



**STATEMENT OF**

**THE LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS UNDER LAW**

**SUBMITTED TO:  
THE U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM**

**On**

**“Lessons from Election Day 2012: Examining the Need for  
Election Reform”**

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**“Lessons from Election Day 2012: Examining the Need for  
Election Reform”**

Congressmen Gerry Connelly and Elijah E. Cummings, the Lawyers' Committee for Civil Rights Under Law appreciates this opportunity to provide this statement on the critical matter of our electoral system. The 2012 election demonstrated to us that many Americans are willing to overcome problems with election administration in order to participate in their civil duty of voting. It also showed us that election officials have much work to do to make sure that all eligible voters are able to cast a ballot and that voters are not subjected to unnecessary or malicious barriers to the ballot. The fact that in many states, voters were forced to wait in line for hours on end is unacceptable. Through the non-partisan Election Protection coalition, we were able to document a great deal of useful information that we hope will provide a foundation for necessary improvements in our electoral system. This statement will discuss some of these points and includes a Preliminary Report of the data collected by the Election Protection coalition's efforts during the recent 2012 Presidential Election.

**BACKGROUND**

The Lawyers' Committee was founded in 1963 following a meeting with President John F. Kennedy who charged the private bar with the mission of providing legal services to address racial discrimination. We continue to work with private law firms as well as public interest organizations to advance racial equality in our country by increasing educational opportunities, fair employment and business opportunities, community development, fair housing, environmental health and criminal justice, and meaningful participation in the electoral process.

Indeed, since our inception, voting rights has been at the center of our work. As part our voting and election administration work, we lead the Election Protection coalition. Election Protection works throughout the election cycle to expand access to our democracy for all eligible Americans, educates and empowers voters through various tools, including the 1-866-OURVOTE, 1-888-VE-Y-VOTA and 888-API-VOTE hotlines, collects data about the real problems with our election system, and puts a comprehensive support structure in place on Election Day. During the 2012 Election cycle, the 1-866-OURVOTE hotline received over 170,000 calls from voters seeking information and assistance. As a supplement to this testimony, we have included a Preliminary Report of Election Protection that highlights the program for the 2012 Election cycle. The final report will be released later this month.

# Major Concerns on Election Day

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Preparation for the 2012 elections included planning for what was expected to be some of the largest issues voters would face when they went to the polls given the spate of repressive voter laws that were passed in the preceding year. Sadly, although there is much to differentiate the 2008 and 2012 elections, the problems that voters faced in 2012 were not drastically different from the issues they faced in 2008, including long lines, understaffed polling locations poorly trained poll workers, and deceptive and intimidating practices. Instead of addressing these systemic problems, politicians in states across the country passed unnecessary and restrictive forms of voter identification and other problematic voting procedure and requirements, putting the votes of 25 million Americans at risk. The civil and voting rights communities and allies fought back against this seemingly coordinated and broad-based attempt to undermine the right to vote. This coordinated action and other efforts resulted in five governors (Minnesota, Missouri, Montana, North Carolina, and New Hampshire) vetoing restrictive photo ID laws. Furthermore, although South Carolina's photo ID law was ultimately pre-cleared, the state was required to substantially modify its photo ID law in order to obtain Section 5 preclearance from the D.C. Court, and the court did not permit the law's use in the 2012 election. Additionally, Wisconsin's photo ID law was blocked in state courts, and the Pennsylvania state courts ruled that given the short time before the election that the law was passed, poll workers could request photo identification, but voters were not required to show it in the 2012 election.

## Increased participation

Over the past few elections cycles we have seen increased civic participation. Voting is a fundamental right and creating a free and open election where all eligible voters feel comfortable and welcome to vote is critical to sustaining our democracy. Intimidation, deceptive and suppressive tactics have no place in our voting process. When voting systems do not work as efficiently as they should, as in this past election, we should move with all deliberate speed to fix the problems that caused these inefficiencies. As the leading democracy in the world, we should be embarrassed when our nation's citizens are forced to wait in the cold for over five hours simply to cast a ballot.

On Election Day, most news stations led with reports of long lines across Virginia letting us know that we in fact have a lot of work to do in this commonwealth to make sure our voting systems are operating as efficiently as possible. Voter advocates across the commonwealth and national organizations including the Lawyers' Committee for Civil Rights Under Law are working together to increase civic participation, this means that at the same time participation is increasing, election systems must be updated and streamlined. Groups must engage federal and state legislators, opinion makers and the general public in a dialogue around how Virginia can ensure fairness and integrity at the polls on Election Day.

