

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



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MARYLAND OFFICE OF THE ATTORNEY GENERAL
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Foreword by Attorney General

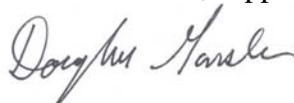
The strength of our democratic system depends on our ability to ensure that all citizens entitled to vote may do so. Public confidence in the election process cannot be maintained if voters are kept from the polls by intimidation, misinformation or deceit. On Election Day in 2006, after voting at my home polling place, I traveled to a polling place in Prince George's County. There, I witnessed long lines snaking around the building as predominantly African-American voters waited hours to cast their ballots. This stood in stark contrast to my own experience voting at a polling place in Montgomery County that served a more affluent community, where voting took just a few minutes. Also in Prince George's County, misleading fliers were distributed to citizens that were clearly designed to dissuade, mislead and outright suppress votes. It should be noted that the deceptive tactics used that day were focused on historically disenfranchised voters.

While it was heartening to see how many citizens were willing to endure those long lines in order to cast their vote, it was also distressing to see how many people could not afford to wait any longer and who eventually left without voting. Beyond the logistical problems of election administration that may impede access to the polls and do so with disparate impacts on poor and minority communities, there are also – even four decades after the Voting Rights Act was enacted – obstacles to voting that reflect *intentional* action. Given our nation's lamentable history of inequality with respect to the most cherished and fundamental of our rights, we cannot allow senseless obstacles to be placed in the way of voting.

The passage of the Voting Rights of 1965 was heralded as an end to voter intimidation in America. With the passage of that historic legislation, gone were the days of violence and the bloody reprisals for attempting to exercise our most fundamental right. Unfortunately, since then, we have seen much more subtle and creative tactics being used to suppress the vote of minority voters.

Shortly after taking office, I created and appointed members to the Attorney General's Voting Rights Task Force. Co-chaired by Professor Sherrilyn Ifill and attorney Orlan Johnson, the task force was given a very broad charge: to examine election irregularities and obstacles to voting experienced by Maryland voters in recent elections and make proposals for policy changes. After holding public hearings in every corner of the State, members of the task force compiled this initial report to document the information they gathered and to make recommendations for the 2008 election. The Task Force will issue another report later this year with further recommendations for long-term strategies to improve elections practices in the State. Both reports suggest remedies to ensure that we no longer see the subtle and sometimes brazen attempts to suppress the minority vote.

It is my hope that as elected officials, we all take this as an opportunity to allow Maryland to be an example of a state that holds true to the goals set forth in the Voting Rights Act of 1965 and put an end to all forms of voter intimidation, suppression and deceit.



Douglas F. Gansler

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INTRODUCTION

In several of the largest jurisdictions in our state, the 2006 Primary election was one of the most disastrous. The use of a new electronic voting system throughout the state, human errors, inadequate poll worker training, misleading candidate ads, and voter ignorance, created a “perfect storm” of voting problems. As a result, in these jurisdictions voting groups went to court on election day to obtain orders extending the hours for election and vote counting in at least one county extended for several days resulting in a delay in the designation of the winner in a hotly contested race. Most importantly, however, eligible voters who were unable to cast their ballots, and those who observed long lines at poll places, unorthodox ballot security measures or misleading campaign materials, lost faith in the integrity of our election system.

The good news is that many of the problems that plagued the 2006 Primary election were corrected for the 2006 General Election. Baltimore City, as well as Montgomery and Prince Georges counties reviewed their election processes, and acknowledged and responded to many of the legitimate concerns raised by voters. The State Board of Elections, local boards of elections, voting rights and advocacy groups such as the NAACP, the ACLU, the Lawyers’ Committee for Civil Rights Under Law, the League of Women Voters, the political parties, and a host of other civic organizations share responsibility for the successful administration and conduct of the General Election.

Nevertheless, the problems with the 2006 Primary Election served to identify and highlight a number of systemic problems that exist in the Maryland election structure. Some of these problems were temporarily overcome in the general election, but continue to present a challenge for future elections. Moreover, the negative experiences of voters in the affected jurisdictions in 2006 have diminished the public’s perception of our election system.

As Americans, our shared belief in democratic traditions defines and connects us. Elections are not just occasions for selecting the people who will occupy offices of power. Perhaps, more importantly, they serve as rituals for legitimizing the power that those people may come to wield, for justifying the sacrifices that our circumstances may require us to embrace, and for forging the commitment needed of each of us to make our communities work.

Problems with elections that undermine their fairness, the representative nature of the democratic process, as well as widespread citizen participation are far more corrosive of our capacity to address the problems of our times than merely choosing the wrong person to be in charge. Compromised elections do not just raise the danger of selecting poor leadership. A broken democracy more seriously leads to a broken citizenry—an uncaring, apathetic, and disengaged public incapable of undertaking any challenge that does not directly benefit a particular citizen or that citizen’s family.

