

ELECTION PROTECTION **YOU HAVE THE RIGHT TO VOTE**

MARYLAND ELECTIONS 2006: A REPORT BY THE MARYLAND ELECTION PROTECTION COALITION



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W



MDLC
Maryland Disability Law Center



PEOPLE FOR THE AMERICAN WAY
FOUNDATION

AN OVERVIEW OF THE NOVEMBER 2006 ELECTION IN MARYLAND: A REPORT BY THE MARYLAND ELECTION PROTECTION COALITION

I. OVERVIEW

To further dialogue with the new administration regarding election reform, the Maryland Election Protection Coalition (“Coalition”) has prepared the following report on the November 2006 Election in Maryland.

The report is based on Maryland-specific data collected by the Election Protection coalition, the nation’s largest non-partisan voter protection coalition, which operates a national hotline on Election Day to guide voters through the voting process, and works with local and state election officials to ensure that all eligible voters have the opportunity to cast a meaningful ballot. The data gathered by Election Protection in 2006 highlights the voting problems that Maryland citizens continue to face, and which beg for prompt attention and electoral reform.

This report was drafted by the Lawyers’ Committee for Civil Rights Under Law, with valued assistance from the NAACP, People for the American Way Foundation, ACLU of Maryland, the Maryland Disability Law Center, the League of Women Voters of Maryland, and other members of the Maryland Election Protection Coalition.

II. BACKGROUND ON ELECTION PROTECTION

Election Protection engages broad coalitions at the state and national levels to mobilize thousands of trained volunteers (including volunteer attorneys) to respond to immediate issues and help voters with various problems on and before Election Day. Trained volunteers monitor polling places, serve as mobile field attorneys, and answer a live hotline (866-OUR-VOTE) to assist voters who have problems or questions.

Election Protection is led at the national level by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”), the NAACP, the National Bar Association and People for the American Way Foundation (“PFAWF”). In 2004, Election Protection’s 866-OUR-VOTE hotline received over 200,000 calls from voters in all 50 states. For the 2006 mid-term elections, Election Protection was a smaller, more targeted program. This year’s program organized 27 Local Legal Coordinating Committees in 19 states, including Maryland, and set up eight local call centers and six national call centers. In addition, the Election Protection Coalition had field campaigns in 10 states, and over 1700 volunteers who served as poll monitors and roving attorneys.

Calls to the 866-OUR-VOTE hotline and reports from the field are entered into a large database, the Election Incident Reporting System (EIRS), which allows us to monitor, track and respond to election irregularities across the country. Information is captured on a uniform EIRS intake form (see Attachment A) regarding the location and nature of the election problem or irregularity, and entered into the database in real time to allow our legal volunteers, poll monitors, and mobile

field attorneys the opportunity to immediately respond to potential issues on the ground. After the election, EIRS data provides an invaluable resource to support election reform efforts by allowing governmental bodies, election officials, and advocates to quantify and analyze election problems.

Maryland became a top priority for Election Protection in light of the various problems encountered by voters during the September 12, 2006 Primary, such as those that arose in Montgomery County after election officials failed to deliver access cards to polling places.¹ The Maryland coalition includes a diverse group of national and local organizations, including the Lawyers' Committee, the NAACP, the ACLU of Maryland, the League of Women Voters of Maryland, People For The American Way Foundation, Project Vote, ACORN, Advancement Project, and the Maryland Disability Law Center. Through the generosity of the NAACP, a hotline call center with more than a dozen phone lines was established at the NAACP's headquarters in Baltimore, for volunteers and coalition staff to handle calls from the Baltimore metropolitan area and the Eastern Shore prior to and on Election Day. Hotline calls from other Maryland counties, including Montgomery and Prince George's, were handled at a national call center in Washington, D.C. In addition, a local legal command center established to focus on Montgomery and Prince George's counties operated from the offices of DLA Piper in Washington, with more than a dozen attorneys and other volunteers available to respond to problems. Election Protection poll monitors and mobile field attorneys, many of them accredited by the State Board of Elections as poll watchers pursuant to Section 33.07.07.01 of the Code of Maryland Regulations, were dispatched across the State.

