



**Testimony of  
John Fund  
Before the  
U.S. Commission on Civil Rights  
Hearing on Voter Fraud and Intimidation  
October 13, 2006  
and  
House Judiciary Committee**

**Hearing: "Protecting the Right to Vote: Election Deception and Irregularities in Recent Federal Elections"  
March 7, 2007**

I want to thank the Commissioners for addressing this important issue because we may be only three weeks away from repeating the 2000 Florida election debacle, although this time not in one but in several states with allegations of voter fraud, intimidation, and manipulation of voting machines added to the generalized chaos we saw in Florida.

It's time to acknowledge the U.S. still has in many places a haphazard election system that is more befitting an emerging nation than the world's leading democracy.

Walter Dean Burnham has called our system the world's sloppiest electoral process. How sloppy? Just ask the residents of Maryland last month who saw their primary election thrown into chaos after electronic voting machines couldn't be activated. Thousands of voters gave up and went home surrendering their right to vote.

Now we have the prospect of both candidates for governor in Maryland, the Republican Governor Bob Ehrlich and the Democratic challenger, Mr. O'Malley, calling on voters to cast their ballots by absentee. This shows a complete lack of confidence in our election system, and this presents us with two possible problems.

If Donna Brazile and others are legitimately worried about voter intimidation, the easiest ballots to intimidate voters over are absentee ballots because they're cast outside of the purview and the authority of election officials, and we have a long history in this country of people being intimidated either by their spouses, their relatives, their employers, union officials, or others into casting an absentee ballot a certain way. More absentee ballots equals more voter intimidation.

In addition, absentee ballots are the most easy method to commit voter fraud, again, because they're cast outside the view and the authority of election officials.

The 2000 Florida recount was more than merely a national embarrassment. It left a lasting scar on the American political psyche. Indeed, the level of suspicion is such that many Americans are convinced that politicians can't be trusted to play by the rules and will either commit fraud or intimidate voters at the slightest opportunity.

Now, the 2000 election did result in some modest reforms at the federal level, such as the Help America Vote Act of 2002, but the implementation has been slow. Although I will say one positive outcome of the HAVA Act is that Donna Brazile's sister, if she did not produce all of the ID that she thought she needed to produce, would have been allowed under HAVA to request a provisional ballot. That provisional ballot would have been counted later after she had established her eligibility. So under the current system if you don't have the ID, you're allowed a provisional ballot. That provisional ballot will be counted if you are, indeed, an eligible voter.

America's election problems go beyond the strapped budgets of many local election offices. More insidious are flawed voter rolls, voter ignorance, lackadaisical law enforcement, and the shortage of trained volunteers at the polls.

Something like 70 percent of our poll workers are going to be retiring in the next year. It's an old person's occupation. We need to find some way to bring young people, college students, high school students into the process.

All of this adds up to an open invitation for errors, miscount or fraud. Reform is easy to talk about, but difficult to bring about. Many of the suggested improvements, such as requiring voters to show ID at the polls, are bitterly opposed. Others such as improving the security of absentee ballots, which Professor Pastor mentioned, are largely ignored.

And of course, the biggest growth sector of our election industry has been the turning of election day into election month through a new legal quagmire, election by litigation. Every close race now carries with it the prospect of demands for recounts, lawsuits, and seating challenges in Congress. Some people joke that

they're waiting for the day that the politicians can just cut out the middle man and settle all elections in court.

That gallows humor may be entirely appropriate given the predicament we face. The 2000 election may have marked a permanent change in how an election can be decided. We need to restore public confidence.

Ironically, Mexico and many other countries have election systems that are more secure than ours. It wouldn't be possible in Mexico to have a situation that we have in many of our American cities where the voter roles have more names on them than the U.S. Census lists as the total number of residents over the age of 18.

Philadelphia's voter roles, for instance, have jumped 24 percent in the last ten years at the same time the city's population has declined by 15 percent. Something is going on there, and it probably does not lead us to greater accuracy at the polls.

In the U.S. at a time of heightened security and rules that require us to show ID to travel and to enter most federal buildings, only about 25 states require some form of documentation in order to vote. A recent Wall Street Journal-NBC News poll confirms every other poll that I've seen on this subject. It found that over 81 percent of those surveyed supported the requirement to show photo ID. This included two-thirds majorities of African Americans, two-thirds majorities of Democrats, two-thirds majorities of Hispanics. In fact, I will make a stipulation I normally don't. If you can bring me evidence of a major public policy question which has the levels of support that we see on photo ID, 81 percent and greater, I'll make a donation to your favorite charity. There simply, you don't get beyond 81 percent. You simply don't.

