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**STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR
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ON
“LESSONS LEARNED FROM THE 2008 ELECTION”
BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND CIVIL LIBERTIES**

March 19, 2009

Good morning. My name is Hilary Shelton and I am the Director of the Washington Bureau of the NAACP, our Nation’s oldest, largest and most widely-recognized grassroots-based civil rights organization. The NAACP’s Washington Bureau is the legislative and public policy arm of the NAACP. Our organization currently has more than 2,200 membership units with members in every state across the country.

I would like to begin by thanking and commending the Subcommittee for holding this hearing. The right to vote is the cornerstone of our Nation’s democracy. Throughout our history, countless Americans have fought and died to protect the right of people across the globe to cast a free and unfettered ballot and to have that vote counted. We owe it to these men and women and their families to ensure that the right to vote is protected.

The NAACP has been in existence for more than 100 years, and since our inception we have fought for equal voting rights for all Americans. Sadly, our struggle continues as there is still voter suppression throughout the United States. While the 2008 election saw some improvements in terms of voting rights, we also saw that there is still much to be done before the promise of democracy is universally fulfilled.

In our pursuit of equal voting rights for all Americans, the NAACP was involved in three lawsuits of note in relation to the 2008 election. Before I provide you details about these cases, however, I would like to add that it is our experience that they are not isolated incidents: indeed, all three examples are indicative of

problems that sadly are rampant throughout the Nation and should be addressed by federal legislation before the next election is held.

In the first case, *NAACP Pennsylvania State Conference v Cortes*, the Pennsylvania State Conference of the NAACP under the leadership of State Conference President Jerome Mondesire and other voting rights groups and private citizens filed for an injunction requiring Pennsylvania to furnish emergency paper ballots to any precinct at which at least half the electronic vote-counting machines had broken down. The state's position had been that it would only provide such paper ballots to precincts in which all the machines had stopped working. In granting the Pennsylvania State Conference's request for an injunction the Court wrote, "Some waiting in line, of course, is inevitable and must be expected. One must always choose between and among a number of candidates for different offices listed on the ballot and often, as in this election, there are questions to be read and considered. All of this takes time. Nonetheless, there can come a point when the burden of standing in a queue ceases to be an inconvenience or annoyance and becomes a constitutional violation because it, in effect, denies a person the right to exercise his or her franchise."

In the second case, *John B. Curley v. Lake County Board of Elections / United Steel Workers District 7, et al. v. Lake County Board of Elections* the NAACP Indiana State Conference under the leadership of State Conference President Barbara Bolling intervened as a defendant in a lawsuit against the Lake County, Indiana Board of Elections. The plaintiffs sought to enjoin the Lake County Board of Elections and Registration and the Lake County Clerk from establishing early voting sites in the cities of Gary, Hammond and East Chicago. On October 22, 2008, the court granted intervener NAACP's motion for a preliminary injunction. The court enjoined the Lake County Board of Elections from closing early voting sites in Gary, Hammond and East Chicago. In its ruling, the court stated that "providing early voting in the community of Crown Point, with an overwhelming white population, and denying accessible early voting to the majority of Lake County's African American and Latino residents, would violate Section 2 of the federal Voting Rights Act." The plaintiffs appealed the case. The Indiana Supreme Court denied certiorari. The plaintiffs appealed to the Indiana Court of Appeals. Oral argument was held on October 30, 2008. The Board of Elections, Steel Workers and the NAACP prevailed on appeal and early voting continued for voters in Gary, Hammond and East Chicago.

The third case I would like to bring to your attention is *Michigan State Conference of NAACP Branches et al. v. Terri Lynn Land, Michigan Secretary of State, et al.* On October 7, 2008, the Michigan State Conference of NAACP Branches under the leadership of State Conference President Yvonne White filed a lawsuit against the Michigan Secretary of State. The lawsuit alleged that Michigan's voter purging and cancellation procedures violate the National Voter Registration Act, the Civil Rights Act of 1964 and First and Fourteenth Amendments of U.S.

Constitution. The lawsuit challenged the Michigan Bureau of Elections' policy of immediately canceling a voter's registration upon learning that said voter had obtained driver's licenses in other states. In addition, the lawsuit challenges provisions of the Michigan Election Law that call for the rejection of newly registered voters whose original voter identification cards are returned by the post office as undeliverable. Federal appeals ruled in the NAACP and other plaintiffs' favor, thereby permitting more than 5,550 purged voters to be returned to the rolls before Election Day.

