Kremlin, and possibly other
28 attackers will be attacking our election system again. Ohio is still very much
29 roiled by voter rights attacks, and controversy. The voting wars are likely to
30 continue in the legislature, and the courtrooms.

31 I hope I've provided a helpful picture of where we are after some important
32 reforms, and elections, and where we still need to go as a state, to ensure that
33 our elections in Ohio are fair, accessible to everyone who wants to vote, and
34 that everyone's vote is counted. So, I'll leave it at that and again, I thank you all
35 so much for listening, and for inviting me to be here with you today.

36 Diane Citrino: Thank you Kathleen Clyde, Representative Clyde, we really appreciate that
37 testimony, and with that we are going to open this up to our committee
38 members, each of the committee members on this call are going to get one
39 question, plus a follow up if necessary. So, I would like to ask our committee
40 members to let me know if you have a question for either Edward Leonard, the
41 director of the Franklin County Board of Elections, or Representative Kathleen
42 Clyde of the Ohio House of Representatives. I will remind the public that they

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1 will have a turn no later than 1:15 today, to also participate. First to our
2 committee members.

3 Speaker 5: Diane, it's Subodh, I just wanted the record to reflect I was able to join the call
4 about halfway through Representative Clyde's testimony.

5 Diane Citrino: Welcome Subodh, thank you for joining us.

6 Scott: Hi Diane. This is Scott. I have a question if I may?

7 Diane Citrino: Certainly. You're recognized. Go ahead.

8 Scott: This is for either or both panels, director Leonard, and Representative Clyde well
9 thank you both for testifying. I'm troubled that the Secretary of State's office did
10 not participate in this meeting despite the diligent efforts of our staff to secure
11 that participation. Do you have any thoughts about why that is, or whether it
12 matters that they did not?

13 Kathleen Clyde: This is Representative Clyde. I am troubled by that, and have been concerned
14 with many of the actions of our Secretary of State, and I think not being willing
15 to participate in this important dialogue is very concerning. Again, our elections
16 should not be a partisan issue, it should be something that we all work together
17 to figure out how we can make our elections as accessible, fair, and open as
18 possible, and this shows that this is a problem that is persisting in Ohio that
19 there's hyper partisanship with our elections, and it's unfortunate that our
20 Secretary of State couldn't join us today.

21 Ed Leonard: I would agree that is, I'm disappointed that they're not participating in today's
22 presentation, particularly given the fact that the Deputy Secretary of State
23 [inaudible 00:43:16], actually had been an election official here in Franklin
24 County, and is quite familiar with the sort of issues, and I think could add to that
25 conversation.

26 Kathleen Clyde: Thank you, another question from our committee members?

27 Mark: Diane this is Mark. I have one if there is time.

28 Kathleen Clyde: Mark, can you speak up please?

29 Mark: Shall I ask the question, actually this is for both.

30 Kathleen Clyde: Yes. Please go ahead.

31 Mark: Thanks. I'm interested in the process where the voters are purged from records.
32 So, I'm assuming without knowing that they don't know. Then if someone
33 shows, or they're given a provisional ballot, or basically what happens?

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1 Kathleen Clyde: So, can I give my read on this, and please fill in-

2 Ed Leonard: Sure.

3 Kathleen Clyde: What I may leave out. So, the process is directed from the Secretary of State's
4 office, that Boards of Elections engage in this process. There are a couple of
5 different processes for purging. Of course deceased voters, there is a lot
6 addresses purging people who died, or purging people who've moved out of
7 state. That's not what we're contesting here. THAT's not what's part of the
8 litigation. The litigation, and the voters impacted, are ones who have missed a
9 few Ohio elections.

10 So, the process in Ohio is, if a voter misses a federal election, an even year
11 election, they receive a postcard from their Board of Elections. It's a
12 confirmation notice to confirm if they have moved, or if they still are a
13 registered voter living in that location. If they do not respond to that postcard,
14 or show up to vote, or take some action in the voting process in the next two
15 election cycles, so the next two even years, then they are purged from the rolls,
16 with no further notice.

17 Some of these voters, actually thousands of these voters, show up to vote after
18 they have been purged. The proper procedure, and this is what usually happens
19 from my knowledge, is they are given a provisional ballot, because they are not
20 in the poll book. THAT's what we do with voters who present themselves and
21 there's a problem with their voter registration. If that voter was indeed a voter
22 purged for this reason, their provisional ballot is thrown out, and that's also part
23 of our problem with provisional ballots.

24 Diane Citrino: Mr. Leonard, do you have anything to add?

25 Ed Leonard: No, I think she's largely accurate on all the points that she made. We do,
26 obviously we keep our voter rolls clean in regard to those who are deceased,
27 and those who obviously moved to another county. Sometimes people get this
28 impression that voter rolls are loaded, and that's an issue, and we do get reports
29 on a regular basis of those who have died. We get that report through the
30 Secretary of State's office, from the Bureau of vital statistics. We get notified of
31 what are identified as duplicate voters, but in terms of the purged voters, again,
32 it is somebody who is identified after two federal election cycles, that haven't
33 responded to that letter that they should have received, or haven't voted in that
34 election. We don't see a large number. We have had a number of people in that
35 category in Franklin County. But I wouldn't identify it as a large number. Again,
36 we don't want any voter to be denied the opportunity to vote in any election.

37 Diane Citrino: Thank you.

38 Mark: Just as a follow up, and then they have to register to vote again in order to vote
39 in a future election, is that how it works?

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1 Ed Leonard: If they cast a provisional ballot, that application will be considered a voter
2 registration form.

3 Mark: Oh, I see, so for the next time it might get counted, but for this time it would be
4 thrown out?

5 Ed Leonard: I'd have to double check as to whether it would be thrown out. I'm not sure of
6 that. Again, the Secretary of State sets forth the criteria we can use to invalidate
7 that.

8 Kathleen Clyde: Let me just jump in, and say that, the ballot does get thrown out for that
9 election, but the envelope that the ballot is in, is the provisional ballot envelope
10 that serves as their voter registration, as long as they completed it correctly.
11 They should be all good to go for the next election, but unfortunately, they are
12 disenfranchised in the current election. Now, neighboring Indiana counts those
13 provisional ballots of people that have been purged, but here in Ohio they are
14 thrown out.

15 Mark: Thank you.

16 Edith: This is Edith [inaudible 00:49:26], and I have a question, or comment.

17 Diane Citrino: Go ahead, Edith. This is Diane, go ahead and ask your question, do you want to
18 direct it to both panelists?

19 Edith: It could certainly be directed to both, and it's kind of a question, or comment.
20 Thank you both for being here today, and your presentations were very
21 informative. I think it's perfectly legitimate that if someone passes away to
22 purge them, and I think it's perfectly legitimate to purge the names of someone
23 who's moved out of the voting area. I don't think anyone would argue with that.
24 I was just wondering, if either of you have any sense of why else, would no one
25 vote? I know that from personal experience, and observation that some people,
26 voting is emotional many times. Some people are reactionary in terms of their
27 voting pattern. Reacting to issues or circumstances.

28 So, I'm just wondering if those are taken into account. There could be for
29 instance, someone running in a presidential election, or a federal election. I
30 think in federal elections people are focused on the president more than
31 anything else, that they don't want to vote for. That person could run for a
32 consecutive time, and they didn't support them the first time, so they're not
33 gonna support them this time. Is that taken into account at all, if you get my
34 drift.

35 Kathleen Clyde: I get your drift, and I think that just as it's a fundamental right for everyone to
36 vote that's eligible. It's your right not to vote, and to not participate in the
37 election. We should be working hard to get people who have been ... who have
38 strayed away from voting and participating, back into the process of

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1 participating in our democracy. Unfortunately, in Ohio we purge people if they
2 don't vote too many times, and I think that's exactly the wrong way to approach
3 this. I think there are a couple of reasons for not voting.

4 One is the example I talked about where voters did not receive, people who
5 were set up for purging. So, they received this mailing after missing one
6 election, did not receive an absentee ballot application, like other registered
7 voters in Ohio, which is a way to encourage them to participate, and to vote
8 from home, to vote by mail.

9 I think there's a lot of confusion about there about the ID requirement. There
10 have been a number of states that have adopted photo ID only for voting. Ohio
11 thankfully, is not one of those states, but I think voters have heard about that,
12 and sometimes there is some confusion. Is that the law in Ohio, I don't have an
13 ID, you know just having that out there can be problematic. Other states
14 disenfranchise ex felons. Ohio does not, and that is an area where I see
15 confusion from voters.

16 They don't realize that they have the ability to again register, and participate. I
17 think there is a suppressive affect, with these partisan battles, and attacks on
18 the right to vote, that make people think, this is just too complicated, my vote's
19 not gonna count. It just attaches, I think a negative stigma to the importance of
20 voting, and the right to vote, and that it may be challenged, or taken away. I
21 think people are very discouraged by that, and that affects turn out.

22 Finally, I would say our voter registration cut off deadline is a huge problem in
23 Ohio. It is 30 days before an election that you need to be registered to vote.
24 That is the longest amount of time allowed under federal law. Many states have
25 shorter cut off periods, or have same day voter registration, or have automatic
26 voter registration, and it correlates directly with turn out. States that have same
27 day registration have 5-10% higher voter turn out than Ohio does. We need to
28 continue to work to make our voter registration system better, and not actually
29 be a burden on voters, and on their ability to turn out.

30 Diane Citrino: Thank you.

31 Ed Leonard: To your question though, is [inaudible 00:54:43] is that, I think voters don't
32 typically don't participate in some of the local year elections, no matter how
33 much we encourage them, and they do look at what they see at a national level,
34 and that the presidential is the most important to them. They perceive it's the
35 most important to them, even though their local officials are the ones who have
36 the most direct impact. So, if they're not enthusiastic about the choices they
37 have, or they've been turned off by the negative media coverage, or the
38 negative advertising, and they simply fail to show up to one presidential
39 election, and don't show up to the next one. All of a sudden, they're in that
40 category, so it doesn't really take into account what voters might actually be
41 experiencing in choosing not to participate in a federal election, or presidential
42 election, then putting themselves at risk for being purged.

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1 Edith: Thank you.

2 Diane Citrino: Great. Thank you. This is Diane Citrino, I'd like to point of privilege, just ask a
3 question, in the last time, we didn't have much time. We heard a little bit about
4 it from Kathleen Clyde about the Russian government attack, and how Ohio was
5 targeted. So, I have a two part question, I'd like to ask what are we doing in
6 Ohio to protect from attacks form a foreign government, and is there more we
7 should do? I would like Mr. Leonard if you could address what are we doing
8 right now, and Representative Clyde if you have ideas of what other things we
9 should be doing, I'd really appreciate hearing those.

10 Ed Leonard: Well from the voting standpoint, we do keep all the tabulation equipment, and
11 all the computers that program the election are not connected to the internet.
12 So, they're not subject to being hacked, because they're not connected to the
13 internet. We take steps during the tabulation process to ensure that when we
14 transmit results to the Secretary of State's office, that we're not in some way
15 connecting to the internet, and then connecting back to the tabulation
16 equipment. So, we keep those separate.

17 We do logic and accuracy testing on every machine before it's put out in the
18 field. There aren't ports on the machine that are available form somebody
19 outside to tamper with the machine, without it being obvious that something
20 has happened. All the machines when they are put out at the voting locations
21 are locked, and the locks are sealed with tamper proof seals so that if something
22 has happened, it would know that. Then we have controls any place where live
23 ballots are in the Board of Elections, that it is under double lock and key, those
24 keys are maintained by a key control box with hand print and key code access,
25 so we can track who enters, and accesses that key box.

26 The voting registration software, we transmit that to the Secretary of State's
27 office, and so form a standpoint of being able to verify if there is something that
28 had happened, we have that capability, but are those systems, those computers
29 would be connected to the internet, and potentially susceptible, but we can
30 maintain a duplicate record in addition to what we send off to the Secretary of
31 State's office.

32 Our County data center has a cyber security effort to keep our system secure.
33 We have worked with, we continue to work with Department of Homeland
34 Security to assess our systems that we have in place to ensure that we've got
35 adequate protections to prevent cyber attack on our system. So, at that point, I
36 would let Representative Clyde address some of the issues that she might have.

37 Kathleen Clyde: Sure, thanks Ed. I would say that this is a prime example of what would be good
38 to hear from our Secretary of State, had he joined us today, and what he's doing
39 to prevent from future attacks. We know Ohio was one of the states where it
40 was attempted. We have been told by the Secretary of State that these attacks
41 were not successful. But much needs to be done to protect our elections going
42 into the future.

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1 I think that we should have a dedicated cyber security director in the Secretary
2 of State's office. I'd like to see that director advised by a bi partisan council of
3 security experts, election officials, and voter advocates. Unfortunately our
4 Secretary of state has cut back on staff pretty dramatically in his time in office.
5 I'm not sure if the current staffing levels are adequate, especially when it comes
6 to the security level of our elections, and helping counties make sure they have
7 the resources that they need, and the advice that they need to keep our system
8 secure.

9 I would like to see Ohio move to a paper ballot system. Right now we have
10 about half our counties have electronic voting machines, where the ballot is an
11 electronic ballot, with a paper trail, and then we have counties with paper ballot
12 systems, and the paper ballot is a voter marked, voter verified, that is the ballot
13 of record in the election. That is a more secure system. That is what other states
14 are moving to, that is what security officials on the national level are saying is
15 the safest system, and it also can be a cheaper system, a little easier to
16 Maintain, and there is less overall equipment needed.

17 I also think an important part of any voting system is doing regular audits to
18 make sure that the tabulating is 100% accurate, and our Boards of Election are
19 doing that, via directive from the Secretary of State. I'd like to see that
20 requirement put into law, and make sure that it is an important part of every
21 election process to verify the results, and to make sure our systems are secure.

22 David: This is David Forte, May I have a question?

23 Diane Citrino: David, go ahead.

24 David Forte: Thank you. Is there any monitoring system to make sure that requests for
25 absentee ballots are timely considered and sent out by the various Boards of
26 Election. Is there any fail safe or checking system to monitor when applications
27 are received, and when they are sent out?

