

**Testimony of Kathryn Boockvar, Pennsylvania Senior Attorney of the Voter
Protection Program of Advancement Project**

**Public Hearing on General Election Preparedness
Before the PA House State Government Committee
Philadelphia, PA
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Majority Chairperson Josephs and Minority Chairperson Baker, and Members of the House State Government Committee, my name is Kathryn Boockvar. I submit this testimony today in my capacity as the local Senior Attorney for Pennsylvania, with the Voter Protection Program of Advancement Project. Advancement Project is a non-partisan, national civil rights and racial justice organization. Through our Voter Protection Program, Advancement Project partners with local leaders, individuals, election officials, organizations, and coalitions, to increase civic participation, improve election administration, and remove barriers to electoral participation in low-income and minority communities.

I am honored to submit to you Advancement Project's perspective on the current state of election preparedness in Pennsylvania.

My testimony today will focus on one overriding theme, which causes countless problems with election administration in our great Commonwealth: **the lack of uniform, effective, and enforced standards requiring counties to provide their citizens with equal access to the voting booth, and equal opportunity to vote and have their vote counted.**

I will first address why this legislature, and the Secretary of State, must take immediate action to clarify and specify uniform standards that counties must follow, in order to protect the state and federal constitutional rights of the voters. Next, I will discuss specific examples of the real consequences of this lack of uniformity and clarity, including disenfranchisement caused by inadequate poll worker training, and I will propose solutions to remedy these problems.

I. Uniformity is Required and Necessary Under State and Federal Law

In Pennsylvania, many election procedures and their effectiveness vary, quite literally, from polling place to polling place, and from county to county. These disparities are contrary to state and federal law, which clearly require uniform and equal voting rights to all Pennsylvanians.

Article VII, Section 6 of the Pennsylvania Constitution provides that "All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State...." Furthermore, Article I, Section 26 provides that "Neither the Commonwealth nor any political subdivision thereof shall deny to any

person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." The Pennsylvania Supreme Court has held that "to be uniform in the constitutional sense ... a law [regulating the holding of elections] must treat all persons in the same circumstances alike." *Kuznik v. Westmoreland County Board of Commissioners*, 588 Pa. 95, 121, 902 A.2d 476, 491 (2006)(quoting *Kerns v. Kane*, 363 Pa. 276, 69 A.2d 388, 393 (1949)).

Under federal law, it is well-established that "the right to vote, the right to have one's vote counted, and the right to have one's vote given equal weight are basic and fundamental constitutional rights." *Black v. McGuffage*, 209 F.Supp.2d 889, 900 (N.D. Ill. 2002); see also *Reynolds v. Sims*, 377 U.S. 533, 555-58 (1964)(A qualified voter has a constitutional right to "cast their ballots and have them counted" and be treated "equal to every other voter in his State.")(quoting *United States v. Classic*, 313 U.S. 299, 315).

As the Supreme Court and other courts have held, a violation of Constitutional rights occurs when "people in different counties have significantly different probabilities of having their votes counted, solely because of the nature of the system used in their jurisdiction [T]he lack of a uniform standard of voting results in voters being treated arbitrarily in the likelihood of their votes being counted. The State, through the selection and allowance of voting systems with greatly varying accuracy rates "value[s] one person's vote over that of another," *Black v. McGuffage*, 209 F.Supp.2d at 899 (citing *Bush v. Gore*, 531 U.S. 98, 104-105 (2000)); see also *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972)("In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."); *Bush v. Gore*, 531 U.S. at 104-5("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."); *Stewart v. Blackwell*, 444 F.3d 843, 860 (6th Cir. 2006)(vacated as moot)("standards for counting votes that 'might vary ... from county to county' and sometimes from within a single county, violate the Equal Protection Clause.").

Moreover, the lack of uniform standards may violate the Help America Vote Act, 42 U.S.C. §15481(a)(6), which requires "[e]ach State [to] adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State." One of the guiding principles of HAVA was the protection of the fundamental right to vote, and the avoidance of disenfranchisement by citizens. See, e.g., 148 CONG. REC. H7848 (daily ed. Oct. 10, 2002)(statement of Rep. DeLauro)("When [the right to vote] is put into doubt, when citizens cannot know that a ballot cast is a ballot counted and that their unique voice has not been heard, it undermines confidence of entire political system [sic]").

Thus, permitting county and local election officials to administer election procedures in varied ways that result in voters within counties, and voters across counties, having the value of their votes treated differently, may violate state and federal constitutional rights, as well as HAVA. Consequently, this legislature, and the Secretary

of State, must establish uniform, effective practices for all counties to follow, particularly in the areas of election administration discussed below.

II. Negative Consequences Result from Disparate Election Practices

There are a tremendous number of different Election Day scenarios that present themselves with every voter who enters the polling place, and, when clear uniform standards are not established nor enforced, each one of these scenarios may be handled differently depending on where you happen to live. Some of the most common examples of disenfranchisement occur as a result of inadequate poll worker training, including provisional ballot misadministration, which could be remedied by uniform, effective standards.

