



**Lawyers' Committee for
Civil Rights Under Law**

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**STATEMENT OF Jon Greenbaum, DIRECTOR OF THE VOTING
RIGHTS PROJECT
December 8, 2004**

Good morning. I am Jon Greenbaum, the Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights Under Law. I want to thank Congressman Conyers and the members of this Committee for their foresight in convening this program and their dedication to improving the fundamental structures of our democracy.

The Lawyers' Committee is a forty year old nonpartisan, nonprofit civil rights legal organization, formed in 1963 at the request of President John F. Kennedy to provide legal services to address racial discrimination. Since its inception, the Lawyers' Committee and its nationwide network of pro bono law firms and attorney volunteers has worked to secure and protect minority voting rights. After the 2000 election debacle, the Lawyers' Committee combined with People for the American Way Foundation, the National Coalition for Black Civic Participation and other organizations to form the non-partisan, national, Election Protection Program. This year's election protection program was the most comprehensive ever protecting voters across the country through the 866 OUR VOTE hotline and direct poll monitoring. Over 130 civil rights and civic participation organizations, many of whom you will hear from today, devoted their resources and talents to making the 2004 election protection program a success.

The Lawyers' Committee, however, is deeply frustrated and disappointed with media reports that inaccurately suggest that all was well at the polls. Between September 1 and Election Day, in Ohio alone, Election Protection received nearly 20,000 calls to our 866-OUR VOTE hotline from voters who either needed assistance to effectively cast their ballot or who were prevented from voting for myriad reasons, many of which I will discuss. Our seven legal command centers, staffed by hundreds of volunteer attorneys and law students, in Cleveland, Cincinnati, Toledo, Columbus, Youngstown, Akron and Dayton responded to many more problems at the polls on Election Day. These calls and the reports from thousands of voters Election Protection Volunteers helped at Ohio polls paint a picture of a statewide election administration rife with systemic failures that compromise Ohioans fundamental rights to cast a meaningful ballot.

The Election Protection Coalition has, for the first time in history, documented the dramatic failures of the electoral process in Ohio and across the nation. Reports are housed in the Election Incident Reporting System, the Coalition's database. To date, there have been nearly 38,000 incidents entered into the database nationwide and over 3,300 incidents entered for Ohio alone.

Through a preliminary assessment of incident reports from Ohio, six significant problems were identified: voter registration problems, problems with provisional balloting, problems with the absentee balloting system, voting machine problems, and an inequitable distribution of Election

Day resources. These problems, both alone and in combination, caused long lines and unnecessary delays. Delays at the polls disproportionately impacted poor and minority voters who have inflexible employment and child care responsibilities.

Voters from across the state complained that their names did not show up on registration lists despite having registered by the registration deadline. In many places, voters never received their voting cards or information on where their polling place is.

Many times these voters complained that they were turned away from the polls. Despite the Help America Vote Act's mandate that all voters have the opportunity to cast a provisional ballot if they are not on the voter registration rolls, it seemed few poll workers in Ohio and across the country understood the provisional ballot system. Even when voters were offered a provisional ballot, many of these ballots were not counted because of arbitrary, overly restrictive counting procedures, including the requirement that a voter cast a ballot in her correct precinct. As I just mentioned, many validly registered voters did not receive their registration confirmations and, therefore, never knew where they were supposed to vote. In Ohio this led to thousands of ballots from validly registered voters being thrown out because under resourced election officials never told many of the voters in their jurisdictions where to cast a ballot on Election Day.

Absentee voters did not fare much better. Across the country we received complaints of voters who requested absentee ballots but never received them. In Ohio, the problem was amplified when Secretary of State, J. Kenneth Blackwell inexplicably directed election officials to refuse provisional ballots to voters who requested an absentee ballot and never received one but could get to the polls. Election Protection immediately filed litigation allowing these Ohioans to cast provisional ballots on Election Day. Despite this victory, we were unable to help the thousands of absentee voters who, because of disability, distance or other obstacle, could not get to the polls.

Many voters who made it to the polls did not have much faith in the ballots they cast. Systemic failures included the breakdown of electronic voting machines in Ohio. Reports ranged from mis-calibrated machines which selected a different candidate than the voter intended to choose; to machines counting backwards; to computers eliminating votes; and of course, the well publicized precinct that gave President Bush 4,258 votes when only 638 ballots were cast.

