
Public Hearing

before

SENATE STATE GOVERNMENT COMMITTEE

"A discussion of the feasibility of establishing standardized procedures for election workers, administrators, and judges who assist the public to vote on the day of any election"

LOCATION: Committee Room 6
State House Annex
Trenton, New Jersey

DATE: December 11, 2008
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Nicholas P. Scutari, Chair
Senator Loretta Weinberg, Vice Chair
Senator Jim Whelan
Senator Jennifer Beck
Senator Kevin J. O'Toole



ALSO PRESENT:

Frank J. Parisi
Office of Legislative Services
Committee Aide

Sonia Das
Senate Majority
Committee Aide

Victoria Brogan
Senate Republican
Committee Aide

Hearing Recorded and Transcribed by
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SENATOR NICHOLAS P. SCUTARI (Chair): I apologize for the length of the hearing today. I did not really anticipate that last bill being on today along with this public hearing.

I do want to make a few opening remarks. And I will not be here for the entire hearing, although I am very interested in the commentary because I believe there are problems throughout the State in terms of the way that we conduct our elections.

New Jersey distributes the responsibilities of election procedures to various State, county, and local election officials. Today, the State Government Committee will conduct a public hearing to understand and evaluate election procedures practiced by these officials throughout the state. Representatives from the Division of Elections, the Constitutional Officers Association of New Jersey, and the Association of Election Officials, the Municipal Clerks Association, the Attorney General's Office, the Administrative Office of the Courts, and the New Jersey Revision Commission have been invited to testify.

Almost every Election Day is filled with (indiscernible) stories of people having difficulty voting: not being listed in the voting books, polling locations opening late or not at all, and voting machine malfunctions. But just as equally varying in the stories are the procedures used to resolve the problems.

We are starting this dialogue to open -- to hold an open and candid discussion on our election procedures. It is necessary to understand the procedures that are working well, along with identifying the problem areas of our election law. This hearing will also help distinguish fact from fiction.

I want to thank everyone for coming.

I do want to say that I have heard of varying stories and varying resolutions to the same problems, county to county. Someone shows up, and they're not on the voting books -- what judges do to resolve that. I think one of the inherent problems that we see is that it's an afterthought for our judiciary -- election duty -- and not one judge is assigned it for the entire day. Each county has a list of judges that serve on election duty, sometimes for only two-hour stints. And it can vary from judge to judge as to how we're going to allow people to vote: if they're going to go on the machine, if they're going to fill out a paper ballot, what they're going to do. I mean, there are differences between Middlesex and Somerset counties, and they join right up against each other.

Group one is Bob Giles -- if you want to come back up -- Director of the Division of Elections.

Mr. Giles, thank you.

ROBERT F. GILES: All by myself?

SENATOR SCUTARI: I guess so.

You know what? We've been here a long time. We're going to bring a few people up at once, and we're going to bring up the (indiscernible).

Who are the representatives from the Attorney General's Office and the Administrative Office of the Courts, if they are here? I see the Attorney General's representative, because I know who he is.

Welcome, gentlemen and lady. Thank you for coming.

Mr. Giles, how is it that elections are supposed to be conducted throughout the State, and that it is so varying in degree in terms of how

people vote and how we resolve problems when they're not listed; and that we have, continually, emergency memos going out from election officials to their co-workers on Election Day -- that there isn't a standardized procedure and a centralized index of voters? I mean, it stands to reason that people could be registered in different places and vote two to three times a day, and nobody would really find out about that.

MR. GILES: As far as the registration question -- now that we have the Statewide Voter Registration System, we've cleaned up a lot of what was happening in the past. Each county had its own individual voter registration system. So if you lived in Monmouth County and were registered, and you moved to Ocean County and you didn't tell Ocean County that you were registered in Monmouth, they wouldn't know. So you would end up being registered in two counties. Now, with the Statewide Voter Registration System, you search a statewide database. So if you're registered in Monmouth, you go to Ocean, you fill out the form, and you don't tell Ocean that you are registered in Monmouth, they'll find out by your name and date of birth. They'll do a search, and they will remove your record from Monmouth County and bring it in to Ocean County. So the issue of people being registered throughout the state has greatly decreased. Obviously, if the date of birth or some other indicator is not the same, then yes, you could have a duplicate record out there. But all things being equal, you will find those people now.

SENATOR SCUTARI: How do we keep people who aren't supposed to vote from voting? If somebody who moves in this country is not legally here, and they register to vote, how do we know that?

MR. GILES: Unfortunately, it's a legal question. But we take the voter registration at face value. And if they check off the box that they're a U.S. citizen, they're 18 years of age, and sign it -- and sign the affirmation part-- Unless we have some reason to believe that it's not true, then we accept those registrations.

SENATOR SCUTARI: So basically anybody who fills out that paperwork can vote, essentially, and as many times as they really want to.

MR. GILES: Well, I mean, we have measures that if you get an acknowledgement card, you are -- some people call it a *voter ID card* -- get sent to the address that you tell us. We do check your driver's license number. You do have to give some form of identification. You have a driver's license number. If for some reason you don't have a driver's license number, you have to give us the last four digits of your Social Security number. And only if you say you have neither one of those can you give us some other form of ID. So as long as that all matches, then we will register you. If your identification doesn't match, then you get put in as "ID required." So we do have some checks and balances for that.

SENATOR SCUTARI: Really what I want to know is: How do the State, county, and local election officials communicate to keep each other informed on election procedures?

MR. GILES: A lot of-- If it's legal issues, it comes from the Attorney General's Office. They represent the county election officials in that capacity. I don't know if the AG's Office would like to comment on that.

ASST. ATTORNEY GENERAL DONNA KELLY:
Yes.

I mean, on a regular basis we represent the 21 county boards of elections.

Donna Kelly, Assistant Attorney General. I apologize, sir.

We, on a regular basis, represent the 21 county boards of elections, the superintendents of elections. A lot of the communication you have is through memos, a lot of it's through a lot of give and take. There are a lot of meetings that we have. Because of the Help America Vote Act, we were able to establish for the first time in our state a regular education program through Rutgers, the Center for Government Services, that Robert Giles and I are the teachers for. And we've been able to pull in a significant number of election officials, particularly administrative staff, to give them a really more detailed training on their legal requirements and administrative issues.

And in terms of Election Day, we will also-- We prepare memos of law and other kinds of quick reference guides for -- not only for our deputies who are out there, but also for the election officials. We provide them to the judges, we provide them to the parties who are involved in the elections.

Again, a lot of it's communication, and it's through writing and trying to keep them abreast of what their legal requirements are. The most recent one was with the new law that was passed regarding e-mailing. So we had a lot of communications with our clients as to how to process e-mail ballots from overseas, so the voters -- and from the armed service representatives. And we learned a lot from that. And I think we'll be making refinements to that as we go along.

SENATOR SCUTARI: Really, this is probably more appropriate for the AOC to respond to, but why is it that it's so different from judge to judge, from county to county, with respect to how somebody is going to -- or if they are going to vote? If they don't appear on the voting rolls, and they challenge that, and they go to court and ask--

Because it's a public hearing, I just-- When you speak, can you just identify yourself?

S T E V E N D . B O N V I L L E: Steve Bonville, Special Assistant to Judge Grant, the Administrative Director.

We do provide training for the judges. Assistant Attorney General Kelly participates in the training. We have seen new judges participating in training. And all of the judges who are on election duty on Election Day either have that training now or had it in previous years.

Each of the judges applies the fact that -- the facts in a particular case -- applies the law to the facts in a particular case, so that the cases are very fact-specific. So I can't really comment on differences in judicial results, Senator.

SENATOR SCUTARI: I've heard of an instance, in this past election, where judges in one county were ordering people who did not appear on the voting rolls to vote on the machine, versus in another county where they had them fill out a provisional ballot based upon the testimony they got at the hearing, Middlesex versus Somerset.

How is it supposed to happen? Share with us an incident -- someone comes in front of a judge and says, "I want to vote, and I'm not on the voter rolls." What happens?

SENATOR WEINBERG: Can I just add to that? I heard some anecdotal evidence from attorneys who are on duty within the same county where people were told to vote on the machine, whereas another judge told them to vote by provisional ballot.

MR. BONVILLE: I apologize, Senator. I'm not really prepared to address that. Most of my testimony -- prepared testimony -- relates to the identification of the judges to handle election duty, the training that they've had, and record-keeping after the fact.

Assistant Attorney General Kelly perhaps can address some of the in-court situations.

SENATOR SCUTARI: That's really the biggest question I have. Somebody here -- and these are the experts, I guess. A person comes in and says, "I want to vote. I'm not registered, but I want to vote." What happens? What's supposed to happen? I mean, it seems like it happens differently everywhere.

ASSISTANT ATTORNEY GENERAL KELLY: Again, I have to agree with Mr. Bonville. It's going to be decided on a case-by-case basis, and what the judge believes are the facts. I can give a scenario, perhaps, where--

(witnesses cell phone rings) I apologize for this. I don't know how to turn off this BlackBerry.

But, I mean, you can have a situation where somebody was-- I'll give you maybe an over-simple example of what happened in one of our southern counties many years ago. There was a voter registration drive by a casino, so you can figure out what the county was. They did a voter registration drive. They brought the voter registration forms to the

Superintendent of Elections. They were smart enough to get time-stamped copies of what they had submitted.

Lo and behold, Election Day comes, and none of those people were registered. They brought before the judge copies of the registration forms. We clearly-- We decided that some mistake had been made on the side of "government," therefore that shouldn't go to the detriment of any of those applicants. And it was determined that they should have been registered. They were determined by the court to be eligible to vote, and they were given that permission to vote.

That's just one variation of a possible theme -- where a court may decide to allow somebody to vote, even if they're not technically registered, but maybe there was just some mistake in the administrative process.

SENATOR SCUTARI: How did they get to vote?

ASSISTANT ATTORNEY GENERAL KELLY: Well, the way they-- If a court believes that somebody is eligible to vote, typically they would be allowed to vote in the voting machine -- if the court determines that they're definitely eligible. We have standardized our court orders over the past few years that we distribute to all the judges -- my deputies use them as well -- in which the court makes the determination whether they're eligible. And if they are, I've always advised that they should be allowed to vote in a voting machine.

Whether a court decides, on the other hand, to allow somebody to vote by a provisional ballot, I can't give an example off the top of my head right now as to what would be that circumstance. Clearly, when it's toward the close of the polls and you know the person isn't going to get

back to the polls in time-- If the court determines the person is eligible, then they're going to have to vote by paper. And some judges will use absentee ballots and some judges will use provisionals. That could be an example as to when a judge would use a paper ballot, even though they know they're eligible -- they just can't get back. It's 7:45 at night in Hudson County, and you're in Jersey City. You're not going to get back to North Bergen in time to vote in the voting machine.

SENATOR SCUTARI: So let's say somebody goes to the poll, and they're denied voting. They say-- Well, what do they do if they don't have an account?

ASSISTANT ATTORNEY GENERAL KELLY: If you're in a polling place, and your name is "not on the book," but you're saying, "Hey, I definitely am registered here. I know this is my district. This is my street address. This would be my polling place," the board workers are supposed to, by law, give a provisional ballot to the voter, and the voter votes that. And then it goes back to the county board or the county office at the close of the polls, and it goes through the verification process. That is how is it supposed to work under our system.

If somebody is challenged in their right to vote at a polling place, and the board workers uphold that challenge, then that voter has the absolute right to go before the judge to argue that, for whatever reason, they're eligible. They have to show identification, they have to sign an affidavit that they're eligible. The challenger who challenges them has to sign a challenger affidavit. And if the board still upholds the challenge, then that person goes before the judge. The person is going to present their facts. Whether the court will ask for identification or try to determine why

there was a challenge-- Again, it's all so case-specific. I really-- That's the way I think the process works.

SENATOR SCUTARI: Let me-- Because it's not working the way you're saying. That means that any voter who comes to the voting booth and says, "I want to vote, I know I'm registered," they're supposed to be allowed to vote by provisional. Unless challenged, they're supposed to be allowed to vote.

ASSISTANT ATTORNEY GENERAL KELLY: Right.

SENATOR SCUTARI: I don't think that's, practically, what happens.

