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**FOR A JOINT OVERSIGHT HEARING ON  
“FEDERAL, STATE, AND LOCAL EFFORTS TO PREPARE FOR THE GENERAL 2008 ELECTION”  
BEFORE THE HOUSE JUDICIARY COMMITTEE'S SUBCOMMITTEE ON THE CONSTITUTION  
AND THE HOUSE ADMINISTRATION COMMITTEE'S SUBCOMMITTEE ON ELECTIONS  
UNITED STATES HOUSE OF REPRESENTATIVES  
SEPTEMBER 24, 2008**

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Several years ago, I served as a law clerk to the Honorable Damon J. Keith, a federal judge on the United States Sixth Circuit of Appeals. Judge Keith famously cautioned us that “Democracies die behind closed doors.” Democracies also die when the doors that lead to political participation and enfranchisement – hallmarks of democracy - are pushed closed. When Americans lawfully seeking to cast a ballot are deterred or disenfranchised; when eligible voters are wrongfully turned away at the polls; or when government actors fail to ensure that pathways to democracy are free from the congestion of “challengers” who block lawful voters from participating in an election – our democracy suffers.

This latter issue, the role of “election challengers,” or the presence of representatives of political parties or other groups in the polls on Election Day, has increased in prominence in recent elections.<sup>1</sup> My testimony today will detail a recent controversy in Michigan over election challengers’ potential use of foreclosure lists to challenge the residency, and thus eligibility, of voters on Election Day. I also offer five recommended actions state and local election officials can take to address this and similar controversies that may surface in the final days before the November 2008 General Election.

**THE MICHIGAN “FORECLOSE THE VOTE” CONTROVERSY**

On Wednesday, Sept 10, 2008, the website [www.michiganmessenger.com](http://www.michiganmessenger.com)<sup>2</sup> posted a story entitled “Lose Your House, Lose Your Vote” that announced “Michigan Republicans plan to foreclose African-American voters.”<sup>3</sup> The article alleged, among other things, that “[T]he

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<sup>1</sup> See, e.g., *Summit County Democratic Central And Executive Committee v. Blackwell*, 2004 U.S. Dist. LEXIS 22539 (N.D. Ohio October 31, 2004) (granting a temporary restraining order prohibiting the state from allowing challengers in the polls during the November 2004 election, out of a concern that challengers would unfairly impede the voting process through acts of intimidation and harassment); *Spencer v. Pugh/Summit County v. Blackwell* (combined) 347 F Supp 2d 528 (6th Cir. 2004) (overturning the lower court’s temporary restraining order); *Spencer v. Pugh*, 543 U.S. 1301 (2004) (affirming the Sixth Circuit’s opinion). See also “Preserving Democracy: What Went Wrong in Ohio,” Status Report of the House Judiciary Committee Democratic Staff, Jan. 4, 2005 at 40-47 (describing problems associated with challengers in Ohio during the 2004 election).

<sup>2</sup> The Michigan Messenger is located at [www.michiganmessenger.com](http://www.michiganmessenger.com), and is self-described as “an independently-produced political news daily featuring original and investigative reporting,” comprised of “a coalition of long-time progressive bloggers, freelance writers and professional journalists” with a focus on “enhance[ing] and expand[ing] the political dialog in Michigan.”

<sup>3</sup> Eartha Jane Melzer, “Lose Your House, Lose Your Vote,” Michigan Messenger, 9/10/08. The entire text of the article, as amended to reflect clarifications of statements from Douglas J. Preisse, chairman of the Franklin County

chairman of the Republican Party in Macomb County, Michigan, a key swing county in a key swing state, is planning to use a list of foreclosed homes to block people from voting in the upcoming election as part of the state GOP's effort to challenge some voters on Election Day."<sup>4</sup> It also stated, perhaps incorrectly,<sup>5</sup> that "voters who have defaulted on their house payments" were "disproportionately ... African-Americans," indicating that over 60% of all sub-prime loans in Michigan were made to African-Americans, according to a 2007 report from the Michigan Department of Labor and Economic Growth.<sup>6</sup>

