

**NEW STATE VOTING LAWS: BARRIERS TO THE
BALLOT?**

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSTITUTION,
CIVIL RIGHTS AND HUMAN RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

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NEW STATE VOTING LAWS: BARRIERS TO THE BALLOT?

THURSDAY, SEPTEMBER 8, 2011

UNITED STATES SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND HUMAN RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:01 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Franken, Coons, Graham, and Cornyn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. This hearing of the Subcommittee on the Constitution, Civil Rights, and Human Rights will come to order. Today's hearing will examine whether a number of new State voting laws imperil the right to vote.

This year we have watched young people in places like Egypt and Tunisia take to the streets to fight for what we in America often take for granted: the right to elect our leaders. In our country, regardless of how big the disagreement, how intense the debate, we settle our political differences at the ballot box. We have enshrined the right to vote as one of the major rights that every American citizen has. But over the course of history, we know that that right has often been honored in the breach.

Only in the last century did Americans win the right to directly elect their United States Senators. And for more than half of the life of our Republic, a majority of the adult population—the women of America—were not allowed to vote. Even after the franchise was legally expanded for close to a century, a well-organized, violent, often racist campaign successfully prevented many African-Americans from exercising their right to vote. Fortunately, our country over time corrected and learned from these mistakes.

In fact, our Constitution has been amended more to expand and protect the right to vote than for any other issue. Six constitutional amendments—the 15th, 17th, 19th, 23rd, 24th, and 26th—ratified over the course of 100 years, underscore our Nation's commitment to ensure that all adult citizens enjoy free and full access to the ballot. Courageous Americans fought for these constitutional amendments in order to guarantee the right to vote for all citizens, regardless of their race, sex, class, income, or State of residency.

We must be constantly vigilant against threats to those hard-fought victories.

That is why earlier this year I held a hearing on what I consider a threat to our democracy posed by the Supreme Court's *Citizens United* decision and the flood of special interest cash into elections and the need to fundamentally reform the way we finance our campaigns.

Today we are going to examine another potential threat to our democracy: recently passed State voting laws designed to restrict voting. I am deeply concerned by this coordinated, well-funded effort to pass laws that would have the impact of suppressing votes in States like Wisconsin, Texas, Florida, Indiana, Georgia, Alabama, Tennessee, and South Carolina.

Regardless of the stated intention or goals, many analysts believe these laws will cause widespread voter suppression and disenfranchisement by making it more difficult for millions of disabled, young, minority, rural, elderly, homeless, and low-income Americans to vote. Let us take a moment to consider some of the new restrictions on voting we will discuss today.

Since the beginning of this year, seven States have passed laws requiring certain forms of photo identification prior to voting. At first blush, it might appear that ID requirements are reasonable. After all, who cannot produce an ID? Well, there is an old saying that applies here: The devil is in the details.

The way these laws are written, not just any ID will do. According to numerous studies, millions of Americans who are currently eligible to vote do not have an ID that would satisfy these new restrictive laws, and these individuals are disproportionately young, low-income, senior citizens, African Americans, and Latinos. It is unclear what, if any, efforts are being made to make sure that those who do not have the required IDs will be able to obtain them before the next election.

Some States have also passed laws drastically reducing the early voting period. Early voting is primarily used by our fellow citizens who cannot get to the polls on election day for a variety of reasons. They may not have reliable transportation. They may work at a job that does not allow them to take time off. They may have trouble finding child care. If they are disabled or elderly, they may not be able to count on receiving the assistance they need to get to the polls on election day.

For these reasons and many others, the number of people voting early has increased with each election. In 2008, for example, 30 percent of all votes were cast before election day, which causes one to ask: Why are some States reducing the early voting period when the number of early voters is clearly on the rise?

Finally, there are two States—Florida, Senator Bill Nelson's State; and Texas—that have enacted laws that threaten to end voter registration drives by nonpartisan groups. The Florida law places onerous administrative burdens on volunteers who sign up to help their neighbors register to vote. If a volunteer fails to meet a series of administrative requirements, they could be prosecuted and fined. This law is so bad that for the first time ever the League of Women Voters, a highly respected, nonpartisan organization, indefinitely suspended all voter registration drives in Florida.

These are just three examples of laws that could seriously impede voting rights in America. The proponents of these new restrictive State laws argue that they are all about reducing fraud. Yet, as Professor Levitt, a witness on our second panel, has demonstrated, the incidence of voter fraud in America is minimal, and the reported fraud is often anecdotal, unsubstantiated, and contrived.

I am particularly concerned that the States where these laws were passed have not taken adequate measures to ensure that affected individuals will, in fact, have the ability to vote. That is why today I am sending a letter to the Governors in three of these States—Florida, Wisconsin, and Tennessee—asking them to inform the Subcommittee of their plans for ensuring that the laws they have enacted will not disenfranchise the citizens of their State.

Protecting the right of every citizen to vote and ensuring our elections are fair and transparent are not Democratic or Republican values. They are American values.

Now I want to recognize the Ranking Member of the Subcommittee, Senator Graham, for his opening statement.

**STATEMENT OF HON. LINDSEY GRAHAM, A U.S. SENATOR
FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman. Obviously, I have a different view on this. My State just passed a voter ID law, and I want to congratulate the legislature in South Carolina. In the future, if the Justice Department approves this program, you will have to have a driver's license or a DMV ID card. And what we have done in South Carolina is if you do not have a driver's license, you can go to a Department of Transportation facility and get an ID card that will allow you to vote and do anything else you need an ID for, and we will give you a ride there. A passport, a military ID, we are going to come up with a voter registration card, which I think is a really good idea, that is going to have a photo on it.

You know, illegal immigration is something that bedevils the country, and the reason most people come here is to find work in America that they cannot find in their native country because of corruption and lack of employment. So I understand why people come. But from an employer's point of view, it is hard to verify employment. So I, along with Senator Schumer, have suggested that we take our Social Security cards and make them biometric, a photo, something that is tamper-proof so that when you get a job the employer will know you are who you say you are. When you get on an airplane, you have to have some form of ID because we want to make sure that you are who you say you are because of the threats we face. And when it comes to voting, I do not think it is too much of a stretch to say you have to prove that you are who you say you are, and we will find accommodating ways to get there.

But I just have a different view. I think what South Carolina did makes eminent sense to me, and the law of the law, as I understand it, is the Indiana system has been upheld, and you will see more of this, Mr. Chairman, not less. Thirty States have some form of voter ID requirement. So I think this is the future of the coun-

try, something we should embrace at the Federal level, because elections do matter.

Casting a vote should be as easy as possible. It should require some participation. And I would end with this thought: Democracy is a fragile thing. We all have to work to make sure it survives. If you want to control illegal immigration, are you willing to do your part? Would you be willing to take your Social Security card, which can be duplicated by midnight as a piece of paper, and turn it into a biometric document to help the country secure employment? Are you willing to show your ID card to get on a plane just because we are threatened by people in the world and we need to know who they are? And all the hijackers had five or six fake driver's licenses. So I think sanctifying the voting process in a way that makes sense to make sure that we are electing people based on registered voters is a goal that we should all be concerned about and want to achieve. And from a South Carolina perspective, I have no desire to suppress people from voting. I want as many people as possible to vote and all of them to vote for me. And I know that is not realistic. And if you do not vote for me, that is okay. I want you to be able to vote, but I want to make sure that we do it in a way that preserves the integrity of elections, not just mine but everyone else's.

Thank you for the opportunity to speak.

Senator CORNYN. Mr. Chairman, may I be recognized for a brief unanimous consent request?

Chairman DURBIN. Sure, the Senator from Texas.

Senator CORNYN. And a brief statement.

Chairman DURBIN. Of course.

**TATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM
THE STATE OF TEXAS**

Senator CORNYN. I appreciate the Chairman's consideration.

Due to a conflict, I am not going to be able to stay for the hearing, but I do have a statement that I would ask unanimous consent be made part of the record. It speaks really to the voter ID issue that has already been previously discussed, but also I am glad to see Mr. von Spakovsky here who I think is going to talk about the bipartisan legislation that we enacted last year. Senator Schumer and I were among the principal cosponsors, enhancing the rights of military voters to vote absentee, which resulted in some significant changes across State laws to facilitate, but which we still have some challenges to meet.

So with that, Mr. Chairman, thank you for allowing me that brief statement.

[The prepared statement of Senator Cornyn appears as a submission for the record.]

Chairman DURBIN. Thank you, Senator Cornyn.

Our first panel consists of colleagues from the Senate, and I see our colleague from the House, Congressman Gonzalez, who is welcome to join us at the table here as well. We will get the proper nameplate up for you in just a moment.

Our first witness is Senator Bill Nelson of Florida, currently serving his second term. He served as Florida's State treasurer, in-

surance commissioner, and fire marshall; six terms in the U.S. House; three terms in the Florida State Legislature.

Senator Nelson, the floor is yours.

**STATEMENT OF HON. BILL NELSON, A UNITED STATES
SENATOR FROM THE STATE OF FLORIDA**

Senator NELSON. Thank you, Mr. Chairman and Senator Graham. The ID problem in my State of Florida is not a problem. We have a different problem, and it is simply not right when the laws are changed in a State to make it harder to vote. And that is what has happened in Florida. And of all places, you will recall the experience that we went through in 2000 when there were votes that were cast in error because of the construction of the ballot, when there were votes that were lost, when a lot of the military votes were either counted or not counted that did not comply with the law, and there had been substantial changes there.

It was a painful experience, and because of that the State legislature set about on a series of reforms. They made it easier to vote, they made it easier to register to vote, and they made it easier that someone would have the confidence that their vote was going to be counted as they intended. That has suddenly been reversed in the State of Florida by the election law that has been passed and signed into law by the Governor.

In the first place, Mr. Chairman, what you mentioned, the League of Women Voters, which has been registering people as a civic project for decades, under law in Florida that had been on the books for decades, to register a voter you want to get those names turned in to the supervisor of elections in that county on a timely basis. They had 10 days. That has been on the books for years. It has now been constricted to 48 hours with the person obtaining the signatures and turning them in subject to a fine of up to \$1,000 if it is not turned in within 48 hours.

Now, what is that intended to do? It ends up doing exactly what the League of Women Voters has done, and they have said they are not going to take the chance that their members are going to have those kinds of fines. And, therefore, an organization which was constantly over the years trying to get people to participate in our democracy by registering voters is not going to.

All right. Let me give you another example. Mr. Chairman, you talked about early voting. On the basis of the experience, the awful experience that we had in the Presidential election of 2000, it was in a State particularly that has a lot of senior citizens, want to make it easier to vote. By the way, early voting, the supervisors of election love it because everybody does not pile in on 1 day, but they can spread that out. And we have had early voting for 2 weeks. But what did the legislature do? They constricted that back to 8 days, and they put the fiction that, oh, the same number of hours of early voting are going to be as the previous law because at the option of the supervisor of election that they can extend from 6 hours a day, they can go all the way up to 12 hours a day. But you know what? If they do, supervisors of election have to pay overtime pay, and what do you think has happened to the budgets of those statewide institutions, in this case each supervisor in each of

Florida's 67 counties? They are not going to be able to afford it. And, therefore, the constriction of early voting has occurred.

And, oh, another interesting thing happened, Mr. Chairman. The early voting used to go up through the Sunday before the Tuesday election. That has been changed. It now will only go up through the Saturday before the Tuesday election. Does it cause anyone to suspicion that there is a certain number of voters on Sunday after church that go to vote? Again, cutting back on the people's opportunity to express their will through a free and fair ballot access process.

"There is a provision in the new law that says if a voter moves from outside of the county or from outside of the state and they have not changed their voter registration address and they go to their new polling location to vote, they must vote a provisional ballot. For 42 years, we allowed them to change their address at their polling location and then they could vote a regular ballot."

And, oh, by the way, what is the experience of provisional ballots? I would merely take you to the last Presidential election. The 2008 Presidential election in Florida, one-half of the provisional ballots when attempted to be counted were disqualified.

Mr. Chairman, we ought to be encouraging people to vote and making it easier for them to register to vote, to have their vote counted as they are intended and to be able to vote.

This matter is hopefully going to be under judicial review. Organizations such as the League of Women Voters, I am told, intend to file suit in court. There are also some Federal suits that are already in the courts. It is yet to be determined what the Department of Justice is going to do. Under the Voting Rights Act of 1965, there are still five counties on the watch list out of Florida's 67 that have to have pre-clearance with regard to the voting rights of those people being upheld. The Justice Department has already cleared those five counties with regard to non-controversial items. The question is: Will they examine it since the State of Florida did not appeal to the Justice Department on these controversial items of having your vote counted?

Mr. Chairman, I certainly hope you will pick up this banner. And, Senator Graham, you and I want the same thing at the end of the day. We want more people to vote, and we want them to be able to have that vote counted like they intended.

Thank you, Mr. Chairman.

Chairman DURBIN. Thanks, Senator Nelson. We appreciate your being here.

Congressman Cleaver, come on up and join us here. We will pull up a chair to the table. We are honored that you would come across the Rotunda and join us.

I would like to next introduce Senator Sherrod Brown, who has been a Member of the Senate since January of 2007, served seven terms in the House before, also two terms as Ohio Secretary of State, which is the chief election officer of the State; four terms in the Ohio General Assembly; and he taught at Ohio public schools and at The Ohio State University.

Senator BROWN. The Ohio State University.

[Laughter.]

Chairman DURBIN. Senator Brown.

Senator BROWN. I do not know why they say that, but they do, Mr. Chairman.

**STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR
FROM THE STATE OF OHIO**

Senator BROWN. Thank you very much. It is a pleasure to be here. Ranking Member Senator Graham, Senator Franken, thank you also for joining us. I am pleased to sit with two of my former colleagues in the House, Charlie Gonzalez and Emanuel Cleaver, both leaders in many ways, and especially on voting issues, and I appreciate the work that they do.

I testify, as Chairman Durbin said, not only as a Senator of a State often at the center of our National elections; I testify as an 8-year, 2-term former Secretary of State of Ohio charged with administering those elections from 1983 to 1990.

I can remember in my re-election in 1990, my then-6-year-old daughter, the election I actually lost running against a fellow by the name of Bob Taft, and my daughter, who was 6, 1 day we are getting out of the car, and she said, "Dad, let me make sure I understand now. You count the votes in this election." I said, "Yeah." And she said, "Well, what is the problem?"

[Laughter.]

Senator BROWN. It did not work out quite so well. She has become a bit more cynical since then, Mr. Chairman.

So I understand the burdens of the costs and resources in ensuring the fundamental right to vote is exercised. Inherent in that responsibility is ensuring that voting is accessible and free of intimidation and road blocks.

As a State, over a period of decades Ohio's legislators undertook a bipartisan—and I would underline bipartisan—effort to help Ohioans vote more easily. When I was Secretary of State, we had major assistance and input from Republicans as we made voting laws work for huge numbers of people. As Secretary of State, I asked, and people cooperating, utility companies cooperated by including voter registration forms in utility bills. Driver's license bureaus registered people to vote. Various social service agencies, various local businesses, and one company housed in the Chairman's State, McDonald's Corporation, at our request printed 1 million tray liners that were put in McDonald's restaurants all over my State that people could register to vote on their tray liner so that occasionally someone turned in registration forms with ketchup and mustard stains, but accepted by—and still I assume some of them are still in boards of elections around the State.

That was bipartisan in those days, but rather than protecting the right to vote, we are seeing brazen attempts around the country to undermine it. Today there is a concentrated campaign sweeping the Nation in far too many State legislatures across the country—Texas, Florida, and Ohio are three of the most notable—undercutting the very protections that I believe are enshrined in our Constitution and the Voting Rights Act of 1965.

These new State voting laws are a result of an organized effort to limit voting rights. It does so in three primary ways: it implements strict voter ID laws; it requires showing limited forms of voter ID before voting. The Ohio Legislature—I will get to a spe-

cific in Ohio in a moment—has decided to sort of bifurcate their efforts. One of their proposals, which has not yet become law but might this month, does not allow State university IDs to count, for instance, so it is restrictive in many ways that I think do not make much sense.

Second, it significantly reduces early voting or the availability of absentee ballots, as Senator Nelson pointed out in Florida, and it limits voter registration efforts.

This hearing will examine several of these laws and what I think is an ideological campaign underpinning them. I will focus on Ohio for a moment.

During the 2004 Presidential election, Ohio saw in some sense a bit of a rerun of Florida 2000: a dysfunctional election marred by electronic voting machines improperly tallying votes and Ohioans waiting in line for as long as hours. I was at Oberlin College then in my Congressional district where young voters waited for 6 hours to vote. Kenyon College, just an hour south nor far from where I grew up, voters waited 9 hours to vote. This was not a question of voter fraud, of individuals trying to game the system. This was a question of an individual voting multiple times. Voters are not going to try to do that. There is nothing in it for a voter to try to vote five times and change an election. The problems are elsewhere but not by the voters. The clouds over the 2004 election in Ohio were all caused by process, not by individual voters.

Now, 7 years later, after we were a national model, what the Republican and Democratic members of the legislature did and what I tried to do administratively as Secretary of State, partnering with all kinds of people and businesses, that national model is—Ohio is poised to return to the headlines again for the wrong reasons. The new election law, which was signed into law by Governor Kasich—it may be subject to a ballot challenge, so it may not take effect yet—does little to fix the problems of the process. It only exacerbates it. Among the most pernicious elements, again, this is a repeal of legislation that mostly a Republican legislature and a Republican Governor enacted in the decade before since I was there, but in the early part of the 21st century. So there was consensus—and that is what is disturbing. There was consensus in America about voting rights, and there was consensus in Ohio about what works best, changes at the margin, but now there is a direct attack undermining so much of what I thought we all believed in in this country.

This new law in Ohio shortened significantly the early voting window. It eliminates, as it does in Florida—you can see this pattern—early voting on the Saturday, Sunday, and Monday prior to the election, the three busiest days of early voting. I know that limiting—as Senator Nelson said, limiting early voting will only cost more money. The election system, the administrators in Ohio, very bipartisan, equal number of Republicans and Democrats, that is our State law, working in boards of elections, they like it this way because it spreads out the sort of bursting chaos of an election, and it saves money ultimately for the election system.

Parents with children in tow, shift workers heading to work, busy professionals who have trouble—you know, it is not so hard for us, but, you know, a single parent taking a child, has got a kid

in tow and has got to get home and fix dinner, they have to stand in line on election day for 2 or 3 hours. Some of them go home. Of course they do, because the most important thing in their life is their kid and feeding their kid and getting ready for school and doing all the things that people do in their regular lives.

Ohio's new law also prevents counties from mailing absentee ballots to eligible voters. There was an agreement, which I am heartened by, between the Democratic county executive in Cuyahoga, our State's largest county, and the Republican Secretary of State, who has, frankly, been much more reasonable about all these reforms than some of his colleagues, former colleagues when he was Speaker of the House in the legislature. They have worked out some arrangements and some agreements there that will make this a little bit better.

The absurdity of this bill, Mr. Chairman, in part is that it prevents poll workers by law from even assisting some voters when they are asking questions when they come in. I mean, how absurd is that? Any fraud is too much, but proposed voter ID solutions are worse than the cure. In Indiana, more nuns were banned from voting because as elderly residents of their convent they did not have photo IDs than there are cases of documented voter fraud in the State. Yet the conservative Roberts Court watered down voting rights in *Crawford v. Marion County Board of Elections* even with the unproven basis of voter fraud.

Though most Americans have Government-issued photo IDs, as Senator Graham suggested, studies as recently as May of this year show that as many as 11 percent of eligible voters nationwide do not. If they cannot find a birth certificate, can they get a Government-issued ID in Ohio? Not clear. Who pays the \$10 for the voter ID? Why do we put this burden on people that have voted religiously and regularly year after year after year? And do many of them just give up? Perhaps some in the legislature hope they do, but it is not good for our country.

If this law were to pass in my home State, nearly 890,000 Ohioans over age 18—890,000 Ohioans over 18—who lack driver's licenses could be disenfranchised. This includes especially the elderly, especially people in rural communities, and a number of Ohioans on college campuses.

Proponents assert that voter fraud is prevalent and needs to be addressed by sweeping elections reforms. In 2002 and 2004 Ohio elections, there were only four instances of ineligible individuals voting or attempting to vote out of 9 million voters in those two elections. That is 0.00004 percent of voters. The nationally renowned bipartisan Brennan Center said the numbers are so staggeringly small that an individual has a better chance of being killed by lightning than the chance of an individual impersonating another at the polls. That sort of says it all.

Mr. Chairman, I will conclude with just saying this was consensus in our country until a group of radical proposals came in my legislature and other legislatures across the country. In a nutshell, this is a solution in search of a problem. It is not something we need to do. The voting system has worked in this country, and it has gotten increasingly better from the days of the 1957 Civil Rights Act to the 1964 Civil Rights Act to the 1965 Voting Rights

Act. We know that we have made progress in this country. Why should we go back? It really is a solution in search of a problem.

Thank you, Mr. Chairman.

Chairman DURBIN. Thank you very much, Senator Brown.

Congressman Rokita, thank you for joining us, and we are going to find a seat for you at the table here as quickly as our staff can slide a chair over—in fact, Senator Brown's chair, all warmed up.

Next up is Congressman Charles Gonzalez, serving your seventh term representing the 20th Congressional District of Texas and Chairman of the Congressional Hispanic Caucus. Prior to service in Congress, Representative Gonzalez was a Texas State court judge for more than a decade and a lawyer in private practice for 10 years.

Thanks for coming across the Rotunda joining us today.

Congressman Gonzalez.

**STATEMENT OF HON. CHARLES GONZALEZ, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS, AND CHAIRMAN,
CONGRESSIONAL HISPANIC CAUCUS**

Representative GONZALEZ. Thank you, Chairman Durbin, Ranking Member Graham, and, of course, Senator Franken as a member of the Subcommittee. Thank you very much for this opportunity to testify about a very troubling trend that is occurring in many of our States.

We have seen a consolidated effort by States across the country to enact laws which will deny thousands if not millions of Americans of the constitutionally protected right to vote. While I will be speaking chiefly about the impact of Texas's new law, the same effects will be seen in many other States since these laws have been linked to the model bill of a single partisan group seeking political advantage at any cost.

Texas holds biannual legislative sessions, which means few surprises. Yet Governor Perry declared voter ID a legislative emergency, calling it necessary to combat rampant voter fraud.

Now, that is a common claim, but it is made without a shred of evidence. We have all heard stories of dead people voting, but when they are investigated, we find them alive and, well, quite a bit surprised. I would refer you to some cases, but I cannot because even the Texas Attorney General in 2006 in his press released, which was entitled "Let's stamp out vote fraud in Texas," could not name a single case of fraud that would have been stopped by voter ID.

The law stops no actual problem. It just creates a burden that State and local governments will struggle to meet in spite of millions of Federal dollars in EAC grants, the very commission that is attempting to be eliminated on the House side.

Now, those localities and States are going to need it. The list of acceptable forms of ID is so short that not even an ID from the Veterans Administration will be accepted in the State of Texas. Your Senate ID won't count. My House of Representatives voting card with my identification and my picture will not count. The most common ID is a driver's license, but 30 to 40 percent of Texas voters do not have one.

So DPS, the Department of Public Safety, will have to handle hundreds of thousands of applications in just 35 days as this law

takes effect, and we have a March 6th primary, including weekends and holidays when the offices will be, presumably, closed.

The State legislature provided zero dollars to handle the influx. They have no plans for special lines, extra staffing, or extended hours. Tens of thousands of Texans live more than 100 miles from the nearest Department of Motor Vehicles, because in Texas 100 miles is not that far. But if you are elderly and have a hard time getting around, or if you are a minority and cannot take time off from work, it is a problem. And the wait at one San Antonio Department of Motor Vehicle office was nearly 90 minutes. This will not be a smooth process.

The Department of Motor Vehicles will mail the applications to the Department of Public Safety headquarters in Austin, Texas. The current turnaround time is 2 weeks. But no one knows how the flood of new applications will slow the process.

Voters who cannot get their ID in time or forget to bring it to the polls will have to vote provisionally at an average of 22 minutes per vote. I have already met with my election officials. That is how long it is going to take. So what does that mean? More poll workers, longer lines, and in neighborhoods like in the west side of San Antonio where voting can already take hours, this will only further discourage participation. I do not even want to tell you about the cure time. Once you vote provisionally, you have got 6 days after the election to go to the main headquarters downtown, pay \$6 to \$10 parking if you have a car and you can get there. You did not have a driver's license, so there is a good chance that you do not have a car.

[Laughter.]

Representative GONZALEZ. Members of Congress can take work—right? We can take time off from work to get an ID or even go to vote. But few working people have such flexibility. Once again, those already bearing the hardest and harshest burdens will be asked to take on the most.

Of even more concern is the fact that these laws are not always enforced evenly, and that is an experience not just in Texas. My written testimony includes a few horror stories about how poor and minority voters already face more challenges at the polls than wealthy and White voters. We must each draw our own conclusions about who benefits when poor and minority voters are disenfranchised.

Since the founding of our country, constitutional amendments and laws have opened the voting process to minorities, women, and young citizens that we send into combat. In recent years, early voting and no-excuse absentee ballots have increased turnout and civic engagement. Yet Texas and other States are reversing this trend and curtailing the availability of both, driving hundreds of thousands of voters from the polls and creating a more disengaged citizenry.

You have heard this often from our Republican colleagues: “When we tax something, we get less of it.” So it will be no surprise if these de facto taxes on voters’ time and money drive down turnout.

Voter ID laws do not stop fraud. They just suppress voting. The recently enacted Texas photo ID law is a prime example. In the

more serious examples of electoral fraud, it is not the voter who is at fault or perpetrating the fraud, but political operatives or corrupt Government officials; and voter ID laws will not stop them. But voter ID laws do have a disparate impact on the poor, the young, the elderly, and the disabled, and these groups are disproportionately minorities. And however much progress we have made, disparate treatment and discrimination against minorities remains a serious problem.

We have made great progress in the past 235 years tearing down barriers that disenfranchise millions of Americans. We must not return to those dark days of the past.

Thank you again.

Chairman DURBIN. Thank you very much, Congressman Gonzalez.

Congressman Emanuel Cleaver, from Kansas City, Missouri, is now serving his fourth term representing Missouri's 5th Congressional District. He is Chairman of the Congressional Black Caucus and previously served as a mayor and member of the City Council of Kansas City.

Congressman Cleaver, please proceed with your testimony.

STATEMENT OF HON. EMANUEL CLEAVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI, AND CHAIRMAN, CONGRESSIONAL BLACK CAUCUS

Representative CLEAVER. Thank you, Chairman Durbin and Ranking Member Graham. I appreciate the opportunity to appear before you today on one of the most significant civil rights issues of this moment.

I am pleased to be the Chair of the Congressional Black Caucus during the 112th Congress and during the 40th anniversary of the CBC. On behalf of our membership, I can say that the issues surrounding voter suppression are particularly troubling to us. Many of us come from families who fought diligently to earn the right to vote, so it is a moral imperative for the members of the CBC to fight to protect the right to vote for all Americans.

The Congressional Black Caucus was founded by and is often referred to as "the conscience of the Congress." Today I am before you to express my steadfast commitment to protect the gains we have made throughout history. I am also here to express the deep and abiding concern the CBC has with this year's onslaught of voter suppression laws, which have not ironically arrived in time for the 2012 elections.

It is also not ironic that early voting days have been cut short, stiffer identification requirements have been implemented, and proof of citizenship required—all statistically proven to impact people of color disproportionately.

I regret that as the Martin Luther King, Jr., Memorial was recently unveiled in our Nation's capital, I am here today to put you on notice that we are still fighting the battle to protect the right to vote—one of the causes Dr. King died for and reminiscent of the 1960s.

Additionally, we can appreciate the significance every time we see our colleague John Lewis. As you all know, Congressman Lewis is not only a proud member of the Congressional Black Caucus, he

is also a civil rights icon amongst us. My good friend Congressman Lewis nearly gave his life to protect our rights. He was a leader with the Southern Christian Leadership Conference President Martin Luther King in a peaceful march across the Edmund Pettus Bridge in Mississippi so that—in Alabama so that you and I could cast our votes. In fact, that bloody Sunday helped hasten the passage of the Voting Rights Act of 1965.

Mr. Chairman, John Lewis could not be here. He is in Georgia on a family emergency, and I would like to introduce Congressman Lewis' op-ed in the New York Times, August 26th, as part of the record, as well as a brief by the National Association for the Advancement of Colored People.

Chairman DURBIN. Without objection, they will both be made part of the permanent record.

[The information appears as a submission for the record.]

Representative CLEAVER. Given the disproportionate impact the voter suppression laws will have on African-American voters, these laws are reminiscent of the poll taxes used in the Jim Crow South. The laws are solutions in search of problems, especially when it comes to voter ID, because there is basically no evidence of voter fraud. Requiring voters to provide a specifically narrowly defined piece of photo identification is unnecessary. The safeguards currently in place to verify voters' identity actually work. That much is clear because there has been no evidence of substantial voter impersonation fraud. The only type of fraud requiring voters to provide a specific type of Government-issued ID guards against it.

Now, Mr. Chairman, the fraud often used by proponents turns out not to be fraud at all. Absentee ballot fraud, felons voting, and other issues are not solved, as my colleague said, by requiring voter ID, and 23 States and the District of Columbia now allow voters to show both photo and non-photo IDs, such as a utility bill or a bank statement.

After the Reconstruction Era ended in 1877, African-Americans ceased to hold significant political power in the South. In the 1890s, the Populist Party attempted to merge the common economic interests of poor African-American and white farmers. The elite party in the South at the time, the Democratic Party, wanted to retain their power, so they worked diligently to disenfranchise African-Americans to ensure their continuity of power.

I am doing some family research. I was born and raised in Texas and had the great pleasure of growing up with two great-grandfathers. One of them, Noel Albert Cleaver, who died at the age of 103—I was married with children—we have not been able to find any proof that Grandpa ever voted. In the State of Texas, during most of his life, Grandpa had to pass a literacy test in Texas. An example of the questions: How many seeds are in a watermelon? How many bubbles are in a bar of soap? That is what Grandpa faced. To vote, African-Americans had to pay \$3.50 in the State of Texas—Ellis County, Waxahachie, Texas. Grandpa in all likelihood lived in this country 103 years and never voted.