28 Ed Leonard: Franklin County does. At least we process those applications, and track when we
29 send the ballot out, when it hits the mail stream, and then when it comes back.
30 In terms of the application, cause we can have a situation, and we do, where
31 people say well I sent in my application, but we have no record of it, and so we
32 can track it once we receive it, and then track when that ballot particularly is
33 prepared and put in the mail stream. It still doesn't control for a situation where
34 a voter asserts that they've sent in an application, and we have no record of
35 having received it.

36 David Forte: I have a follow up question. Is there out of the Secretary of State's office, is
37 there any monitoring of the various Boards of Elections response rate and
38 alacrity, or is it all just self controlled?

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- 1 Ed Leonard: I have to state, I'm not aware that we're required to report anything to the
2 Secretary of State's office pertaining to how we handle the tracking, and
3 processing of our absentee application requests.
- 4 David Forte: So, just to be clear, if the Board of Election is [inaudible 01:04:33] in responding
5 in a timely manner to applications for absentee ballots, no one knows outside of
6 that Board of Election, is that correct?
- 7 Ed Leonard: That would be correct.
- 8 David Forte: Thank you.
- 9 Diane Citrino: Another question from, who is this David Tryon.
- 10 David Tryon: David Tryon.
- 11 Diane Citrino: David Tryon, go ahead.
- 12 David Tryon: Thank you. So, Edward Leonard, the college students, that move out of their
13 parents home and go to college, and then they register to vote in their college
14 town, is there a way that that is monitored, so that they are only voting in one
15 location at the same time to make sure that their vote is not cast out because
16 they are registered in more than one location. How does that all work? I
17 presume that there is a system, but I don't know what it is.
- 18 Ed Leonard: Correct. It ends up going to the state wide voter registration database, and we
19 get notified. Obviously, we get the registration, and then the losing county
20 would get notified that this registered voter, is registered in Franklin County, so
21 they're directed, they would remove that person from their voter rolls. In
22 Franklin County, we don't delete them from them, but we put them in a cancel
23 status, so that they're not active voters in Franklin County, because we received
24 notification that they moved to Ohio University, and they're down in Athens
25 now. We would get that notice from the Secretary of State's office that I am a
26 resident of Franklin County, who's moved to Miami of Ohio, or to OU, and they
27 are now residents of those counties. We would put them in a cancel status so
28 that they wouldn't vote here in Franklin County, and vote in the county where
29 they are going to school.
- 30 David Tryon: So, there's a centralized record in the Secretary of State's office for all the voters
31 to make sure that they're-
- 32 Ed Leonard: Well that's sort of the Boards of Elections, and they do a comparison based on
33 various factors, name, birthdate, last four of the social, and again, when
34 somebody registers they indicate to us what their previous address was so that
35 the Secretary of State could use that as an identifier to indicate that, while this
36 person was previously registered in Athens County, now they're going to Ohio
37 State, so they registered to vote her in Franklin County, from that Athens

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1 County would be notified that this individual is now registered in Franklin
2 County, and so they have to be removed from that voter roll, and [inaudible
3 01:07:34] County would add them to their voter rolls. So, if the person doesn't
4 fill it out completely, there is still a comparison done, based on certain data
5 elements to identify whether that voter is a duplicate voter, and if they are,
6 each county is notified. We get a list of that, so we know that another county is
7 having to drop this person, because they are now registered in Franklin County.

8 David Tryon: Thank you. Does that work on an interstate level basis too?

9 Ed Leonard: No. There isn't anything like that on an interstate basis.

10 David Tryon: Okay. Thank you.

11 Diane Citrino: So, Cassandra, or Subodh would either of you like to ask a question?

12 Cassandra: This is Cassandra-

13 Subodh: I would like to, I'll defer to Cassandra, go ahead.

14 Diane Citrino: Yes Cassandra, you're recognized, please go ahead.

15 Cassandra: My question is for Director Leonard, concerning language barriers. Her in
16 [inaudible 01:08:29] County, there have been great discussion, and expert
17 movement, to having the ballots in english, and in Spanish. I saw that one of
18 your slides, that you do work along with the Somali community, so could you
19 give me a little more information just in Franklin County, how many precincts
20 you have your ballots in English, and in Spanish?

21 Ed Leonard: Right now, we don't have any. I don't know that, that conversation has begun,
22 although I think it should, because I believe there may be some precincts where
23 we've met the federal threshold. I'm not aware of any, where we've been
24 notified that, that is in fact the case, but I think it is something we ought to
25 primarily be growing the Hispanic community in Central Ohio as well as the
26 Somali community in Central Ohio.

27 Cassandra: Thank you.

28 Ed Leonard: Okay.

29 Diane Citrino: Subodh, we're gonna have to interrupt at 1:15 to take calls from the public, so
30 hopefully Subodh, you can ask your question, and get your answer in the next
31 five minutes. Go ahead.

32 Subodh: Yes, I actually have two questions, I hope we'll be able to cover them both, but
33 they're directed to Representative Clyde. In the interest of full disclosure to the
34 committee and for the record, these relate to a case that I litigated as a private

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1 litigator on behalf of the North East Ohio coalition for the homeless, and the
2 Columbus coalition for the homeless. The substance of the case is over now, but
3 Representative Clyde was a witness in that case, so I want to ask he about some
4 of the matters related to that. Forgive me Representative Clyde, if you covered
5 this extensively in your opening testimony, I didn't get to hear all of it, so let me
6 know if you've covered it already.

7 The first question relates to changes in state law in Ohio that led to the so called
8 five fields requirement on ballot forms, and perfect form. The idea for example
9 that Secretary of State's have to find that if somebody writes, or the Secretary
10 of State's representative, and chief of staffs testifying that if somebody writes
11 their name in cursive, even legible cursive, where the form says print name, that
12 the Secretary of State's position is that, that voter should be disenfranchised.

13 So, if you could describe the controversy surrounding that requirement, and
14 what led up to it in the general assembly, what your position was on it, and
15 what the current state of the law is on those requirements. The second, which
16 we can elaborate on when you finish on that, and any other issues that came to
17 play in that legislation that you think are problematic, relates to the concern
18 about whether this represents intentional discrimination. I'll be more specific
19 about that when you finish your response to the first question.

20 Kathleen Clyde: So I covered that very briefly, and I would just say that legislation was past, that
21 was part of the 13 voter restriction bills that have been signed into law since I've
22 been in office. Two of those bills required more information to be provided by
23 the voter on their provisional ballot envelope if they're a provisional voter, or
24 their absentee ballot envelope if they're an absentee voter. If any of that
25 information is incorrect, or missing, the voter's ballot shall not be counted.

26 In the legislature, it's been a few years now, but I remember that there were no
27 proponents of this legislation, only the sponsor of the legislation. They were
28 party line votes, and our concern was that too many votes would be thrown out.
29 This would increase the problem of us throwing out ballots, and we know who
30 the voter is, what the information generally you know that the voter is eligible,
31 you just are prevented from actually counting that vote. This is an outlier from
32 what other states do. It's really problematic that we are not counting people's
33 votes here in Ohio.

34 Subodh: And are there different practices among the counties, where in one county they
35 will count your ballots, but in another they won't?

36 Kathleen Clyde: Anecdotally, that is what I have heard, that different counties may be applying
37 different standards. There is also a part of the legislation too that said, if the
38 Board voted three to one, or four zero, to count certain groups of ballots that
39 they then would count. But in counties where you had disagreement, the votes
40 wouldn't count. So, you know this is still a serious problem.

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- 1 Subodh: And the last question is simply, what experiences have you had, that would
2 cause you, including comments made by legislative colleagues, or others, Board
3 members, that would cause you concern that some of these efforts that would
4 shave off percentages of the vote, and not get them counted, particularly in
5 larger urban counties, might be the product of any effort to intentionally
6 discriminate against minority, poor, or Democratic leaning voters?
- 7 Kathleen Clyde: That's been a concern of mine in the legislature frequently with this legislation.
8 We have heard comments about, when it comes to early in person voting, which
9 is absentee voting technically, that certain legislators don't want those people
10 who take the bus after church on Sunday to make it too easy for them. We have
11 heard-
- 12 Subodh: Was that a phenomena occurring in the African American community, starting
13 with the election of President Barack Obama in 2008?
- 14 Kathleen Clyde: Yes. That comment, I think it was generally agreed by anyone who heard it, was
15 referring to this whole to the polls that typically happens in Ohio on Sundays
16 after church. That is a big, important part of the get out to vote effort for our
17 African American communities in Ohio.
- 18 Subodh: Did Secretary of State you say cut back early voting on Sunday?
- 19 Kathleen Clyde: Yes. We have less early voting under our Republican Secretary of State on the
20 evenings, on the weekends, than we had under a Democratic Secretary of State.
21 Less voting opportunity, less, fewer days, fewer hours. These pieces of
22 legislation are, I believe almost everyone, or everyone was decided on a party
23 line vote, so not bi partisan agreement, this is not how we should be making
24 changes to our election system.
- 25 You hear legislators in Ohio talk often about voting being a privilege, not a right,
26 and voter's need to be more personally responsible to meet all of these
27 different requirements. It's really sad to see this occurring, and I'm hopeful
28 moving forward as a state that we can come out of this, and be ensuring the
29 right to vote for every single Ohioan that wants to vote, and that we [inaudible
30 01:17:14] this partisan fighting, and often attacks on certain groups of voters
31 behind us. This belongs on the past.
- 32 Subodh: I do want to step, I would-
- 33 Diane Citrino: I'm sorry, we're gonna have to interrupt, because we have a scheduled time
34 that's set in the public record for the public to participate. So, we can come back
35 if we have time, but we do need to allow members of the public right now, to
36 press one on their telephone keypad to request that their line being unmuted,
37 and then I'm gonna check and see with the operator to see if there are
38 members of the public who would like to either make a statement, or ask a
39 question of the panelists.

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1 Operator: Thank you ma'am. Edward Leonard, please press star one on your telephone for
2 a question, or comment at this time. Please make sure your mute function is off,
3 to allow us to [inaudible 01:18:15] equipment against star one to signal.

4 We have no questions at this time from the public.

5 Diane Citrino: Thank You.

6 Subodh: May I follow up then Diane, May I follow up on the last discussion, please.

7 Diane Citrino: Yes, Subodh, go ahead.

8 Subodh: So, Representative Clyde, just going back to the second larger question about
9 evidence, or things that cause you concern about intentionally discrimination.
10 Were there other comments that you heard, or that were made? And could you
11 also talk about the billboard incident in Cleveland, related to one of the
12 presidential elections.

13 Kathleen Clyde: Yes, and I did talk about that in my presentation, and had a slide.

14 Speaker 13: A point of order. Are we having a controversy case placed into the record here?
15 I thought we were just obtaining information.

16 Subodh: No [inaudible 01:19:21]-

17 Speaker 13: If you've already tried the case, do we need to retry it?

18 Subodh: Well, I don't think were talking about the case, I think we're talking about
19 information that Representative Clyde is aware of, and can testify about. Now, it
20 happens to relate to information that was presented in a case that is now
21 resolved, but that doesn't mean that these things didn't happen, and aren't a
22 part of the voting issues that are the subject of this hearing. So, I don't
23 understand the objection, I don't think it's a fair objection, and I think this
24 witness has the ability to comment on these issues.

25 Scott: Yeah, I have a point of order too this is Scott, I thought Diane you said we could
26 ask one question, and then a follow up.

27 Diane Citrino: Yes. I agree. I was seeing that we had a little more time, and I was allowing this
28 follow up. I'm gonna allow the question, and allow Kathleen to comment.
29 Representative Clyde. I understand Subodh [inaudible 01:20:30] question to be
30 directed in a more general sense. I think he was disclosing that he participated
31 in a lawsuit with you, but we as David Forte mentioned, we don't want to retry
32 the lawsuit, but if you can comment, and directly just answer his question, we'd
33 appreciate that.

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1 Kathleen Clyde: I will just say generally, this has been a difficult environment, where many
2 problematic things have been said. There's one quote that I can remember that
3 received national attention, and it was the Chairman of the Republican Party in
4 franklin County, Doug Price, saying that we shouldn't accommodate the African
5 American voter turn out machine when it comes to this early voting, and the
6 fights over the in person early voting process.

7 There have been many witnesses, who have come before the legislature and
8 described these various pieces of legislation that have been signed into law as
9 discriminatory against African Americans, and other marginalized communities.
10 Whether it's the billboards, whether it's the comments, whether it's failing to
11 address problems in our election system that particularly affect certain voters.
12 These are problems that need to be addressed. We need to come together. We
13 need to work to make our system as fair and accessible to every Ohioan, You
14 know, I'll leave it at that.

15 Diane Citrino: Okay.

16 Ed Leonard: This is Director Leonard. If I could-

17 Diane Citrino: [inaudible 01:22:27].

18 Ed Leonard: I'd like to just come to the defense of Boards of Elections in that, the employees
19 at the Board of Elections, regardless of party are genuinely trying to ensure
20 everybody can vote. I understand the Board members are comprised of folks
21 who represent their political parties, but the staff at Boards of Elections across
22 the state, work to try and allow everyone to vote, particularly when it comes to
23 provisional ballots that we work to try, every opportunity, and every effort is
24 made to try and count those provisional ballots, to attempt to identify and make
25 sure that if we can identify that individual voter. If there's issues about someone
26 filing it out incorrectly, and trying to find that information on our system to
27 identify that correct address, that might be a number transposed, or might be
28 something erroneous about it, but trying to identify the information, so that we
29 can count that ballot.

30 There have been some restrictions. The Secretary of State imposed a restriction
31 in terms of what information we can look at, that we're only allowed to look at
32 the state wide database, that we can't look to ... Cause counties, we would look
33 at auditor records. We would look at treasurer records, we would look at ever
34 governmental record that we could try and access, to try find information that
35 would help us validate the accuracy of that provisional ballot. The Secretary of
36 State has restricted that, so we can now only look at the state wide voter
37 database. But again, our boards of elections regularly work to try and count the
38 vote, and try and make ourselves available to ensure that voter have access to a
39 ballot. I just wanted to state that, cause it seems like there's a lot of discussion
40 about Boards of Elections, and casting it in a negative light.

