

Testimony of

# **The Honorable Douglas F. Gansler**

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Statement of Douglas F. Gansler, Attorney General of Maryland  
Before the Senate Committee on the Judiciary  
S. 453: "Deceptive Practices and Voter Intimidation Prevention Act of 2007"  
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Mr. Chairman and distinguished members of the Committee, thank you for the opportunity to be here today and discuss with you the important legislation that Senator Obama has introduced to prohibit deceptive practices in federal elections.

I strongly endorse the legislation, which builds on the reauthorization last year of the landmark 1965 Voting Rights Act. The health of our democratic system depends on our ability to ensure that all citizens entitled to vote may do so, for the candidates of their choosing. Public confidence in the election process cannot be maintained if voters are kept from the polls by intimidation, misinformation or deceit.

My interest in this legislation comes from personal experience. I have served as a federal prosecutor and, for the previous eight years, I was the elected State's Attorney for Montgomery County, Maryland. I now serve as Attorney General of Maryland, a position to which I was elected in last fall's election. Maryland's experience in that election has underscored the need for concerted state and federal action to build on the legacy of the Voting Rights Act.

The Committee is aware of one incident that took place in Maryland on Election Day in 2006, involving misleading fliers that were distributed in Prince George's County, Maryland. Those brochures were designed to suggest that three prominent and influential political leaders had endorsed candidates for the United States Senate and Governor of Maryland when in fact they had not. One of those leaders, Jack Johnson, the County Executive for Prince George's County, whose image appeared on the cover of that flier, is here today and I'm sure the Committee will be interested to learn more about that incident.

But I would like to discuss for a moment another occurrence that I witnessed that day, also in Prince George's County. After voting at my home polling place, an elementary school in Chevy Chase, Maryland, in Montgomery County, I traveled to a polling place in Prince George's County. There, I witnessed long lines snaking around the building, as voters, predominantly African-American, waited hours to cast their ballots. This stood in stark contrast to my own experience voting at a polling place that served a more affluent community, which took just a few minutes. Television cameras have recorded similar contrasting images in every recent election, across the country: poor and minority voters being subjected to greater obstacles than whites in neighboring jurisdictions. This is unacceptable in America in 2007.

The problem may be the result of unexpectedly high turnout, poor planning in the allocation of machines and election workers or glitches in getting the machines up and running, rather than intentional discrimination. But, whatever the cause, the problem cannot be allowed to persist. For while it was heartening to see how many citizens were willing to endure long lines in order to exercise their most fundamental right, the right to vote, it was also distressing to see how many people could not afford to wait any longer and turned away. Beyond the logistical problems of election administration that may impede access to the polls and do so with disparate impacts on poor and minority communities, there are also unfortunately, even four decades after the Voting Rights Act was enacted - obstacles to access that reflect intentional action.

Given our nation's lamentable history of inequality with respect to the most cherished and fundamental of our rights, the right to vote, we cannot allow senseless obstacles to be placed in the way of voting. In Maryland, I have asked a task force, chaired by Professor Sherrilyn Ifill of the University of Maryland School of Law, to examine election irregularities and obstacles to voting experienced by Maryland voters in recent elections and to make proposals for policy changes. The task force has been given a broad charge, but a very important aspect of the issues it is examining concerns the types of practices that Senate Bill 453 addresses.

As I mentioned earlier, Maryland's experience in the 2006 election cycle furnished illustrations of the types of deceptive practices that are addressed by this legislation: communications that are designed to dissuade, mislead and outright suppress votes. It should not escape notice that the deceptive tactics we have seen and that are targeted by this legislation very commonly are focused on traditionally disenfranchised voters - the voters, for instance, who were lined up around the block at the polling place that I visited on Election Day 2006 in Prince George's County. In other words, these tactics are frequently directed at the very Americans the Voting Rights Act is committed to protecting - people whose full participation in the democratic process is being thwarted through cynicism, deceit and misinformation.