Data collected in Maryland was entered into the EIRS database on Election Day and during the following weeks by volunteers from the ACLU, NAACP, PFAWF and Lawyers' Committee. We have reviewed and analyzed the data, and we present our preliminary findings and conclusions below.

III. SUMMARY OF PROBLEMS EXPERIENCED BY VOTERS

A. Overview of Statistical Data

Nationwide, Election Protection's hotline received more than 26,000 calls in October and November 2006, including more than 21,000 calls on November 6-7. Of the 21,143 calls received on November 6-7, 83% of the callers communicated with an Election Protection volunteer.

Maryland was among the states with the highest call volume. On Election Day, a total of 768 calls were received from Maryland voters.² An EIRS report containing caller information and a description of the reason for the call was generated for 491 of these calls. (As a general matter, the 277 calls which did *not* generate an EIRS report would have been simple inquiries such as requesting the

¹ The numerous problems encountered by Maryland voters during the September 12 primary were well-reported in the press, and are familiar to many of the readers of this Report. Accordingly, this Report focuses on voters' experiences during the November 7 general election.

² Other states with significant Election Day call volumes include Ohio (2334 calls), Georgia (1399), California (1236 calls), Pennsylvania (1088 calls), and Florida (1008 calls).

location of the voter's polling place or the hours the polls were open). With respect to the 491 calls which generated EIRS reports, 324 were categorized as voter problems, and 167 were classified as voter inquiries. Calls were received from more than one-half of the 23 counties in the state, with the majority of calls coming from Baltimore City, Prince George's, Montgomery, Anne Arundel and Baltimore counties.

Obviously, not all voters who experience voting problems call the Election Protection hotline. It is important to recognize that a single call to the hotline or a single report from a poll monitor often documents the problems of dozens or hundreds of voters. For example, when we log complaints about three hour lines at a Prince George's County precinct, those complaints must be understood to reflect the experiences of hundreds of voters who are standing in those lines. Likewise, when we receive calls from several dozen voters complaining that they did not receive absentee ballots despite having submitted a timely request, these complaints are a symptom of a larger, systemic problem that affects many more voters.

With these thoughts in mind, we turn to a review of the individual experiences of Maryland voters who attempted to cast a ballot in the November 7 election.

B. Overview of Problems Encountered by Maryland Voters

The problems experienced by voters in the November election have been grouped below by type of problem, e.g., long lines at the polls, problems with voting machines, deceptive practices, and absentee ballot problems. As discussed in detail below, these recurring problems beset voters across the state.

1. Long Lines, Primarily Due to Malfunctioning or an Insufficient Number of Voting Machines

Voters in Prince George's County, Baltimore City, and Montgomery County faced long lines and long waits – up to three hours in some precincts – due primarily to insufficient numbers of voting machines and malfunctioning machines. The *Washington Post* reported that only one-third of all voting precincts in Prince George's County were provided with the number of machines required by law on Election Day.³ While some voters were able to withstand excessive waiting periods to cast a ballot, many left without voting.

As mentioned, these problems were particularly severe and widespread in Prince George's County, as the following examples attest:

- ∞ At the University of Maryland at College Park, lines at the Stamp Student Center precinct averaged three hours for the entire day due to a shortage of machines. One caller reported that, although there had been long lines all day, at 7:00 p.m. there were still only four voting machines serving a campus with 35,000 students. The caller reported that there were still 200 students in line at 8:15 p.m., after the polls had closed.

³ "Two-Thirds of Precincts Were Short on Machines," Rosalind S. Helderman, *Washington Post*, Jan. 13, 2007, B05.