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

- 1 Diane Citrino: Thank you.
- 2 Kathleen Clyde: Let me just jump in, and agree with Ed Leonard, and the good work done by
3 election officials across the state, and our professional staff. I think a lot of the
4 problems I'm describing have happened at the legislative level, and the state
5 level, but our election officials persist, and do an excellent job serving Ohio
6 voters. I would like to see the environmental laws that they operate under
7 change, and us to work on these problem areas that I've discussed.
- 8 Diane Citrino: And, Mr. Leonard, this is Diane Citrino, I was wondering, when you said you try
9 and validate it, so if you saw that there was a number transposed, is there a way
10 to fix that?
- 11 Ed Leonard: No, but we can, again try and find that voter in the system, even if they may not
12 be in the voter registration, the state wide voter registration database, but
13 trying to find the information that will allow us to consider that provisional
14 ballot valid.
- 15 Diane Citrino: Okay, we have time for one more question, so I wanted to open it up to our
16 committee members again. Is there someone who would like to ask another
17 question?
- 18 Scott: Hi, this is Scott, I'll go if I could.
- 19 Diane Citrino: Sure, go ahead Scott.
- 20 Scott: Yeah. Again, I want to thank the panelists. They were terrific. My earlier point
21 was that you had limited us to one question, I know Subodh came in late, so he
22 didn't hear that instruction, so that's all I have to say about that. But, it's pretty
23 clear to me that Representative Clyde's identified a number of continuing
24 problems, so I'd like to direct my final question to Director Leonard, when we
25 vote unanimously to invite the people to present that we did, and you two are
26 on that list obviously. The reason we pick Franklin County, because in 2006, in
27 the transcript that we read, there were a lot of problems in Franklin county. It
28 was not on your watch, so I'm not blaming you, I just wondered what you think
29 now, that we're in 2018, whether things are a lot better in Franklin County,
30 whether there is still room for improvement in Franklin County, etc.
- 31 Ed Leonard: I think we have made a lot of improvements, and I think I went through a lot of
32 those in my remarks, in terms of changes that we've made with regard to poll
33 worker training. Some of the implementation of poll pads, and the voting
34 location based voting have really helped us reduce the number of lines. The fact
35 that we are amongst the counties that do aggressively advertise during the
36 presidential elections, the early vote and absentee availability, which helps us
37 reduce the number of voters who show up at the polls, and thus reduce the
38 lines, which I think were the biggest issue discussed regarding the 2004 election,

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 where long lines at the polls, and they were limited at that point in terms of
2 their ability to get new equipment.

3 So, I think our new equipment that we operate on currently allows us to process
4 voters a lot more quickly, and allows us to put any voter on any machine at a
5 voting location, so we can actually utilize the equipment to, it's fullest extent,
6 instead of the way the old equipment was where, you were limited to the single
7 precinct that was programmed on that machine. Therefore, if somebody came
8 up in the same location, with a different precinct, they could not be put on an
9 available machine. So, the technology has changed such that it allows us to
10 maximize the utility of the equipment that we have. As we look toward the new
11 system, we anticipate, we are looking for that same type of flexibility of the
12 equipment that allows us the same ability to maximize it's utility so that we're
13 not creating any situations in which voters would be forced to wait in long lines
14 in order to cast their vote.

15 Diane Citrino: No, we don't have any [inaudible 01:29:30] sorry. There's no further time. We
16 have to, we only have the recording for a limited time, so I want to thank the
17 panelists, the members of the committee, members of the public for attending
18 this meeting. The record is going to remain open through April 9, 2018. So, this
19 conversation can continue in written form. You can submit a written comment
20 to MWOJNERSKI@USCCR.gov, and that information should appear on your
21 screen, or mail it to USCCR, 55 West Monroe Street, Suite 410, Chicago, Illinois.

22 There it is, on the screen. 60603. We will follow up with everyone in attendance,
23 to provide the minutes, and a transcript from this meeting, and a link to access
24 those records. We are going to als notify everyone when the committee is
25 meeting for discussion, and when a report based on these meetings that we've
26 had, and again, this was the second of a two part series are ready. So, thank you
27 again, we appreciate your time here today. We've all learned a great deal, and
28 again, we're very, deeply appreciative. Thank you now.

29 Ed Leonard: Thank you.

30 Diane Citrino: This meeting is adjourned. Bye.

31 Operator: Thank you, and again, that does conclude the meeting, thank you for
32 participating. You may disconnect at this time.

33

Ohio Advisory Committee *to the* U.S. Commission on Civil Rights

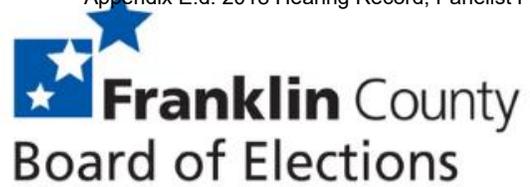
Voting Rights in Ohio, Session II
March 9, 2018



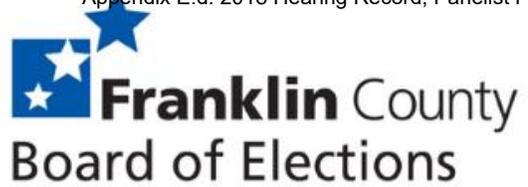
Agenda

- **Welcome and Introductions (12:00-12:05pm, EST)**
- **Speaker Presentations (12:05am-12:35pm)**
 - Edward Leonard, Director, Franklin County Board of Elections
 - Representative Kathleen Clyde, Ohio House of Representatives
- **Committee Questions and Answers (12:35 – 1:15 pm)**
- **Public Comment (1:15-1:30pm)**
- **Adjournment (1:30pm)**



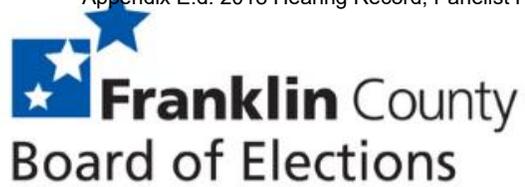


Edward Leonard, Director
Franklin County Board of Elections
before
Public Meeting of the
Ohio Advisory Committee to the
U.S. Civil Rights Commission
March 9, 2018



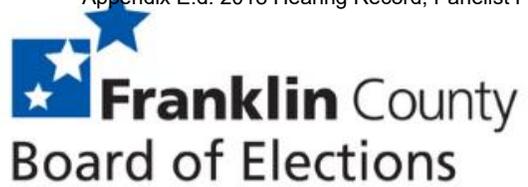
Topics Covered in 2006

- Voting Machine Shortages
- Long Lines on Election Day
- Protections to Prevent Over-Voting
- Poll Worker Training
- Additional Subjects Not Addressed in 2006



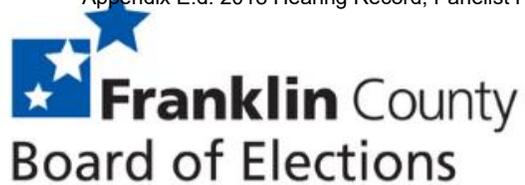
Voting Machine Inventory & Reducing Lines at Polls

- 4,600 new voting machines were acquired in 2006
- Currently have 4,735 machines available
- Change from Precinct to Location Level Voting
- Introduction of “No-Fault” Absentee in 2006
- Introduction of Early Vote Centers
- Introduction of Electronic Poll Pad throughout Ohio in 2016-17
- Currently in the midst of Voting System Selection Process



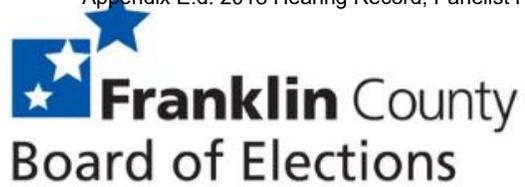
Preventing Over-Voting Issues

- I/votronic Touch Screen DRE Prohibit Over-Voting
- Absentee Over-Voting Still an Issue
- Factor to be considered as we look at new systems
 - Touch screen system that do not allow a voter to over-vote
 - Precinct-level paper ballot scanners that identify, warn voter and allow voter opportunity to correct and over-vote



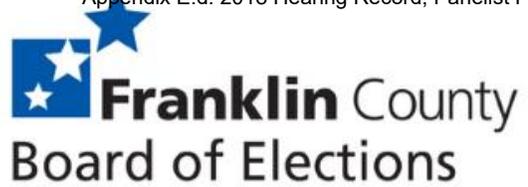
Poll Worker Training

- Poll Worker Training Critical to Voter Experience
- Franklin County Poll Workers Trained Every Election Cycle
- Specialization of Poll Worker Responsibilities
- Award Winning Training Manuals
- “Practice Makes Perfect” Program
- Champions of Democracy and Youth-at-the-Booth Programs
- Incorporating Training Videos for Polishing Critical Skills



Improvements for those with Disabilities

- ADA Compliance Software Tool
- Current Voting Systems Compliance with ADA Requirements
- Facility Improvements
- Work with Democracy Live to Facilitate Access
 - Current Sample Ballot
 - Remote Ballot Marking Capability
- Upcoming Website Refresh will be more disability-friendly



Other Improvements at the Franklin County BOE

- Provisional Ballot Envelope Template Reduces Errors & Rejections
- New Board Office Location
- Somali Interpreter for Early Vote Center
- Online Voter Registration

State Representative Kathleen Clyde

District 75, Ohio House of Representatives

Ranking Member, Government Accountability and Oversight Committee

4th Term Legislator, 2018 Candidate for Ohio Secretary of State

Voter Intimidation Billboard in Ohio



Long Lines at Single Early Vote Location



Online Voter Registration System Exclusion

WE ARE UNABLE TO PROCESS YOUR APPLICATION ONLINE

We are unable to process your application online for the reason below:

You can complete a paper voter registration form (PDF). Select 'Yes' to continue with a paper voter registration form or if you entered your information incorrectly, you may select 'Cancel' to try again.

Cancel

Yes

Committee Dialogue

Ohio Advisory Committee to the U.S. Commission on Civil Rights

- Diane Citrino, Chair
- Cassandra Bledsoe, Vice Chair
- David Forte, Vice Chair
- Subodh Chandra
- Catherine Crosby
- Scott Gerber
- Emerald Hernandez
- Kevin McDermott
- Robert Salem
- Lee Strang
- Mark Strasser
- Edith Thrower
- David Tryon

Speakers

- Edward Leonard, Director, Franklin County Board of Elections
- Representative Kathleen Clyde, Ohio House of Representatives



Open Forum

Press *1 on your phone to indicate to the operator that you would like to speak. The operator will place you in queue and open your line when it is your turn.

Please remember this meeting is being recorded.

Thank you for your participation!



Questions?

For more information please contact:

U.S. Commission on Civil Rights
Midwest Regional Office
55 W. Monroe, Suite 410
Chicago IL 60603
312-353-8311

To submit additional testimony in writing please email
Melissa Wojnaroski at mwojnaroski@usccr.gov by April 9, 2018



To: U.S. Civil Rights Commission
From: Camille Wimbish, Ohio Voter Rights Coalition
Date: March 1, 2017
Re: Voting Access in Ohio

My name is Camille Wimbish, and I am the director of the Ohio Voter Rights Coalition (OVRC). The OVRC is a network of non-partisan organizations who are committed to free, fair and accessible elections. Over the last several years, we have testified against numerous pieces of restrictive legislation in the Ohio Statehouse. We also organize a non-partisan election protection program in coordination with the Lawyers' Committee for Civil Rights Under Law, providing assistance to Ohio voters who call the 866-OUR-VOTE hotline.

I am pleased to share that Ohio is doing several things well when it comes to voting access. Ohio accepts a number of forms of voter identification such as utility bills, government checks, or pay stubs, bucking the trend of strict photo ID. Because of our history of long lines on Election Day, Ohio also has a generous 29 day no-fault absentee voting period. Approximately 1/3 of all Ohio voters now vote early.

Ohio has also made strides in modernizing our election system. In 2016, Ohio joined the Electronic Resource Information Center (ERIC), an inter-state data sharing service sponsored by the Pew Center, which improves the accuracy of the voter rolls. In 2017, Ohio implemented online voter registration, which is universally praised for being convenient for voters and cost-effective for election officials. Additionally, voters are now able to track the receipt of their absentee ballots, improving voter confidence in early voting.

Ohio voters are also challenged in a number of ways by a spate of restrictive voting laws and practices, which make it more difficult for voters to cast their ballot and have their vote counted. I will briefly outline a three significant restrictions below:

- **The Purge:** Ohio is one of the most aggressive states for purging voters for failing to vote. Secretary of State Jon Husted has established a practice of mailing a postcard to voters who do not vote within a two year period, asking them to confirm their registration. Voters who fail to respond or vote within the following four years are removed from the rolls without further notice. In advance of the 2016 election, tens of thousands of voters (primarily African Americans from urban areas) were removed from the rolls, despite still being eligible to vote. The U.S. Supreme Court now has the final say whether this practice violates the National Voter Registration Act of 1993. Ultimately, infrequent voters are most at risk for losing their right to vote, which only erodes people's faith in the system.
- **Loss of Golden Week:** In 2014, the legislature passed SB 238, which eliminated Ohio's same-day registration period in which the last week of voter registration overlapped with the first week of early voting. The bill sponsor claimed that the change was needed to curb voter fraud, however this claim was unsubstantiated as ballots cast during Golden

Week were segregated and were not counted until the voter's eligibility could be verified. Litigation worked its way all the way to the U.S. Supreme Court, but ultimately the elimination of Golden Week was upheld. The loss of this cure period means that for the majority of voters who need to update their registration, they are forced to vote provisionally. In 2016, approximately 15% of all provisional ballots cast in Ohio were not able to be counted.

- Absentee Ballot Restrictions: In 2014, the Ohio General Assembly passed SB 205, which changed the procedure for sending absentee ballot applications. Several urban counties had traditionally sent absentee ballot applications to voters every year as a cost-effective way to encourage early voting. But under the new law, absentee ballot applications can only be mailed by the Secretary of State *if* the legislature appropriates the money to do so. In practice, this means that voters only receive applications in even-numbered years, leaving voters confused about whether they will receive an application in the mail, or whether they must request one. Voters would be far better served if government officials sent absentee ballot applications for every election. Additionally, SB 205 instituted hyper-technical rules that disqualify ballots for paperwork errors such as writing a name in legible cursive instead of print, omitting a zip code from an address, or missing a single digit from a social security number. Voters deserve better than a game of "gotcha" when it comes to their ballot.

