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Humphrey Fellows Election Observation Report United States Midterm Elections November 7, 2006

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Findings

At the core of our delegation to observe U.S. elections on November 7, 2006 in the District of Columbia, Maryland, and Virginia were Hubert H. Humphrey Fellows attending American University's Washington College of Law (WCL). The delegation included legal practitioners and academics from Brazil, Tunisia, Moldova, the Philippines, Iraq, Egypt, Pakistan, Nigeria, Zimbabwe, Bhutan, Indonesia, Malaysia, Canada, and the United States. Led by Dr. Robert Pastor, Director of the Center for Democracy and Election Management (CDEM) at American University (AU), and Dr. Louis Massicotte, CDEM Senior Fellow and Visiting Professor at AU's School of Public Affairs, we visited a total of 11 precincts (7 visited by the Humphrey Fellows and 4 visited by Dr. Massicotte) throughout the day as well as two Washington, DC call centers of the Election Protection Coalition. We observed how Americans vote and the contrasting practices in the U.S. voting process. Using a standardized questionnaire developed by CDEM (see Appendix B), we collected information from each site we visited. The following is a summary of our findings.

Election observers

Our access to polling stations was restricted to specified sites by the Boards of Elections, although we did make impromptu visits to two polling sites in Washington D.C. These restrictions are inconsistent with international practice of observing elections. In addition, we were not permitted to observe the closing of the polls and the counting and reporting of results at any precincts in the two states and the District of Columbia. We were informed that only "party watchers" are allowed to be in precincts.

In general, we had some access to polling place officials and were able to ask them questions about the election process. However, we noted that precincts had different attitudes and policies towards election observers. For example, the Friendship Heights Village Center (MD) was the only place where we were asked to write our names and organizations represented on a sign-up sheet as well as receive "Challenger and Watcher" badges issued by the Montgomery County Board of Elections.

Precincts generally did not have a space reserved for independent poll observers (only for party "poll watchers") and we were requested to stand away from the voting areas, making it more difficult for us to observe or to ask questions of election officials. In Virginia, our presence was met with cooperation and curiosity, but above all officials displayed a willingness to interact with our delegation. In Washington D.C. attitudes and policies were mixed. One precinct captain, in upper Northwest, was concerned about the time their workers were "wasting" with us answering questions. Two other D.C. polling sites were both cooperative and educational. Maryland precincts were generally gracious hosts, though they rejected requests to view ballot counting at the end of the day.

Voter secrecy

We found that the organization of the polling places created challenges for the secrecy of the ballot. In the precincts we visited, with the exception of the Key School (VA), the voting booths/machines were placed in ways that allowed others to see how voters fill out their ballots. Voting booths/machines were located in a way that made voting not as private as it should be.

Certain precincts were also more appropriate sites for voting than others. The Hardy Recreation Center (DC) and the Latin American Youth Center (DC) had relatively smaller areas for voting and because of the space, people could pass behind the voters to see their votes or interrupt the voting process. The lack of competition in DC elections may have led to a smaller turnout, which mitigated the problem. The precincts visited in Virginia and Maryland were more spacious.

At the Latin American Youth Center (DC), poll workers redirected disabled voters who sought help in casting their ballots to "poll watchers". The disabled voter touch screen machine had been broken for four hours into the middle of the day without repair. This practice not only compromises the secrecy of

the ballot, but also its integrity since the voter could be influenced by the partisan affiliation of the “poll watchers”.

Provisional ballots

Precincts varied in their use of provisional ballots, both among precincts in the same state and between states. The Hardy Recreation Center (DC) precinct redirected voters who believed to be registered to vote there to their correct voting precincts, while the Drew Elementary School (DC) precinct immediately gave them provisional ballots to vote. The latter was also the practice in the Friendship Heights Village Center (MD). At the Key School (VA), if a voter’s name was not on the registration list, the precinct captain called the Registrar to locate the correct precinct. We did not receive further information on how the problem would be further resolved.