ASSISTANT ATTORNEY GENERAL KELLY: I don't know. I can't speak for all the counties, but that's how they're instructed and that's--

SENATOR SCUTARI: The only people who would be in front of a judge would be people who were challenged then, in your scenario, based on what you're telling me -- that everybody gets to vote, either at the machine -- or if they're not registered, and they demand to vote, they vote provisionally; and if challenged, they go to the county if they would like.

ASSISTANT ATTORNEY GENERAL KELLY: You could also have somebody who says, "Look, I don't want to vote by provisional ballot. I want to go and vote in the voting machine." That would be another-- That would be the type of person who would go before a judge.

MR. GILES: Also, a lot of people will call the board of elections or the superintendent and ask, "Am I registered? Where do I go to vote?" And if at that time they don't find them on the system, they'll

say, "You're not registered, not eligible," your only recourse would be to come down and see a judge on Election Day.

SENATOR SCUTARI: Well, that's different then, because you're telling me -- she's telling me the recourse is to vote provisional. You're telling me you have to go--

MR. GILES: If you show up at the polling place, you get a provisional ballot. But if you call ahead of time, or you have knowledge that you're not registered, then you wouldn't go to the polling place. You would be instructed that you need to go in front of a judge. But if you just show up--

SENATOR SCUTARI: Let's just say you get that information and say, "I'm going to show up anyway."

MR. GILES: And you get a provisional ballot? It won't count.

SENATOR SCUTARI: The provisional ballot. You go down there, the polling worker says, "You're not on the list." You say, "Well, I want to vote provisionally."

MR. GILES: Correct.

SENATOR SCUTARI: They give you a provisional ballot? That's the way it's supposed to work.

MR. GILES: Yes. And then when it comes back, it wouldn't count, because you're not registered.

SENATOR SCUTARI: Under the scenarios that you described, it doesn't seem like the judges should have that much to do, because hardly anybody is-- I mean, only the challenged people should be in court, or people instructed ahead of time.

MR. GILES: Well, I think more and more, with technology, our Web site, you're able to search to see if you're registered. And a lot of people were calling-- They were interested because maybe they didn't know where their polling place was and didn't know when their sample ballot was coming, so they could call and say, "I didn't receive a sample ballot." "You didn't get one because you weren't registered." So we do get, I mean, a fair amount of those at the county level.

SENATOR SCUTARI: I apologize. I have to go chair another meeting, which is already an hour waiting. And Senator Weinberg is going to take over.

But I do want to ask one other thing, and that's kind of why I'm jumping in here. I'd like to know the steps to rectifying incorrect administration of election procedures. Who enforces this? If something is going on wrong, and the step -- there's an administration of an election procedure which is not correct, how is that fixed?

ASSISTANT ATTORNEY GENERAL KELLY: It typically would be the Attorney General. I mean, if we get information that a county board is not following the proper procedure, we would have a direct communication with them and rectify it for that day, and then moving forward. And we have done that.

SENATOR SCUTARI: What do we do when we have campaign literature within the zone that it's not supposed to be? I'm familiar with that, as you know. (laughter)

ASSISTANT ATTORNEY GENERAL KELLY: That typically is pretty much a law enforcement issue on that day. It's either the local police officers-- We will have State Police, particularly with the

superintendents, on Election Day. And we've had to have troopers go out and take down the signs, if need be, within that 100-foot zone.

SENATOR SCUTARI: Or the literature right on the polling table. I mean, I've seen that.

ASSISTANT ATTORNEY GENERAL KELLY: Yes, that's not good either.

SENATOR SCUTARI: It wasn't mine, by the way, and I still won. (laughter)

ASSISTANT ATTORNEY GENERAL KELLY: Well, if it's actually in the polling room itself, it ought to be the board workers who are getting rid of it and throwing it away.

SENATOR SCUTARI: Unless they're the ones who put it there.

ASSISTANT ATTORNEY GENERAL KELLY: That would not be a good thing.

SENATOR SCUTARI: All right. Thank you.

I'm very interested in this topic. And our crackerjack staff here is going to give me a memo on everything else that goes on here. (indiscernible) how long Senator Weinberg wants to keep you here.

But I apologize. I do have to go upstairs.

Thank you.

Senator.

SENATOR WEINBERG: Thank you.

Let me try to get a little more generic, perhaps. Do you-- What would be your most common complaint about what goes on, in terms

of our election procedures or what you can change? Each of you I would put that question to.

MR. GILES: We'll start with Donna. (laughter)

ASSISTANT ATTORNEY GENERAL KELLY: Our most common complaint about-- Wow, I can't think, off the top of my head, of the most common.

SENATOR WEINBERG: So we're pretty perfect?

ASSISTANT ATTORNEY GENERAL KELLY: I think we do-- Overall, I think we do a-- I think everyone does a very good job. I think part of the-- I think some of the complaints are that -- with board workers. And that's what I hear at times. And you always have to bear in mind that we've got somebody who is doing it maybe two or three times a year. We're working on trying to get them better educated as well. I mean, Bob and I have been involved in -- and with the help of Linda von Nessi, as well, and Jim Vokral, from Middlesex County -- we wrote a standard, board-worker training manual that we have on our Web site. And from that, we're going to be developing a flip chart that we want every board worker in the state to have, moving forward, to make it easy for them. I do a quick reference guide for everybody in a Q&A format. But we want to do something that's uniform for the board workers right there in the polling place.

So I have to say that's where we've tried to do a focus. And certainly, I can tell you the county board members and their staff who do train board workers have a yeoman's job and just have had a significant number of classes. And they really-- It's about 26,000 people. That's a lot to train. So that's the first thing that would come to my mind.

SENATOR WEINBERG: Do you have any reports back when we changed the hours from -- to 6:00 a.m.?

ASSISTANT ATTORNEY GENERAL KELLY: Do you mean how many people voted between that hour?

SENATOR WEINBERG: Yes. Were there reports back on how well that worked or didn't work?

ASSISTANT ATTORNEY GENERAL KELLY: You know, it's really interesting. I did my own informal survey the first year that we did that. And I only got about half the counties to respond. So I didn't get that great of a number of people who actually came. But I think it really depended -- it also depended, I think, on that particular election. It was not a big election, so to speak.

But I haven't had any complaints about that hour. I think it's kind of like in our culture, at this point, for people to want to be able to vote at 6:00. I know that for this presidential, we had some people who were on line at like 5:30 in the morning, 5:00 in the morning waiting to -- they were all excited, waiting to get to vote.

MR. GILES: I think it depends on what part of the state. If it's a commuter part of the state, they tend to utilize that 6:00 a.m. opening more than maybe another part that doesn't have to get on a bus or a train by 7:00, 8:00. So I think we see some of that geographically.

SENATOR WEINBERG: Any questions over here?

Senator Beck.

SENATOR BECK: Not so much.

SENATOR WHELAN: Madam Chair, I just have one question.

SENATOR WEINBERG: Sure.

SENATOR WHELAN: The shift from the AG's Office to the Department of State, as far as the running of elections -- and recognizing the AG's Office still has an enforcement role -- how has that gone? Is that likely to be the way we see this in the future, or should it go back under the Attorney General?

ASSISTANT ATTORNEY GENERAL KELLY: Bob's happy with it. (laughter)

MR. GILES: I have to say it's done very well. And Secretary Wells really hit the ground running this year with it. She's very passionate about elections, as was Anne Milgram, our Attorney General. And I think it's the right place. You get a little separation. When it was in the Attorney General's Office, they were our attorneys as well as the chief election officials. So sometimes there may have been some internal struggles with the counties that they represented. Now you have a chief election official that is not your attorney. It seems to make the communication much better. And as far as the Attorney General, with so much on her plate and just having elections in there as another part of that-- I think the Secretary of State is able to address more of the minor issues and the day-to-day issues that maybe the Attorney General's Office wasn't able to do.

SENATOR WEINBERG: Let me go back to the judges, again, for a moment. Are there any prerequisites to select judges to have the Election Day duty?

MR. BONVILLE: The assignment judges, Senator, decide which judges have election duty. Some of them run it off of the emergent duty sequential list. And then if there are not enough, they ask volunteers.

They all have the training, they all have the materials available to them. That's basically it.

SENATOR WEINBERG: And do they get trained in a set of procedures? Is there any standard procedure on this? That was the biggest complaint I heard from Election Day: attorneys that -- according to them -- the same case was handled very differently by different judges.

MR. BONVILLE: Perhaps one of the faculty members who's down at the end here--

ASSISTANT ATTORNEY GENERAL KELLY: That just goes back to the fact that a judge is going to decide the case that's before him or her. And they're all provided with the parameters of what the law is, what the requirements are. As I said, we have written materials that are provided to them. And then it's up to them, with the person standing before them, to make the decision as to whether to deny or grant the application.

SENATOR WEINBERG: Senator Beck.

SENATOR BECK: I actually would agree with that. As you know, in Monmouth County we had a very close freeholders race. And the biggest complaint we heard on both sides, Democrat and Republican, was that when people came before the judge to challenge a vote or to try to secure their right to vote, the decision was made different, even though some of the cases seemed very similar. There didn't seem to be a lot of consistency in that decision making. And maybe it is -- pre-election we should host a little seminar for those who are going to be sitting in the position of making that call, just to sort of remind them of the guidelines.

But I haven't heard a lot of-- And interestingly enough, with the huge number of people who went to vote in my legislative district, I

actually didn't hear a lot of complaints except for that. I didn't hear people couldn't get to machines -- there were plenty of machines. They felt the board workers were professional. None of that. The only thing I heard was that the judges were inconsistent, sometimes, in administering who got to vote and who didn't. And I think the ACLU was there helping some folks, and then there were other attorneys there helping other folks. It was a little bit confusing. Maybe that's part of the reason the judge was rendering different decisions. I don't know.

ASSISTANT ATTORNEY GENERAL KELLY: I don't know. And, honestly, I can't speak to that. You would want to know who was there, what was said, what was presented, what was the evidence. It's just how the process works, in terms of the judiciary.

SENATOR BECK: Right.

SENATOR WEINBERG: Another general complaint that I hear too, from the challengers, from the people who were there on behalf of candidates or the party, is that they can never get the board workers to announce the names loudly enough for them to cross off their lists. Board workers are not told that this is really not private information. Sometimes voters protest. They don't want their name hollered out throughout the voting area. So I don't know if that's come up. But I've gotten calls like that. "I can't hear the name, so I can't cross it off the list. Will somebody tell them they have to call out their names?"

ASSISTANT ATTORNEY GENERAL KELLY: That's part of the training, though, from the county, that they-- That is part of the training that they do -- to tell them they have to. But you may have a very

hectic polling place, maybe a lot of people. They may be saying the names, but they're not loud enough. You would hope that that could be resolved.

SENATOR WEINBERG: That is part of the standard training?

ASSISTANT ATTORNEY GENERAL KELLY: Yes.

SENATOR WEINBERG: All right, so you have no suggestions on anything that should be standardized (laughter) in terms of the conduct of elections?

MR. GILES: I think we're moving toward that, as Ms. Kelly said -- that we have the board worker training manual we're trying -- we have the Rutgers class. So we're really trying to get a more uniform policy. We're looking at some software that would allow us to give the election officials access -- almost like a help desk, where we can compile information on Election Day. We did it in a much more manual way this year. We were in a room -- the Secretary of State, Chief of Staff, myself, and several other people -- answering calls. We gave the advocates our number, we gave the attorneys for the parties our number, so if they found something out there, we were able to get it and reach out to those counties directly, to the right people, to make sure it got addressed.

There are programs out there that you can data enter and you can build a database that day so you can see where problems may be developing. So that's something that -- as part of that -- when you type in a potential problem or question, the answer is there. So we would have a uniform answer that the entire state could utilize -- this database of frequently asked questions. Say, "Okay, we have a voter. This is the problem," and the system is able to identify what you're trying to ask, and

we could give a standard answer, and the AG's Office would use it for their deputy attorney generals. The county officials could use it.

In the meantime, that's also recording what the question was, so you can see a pattern developing -- there's a problem with provisional ballots, or long lines, or whatever it may be. That would allow us to really uniform-- And when you hear about one county is giving provisional ballots out one way, another is not giving it out the same way, that would really help us to address that. So it's something we're looking to do, moving forward.

SENATOR WEINBERG: Do the board workers get the same training in each county?