Ohio has made frequent changes to its voting rules over the last decade and yet the state has not prioritized voter education. Combined with voting restrictions, the lack of voter information is a one-two punch. Community groups and non profit organizations have had to stand in the gap to provide voters with information about the mechanics of how, where and when to vote. Additionally, voter education needs to be strengthened in the following areas:

- Voter registration updates: Approximately 10% of voters move each year, and yet many voters are not aware that their Ohio voter registration does not automatically update when they move. They may not realize their registration is no longer valid until they attempt to early vote or show up at the polls on Election Day and often their only recourse is to vote provisionally. Voters need information to encourage them to verify their registration in advance of every election.
- Send important mailings to inactive voters: Voters who do not vote within a two year period are designated as "Inactive" voters and do not receive important election mailings, despite there being no evidence that the address is invalid. Excluded mailings include absentee ballot applications and change of polling place notifications. In 2016, for example, the Secretary of State excluded 13% of registered voters because they were deemed inactive¹. Many voters are accustomed to only voting every 4 years during

¹ "A million Ohio voters didn't get absentee ballot mailing," *Columbus Dispatch* October 2, 2016. <http://www.dispatch.com/content/stories/local/2016/10/02/1-a-million-ohio-voters-didnt-get-absentee-ballot-mailing.html>

presidential elections, and are thus may not receive the basic election information they need to vote and/or have their vote counted.

- Felon re-enfranchisement: Ohio has a favorable felony re-enfranchisement policy, in that allows citizens who have been convicted of a felony can simply re-register once they have completed their sentence. They do not have to wait until they are on probation or parole, and they may even register and vote from jail. Sadly, these facts are not widely known among the public, which serves as a barrier, particularly for people of color.

In short, there is a lot of work that can be done to remove barriers to the ballot box in Ohio. We welcome ideas for how to make it easier for more citizens to participate in our democracy.

Thank you for the opportunity to submit testimony.



We have the legal right of way.

VOTING IN OHIO: A Disability Rights Perspective

March 2018

Prepared for: Ohio Advisory Committee to the U.S. Commission on Civil Rights

Disability Rights Ohio is a non-profit corporation with a mission to advocate for the human, civil and legal rights of people with disabilities in Ohio. Disability Rights Ohio is also Ohio's Protection and Advocacy System (P&A) and Client Assistance Program (CAP).

Disability Rights Ohio is governed by a nonprofit board that guides the organization's programmatic priorities. Disability Rights Ohio receives funding from federal grants to advocate for Ohioans with disabilities in a wide range of issues, including employment, mental illness, developmental disabilities, assistive technology, traumatic brain injury, victims of crime, and voting. Voting rights for people with disabilities is an important aspect of Disability Rights Ohio's work, and is reflected in the organization's priorities.

Disability Rights Ohio's voting activities

Disability Rights Ohio receives federal funding through the Help American Vote Act to support voting advocacy on behalf of Ohioans with disabilities. This work includes education and outreach to voters with disabilities and professionals in the disability field, direct and systemic voter advocacy, and operating a voter hotline every Election Day. Disability Rights Ohio also engages in voting-related litigation.

How voting impacts disability rights

Title II of the Americans with Disabilities Act (ADA) not only prohibits discrimination based on an individual's disability; it also seeks to ensure full participation of people with disabilities in society by removing barriers to access.¹ The ADA embodies in the

¹ See 42 U.S.C. § 12131 *et seq.*

law the key elements of the independent living movement: nondiscrimination, integration, and full inclusion of people with disabilities as members of society. People must be treated as individuals, not as stereotypes or caricatures. Full participation in the political process is a central value of the disability movement. Broad protections, both constitutional and statutory, exist to ensure that people with disabilities have full access to the ballot. While both HAVA and the ADA provide broad protections to ensure voting access by people with disabilities, implementation in practice is not always smooth, and antiquated notions about people with disabilities persist.

Barriers to voting

Disability Rights Ohio focuses its work on the voting barriers faced by people with disabilities. Several issues have emerged over the last decade. The following are examples of barriers experienced by Ohioans with disabilities and the advocacy efforts engaged in by Disability Rights Ohio to increase voting access.

STEREOTYPES AND DISCRIMINATION

The Ohio Constitution provides that any U.S. citizen who is a resident of the state is a qualified “elector” or voter.² But the Constitution also contains antiquated and discriminatory language that “No idiot, or insane person, shall be entitled to the privileges of an elector.”³ This class of voters is the only one that is conclusively disqualified in Ohio’s constitution. These terms are offensive relics of an 1851 constitution.

Disability Rights Ohio advocated to have these offensive terms removed from the Ohio Constitution before the recent Ohio Constitutional Modernization Commission, noting the conflict with federal law protecting the right to vote for people with disabilities and the illusory nature of capacity to vote. Despite Disability Rights Ohio’s efforts, no changes to update this language were made through the modernization process. Fortunately, these antiquated terms are not used in current Ohio statutory or administrative law, and this provision is essentially not being implemented in Ohio law.

In fact, the only relevant statutory section regarding competency to vote allows for probate court judges to “adjudicate” as “incompetent for the purpose of voting” individuals subject to another statute regulating involuntary hospitalization.⁴ This provision adjudicating an individual incompetent for voting purposes does not appear to be widely utilized in Ohio.

However, some probate guardianship application forms do have a check box question as to competency to vote. Disability Rights Ohio is concerned that someone might argue that checking this box on the application (an action taken by the applicant, not the court) supports a finding of incompetency for voting purposes if the guardianship is granted, even where no hearing or examination of this issue ever occurred. While Disability Rights Ohio is unaware of this problem having surfaced, if it did it would be a

² Ohio Const. Art. V, § 1.

³ Ohio Const. Art. V, § 6.

⁴ See Ohio Rev. Code §§ 5122.301, 5122.11-15; 3503.18.

significant violation of an individual's due process rights.

STEREOTYPES AND MISINFORMATION

While great strides have been made in accessibility, many common misconceptions remain about disability voting rights. These misconceptions often arise from paternalistic views of people with disabilities, lack of understanding about the capabilities and communication methods of people with disabilities, and lack of knowledge about technology available to voters with disabilities. Disability Rights Ohio has released publications and conducted extensive outreach efforts to help educate the public about these misconceptions, several of which are outlined below.

First misconception: "You can't vote if you have a guardian."

While in some states, guardianship may limit or even prohibit an individual's voting rights,⁵ people with guardians in Ohio can still vote in Ohio elections. The only exception to this rule is where an individual has been specifically adjudicated incompetent for voting purposes, and this type of finding is very rare. Indeed, as outlined in the *Glancy* Consent Order signed by the Ohio Secretary of State, registration to vote creates a presumption of capacity to vote.⁶

Second misconception: "How can you understand enough to vote if you can't verbally communicate?"

Voting eligibility criteria in Ohio involves residence, citizenship, and age.⁷ There is no requirement that a voter be able to communicate verbally. Assistive technology also exists to help people with disabilities communicate by other means. In addition, Ohioans who wish to register to vote who cannot sign their name on the registration form can still register to vote with the assistance of another who attests that the voter indicated a desire to register.⁸ Finally, capacity is not a valid challenge to a person's ability to vote at the polls.⁹

Third misconception: "If you are blind, how can you independently complete a ballot?"

Under both state and federal law, voters with disabilities—including those who are blind or visually impaired—must be given the same opportunity for access and participation as others. The Help American Vote Act (HAVA) requires access to private and

5 See State Provisions Regarding Voting: Constitutions, Election Laws, and Guardianship Statutes, *American Bar Assn.*, available at: https://www.americanbar.org/content/dam/aba/administrative/law_aging/State_Provisions_Regarding_Voting.authcheckdam.pdf; Thousands Lose Right to Vote Under 'Incompetence' Laws, *Stateline*, The Pew Charitable Trusts, available at: <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/03/21/thousands-lose-right-to-vote-under-incompetence-laws>.

6 *Glancy* Consent Order at <http://www.disabilityrightsohio.org/voting-glancy-consent-order>.

7 To be eligible, voters also cannot be currently incarcerated for a felony, be found incompetent for voting purposes, or have lost voting privileges for election law violations.

8 Ohio Rev. Code § 3503.14(C).

9 See Ohio Rev. Code §§ 3503.24, 3513.19; *Glancy* Consent Order n. 6.

independent voting, and accessible voting machines.¹⁰ The ADA also requires accessible voting procedures, routes of travel at the polling location, and voting machines. State law requires poll workers to assist voters with disabilities at the poll if requested.¹¹

ACCESSIBILITY BARRIERS

While laws such as HAVA and the ADA require equal access to the voting process, voting access issues for people with disabilities do persist. Below are some of the major advocacy successes and remaining shortcomings in voting access for people with disabilities in Ohio.

Polling locations

In recent years, there has been a considerable push to ensure that polling locations are physically accessible for people with disabilities. While overall polling place accessibility has improved dramatically, voters with disabilities still run into problems at the polls. For instance, a 2017 voter survey conducted by Self Advocates Becoming Empowered (SABE) found that some voters who use wheelchairs have difficulty navigating around the voting machines (e.g. voting machines too close together, loose cords), problems with an accessible route of travel to the voting area or entrance, problems with accessible parking, and problems with inoperable wheelchair ramps or elevators.¹²

Poll workers

Disability Rights Ohio also conducted an informal survey in March 2016 asking individuals to identify barriers to voting. The most prevalent issue identified was problems interacting with poll workers.¹³ These results suggest that additional training for poll workers on topics such as how to set up the polling location to be physically accessible, how to use all available equipment including accessible machines, and how to communicate effectively with voters who may have difficulties speaking, hearing, or writing would be beneficial. The Franklin County Board of Elections, for example, has begun training that seeks to specialize certain staff on different topics in the hopes of creating more positive and accessible voter experiences.

Accessible voting information and registration

People with disabilities must also have access to voter resources such as registration or change of address forms and other voting materials. Today, this information is frequently accessed on the internet, so it is critical that these materials be made available in accessible formats.¹⁴

¹⁰ 52 U.S.C. § 20901 *et seq.*

¹¹ Ohio Rev. Code § 3505.24.

¹² Voters with Disabilities Election Report, July 2017, *Self Advocates Becoming Empowered*, available at: <http://www.sabeusa.org/wp-content/uploads/2017/03/2016-Voter-Survey-Final-Report-28229.pdf>.

¹³ See also SABE Report n. 12, which also identified poll worker training as a need to increase voter access.

¹⁴ See Web Content Accessibility Guidelines 2.0 AA, available at: <https://www.w3.org/TR/WCAG21/>.

In December 2015, the Ohio Secretary of State's website had many accessibility problems for people who are blind or have print disabilities. After attempts to resolve the issue informally, Disability Rights Ohio filed a federal lawsuit under Title II of the ADA as co-counsel on behalf of individual plaintiffs and the National Federation of the Blind seeking remediation by the Secretary's office.¹⁵ The federal court issued an injunction in February 2017 ordering the Secretary of State to make his website accessible by September 2017. Recent testing showed that much of the website is now accessible, including online registration and change of address functions. The Secretary of State's office is currently working to fix remaining problems, which include inaccessible PDFs.

In addition, Ohio recently implemented new electronic poll books, and is also in the process of working with boards of elections to replace outdated voting machines. These new technologies must be accessible for people with disabilities under the ADA. In addition, voters with disabilities often utilize a myriad of assistive technology devices for communication or mobility. Ongoing poll worker and board of elections staff training is critical to ensure that these workers know how to operate the technology, and provide accommodations as modifications as needed to ensure equal access to voting services.

Accessible absentee ballots

In the same ADA lawsuit on behalf of the National Federation of the Blind, plaintiffs challenged the accessibility of Ohio's absentee ballot marking system. Under the current paper absentee ballot system, voters who are blind or who have print disabilities could not submit a ballot privately and independently, thus denying them equal access to the absentee ballot program. After a ruling in the United States Court of Appeals for the Sixth Circuit, the Ohio Secretary of State recently issued a directive ordering all county boards of elections to adopt and implement accessible electronic ballot marking tools by the November 2018 election.¹⁶ Now for the first time, voters who are blind or who have print disabilities will be able to absentee vote privately and independently.

Accessible signature options

Some voters with disabilities cannot physically sign their name on a voter registration or poll book, and need alternative options to affirm intent to vote. Ohio law does provide a process through which a voter can sign with an "X" or have someone sign applicable forms affirming under penalty of elections fraud that the voter wishes to submit the form. Confusion with this process occasionally resurfaces during election season, and additional training on the law for both board or elections staff and poll workers may be warranted.

Inadequate accessible transportation options

Disability Rights Ohio's March 2016 survey identified transportation as the second most prevalent issue for people with disabilities to access in-person voting. While some voters

¹⁵ *Hindel v. Husted*, Case No.: 2:15-cv-3061 (S.D. Ohio).

¹⁶ *Hindel v. Husted*, 875 F.3d 344 (6th Cir. 2017); Ohio Secretary of State Directive 2018-03, available at: <https://www.sos.state.oh.us/globalassets/elections/directives/2018/dir2018-03.pdf>.

with disabilities can utilize their own vehicle, the 2017 SABE report found that many voters with disabilities rely on family, friends, or service providers to provide transportation. Some use public transportation, but service availability to polling places can limit this option.¹⁷

Institutional isolation

Ohio houses tens of thousands of people with disabilities in institutional settings such as intermediate care facilities, nursing homes, and psychiatric hospitals. Lengths of stay vary widely based on a number of factors, including available resources, needs, and caregivers' decision making. A stay can be for just a few days, causing only a short-term disruption to an individual's daily life, but for many the stay in institutionalized settings may last many years and can result in long-term isolation from the community. When individuals are isolated from the community, they might not have ready access to or know about their fundamental right to vote. Disability Rights Ohio conducts annual outreach efforts to speak with residents and staff in institutional settings to educate them on voting rights and resources.

Unexpectedly hospitalized voters

Disability Rights Ohio has also focused efforts on one type of institutionalized setting where voter access is particularly susceptible to falling through the cracks. Existing Ohio law provides a special process for voters to obtain an absentee ballot if they are unexpectedly hospitalized on or shortly before Election Day.¹⁸ While the law applies to all unexpectedly hospitalized voters as well as those whose children are unexpectedly hospitalized, it has proven to particularly impact voters with mental illness who are admitted to psychiatric hospitals shortly before Election Day.