## **Voting Registration**

Our nation's reliance on paper-based voter registration systems continues to divert election officials' resources – both money and time – that make it more challenging to properly prepare for and administer elections. As documented in the attached preliminary report, voter registration problems accounted for a great amount of challenges faced by voters during the recent elections. Specifically, mistakes made by election officials using our antiquated voter registration system often lead to long lines, confusion, and eligible Americans being improperly turned away on Election Day. The increased and often times incorrect use of provisional ballots is also a result of voter registration problems. Overall, a substantial amount of the challenges voters experience on Election Day could be alleviated with an overhaul of the current voter registration system.

Virginia should come together in a bi-partisan way to ensure that all eligible voters are able to participate in our country's democracy in a meaningful way. The Lawyers' Committee took thousands of calls prior to Election Day, many from the state of Virginia, answering questions about registration alone. Voter registration problems led to countless additional issues during the election including the overuse of provisional ballots and ultimately the disenfranchisement of voters.

## **Early Voting**

In addition to modernizing the voting system, it is critical that we continue to expand options for early voting. As documented through the Election Protection Hotline and on the ground efforts of the Lawyers' Committee and its coalition partners, limiting early voting only serves to create massive voter confusion and disenfranchisement at the polling place on Election Day. It also places an increased burden on election officials who are staffing polling locations on Election Day. Voters would have benefited greatly if New York and New Jersey had more robust early and absentee voting rules. Absent natural disasters, long lines that were experienced in almost every state during this election cycle demonstrate the importance of expanded voting opportunities. We saw this everywhere in Virginia, particularly in areas such as the Chesapeake Bay and Hampton Roads which had excruciatingly long lines. Allowing people to exercise their right to vote early helps alleviate long lines on Election Day and prevents polls from having to stay open later than anticipated.

## **Poll Worker Training/Long Lines**

Much of the chaos and wait times at polling locations across the country were the result of poor organization and management, particularly in of multi-precinct polling locations, such as inadequate signage and supervision to direct voters to the correct line. Once again, in the 2012 election, voters across the nation experienced extremely long wait lines. In particular, the voters in Virginia experienced some of the longest average wait times in general. Many waited in line for over five hours while overwhelmed poll workers attempted to keep up with the crowds that were gathering outside of their polling locations on a particularly cold November day. In Detroit, for instance, many voters reported they were extremely frustrated at the prospect of

waiting in a two-hour line with no knowledge of whether they were standing in the correct line, and many left in frustration. Elected officials in Virginia and across the United States did not take the opportunity to fix these problems, the same problems that occurred in 2008. Again, they are presented with the opportunity to improve the voting experience for Virginia voters prior to the 2014 midterm elections and the 2016 presidential elections. Disorganization, particularly at multi-precinct polling sites combined with malfunctioning machines, and poorly trained poll workers became a recipe for chaos and voter frustration. We believe that some of these wait times could have been severely shortened had the poll workers been properly trained. Below are a few examples of note.

- A Chesapeake Bay voter waited in line for over four hours only to be told when she got to the front of the line that she was required to show two forms of identification because she was a first time “Help American Vote Act” (HAVA) voter. The voter was aware of her rights and attempted to tell the poll worker before calling 866-OURVOTE she only had to show one form of identification. After not allowing the woman to vote, the poll worker got on a bull horn and announced to the hundreds of people in line that if they were first time HAVA voters, they would be required to show two forms of identification. It is unclear how many voters left the lines because of that announcement.
- At other polling locations, poll workers were overheard giving announcements with the express purpose of shortening the line and some polling locations closed with voters still in line waiting to vote.

These kinds of disenfranchising tactics are the very things that make Americans distrust the election system. The lack of transparency and accountability when things go wrong is staggering and must be addressed both at the state and national level. Poll worker errors can mean disenfranchisement for eligible voters, particularly low income voters, students, the elderly and voters with disabilities.

## **Deceptive Practices and Voter Intimidation**

Modernization voting registration and expanding early voting practices is part of the puzzle. It is also critical that Congress address the problem of deceptive election practices. During the 2012 election, deceptive practices unfortunately continued to play a prevalent role in confusing voters regarding their rights, including time, manner and place of voting as well as false information regarding who is able to vote. In October, for instance, voters in Florida and Virginia received live phone calls falsely telling them they could vote by phone. In Florida, the callers said “the Supervisor of Elections authorized us to take your vote by phone.” The caller had the voter’s name, address, and party affiliation and said they only needed a few more pieces of information to accept the voter’s ballot. Election Protection countered these deceptive calls with robo calls informing voters that they could not vote by phone. Similarly, in the weeks before Election Day, voters in North Carolina reported receiving calls that said they could not vote if they had an outstanding traffic ticket or that those with a certain party affiliation could vote on November 7

instead of November 6. On October 29, the Executive Director of the North Carolina Board of Elections issued a memo to the Directors of the County Boards of Elections, warning them about the various cases of misinformation.

