

STATEMENT OF JOHN C. BONIFAZ
LEGAL DIRECTOR OF VOTER ACTION

BEFORE

THE COMMITTEE ON HOUSE ADMINISTRATION
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON THE 2008 PRESIDENTIAL PRIMARIES AND CAUCUSES:
“WHAT WE’VE LEARNED SO FAR”
WEDNESDAY, APRIL 9, 2008

Good morning, Mr. Chairman and Members of the Committee. My name is John Bonifaz. I serve as the legal director of Voter Action, a national non-profit and non-partisan organization dedicated to protecting our elections and our right to vote. Voter Action emerged in early 2005, following questions which arose in the 2004 presidential election concerning the reliability and accuracy of our vote-counting process. Since that time, Voter Action has been at the forefront of the election integrity movement in the United States, fighting to ensure that our elections remain in the public domain, controlled by the voters. Through legal advocacy, research, and public education, we aim to protect an open and transparent election process, one in which our elections at the federal, state, and local levels are accessible and verifiable.

Prior to joining Voter Action, I was the founder of the National Voting Rights Institute and served as its executive director from 1994 to 2004, and its general counsel from 2004-2006. While working as the Institute’s general counsel, I served as the lead attorney for a coalition of candidates and voters seeking a full and meaningful recount of the 2004 presidential vote in the State of Ohio. During that time, I testified before a congressional panel in Columbus, Ohio, and in Washington, DC, investigating widespread reports of voting irregularities in Ohio’s 2004 presidential election.

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In 2006, Voter Action initiated the “Watch the Vote Program,” an original effort to provide legal and organizational resources for citizen-led monitoring activities in the 2006 election with state and national partner organizations. In January of 2007, Voter Action co-authored a report on collected findings from the 2006 mid-term elections based on data gathered via this election monitoring work. The report, which documented serious problems with our nation’s voting systems, is available via our website at www.voteraction.org.

Voter Action has recently joined with the NAACP National Voter Fund and the MyVote1 hotline (866-MyVote1) to engage in election monitoring and protection of the 2008 election. Through this work, we will be able to 1) provide assistance to voters with questions or problems during the 2008 election cycle; 2) collect data from voters on election concerns that can be used to help improve access to the nation’s electoral process; and 3) support and enhance citizen-led efforts to become more engaged in public oversight of the electoral process. We share the view that such public oversight can play a critical role in protecting the integrity of our elections.

The data collected via the MyVote1 hotline thus far in the 2008 presidential election cycle highlights, in part, a growing concern with a new phenomenon in our democracy: election privatization. Jurisdictions across the country are increasingly outsourcing to private vendors key election functions and, in the process, compromising the transparency and public control of our elections. A powerful example of this can be found in what happened this past February in the Georgia primary.

As with a number of states today, Georgia uses privatized electronic poll books, manufactured by Diebold Election Systems (now known as Premier Election Solutions).

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These electronic poll books determine whether or not a voter is able to access the ballot. During the February 5, 2008 primary, the MyVote1 hotline received numerous calls from voters in at least five Georgia counties reporting that the electronic poll books were crashing and inoperable, leading to long lines and citizens leaving polling sites without casting ballots.

This is, unfortunately, not an isolated matter. In the New Mexico presidential caucus for the Democratic Party on February 5, 2008, a flawed voter registration database prepared for the state by the Elections Systems & Software Company led to thousands of voters having to cast provisional ballots when their names did not appear on the voting rolls. Voters in other states, including Arizona, Louisiana, Maryland, New Jersey, and Utah, have reported similar problems with accessing the ballot this primary election season. And, today, thirty-three states are slated to use electronic voting machines this November for the counting and recording of votes, despite a growing body of evidence that such systems are unreliable and do not meet basic security standards. With this growing influence and control by private companies in how we conduct our elections in this country, our democracy remains at serious risk.

What can we do to address this danger and protect the integrity of our elections? First, citizen-led monitoring of our elections, such as the MyVote1 effort, is critically needed to identify election concerns and to collect the data from voters on election day. Without the MyVote1 hotline, it is unclear whether we would have learned of the extent of the problems with electronic poll books in Georgia in the February 5th primary. Such election monitoring work provides the added benefit of engaging further ordinary citizens in the ownership of our democracy.

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Second, the Election Assistance Commission (“EAC”), of which this Committee has direct oversight, is not currently fulfilling its statutory duties as set forth by Section 202 of the Help America Vote Act of 2002. As “a national clearinghouse and resource,” the EAC ought to be reviewing and analyzing the data gathered by the MyVote1 hotline and other such efforts so as “to promote the effective administration of Federal elections.” Further, the EAC does not engage in testing electronic poll books because, the agency claims, electronic poll books are not part of a voting system. And, the EAC has yet to carry out its duties related to the certification, decertification, and recertification of voting system hardware and software. To date, it has not certified a single voting system in the United States to the new voting system standards it issued in December 2005.

Finally, we must reclaim public control of our public elections. This means that the election process must be transparent, accountable, and verifiable. When private companies deny independent investigation and review of their voting systems – as occurred with the ES&S Company in the 2006 congressional election in Sarasota County, Florida, or, more recently, with the Sequoia Voting System Company in the February 5, 2008 New Jersey primary – the integrity of the election process is undermined. When voting systems, including privatized voter registration databases and electronic poll books, are found to be unreliable, election officials ought to discontinue their use and employ safer and more accurate systems. When questions repeatedly emerge every election as to whether votes are being properly counted – as they have in the past several election cycles, rigorous and mandatory audits ought to be required with voter-marked paper ballot systems that are, in fact, auditable.



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More than a century ago, the United States Supreme Court stated in the case of *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), that the right to vote is “a fundamental political right” which is “preservative of all rights.” In 2008, we must remain ever-vigilant in protecting this most basic right. Democracy demands no less.

Thank you.