The law provides that when a voter is hospitalized within their county of residence, the voter can make a request up until 3 p.m. on Election Day for two elections officials or an eligible family member to deliver the ballot to the voter personally, and then return the completed ballot to the board of elections. This process has worked in the past and helped voters exercise their voting rights despite extenuating circumstances.

However, for voters who are not hospitalized in their county of residence, there is no option for board of elections in-person delivery. As a consequence, out-of-county hospitalized voters must either have an eligible family member pick up, deliver, and return the ballot for them, or they must mail the ballot to the board of elections themselves. But under Ohio law, absentee ballots must be postmarked prior to Election Day,¹⁹ so as a practical matter, returning by mail is not an option for day of Election requests.

Disability Rights Ohio first encountered this problem in 2012 when a young woman hospitalized in a psychiatric hospital outside of her county of residence did not receive her requested absentee ballot, and neither the county board of elections nor the Secretary of State's office would agree to ensure her access to a ballot. Under the ADA, a public entity must modify its usual policies and procedures when necessary to ensure

¹⁷ *Id.* n. 12.

¹⁸ Ohio Rev. Code § 3509.08(B).

¹⁹ Ohio Rev. Code § 3509.05.

equal access to individuals with disabilities. After trying to resolve the issue through negotiation, Disability Rights Ohio filed a lawsuit to require the county board of election and the Secretary of State to make the necessary modifications so this young woman could vote. The Court agreed with Disability Rights Ohio.²⁰

Despite subsequent attempts by Disability Rights Ohio to work with the Secretary of State to address future similar problems, no meaningful steps were taken by the Secretary's office until the November 2016 election.

In 2016, after additional negotiations with Disability Rights Ohio, the Secretary did issue a very narrow temporary directive and accompanying forms. However, the new forms are complicated and the directive severely limits applicability of the process. Now, hospitalized voters can only request an emergency ballot if they were hospitalized after the regular deadline for requesting an absentee ballot (noon the Saturday before Election Day). This new limitation is narrower than the Ohio Revised Code language on emergency hospitalization, which does not limit its application to only those admitted to the hospital after the regular absentee ballot request deadline.

In the 2016 general election, Disability Rights Ohio received calls from more than 20 psychiatric hospitals, and gave advice to more than 50 voters about how to get a ballot on Election Day while hospitalized. Many of these voters had been admitted to the hospital during the week prior to the election but were in no condition to request an absentee ballot within the Saturday deadline. Some did not have an eligible family member to pick up and submit their ballots. While many voters were able to vote with limited assistance, Disability Rights Ohio had to directly intervene and contact the Secretary of State's office to help 13 of them exercise their rights to vote. Many other hospitalized voters likely did not get to vote at all because they were admitted prior to the Saturday cutoff and did not obtain assistance from Disability Rights Ohio.

After the 2016 general election, the Ohio Secretary of State issued a permanent directive and modified the applicable forms, creating a new form through which voters must "declare, under penalty of election falsification, that [they are] a qualified elector with a qualifying disability under the [ADA]."²¹ The same narrow limitations, however, still apply, and hospitalized voters will continue to face barriers to voting until addressed more thoroughly.

HARMFUL IMPACT OF POVERTY AND OHIO VOTING POLICIES

Disproportionate impact of poverty

Voters with disabilities disproportionately experience poverty and thus the barriers to voting commonly experienced by voters with limited incomes. This includes limited voting hours, erratic job schedules, child care needs, homelessness or lack of permanent housing, inadequate or inaccessible transportation, and the costs associated with obtaining a photo identification, to name a few.

²⁰ *Mooneyhan v. Husted*, 2012 WL 5834232 (S.D. Ohio Nov. 16, 2012).

²¹ Directive 2017-06, available here: <https://www.sos.state.oh.us/globalassets/elections/directives/2017/dir2017-06.pdf>; Form 11-B (non-ADA form) available at: <https://www.sos.state.oh.us/globalassets/elections/forms/11-b.pdf>; Form 11-B-2 (ADA form) available at: <https://www.sos.state.oh.us/globalassets/elections/forms/11-b.pdf>.

Removal of voters from voter rolls

Current Ohio law includes a “supplemental process” which allows the Secretary of State to target voters who fail to vote in a designated period for removal from the voter rolls on the presumption that such voters have moved.²² As a direct result of this process, voters who remain otherwise fully eligible to vote are stripped from the registration rolls and denied their right to vote. Registrants are targeted for removal from the voter rolls after failing to vote in one election and could ultimately be removed if they do not vote in the following four-year period.

In 2015 alone, hundreds of thousands of voters were removed under Ohio’s purge practice. This means that many eligible voters are unable to cast ballots on Election Day, despite registering where necessary, being motivated to vote in the particular election, and in some cases, even arriving at the correct polling place and waiting in line.

In 2016, the A. Phillip Randolph Institute and other plaintiffs filed a lawsuit against Ohio’s Secretary of State challenging this practice and claiming that the National Voter Registration Act (NVRA) does not allow states to initiate the voter purge process based solely on their failure to vote.²³ Plaintiffs argued that allowing states to disenfranchise voters on this basis is contrary to the NVRA’s general purpose of broadening participation of the electorate and the Act’s specific goal of expanding access for historically disenfranchised groups. It would also unnecessarily and unjustifiably tread on the fundamental right to vote of many Americans already facing significant obstacles to political participation.

This lawsuit is now awaiting a decision by the Supreme Court of the United States. Disability Rights Ohio, its national affiliate the National Disability Rights Network, and other disability and civil rights organizations filed an *amicus curiae* brief to advocate for the removal of access barriers and enforcement of rights to participate in Ohio’s electoral process.

Conclusion and Recommendations

While state and federal laws provide protections for equal access to voting for Ohioans with disabilities, barriers to access still persist. Ohio has made progress in removing these barriers, but in many instances such progress occurred only after focused advocacy by Disability Rights Ohio or others. Ohio should make accessibility a priority. This must include effective policies for procuring and implementing accessible information technology in all aspects of the voting process, and effective training for election officials and poll workers about the rights of people with disabilities and how to provide an accessible voting experience.

We thank the Ohio Advisory Committee for undertaking these important issues and for considering the experiences of Ohioans with disabilities in their report and recommendations to the U.S. Commission on Civil Rights.

²² See Ohio Rev. Code § 3503.21

²³ *Husted v. A. Philip Randolph Institute, et al.*, 137 S.Ct. 2188 (2017) (Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit granted).

To: Melissa Wojnaroski, U.S. Commission on Civil Rights
From: Dan Tokaji, Associate Dean for Faculty, Charles W. Ebersold & Florence Whitcomb Ebersold
Professor of Constitutional Law, The Ohio State University, Moritz College of Law
Date: May 14, 2018
Re: Response to Written Question on Non-Citizen Voting

Thank you for the opportunity to speak before the Ohio Advisory Committee to the U.S. Commission on Civil Rights in March. Thanks also to Mr. Tryon for his follow-up question, which affords me the opportunity to elaborate on the topic of non-citizen voting. These comments are of course only made on my own behalf, not that of The Ohio State University, the Moritz College of Law, or any other entity or person. The institutional affiliation above is provided for the purpose of identification only.

Mr. Tryon asks for recommendations regarding non-citizen voting. He prefaces his question with a comment that helpfully distinguishes between the *reality* and the *perception* of non-citizen voting. I agree that it is important to recognize that these are two very different things. It is, moreover, essential that any recommendations be informed by evidence on the character and magnitude of the problems at hand. We cannot intelligently consider solutions to any problem without examining the evidence regarding its nature and severity. Accordingly, I discuss the research regarding the reality and perception of non-citizen voting, before considering what might be done to address both of these issues.

As for the reality of non-citizen voting in the U.S., the available evidence demonstrates that it is vanishingly rare. The most recent in-depth study of the subject is a paper published earlier this year by David Cottrell, Michael C. Herron, and Sean J. Westwood of Dartmouth College.¹ As the paper describes, the last presidential election featured prominent and highly publicized allegations of widespread voter fraud, including noncitizen voting. This study, which relied on multiple regression analyses, found “little evidence consistent with widespread and systematic fraud fomented by non-citizens.”² This finding is consistent with prior research on the subject, which the article reviews.³ It is also consistent with common sense. While proving a negative is inherently difficult, it should come as no surprise that there is so little evidence of non-citizen voting, given the potential for jail time and even deportation as well as the infinitesimally small likelihood that any illegal non-citizen’s vote will affect the result.⁴

Another recent study employs a different methodology but arrives at the same conclusion: that non-citizen voting is exceedingly uncommon. The Brennan Center for Justice at New York University School of Law examined the problem from the perspective of local election officials, reaching out to those administering elections in places with large number of non-citizen residents.⁵ After interviewing people in 42 electoral jurisdictions collectively encompassing 23.5 million 2016 voters, the researchers found

¹David Cottrell, Michael C. Herron & Sean J. Westwood, *An Exploration of Donald Trump’s Allegations of Massive Voter Fraud in the 2016 General Election*, 51 *Electoral Studies* 123 (2018).

² *Id.* at 124.

³ *Id.* at 125, 138.

⁴ *Id.* at 125.

⁵ Christopher Famighetti, Douglas Keith & Myrna Pérez, *Noncitizen Voting: The Missing Millions* (2017).

that only 30 incidents of suspected non-citizen voting fraud were referred for further investigation or prosecution.⁶ It bears emphasis that not all these are instances of *proven* illegal voting by non-citizens. But even assuming they were, it would amount to just 0.00013% of votes cast in these jurisdictions (just over one in a million).⁷ This is consistent with a prior survey conducted by the Republican National Lawyers Association. Examining prosecutions and convictions across the country between 2000 and 2011, the RNLA identified just 24 cases of non-citizen registration or voting.⁸

Mr. Tryon’s comment references a 2014 article in *Electoral Studies* by Jesse T. Richman and Gulshan A. Chattha of Old Dominion University, and David C. Earnest of George Mason.⁹ That analysis relied on survey data from 2008 and 2010, to find that some people identifying themselves as non-citizens reported voting in those years. Extrapolating from their survey data, they concluded that “more than three percent of non-citizens reported voting” in 2010.¹⁰ Other scholars have severely criticized the methodology used in that study and on that basis expressed doubt about the reliability of its findings.¹¹ Without getting too deep into the methodological weeds, the main problem is the focus on a small number of people in a much larger sample, some of whom may have misreported their status, leading to a substantial overestimate of how many non-citizens actually voted. As explained by Stephen Ansolabehere of Harvard, Samantha Luks of YouGov (which conducted the surveys), and Brian Shaffner of University of Massachusetts, Amherst, the 2014 study “presents a biased estimate of the rate at which non-citizens voted in recent elections,” and its anomalous results are “completely accounted for by very low frequency measurement error.”¹² When this error is corrected for, Dr. Ansolabehere and his co-authors conclude, “the likely percent of non-citizen voters in recent US elections is 0.”¹³

While the lead author of the 2014 study, Jesse Richman, disagrees that non-citizen participation in elections is zero, he has since acknowledged that their study led some people to exaggerate the magnitude of non-citizen voting. As he puts it, “there has been a tendency to misread our results as proof of massive voter fraud, which we don’t think they are.”¹⁴ He goes on to say that “our results suggest that almost all elections in the US are not determined by non-citizen participation, with

⁶ *Id.* at 1.

⁷ *Id.*

⁸ Republican National Lawyers Association, *Vote Fraud Survey*, <http://www.rnla.org/survey.asp>. The webpage notes that it is “not intended to be a comprehensive list of all instances of vote fraud,” but rather than the “RNLA conducted a limited survey to indicate whether voting charges have been filed in states across the country since 2000.”

⁹ Jesse T. Richman, Gulshan A. Chattha & David C. Earnest, *Do Non-Citizens Vote in U.S. Elections?*, 36 *Electoral Studies* 149 (2014).

¹⁰ *Id.* at 154.

¹¹ Stephen Ansolabehere, Samantha Luks & Brian F. Schaffer, *The Perils of Cherry Picking Low Frequency Events in Large Samples*, 40 *ELECTORAL STUDIES* 409 (2015). For journalistic accounts of the methodological problems in the 2014 study by Richman, et al., see Maggie Koerth-Baker, *The Tangled Story Behind Trump’s False Claims of Voter Fraud*, FIFTYEIGHT.COM (May 11, 2017), and Michael Tesler, *Methodological Challenges Affect Study of Non-Citizens’ Voting*, WASHINGTON POST, MONKEY CAGE (Oct. 27, 2014).

¹² *Id.* at 409.

¹³ *Id.*

¹⁴ Jesse Richman, *Some Thoughts on Non-Citizen Voting*, <https://fs.wp.odu.edu/jrichman/2016/10/19/some-thoughts-on-non-citizen-voting/>.

occasional and very rare potential exceptions.”¹⁵ The back-and-forth among scholars that has followed the 2014 study is exactly what one would expect and hope for among academics who disagree on how to interpret the data. But as Dr. Richman has acknowledged, the title of the 2014 paper (“Do non-citizens vote in U.S. elections?”) misled some people: “The title suggested a ‘yes’ answer, where our ultimate conclusion was really one more that they probably wouldn’t. Maybe if there was a really, really close race, they might, but otherwise [they] probably wouldn’t have much effect on the outcome of the elections.”¹⁶

This exchange illuminates the disjunction between perception and reality when it comes to non-citizen voting. The evidence shows non-citizen voting to be a very small problem in reality. But the *perception* of non-citizen voting is a different matter. There is evidence that many voters falsely perceive voter fraud in general and non-citizen voting in particular to be a significant problem.¹⁷ In a 2007 survey, for example, 26% of people expressed the view that vote fraud such as multiple voting or voting by those who are not U.S. citizens was “very common.”¹⁸ More recent surveys are consistent with this study. A 2017 Rasmussen survey found that 27% say that vote fraud is a “very serious” problem.¹⁹

The available research thus shows that there is a gap between the reality and the perception of non-citizen voting. The former is an extremely small problem; the latter a larger one. It is therefore appropriate to think of this as a “two pronged problem,” as Mr. Tryon puts it. Accordingly, in thinking about solutions, we must separate reality and perception.

Let me start with reality. The best solution to actual non-citizen voting – minuscule though it is – is to bring criminal prosecutions where it can be proven. Such prosecutions have in fact been brought in the past, as noted above. The evidence indicates that such prosecutions have been and continue to be an effective means by which to deter and punish illegal non-citizen voting. Where such prosecutions are brought in good faith based on reliable evidence that someone has violated criminal laws, they are unlikely to discourage eligible citizens from voting.

