



## WASHINGTON BUREAU

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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### STATEMENT OF MR. HILARY SHELTON ON ELECTION PROTECTION AND NAACP FINDINGS IN OHIO DURING THE PRESIDENTIAL ELECTION OF 2004 *December 8, 2004*

Thank you, Congressman Conyers, for inviting me on behalf of the NAACP; I appreciate the opportunity to testify today. I want to commend you for holding this hearing, and for focusing attention on critically important issues facing the American people, particularly those of color, as we attempt to pursue our Constitutional right to cast a free and unfettered vote and to have that vote counted.

While I will certainly address the problems the NAACP found specifically in Ohio, it is clear to us that many, if not most, of these problems occurred in many other precincts throughout our country and need to be addressed by every state, territory, and local municipality in our nation as well as by the Congress and the White House.

As you mentioned, My name is Hilary Shelton, and I am here on behalf of the National Association for the Advancement of Colored People, our nation's oldest, largest and most widely recognized grassroots civil rights organization. The NAACP currently has over 500,000 card carrying members and 2,200 membership units across the United States as well as in Germany, Korea, Italy and Japan. We literally have branches in each and every state in the Union. I serve as the Director of the NAACP Washington Bureau, the Federal legislation and national public policy division here in DC.

The NAACP, as part of our original mandate, has worked to strengthen our democracy by protecting voter's rights since 1909. Throughout our over 95 year history, the NAACP's has advocated against America's *Jim Crow laws* and *the Black Codes* and we were instrumental in the development and enactment of the **1964 Voting Rights Act**, the **1992 National Voter Registration Act or Motor Voter Law**, and most recently the **Help America Vote Act** as well as several other key pieces of Federal legislation aimed at ensuring the rights of all eligible Americans to vote and be certain that our vote has been counted.

Prior to the 2000 Presidential election the NAACP took a 3-pronged approach to non-partisan voter empowerment: ***encouraging and facilitating voter registration, enhancing voter education efforts*** and ***aggressive get-out-the-vote programs***. After what we witnessed in the 2000 Presidential election in Florida, Illinois, Missouri and elsewhere we have added a fourth element to our program: ***voter protection***.

As most citizens of the world are aware in the 2000 Presidential election between four and six million Americans were disenfranchised when their votes were not counted. One fact that has received less public attention, though, is that a disproportionate number of those Americans who were wrongfully disenfranchised were racial and ethnic minority Americans, and specifically African Americans.

In the 2000 general election, a disproportionate number of voters, predominantly in African American and other racial and ethnic minority communities, were disenfranchised by a combination of **illegal actions, inadequate voter education and poll worker training, faulty voting machines and election administration incompetence.**

Despite the enactment of the *Help America Vote Act in 2002*, the NAACP was aware that in 2004 voters could face these same problems and more, including **unfamiliar machines, new identification requirements, and potential voter identification and suppression activities**, and that again these problems could very well take place at disproportionate levels in African American communities. I'm saddened to say that we were right.

The NAACP's involvement in the non-partisan Election Protection program sought to remove the barriers that hinder African American and other racial and ethnic minority participation in the electoral process. The program was designed to educate, identify, and respond based on the *Help America Vote Act*, the *National Voter Registration Act*, the *Voting Rights Act*, and **various state election laws**. We wanted to make sure that the laws were applied fairly, that they were followed, and that each voter's ability to vote free and fairly was not hampered.

Thus, the NAACP entered November 2004 ready for action. Through the NAACP's involvement in the national election protection initiative, we dispatched **lawyers, poll monitors and volunteers** to assist voters across our nation. We put into place a national command center at our headquarters in Baltimore, Maryland, and replicated similar centers in each of our seven regional offices and in 15 other key sites across the country. For the purposes of this hearing we administered five sites in Ohio; they were located in **Toledo, Cincinnati, Columbus, Akron, and Youngstown**. The NAACP also worked closely with other organizations in **Cleveland**.

Each command center, which was set up three weeks prior to Election Day, began as an education post: we recruited and trained poll monitors, educated the community as to their electoral rights, and recruited lawyers to help on Election Day.

The command centers were also key conduits of information: prior to the election they would hear of challenges to the electoral rights of individuals or communities and would relay the information to our headquarters, where we would initiate legal action.

On Election Day, we publicized a toll-free number, which voters could use if they experienced or witnessed any problems or concerns. We further placed poll monitors at precincts to provide immediate assistance to voters. When the need arose, we dispatched lawyers to polling places to respond to voter complaints and allegations.