The problems that arose in connection with the 2006 Maryland Primary Election raised understandable concerns. The seemingly “perfect storm” in November 2006 of malfunctioning devices bearing the record of those eligible to vote, seemingly inconsistent and sometimes incorrect applications of the law about who may vote and how, as well as failures to prepare adequately for the numbers of people turning out to vote, imposed upon the voter seeking to

exercise the franchise the burden of overcoming long lines, misleading information, and, at times, outright rejection just to make what should have been a simple gesture of citizen participation. By any standard, what happened in too many places in Maryland two years ago was not the best way to run an election.

Since November 2006, the stakes have gone up considerably. Over the last several months trends have become clear:

- In the 2008 general election we may see the highest turnout of any election in the state. The turnout for the 2008 Presidential primary was the highest vote total by far in the history of the State for a Presidential primary;
- We are possibly observing the coming of age of a new generation of first-time voters who, for the moment, have put aside past cynicism to give democracy a chance;
- We are in the midst of a demographic shift in Maryland that, from the 2000 census, has seen 98% of the State's substantial population growth since 1990 to be among its non-white residents;
- The General Assembly has undertaken reforms to encourage the productive participation of ex-offenders who have completed their sentences, making it easier for them to engage in the democratic process; and
- The population of long-term, traditional Maryland voters is shrinking as that population ages.

These conditions present challenges and opportunities and the implications of the above are: (1) that low election turnout will not serve us well in dealing with the problems facing the state over the next several decades if citizens engagement is to be part of the solution, and (2) that we have at hand a rare opportunity to change the citizen disengagement we have faced in the past. To secure the benefits of an engaged citizenry, not only do we have to assure that the problems of 2006 Maryland Primary election do not recur, we have to prepare for the fact that more people than we might ever before have imagined would ever want to vote will show up at the polls in future elections.

Over 100,000 voter registration applications were processed by state and local boards of election in the first 3 months of 2008. The State may register close to 200,000 additional voters before the close of the registration period on October 14, 2008. This would bring the total number of registered voters for the general election to over 3.3 million. Of those registered, it is estimated that 80% or more will turnout for the presidential general election this year. If so, this would translate into the largest raw vote total in the history of the State.

MEMBERS OF THE TASK FORCE

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 is civil rights lawyers and a law professor at the University of Maryland School of Law.

Moonyene Jackson-Amis, Esq 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 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 of the NAACP.

John Willis is a former Maryland Secretary of State, professor at the University of Baltimore

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

PURPOSE AND CREATION OF THE TASK FORCE

In the spring of 2007, Attorney General Douglas F. Gansler asked Professor Sherrilyn Ifill and Attorney Orlan Johnson to co-chair a Task Force on Voting Irregularities. The charge of the Task Force was to examine the problems that arose or existed in the 2006 elections and to recommend changes that would address these problems. Mr. Johnson is a partner at the law firm of Saul Ewing, LLC and a recognized leader in Prince George's County, who has participated in a number of political campaigns in that County. Professor Ifill is a civil rights lawyer who has worked on voting rights issues for nearly 20 years.

Attorney General Gansler offered the resources of his offices to support the Task Force's work. Carl Snowden, Director of Civil Rights in the Attorney General's Office, was designated as the Attorney General's representative on the Task Force. The remainder of the Task Force members were selected by the co-chairs in consultation with Mr. Snowden and the Attorney General. As new members joined the Task Force, they suggested additional members who were asked to participate. In forming the Task Force, the co-chairs sought geographic, racial and political party diversity, and attempted to include on the Task Force members who could raise issues important to specific constituencies that are most vulnerable to irregularities in the voting process.

The Task Force began its work in May of 2007, with a meeting held at the University of Maryland School of Law in Baltimore, Maryland. The Attorney General attended this first meeting to welcome the Task Force members and to express his concerns about irregularities he observed in the 2006 Primary. He charged the Task Force with making recommendations to improve the system and experience of voting in Maryland for eligible voters. Thereafter the Task Force met monthly, mapping out a plan for our work. First, the Task Force members sought to further refine its mission within the parameters set by the Attorney General's charge. Ultimately the Task Force defined its mission as:

To document, delineate, and analyze the problems, questionable and misleading campaign practices, and voting difficulties that arose in connection with the Maryland election of 2006, in order to draw from these events solutions and recommendations to assure that future Maryland elections will:

- Both engage and accommodate full participation of the Maryland electorate;
- Assure a reliable and accurate representation of the public will, embodied by the vote;
- Fairly provide all legally eligible residents of Maryland the benefit of democratic participation in their government; and
- Preclude abuses of the process that may cloud or undermine the legitimacy of the election's outcome.

