

FINAL REPORT OF THE ATTORNEY GENERAL'S TASK FORCE ON VOTING IRREGULARITIES



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Purpose and Creation

In 2007 Attorney General Doug Gansler proposed the creation of a task force to study irregularities in voting practices and procedures that had resulted in widespread problems in the 2006 primary election. The non-partisan Task Force was co-chaired by University of Maryland School of Law's Professor Sherrilyn Ifill and by Orlan Johnson, a partner in the Saul Ewing law firm, and included among its members community leaders, voting rights experts, and activists and civic leaders. A full list of the Task Force members is attached as Appendix "A." Over the course of the a year, the Task Force year travelled throughout the state and received written and oral submissions from individuals, citizen groups and civic organizations.

In April 2008, the Task Force issued a report documenting problems experienced by voters arising from the state's election practices and procedures, and offering recommendations for improvements in the conduct of elections in the state. The recommendations contained in that report were limited to those that could be implemented in the short-term – many before the then upcoming 2008 general election. At that time, the Task Force pledged to supplement its initial report with additional recommendations for matters that might require structural changes to our election system or legislation. This report is devoted exclusively to the presentation of those issues. It is our hope that the Attorney General will raise the legislative initiatives suggested in this report with relevant committees in the General Assembly and work to implement all of the changes suggested by the Task Force in order to promote the unfettered exercise of the franchise by Maryland voters of all races, socioeconomic conditions, political party affiliations and levels of physical disability, across the state.

On behalf of the Task Force, we thank the Attorney General for his leadership in seeking to address the problems associated with voting in the state. As the Supreme Court said over 100 years ago, "The right to vote is. . . preservative of all rights."¹ It has been a pleasure and an honor to work towards preserving and promoting this most fundamental right for voters in Maryland. With the transmission of this report, we regard our work as a Task Force as completed.

Overview

In this report, the Task Force offers seven basic recommendations. In summary, we urge the Attorney General to support and/or implement the following recommendations:

¹ *Yick Wo v. Hopkins*, 30 L.Ed. 220 (1886).

- 1) amend the Election Law article to give greater authority to the state election administrator in order to ensure uniformity and accountability in the allocation of voting machines for polling places and in the conduct of elections;
- 2) promote the passage of legislation modeled on that in Missouri and Wisconsin to make it a felony to knowingly disseminate false information to voters;
- 3) request that the new assistant attorney general for civil rights in the U.S. Department of Justice convene a multi-state task force to undertake a national investigation and review of voter suppression efforts;
- 4) implement the full complement of recommendations included in the Task Force's first report that urge the implementation of measures to ensure that ex-offenders are aware of their right to vote in accordance with Senate Bill 488, the Maryland Voter Registration Protection Act;
- 5) create a permanent reporting requirement by pre-trial detention facilities to the Attorney General's Office to ensure that pre-trial detention facilities throughout the state regularly provide registration and voting opportunities for detainees who are eligible to register and vote;
- 6) vigorously monitor and ensure strict compliance by all state social service agencies with the requirements of the National Voter Registration Act; and,
- 7) collect sound and verifiable data about voting by undocumented or illegal immigrants.

Recommendations

1. Amend the Election Law article to give greater authority to the state election administrator in order to ensure uniformity and accountability in the allocation of voting machines for polling places and in the conduct of elections

As we noted in our April 2008 report to the Attorney General, the statutory governance and funding scheme for the administration of elections limits the ability of the State Board of Elections and the state administrator of elections to meet their general statutory obligations and public expectations. For example, decisions about the allocation of voting machines to polling places within election districts ultimately rests with local boards. The state administrator may make recommendations to the local board, but these recommendations need not be followed, and there is no accountability at the State Board for problems associated with the misallocation of voting machines.

The failure of the local board to allocate sufficient machines in Prince George's County in the 2006 primary election resulted in well-publicized long lines among voters there. It was his personal observation of these long lines in Prince George's County in that election that inspired the Attorney General to create our Task Force. Although there were fewer problems in 2006 and in the primary election in 2008, we note that problems arose again in a few polling places in the general election of 2008. Voters at the Mt. Oak Church on Church Road in Prince George's County experienced wait times of five hours in the early morning. Likewise, voting at the Augsberg Lutheran Retirement Center in Baltimore County (Lochearn) took several hours for some voters in the morning hours of election day in 2008. Long lines at the polls have disproportionately negative consequences for voters whose work schedules do not allow them to

wait in long lines to vote. Shift workers on the Eastern Shore, for example, have had to forego voting on occasions when long lines resulted in significant wait times for voting.

