



**Testimony of Tanya Clay House
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Election Assistance Commission
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Chairman Soaries, Vice Chair Hillman and Commissioners Martinez and DeGregorio -- Thank you for the opportunity to testify today. I want to commend you for holding this hearing, and for focusing attention on critically important issues facing the nation during this election year. And, I want to salute the Commission again working under extremely difficult circumstances to help resolve the problems facing voters and election officials.

I am the Deputy Director of People For the American Way in charge of civil rights issues, including election reform. I bring greetings on behalf of our President Ralph G. Neas. People For the American Way is a national nonprofit social justice organization with over 675,000 members and supporters, and with more than two decades of commitment to nonpartisan civic participation efforts. Since our founding by Norman Lear, Barbara Jordan, and other civic, religious, business and civil rights leaders, People For the American Way and its Foundation have urged Americans to take seriously their responsibilities as citizens. And we have sought to engage those Americans who have been traditionally underrepresented at the polls, including young voters and people of color.

I am honored to be here today, and especially honored to testify with my colleague from MALDEF and with the election officials here today.

The right to vote is fundamental to the health of our democracy. There is no greater guarantee of freedom than the conduct of open, fair elections that express the will of the people, and maintain the public's trust and confidence.

Sadly, public confidence in our system of elections was shaken to the core during the 2000 elections and has yet to be fully restored. In response, the Help America Vote Act of 2002 was drafted with the consultation of numerous civil rights organizations, including People for the American Way. HAVA was drafted with the intent of restoring confidence in our electoral system. After the 2000 election debacle, we all knew that we must do everything we could as a government and a free people to ensure that in every future election, every voter has a chance to cast a vote that will be counted. No longer could we stand by and allow another 4 million voters to be disenfranchised.

HAVA was always intended by the civil rights community to be a bill that would enfranchise voters and help restore their confidence in our electoral system. Requirements like provisional ballots, the computerized statewide voter registration list, accessibility standards and funding for updated voting systems, were all intended to help create a more uniform and non-

discriminatory electoral system. However, as the Commission can attest to, HAVA has not always remained a priority in the eyes of many in Congress, attributing to the delayed funding and some might say half-hearted commitment to its implementation.

While the enforcement of voter's civil rights protection in HAVA is not completely dependent upon federal financial support from the Congress, all of us who support the proper implementation of HAVA understand that significant electoral change will continue to creep without proper federal funding. Nevertheless, this is not an excuse for disregarding the true intent of HAVA which is to afford all registered voters the opportunity to exercise their right to vote without States enacting unnecessary barriers or prohibitive interpretations.

As a member of the civil rights coalition that helped to draft components of HAVA, I was acutely aware of how apparently slight changes could dilute the effectiveness of well-intentioned provisions. For example, throughout negotiations on HAVA, the civil rights coalition urged legislators and election officials alike to maintain consistency in the implementation of various requirements in order to ensure that their intent was preserved. Specifically, the simultaneous implementation of the provisional ballot requirements and the computerized statewide voter registration list was necessary to uniformly ensure that voters were not once again disenfranchised because of improperly kept registration lists. Unfortunately, language was placed in HAVA that allows states to obtain an exemption from the requirement to create a statewide voter registration list by January 1, 2004. The consequences of this language are why we are here today.

The computerized statewide registration list under Title III, Section 303(a) of HAVA would enable every locality in the state to verify all registered voters and would lessen the problematical effects of additional identification requirements for first-time voters. Title III, Section 302 of HAVA requires states to provide any person who is not on the voter list or whose eligibility is challenged, to be offered a provisional ballot. When enacted together, these provisions would ensure that the votes of all registered voters were counted. This was the intent of the civil rights community.

As I stated earlier, despite the best efforts of the civil rights coalition, an exemption was placed in HAVA that permits states delay the development of a statewide voter registration list until January 1, 2006. As a result, states without such a list, must then determine according to their state law under what circumstances provisional ballots will be counted. This is problematic because there is no consistent definition of jurisdiction amongst states and non listed under HAVA.

Let me explain further. HAVA states that every state must provide a provisional ballot to any person who declares they are: a) registered to vote and b) eligible to vote in a federal election. Technically, a voter declares to be a "registered voter in the jurisdiction in which she desires to vote." States define jurisdiction in various ways, and because HAVA does not provide a definition, many states have chosen to be very restrictive in their definition by limiting a jurisdiction to a polling place or precinct. Once the statewide voter registration list is

operational, jurisdiction will be defined as a state, but until that time states may continue to justify the enforcement of such a limiting definition.¹

This unfortunate loophole in HAVA has been highlighted because of the inconsistent implementation of the provisional ballot provisions and statewide voter registration lists. If states had been required to create a statewide voter registration list by January 1, 2004, the federal definition of jurisdiction would be used and individuals voting by provisional ballots in the wrong polling place or precinct would not be disenfranchised.