MR. GILES: They get the same basic training. That's why we did the manual. The material is the same. The way the training is conducted is different. And that's something we started looking at, I know, when it was in the Attorney General's Office -- of looking to maybe get a train-the-trainer program so we can move in the direction of -- Okay, rather than just, "Here's the material, you use PowerPoint. You have 50 people in your class; you have 200 people in your class," -- try to get something that is a little more uniform. The original, main purpose to get started was, "Let's get the material the same, make sure everybody's teaching the same procedures." And from there, we want to expand out to say, "Let's see if we can find what works." And some counties love PowerPoint, other counties hate it. So you have to work within those parameters. But we are moving in that direction as well.

SENATOR WEINBERG: Okay.

Thank you.

If there are no further questions--

MR. GILES: Thank you.

SENATOR WEINBERG: The next group is representatives from the Constitutional Officers Association, the Association of Election Officials, and the Municipal Clerks' Association.

Do you want to start and identify yourself, please?

L I N D A v o n N E S S I: Good afternoon.

My name is Linda von Nessi. I'm the President of the New Jersey Association of Election Officials. And I really welcome sitting before this panel, giving you some of our ideas. Because we, too, have the same concerns that you have.

With me, from the New Jersey Association of Election Officials -- I did ask Terry O'Connor to sit with me.

Other than being the President of the Association, I'm the Administrator of the Essex County Board of Elections, that has a superintendent. So my roles are a little bit different than another county. So Terry is going to represent the superintendents' side. So should you have an answer (*sic*) for us, both of us would be able to help you.

Shall I go on?

SENATOR WEINBERG: Yes, please start.

MS. von NESSI: Okay. A few of the comments that you made regarding--

SENATOR WEINBERG: Give us your name first.

MS. von NESSI: Linda von Nessi.

Regarding the courts-- One of my main jobs and responsibilities that I take very seriously is the training of poll workers.

And you are right that the courts all rule differently, and not from county to county, but within a county. I have one court that will send a voter to vote back on the machine, and another judge will send them back to vote on a provisional ballot. Now, being the person who trains the poll workers, how do I train them? Do I train them when they come back with the court order to vote on the voting machine or vote on the provisional? If the judge writes *voting machine*, obviously they're going to allow -- should allow them to vote on the voting machine. However, if it says provisional ballot, then you're going to do what the judge rules. But it's very confusing to the poll worker. And the poll worker is really the person out there who is getting all the flack.

We do our best to train them. And I do agree with Bob Giles. It's a great suggestion that we -- and we are moving in that -- so that we will have standardized training. Right now, I use a video and PowerPoint. And I think it would be great if all the counties would use the same thing so everyone is trained the same way.

Also, with regard to the boards, the only other suggestion I would have is maybe, after election -- and this election would be a great time to do it -- maybe we can do some research and see how the judges ruled. When they sent someone to vote, how they sent them to vote. And then maybe we can get all the counties together to have the same process so the board workers would know what to do when the voter comes back with a court order.

Regarding the-- Also, regarding the provisional ballots, I know in my county -- Essex County was really a hotbed for this election. And I have to say most people have a good time talking about what board workers

did wrong. And I am the first to say they do. But they were spectacular in this election. And I'm very proud of the hard job they did with the lines that they had to confront.

But I know a lot of the campaigns -- one in particular -- they had challengers in the polling place. And they were instructing the voters, "Do not use provisional ballots. Go to court." So that may be one of the reasons why there were so many people -- so many more people in court this election than other elections. And the reason being is because the campaigns know that if you're not registered, your ballot is going to come back to the superintendent, and it's going to be put *not registered*, and it will not be counted. So campaigns were very aware of that beforehand.

Regarding your question of what we think the biggest complaint is, my biggest complaint in elections -- with an election is the board workers cannot find the names in the book. And many times it is in the book. Many of the board workers are elderly. And I am the last person to talk about eyesight, because sometimes I wear contacts, and I still need my glasses on top of the contacts. But the poll books -- the print is small. And sometimes, even if they're the best poll worker in the place, they have a hard time finding it.

This year, we also had supplemental poll books which -- they had pages in the back of the book. So they had to go to two different areas to look for the name. So that really is the biggest complaint we get -- that board workers do not find the names.

I think I'll pass it on to Terry, if she has any--

THERESA M. O'CONNOR: Yes. Terry O'Connor, Deputy Superintendent of Elections, Bergen County.

With reference to the court orders on Election Day -- and I know this is typical of many counties -- the Attorney General's Office, as Donna Kelly said, works with the AOC. And in our case, the Superintendent, Pat DiConstanzo, and I met with our judges that had election duty. Now, the assignment judge in Bergen, because it's such a large county, assigns two shifts of judges: four judges in the morning, four judges in the afternoon. The people who get the afternoon actually get the worse stint of it, because that can extend beyond 8:00. Although this year, I have to tell you, people voted so early that we did not, statewide, experience long lines at the close of the polls.

But typically -- and I know this is a procedure in our county, and I think it's something that's a good procedure. And I know a lot of counties do it, but it's something you might want to consider codifying. In our county, if a voter moves after the poll books are printed, and they notify us, they receive a letter that says, "Your registration -- your change of address was received too late for the poll books. Your new polling place is X. Bring this letter with you to polling place Y. You now vote -- and you will vote on a provisional ballot." So the voters themselves bring the provisional ballot letter to the polls, because their name is not going to be in the poll book. That clears up a lot of problems.

Secondly, people whose registrations we receive too late, people who are not timely -- they also receive a letter from our office that says, "We received your registration too late. You are not timely. You are not eligible to vote. If you wish to contest this, the only option you have is to come before a superior court judge on Election Day." They appear in our office. They go over to the judge, and they plead their case to the judge.

Now, in sitting with the judges -- and I know the instructions they receive from the Attorney General's Office -- the judges go over the rules about registration deadlines, and who is eligible to vote, and all the myriad reasons why someone should be allowed to vote or not allowed to vote. But frankly, judicial discretion comes into play. And I have seen and I know of cases where a judge votes one way one time and one another. And the only option the voter has, or the lawyers representing those people have, is to appeal to the Appellate Division. And they have done that.

But it's a little hard-- I think it's easier to legislate -- lay out the rules for the judges. But I would not be one that would advocate that I tell a judge how to rule. (laughter) I don't think that's a smart thing.

One other question -- and Dennis Kobitz, from Union County, brought it up, and Senator Scutari asked the question as far as why someone would be told to vote on a provisional ballot if they went to court. There would be a reason. If a voter moves from one county to the other after the deadline, and they appear in court, the judge might tell them to vote on a provisional ballot just so we could make sure they didn't vote in their old county. That would be the only reason, that I would see, a judge would give someone an opportunity to vote on a provisional ballot rather than by court order on a machine -- just to verify that the voter did not move -- did not vote in the old county as well as the new county.

As far as problems on Election Day -- and this was the granddaddy of them all. Considering the fact that in Bergen County we have 550,000 registered voters -- and I know the registration increase, statewide, was tremendous -- there were very, very few problems, and mostly they were poll worker or human related. We had a brand new crop

of voters who had never voted on voting machines. We did experience a few *voter* (indiscernible), which means that a voter goes in and does not press the *cast vote* button. That's voter education. We had cases, as Linda said, where poll workers could not find voters' names in the books, even though they were there. Again, that accounts for the 6,000 provisional ballots that we received in the county.

But beyond that, our county -- and I know a lot of the counties do it. We hire, as a superintendent -- although the board is in control of the board of elections and the poll workers -- we hire people from our end who we call *super board workers*. Some counties call them *masters*. I know my colleagues all use them. Those are extra people out in the field to try to be a trouble shooter, to help the board worker if there's a problem, to get rid of the challenger that's handing out campaign literature, to help a voter, to remind the poll workers to give out provisional ballots to try to expedite the process in an unintrusive way. So that's something else I think you could consider. And I know the Secretary of State's Office is reviewing that too.

But the more help that we can provide, the more access that we provide -- including handicap accessibility -- all those things are what make Election Day work smoothly. And as I said before, considering how many people voted, really, we did not have a statewide problem.

SENATOR WEINBERG: Terry, what happens with provisional ballots? Do they go in with machine counts? Do they all go back to the Board of Elections? What's the process?

MS. O'CONNOR: The counties handle that differently, too, Senator. In our county, what happens is -- because we consider us -- we are the commissioner of registration. The Superintendent is the commissioner.

In our county, the provisional ballots are brought back the night of election, with all the other election material, and they come to our office. And our office staff quantifies how many were in the bag, how many we used -- how many we voided, and how many voted.

SENATOR WEINBERG: And they have names attached?

MS. O'CONNOR: Oh, absolutely. There's an affidavit on the front of the absentee -- of the provisional ballot. In our office, our county makes copies of the affidavit as a worksheet. And what we do is, we go through -- we search in the statewide system to see if the person is a registered voter in Bergen County. And if it's-- And people, to be honest with you -- they're four-year voters. They forget where they voted last. So we don't just-- If voter A says, "My old address was Teaneck, New Jersey," and really it was Bogota, that's still a registered voter. We document where they were registered, and we make remarks for the Board of Elections. After we have done that and quantified the eligibility of the ballot -- not whether it's countable or not -- the eligibility of whether it's registered or not registered out of county, we turn that over to the Board of Elections. And it's the responsibility of the board in Bergen County to vote whether or not to accept that ballot, to strip the affidavit, and then count the provisional ballot. And then those are added to the totals.

MS. von NESSI: And if I might add, there is some confusion -- I'm also asked the question if provisional ballots-- If it's not a close race, are provisional ballots counted? And absolutely every provisional ballot that's eligible is counted in New Jersey.

MS. O'CONNOR: And they're part of-- Just that tally is added into the general tally. And I know there are reports that are given to

the Secretary of State's Office and the Attorney General's Office about how many ballots were cast, who voted, how many were not eligible. Just on that ballot, too, the current law in New Jersey is, if a voter votes on a provisional ballot and they were not a registered voter, that affidavit counts as an application. So even though that vote is not counted for that election, that application becomes an active voter registration form, and that person is put into the registration system so, going forward, they're eligible to vote.

BARBARA L. BASCOM: Hello, again.

I'm Barbara Bascom, Municipal Clerk and Administrator for Upper Freehold Township, Monmouth County. And I'm here speaking on behalf of the New Jersey Municipal Clerks' Association.

I'm on the election committee there, and also I instruct for Rutgers, the Center for Government Studies, and I instruct on the elections class. So I have hands-on with the municipal clerks from all over the counties of the State of New Jersey. And, yes, I do see a lot of differences in the way the counties -- each county, as I think Terry just told you -- handles certain things, like the way they process the provisionals when they come back; or the way judges are always going to make judicial decisions that may be different than-- I always give the example to my class that there is a section on the ballots -- not on the ballots, on the petitions that say, "They have to be in your office by 4:00 on a certain day and time before the election." And yet I have seen judges rule on ones that have come in eight hours late and say it's okay.

So as I tell my students, "You go by the rules." And we tell our board workers, "You go by the rules. If somebody wants to make an exception to that, that's going to be the judge. That's his decision."

I love the people from the State that have all worked on this district board workers' manual that is attainable from the Secretary of State's -- our New Jersey election Web site. And it's right on. Everything is in this book: what they are supposed to do if somebody comes in -- this is for the board workers -- what somebody is supposed to do if they come in and their name is not in the book; what they're supposed to do if it's marked that they need identification; and such like that.

You had a question before: What if somebody comes in and they're not in the poll book? Well, the board workers are supposed to go through a process of -- and it tells them in here to do that, to find out if they are in another district within the same municipality, find out if they are just in the wrong place. And the reason they give them the provisional ballot is -- that's a wonderful invention, as I should say it, because it always gives everybody the opportunity to vote, and then for the county to investigate and see whether they really should have had the right to vote. Once they go in the machine, it's there. They can't change that. But certainly the judge is going to rule and tell them to go back to the machine if they find that they are a registered voter, and they've met all the qualifications, and such like that.

I'm very familiar with my board workers. I've worked with some of them for years, and years, and years. And you all go to vote, so you know who is at your boards. And predominantly a lot of seniors have the ability to work those days. I do happen to have a few people that are in their own businesses -- take off that day and work as board workers. They're my A-Team. They stay abreast of some of the rules and such like

that. But board worker training is required every second year in order for them to keep up the maximum paid salary.