He is not alone. There are many others who are in the same situation. I believe we have a modern-day poll tax. There is a cost for a State ID in every single State in the United States.

My father, now 89 years old, has no idea of his birthday. My grandma, Grandma Annie Mae, his mother, had two sons born in the month of July—one on the 15th, one on the 27th. She could not remember which one. African-Americans were not allowed to go to hospitals at that time, so when my father and his older brother became teenagers they just decided to choose a day: “You celebrate this day, I will celebrate this day.” And they have done it all of their lives.

My father is 89 years old, in perfect health, still drives. But what happens if my father did not have a driver’s license? He has no birth certificate. He was born in Grandpa’s house in the kitchen. Why in the world are we doing things to make voting more difficult? It would seem to me in the United States of America in the 21st century we would do everything conceivably possible to give everybody encouragement to vote. We are encouraging democracy in Iraq. Let us demand it at home and do away with anything that prevents any American from voting.

Thank you, Mr. Chairman. I appreciate the opportunity to be here before you.

Chairman DURBIN. Congressman Cleaver, thank you very much.

We are honored to have Representative Todd Rokita here. He is serving his first term representing Indiana’s 4th Congressional District. Like Senator Brown before him, prior to his service in Congress, Congressman Rokita served two terms as the Indiana Secretary of State. During his tenure he was president of the National Association of Secretaries of State.

Congressman Rokita, the floor is yours.

STATEMENT OF HON. TODD ROKITA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Representative ROKITA. Thank you, Mr. Chairman. I am pleased to know that as I visit here from the other side of the Rotunda, you all do not take as much adherence to the time clock as we do on our side. In light of that, I will not be more than 40 minutes or so.

[Laughter.]

Senator GRAHAM. Do not push your luck.

Representative ROKITA. Chairman Durbin, Ranking Member Graham, and members of the Committee, thank you for the opportunity to share my experience with Indiana’s photo ID law. In light of the last bit of testimony, I would like to indeed bring us back to the 21st century.

As you may know, I was the Secretary of State of Indiana for 8 years, from 2003 to 2010, prior to coming here, and as Secretary of State I was also the chief election officer. When Indiana’s photo ID law was created—and I helped draft that specific bill with my State legislators—it became law, and then I had to oversee the legal challenges that followed as well as implementing the law.

Governor Daniels signed Indiana’s voter ID law in the spring of 2005. Indiana’s law requires that to vote in person a voter must present a valid photo ID issued by Indiana or the United States. That ID must have a photo of the voter and the expiration date.

I imagine, as I listened to Representative Gonzalez’s testimony, that to the extent one of those photo ID examples that he men-

tioned did not comply with the Texas law, it was because it did not have an expiration date. And there is a very logical reason why we have an expiration date in our law, and that was because people's facial images change. They get older, for example.

Now, it was not that our law was so strict—

Chairman DURBIN. Unless you are a Senator or a Congressman, the same photo will last for decades.

[Laughter.]

Representative ROKITA. I have forgotten where I am. Thank you, sir.

It is not that we were so strict in Indiana as to say, well, the photo IDs had an expiration date of yesterday and today is election day, therefore you cannot vote. I mean, that is an example that I would agree with these gentlemen on. That would be unreasonable. Our face does not change that much in a day. So as an example of the reasonableness in Indiana's law, we simply said, all right, you can vote on an expired ID up to 2 years. We did things like that all along the way to accommodate the arguments that I am again hearing today, but certainly we have not heard for the first time. And the bottom line is that, after 6 years' worth of elections, Indiana's photo ID law works. In fact, people that agree with the comments that I have heard already have been looking. They have looked—I think they have given up looking finally for problems with Indiana's photo ID law.

We have not been sued once. We have not even had allegations, legitimate allegations that anyone—Hispanic, black, woman, man, young, old, whoever—has been legitimately—or illegitimately disenfranchised by Indiana's law, because it is reasonable.

It is reasonable also because whether or not you agree that in-person voter fraud exists—and I will say that as 8 years being Indiana's Secretary of State, it does exist. We have allegations made every election. That does not mean I am trying to denigrate Hoosiers. We are, I think, some of the most reasonable, common-sense, God-loving, patriotic people that this Nation knows. But if it is happening in Indiana, it is happening everywhere, from New York to California.

Now, these gentlemen and others say, "Well, you cannot produce one case, you cannot produce one conviction; therefore, it does not exist." The word "evidence" was used. Well, that is not true. There is a lot of evidence. There are several cases that I have presented to prosecutors who have not taken up the case—not because of a lack of evidence, but because think about the kind of fraud it is. Think about the kind of crime it is. It is something that happens in an instant and then it is gone. The witnesses dissipate. These are volunteer poll workers. It is not a domestic violence case. It is not something that leaves visible scars or blemishes or bruises. And so it is the kind of case, it is the kind of fraud that is very hard to prosecute. But that does not mean it does not exist. And the bottom line, it is not a matter of how many cases or convictions there are, gentlemen. It is a matter of confidence.

In a free republic, you have got to have the personal responsibility to participate. Voting is one of the highest and best civic transactions we can undertake.

I have heard today that people have to leave their jobs to come and vote. Why make it harder? Well, I would take the opposite end of that. People leave their jobs, they leave their work, sometimes they leave their kids to go vote. Hopefully they take their kids with them. Hopefully they wait in a short line, as they do in Indiana. We have not seen extended long lines in Indiana after 6 years at all. It has not elongated the voting process. But you leave your day-to-day life to come vote. And then you get to the poll, you get to the poll clerk, you sign in, maybe, and you realize that the perception is that the people that are doing this process do not take it nearly as seriously as some of the other transactions that they partake in in day-to-day life.

So I would argue it leaves the perception of a lack of confidence. These people did not even care enough to find out who I was, yet they ask me to leave my life and go vote. We want to instill confidence in the process to drive up turnout. And, in fact, in Indiana, since we have had the photo ID law, voter turnout has gone up 2 percent. It was not enacted to increase voter turnout. It was not enacted to decrease voter turnout. But the effect was it has increased voter turnout. If you do it the right way, if you do it reasonably, you will instill confidence in our process, which is definitely needed, definitely a prerequisite to having a successful free republic and to allow this citizenry to participate and to grow the personal responsibility that is needed if we are going to maintain a free republic.

So, with that, thank you for letting me come this afternoon, and I would like to enter my remarks for the record.

Chairman DURBIN. Thank you, Congressman Rokita, and, of course, your remarks in their entirety will be part of the record, and the remaining 35 minutes that you were going to take will be published instead of transcribed.

[Laughter.]

[The prepared statement of Mr. Rokita appears as a submission for the record.]

Chairman DURBIN. I do not know if there are any questions of our guests from the House. If not, we are going to go to the second panel. We thank you very much for coming.

I know Senator Graham has to go to another meeting, but thank you for joining us this afternoon.

We are going to turn to our second panel of witnesses, and I will ask the witnesses to take their places at the table. Each witness is going to have 5 minutes for an opening statement, and their written statements will be included in the record. They include:

Judith Browne Dianis, Hans von Spakovsky, and Justin Levitt. If they would please stand for just a moment, please, we have a tradition of administering an oath to our lay witnesses.

If you would please raise your right hand, do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BROWNE DIANIS. I do.

Mr. VON SPAKOVSKY. I do.

Mr. LEVITT. I do.

Chairman DURBIN. Let the record reflect that all three witnesses have answered in the affirmative.

Our first witness is Judith Browne Dianis, co-director of Advancement Project, previously was an attorney with the NAACP Legal Defense and Educational Fund. Ms. Browne Dianis graduated from Columbia University School of Law, and was a recipient of the Skadden Fellowship.

Ms. Browne Dianis, the floor is yours.

**STATEMENT OF JUDITH A. BROWNE DIANIS, CO-DIRECTOR,
ADVANCEMENT PROJECT, WASHINGTON, D.C.**

Ms. BROWNE DIANIS. Thank you, Chairman Durbin, for inviting me to testify about new voting barriers. I respectfully request permission to enter my entire written testimony into the record.

Chairman DURBIN. Without objection.

Ms. BROWNE DIANIS. I am a civil rights litigator and co-director of Advancement Project, a national civil rights organization. Since 2000 we have worked with local civic engagement groups and election officials to eliminate barriers to voting.

Our country has not seen such widespread attempts to disenfranchise voters as we have seen this year in more than a century. Inclusive democracy is under attack. New barriers to voting may neutralize recent surges in black, Latino, and youth voter registration rates and record voter turnout. These laws may systemically disenfranchise already registered voters in these groups as well as limit voting of people who are poor, people who are elderly, and people with disabilities.

The new barriers to voting include laws that place restrictions on the number and type of acceptable voter identification introduced in 24 States this year; laws to limit early voting, such as bills passed in Ohio, Tennessee, Georgia, West Virginia, and in Florida, where 30 percent of voters cast early ballots in 2008 with twice as many African-Americans doing so than whites; laws that place restrictions on nonpartisan voter registration efforts, such as that in Florida; African-Americans and Latinos are more than twice as likely as white voters to register through voter registration drives; laws such as that passed in Kansas and Alabama requiring documentary proof of citizenship to register; policies such as those in Florida, Iowa, and Virginia making it harder for people with criminal records to regain their voting rights, even after they have paid their debt to society; and, lastly, reactionaries have announced plans to place millions of challengers at the polls in 2012 to challenge voter eligibility in ways that may intimidate voters and disrupt polling place operations.

Of all the barriers, the most pervasive new threat to voting rights has been voter identification restrictions. The issue is less about whether voters should be made to demonstrate their identity at the polls but, rather, how restrictive the forms of identification should be.

Election officials realize these laws are budget busters, have gone too far, and will create election administration nightmares. As Ohio Republican Secretary of State Jon Husted, splitting from party ranks, explained, "I believe that if you have a Government-issued check, a utility bill in your name with your address on it, that no one made that up. They didn't...establish utilities in their name to commit voter fraud. Let's be clear about this. There are some other

forms that are legitimate.... What if I lose my ID on election day? Should there be no other alternative I can use to cast my ballot? I think that there should be.”

In a trial run in Wisconsin on voter ID, the Madison County clerk explains, “Between showing ID and signing the poll book, the amount of time each voter needs to spend at the poll book has at least doubled. The minimum number of election officials needed at each polling place will increase from five to nine. Election officials are very concerned about dealing with voter lines that could easily become 2 or 3 hours long.”

Further implementing photo ID laws could cost cash-strapped States \$20 million or more. Despite the myth that everyone has ID, many voters do not. In South Carolina, 178,000 registered voters lack a driver’s license or State identification. In Wisconsin, 23 percent of voters aged 65 and older lack State ID. Among young voters 18 to 24, 78 percent of African-American men, 66 percent of African-American women, 59 percent of Latino men, and 46 percent of Latino women in Wisconsin lack the ID.

The IDs are also hard to get. Nora Elze, 88, in Georgia, was told she needed to produce her 1946 marriage license to show her name changed to get an ID. She fears she will not be able to vote because of the difficulty of getting her marriage license.

In Missouri, we represent Emmanuell Aziz in a lawsuit challenging the ballot initiative that, if passed, would require State-issued photo ID. Mr. Aziz is a registered voter with an expired driver’s license and passport, which lapsed during his illness with multiple sclerosis. He is confined to a wheelchair. It will be nearly insurmountable for him to get his license renewed due to a lack of transportation and inability to pay for the supporting documents.

The difficulty of obtaining ID is exacerbated further by budget cuts that have led to the closure and reduced hours of offices where IDs and underlying documents may be obtained. In Wisconsin, DMV offices are closed on weekends, and 25 percent of offices open less than 1 day a month. Similarly, in Texas, approximately 500,000 Latinos and blacks live in counties without ready access to Department of Public Safety offices in their counties. Eighty counties have no office or closed it altogether. In Tennessee, only a third of the counties have DMV offices, and those in urban areas serving predominantly people of color have wait times up to 4 hours.

Furthermore, the cost would-be voters must pay first for obtaining the underlying documents for ID, which is a certified birth certificate, et cetera, make these laws effectively poll taxes. In Texas, it would cost you \$22 for a birth certificate, and a passport can cost up to \$145. Thus, one must pay to vote.

These new laws represent the largest legislative effort to roll back voting rights since post-Reconstruction Era. Collectively, they effectuate a trifecta of voter suppression, making it harder to register to vote, harder to cast a ballot, and harder to have a vote counting. And the impact is not evenly distributed and, indeed, is designed to effectuate political results.

Americans should be outraged that across the country efforts are being undertaken to make voting harder and to silence some. After all, Election Day is the one great equalizer. Regardless of race, gender, religion, disability, or income, we all have the same amount of

power when we go into the voting booth. That is what makes this Nation great. We cannot go backwards.

Thank you.

[The prepared statement of Ms. Browne Dianis appears as a submission for the record.]

Chairman DURBIN. Thank you very much.

Our next witness is Hans von Spakovsky, senior legal fellow at the Heritage Foundation Center for Legal and Judicial Studies. He is also the manager of the Heritage Foundation's Civil Justice Reform Initiative. Before this, Mr. von Spakovsky served 2 years as a member of the Federal Election Commission. Prior to that, he worked at the Justice Department as counsel to the Assistant Attorney General for Civil Rights. He has also served on the Board of Advisers of the U.S. Election Assistance Commission and on the Fulton County Board of Registrations and Elections. He is a member of the Fairfax County, Virginia, Electoral Board and the Virginia Advisory Board to the U.S. Commission on Civil Rights. He obtained his law degree from Vanderbilt University School of Law and his bachelor's degree from Massachusetts Institute of Technology.

Mr. von Spakovsky, thank you for joining us and please proceed.

If you would like to repeat the compliment, go ahead.

Mr. VON SPAKOVSKY. Is it on now? Okay.

[Laughter.]

STATEMENT OF HANS A. VON SPAKOVSKY, THE HERITAGE FOUNDATION, WASHINGTON, D.C.

Mr. VON SPAKOVSKY. Thank you, Senator Durbin. As we prepare for the 2012 election, it is critically important that States improve the security and integrity of our elections. One of the key principles in any fair election is ensuring that the person who casts a ballot is legally eligible to vote. The fairest way to do that is by requiring individuals to authenticate their citizenship when they register and their identity when they vote. Such measures also increase public confidence.

As Governor Lincoln Chafee, an independent, said when he signed Rhode Island's new voter ID law, sponsored by Democratic State legislators, "Requiring ID at the polling place is a reasonable request to ensure the accuracy and integrity of our elections."

The evidence from numerous academic studies and actual turnout in elections is overwhelming that, contrary to the claims of opponents, voter ID does not depress the turnout of voters. In fact, a study by the University of Delaware and the University of Nebraska that looked at turnout across the country said the concerns about voter ID laws affecting turnout are much ado about nothing.

Voter fraud exists, and criminal penalties imposed after the fact are an insufficient deterrent. When Justice John Paul Stevens wrote the majority opinion of the U.S. Supreme Court upholding Indiana's voter ID law, he noted that examples of such fraud have been documented throughout this Nation's history by respected historians and journalists, and not only is the risk of voter fraud real, but it could affect the outcome of a close election.

African American Senator Harold Metz, who cosponsored Rhode Island's law, noted that very few adults lack one of the forms of

ID that will be accepted, and the rare person who does can get a free voter ID card, and that he would not have supported any obstacle to voting.

Polls show overwhelming support for voter ID across all ethnic, racial, and party lines. That is no doubt because Americans have to use a photo ID to obtain a library card, drink a beer, cash a check, board an airplane, or check into a hotel. Those in the leadership of organizations opposed to such common-sense reforms are clearly not in touch with their constituents.

Actual election results confirm voter ID does not hurt minority turnout. Voting in both Georgia and Indiana increased more dramatically in 2008 in the first Presidential elections held after their photo ID laws went into effect than in some States without photo ID. There was also an increase of over 7 percentage points in the turnout of registered black Georgians from the 2006 to the 2010 midterm Congressional elections. The Georgia voter ID requirement was upheld in State and Federal court, including the Eleventh Circuit Court of Appeals and the Georgia Supreme Court. They held that such ID requirements are not discriminatory, do not violate the Constitution, or any Federal voting rights laws. After years of litigation, none of the plaintiffs, including the NAACP, could produce a single individual who did not have a photo ID or could not easily obtain one.

In Indiana, the turnout of Democratic voters in 2008 increased by over 8 percentage points from 2004, the largest increase in Democratic turnout of any State in the Nation. According to the census, there was a 5-percent increase in the turnout of the black voting-age population in the 2008 election compared to 2004. Black turnout in Indiana in 2010 was even higher than black turnout in the 2008 election, which was a banner year for black turnout.

The evidence is indisputable also that aliens are registering and voting. In 2005, the GAO issued a report finding that up to 3 percent of the 30,000 individuals called for jury duty from voter registration rolls in just one U.S. district court were not U.S. citizens. I recently received an order from a 2010 immigration case in Orlando, Florida, the Cuban immigrant who arrived in Florida in April of 2004, and then promptly registered and voted illegally in the November election.

The only Americans really being disenfranchised as a large group today are overseas military voters. Only an anemic 4.6 percent of them cast an absentee ballot that was counted in the 2010 election, and that is something that does need to be taken care of.

Three more quick points.

The ability to travel freely within the U.S. is a basic right, yet there have been no claims that the Federal requirement to show a photo ID before boarding a plane is somehow discriminatory. No one can enter most Federal buildings to exercise the First Amendment right to petition the Government without a photo ID, and there have been no cries that this is Jim Crow.

The right to work is just as important as the right to vote. Yet Federal law, passed by this Congress, mandates that no one can be employed without producing documentation authenticating their identity and U.S. citizenship or legal authorization to work. There are no claims that this Federal requirement is Jim Crow. States

are simply implementing a similar requirement to authenticate identity and citizenship for voting.

As Rhode Island Democratic State Representative John Ryan said, "Voting is one of the most important rights and duties we have as Americans, and it should be treated accordingly."

Thank you.

[The prepared statement of Mr. von Spakovsky appears as a submission for the record.]

Chairman DURBIN. Thank you very much.

Justin Levitt is our next and final witness on this panel, associate professor of law at Loyola Law School in Los Angeles, previously counsel at the Brennan Center for Justice at NYU Law School, served in various capacities for several Presidential campaigns, including the National Voter Protection Counsel in 2008; graduated magna cum laude with a law degree and master's degree in public administration from Harvard, where he was an articles editor for the Harvard Law Review; also earned a bachelor's degree magna cum laude from Harvard College.

Professor Levitt, thank you for coming all the way from Los Angeles.

**STATEMENT OF JUSTIN LEVITT, ASSOCIATE PROFESSOR OF
LAW, LOYOLA LAW SCHOOL, LOS ANGELES, CALIFORNIA**

Mr. LEVITT. Thank you very much, Mr. Chairman. Thank you for having me here, Mr. Chairman, Senator Franken, and thank you as well for entering the full written testimony that I have submitted to you into the record. I very much appreciate that.

I am a constitutional law and election law scholar at Loyola Law School in Los Angeles. My scholarship is based on careful research into the very real-world costs and benefits of election policies. I think it is very important to have a grounding in real facts, and so I appreciate this opportunity to share some of them with you here today.

Unfortunately, 2011 has seen several States ignoring this balance, careful balance of costs and benefits, imposing real burdens on real Americans without real reasons.

There are several categories of these new laws. I would like to take just a few moments of my opening statement to address three:

First, voter registration. We have heard a lot about this today. The biggest cutback is in Florida, again. In 2005, Florida law shut down registration drives for the League of Women Voters for the first time in its 67-year Florida history. That law was struck down in court. Now the restrictions are back. The new law requires citizens to get Government permission before they touch a voter registration form from anyone other than their immediate family. This stops impromptu drives at bake sales, churches, and at actual tea parties.

[Laughter.]

Mr. LEVITT. In the campaign finance arena, conservative groups have vigorously challenged far less burdensome restrictions. These new restrictions limit participation far more than necessary to ensure that the voter registration process is both clean and smooth.

Second, early voting. We have also heard about this today. Florida has also cut back here. The most significant cut, the Sunday

before election day. On this Sunday, particularly in minority communities and vastly disproportionately in minority communities, citizens who work long hours during the week go to the polls after church, fulfilling their civic obligations after their spiritual ones. Cutting this Sunday in particular makes no sense. That is, there is no justification for it at all. In Florida, each county could choose to offer voting on the final Sunday or not. Where it cost too much, counties declined. But ten counties opened the polls on that final Sunday because they thought they could better and more efficiently serve their constituents. As Senator Nelson said and as Senator Brown said, for no good reason the State now limits their options and increases their costs by mandating that they close shop on that final Sunday when people are coming from church.

Finally, I would like to mention new restrictive ID laws. I have devoted extensive space to this in my written remarks in part because there is so much myth and misinformation out there, and I hope there is time to clarify in further questions if you have any.

At the moment, six States stop citizens from casting a valid ballot at the polls if they do not have particular types of Government-issued photo ID. They are the minority. All States have some process to make sure that people are who they say they are before they vote. The other 44 States offer options because they know there are real live eligible American citizens out there who simply do not have the ID required in the most restrictive States. I give specific examples of specific names of these real live eligible people in my written testimony. There are many more. Voting is a right for them, too.

Now, everyone agrees that most citizens have photo ID. There is no dispute there. But a substantial number do not, and they have constitutional rights as well. It is tough to know exactly how many do not. There are good scientific studies and bad scientific studies. Unfortunately, I think Mr. von Spakovsky's numbers would fail Statistics 101 at just about any college in the country. The best way to know who does not have the right ID is to ask them. And when you ask them, between 2, from the most conservative estimates, and 20 million—between 2 million and 20 million—American voting-age citizens raise their hands. They are disproportionately minorities, disproportionately poor, disproportionately young, disproportionately seniors. And if you do not have ID, it turns out that it is awfully tough to get ID.

There is no good reason to close out these millions of people. As Senator Brown mentioned, Americans are killed by lightning more often than they are victimized by any sort of fraud that ID stops.

Representative Rokita mentioned allegations of in-person impersonation fraud in Indiana. I would love to hear them. I have not yet seen any reports of any in-person impersonation fraud in Indiana, and I am not talking about prosecutions. Allegations—“We think there has been a problem.” In fact, at the largest stage in the country, at the Supreme Court, there were a total of nine alleged votes nationwide since 2000 that might, if they were fraudulent at all, have been stopped by ID. Nine. There have already been many more than nine real Americans blocked by the new ID restrictions.

Indiana's law does work, but it works to keep people from voting a valid ballot. And there have already been elections, including a

school board election in 2010, decided by provisional ballots cast by individuals who did not have ID and could not prove, using Indiana's new restrictive law, that they were who they said they were.

We have amputated a foot to cure a potential hangnail.

One word on airplanes. Mr. von Spakovsky is fond of saying that you need photo ID to board a plane. I wish he would add, "And I am George Clooney," because neither one is true. To get to you today, I had to board a plane from Los Angeles. I never showed photo ID. While waiting in the terminal, I drank a beer while waiting for the flight, and quite enjoyed it. I never showed ID. To come testify before you today, I had to walk right in through this Federal building and never showed ID. In fact, I have not had photo ID in my wallet the entire week.

Airlines, restaurants, and Federal buildings have figured out ways of accommodating real American citizens without restricting them to single ID cards. And as a fundamental constitutional right, so should all elections in the country.

The airplane analogy is also beside the point. This is the last thing I will mention. Voting is in two articles of the Constitution and ten amendments of the Constitution, featured at the very heart of our constitutional order. Boarding a plane is nice. Drinking a beer is very nice. But outside of Prohibition, I do not see that in the Constitution.

None of the laws that I have mentioned today, none of the laws here make it 100 percent impossible to vote. But for many, as a practical matter, they do make it very, very difficult for no good reason. We all deserve better when it comes to our most fundamental constitutional guarantees, and I thank you very much for investigating this issue.

[The prepared statement of Mr. Levitt appears as a submission for the record.]

Chairman DURBIN. Thank you very much, Professor Levitt. I read your testimony in its entirety, and I know it is exhaustive in terms of the research you have done. I thank you for that very much.

I found Congressman Rokita's statement hard to rationalize when he said something along the lines of we should not really count the fact that people are not prosecuting voter fraud because, you know, it is not worth prosecuting. He talked about, you know, witnesses are hard to come by; and we should not be concerned that there is no evidence of prosecution of fraud. And yet State after State is being urged to change the laws and impose new burdens on innocent people all across the State because of allegations of fraud, which is "not worth prosecuting." I do not think you can have it both ways. If this is clearly designed to stop some terrible miscarriage of justice at the polling place, then it ought to be prosecuted, and there ought to be a clear example to the people of this country that we just will not stand for this, wherever it might occur.

Mr. von Spakovsky, let me go back to a movie whose name I cannot recall where the seminal phrase was "Show me the money." Remember that one, Al?

Senator FRANKEN. "Jerry Maguire."

Chairman DURBIN. Oh, I knew he would know that.

[Laughter.]

Senator FRANKEN. "I will take Movies for \$200."

I am sorry. "What was Jerry Maguire?"

[Laughter.]

Chairman DURBIN. So let us follow the money in this debate for a moment. Let us see who is pushing for these changes in the law and where the money is coming from and see if it gives us any kind of an indication of a political motive behind this.

Are you familiar with a group known as the American Legislative Exchange Council?

Mr. VON SPAKOVSKY. Certainly, Senator. It is the equivalent of the National Conference of State Legislators. It is a similar trade organization for State legislators.

Chairman DURBIN. And one of the founders, Paul Weyrich, are you familiar with this man?

Mr. VON SPAKOVSKY. Certainly. He helped start the Heritage Foundation, too.

Chairman DURBIN. And one of the preeminent conservative political spokesmen in America who said in a moment of candor, "I do not want everybody to vote. As a matter of fact, our leverage in the elections quite candidly goes up as the voting populace goes down." This quote comes from Paul Weyrich, one of the founders of the American Legislative Exchange Council.

Then you take a look at where the money is coming from for this council to undertake these legislative efforts all across the United States, and you find a couple of brothers: David and Charles Koch, billionaire conservative financiers who have spent substantial sums of money, even before *Citizens United*, to promote a pretty conservative political agenda.

Now take a look at the people most affected by these new laws. You have heard it said over and over again. I think you have said it in your testimony. I will just tell you as a sophomore student of political science, I would bet the people we are talking about are more likely than not to vote on the Democratic side. Not all of them by any means, but more likely than not. So is this a great leap to put these two things together, that these two financiers through this council spending millions of dollars promoting changes in State law that will restrict the outcome of elections when it comes to Democratic voters?

Mr. VON SPAKOVSKY. Senator, you can do that with any subject in America. In fact, there is a famous Hollywood thing. I am seven stages removed from—which actor is it?

Senator FRANKEN. It is——

[Laughter.]

Senator FRANKEN.—Kevin Bacon. It is not seven. It is six.

[Laughter.]

Mr. VON SPAKOVSKY. Six. Very good.

I do not believe that the Democrats in Rhode Island who control the State I think four to one in the State legislature would agree with that. They are the ones who thought this bill was necessary. I read you some of the quotes from the legislators who were in favor of this. And the same thing——

Chairman DURBIN. But take——

Mr. VON SPAKOVSKY. The same thing happened in Kansas.

Chairman DURBIN. Do you—

Mr. VON SPAKOVSKY. Democratic legislators also voted to approve this voter ID legislation.

Chairman DURBIN. Do you dispute my premise that the American Legislative Exchange Council has played an active role in the promulgation of the State laws that we are discussing here today?

Mr. VON SPAKOVSKY. Senator, they have a lot of model bills that they recommend to their State legislators.

Chairman DURBIN. I will take that as a yes.

Mr. VON SPAKOVSKY. Yes, and those are—those are approved by votes of their State legislators at their Committee meetings.

Chairman DURBIN. And do you also concede the fact that the Koch brothers are major financiers of conservative causes, including this council?

Mr. VON SPAKOVSKY. I have no idea, Senator. I do not keep track of major contributors to organizations like that.

Chairman DURBIN. We do. And—

[Laughter.]

Chairman DURBIN. I would like to ask you as well, do you not note that the people we are talking about by and large, whether African American, poor, elderly, and such, are generally inclined toward voting on the Democratic side? Do you dispute that?

Mr. VON SPAKOVSKY. I do not dispute, Senator, that, for example, you know, probably upwards of 90 percent of African-Americans in this country vote Democratic. But what I am disputing is the idea that voter ID, for example, depresses their turnout. The actual numbers in elections in Georgia and Indiana since the voter ID laws have been passed show that that is not true. There have been significant increases in the turnout—

Chairman DURBIN. Well, let me ask—

Mr. VON SPAKOVSKY.—of African-American voters in those elections. And if—no. If the premise that is being made here were true, that, in fact, this suppressed their turnout, then that would have happened. It has not happened in those States. In fact, the University of Missouri did a study of Indiana shortly after the voter ID law went into place, and they found that there was no statistically significant showing that that was occurring. In fact, the only thing that came close to being statistically significant was the fact that turnout seemed to go up in predominantly Democratic counties.

Chairman DURBIN. Professor Levitt, what is your response to the turnout defense?

Mr. LEVITT. Well, this is where I pointed out the statistical flaws. There is a basic—and I mean basic—misconception here. It is called “the correlation-causation fallacy,” and anybody who has had statistics for a week can talk to you about it. Yes, so Mr. von Spakovsky and I agree on one thing, that the turnout studies do not show a great impact, but that is because they cannot. There are so many different factors that go into an election that when you only have two or three data points—Georgia before and after, Indiana before and after—you cannot draw any real conclusions about that.

I will give you an example. Mr. von Spakovsky supports ID restrictions. I oppose them. Mr. von Spakovsky has no facial hair. I

have facial hair. But certainly opposition to photo ID does not cause facial hair to grow.

[Laughter.]

Mr. LEVITT. They are simply unrelated. The 2008 election in particular is a particularly bad example. Georgia and Indiana were battleground States for the first time in decades in a Presidential election, and minority turnout in those States would have been buoyed through the roof with a Presidential candidate at the top of the ticket for a major party who was himself a minority. Under any circumstance, in Georgia and Indiana in 2008, turnout should have shot up. And the fact that it went up in Georgia by about 19 percent does not tell you anything about whether it would have gone up by 17 percent plus 2 percent for ID or 35 percent minus 16 percent for ID. That is, you just cannot know what effect ID is having with such a massive, overwhelming output of minority voters like that.