A more significant problem is the mistaken perception that non-citizen voting is widespread. I agree with Mr. Tryon that accusing people of “bigotry” is an inadequate response. While some people’s beliefs on this topic may stem from some form of bias, we need not presume latent racism to explain why so many people incorrectly believe that non-citizen voting is widespread. Given the substantial

¹⁵ *Id.*

¹⁶ Koerth-Baker, *supra*.

¹⁷ See, e.g., Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARVARD LAW REVIEW 1737 (2008).

¹⁸ *Id.* at 1746. The question was subsequently reworded to reduce the likelihood that respondents were being primed to express concerns about voter fraud more generally rather than these specific types of fraud. *Id.* at 1745 n.25. When the question was reworded, the percentage responding that the problem was “very common” or occurred “very often” declined to 12% or 14% (depending on how the question was framed). *Id.* at 1747.

¹⁹ Rasmussen Reports, *Most Still See Voter Fraud as Serious Problem*, http://www.rasmussenreports.com/public_content/politics/general_politics/august_2017/most_still_see_voter_fraud_as_serious_problem (Aug. 10, 2017).

amount of misinformation that has swirled around the topic for the many years, it is not surprising that many people harbor erroneous beliefs about the frequency of non-citizen voting.

In my opinion, the best response to public misperceptions regarding non-citizen voting is truthful information. This view stems from my longstanding commitment to the First Amendment and the constitutional values for which it stands. As Justice Brandeis once wrote: “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”²⁰ There are limits to this adage, of course, but the basic principle is as important today as it was a century ago. The best antidote to false beliefs is reliable information, truthful counter-speech, and public education.

In my view, public education is where the U.S. Commission on Civil Rights could perform the most useful role. As I have explained, there is a disconnect between perception and reality when it comes to non-citizen voting. The Commission could help ameliorate this problem by disseminating accurate information about just how uncommon non-citizen voting in particular – and voter fraud more generally – really is. Raising additional barriers to voting based on a false perception of widespread fraud would clearly be a mistake, one that would only serve to exacerbate the problem of inaccurate perceptions. A much better approach is to counter mistaken beliefs with truthful information about the infrequency of non-citizen voting.

²⁰ *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

**Ohio Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights Contact

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Voting Rights in Texas



An Advisory Memorandum of the
Texas Advisory Committee to the
U.S. Commission on Civil Rights

July 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Letter of Transmittal

**Texas Advisory Committee to the
U.S. Commission on Civil Rights**

The Texas Advisory Committee to the U.S. Commission on Civil Rights (Committee) submits this advisory memorandum regarding potential barriers to voting in the state of Texas that may have a discriminatory impact on voters based on race, color, sex, disability status, and national origin. The Committee submits this advisory memorandum as part of its responsibility to study and report on voting rights concerns and to supplement the U.S. Commission on Civil Rights' 2018 statutory enforcement report. The contents of this advisory memorandum are primarily based on testimony received during a public meeting on March 13, 2018, held in Houston.

This advisory memorandum begins with a brief background of state-specific voting rights issues, identifies primary findings as they emerged from testimony, and recommendations for addressing related civil rights concerns directed to the U.S. Department of Justice, Texas Secretary of State and Elections Division, Texas Legislature, and County Elections Administrators. In recognition of the U.S. Commission on Civil Rights' continued study on this topic and in lieu of providing a detailed discussion of each finding presented, the Committee offers findings and recommendations for addressing voting rights issues in Texas.

**Texas Advisory Committee to the
U.S. Commission on Civil Rights**

Mimi Marziani, *Chair, Texas Advisory Committee*, Austin

Joni Baker, College Station

Cecilia Castillo, Buda

Josh Blackman, Houston

Bobby Lydia, Duncanville

Charles Burchett, Kirbyville

Merrill Matthews, Coppell

Rogene Calvert, Houston

Christina Sanders, Houston

Frances Carnot, San Antonio

Ronald Smeberg, San Antonio

Jason Casellas, Houston

Barbara Walters, Plano

Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Texas Advisory Committee to the U.S. Commission on Civil Rights

Date: May 30, 2018

Subject: Voting Rights in Texas

On March 13, 2018, the Texas Advisory Committee to the U.S. Commission on Civil Rights (Committee) convened a public meeting to hear testimony regarding potential barriers to voting in the state of Texas that may have a discriminatory impact on voters based on race, color, sex, disability status, and national origin.

The following advisory memorandum results from the testimony provided during the March 13, 2018, meeting of the Committee, as well as related testimony submitted to the Committee in writing during the thirty-day public comment period. It begins with a brief background of state-specific voting rights issues, identifies primary findings as they emerged from this testimony, and recommendations for addressing related civil rights concerns. This memo is intended to focus specifically on potential barriers to voter registration, access to and administration of polling locations, and language access. While other important topics surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memo and the recommendations included within it were adopted by a majority of the Committee on May 30, 2018.

The Committee is comprised of a group of Texans who strove to approach this project from an open-minded and neutral posture. To that end, the Committee went to great lengths to solicit participation from stakeholders representing diverse perspectives, from voting rights advocacy groups to the Office of the Secretary of State. The Committee made many outreach attempts over several months to conservative-leaning lawmakers and advocacy groups, including the Texas Attorney General, Senator Brian Birdwell, Senator Paul Bettencourt, Representative Jodie Laubenberg, Representative Joe Straus, Senator Joan Huffman, True the Vote, and Direct Action Texas, to solicit their participation at the public meeting, through written testimony, and/or by joining a Committee meeting. Regrettably, after multiple attempts by numerous Committee members and U.S. Commission on Civil Rights staff, the views of these stakeholders remain largely absent from this memorandum. A full list of individuals and organizations that were invited, but were unable to participate is attached in Appendix F.

Background

The Fourteenth and Fifteenth Amendments to the Constitution guarantee citizens the right to

vote free of discrimination. There has, however, been a history of efforts across the U.S. to circumvent this guarantee through a variety of techniques. As a result of these practices, the Voting Rights Act (VRA) passed the U.S. Congress and was signed into law by President Lyndon B. Johnson in 1965.¹ Among its key provisions, the VRA prohibits public officials from imposing voting practices and procedures that “deny or abridge the right to vote of any citizen of the United States to vote on account of race or color.”² It also requires that states and counties with a “history of discriminatory voting practices or poor minority voting registration rates” secure “preclearance” – that is, the approval of the U.S. Attorney General or a three-judge panel of the District Court of the District of Columbia – prior to implementing any changes in their current voting laws.³ With the extension of the VRA in 1975, Congress included protections against voter discrimination toward “language minority citizens” bringing more jurisdictions, including Texas, under its preclearance requirements.⁴ In 1982, the VRA was again extended, and amended, to provide that a violation of the VRA’s nondiscrimination section could be established “without having to prove discriminatory purpose.”⁵ In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be found in violation of the VRA.

The VRA’s language minority provision, Section 203, states that counties are required to provide bilingual election information if more than five percent of the population, or 10,000 voting age citizens, belong to a single language minority, have depressed literacy rates, and do not speak English very well.⁶ In Texas, there are 88 counties that fall under the provisions of Section 203—the most counties in any state in the nation.⁷ Among these counties, Harris County has the most language minority groups in need of election information in the Spanish, Chinese, and Vietnamese languages.⁸

In 1993, Congress enacted the National Voter Registration Act (NVRA), which was designed to further protect voting rights by making it easier to for all Americans to register to vote and to maintain their registration.⁹ The NVRA requires states to allow citizens to register to vote at the same time they apply for their driver’s license or seek to renew their license; it also requires a range of social service agencies to offer voter registration in conjunction with their services.¹⁰ The NVRA contains requirements with respect to the administration of voter registration by

¹ 42 U.S.C. §§ 1973 to 1973aa-6 (1965).

² 52 U.S.C. 10301 (2018).

³ 52 U.S.C. § 10304 (2018).

⁴ Voting Rights Act Amendments, Pub. L. 94-73, 89 Stat. 400 (Aug. 6, 1975).

⁵ Voting Rights Act Amendments, Pub. L. 97-205, 96 Stat. 131 (Jun. 29, 1982).

⁶ 52 U.S.C. § 10503 (2018).

⁷ Bureau of the Census; Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87532 (Dec. 5, 2016); *see also* Appendix A.

⁸ *Ibid.*

⁹ 52 U.S.C. §§ 20501- 20511 (2018).

¹⁰ 52 U.S. Code § 20506 (2018).

states, requiring states to implement procedures to maintain accurate and current voter registration lists,¹¹ and mandates the use and acceptance of a standardized voter registration form.¹²

Despite the numerous laws and constitutional amendments established to protect equal access to voting, problems persist. *Shelby County v. Holder*, which was decided on June 25, 2013, by the U.S. Supreme Court, ruled that the formula used to determine which states should be subjected to “preclearance” requirements under the VRA was outdated and thus unconstitutional.¹³ This ruling effectively nullified the preclearance requirement, a core component of the VRA, until such time as Congress agrees upon a new formula.

Prior to the *Shelby County v. Holder* decision, Texas was subject to the preclearance restrictions found in Section 5 of the VRA.¹⁴ Since the decision, Texas has made a variety of changes to its voting and elections procedures at multiple levels of government, from the county-level to the Texas Legislature.¹⁵ Several court decisions, discussed below, have held that these changes violate Section 2 of the VRA, by discriminating against racial minorities.¹⁶

Garnering the most national attention is the Texas voter ID law, or SB 14, which altered the identification requirements for voting. This law requires most voters to present government-issued photo identification when appearing to vote at the polls such as a driver’s license, a personal ID card, U.S. military ID, U.S. citizenship certificate, U.S. passport, or a concealed handgun license.¹⁷ Voters with disabilities and those voters who qualify to vote by mail were exempted from this requirement.¹⁸ Federal preclearance was denied with respect to the Texas voter ID law because it failed to prove the law would not have a discriminatory effect on

¹¹ 52 U.S.C. §§ 20507(b) (2018).

¹² 52 U.S.C. §§ 20507(a)(1A-D).

¹³ See *Shelby County v. Holder*, 570 U.S. 529, 556-57 (2013).

¹⁴ 40 Fed. Reg. 43746 (Sept. 23, 1975).

¹⁵ Scott Simpson, *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND (2016), p.11, available at <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>; Beth Stevens, Mimi Marziani, Cassandra Champion, *Texas Election Protection 2016: An overview of the challenges faced by Texas voters in the presidential election*, TEXAS CIVIL RIGHTS PROJECT (2017), p.10, available at <http://texascivilrightsproject.org/wp-content/uploads/2018/05/EP-Report.pdf>.

¹⁶ Indeed, the Fifth Circuit (*en banc*) struck down the 2011 Texas voter ID law in July 2016, finding that it discriminated against Black and Latino Texans in violation of Section 2 of the VRA. See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016). While, more recently, the Fifth Circuit upheld a modified version of the ID law passed by the Texas Legislature in 2017, its findings on the discriminatory effect of the original law remain undisturbed. See *Veasey v. Abbott*, 17-40884, 2018 WL 1995517 (5th Cir. Apr. 27, 2018). Moreover, in 2017, a three-judge panel ruled that key portions of the 2013 congressional and state house maps were racially discriminatory in violation of Section 2, and were intentionally designed to suppress the voting rights of Black and Latino Texans in light of the possibility of their growing political power. *Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

¹⁷ SB 14 § 1. Tex. Election Code § 63.0101.

¹⁸ SB 14 § 1. Tex. Election Code § 82.002-82.003.

minority voters.¹⁹ However, just days after the *Shelby County v. Holder* decision, the law went into effect²⁰ and has been embroiled in litigation since. Early court rulings concluded that the law has a discriminatory effect on minorities.²¹ However, SB 5, the most recent iteration of the law, was upheld in the U.S. Court of Appeals Fifth Circuit on April 27, 2018.²²

In a related issue, Texas' congressional and state legislative maps have been the subject of litigation since original passage in 2011. Initially, Texas maps did not receive preclearance under Section 5 of the VRA because the maps abridged minority voting rights by using “deliberate, race-conscious method[s]” to “manipulate” outcomes.²³ In 2013, the Texas Legislature adopted interim maps drawn by a district court in Texas and the U.S. Supreme Court vacated and remanded the D.C. panel's opinion, in light of the *Shelby County v. Holder* decision.²⁴ Since then, the 2011 and 2013 maps have been litigated before a three-judge district court panel in San Antonio, including claims that the maps violate Section 2 of the VRA and the Equal Protection Clause.²⁵ Most notably, in 2017, the panel ruled that key portions of the 2013 congressional and state house maps were racially discriminatory and were intentionally designed to suppress the voting rights of Black and Latino Texans in light of the possibility of their growing political power.²⁶ At the end of the 2017-2018 term, however, the U.S. Supreme Court issued a decision largely rejecting the finding of racial discrimination.²⁷

By removing the preclearance requirement and allowing for unmitigated changes, the *Shelby County v. Holder* decision affected local election law and practices in Texas. For example, following *Shelby County*, the city of Pasadena changed how it elected city council members by adopting at-large elections rather than the district election method it previously utilized. In 2017, a court found this change to be intentionally discriminatory against Latino voters, as it illegally diluted their voting strength.²⁸ Moreover, hundreds of polling locations were closed in Texas before the 2016 presidential election, significantly more both in number and percentage

¹⁹ *Texas v. Holder*, 888 F. Supp. 2d 113, 143-44 (D.D.C. 2012), *vacated and remanded*, 570 U.S. 928 (2013).

²⁰ “Voter ID Laws Passed Since 2011,” *Brennan Center for Justice*, <https://www.brennancenter.org/analysis/voter-id-laws-passed-2011>.

²¹ *Veasey v. Abbott*, 830 F.3d 216, 265 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612 (2017). *See also* Robert Barnes, *After Losses on Voting Laws and Districting, Texas Turns to Supreme Court*, THE WASHINGTON POST, Aug. 27, 2017, available at https://www.washingtonpost.com/politics/courts_law/after-losses-on-voting-laws-and-districting-texas-turns-to-supreme-court/2017/08/27/cf68fea8-89bc-11e7-a94f-3139abce39f5_story.html?utm_term=.a629779fdf2d.