During that time, election rules change. We get those memos from the county board of elections, we get those memos from the State, day in and day out, changing things or telling us that we're going to have exit polling, or telling us we're going to have somebody check the tallies -- things that are different that are going to upset our board workers because it's different. Or somebody comes in, and if a voter is difficult-- I had one voter who came to a district where there were four elderly board workers, and he got very argumentative with them about his wife having to give identification. Eventually, they let her vote. But all this happened, and those things are always going to happen. I think that the uniformity is there. It's there in the book. All the rules are uniform. It's if we can get everybody to follow them.

We have -- the Municipal Clerks' Association of New Jersey -- we keep up on election training at all of our seminars or all of our conferences. We meet with the -- our county, Monmouth County -- we meet with our County Clerk and our special Clerk of Elections shortly before every election to bring us up-to-date on anything that's going to be different that day. They're very hands-on with us.

When I teach classes, I ask students to bring into me -- to go to their clerk and get a copy of the packet that the county gives to their board workers. And some of them have the most inventive and really nice-- This is a flip chart. There is a county that uses a flip chart very nicely. It says-- If the voter doesn't have ID, if the voter is not in the book, they flip to it and do what it tells them. Monmouth County has a book. Everything is in

it. I've gone to the polls to check on my board workers, and I go, "Where is your instruction book?" "It's in the back."

So here's what I propose: Instead of asking for a feasibility study of things that -- as you see, we can come to you, and we know it's wrong and where it's wrong. I'd ask for the master -- or as you call it, *super board workers program* -- to be-- I know it's used in Passaic County. That's where I'm most familiar with it, and other counties do have it. That it be expanded or required by all counties. This way, there is a specific board worker at each polling place -- or even if there's a polling place -- like, I have a first aid house that has more than one polling district in it. If there's a board worker on hand that's really up-to-date on all -- and isn't going to get rattled by somebody questioning them or a difficult voter -- somebody who knows all the rules, who is going to take the time to open the book, take the time to call a county, and answer the questions, and diffuse any problems at the polls. You'll have less people going to the judge. I don't think we have that many people going to the judge now. Maybe in this past election we saw more of it. But I think the master board workers -- whether we give them the stipend to have the extra training, and that their training has to be more than once every other year. It has to be before each election so that they're brought up-to-date on what's changed. Because we did have some things change now on the voter registration form. It tells them that if they do not have certain identification, and they don't -- it tells them they'll have to vote by provisional and that they have 48 hours after they get the provisional -- after they vote by provisional ballot to get to the county and show them their ID and to prove that they were a qualified voter.

SENATOR WEINBERG: Thank you.

Mr. Florio.

DALE J. FLORIO, ESQ.: Thank you, Senator.

Dale Florio, on behalf of the county clerks who could not be here today because they had one of their quarterly meetings.

Very simply, on Election Day the clerk is really in a partnership with the Board of Elections to help make things run as smoothly as possible, as you know. They manage the absentee ballot process leading up to the election. The absentees are then counted by the Board of Elections and commissioners. Many counties are now using the optical scanners. Some are hand-counting, still, the absentee ballots. Of course, as you know, the county clerk -- at least in the Board of Elections counties -- certifies the elections. So their role is, on Election Day, somewhat nominal obviously, to the election officials who really are ground zero and make it all happen.

There's nothing else to report other than just the large number of absentees this year. But none of the county clerks reported any serious problems or inability to perform.

SENATOR WEINBERG: Some people were encouraged to vote by absentee ballot for all the reasons we heard in the earlier hearing on the earlier bill -- those people who were not convinced that the electronic machines were appropriate anyway.

MR. FLORIO: But I also think people were -- just because of the expected long lines. And I think that probably helped in some areas, because I think people did that. I know they did in our household.

SENATOR WEINBERG: Senator Whalen, you're the only one who can ask a question now. (laughter)

I'll deputize any of you to ask any questions.

MS. BASCOM: And then I would just like to make a comment about the absentee ballot.

A few years ago, when they wanted to make the election hours longer -- and, again, when it was proposed, I believe by Senator Beck the last time, to add another hour onto the evening, we said, "You've made absentee ballots available for everybody now," rather than take these board workers who have a long day -- as it begins to give them extra time. How about we change the absentee ballot just to be called a *mail-in* so they don't think that they have to be absent from somewhere in order to vote and, again, to promote the absentee ballot? I have a lot of phone calls that say, "How come New Jersey doesn't have early voting?" I say, "Well, I guess you can say we do. We have absentee-- You can vote by absentee and vote now."

SENATOR WEINBERG: Actually, that was my answer to people too. We do have early voting. It's called *absentee ballots*.

MS. von NESSI: And every county board can vouch for that.

SENATOR WEINBERG: Okay. Thank you very much.

We have one more group. John Cannel, from the New Jersey Law Revision Commission; and Bryan Lee, from the Asian American Legal Defense and Education Fund.

And, Deborah, are you coming up again? (affirmative response)

Deborah Jacobs, from the ACLU.

And Steve Finkle was with you earlier.

Hi, John. I haven't seen you in a long time.

J O H N M. C A N N E L: It's been a while.

Let me state for the record--

MR. PARISI (Committee Aide): Please identify yourself.

MR. CANNEL: Yes, John Cannel. I'm the Executive Director of the New Jersey Law Revision Commission, which is a legislative commission. And one of our projects, completed now five years ago, was to take a look at the election laws.

Now, part of the difficulty that I think exists in the odd case-- I think, by and large, elections run well. But the law is no help. If you go to the statutes, which I recommend you do, you will find that they're really in quite a mess. If the judges are having difficulty with the cases, part of problem is that the statutes are not really an assistance in this regard.

You have a summary of our report, which deals with the important things, and I'm not going to go over any of that. But there are serious deficiencies in the existing law. To begin with, there are pages and pages about how we handle paper ballots and how we handle lever machines, and we don't use either. There's nothing on the modern way we do elections -- or nothing that is sufficient.

There's also-- In many cases, there are inconsistencies as to who has authority to do what things in regard to elections. And it comes really from the fact that the laws were passed layer by layer over the last hundred years, and they don't really talk to each other.

What is necessary is a total modernization of the law. And that's what we've proposed. Now, that doesn't mean that-- I mean, the Commission's job is to recommend and give its reasons. That doesn't mean that the Legislature should take everything the Commission says -- "Oh, yes, follow it exactly as it is." That, I think, is an abdication of your legitimate duties to take a look at some contentious issues. But let me go

through what the Commission has recommended, in part because I think a total modernization is necessary.

And to add to that, about a year ago I ran into a justice of the Supreme Court who said to me, “Oh, I’m glad you reported on the election law. It’s a mess. You have to do something about it.” I said, “Well, you--” “Oh,” she said -- sorry -- that judge said, “Oh, the whole court will come and tell you what’s wrong with the law.” Now, that’s not really going to happen in any real sense. But I think you can see that there are very serious problems with the law. And if we have problems in odd cases, it often is because the law gives no guidance.

Take, for instance, the problem with the provisional ballots. First of all, they’re put in, really, in part because they’re required by Federal law. As a result, I have seen in some places where they say, “Oh, we don’t give out provisional ballots for State and local offices because that’s not -- because they’re not under Federal law.” Well, that doesn’t make a whole lot of sense to me, but it may be that they may not be wrong. And if they are wrong -- if they’re not wrong, it needs to be corrected.

Add to it the fact that this business-- A perfectly reasonable thing was said a few minutes ago about what happens when the person is required to come up with identification and votes by provisional ballot. The reasonable response was, they have 48 hours to provide that. The Federal law doesn’t say at all what happens. It merely says that the -- that it’s required, and otherwise it’s under provisional ballot. I’m sure in some places these ballots are counted in every single case, because they go to the registration list, they find the person there, the person is registered, and the law requiring ID, whether you like it or hate it, becomes a nullity.

There is-- What needs to be done is a total work-through of the law. Add to it-- You've noticed that there are certain differences from county to county, from municipality to municipality. Part of the reason for that is there is really very little statewide authority in elections. The Attorney General's Office, historically, has done a very thorough job in advising people. But they're advising people. They don't have regulatory authority.

Now the Secretary of State's Office is the major election official, but they're not given full regulatory authority. We need somebody. The Commission recommends having an election -- basically a statewide election board to do that. That's creating a whole new entity. Some people say, "No, we don't need that." I don't care what is done. The important thing is there needs to be a statewide regulatory authority.

There is no reason-- For instance, with each new kind of voting system we use -- and I don't know what voting system we're going to have in five years. The hearings earlier this afternoon really told us that it's very much up in the air as to what's going to happen. But for each new one, somebody has to decide what the procedures are.

I remember when we were doing this -- I think it's been more settled. What happens when the person presses a whole lot of buttons on the machine and then walks out without pressing *cast vote*? Well, in a number of counties, they came up with, again, a perfectly reasonable decision. They send in one election board worker of each party to go in there together and press it for the person. In others, they say they void it out. We need a regulatory authority to make certain kinds of decisions,

and we need the law to be simplified and set out in a way that it is very clear who does what and when.

Let me, again, go through the *when* thing, because it came up very importantly in the Torricelli matter. It is not possible to draw a timeline that is coherent from the existing law. Event *A* may have to take place before Event *B*. But on the other hand, Event *B* may be similar -- in another section, required to happen before Event *A*. Since the thing was not written as a coherent whole, there is no -- there is a lack of coherence to even the timelines.

I recommend that you consider this. I recommend also that you make some decisions about exactly how you want to handle it. I am available, as is my small staff, to do any customizing you want on this. If you tell me what you want, in two weeks it will be done and you will have a totally new election law, which we need. You will also-- You may find there are gaps in this. Issues that were not obvious in 2003 may be obvious now. Add them in. Tell me what you want, and let's put them in.

I think we need more on provisional ballots. One of the problems when the cases go to court is -- using my own training when I was working for a campaign -- municipal campaign a number of years ago is -- the rule of thumb is: Never let somebody who is voting for your guy vote on a provisional ballot. It might not be counted. If you take them down to the court, they will get -- the judge will make a decision as to whether he's eligible or not. Once he is eligible, he can vote on the machine. If he's not eligible, you've lost.

What happens to provisional ballots is completely unclear, because it's done by a county board, and some of them are counted and some of them are not, for different reasons.

If you have any questions or want me to elucidate more on this-- But I really recommend to you a total overhaul of the election law. If you take a look at the current Title, it really is no help.

SENATOR WEINBERG: As a matter of fact, in Bergen County we had an attorney -- partisan attorney representing a partisan side -- tell people, "Don't vote on a provisional ballot. Go to court and get your vote on a machine."

MR. CANNEL: Well, because what they're saying--

SENATOR WEINBERG: And he was-- And then a letter went out to the board workers to say that was erroneous information.

MR. CANNEL: Well, it isn't erroneous any more than it's correct. What he's saying, as a strategic matter, is "If you vote on a provisional ballot, the Board of Elections will decide after the fact whether your vote is counted." If you go to a judge, and the judge says, "You may vote on a machine," you've already won that issue. And basically you've cut out the middle man of the election board. And you may never know what the election board decision was on your individual case, so that you would even know that you could go to a judge after the fact.

So I don't disagree with what that lawyer was saying. But I think it is a problem in the system, that it needs to be said.

SENATOR WEINBERG: If we did not create a new entity -- which I don't think anybody in the Legislature, the Governor's Office, is

going to look upon too kindly today -- where would you assign regulatory powers?

MR. CANNEL: I would assign it to, then, probably where it is now, with the Secretary of State's Office. The difficulty with it being the Secretary of State or Attorney General is, there have been times in the past when the people who have held those positions have been really active in politics. And what you don't want is a person who has regulatory authority to be somebody who has an axe to grind. But on the other hand, somebody has to do it. And it is better to have the regulatory authority. You could grasp a part-time board that mirrors the Board of Elections in the counties -- that doesn't add anything to cost -- and require regulations to go through that if you want to do that. There are a number of middle grounds.

But I think you're right. Nobody wants to create a new governmental entity these days. But be aware of what happened in Florida some time ago. And we've never had a situation like that in New Jersey, and maybe we never will. In fact, the election situation in New Jersey is really very good. But we've also had the luck of having not many very close elections. And if you have-- If there's not a close election, all of the rough edges sort of disappear, including problems with the system we use. But we don't have a nice, good system of somebody who is responsible for approving new election modalities and then requiring how they're to be used.