Chairman DURBIN. So let me ask you this question on early voting. It appears that consciously these legislatures are denying an opportunity for early voting on the Sunday before an election, and it has been stated by Ms. Browne Dianis and others—I think you may have stated it yourself—that in many minority communities people go to church and then proceed to vote early. So is the premise here that there is more fraud in early voting on Sunday than there is on another day of the week? I am trying to follow the logic of this effort to restrict early voting.

Mr. LEVITT. It is tough to follow that logic because I am not sure I see any logic there. I have not heard it justified based on fraud, although I have heard just about anything else justified based on fraud. I have heard it justified based on cost, but the important thing to note is that this actually restricts flexibility. You heard from several members of the first panel that election administrators love opportunities when it is up to them to expand early voting because it helps smooth out the profile, because it helps get people in when they do not have to pay overtime, because it helps them actually process voters as voters want to come in, and because it helps them serve their constituents. And in Florida, election administrators had the flexibility—the law allowed them to offer 8 hours of early voting over the weekend. They could choose to offer it on Saturday, or they could choose to offer it on Sunday. And in at least ten counties, including the most populous counties, election administrators thought they could best serve their constituents by offering it on Sunday. They no longer have that latitude. And the impact on the minority community is striking.

In my written testimony, I have explained. In 2008, 13 percent of African-Americans were the total electorate; 31 percent of the final Sunday were African Americans. Latinos were 11 percent of the total electorate, 22 percent of the final Sunday—double the impact. And 2008 was a banner year for minority turnout. Look to 2010, same pattern. Twelve percent of the electorate were African Americans; 23 percent of that final Sunday. And for Latinos, 9 percent of the electorate and 16 percent of the final Sunday. The minority communities come out to vote on that final Sunday, and now they cannot.

Chairman DURBIN. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. I unfortunately have to go in about 5 minutes because I have an important call, so thanks.

Professor Levitt, there is a lot of talk about this is a matter of confidence because whether or not there have been actual—because we cannot find any convictions in voter fraud, so this is a matter of confidence. Do you think that it erodes confidence when people allege voter fraud and there just does not seem to be any convictions for it and there is no—and who tends to allege voter fraud more in your experience in this field?

Mr. LEVITT. Unfortunately, in my experience, every time a candidate loses, there are allegations of voter fraud. At least that is the most common.

I do think it erodes confidence when people allege voter fraud that is not there, and, in fact, you will see election administrators really fighting very strongly allegations of voter fraud when they know they have run clean elections. And they later turn out, to explain that all of these allegations just disappear. They are easy to make just after elections, and then they vanish thereafter.

I can also tell you that it is often asserted that we need ID laws in order to promote voter confidence, but here, too, I fall back on facts. It is a crutch I have. Professor Stephen Ansolabehere and Professor Nate Persily wrote an article in the Harvard Law Review examining the data, so they asked people, “How confident are you in the elections?” And they looked at the photo ID laws in those States, and they found no correlation whatsoever. It turns out that if you believe the election is stolen, you believe it no matter what the legal regime is. And if you believe it was fair, you believe it no matter what the legal regime is. So it just does not have that effect.

Senator FRANKEN. Okay. Thank you.

Mr. von Spakovsky, in 1982 this Congress amended the Voting Rights Act to prohibit not just voting practices with a discriminatory intent, but also those practices that disproportionately hurt minority voters regardless of intent. In 2006 the Senate reauthorized that law by 98-0. It was not a voice vote, either. It was 98-0.

Mr. von Spakovsky, we have heard some very persuasive evidence from your fellow witnesses today that these laws from voter ID laws to restrictive registration laws disproportionately hurt minority voters. Do you think that they comply with the letter and the spirit of the Voting Rights Act as amended and overwhelmingly reauthorized by Congress?

Mr. VON SPAKOVSKY. I would agree with Judge Harold Murphy, who was a Federal judge in Georgia who found that, in fact, Georgia’s voter ID law was not discriminatory, and that is why he threw out all of the claims that had been made against it that it was discriminatory. And, in fact, that decision was upheld by the Eleventh Circuit. So you do not need my opinion. That is the opinion of a Federal judge who not only examined that law but held very detailed and very lengthy hearings and looked at all of the evidence that a number of groups tried to present in court, including the ACLU and the NAACP, to show that it would have a dis-

criminate impact. And the judge concluded that they were unable to prove that it did.

Senator FRANKEN. Mr. Levitt, what do you have to say to that?

Mr. LEVITT. It is true that the court did find that there was no violation of Section 2 of the Voting Rights Act. I will say that it did not credit much of the evidence of burden about going to get a photo ID for those who did not have that, and there are voters in Georgia for whom this is quite burdensome.

There is a different provision of the Voting Rights Act, Section 5 of the Voting Rights Act, that the court did not have a chance to address because the Department of Justice is the only entity that has a chance to address it if it signs off on the law. That was a very controversial pre-clearance exercise. I believe that there was a staff memo, not normally leaked but in this case leaked to the public, that came in recommending that the law not be pre-cleared. And then the very next day, so a 70-some-page staff memo, the very next day the law was pre-cleared without objection. And that decision never got a second hearing in a court. There is no jurisdiction to give that decision a second hearing.

Senator FRANKEN. I see. I wanted to go back. I know that Mr. Levitt talked about this, but this was the use of the number of additional votes in 2008 in Georgia's black population. Mr. von Spakovsky, do you think that part of that might have been because Georgia was targeted as a battleground State and had not been for a long time?

Mr. VON SPAKOVSKY. Well, let me make two points. First of all, Mr. Levitt said I was only talking about one or two data points. Well, that is untrue. There are a number of studies that have been done, including one by the Heritage Foundation, that looked at turnout over more than one election in all 50 States, including a study that I looked at earlier—I mentioned earlier, the University of Delaware and University of Nebraska. They looked at turnout in, I think, the 2002, 2004, and 2006 elections, and all concluded that it did not depress the turnout of voters across socioeconomic lines.

Now, with regard to Georgia, you know, we had a great turnout in the 2008 election. In fact, you know, we had one of the highest turnouts in decades. But the turnout in Georgia went up in comparison to other States that also went up. For example, Mississippi, a neighboring State, large African-American population, just like Georgia, the increase in turnout there was only about a third what it was in Georgia. Indiana—

Senator FRANKEN. Can I ask you something?

Mr. VON SPAKOVSKY. Sure.

Senator FRANKEN. Do you know how much Mississippi grew in terms of black population during those years versus Georgia?

Mr. VON SPAKOVSKY. I do not, but I do know—

Senator FRANKEN. Well, wouldn't that—excuse me. I am sorry. Wouldn't that have to factor in then, the significance of that?

Mr. VON SPAKOVSKY. It certainly does, but Georgia's Secretary of State recently noted that, in fact, for example, in the 2010 elections the turnout of African-Americans outpaced their registration by like 20 percent.

Senator FRANKEN. Well, here is my question. You did a study, and you put in your testimony that it was significant that the percentage of black voters grew more in Georgia than in Mississippi, and you just cited it again. But I would think that as someone who writes studies that it would be significant to know that the black population in Georgia grew at more than 4 times the rate than the black population in Mississippi. And I am wondering how you did not factor that in and put all kinds of significance into the fact that the percentage of blacks who voted grew more in Georgia than in Mississippi when, in fact, Georgia was, I think, the second highest next to Kentucky in terms of percentage of growth of black population during the last decade. Don't you think that that is a little sloppy that you put that in without noting that Georgia grew at more than 4 times the rate that Mississippi did? And didn't that create an inference?

I have to go. I am sorry. I mean, doesn't that—

Mr. VON SPAKOVSKY. Do you want me to answer the question or not, or—

Senator FRANKEN. I am sorry. It is more than 3 times the rate, not 4 times the rate. I apologize.

Mr. VON SPAKOVSKY. All you are telling me, Senator, is that the increase in turnout kept up with the rate of growth, which is just another sign that it did not affect or depress the turnout.

Senator FRANKEN. Well, I was basically kind of saying that you put something in your testimony that did not—that suggested something that was not necessarily—that created an inference that was not true.

Mr. VON SPAKOVSKY. Well, I would disagree with that, Senator.

Senator FRANKEN. Yes, but I think that it is hard to really argue with it because you did not note that Georgia's black population grew at a much, much, much faster rate than Mississippi's, and yet all you did was put that their black voting rate increased more. And I think that is creating an inference that—either you knew it or you did not know it, but I think you should have checked it out.

Chairman DURBIN. Thank you very much, Senator Franken. I appreciate your coming and your patience.

I want to ask a few more questions, and, Ms. Browne-Dianis, you are not going to get off the hook. You were invited to be part of this panel, and I would like to hear your comments. You probably heard Senator Bill Nelson speak about the situation in Florida, and voter registration. And I am concerned that a group like the League of Women Voters would decide to get out of the business. And I am also concerned that there are many other organizations, nonpartisan organizations, focusing on voter registration that may share their concerns when you impose burdens like the new Florida law does.

So, if I can, I would ask you to comment on the impact of these new voter registration standards. They have been alluded to here, turning in voter registration within 48 hours and the like. If you could comment on what impact this is likely to have on voter registration turnout.

Ms. BROWNE DIANIS. Sure. As Professor Levitt mentioned, this actually was not the first time that the Florida State Legislature tried to increase the penalties for voter registration groups and the

burdens on them. However, Advancement Project and the Brennan Center sued on behalf of the League of Women Voters before, and we were successful in settling that case.

We believe what will happen this go-round is that a number of requirements that groups did not have to meet before, that are very similar to Jim Crow registration requirements of the 1950s and 1960s where, first of all, groups will have to go and register as registrars in the State and go through a process, a burdensome process of filling out paperwork, will not make it very easy for these groups.

Second, there is a 48-hour turnaround for groups to turn in completed registration forms. Of course, there is some concern. First of all, the turn around deadline had been 10 days. A registration group could take its voter registration form and make certain that it was of high-quality. Part of the problem is that the new requirement will chip away at the quality of voter registration that third party that groups are doing, because often the best voter registration groups—and I have seen this in the State of Florida—take these voter registration forms, make sure that they are filled out completely before they are submitted. If they are not, they go back to the person that was applying to register to get the missing information before they hand it in to the registrar, thereby cutting down the work that the registrar may have to do in processing incomplete forms.

It will also increase the penalties, actually the cost and the fines that registration groups will encounter if they do not turn in the registration forms within the 48-hour period.

So if you are looking at this as the League of Women Voters, the NAACP, other nonpartisan groups, and thinking about the cost to us of messing up one time or two times, it may not be worth it. And so to have an organization like the League of Women Voters, that has been doing voter registration in Florida for over 60 years, pull out of Florida is very devastating. It really is about whether or not people will have access to voting. And, again, as I said in my testimony, African-American and Latino voters are more likely than white voters to register through third party voter registration drives than going into the motor vehicle office or some other agency to do the registration.

Chairman DURBIN. So what have you found in this Advancement Project that you are part of in terms of the incidence of voter fraud? Professor Levitt and Mr. von Spakovsky obviously have a different point of view. What have you found?

Ms. BROWNE DIANIS. Sure. We have looked at the studies; we looked at what the Department of Justice did during the Bush administration in its 5-year investigation of voter fraud, coming up with very little voter fraud. One thing that was mentioned earlier was the issue about a Cuban coming to America and registering to vote. The new photo identification requirements do not prevent that. What helps is Federal law. The Help America Vote Act requires that a voter registration applicants you provide either a driver's license number or the last four digits of their Social Security number that can be matched against their name. And so there are other protections in Federal law that really address these issues so that we do not have to go to new photo ID requirement.

And, again, it is about whether or not the law allows for multiple forms of identification. Professor Levitt got on a plane with multiple forms, not just that one photo ID.

And so, again, it is the solution without the problem; and there is no documentation of the problem. In Indiana, they could not come forward with a case of impersonation in front of the Supreme Court. So if they cannot find the cases, they do not exist, because I am sure they have been looking for them for a long time.

Chairman DURBIN. I sent a letter to a number of Governors as a result of this hearing asking them for some information about what is going on in their State where these laws are being changed. I hope they respond.

I want to make particular note of a neighboring State to Illinois—Wisconsin. Wisconsin has a State agency, the Legislative Fiscal Bureau, and they determined that 20 percent of the people living in Wisconsin do not possess the kind of identification required by the new Wisconsin law. That includes 177,000 elderly people, 36 percent of young voters, 70 percent of African-Americans under the age of 25, and approximately 242,000 Wisconsin college students whose student ID cards do not meet the strict new requirements in Wisconsin law.

Let me go to student ID cards for a minute here. It seems to me that these States are going out of their way not to acknowledge IDs issued by State universities. Texas is a good illustration. Your ID at the University of Texas does not meet the test. However, your application for a firearm, that ID does meet the test. Hmm. Can we draw any political conclusions from that?

I would like to ask you, when you take a look at where this is headed, is it a leap to suggest that these laws are more restrictive in terms of potential Democratic voters?

Ms. BROWNE DIANIS. It is not a leap. When you look at the groups that will be disproportionately impacted by these laws—black voters, Latino voters, young voters in States like South Carolina, Texas, and Wisconsin where they will not be able to use their student IDs—there clearly is a correlation because those are the groups that saw a surge in voter registration in 2008 and saw a surge in turnout. And so there is real concern that these new restrictions are targeted at these folks so that they will not be able to participate in such great numbers in 2012.

Chairman DURBIN. Now, one of the things Wisconsin made a point of doing was saying we are not going to charge for the ID card. That was smart because I think that would have just fallen on its face as basically a poll tax. You have made the point and others have made the point that going to get a birth certificate is not a free enterprise. You end up paying for it usually if you need one to prove your identity for one of these State ID cards.

But there is also another element, and I will give you an example here in Wisconsin. There is only one DMV office in the entire State of Wisconsin that is open on weekends. One for the entire State. More than half of the DMV offices open during the week only have part-time hours. Three counties have no DMV office at all.

So I have written to the Governor and asked him, “You are considering closing more DMV locations because of budgetary problems. How are you going to accommodate the issuance of IDs to one

out of five people in Wisconsin who do not have them?” Is this a problem beyond Wisconsin?

Ms. BROWNE DIANIS. Sure. As I mentioned earlier, in Texas it is also a problem where 80 counties have either no DMV office or have closed their DMV offices. Of course, as we see the cutbacks in budgets across the country, we will see more of these offices closing. And when you look at the correlation—actually, it is my testimony—the correlation between race and where those offices have closed, you will find that there are disparities in the impact of the closures of those offices, thereby making it more difficult for African-American and Latino would-be voters to actually get their ID in order to vote.

Chairman DURBIN. Mr. von Spakovsky, you said that photo ID laws increase public confidence in elections. But if that is the case, what impact does disenfranchising people who cannot make it to these DMV offices because of inconvenient locations or inconvenient opportunities, what impact does that have on public confidence in elections?

Mr. VON SPAKOVSKY. Well, I think as I have said both in my written testimony and here today, those claims are, quite frankly, bogus, Senator. Let me read you a quick quote from the Indiana Federal district court that said this: “Despite apocalyptic assertions of wholesale voter disenfranchisement, plaintiffs have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting pursuant to the photo ID law.”

All of the same claims being made here today, that there are huge numbers of people without photo ID, that they will not be able to vote, were made not just in the Indiana case but also in the Georgia case before Judge Harold Murphy, who, by the way, is not a conservative judge. He is a Carter appointee. And, in fact, the plaintiffs in that case venue shopped to file their case up in a small town in the northwest corner of Georgia specifically to get that particular judge. And he also said that this failure to identify those individuals is particularly acute in light of the plaintiffs’ contention that a large number of Georgia voters lack acceptable photo ID.

In both cases, when it actually came to not making claims but producing actual evidence that there are large numbers—or even a single individual that would not be able to meet these photo ID requirements because they either did not have a photo ID or could not easily obtain one, these organizations were unable to do so, and that is why those laws are in place and have been in place now for several elections in both States.

Chairman DURBIN. Your first quote was from the *Crawford v. Marion County Election Board* case which considered Indiana’s photo ID law, and you have cited that case to support your point that photo ID laws do not prevent people from voting, and you quoted the court’s statement to that effect. Your citation is misleading because the *Crawford* case was filed before the Indiana law was even implemented.

Isn’t it true that in *Crawford* there were no plaintiffs that had been harmed by the photo law because the election in Indiana had not occurred and Indiana’s voter ID law had not been implemented?

Mr. VON SPAKOVSKY. Well, I would refer you to what Congressman Rokita said earlier. Any groups, the same groups who contested the case before the U.S. Supreme Court could have within the last few years filed an as-applied challenge based on actual individuals that they claim are unable to vote because of the law, and as Congressman Rokita said, you know, where are the suits making that claim?

Chairman DURBIN. Professor Levitt.

Mr. LEVITT. So it is a little odd listening Mr. von Spakovsky begging for more litigation. I think your point is exactly right, that the suit was brought before there was ever a chance to enforce the law. That may or may not speak to a particular plaintiff's strategy, but it does not speak at all to whether there were actual voters burdened.

It is also important to listen to the quote, and Mr. von Spakovsky quoted accurately, but the judge said: "There is no individual prevented from voting who has been put before the court." There were plenty of individuals, mostly in an amicus fashion, who would have had a really, really hard time, and the court essentially set a higher standard than public policy should ever set in determining that it was only going to look at people who were locked out, no point of return, not caring about the individuals who would be substantially burdened. And there are real individuals.

Since that case was brought, we know that there have been individuals without ID who have tried to vote and failed. Real people. Retired nuns in South Bend in 2008. I believe that there were at least ten of them turned away, and one of the nuns who was turned away noted that many others among the 137 retired sisters living at the Congregation of Sisters of the Holy Cross Convent were dissuaded from voting upon learning that their sisters had been turned away—that is, never showed up to cast a provisional ballot. We do not have the evidence that they tried to vote because sisters came home and said, "Hey, we just went down to the polls and we could not do it."

Chris Connolly, a 50-year-old veteran of the Navy and Marines, tried to vote in Indiana's 2008 primary, but his Veterans Administration photo ID card did not have an expiration date, and so he was not able to cast a valid ballot.

That is just one example here. There are many others that I have put forward in my written testimony for you. But I frankly think it is shameful to conceive of even one veteran who served our country and watched brothers and sisters die to preserve others' right to vote turned away for no good reason. And, yes, it is true that Mr. Connolly did not bring a lawsuit, but that should not be the standard when looking at whether these laws are rational, whether they are good public policy, and even whether they are constitutional.

Chairman DURBIN. I want to thank this panel for joining us today and being part of what I believe may be the first hearing on the subject on Capitol Hill. I hope others will follow. What is at issue here goes beyond the ordinary fare of these committees, as important as it may be, because the right to vote in America has been described as "the right preservative of all other rights." It really is fundamental. It goes way beyond getting on an airplane

or anything else that we might do. And that is why I think it should be treated with extreme care, and each generation should accept the responsibility to make certain that we preserve this right to vote for all those in America who have fought so hard to maintain it over the years and who honor it as we do.

Dozens of organizations are on the ground educating the public, challenging these laws, and fighting to preserve the right to vote for all Americans. Many of them have submitted statements, including Lawyers Committee for Civil Rights Under Law, the Leadership Conference on Civil and Human Rights, the Brennan Center for Justice, Rock the Vote, Demos, AARP, Fair Elections Legal Network, Constitutional Accountability Center, United States Student Association, Human Rights Campaign, NAACP Legal Defense and Educational Fund, the League of Young Voters, America Votes, District Supervisor Nikiya Harris of Milwaukee, Campus Progress, National Coalition for the Homeless, National Action Network, National Coalition on Black Civic Participation, and without objection, I will make these statements that they have submitted part of the record.

[The statements appears as a submission for the record.]

Chairman DURBIN. I thank these organizations and especially thank the witnesses for the sacrifices they made to come here today and be part of this important hearing.

The hearing record will be open for one week to accept additional statements. Written questions for the witnesses may also be submitted, and I hope they can respond in a timely fashion.

If there are no further comments from those on the panel, I want to thank our witnesses again for attending and all those who are here today and my colleagues for participating. The hearing stands adjourned.

[Whereupon, at 3:51 p.m., the Subcommittee was adjourned.]

[Submissions for the record follows.]

SUBMISSIONS FOR THE RECORD



STATEMENT FOR THE RECORD

SUBMITTED TO THE

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS

Regarding

"NEW STATE VOTING LAWS: BARRIERS TO THE BALLOT?"

SEPTEMBER 8, 2011

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AARP is a nonprofit, nonpartisan organization with a membership that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. AARP is pleased to submit this statement for inclusion in the hearing record. We thank the Committee for holding this hearing to assess the impact of the many new voting laws being proposed and enacted by states, especially on older voters who vote in disproportionately greater numbers than other age groups in elections around the country. The hearing focus on "Barriers to the Ballot" constitutes the first national assessment by the U.S. Congress regarding this unusual upsurge in state and local voting laws and who is most affected by the changes.

AARP has a longstanding commitment to full citizen participation in the democratic process at the federal, state and local level, and for that reason AARP has supported electoral reform at the federal level – i.e., enactment of the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), the Bipartisan Campaign Reform Act (BCRA), and reauthorization of the Voting Rights Act (VRA). AARP also conducts extensive voter education efforts in each of the 53 U.S. states and territories in which it has offices.

The right to vote is the most basic of all political rights. Over the last several years, the American public has become aware of the many inconsistencies that exist in voting systems throughout the country and which compromise the integrity of the election process. Overall, voting mechanisms lack uniform standards, and in many locations, they have failed to keep pace with new technologies. Of particular concern are the unnecessary, complex rules for voter registration and absentee balloting. Physical and other barriers to in-person voting are also rampant. Impediments to exercising the franchise disproportionately prevent minorities, older persons and people with disabilities from voting or from having their vote counted. And as we all know, the overall rate of voter participation in the U.S. is woefully low, especially when compared to other industrial democracies. User-friendly voting and voting procedures would encourage larger numbers of Americans to vote. In order to ensure that more Americans participate in the electoral process, people's confidence needs to be restored by an election system that is fair, accurate, accessible and secure.

Congress passed HAVA in 2002, requiring states to meet uniform standards in federal election technology and administration. One result of these reforms is that states are required to develop and maintain centralized voter lists, offer provisional ballots, permit voters to verify and correct their ballots, and meet accessibility requirements for voters with disabilities.

HAVA imposes more stringent voter-identification requirements for voters casting a ballot for the first time after having registered to vote by mail. This provision – intended as an anti-fraud measure – discourages participation by otherwise-eligible low-income, minority, foreign-born and older voters. Ultimately, the success of the law in allowing all eligible citizens the opportunity to vote and have their vote accurately counted depends on state implementation laws and administrative procedures.

VOTER ID REQUIREMENTS

As the states have become more active in addressing access to the ballot in recent years, AARP Foundation attorneys have represented citizens – a great many of whom are aged 50+ – who are in danger of disenfranchisement. AARP also has participated in various advisory capacities, at both the federal and state levels, to support citizen empowerment through meaningful opportunity to exercise the franchise.

AARP Foundation attorneys have served as one of the counsel for plaintiffs in federal lawsuits challenging burdensome and unreasonable state laws in Georgia (GA) and Arizona (AZ). AARP also has filed "friend of the court" briefs in the highest state courts in Missouri (MO) and Michigan (MI) to challenge similarly restrictive voting rules. AARP filed such a brief in the U.S. Supreme Court, focusing on the adverse impact on older voters, minority voters and voters with disabilities, in the case involving the Indiana (IN) voter ID law, *Crawford v. Marion County Election Board*, recently decided by the Supreme Court. We believe the evidence shows that "photo ID" voting requirements unnecessarily limit rather than expand citizen participation in the electoral process. The use of "photo ID" to address in-person voting fraud is an overly broad response to a "problem" that the Supreme Court acknowledges barely exists, if at all.

In the jurisdictions that have embraced strict "photo ID" policy, state statutes or ballot initiatives have sought to enact laws that elevate proof requirements for voters to register and/or to vote in person. These laws are based on assertions of fraud which lack a concrete basis in fact. The assertions of fraud unfortunately serve to heighten tensions among voters across the spectrum. We believe the new state laws and implementing rules will significantly limit opportunities to register and/or vote. Many persons who are qualified to vote, but do not have ready access to documents – such as birth certificates, driver's licenses and passports – that have never been deemed necessary in the past may lose the fundamental right to vote.

AARP is particularly concerned that such rules will prevent many eligible older voters, voters with disabilities (who may be unable to obtain the requisite photo or citizenship ID) and low income voters (who may not be able to afford such ID) from exercising their right to vote. Such laws adversely affect older voters who (1) no longer drive and do not need licenses; (2) do not now travel or never did and therefore have no passport; or (3) are persons without birth certificates (e.g., Southern blacks or some Native Americans who were not allowed in white hospitals that provided documentation). At a time when democratic elections are being conducted for the first time in many nations throughout the world, any unnecessary erosion in access to the ballot in the world's oldest electoral democracy should be unacceptable. On behalf of older Americans who have largely shaped the values of our democracy, we urge great care to ensure that the basic right to vote is not trampled in an effort to address unproven allegations of voting abuse.

The larger problem in this country is not people trying to vote who shouldn't – it's all the people who can vote, but don't. There is very little evidence of in-person voter fraud. Many current rules make it too complicated or costly to go to the polls. We should encourage voting, not make it more difficult. For example, imagine you're 75 years old, you've been going to your local polling place for a half century, and suddenly you're asked to prove who you are with a new photo ID. The ID will cost extra money to obtain. If you do not have or can not find your birth certificate — necessary to prove you're a citizen — you may have to spend up to \$200 to get a replacement copy. For someone on a fixed income, this is an unnecessary cost and a nightmare scenario where you have to prove that you are the same person who has been going to the same polling station for decades. Many votes are unlikely to return and vote if rejected. Clearly, there less punitive alternatives are available.

In addition, the potential for poll worker confusion and selective enforcement of voter ID rules are great, further calling into question fair voting practices. In many instances, poll workers are not adequately trained in advance on the basic requirements, such as:

- which IDs are acceptable;
- who should be asked for their IDs;
- what is the proper protocol for attending to persons lacking proper ID; and

- who is responsible for ensuring voter access to a provisional ballot or alternative voting opportunity?

Leaving the decision to subjective interpretation leaves open the path to unfair voting practices.

In a 2009 study AARP conducted with PEW Charitable Foundation, we learned that voter ID laws were unevenly implemented across and within state. The study found:

- In states that require all voters to show photo identification, roughly one-quarter of voters said they showed photo identification not because it was required but because it was convenient.
- In the states that only ask first-time voters to show *any* form of identification (including a letter addressed to them), one-quarter of *all* voters stated they would not have been allowed to vote had they not produced a photo ID.
- African Americans and Hispanics were asked to show "picture ID" more often than Whites — 70% for African Americans, 65% for Hispanics, and 51% for Whites.

Even casting a provisional ballot can be a barrier to voting. Provisional ballots have been suggested as a "compromise" that is equivalent to casting a ballot, but provisional ballots are valid only when counted – and many are not.

AARP believes that voter ID requirements and provisional ballots should be tools to promote honest and effective elections, but should not present administrative, financial or other barriers to the right to vote. Effective remedies legislators could consider include:

- sworn statements affirming in-person voter identity;
- thorough, advance training of poll workers to help ensure that each voter understands how to cast a ballot that will be counted;
- the requirement to provide – in advance of elections – free voter ID to registered voters and new registrants for whom the financial and administrative cost of an official ID are burdensome;
- procedures that encourage and promote maximum participation in the electoral process by expanding the range of voting times, locations and means (e.g., by offering in-person, vote-by-mail, early and secure online voting), and
- repeal of unreasonable identification requirements that discourage or prevent certain classes of citizens from voting.

ELECTION TURNOUT, ELECTION ADMINISTRATION & VOTER ACCESS

A positive result of HAVA's passage has been innovation in the states as election officials have sought creative solutions to the challenges presented by the Act's mandates. The requirements for accessible voting, the difficulty in recruiting poll workers and the desire to increase voter participation have led a number of jurisdictions to experiment with vote-by-mail (VBM) processes. Oregon, which pioneered VBM in 1980 with a series of pilot projects, was the first state to conduct all elections by VBM, starting in 2000. Election officials in Oregon indicate that VBM has resulted in higher voter participation, lower election costs, and avoidance of controversies over electronic voting systems. They also report strong acceptance by the public and minimal instances of election fraud. In 2005, Washington State passed legislation allowing counties to switch to VBM and in the September 2006 primary election, 93 percent of voters cast their ballots by mail. In 2007, several cities in Montana initiated VBM systems for local elections.

According to a 2007 report by the Pew Center on States, early in-person voting at centralized polling places has increased since HAVA's passage. In 2008, 35 states will allow all voters some option to cast ballots prior to election day. In addition, Montana and Iowa joined six states that currently allow registration and voting on election day. North Carolina allows registration and early voting at the same time, but not on election day itself. AARP urges that we build on these legislative efforts to improve voter turnout, not efforts that discourage voting.

The 2009 AARP/PEW study also looked at the various options citizens have to exercise their right to vote. States vary in how they allow voters to vote, and nationwide in 2008 the study found that:

- 63% of voters voted in person on Election Day,
- 18% voted in-person early (or in-person absentee), and
- 19% voted by mail.

In 11 states, a majority of votes were cast before Election Day, via early or absentee voting. In 13 states, more than 90% of the votes were cast on Election Day. Women, the elderly, individuals with disabilities, and the better educated were more likely to use early or absentee voting.

In addition to HAVA, four other statutes—the Voting Rights Act, the National Voter Registration Act, Voting Accessibility for the Elderly and Handicapped Act of 1984, and Americans with Disabilities Act (ADA)—also promote the right to vote by mandating improved access to registration and polling places and better outreach programs for older Americans and people with disabilities. Because the requirements of the Voting Accessibility for the Elderly and Handicapped Act expired in 1995, the Federal Election Commission can no longer require reporting, yet its voluntary state-reporting guidelines remain. Stairs without ramps remain the greatest physical obstacle at polling places. Periodic accessibility reports should be restored, especially as many states enact laws that reduce polling sites and mandate centralized voting centers.

In addition to physical barriers, other administrative barriers still exist that voters must overcome. Some examples of such legislated administrative barriers include:

- Imposing strict requirements on voters who moved into or within the jurisdiction since the last election;
- Imposing new, burdensome ID and verification requirements for registration by mail;
- Requiring more frequent purging of voter rolls – some as often as monthly – that increase the likelihood of purging errors;
- Excessively restrictive third-party registration prohibitions that limit civic-minded groups and individuals from assisting unregistered eligible persons to register; and
- Excessively restrictive election protection zones to deter unlawful voter influence and solicitation.