The Task Force, over the course of the year, undertook the task of identifying voting problems by: sharing with one another those voting problems Task Force members personally had encountered or that had been brought to their attention; hearing from guests who asked to present issues to the Task Force; meeting with State Election Director, Linda Lamone and her

staff; and holding public meetings in several counties throughout the State at which we heard from voters, concerned citizens groups and local election board members. The last public meeting was held in Baltimore City on January 21st, 2008. Thereafter the Task Force met to discuss what they had learned and to begin to craft recommendations to improve the voting experience for Marylanders. A list of Task Force meetings and their locations can be found at Attachment A.

OVERVIEW

From the Eastern Shore to Hagerstown to Baltimore City, the Task Force heard a variety of issues and concerns raised by voters, concerned citizens and election administrators. Many of the issues brought to our attention will require long-term solutions and change. They include, but are not limited to the lack of uniformity and disparity in resources between electoral jurisdictions, inconsistencies and problems in the lines of authority between the State Board of Elections and local boards, and the failure to properly redistrict towns in some counties to reflect demographic changes. Given the urgency of the 2008 General Election however, the Task Force has decided to issue its report in two parts. This report is limited to identifying and addressing problems that we believe can be addressed, and indeed must be addressed in time for the General Election this year. Later this year, the Task Force will issue a second report describing some of the long-term solutions that we believe should be taken up by legislative, administrative and executive officers in the state to improve the conduct of elections.

RECOMMENDATIONS

1. Review of Governance Structures and Key Election Management Practices

Governance Structure

The administration of elections in Maryland, like the vast majority of other states, in our nation, is a shared responsibility of the state and counties (including Baltimore City). This bifurcated structure inherently creates challenges and presents obstacles for the efficient administration of elections. There is not a unified table of organization and administration with clear lines of authority. Differences and significant disparities exist among the local jurisdictions in the fiscal, physical and technology resources available to implement election laws, rules and regulations and to employ best practices in the administration of elections.

Pursuant to the recommendations of the Commission to Revise the Election Code (1998), the current governance structure is two-tiered. A five-member State Board of Elections (SBE) is charged with managing and supervising elections in the State and ensuring compliance with state and federal election laws. The State Board appoints a State Administrator. As the State's chief elections official, the State Administrator is charged with oversight of the State Board functions as well as with supervising the operations of the local election boards. Each county of the State (including Baltimore City) has a local board of elections, appointed by the Governor and confirmed by the State Senate, which is subject to the direction and authority of the State Board. Each local board of elections appoints an election director who in turn appoints the employees for the jurisdiction's operations and supervises the local staff.

Although the State Board of Elections received increased responsibility from the General Assembly in 1998 for election administration and supervisory authority over State elections, there are limits on the extent of SBE authority over the local boards of elections. The State Board has no control over the appointment or removal of local board members of local election directors. The State Board has no control over the resources and expenditures of local boards. The State administrator has no director supervisory authority over the local election directors or local budgets and expenditures. County governments continue to bear the primary responsibility for the conduct and cost of elections. 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. This 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.

A later report of the Task Force will provide long-term recommendations for changes in the governance structure of election management in Maryland. However, there are recommendations that can and should be considered prior to the 2008 General Election.

Provisional Ballots

The Task Force learned that there continues to be problems with the implementation of regulations and procedures relating to provisional ballots. Created to assure that no eligible voter is not allowed the opportunity to vote, provisional ballots are offered at the polling place to voters whose name does not appear on the poll register of eligible voters despite the voter’s belief that the name should be on the list, and to first time voters who are not able to provide the HAVA-required identification. It appears that problems with voter registration systems in the 2006 election cycle, especially in Prince George’s County, resulted in the issuance of a large number of provisional ballots to voters whose name should have been on the list of eligible voters. (*See* Voter Registration section.) This issue seems to have been resolved for the 2008 primary election in that county. In the 2007 Mayoral primary election in Baltimore City and the 2008 primary election statewide, a number of provisional ballots were requested by voters because they believed their party affiliation was different than the affiliation recorded on the statewide voter registration list. Additionally, the confusion over the rights of 17 year old voters to vote in primary elections in 2008 was not resolved until days before the election, requiring most voters in that category to vote by provisional ballot. And finally, a substantial number of provisional ballots were rejected by the local election board because they lacked all required signatures.

There was a lack of uniformity in the canvassing of provisional ballots following the 2008 primary election. For example, the Montgomery County Board of Elections elected to count votes for the Office of School Board cast on provisional ballots submitted by unaffiliated voters who cast votes on a party ballot. SBE procedures call for ballots submitted by unaffiliated voters on party ballots to be rejected in their entirety.

Recommendations regarding provisional ballots:

1. There should be a review of the statewide voter registration system to assure accuracy of the voter information, including party affiliation;
2. There should be uniformity among local election boards relating to the canvassing of provisional ballots, including those cast on party ballots by unaffiliated voters;
3. Provisional ballot judges should receive additional training to ensure they correctly instruct voters on the proper use of provisional ballots, the potential rejection of provisional ballots for various reasons, and provisional ballot judges should emphasize the need for multiple signatures on the ballot documentation;
4. The instructions for completing a provisional ballot should be reviewed to ensure the options for casting such a ballot are clear and the requirement for multiple signatures on the ballot documentation is clear and obvious; and
5. SBE should reiterate provisional ballot canvassing procedures to local election boards to ensure uniformity and to confirm that voters in all parts of the state are treated equally.