We have a simple approval left over from the 1940s -- '40s, '30s, I don't know.

SENATOR WEINBERG: Definitely before my time. (laughter)

MR. CANNEL: Well, the machines were there as long as I was. And nobody objected to the fact that you had no way of knowing that your vote was counted when you pulled the lever. But it was a mechanical system. There were fewer ways to hack it. And we were all just -- it was part of our mythology. We believed in it.

But paper ballots are-- I mean, to introduce paper ballots is the bottom line. I would want to have somebody who has the ability to do real heavy regulation, because they are subject to things that are far more dangerous than hacking.

SENATOR WEINBERG: Thank you very much, John.

Thank you for this document, which I know I will look over.

MR. CANNEL: And you can have a copy of the whole thing if you'd like.

SENATOR WEINBERG: Okay. Yes.

MR. CANNEL: I'll leave it with staff.

SENATOR WEINBERG: Okay.

Yes.

B R Y A N L E E: Good evening.

My name is Bryan Lee. I'm the Voting Rights Coordinator for the Asian American Legal Defense and Education Fund. It's a 34-year-old, nonpartisan organization that protects and promotes the civil rights of Asian Americans. We also have the Asian American Legal Project that's based in Newark, New Jersey.

Today we just want to submit a statement to comment on ways New Jersey can further expand access to the vote for the Asian American

population, and also describe some of our observations that we had in the 2008 general elections.

First, we'd like to commend the State Legislature for adopting a law in the Fall of 2005 that required translated postings of the Voters' Bill of Rights in languages that are spoken by 10 percent or more of the registered voters in the election district. We also commend the State for translating New Jersey voter registration forms, starting in January 2008, into Korean, Chinese, and Gujarati, which is a South Asian language. Actually, New Jersey is the only state in the entire country that has a South Asian language translation that has anything related -- to do with elections. Although we'd ideally like to see New Jersey translate ballots and voting instructions in Asian languages, these laws have still helped more Asian Americans to access the vote.

On Tuesday, November 4, 2008, AALDEF conducted the largest multi-state exit poll survey and poll monitoring program in the country, with a volunteer base of over 1,500 people, along with numerous co-sponsors, to gather data on Asian American voting patterns and also document for voter problems. We're still in the middle of processing all the incident reports and the over 17,000 surveys that were filled out.

But some of the problems we saw that day include voters who registered well before the October deadline who did not appear in poll books and were unable to vote, names which were misspelled or entirely missing from poll books, voters who have voted in previous years were still required to show identification, paper provisional ballots were either not available at poll sites or simply not offered to voters. In Edison, New Jersey, a poll worker refused to give a South Asian American voter a

provisional ballot without proof of registration. In Palisades Park, New Jersey, a Korean American voter who had not moved but had voted in previous years was not listed in the voter roll, and poll workers refused to give her a provisional ballot until AALDEF called in the problem to the Department of Justice to intervene. Voters were not notified by mail of their poll sites. In Palisades Park, New Jersey, a poll worker shouted at an Asian American voter, “Why do you not know your voting room?” In East Brunswick, New Jersey, a South Asian American voter was misinformed by the Board of Elections and poll workers, and was sent to multiple poll sites before eventually being allowed to vote by provisional ballot. So we’d like for you to just think about some of those issues. And we will certainly be submitting formal observations to the local county Boards of Elections, as well, in the next couple of months.

On another note, the Asian American population in New Jersey is growing. Since 1990, actually, the population has more than doubled. New Jersey has the fifth largest Asian population in the United States, numbering over 643,000 from the 2007 Census, and has actually had a 32 percent increase since the 2000 Census. And every county has actually seen a double-digit percentage increase in the Asian American population. And the Census shows that -- the 2000 Census shows that LEP voters in New Jersey consist of over 17,000 who speak Chinese, over 11,000 who speak Korean, and over 6,500 Gujarati speakers. And the 2010 Census will most likely show an increase in these statistics. These are statewide numbers, so we can’t break it down by county yet.

So to ensure that Asian Americans have access to vote, interpreters should be provided at poll sites on Election Day; and

instructions on how to vote, election guides, voters' right flyers, ballots, and other voting materials should be translated into at least Korean, Chinese, and Gujarati. And this assistance can easily target localities and poll sites with a large number of LEP Asian American voters. Providing translated voting materials and interpreters at the poll sites will greatly assist Asian Americans in exercising their right to vote.

Many years ago, New Jersey actually enacted a change in its election laws to allow for Spanish language assistance. And we recommend that you amend the relevant sections of Title 19 to include Asian language assistance. Ten sections mention Spanish and should be changed to "Spanish or Asian language." And the result would be, as an example in the written testimony that was submitted to everybody, "In a county or election district where the primary language of 10 percent or more of registered voters is Spanish or an Asian language, then bilingual voting materials and interpreters will be provided."

It is a simple and uniform test. In addition, because voting operations are now generally uniform across the state, such as statewide voter registration forms and election guides, these materials would only need to be translated once and can be used across the state, thus minimizing costs. And, of course, the Help America Vote Act provides Federal money to states to improve accessibility to the vote for individuals with limited proficiency in the English language. New Jersey would thus be able to use Federal funds to cover the costs in providing this form of assistance.

It is important to note that while the Voting Rights Act, VRA, requires language assistance in certain jurisdictions, the 2000 Census shows

that the New Jersey Asian American population does not meet the Act's test for coverage, and so no county in New Jersey is covered under the Act for Asian language assistance. The test is 5 percent, or more than 10,000, voting-age citizens who speak the same language; are limited English proficient; and, as a group, have a higher illiteracy rate than the national illiteracy rate as measured by a fifth-grade education.

Thank you for the opportunity to testify. AALDEF looks forward to assisting the Senate State Government Committee of New Jersey on implementing issues.

SENATOR WEINBERG: Thank you.

Senator Whelan, any questions?

SENATOR WHELAN: Yes, just a comment, Madam Chair, just to Mr. Lee.

You have a litany of things on the first and onto the second page of voters with misspelled names; missing from the book; being sent from one polling place to another polling place, to another polling place, to another polling place. I'm sure the Chair will attest to this as well: Not only-- That is not limited to Asian American voters.

MR. LEE: Certainly not.

SENATOR WHELAN: That is-- Across the board that happens. Every election -- those of us who are in this business -- we have people who get sent from polling place, to polling place, to polling place. We have people who show up and voted in the same place for years -- all of a sudden their name disappears, and so on.

So we applaud the work that you're doing.

Thank you.

MR. LEE: Thank you very much.

SENATOR WEINBERG: Deborah.

D E B O R A H J A C O B S: Thank you, Senator Whelan, Senator Weinberg, for staying and hearing us. We really appreciate it.

As you know, the ACLU supports the eighth amendment ban on cruel and unusual punishment, so I will be brief. (laughter) Hopefully, you'll read my written testimony. I'll just try to get to the highlights.

Senator Whelan, I wanted to start by answering a question you directed to someone else about how does the change of having the Division of Elections move from the AG to the Secretary of State's Office-- We lobbied for that change. We agree with the comments that were made about the conflict that is created. And we've been tremendously pleased with the efforts of the Secretary of State's Office. We think Bob Giles is a great appointment. He's doing a great job. Secretary of State Wells has demonstrated a real desire to keep the dialogue open. And we've seen a lot of improvement to attention and concern, and hope that continues.

The problems that we encounter-- We, I think, probably have the largest election protection effort, which we do in partnership with the League of Women Voters of New Jersey. And for this last election, we had about 250 volunteers staffing phones at the poll locations and in the courthouses. And what we do is, we process -- and we will issue a report, but we're still analyzing, and verifying, and processing the complaints, just like Mr. Lee is in their shop -- and we issue a report.

And one of the biggest recommendations I have is that the work that we're doing, and other advocacy organizations are doing, is really work that the State should be doing. They are out in the field, but what

they're not doing is issuing a report saying, "We got complaints about this. Here was the problem. And here is how we're going to fix it." I think that would contribute tremendously. And if you're looking for uniformity in particular, if they do -- "Counties, what did you get?" And let's figure out what happened and where those communication breakdowns are taking place. So having them required to do reporting after every election on what worked and what didn't work would be a huge step forward.

Poll worker problems, lack of poll worker training, for us is about 50 percent of the complaints we get. And the two biggest ones for this election were poll workers improperly asking people for identification; and poll workers improperly managing provisional ballots, that we've talked so much about.

It seems simple to me. You think you're supposed to be on the list. You're not on the list. You should be offered the provisional ballot or you should have the opportunity to go to court if you so choose. And it seems that that confuses people. I realize that the counties have a real difficulty recruiting poll workers. And I think we really need better systems for the training, and better resources. It just seems that again, and again, and again we get reports of misinformed, sometimes hostile, sometimes power-hungry poll workers -- and just using Bergen as one county. We had 14 complaints of people not being offered provisional ballots.

Now, not everybody knows to call the ACLU or the League of Women Voters. I mean, the number sounds small. But the fact that that many got to us, that's big. Because overall, we had processed about 450 complaints that day between our different places.

Again, with uniformity -- I think around voter registration and voter notification would be really helpful. People get different letters from different counties. Some get verified, some get a voter registration card, some don't. It causes confusion, and that would be a place that would be really helpful to have uniformity. And I think that's what you're primarily interested in today.

Responding -- same thing with responding to complaints about elections. We filed an Open Records request to the different counties asking for what complaints they had received, and logged, and how they were handled in the presidential primary. Sussex County sent us the best batch of information. But many counties said that they had no official complaints, and we knew that wasn't true, because we had assisted people in filing complaints.

Student voting: We want our young people to be engaged, we want them to be part of our democracy. But again and again, we get a disproportionate number of complaints from Rutgers Campus. And I think we've raised all these issues -- we'll continue -- with the State. But I think that if there could be a system, for example, where students who are Rutgers students can go to any polling place -- any campus polling place and maybe not have to have one particular one. They get bounced back and fourth from polling place to polling place. And it caused a lot of confusion. And they're so passionate about wanting to cast those votes. We had complainants who spent half the day getting bounced from polling place to polling place.

With the election court issues -- which may have been the impetus for this hearing, from what I understand-- I mean, Donna Kelly is

certainly right that you -- each judge has their own discretion. I think that one thing that could make a difference is to have mandatory training in election law for the judges. There was, I believe, an optional three-hour session provided by the State. And maybe 75 people attended this year. But to have it mandatory--

SENATOR WEINBERG: Are you talking about for judges?

MS. JACOBS: Yes -- to have it mandatory, and also have consistent supporting materials.

Also, we have concerns that different stakeholders have input into what information about election law might be presented. Because we sometimes have differences in opinion on what the law says. And if those could be flushed out, then our jurist would be in a better position to rule.

In terms of other-- I mean, being -- having better poll worker training, better accountability, and reporting as far as complaints; standardized policies and procedures for written and phone intake; standardized forms and procedures for notifying residents about various voting issues, changes in polling sites -- all those things would help reduce confusion. Mandatory training on election law; and developing election overview materials for election judges with input from all the stakeholders.

The other thing I think you should really think about is doing what I think about eight or nine other states have done, which is Election Day registration. (laughter) Ideally, if someone does a provisional ballot--

Is that a funny one?

SENATOR WEINBERG: Apparently.

MS. JACOBS: They don't like it over there.

SENATOR WEINBERG: We heard from the peanut gallery over there.

MS. JACOBS: Those states that have it have typically a 10 to 12 percent higher voter turnout. And then it also can, in a positive way, disproportionately affect poor communities who are negatively affected by voter registration rules and if they're not as stable in their living environment. So eight states have Election Day registration. And North Carolina, a ninth state, allows for same-day registration at early voting sites. So it's just as if your provisional ballot often is your voter registration. So why the heck can't you go-- You have to show ID if you're doing it that way, understood. You take your ID, and then you're registered thereafter. And then they don't have the pressure of getting people listed by the date, which many counties did not succeed in this year because of the high volume of people interested in voting in this particular election. So I would suggest that.

And also, I'm very much hoping that, in the future, this Committee will hear Senator Cunningham's bill that would extend voting rights to people on probation and parole. There are public safety and democracy reasons why it would be very healthy to allow people who are otherwise exercising every right and responsibility of citizenship to be able to cast a vote and contribute to society in that way.