In the latter case, for example, no person, group or organization would be allowed to “solicit” voters within 100 feet of voters standing in line, including offering legal advice or non-partisan, civic engagement efforts regarding voting or ballots.

CONCLUSION

AARP believes that these issues -- directly or indirectly -- affect every voter and should therefore be of concern to all of us. Therefore, AARP urges that:

- Congress should adopt procedures that encourage and promote maximum participation in the electoral process by expanding the range of voting times, locations and means (e.g., by offering in-person, vote-by-mail, early and secure online voting), and oppose unreasonable identification requirements that discourage or prevent certain classes of citizens from voting;
- Federal, state and local governments should ensure that no governmental entity exclude any otherwise qualified person from voting on the basis of medical diagnosis, disability status or type of residence; and
- Uniform standards should be established and reinforced with adequate funding in order to safeguard the integrity of the election process and afford all Americans the ability to express their electoral preference.

Because this is an effort that requires coordination between federal and state governments, AARP looks forward to working with leaders at all levels of government to institute laws, regulations and administrative tools to promote, expand and ensure the exercise of every citizen's right to vote.



**American Civil Liberties Union
Statement Before the Senate Committee on the Judiciary
Subcommittee on The Constitution, Civil Rights and Human Rights**

"New State Voting Laws: Barriers to the Ballot?"

Submitted by

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September 8, 2011

Introduction

The American Civil Liberties Union (ACLU), on behalf of its over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide, commends the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for focusing public attention on recent state laws which may severely restrict the fundamental right to vote for millions of Americans.

The ACLU is a nationwide, non-partisan organization working daily in courts, Congress, state legislatures, and communities across the country to defend and preserve the civil rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.

We are pleased to submit this written statement for the record on this hearing, addressing the serious problem of new voting restrictions and new barriers to the ballot box across the country.

During the 2011 state legislative season, there has been a dramatic proliferation of bills that would restrict access to the ballot. According to Bloomberg News, this year saw states passing the most election-related laws since 2003.¹ Regressive measures were introduced in more than 30 states, and thirteen states proceeded to adopt new or expanded barriers to voting.² Stopping voter fraud is the posited rationale for these laws. There is much more evidence, however, that qualified voters are disfranchised by these measures than there is evidence of fraud. Instead of creating unnecessary and discriminatory barriers to the ballot box, state governments must redirect their resources to ensuring the right to vote for all.

I. Restricting Access to the Vote

No right is more fundamental than the right to vote. It is protected by more constitutional amendments - the 1st, 14th, 15th, 19th, 24th and 26th - than any other right we enjoy as Americans. Broad political participation ensures the preservation of all our other rights and freedoms.³ State laws that impose new restrictions on voting, however, undermine our strong democracy by impeding access to the polls and reducing the number of Americans who vote and whose votes are counted.

There have been several restrictive voting bills considered and approved by states in the past several years. The most commonly advanced initiatives are laws that require voters to present photo identification when voting in person. Additionally, states have proposed or passed laws to require proof of citizenship when registering to vote; to eliminate the right to register to vote and to submit a change of address within the same state on Election Day; to shorten the time allowed for early voting; to make it more difficult for third-party organizations to conduct voter registration; and even to eliminate a mandate on poll workers to direct voters who go to the wrong precinct.⁴ These recent changes are on top of the disfranchisement laws in 48 states that

¹ Mark Niquette, *U.S. States Tighten Voting Regulation With Republicans in Charge*, Bloomberg News, Aug. 25, 2011, available at <http://www.bloomberg.com/news/2011-08-25/republicans-make-drive-to-tighten-state-voting-rules-before-2012-elections.html>.

² See, e.g., ACLU Map, 2011: *Voting Rights Under Attack in State Legislature*, available at <http://www.aclu.org/maps/2011-voting-rights-under-attack-state-legislatures>. States that passed laws or adopted policy changes imposing voting restrictions during 2011 are Alabama, Florida, Georgia, Iowa, Kansas, Maine, Ohio, Rhode Island, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin. These laws will require voters in several states to show photo ID to vote in person and/or proof of citizenship to register to vote; shorten early voting periods; limit Election Day registration, registration by third party organizations, and absentee voting; and disfranchise more people with felony records. In addition, Mississippi and Missouri voters are slated to consider ballot initiatives in 2011 and 2012, respectively, that would restrict voting rights, and the Pennsylvania legislature still has pending before it a law to require photo ID, as of September 6, 2011. It is also possible that the North Carolina legislature could override the gubernatorial veto of the voter ID bill in that state.

³ *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

⁴ Jim Provanca, *Obama campaign fighting Ohio voting law*, Toledo Blade, Aug. 31, 2011, available at <http://www.toledoblade.com/Politics/2011/08/31/Obama-campaign-fighting-Ohio-law.html>; See also H.B. 194, 129th Leg., Reg. Sess. (Ohio 2011).

deprive an estimated 5.3 million people with criminal convictions – disproportionately African Americans and Latinos – of their political voice.⁵

A. Photo Identification Requirements

Voter ID laws are becoming increasingly common across the country. Today, 30 states have laws requiring voters to present identification to vote in federal, state and local elections, although some laws passed during the 2011 legislative session have not yet gone into effect. In 15 of those states, voters must (or will soon be required to) present a photo ID – that in many states must be government-issued – in order to cast a ballot.⁶

Voter ID laws deny the right to vote to thousands of registered voters who do not have, and, in many instances, cannot obtain the limited identification states accept for voting. Many of these Americans cannot afford to pay for the required documents needed to secure a government-issued photo ID. As such, these laws impede access to the polls and are at odds with the fundamental right to vote. In total, more than 21 million Americans of voting age lack documentation that would satisfy photo ID laws,⁷ and a disproportionate number of these Americans are low-income, racial and ethnic minorities, and elderly. As many as 25% of African Americans of voting age lack government-issued photo ID, compared to only 8% of their white counterparts.⁸ Eighteen percent of Americans over the age of 65 do not have government-issued photo ID.⁹

Laws requiring photo identification to vote are a “solution” in search of a problem. There is no credible evidence that in-person impersonation voter fraud – the only type of fraud that photo IDs could prevent – is even a minor problem. Multiple studies have found that almost all cases of alleged in-person impersonation voter “fraud” are actually the result of a voter making an inadvertent mistake about their eligibility to vote, and that even these mistakes are extremely infrequent.¹⁰ It is important, instead, to focus on both expanding the franchise and ending practices which actually threaten the integrity of the elections, such as improper purges of voters, voter harassment, and distribution of false information about when and where to vote. None of these issues, however, are addressed or can be resolved with a photo ID requirement.

Furthermore, the ACLU believes that requiring voters to pay for an ID, as well as the background documents necessary to obtain an ID in order to vote, is tantamount to a poll tax.

⁵ See generally, Deborah J. Vagins and Erika Wood, *The Democracy Restoration Act: Addressing a Centuries-Old Injustice* (March 2010), American Constitution Society, available at <http://www.acslaw.org/issues/democracy-and-voting>.

⁶ American Civil Liberties Union, *Oppose Voter ID Legislation – Fact Sheet* (July 21, 2011), available at <http://www.aclu.org/voting-rights/oppose-voter-id-legislation-fact-sheet> (hereinafter Voter ID Fact Sheet); National Conference of State Legislatures, *Voter Identification Requirements* (August 8, 2011), available at <http://www.ncsl.org/?tabid=16602> (hereinafter NCSL Map).

⁷ Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006), available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf [hereinafter *Without Proof*].

⁸ *Id.*

⁹ *Id.*

¹⁰ Justin Levitt, *The Truth About Voter Fraud* 11, Brennan Center for Justice (2006), available at http://brennan.3cdn.net/e20e4210db075b482b_wcm6ib0hl.pdf (hereinafter *Truth About Voter Fraud*); Voter ID Fact Sheet, *supra* note 6.

Although some states issue IDs for free, the birth certificates, passports, or other documents required to secure a government-issued ID cost money, and many Americans simply cannot afford to pay for them. In addition, obtaining a government-issued photo ID is not an easy task for all members of the electorate. Low-income individuals who lack the funds to pay for documentation, disabled people with limited access to transportation, and elderly Americans who never had a birth certificate and cannot obtain alternate proof of their birth in the U.S., are among those who face significant or insurmountable obstacles to getting the photo identification needed to exercise their right to vote.¹¹ For example, because of Texas' recently passed voter ID law, an estimated 36,000 people in West Texas's District 19 are 137 miles from the nearest full service Department of Public Safety office, where those without IDs must travel to preserve their right to vote under the state's new law.¹²

In addition, women who have changed their names due to marriage or divorce often experience difficulties with identity documentation, as did Andrea Tangredi, who recently moved from Massachusetts to South Carolina and who, in the span of a month, spent more than 17 hours online and in person trying without success to get a South Carolina driver's license.¹³

As Rep. John Lewis recently wrote in the New York Times, "[t]hese schemes are clearly crafted to affect not just how we vote, but who votes."¹⁴ Voter ID laws send not-so-subtle messages about who is and is not encouraged to vote. As states approve laws requiring photo ID to vote, each formulates its own list of acceptable forms of documentation. Another common thread emerging from disparate state approaches is a bias against robust student electoral participation. Henceforth, students at Wisconsin state universities will not be able to vote using their student IDs, because these documents lack signatures.¹⁵ Nor will South Carolina, Texas, or Tennessee accept student identification at the polls.¹⁶ Policies that limit students' electoral participation are particularly suspect, appearing on the heels of unprecedented youth turnout in the 2008 election.¹⁷

B. Proof of Citizenship

Laws mandating presentation of proof of citizenship likewise impose a potentially insurmountable burden and have been adopted largely in response to allegations of problems that evidence reveals to be illusory. Investigations have failed to identify a confirmed case of a

¹¹ See, e.g., statement of Terri Burke, Executive Director of the ACLU of Texas (March 18, 2011), available at <http://www.hispanicallyspeakingnews.com/noticias-de-noticias/details/coalition-of-civic-organizations-oppose-texas-voter-id-law-vote-set-fo/6199/>.

¹² Sen. Carlos Uresti, *Thousands face 137-mile trip for Voter ID in one Senate district*, San Antonio Express-News, Jan. 28, 2011, available at <http://blog.mysanantonio.com/texas-politics/2011/01/thousands-face-137-mile-trip-for-voter-id-in-one-senate-district/>.

¹³ Schuyler Kropf, *Voter ID Battle: Some Rally Against S.C. Law They Think Is 'Trying To Change Electorate'*, The Post and Courier (August 9, 2011), available at <http://www.postandcourier.com/news/2011/aug/09/voter-id-battle/>.

¹⁴ Rep. John Lewis, Op-Ed, *A Poll Tax by Another Name*, Aug. 26, 2011, available at <http://www.nytimes.com/2011/08/27/opinion/a-poll-tax-by-another-name.html>.

¹⁵ Brennan Center for Justice, *Voter ID Laws Passed in 2011* (August 8, 2011), available at http://www.brennancenter.org/content/resource/voter_id_laws_passed_in_2011/.

¹⁶ *Id.*; Michael Lollar, *Law requiring photo ID puts some Tennessee voters in a tizzy*, *The Commercial Appeal*, July 29, 2011, available at <http://www.commercialappeal.com/news/2011/jul/29/identity-crisis/>.

¹⁷ E.g., Center for Information & Research on Civic Learning and Engagement, *Youth Voting: Voter Turnout by Age, 1972-2008*, available at <http://www.civicyouth.org/quick-facts/youth-voting/>.

noncitizen intentionally registering or voting while aware that s/he was not eligible to do so.¹⁸ Aggressive enforcement efforts by the Bush Administration produced a mere 14 convictions for voting fraud involving noncitizens between 2002 and 2005, in cases in which “[i]t was absolutely clear that there were some people who just did not understand that they could not vote,” according to expert and Barnard College professor Lorraine Minnite.¹⁹

Though there is no significant evidence of noncitizens voting, there are a sizable number of Americans for whom obtaining documentary proof of citizenship is difficult or impossible. A Brennan Center poll concluded that an estimated 7% of Americans – more than 13 million people – do not have ready access to proof of their citizenship.²⁰ People with low incomes, the elderly, women, and people of color living in rural areas are among those least likely to have appropriate documentation. As birth registration was becoming standard practice throughout the U.S. in the 1920s, 30s, and 40s, for example, Native Americans, children born to Spanish-speaking families, and others with minimal access to formal healthcare remained significantly less likely than their urban and white counterparts to have their births officially recorded.²¹ Such individuals often cannot obtain a delayed birth certificate because no living birth witness is available.²² The Brennan Center’s poll concluded that citizens earning less than \$25,000 per year are more than twice as likely to lack ready documentation of their citizenship as those earning more than \$25,000, and that as many as 32 million women of voting age lack documentation of citizenship reflecting their current legal names.²³

Proof-of-citizenship laws are far more likely to prevent American citizens from accessing the ballot box than to stop noncitizens attempting to vote illegally. For example, in Arizona, 37,000 registration applications have been rejected since 2006 for lack of proof of citizenship.²⁴ But in the 10 years prior to the passage of that state’s proof-of-citizenship law, a mere 20 cases of suspected voting by noncitizens were recorded. It is likely, therefore, that almost all of those impacted by the law are qualified voters lacking the required documentation.²⁵

C. *Restrictions on Registration Leading Up to an Election*

Laws that restrict the time allowed for voter registration prior to an election, and that limit the ability to record a change of address close in time to an election, merely serve as an unjustified hindrance on voting participation. For example, Florida’s H.B. 1355, which became law on May 19, 2011, eliminated the ability to submit address changes within Florida (that is, from one Florida address to another) on the day of an election, except for active-duty military families.²⁶

¹⁸ *Truth About Voter Fraud*, *supra* note 10, at 18.

¹⁹ *Immigrant Voter Fraud Fears Didn’t Materialize*, (NPR radio broadcast Nov. 5, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=131089170>.

²⁰ *Without Proof*, *supra* note 7.

²¹ Hetzel, *U.S. Vital Statistics System Major Activities and Developments, 1950-95*, 59, (U.S. Dept. of Health and Human Services 1997), available at <http://www.cdc.gov/nchs/data/misc/usvss.pdf>.

²² Gonzalez Plaintiffs’ Proposed Findings of Fact Nos. 570-72, *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS (D. Ariz., May 9, 2006).

²³ *Without Proof*, *supra* note 7.

²⁴ American Civil Liberties Union of Utah, Senate Bill 210 “Proof of Citizenship Required to Vote” is an Unnecessary Bill That Will Discourage Voter Participation (Feb. 26, 2008), available at http://www.acluutah.org/SB210_factsheet.pdf.

²⁵ *Id.*

²⁶ H.B. 1355, 2011 Leg., Reg. Sess. (Fla. 2011).

The likely effect of this change in policy is that individuals who have the poor fortune to move just prior to an election will be disfranchised for no other reason but bad timing. Victims of the law are likely to be disproportionately African American and Latino, given that Pew Research Center data shows these demographic groups move more frequently than do whites – 43% of African Americans and 48% of Latinos moved between 2003 and 2008, compared to just 27% of whites.²⁷ Relocating should not cause someone to lose his or her right to vote.

A varied patchwork of state rules surrounding residence, moves, and voter registration breeds confusion, and excludes those with more precarious housing arrangements. The ACLU documented cases in 2008 in which Ohio voters were threatened with prosecution when requesting absentee ballots less than thirty days after registering, even though both federal and state courts had upheld the voters' right to register and request an absentee ballot on the same day.²⁸ Enhanced residence prerequisites to registration have also been used in attempts to prevent students from voting where they attend school. The ACLU has worked on cases occurring across the country in which students' votes were challenged solely on the basis of issues immaterial to their qualifications as voters, including their provenance, parents' residence elsewhere, community activities, church membership, car registration, and status as dependents of their parents.²⁹

D. *Early Voting*

Generous early voting periods, that include weekend days, facilitate voter participation.³⁰ Early voting eases congestion at polling places on Election Day, and thereby improves the efficient operation of elections by reducing the ratio of poll workers to voters. Early voting periods also afford extra time to address registration problems and other barriers to voting that can keep votes from being cast and counted if encountered for the first time on Election Day itself. Thus states' proposals to reduce voting periods may result in further obstacles to voting or possible diminished voter turnout. Recently, Ohio repealed Sunday voting, eliminating the convenience of weekend voting for those unable to make it to the polls on a workday.³¹

Given the flexibility early voting affords citizens, it is not surprising that many voters have taken advantage of this option. In states like Tennessee, Nevada, Oregon, and Florida, more than half of all votes in recent elections have been cast during early voting periods or by absentee ballot.³²

²⁷ Pew Research Center, *American Mobility: Who Moves? Who Stays Put? Where's Home?* at 23 (December 17, 2008), available at <http://pewsocialtrends.org/category/datasets/>.

²⁸ Press Release, American Civil Liberties Union, Voting Rights Groups Call on Greene County Officials to Halt Investigation on Innocent Voters (Oct. 10, 2008), available at <http://www.acluohio.org/pressreleases/2008pr/2008.10.10.asp>.

²⁹ See, e.g., *Saunders v. Davis*, Civ. No. 4:04 CV 20 (E.D. Va. 2004); *Prairie View Chapter of NAACP v. Kitzman*, No. H-04-459 (S.D. Texas 2004); *Copeland v. Priest*, Civ. No. 4-02-CV-675 (E.D. Ark. 2002).

³⁰ Jan E. Leighley and Jonathan Nagler, *The Effect of Non-Precinct Voting Reforms on Turnout, 1972-2008* 13-14 (January 15, 2009), available at <http://www.electiononline.org>; Paul Gronke, Et Al., *Early Voting in Florida, 2004* 2, The Early Voting Information Center. Sept. 1, 2005, available at <http://people.reed.edu/~gronkep/docs/GronkeBishinStevensGalanes-Rosenbaum.APSA.2005.pdf>.

³¹ H.B. 194, Sec. 3509.01(B)(3), 129th Leg., Reg. Sess. (Ohio 2011).

³² See *Florida Early Voting May Change*, [wjhg.com Apr. 20, 2011](http://www.wjhg.com/home/headlines/Florida_Early_Voting_May_Change_120255094.html), available at http://www.wjhg.com/home/headlines/Florida_Early_Voting_May_Change_120255094.html; Editorial, *They Want to Make Voting Harder?*, The New York Times, June 5, 2011, available at http://www.nytimes.com/2011/06/06/opinion/06mon1.html?_r=1 (hereinafter N.Y. Times Voting Barriers); Early

In 2008, 13% of all votes nationwide were cast during early voting periods.³³ Additionally, early voting options are used more frequently by voters of color than by white voters. In Florida in 2008, for example, African Americans comprised 13% of the electorate, but cast 22% of early votes.³⁴ Nearly 54% of African American voters in Florida cast their ballots before Election Day, compared with 27% of white voters.³⁵ Likewise, more than half of African American voters in North Carolina voted early in 2008, compared to about 40% of white North Carolina voters.³⁶ This history strongly suggests that reducing early voting periods will not only complicate administration of polling places on Election Day, but have a disparate negative impact on voting by people of color. As the Early Voting Information Center at Reed College reports, "[t]here is no evidence that any form of convenience voting has led to higher levels of fraud."³⁷

E. *Third-Party Voter Registration Restrictions*

The National Voter Registration Act (NVRA) signaled the advent of enhanced efforts to facilitate widespread voter registration. The bill was premised on the concern that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities."³⁸ Among other provisions aimed at redressing barriers to election participation, the NVRA authorized registration by mail-in form, and emphasized that the forms must be made available to private entities wishing to conduct voter registration drives. Third-party organizations have responded by helping many more millions register to vote. For example, during the 2004 election cycle alone, the non-profit Project Vote registered 1.2 million voters.³⁹ During the 2008 cycle, Rock the Vote registered 2.5 million voters.⁴⁰

Not surprisingly, efforts to restrict voting participation have included imposing unjustified restrictions on third-party registration activities. Restrictions that apply only to third-party registration efforts and not to other registrars of voters will result in fewer Americans registered, and fewer Americans participating in our democracy. For example, Florida's 2011 H.B. 1355 dramatically shortens the period of time third-party organizations have to return completed

Voting Information Center, Frequently Asked Questions, *available at* <http://earlyvoting.net/faq> (last visited Aug. 31, 2011).

³³U.S. Election Assistance Commission, The 2008 Election Administration and Voting Survey (November 2009) at 9, *available at* <http://www.eac.gov/assets/1/Documents/2008%20Election%20Administration%20and%20Voting%20Survey%20EAVS%20Report.pdf>.

³⁴Letter from Laughlin McDonald, ACLU Voting Rights Project, to T. Christian Herren, Chief, Voting Section, Civil Rights Division, (2011) *available at* <http://www.acluf.org/pdfs/2011-06-20-ACLU DOJLetter.pdf> [hereinafter *FL Preclearance Letter*].

³⁵*Id.*

³⁶N.Y. Times Voting Barriers, *supra* note 32.

³⁷Early Voting Information Center, *Frequently Asked Questions: Why do states adopt early voting? Are there risks?* (accessed September 3, 2011), *available at* <http://www.earlyvoting.net/faq>.

³⁸The National Voter Registration Act of 1993, P.L. 103-31, 107 Stat.77, 77 (1993).

³⁹Letter from Penda D. Hair, Co-Director, Advancement Project and Holli Holliday, National Director, Project Vote, to The Honorable Cathy Cox, Chairperson, Georgia State Election Board (Sept. 12, 2005) at 1, *available at* <http://www.advancementproject.org/sites/default/files/GAcom2.pdf>.

⁴⁰Ari Berman, *The GOP War on Voting*, Rolling Stone, Aug. 30, 2011, *available at* <http://www.rollingstone.com/politics/news/the-gop-war-on-voting-20110830?page=2> [hereinafter *Rolling Stone*].

applications to the state; require third-party registrars of voters to register themselves with the state and submit names and sworn statements of each person who will conduct registration activities on the organization's behalf; and sets potentially heavy fines for non-compliance, among other provisions.⁴¹

Already, Florida's new third-party registration restrictions have prompted the League of Women Voters to announce plans to end registration activities in the state, and other groups may be forced to do the same.⁴² As with many of the other restrictions cited in this statement, such proposals have a disproportionate impact on voters of color. Based on nationwide statistics, in 2008, more than one-third of voters who registered through third-party drives were racial minorities⁴³, though minorities constituted only approximately 18% of the voting age citizen population.⁴⁴ African American and Latino voters register with third-party groups at twice the rate of other voters.⁴⁵ Moves to restrict third-party registration will effectively chill registration and election participation among historically disfranchised people.

F. *Criminal Disfranchisement*

Millions of Americans have had their right to vote revoked because of criminal convictions. Upon release from incarceration, these citizens work, pay taxes, live in our communities and bring up families, yet they are without a voice. An estimated 5.3 million citizens cannot vote as a result of felony convictions, and nearly 4 million of those who are not in prison, but are living and working in the community.⁴⁶

States have vastly different approaches to voting eligibility for those with a criminal conviction. Some states permanently disfranchise some, but not all, citizens with felony convictions, while others allow voting after a sentence is completed or after release from prison.⁴⁷ Despite a trend over the last decade of increasing access to the polls, this year, governors in two states – Florida and Iowa – enacted regressive policy changes to make it nearly impossible for people with past convictions to ever regain their voting rights. Those states now join Kentucky and Virginia in essentially imposing lifetime voting bans on people with felony records.⁴⁸ In Florida alone, an estimated one million citizens are affected by this draconian policy.⁴⁹ Two states, Maine and Vermont, allow all persons with felony convictions to vote, even while incarcerated; all other

⁴¹ H.B. 1355, 2011 Leg., Reg. Sess. (Fla. 2011).

⁴² *Voting laws Sunday punch*, The Herald-Tribune, June 15, 2011 [hereinafter *Sunday Punch*]; *Rolling Stone*, *supra* note 40.

⁴³ *FL Preclearance letter*, *supra* note 34, at 4.

⁴⁴ U.S. Census Bureau, *Reported Voting and Registration of the Voting-Age Population, by Sex, Race and Hispanic Origin, for States*, Table 4b, (Nov. 2008), available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

⁴⁵ *Sunday Punch*, *supra* note 42.

⁴⁶ See Vagins and Wood, *The Democracy Restoration Act*, *supra* note 5, at 1; Erika Wood and Rachel Bloom, *DeFacto Disenfranchisement* (2008), available at <http://www.aclu.org/votingrights/exoffenders/36992pub20081001.html>.

⁴⁷ See ACLU Map, *Voting Rights for People with Criminal Records*, <http://www.aclu.org/map-state-felony-disfranchisement-laws> (last visited Aug. 8, 2011) (contains a map detailing state laws).

⁴⁸ *Id.*

⁴⁹ The Sentencing Project Map, *Felon Disenfranchisement by State*, <http://www.sentencingproject.org/map/map.cfm#map> (last visited Sept. 5, 2011) (1,179,687 Floridians in total estimated to be disfranchised).

states fall somewhere in between.⁵⁰ Unfortunately, this patchwork of voting laws has caused widespread confusion about the proper administration of state laws that, in turn, has contributed to the disfranchisement of even eligible citizens.

Worse still, criminal disfranchisement laws are rooted in the Jim Crow era and were originally intended to bar minorities from voting. The impact of these laws continues today. Nationwide 13% of African American men have lost the right to vote – a rate seven times the national average.⁵¹ Contributing to the disfranchisement, African Americans and Latinos are disproportionately targeted by the criminal justice system.⁵² Surveys show that whites, African Americans, and Latinos in the U.S. use and sell illegal drugs at very similar rates, but two-thirds of all those incarcerated in state prisons for drug offenses are African American or Latino.⁵³ This is true at a time when African Americans constitute just 12.6% of the U.S. population, and Latinos 16.3%.⁵⁴ In turn, this has impacted the families of those who are disfranchised and the communities in which they reside by reducing their collective political voice.

By continuing to deny citizens the right to vote based on past criminal convictions, the government is endorsing a system that expects these citizens to contribute to the community, but denies them participation in our democracy. Not only is the disfranchisement of millions of citizens undemocratic, but it is counterproductive to the rehabilitation of those released from prison and their reintegration into society. As the New York Times recently opined, “[f]ully integrating ex-offenders back into society is...the best way to encourage their lasting rehabilitation. It is past time for all states to restore individual voting rights automatically to ex-offenders who have served their time.”⁵⁵

In sum, the potential consequence of restrictive measures like the foregoing examples is immense. According to the Cooperative Congressional Election Survey, 4 million registered voters did not vote in the 2008 presidential election because of administrative problems.⁵⁶ Another 4 million to 5 million people reported administrative problems as their reason for not registering.⁵⁷ With just less than 10 million votes separating the candidates in the 2008 elections,

⁵⁰ See ACLU Map, Voting Rights for People with Criminal Records, <http://www.aclu.org/map-state-felony-disfranchisement-laws> (last visited Aug. 8, 2011) (contains a map detailing state laws).

⁵¹ *Voting After Criminal Conviction*, Brennan Center, http://www.brennancenter.org/content/section/category/voting_after_criminal_conviction.

⁵² See generally, e.g., Leadership Conference on Civil and Human Rights, *Justice On Trial: Racial Disparities in the American Criminal Justice System* (May 2000), available at <http://www.civilrights.org/publications/justice-on-trial/>.

⁵³ Drug Policy Alliance, *Drug War By the Numbers* (accessed September 2, 2011), available at www.drugpolicy.org/facts/drug-war-numbers.

⁵⁴ U.S. Census Bureau, *Overview of Race and Hispanic Origin*, Table 1 (March 2011), available at www.census.gov/prod/cen2010/briefs/c2010br-02.pdf.

⁵⁵ Editorial, *Their Debt is Paid*, New York Times, Oct. 20, 2010, available at http://www.nytimes.com/2010/10/20/opinion/20wed4.html?_r=2&partner=rssnyt&emc=rss.

⁵⁶ *Voter Registration: Assessing Current Problems: Hearing Before the S. Comm. on Rules and Administration*, 111th Cong. 1 (2009) (statement of Stephen Ansolabehere, Professor, Department of Government, Harvard University, Cambridge, M.A.), available at http://rules.senate.gov/public/index.cfm?FuseAction=CommitteeSchedule.Testimony&Hearing_ID=c33b5ae8-ae8-413e-85db-a256cc6169f6&Witness_ID=e394ba39-8bf4-441c-8ed3-6e8c68cf4b23.

⁵⁷ *Id.*; see also Editorial, *Shut Out at the Polls*, WASH. POST, Mar. 16, 2009, at A16, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501668.html?referrer=emailarticle>.

and additional legal obstacles now in effect in a number of states, voting barriers could easily become determinative of election outcomes.⁵⁸

II. The Impact of Restricting Access to the Vote

The chilling impact of new state-level voting restrictions is not just a theory based on statistics and extrapolation: it is a known fact, featuring real victims. Citizen surveys as well as individual anecdotes tell this story.

It has been known for some time that the move toward requiring photo ID to vote and proof of citizenship to register results in fewer votes cast, particularly by people of color and others disproportionately unlikely to possess the relevant documents. The New York Times noted that imposition of identification requirements had reduced turnout in the 2004 election by about 3%, but disproportionately reduced turnout by minorities by two to three times as much.⁵⁹

Studies offer further confirmation that from state to state, as well as nationally, voter ID laws depress voter participation, particularly among people of color, people with disabilities, and other groups who have been historically excluded from elections.⁶⁰ The coming years will demonstrate the similar impact of new policies that reduce opportunities to register, to amend registration, and to vote before Election Day.

