



**TESTIMONY OF
U.S. SENATOR BENJAMIN L. CARDIN OF MARYLAND
BEFORE THE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
HEARING ON
"PROTECTING THE RIGHT TO VOTE: ELECTION DECEPTION AND IRREGULARITIES IN RECENT
FEDERAL ELECTIONS"
WEDNESDAY, MARCH 7, 2007**

Chairman Conyers, Ranking Member Smith, thank you for the opportunity to testify today before the House Judiciary Committee on the critical subject of election deception and irregularities in recent federal elections. I am privileged to appear before you with such a distinguished panel of members of Congress, including Senator Obama, Congresswoman Loretta Sanchez, and Congressman Emmanuel.

In the interest of full disclosure, let me begin by stating that I greatly enjoyed my previous service on this committee which began when I was first elected to the House and was appointed to serve on the Judiciary Committee in 1987 under Chairman Peter Rodino of New Jersey. After serving twenty years in the House of Representatives representing the Third Congressional District of Maryland, I was honored to be elected to the United States Senate in 2006. And I find myself privileged to serve again on the Judiciary Committee of the other body, and I look forward to working with this committee in my new capacity.

Today I come before the committee to testify in part as a fact witness to discuss what happened during the 2006 U.S. Senate election in Maryland.

After a lengthy campaign which began shortly after the retirement announcement of former U.S. Senator Paul Sarbanes in the spring of 2005, I was nominated by the Democratic Party in September 2006 as our U.S. Senate candidate. Former Lt. Governor Michael Steele was the Republican nominee for U.S. Senate. Former Baltimore Mayor Martin O'Malley was the Democratic candidate for Governor challenging the Republican incumbent Robert Ehrlich.

Former Congressman Kweisi Mfume, who is a friend with whom I represented Baltimore City in the U.S. House of Representatives, ran against me for the Democratic nomination and lost. He subsequently endorsed me as the U.S. Senate nominee for the general election, as did Prince George's County Executive Jack Johnson. They both are prominent African-Americans leaders in Maryland and appeared at several campaign events on my behalf as I prepared to face off against Lt. Governor Steele in the November general election.

Imagine my surprise then to discover on Election Day that the Republican campaigns for Governor and Senator in Maryland had distributed this literature. I would ask unanimous consent to have a copy of this literature inserted in the hearing record today.

Let me take a minute to walk through it, since it is one of the tactics that would be prohibited under the pending legislation before this committee.

The title of the piece is "Ehrlich-Steele Democrats" and "Official Voter Guide." The cover page prominently displays three African-American politicians: former Prince George's County Executive Wayne Curry, former Congressman Mfume, and current Prince George's County Executive Jack Johnson. Under their names is the statement "These are OUR choices," implying that all 3 gentlemen had endorsed Mr. Ehrlich for governor and Mr. Steele for senator. That is false. Mr. Mfume and Mr. Johnson endorsed my candidacy over Mr. Steele for the Senate. The flyer concludes with a citation to the general election, on Tuesday, November 7, 2006, and legal authority lines (required under Maryland election law) noting that the literature was "paid and authorized" by both the Ehrlich and Steele campaigns.

On the inside a large sample ballot is printed with the title "Democratic Sample Ballot," with the correct date and times for the elections. The entire sample ballot endorses Democratic candidates for local, county, state, and federal offices, with two exceptions: the "Democratic Sample Ballot" endorses the re-election of the Republican Governor Robert Ehrlich, and the election of Republican U.S. Senate candidate Michael Steele.

Mr. Chairman, this type of deceptive literature is despicable and outrageous. It is clearly designed to mislead African-American voters, who have a legal right to vote and pick the candidate of their choice. I was also upset to learn, according to articles in the Washington Post and Baltimore Sun, that the Ehrlich and Steele campaigns had bused in homeless African-Americans individuals from Philadelphia to hand out this deceptive literature on Election Day. These individuals from Philadelphia were given \$100 and two meals, but many told the newspapers that they were not aware they were working for the Republican Party on that day. Finally, the Washington Post reported that a Maryland Republican election worker guide

for poll workers stated that their "most important duty as a poll worker is to challenge people" trying to vote. This election guide was rightfully denounced by civil rights groups as a voter suppression and intimidation effort.

After having served in elective office in Annapolis for 20 years and in Washington for 20 years, I understand that campaigns are a rough and tumble business. I expect that candidates will question and criticize my record and judgment, and voters ultimately have a right to choose their candidate.

What goes beyond the pale, Mr. Chairman, is when a campaign uses deceptive tactics to deliberately marginalize minority voters. Sadly, Mr. Chairman, the tactics we saw in Maryland are not new, and in previous years deceptive practices in Baltimore City, the State of Maryland, and throughout the United States involved handing out false and deceptive literature in African-American neighborhoods. In previous elections we have seen deceptive literature distributed which gave the wrong date for the election, the wrong times when polling places were open, and even suggested that people could be arrested if they had unpaid parking tickets or taxes and tried to vote. My colleagues on the panel, I am sure, will discuss other such tactics designed to suppress minority turnout.