Andrew Young, who is the former U.N. Ambassador and the former Mayor of Atlanta, makes a very good point about photo ID. Of course we have to make sure this is accessible. Of course we have to make sure this is accessible. Of course we have to make sure that it's free to anyone who can't afford it. Of course we have to make sure that it's not another barrier.

But there's also an advantage to photo ID. In modern 21st Century America if you don't have photo ID, you are cut out of the mainstream of American life. You can't really travel. You can't really apply for a job. You can't really do a lot of things in life that, frankly, would bring you into the mainstream and make your life more rich.

Andrew Young points out we are helping the poor. We are helping the indigent. We are helping many people out of the mainstream of American life if we get them a photo ID. They need to have it to be fully participatory in America's life.

Election fraud, whether it's phony voter registrations, illegal absentee ballots, shady recounts or old fashioned ballot box stuffing can be found in every part of the U.S. Fraud can be found in rural areas and in major cities. If you want to find some interesting witnesses for voter fraud, I suggest you go to St. Louis and Detroit where we've recently had Democratic primaries for mayor.

In these Democratic primaries, the losing candidates have presented some compelling evidence of either massive voter official incompetence or outright fraud. Freeman Hendrix, the losing candidate for Mayor of Detroit in the Democratic primary in the last election, says that the election was conducted under conditions of massive fraud. There's an ongoing FBI investigation into that, and he has called for photo ID at the polls, and he's a Democrat and a minority.

Investigations of voter fraud are inherently political because they often involve touchy situations which people, frankly, don't want to address fully, conditions that harken back to the great debates we had over the civil rights struggle in the 1960s.

And I want to address that because we fought a great civil rights hurdle in the 1960s to make sure that poll taxes and other barriers to voting would be dropped and would never again stain America's conscience. We need to continue that struggle. It's one of the reasons we just extended the Voting Rights Act for the next 25 years.

But I would remind people that there is another civil right at stake here. When voters are disenfranchised by the counting of improperly cast ballots or outright fraud or, frankly, the incompetence of election officials, their civil rights are violated just as surely as if they had been prevented from voting. The integrity of the ballot box is just as important to the credibility of elections as access to the ballot box is.

Voting irregularities have a long pedigree in America, stretching back to the founding of the nation. Many people thought that those bad, old days had ended, just as many people think that there no longer is any form of voter intimidation.

That's not the case. Voter intimidation does continue. Voter fraud does continue. Let me give you an example of how historical ghosts can come back to haunt us.

In 1948, pistol packing Texas sheriffs helped stuff ballot box 13, stealing a United States Senate seat and sending Lyndon Johnson on his road to the White House. That's been documented in Robert Caro's biography.

Amazingly, 56 years later came the 2004 primary election in that same part of Texas with Representative Sero Rodriguez, a Democrat and chairman of the Hispanic Caucus in the U.S. House, charged that during

the recount a missing ballot box once again appeared in south Texas with just enough votes to make his opponent, the Democratic nominee, by 58 votes. Political bosses, such as Richard J. Daley or George Wallace, may have died, but they do have successors. Even after Florida 2000, the media and others tend to downplay or ignore stories of election incompetence, manipulation or theft. Allowing such abuses to vanish into an informational black hole in effect legitimizes them.

The refusal to insist on simple procedural changes, such as requiring a photo ID, improving absentee ballot procedures, secure technology, and more vigorous oversight, accelerates our drift towards more chaotic and contested elections.

In conclusion, I would remind you that I never expected to live in a country where officials in places like Miami and other cities would hire the Center for Democracy, which normally oversees voting in places such as Guatemala or Albania, to send election monitors to south Florida and other places in the 2002 and 2004 elections. Scrutinizing our elections the way we have traditionally scrutinized voting in developing countries is unfortunately a necessary step in the right direction.

Before we get the clearer laws and better protections, we need to deal with fraud and voter mishaps. We need to have a sense of the magnitude of the problem we have. I hope and trust that you as Commissioners of this body can help in that process.