Evidence submitted by the plaintiffs in the course of litigation over Arizona's voter ID law showed that between the beginning of 2005 and fall 2007, 31,550 voter registration applications were rejected in that state because of a failure to provide proof of citizenship.⁶¹ Even though approximately 90% of those submitting rejected applications listed the U.S. as their place of birth, only about 11,000 of the 31,550 were ultimately successful in registering to vote. Not surprisingly, given the additional hurdles to be surmounted by prospective voters, Arizona lost 11,000 registered voters during a period in which the state's population increased by 650,000.⁶²

The ACLU is working across the country to defend the rights of people who will be disfranchised by the wave of new voting restrictions. In Missouri, for example, the ACLU is representing citizens who would be disfranchised by attempts in that state to impose a voter ID requirement. Before the state can enact such a law, it must first amend the Constitution to eliminate certain protections for voters that currently make voter ID unconstitutional. Our clients include:

- two elderly women – 90 and 86 – who no longer drive and would have great physical and financial difficulty obtaining necessary ID documents;

⁵⁸ Federal Election Commission, *2008 Official Presidential General Election Results*, Jan. 22, 2009, available at <http://www.fec.gov/pubrec/fe2008/2008presgeresults.pdf>.

⁵⁹ Christopher Drew, *Lower Voter Turnout Is Seen in States That Require ID*, N. Y. TIMES, Feb. 21, 2007, at A16.

⁶⁰ E.g., Matt Barreto, Stephen Nuno, Gabriel Sanchez, *Voter ID Requirements and the Disenfranchisements of Latino, Black, and Asian Voters*, Prepared for the 2007 American Political Science Association Annual Conference (September 1, 2007), available at http://faculty.washington.edu/mbarreto/research/voter_ID_APSA.pdf.

⁶¹ Gonzalez Plaintiffs' Proposed Findings of Fact No. 603, *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS (D. Ariz., May 9, 2006).

⁶² ITCA Plaintiffs' Proposed Findings of Fact No. 22, *Gonzalez v. Arizona*, No. CV-06-1268-PHX-ROS (D. Ariz. May 9, 2006).

- a former musician now stricken with multiple sclerosis and confined to a wheelchair, whose ID has expired and for whom obtaining new state identification would be both physically and financially difficult;
- a woman on disability due to a severe accident, who would encounter significant physical and financial hardship obtaining new state identification;
- a naturalized citizen who has had difficulty renewing her driver's license when officials have questioned her Russian birth certificate;
- a former school board member who is likely to encounter difficulties at the polls because the name on her birth certificate is not the name under which she is registered to vote, and whose hand tremor could result in a signature that poll workers do not believe matches her signature on file; and
- a college student and a recent graduate whose out-of-state and student IDs will no longer serve as valid voter identification under the proposed amendment.⁶³

The ACLU and allies have also conducted outreach to determine the likely impact of a new voter ID law in Wisconsin. This work has identified many individuals who will be negatively affected, including:

- three senior citizens, ages 89, 91, and 96, who each lack photo ID, subsist on Social Security income, and are active voters. There is no public transportation available to these individuals, so they will each need a friend or relative to take them to obtain identification documents. The 91-year old lacks a birth certificate, which she will need to obtain state ID. Procuring a copy of a birth certificate, if it exists, is logistically difficult at best, but at worst, potentially impossible.
- two people with disabilities, ages 71 and 91, who are not mobile – in fact, the 71 year old is unable to leave her home. Their hometown of Winter is an hour's drive from the nearest state office that issues qualifying identification. Both will face significant difficulty arranging to obtain the necessary documentation to continue voting.
- a Native American resident of Green Bay, who is living with disabilities and dependent on public assistance, and lacks a photo ID as well as a copy of his birth certificate. He has few financial and other resources with which to seek the documentation he will need to continue voting.

III. Dispelling the Myths Behind Voting Restrictions

"No one could give me an example of all this [voting] fraud they speak about."
– Mike Fasano, Florida State Senator (R-FL 11th District)⁶⁴

Proponents of restrictions on the right to vote allege that controls are needed to combat the danger of voting fraud, and further, that measures like requiring photo ID to vote will not impose any significant burden on voters. Evidence tells a different story, however: while there is little indication of fraud in elections, and even less reason to suspect that any improper voting is

⁶³ Press Release, American Civil Liberties Union, Civil Rights Groups Sue Missouri Officials Over Voter ID Ballot Initiative (July 7, 2011), available at <http://www.aclu-om.org/pressroom/2011/pressreleases/civilrightsgroupssuemissou.htm>.

⁶⁴ Rolling Stone, *supra* note 40.

intentionally done, millions of Americans will be less able and likely to vote as a result of voter ID and other limitations emerging in state legislation.

A. *Lack of Documented Fraud*

Nationally, an intensive anti-fraud initiative conducted by the Bush Administration's Department of Justice between 2002 and 2007 resulted in just 86 voting fraud convictions for more than 300 million votes cast, and most of these targets were, as Rolling Stone reported, "immigrants and former felons who were simply unaware of their ineligibility."⁶⁵ Investigations in state after state also have consistently failed to produce evidence to justify fear of intentional voting fraud. A statewide survey conducted in Ohio uncovered a mere four instances of ineligible people voting in the 2002 and 2004 elections, out of nine million votes cast during that period.⁶⁶ In Texas, some 50 million votes have been cast since 2002, yet only one documented case has emerged of a person falsely claiming the identity of someone else for voting purposes.⁶⁷

In Alabama, sponsors of this year's voter ID legislation were able to identify only three cases of voter fraud in the state since 2008, none of which dealt with voters misrepresenting themselves during the registration process or at polling places.⁶⁸ South Carolina, which also passed restrictive voting legislation this year, recorded not one single report of voting fraud during the 2008 election.⁶⁹ The South Carolina State Election Commission also reported this year that there had been no substantiated cases of fraud in the state in the past decade.⁷⁰ In Wake County, North Carolina, about 280,000 votes were cast in 2010, however, the Board of Elections identified just six cases of potential voter fraud, fewer of which have resulted in any legal action.⁷¹ Although the Secretary of State of Kansas has advocated tougher voter restrictions, records obtained from his office show that in 14 years, between 1997 and 2010, there were a mere 221 alleged instances of voter fraud in the state, 200 of which could not have been prevented by the new proof of citizenship and photo ID requirements, and only eight of which resulted in legal action.⁷²

Legislation requiring voters to show photo ID at the polls is the most popular recent form of voting restriction considered by the states. But the kind of fraud that such restrictions could halt – impersonation of a registered voter – simply does not exist to any significant degree. The

⁶⁵ *Id.*

⁶⁶ Press Release, Brennan Center for Justice, Voting Rights Groups Urge Carter-Baker Election Commission to Oppose National Voter Identification Card (June 29, 2005), available at http://www.brennancenter.org/content/resource/voting_rights_groups_urge_carter_baker_election_commission_to_oppose_nation/.

⁶⁷ Terrence Stutz, *Texas House OKs bill requiring voters to show ID*, Dallas Morning News, Mar. 23, 2011, available at <http://www.dallasnews.com/news/politics/texas-legislature/headlines/20110323-texas-house-oks-bill-requiring-voters-to-show-id.ece>.

⁶⁸ Press Release, Alabama Democratic Party, *ADP Calls on Senate to Block Costly Voter ID Bill*, March 23, 2011, available at http://www.aladems.org/2011/03/adp_calls_on_se_1.php.

⁶⁹ Desiree Evans, *GOP Pushes Voter ID Bills in the South*, Facing South, Mar. 27, 2009, available at <http://www.projectvote.org/in-the-news/408-gop-pushes-voter-id-bills-in-the-south-facing-south.html>.

⁷⁰ Gina Smith, *Opposition Grows to New Voter ID Law*, The State, Aug. 27, 2011, available at <http://www.thestate.com/2011/08/27/1948342/opposition-grows-to-new-law.html>.

⁷¹ See e.g., Press Release, NC Center for Voter Education, *NCCVE Supports Veto of Voter Photo ID Bill* (June 23, 2011), available at http://www.ncvotered.com/releases/2011/6_23_11_voter_id_veto.php.

⁷² Katie O'Connor and Jon Sherman, *Lions and Tigers and Fraud, Oh My! Secretary of State Kris Kobach Is At It Again*, Huffington Post, June 14, 2011, available at http://www.huffingtonpost.com/katie-oconnor/lions-and-tigers-and-frau_b_876836.html.

Election Assistance Commission concluded in 2006 that voter impersonation “is probably the least frequent type of [election] fraud.”⁷³ It is so rarely seen, in fact, that instances of in-person impersonation fraud at the polls happen less often than lightning striking a person.⁷⁴ In part, this is because in-person fraud by individual voters is an ineffective way to influence an election. There are severe criminal penalties for voter fraud in federal elections, and in return, it yields at most one additional vote.⁷⁵

B. Fraud Allegations Do Not Withstand Scrutiny

When state officials have argued that fraud has occurred on anything approaching a large scale, their allegations have relied upon seriously flawed methodology. For example, New Mexico Secretary of State Dianna Duran announced in March that she had identified 37 cases of registered voters whose names matched names on a list of foreign nationals, as well as 117 registrants whose names did not match their social security numbers.⁷⁶ There was no indication, however, that she had confirmed whether or not these individuals had become naturalized citizens before voting, nor that her office had conducted investigation into the extent to which clerical errors – a common occurrence where handwritten registration documents must be entered into computer databases – were responsible for non-matches.⁷⁷

Similarly, Colorado Secretary of State Scott Gessler released a report earlier this year that alleged that 11,805 Coloradans who were foreign nationals were registered to vote.⁷⁸ His report covered the years 2006-11, during which time more than 32,000 Colorado residents became naturalized citizens.⁷⁹ Secretary Gessler’s report failed to conclusively establish that even one of these individuals was not a citizen at the time of his or her voter registration, because it revealed his office had not accessed citizenship information held by the federal government.⁸⁰ Though he submitted that 106 individuals registered to vote prior to providing documentation indicating immigrant status to obtain a driver’s license, this fact fails as proof of fraud, given that naturalized citizens often possess documents identifying themselves as legally present immigrants even after the date of their naturalization. In sum, widespread voting fraud has not yet, or ever, been demonstrated to exist through sound, validated analysis.

⁷³ U.S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study* (Dec. 2006), available at http://www.eac.gov/assets/1/workflow_staging/Page/57.pdf.

⁷⁴ *Truth About Voter Fraud*, *supra* note 10, at 6.

⁷⁵ *Id.* at 7.

⁷⁶ Keesha Gaskins, *Smoke and Mirrors: Alleged Non-Citizen Voting in NM and CO*, Brennan Center for Justice (Apr. 1, 2011), http://www.brennancenter.org/blog/archives/smoke_and_mirrors_alleged_non-citizen_voting_in_new_mexico_and_colorado/.

⁷⁷ E.g., Milan Simonich, *New Mexico Dems Pan Official’s Voter Fraud Claims*, The El Paso Times, June 19, 2011, available at http://www.elpasotimes.com/news/ci_18308522; Matthew Reichbach, *Legality of Actions Questioned: Duran Grilled Over Voter File Examination*, Center for Civic Policy: ClearlyNewMexico.com, July 15, 2011, available at <http://www.clearlynewmexico.com/?p=6917>.

⁷⁸ Colorado Dept. of State, Comparison of Colorado’s Voter Rolls with Department of Revenue Non-Citizen Records (March 8, 2011), available at http://cha.house.gov/images/stories/documents/co_non_citizen_report.pdf.

⁷⁹ Dept. of Homeland Security, *2009 Yearbook of Immigration Statistics* (Aug. 2010) at 57, available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf.

⁸⁰ Colorado, *supra* note 78 at 4.

C. *Anti-Fraud Measures Have Chilled Voter Participation*

Though the fraud that new state voting restrictions supposedly redress is an illusion, massive disfranchisement of Americans through the implementation of these restrictions is a reality. A recent academic study concluded that approximately 2.2 million registered voters did not or could not vote in 2008 because of a lack of identification.⁸¹ In coming elections, this number is likely to grow, as millions more voters who lack identification become subject to strict photo ID requirements. In 2008, only two states, Georgia and Indiana, required in-person voters to produce one of a limited number of acceptable photo IDs.⁸² As of September 3, 2011, seven more states – Kansas, Wisconsin, Rhode Island, Texas, Tennessee, South Carolina, and Alabama – will impose similar requirements on voters during or after the 2012 election cycle.

Based on what we know about those who lack identification and struggle with barriers to obtaining it, these excluded voters were disproportionately racial and ethnic minorities. A 2010 report from the South Carolina State Elections Commission, for example, found that 178,175 registered voters in the state did not possess either a driver's license or identification card issued by the Department of Motor Vehicles. African Americans constitute 30.4% of registered voters in South Carolina, but a disproportionate 35.8% of voters who lack a DMV-issued photo identification.⁸³

Many proponents have argued that, since photo IDs are required for so many common purposes, like driving a car or boarding an airplane, producing an ID for voting does not impose a great burden. Such comparisons are misplaced. Voting is not a privilege like driving or flying. Rather, it is a fundamental right guaranteed by more constitutional amendments than any other right we have as Americans. Because of the primary importance of the franchise, any law that threatens to make it more difficult to vote faces the strongest constitutional scrutiny. By contrast, actions like buying alcohol, driving, and flying are not constitutionally enshrined, and can be limited by restrictions, such as ID requirements, so long as restrictions are applied evenly and are justified by a legitimate government interest.⁸⁴

Conclusion

In order for the United States to continue as one of the world's leading democracies, it must ensure all eligible citizens are able to register and cast their ballots. Elected officials should be seeking ways to encourage more voters, not inventing baseless excuses to deny voters the ability to cast their ballots.

The ACLU urges states to revisit the use of voter IDs, citizenship requirements, restrictions imposed on registrations, voting periods, criminal disfranchisement laws and other voter

⁸¹ Alvarez, R. Michael et al., 2008 Survey of the Performance of American Elections, 59 (2009) available at <http://vote.caltech.edu/drupal/node/231>.

⁸² NCSL Map, *supra* note 6.

⁸³ South Carolina Voter Registration Demographics: Registered Voters Without A Driver's License or Identification Issued by DMV, Jan. 25, 2010 (appendix to ACLU letter to DOJ re: SC preclearance), available at http://www.aclu.org/files/assets/comment_under_section_5_re_submission_no_2011-2495.pdf.

⁸⁴ See, e.g., Todd B. Tatelman, Congressional Research Service, *Interstate Travel: Constitutional Challenges to the Identification Requirement and Other Transportation Security Regulations* 9 (December 21, 2004), available at www.fas.org/sgp/crs/RL32664.pdf.

suppression tactics. However, turning back the tide on such regressive state measures is not enough. As it did by passing the historic Voting Rights Act, the National Voter Registration Act, and the Help America Vote Act, Congress should continue to adopt uniform federal laws designed to protect, restore, and expand all citizens' fundamental right to vote. Such proposals should include passage of the Democracy Restoration Act – a federal standard that restores voting rights in federal elections to the millions of Americans who are living in the community, but continue to be denied their ability to fully participate in civic life because of a past criminal conviction. Other federal legislative reforms should include providing affidavit alternatives to voter ID and citizenship requirements, modernizing voter registration processes, and developing uniform federal standards for early voting, voting by mail, and casting provisional ballots in federal elections.

Finally, the ACLU has urged and continues to urge the Department of Justice (DOJ) to fully enforce federal laws where states violate citizens' fundamental rights by the passage of new regressive voting laws. Over the last few weeks, the ACLU has been joined by over 50,000 of our members and activists in calling on DOJ to ensure compliance with the Voting Rights Act (VRA). We have urged DOJ to scrutinize new voting restrictions aggressively for discriminatory impact, refuse to pre-clear laws under Section 5 of the VRA that have a discriminatory purpose or effect, and to bring cases under Section 2 of the VRA in other states where necessary to challenge regressive voter laws. As we approach another election year, Congress must continue to provide the Department of Justice and other federal entities with the resources and support they need in order to enforce the laws that guarantee Americans broad and nondiscriminatory access to the ballot.

Measures that repress voting are a dangerous and misguided step backward in our ongoing quest for a more democratic society and we commend this Subcommittee's attention to the impact of these new restrictive state voting laws.

Statement by the AFL-CIO
on “New State Voting Laws: Barriers to the Ballot?”
Before the Subcommittee on the Constitution, Civil Rights, and Human
Rights of the Senate Committee on the Judiciary
Thursday, September 8, 2011

Thank you Chairman Durbin, and members of the subcommittee, for the opportunity to provide a statement for the record in this important hearing. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a voluntary federation of 56 national and international labor unions, representing 12.2 million members, including 3.2 million members in Working America, the AFL-CIO’s community affiliate. We are teachers and miners, firefighters and factory workers, bakers and engineers, pilots and public employees, doctors and nurses, painters and plumbers—and more. Within the AFL-CIO, constituency groups bring particular attention to workers who are persons of color, women, veterans or part of the lesbian, gay, bisexual and transgender communities.

The AFL-CIO historically has played an active role in protecting and advancing the right to vote for all Americans. We have done so legislatively at the federal and state levels and devoted substantial resources to assist union members and others to register. Most recently, in 2004 and 2008, the AFL-CIO conducted a non-partisan voting rights protection program to ensure that those who were eligible to vote were given their fair right to vote and those votes properly counted.

In the United States, the right to vote and the free and fair exercise of voting rights by all eligible voters are fundamental principles of our democracy. However, in the past year, we have witnessed a disturbing increase in state legislation to impose unwarranted restrictions on voting. This legislation has included oppressive photo

identification requirements, proof of citizenship to register to vote, attacks on third party voter registration and reductions in early voting days, as well as other types of restrictions, all with the singular purpose of disenfranchising certain voters.

Specifically, legislation has been introduced in more than thirty states and already passed in at least seven states requiring voters to present current government-issued photo identification when voting. In addition to photo identification requirements for in person voting, Kansas, Texas and Wisconsin now have photo identification requirements for absentee voting. Governors in Montana, Minnesota, North Carolina, New Hampshire and Missouri vetoed photo identification bills that passed their legislatures. At least ten states introduced legislation that would require proof of citizenship to register to vote. These citizenship laws have a disparate impact on naturalized immigrants and on elderly, poor and other citizens who lack this documentation.

Efforts to adopt restrictive voting legislation have been part of a coordinated campaign across the country to attack democracy. The proponents of voter photo ID and other restrictive legislation, including the American Legislative Exchange Council (ALEC), the conservative organization linked to corporate and right-wing donors including the billionaire Koch brothers, also have promoted companion legislation that attacks the rights of workers and collective bargaining.

The AFL-CIO and its affiliated unions are opposed to these laws. Legislation requiring voter photo IDs creates a disproportionate burden on racial minorities, senior citizens, immigrants, the homeless, disabled, young people and low-wage workers. Research sponsored by the Brennan Center for Justice has found that approximately 11 percent of all eligible voters do not have current government-issued photo IDs.

Nationwide, 18 percent of citizens 65 and older, 25 percent of African American voting-age citizens, 16 percent of Latino voting-age citizens, 20 percent of young people (ages 18–29) and 15 percent of citizens earning less than \$35,000 a year do not have current government photo IDs. In Wisconsin alone, according to a recent University of Wisconsin-Milwaukee study, those without state issued photo identification who would need to obtain one to vote include 23 percent of Wisconsinites over the age of 65, 55 percent of African American males, 49 percent of African American women, 46 percent of Hispanic men and 59 percent of Hispanic women. In its Progress Report, the Center for American Progress Action Fund estimates voter ID bills would depress Latino voter turnout by as much as 10 percent.

And, several recent incidents in Wisconsin underscore how a photo ID requirement can disenfranchise eligible voters. Wisconsin launched a “soft” implementation of parts of the state’s voter ID law during the just-concluded July and August state senate recall elections. Under the new law, poll workers were required to ask voters for their photo identification but voters were not required to provide it. WTMJ NBC 4 in Milwaukee reported that in the city of Glendale, during the recall efforts in State Senate District 8, voters experienced long lines, including up to 40- minute waits, because of limited polling places and poll workers asking voters to show photo ID. Not connected to the recall elections, but just as problematic, the Daily Kos reported that a Wisconsin DMV worker told a young voter seeking a supposedly state-guaranteed free ID that he could not get one because he did not have enough activity in his bank account to constitute proof of address. Worse, the DMV posts no signs about the opportunity to obtain a free ID and DMV personnel are not instructed to tell voters they can get the ID

without charge. These examples foreshadow greater problems likely to arise when states implement these laws statewide, and they underscore the need for thorough and proper training of personnel and education of voters on the new laws. The combination of restrictive laws, poorly trained election workers and inadequate public notice greatly increases the risk of voter disenfranchisement.

The assault on voting rights and democracy is not limited to photo identification laws, however. In Ohio, Gov. Kasich signed into a law a bill that shortens the state's early voting period, bans in-person early voting on Sundays, prohibits boards of election from mailing absentee ballot requests to voters, and allows poll workers to refuse to tell voters where they can vote. Outraged citizens in Ohio are working together to collect signatures to put Ohio's oppressive voting law, HB 194, on the ballot for November 2012. Florida recently enacted legislation that will, among other provisions, impede full civic participation by curtailing early voting, prohibiting voters from updating their addresses at the polls when they move between counties, and impose onerous new requirements and stiff criminal penalties on organizations engaged in voter registration activities. Notably, more than half of African-Americans voted early in Florida in the 2008 election and fewer early voting days will decrease turnout among this traditionally disenfranchised group. As reported in Politico, Florida State Senator Mike Bennett (R-Bradenton) explained the new law as follows:

Do you read the stories about the people in Africa? The people in the desert, who literally walk two and three hundred miles so they can have the opportunity to do what we do, and we want to make it more convenient? How much more convenient do you want to make it? Do we want to go to their house? Take the polling booth with us? This is a hard-fought privilege. This is something people die for. You want to make it convenient? The guy who died to give you that right, it was not convenient. Why would we make it any easier? I want 'em to fight for it. I

want 'em to know what it's like. I want them to go down there, and have to walk across town to go over and vote.

Proponents of photo ID legislation, citizenship requirements and other restrictions have been unable to provide evidence to support their claims that these strict requirements provide solutions to problems that threaten voting integrity, correct election irregularities or combat voter fraud. Current election laws that do not include strict photo ID provisions have proven to be effective and have not presented impediments to free and fair elections. Moreover, claims of voter fraud have gone unproven time and again. According to the New York Times, in 2007, a five-year investigation by the Bush Justice Department, yielded only 86 convictions out of 196 million votes cast.

There is also evidence that the administration and implementation of legislation requiring voter IDs, citizenship requirements and imposing other restrictions on voting requires significant monetary resources, creates an excessive financial burden for states already in financial crisis, and further depletes resources needed for basic services for state residents, including education, health and human services, police and fire protection and other critical needs. The costs of implementation are significant; for example, a legally compliant photo ID law can cost a state millions of dollars. Wisconsin's law, according to the Wisconsin Legislative Fiscal Bureau, will require more than \$5 million to implement.

There is also a severe burden on the would-be voter. The cost and effort to secure the underlying documentation needed for the free ID, such as a birth certificate, may be prohibitive for many voters, particularly the poor, elderly and students. These citizens are simply disenfranchised, and others with the means to pay for the documentation are

essentially paying for the right to vote, regardless of whether the state-issued identification is “free” otherwise.

Legislatures should enact reforms that *increase* voter participation, not pass laws that impair the ability of eligible voters to cast ballots. Voter suppression legislation is an attack on democracy and voting rights and is part of a coordinated effort to attack working people. The AFL-CIO firmly opposes voter photo ID legislation and other measures that restrict or curtail voting.

Thank you for the opportunity to provide this statement for the record in connection with this hearing.



**Statement of Angela Peoples and Tobin Van Ostern, Campus
Progress**

**To the Senate Judiciary Subcommittee on the Constitution,
Civil Rights and Human Rights**

September 2011

**At the hearing entitled
“New Voting laws: Barriers to The Ballot?”**

We appreciate the opportunity to submit this statement to the Subcommittee. Campus Progress is the youth division of the Center for American Progress, a national nonpartisan organization. Campus Progress works with and for young people to promote progressive solutions to key political and social challenges. Through programs in activism, journalism, and events, Campus Progress engages a diverse group of young people nationwide, inspires them to embrace progressive values, provides them with essential trainings, and helps them to make their voices heard on critical issues.

Voting is a sacred and fundamental pillar of our democratic society. Every year millions of American young people mark their transition to adulthood by registering to vote with the aim of making their electoral voices heard. Campus Progress and the young people we represent are concerned that this cherished right is being undermined by a growing trend in states across the country to pass laws that limit millions of citizens' ability to vote.

Among other current legislative threats to voting are so-called "Voter ID" laws requiring specific forms of identification in order to cast a ballot on Election Day. Campus Progress opposes Voter ID laws because;

1. Voter ID laws address a fake problem. The claimed intent of these laws is to prevent fraud, but in fact there are almost no cases of fraud through voter impersonation.
2. The laws undermine the right to vote, particularly for young people, low income people, people of color, the elderly, the disabled, and America's veterans, groups that already face disadvantages in the political process.
3. The laws are a cynical attempt by corporate funded conservatives to exclude progressive voters from the democratic process.

We are inspired by the leadership of Members of Congress such as Senator Richard Durbin (IL) who have brought the issue of systematic voter suppression to the national stage.

We agree with Senator Durbin, Senator Bennett, and the fourteen additional Senators that wrote the Department of Justice urging them to review the laws being passed in covered jurisdictions due to the Department's authority under Section 5 of the Voting Rights Act.

New Voting Legislation Disproportionately Harms Young People and Other Historically Excluded Citizens

In state legislatures across the country, young people's right to vote has been under attack. In February, New Hampshire, House Speaker William O'Brien said that state voting laws needed to be passed to "tighten up the definition of a New Hampshire resident." O'Brien claimed that college towns that experience hundreds of same-day voter registrations are plagued by "kids voting liberal, voting their feelings, with no life experience." Such offensive views about the rights and capacity of young people

seem to carry over into other states, such as Texas, which prohibits student IDs as an acceptable form of identification for voting purposes.

Wisconsin's new law also makes it more difficult for students to vote. The restrictive law accepts student ID's as a valid form of identification, as long as they have a photo, signature, and expiration date not two years later than issuance. But none of Wisconsin's current student IDs meets all of those requirements. People of color in Wisconsin are also more likely to be adversely affected by new legislation. Fifty-nine percent of Latina women and seventy-eight percent of black males between the ages of 18-24 currently lack a driver's license.¹

In a New York Times op-ed Congressman John Lewis (GA-5) called the growing trend to enact various barriers to voting the "most concerted effort to restrict the right to vote since before the Voting Rights Act of 1965."² He identified the Voter ID laws as a central component of a counterattack on the progress our democracy has made since the 1960's. Similarly, at the Campus Progress National Conference in July 2011, former President Bill Clinton told 1200 young attendees, "There has never been in my lifetime, since we got rid of the poll tax and all the Jim Crow burdens on voting, the determined effort to limit the franchise that we see today."

<http://www.politico.com/news/stories/0711/58419.html>

Voter ID laws require that citizens display an unexpired government issued ID in order to vote. This threshold to cast a vote may seem to some like a fairly easy one to cross, but when you consider the demographics of those who do not have the required ID, the picture looks very different. Fifteen percent of low income people, twenty percent of young voters, and as twenty-five percent of African American voting age citizens do not have an ID that allows them to vote under these new laws.³

The sponsors of these Voter ID laws claim they are waging a war on widespread voter fraud. But there are almost no cases of the kind of voter fraud these laws are designed to prevent. Based on reported cases, someone is more likely to be struck by lightning than to commit voter impersonation fraud. Most

¹ http://www.lwwi.org/Portals/0/IssuesAdvocacy/PDF/VoterID_unneeded_unfair_expensive.pdf

² [New York Times op-ed](#)

³ <http://www.advancementproject.org/sites/default/files/Photo%20ID%20Report%20FINAL%204-6-2011.pdf>

documented voter fraud is actually linked to absentee ballots, a kind of fraud that Voter ID laws do not address.

In the example of Wisconsin, where a Voter ID law has been passed, out of the 2.9 million votes cast in 2004 there were only 18 fraudulent votes.⁴ None of those votes were cast by someone impersonating someone else. Voter ID laws not only fail to prevent voter fraud, but they make voting more difficult for the more than 558-thousand people in Wisconsin without proper identification cards.⁵

Additionally in states like South Carolina⁶, Kansas⁷, and Texas⁸ that have passed Voter ID Laws, fewer than ten cases of voter fraud have been reported over the past five years. These laws however do leave over a million people without the required identification to vote.

Other research from the Advancement Project⁹ and other non partisan groups confirms that voter impersonation fraud is not happening on any significant scale and thus is not a real threat to our democracy. However, these new Voter ID laws are such a threat. If passed throughout the country they would actively disenfranchise over twenty million legal citizens who do not have an ID that meets the new requirements to vote.¹⁰ That is more than one out of every ten eligible voters. – or the entire populations of Missouri, Kansas, Oklahoma, Arkansas, and Kentucky combined.

Voter ID Laws Are an Organized Attempt to Disenfranchise Vulnerable Voters

Last March, Campus Progress exposed the fact that the model “voter ID” law used by several of these state legislatures was drafted by a Washington, DC, group called the American Legislative Exchange Council (ALEC), affiliated with right-wing donors and corporations.¹¹ ALEC says its mission is to promote “free markets, limited government, federalism, and individual liberty.” It is unclear how suppressing the right to vote – the cornerstone of our democracy—further individual liberty or any other component of ALEC’s stated agenda.

⁴ http://www.truthaboutfraud.org/case_studies_by_state/wisconsin_2004.html

⁵ <http://www4.uwm.edu/eti/2007/VoterID.htm>

⁶ <http://news.yahoo.com/jesse-jackson-calls-south-carolina-voter-id-law-215900375.html>

⁷ <http://prairiepolitics.wordpress.com/2010/08/20/numbers-dont-match-kobachs-message/>

⁸ <http://brainsandeggs.blogspot.com/2010/06/texas-voter-fraud-cases-in-past-eight.html>

⁹ <http://www.advancementproject.org/sites/default/files/Photo%20ID%20Report%20FINAL%204-6-2011.pdf>

¹⁰ <http://www.advancementproject.org/sites/default/files/Photo%20ID%20Report%20FINAL%204-6-2011.pdf>

¹¹ http://campusprogress.org/articles/conservative_corporate_advocacy_group_alec_behind_voter_disenfranchise/

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Campus Progress has recently uncovered [new evidence of ALEC connections](#) to all Voter ID legislation passed in that past year. Our research indicates that every single one of the five states that passed Photo ID legislation had ALEC members as co-sponsors of the legislation.