Compounding the confusion was a statement in the *Michigan Messenger* story in which Joe Rozell, Director of Elections for Oakland County Clerk Ruth Johnson, appeared to "acknowledge" that challenges based on the presence of a voter's residence on a list of foreclosed homes were "allowed by law" and "have the potential to create long lines and disrupt the voting process."<sup>7</sup> The story quoted Rozell as stating that "poll workers are not allowed to ask the reason" for challenges to voters. Based on Rozell's statement and an excerpt of a directive from Michigan Secretary of State Terri Lynn Land indicating that challenges to voters' eligibility "need only be 'based on information obtained through a reliable source or means,'" the *Messenger* article concluded, "vote challengers are free to use foreclosure lists as a basis for disqualifying otherwise eligible voters."<sup>8</sup>

In the 48 hours that followed the posting of the Messenger article, the Michigan Republican Party and the Republican Party of Macomb County swiftly and strongly denounced the allegations that they were planning to use foreclosure lists to challenge voters' eligibility via a press release and interviews with several major news outlets.<sup>9</sup> The *Detroit Free Press* quoted Jim Carabelli, the Chairman of the Macomb Republican Party saying "[t]he GOP is 'absolutely

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Republican Party in Columbus Ohio, is available at <http://michiganmessenger.com/4076/lose-your-house-lose-your-vote> (last accessed: Sept. 23, 2008).

<sup>4</sup> Id.

<sup>5</sup> A subsequent article in the Detroit News contained a statement from a pastor and president of the Macomb County Ministerial Alliance that questioned the racial demographics of individuals facing foreclosures in Macomb County. See Jim Lynch and Gordon Trowbridge, "Foreclosures won't hinder voters", Detroit News, 9/12/08, available at: <http://www.detnews.com/apps/pbcs.dll/article?AID=2008809120380> (last accessed: Sept. 23, 2008);

<sup>6</sup> See Melzer, note 2, *supra*.

<sup>7</sup> Quotation is from the Michigan Messenger article, paraphrasing statements from Rozell to the author of the article. See Melzer, note 2, *supra*.

<sup>8</sup> Id.

<sup>9</sup> See, e.g., Chad Selweski, "GOP denies Web report on vote blocking," Macomb Daily, 9/11/08, available at: [http://www.macombcountymi.gov/clerksoffice/news/pdf/2008\\_09\\_11\\_Macomb\\_Daily\\_GOP\\_Denies\\_Web\\_Report.pdf](http://www.macombcountymi.gov/clerksoffice/news/pdf/2008_09_11_Macomb_Daily_GOP_Denies_Web_Report.pdf) (last accessed: Sept. 23, 2008); Jim Lynch and Gordon Trowbridge, "Foreclosures won't hinder voters", Detroit News, 9/12/08, available at: <http://www.detnews.com/apps/pbcs.dll/article?AID=2008809120380> (last accessed: Sept. 23, 2008); Kathleen Gray and Amber Hunt, "GOP won't use foreclosure list to block voters," Detroit Free Press, 9/12/08, available at: <http://www.freep.com/apps/pbcs.dll/article?AID=/20080912/NEWS15/809120346> (last accessed: Sept. 23, 2008); Matthew Miller, "Macomb County GOP leader denies plan to block votes," Lansing State Journal, 9/12/08, available at: <http://www.lansingstatejournal.com/apps/pbcs.dll/article?AID=/20080912/NEWS01/809120338/1002/NEWS01> (last accessed: Sept. 23, 2008).

not' gathering foreclosed home addresses for poll challenges."<sup>10</sup> Carabelli also issued a statement to the *Lansing State Journal* in which he said there was "no such plan."<sup>11</sup>

However, the damage was already done. The implication of the articles was that there may be members of a political party acquiring a list of foreclosed homes with plans to challenge the eligibility of voters in those homes when they arrived at the polls to vote on Election Day. The story, allegations, and subsequent denials, created confusion over a key question: is it legal under Michigan law for individuals to challenge the eligibility of voters facing or experiencing foreclosure when they arrived at the polls to vote on Election Day?