Voter Registration

A number of participants at Task Force public hearings noted problems with the accuracy of their voter registration, including one married couple in Talbot County who had lived together in the same household for many years, but who are currently registered in different polling places. Additionally, it was reported that a large number of registered voters in Prince George's County, particularly in College Park, had received their voter registration cards from the local election board but found they were not on the statewide voter registration list on the date of the November 2006 election.

Recommendations regarding Voter Registration:

1. There should be a review of the statewide voter registration system to assure accuracy of the voter information, including party affiliation; and
2. Data entry on the statewide voter registration database should be audited randomly and re-training of data entry personnel as needed.

#2. Transparency of Election Board Processes and Public Access

The Task Force heard a number of complaints about the inability to obtain information from the State Election Board and local election boards. Transparency of election procedures is required for voter confidence. In most instances, the information desired was available, but the process of obtaining it was cumbersome.

Recommendations regarding Transparency and Public Access:

1. To the extent practical, the State Election Board and local election boards should use their respective websites to make information about election laws, regulations and processes available to voters. Public notice of events requiring such notice should not, however, be limited to posting the notice on the website. Rather, local election boards should place advertisements or notices of such events in local newspapers, including notice of pre-election testing of voting machines and post-election audits of election results;
2. Local election boards should consider opening up election judge training sessions to the public, or should hold separate training sessions for the public, to provide them with information regarding election laws, regulations and procedures;
3. Local election boards should consider hold “lessons learned” session with their election judges after each election. This practice is followed in Harford County and seems like a logical way to obtain on-the-ground feedback about Election Day problems or issues that arose;
4. Local election boards should consider hosting a public comment session after each election, offering voters the opportunity to make comments, ask questions or share ideas for improvement about election procedures.

#3. Training of Election Officials

Under current law, the State Board of Elections is required to conduct a statewide biennial pre-election meeting in the year before a primary and general election. Attendance at this meeting is required for all members of the local boards of elections, election directors, Board counsel and others designated by the State Board or a local board. Other than this requirement, there are no regularly scheduled training programs for Maryland election officials, although the State Administrator conducts monthly meetings with local election directors.

Various national organizations offer election-related training programs on a range of election administration topics. Some Maryland election officials have attended training programs run by the Election Center and the National Association of Election Officials. Although these national organizations and training programs are valuable, a limited number of election officials in Maryland are able to participate because the meetings, programs and training sessions are costly, require membership, travel, lodging and course fees.

Other states have established their own election administration training programs. For example, the State of Washington has had a Certification and Training Program since 1992 and requires each county to have at least two “Certified Election Administrators.” The Georgia Office of Secretary of State and Kennesaw State University formed a cooperative venture, the Center for Election Systems, to provide training sessions throughout the year for county election officials on topics related to the administration of elections. A similar approach in Maryland would support the implementation of uniform practices and procedures in the administration of elections. Election directors and key staff could be offered a standard curriculum covering the

full range of election administration duties and responsibilities under Maryland law. Introductory courses could be given for all new election administration employees and new classes could be developed when there are significant equipment or procedural changes. In addition, there is a need for general management training for local election directors and state and local key staff in areas including budget, personnel management and project management.

For the short term however, the Task Force recommends that in the late summer the Attorney General convene a conference call with counsel to various local elections boards to review various aspects of election law likely to arise in the coming election. These include: the proper treatment and law regarding counting of provisional and absentee ballots; the laws regarding securing the integrity of provisional and absentee ballots; and procedures for dissemination of information regarding the extension of poll hours pursuant to a court order. In addition, regional training meetings for polling place judges should be convened by the Attorney General or his designee on these issues in August or September 2008.

#4. Allocation of Voting Machines at Polling Places

During our discussions with representatives of the State Board of Elections, local boards and voters, it became apparent that there were some specific instances in which there were insufficient voting machines at several polling places. This produced long lines and wait times, and resulted in some eligible voters being unable to vote.

It is our understanding that the State Board makes recommendations to the local boards on the number of voting machines that should be allocated to each precinct. The final decision for how many machines to allocate to each precinct, however, lies with the local board. The Task Force recommends that allocation determinations for each polling place should be publicized by each election board three weeks before the election.

In addition, the Task Force recommends that if local boards decide to allocate fewer machines than are recommended by the state board, the local board should provide explanation in writing to both the State Board and the Attorney General's office at least three weeks prior to the November 4, 2008 election. The local board should include a statement of the reasons why they believe the state estimate is in error, and what emergency procedures they intend to put in place should additional machines be needed on election day.