Often times, our command centers served not only the community in which they were based, but also educated voters and poll workers on electoral procedures that they may have been unaware of, such as the requirements in the recently passed ***Help America Vote Act***.

During the presidential election period, we at the NAACP recorded more than 38,000 formal complaints and inquiries from voters nationwide; more than 3,650, or almost 10% of the calls came from Ohio. I must hasten to say that this number, although unacceptably high, represents only a fraction of the calls we received.

After analyzing all the recorded data that we have received to date, it appears that a number of key issues, which were the result of poor preparation or in some cases ineptness, led to problems for eligible voters who wanted to cast a ballot. These problems included:

- Improper requests for identification,
- Randomly applied identification requirements,
- Improper instructions on when to offer a provisional ballot,
- Long lines due in part due to poorly trained poll workers, inadequate staffing or too few machines,
- Long-time voters showing up at the polls and finding themselves no longer listed on voters rolls,
- Non-uniform and sometimes discriminatory procedures for handling voter who requested, but did not receive absentee ballots,
- Inadequate assistance to voters (language and disability),
- Inequitable distribution of voting materials (ballots or machines), and
- Disruptively aggressive challenges to and interrogations of voters' eligibility by partisan third party organizations often prolonged the already over-extended voting process, leading some voters to leave prior to casting their ballots and in at least one documented case required the intervention of law enforcement officials.

A more thorough breakdown of some of the complaints the NAACP witnessed or received is included in my written testimony<sup>1</sup>. Suffice it to say, however, that it does not appear as if every eligible voter in Ohio was allowed to vote, nor were

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<sup>1</sup> There were 284 Absentee ballot related issues; 1006 Registration related issues; 218 **Complaints of Voter Intimidation**; 241 **Inquiries regarding machine problems**; 132 identification related problems; 82 Disability related problems; 262 Provisional Ballot related problems; 32 insufficient number of ballot problems; 27 incidents of late opening; 13 incidents of early closing; 459 incidents of long lines

the votes of all eligible Ohioan voter counted. I must reiterate that this unfortunately appears to be true across the nation.

Perhaps most disturbing is the fact that I can only report to you on the problems of inquiries of those who called in to our hotline or who spoke with one of our lawyers or poll monitors. No one knows the number of Ohio residents, or voters across the nation, for that matter, who could not vote because of these frustrations.

### **Absentee Ballots**

A number of Ohio residents called with questions or complaints regarding the use of absentee ballots, generally from individuals who had requested such ballots but never received them.

Many seniors reported not receiving their absentee ballots in the mail in a timely manner and, as a result, most of them had to use a provisional ballot or where not allowed to vote.

Voters who did not receive absentee ballots in the mail by Election Day were turned away from their polling sites and the Board of Elections. A lawsuit was filed and the court reversed this process 2 hours before the polls closed. News reports at 5:00 and 6:00 instructed voters who did not receive mailed ballots to go back to their polling sites or the Board of Elections. This delay may have caused many absentee voters problems.

A voter requested an absentee ballot that arrived on November 1. The voter was in school several hundred miles away from the place where she is registered and thus would not be able to receive her ballot on time.

Polling officials told voters that if they erased errors on their ballots that their ballot would be rejected.

### **Voter Registration Problems**

The NAACP received over 1,000 calls related to voter registration issues, generally from individuals who were not on the voter rolls even though they had voted in previous elections, individuals with questions on how to register, and individuals with concerns about not receiving a voter registration card. There needs to be a major overhaul of the voter registration system in Ohio.

### **Voter Intimidation**

The NAACP received over 200 calls regarding incidents of suspected voter intimidation or unusual election related activities, particularly actions taken by challengers who intimidated poll workers and voters. Other specific incidents involved a caller who reported that someone was going door-to-door telling people they were not registered to vote. A voter in Franklin County received information in the mail that said it was from the state that said that since he moved, he would have to vote by provisional ballot. The voter had not moved and had lived at the address for 10-15 years. A polling place worker was only asking African American voters for their address. A new voter was told that there were

vote challengers at her precinct. When she was voting, she was confused by the punch cards. She was afraid to ask poll workers for help for fear that she would be challenged. Vote challengers were demanding that voters provide ID, leading many people to leave. This egregious behavior should be curtailed by the state.

### **Machine Problems**

The Board of Elections underestimated the number of people who came out to vote and where not prepared. Several polling sites did not have enough voting machines. About thirty precincts did not have curbside voting machines for seniors and disabled voters. In Toledo, one machine was off by thirty votes. There was a broken scanner at one location.