In Texas, one of the co-sponsors was the former National Chairman of ALEC's Board of Directors, Rep. Tom Craddick. In Wisconsin, co-sponsors include the former ALEC Wis. State Chair, Rep. Robin Vos, and current Senate Majority Leader and former ALEC State Chairman, Rep. Scott Fitzgerald. In South Carolina co-sponsors include the ALEC State Chair and member of ALEC's National Board of Directors, Rep. Liston Barfield. In Tennessee co-sponsors includes the ALEC State Chair and member of ALEC's National Board of Directors, Rep. Curry Todd. Finally, in Kansas co-sponsors include numerous members of ALEC such as Rep. Steve Brunk, Rep. Lance Kinzer, Rep. Marvin Kleeb, and Rep. Peggy Mast.

The influence that the ALEC co-sponsors had on the legislation is clear. In examining the first section of definitions of the proposed Pennsylvania Voter ID legislation, [HB 934](#)¹², it is possible to see just how similar it is to the ALEC [model legislation](#) uncovered by Campus Progress.¹³ The definitions are substantively identical, there is very similar wording, and the requirements are in the exact same order.. In other states, due to pre-existing state statutory provisions, the order of the legislative language may have varied but the content is substantively very similar.

To learn more about the Voter ID laws and how they are being spread, visit the Campus Progress Voter ID page at www.campusprogress.org/VoterID

Angela Peoples is the Policy and Advocacy Manager for Campus Progress at the Center for American Progress, where she directs advocacy work on issues of critical importance to young people including immigration reform, LGBTQ rights, affordable education, and voting rights. She graduated from Western Michigan University. Angela was formerly the Legislative Director of the United States Student Association, where she played a key role in campaigns to enact legislation to increase college access and affordability, including the American Recovery and Reinvestment Act and the Health Care and Education Reconciliation Act. She also supported grassroots voter registration and get out the vote efforts during the 2008 election in Michigan and Wisconsin. As a student she collaborated with universities across the state of Michigan to develop and institutionalize the Student Association of Michigan.

¹²

<http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=0934&pn=1003>

¹³ http://images2.americanprogress.org/campus/web/ALEC_voter_ID_model_legislation.pdf

Tobin Van Ostern is the Communications Manager for Campus Progress at the Center for American Progress. Tobin is a graduate of The George Washington University, where he received a B.A. in International Affairs. While in college, Tobin was the National Director of the student wing of the Obama for America campaign –Students for Barack Obama– as well as a National Co-Chair of the campaign. In this capacity, he helped lead Students for Barack Obama from its initial launch with twenty chapters to over 1,000 chapters nationally by Election Day in 2008.

Statement for Hearing on Barriers to the Ballot
By Rob "Biko" Baker
Executive Director League of Young Voters

Our democracy is imperfect. No matter how hard the founding fathers fought, scraped and debated to perfect the political process, they still left room for future generations to continue to improve our legislative undertakings. Despite their contradictions and weak points, they understood that American citizens' unalienable rights needed to be defended by consistently upgrading and improving our democracy. And while the ideological differences ran as deep, if not deeper, than they do today, the framers of the Constitution understood that the right of an individual to participate should be unimpeded and without obstacles.

Today, thanks to this imperfect process, groups of citizens who were once permanently relegated as second class citizens, have a voice in our democracy.

Yet, many of these voices are being threatened to be silenced by Voter ID laws that prevent many of the nation's most vulnerable constituencies from participating in the process. While champions of these laws say that they protect elections, the truth is that they suppress the vote by implementing unneeded barriers and obstacles. In Wisconsin, for example, the State Legislature enacted the most stringent Voter ID bill in the country, even though the Department of Justice found less than a dozen individuals who voted fraudulently in the 2008 elections. And the largest percentage of these folks were formerly incarcerated individuals who were unaware that their rights had been stripped from them. (<http://legis.wisconsin.gov/senate/sen27/news/Press/2011/col2011-004.asp>)

Unfortunately, these laws hit young people the hardest. At the very time the young adults are being rocked by the tough realities of the recession, they are being asked to spend extra cash and time to participate in elections. And while proponents of Voter ID laws and individuals who are unfamiliar with the cultural realities of young people may ask, "What's the big deal about getting an ID," the statistics reveal that large segments of young people simply do not have the necessary identification to participate in the upcoming election. In fact, according to the University of Wisconsin-Milwaukee's Marc Levine, 78% of African Americans 18-24 in Milwaukee do not have drivers license. The transient nature of youth populations, combined with their growing economic hardships, simply prevents them from having the proper forms of identification. And even though the WI Voter ID bill pays for new state IDs, it does not pay for lost, stolen and or IDs of individuals who have recently moved.

While we should work hard to rid elections of fraud, we should not seek and implement a solution to a problem that does not exist. There are numerous ways that we can ensure that voters are participating in good faith, like sharing the last four digits of their Social Security number on their voter registration card, that have worked for decades. These Voter ID laws not only prevent young people from voting, but they also prohibit large percentages of people from becoming stakeholders in the civic process. This is unacceptable. Because while the founding fathers may have restricted the right to

vote to a certain class of people, future generations of law makers understood that this is right is to be enjoyed by all American citizens, not just those that have proper ID.

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BRENNAN
CENTER
FOR JUSTICE

**Testimony of
The Brennan Center for Justice at NYU School of Law
Before the
United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights**

New State Voting Laws: Barriers to the Ballot?

September 8, 2011

The Brennan Center for Justice at NYU School of Law thanks the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for providing the opportunity to present testimony at this important hearing, and in particular, discuss the consequences of strict voter identification requirements.

The Brennan Center is a nonpartisan think tank and legal advocacy organization that focuses on issues of democracy and justice. Among other things, we seek to ensure fair and accurate voting procedures and systems, and to promote policies that maximize citizen enfranchisement and participation in elections. We have done extensive work on a range of voting issues of concern to Americans, including voter identification, voter registration, and voting system security. Our work on these topics has included the publication of studies and reports; assistance to federal and state administrative and legislative bodies with responsibility over elections; and, when necessary, participation in litigation to compel states to comply with their obligations under federal law and the Constitution.

In the past year, state governments across the country have enacted a record number of laws restricting access to the franchise.¹ These laws have taken many forms—from eliminating election-day registration, to restricting third-party voter registration activities, to reducing the number of days for early voting and limiting the number of days for voter

¹ For an overview of these new laws, see Wendy Weiser & Nhu-Y Ngo, *Voting Rights in 2011: A Legislative Roundup*, at http://www.brennancenter.org/content/resource/voting_rights_in_2011_a_legislative_round-up/ (July 15, 2011). A comprehensive report on these laws will be available next week at the same page.

registration. By far the most common legislation of this type introduced in the 2011 legislative session was legislation requiring photo ID for in-person voting. Thirty-four states introduced laws requiring voters to produce photo IDs for in-person voting. Of the states that do not have a voter ID laws, only three—Oregon, Vermont and Wyoming—did not consider voter ID legislation this year. Of the states considering new legislation this year, twenty-two defeated photo ID legislation in the legislature.² Six states passed strict “no-photo, no-vote” voter ID laws;³ and three extended the new photo ID requirements to absentee voters.⁴ In five states, governors’ vetoes prevented photo ID legislation from becoming law.⁵ And, as a result of activity this session, in November 2011 in Mississippi and November 2012 in Missouri, voters will consider ballot measures to amend their state constitutions to require photo IDs for all voters.

The Brennan Center’s testimony will focus on these new voter ID laws. Following a brief discussion of the constitutionality of the new photo ID laws, the Brennan Center will provide an assessment of the evidence related to two issues that are critical to understanding the impact of these new laws, specifically: (a) available empirical evidence related to rate of possession of photo ID by voting-age American citizens, including the effect of voter ID laws on voter turnout, and; (b) the true incidence of voter fraud—particularly with respect to voter impersonation, including an evaluation of the most oft-cited and recent allegations of voter fraud in the photo ID debate.

I. Voter ID Laws Are Not *Per Se* Constitutional

Advocates for photo ID laws often subscribe to the inaccurate belief that the U.S. Supreme Court’s divided decision upholding Indiana’s photo ID law in *Crawford v. Marion County Election Board* rendered all state photo ID laws immune to constitutional challenge.⁶ In *Crawford*, the Court upheld Indiana’s photo ID law against a broad “facial” attack to its constitutionality. In doing so, the Court made clear that the photo ID law remained subject to challenge as a matter of law by particular groups or individuals

² Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Mississippi, Nebraska, Nevada, New Mexico, New York, Ohio, Virginia and West Virginia. There is pending photo ID legislation in New Jersey and Pennsylvania.

³ Alabama, Kansas, South Carolina, Tennessee, Texas, and Wisconsin.

⁴ Kansas, Texas, and Wisconsin.

⁵ Minnesota, Missouri, Montana, New Hampshire and North Carolina. The New Hampshire State Senate will take up the measure to override the gubernatorial veto in September 2011.

⁶ Those challenging photo ID laws to date have argued that they violate federal or state constitutional protections under a variety of theories: they impose constitutionally unjustified burdens on voters without photo ID; the differential treatment of voters with and without photo ID violates the Equal Protection Clause of the Fourteenth Amendment; requiring a voter without ID to pay to obtain one violates the Twenty-fourth Amendment’s prohibition on poll taxes; and photo ID laws run afoul of various state constitutional protections of the right to vote, which may be stronger than their counterparts in the U.S. Constitution.

who were unconstitutionally burdened by the law.⁷ The Court expressly singled out as groups who might bring a successful challenge “elderly persons born out of state,” “persons who because of economic or other personal limitations may find it difficult to secure a copy of their birth certificate” or other documents needed for photo ID, homeless people, and people with a religious objection to being photographed.⁸ In addition to leaving the door open to challenges by affected voters, the Court also left the door open to challenges to other photo ID laws that burden voters more than Indiana’s.

The factual record in *Crawford* largely compelled the Court’s decision refusing to invalidate Indiana’s photo ID law. The Court held that the scant record put before it did not present sufficient evidence of the burdens the law would impose on voters to justify striking down the law.⁹ Consequently, a future lawsuit with a more developed factual record may lead to a different result than *Crawford*.

Finally, photo ID laws may also be vulnerable to lawsuits based on state constitutional rights. For example, Missouri’s photo ID law was struck down by the state’s Supreme Court, which found that the Missouri Constitution had stronger voter protections than the federal constitution.¹⁰

For all of these reasons, the Supreme Court’s divided decision in *Crawford v. Marion County Elections Board* should not be read as a universal constitutional endorsement of Indiana’s photo ID law, let alone all photo ID laws.

II. Photo ID Requirements for Voters Negatively Impact Voting

The best available empirical evidence shows that significant percentages of voting-age American citizens do not possess valid, government-issued photo identification.

Regardless of whether new photo ID laws are constitutional, they are certainly bad policy. Statutes obliging American citizens to obtain and produce government-issued photo ID before being permitted to vote threaten to disenfranchise millions of Americans. The seminal study on this issue, *Citizens Without Proof*—a report based upon a nationwide survey by the National Opinion Research Corporation sponsored by the Brennan Center in late 2006—found that 11% of voting-age American citizens do not have current, government-issued photo IDs.¹¹ That represents more than 21 million

⁷ See generally Vishal Agraharkar, Wendy Weiser & Adam Skaggs, *The Cost of Voter ID: What the Courts Say*, BRENNAN CENTER FOR JUSTICE 3-4 (2011), available at http://brennan.3cdn.net/2f0860fb73fd559359_zzm6bhml.pdf.

⁸ *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 199 (2008).

⁹ *Id.* at 200-03.

¹⁰ *Id.* at 201.

¹¹ BRENNAN CENTER FOR JUSTICE, *CITIZENS WITHOUT PROOF* (2006), available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

individuals. Any policy that would operate to completely bar or limit access to a population of this size from the polls must be viewed with scrutiny and compels demand for a well-supported rationale for its implementation.

These findings in *Citizens Without Proof* are consistent with other independent studies. For instance, a 2008 Collaborative Multi-ethnic Post-election Survey of registered voters in eighteen states found that 8% lack a valid, state-issued photo ID with their current address.¹² And a 2007 Indiana survey found that over 13% of registered Indiana voters lack a valid Indiana driver's license or an alternate Indiana-issued photo ID.¹³

Also of significant concern is the substantial evidence that poor, elderly, and non-white citizens are less likely than the general population to possess the requisite current government-issued photo ID. In *Citizens Without Proof*, we found:

- Citizens earning less than \$35,000 per year are more than twice as likely to lack current government-issued photo identification as those earning more than \$35,000. Specifically, at least 15% of lower-income voting-age American citizens do not have this type of documentation.
- Of citizens age sixty-five and above, 18% lack current government-issued photo ID.
- Up to 25% of voting-age African-American citizens lack valid, government-issued photo ID, compared to 8% of voting-age white citizens.¹⁴

Again, other empirical studies have come to the same conclusions. For example:

- A 2005 telephone survey of Indiana voters aged sixty and older found that 10% lack a valid state driver's license. Within this population, the survey concluded that 30% of non-white voters do not have a valid license.¹⁵

¹² LORRIE FRASURE ET AL., 2008 COLLABORATIVE MULTI-RACIAL POST-ELECTION SURVEY: COMPARATIVE MULTI-RACIAL SURVEY TOPLINES 24 (2008), available at <http://cmpstudy.com/assets/CMPS-toplines.pdf>.

¹³ MATT A. BARRETO, STEPHEN A. NUNO, & GABRIEL R. SANCHEZ, THE DISPROPORTIONATE IMPACT OF INDIANA VOTER ID REQUIREMENTS ON THE ELECTORATE (2007), available at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf

¹⁴ BRENNAN CENTER FOR JUSTICE, supra note 11.

¹⁵ VOTER IDENTIFICATION IN INDIANA: A DEMOGRAPHIC ANALYSIS OF IMPACT ON OLDER INDIANA CITIZENS (2005) (survey of 843 Indiana registered voters aged 60 and older). This survey was attached to the Plaintiffs' Motion for Summary Judgment at a district court proceeding in *Crawford v. Marion County Election Board*. See Motion for Summary Judgment by Plaintiffs, attach. 8, *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775 (2007).

- A 2006 national survey sponsored by the Center on Budget and Policy Priorities found that 8.9% of African-Americans born in the U.S. do not have a passport or birth certificate available.¹⁶
- A 2007 statewide telephone survey of Indiana residents concluded that state residents with only a high-school degree are 9.5% less likely to have access to valid photo ID than college graduates.¹⁷
- A 2007 regression analysis of data from the Georgia Secretary of State and the Georgia Department of Driver Services determined that, compared to white voters, black voters were over three times more likely to lack valid forms of identification. Women and the elderly were also significantly less likely to possess a valid driver's license or state ID card.¹⁸
- The 2008 Collaborative Multi-ethnic Post-election Survey found that 14% of blacks and 7.3% of Latinos lack a valid, state-issued photo ID with their current address, compared with 5.8% of whites.¹⁹

Attempts to Discredit Studies That Show a Significant Number of Americans do not have Government Issued ID are Unpersuasive.

As the seminal national study on the question of how many Americans eligible to vote possess current government issued photo ID, *Citizens Without Proof* is regularly cited by academics, politicians and advocates as conclusive evidence of how many Americans will be impacted by laws imposing harsh and restrictive photo ID requirements on voters. It has also, consequently, been the focus of criticism of studies on the subject from proponents of strict photo ID laws.

The results reported in *Citizens Without Proof* are based on a national survey conducted by the nationally well-respected research firm Opinion Research Corporation (ORC). ORC helped determine neutral question wordings, conducted the questioning of survey participants, and then corrected for biases. The Brennan Center correctly and ethically disclosed all results, along with their statistical significance. The Brennan Center and

¹⁶ ROBERT GREENSTEIN, LEIGHTON KU & STACEY DEAN, SURVEY INDICATES HOUSE BILL COULD DENY VOTING RIGHTS TO MILLIONS OF U.S. CITIZENS 1 (2006), available at <http://www.cbpp.org/files/9-22-06id.pdf>.

¹⁷ MATT A. BARRETO, STEPHEN A. NUNO, & GABRIEL R. SANCHEZ, VOTER ID REQUIREMENTS AND THE DISENFRANCHISEMENT OF LATINO, BLACK AND ASIAN VOTERS (2007), available at http://www.brennancenter.org/dynamic/subpages/download_file_50884.pdf.

¹⁸ M.V. Hood III & Charles S. Bullock, III, *Worth a Thousand Words?: An Analysis of Georgia's Voter Identification Statute*, 36 AM. POLITICS RESEARCH, no. 4, July 2008 at 555-579, available at <http://apr.sagepub.com/content/36/4/555.abstract>.

¹⁹ FRASURE ET AL., *supra* note 12.

ORC acted under proper methodological and ethical protocols for gathering data and reporting conclusions.

The most recent attack on *Citizens Without Proof* comes from Hans von Spakovsky and Alex Ingram, who recently published a Heritage Foundation memo claiming that *Citizens Without Proof* is flawed in both its conclusions and methodology.²⁰ Von Spakovsky and Ingram make a number of false and misleading about *Citizens Without Proof*. A detailed response to those criticisms can be found in a document ("*Citizens Without Proof Stands Strong*") that is annexed as an exhibit to this testimony.

The three main responses in *Citizens Without Proof Stands Strong* are as follows: first, von Spakovsky and Ingram wrongly criticize the survey because it "could have included illegal and legal aliens."²¹ This speculation baseless. As *Citizens Without Proof* clearly reports, ORC specifically questioned survey participants as to whether they were U.S. citizens, using questions generally accepted in the industry. The survey results were limited to U.S. citizens of voting age and did not include illegal or legal aliens. Von Spakovsky and Ingram also try to criticize the survey on the ground that it was not limited to "actual or likely voters, registered voters, or even eligible to vote at all [sic]."²² This too is baseless. *Citizens Without Proof* does not purport to present findings of how many actual, likely, or registered voters do not have the documents. Actual or likely voters are not the only citizens who have the *right* to vote. It is certainly relevant to assess how many of those who are entitled to vote would be prevented from doing so if they tried because of a photo ID or proof of citizenship requirement.

Second, von Spakovsky and Ingram entirely misrepresent the survey questions asked by ORC for the survey used by *Citizens Without Proof*. For instance, they claim that the survey "did not ask respondents whether they had government-issued IDs"²³, even though question one in the survey asked respondents whether they have a "current, unexpired government-issued ID."²⁴

Third, von Spakovsky and Ingram cite two questionable studies and their own haphazard data analyses to show that *Citizens Without Proof* is wrong.²⁵ Von Spakovsky and Ingram entirely ignore the overwhelming weight of the academic research documented above, all of which supports the Brennan Center's conclusions. In their own analyses,

²⁰ See HANS A. VON SPAKOVSKY & ALEX INGRAM, WITHOUT PROOF: THE UNPERSUASIVE CASE AGAINST VOTER IDENTIFICATION (2011), available at <http://origin.heritage.org/research/reports/2011/08/without-proof-the-unpersuasive-case-against-voter-identification>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See Wendy Weiser, Keesha Gaskins & Sundeep Iyer, "*Citizens Without Proof*" *Stands Strong*, Sept. 8, 2011, http://www.brennancenter.org/content/resource/citizens_without_proof_stands_strong/.

²⁵ VON SPAKOVSKY & ALEX INGRAM, *SUPRA* NOTE 20.

they repeatedly cite the flawed list-matching comparisons documented below to bolster their flawed allegations.

In short, von Spakovsky and Ingram fail to raise any legitimate criticism of *Citizens Without Proof*. Their baseless assertions should not be treated with the same seriousness as a national study conducted by one of the nation's best and most respected research firms, or all of the independent and empirically rigorous studies conducted before and since.

Comparisons of voter registration lists with driver's license and state identification card lists are not sufficient to demonstrate conclusive rates of ID ownership in a particular state.

Proponents of strict voter ID laws have also attempted to discredit studies showing many Americans do not have ID required under these laws by comparing the numbers of state issued IDs with the numbers of registered voters, or voting age citizens, in a given state. Some advocates claim, using this flawed list-matching methodology, that the number of government-issued photo IDs actually *exceeds* the number of possible voters. For instance, in an attempt to refute the fact that thousands of voting-age Kansans lack state-issued photo IDs, Kansas Secretary of State Kris Kobach made a simple list comparison between the number of US citizens in his state (2,126,179 persons), and the number of Kansas driver's licenses or non-driver ID in circulation (2,156,446).²⁶ Based upon his comparison, Secretary Kobach concluded that there are more photo IDs in circulation than there are eligible voters in Kansas.

A review of the list-management practices of the Kansas Department of Motor Vehicles shows Secretary Kobach's conclusion is flawed. The Kansas Department of Motor Vehicles ("DMV") only purges people who have moved outside of the state if they apply for a license in another state, and then that state notifies Kansas.²⁷ If Kansas is not notified, the license remains on the DMV list until it has been inactive for five years after the license's expiration date.²⁸ Between 2005 and 2009, 351,462 Kansas residents over 18 left the state, raising the possibility that many of these movers remain on the current DMV list.²⁹

²⁶ *IDs exceed voter-age residents*, THE COLUMBUS DISPATCH (July 25, 2011)

<http://thevotingnews.com/state/ohio/ohio-ids-exceed-voter-age-residents-the-columbus-dispatch/>.

²⁷ Telephone Interview by Maria da Silva with Division of Motor Vehicles clerk, Kansas Department of Revenue (May 27, 2011).

²⁸ *Id.*

²⁹ It is not unreasonable to assume that most of these residents still had current (or very recently expired) licenses at the time they moved. Because Kansas purges its license lists after five years of inactivity following expiration, most of the people who moved between 2005 and 2009 could still have been on the state's DMV rolls in 2010. 350,000 is 16.2% of the number of licenses that Secretary Kobach cites.

Likewise, unless a family member submits a death certificate, deceased persons remain on the DMV list for five years after expiration.³⁰ Assuming that all Kansans over 18 who died in the past five years had a license that expired in 2006 or later, there could be as many as 118,000 people on the 2010 license lists who are no longer alive.³¹ Moreover, Kansas' driver's license list and voting-age population statistics both include permanent residents and other non-citizens who cannot vote. According to the American Community Survey, in 2009 there were 104,731 residents of Kansas who over 18 but not citizens.³² Finally, Kansas' driver's license list includes expired licenses, which are not sufficient identification under the state's voter ID law. For all of these reasons, one cannot draw any meaningful conclusions from the fact that there are a greater number of Kansas driver's licenses and state ID cards in circulation than there are voting-age citizens.³³

Comparing state's driver's license lists with voter registration lists is inadequate to determine whether or not significant numbers of voting-age citizens lack proper ID for voting purposes. Such lists should not serve as a substitute for empirically rigorous surveys that show large numbers of Americans citizens do not have the kind of government issued photo ID required in the most restrictive state laws.

³⁰ Da Silva Interview, *supra* note 27.

³¹ According to the Centers for Disease Control, 122,059 Kansans died between 2005 and 2009. Only about 3% of deaths are among those below 24. Accordingly, if we conservatively estimate that 3% of deaths were among those below 18, then about 118,400 Kansans above 18 died between 2005 and 2009. See CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL VITAL STATISTICS REPORT, DEATHS BY 10-YEAR AGE GROUPS: UNITED STATES AND EACH STATE, 1999-2007 (2010), <http://www.cdc.gov/nchs/nvss/mortality/gmiwk23f.htm>; CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL VITAL STATISTICS REPORT, BIRTHS, MARRIAGE, DIVORCES, AND DEATH: PROVISIONAL DATA FOR 2009 (2010), http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_25.htm (including estimates from 2008 and 2009).

³² U.S. Census Bureau, 2009 American Community Survey Estimates (2010) (custom table identifying citizenship status of Kansas residents by age).

³³ These concerns apply to similar comparisons made in other states. A July 2011 article in the Columbus Dispatch reported that Ohio has 28,000 more driver's licenses than voting age residents. But in 2009, 165,954 people over the age of 18 left Ohio. Approximately 105,000 individuals over the 18 die in Ohio annually (NATIONAL VITAL STATISTICS SYSTEM, CENTERS FOR DISEASE CONTROL AND PREVENTION, DEATHS BY 10-YEAR AGE GROUPS: UNITED STATES AND EACH STATE, 2007 (2010), http://www.cdc.gov/nchs/data/dvs/MortFinal2007_Worktable23f.pdf). And according to the American Community Survey, in 2009 there were 191,439 residents of Ohio who were over 18 but not citizens. As in Kansas, many of these people are likely to be on the State's driver's license lists, but none of them are eligible to vote in the state.

The best available evidence shows that strict voter ID laws depress turnout.

Given the myriad factors that influence voter turnout and the very short period of time that any photo ID laws have been in effect, it is extremely difficult to isolate the precise affect of voter ID laws on voter turnout. However, the most rigorous empirical study to date,³⁴ recently described in the leading journal of political science methodology, *Political Analysis*,³⁵ concludes that the strictest forms of voter ID requirements reduce turnout among registered voters. This study also found that less educated and less wealthy voters are particularly likely to be deterred. Notably, that study relied upon data from 2000 to 2006, and thus does not examine the impact of the more recent, stricter voting ID laws—which would likely have an even greater negative effect. In their study, Alvarez, et al. documented the effect of voter identification requirements on registered voters as they were imposed in states in the 2000 and 2004 presidential elections, and in the 2002 and 2006 midterm elections.³⁶ By using four election cycles and individual responses from the Current Population Survey, the authors could isolate the effect of voter identification requirements on voter turnout. The state-level panel data allows them to control for changes in the electoral environment both across states and across time, which they could not do with only one year of data. The individual-level data allowed them to answer questions about whether certain subpopulations are disproportionately affected by these regulations, something that is not possible using aggregate data.³⁷ Ultimately they found that aggregate data showed no evidence that non-strict voter identification requirements had any effect on voter participation. They did find, however, that the strictest forms of voter identification requirements — combination requirements of presenting an identification card and positively matching one's signature with a signature either on file or on the identification card, as well as requirements to show picture identification — had a negative impact on the participation of registered voters.³⁸

Despite these credible empirical findings, supporters of photo ID laws claim that such laws do nothing to depress turnout. A common survey relied upon by advocates for strict voter requirements is a 2009 study by Jason D. Mycoff, Michael W. Wagner, and David C. Wilson³⁹ finding that photo ID requirements do not have an effect on voter turnout.

³⁴ R. MICHAEL ALVAREZ, DELIA BAILEY, & JONATHAN N. KATZ, THE EFFECT OF VOTER IDENTIFICATION LAWS ON TURNOUT (2007), available at http://brennan.3cdn.net/c267529e2bb704e85d_u0m6ib08s.pdf.

³⁵ R. MICHAEL ALVAREZ, DELIA BAILEY, & JONATHAN N. KATZ, AN EMPIRICAL BAYES APPROACH TO ESTIMATING ORDINAL TREATMENT EFFECTS 26-30 (2010), available at http://brennan.3cdn.net/a5782740e4185414a8_snm6bhfwg.pdf.

³⁶ ALVAREZ ET AL. *supra* note 34, at 2.

³⁷ *Id.* at 2 - 3.

³⁸ *Id.* at 3.

³⁹ See David Muhlhausen, *Photo ID Laws Do Not Reduce Voter Turnout*, Heritage Foundation, May 5, 2009. Available at: http://www.heritage.org/research/testimony/photo-id-laws-do-not-reduce-voter-turnout#_edn15 (citing Jason D. Mycoff, Michael W. Wagner, and David C. Wilson, *The Empirical Effects of Voter-ID Laws: Present or Absent?* PS: Political Science & Politics, 42 (2009)).

Many of Mycoff's conclusions are based upon aggregate data, which has limited applicability in this context because it fails to consider how voter ID requirements affect individuals. Consequently, as a statistical matter, Mycoff et al.'s conclusion that photo ID does not affect voter turnout is suspect.⁴⁰

While this makes sense as a statistical matter, it is also a matter of common sense. Group or aggregate data can tell you how a large group behaves but it cannot give any meaningful information about the impact of specific inputs on individuals within a large group. For example, say 10 people per week visit a grocery store in their neighborhood for four weeks to buy milk and eggs. At the end of the four weeks the grocery store suddenly changes to a cash-only policy. That cash-only policy may deter shoppers who only use credit cards for grocery purchases. After another four weeks that grocery store may still have 10 customers per week, but there is no way of knowing, based upon the aggregate numbers whether any of the original 10 customers were deterred by the new policy. Similarly, if the same or similar aggregate numbers of voters turnout for elections – there is no way to know, without additional research, whether individual voters within that group are deterred by strict voter ID requirements.

In another example, Georgia's Secretary of State Brian Kemp wrote a letter to the *Washington Post* citing increased turnout among black voters between 2006 and 2010 as proof that the state's voter ID laws had no negative impact on voting.⁴¹ This fact was subsequently repeated to argue that voter ID laws do not, in fact, deter voting.⁴² Secretary Kemp drew his conclusions based upon Georgia's turnout numbers without controlling for other influencing factors. Consequently, after careful evaluation his assertion about increased black voters is not persuasive. A more appropriate way to examine these numbers is to compare Georgia's turnout with that in other similar states that did not have voter ID requirements during the relevant time period. For instance, in nearby North Carolina, the black voter turnout rate jumped by 40% between 2006 and 2010. This increase rate dwarfs Georgia's. In 2006, when there was no voter ID

⁴⁰ Mycoff et al. do apply a regression model to individual-level data in order to determine how photo ID affects voter turnout. In statistics, regression analysis includes any techniques for modeling and analyzing several variables, when the focus is on the relationship between a dependent variable and one or more independent variables. More specifically, regression analysis helps one understand how the typical value of the dependent variable changes when any one of the independent variables is varied, while the other independent variables are held fixed. But instead of assessing the effect of photo ID on turnout among groups most likely not to have ID, the authors group together all voters when examining how photo ID affects turnout. This could "drown out" the effect of photo ID on turnout among minorities and elderly, groups less likely to possess ID.

⁴¹ Hans Von Spakovsky, Op-Ed, *Voter ID Was a Success in November*, WALL ST. J., Jan. 30, 2009, http://www.washingtonpost.com/opinions/how-voter-id-laws-keep-elections-honest/2011/06/22/AGS6UkjH_story.html.

⁴² Brian Kemp, Letter to the Editor, *How Voter ID Laws Keep Elections Honest*, WASH. POST, June 24, 2011, http://www.washingtonpost.com/opinions/how-voter-id-laws-keep-elections-honest/2011/06/22/AGS6UkjH_story.html.

requirement, 42.9% of registered black voters turned out in Georgia; in 2010, after the state's restrictive ID requirement became law, turnout was just 50.4%—representing an increase of 17.5%. In other words, the increase in black voter turnout in North Carolina, a state without voter ID laws, was more than twice the size it was in Georgia, a state with stringent voter ID laws. When appropriately contextualized, Georgia's voter ID law no longer looks quite so harmless.