In addition, each local board should certify to the State Election Board what provisions they have implemented to ensure that each polling place has sufficient technical support on election day to address problems that may arise with the machines or electronic poll books. Local boards should certify as well that technicians received appropriate training prior to election day. This certification should include the name and contact information for each technician and their expected geographic area of focus for election day.

Finally, 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 to improving the election experience for voters. The Task Force recommends that evaluations, once completed after the November election, should be made publicly available and posted on the websites of each local board of election.

#5. Compliance with Provisions of NVRA

In September 2007 the Task Force received a complaint from DEMOS, a national public policy research and advocacy organization, regarding the State's compliance with the National Voter Registration Act ("NVRA"). The Act requires states to "designate as voter registration agencies . . . all offices in the State that provide public assistance." *See* 42 U.S.C. 1973gg-5.¹ DEMOS noted that after the state of Maryland was sued in 1996 for failure to comply with these provisions, the state entered into a settlement agreement. Thereafter "registrations increase[d] dramatically to 22,095 in 1997-1998 and . . . to 32,350 in 1999-2000."² After 2000, however, voter registration numbers in public assistance agencies began to plummet. According to DEMOS only 1,151 registrations from social service agencies was noted in 2001-2002 and 8,778 in 2005-2006.

The Attorney General's office responded promptly, the Task Force transmitted the complaint from DEMOS to the Attorney General's staff, assigning an assistant Attorney General to participate in a Working Group convened by the Secretary of State's office to monitor and promote compliance with the NVRA. The group includes representatives of all state agencies that provide public assistance and have voter registration obligations under the NVRA. The group has met directly with representatives from Demos, and has implemented a two-track procedure to address NVRA concerns. The first track is focused on addressing immediate compliance issues. The second track is focused on long-term evaluation of agency compliance. The immediate compliance measures identified by the Work Group include: distributing sample language promoting voter registration to NVRA agencies for inclusion in agency newsletters, fliers, emails, and brochures; adding a link on agency websites to the State Board of Elections voter registration page; and distributing additional voter registration applications, posters, relevant signage and election calendars to agencies and satellite offices statewide.

The Task Force notes that these measures are still in their infancy. In fact, according to figures on the State Board of Elections website, only 2 voters were registered at social service agencies in the State during the month of March, 2008.³ The Work Group expects that those numbers will increase in the coming months, as the measures set out above become more fully

¹ The statute requires that agencies, "(i) distribute voter registration application forms with each application for assistance and with each recertification, renewal or change of address form relating to such assistance; (ii) assist applicants in completing the voter registration forms; and (iii) accept completed voter registration forms and forward them to the appropriate election official. 42 U.S.C. §§1973gg, §(a)(6).

² *See* Memorandum from Brenda Wright, Legal Director, Demos to Sherrilyn Ifill, Co-Chair Attorney General's Task Force on Voting Irregularities, September 12, 2007, available upon request.

³ *See* http://www.elections.state.md.us/pdf/vrar/2008_03.pdf

integrated into agency practices. The Attorney General will need to continue to monitor the implementation of these measures to assure compliance. Brenda Wright, legal director of DEMOS has stated that representatives from the Attorney General's office and from the Work Group have been positive, accommodating and cooperative with DEMOS in addressing these important compliance issues.

#6. Voter Education and Addressing False & Misleading Campaign Materials

Voter Education

To ensure that all Marylanders who are eligible to vote have a chance to register, a viable voter education campaign must be put in place before the 2008 General Election. There are approximately 800,000 eligible Marylanders who have not registered to vote. This calls for the State of Maryland and local governments, local school boards, civic associations, home owner associations, and service clubs like the Rotary Club to assist with the campaign. We must also use the media, both free and paid. The public must be educated on the voting process and provide answers to the most basic voting-related questions. A public education campaign on these questions should be implemented well in advance of the last day for voter registration (October 14, 2008) for the November 4th election.

Election Protection Efforts

In addition, during the last several election cycles, several national and state civil rights organizations have conducted extensive "election protection" efforts designed to educate voters about their rights, address any issues of voter intimidation or disenfranchisement, and solve problems voters have at the polls as they occur. The organizations have established and staffed an Election Hotline each Election Day and have distributed Maryland Voter Empowerment Cards specifically designed to inform voters of their rights and how to address potential problems when seeking to cast a ballot. Outreach is done to reach out to and receive voting complaints/feedback from individual voters, get-out-the-vote organizations, candidate campaigns, and political parties active in Maryland.

Typically, the lawyers, staff, and volunteers in election protection efforts act to address the most serious complaints by contacting officials at the State and Local Boards of Election and the Attorney General's Office. The experience generally has been that government officials work hard to cooperate in the organizations' efforts to address complaints, and only in very rare instances do the government and the organizations find themselves at odds. However, the government's lack of direct involvement in any election protection programs create a layer of bureaucracy that could easily be eliminated if the organizations, the Election Boards, and the Attorney General's office all worked together on election protection. For this reason, we propose that the Attorney General and Boards of Election consider becoming directly involved in election protection efforts that have already been planned for the November 2008 general election.

