



Testimony of Jonah H Goldman  
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Under Law

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"Protecting the Constitutional Right to Vote for All Americans"  
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Mr. Chairman, members of the Committee, thank you for inviting me here today and for holding this hearing on the foundational issue of our great democracy – the fundamental right to vote.

My name is Jonah H Goldman and I am the Director of the National Campaign for Fair Elections at the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee was founded 45 years ago by President Kennedy to organize the *pro bono* resources of the private bar to protect civil rights. The National Campaign for Fair Elections was established by the Lawyers' Committee to serve as the lead legal partner of Election Protection, the nation's largest non-partisan voter protection coalition, and to turn the lessons learned from that experience into real, effective, policy solutions for America's voters. This year, the Lawyers' Committee will recruit, train and deploy over 10,000 legal volunteers to develop a nationwide comprehensive, year round program to work on all facets necessary to ensure the right to vote. We will support over 150 coalition partners, establish a productive dialogue with election officials, conduct strategic legal voter protection field programs and answer the 1-866-OUR-VOTE hotline. This hotline is the nation's largest voter services hotline which, since its inception, has answered nearly 300,000 calls from voters across the country, including over 6,000 in this year's primaries.

Mr. Chairman, the Congress has both a Constitutional and moral duty to protect the rights of all eligible Americans to cast a meaningful ballot. My fellow panelists, with whom I am proud to share this honor with, have laid out the historical and constitutional imperative to fiercely protect the right to vote. The 1<sup>st</sup>, 14<sup>th</sup> and 15<sup>th</sup> amendments give Congress the power to protect this fundamental right. Through the Voting Rights Act, the National Voter Registration Act, and the Help America Vote Act Congress has shown, with varying levels of success, a commitment to protect this right. In addition to the constitutional responsibility, there is another critical reason why this hearing – and hopefully subsequent remedial action – is so important. This country is the light of liberty and democracy. Our noble experiment in providing each citizen a voice in the destiny of her country – constantly evolving and made better through expanding the

voices of those able to participate – is now the template for freedom around the world. The hope of our democratic institutions inspires nations to entrust power to the citizenry.

Of course, with this role comes great responsibility. We have a moral obligation to America's voters to provide the most responsive infrastructure available. We have a duty to make our elections equally open to all eligible citizens, conduct them fairly, and transparent so all Americans have confidence in the process. Unfortunately, we are not there yet.

In this year's primaries we have made strides towards honoring our democratic promise through historic voter turnout. This primary season, almost 50 million voters have already cast ballots. In Pennsylvania in 2004, fewer than 800,000 voters cast ballots in the presidential primary; this year over 3 million voters showed up to the polls. Georgia saw a 157% increase during that same time and Virginia added over 1 million voters to its primary process this year as compared to the last presidential contest. Unfortunately, this civic exuberance has put tremendous weight on an already crumbling election infrastructure. This year Election Protection has recruited, trained and deployed nearly 2,000 legal volunteers and answered more than 6,000 calls to its hotline during programs on the season's five largest primary days: February 5, February 12, March 4, April 22 and May 6. Attached to my testimony is a report the Lawyers' Committee compiled highlighting the experience of voters across the country in those elections. This experience is consistent with what we have learned over the 7 years of this program and during the 45 years the Lawyers' Committee has been working to secure voters' rights. Real, eligible voters – between 4-6 million voters, according to a study conducted by CalTech and MIT in 2000 – may be prevented from exercising their right to vote in a general election. Primarily, this staggering level of disfranchisement stems from an election administration system that lacks resources, is overly burdensome and complicated, lacks centralization, and, unfortunately, is still marred by cynical attempts to remove eligible voters from the process for political gain.

These administrative failures violate our constitutional protections and undermine our democratic leadership. Americans want the best election system in the world and we deserve it.

During this year's primaries, Election Protection identified unique challenges in each of the 10 states in which we ran programs. Four themes emerged across state lines that violate the constitutional right to vote by denying eligible voters an opportunity to cast a ballot:

- under trained and under resourced poll workers;
- voting technology malfunctions;
- inaccurate and incomplete registration lists; and
- Problems with voter identification requirements.

### *Under trained and Under Resourced Poll Workers*

There are over 1.4 million poll workers across the country. The overwhelming majority of these dedicated Americans are committed to doing their civic duty by volunteering up to 18 hours on Election Day. Despite this commitment voters are turned away because poll workers lack training and guidance on how to effectively administer an election. In every state we ran a program during this cycle and in every program we have run in the past, Election Protection uncovers voters who were turned away because poll workers did not know the rules. Voters who should have been able to cast regular ballots were forced to cast provisional ballots and voters who should have been offered provisional ballots were turned away from the polling place. Voters stood in lines for hours or were disenfranchised because there were not enough poll workers or because polling places opened late or close early.