Maryland and Virginia established provisional ballot procedures that helped assure voters that their votes would be counted. Yet these procedures were contingent on the voter to follow up with election officials. We believe that it would be better for the states to notify the voters if and when their votes would be counted than for the voters to try to find out if their votes were counted.

Voting machines

Problems with the voting equipment were reported and varied from missing cords to technical malfunctions. The Friendship Heights Village Center (MD) precinct had a machine malfunction in the morning, which it reported but still awaited resolution at the time of our visit (10 am). At the Latin American Youth Center, the card activation system failed and the Board of Elections was notified of the malfunction at about 7:30 am. At 11:30 am, they had not yet come to repair the machine. Based on interviews with poll workers, voters in Virginia were primarily using electronic voting machines. To our question how did the precinct captains know whether votes were lost due to machine malfunctions, they either failed to answer the question or did not offer a convincing explanation.

ID requirements

ID requirements, like provisional ballot procedures, varied among states and among precincts in the same state. In DC, voter identification is only required for first-time voters who registered by mail. The registration lists in DC polling precincts had “ID required” typed alongside the names of such voters. The Hardy Recreation Center precinct accepted any type of photo ID, such as drivers’ license, university ID, etc. The Drew Elementary School precinct only accepted state issued ID’s and specifically told us that university ID’s are not accepted as identification.

Voters were asked to present an ID at the Key School (VA), and acceptable ID’s were voter registration cards, driver licenses, social security cards, etc. If voters were unable to produce an ID, they were asked to fill out an information sheet.

Maryland precincts did not request ID’s from voters. The Bethesda Elementary School precinct had a state of the art electronic register of voters which allowed poll workers to accurately and speedily check if a voter was on the registration list and their correct precinct. If their name was not on the registration list, they were given a provisional ballot.

Election day complaints

There were no uniform practices on how election day complaints were handled. The Friendship Heights Village Center (MD) precinct had a book where such complaints were recorded, whereas in DC, voters either filled out a complaint form (Hardy Recreation Center) or were directed to the DC Board of Elections and Ethics (Drew Elementary School) if they had complaints.

In the Friendship Heights Village Center (MD), we observed a voter with a complaint. The voter objected to the media presence in the precinct, and specifically to the fact that the film might capture how a voter marks a ballot. The voter was given the complaint book where he recorded the complaint and then proceeded to cast his ballot.

At the Latin American Youth Center (DC) the precinct captain interacted with the voter until the complaint was resolved and enlisted the help of party "poll watchers" to aid her and voters in resolving problems. The Duke Ellington School (DC) had a desk set up in a corner for voters to write down complaints, though none had been made by the time we visited at midday.

We noted that while the precincts we visited had a sign informing voters what type of service they provided (voter registration, information, etc), there were no signs regarding where complaints could be filed. Also, the forms used for filing complaints at the Hardy Center (which were also available in other DC sites visited), were general forms with no specification as to their purpose. The Virginia and Maryland sites did not have uniform complaint forms, procedures, or logbooks. There was also little agreement between precinct captains at different precincts among and within states as to how complaints should be resolved.

Access to the polls

We found the efforts to allow voters to cast a ballot (such as the availability of provisional ballots, the various methods to allow and help people with disabilities to cast their votes, and the availability of bilingual voting materials) to be commendable though incomplete.

Summary and conclusions

Elections are an integral part of democracy. Also integral to democracy is the opportunity to observe the entirety of the electoral process by neutral observers, including international observers. We have found that while the United States adheres to, and demands, a commitment to unrestricted access from electoral authorities abroad, it does not reciprocate the commitment and does not provide international observers with unconstrained access to all the stages of the electoral process.

Our observations of the US 2006 midterm elections have led us to conclude that there is disparity in the implementation of the same legislation across states and among precincts in the same state (as in the case of provisional ballots). There is also lack of uniform practices on how to deal with voter complaints both among and within states. Such variation can obstruct the accurate identification of problem areas in the electoral process.