A. Inadequate poll worker training results in disenfranchisement

Poll workers have been called the “champions of democracy.” They are the last defense between a well-run democracy and an unstable, ineffective political system, and they deserve respect, support, and appreciation for their service. Yet, instead, the biggest question mark in Pennsylvania’s voting system may not be what has changed since 2004, but one thing that has not—inadequate poll worker training and support.

The sheer magnitude of vital Election Day responsibilities requires intensive training. Pennsylvania law requires that county boards of election “instruct election officers in their duties” and inspect the conduct of elections, “to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.” The actions and inactions of poll workers can make the difference between a vote counted and a vote rejected.

Yet despite this—and because there are no standards enforced in this regard-- Pennsylvania counties rarely require that all poll workers be trained regularly. For example, in Philadelphia, poll worker training has been perceived as effectively optional, as local officials take the position that they cannot require poll workers to attend training. We are unaware of any county which penalizes poll workers for neglecting to attend training, nor an effective system to assess whether poll workers are actually qualified and able to perform their duties. As a result, countless untrained poll workers work every Election Day. This is contrary to Pennsylvania law, which states that “[n]o judge or inspector shall serve at any primary or election . . . unless he shall have been found qualified to perform his duties...” and is also contrary to HAVA, which was passed “to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections.” 116 Stat. 166.

In addition, the content of many of the trainings that do occur are also inadequate to protect voters' federal and state rights, and again, this is a direct result of a lack of effective, uniform standards. For example, Advancement Project staff attended a 2006 training in Philadelphia, which lasted only 17 minutes. The short-lived session covered polling place procedures in ten minutes, during which the instructor inappropriately joked about intoxicated election officials and dead people on the voter rolls. This is in shocking contrast to the two hour training sessions offered in some other counties, and the comprehensive training required by many other states.

Consequences of lack of poll worker training are often seen in provisional ballot results. For example, during the 2008 primary, in Allegheny county alone, 587 voters— 27 % of the provisional ballots voted in Allegheny-- were completely disenfranchised because their provisional ballot envelopes were incomplete.¹ This is an error which could be completely prevented by proper poll worker training-- training the poll workers to carefully check every envelope to make sure it is complete before the voter leaves.

According to the Fels Institute of Government, in 2006, Pennsylvania had the nation's highest number of complaints about poll workers and election staff, the second highest number of complaints about coercion or intimidation, and the third highest number of complaints about requests for identification.² Election Day complaints which were caused or worsened by poor poll worker training or support have included equipment operation problems, failure to distribute emergency ballots, late opening of polling places, language barriers, improper demands for voter identification, improper provisional ballot administration, intimidating polling place behavior, and ineffective polling place design and procedures.³

Of even greater concern, these problems have tended to occur disproportionately in poorer neighborhoods and in communities of color.

All these problems cause longer lines, frustration, and disenfranchisement, which not only burden voters, but also make Election Day much more difficult for the poll workers, who are already working an incredibly long day for little pay.

¹ *Provisional Ballot Certified Counts by Reject Reason*, data received from the PA Department of State, Statewide Uniform Registry of Elections (SURE).

² *MyVote1 National Election Report: Voice of the Electorate 2006*, p. 37, Univ. of Pa., Fels Institute of Government, August 20, 2007.

³ See, e.g., April 22, 2008 data from OURVOTE hotline; April 22, 2008 data from MYVOTE1 hotline; Asian-American Legal Defense and Education Fund July 1, 2008 letter to Philadelphia's City Solicitor, Shelley R. Smith, re: Observations of Presidential Primary Election in Philadelphia, PA, on April 22, 2008; Anthony R. Wood & Vernon Clark, *Election officials gird for a hectic day*, PHILADELPHIA INQUIRER, April 22, 2008, at A01; Margaret Gibbons, *Request to extend voting hours denied*, TIMES CHRONICLE, April 23, 2008, at http://www.thetimeschronicle.com/site/news.cfm?newsid=19509317&BRD=1306&PAG=461&dept_id=187823&rfti=6.

B. Recommendations

As described, uniformity and equality in election procedures are essential in order to protect Pennsylvania voters' rights to uniformity and equal protection under the law. To remedy these disparities, Advancement Project recommends that Pennsylvania:

(1) make training mandatory for all poll workers, including but not limited to all poll workers who will be employed to serve at the polls on November 4, 2008;

(2) identify essential areas of election administration that must be covered by trainings;

(3) provide manuals that must be distributed to the poll workers;

(4) establish clear, uniform qualifications and assessment of every poll worker without which the poll worker cannot work on Election Day;

(5) distribute to all poll workers statewide Advancement Project's poll worker palm card,⁴ or a comparable, easy-to-use short summary of the most common procedures poll workers should know;

(6) play a stronger role in recruiting poll workers, with modernized and energized recruiting messages, increased compensation, and other non-compensation incentives for becoming part of this vital process; and

(7) make Election Day a holiday, or provide incentives for employers to give their employees the day off with pay. This would help both to recruit more poll workers, and also to lessen the stress of voters who experience a wait period before they can vote.

Thank you for your kind consideration of our testimony, and for ensuring that each Pennsylvania voter has the opportunity to vote and have our vote counted, and has equal protection under the law.

⁴ The palm card is a simple, easy-to-read tool designed to provide poll workers with guidance on how to respond to the top ten issues that poll workers may face on Election Day.