In Ohio and throughout the country, acts of voter intimidation and suppression aimed at minority communities were rampant throughout the election period and became even more pervasive on Election Day. "Dirty Tricks" flyers were distributed in predominantly minority neighborhoods across the country. These malicious flyers misidentified polling places and threatened voters with legal repercussions for casting a ballot. In Franklin County, for example, Election Protection received fliers telling voters that they could cast a ballot on November 3. In addition, we received complaints, backed up by testimony at post-election hearings sponsored by Election Protection, that voters in urban, predominantly minority communities suffered from a lack of Election Day resources,

including voting machines and well trained poll workers, compared to voters in more affluent suburbs.

The problem of disenfranchisement in Ohio seems to be the result of three mutually destructive factors. First, election officials and election administration are terribly under resourced. Effective election reform must start by providing dedicated civil servants who administer elections with the tools they need to do their job effectively. Second, the system is far too decentralized. It is impossible to conceive of an election system that is efficient and responsive state wide when machines and other elements of election administration vary from county to county. Finally, it is disgraceful that we allow partisan officials to oversee fundamental electoral processes. What seemed like a misadvised idiosyncrasy of American elections turned into an embarrassing reality during the 2004 election cycle. In Ohio and across the nation, we saw state and local partisan election officials privileging their party's political success – or, sometimes, personal political ambition – over the rights of their constituency.

These cracks in the infrastructure of our democracy need to be addressed, not just in Ohio, but in these halls as well. Because of the holistic need to address the problems Americans face in casting a ballot, it is important that those responsible for reform do not solely rely on any currently existing mechanism to frame the debate. Specifically, Congress and the states must look beyond the Help America Vote Act in order to effectively address the shortcomings in the system. Although we continue to support vigorous enforcement of existing legislative voting rights protections, we now know that successfully reforming the process will take additional prospective legislative pronouncements at all levels.

This election cycle provided Election Protection an opportunity to observe and monitor the impact that HAVA had on election administration at the national, state and local level. Unfortunately, what we saw confirmed fears that HAVA is an inadequate mechanism to effectively remedy voting irregularities. Although HAVA should not be the only legislative vehicle for election reform, there are ways to make it significantly more effective in fulfilling its promise to help Americans vote.

First, it is essential that advocates and citizens have the ability to avail themselves of the Act's protections without relying on an ineffective and often counterproductive Department of Justice. HAVA needs an explicit private right of action in order to provide citizens with a viable process to redress violations of their rights. Election Protection experienced the limits of this constraint first hand. In pre-Election Day litigation attempting to enforce the mandates of HAVA, Election Protection attorneys and courts across the nation were forced to waste time arguing procedural squabbles rather than focusing on the substance of voting rights violations.

Second, we must reexamine the provisional balloting system created by HAVA. While we applaud congress for recognizing the problem of validly registered voters who fail to show up on precinct registers or who otherwise would be turned away at the polls, the provisional ballot system created by HAVA is inadequate. States across the country have

enacted overly restrictive and exceedingly burdensome requirements to the counting of provisional ballots. Additionally, very few election officials and poll workers have any idea how the provisional ballot system works.

Thirdly, Congress must better equip the Election Assistance Commission with the resources it needs to effectively monitor the implementation of HAVA and by granting it the authority to issue binding, rather than recommended, directives.

Finally, we must reevaluate HAVA's identification provisions; assess their impact on traditionally disenfranchised communities and their effectiveness in preventing fraud. Election Protection heard from thousands of voters across the nation complaining of poll workers asking for identification when they shouldn't have, demanding more identification than required or discriminating in their application of the ID procedures.

There are, of course, many election reform issues not addressed by HAVA. To be effective we must reconsider the way we register voters and process absentee ballots. We must explore the virtues of early voting and the limitations of the precinct system. In short, in order to effectively respond to the problems that American voters have, to protect each citizen's constitutional right to cast a meaningful ballot, we must look at the system with a fresh set of eyes.

Our liberty as Americans, our national pride as citizens, rests on the greatness of our democracy – and it is great. The foundation of that democracy, however, is crumbling. Our freedoms and liberty ultimately must rely on a system of fairness and accountability. In order to be successful as a nation, Americans must be convinced of the veracity of democratic results. In order for Americans to continue to participate in the system we must be confident that our voice is heard when our ballot is cast. We have arrived at a unique moment when the failures of our system coincide with unprecedented activism and awareness about our process. I ask activists, citizens and policy makers not to let this moment recede without action.

Thank you.