The Task Force recommends that the Election Law article 2-203 be amended to provide that local boards may depart from recommendations made by the state administrator in allocating the number of voting machines for each polling place upon a showing of “good cause.” The “good cause” showing may be satisfied by the filing a written explanation and request for a departure, with supporting data, with the State Administrator no later than three weeks before election day.

Section 2-203 of the Election Law article requires each county and Baltimore City to “appropriate the funds needed for the operations of its local board.” Since 2002, the cost of acquiring and operating the mandated statewide voting system has been shared equally between the state and the counties. The Attorney General should also support the enactment of legislation that would allocate state funds that would be available to local boards to fund additional voting machines where the state administrator’s recommendation exceeds that of the local board.

Finally, as we indicated in our April 2008 report, the Code of Maryland Regulations (COMAR) section 33.07.03.04 requires local election directors to establish and implement a polling place evaluation program, using board members, staff members, independent contractors or volunteers to make unannounced visits to polling places on election day to assess election judges’ compliance with procedures and to gather information useful for improving the election experience for voters. The Task Force recommends that the Attorney General and the state election administrator review compliance by local election boards with COMAR that require the creation and implementation of polling place evaluation programs. The results of these evaluations should be made publicly available through links on the webpage of local boards and the State Board of Elections.

- 2. Promote the passage of legislation modeled on that in Missouri and Wisconsin to make it a felony to knowingly disseminate false information to voters**
- 3. Request that the new assistant attorney general for civil rights in the U.S. Department of Justice convene a multi-state task force to undertake a national investigation and review of voter suppression efforts**

During the course of our work, many voters and civic groups expressed concerns about false and misleading campaign advertisements, and efforts to suppress the vote through “robo calls” and the posting or dissemination of intimidating flyers and notices. It is of particular concern that these efforts appear to be targeted at minority voters. In 2006, Senator Ben Cardin and then-Senator Barack Obama introduced federal legislation that would have addressed this issue. That legislation passed in the House, but failed to make it out of committee in the Senate.

There are two states – Missouri and Wisconsin – that have laws outlawing deceptive campaign practices. Wisconsin’s law prohibits “the dissemination of false information to voters

and attempts to influence their voting via force or coercion.”² In Missouri it is a felony to knowingly provide voters with false information about election procedures for the purpose of preventing any person from going to the polls.”³

Maryland’s Attorney General should ask the legislature to take up this important issue and to consider legislation modeled on the Missouri and Wisconsin laws. In particular, the Attorney General should provide testimony to the relevant legislative committees of the General Assembly, setting out the constitutional parameters of such proposed legislation, and the urgent need for statutory protections that would promote the integrity of our electoral process.

In addition, the disturbing issue of voter suppression efforts requires the most firm and aggressive response by the Attorney General. In the 2008 general election some voters reported to election protection workers at the American Civil Liberties Union and the Attorney General’s office that the voters had received text messages on election day which said, “Due to long lines today, all Obama voters are asked to vote on Wednesday.” Efforts to trace the source of these messages was unsuccessful (although we would request that the Attorney General follow-up with the State Prosecutor on his investigation into these “robo-texts”).

We recommend that these reports should be compiled by the Attorney General and forwarded to the Civil Rights Division of the Department of Justice. The Task Force further recommends that Attorney General Gansler ask that the new assistant attorney general for civil rights of the Justice Department convene a multi-state task force (as suggested in our April 2008 report) to undertake a national investigation and review of voter suppression efforts, with an eye toward promoting coordinated investigations and, where appropriate, federal prosecution of perpetrators.

- 4. Implement the full complement of recommendations included in the April 2008 Task Force report that urged the implementation of measures to ensure that ex-offenders are aware of their right to vote in accordance with Senate Bill 488, the Maryland Voter Registration Protection Act**
- 5. Create a permanent reporting requirement by pre-trial detention facilities to the Attorney General’s office to ensure that pre-trial detention facilities throughout the state regularly provide registration and voting opportunities for detainees who are eligible to register and vote**

Since the General Assembly took the bold and important step in 2007 of passing legislation that restores the voting rights of ex-offenders (who had been disenfranchised under prior law) confusion and disinformation have continued to stymie efforts to ensure ex-offenders

² VOTING IN 2008: TEN SWING STATES, Report of The Century Foundation and Common Cause, citing, Wisconsin Statutes, Section 12.035, available at www.commoncause.org.