The short answer is no. Michigan law does not allow for voters to be challenged based solely on the fact that their home appears on a list of foreclosed properties. Michigan Election Law does not allow for challenges to a voter's eligibility "without good cause or for the purposes of harassment."<sup>12</sup> Under Michigan law, only Michigan residents who moved outside of their city or township to another county prior to September 4, 2008 are required to re-register and vote from their new address.<sup>13</sup> Existing federal and state law allows for voters who have moved from one Michigan county to another Michigan county within 60 days of election day to vote in the precinct associated with their previous address.<sup>14</sup> Voters who move within their county but fail to change their address prior to Election Day, are permitted to vote "one last time in the precinct where registered" provided they complete an Election Day change of address form.<sup>15</sup> Thus under state and federal law, the listing of a voter's residence on a list of foreclosed homes does not, in and of itself, provide sufficient information to indicate or even suggest that a voter has moved to a new location outside of their county prior to that date.

Nevertheless, incidents during the week after the Michigan Messenger story revealed a great deal of voter confusion as a result of the controversy. For example, Macomb County Clerk Carmella Sabaugh reported that her office received approximately 15 phone calls over the course of the two days following the publication of the article from people who were concerned that they may be unable to vote because their homes had been foreclosed. Clerk Sabaugh indicated that in her experience "if my office receives phone calls about a particular issue, there are often many, many more citizens ... who are concerned about the issue that have not called." In addition, in a

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<sup>10</sup> See Kathleen Gray and Amber Hunt, note 9, *supra*.

<sup>11</sup> See Matthew Miller, note 9, *supra*. The Lansing Journal also included statements from Bill Nowling, spokesman for the Michigan Republican Party, denying that the state party had plans to target voters facing foreclosure.

<sup>12</sup> See MCL § 168.512 (2008). The Michigan Secretary of State has interpreted this provision of the law governing voter challenges to indicate that it is "permissible for a challenger to challenge a voter" when a "challenger has good reason to believe that a person who offers to vote 1) is not a true resident of the city or township 2) has not yet attained 18 years of age 3) is not a United States citizen or 4) did not register to vote on or before the 'close of registration' for the election at hand." See The Challenge Process, Questions and Answers, available at: [http://www.michigan.gov/documents/sos/Challenger\\_QA\\_177165\\_7.pdf](http://www.michigan.gov/documents/sos/Challenger_QA_177165_7.pdf) (last accessed: Sept. 23, 2008). The document also states that a "challenger has the right to challenge any voter issued an absentee ballot who appears at the polls to vote on election day claiming that he or she never received the absentee ballot, lost the absentee ballot or destroyed the absentee ballot" and that "a challenger has the right to challenge a voter in any instance where the precinct board fails to prepare a 'challenged ballot' for a voter when required."

<sup>13</sup> See MCL§ 168.509a (2008).

<sup>14</sup> *Id.*

<sup>15</sup> The Michigan Bureau of Election has issued such clarifications to clerks in the past; a May 2006 publication from the Bureau sufficiently clarifies the law in this regard.

radio interview for “Detroit Today” on Michigan Public Radio that I participated in on September 16, 2008, nearly a full week after the Michigan Messenger story surfaced, numerous individuals called into the radio station with concerned questions about whether they would be able to vote if their home was in foreclosure.

This confusion has been compounded by a lack of explicit and vociferous clarification from relevant government authorities and election officials, including the Michigan Secretary of State. In particular, none of the major news outlets that covered the Michigan Republican Party’s immediate denials of the allegations included a direct statement from the Michigan Secretary of State indicating that the presence of a voter’s residence on a foreclosure list was not sufficient “good cause” for challenging a voters’ eligibility on Election Day under Michigan Law.