As it happens, voters in Prince George's County were the target of the now-notorious deceptive brochures that misleadingly implied that Jack Johnson and others had endorsed candidates for Governor and Senator that they had not. This outlandish attempt to mislead voters, trading on the good names (and images) of three prominent African-American political leaders, is perhaps most notable for its sheer, unabashed brazenness, which may account for the national attention that it has received. But this was not an isolated incident, and in my view, other examples of deceptive practices covered by this bill that we have encountered in Maryland, and that have been documented elsewhere, are in fact more insidious and more corrosive of our democratic process.

The distribution of these glossy brochures labeled as an "Official Voter Guide" is a straightforward example of the type of irresponsible and deceptive practices that have no place in our political process. As an elected official, I expect my political opponents to challenge my positions on the issues, and I believe the democratic process generally benefits from a vigorous debate between candidates with opposing viewpoints, even where I feel that my stance on the issues has been misrepresented or characterized in a misleading way. But democracy does not benefit from deceptive tactics like the ones targeted by this bill.

The misleading fliers distributed on Election Day in Prince George's County (and similar ones distributed that day in Baltimore County), because they were distributed on Election Day, evaded

corrective action. The campaign committees that sponsored those fliers did, however, identify themselves in the "paid for by..." line on the fliers. And, in the case of the Prince George's County fliers, three prominent political leaders whose endorsements of candidates had been misrepresented could be expected to call attention to the tactic. The media did in fact report on the distribution of the Prince George's fliers, by homeless people bused in from Philadelphia, relatively early on Election Day.

Other examples of deceptive practices that this Committee has cited, in my view, present an even greater threat to the principles embodied in the Voting Rights Act and this nation's commitment to civil rights. I have supplied the Committee with an example of another flier that was distributed in predominantly African-American areas of Baltimore City in the 2002 election cycle. This type of deceptive communication is even more insidious than the two examples I have already discussed. Whereas those fliers communicate misleading information in a deceptive effort to sway votes, this 2002 flier seeks to outright suppress votes by eligible voters.

While the flier invites citizens to "come out to vote on November 6," the election that year was held on November 5. There is of course no requirement under Maryland law that voters pay outstanding parking tickets or motor vehicle citations or unpaid rent in order to be eligible to vote. There is absolutely no place in our democratic society for deceptive communications like this. But, as the Committee is aware, there are abundant examples of similar tactics that have been used around the country in recent elections: communications that "remind" voters to vote on Wednesday; or "alert" voters that the day for voting has been postponed; or "inform" voters of spurious eligibility requirements; or attempt to intimidate voters by intimating that their privacy rights cannot be protected or that they may be subject to criminal penalties. There is no justification for such intimidation and vote suppression tactics, and this legislation rightly creates penalties for those who perpetrate these crimes.

We cannot allow another election cycle to go by where we witness deliberate efforts to subvert the will of voters to vote for their candidate of choice. And we cannot allow deceptive tactics to be used to disenfranchise voters. These practices seek to deprive Americans of rights guaranteed by the Fifteenth Amendment and vindicated by the civil rights movement of the 1960s. We sully ourselves when we fail to stand up for the values of full and equal access to the franchise, and we undermine public confidence in the electoral process every time tactics like the ones targeted by this legislation are used to mislead or intimidate voters.

This legislation takes a measured approach to addressing an important issue, imposing penalties for deceptive communications where the person (1) knows the information to be false and (2) acts with 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 strong federal interest in safeguarding the right to vote and prohibiting tactics that have frequently been employed in racially discriminatory ways.

The examples of such tactics that I have discussed today illustrate that shame has proved to be an insufficient deterrent to those who would engage in these deceptive practices. Senate Bill 453 is an important component of what must be a comprehensive approach, at both the state and federal levels, to ensuring that voter rights are protected. I strongly endorse the bill and urge its passage.

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