³ *Id.*, citing http://sentate.mo.gov/06info/BTS_Web/Bill.aspx?SessionType+R&BillID+83706.

are fully informed about their right to vote.⁴ In our 2008 report, the Task Force set out nine initiatives that we recommend to rectify this problem. Nevertheless, in the days prior to the 2008 general election, letters were circulated to ex-offenders, generating confusion as to their right to vote. The problems generated by the letter and the difficulty faced by the Attorney General's Office and the state administrator to clarify and explain the letter, demonstrated the need for a comprehensive and effective public education campaign regarding the voting rights of ex-offenders.

In addition, the Attorney General should take the lead in ensuring that detention facilities throughout the state take appropriate steps to ensure that eligible pre-trial detainees awaiting trial have access to register and to vote while in detention. This includes providing access to civic organizations that can assist with voter registration inside pre-trial detention facilities.

In 2008, the Attorney General wrote a letter to detention facilities throughout the state, urging wardens in the strongest possible terms to make registration and voting opportunities available. This letter appears to have been successful. The Task Force received direct reports from organizations and individuals who were able to assist with registration of pre-trial detainees throughout the state. The Task Force recommends that the Attorney General send out follow-up letters asking the wardens to report back on the procedures used in their facilities to provide registration and voting to detainees, and the number of detainees who registered (or completed registration materials) within the jail. We note that Douglas Devenyns, former director of the Wicomico County Department of Corrections, provided this information to the Attorney General in a letter dated September 18, 2008. He indicated that 64 pre-trial detainees completed registration or absentee ballots at the jail during the statutory period. This provision of reports on pre-trial detainee registration should be regularly required and maintained by the Attorney General.

6. Vigorously monitor and ensure strict compliance by all state social service agencies with the requirements of the National Voter Registration Act

The Task Force strongly urges the Attorney General to strictly monitor compliance with the National Voter Registration Act (NVRA). The NVRA requires states to “designate as voter registration agencies . . . all offices in the state that provide public assistance.”⁵ As we indicated in our April 2008 report, Maryland's failure to comply with the provisions of the NVRA was the subject of litigation in 1996. That case was resolved pursuant to a 1998

⁴ These included, among other recommendations, that the State Election Board use an aggressive media and public education campaign across the state to publicize a toll free number that people with felony convictions can call and get assistance with obtaining and filling out voter registration applications; that the Attorney General recommend that the Maryland Department of Corrections amend the standard post-release supervision forms to include a provision to the effect, “I am aware of my right to vote and understand that voting is an important responsibility of all citizens”; and that training be provided to ensure that each board of election employee or volunteer knows the new law restoring ex-offender voting rights.

⁵ National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. Sections 1973 *et seq.*

settlement agreement. Registrations at state social service agencies increased dramatically in the years following that agreement.

It was brought to the attention of the Task Force in 2007 that social service agencies had again appeared to decline in providing voter registration opportunities as required under the Act.⁶ In response to this concern, the Attorney General promptly assigned an assistant attorney general to participate in a working group convened by the Secretary of State's office to compile data and implement protocols for ensuring agency compliance with the provisions of the Act. The group includes representatives of all state agencies that provide public assistance and have voter registration obligations under the Act.

To the best of our knowledge, those efforts have been largely successful. We note that according to figures provided on the State Board of Elections website, the numbers voters registered at social service agencies in 2007 (10), increased dramatically in 2008 (632).⁷ While this represents a sharp and commendable increase, it is a far cry from the over 30,000 voters that were registered in social service agencies in the state in 1999-2000, or even the nearly 9,000 registered in 2005-2006.⁸ We strongly encourage the Attorney General to monitor registration numbers at social service agencies, and to be particularly mindful of county-by-county figures that indicate levels of compliance across the state. Every effort should be made to ensure that uniform and effective procedures are being actively utilized in the state's social service agencies to comply with the requirements of the NVRA.