Several articles did offer some clarification on the law, but none specifically and unequivocally addressed the issue of foreclosure lists:

- *The Daily Tribune*, a newspaper for Southern Oakland County, Michigan, and the *Flint Journal*, a newspaper servicing Flint, Michigan, carried an article in which Kelly Chesney, spokeswoman for the Michigan Secretary of State, offered a partial explanation that “If you change your residency within 60 days of an election, voters may vote using their former address and polling place for one more election.”<sup>16</sup>
- *The Macomb Daily* cited a Macomb County election officials who said “those who are in default on their mortgage but still living in their home on Election Day” and “those who were forced out of their homes” after September 4, 2008, “can vote without facing any restrictions.” The article also stated that “a foreclosure victim who moves to a new address within the same [city or township] can vote one last time at their previous precinct without facing a challenge.”<sup>17</sup>
- *The Detroit News* noted that, under state law, challengers can “[c]hallenge a person’s right to vote if the challenger has a good reason to believe that person is not eligible to vote in the precinct,” and can “[c]hallenge the actions of the election inspectors serving in the precinct if the challenger believes that election law is not being followed.”<sup>18</sup>

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<sup>16</sup> Charles Crumm, “Dems File Suit Against GOP Over Challenge to Voters,” *The Daily Tribune*, 9/17/08. Available at: <http://www.dailytribune.com/articles/2008/09/17/news/doc48d11aa8c2830413965535.txt> (last accessed: Sept. 23, 2008). See also David Eggert, “Web story has both parties crying foul,” *Flint Journal* (Michigan), 9/13/08, page A01. (noting that “Secretary of State spokeswoman Kelly Chesney said voters who move within 60 days of an election can vote at their old polling place. If they move and change their address 30 or more days before an election, they must vote in their new precinct. If they change their address within 30 days of an election, they must vote in the old precinct.”)

<sup>17</sup> Chad Selwesi, “Lawsuit targets voter suppression: GOP says it never considered blocking voters facing foreclosure,” *The Macomb Daily*, 9/17/08. Available at: <http://www.macombdaily.com/articles/2008/09/17/news/srv0000003531839.txt> (last accessed: Sept. 23, 2008).

<sup>18</sup> See Jim Lynch and Gordon Trowbridge, note 9, *supra*.

## **RECOMMENDATIONS FOR PREPARATIONS FOR THE NOVEMBER 2008 ELECTION**

Based on my experience and knowledge of the so-called “Foreclose the Vote” controversy in the state of Michigan, and my understanding of the role of the State Secretary of State and local election officials in Michigan and other states,<sup>19</sup> I make the following five recommendations regarding state and local preparations for the November 2008 elections..

### **RECOMMENDATION 1**

**THE STATE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD, WHERE WITHIN THE REALM OF THEIR AUTHORITY, QUICKLY, EXPLICITLY, AND REPEATEDLY CLARIFY THE LAW REGARDING VALID AND INVALID CHALLENGES TO A VOTER’S ELIGIBILITY.**

In Michigan, the Secretary of State has the authority to issue instructions to all local election officials on the county, city, and township level regarding the administration of existing election laws. On November 1, 2006, for example, Secretary Terri Lynn Land issued an important directive to clerks in the 40<sup>th</sup> issue of the Department’s “Election News,” indicating that challengers were not permitted to “approach voters or talk to voters for any reason” or “use video cameras or recording devices in the polling place.”<sup>20</sup> In addition, in late 2007 the Secretary issued instructions to Election officials on the administration of Michigan’s new voter identification requirements, which explicitly state that “no voter may be challenged just because he or she is not in possession of picture identification or did not bring picture identification to the polls and signs an affidavit in order to vote.”<sup>21</sup>

More recently, in August 2008, Ohio Secretary of State Jennifer Brunner issued a directive to local election officials indicating that 60-day notices sent by boards of election to voters that are returned as undeliverable cannot be used as the sole reason for challenging an Ohioan’s voter registration as cancelable.<sup>22</sup> Secretary Brunner has also called on the General Assembly to amend Ohio’s 2006 voter registration challenge law.

These directives provide a laudable example of an important step that State election officials can take to protect voters from wrongful challenges, harassment and intimidation at the polls on Election Day.

