



TESTIMONY OF
EDWARD A. HAILES, JR., Senior Attorney
ADVANCEMENT PROJECT

Public Hearing on
THE CLEARINGHOUSE FUNCTION
of the
THE UNITED STATES ELECTION ASSISTANCE COMMISSION

March 22, 2005

Good Morning Chairperson Hillman and Commissioners. I am Edward A. Hailes, Jr., a Senior Attorney and Director of Power and Democracy for Advancement Project. I very much appreciate the opportunity to testify before the Election Assistance Commission on behalf of Advancement Project on the subject of the clearinghouse function of this Commission. We believe it is important for the clearinghouse function to be sufficiently funded, credible and responsive to the needs of voters and election officials to move our nation closer to a just democracy. We further believe that the role of this Commission in gathering, disseminating and emphasizing best practices and providing guidance in specific areas of election administration will greatly enhance the capacity of racial justice and voter registration groups to understand,

follow and, where necessary, challenge current election policies and procedures in order to maximize participation in our democracy.

Advancement Project, a legal and policy action group, has been working since its inception in 1999 to address one of the most significant racial justice issues of our time: expanding the active electorate. In the wake of the blatant and widespread irregularities of the 2000 election, Advancement Project expanded its Power and Democracy program by creating the "*Clearing the Path for a Just Democracy*" project. It focuses on increasing democratic participation in low-income and minority communities by investigating obstacles to voter participation and providing mechanisms for removing those obstacles, generating reform efforts that seek to expand opportunities for democratic participation, building support for a more transformational solution for re-enfranchising formerly incarcerated people, and facilitating alliances among multi-racial groups.

During the 2004 election cycle, Advancement Project worked on the ground in support of several statewide voter protection coalitions and provided legal counsel to a number of voter registration groups. In order to support these coalitions and provide constructive counsel to the groups, Advancement Project conducted extensive research on the law and local practices pertaining to the administration of elections. We collaborated with a number of other legal and policy groups that also generated manuals, "bills of rights" and charts on election procedures. But for this body of work produced by the advocacy groups, we observed a yawning dearth of community-friendly and culturally-competent materials that would help community groups in tackling widespread structural disenfranchisement, particularly among poor communities of color. In these communities large numbers of citizens in the voting age population face numerous, interlocking practices and mechanics that block their access to polling places, including the more easily recognized barriers such as error-prone voting equipment and

inadequate funding, and then the more complex, structural elements of election administration; for example, ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, lack of culturally competent voter education materials, voter intimidation schemes including racially discriminatory challenges to voters, poorly designed ballots, inaccurate ballot translations and a shortage of translators to assist voters who speak languages other than English. Working together, all of these structural elements can undermine communities of color in having a voice in our democracy.

It is imperative, therefore, that an entity with the authority and credibility to examine these barriers, takes on the responsibility to compile and carefully analyze reliable data, aggregated by race, in a manner that provides useful guidance on eliminating these barriers. This responsibility appears to fit squarely within the purview of the clearinghouse function of the Election Assistance Commission. I hasten to point out that I understand that the Commission has many responsibilities to offer guidance to the public on the administration of elections. For example, the Commission must develop voluntary guidelines under Title II, Subsection A, Part 3 – Subsection 221 of the Help America Vote Act (HAVA) of 2002, Public Law 107-252, providing for a national program for testing, certification and decertification of voting systems and a separate responsibility to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections. Under that responsibility, we trust the Commission will find a way to meet the needs of the proponents of instant runoff elections in order that Commission guidance is offered to make certain that voting machines are properly fitted to accommodate instant runoff selections in jurisdictions that adopt these procedures. We also understand that under Title II, Subtitle C, Sections 241- 246, the Commission must study and report best practices in its goal to promote

practices of voting and administration which are the most convenient, easy to use for all voters, accessible, will yield the greatest accuracy in voting and vote tabulation and will nondiscriminatory, as well and efficient and cost effective.

We know the Commission has issued a report on “Improving the Usability and Accessibility of Voting Systems and Products” and its clearinghouse resources include a “Best Practices Toolkit on Election Administration” and a Best Practices Report on Voting by Uniformed and Overseas Voters, along with “2004 Election Surveys.” We urge the Commission to move swiftly to investigate and report on the prevalence and persistence of voter intimidation and voter deception practices, including the use of partisan, discriminatory challenges against newly registered voters in communities of color. In our work on the ground with many voter registration groups, we have discovered that a great number of committed advocates “outside of the Beltway,” are unaware of the existence, purpose or functions of the Commission. This suggests to me that the Commission should increase its direct outreach to communities of color to make it clear that it was established to help more Americans to vote. The Commission should continue to hold field hearings and listen to firsthand accounts of people who face barriers to voting and to get a sense of what information is useful to them and in what format.

It has been our experience for example, that people want to know their rights and responsibilities and the obligations of election officials in simple, written plain language and in language other than English. Advancement Project, for example, published a series of guides that distill complex election law for lawyers, advocates, voter registration campaigns and “Get Out the Vote” campaigns for states in which we conducted voter protection work. The guides combine state election law with state regulations, rules, attorney general opinions and other election materials to provide a comprehensive interpretation of the law and practices that impact elections. While the guides do not cover every provision of state election law, they highlight

those provisions which in our experience have most impacted the voting rights of minority voters. Those guides are accessible at www.AdvancementProject.org.

We also recognized that election administration policies and procedures were not conducted in uniform ways from county to county and from state to state. Accordingly, we published, again out of necessity to help groups that were registering and protecting voters, guides on local practices based on inquiries we made and research we conducted for specific counties where our assistance was requested. These guides, which are also accessible on our Web site, provide detailed information on local voter registration issues, list maintenance practices, and polling place location choices in counties where high concentrations of African-American/Black, Hispanic and/or Asian citizens of voting age as compared to other counties in a given state. We found wide disparities in how election officials understood and implemented their responsibilities. The Election Administration Commission should use its clearinghouse function to show the American people the crazy quilt we call our election system.

I also recommend that the Commission collect, analyze and disseminate more information about the duties, qualifications and responsibilities of election officials across the nation. These officials are critically important to our democracy, yet many people do not know who they are and what jobs they perform. Moreover, the racial and ethnic composition of the nation's election directors is important in both a practical and symbolic sense. First, given our nation's long history of racial exclusion of voters of color, it is important symbolically for those who administer elections to reflect racial progress in the body politic and the racial and ethnic composition of the country. Second, it is important on a practical level -- both to restore confidence in the elections system among all voters and to increase cultural sensitivity at the polling sites. While state election officials do not serve voters directly at the polls, the lack of diversity in their ranks, combined with their lack of familiarity with the problems experienced by

minority voters, suggests that public scrutiny of the selection process for election directors is warranted. The Commission's clearinghouse function can certainly be used to foster a better understanding of the need for racial diversity among election officials.

Lastly, we welcome the opportunity to continue this discussion with the Election Assistance Commission on finding innovative approaches for reaching the greatest number of people with user-friendly information that may help more eligible voters to cast votes that count. Thank you for this opportunity to share information about the critically important clearinghouse function of the Commission.