While this situation continues to be unacceptable in the eyes PFAW and the rest of the civil rights community, until we can correct this problem, we as that at a minimum, states allow provisional ballots cast in the wrong polling place or precinct to count for all federal office races.

Nevertheless, while this situation is extremely unfortunate, let's not be too pessimistic for fear that we unintentionally discourage people from voting. Thus, it is incumbent upon us all to educate voters about these issues so that we can avert potential significant voter disenfranchisement. Therefore, People For the American Way Foundation, our non-partisan sister organization, has included as part of its flagship civic participation program called Election Protection, a campaign to educate voters about the problems associated with provisional ballots in certain states.

People For the American Way Foundation is proud to be a creator and one of the founding members of the nonpartisan Election Protection program, a broad coalition of national, state and local advocacy organizations dedicated to protecting voter rights, including Lawyers' Committee for Civil Rights Under Law, the National Coalition on Black Civic Participation, the NAACP National Voter Fund, the NAACP Legal Defense and Education Fund, League of United Latin American Citizens, the Mexican American Legal Defense and Education Fund, America's Families United, and the AFL-CIO.

Election Protection promotes civic participation by educating voters about their rights and helping them hold election officials accountable when those rights are violated. Election Protection is a national program that will be on the ground in more than 30 states nationwide, with materials for all 50 states in the continental U.S.

As part of the Election Program, we are distributing millions of copies of the state-specific "Voters' Bill of Rights," a voter education tool tailored to reflect the voting laws and special circumstances of each state. The materials will be printed in English and Spanish (and Creole for distribution in Florida). There is also a toll-free voter assistance hotline, 1-866-OUR-VOTE, that is already up and running nationally, and provides voters with free legal advice and assistance, from now through Election Day and beyond.

The reason I have dedicated so much time to discussing the Election Protection program is because Election Protection is actively engaged in educating voters about their voting rights. Thus, we are making a point to specify in our Bill of Rights under which circumstances a

¹ The National Voter Registration Act defines jurisdiction for **federal purposes** as the largest geographic area governed by a unit of government (municipality or larger) that performs all the functions of a voting registrar.

provisional ballot will be counted. Further, we have been monitoring states to ensure that HAVA implementation does not unnecessarily burden voters. We are doing because of massive confusion we have encountered already amongst voters and poll workers alike. Currently, we estimate that over 20 states are using the most restrictive definition of jurisdiction. For this reason we are training our volunteer poll monitors, lawyers and law students on state election law so that they can be ready to provide quick and accurate assistance to voters and poll workers.

Despite some positive efforts on Capitol Hill and in state and local governments, the coming election threatens continued problems and grave risks of disenfranchisement for millions of American voters. And as recent events in Florida, Ohio, Arizona and a number of other states have proven again, many of those problems will overwhelmingly disenfranchise poor and minority voters.

The whole sorry episode in the 2000 Election has left deep scars, and done great damage to public confidence, but HAVA has the potential, if properly implemented to restore this confidence and encourage voter turnout. It is our hope that voters are not so discouraged about problems with provisional ballots and such that they may not vote at all. That is a particularly subtle and persistent form of voter suppression. It feeds into voter skepticism and the idea, "Why should I vote? It won't make a difference." This is why programs like Election Protection and other voter participation efforts are critical to the maintaining a true democratic system in which all voters are active participants.

It is clear that as a nation, we must act to repair the damage that has been done to public trust, and restore voter confidence in the integrity of our elections. The challenges are unquestionably enormous, but so must be our resolve.

As the struggles of the civil rights era begin to fade from living memory, our dedication to protecting the fundamental right to vote and the conduct of free and fair elections must be renewed and must be strengthened.

Commissioners, I began by saying that the faith of the American people in our election process has been shaken. As I have discussed, the continuing problems in the problematic implementation of HAVA have done little to dispel those doubts. My testimony here today is an effort to present ways to restore confidence and encourage states to act in the best interests of voters.

Again, I commend the Commission for drawing attention to these problems. Resolving them is one of the most important challenges facing our nation today. I am proud to say that People For the American Way Foundation and its partners in the nonpartisan Election Protection coalition intend to do everything we can to protect the rights of the voters of this nation, make sure that every voter has the opportunity to vote on this Election Day, and that every vote is counted.

Thank you for this opportunity to testify, and I will be happy to take your questions.