Thank you for hearing me.

SENATOR WEINBERG: Thank you.

The last panel are the League of Women Voters, Sandra Matsen and Anne Ruach Nicolas, if you are still here.

Irene Goldman, from the Coalition for Peace, and (indiscernible) from Rutgers Law School.

Thank you for your patience.

S A N D R A M A T S E N: Thank you.

I'm Sandy Matsen, with the League of Women Voters. And I brought my new Executive Director, Anne Nicolas, with me. So I will be presenting the testimony, which you have, and just very briefly.

I think, certainly for the League, over the past six years I have stated that, ultimately, we want voter's experience -- registration or at the polls -- to be the same, whether they live in Cape May or Sussex. And I think so would everyone else here, in that sense of standardized procedures. And I did submit some very brief testimony.

I would just like to mention two quick issues. As we've heard, poll workers really are the front-line election workers. They're expected to know not only about signing the book and operating the machine, but emergency and provisional ballots, challenges, being able to help somebody who is at the wrong poll place or who doesn't understand how to use the machine -- just a myriad of questions. And it is a complicated and difficult job. And so we have, in the past, lobbied for, and would suggest again, that one way of helping standardization would be to evaluate the current schedule to require poll worker training every year; and to also think about: inexperienced workers need different training than their experienced peers, and to try to do some accommodation in that way.

And also -- it's not in my written testimony -- but to ask the panel to really consider codifying the master poll worker program -- which a number of counties have, but it's not a requirement in the law -- as a way of

really trying to solve problems on the ground, having people who really-- I can't get into all of them -- the little nitty-gritty -- and could help, whether they're serving four, five, six precincts, two or three locations, whatever. I mean, there are examples out there.

We'd also ask the Committee to explore-- We have an 800 number that we operate all year long. So the majority of our calls in the weeks prior to the election were about people who knew they registered but hadn't received notification. I am fairly certain that this year is basically an overload of the system. There was just not the capacity for everything to get in and for people to get their notification. But I mean, I think that's an issue that we should -- be on the table.

And then finally, really sort of an evaluation of the complaint form so that you can determine the systematic problems that can be corrected. There's always going to be glitches and problems. But to see-- And this was also -- I think Bob Giles mentioned, moving forward, that sort of issue of being able to see if, systematically, you have problems in certain areas or certain sites, and to be able to address those.

So thank you for your time.

SENATOR WEINBERG: Thank you.

Anne.

A N N E R U A C H N I C O L A S: Hello. Anne Ruach Nicolas, League of Women Voters.

Just to add a little bit to what Sandy said, and to add on to what Deborah said, we had a very successful year this year -- first the presidential primary, then also the nonpresidential primary, and the general election -- in terms of our voter protection project. A lot of volunteers, a lot

of people knew about our hotline, which was great. So we heard a lot from the ground, and we're very excited and pleased -- the results that we've seen with the move over to the Division of Elections under the Secretary of State in a positive way.

We're also excited to release the results of our report once we get done compiling the data. And Sandy and, also, Deborah had mentioned some of what we've been seeing. So we look forward to talking to you more.

And having this hearing, I think, is a great first step to, as Sandy said, getting out the complaints and looking at it from a systematic standpoint.

So thank you.

SENATOR WEINBERG: Thank you.

Ms. Goldman.

I R E N E E. G O L D M A N: Thank you.

Irene Goldman, Coalition for Peace Action. (indiscernible) had to leave.

We haven't consulted-- These are my thoughts, just very briefly.

I want to thank you and let you know that in addition to the previous session, we are also advocates for working on voters' rights with the Secretary of State. Some of us have worked closely with Mr. Giles and the Secretary of State to try to improve and recommend, along with all the other organizations that you've seen here today. So we do have a nice play group.

My comments are about the current paper that we use to vote -- on which we vote. There's the absentee ballot, the emergency ballot, and the provisional ballot. Today, the word *emergency ballot* was not mentioned. And it's important, for many people -- people who are elected officials themselves -- are just not -- frequently confuse provisional and emergency. They interchange them. There are very clear differences.

SENATOR WHELAN: Can I just interrupt one second?

MS. GOLDMAN: Go ahead.

SENATOR WHELAN: I think the nomenclature should be *messenger ballot*. Emergency ballot is a messenger ballot. I think that's what you're talking about, correct?

MS. GOLDMAN: No, an emergency ballot is-- Every polling place has-- Let's do-- Absentee ballots are previous to the election.

SENATOR WHELAN: Vote by mail.

MS. GOLDMAN: No, not necessarily. You can vote in person.

SENATOR WEINBERG: No, but if you have an absentee ballot it's vote by mail.

MS. GOLDMAN: If you have an absentee ballot-- I'm trying to be brief. I'm going to go over each of the three things.

The emergency ballot is a requirement for any -- an available form of voting. Currently, if the machine fails, or if there is a long line -- this is recent, in the last several years. If there's a long line, due to the fact that someone is using the audio version of assistance and it's taking an excessive amount of time, our position has been that there should be emergency ballots at free will. That's a point to be considered -- how many emergency ballots, what percent should there be. They are totally different.

They are as if you are voting on a voting machine. You have gone in, written in the book, you've been given your authorization, and now you are planning to vote on the technology before you. If that technology is failed, out of commission, the board worker is supposed to offer you not a provisional ballot, but an emergency ballot. There's a special bag.

This point is really important, because they're two separate ways to vote on the day of election. And those emergency ballots must be counted at the precinct that day and be included in the count. They are hand counted, and they are counted in the count on Election Day.

SENATOR WEINBERG: Do we have anybody from the Division of Elections still here?

MS. GOLDMAN: We are actually-- They'll confirm that, because we are all in agreement.

SENATOR WEINBERG: No. I'm just curious as to how many of those ballots they supply.

MS. GOLDMAN: They do not-- They are required by law currently--

Is someone here?

SENATOR WEINBERG: Yes.

UNIDENTIFIED SPEAKER FROM AUDIENCE:
(indiscernible).

MS. GOLDMAN: I think it had been 30, and it was increased to at least -- maybe 70 this year.

Justin?

JUSTIN ZIMMERMAN: That is my understanding.

Justin Zimmerman, from the Secretary of State's Office.

MS. GOLDMAN: Yes.

MR. ZIMMERMAN: But I can get you a definitive number.

SENATOR WEINBERG: Okay. So if a machine breaks down, people don't have to wait in line until the technician comes to fix it, or--

MS. GOLDMAN: They should not have to.

SENATOR WEINBERG: --told to leave and come back. They should be given an emergency ballot right then and there.

MR. ZIMMERMAN: My understanding is, if there is only one machine in the polling place, that would be the procedure.

MS. GOLDMAN: Okay. Well in the state of Pennsylvania, by order -- by lawsuit and by order of the court, it was not only if one machine -- if all of the machines were down. It was at least 50 percent of the machines were down. So if there were two-- There's a way to figure that out. And I would welcome further conversation with the Secretary of State's Office and the Legislature to determine that. Because you want-- The whole point is to have a smooth, continuous process so that there's no unnecessary delay. No one is questioning whether the individual had a right to vote. It's registered. It just slows down the process.

The one thing for you to consider: whether or not long lines could go into that category, and we feel that it should. Just the delay of being on an excessive line-- In fact-- And it was really nice to have the good relationship with Bob Giles this election, and working with the ACLU and League of Women Voters on voter protection, to be able to communicate on the day of the election if we saw problems, and we did so, and we felt free to call back and forth. That, in my day, didn't come up,

but it may come up someplace else. So I really want you to, if you would, please focus on that.

If that issue was made crystal clear: between provisionals -- which have been discussed here today -- and emergencies-- I think it's really important to talk about it a lot with the election board workers and to give it as much room as possible. Have as many emergency ballots available as possible. You might (indiscernible) 100 percent of the anticipated vote. So that's one thing.

The term *vote by mail*: That's a very particular term that is used, for an example, in the state of Oregon, which is 100 percent vote by mail; and is somewhat -- it's confusing if you refer to it, and the press refers to it, as vote by mail. It has a very specific definition in voting technology. So I encourage *vote anytime*, or *vote early*, or *vote when you feel like it*, something that doesn't also make you legally saying that you are a state which is only vote by mail. I don't think New Jersey should ever be a vote-by-mail state, 100 percent. I really don't think we're set up that way. Oregon was designed to be that way. And then the vote is not secret, which we require.

We talked-- Oh, e-mail was mentioned by Ms. Kelly. There's a very small-- We and the larger voting integrity community is very concerned about using e-mail as a method of voting. It's vulnerable in so many different ways. And so I just wanted to say out loud, "Don't do it." There's a small way that it is being done, I think, on international voting. That's already happening. I would limit that to, as much as possible-- Justin can describe it better than I can, but I'm just -- what we want to caution is that we are absolutely against something that would increase the use of electronic voting through ether.

That's really all I have to say. I'm really happy to participate, I'd love to come back and talk to you some more. I'm really glad you're going to fix this law.

SENATOR WEINBERG: I thank you all.

I will give you a suggestion that you can help us by recruiting board workers from among your membership.

MS. RUACH NICOLAS: Thanks to the Secretary of State and the Division of Elections this year. They had -- they made it very easy for us to put out the word to our members to be poll workers. There is a link right on the front page that went to every county with a county-specific page. So we got that word out to our members. They'd click on this link, they could go right to it.

SENATOR WEINBERG: Particularly an organization like the League of Women Voters, as a civic responsibility -- they have them get paid a few dollars for that. That would go -- help a great deal to making the whole election process smoother.

MS. GOLDMAN: I wanted to say that the absentee voting project was one that was forwarded by the Secretary of State. The Coalition for Peace Action was very active in support of the Secretary's desire to have voters vote by absentee ballots. So that's how that came to be.

SENATOR WEINBERG: Thank you.

A personal thank you to Senator Whelan who hung in there with me. (laughter) (applause) He has almost as far to get home as I do.

Thank you.

And to the staff, thank you.

MR. PARISI: You're welcome.

(HEARING CONCLUDED)

APPENDIX

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS



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**Prepared Testimony to the Senate State Government Committee
by Steven D. Bonville, Special Assistant to the Administrative
Director of the Courts, New Jersey Judiciary**

December 11, 2008

Thank you, Senator Scutari, Vice-Chair Weinberg, and members of the Committee for the opportunity to speak with you about the New Jersey Judiciary's role in the Election Day process.

My name is Steven Bonville and I am Special Assistant to Judge Glenn Grant, the Acting Administrative Director of the Courts.

The role of the Judiciary in the election process is twofold. The first relates to access. This is the Judiciary's administrative role – to provide voters with ready and effective access to a court when the administrative remedies defined in the statutes have been exhausted leaving the courts as the remaining recourse. The second – and obviously related – role is the court's adjudicative role. To decide those applications brought before it by quickly, yet carefully and fairly, applying the statutory law to the particular facts in each case.

Others testifying here today will provide you with information about the legal aspect of election law, about the various types of proceedings brought under those laws, and the dynamics of the decision-making process.

What I would like to share with the Committee are the steps that the Judiciary takes each election day – and in the weeks leading up to election day – to ensure that voters who need a judicial resolution as to their entitlement to vote can gain ready access to a judge who is knowledgeable about the voting laws and who in applying that knowledge to the facts presented will make a just and fair decision.

Several weeks before each election – whether a general election, a June primary, or a presidential primary – each of the state's fifteen Assignment Judges, working with the Administrative Office of the Courts, determines how many judges will be needed to provide adequate judicial coverage for that county on election day, from the time the polls open until the time the polls close, or even later. The number of judges assigned varies from county to county, as does the length of the blocks of time that the judges are

assigned to cover on election day. That is a determination made by the Assignment Judge, in consultation with local election officials, with the goal to ensure maximum coverage and maximum availability.

For example, this past election, in Union County there were six judges assigned to election duty, three from 6:30 a.m. to 1:30 p.m. and three from 1:30 p.m. to 8:00 p.m., with two more judges on call. In Bergen, eight judges were assigned, four from 6:00 a.m. to 2:00 p.m. and four from 2:00 p.m. to 8:00 p.m. Monmouth assigned four judges, with each handling a shift of three to four hours. Eleven judges were assigned to election duty in Passaic County – six from 6:00 a.m. to 1:00 p.m. and five from 1:00 p.m. to 8:00 p.m., with one additional judge on call. Atlantic assigned three judges, all from 8:00 a.m. to 8:00 p.m.