²² *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612, 197 L. Ed. 2d 78 (2017).

²³ *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012).

²⁴ *Texas v. United States*, 133 S. Ct. 2885 (2013); *see also Texas v. United States*, 49 F. Supp. 3d 33 (D.D.C. 2014).

²⁵ *See Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

²⁶ *Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

²⁷ *Abbott v. Perez*, No. 17-586 (2018), https://www.supremecourt.gov/opinions/17pdf/17-586_o7kq.pdf.

²⁸ *Patino v. City of Pasadena* 230 F. Supp. 3d 667 (S.D. Tex. 2017); *see also* Ernest Herrera, Staff Attorney, MALDEF, Public Meeting on Texas Voting Rights: Briefing before the Texas Advisory Committee to the U.S. Commission on Civil Rights, briefing transcript, p. 59-60 (2018), available at <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276> (hereinafter *Transcript*).

than any other state.²⁹

Findings

The section below provides findings received and reflects views of the cited panelists, not necessarily the members of the Committee. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or firsthand experience with the topics at hand.

Findings regarding voter registration:

1. With only 68 percent of eligible voters actually registered, Texas ranks as the 44th worst state for voter registration in the 2016 election.³⁰ Moreover, as discussed below, the current Texas electorate does not adequately represent the State's citizen voting age population. Instead, those currently registered to vote are more likely to be Anglo (*i.e.*, non-Hispanic Caucasian) and more likely to be older than those who are not on the rolls.
2. Testimony from numerous organizations and individuals indicated that low, disparate registration rates are at least partially due to the State's restrictions on third-party voter registration activities, such as voter registration drives.³¹ The following examples demonstrate specific challenges:
 - a. Volunteer Deputy Registrars (VDR) must be separately certified for each county in which they want to register voters.³² This acts as a deterrent for voter registration and impedes large-scale voter registration efforts, particularly because it is a criminal offense to register a person to vote from a county where one is not deputized.³³
 - b. The State's VDR training program, in practice, vary greatly among counties.³⁴ For example, in Harris County, VDR trainings are available in Spanish and English and has yielded in deputizing a high number of VDRs.³⁵ In Bexar County, one

²⁹ Scott Simpson, *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND 4 (2016), available at <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

³⁰ Saenz, *Transcript* at 14; Rivera, *Transcript* at 168.

³¹ Tex. Elec. Code Ann. § 276.011 (West 2017); see also Tex. H.B. 1735, 85th Leg., R.S. (2017) § 62, amending § 276.011 of the Texas Election Code (noting that in Texas, it is a crime to register another person to vote unless one has been certified as a Volunteer Deputy Registrars (VDR) and adheres to a complicated and burdensome regulatory regime. The laws regarding VDRs and their duties comprise the harshest restrictions on voter registration drives and related community outreach in the nation).

³² Harris-Bennett, *Transcript* at 143.

³³ Tex. Elec. Code Ann. § 13.044; Harris-Bennett, *Transcript* at 143; Rivera, *Transcript* at 172.

³⁴ See Mimi Marziani & Robert Landicho, *What Starts in Texas Doesn't Always Stay in Texas: Why Texas's Systematic Elimination of Grassroots Voter Registration Drives Could Spread*, THE AMERICAN CONSTITUTION SOCIETY 8 (2018), https://www.acslaw.org/sites/default/files/What_Happens_In_Texas.pdf.

³⁵ Rave, *Transcript* at 25; Harris-Bennett, *Transcript* at 120-121.

training is offered one day per month and only during business hours.³⁶ Additionally, the law dictates that VDR certifications expire every two years, meaning the entire certification and training process must be repeated at the beginning of every odd year, regardless of how recently a volunteer was trained.³⁷

- c. There are severe criminal penalties associated with failure to comply with VDR requirements, including not submitting completed registration application forms within 5 days of their collection or accidentally registering a voter who lives in another county where the VDR is not deputized.³⁸
 - d. Despite the NVRA's requirement that registration forms be accepted by mail, VDR rules require in-person submission.³⁹
 - e. While the law requires that VDRs issue a receipt every time they complete a VDR transaction, there are no standardized procedures for doing so. As a result, each county has a separate receipt process and, typically, a separate voter registration form that it requires. This adds to the complication of conducting large-scale registration drives and prevents the use of the federal form prescribed by the NVRA.
 - f. One result of the burdensome requirements is low numbers of VDRs to support Texas' growing population. For example, in Bexar County for the 2016 election, there were approximately 1,000 VDRs registering voters in a city with a population of more than 1.5 million people.⁴⁰
3. While the number of eligible Latino voters in Texas has grown dramatically in the last four decades, from 1.5 million people in 1980 to 5.2 million in 2016,⁴¹ Latinos are less likely to be registered to vote in comparison to other voter groups.⁴² Testimony indicated the following barriers to registration that may have a disparate impact on Latino voters:

³⁶ Rivera, *Transcript* at 171-172; Stevens, *Transcript* at 216.

³⁷ Tex. Elec. Code § 13.031; *see also* Rivera, *Transcript* at 172.

³⁸ Tex. Elec. Code § 13.042 (noting that failure to return applications by 5:00 p.m. on the 5th consecutive day will result in a Class C misdemeanor if unintentional and a Class A misdemeanor if intentional); Tex. Elec. Code Ann. § 13.043(a)-(b) (West 2017) (noting that in 2017, Texas passed a law that further increases criminal penalties for certain violations of the VDR law); Rivera, *Transcript* at 173; Stevens, *Transcript* at 217.

³⁹ Tex. Elec. Code § 13.042 (c).

⁴⁰ Rivera, *Transcript* at 172.

⁴¹ Saenz, *Transcript* at 12-13; *see also* Appendix E.

⁴² Herrera, *Transcript* at 89.

- a. While voter registration materials are provided in Spanish by the Secretary of State, not all counties are making these readily available to the public or VDRs.⁴³
 - b. VDR training is not always provided in Spanish, even in counties that are bound by Section 203 requirements, such as Harris County which implemented its first Spanish VDR training in 2017 despite having Section 203 requirements.⁴⁴
 - c. Low registration rates among Latinos have been associated with mistrust and fear due to public discourse concerning voter fraud and immigration.⁴⁵
 - d. Low Latino registration may be associated with apathy as a result of not having adequate representation among elected representatives. For instance, more than 1.3 million Latinos in Texas live in cities or counties with no Latino representation on their city council or commissioners' courts.⁴⁶
4. There is widespread confusion and misinformation among citizens about voter registration.
- a. Information regarding registration deadlines are 30 days before Election Day, are too often not clearly available on county websites.⁴⁷
 - b. Citizens moving from one county to another is a common reason that individuals fail to meet registration requirements. Voters do not realize they need to update their registration information after they move – sometimes, voters do not realize they now reside in a different county given that most Texas metropolitan areas span more than one county.⁴⁸
 - c. Registration forms are not readily accessible or available for certain populations including individuals with a disability, the elderly, and individuals with limited English proficiency.⁴⁹

⁴³ Keith Ingram, Elections Division Director, Office of the Secretary of State, Written Statement Submitted to the Texas Advisory Committee to the U.S. Commission on Civil Rights, p. 1 (2018), *available at* <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276> (hereinafter *Written Testimony*); Herrera, *Transcript* at 65.

⁴⁴ Harris-Bennett, *Transcript* at 122.

⁴⁵ Herrera, *Transcript* at 89; Jackson, *Transcript* at 79-80.

⁴⁶ *Ibid* at 61; Duarte, *Transcript* at 102; Jeremy Schwartz & Dan Hill, "Silent Majority: Texas Booming Hispanic Population Deeply Underrepresented in Local Politics," *Statesman*, Oct. 21, 2016, *available at* <https://consulmex.sre.gob.mx/austin/images/Prensa/2016/Silent-Majority.pdf>.

⁴⁷ Haltom, *Transcript* at 152; Weatherby, *Transcript* at 184; Herrera, *Transcript* at 64.

⁴⁸ Haltom, *Transcript* at 151-152; Jackson, *Transcript* at 49-50.

⁴⁹ Herrera, *Transcript* at 63; Vattamala, *Transcript* at 74; Broadway, *Transcript* at 108; Harris-Bennett, *Transcript* at 139; Gulamali, *Transcript* at 182.

5. State voter registration procedures are not compliant with the National Voter Registration Act (NVRA).
 - a. Texas Department of Public Safety (DPS) allows online renewal and modification of driver's licenses but does not also allow users to register to vote or update their registration online, potentially affecting at least 1.5 million eligible voters who use DPS' online driver's license services each year.⁵⁰ A federal judge recently ruled that this practice violates the NVRA and the Equal Protection Clause of the U.S. Constitution.⁵¹
 - b. As the U.S. Commission on Civil Rights noted in a past report,⁵² the processes on the Texas DPS website are misleading and confusing. Individuals wishing to update their registration when they update their driver's license information must actually take additional steps offline to successfully register. There is confusion on what steps are necessary, and thousands of individuals who think they have registered discover on election day they are not on the registration rolls.⁵³
6. There are specific barriers to registration for young voters. For example:
 - a. Texas law mandates that all high schools, both public and private, must offer voter registration to eligible students at least twice a year through a designated High School Deputy Registrar.⁵⁴ Testimony from several stakeholders indicated this law was not being enforced by the Secretary of State's office and thus not being implemented in a uniform manner across the State, with most schools not in compliance.⁵⁵ The result is that too few of the roughly 330,000 young people who graduate from Texas public schools each year are getting registered to vote.⁵⁶
 - b. The widespread noncompliance with the State's high school voter registration mandate is due to lack of knowledge and confusion about requirements and

⁵⁰ Stevens, *Transcript* at 215.

⁵¹ See *Stringer v. Pablos*, 274 F. Supp. 3d 588 (W.D. Tex. 2017); see also Stevens, *Transcript* at 215.

⁵² U.S. Commission on Civil Rights, *Increasing Compliance with Section 7 of the National Voter Registration Act*, (May 7, 2016), at 59, 79, <http://www.usccr.gov/pubs/NVRA-09-07-16.pdf>.

⁵³ Weatherby, *Transcript* at 187; Rivera, *Transcript* at 175; Stevens, *Transcript* at 215; Stevens, *Written Statement* at 2-3.

⁵⁴ Tex. Elec. Code § 13.046.

⁵⁵ Saenz, *Transcript* at 19; Rivera, *Transcript* at 171; Saldivar, *Transcript* at 103; Duarte, *Transcript* at 116; Stevens, *Written Testimony* at 7-8.

⁵⁶ Stevens, *Transcript* at 216; see also Beth Stevens, Brendan Downes, Mimi Marziani, Cassandra Champion, "The High School Vote: How Texas fails to engage the next generation of voters," Texas Civil Rights Project, 2017, <http://texascivilrightsproject.org/wp-content/uploads/2018/02/HSVR-Report.pdf>.

procedures.⁵⁷ This is likely confounded by the strict VDR rules, which govern voter registration drives within high schools that are conducted by anyone other than the school's designated High School Deputy Registrar.

- c. For the 2016 general election, only 48 percent of Texans ages 18 to 24 were registered to vote, while 78 percent of Texans over the age of 65 were registered. This is 7 percentage points lower than the national average rate for eligible voters ages 18-24.⁵⁸

Findings regarding access to and administration of polling places:

1. College students face barriers to accessing polling locations because there is a shortage of polling locations accessible or convenient to college campuses.⁵⁹
2. Testimony indicated that polling places are sometimes located in intimidating locations such as a sheriff's office or other law enforcement offices that may discourage marginalized communities from voting.⁶⁰
3. Testimony indicated that polling locations and voting procedures in Texas have changed significantly following the *Shelby County v. Holder* decision and may have disenfranchised certain voters. The following examples demonstrate these changes:
 - a. Texas Election Code, now the only law governing polling place changes in Texas, requires just a 72-hour notice of polling location changes; in recent elections, last-minute changes have greatly increased confusion on where voters are required to vote.⁶¹
 - b. Hundreds of polling locations were closed in Texas before the 2016 presidential election, significantly more both in number and percentage than any other state, with the highest volume of closures in counties that have a history of VRA violations while still under preclearance.⁶²

⁵⁷ Stephanow, *Transcript* at 147; Carlos Duarte, *Transcript* at 103.

⁵⁸ Jay Jennings and Emily Einsohn Bhandar, "2018 Texas Civic Health Index," *Annette Strauss Institute for Civic Life*, 2018, p. 5, https://moody.utexas.edu/sites/default/files/2018-Texas_Civic_Health_Index.pdf.

⁵⁹ Jackson, *Transcript* at 53.

⁶⁰ Bledsoe, *Transcript* at 90.

⁶¹ Tex Elec. Code § 43.06; Rave, *Transcript* at 26.

⁶² Rave, *Transcript* at 26; Scott Simpson, "The Great Poll Closure," *The Leadership Conference Education Fund* November 2016, p. 11, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>. (noting 403 total poll closures. Texas has five of the top ten counties with poll closures in the nation and seven of the top ten counties for percentage of polls closed).

- c. Polling relocations that were denied under VRA preclearance requirements were then implemented after the *Shelby County v. Holder* decision and were found by the Department of Justice to be discriminatory for African American and Latino voters.⁶³
4. Testimony indicated considerable confusion regarding elections administration, including confusion about the voter ID law and provisional ballot procedures.
 - a. In the 2016 election, there was widespread confusion surrounding voter ID requirements. Voters without proper ID were not consistently informed about the “reasonable impediment” exception to the ID law, or offered provisional ballots; as a result, some were improperly turned away by misinformed poll workers.⁶⁴
 - b. Voters who cast a provisional ballot were not always given proper instructions on how to cure their ballot following the election.⁶⁵
 - c. In the new version of the ID law, passed by the Texas Legislature in 2017, there are intimidating criminal sanctions associated with incorrectly executing the affidavit necessary to claim the “reasonable impediment” exception to the ID law and stakeholders are concerned that this will deter voters who in fact fall under the ID law’s exception from casting a ballot.⁶⁶ Without sufficient poll worker training on the ID procedures, this may disenfranchise voters.
5. Poll workers are not given adequate training and have significant discretion that can have discriminatory consequences.
 - a. Poll workers are not given adequate training on how to address the needs of individuals with disabilities.⁶⁷
 - b. Instances of discrimination, disparate treatment, and hostility at polling locations were reported by several stakeholders and appear often to be the result of poll worker discretion or misinformation.⁶⁸

⁶³ Bledsoe, *Transcript* at 86; Rave, *Transcript* at 27; Scott Simpson, “The Great Poll Closure,” *The Leadership Conference Education Fund* November 2016, p. 11, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>. (noting the city of Galveston closed 16 percent of its polling locations with a plan that was rejected under VRA preclearance before *Shelby County v. Holder* due to discriminatory repercussions).