I reject that this is the way we do business in 2006 in Maryland and in the United States of America. To me this is clearly an organized pattern and practice of attempting to confuse minority voters and to suppress minority turnout.

It has been 137 years since Congress and the states ratified the Fifteenth Amendment to the Constitution in 1870, which states that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race [or] color..." The Amendment also gave Congress power to enforce the article by "appropriate legislation." African-Americans suffered through nearly another 100 years of discrimination at the hands of Jim Crow laws and regulations, designed to make it difficult if not impossible for African-American to register to vote due to literacy tests, poll taxes, and outright harassment and violence. It took Congress and the states nearly another century until we adopted the Twenty-Fourth Amendment to the Constitution in 1964, which prohibited poll taxes or any tax on the right to vote. In 1965 Congress finally enacted the Voting Rights Act, which once and for all was supposed to prohibit discrimination against voters on the basis of race or color. The Act also provides that no person, "whether acting under color of law or otherwise," shall:

"intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such person to vote or to vote as he may choose, or of causing such other person to vote for, or not vote for, any candidate for [any federal office]." [42 U.S.C. 1971 (b), emphasis supplied].

Mr. Chairman, it is time for Congress to once again take action to stop the latest reprehensible tactics that are being used against African-American voters to interfere with (a) their right to vote or (b) their right to vote for the candidate of their choice, as protected in the Voting Rights Act. These tactics undermine and corrode our very democracy and threaten the very integrity of our electoral process.

After being sworn in to the Senate in January, I was pleased to join with Senator Obama and Senator Schumer to introduce S. 453, the Deceptive Practices and Voter Intimidation Prevention Act of 2007. In sum the legislation provides that, within 60 days before a federal election, it shall be illegal to distribute false and deceptive information about an election regarding the time, place or manner of an election. The legislation also bans false and deceptive information about voter's qualifications or restrictions on voter eligibility, as well as false and deceptive information about political party affiliations or explicit endorsements of candidates.

This legislation is narrowly tailored to apply to only a small category of communications that occur during the last 60 days before an election. Under our legislation the categories of the false and deceptive information cited above are only illegal if they are intentionally communicated by a person who: (1) knows such information to be false and (2) has the intent to prevent another person from exercising the right to vote in an election. This legislation properly respects the First Amendment's guarantee of freedom of speech while recognizing the power of Congress to prohibit racially discriminatory tactics to be used in elections under the Fifteenth Amendment, Voting Rights Act, and the general power of Congress under Article I, Section 4 of the Constitution to regulate the "times, places, and manner" of federal elections.

This legislation creates tough new criminal and civil penalties for those who create and distribute this type of false and deceptive literature. The bill authorizes a process to distribute accurate information to voters who have been exposed to false and deceptive communications. The bill requires the Attorney General to submit to Congress a report compiling and detailing any allegations of false and deceptive election communications, and authorizes the Attorney General to create a Voting Integrity Task Force to carry out this law. The Senate bill would also create a right of private right of action against the continued distribution of false and deceptive campaign literature and communications, in which a party could seek a temporary injunction, restraining order, or permanent injunction against materials.

In the House I understand that similar legislation, H.R. 1281, has been filed by Congressman Emanuel with Chairman Conyers, and I applaud your efforts.

Let me conclude by thanking the many civil rights groups who helped us with voter protection efforts on

Election Day and who have helped us in supporting this legislation, including the NAACP, the Mexican-American Legal Defense and Educational Fund, the Lawyer's Committee for Civil Rights Under Law, and People for the American Way.

This past weekend was the 42 year anniversary of the voting rights march onto Edmund Pettus Bridge outside Selma, Alabama. Our own House colleague, Congressman John Lewis from Georgia, was savagely beaten and tear-gassed by police for peacefully marching and protesting on what we now call "Bloody Sunday." He and so many others, including the Rev. Dr. Martin Luther King, Jr., ultimately led a peaceful march to Montgomery help their fellow citizens register to vote. Media coverage of the mistreatment of our own American citizens garnered worldwide attention, and led to the quick introduction by President Johnson in Congress of the proposed Voting Rights Act. Congress passed this historic act and President Johnson signed it into law less than five months after its introduction.

Today we have the obligation and duty to fulfill the promises made by Congress and the states nearly 140 years after the end of the Civil War, and over 40 years after the enactment of the Voting Rights Act. I urge you to pass this legislation that would stop the use of false and deceptive practices designed to disenfranchise and suppress minority voter turnout. Let us make it crystal clear that it is illegal to use these types of campaign tactics to deliberately try to suppress and intimidate minority voters from casting their hard-won and precious right to vote in an election.

Thank you for the opportunity to testify today, and I look forward to your questions.