False or Misleading Campaign Speech

The issue of false or misleading political speech was one of the serious concerns that arose following the 2006 elections in the State of Maryland. The specific concerns that arose in the last election involved allegations that certain candidates had misled voters in regards to their supporters and endorsements. Furthermore, there were reports from citizens and voting rights groups that involved misleading and false information that was disseminated to voters during the primary and general elections that were intended to either divert votes, or confuse voters as to a candidate's position and/or cause confusion as to the voting process. Many of these efforts were specifically targeted at African American voters and the campaign materials themselves were focused by design on influencing black voters. The Task Force heard specifically from Senator Lisa Gladden, who provided the Task Force with campaign materials that falsely suggested her endorsement of certain Republican candidates. Delegate Sandy Rosenberg met with the Task Force to describe legislation that he and Senator Gladden planned to co-sponsor in the Maryland General Assembly that would prohibit false and misleading campaign materials. The Task Force also reviewed federal legislation. Senate Bill 453, a bill co-sponsored by Democratic members of Congress, including Senator Ben Cardin (D-MD), would impose criminal penalties on those who "knowingly" disseminate false or deceptive campaign materials. This legislation is still pending in the Senate.

Attempting to regulate false and misleading political speech is a not an easy task. It is reported that twenty-four (24) states currently prohibit false political speech regarding candidates. The State of Maryland currently has no statutes or cases that squarely confront this issue. The protections of free speech contained in the First Amendment of the U.S. Constitution and Article 40 of the Declaration of Rights of the Maryland Constitution require any statute that attempts to regulate misleading or false political speech to survive strict judicial scrutiny. The Task Force intends to address these issues in our report later this year, when we turn our attention to long-term solutions to voting problems in the state.

In the meantime, the Task Force recommends that the media including print, television and radio, take an active role in ensuring that voters receive truthful and accurate information about candidates for office in a timely manner. Where misleading campaign materials are distributed on or before election day, media outlets should make every effort to immediately contact the parties named in the materials and to provide the public with accurate information regarding candidate qualifications, affiliations and endorsements by groups or individuals.

The Attorney General should encourage the State and local election boards to ensure that signage is available for all polling places that provide voters with the hotline number for the Attorney General's office and the State Board of Elections, so that voters may report instances when deceptive campaign materials are distributed on election day.

#7. Physical Layout of Voting Machines

In almost every jurisdiction visited by the Task Force, voters complained that they felt a lack of privacy when voting on the electronic machines. Individual Task Force members complained of this as well. The Task Force determined that at a number of polling places

throughout the state, voting machines were arranged in ways that undermined privacy. For example, machines were arranged around a school auditorium, with the back of the machines facing the wall, and the voting screens facing the center of the room. This means that voters standing in line behind a voter who was using a machine could view the screen from a distance, interfering with the voter's sense of privacy. Voting machines should be arranged in a "U-shaped" configuration around a voting room with the back of the machine facing the center of the room, and with the voting screen facing the wall. This simple adjustment will increase the sense of privacy experienced by each voter.

The Task Force recommends that local boards instruct and carry out proper organization of voting machines to maximize the privacy of voters.

#8. Communications regarding Election Day Court Decisions

As a result of the myriad of problems experienced by voters on Primary Election Day 2006, voters and voting rights advocates in several jurisdictions filed suit in Circuit Court seeking to extend the time for keeping the polls open. These suits were successful in a number of counties in the 2006 Primary, and again most recently in Baltimore County in this year's 2008 Primary. Voters and the President of the Baltimore City NAACP informed the Task Force that several polling places in Baltimore City closed, despite the court order mandating extended polling hours, because poll workers at individual sites seemed unaware of the court's decision. Others commented that citizens were not effectively informed of extended voting hours by the media.

The Task Force recommends that local boards conduct an immediate review of the communication procedures that should be in place to ensure that individual polling sites receive prompt notification of extended voting hours. Each board should ensure that there is a plan for effective, prompt and accurate communication regarding court decisions that may affect poll closing.

Moreover, the Task Force recommends that media outlets, radio, local TV news, and newspapers stay abreast of court developments and give a prominent place in their publications or programs to update the public on poll closing news, including the status of court decisions. Television news should employ the use of scrolled updates across the bottom of the television screen, or "special news reports" to ensure that voters are aware of extended poll hours.

The State and local election boards should promptly and prominently include on their websites on election night, the status of any court decision affecting the outcome of cases filed on election day, including those cases involving a request for extended poll hours. This information should also be posted promptly on the Attorney General's website, and election day hotline operators should be apprised of current and accurate information.