### **Identification related problems**

Many voters were complaining that they were asked to show ID when they thought it was unnecessary or were unable to vote because they lacked proper ID. At several locations in Cuyahoga County, all voters were being asked for ID, not just new voters. A voter called to say that all voters are being asked for ID. The poll workers were checking the address of the voter against the address on the registration and if they didn't match, the voter was being turned away, often without casting a provisional ballot. In still another case, a voter was challenged because address on ID did not match registration address (but was in the same precinct).

### **Provisional Ballot related problems**

Many voters reported being denied the opportunity to vote by provisional ballot. Several voters in Franklin County received erroneous notices in the mail that said they could only vote by provisional ballot. Some polling places either ran out of provisional ballots or never had any at their location. A voter complained that they were at a correct polling location, confirmed by the hotline and was refused a provisional ballot. Many voters in inner-city polling locations forced to vote provisionally instead of having their ballot run through the machine.

### **Insufficient number of ballot problems**

A voter stated that polling place in Cleveland ran out of ballots, put in emergency request for ballots but didn't have them.

### **Other Problems**

There were many other problems such as several polling places opening after 6:30 pm. Several polling places were too small for the precincts. Voters who wore the Vote or Die t-shirt were told they could not vote if they wore the Vote or Die t-shirt. Voters received letters instructing them to go to the wrong polling place. Voters as well as board of election's poll workers stated that that the number to the Board of Elections number was busy or rang and was never answered so it make it impossible to help voters. Several poll workers were overheard by voters telling crowds outside the polling places that the doors would be closed at 7:30 pm, giving the impression that they could not vote

Finally, as we saw on Election Day, challenges from political parties got out of hand. Many voters were intimidated by both the challenges and the challengers



and as a result a number of voters did not vote because of challengers' gregarious conduct at the polling site. There many lawsuits filed, protests held, and meetings in Ohio prior to Election Day. Unfortunately, Ohio's model was not one in which voters felt that they could vote freely and unhampered by challengers, poll workers who lacked training, and various attempts to engage in intimidation.

The NAACP is currently developing a final set of recommendations for state and federal election officials, based on what we saw and learned in the 2004 election, to help reduce the numbers of problems. To date, I am prepared to provide an informal list of recommendations that we feel strongly should be taken up by not only Ohio, but by every state in the nation to help increase voter protection.

- Top state election officials should develop a uniform and equitable system for counting provisional ballots. The focus should be on making sure those provisional ballots are a last resort and that every effort be made so that provisional ballots are counted.
- There should be a statewide public system, through which any resident can retrieve, via the Internet, their voter registration status.
- There should be an expansion of the acceptable forms of identification to include signature attestation.
- County Board of Elections should recruit a diverse pool of additional poll workers. There should be a mandated number based on the actual number of registered voters rather than an estimated turnout.
- States should review absentee distribution and how local county election boards can distribute them sooner by next day mail.
- Voting machines should be equitably distributed based on actual registered voter rather than expected turnout. States should increase the number of machines so as to shorten the long lines experienced on Election Day 2004.
- States should properly train poll workers on provisional ballots. I must repeat that provisional ballots are a last resort solution but at the same time, they should be available when necessary.
- States should educate poll workers on identification requirements. Poll workers should know when IDs are required and when they are not required. Poll workers should not instruct voters to pull out their IDs. This will make voters feel that if they don't have their ID that they cannot vote.
- States should move as quickly as possible to put in place the statewide-computerized voter registration rolls mandated in the Help America Vote Act.

- The HAVA Commission should be instructed to research, develop and issue “best practices” policies for “Election Day Voter Registration Guidelines.”

I would be remiss if I did not point out that any of the problems that occurred on Election Day 2004 in Ohio are subject to, and the result of Ohio state law. Likewise, many of the problems nationwide were a result of state laws. It is the hope of the NAACP that state and local election throughout our nation will work with the NAACP to take a hard look at the problems faced by voters and do whatever they can to be eliminated. Many of the recommendations above can and should be applied at the state or even local level, in Ohio and elsewhere.

Suffice it to say that it is the belief of the NAACP that problems with our nation’s electoral system remain, and that we are committed to seeing them eliminated. It is further disturbing to us that Americans of color continue to suffer disproportionately from the myriad of problems that continue to plague our electoral system.

Thus we welcome this hearing, Congressman Conyers, as well as any other efforts to explore and publicize the problems that continue to block too many Americans from pursuing their Constitutional right to cast a ballot for the candidate of his or her choice, and to have that ballot counted.

Thank you.