⁶⁴ Herrera, *Transcript* at 62; Harris-Bennett, *Transcript* at 124; Haltom, *Transcript* at 156; Rivera, *Transcript* at 203.

⁶⁵ Harris-Bennett, *Transcript* at 129.

⁶⁶ Bledsoe, *Transcript* at 90; Haltom, *Transcript* at 157.

⁶⁷ Broadway, *Transcript* at 112; Garrison, *Transcript* at 191.

⁶⁸ Bledsoe, *Transcript* at 86; Jackson, *Transcript* at 88; Saldivar, *Transcript* at 105.

- c. There is little to no recourse or accountability for mistakes made or discriminatory conduct by poll workers.⁶⁹ Although the Texas Secretary of State and most counties offer some avenue for complaint,⁷⁰ testimony suggested that the current procedures are unresponsive and difficult to navigate.⁷¹
 - d. There is currently no easily accessible way to gather statewide data about how many Texans experienced problems at the polls and were unable to cast a regular ballot, because there are no statewide records of provisional ballots cast. In addition, there is no mechanism for tracking how many people were turned away without being offered a provisional ballot.⁷²
6. According to testimony, many polling locations may not be in compliance with the Americans with Disabilities Act (ADA) and may disenfranchise voters with disabilities. For example:
- a. Many polling locations are inaccessible because of parking lots that are not stable, firm, level, and slip resistant; an insufficient number of reserved parking spaces; and/or unstable or nonexistent ramps.⁷³
 - b. Few counties in Texas are effectively implementing curbside voting, which creates a significant barrier for voters with limited mobility.⁷⁴
 - c. Adaptive voting equipment that is required under the ADA is frequently not present at polling locations.⁷⁵
 - d. When adaptive voting equipment is present at polling locations, it is frequently not set-up properly or no poll workers have been trained how to operate it.⁷⁶

⁶⁹ Gulamali, *Transcript* at 180; Rivera, *Transcript* at 169; Haltom, *Transcript* at 154.

⁷⁰ Harris-Bennett, *Transcript* at 124; *See also* the Texas Secretary of State's election complaint form: <http://www.sos.texas.gov/elections/forms/complaintform-sos.pdf>.

⁷¹ Gulamali, *Transcript* at 204.

⁷² Haltom, *Transcript* at 154.

⁷³ Broadway, *Transcript* at 112; United States Access Board, Chapter 3: Building Blocks, <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards/chapter-3-building-blocks#302%20Floor%20or%20Ground%20Surfaces> (noting that over 500 parking lots were composed of material that does not meet ADA standards such as gravel or grass). The ADA Accessibility Guidelines state that both parking spaces and access aisles must comply with § 302 requirements that floor and ground surfaces is "stable, firm, and slip resistant." ADA Accessibility Guidelines, Ch. 3 § 302.1. Additionally, access aisles must be level with their parking spaces. ADA Accessibility Guidelines, Ch. 5 § 502.4.

⁷⁴ Garrison, *Transcript* at 191; Craft, *Transcript* at 211.

⁷⁵ Garrison, *Transcript* at 191.

⁷⁶ *Ibid.*

Findings regarding language access:

1. There are widespread inadequacies in providing language assistance at polling locations.
 - a. Numerous counties appear to be failing to comply with the requirements of Section 203 of the VRA, such as failing to provide the mandated ballots or translators.⁷⁷
 - b. There is widespread confusion based on the terminology voters must use to receive language assistance by an individual of their choice. Semantic differences can determine if a voter will receive the language assistance they prefer or be denied.⁷⁸ For example, voters who referred to their “assister” as an “interpreter” have been denied language assistance due to the Texas Election Code’s requirement that all interpreters be registered to vote in the county in which they are assisting a voter.⁷⁹ While recent litigation has resolved this issue as a matter of law, testimony indicates that confusion at the local level is likely to persist without adequate training.

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise federal agencies (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁸⁰ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Texas Advisory Committee respectfully submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the U.S. Department of Justice to:
 - a. Enforce and monitor the requirements of the Voting Rights Act, particularly Section 203.
 - b. Enforce the National Voter Registration Act.

⁷⁷ Vattamala, *Transcript* at 74.

⁷⁸ *Ibid.* at 74-76.

⁷⁹ *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017); Asian American Legal Defense and Education Fund has recently litigated this issue in Texas. The court ruled that Texas Election Code requiring interpreters to be registered in that county is in violation of the Voting Rights Act.

⁸⁰ 45 C.F.R. § 703.2 (a).

- c. Further investigate the findings within this memorandum over which it has jurisdiction and take appropriate action.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Texas Secretary of State and its Elections Division to:
 - a. Increase accountability for poll workers and polling place administration, including verifiable paper trails and a more accessible and responsive complaint system. Specifically, all complaints should be compiled by the Secretary of State annually and made easily available to the public through a database on its website.
 - b. Implement more accessible registration forms by including forms in all Section 203 covered languages spoken in each county, in Braille, and in large print.
 - c. Ease the certification requirements for Volunteer Deputy Registrars by clarifying existing interpretations of the law and allowing Volunteer Deputy Registrar certification in one county to be accepted in all counties; standardizing training opportunities statewide, including by establishing, at minimum, weekly Volunteer Deputy Registrar training sessions in all counties with a population over 250,000; and requiring the standardized use of statewide registration forms and receipt systems.
 - d. Establish best practices and minimum standards for counties' election administration. These should include standardized information to be included on county websites, encouragement of voting centers, better training for poll workers (including training on the use of provisional ballots), and improved implementation of curbside voting and other ADA accommodations.
 - e. Increase the public education campaign regarding voter ID requirements and further encourage efforts in raising public awareness by partnering with community groups. This includes information on what ID is required to vote, as well as the "reasonable impediment" exception to the ID law.
 - f. Improve procedures for voting by mail for the elderly and disabled by making request forms and ballots easier to understand and more accessible.
 - g. Establish more uniform and consistent standards for poll worker training, including better training on meeting ADA requirements, how to issue provisional ballots, and how to implement language assistance requirements.

- h. Create a mechanism to track and enforce the high school voter registration law, including providing clearer information about its requirements and best practices.⁸¹
 - i. Implement a mechanism to better track provisional ballot use across the State. Statistics on issuance of provisional ballots and whether they were accepted or rejected should be compiled by the Secretary of State annually and made easily available to the public through a database on its website.
 - j. Establish early voting and Election Day polling places on all college and university campuses with an enrollment of at least 5,000 students.
 - k. Take measures to guard against acts of discrimination and intimidation at the polling place, including by implementing diversity and inclusion training into the standard poll worker training.
3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Texas Legislature to:
- a. Implement a secure online voter registration system to make voter registration easier and more accessible and to better comply with the National Voter Registration Act.
 - b. Create a bipartisan commission to study voter registration and election administration and make recommendations to the Texas Legislature as to how to make voter registration and voting secure, easy and equally accessible for all eligible Texas voters.
 - c. Lessen legal repercussions and penalties for Volunteer Deputy Registrars in a manner that encourages voter registration efforts.
 - d. Improve Volunteer Deputy Registrar procedures and better comply with the National Voter Registration Act by allowing more time to return completed forms and the ability to return completed forms by mail.
 - e. Require use of Election Day voting centers in all counties with a population over 250,000.

⁸¹ Harris-Bennett, *Transcript* at 121; Duarte, *Transcript* at 103.

- f. Amend existing law to set an extended notice period for polling place changes of no less than 30 days.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to Texas County Elections Administrators to:
 - a. Establish more uniform and consistent standards for poll worker training including better training on meeting ADA requirements, how to issue provisional ballots, and how to implement language assistance procedures.
 - b. Strengthen implementation and enforcement of Section 203 of the VRA in the 88 counties that require it.⁸²
 - c. Track compliance and progress of high school voter registration efforts by providing high school-specific Volunteer Deputy Registrar numbers and increasing outreach efforts to high schools.⁸³ The Committee recognizes that enforcement is the responsibility of the Secretary of State, but county administrators can play an integral part by coordinating enforcement and facilitating partnerships with local school districts.
 - d. Provide improved and more convenient trainings for Volunteer Deputy Registrars including greater availability of trainings, trainings in more languages, online training, and reciprocity agreements with adjacent counties.
 - e. Ensure more awareness of voter ID requirements through public awareness campaigns, partnerships with local organizations and businesses, and displaying clearer signage at polling locations.
 - f. Take measures to guard against acts of discrimination and intimidation at the polling place, including implementing diversity and inclusion training into the standard poll worker training.

⁸² See Appendix A for specific counties.

⁸³ Thomas, *Transcript* at 138.

Appendix

- A. Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations Under Section 203 – Texas Counties Subject to Section 203 Compliance
- B. Briefing Agenda & Minutes
- C. Briefing Transcript
- D. Written Testimony
- E. Presentation Slides by Rogelio Saenz
- F. List of Individuals and Organizations Invited, But Were Unable to Participate in March 13, 2018, Briefing

Appendix A

Texas Counties Subject to Section 203 Compliance

	County	Language Minority Group
1	Andrews	Hispanic
2	Atascosa	Hispanic
3	Bailey	Hispanic
4	Bee	Hispanic
5	Bexar	Hispanic
6	Brooks	Hispanic
7	Caldwell	Hispanic
8	Calhoun	Hispanic
9	Cameron	Hispanic
10	Castro	Hispanic
11	Cochran	Hispanic
12	Crane	Hispanic
13	Crockett	Hispanic
14	Crosby	Hispanic
15	Culberson	Hispanic
16	Dallam	Hispanic
17	Dallas	Hispanic
18	Dawson	Hispanic
19	Deaf Smith	Hispanic
20	Dimmit	Hispanic
21	Duval	Hispanic
22	Ector	Hispanic
23	Edwards	Hispanic
24	El Paso	American Indian (Pueblo)
		Hispanic
25	Floyd	Hispanic
26	Fort Bend	Hispanic
27	Frio	Hispanic
28	Gaines	Hispanic
29	Garza	Hispanic
30	Glasscock	Hispanic

31	Hale	Hispanic
32	Hansford	Hispanic
33	Harris	Chinese ⁸⁴
		Vietnamese
		Hispanic
35	Hockley	Hispanic
36	Hudspeth	Hispanic
37	Jeff Davis	Hispanic
38	Jim Hogg	Hispanic
39	Jim Wells	Hispanic
40	Jones	Hispanic
41	Karnes	Hispanic
42	Kenedy	Hispanic
43	Kinney	Hispanic
44	Kleberg	Hispanic
45	Knox	Hispanic
46	La Salle	Hispanic
47	Lamb	Hispanic
48	Live Oak	Hispanic
49	Lynn	Hispanic
50	Martin	Hispanic
51	Matagorda	Hispanic
52	Maverick	American Indian ⁸⁵
		Hispanic
53	McMullen	Hispanic
54	Medina	Hispanic
55	Menard	Hispanic
56	Midland	Hispanic
57	Moore	Hispanic
58	Nolan	Hispanic
59	Nueces	Hispanic
60	Ochiltree	Hispanic
61	Parmer	Hispanic
62	Pecos	Hispanic

⁸⁴ Including Taiwanese

⁸⁵ All other American Indian Tribes

63	Presidio	Hispanic
64	Reagan	Hispanic
65	Reeves	Hispanic
66	Refugio	Hispanic
67	San Patricio	Hispanic
68	Schleicher	Hispanic
69	Scurry	Hispanic
70	Sherman	Hispanic
71	Starr	Hispanic
72	Sterling	Hispanic
73	Sutton	Hispanic
74	Swisher	Hispanic
75	Tarrant	Hispanic
		Vietnamese
76	Terry	Hispanic
77	Titus	Hispanic
78	Travis	Hispanic
79	Upton	Hispanic
80	Uvalde	Hispanic
81	Val Verde	Hispanic
82	Ward	Hispanic
83	Webb	Hispanic
84	Willacy	Hispanic
85	Winkler	Hispanic
86	Yoakum	Hispanic
87	Zapata	Hispanic
88	Zavala	Hispanic

63	Presidio	Hispanic
64	Reagan	Hispanic

Appendix B

Briefing Agenda and Minutes

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276>

Appendix C

Briefing Transcript

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276>

Appendix D

Written Testimony

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276>

Appendix E

Presentation Slides by Rogelio Saenz

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276>

Appendix F

List of Individuals and Organizations Invited, But Were Unable to Participate in March 13, 2018, Briefing

- Aaron Harris, Direct Action Texas
- Ana Hernandez, Texas House of Representatives
- Brian Birdwell, Texas Senate
- Casey Thomas, City of Dallas City Council
- Catherine Engelbrecht, True the Vote
- Celia Israel, Texas House of Representatives
- Chad Dunn, Brazil & Dunn
- Daron Shaw, University of Texas at Austin
- Derrick Osobase, Communication Workers of America
- Diana McRae, Walker County
- Direct Action Texas
- Drew Galloway, MOVE San Antonio
- Empower Texans
- Franklin Jones, Texas Southern University
- Grace Chimene, League of Women Voters
- Grant Hayden, Southern Methodist University
- Joan Huffman, Texas Senate
- Jodie Laubenberg, Texas House of Representatives
- Joe Straus, Texas House of Representatives
- John Alford, Rice University
- Joseph Fishkin, University of Texas Law
- Ken Paxton, Texas Attorney General
- Marc Veasey, U.S. House of Representatives
- Michael Adams, Texas Southern University
- Nina Perales, Mexican American Legal Defense & Educational Fund
- Paul Bettencourt, Texas Senate
- Rodney Ellis, Harris County Commissioner
- Ross Ramsey, Texas Tribune
- Senfronia Thompson, Texas House of Representatives
- Stan Stanart, Harris County Clerk
- Texas Organizing Project
- Tom Brunell, University of Texas Dallas
- True the Vote