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<sup>19</sup> In addition to my work as a law professor and Election Law scholar and Director of a new nonpartisan nonprofit Election Law Center, my recommendations are informed by my ongoing research for my forthcoming book entitled “Democracy and the Secretary: The Crucial Role of State Secretaries of State in Promoting an Honest and Accountable Democracy.”

<sup>20</sup> See “Election News: Issue 40,” November 1, 2006. Available at: [http://www.michigan.gov/documents/sos/Issue\\_40\\_177190\\_7.pdf](http://www.michigan.gov/documents/sos/Issue_40_177190_7.pdf) (last accessed: Sept. 23, 2008).

<sup>21</sup> See Question 12, “Picture Identification in the Polls: Questions and Answers,” a publication of the Michigan Department of State, available at: [http://www.michigan.gov/documents/sos/090507\\_Voter\\_Id\\_QA5\\_209294\\_7.pdf](http://www.michigan.gov/documents/sos/090507_Voter_Id_QA5_209294_7.pdf) (last accessed: Sept. 23, 2008).

<sup>22</sup> Press Release: “Secretary Brunner Clarifies Challenge Laws to Protect Voters,” 8/5/08, available at: <http://www.sos.state.oh.us/SOS/News/UI/Default.aspx?page=9757&AspxAutoDetectCookieSupport=1> (last accessed: Sept. 23, 2008).

It is my hope that the Michigan Secretary of State will issue a similarly clear and enforceable<sup>23</sup> directive to clerks prior to the election that clearly and explicitly states that it is not “good cause” under Michigan law to challenge a voter based solely on the fact that their home is facing foreclosure. The directive should also reiterate existing federal and state law governing voters who have moved between elections, clarifying that voters who have moved from one Michigan county to another Michigan county within 60 days of election day are permitted to vote in the precinct associated with their previous address.<sup>24</sup> Also, voters who move within their county but fail to change their address prior to Election Day, are permitted to vote “one last time in the precinct where registered” provided they complete an Election Day change of address form.<sup>25</sup>

It is also my hope that Secretary Land will issue such a directive prior to Michigan’s October 6 voter registration deadline, given the current public confusion surrounding this issue. The directive will both assure voters that they will not lose their right to vote based only upon the matching of their home address with a list of foreclosed properties, while ensuring that all local election officials, poll workers, and other relevant parties have a clear, consistent statement on the boundaries of legal challenges to voters on Election Day.

## **RECOMMENDATION 2**

### **THE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD ENGAGE IN EXTENSIVE PUBLIC EDUCATION ON THE RULES AND PROCEDURES GOVERNING THE VOTING PROCESS.**

In addition to issuing a clear and explicit directive barring the use of foreclosure lists as the sole basis for challenging a voter’s eligibility to vote, the State Secretary of State and local clerks on the county, city, and township level must publicize the fact that challenges to voters’ eligibility based solely on the fact that their home is being foreclosed will not succeed. This public education campaign should include, but cannot be limited to, direct statements to the press and information posted to the Secretary’s or a clerk’s website. For example, in Michigan, Macomb County Clerk Carmella Sabaugh acted quickly in response to the *Michigan Messenger* allegations to issue a press statement with the headline: “You Do Not Have to Own Property in Order to Vote, At Least Since 1850.”<sup>26</sup> Importantly, the statement included a quote from Clerk Sabaugh, clearly and explicitly stating that “[c]itizens whose homes are foreclosed still have the right to vote!”<sup>27</sup>

However, press releases and statements to reporters alone will not reach many voters,<sup>28</sup> It is important for election officials to develop public service announcements for local and cable

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<sup>23</sup> There is also precedent in Michigan law to indicate that these directives carry the enforceability of law, and a private cause of action. *See, e.g.,* Amber Hunt and John Wisely, *Turnout High, With Some Glitches, Workers Say*, DETROIT FREE PRESS, Nov. 8, 2006, at 11 (describing lawsuits filed by political parties on Election Day in Detroit, Michigan over compliance with the Secretary of State’s ban on challengers talking to voters).

<sup>24</sup> See MCL § 168.509a (2008).