The total number of judges handling election duty this year on November 4 was 117, with another 15 on call. The bottom line – in every one of the state's 21 counties, there were judges on duty to handle election matters during the entire time the polls were open. The Administrative Office gathers the election duty assignments from each of the Assignment Judges and constructs a statewide grid listing on a county by county basis the names of the judges assigned, the hours of that assignment, the location where the judge will be sitting, and telephone and fax contact numbers. I have copies of this year's information grid with me to show the Committee the scope of the election day judicial coverage.

The Judiciary forwards that information grid to the Attorney General's Office, to the Public Advocate, to counsel for the parties and counsel for the candidates.

About a week or ten days before the election, the Judiciary provides an in-depth training session for any of the designated election duty judges who have not recently had that training. This year's session – presented on October 27 – addressed a multitude of election law issues, including the federal Help America Vote Act of 2002 (HAVA). The seminar is conducted by senior judges in conjunction with the Division of Law. The judges attending the training program are provided with copies of the materials. And those materials are posted on the Judiciary's intranet for access by those judges who attended previous sessions. Additionally, the AOC provides all of the assigned election duty judges with standard sample orders developed by the Division of Law.

On election day, the election duty judges were actually in the county courthouses during their assigned coverage time period, with a few variations, this time including a number of municipal courts linked by videoconferencing technology to the county courthouse. Courtroom staff also were on site. And interpreters either were on site or available on call. In other words, the voter making an application to the court for authorization to vote experienced in essence a regular court proceeding, with each matter receiving the full attention of the court and each decision made and each order entered carrying the full authority of the court, both in appearance and in effect.

Subsequent to Election Day the Administrative Office obtains from each Assignment Judge the number of orders entered by the election duty judges in that county, with each order representing one application. In this year's general election the total number of judicial orders issued by Superior Court judges was 2515, with 78% of those orders

granting the relief sought. There also were 49 orders issued in the Appellate Division by the judges in the court on election duty. I have copies for the Committee of the order tally sheet for this year's general election.

The numbers of applications made and orders issued is cyclical, with by far the largest number in the general election in presidential election years. In 2004, the previous presidential election, the number of orders issued was 3944 – as compared to this year's 2515. In 2005, the number of orders issued was 265; in 2006, 502; and in 2007, 130. In this year's presidential primary on February 5, there were 459 orders entered. In the June primary, only 21. While the number of judges assigned to election duty in other than presidential election years has been lower than in presidential election years, the scope of the coverage has not varied.

As all of these steps demonstrate, the Judiciary takes very seriously its obligation to provide voters with ready and effective access to judges who are knowledgeable about the voting laws and who in applying that knowledge to the facts presented will make a just and fair decision.

Thank you.

NEW JERSEY LAW REVISION COMMISSION
SUMMARY OF FINAL REPORT AND RECOMMENDATIONS ON ELECTIONS

I. Introduction

The Final Report and Recommendations on Elections issued by the Law Revision Commission substantially revises New Jersey law regulating elections, presently found at *N.J.S.A. 19:1-1* to *N.J.S.A. 19:60-12*. The Report addresses the manner in which an individual obtains a place on a ballot and the manner in which an individual actually casts a vote but does not address the contribution and expenditure areas of election law. The Report may be found on the Commission's website (<http://www.lawrev.state.nj.us>).

The initial impetus for the revision was the 2000 Presidential election, which revealed problems with the election systems in various states. Originally enacted in the 1930s, the New Jersey's election law does not presently address recent developments in technology or mirror current election practices.

More significantly, recent federal law requires changes to New Jersey's election law. The *Help America Vote Act of 2002* (Pub. L. 107-252), requires the implementation of a statewide voter registration system not presently available in New Jersey. The federal law also requires the widespread availability of provisional voting, increased accessibility of voting machines, an opportunity for voters to verify and correct their ballots before casting their votes, the discontinuation of obsolete voting methods and the increased use of available technologies, and the implementation of an administration complaint procedure for violations of federal voting law.

The New Jersey Legislature has clearly recognized the need to reform New Jersey Election law. At the time of the dissemination of the Commission's first Tentative Report there were more than 70 bills pending in the Legislature pertaining to election issues and more than 30 bills dealing with election law issues have already been introduced in the 2002-2003 Legislative Session.

II. Summary of Changes

- Provides for statewide registration: Federal law now requires a statewide voter registration system maintained and administered at the state level, and coordinated with other state agency databases. Any election official in the state must be able to obtain immediate access to the information contained in the system. The Commission's recommendations fulfill these requirements.
- Establishes a State Commission on Elections: While the day-to-day responsibilities associated with elections will continue to be handled by personnel at the county level, federal law now requires that statewide registration be maintained and administered at the state level. Federal law also requires that any state that receives funding pursuant to the new federal election law establish and maintain a state-based administrative complaint procedure. The Commission would handle these

new responsibilities and would enforce the provisions of the statute in an effort to achieve more statewide uniformity in all aspects of the electoral process.

- Technological neutrality and development: The Report uses machine neutral language. Current law provides detailed procedures for the use of paper ballots and lever machines and no procedures at all for the modern voting machines now in use in most parts of the State. Since voting technology continues to develop, machine neutral language does not tie the law to a voting system that the passage of time may render obsolete. The Report also reflects the minimum voting system standards now imposed by federal law, including general standards, and the requirements pertaining to audit capacity, accessibility, error rates, and a uniform definition of what constitutes a vote.
- Ballot changes and provisional ballots: Requirements pertaining to ballots have been streamlined and modernized to avoid waste. Pursuant to the federal requirements, provisional ballots will be available for those voters whose right to vote cannot be confirmed at the time they wish to vote, as will a free access notification system through which a voter can determine whether his or her vote was counted.
- Modifies timeline and deadlines: In some cases, the current law does not provide clear deadlines; in other cases, the deadlines do not allow for the sequence in which actions must take place. The Report clarifies the deadlines, corrects anomalies, and shortens deadlines where technological changes have made current deadlines anachronistic. The Report also provides clear deadlines for the replacement of candidates on a ballot to address issues raised in *New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178 (2002).
- Consolidates elections: In an effort to streamline, regularize and make the election process more cost efficient and less burdensome for voters, all non-partisan elections, including school elections, will be held together in April.
- Expands absentee voting: The Report discontinues the current requirement that a voter provide a reason for voting by absentee ballot, and permits early voting on request.
- Expands pool of poll officials: The Report expands the pool of potential poll officials by permitting those voters registered as independents to work at the polls on Election Day. Over half of the registered voters in this State are not registered as either Democrats or Republicans; they will now be permitted to participate in this important process.
- Consolidates voting offenses: The Report consolidates the various offenses presently scattered throughout the two volumes of the statute in a single chapter of the Criminal Code.

- Changes at county level: Although many responsibilities associated with elections will continue unchanged, the duties of the election officials at the county level have been rearranged to increase efficiency.

III. Conclusion

The Report endeavors to clarify, simplify and streamline the election process in New Jersey. This is done in an effort to increase voter participation and to make the process run more smoothly for the voters and for the local, county and state officials who are responsible for the conduct of elections. The comments received by the Commission after the extensive distribution of its Tentative Reports suggest that most of the recommendations are acceptable to the individuals throughout the State who would be affected by the implementation of the proposed changes.

Prompt consideration of the remaining issues by the Legislature should allow for the resolution of those limited issues in time to allow New Jersey to comply with the federal mandates within the deadlines imposed by federal law. Given the substantial changes required by federal law and the extent of the modifications needed to conform New Jersey's statute to current voting realities, addressing all of the necessary changes at the same time seems to be the most efficient way to proceed.



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Statement of Bryan Lee
Voting Rights Coordinator

Asian American Legal Defense and Education Fund

Before the

MEMBERS OF THE SENATE STATE GOVERNMENT COMMITTEE

December 11, 2008

Trenton, New Jersey

Good afternoon. My name is Bryan Lee and I am the Voting Rights Coordinator at the Asian American Legal Defense and Education Fund. AALDEF is a 34-year old, nonpartisan organization that protects and promotes the civil rights of Asian Americans through litigation, legal advocacy and community education, including our New Jersey Asian American Legal Project based in Newark, NJ.

Today, AALDEF submits this statement to comment on ways New Jersey can further expand access to the vote for the state's growing Asian American population and to briefly describe some of our observations from the November 2008 General Elections.

First, we would like to commend the State Legislature for adopting a law in the Fall of 2005 that requires translated **postings of Voters' Bill of Rights** in languages that are spoken by 10% or more of the registered voters in the election district. We also commend the State for translating New Jersey voter registration forms, starting in January 2008, into Korean, Chinese, and Gujarati. Although, we would ideally like to see New Jersey translated ballots and voting instructions in Asian languages, these laws have still helped more Asian Americans to access the vote.

On Tuesday, November 4, 2008, AALDEF conducted the largest multi-state exit poll survey and poll monitoring program in the country with a volunteer base of over 1,500 people and the assistance of numerous co-sponsors to gather data on Asian American voting patterns and to document voter problems. We are still in the middle of processing over 17,000 survey results and over 900 voter incident reports from 12 different states including Washington, D.C. However, some of our results for New Jersey currently show that many Asian American voters experienced the following voter problems:

- Voters who registered well before the October deadline did not appear in poll books and were unable to vote
- Names were misspelled or were entirely missing from poll books
- Voters whom have voted in previous years were required to show ID
- Paper provisional ballots were either not available at poll sites or simply not offered to voters

- In Edison, New Jersey, a poll worker refused to give a South Asian American voter a provisional ballot without proof of registration
- In Palisade Park, New Jersey, a Korean American voter who had not moved but has voted in previous years was not listed in the voter roll; poll workers refused to give her a provisional ballot until AALDEF called in the problem to the DOJ to intervene
- Voters were not notified by mail of their poll sites
 - In Palisades Park, New Jersey, a poll worker shouted at an Asian American voter, "Why do you not know your voting room?"
 - In East Brunswick, New Jersey, a South Asian American voter was misinformed by the Board of Elections and poll workers and was sent to multiple poll sites before eventually being allowed to vote by provisional ballot

I. New Jersey Asian Americans

Since 1990, the Asian American population in New Jersey has doubled. New Jersey has the nation's fifth largest Asian population, numbering over 643,000 in 2007, a 32% increase since 2000 and the largest population increase in New Jersey in terms of race. In fact, every county of New Jersey has seen a double-digit increase in its Asian American population. Asian Americans are increasingly becoming U.S. citizens but many have difficulty in exercising their right to vote because of limited English proficiency (LEP). A review of 2000 U.S. Census data shows that, of LEP voters in New Jersey, over 17,000 speak Chinese, over 11,000 speak Korean, and over 6,500 speak Gujarati. These are statewide numbers. The 2010 Census will most likely show increases in these statistics.

A closer look reveals that most limited English proficient Korean voters reside in Bergen County, and pluralities of Chinese and South Asian Gujarati speakers reside in Middlesex County.

During the 2004 election, the Asian American Legal Defense and Education Fund with the Korean American Voters' Council and South Asian Americans Leading Together (SAALT) conducted a non-partisan survey of almost 1,400 Asian American voters. We found that most (85%) were foreign born; more than a third (35%) were first time voters; and a quarter (25%) were limited English proficient (LEP).

Specifically, in Middlesex County, 26 % of the Chinese voters surveyed were LEP; in Bergen County, 55% of the Korean voters surveyed were LEP; and in Hudson County, 25% of Indian voters surveyed were LEP (mostly speaking Gujarati).

To ensure that Asian Americans have access to vote, interpreters should be provided at the polls on election day and instructions on how to vote, election guides, voters' rights flyers, ballots, and other voting materials should be translated into, at least, Korean, Chinese, and Gujarati. This assistance can easily target localities and poll sites with the largest number of LEP Asian voters.

II. Language Assistance

Providing translated voting materials and interpreters at the polls will greatly assist Asian Americans in exercising their right to vote.

Many years ago, New Jersey enacted a change to its election laws to allow for Spanish language assistance. We recommend amending the relevant sections of Title 19 to include Asian language assistance. Ten sections mention "Spanish" and should be changed to "Spanish or Asian language." The results would be:

In a "county" or "election district" where the "primary language of 10% or more of the registered voters is Spanish or an Asian language" then bilingual voting materials and interpreters will be provided.

