



**TESTIMONY OF
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AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
SUBMITTED TO
HOUSE STATE GOVERNMENT COMMITTEE
HEARING ON ELECTION PREPAREDNESS
PHILADELPHIA
SEPTEMBER 25, 2008**

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Good afternoon, Chair Josephs and members of the committee. My name is Andy Hoover, and I am the legislative director for the American Civil Liberties Union of Pennsylvania. I am here today on behalf of the approximately 18,000 members of the ACLU of Pennsylvania. Founded in 1920, the ACLU is one of America's oldest civil rights organizations and today boasts of a nationwide membership of approximately half a million people, a number that has doubled since 2001.

Signs of the impending election are all around us, so your hearing today is obviously timely. At the ACLU, we are hopeful that this hearing and the ongoing press coverage of election issues will serve as a reminder that our precious right to vote must be protected.

In recent weeks, the ACLU of Pennsylvania has been involved in two significant issues regarding the right to vote. Our legal department has been actively engaged in ensuring the right to vote for former offenders and protecting the free-speech rights of voters at the polls to display campaign t-shirts and buttons. This latter issue has come to be known as "passive electioneering." These are the two issues that I will address in

depth. I will also comment on anecdotes we hear of Election Day problems and concerns of our allies who are working on these issues.

As you may know, the General Assembly passed and Governor Ridge signed legislation in 1997 that barred former felons from voting for five years after release. Three years later, the Pennsylvania Supreme Court struck down this law after it was challenged by multiple plaintiffs. *Mixon v. Commonwealth*, 759 A.2d 442 (Pa. Cmwlth. 2000), *affirmed*, 783 A.2d 763 (Pa. 2001). Accurate and up-to-date information about ex-felons voting rights is available on the Secretary of State's website.¹

Our experience at the ACLU has been that the 1997 law imposing the five-year ban on ex-offenders' right to vote is well-known, but the court ruling that overturned that law is not. ACLU-PA has three offices and 11 chapters around the state, and our staff and volunteers have found that many ex-offenders do not know that they can vote. Community advocates who work with us confirm this.

Within the last two months, an activist working on a voter registration drive in southeast Pennsylvania was told by some former offenders that their probation and parole officers told them that they do not have the right to vote. In one particularly egregious case, a parolee was allegedly told by his parole officer that voting would be a violation of his parole, and he could go back to jail. As we researched this issue further, it was also discovered that some counties still had information on their websites stating that former felons cannot vote for five years after release.

¹ The Department of State brochure *The Voting Rights of Convicted Felons, Convicted Misdemeanants and Pre-Trial Detainees* is available at http://www.dos.state.pa.us/voting/lib/voting/guide/convicted_felon_brochure.pdf.

After these allegations surfaced, we saw an opportunity to further educate the public and government officials about the law on ex-offenders' voting rights. Witold Walczak, ACLU-PA's legal director, sent a letter to the probation and parole offices in all 67 counties and to the state board of probation and parole.² The letter outlined the allegations we received and reminded officials in probation and parole offices around the state of the law on ex-offender voting. Mr. Walczak encouraged probation and parole officials to provide a copy of the Secretary of State's guidelines to all probation and parole officers and to advise parolees of their right to the franchise.

We are pleased to report that this action had a positive impact. Eleven counties contacted ACLU-PA to tell us that they would disseminate the information in some capacity. In addition, a spokesperson from the state board of probation and parole told us that they would give the information to all of their officers and would ask the officers to give it to their parolees. The state board also reinforced the message with the county offices.

In addition to this work by our legal staff, ACLU-PA's community organizing staff in Philadelphia produced an information card to advise former offenders and the public of the law. The information cards are available to the public for distribution, and I have some of them with me today.

ACLU-PA's legal team has also been busy protecting voters' right of free speech at the polls. During the April primary, we received complaints from several polling places that voters were not permitted to vote because they were wearing t-shirts and buttons

² An example of the letter is available at <http://www.aclupa.org/downloads/ltrprobationoff.pdf>

promoting a candidate. The complaints we received were from Mt. Lebanon in Allegheny County, Ardmore in Montgomery County, and the City of York in York County.

We do not suspect that this was a deliberate attempt at voter suppression. The poll workers were likely interpreting the definition of “electioneering” broadly. State law indicates that “no person when within the polling place shall electioneer or solicit votes for any political party, political body, or candidate, nor shall any written or printed matter be posted up within the said room, except as required by this act.” But the term “electioneering” is not defined.