<sup>25</sup> The Michigan Bureau of Election has issued such clarifications to clerks in the past; a May 2006 publication from the Bureau sufficiently clarifies the law in this regard.

<sup>26</sup> The Press Release is available at:

<http://www.macombcountymi.gov/CLERKSOFFICE/news/htm/YouDontHaveToOwnProperty.htm> (last accessed: Sept. 23, 2008).

<sup>27</sup> *Id.*

<sup>28</sup> For example, Heaster Wheeler, Executive Director of the Detroit Branch NAACP, estimates that 50% of residents in the city of Detroit, Michigan do not have regular access to the internet.

television, and traditional and community-based radio stations, In addition, to address the foreclosure confusion in Michigan, the Michigan Secretary of State should develop and distribute materials to be posted in every one of Michigan's over 5200 polling places, including posters and other visible and easily accessible resources, that explicitly state the rules for valid challenges and eliminate any confusion about rules for voters who have moved or changes residences prior to the election. This information should also be posted prior to Election Day in every local Secretary of State office, and the office of every county and local clerk.

Finally, where possible, election officials should go beyond traditional means of information dissemination and directly contact voters through mailings or phone calls to ensure that voters have access to all relevant information prior to Election Day. Recent actions by the Georgia Secretary of State Karen Handel provide a bold example of this sort of direct and thorough voter education. After a federal court mandated that she engage in an extensive voter education effort to inform Georgia citizens about the state's new voter photo identification requirements, Secretary Handel sent several mailings explaining the law directly to over 166,000 registered Georgia voters who, according to state records, did not possess a Georgia driver's license or state identification card.<sup>29</sup> The mailings were designed to ensure that voters in Georgia who were most likely to be adversely affected by the state's photo identification requirement for voters had access to information about how to comply with the new law.

### **RECOMMENDATION 3**

**THE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD BUILD COLLABORATIVE WORKING RELATIONSHIPS WITH COMMUNITY BASED ORGANIZATIONS TO PROMOTE VOTER EDUCATION ABOUT VOTING REQUIREMENTS AND DISPEL MYTHS ABOUT VOTING ELIGIBILITY.**

In conjunction with an extensive public information campaign, state and local election officials in Michigan should work closely with nonpartisan community based organizations to, specifically, discuss the best methods to reach constituencies and individuals facing foreclosure who may be confused about the law and, more generally, to ensure that the government's education efforts are tailored to the needs of various constituencies. For example, in Michigan, Heaster Wheeler, Executive Director of the Detroit Branch NAACP, has indicated that his organization hopes to hold a press conference with the Michigan Secretary of State and local election officials in Detroit to reiterate and reassure all voters that they will not lose their right to vote just because they are facing foreclosure. Wheeler believes that the Michigan Secretary of State in particular needs to engage in an "aggressive" public information campaign that involves "bold" statements to assure voters that their right to vote will not be affected by the foreclosure crisis. Such relationships can also ensure the development and availability of, where necessary, translations of voter education materials for English Learning citizens, and relevant and accessible information for voters with physical disabilities.

### **RECOMMENDATION 4**

**THE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD, WHERE WITHIN THE REALM OF THEIR AUTHORITY, DEVELOP REGULATIONS AND SET PARAMETERS FOR ELECTION**

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<sup>29</sup> See Secretary Handel Begins Phase Two of Photo ID Outreach, Press Statement available at: <http://www.karenhandel.com/default.asp?pt=newsdescr&RI=285> (last accessed: Sept. 23, 2008).

**CHALLENGERS AND ENSURE THE CONSISTENT ENFORCEMENT OF THESE PARAMETERS ON ELECTION DAY.**

It is crucial that the Secretary of State develop, within the confines of state and federal law, explicit regulations and parameters for election challengers.