We need to be creative about how we recruit, train and deploy poll workers. Government workers on all levels should be encouraged to be poll workers and should be provided extensive training. High schools, colleges and universities should pursue programs that put students at the polls. Large employers should work in public/private partnerships to encourage their employees to become poll workers. Before November, however, election officials must improve their training curricula and programs. They need to ensure that poll workers have the tools they need to do their job and the guidance necessary to understand the rules. They must have an effective way to communicate with election officials if they have questions or if something goes wrong.

### *Voting Technology Malfunctions*

Problems with voting equipment also led to disenfranchised eligible voters. In 8 of the 12 states Election Protection has covered this year, we received reports of significant problems with voting technology that led to voters being turned away at the polls. Most of the problems were with voting machines, but some concerned electronic poll books and other election technologies. Sometimes, the problems were caused by technological glitches, but frequently the problems were more human. Both poll workers and voters were confused about how new voting technology works. Unfortunately, many jurisdictions do not have adequate safeguards for when voting technology breaks down. In many places when the machines breakdown, voting stops. Those voters who have the bad luck to show up when the machines are down are turned away. States should implement emergency ballot procedures and be sure to teach their poll workers how to follow them.

### *Inaccurate and Incomplete Registration Lists*

This year, more than 3.5 million new voters have registered, up 65% from the same period 4 years ago. These numbers are staggering and we should all be proud of the powerful chorus of new voices engaging in the process. Unfortunately, in every state we covered during this year's primaries and in every program we have run in elections past, eligible voters who submit timely registration applications find that their names are not

on the registration rolls. Moreover, this year in Indiana, Pennsylvania, Georgia and elsewhere, longtime voters -- many with their voter registration confirmations in hand -- were told they were not on registration lists or their party affiliation had been switched. In addition to the administrative shortcomings that left voters off of registration rolls, irresponsible, discriminatory or ineffective purges removed countless voters from the rolls. Many of these problems are foreign to voters in states with Election Day Registration. There, administrative problems and other pitfalls of registration lists can be fixed by voters when they get to the polls. More than any other single reform, Election Day Registration will move us towards fulfilling our moral and constitutional imperative.

### *Problems with Voter Identification Requirements*

Voters in every state are also being turned away by confusion over voter identification requirements. Poll workers are confused about when voters need to show identification and what identification is required by state law. Because of this confusion, poll workers force voters to cast provisional ballots, though they are entitled to regular ballots and turn away voters who should be casting provisional ballots. Worse, some poll workers, educated about what the rules are in their states, insist on implementing stricter ID requirements based on what they think the law *should* be. In every election cycle, we receive calls and our volunteers on the ground witness, poll workers implementing ID requirements in a discriminatory way. Sometimes, in areas where there are large populations of young voters, only students are asked for ID. In addition, we have seen poll workers only ask for the ID of voters they do not know or only voters of a particular racial or ethnic background.

Unfortunately, the debate over voter ID has distracted us from a productive discussion of how to solve the real problems voters face. The case recently decided by the United States Supreme Court, *William Crawford, ET AL. v. Marion County Election Board, ET AL.*; and *Indiana Democratic Party, ET AL., v. Todd Rokita, Indiana Secretary of State, ET AL.* has only made this problem worse. As this Committee has heard, there is no evidence of a massive conspiracy to impersonate eligible voters at the polling place -- the only type of election misconduct that voter ID actually guards against. There are no shadow bands of ineligible voters roving from polling place to polling place to affect election results. And no wonder, penalties are quite high -- up to 10 years in prison and a fine of up to \$10,000 and the prospects of affecting election outcomes are low -- changing a single vote. As they should, every state has a process for verifying voters' identities. Most accomplish that essential goal without sacrificing the ability of eligible voters to participate in the process. Of course, there have been attempts to influence election results through misconduct; it just is not done *this* way. The truth is you have a better chance of being hit by lightning than you do finding a voter impersonator.

But the participatory casualties of voter ID are real. On May 6, as Indianans headed to the polls for the first time since the Supreme Court decided *Crawford*, Election Protection was on the ground assisting voters who had questions or problems at the polls. We also were running the 1-866-OUR-VOTE hotline to provide immediate assistance to citizens who needed help during the day. Early that morning, Election Protection volunteer and

Lawyers' Committee board member, John Borkowski, a partner at the law firm of Hogan and Hartson, LLP, walked into a polling place on the campus of St. Mary's College in his hometown of South Bend. Students from the college were being turned away because they only had a student ID from the private college and not a government issued photo identification with an expiration date. The students were devastated. While talking to Sister Julie McGuire, one of the poll workers, John discovered that it was not just the students that were the victims of this misguided policy, but many of the nuns who lived in the convent that housed the polling place. John talked to retired nuns, between 70-90 years old who either did not have ID or only had an expired license. These nuns no longer drove and had no need for current, government issued photo identification. They lived in the convent, among a community of their sisters. John discovered many of the sisters who were ineligible did not attempt to come to the polls. And that is the true scope of this tragedy. Most of the citizen voices made silent because they do not have this type of ID, as many as 21 million eligible voters across the country, will not show up because they know they will be turned away.