Examples of voter intimidation included hundreds of billboards placed in prominently African-American communities menacingly stating that “VOTER FRAUD IS A FELONY! Up to 3 ½ YRS & \$10,000 Fine.” These types of practices unfairly and maliciously create a chilling effect and have the potential to deprive eligible voters of their right to vote.

## **Voter ID**

Since the 2010 mid elections, many state legislatures passed new laws requiring that voters show restrictive photo identification in order to get a ballot. Fortunately, litigation against several of these laws was successful, and courts struck down or expanded the identification options. These new laws created mass confusion at the polls and exacerbated long lines. In addition, many poll workers were confused about what identification voters were required to provide. Election Protection received several reports of voters who were turned away or given provisional ballots because poll workers failed to understand their state’s voter identification law. In Michigan, for instance, voters without photo identification reported being turned away, even though Michigan law permits the voter to vote without identification after signing an affidavit. The confusion that results from implementing new voter ID laws leads to poll workers handing out unnecessary provisional ballots, adding to voter wait time, and – at worst– an uncast vote.

Virginia experienced confusion on Election Day because of the ambiguous nature of the new Voter ID law. Voters and poll workers alike were confused about the types of identification voters were required to show and this led to even longer waits to vote.

# **Policy Recommendations**

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## *Overhaul the American Electoral System*

While the American electoral system is primarily controlled by the states, the federal government does have very important and substantial role to play in ensuring that the rights of all voters are protected. If the continuing problems of the recent elections are any guide, among other things, the modernization of the nation’s voter registration system is long overdue. Such a structural overhaul would substantially decrease, if not eliminate, many of the problems just highlighted in this testimony and our Preliminary Election Protection Report. Once again, as in previous elections, in 2012, a high percentage--of all problems reported to Election Protection were a result of registration. Modernizing the registration system will not only improve the foundation of our democracy, it will allow communities to reinvest these resources in other critical

functions. Modernizing voter registration will make the American electoral system far more efficient and effective.

### *Voter Registration Modernization*

Voter Registration Modernization is a comprehensive approach to overhauling the primary way in which voters register, maintain and update their registration. This would include adopting such policies as automatic and permanent registration and same-day voter registration. While this may be simplistic, the lasting effects of such changes are substantial and will be felt by almost every voter. If implemented correctly, these changes could help to correct the following problems almost immediately: under-registration of traditionally disenfranchised communities, including people of color, low income voters, students elderly and people with disabilities. This would also remedy the problem of missing names from the registration polls, challenges to registration status and the misuse and overuse of provisional ballots because of clerical errors.

Currently, the primary vehicle that includes a version of such a policy prescription is the Voter Empowerment Act (VEA), previously introduced in the 112<sup>th</sup> Congress by Congressman John Lewis and expected to be reintroduced soon in the 113<sup>th</sup> Congress. Many Americans, particularly communities of color as well as other historically disenfranchised groups, face significant barriers preventing them from freely casting a ballot on Election Day. In order to ensure that all Americans can exercise their fundamental constitutional right to vote, the Voter Empowerment Act, introduced by Congressman John Lewis in June 2012, would make voter registration more accessible for all Americans and improve the integrity of our elections by creating greater accountability for election officials. Additionally, the Bill would implement measures to curtail deceptive practices and voter intimidation interfering with voters' ability to exercise their right to vote. By ensuring that eligible voters can participate on Election Day, the Bill will safeguard the vitality of our democracy.

### *Updating and Improving Election Administration*

It is critical that moving forward election administration is drastically improved. By working with local registrars to assess their past turn out and estimate their future turn out we can decrease the transaction time for the voter. Examples of how to achieve this goal include increasing the number of electronic poll books at locations, supplementing the number of voting machines based on voting trends and population assessment, improving the way curbside voting is conducted, and authorizing the use of paper ballots as an alternative to machines when lines reach a critical mass.

### *Election-Day Registration*

Voters may not realize that if they move, they need to update their registration before Election Day, at which point, in states without same day registration, these voters will be unable to take steps to be able to cast a regular ballot. By utilizing already-existing databases with updated information about, for example, a voter's current address, states may make it easier for voters to update their registration and ensure that it remains current. Additionally, same day registration permits voters to update their registration or even register for the first time on Election Day. Other reforms such as online registration make voting more accessible for eligible voters.

### *Eliminate Deceptive Practices and Voter Intimidation*

At times, Voters are given false information about elections from parties who wish to manipulate the result of that election. Perpetrators of deceptive practices and voter intimidation disenfranchise voters by deliberately disseminating misinformation about an election or exercising coercive influence over a voter's choice of candidate. Most states do not have laws addressing deceptive practices, or, in states that do have these laws, they are not enforced due to ambiguity about the types of deceptive practices they cover. Deceptive practices and voter intimidation prevent elections from being an accurate reflection of the peoples' electoral choice.