The Michigan Bureau of Elections has taken clear steps in this regard, as exemplified in the Bureau's enforceable directive from 2006, also described above, which bars challengers from approaching or talking to voters or using "video cameras or recording devices in the polling place." The Michigan Bureau of Elections has also in the past issued clarifications to clerks on the proper role of election challengers under Michigan law, and has published both a guide entitled "The Appointment, Rights, and Duties of Election Challengers and Poll Watchers"<sup>30</sup> and a document that provides "Questions and Answers" on the "Challenge Process."<sup>31</sup>

In addition to the development and dissemination of these materials via the education efforts and community partnerships described in recommendations 2 and 3, it is my hope that in the future, the laws in Michigan and other states will mandate trainings for all challengers who seek to work in the polls on Election Day. Currently, there are no mandates under Michigan law that challengers partake in any election law training, nor is there any requirement that challengers demonstrate any sufficient or accurate understanding of the laws governing the limitations on their role prior to entering the polling place on Election Day.

**RECOMMENDATION 5**

**THE SECRETARY OF STATE AND LOCAL ELECTION OFFICIALS SHOULD, WHERE WITHIN THE REALM OF THEIR AUTHORITY, ENSURE THAT ALL POLL WORKERS ARE WELL TRAINED AND FULLY AWARE OF THE LAWS GOVERNING THE RIGHTS AND LIMITATIONS OF CHALLENGERS.**

Poll worker training responsibility and requirements vary from state to state, but in general the parameters are governed by either state or local election officials. In Michigan, the Bureau of Elections is currently developing a poll worker training program that will instruct individuals who train poll worker on clear rules on dealing with election challengers and any challenges they issue on Election Day.

It is crucial that these programs, particularly when developed at the statewide level, include methods of evaluating the extent to which the information is clearly, consistently, and accurately reaching the individual poll worker and poll worker supervisor. These methods can include the development of video trainings at the state level for use in local trainings, and the use of statewide tests and evaluations for individual poll workers. Another useful Election Day evaluation tool can include "comment cards" that empower voters who interact with the poll

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<sup>30</sup> As of September 23, 2008, the most recently updated version of this document was published in September 2003, and is available on the Michigan Secretary of State's website at: [http://www.michigan.gov/documents/SOS\\_ED\\_2\\_CHALLENGERS\\_77017\\_7.pdf](http://www.michigan.gov/documents/SOS_ED_2_CHALLENGERS_77017_7.pdf). (last accessed: Sept. 23, 2008). The document states that it is "not intended as a complete interpretation of the law" governing challengers on Election Day.

<sup>31</sup> The document is available at: [http://www.michigan.gov/documents/sos/Challenger\\_QA\\_177165\\_7.pdf](http://www.michigan.gov/documents/sos/Challenger_QA_177165_7.pdf) (last accessed: Sept. 23, 2008).



worker to evaluate and offer positive or negative feedback on the helpfulness of the poll worker to the state and local election officials.<sup>32</sup>

## **CONCLUSION**

The above narrative describing the recent controversy over the use of foreclosure lists to challenge voters' eligibility in Michigan illustrates what could be a brewing storm in advance of this November's election. It is not beyond the realm of possibility that such lists could be used to challenge voters in other states, nor is it unthinkable that other nefarious means of blocking voters from the polls could be developed prior to Election Day. As such, it is crucial that state and local election officials make it a priority to engage in deep and systematic legal and grassroots education efforts – aimed at other election administrators, poll workers, challengers, and most importantly, voters – in these final weeks leading up to the November election. My recommendations offer some suggestions to further that goal, based on my experience and belief that election officials are the “guardians” of our American democracy.<sup>33</sup> Their primary responsibility to ensure that our democracy is alive and well, and that the doorways to democracy are opened wide, and that every eligible voter who wishes to vote on Election Day is able to do so.

Thank you for the opportunity to present this testimony.

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<sup>32</sup> It is also worth noting, as this Committee is no doubt aware, of several other reforms beyond trainings are required to support the development of a strong poll worker force throughout the country on Election Day. Such reforms, including an increase in pay for poll workers and extensive recruitment efforts, are necessary but may go beyond the scope of my current testimony.

<sup>33</sup> As stated by NASS President, Pennsylvania Secretary of State Pedro Cortes at the July 2008 meeting of the National Association of Secretaries of State (NASS).