- ∞ At Deerfield Run Elementary School in Prince George's County, a caller reported at 8:22 a.m. that there was a one and one-half hour waiting time to vote, due in part to two malfunctioning voting machines.
- ∞ At the Templeton Elementary School in Riverdale, Prince George's County, a voter who arrived when the polls opened reported that the voting machines were not set up and the computers were not working. The voter waited outside the school for 45 minutes.
- ∞ A voter at the Columbia Moose Lodge # 126 in Clinton, Prince George's County, reported that only four of the precinct's 15 voting machines were working, and that many voters had to vote multiple times because "the cards weren't working." Another voter at the precinct confirmed these problems.
- ∞ A Prince George's County voter reported that only one voting machine was working at her precinct at 7:00 a.m., resulting in long lines of voters who were attempting to vote before work.
- ∞ Voters at the Jessie B. Mason School on Iverson Street in Temple Hills, Prince George's County, encountered at least two malfunctioning machines and long lines at 7:15 a.m.
- ∞ A voter at Andrew Jackson Middle School located in Forestville in Prince George's County reported that the polling place did not have enough cards for voters to access the electronic voting machines, and that there were no paper ballots to use as a back-up.
- ∞ A caller from Bowie reported insufficient voting machines at his precinct, and said that the election judge informed him that the precinct had received fewer machines than requested.
- ∞ A voter at Bishop McNamara High School in Forestville, Prince George's County, was unable to vote because of long lines resulting from the precinct not having voting cards.

Other voters in Prince George's County also called in to report excessive long lines, although it is not clear from their reports whether these lines were directly related to a lack of voting machines or machine malfunction.

- ∞ The Lawyers' Committee's Executive Director, Barbara Arnwine, experienced problems at the polls first-hand when she went to cast her ballot at Evangel Cathedral in Upper Marlboro, Prince George's County. There, she waited in line along with fellow voters for more than two and one-half hours before she was able to cast her ballot. The hotline received several calls from voters forced to wait in line at Evangel Cathedral, which serves many senior citizens. One caller reported that the waiting periods had been three hours all day long.
- ∞ At Bowie State University in Prince George's County, voters at the McKeldin Gym also reported "huge lines" and waiting times of up to two hours to vote.
- ∞ Another caller reported two and one-half hour lines at St. Mary of Assumption School in Upper Marlboro in Prince George's County. The caller indicated that only two of the four voting stations were open.
- ∞ At the James Madison Middle School precinct in Upper Marlboro, Prince George's County, a caller reported that she gave up attempting to vote because of lines of three hours or more. Another caller reported that there were at least 500 people in line at the James Madison precinct, but only 15 people in line at Melwood Elementary School, which is located only a block away.

- ∞ At Marlton Elementary School in Upper Marlboro, voters left without voting due to long lines and waiting times exceeding one hour.
- ∞ A caller also reported long lines at Adelphi Elementary School in Adelphi, Prince George's County.

Voters at some precincts in Baltimore City, Baltimore County and Montgomery County likewise encountered long lines and malfunctioning machines:

- ∞ Voters at the precinct located at 3113 Richwood Avenue in Baltimore City weathered long lines because only four of the 20 voting machines were functioning.
- ∞ A voter at Villa Cresta Elementary School located on Rader Avenue in Baltimore City reported that he had to wait an hour to vote because only three of the precinct's 12 voting machines were functioning.
- ∞ A voter at Halstead Academy in Baltimore County also reported insufficient numbers of voting machines.
- ∞ At the Little Flower School in Bethesda, two voting machines were broken causing long lines. Some senior citizens left without voting because they could not wait an hour on line. According to the caller, the precinct supervisor indicated that the Board of Elections promised to fix the problems by noon, but had not done so by 1:30 p.m.