The electoral process also faces some integrity and secrecy challenges. We have found that variations in ID requirements within the same state and among states open the door for potential integrity problems. In addition, voter secrecy is jeopardized by the organization of the physical space in the precincts and poll worker practices of redirecting questions regarding the casting of ballots to party-affiliated poll watchers.

From interviews with poll workers, we have found that voters in the primary elections have shown a preference for electronic voting machines. In addition, we think the efforts of election administrators to make the voting process accessible to voters with disabilities and bilingual voters are commendable, though incomplete.

While the deficiencies identified above did not undermine the basic fairness of the 2006 election in the three jurisdictions, they are serious concerns that can be remedied before the 2008 presidential election, when higher turnout and heightened scrutiny will put a greater strain on the electoral system.

Recommendations

Based on our observations on election day, we would like to offer the following recommendations to improve the process:

- Neutral observers, including international, should be granted the same unrestricted access to the entire electoral process that the US observers abroad demand from foreign governments. This access should include pre-Election Day preparations, opening of polls, Election Day observation, complaint resolution, and ballot integrity and counting procedures at the end of Election Day. If recounts occur, observers must be granted complete and unrestricted access.
- Ballot secrecy is imperative, and the voting machines need to be organized and located in a manner that guarantees the privacy of the voter. Precincts should have ample space to allow the inflow and outflow of voters not to interfere with the secrecy of the casting of the ballots and voting booths/machines should be placed in such a way as not to allow bystanders directly behind people who are casting their ballots.
- Voter complaints and problems should be tracked systematically. Ad hoc procedures are in place across voting districts and within states to respond to voter complaints. These procedures should be uniform and public. Precincts should have a complaint log, clearly designated for this purpose, and there should be signs in the precincts indicating where this complaint log is located.
- Provisional ballots should be issued in a uniform way throughout states. The provisional ballot issuing procedures vary not only among states but also from precinct to precinct in the same state.
- Rules for counting the ballots should be made public and disseminated widely to ensure that voters have confidence that votes cast will equal votes tallied. Transparency in counting centers means that independent observers should be able to observe that all rules and regulations are followed.
- Our observations found great variation among and within states, which might be a product of inadequate training of poll workers and officials. States must provide up-to-date training on election law procedures and technology.

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Center For Democracy and Election Management (CDEM)

The Center for Democracy and Election Management (CDEM) at American University was established in September 2002 to educate and train undergraduate and graduate students and mid-career professionals in the management of elections and best democratic practices. Our teaching and research programs are organized around three subjects: (1) the management and conduct of elections throughout the world; (2) cross-regional comparison of democratic institutions; and (3) election-mediation as an instrument for resolving civil conflict.

Since its establishment, CDEM has pursued the goal of becoming a nexus for education, training, policy development, and scholarly research on topics relating to democracy and elections. The Center is integrated with the research and training facilities of American University's School of International Service and School of Public Affairs, both of which enjoy a long tradition of public service education. CDEM's priority focus is to prepare students who are interested in democracy-related careers, and professionals who are engaged in democracy work, by providing a focused, sophisticated educational background not available elsewhere.

CDEM organized the Commission on Federal Election Reform, co-chaired by former President Jimmy Carter and former Secretary of State James A. Baker III and directed by Dr. Robert A. Pastor. The Commission remains an ongoing project of CDEM to make sure that future elections are an improvement on the past ones. The project focuses on evaluating the impact of the Help America Vote Act and brings the Commission's recommendations to the attention of the executive and legislative branches of federal and state governments and to the public.

Humphrey Fellowship Program at the Washington College of Law

The Humphrey Fellowship Program is a nationwide Fulbright Exchange funded by the Department of State and administered by the Institute of International Education (IIE) that offers mid-career professionals with a year of non-degree graduate study and professional development in the US. AU has served as a host institution for the Humphrey Program since 1980, and specifically at Washington College of Law (WCL) since 2002. The focus of the Program at AU is human rights and law, reflecting the importance of law and legal education as instruments to pursue justice and confront the dramatic changes that are occurring in the world today. At WCL, the Humphrey Program is hosted by the International Legal Studies Program (ILSP), a graduate program designed to meet the growing demand for lawyers trained in global legal issues. The ILSP provides the Humphrey Fellows with opportunities to interact with our innovative and internationally renowned faculty, participate in law courses, and attend specialized conferences, workshops, and lecture series organized by various units at the law school, including the Center for Human Rights and Humanitarian Law, the War Crimes Research Office, and the International Human Rights Law Clinic.