III. The Myth of Widespread Voter Fraud

The Brennan Center has paid particular attention in recent years to claims of voter fraud. We have collected allegations of fraud cited by state and federal courts, commissions, political parties, state and local election officials, authors, journalists, and bloggers. We have analyzed these allegations at length, to distinguish those which are supported from those which have been debunked; furthermore, we have created and published a methodology for investigating future claims, to separate the legitimate from the mistaken or overblown. In 2007, we published a monograph reflecting our analysis, entitled "*The Truth About Voter Fraud*," which compiled for the first time, the recurring methodological flaws behind the allegations of widespread voter fraud that are frequently cited but often unsupported. Allegations concerning the incidence of or potential for voter fraud have been cited as justification for various restrictions on the exercise of the franchise, specifically photo ID laws. There has been much assertion concerning the appropriate degree of concern regarding such fraud, but relatively little attention paid to the facts that we know.

In-person impersonation fraud is the only type that voter ID laws have the potential to address but study after study confirms that such fraud is extremely rare.

The Brennan Center has analyzed claims of rampant voter fraud in order to distinguish unfounded and exaggerated tales of fraud from reliable, verified claims of election misconduct. We published the results of our analysis in a monograph entitled "*The Truth about Voter Fraud*," which compiles the methodological flaws that lead to allegations of voter fraud, and debunks baseless — though often repeated — reports of voter fraud.⁴³ In our research we have found virtually no fraud of the type that a photo ID requirement could fix. As to allegations of other types of voter fraud, our research indicates that these claims often prove baseless upon inspection. The Brennan Center's exhaustive research revealed that there is little to no reliable evidence of in-person impersonation fraud in the country. And, of course, this form of fraud is *the only* misconduct that photo ID laws address.

⁴³ Justin Levitt, *The Truth About Voter Fraud* (2007), available at <http://www.brennancenter.org/content/resources/truthaboutvoterfraud/>.

All available studies show that the incidence of in-person voter impersonation is extraordinarily rare.

- Of the 9,078,728 votes cast in Ohio's 2002 and 2004 general elections, a total of four were deemed as ineligible or "fraudulent" and found by the Board of Elections and County Prosecutors to have merit and pursued legal action. With no evidence of any of the four convictions being preventable by a photo ID law.⁴⁴
- Between October 2002 and September 2005, the Department of Justice brought just 38 cases were brought nationally, and of those, 14 ended in dismissals or acquittals, 11 in guilty pleas, and 13 in convictions, with only one conviction potentially being preventable by imposition of photo ID laws.⁴⁵
- Analysis of Analysis of 2004 Washington gubernatorial election revealed 6 cases of possible double voting and 19 cases of alleged voting in the name of deceased individuals out of a total 2,812,675 ballots cast; the rate of ineligible voting that thus might have been remedied by ID requirements was 0.0009%⁴⁶
- In a comprehensive survey of election fraud, Professor Lorraine Minnite and David Callahan conducted a review of news and legal databases and interviewed attorneys general and secretaries of state in Alabama, California, Florida, Georgia, Illinois, Minnesota, Mississippi, New York, Oregon, Pennsylvania, Texas and Wisconsin, collectively representing about half of the national electorate. The study found that voter fraud of any kind is "very rare," is not more than a "minor problem" and "rarely affects election outcomes." Notably absent from the study are any confirmed cases of in-person impersonation fraud.⁴⁷

Some claim the low incidence of voter impersonation fraud demonstrated above is because it is so difficult to detect.⁴⁸ In truth, there are multiple means to discover in-person impersonation fraud, all of which might be expected to yield more reports of such

⁴⁴ COHHI and League of Women Voters Ohio, *Let the People Vote*, A Joint Report on Election Reform Activities in Ohio, June 14, 2005. Available at:

<http://moritzlaw.osu.edu/electionlaw/litigation/documents/NEOCH-MotionforPI-10-14-08-ExE.pdf>

⁴⁵ U.S. Department of Justice, Criminal Division, Public Integrity Section, "Election Fraud Prosecutions and Convictions; Ballot Access and Voting Integrity Initiative, October 2002 – September 2005". Available online at <http://cha.house.gov/media/pdfs/DOJdoc.pdf>.

⁴⁶ *Borders v. King County*, No. 05-2-00027-3 (Wash. Super. Ct. Chelan County June 24, 2005), <http://www.secstate.wa.gov/documentvault/694.pdf>.

⁴⁷ Lorraine Minnite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (2003). Available at http://www.demos.org/pubs/EDR_-_Securing_the_Vote.pdf.

⁴⁸ See, e.g., *Crawford v. Marion County Election Board*, 472 F.3d 949, 953 (7th Cir. 2007).

fraud, if it actually occurred with any frequency. An individual seeking to commit impersonation fraud must, at a minimum, present himself at a polling place, sign a pollbook, and swear to his identity and eligibility. There will be eyewitnesses: pollworkers and members of the community, any one of whom may personally know the individual impersonated, and recognize that the would-be voter is someone else. There will be documentary evidence: the pollbook signature can be compared, either at the time of an election or after an election, to the signature of the real voter on a registration form, and the real voter can be contacted to confirm or disavow a signature in the event of a question.⁴⁹ There may be a victim: if the voter impersonated is alive but later arrives to vote, the impersonator's attempt will be discovered by the voter. (If the voter impersonated is alive and has already voted, the impersonator's attempt will likely be discovered by the pollworker; if the voter impersonated is deceased, it will be possible to cross-reference death records with voting records, as described above, and review the actual pollbooks to distinguish error from foul play.) If the impersonation is conducted in an attempt to influence the results of an election, it will have to be orchestrated many times over, increasing the likelihood of detection.

During a period when investigating voter fraud was expressly deemed a federal law enforcement priority,⁵⁰ and when private entities were equipped and highly motivated to seek, collect, and disseminate such reports there have been hundreds of millions of ballots cast,⁵¹ it is telling that during that time, with so many ways to identify voter impersonation fraud there have been only a handful of potential instances of impersonation fraud. Every year, there are far more reports of UFO sightings.⁵² The scarcity of reports of in-person impersonation fraud, in this context, is itself meaningful.

Many allegations of fraud are plagued by recurring methodological errors, which are widely discredited.

A common source of fraud claims are list-matching exercises gone wrong. In many cases, the failure of disclosure for the methodology for matching lists makes it impossible to determine the accuracy of the final numbers giving rise to the claims of voter fraud. Comparing lists means comparing multiple fields for accuracy. An abundance of caution

⁴⁹ It is no answer that the individual may have submitted a fraudulent registration form in a fictitious name, presumably outside of the presence of an election official, before arriving in person to vote in that fictitious name. Federal law already contemplates this hypothetical and unlikely possibility, by providing that any registrant new to the jurisdiction who submits a registration form by mail must at some point, and through a broad range of means, offer reliable proof of his identity before voting. 42 U.S.C. § 15483(b).

⁵⁰ See Dep't of Justice, Fact Sheet: Department of Justice Ballot Access and Voting Integrity Initiative, July 26, 2006, at http://www.usdoj.gov/opa/pr/2006/July/06_crt_468.html; Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. TIMES, Apr. 12, 2007.

⁵¹ See, e.g., Republican National Committee, You Can't Make This Up!, at <http://www.gop.com/ycmtu.htm> (last visited Mar. 7, 2008).

⁵² See, e.g., UFO Casebook, Breaking UFO News Reports, at <http://www.ufocasebook.com/>.

is required in any attempt to accurately match information in one data system with information in another. Nevertheless, there are consistent problems when advocates for restrictive voting laws make list comparisons in attempts to prove voter fraud.

Incomplete Matches: “False Positives”

Attempts to match data on one list to data on another list will often yield “false positives”: two records that at first appear to be a match but do not actually represent the same person. If middle initials, prefixes or suffixes are ignored, it can generate thousands of false matches. For example In 2008, the Elections Director for Muscogee County, Georgia, sent out 700 letters to local residents informing them that they were ineligible to vote because they were convicted felons. More than one-third of the voters called to report that there had been a mistake. The purged voters included an octogenarian who insisted she had never even received a parking ticket. According to media reports, the list that went to Muscogee County was generated by a new computer program, and included voters whose names, but not necessarily other information, corresponded or “matched” the names of those with felony convictions.⁵³

Complete but Deceptive Matches: “The Birthday Problem”

Advocates for greater restrictions on voting have compared non-citizen lists with voter registration lists, or lists of people voting in a particular election, matching only name and birthday⁵⁴ Too often, the unsupported conclusion is that non-citizens are illegally voting. There is a problem, however, with presuming that two records with the same name and date of birth must represent the same person. This presumption is not consistent with basic statistical principles. The statistical coincidence of matching birthdates is a proven phenomenon, so much so it has a name – “The Birthday Problem.”⁵⁵ For example, in a modestly sized group, the probability that two people

⁵³ See, e.g., Alan Riquelmy, *Political Confusion: Removal Letter Confuses Law-Abiding Voters*, Columbus Ledger-Enquirer, April 3, 2008, at A01.

⁵⁴ Scott Gessler, State of Colorado Department of State Comparison of Colorado’s Voter Rolls with Department of Revenue Non-Citizen Records, March 8, 2011. Available at: http://cha.house.gov/images/stories/documents/co_non_citizen_report.pdf; Michael P. McDonald & Justin Levitt, Seeing Double Voting: An Extension of the Birthday Problem, ELECTION LAW JOURNAL (2008), <http://www.liebertonline.com/doi/abs/10.1089/elj.2008.7202>.

⁵⁵ See generally, W. Feller, *An Introduction to Probability Theory and its Applications* (3d ed., 1968); Edmund A. Gehan, *Note on the “Birthday Problem”*, 22 Am. Statistician 28 (1968); Ned Glick, *Hijacking Planes to Cuba: An Up-Dated Version of the Birthday Problem*, 24 Am. Statistician 41–4 (1970); A. G. Munford, *A Note on the Uniformity Assumption in the Birthday Problem*, 31 Am. Statistician 119 (1977); M. Sayrafiezadeh, *The Birthday Problem Revisited*, 67 Mathematics Mag. 220–3 (1994); W. Schwarz, *Approximating the Birthday Problem*, 42 Am. Statistician 195–6 (1988); D.M. Bloom, *A Birthday Problem*, 80 Am. Mathematical Monthly 1141–2 (1973); Kumar Joag-Dev & Frank Proschan, *Birthday Problem with Unlike Probabilities*, 99 Am. Mathematical Monthly 10 (1992). An exception to this scholarship is that adding leap years has a small negative effect on the probability of a birthday match.

have the same birthday – day and month – is, for many observers, surprisingly high.⁵⁶ In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%.⁵⁷ Applying the “Birthday Problem” to voter registration lists is fairly straightforward. By including the year (and thus the full birth date), the statistics change somewhat, but the threshold is still surprisingly small to many: given some reasonable assumptions about the average lifespan, the probability that at least two of 150 people have the same exact birth date – day, month, and year – is 50%.⁵⁸ And in a group of 300 people, the probability that two share a birth date match is approximately 90%.⁵⁹ When one begins to compare lists of hundreds of thousands of voters, it is expected that there will be potentially thousands of name and birthdate matches by simple statistical probability and do not reflect any evidence of voter fraud.

Improper addresses: “You have the wrong house”

There are often allegations that voters have illegally registered from a fake address. Allegedly improper addresses may not show fraud. Apartment numbers may be incorrectly read as part of a street address by computerized matching systems, causing the system to reject an accurate address. A typographical or other data entry error may make a legitimate address appear fictitious or appear to be located outside of the relevant precinct. A voter may be registered as living in a building that has been demolished since the registration was processed; if the voter moved within the same precinct, she may not be required to re-register. In addition, an individual (e.g., a site manager of a business) may actually live at what appears to be an invalid business address. An example of this was in the 2000 elections in Missouri. Then-Secretary of State Matt Blunt saw widespread chaos in the hotly contested 2000 election and made claims of widespread fraud. He claimed, as did others, that 79 votes were cast by voters with allegedly invalid addresses. But a subsequent *Post-Dispatch* survey of every one of those suspect properties turned up something else: hundreds of bona fide houses and apartment buildings that were wrongly classified by the city assessor's office as vacant lots.⁶⁰ Because of those inaccurate records, many of those properties' occupants have been

Philip F. Rust, *The Effect of Leap Years and Seasonal Trends on the Birthday Problem*, 30 *Am. Statistician* 197–8 (1976). Geoffrey C. Berresford, *The Uniformity Assumption in the Birthday Problem*, 53 *Mathematics Mag.* 286–8 (1980); Rust, *supra* note 16; Thomas S. Nunnikhoven, *A Birthday Problem Solution for Nonuniform Birth Frequencies*, 46 *Am. Statistician* 270–4 (1992).

⁵⁶ Dr. Michael McDonald, *Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General*, Brennan Center for Justice at NYU School of Law, December 2005 at 8. Available at: http://brennan.3cdn.net/9d1efb8db2c45834e0_pom6bx3bk.pdf

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Jo Mannies and Jennifer LaFleur *City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear to Be in Error, Survey Finds; Just 14 Ballots Are Found Suspect*, *St. Louis Post-Dispatch* **BYLINE:** Of The *Post-Dispatch* November 5, 2001. Available at: http://www.brennancenter.org/page/-/d/download_file_39006.pdf

wrongly tagged as registering to vote from fake addresses. At that time, city records indicated that 2,214 residents appear to be registered to vote from 1,000 vacant lots. Consequently, state and local elections officials targeted 79 of them for casting possibly illegal ballots.⁶¹ The *Post-Dispatch* did in fact find 432 city residents registered from 296 truly vacant lots. But most of those residents haven't voted in years, an indication they had likely moved.⁶²

The most notorious allegations of in-person voter fraud are baseless.

There are a few alleged cases of voter fraud that are cited repeatedly, and many are explained by the matching and database errors identified above. Serious review of these exaggerated claims demonstrate them to be little more than hyperbole and distorted facts. The first such example is drawn from the Special Investigations Unit of the Milwaukee Police Department report into the November 2, 2004 general election in the City of Milwaukee. This report is widely cited as evidence that voter fraud is a problem, and frequently bootstrapped onto claims that photo ID laws are needed to prevent such fraud. Yet while the report revealed administrative mistakes and, occasionally, negligence on the part of election officials, it identified only one potential vote that might have involved impersonation fraud, and no documentation verifying that the vote in question was actually cast. The report expressly disavowed any claim that “thousands of fraudulent ballots were cast in Wisconsin.”⁶³ Indeed, the report showed that much of what had originally been identified as potential fraud was in fact due to clerical error.⁶⁴ The report uncovered several votes by potentially ineligible individuals, including some who were allegedly nonresidents of the City of Milwaukee and some who had allegedly been rendered ineligible due to convictions; however, none of these problems would have been prevented by the imposition of photo ID laws. When questioned about the report, Milwaukee Police Chief Edward Flynn stated that the report itself was never properly vetted within the chain of command and the recommendations contained therein were ill-advised and should have never been included.⁶⁵

Another frequently cited event involved a Brooklyn voter fraud ring, which conspired to manufacture votes decades ago, and consisted of coordinated “ballot stuffing” fraud by local officials and election workers. The crime in question involved forgery of voter registration cards, filing of the cards with the New York Board of Elections and

⁶¹ *Id.*

⁶² *Id.*

⁶³ Special Investigations Unit, Milwaukee Police Department, *Report of the Investigation into the November 2, 2004 General Election in the City of Milwaukee* (City of Milwaukee Report), Feb. 26, 2008 at 53. Available at: http://graphics2.jsonline.com/graphics/news/MPD_2004voterfraudprobe_22608.pdf.

⁶⁴ *Id.* at 56, 61.

⁶⁵ John Diedrich, *Chief Flynn says MPD vote fraud unit on the job*, Journal Sentinel Nov. 4, 2008. Available at: <http://www.jsonline.com/news/milwaukee/33825499.html>

recruitment of people to cast votes in the names of the fictitious voters.⁶⁶ Proponents of photo ID laws argue that this fraud ring could have been stopped by imposition of photo ID laws,⁶⁷ but this is a dubious conclusion. That is because election workers themselves were instrumental to the fraud. Photo ID laws, of course, depend on honest enforcement of the law by election officials. If they are part of a conspiracy to commit fraud, requiring them to check photo ID would not prevent fraud.⁶⁸

Another claim commonly used to support imposition of photo ID laws is the 2010 state representative race in Kansas City, Missouri that was allegedly “stolen” when one candidate, J.J. Rizzo, allegedly received more than 50 votes illegally cast non-citizens of Somali descent.⁶⁹ Due to the closeness of the race, that event was fully investigated and litigated. There no indictments or no prosecutions after a full review of the incident in question and no finding⁷⁰ of illegal voting by the Missouri Court of Appeals after full and fair litigation of all the allegations of election irregularities. The court, in reviewing the reports of election irregularities found credible the election judges who testified, “without contradiction, that all persons who were given a ballot were registered voters who verified their identity by showing proper identification in the check in process,”⁷¹ including the Somali voters who were allegedly non-citizens at the time of the election. Nonetheless, proponents of photo ID laws continue to use this incident in articles, op-eds and blogs as an example of non-citizen voting.

The most recent allegations of voter fraud are similarly unsupported and unreliable.

More recent allegations of voter fraud that fit the pattern of relying upon allegations that seem particularly egregious on the surface, but when closely examined contain little evidence of voter fraud, and utterly no evidence of impersonation fraud that would be solved by enactment of photo ID laws.

⁶⁶ See *In the Matter of Confidential Investigation R84-11*. (N.Y. Supreme Court 1984). Available at: http://electionlawblog.org/wp-content/uploads/1984_grand_jury_report-r84-11.pdf

⁶⁷ Hans A. von Spakovsky, *Voter Photo Identification: Protecting the Security of Elections*, The Heritage Foundation, Legal Memorandum No. 70, July 13, 2011.

⁶⁸ Moreover, other basic safeguards that have since been put into place nationally (such as checking the names, addresses and other identity information of new registrants and ensuring greater security of voter registration materials), means a similar scene almost certainly could not occur today. See Rick Hasen, *1984 New York Grand Jury Report on Voter Fraud Now Available*, ELECTION LAW BLOG, June 23, 2011, <http://electionlawblog.org/?p=19560>.

⁶⁹ Kris Kobach “The Case for Voter ID” Wall Street Journal, May 23, 2011. Available at <http://online.wsj.com/article/SB10001424052748704816604576333650886790480.html>

⁷⁰ See *Royster v. Rizzo*, 326 S.W.3d 104 (2010) Available at: <http://www.legale.com/xmlResult.aspx?page=3&xmlDoc=In+MOCO+20101013351.xml&docbase=CSLW AR3-2007-CURR&SizeDisp=7>

⁷¹ See *id.* at 113-114.

New Mexico

In an attempt to prove voter fraud is a serious problem in New Mexico, Secretary of State Dianna Duran turned over 64,000 cases to the state police for investigation of whether voter fraud was committed.⁷² In June 2011, Secretary Duran turned over a list of names equal to approximately 5% of New Mexico's registered voters to the New Mexico State Police for voter fraud investigation. Secretary Duran took this ill-advised action⁷³ during the consideration of a proposed photo ID law by the New Mexico legislature. To identify the names, Secretary Duran stated that her office used names and birthdates to affect the matches between the voter registration lists and the lists of foreign nationals. She further stated that 117 registrants from the voter registration list had social security numbers that did not match their name. It is important to note that New Mexico has over 900,000 registered voters, most of whom fill out their voter registration card by hand, from which the data must be entered into a centralized data system.

Ultimately, there is no indication that Secretary Duran's analysis included any evaluation or follow-up to determine if any or all of the alleged incidents of voter fraud were the result of data entry errors, unreadable voter registration forms or some other accidental source for the confusion. When interviewed, Secretary Duran's office admitted⁷⁴ that the 64,000 names turned over for investigation could not be considered evidence of voter fraud and may have simply been a result of administrative errors. In addition, in reviewing the hundreds of thousands of names on the list of registered voters and the hundreds of thousands of names on the foreign national license holders lists in New Mexico over an 8-year period, one should expect to find people on both lists with matching names and birthdates. Consequently, any conclusion of fraud, based solely upon name and birth date matches in a population of hundreds of thousands of people should be viewed with suspicion. Once again, there is no evidence that any of the types of voter fraud alleged here could be prevented by the introduction of photo ID laws.

Colorado

In a report issued on March 8, 2011, Colorado, the Secretary of State Scott Gessler's office identified 11,805 non-citizens allegedly illegally registered to vote in the state, of

⁷² Luke Johnson, *Secretary of State Alleges 64,000 Cases of 'Possible' Voter Fraud*, June 16, 2011. Available at: <http://newmexicoindependent.com/70457/secretary-of-state-alleges-64000-cases-of-possible-voter-fraud>

⁷³ John Travis, *Doubling Down on Dubious Claims of Voter Fraud*, Brennan Center for Justice website, June 28, 2011. Available at: http://www.brennancenter.org/blog/archives/doubling_down_on_dubious_claims_of_voter_fraud/

⁷⁴ *Id.*

whom 4,947 allegedly cast a ballot in the 2010 elections.⁷⁵ Secretary Gessler's office, based upon the report was, "nearly certain" that 106 American immigrants were improperly registered to vote in Colorado. The report's conclusion that there are over 11,805 improperly registered voters and of those 4,000 people improperly voted in the 2010 elections are called into question by the qualifying statements and equivocal recommendations contained in the report.

Secretary Gessler's report admits that inconclusive voter registration data does not prove that all 11, 805 persons it identified were registered improperly. It concludes that even where there are improper registrations, they could have been due to unintentional registration, clerical or other administrative failure without any intention of the registrants to vote or commit voter fraud. The report is utterly silent on how it arrived at the conclusion that over 4000 of the "improper registrants" voted in the 2010 election. There is simply a barely-supported, conclusory statement that "it is likely" that many of the 4,214 registrants in question were not citizens when they cast their vote in 2010. Compare the 106 registered voters that the report alleges are "virtually certain" that they are not citizens, with no attempt to suggest that any of those 106 persons actually voted in 2010 or intended to commit fraud.

Most important, the analysis itself was flawed. The study used a non-citizen resident list dating from 2006 to identify over 4900 non-citizens who allegedly voted in 2010. While his process removed duplicates created when a person used two different non-citizen sources of identification to apply for or renew their driver's license or identification card, there is no indication that Gessler's process removed people from the list once they had become citizens. The Secretary did not cross-check those names against the names of over 30,000 Americans⁷⁶ that became citizens in Colorado between 2006 and 2009 before making unsupported allegations that 4900 non-citizens voted in the 2010 election in Colorado. Like many of the other common allegations of potential voter fraud, Secretary Gessler's report is insufficient to support any real claim of voter fraud. Moreover, it is worth noting that because Secretary Gessler's methodology was to compare non-citizen lists with motor vehicle license or state identification card lists, each one of the allegedly "illegal" voters had photo ID to prove their identity.

⁷⁵ Scott Gessler, State of Colorado Department of State *Comparison of Colorado's Voter Rolls with Department of Revenue Non-Citizen Records*, March 8, 2011. Available at: http://cha.house.gov/images/stories/documents/co_non_citizen_report.pdf

⁷⁶ U.S. Department of Homeland Security, Office of Immigration Statistics *2009 Yearbook of Immigration Statistics*, August 2010. Available at: http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf

Kansas

A May 23, 2011 letter to the Wall Street Journal, Kansas Secretary of State Kris Kobach used 221 incidents of reported voter fraud in the 13-year period between 1997 and 2010 to allege that voter fraud is a concern in Kansas.⁷⁷ This allegation of voter fraud relies upon data about “reported” events and “allegations” of problems with no reference to actual prosecutions, arrests or actual findings of voter malfeasance. A review of the 221 incidents of reported “voter fraud” that he cites revealed that the categories of violations included: electioneering too close to a polling location, failure to deliver voter registration cards, improper ballot challenges, registration cards containing improper zip codes, non-citizen registration (no allegation of non-citizen voting), intimidation of poll workers, double-voting and voter impersonation. Of the seven convictions arising out of the incidents of “voter fraud” there were two for electioneering and the remainder for double-voting between states or counties. None of the seven convictions based upon the 221 allegations over 13 years would have been prevented by the introduction of photo ID laws.

Maine

Recently, student voters in Maine have been targeted for criminal investigation based on their student status. In July, Maine Republican Party Chairman Charlie Webster claimed that a list of 206 University of Maine students who both paid out-of-state tuition and voted in Maine elections was evidence of potential voter fraud.⁷⁸ He turned this list over to the newly-elected Maine Secretary of State, who immediately announced that his office would add the student list to an inquiry about voter fraud and called upon the Attorney General to assist in a criminal investigation.⁷⁹

But under Maine law, as in other states, the residency rules for tuition are very different from those for voting; many students meet the legal voting residency requirements while still being ineligible for in-state tuition. Maine students are eligible to vote in local elections so long as they meet state voting residency requirements, which require an individual to affirm that his or her residence “is that place where the person has established a fixed and principal home to which the person, whenever temporarily absent,

⁷⁷ Kris Kobach, *The Case for Voter ID*, Wall Street Journal, May 23, 2011. Available at: <http://online.wsj.com/article/SB10001424052748704816604576333650886790480.html>

⁷⁸ The evidence of voter fraud was widely reported as consisting of a list comparing those who paid out-of-state tuition and voted in Maine. See, e.g., A.J. Higgins, *Maine Secretary of State to Probe Identity and Voter Fraud*, MAINE PUBLIC BROADCASTING NETWORK, July 28, 2011, <http://www.mpbn.net/Home/tabid/36/ctl/ViewItem/mid/3478/ItemId/17419/Default.aspx>.

⁷⁹ Press Release, Maine Secretary of State, Secretary of State Charles E. Summers, Jr.'s Remarks Concerning Possible Voter and Identity Fraud, (July 28, 2011), <http://maine.gov/sos/news/2011/possible-voter-fraud-.html>.

intends to return.”⁸⁰ As long as a student considers a campus address to be a fixed residence and has no immediate intention to leave, he or she may lawfully register to vote at school.⁸¹ The receipt of in-state tuition, on the other hand, is governed by a completely different and more restrictive set of rules. The University of Maine System’s residency guidelines require a student to have lived in Maine for a full year to be considered for in-state tuition, among other requirements.⁸² It is worth noting that this rule, if applied as voting residency requirements, would be plainly unconstitutional.

A student paying out-of-state tuition who voted in a Maine election is not evidence of voter fraud. Like many “anecdotal” claims of voter fraud, this is an example of alleging fraud where no illegal conduct exists. The practice of using a population that may be particularly vulnerable to charges of voter fraud and alleging illegal conduct to raise the suspicions of citizens and politicians is particularly abhorrent. Once again, there are no allegations here that would be prevented by the introduction of a photo ID law.

* * *

Given the amount of speculation and misinformation in the public sphere concerning in-person impersonation fraud, and restrictions ostensibly intended to address such fraud, we thank the Subcommittee for sponsoring this hearing. This represents a welcome effort to ensure that the serious policy debate around election reform remains grounded in the facts.

The available empirical research shows that although in-person impersonation fraud is an occurrence of extraordinary rarity, it has been used to justify policies that appear to offer little benefit and impose substantial cost. The existing safeguards and deterrents have been successful in preventing in-person impersonation fraud to any significant degree; further measures are not only unnecessary, but risk compromising the integrity of our elections to the extent that they shut out eligible citizens.

⁸⁰ M.R.S. 21-A §112 (residence for voting purposes).

⁸¹ *Id.*

⁸² University of Maine System Administrative Practice Letter: Residency Guidelines, (Feb. 25, 2005), available at <http://www.maine.edu/pdf/APL34.pdf>.

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***Citizens Without Proof* Stands Strong:
A Response to Von Spakovsky and Ingram**

Wendy Weiser and Keesha Gaskins

In November 2006, the Brennan Center for Justice published *Citizens Without Proof*, a report documenting the findings of a survey conducted by the Opinion Research Corporation, a prominent independent research firm, about the extent to which American citizens possess government-issued photo ID and documentary proof of citizenship.¹ The report detailed the study's methodology, its principal findings, and the associated margins of error. Most prominently, the study found that 11% of voting-age American citizens—and an even greater percentage of African American, low-income, and older citizens—do not have current and valid government-issued photo IDs.

Since its publication, *Citizens Without Proof* has been widely cited by scholars, legal experts, and the media, and its findings have been widely accepted. What is more, its principal findings have been repeatedly confirmed by multiple independent studies. For example:

- The 2001 Carter-Ford Commission on Election Reform found that between 6 and 11 percent of voting-age citizens lack driver's licenses or alternate state-issued photo IDs.²
- A 2007 Indiana survey found that roughly 13 percent of registered Indiana voters lack an Indiana driver's license or an alternate Indiana-issued photo ID.³
- A 2009 study in Indiana found that of the citizen adult population, 81.4% of all white eligible adults had access to a driver's license, compared to only 55.2% of black eligible adults. It also found that strict photo ID requirements have the greatest impact on the

¹ CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION, BRENNAN CENTER FOR JUSTICE (2006), available at http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf.

² THE NATIONAL COMMISSION ON FEDERAL ELECTION REFORM, TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS, (2001), available at <http://f11.findlaw.com/news.findlaw.com/hdocs/docs/election2000/electionreformrpt0801.pdf>.

³ MATT A. BARRETO, ET AL., WASHINGTON INSTITUTE FOR THE STUDY OF ETHNICITY AND RACE, THE DISPROPORTIONATE IMPACT OF INDIANA VOTER ID REQUIREMENTS ON THE ELECTORATE, (2007) available at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf.

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elderly, racial and ethnic minorities, immigrants, those with less educational attainment and lower incomes.⁴

- A 2007 report based on exit polls from the 2006 elections in California, New Mexico, and Washington State found that 12% of actual voters did not have a valid driver's license.⁵
- A prominent national survey conducted after the November 2008 election found that 95% of respondents claimed to have a driver's license, but that 16% of those respondents lacked a license that was both current and valid.⁶

Recently, however, *Citizens Without Proof* has come under attack by political operatives supportive of strict photo ID requirements for voting. On August 24, 2011, Hans von Spakovsky and Alex Ingram, through the Heritage Foundation, published a memorandum⁷ seeking to discredit the study, criticizing the study's methodology and the Brennan Center's reporting of its results. This document responds to their baseless criticisms.