2. Other Problems with Voting Machines and Ballots

In addition to waiting in long lines, many Maryland voters faced other difficulties in their interactions with the voting equipment. The Election Protection hotline received numerous calls from voters complaining that voting machines "flipped" their votes to other candidates or otherwise did not record their vote correctly. Reports of "vote flipping" were received from precincts across Maryland: from Takoma Park, Olney, Bethesda, Silver Spring and Kensington in Montgomery County; Pasadena in Anne Arundel County; Chester in Queen Anne's County; Baltimore City; and Baltimore County. For example:

- ∞ A voter at Bannockburn Elementary School in Bethesda reported that she tried to vote for one senatorial candidate, but another candidate's name appeared on the touch screen several times.
- ∞ Another voter at Jackson Road Elementary School in Silver Spring reported that the voting machine selected a different candidate than the one she had pressed, and poll workers were "too busy" to help her.
- ∞ A voter at Harford Senior Center in Baltimore stated that candidates she did not vote for appeared on her voting summary.
- ∞ A voter at Parkside Clubhouse North reported that each time she touched the screen to vote for one candidate, his opponent's name would show on her screen. After three attempts, she thought the machine worked, but was unable to verify it on her summary screen.

Other voters encountered similar problems with voting machines failing to record their votes:

- ∞ At Waugh Chapel Elementary School in Odenton, Anne Arundel County, a machine would not allow voters to vote for certain candidates.
- ∞ A voter at the Silver Spring Library in Montgomery County was unable to change her vote because the voting card “popped out” before she finished voting. A voter at Highbridge Elementary School in Prince George’s County encountered a similar problem with a card ejecting before he completed reviewing his ballot.
- ∞ A voter at a precinct in Beltsville, Prince George’s County, encountered a machine that required rebooting nine times before he was able to vote. Similarly, this was the case for a voter at North Bethesda Middle School in Montgomery County, whose machine shut down a number of times.
- ∞ Election Protection also received a call on the morning of Election Day from a mobile technician who had been attempting to service voting machines across the state. He complained that he had not been able to calibrate machines as required.

We received several calls from voters who reported that the electronic voting equipment at their precincts erroneously indicated that they had already voted:

- ∞ A Bowie resident who arrived at her Prince George’s County poll early in the morning and was the first person in her precinct to vote was informed that she had already voted.
- ∞ Other voters in Baltimore City, Harford County, Montgomery County and Prince George’s County similarly reported that the electronic poll books at their precincts erroneously indicated that they had already voted; they were required to vote by provisional ballot.

Finally, paper ballots were not immune to problems. We received two calls from voters at Calverton Elementary School in Beltsville, Prince George’s County, who related that, although four initiatives were on the ballot, only two initiatives appeared on the paper provisional ballot.

3. Voter Registration Problems

Election Protection received numerous calls from Maryland voters who experienced problems relating to voter registration. Voters across the state arrived at their polling place and were advised that they were not on the registration rolls, and were required to vote a provisional ballot.

- ∞ A Montgomery County voter who registered at the Motor Vehicle Administration over one year ago was told he was not on the registration list.
- ∞ Despite registering in July 2006 and receiving a voter registration card, a Prince George’s County voter was advised she was not on the rolls.
- ∞ A Montgomery County voter who successfully voted at her Silver Spring precinct in the September primary was advised on November 7 that she was not registered to vote. Other voters experienced the same problem at Norwood Elementary School in Baltimore County, and Cecil Elementary School in Baltimore City.
- ∞ Poll monitors at Stamp Student Union at the University of Maryland also reported that significant numbers of students were advised that they were

not on the registration rolls. One poll worker was telling students that they were “listed as provisional.”