This is a simple and uniform test. In addition, because voting operations are now generally uniform across the state (i.e. voter registration forms, instructions in how to vote, nonpartisan election guides for statewide offices, and voters' rights flyers), these materials would only need to be translated once and can be used across the state, thus minimizing costs.

To assist in paying for language assistance, the Help American Vote Act (HAVA) provides federal money to states to improve accessibility to the vote for individuals with limited proficiency in the English language. New Jersey would thus be able to use federal funds to cover the costs in providing this assistance.

It is important to note that while the Voting Rights Act (VRA) requires language assistance in certain jurisdictions, the 2000 Census shows that the New Jersey Asian American population does not meet the Act's test for coverage and so no county in New Jersey is covered under the Act for Asian language assistance. The test is 5% or more than 10,000 voting age citizens who speak the same language, are limited English proficient, and, as a group, have a higher illiteracy rate than the national illiteracy rate as measured by a fifth grade education.

Thank you for the opportunity to testify. AALDEF looks forward to assist the Senate State Government Committee of New Jersey on implementation issues. If you have any questions, please feel free to call me at 212-966-5932.

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President
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Executive Director

Testimony on Voting Rights Problems in New Jersey
Senate State Government Committee Hearings
December 11, 2008

Submitted by

Deborah Jacobs, Executive Director
American Civil Liberties Union of New Jersey

Thank you for the opportunity to testify. The American Civil Liberties Union of New Jersey is a private, non-profit organization that promotes and defends our nation's founding principles of freedom, justice and equality. We have nearly 15,000 members in New Jersey, and half a million nationwide.

For the past several years the ACLU-NJ has worked collaboratively with the League of Women Voters on Election Day to host a hotline for voters with questions or problems. We also send trained monitors to the polls and attorneys to the county court houses to assist voters. We advocate for voters' rights, investigate complaints and issue reports on our concerns and recommendations for improvements to voting systems.

This year, we received over 450 voting complaints during the November General Elections, and over 140 during the February Primary. In addition, election protection efforts by government and other advocacy organizations fielded many more. The entirety and range of voting issues and problems remains unclear because the state doesn't issue a report that documents the complaints the counties receive or problems addressed; we are concerned as to how the state can confidently assess the health of our voting system given the lack of any systemic review.

We are still analyzing and verifying the complaints we received in November, and have not yet issued our report, but I can highlight some of the most prevalent type of problems encountered this year.

Poll Worker Problems

Counties currently employ 26,000 temporary workers to run the 6500+ polling precincts. We documented unacceptable levels of partisanship, unprofessionalism and general misdirection in numerous polling places this year. More than half of all problems we documented relate to poll worker error or confusion. An article by the *Associated Press* reported that Essex County Superintendent of Elections Carmen Casciano attributed 50% of voting machine problems on November 4th to poll worker error. The most common complaints we received about poll workers involved improper demands that voters show identification, which was reported in at least six counties, and improper handling of provisional ballots.

Provisional Ballots

The failure to provide provisional ballots is the most common problem we receive. Time after time we get reports of confused poll workers disfranchising voters by withholding provisional ballots. In the November election provisional ballot distribution was especially problematic in those counties that refused to print supplemental books in response to the voter registration overload, but promised that they would offer provisional ballots to would-be voters whose names were not on the poll rolls. Unfortunately, that promise didn't trickle down to the front lines. One poll worker told voters that only people who are on the county "rolls" are entitled to provisional ballots. We also heard stories of poll workers using provisional ballots to assert power over donors, such as a Hudson County worker who boasted to a voter, who happened to be a television reporter, that "I decide who gets a provisional ballot."

We documented at least 14 people turned away at the polls in Bergen without a provisional ballot, several Drew University students in Morris County and would-be voters in Monmouth and Ocean counties. While these numbers may seem small, keep in mind that the ACLU-NJ's monitoring effort is quite small and only captures a snapshot of what happens on Election Day; without more analysis by the state itself, the breadth of the problem is really unknown.

Voter Registrations

Over two-thirds of the problems people reported to us on Election Day were traced back to the voter registration period. Some were due to registration overload at the counties, some due to failure of agencies such as the MVC to pass on completed registrations, and some to problems with address or identification discrepancies.

The ACLU-NJ has also documented ongoing problems with counties registering people with prior convictions to vote, although the state has established clear rules for registering people who have paid their debt to society. Our 2004 survey showed that nine counties were setting roadblocks in the way of voter registration by demanding paperwork that either was non-existent or hard to produce. Many counties demanded release papers although they already had this information in their database. Our 2008 survey showed little has changed; now eight counties continue to violate the law. Hudson County has apparently added its own condition for enfranchisement - the payment of all outstanding fines, a requirement certainly not imposed by the legislature when it set the conditions for enfranchisement after a conviction.

Voter Notification Problems

The tremendous number of registrations this year apparently overwhelmed registration offices and the names of many who registered in a timely manner didn't make it onto the printed poll rolls. Some counties printed supplemental lists, others decided to use provisional ballots. One county, Morris, notified its voters by letter. The result was confusion, both at the polls and for advocacy organizations such as ours trying to assist voters. It would be easier for the state to confer with counties to develop a uniform response to handle problems. Multiple counties utilizing different responses can add to the general confusion over elections.

We received at least 10 complaints from voters who never received notice about their voter status from their counties, or any communication about changes in their voting status. We had 13 complaints from people whose names disappeared from the county databases without notification. Some counties provide voter registration cards to successful registrants, while others do not. We have concerns about how voters are notified if their absentee ballot applications are denied by the county clerk; we received at least 16 complaints from voters who did not receive absentee ballots, nor any communication from the county about their applications. Atlantic

County lost one voter's absentee ballot; so she drove 200 miles on November 4th to vote back at her home precinct.

Response to election complaints

The ACLU-NJ filed open public records requests with all twenty-one counties requesting records of the voter complaints they received during the presidential primary; we received a wide variety of documents in response. Sussex County provided the most comprehensive packet of voting concerns filed by its citizens. Several counties indicated they had no "official" complaints, though we knew otherwise. Neither the state nor the counties appear to employ standard complaint/response systems. Nor do they appear to track problems, a practice any organization should utilize to improve their effectiveness.

Student Voting

Students continue to have problems voting, in part due to confusion of "home address" as indicated on the voter registration and in part due to location of campus polling sites. They often get bounced from polling place to polling place and also have a disproportionate number of registration issues. Students tend to register through campus "voter registration drives" led by a variety of organizations.

Election Court issues

Our observers were in the courts on November 4th watching over 20 judges in action. The county courts in general responded very well to the anticipated up-tick in election cases during this particular election and court administrators are to be commended for ensuring every citizen denied a vote at least had an opportunity for a hearing.

We observed some disparity, as is to be expected for a system that depends on individual jurist temperament and interpretation of the law. In general, judges seemed concerned that one's fundamental right to vote was equitably served by the process, especially where administrative action or inaction might have been at fault.

Some of the jurists were experienced and some just starting out. Some decisions, such as orders for provisional ballots, were unhelpful in that they provided no relief and only extended the uncertainty. Voters who take the time and trouble to go to court want to make sure that their vote will count, and that is hardly guaranteed with a provisional ballot.

While there is no mandatory training on election law for jurists assigned to election court, the Administrative Office of the Courts provides a three-hour training by staff from the Office of the Attorney General in October. About 75 attended this year's training. We are also concerned that the training materials are prepared by staff at the OAG without input from advocates and other stakeholders in the process. We often find that OAG's interpretations of voting policies and rights are inconsistent and not democracy-friendly.

For example, our monitors have noted that the deputy attorneys general who represent the state or county during election court cases typically argue against the plaintiff. In some counties, the DAG is sequestered with the plaintiff before the court case. This may be a conflict of interest, particularly if the person is not aware of the role of the DAG and believes the DAG to be acting as his or her attorney.

Recommendations

As I stated previously, we're still analyzing and verifying the complaints we received, and will issue a report in due course. However, based on what we know thus far, we have a number of

recommendations which are consistent with those we have provided to the State Elections Officials previously:

- Require that county election officials follow poll worker training and retention guidelines, including policies/procedures for poll worker warning letters and grounds for dismissal of those poll workers identified as failing to properly issue provisional or emergency ballots.
- Create a new class of professional master poll workers that are routinely trained, evaluated and compensated fully in place of poll judges now operating at polling locations. These master poll workers shall be prohibited from engaging in local or state political campaigning.
- Require the Division of Elections to have systems for recording voter complaints, analyzing the causes and issuing public reports that summarize the types of problems voters encounter and its plans to fix problems and improve the process. The state should also gather information about provisional, emergency and absentee ballots from all counties so it can further analyze local election performance.
- Similarly, the Division of Elections should provide counties with standard policies/procedures concerning county intake of written, phone or in-person voting complaints and concerns, including the maintenance of phone logs, timely follow-up with the complainant, investigations as needed, and reporting of election problems.
- Require counties to establish standard forms and procedures for notifying residents about various voting issues, alerting voters to problems and confirming voters' registration status.
- Establish mandatory training on election law for those judges newly assigned to Election Day Court.
- Develop elections overview materials for election judges, with input from all stakeholders.

An important step the state could take that would eliminate many voting problems and also increase democratic participation is to establish Election Day Registration (EDR). EDR permits eligible citizens to register and vote on Election Day. Currently, eight states have EDR. A ninth, North Carolina, allows for same day registration at early voting sites. EDR states typically boast voter turnout rates that are generally 10-12 percent higher than states without EDR, and report few problems with fraud, costs or administrative complexity. EDR significantly increases the opportunity to cast a vote and participate in American democracy.

Finally, I hope that at your next hearing you will consider Senate Bill 1970, which seeks to extend the right to vote to people on probation and parole. There are both societal and public safety benefits to allowing people exiting the criminal justice system the right to vote, which I look forward to detailing further when you hear that bill.

Thank you for your interest in my comments.



LEAGUE OF WOMEN VOTERS
OF NEW JERSEY

Hearing on the feasibility of standardized election procedures
Senate State Government Committee
Thursday, December 11, 2008

Sandra Matsen
League of Women Voters of New Jersey

First, I want to take the opportunity to say thank you to the Committee for holding today's hearing on this very important and timely subject. With November's general election just behind us and the gubernatorial election quickly approaching, now is the time to act to evaluate and correct the issues we saw in the prior election. Thank you for the opportunity to testify.

The League of Women Voters of New Jersey has a proud and long history of protecting New Jersey voters and working to promote good government and efficient voting systems. For the past several years, the League has worked with the American Civil Liberties Union of New Jersey to operate a voter protection hotline and deploy volunteer poll monitors to assist voters and to help report problems. While the data is still being compiled, there were several issues that have already been identified that are pertinent to today's hearing.

Poll Worker Training

In this election, as in past elections, we had reports of poll workers who gave out misleading or incorrect information. Furthermore, some poll workers were unwilling to give out provisional or emergency ballots when needed or appropriately requested. While there will always be instances of imperfect poll workers, we believe this is a systematic issue and that improvements in poll worker training are needed. In researching standardizing election procedures, we ask that you evaluate the current schedule for poll worker training and suggest that yearly trainings be strongly considered. Furthermore, because inexperienced poll workers need more training than their experienced peers, it would be useful to have trainings set up by experience level to streamline the process and to keep experienced poll workers in the system.

Election Administration

There are two areas of election administration where we see a need for systematic standardization. Because the League's voter hotline is available year-round, we began receiving calls in the weeks prior to the election that voters had registered, but had received no notification from election officials as required. This was by far the largest number of complaints in our pre-election day calls. Additionally, some voter registrations were not entered in time and their names were either put on supplemental lists, were sent letters, or the voters were asked to vote by provisional ballot. Because of the high voter participation in this election, it is possible that these two issues could have been a capacity issue in part. However, both are serious problems that no one wants to see again, and so we ask the committee to examine these issues further.

The second area of standardization that would be of great benefit to the voters is standardization of the complaint process. Poll workers should more readily offer complaint forms and complaints should be published and examined for systematic issues. Yes, there will always be problems, but if these complaints are not examined on every level, then the larger issues will never be addressed.

Thank you for the opportunity to testify today.