

Statement of

The Honorable Benjamin L. Cardin

United States Senator
Maryland
June 7, 2007

OPENING STATEMENT OF U.S. SENATOR BENJAMIN L. CARDIN OF MARYLAND AT
THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE HEARING ON
"PREVENTION OF DECEPTIVE PRACTICES AND VOTER INTIMIDATION IN FEDERAL
ELECTIONS: S. 453"

THURSDAY, JUNE 7, 2007

The hearing will come to order.

Today the Senate Judiciary Committee will receive testimony on the subject of "Prevention of Deceptive Practices and Voter Intimidation in Federal Elections: S. 453." Let me thank Chairman Leahy for asking me to chair this hearing.

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

What goes beyond the pale, is when a campaign uses deceptive tactics to deliberately marginalize and disenfranchise minority voters. Sadly, the tactics we saw in the 2006 elections are not new. These tactics seem to deliberately target minority neighborhoods and are blatant attempts to reduce minority turnout.

In previous elections we have seen deceptive literature distributed which gave the wrong date for the election, the wrong times when polling places were open, and even suggested that people could be arrested if they had unpaid parking tickets or unpaid taxes and tried to vote. Other literature purported to give a different general election day for Republicans and Democrats.

So I want to start the hearing today by going through a few examples of actual literature that was distributed in recent elections. These flyers will be made part of the permanent hearing record. In particular I want to thank the Lawyers Committee for Civil Rights Under Law - and its Executive Director Barbara Arnwine - and Jonah Goldman, the Director of the National Campaign for Fair Elections - for cataloguing and documenting these practices. I will place their written testimony in the record.

Exhibit 1 is from Jefferson County, Alabama, which gives the wrong day for the election.

Exhibit 2 is from the 2006 general election for U.S. Senate in Maryland. Our distinguished witnesses on Panel II, the Attorney General of Maryland and the Prince George's County Executive, will discuss this exhibit in more detail. Let me just say that former Congressman Kweisi Mfume, who is a friend with whom I represented Baltimore City in the U.S. House of Representatives, ran against me for the Democratic nomination and lost. He subsequently endorsed me as the U.S. Senate nominee for the general election, as did Prince George's County Executive Jack Johnson. They both are prominent African-Americans leaders in Maryland and appeared at several campaign events on my behalf as I prepared to face off against Lt. Governor Steele in the November general election.

Imagine my surprise then to discover on Election Day that the Republican campaigns for Governor and Senator in Maryland had distributed this literature.

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

This type of deceptive literature is despicable and outrageous. It is clearly designed to mislead African-American voters about prominent endorsements by well-respected politicians. Maryland voters have a legal right to vote and pick the candidate of their choice. I was also upset to read in the Washington Post that a Maryland Republican election worker guide for poll workers stated that their "most important duty as a poll worker is to challenge people" trying to vote. This election guide was rightfully denounced by civil rights groups as a voter suppression and intimidation effort.

Exhibit 3 is from Franklin County, Ohio, in the 2004 general election. It said that due to "confusion caused by unexpected heavy voter registrations" that Republicans should vote on Tuesday and Democrats should vote on Wednesday.

Exhibit 4 is from Allegheny County, Pennsylvania, in the 2004 general election. It stated that "due to immense voter turnout" that Republicans should vote on Tuesday and Democrats should vote on Wednesday. The flyer also thanked voters for "cooperating with us in this endeavor to create a peaceful voting environment."

Exhibit 5 is from Orange County, California, in the 2006 general election. The distinguished President and General Counsel of the Mexican American Legal Defense and Educational Fund John Trasviña will discuss this exhibit in more detail. We have the original version in Spanish and then an English translation. This letter was sent to individuals who had recently registered to vote. Paragraph two warns the individual, in part, that if they are an immigrant that "voting in a federal election is a crime that can result in incarceration, and possible deportation for voting without the right to do so."

Exhibit 6 is from the Baltimore City, Maryland general election in 2002. It gives the wrong day - November 6th for the election - instead of November 5, and it warns voters to pay parking tickets, motor vehicle tickets, overdue rent "before you come to vote." It also warns voters about "any warrants."

Exhibit 7 is from Milwaukee, Wisconsin, in the 2004 General Election. The flyers contains "some warnings for election time," and states that: you can only vote once a year; if you have been found guilty of anything, even a traffic ticket, that you cannot vote in the presidential election; and that if you "violate any of these laws you can get ten years in prison and your children will get taken away from you." This is clearly targeted toward suppressing voter turnout in minority communities.

It has been 137 years since Congress and the states ratified the Fifteenth Amendment to the Constitution in 1870, which states that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race [or] color..." The Amendment also gave Congress power to enforce the article by "appropriate legislation." African-Americans suffered through nearly another 100 years of discrimination at the hands of Jim Crow laws and regulations, designed to make it difficult if not impossible for African-American to register to vote due to literacy tests, poll taxes, and outright harassment and violence. It took Congress and the states nearly another century until we adopted the Twenty-Fourth Amendment to the Constitution in 1964, which prohibited poll taxes or any tax on the right to vote. In 1965 Congress finally enacted the Voting Rights Act, which once and for all was supposed to prohibit discrimination against voters on the basis of race or color.

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

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

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

This legislation creates tough new criminal and civil penalties for those who create and distribute this type of false and deceptive literature. The bill authorizes a process to distribute accurate information to voters who have been exposed to false and deceptive communications. The bill requires the Attorney General to submit to Congress a report compiling and detailing any allegations of false and deceptive election communications.

In the House I understand that similar legislation, H.R. 1281, has been approved by the House Judiciary Committee and it awaiting action in the full House.

Let me also thank one of my predecessors in the Senate, Mac Mathias, a Republican from the State of Maryland, for his thoughtful June 4, 2007 letter which will be made part of the record. Senator Mathias lays out the history of the relevant civil rights and voting rights acts. He writes that "while the methods employed to deter voting differ today from those in vogue forty years ago, the deplorable objective remains the same: to help destroy the integrity of the election process by suppressing participation, especially by minorities. Because these more modern methods of coercion and intimidation do not fall neatly within the ambit of current law, legislation amending Section 1971(b) is needed. I believe S. 453 fills that gap admirably."

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

Today we have the obligation and duty to fulfill the promises made by Congress and the states nearly 140 years after the end of the Civil War, and over 40 years after the enactment of the Voting Rights Act.