#9. Ballot Questions

Our experience in past elections has been that "ballot questions"—those issues on referenda for public consideration—present two fundamental problems. First, how can we

assure that the votes cast for ballot questions truly represents the voters' informed response to the issues put forth by the legislature for voter approval? Voters are often confused by long, detailed ballot questions. Second, how should ballot questions be worded so that the questions can easily and quickly be understood by voters on election day? Voters trying to comprehend ballot questions at the voting machine often use a considerable amount of time, causing delays and long lines at the polls.

We advocate for aggressive voter education and outreach prior to Election Day, on ballot questions. We also recommend that a copy of the ballot questions be available for voters waiting in line on Election Day so that voters may use that time to review ballot questions. This should reduce the time taken by voters at the machine who are reading and considering ballot questions for the first time as they stand at the machine. Accordingly, the Task Force recommends:

- That the Attorney General reach out to local civic organizations to obtain their assistance in educating the public regarding the provisions on the ballot seeking voter approval including print and electronic media, local churches, community groups, and local organizations;
- That this outreach take place well in advance of the election so that voters can be given due time to absorb the substance of a ballot proposals;
- Voting polls should be furnished with written explanations of all ballot questions to be distributed at the time each voter arrives to vote, so that the voters can review the questions while standing in line; and
- The Attorney General's office should be a source for clearing and approving the explanations of ballot questions under this proposal to assure that the explanations are correct and otherwise neutral.

#10. Ex-Offender Voting Rights

The passage of Senate Bill 488, "Voter Registration Protection Act," which became effective July 1, 2007, removed a barrier for ex-offenders working to integrate themselves back into society by restoring their right to vote. This legislation states very clearly that a person is eligible to vote if the individual has **not** been convicted of a felony, or if they have, they have completed serving a court ordered sentence of imprisonment, including any term of parole or probation for conviction. It is estimated that this legislation re-enfranchised over 52,000 citizens across the State.

To date there has been no effort to inform this constituency about their eligibility to vote. As a result, voter education and registration of this constituency has fallen on the advocacy community which lacks the financial resources to effectively implement the new legislation.

This lack of education effort has a disproportionate impact in the districts that large numbers of former felons return to such districts as Baltimore City and Prince George's County. While most former felons access state public assistance agencies where forms are available, there is usually no one available or trained to answer questions about voter eligibility.

The Task Force recommends that there be a statewide effort to both educate and engage this constituency. This could be achieved via the following:

- Implementation of a strategic public education campaign that includes a strong communications strategy and media outreach;
- Conspicuous signage at all state public assistance agencies that advises in everyday language when voting rights are restored;
- Ensure that each board of election employee or volunteer knows the new law;
- Allocation of state funding to local advocacy groups who are in the best position to do voter education and registration;
- Using an aggressive media and public education campaign across the state to publicize a toll free number where people with felony convictions can call and get assistance with obtaining and filling out the voter registration application. This number could be advertised in newspapers and on major media, on billboards and in advertisements on buses and in bus shelters in targeted communities;
- Prisons, jails and local detention facilities should provide every released ex-offender with information on voting at the time of their release. In addition ensure that signage is conspicuously posted at these facilities;
- Establish procedures in local jails and detention centers that provide opportunities for jail-based registration activities to ensure that local misdemeanants and pre-trial detainees have the ability to exercise their right to vote;
- Encourage state parole and probation officers and work release facilities, to work in concert with Justice Maryland, and other advocacy groups that supports the re-entry of ex-offenders, to make voter registration applications available to ex-offenders who express an interest in voting are posted;
- Amend standard post-release supervision form 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.”

11. Voting for Eligible Pre-Trial Detainees

On any given day over 8,000 people are detained, awaiting trial or arraignment, in the State’s detention facilities – nearly 5,000 of these detainees are in Baltimore City. Many of these individuals will spend more than a month in detention because they are unable to make bail. All of these individuals are innocent until proven guilty. Many are eligible to vote. In the past, efforts have been made by local voting rights groups to facilitate voter registration for eligible pre-trial detainees, but these efforts have been ad hoc and not regular.

The Task Force urges the Attorney General to encourage local boards of elections, local detention facilities and advocacy groups to work together to support the registration of pre-trial detainees. In addition, the Attorney General should encourage these groups to find ways to ensure that the registered voters who are in pre-trial detainee facilities on election day have the opportunity to vote using either emergency ballot or absentee ballot procedures. We note that Montgomery County, by working collaboratively with local community groups, has developed a safe, secure, regular system for supporting voter registration for pre-trial detainees.

The Task Force recommends that the Attorney General require local jurisdictions throughout the state to work in concert with advocacy and community groups to provide some meaningful opportunity for pre-trial detainees to exercise their constitutional right to vote in the 2008 General Election. These groups may include, but are not limited to: the League of Women Voters; local churches; synagogues and mosques; the NAACP; the ACLU; Justice Maryland; and the Re-entry of Ex-Offenders Law Clinic at the University of Maryland School of Law.

