



**STATEMENT OF BARBARA R. ARNWINE  
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BEFORE THE COMMITTEE ON SENATE RULES AND ADMINISTRATION  
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Madame 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 cast a ballot, and have that vote counted.

My name is Barbara Arnwine, and I am the Executive Director of the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee was founded in 1963 by President John F. Kennedy to organize the pro-bono resources and talent of the private bar to assist in the legal battles of the civil rights movement. I am also a member of the Advisory Committee to the Election Assistance Commission.

I want to start by thanking both you Madame Chairman and Ranking Member Bennett for your courage in beginning a bipartisan discussion on Election Reform. It is critical that this essential issue be removed from politics. Fixing our nation's election infrastructure and promoting confidence in election outcomes is an American issue. Up until now, much of this debate has been consumed by the excitement of political contests. That's a mistake. It is only when we recognize that fixing the election system will take a thoughtful policy discussion, removed from the bluster of politics, that we can move down the road to real meaningful reform.

The Bipartisan Electronic Voting Reform Act begins that discussion by highlighting some key issues that cause million of eligible voters to be disenfranchised. As I will discuss in a minute, many of these issues stem from problems with voting machines. Section 2 of the bill begins to answer the problem of the lack of confidence voters have when they cannot independently verify their votes. Section 3 address the serious need to have adequate auditing procedures to promote confidence in election outcomes. Section 4 also increases confidence by requiring strict chain of custody protocols for ballots and requires voting machine manufacturers to disclose key information to election officials and litigants. This latter provision is particularly important to understanding the problems with electronic voting and providing a roadmap for security. The provision strikes a critical balance between trade secrets and election integrity – the latter, of course, being more important to the security of elections. Section 6 is also critical. By encouraging research and development, this section acknowledges that we have not yet found the best election system, but that we are committed to that endeavor. While reasonable minds disagree about where we are and where we must be when it comes to

election machinery, no one can claim that we have found the perfect system. Stifling innovation is certainly not the way to get there.

At the Lawyers' Committee, we have seen how all of the shortcomings addressed by this bill affect real voters on and before Election Day. Following the 2000 presidential election, the Lawyers' Committee, together with our allies in the civil rights community established Election Protection, the nation's largest non-partisan voter protection coalition. The Lawyers' Committee serves as that coalition's legal leader. Beginning with the 2004 presidential election, the Lawyers' Committee recruited, trained, and deployed over 8,000 lawyers in 17 states to protect the fundamental rights of hundreds of thousands of American citizens. Legal volunteers conducted strategic voter protection programs, including the implementation of the 1-866-OUR –VOTE hotline, and provided legal support to over 150 coalition partners dedicated to protecting every American's right to vote, and have that vote counted.

Using the lessons learned in 2004, The Lawyers' Committee expanded the program for the 2006 mid-term elections and the 2008 primaries, fielding over 300,000 calls to date from voters from all over the country. Following each election, the Lawyers' Committee has compiled a report of the problems faced by voters as they head to the polls. I have attached the report from this year's primary program to this testimony. Unfortunately, for millions of voters across the country, the right to vote was circumvented by an infrastructure overwhelmed by massive voter turnout and inadequate resources.

In this historic primary season 47,477,806 votes were cast. Election Protection had an active presence in 10 states and with over 1,600 legal volunteers on the ground. The stories that I will share today come from individual voters in the primary elections, but they are not unique. All over the country, eligible voters were disenfranchised by malfunctioning voting machines and inadequately trained poll workers.

During the 2006 election, nearly 21% of voter complaints to the election protection hotline were problems related to voting machines. During the 2008 primaries, this proportion was greatly increased. On Super Tuesday, February 5, alone, 57% of problems reported were problems at the polling place, including problems with voting machines.

Human error – such as removing vote cards prematurely – accounted for some of these complaints. However, an even greater number of voters reported mechanical problems – optical scanners that did not work, votes that were recorded incorrectly, or had simply shut down.