4. Failure to Timely Deliver Absentee Ballots

A combination of factors, including a high demand for absentee ballots and the failure of several counties to mail absentee ballots to voters in a timely fashion, resulted in widespread absentee ballot problems for voters in Maryland. Election Protection received 29 calls from voters in seven counties who never received an absentee ballot despite timely requesting one, or received the absentee ballot after the deadline for returning it. A coalition of civil rights groups, including the Lawyers’ Committee, the ACLU of Maryland and the People for the American Way Foundation, working with the law firm of Akin Gump Strauss Hauer Feld LLP, filed suit seeking relief for such voters by extending by one day the deadline for returning absentee ballots. However, in *Fritzsche v. State Board of Elections*, the Maryland courts denied the requested relief. Maryland’s absentee ballot problems seriously affected voters, as the following anecdotes attest:

- ∞ A married couple residing at Leisure World, Montgomery County, requested absentee ballots several weeks before the election but did not receive them. The husband is 90 years old; the wife is bed-bound and was not able to travel to the polling place to vote.
- ∞ An Anne Arundel County voter on military duty in Tennessee timely requested an absentee ballot but never received the form.
- ∞ A caller from Baltimore County reported that she hand-delivered a timely absentee ballot request to the Board of Elections on behalf of her husband, who is disabled and in a nursing home. The Board personnel stated that the absentee ballot would be mailed right away, but the caller did not receive the absentee ballot by the November 6 deadline.
- ∞ Another caller in Baltimore County said that she, her daughter, and her son all requested absentee ballots in mid-October. While she and her daughter both received their ballots, her son’s ballot never arrived.
- ∞ A voter at Kettering Elementary School in Upper Marlboro, Prince George’s County, was not permitted to vote because the chief judge incorrectly told her that she had voted already by absentee ballot.

5. Deficiencies in Poll Worker Training

Election Protection received several calls from voters relating that poll workers were confused by identification requirements, or otherwise failed to follow appropriate procedures. The following examples highlight the need to prioritize poll worker training.

- ∞ Poll workers across the state improperly requested that voters provide identification, including at precincts in Prince George’s County (Samuel Chase Elementary School, Riverdale Elementary School, Ardmore Elementary School), Montgomery County (Silver Spring Library, Broad Acres Elementary School, Sligo Creek Elementary School), and Baltimore County (Halstead School).

- ∞ At Richview School in Montgomery County, a first-time voter provided a student photo ID and a birth certificate, but was told that this was insufficient ID.
- ∞ Voters at precincts in Prince George’s County (Oaklands Elementary School, Phelps Senior Center) reported that they attempted to vote at their polling place because they did not receive an absentee ballot, notwithstanding having submitted a timely request. However, the election judges initially refused to provide them a provisional ballot. One voter reported that he had to argue with the election judge in order to obtain a provisional ballot.

6. Voter Intimidation and Deceptive Practices

Election Protection received approximately 56 calls from Maryland voters who encountered or witnessed voter intimidation or deceptive practices.

- ∞ Consistent with local press reports, we received over two dozen calls from voters in Prince George’s County who complained about a flyer claiming to be a “Democratic Sample Ballot” with boxes checked for the Republican gubernatorial and senatorial candidates, without identifying them as Republicans. Their names were followed by a list of Democratic candidates. (See Attachment B)
- ∞ A voter in Baltimore City at the Dumbarton Middle School precinct reported that Ehrlich campaign volunteers were in the parking lot of her precinct discouraging people from voting by telling them that there were long lines inside.
- ∞ At Evangel Temple in Prince George’s County, a voter reported blatant electioneering inside the polling place. Flyers from the Steele campaign were on a poll worker’s table which stated that Ben Cardin, the opposing candidate, “promised to attack Jesus Christ and Christians” and would take away black people’s freedom if elected.
- ∞ A voter in Waldorf, Charles County, complained that, while he was voting, a man interrupted him, handed him an American flag, and began electioneering.

We also received reports of election officials engaging in intimidating or harassing conduct.

- ∞ A voter at Deer Park Elementary School in Owings Mills, Baltimore County, complained that a polling place official was debating politics with voters.
- ∞ At Carney Elementary School in Parkville, Baltimore County, a voter wearing traditional Pakistani clothes complained that the polling judges ignored her, and assisted other voters who came after her in line.
- ∞ In Baltimore City, a voter complained that a poll worker harassed voters by hurrying them to cast their ballots, and making the voters feel uncomfortable.