As I said before, sadly these three cases are not isolated incidents: we hear of instances in which the voting rights of racial and ethnic minority communities are routinely targeted. What is perhaps more frightening, however, is the fact that some efforts to disenfranchise whole communities are also taking place at the federal level. As I testified before this subcommittee just last year, the move toward requiring a government-issued photo identification from potential voters is a blatant attempt to disenfranchise whole communities much in the spirit of poll taxes.

While supporters of these initiatives purport to be combating "voter fraud," (a "problem" which, as numerous studies have shown, is not really a problem when compared to other issues currently faced by our Nation's electoral system), what these laws are in fact doing is creating a barrier to keep the up to 20 million Americans who do not have government-issued photo IDs out of the ballot booth. And I would hasten to add that a disproportionate number of these people who do not have government-issued IDs are racial or ethnic minorities or low-income Americans. Furthermore, studies of recent elections show that the application of photo-id requirements is biased: whether purposeful or not, poll workers tend to ask African Americans and other racial and ethnic minority voters for their photo identification at much greater rates than they do Caucasian voters¹.

Lastly, I would like to raise a disenfranchisement issue that first came into the national spotlight with the 2000 election, but that the NAACP has been concerned about for decades. Nationally, 5.3 million Americans are not allowed to vote because they have been convicted of a felony, regardless of the nature of the offense or how much time has elapsed since their conviction. Three fourths of

¹ Stephen Ansolobehere, "Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day," *PS: Political Science & Politics* (2009), 42:127-130 Cambridge University Press, The American Political Science Association 2009

Atkeson, et.al, *New Barriers to Participation: Application of New Mexico's Voter Identification Law,*" Caltech/MIT Voting Technology Project, 2008.

Stewart, et. al, "Evaluating the Performance of Election Administration Across the States: Lessons from the 200 Gubernatorial Elections and the 2008 Super Tuesday," Paper prepared for the American Political Science Association, August 27-September 1, 2008.

these Americans are no longer in jail. And because of the racial disparities inherent in our criminal justice system, African American men are disenfranchised at a much greater rate: in the 2008 election, 1 in 8 African American men were not allowed to vote because of ex-offender disenfranchisement laws².

While the good news is that since 1997, 19 states have amended felony disenfranchisement policies in an effort to reduce their restrictiveness and expand voter eligibility³ and citizen participation, much more needs to be done to make ex-offender re-enfranchisement more uniform across the nation. State laws vary when it comes to defining a felony and in determining if people who are no longer incarcerated can vote. Thus it is possible that in some states, a person can lose their right to vote forever if he or she writes one bad check. The process to regain one's right to vote in any state is often difficult and cumbersome. Most states require specific gubernatorial action, and in several states federal ex-felons need a presidential pardon to regain their voting rights.

So to summarize, the NAACP calls for stronger federal laws to protect and enhance the rights of all Americans to cast a free and unfettered vote and to ensure that their vote is counted. Specifically, the NAACP calls for federal laws to:

- Require guaranteed early voting throughout the country with no excuse required;
- Allow same-day registration nationally;
- Outlaw "voter caging", a practice by which mail is sent to a registered voter's address and, if the mail is returned as "undeliverable" or if it is delivered and the voter does not respond, his or her registration is challenged;
- Clarify and strengthen the use of provisional ballots;
- Make voter intimidation and deception punishable by law, with strong penalties so that people who commit these crimes suffer more than just a slap on the wrist, and establish a process for reaching out to misinformed voters with accurate information so they can cast their votes in time; and
- Allow ex-offenders, once they are out of prison, the opportunity to register and vote in federal elections without challenges or complication.

As I said at the beginning of my statement, many of the incidents that I have reported here, and many more of the stories that we have heard today are as sad as they are avoidable. I think that everyone in this room, and in fact, the vast majority of Americans, would agree that Congress can and should do more to make sure that every eligible American can cast a free and unfettered vote and

² Ryan King, "Expanding the Vote: State Felony Disenfranchisement Reform 1997 – 2008" the Sentencing Project, September 2008

³ *ibid*

should rest assured that their vote will be counted. As such, the NAACP stands ready to work with the subcommittee and the Congress to pass comprehensive, effective voter reform legislation.