For these reasons and more, Congress should immediately pass a law that provides counties and states with the tools necessary to stop dirty tricks and voter intimidation. Again, as highlighted in Election Protection's preliminary report, deceptive voter practices include the creation and distribution of resources listing the wrong date or time for the election, giving inaccurate information about voter ineligibility, or promoting false endorsements of candidates. Sadly, these dirty tricks continue to proliferate every election cycle. Current law is clearly deficient in protecting voters' rights against these deceiving practices. There needs to be a clear civil action to an additional deterrent and give more resources for enforcement officials to go after perpetrators of voter deception. Of course, once the false information has been disseminated, the damage has been done. A mechanism must be put in place to ensure the government quickly and widely publicizes corrective information so voters are not fooled by this activity.

On December 14, 2011, Senators Ben Cardin (D-MD) and Charles Schumer (D-NY) introduced the *Deceptive Practices and Voter Intimidation Prevention Act of 2011*, to create tough criminal and civil penalties for those who use voter deception tactics<sup>1</sup>. Major components of this bill were included in the *Voter Empowerment Act* introduced in the House in 2012. This bill will clarify the definition of deceptive practices for law enforcement officials, making it easier for these officials to prosecute perpetrators of deceptive practices. Additionally, the bill's criminal provisions create deterrence measures to prevent future acts intended to intimidate and mislead voters, and also ensure that perpetrators face real consequences when they mislead voters.

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<sup>1</sup> Op-ed piece by U.S. Senator Ben Cardin "Deceptive Voter Practices Cannot Be Tolerated" available at <http://cardin.senate.gov/newsroom/news/deceptive-voter-practices-cannot-be-tolerated>



Finally, the bill will also require the federal government to investigate allegations of deceptive practices. This is necessary so that it can take an active role in protecting voters against false information regarding the ability to participate in elections by immediately taking action and publicizing corrective information if it receives credible reports of deceptive voting practices. The immediate dissemination of this information will mitigate the potentially disenfranchising confusion perpetrators of these actions are trying to sow.

This legislation sheds light on the severity of deceptive voter practices that threaten our democracy and recognizes the power of Congress to prohibit discriminatory tactics in elections as stated under the Fifteenth Amendment and the 1965 Voting Rights Act<sup>16</sup>. The *Deceptive Practices and Voter Intimidation Prevention Act of 2011* has been endorsed by the Lawyers' Committee for Civil Rights Under Law and we urge its swift passage upon reintroduction in both Houses of Congress.

### *Prohibit Voter Caging*

Some individuals or organizations targeting particular groups of voters practice “voter caging,” in which the individual or group sends out a non-forwardable mass mailing, challenging voters whose mailings are returned. The Lawyers' Committee supports legislation like that introduced by Senator Sheldon Whitehouse in the 112<sup>th</sup> Congress that would institute criminal penalties for individuals engaging in voter caging, protecting voters from disenfranchisement on Election Day.

## Conclusion

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Federal funding is desperately needed. Election officials are under-resourced and over-worked. Voting equipment regularly malfunctions and many jurisdictions' machines are at the final states. Offices need to be professionally staffed at the proper capacity and technology must be adopted to create greater efficiencies across the system. Voter education is so minimal that it has little effect to actually informing voters of the labyrinth of rules and procedures they must follow to exercise their right to vote. Even Ohio Secretary of State Jon Husted recently stated, “You can't run elections on the cheap.” Democracy is at the very core of how we define ourselves as Americans. Election funding should be a top priority for our nation's leaders.

The 2012 election cycle taught us that we have a lot of improvement to make on our election system. Some of the voting laws that were passed are a clear step backwards and we must take immediate corrective action to make sure that we address those laws. However, in addition to righting the wrongs passed in many state legislatures in the past couple of years, we must also take proactive measure to make our elections more transparent and efficient. It is far past time that we take advantage of advances in technology to modernize our system of registration in order to save money, ensure all voters are able to participate in our democracy, and improve voter confidence. Furthermore, ensuring that deceptive practices are rightly prosecuted, allowing

for election day registration, increased voter resources and poll worker training are a few of the ways Congress and state legislatures can begin to ensure that we have the best election system in the world.

An opportunity has been created for Congress to lead in a bi-partisan fashion and set our country on the course to a truly accessible and secure system of elections. The Lawyers' Committee for Civil Rights Under Law looks forward to working with leaders on both sides of the aisle to make that opportunity a reality.