Voters at precincts in Baltimore City and Prince George’s County also reported that the voting machine arrangement did not afford sufficient privacy to vote. As a voter at Holy Trinity Episcopal Church in Bowie explained, “anyone could see” her votes on the electronic screen.

7. Disability Access Issues

A variety of obstacles faced Maryland voters with disabilities, from inadequate parking spaces at certain polling places to inaccessible machines. Some of the incidents recorded by Election Protection include:

- ∞ A voter who is blind stated that she was unable to vote on the voting equipment at the Silver Spring Library, Montgomery County.
- ∞ A Cecil County voter with limited vision reported being unable to vote on the equipment at Calvert Elementary School in Rising Sun.
- ∞ A caller at Cooper Lane Elementary School in Landover Hills, Prince George's County, complained that the voting machine screens were too small for the senior citizens voting there.
- ∞ A voter who is deaf brought his 15 year old daughter to assist him with voting at Westover Elementary School, Montgomery County. The poll workers tried to prevent the daughter from entering the area and accompanying her father into the booth. After much discussion, they asked the father to initial a form allowing the daughter to assist him.
- ∞ Because there were no accessible bathrooms at Northwood Elementary School in Baltimore City, two polling judges who use wheelchairs had to travel up the street to the hospital to use the bathrooms.
- ∞ A voter at Monocacy Elementary School, Montgomery County, complained that there were no automatic door openers at his polling place and he was unable to get in or out of the building without asking people to open the door for him.
- ∞ A voter with a vision disability in Montgomery County voted using an audio ballot. After checking his ballot when he was finished, the machine stopped responding and rejected his card. He spoke with a poll worker and was told he had to re-vote as the machine had "timed out." The voter complained that the voting machine does not allow sufficient time for a person with a vision disability to vote and then verify the ballot.
- ∞ A voter who is blind reported that poll workers at Loch Raven Academy in Baltimore County did not know how to use the audio ballot. She had to wait 55 minutes while the poll workers tried in vain to set up the equipment. Finally, another voter (not a worker or a judge) helped to set it up. She also reported that the signage regarding accessible parking and the accessible entrance was very poor.
- ∞ Another voter who is blind complained that when he attempted to vote at Loch Raven Academy, Baltimore County, the judges neglected to encode his voting card for an audio ballot. When he inserted his card into the machine, the audio was not activated. His wife, who uses a wheel chair, had to assist him in voting since the audio ballot was not available. She complained that when she tilted the screen in order to cast the ballot she did not have any privacy.

IV. CONCLUSION

As past Election Protection programs have documented, there are persistent problems with the way we conduct elections in this country that lead to voter disenfranchisement. The Maryland data from the 2006 election cycle demonstrates that our state is not immune from these problems, and that our voters continue to

experience problems that can, and should, be resolved through election reform, poll worker training, and improvements in local election administration.

While Election Protection is a resource for all Americans, the program centers on traditionally disenfranchised communities, including African Americans, Latinos, and other racial, ethnic and language minorities, senior citizens, low-income voters, and individuals with disabilities. The data from the recent election cycle in Maryland underscores why such a focus is proper: in example after example, the communities affected by Maryland's voting problems are communities that historically have been disenfranchised. Simply put, there is no excuse for African American voters being required to wait for three hours to cast a ballot in Prince George's County precincts. Likewise, there is no excuse for the disenfranchisement of bed-bound senior citizens because of absentee ballot chaos in many of our jurisdictions.

It is the hope of the Election Protection Coalition to work cooperatively with the new administration and state and local election officials to attack the problems documented in this Report.

This Report was prepared and endorsed by the following organizational members of the Maryland Election Protection Coalition:

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