Appendix A: Precincts/Sites Visited

Washington, DC

- Hardy Recreation Center, 45th and Q Street, NW
- Duke Ellington School of the Arts, 3500 R Street, NW
- Drew Elementary School 56th and EADS, NE
- Latin American Youth Center, 1419 Columbia Road, NW

Maryland

- Friendship Heights Village Center, 4433 S Park Ave., Chevy Chase
- Bethesda Elementary School, 7600 Arlington Road, Bethesda

Virginia

- Key School, 2300 Key Boulevard, Arlington
- Thomas Jefferson School, 601 S. Oak St, Falls Church City
- Lewinsville Center, 1609 Great Falls Street, McLean
- Mennonite Church, 3729 Old Lee Highway, Fairfax City
- Weems Elementary School, 8750 Weems Road, Manassas

Election Protection Coalition sites

- Lawyer's Committee on Civil Rights: Voting Rights Project, Skadden Arps, 700 14th St NW, Washington, DC
- Lawyers Committee for Civil Rights Under Law, 1401 New York Avenue, NW, Suite 400, Washington, DC

Appendix B: Aggregate Data from Questionnaire

Polling Place	1. Interview with Chief Election Officer						2. Voter identification			3. Voting machines			
	Did the polling place open on time? If not why not?	Were there problems? (e.g. registration lists, ballots, or machines) (Y/N)	If so, how serious?	What solutions were offered for each problem specifically?	Are officials keeping record of voter complaints or polling place problems? (Y/N)	If voter's names were not on the registration list, what did the precinct captain say?	Were voters asked for IDs? (Y/N)	Did voters have any problems with the identification requirements? (Y / N)	What types of identification were accepted? Which ones were turned down?	How many, and what type of voting machines were at this site?	Did any machines malfunction during the course of the election? (Y/N)	If "yes", describe the number and kinds of problems?	How did the precinct captain know whether votes were lost?
DC													
Latin American Youth Center	Yes	Yes, voting machine card activator had a malfunction	At 11:30am, problem was not yet repaired.	Called board of elections at 7:30am	No	Voters were provided with special ballots	No, except when the registration clerk asks for ID	-	-	1 electronic machine and 1 optical scan	Yes	The electronic machine had an unidentified malfunction	Question was not answered
Drew Elementary School	Yes	Yes, voting machine was missing a cable	Problem was repaired after half an hour	A cable was found	No, voter complaints directed to DC Board of Elections	Voters were given special ballots	No, except when the registration clerk asks for ID	No	State issued ID	1 electronic machine and 1 optical scan	Yes, one machine was turned on later-had no cable	-	Question was not answered
Hardy Recreation Center*	Yes	n/a	n/a	n/a	Yes, there is a pink form for complaints	Voter referred to correct precinct	No, except first time voters	No	Any photo ID (driver's license, university ID, etc.)	1 electronic and 8 optical scan machines	n/a	n/a	Has not happened
Maryland													
Friendship Heights R.Center	Yes	Yes, electronic machine malfunction	Not serious (precinct has 15 additional functioning machines)	Precinct called the board of elections and are awaiting a technician	Yes, through a complaint book	Voter is given a provisional ballot	No	-	-	16 electronic voting machines (15 working)	Yes	1 machine malfunction (unidentified cause)	They draw total of both the poll book and the machine records
Virginia													
Key School	Yes	No	n/a	n/a	Yes	Call registrar	Yes	No	Accepted voter registr. cards, driver licenses, social security cards.	Touch screen voting machines	No	-	Question was not answered

Notes: * election observation began at this precinct; n/a-not applicable