Whether the poll workers’ intentions were pure or cynical, the ACLU believes that the First Amendment right to free speech allows this kind of silent expression by voters at the polls. Furthermore, the imposition of a dress code could result in a voter being denied the right to vote if he or she wears an unacceptable message.

As our legal staff researched this issue further, it became clear that there is no uniform standard. County election officials and even individual poll workers are left to interpret the definition of electioneering. We learned that other polling places in Allegheny County and indeed in most of the Commonwealth allowed voters to wear t-shirts and buttons expressing a partisan message during April’s primary.

In August, Mr. Walczak, Sara Rose, who is a staff attorney for ACLU-PA, and Andrea Mulrine, president of The League of Women Voters of Pennsylvania, sent a letter to Secretary of the Commonwealth Pedro Cortes asking for clarification on this issue.³ In response, Chet Harhut, the Commissioner of the Pennsylvania Department of State's

³ The letter is available at <http://www.aclupa.org/downloads/Cortesletter.pdf>.

Bureau of Commissions, Elections and Legislation (BCEL), sent a memo to all county election boards, dated September 4, which stated that Commonwealth election officials believe that if voters "take no additional action to attempt to influence other voters in the polling place, then the wearing of clothing or buttons" supporting a candidate or political party would not constitute illegal "electioneering" under Pennsylvania law.⁴

Reaction to Commissioner Harhut's memo has been mixed. Eleven counties responded positively and have made it clear that they will allow voters to wear candidate t-shirts and buttons at the polls. As an example, the Lebanon County Commissioners unanimously passed a resolution last week allowing this type of expression at the polls.⁵ Importantly, the two largest jurisdictions, Philadelphia and Allegheny County, have not imposed a dress code and have advised us that they have no intention of applying one in the future. Unfortunately, at least four counties have indicated that they will not follow the recommendation from the Department of State.

Additionally, last week two election officials from Allegheny County filed a lawsuit in Commonwealth Court against the Secretary of State wherein they seek to force all counties to forbid voters from entering the polls wearing campaign messages. The ACLU of PA will today be filing papers to intervene in that lawsuit and to contest the requested relief.

Most of ACLU-PA's work in preparation for the upcoming election has been focused on these two issues. Our community organizing department has worked on

⁴ The memo is available at <http://www.aclupa.org/downloads/PassiveElectioneering.pdf>.

⁵ Latimer, J. (2008) County: Political garb at polls OK. Retrieved September 24, 2008, from http://www.ldnews.com/ci_10529301.

voting rights issues with numerous allies in recent years, including this year. As a result, we have heard numerous anecdotes about problems at the polls.

For example, in just my own small circle of colleagues and friends, I have heard multiple accounts of poll workers asking voters for photo identification when the complainants have voted at the polling place in the past. As you know, Pennsylvania law only requires photo identification when a person is voting at the polling place for the first time. The voters who alleged that this occurred were not denied the right to vote because they had ID, but it is possible that others who voted at those polling places were denied the right to vote. Voter ID laws disenfranchise the elderly, persons with disabilities, the poor, and racial and ethnic minorities, who are more likely than the general population to not have government-issued photo identification.

Our staff has maintained working relationships with numerous groups that advocate for effective election laws and policies that protect the vote. Some of these groups have organized the Pennsylvania Election Protection Coalition. This coalition has a long list of concerns about the state of Pennsylvania's election preparation. The problems this coalition has identified include but are not limited to language access, disability access, poll worker training, unprocessed voter registrations, and partisan voter challenges and intimidation.

Last week Common Cause released a report examining the election preparedness of 10 swing states, including Pennsylvania.⁶ This report gave Pennsylvania both high marks and low marks.⁷ Common Cause praised the commonwealth for providing provisional ballots to voters who are registered to vote but go to the wrong precinct, for student access to the polls, and for the availability of registration information. The report criticized the commonwealth for a lack of laws cracking down on voter deception tactics, for allowing any person to challenge the eligibility of any voter, and for not mailing a sample ballot to registered voters before Election Day.

Ensuring a fair election is a monumental task. As you have heard in today's testimony, there are many issues for state and county officials to address. This is clearly a work in progress. The ACLU is grateful that this committee, the legislature, and the Department of State continue to examine these issues. Our democracy depends on it. Thank you for the opportunity to testify today.

⁶ Wang, T. et al. (2008) Voting in 2008: Ten Swing States. Retrieved September 24, 2008 from <http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/VOTINGIN2008REPORT.PDF>.

⁷ Pennsylvania: Common Cause. Retrieved September 24, 2008, from <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4496731>