The Task Force also recommends that the assistant attorney general participating in the NVRA working group take a close look at the procedures used at the state's motor vehicle offices for providing registration to eligible voters. The MVA uses a two-step process in which motorists are asked if they wish to be registered to vote. If they say yes, they are then provided with registration forms which they can complete and return to MVA personnel. Nevertheless, many voters believe that simply answering in the affirmative and providing their information to the MVA attendant, motorists have been registered to vote. The ACLU has worked with the MVA on this issue and some progress has been made in addressing the problem. Nevertheless, the Task Force recommends that the Attorney General's working group continue to monitor the effectiveness of procedures used by the MVA for compliance with the NVRA.

In sum, the Attorney General should continue to exercise vigilance in ensuring compliance with both the letter and the spirit of the NVRA by the MVA and social service agencies.

⁶ See Memorandum from Brenda Wright, Legal director, DEMOS: A Network for Ideas & Action, September 12, 2007, on file with Sherrilyn Ifill at University of Maryland School of Law.

⁷ Compare figures for registration at social service agencies in Maryland State Board of Elections, VOTER REGISTRATION STATISTICS ANNUAL SUMMARY for 2007 and 2008, available at http://www.elections.state.md.us/pdf/vrar/2007_year.pdf and http://www.elections.state.md.us/pdf/vrar/2008_year.pdf; last visited on January 28, 2010, Complete data is not yet publicly available for 2009.

⁸ See Memorandum from Brenda Wright, Legal Director, DEMOS.

7. Collect sound and verifiable data about the existence and/or extent of voter fraud by undocumented immigrants

In several public meetings, the Task Force heard from voters and activists who expressed concerns about voting by illegal immigrants. Several community leaders from Prince George's County raised these concerns both at public meetings convened by the Task Force and in e-mails to the Task Force co-chair, Sherrilyn Ifill. While none of those who expressed this concern to the Task Force provided supporting evidence, questions about illegal immigrant voting were raised with sufficient regularity and passion by members of the public. The Task Force recommends that the Attorney General gather and maintain data about whether there has been voting by undocumented immigrants, if so, in what counties, and whether such offenders have been subject to prosecution. This will better enable the Attorney General to provide accurate information to the public about where and if such voter fraud has taken place, or in the alternative to counter unfounded rumors about the supposed prevalence of voter fraud by undocumented immigrants.

Conclusion

The Task Force recognizes that the recommendations contained in this and our earlier report do not represent an exhaustive list of all of the improvements that could be made to our state election practices and procedures. Our effort has focused on addressing those problems that voters have identified as among the most pressing. It is our hope that the Attorney General will continue to demonstrate his commendable leadership on the issue of voting rights and access in Maryland. We trust that our work has contributed to what should be an ongoing dialogue and engagement with ensuring full access to voting for all Marylanders.

Appendix “A”

Attorney General Task Force Members*

Christopher Brown is a partner in the Baltimore law firm of Brown, Goldstein & Levy. He has extensive experience litigating voting rights cases in the state of Maryland.

Kimberly Haven is Executive Director of Justice Maryland, a statewide advocacy organization and its voter re-enfranchisement campaign *Maryland, Got Democracy*. In 2007, she became the first newly re-enfranchised former felon to exercise her right to vote. Haven lives and works in Baltimore City.

Sherrilyn A. Ifill, co-chair of the Task Force, is civil rights lawyer and a law professor at the University of Maryland School of Law.

Moonyene Jackson-Amis, is an elected official in Talbot County Maryland serving a second, four year term on the Easton Town Council.

Deborah Jeon is the Legal Director of the American Civil Liberties Union of Maryland. She has done extensive work on voting rights issues, much of it on Maryland's Eastern Shore.

Orlan Johnson, co-chair of the Task Force, is a Partner at Saul Ewing LLP and Assistant Adjunct Professor at Howard University School of Law.

Darryl Jones is a lawyer who serves as the representative from District 1 on the County Council of Anne Arundel County.

John Morris is an attorney in Baltimore.

Josue Pierre is an attorney with the Law Office of J. Pierre, PC. He has been involved with various campaigns for political office in municipal, county, and state elections. Pierre lives and works in Prince Georges County.

Lu Pierson, Baltimore City, is President of the Maryland League of Women Voters, and a former member of the Baltimore City Election Board and State Election Board.

Carl O. Snowden is a former three-term member of the Annapolis City Council. He currently serves as director for the Office of Civil Rights in the Office of the Maryland Attorney General.

Gregory Wims is a businessman and the former president of the Montgomery County branch of the NAACP.

Dayna Baskette, a third year student at the University of Maryland School of Law was not a member, but provided research assistance to the Task Force.