In Georgia, a super-Tuesday state, a full 72% of voter complaints concerned problems at polling places and malfunctioning voting machines. In several precincts, broken voting machines caused forty-five minute delays for voters waiting to cast a ballot, with lines winding around the block. In another incident, a caller reported that he had asked to vote Democrat, but when the poll worker inserted the yellow card into the machine Republican names appeared. The machine then shut off. When the voter asked the poll

worker for assistance, he was told that he had already voted, even though it was not for the candidate of his choice.

Similarly, in Illinois, 70% of problems reported by voters were polling place and voting machine related. One voter called the 1-866-OUR VOTE hotline after the poll worker at her location attempted to feed her ballot to the machine upside down. When she corrected him, the poll worker smiled and said she was “one of the lucky ones.”

Callers across the country reported being turned away from the polls because machines had broken down. In New York, this problem was experienced in precincts in Harlem, Manhattan, Brooklyn, and the Bronx. Further, voters who asked to cast emergency ballots in these precincts – which are counted as regular ballots – were instead given affidavits. One voter in Manhattan was given an emergency ballot, but had to mark it at a table filled with other voters, then fold it in half and deposit it in a cardboard box. Another voter was interrupted while casting her ballot by poll workers who said the machine was malfunctioning. The voter then watched in horror as her selection of candidates was changed.

When Super Tuesday failed to produce party nominees, the eyes of the nation turned to the February Potomac Primary. The Lawyers’ Committee, through Election Protection, set up a hotline in Washington DC. In Virginia, Maryland, and the District of Columbia, voter turnout increased an average of 175% from previous primaries – and election officials were under-prepared and overwhelmed. In DC, voters reported that in precincts where voting machines were broken, poll workers merely collected ballots to be processed later. In Maryland, one precinct’s machines malfunctioned after a poll worker improperly pulled cards from the voting machine. There were also several reports of precincts across the Potomac primary states where no machine was functioning, and voters were asked to cast provisional ballots that were then placed in an unsecured box.

Perhaps some of the most egregious polling place problems were reported to Election Protection’s Pennsylvania campaign. There, voters reported precincts that ran out of emergency ballots after voting machines mal-functioned, and machine counts whose final tallies differed from the poll book records. 1-866-OUR VOTE also received a call from a woman who had asked to see a demonstration of the voting machine. When she said she wanted to vote for a different slate of candidates, the poll worker told her that she was not supporting those candidates and that she hoped the woman would reconsider her vote.

Obviously, the issues addressed in S. 3212 are critical and, again, I am excited that this conversation has started. Voters need to feel confident that the votes they cast count for the candidate they choose. Section 2 of the bill begins to address this problem by allowing each voter to verify her vote. I am pleased to sit up here with my good friend and ally Jim Dickson who has lead the fight to make sure that the promise made to voters with disabilities by the Help America Vote Act is honored. Similarly, voters who have limited English proficiency must be able to verify their votes as well.

This bill also recognizes the need to have an audit system that will promote confidence in election outcomes. The hundreds of thousands of voters that Election Protection reaches through our programs are concerned that election outcomes, either through incompetence, mistake, or malice, don't always reflect the actual votes cast. A meaningful audit program will help restore that confidence.

As I said, this is a great start. It is important to continue this conversation and address the very real obstacles voters face in the registration system and provide the necessary legislative framework to prevent the dirty tricks that voters across the country face – like intentional deception and voter purging. I want to thank the Chairman and Senator Kerry for introducing S. 3308, the Veteran Voting Support Act, which calls on the Veterans Administration to honor the service of our brave men and women who have served this country by providing registration opportunities at the Veteran's Affairs facilities. This is an immediate and critical need.

We also need to be creative, however, in solving the problems that prevent eligible voters from participating in the process. Perhaps the largest problem, outside of voter registration complications, that cause eligible voters to be disenfranchised is the problem of poorly trained, or too few, poll workers. We need to think of how we can address these issues through pilot programs, public/private partnerships or providing incentives for government employees to continue their civic duty by serving as poll workers.

We have an obligation to our democracy to provide an infrastructure where everyone eligible can participate. S. 3212 begins this discussion. I look forward to working with all of you to move us towards this noble goal.

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