That night, John summed it up best, referring to the voter ID law he said it "definitely had the effect of preventing many people who were highly motivated to participate in this primary election from exercising their right to vote. It seems very ironic to me that a law intended to prevent voter fraud prevented members of a single community, essentially a family, who have lived together for years, from accepting the votes of their own sisters."

Mr. Chairman, there are real problems with our election system that prevent real, eligible voters with a deep desire to participate in the proud tradition of our democracy. Government has a constitutional mandate to act to protect our moral obligation to providing the world's light of democracy with the best system possible. In addition to the problems I have already discussed, Congress should focus its attention on preventing the cynical attempts to remove eligible voters from the process that actually cause real, eligible voters to be confused, turned away, and disfranchised for political gain. It is critical to show Congress is concerned with making it easier, not harder, for eligible citizens to have their voices heard. Failing this, we risk losing the possibility to transform the energy inspired by this historic election season – the young voter revolution and the reinvigorated voices from all walks of American life – into a civic community committed to a lasting voice in the future of the nation.

Common sense provisions like the Deceptive Practices and Voter Intimidation Prevention Act – which is spearheaded by members of this Committee – will demonstrate the Congress's commitment to fulfilling its constitutional mandate to protect all voters. A particularly strong illustration of the need for this critical legislation is the experience of African-American voters in Milwaukee in 2004. Across the community fliers were distributed claiming to be from the "Milwaukee Black Voters' League" saying that if voters failed to pay parking tickets, if any member of their family was convicted of a felony or if they had ever voted during that year, they could be arrested at the polls. Other fliers were distributed in states across the country telling voters to come to the polls on the wrong day. Unless you can prove conspiracy, these tactics are not currently prohibited by federal law. Furthermore, Senator Whitehouse's Caging Prohibition Act,

will go a long way to providing the tools needed to stop these insidious political attacks on our right to vote and preventing voter intimidation at the polls.

The Department of Justice should also vigorously enforce the current federal voter protections including the Voting Rights Act and the National Voter Registration Act. The Voting Rights Act is the most successful civil rights legislation in the country's history. We are proud of the clear commitment to the Voting Rights Act that Congress made just two years ago by overwhelmingly reauthorizing the Act. The Department of Justice must reinvigorate its efforts to honor that commitment by vigorous enforcement. Similarly, the Congress took a tremendous step towards progress in passing the National Voter Registration Act just over 15 years ago. Unfortunately, the promise of that bill continues to be unfulfilled because there has not been adequate enforcement of Section 7, which requires state social service agencies to provide their clients with voter registration opportunities. The Department of Justice, and states across the country, must do a better job of enforcing this critical provision.

Unfortunately, election administration has been largely treated as a political issue and not a policy issue in our country. This needs to change. We need real solutions to the real problems that prevent eligible voters from participating in the process and we need to address those issues, not only on the eve of a national election, but in a constant effort to improve the process. Our election system needs an overhaul and not with political solutions to non-existent problems – like requiring discriminatory photo ID requirements, but with common sense solutions to the real problems voters face. We should move toward universal registration by implementing Election Day Registration. Election Day Registration has been implemented with security and reliability in several states, with voters in those states overwhelmingly approving the system once it is in place. This policy also helps simplify the system for poll workers: if there is some problem in the process that would otherwise require several different steps for a poll worker to remedy, Election Day Registration makes the fix easy. We should prevent the real fraud that happens in elections like offensive deception and take away the tools of intimidation and dirty tricks like voter caging. We need to provide a real infrastructure of training for our nation's poll workers and searchingly contemplate the best technology for voters to cast ballots on. We should be creative, thinking of ways to make sure that those who have work or family obligations on Election Day can still participate. Finally, we need to protect those voters who have reliably shown up election after election by making it easier for our seniors to participate.

For over a century, the Supreme Court has held that the right to vote is our most fundamental right because it is preservative of all of our other rights and freedoms. We must honor those who participate by providing the most responsive, advanced infrastructure available. We owe our history, our children and our country no less.

Thank you for the opportunity to testify today and I would be happy to answer any questions.