12. Voter Suppression and Intimidation

Organized efforts to suppress or discourage voting have occurred in Maryland. Telephone calls to voters or signage posted in minority communities that incorrectly inform voters of the wrong day for primary party elections, that connect voting eligibility with payment of child support, or that otherwise attempt to suppress voting, poison the political process and violate the law.

Citizens in several counties have complained that local law enforcement officials were prominently present at some polling locations, although there appeared to be no public safety threat at these polling places. Individuals reported to the Task Force that police squad cars and officers nevertheless were deployed and remained at polling places for considerable periods of time. These actions can have the effect of depressing voter turnout and intimidating voters attempting to exercise their right to participate in the voting process, particularly when coupled with some of the misleading calls and signage described above. These voter suppression practices raise particular concerns in light of the history of the abuses that led to the passage of the Voting Rights Act and other civil rights legislation.

The deployment of local police is largely a municipal concern. Municipal elections and municipal actors, however, are subject to federal laws, including the Voting Rights Act of 1965, as amended, and other civil right laws that forbid the interference with rights held under the U.S. Constitution or federal statutes.

The Task Force recommends that local election officials, elected representatives and law enforcement officials show particular sensitivity to the appearance of intimidation that may result from the use and deployment of uniformed police officers and police vehicles at polling places, unless needed to address legitimate and specific public safety or election administration concerns. The Task Force would ask the Attorney General to make clear in public statements prior to the election that attempts to intimidate or otherwise interfere with the voting rights of eligible voters violates federal law, and that any such efforts should be promptly reported to the Attorney General's office. The Attorney General should also put in place an ongoing procedure for the collection and investigation of acts disguised to intimidate voters, and where appropriate, legal action should be taken against those who engage in these practices. We further recommend that the Attorney General consider convening a multi-state task force that would work with lawyers in the Civil Rights Division of the U.S. Department of Justice to look more broadly at coordinating legal efforts to prosecute voter suppression activities targeted at minority groups. The Task Force will return to this issue in its next report, which shall be issued later this year.

13. Issues related to Voters with disabilities

Through public hearings and from other sources, the Task Force heard about problems related to access to the voting process by voters with disabilities. There were complaints about a lack of accessible parking and physical barriers at polling places. Judges in a number of polling places were unable to set up the audio equipment on the voting system, or took an excessive amount of time to do so. Also, some judges failed to properly encode the voter access card to allow the machine to function properly.

Although not disabled, elderly voters have particular limitations which may restrict their accessibility to voting equipment. The font size on the voting machine screen is adjustable to larger font size, but voters need to be aware of this feature. Signs at the check in desk, immediately adjacent to the voting machine, or prominently displayed elsewhere in the polling location should inform voters of this large font option.

The Task Force specifically recommends that:

- Training for election judges should reinforce the need to use appropriate signage to identify handicapped – accessible parking spaces at the polling place;
- Training for election judges should reinforce the need to physically locate voting machines specially designated for use by disabled voters in a space within the polling place that allows maximum accessibility and ensure privacy;
- At least one election judge at each precinct should receive additional training on how to set up, maintain and operate the audio ballot option on voting equipment;
- Signage at the polling place should prominently display information about accessibility options for voters, including the audio ballot option and the large font capability of the voting machines; and
- If a polling place is inaccessible to disabled voters, immediate action should be taken to make the facility accessible to all voters in accordance with the requirements of federal law.

CONCLUSION

Most persons would agree that there is no more basic and fundamental guarantee by the United States' democratic form of government than the right to vote. As a result thereof, it is implicit that it is the responsibility and the duty of the federal government, and each state government to ensure that its citizens' votes count and that the methods created to administer the election process are fair, transparent, reliable and provide equal protection for all voters. Marylanders deserve a clear and readily understandable process for voting.

Many of our initial recommendations in this report advocate that the State of Maryland should strive to promote more statewide standards. However, it should be noted that if the State of Maryland truly intends to take a renewed interest in improving upon the election process,

without the necessary funding, many of the counties may not have the resources to implement changes that may be required in connection with certain of our recommendations. Based on the concerns noted by many Marylanders surrounding the 2006 Primary Election, it is clear that the counties and the State Board of Elections must partner more aggressively to ensure free and fair elections for all Marylanders.

It is the desire of the Task Force that the implementation of these initial recommendations would be the first steps to ensure that voting in our great state will be simple, convenient and will encourage its citizenry to actively engage in the election process.

Attachment “A”

In addition to over a dozen meetings in Baltimore City at which the Task Force engaged in its work, the Task Force held 5 meetings around the state devoted to receiving comments from the public. Those meetings were held at:

Washington County- Hagerstown Community College - Sept. 24, 2007

Prince George's County- Bowie State University - October 29, 2007

Queen Anne's County- Chesapeake College - November 12, 2007

Montgomery County- Rockville City Hall - January 8, 2008

Baltimore City- Sojourner Douglass College - January 24, 2008

The Task Force met with State Elections Director Linda Lamone and her staff on July 8, 2007.