The Study's Data Collection Methods Follow Best Practices

Citizens Without Proof reports the results of a national survey conducted by the well-respected independent research firm, Opinion Research Corporation (ORC), in November 2006. The *Citizens Without Proof* survey was part of a broader telephone survey conducted by ORC that month, for which ORC followed standard industry practice in terms of survey design, selecting the appropriate number of survey participants for statistically significant results, random selection of survey participants, and method of questioning survey participants. ORC used its standard demographic screens—i.e., questions to determine demographic characteristics of survey participants, such as race, citizenship, and age—for the entire survey. In other words, the survey methodology used for *Citizens Without Proof* was the same widely respected methodology typically used by ORC and similar survey research entities. With respect to the survey questions relating to photo ID and citizenship documentation, before conducting the survey ORC analyzed and revised the proposed survey questions and corrected for any potential bias.

Notwithstanding these facts, von Spakovsky and Ingram criticize the survey because it “could have included illegal and legal aliens.” This is baseless. As *Citizens Without Proof* clearly

⁴ Matt A. Barreto et al., *The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana*, PS: POLITICAL SCIENCE AND POLITICS, 111 (January 2009), available at http://faculty.washington.edu/mbarreto/papers/PS_VoterID.pdf.

⁵ MATT A. BARRETO ET AL., VOTER ID REQUIREMENTS AND THE DISENFRANCHISEMENTS OF LATINO, BLACK AND ASIAN VOTERS (2007), available at http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf.

⁶ R. MICHAEL ALVAREZ ET AL., 2008 SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS (2009), available at http://www.pewtrusts.org/uploadedFiles/www.pewtrusts.org/Reports/Election_reform/Final%2520report20090218.pdf.

⁷ HANS VON SPAKOVSKY AND ALEX INGRAM, HERITAGE FOUNDATION, WITHOUT PROOF: THE UNPERSUASIVE CASE AGAINST VOTER IDENTIFICATION, (2011), available at <http://www.heritage.org/Research/Reports/2011/08/Without-Proof-The-Unpersuasive-Case-Against-Voter-Identification>.

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reports, ORC specifically questioned survey participants as to whether they were U.S. citizens, using questions generally accepted in the industry. The survey results were limited to U.S. citizens of voting age and did not include illegal or legal aliens.

Von Spakovsky and Ingram also try to criticize the survey on the ground that it was not limited to “actual or likely voters, registered voters, or even eligible to vote at all” [sic]. This too is baseless. First, *Citizens Without Proof* does not purport to present findings of how many actual, likely, or registered voters do not have the documents studied. Despite von Spakovsky and Ingram’s insinuation, the report does not in any way misrepresent its survey pool. To the contrary, it clearly says that the survey’s findings relate to all voting-age American citizens, and not to the survey participants’ likely participation in any election. That statement remains true.

Second, contrary to von Spakovsky and Ingram’s assertion, the survey was, in fact, essentially limited to eligible voters, since it focused exclusively on U.S. citizens over the age of eighteen, the main determinants of voter eligibility across the country. (While it is theoretically possible that the survey could have captured a small number of individuals rendered ineligible to vote because of disqualifying criminal convictions, based on the national rate of those disqualifications, that number would be miniscule and would have a statistically insignificant effect on the study’s results.)

Third, von Spakovsky and Ingram are wrong that a more appropriate survey pool for assessing the fairness of photo ID or proof of citizenship requirements for voting would have been actual, likely, or registered voters. While it is true that citizens in those groups are more likely to vote in any given election, they are not the only citizens who have the *right* to vote. It is certainly relevant to assess how many people of those entitled to vote would be prevented from doing so if they tried because of a photo ID or proof of citizenship requirement. The fairness of photo ID and proof of citizenship requirements is not solely a factor of their effect on overall turnout in run-of-the-mill elections; it is also a factor of their effect on the ability of every eligible American—whether or not she has voted recently—to participate in future elections. Indeed, it is often people who do not frequently participate in elections who periodically become excited by a new candidate, mobilize to vote, and change the outcomes of elections.

The Study’s Survey Questions Are Valid and Transparent

As noted above, the survey questions used in *Citizens Without Proof* were analyzed and revised by the independent Opinion Research Corporation to ensure that they did not reflect any bias. And indeed they did not. To enable peer-reviewers and other readers to assess the questions for themselves, *Citizens Without Proof* reprinted them in full. But von Spakovsky and Ingram apparently neglected to read them.

The question that led to the bulk of the report’s findings was the following question: “Do you have a current, unexpired government-issued ID with your picture on it, like a driver’s license or a military ID?” Eleven percent of all survey respondents said that they did not, and even higher percentages of African-American, low-income, and older citizens said that they did not. It is hard to imagine how such a straight-forward question can be interpreted as biased in any way.

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Nonetheless, von Spakovsky and Ingram try to claim that the question was indeed biased. They do so by completely misquoting the question, claiming that the survey “did not ask respondents whether they had government-issued IDs but rather asked whether respondents had ‘readily available identification.’” That is completely untrue. Although the term “readily available identification” might indeed be confusing if used in a survey, it was not used in this survey at all.

Von Spakovsky and Ingram further criticize this question because it does not include a more comprehensive list of all government-issued photo IDs, including military IDs and student IDs, as examples. Again, they misread the question, which expressly *includes* military ID as an example. And while the question does not list state-issued student photo IDs as an example, those IDs are clearly covered as a form of “government-issued ID with your picture on it.” Moreover, possession of student photo IDs is not especially relevant to the question of the fairness of voter ID laws; only some states that require photo ID to vote accept student photo IDs.

In addition to their failed attempt to discredit the photo ID question, von Spakovsky and Ingram criticize the study’s question relating to documentary proof of citizenship. That question was: “Do you have any of the following citizenship documents (U.S. birth certificate/U.S. passport/U.S. naturalization papers) in a place where you can quickly find it if you had to show it tomorrow?” Seven percent of survey participants answered no. Von Spakovsky and Ingram claim that the inclusion of the clause, “in a place where you can quickly find it if you had to show it tomorrow” biased the results. That clause was included to differentiate between people who actually had possession of their birth certificates and those who believed that at some point in their lives their parents obtained a birth certificate for them and thus that the document must exist somewhere. Absent that clause, test survey participants who did not have birth certificates but who assumed they should have access to their birth certificates were likely to erroneously answer yes. What is more, *Citizens Without Proof* accurately reported its results. Specifically, it reported that 7% of respondents “do not have *ready access* to citizenship documents.” In other words, unlike with the photo ID question, it did not purport to reflect findings of how many people have citizenship documents *somewhere*, but rather only those who have those documents readily accessible to them. Even if the survey could have accurately determined how many people have citizenship documents somewhere—and we concluded that it could not because of the confusion relating to birth certificates—the number of people with ready access to those documents is arguably more relevant to the question of the fairness of proof of citizenship requirements for voting.

The Study Accurately and Ethically Discloses Its Results and Limitations

Without any basis, von Spakovsky and Ingram repeatedly suggest that the Brennan Center misrepresented the findings of its survey. To the contrary, *Citizens Without Proof* very scrupulously and accurately reports each of the survey’s findings. Indeed, before the Brennan Center publishing the findings, the report was reviewed in full by the independent Opinion Research Corporation to make absolutely sure that the results were accurately described. ORC also provided the Brennan Center with the margins of error for each of the findings reported, and all such margins of error were fully included.

Von Spakovsky and Ingram try to cast aspersions on the accuracy of the survey's reporting by criticizing the study's weighting of survey responses to account for the underrepresentation of minority respondents. This again displays their ignorance of proper survey methodologies. In fact, this type of weighting of survey responses is standard practice in the field. Weighting removes sample bias from a survey sample so that the results better reflect the target population.⁸ For example, imagine a random survey of 100 Americans ages 15 to 64, where respondents include 60 males and 40 females. In that age range, the general population is 50% male and 50% female. To correct for the demographic discrepancy between the random sample and the population, a researcher would weight each male respondent as 0.83 and each female respondent as 1.25. Consistent with accurate, ethical and responsible survey practices, ORC weighted the survey results to accurately reflect the rate of photo ID possession among all American citizens.

Von Spakovsky and Ingram also find it ominous that 135 survey respondents indicated that they have both a U.S. birth certificate and U.S. naturalization papers, suggesting that this means that results were not fully reported. While this does indicate some misunderstanding among respondents about the nature of the documents described in the question, the misunderstanding in no way biased the survey's results in favor of lack of documentation. All 135 of those respondents were *included* in the reported results as individuals who have citizenship documents. Had they been excluded from the results, the study would have found an even higher percentage of Americans without citizenship documents.

Finally, von Spakovsky and Ingram raise the baseless criticism that the report improperly relies on 2000 Census data. Again, this is highly misleading. Nothing in the survey findings depends on Census data. For example, the finding that 11% of all voting-age citizen survey respondents said they did not have government-issued photo ID has nothing to do with Census data. Rather, the Census data was used only narratively, to provide readers with an understanding of the total number of people who are "11% of all voting-age citizens." According to 2000 Census data, that number was around 21 million people; the number is almost certainly higher in 2011. (Although it is completely irrelevant, von Spakovsky and Ingram are also wrong that the Census uses non-citizen population numbers to estimate the number of voting-age citizens.)

The Study's Findings Have Been Repeatedly Confirmed, Not Undermined

As noted above, the findings of *Citizens Without Proof* have been repeatedly confirmed in subsequent studies. Nonetheless, von Spakovsky and Ingram try to undermine the *Citizens Without Proof* by citing studies that supposedly came to different results. Again, their criticism is baseless. First, unlike *Citizens Without Proof*, none of the studies they cite attempt to survey the number of voting-age Americans who have current state-issued photo IDs. And second, those studies each have serious problems.

⁸ For general illustration of this principle see: Eric L. Dey "Working with Low Survey Response Rates: The Efficacy of Weighting Adjustments" Research in Higher Education Volume 38, Number 2, 215-227. Available at <http://www.eric.ed.gov/PDFS/ED387018.pdf>.

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The 2006 survey they cite for the proposition that only 23 people out of 36,000 nationwide were unable to vote because of an ID requirement is both irrelevant and misleading.⁹ First, in 2006, only one state (Indiana) required voters to present government-issued photo ID to vote. Thus, the lack of photo ID would not have prevented voters in other states from voting. Second, and more importantly, the 2006 survey did not ask whether people voted by regular ballot or by provisional ballot; it merely asked whether they voted. But under federal law, anyone whose vote will not count because they cannot meet a photo ID requirement is still entitled to vote a provisional ballot. In other words, it is possible that thousands of people who voted a provisional ballot in 2006 and thus told survey questioners that they voted in fact did not have their ballots count because they did not present photo IDs.

Similarly, the American University survey they cite, in addition to being an outlier, has serious methodological problems.¹⁰ Although the study concluded that few registered voters in Maryland, Indiana and Mississippi lacked photo ID, the way the survey sampling was done assured that the results would dramatically underestimate the number of voters without ID. Specifically, contrary to common practice, the study did not adjust for underrepresentation of minority and poorer populations, which are less likely to be included in a random sample. These populations have been shown in virtually every other study on the topic to disproportionately lack photo ID. In fact, the authors of the survey noted, “[s]ome of the limitations of the study stem from the unanticipated results. We expected that a much larger number of registered voters would lack a photo ID, and so we did not over-sample any specific population.” Moreover, even if the results were not skewed, unlike *Citizens Without Proof*, the American University survey focused only on registered voters as opposed to eligible voters.

Finally, von Spakovksy and Ingram erroneously rely upon reports from state and federal agencies that more photo IDs are issued than there are registered voters. Specifically, they point to a July 2011 article from the Columbus Dispatch reporting that Ohio has 28,000 more driver’s licenses than voting-age residents.¹¹ But a simple comparison of the total number of state-issued photo IDs to the number of registered voters is inadequate to determine whether how many registered or eligible voters there lack current, valid photo ID required by some states to vote. A closer review of Ohio’s drivers’ license list management practices shows clear reasons why the number of IDs may exceed the number of voting-age citizens without changing the fact that there are many citizens who lack photo ID. First, the Ohio motor vehicle agency (BMV) only removes people who have moved out of state from the BMV rolls if they apply for a license in another state and that state notifies Ohio. If the BMV does not receive notification, the license is marked as expired but remains on the rolls. The holder of that license, however, is not an eligible voter in the state. Second, Ohio only removes deceased people from the BMV rolls after a family

⁹ Stephen Ansolabehere, *The First Big Survey Of Voter ID Requirements—And Its Surprising Findings*, SLATE, March 16, 2007, <http://www.slate.com/id/2161928/>.

¹⁰ ROBERT PASTOR ET AL., CENTER FOR DEMOCRACY AND ELECTION MANAGEMENT, AMERICAN UNIVERSITY, *VOTER IDS ARE NOT THE PROBLEM: A SURVEY OF THREE STATES* (2008), available at http://brennan.3cdn.net/9dfd902a36ac8a7a27_aqm6b0w84.pdf.

¹¹ Bill Bush, *Ids Exceed Voter-Age Residents*, THE COLUMBUS DISPATCH, July 25, 2011, <http://thevotingnews.com/state/ohio/ohio-ids-exceed-voter-age-residents-the-columbus-dispatch/>.

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member sends the BMV a copy of the death certificate.¹² A BMV Drivers License attendant estimated that “many” of the 105,000 individuals over 18 who die in Ohio every year¹³ remain in the BMV driver database, as local counties do not automatically send death certificates to BMV. Family members tend to do so only if they receive a renewal notice for the deceased, which may occur several years after death. And third, Ohio’s driver’s license list includes significant numbers of permanent residents and other non-citizens who cannot vote. According to the American Community Survey, there were 191,439 residents of Ohio of voting-age who were not citizens in 2009. This is equal to 2.17% of Ohio’s voting-age population. (There are no statistics available on how many people with driver’s licenses were not citizens.) In other words, the total number of entries on bloated drivers’ license lists does not at all reflect the number of voting-age citizens who have or do not have state-issued photo ID.

* * *

In short, in their ill-conceived diatribe, von Spakovsky and Ingram fail to raise any legitimate criticism of *Citizens Without Proof*. It is for good reason that *Citizens Without Proof* remains the foremost study of the number of voting Americans who lack government-issued photo ID and citizenship documentation.

¹² In order to have a spouse’s or relative’s Ohio driving record marked as deceased, a copy of the death certificate or a letter from the coroner’s office must be provided. You can mail to the Ohio Bureau of Motor Vehicles, Attn: License Support Verification Unit, P.O. Box 16784, Columbus, Ohio 43216-6784 or fax to (614)752-7987.

¹³ According to the Centers for Disease Control, 972,223 people died in Ohio between 1999 and 2007. Less than 3% of deaths are among those below 24. Accordingly, if we conservatively estimate that 2.5% of deaths were among those below 18, we can safely estimate that between 105,000- 108,000 people in Ohio age 18 and older die every year.

Testimony of Senator Sherrod Brown
U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and
Human Rights Hearing on “New State Voting Laws - Barriers to the Ballot?”
September 8, 2011

Chairman Durbin, Senator Graham, distinguished Members of the Subcommittee; thank you for hosting this important hearing and for the opportunity to testify before this Subcommittee.

I am honored to testify alongside my colleagues, Senator Bill Nelson, Congressmen Emanuel Cleaver, Charlie Gonzalez and Todd Rokita.

Last month, we celebrated the 48th anniversary of the March on Washington – many did so by coming back to Washington to stand in the shadow of the new monument to Dr. King.

The anniversary – and the monument – is a reminder that the march toward free and fair elections continues, even if burdened with barriers – relics of an era of wide-spread voter suppression and disenfranchisement.

I testify today not only as a Senator of a state often at the center of our national elections. I also testify as a former Secretary of State of Ohio, charged with administering those elections.

I understand the burdens of cost and resources in ensuring the fundamental right to vote is exercised by all who are eligible.

But inherent in that responsibility was ensuring the right to vote was accessible, free of intimidation and roadblocks.

As a state, over a period of decades Ohio’s legislators undertook a bipartisan effort to help Ohioans vote more easily.

Republicans – working with Democrats – expanded Ohio’s early voter registration and early voting periods.

As Secretary of State, I did my own small part to increase voter participation. I convinced McDonald’s restaurants in Ohio to print voter registration forms on their tray liners.

We received voter registration cards with ketchup and mustard on them.

We accepted them because by helping eligible voters access the ballot, we were upholding the integrity of our electoral system.

But rather than protecting the right to vote – we have seen brazen attempts to undermine it.

Rather than safeguarding a sacred public trust, there are some willing to exploit it.

Today there is a concentrated campaign being executed in state legislatures across the country – undercutting the very protections enshrined in our Constitution and the Voting Rights Act of 1965 (VRA).

New state voting laws are the result of an organized effort to limit voting rights. It does so in three primary ways:

1. Implementing strict voter identification laws that require showing limited forms of photo identification before voting;
2. Significantly reducing early voting or the availability of absentee ballots; and
3. Limiting voter registration efforts.

Today's hearing will examine several of these laws – and the radical, ideological campaign supporting them.

I'll focus my remarks on what's happening in Ohio – to provide context of what's happening nationally.

During the 2004 presidential election, Ohio saw a re-run of Florida in 2000, a dysfunctional election marred by electronic voting machines improperly tallying votes and Ohioans waiting in lines for as long as nine hours.

I remember standing in line with students from Oberlin College, buying them pizza and keeping them company as they waited for hours to vote.

The clouds over the 2004 election were all caused by process – not the people.

And just seven years later – after becoming a national model in electoral dysfunction – Ohio is poised to return to the headlines – and again for all the wrong reasons.

The new Ohio election law, H.B. 194, does little to fix the problem of the process.

It only exacerbates it – and penalizes people who simply want to vote.

Early Voting

Among the most pernicious elements in HB 194 is the significant reduction in the number of early voting days.

H.B. 194 significantly shortens the early voting window and eliminates early voting on the Saturday, Sunday and Monday prior to the election.

These are the three busiest days of early voting.

Similar laws, which limit early voting, are being justified as cost saving measure.

As a former Secretary of State, I know that limiting early voting would ultimately cost more money, and further burden already stretched boards of elections on election day.

Without early voting, the lines outside polling stations will only get longer. This increases frustration and limits voting.

Parents – with children in tow; shift workers heading to work; and busy professionals will be forced to choose between voting or delaying dinner for their kids; making work on time; and ignoring pressing meetings.

Exercising one's right to vote is a sacred duty. It should not be riddled with additional burdens making it harder.

Ohio's new law also prevents counties from mailing absentee ballots to eligible voters.

I am glad to see the recent agreement brokered by Cuyahoga County Executive Ed Fitzgerald and Ohio Secretary of State, Jon Husted that will ameliorate this provision by having the state mail our absentee ballots to all Ohio voters in 2012. But I will continue to monitor what is happening in my state.

The absurdity of HB 194 is clear as it prevents poll workers from doing even the most basic functions – like helping voters find their right precinct.

Restriction of early in-person voting; restrictions on absentee ballot applications; restricting functions of poll workers – these are not the hallmarks of a free and fair electoral system.

Voter Identification and Voter Fraud

And Ohio was poised – and still might – pass the most restrictive voting ID law in the country – under the auspice of preventing “voter fraud.”

Let's be clear – relying upon fact and evidence – voter fraud is not a pervasive problem.

Any fraud is too much, but proposed voter ID solutions are worse than the cure. They will bar far more honest voters than they will any purported fraudsters.

In Indiana, more nuns were banned from voting – because as elderly residents of their convent they didn't have photo IDs – than there are cases of documented voter fraud in the state.

Yet the conservative Roberts Court watered down voting rights in Crawford v. Marion County Elections Board, even with the unproven basis of “voter fraud.”

I am grateful that my fellow Ohioans have not yet had to encounter this type of restrictive law, though we are not out of the woods.

But I remain concerned about the impact that this type of law will have on the voting franchise generally.

Although most Americans have government-issued photo ID, studies as recent as May 2011, show that as many as 11% of eligible voters nationwide do not.

The percentage is even higher for seniors and students.

Imagine a shut-in neighbor who hasn't driven in years and has voted for years with her utility bill as proof of residence.

Imagine a student – your child, who even though she attends your local state college cannot use her state-issued student ID to vote.

Imagine people with disabilities and low-income voters who lack such forms of ID.

If this law were to pass in my home state, the nearly 890,000 Ohioans over age 18 who lack driver's licenses would be disenfranchised.

This 890,000 includes Ohioans across the state, including the elderly, disabled and Ohioans on each of our college campuses.

Some argue erroneously that voter ID laws do not keep people from voting. They argue that some states with newly enacted voter ID laws had record voting turn out after these laws were enacted.

Such an argument conflates cause and effect. In a nation where voting levels are far too low, increases in turn-out can occur while many – lacking appropriate ID – are still unable to vote.

Proponents of these measures will assert that voter fraud is prevalent and needs to be addressed by sweeping elections reform.

Voter fraud is not prevalent, and is consistently overblown and used as a scare tactic.

In the 2002 and 2004 Ohio elections – in my homestate – there were only four instances of ineligible individuals voting or attempting to vote, out of more than 9 million voters.

That is a minute .00004 percent of voters.

Nationally, the numbers are staggeringly small: an individual has a better chance of being killed by lightning than the chance of an individual impersonating another at the polls.

Let me be clear, restrictive voter identification laws have been enacted without one shred of evidence to substantiate voter fraud.

Too many – including those in the conservative movement, academics, media, elected officials, think tank professionals simply don't want everyone voting. I simply don't think that this is a position shared by most Americans.

And the fact is that ID laws will bar more legitimate, registered voters than there are fraudsters.

Voter Registration

Let me close with one other note – about Ohio's sometimes forgotten role in ensuring the right to vote.

Voter registration is a cornerstone of our democracy – a noble effort that Freedom Riders, trained in Oxford, Ohio, ensued as they traveled to the South and register newly eligible African American voters.

Penalizing the volunteers who register the elderly, students, minorities and low-income voters to vote is among the most transparent attempts to limit access to the ballot.

Yet along with restrictive voter ID law, limiting access to the ballots, undermining voter registration efforts continues to this day in statehouse across the country.

In 1965, two months before the passage of the VRA, President Lyndon Johnson declared that “command of the Constitution is plain” and that it was “deadly wrong... to deny any of [our] fellow Americans the right to vote in this country.”

These words are just as significant today, as they were 46 years ago.

Again, I thank Chairman Durbin and the Members of the Subcommittee for the opportunity to testify today.



**Testimony of Judith A. Browne-Dianis
Co-Director, Advancement Project**

Hearing on “New State Voting Laws: Barriers to the Ballot?”

**Before the Subcommittee on the Constitution, Civil Rights, and Human Rights, Senate
Committee on the Judiciary
Washington, DC
Thursday, September 8, 2011**

Chairman Durbin and Members of the Subcommittee on the Constitution, Civil Rights and Human Rights, thank you for the opportunity to testify today about new barriers to voting, which are threatening to undermine our democracy.

My name is Judith Browne Dianis. I am Co-Director of Advancement Project—a national, civil rights organization that advances universal opportunity and a just democracy. For almost 20 years, I have been a civil rights litigator bringing cases on behalf of individuals and organizations on a range of issues including housing, education and voting rights. I served as lead counsel in a lawsuit against the State of Maryland for failure to fully implement the “Motor Voter” Law. In November 2000, I investigated civil rights violations after the election in Florida, providing the basis for the *NAACP v. Harris* lawsuit, in which I served as counsel. In 2004, I successfully advocated to preclude the use of the infamous Florida felon purge list, and served as counsel in *DNC v. RNC*, which stopped the RNC from challenging voters of color based upon an illegal voter caging program. In 2008, I represented the Virginia NAACP in litigation against the Commonwealth of Virginia and several jurisdictions for racial disparities in the allocation of voting machines. Since 2001, Advancement Project’s Voter Protection Program has eliminated barriers to voting and improved election administration in advance of Election Day by working closely with local civic engagement groups and election officials.

Chairman Durbin and Members, based on my experience, expertise, and the work Advancement Project is doing around the country, I must report that the threat to an inclusive democracy, full participation by Americans in the electoral process, is quite real and quite pernicious. It is being effectuated through a well-organized and well-financed campaign. The right to vote, particularly for racial minorities, young voters, senior citizens, the working poor and people with disabilities, is under assault. There is a growing body of evidence to establish that well-funded reactionaries are determined to execute a voter suppression campaign against voters of color, in particular, who are growing in number and who reactionaries fear will vote their interests. The country has not seen this level of attempted suppression since the days of poll taxes and literacy tests. Advancement Project and its partners are battling a systematic campaign supported by the development and strategic distribution of repressive model legislative proposals crafted by the American Legislative Exchange Council, a conservative legislative advocacy group that receives funding from the Charles G. Koch Charitable Foundation and other

Tea-party backed interests. Some 38 states introduced legislation this year, based on ALEC's model legislation, designed to impede voters at every step of the voting process.¹ At least a dozen states passed laws this year that could prevent millions of hard working, taxpaying Americans - especially racial minorities, young voters, the working poor, people with disabilities, people with criminal records and senior citizens - from casting ballots in 2012 and beyond, making this the most significant setback to voting rights in a century.

In my testimony today, I will highlight new barriers to voting that have been enacted in the past 8 months; to describe the specific harms these barriers pose for people who are and will be eligible to vote in the 2012 election cycle; and to underscore the compelling necessity of eliminating these barriers in order to guarantee fair elections. This rash of newly enacted voting laws place restrictions on the number and types of acceptable forms of voter identification, early voting opportunities, and access to voter registration. Advancement Project has been at the forefront of combating the spate of new voting restrictions this year, working with local groups in at least a dozen states. In April, Advancement Project published *What's Wrong With This Picture?*,² which analyzes and sounds the alarm on pernicious voter identification proposals. Advancement Project and its partners filed litigation in Missouri to challenge the ballot initiative that could lead to voter ID restrictions in that state.

Record turnout by Black and Latino voters in 2008 impacted federal and state elections across the nation. According to Pew Research Center, Black turnout increased almost five percentage points, from 60% in 2004 to 65% in 2008, nearly matching White turnout (66%). Latino turnout also rose, from 47% to 50%. New barriers to voting may neutralize these surges and systematically disenfranchise already registered voters. These barriers to voting can be notably seen in the following instances:

- Introduction of pernicious, restrictive voter identification laws, introduced in 34 states this year that stand to disenfranchise millions of voters nationwide.
- Legislation to limit early voting, such as bills passed in Florida, Ohio, Tennessee, Georgia and West Virginia.
- Laws, such as those passed in Florida and Texas, making it more difficult for groups like the League of Women Voters to register voters.
- Laws, such as those passed in Kansas and Alabama, requiring documentary proof of citizenship to register to vote.
- Policies such as those in Florida, Iowa and Virginia, that make it harder for people with past criminal records to regain the right vote even after they have paid their debt to society.

¹ Eliza Newlin Carney, "Voting: The Rising Degree of Difficulty," *National Journal*, March 13, 2011, <http://nationaljournal.com/columns/rules-of-the-game/voting-the-rising-degree-of-difficulty-20110313> ("Many GOP-controlled legislatures are working from model legislation produced by the American Legislative Exchange Council, a conservative group that has received funding from the Charles G. Koch Charitable Foundation, the progressive group Campus Progress recently disclosed.")

² *What's Wrong with this Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights*, April 2011, <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf>

- Coordinated plans to place millions of challengers at polls in 2012 to challenge voters' eligibility in ways that may intimidate eligible voters and disrupt polling place operations.³

The historical struggle to gain equal voting rights in our nation for citizens of color has been a long and painful one. Ratification of the 15th Amendment prohibited the denial of the right to vote on the basis of race, color or previous condition of servitude. For almost one hundred years after, people continued to suffer, bleed, and die to ensure that individuals can express their voices equally through the ballot box. The sudden increase of new legislation restricting voting combined with voter intimidation tactics collectively could result in mass disenfranchisement of eligible voters in 2012 and beyond.⁴

I. VOTER IDENTIFICATION RESTRICTIONS

The most pervasive new threat to voting rights has been voter identification restrictions, which were introduced in 34 states this year. Thirteen states this year passed laws restricting identification voters may show before being allowed a ballot. Such bills were vetoed by governors in 5 states: Montana, Minnesota, Missouri, North Carolina and New Hampshire. Missouri and Minnesota are considering constitutional amendments to enshrine photo ID requirements. Newly enacted laws in some states, like Texas, South Carolina and Alabama, face review by the Justice Department before they can be implemented. In other states, like Wisconsin, Kansas, and Tennessee, implementation will soon be underway. While these new laws vary slightly from state to state, they all limit the forms of identification voters must show before being allowed to cast a ballot to only non-expired, photo ID issued by that state or the federal government. The issue is less about *whether* voters should be made to demonstrate their identity at the polls, but rather *how restrictive* the allowable forms of identification should be.

Federal law requires first-time voters by mail to present ID,⁵ and more than half the states already require all voters to show ID at the polls, but most allow a range of forms of acceptable ID. Prior to this year's new laws, eight states required photo ID from voters but only two – Georgia and Indiana – prevented voters from casting regular ballots if they lacked a photo ID.⁶ The other states had provisions allowing voters without ID to vote a regular ballot upon completion of an affidavit attesting to their identity. The new laws do not afford that option to voters, and in nearly every state that passed such a law, the laws are more restrictive in the forms of allowable ID than the corresponding laws in Indiana and Georgia, which until this year had the most restrictive voter identification laws in the country.

A. These new laws significantly alter the voting process and make it much harder for people to vote.

³ Mary Tuma, "King Street Patriots aim to recruit 1 million volunteers to monitor 2012 elections," The American Independent, Mar. 27, 2011, <http://www.americanindependent.com/175736/king-street-patriots-aim-to-recruit-1-million-volunteers-to-monitor-2012-elections>.

⁴ Id. The *National Journal* reported, "The movement to challenge voters in person is only one prong of a multi-part national campaign to fight supposed fraud by erecting new barriers to voting. These include proposed photo IDs and proof-of-citizenship bills; plans to eliminate same-day voter registration, and efforts to restrict voting access for students and felons. The movement is fueled in part by new GOP legislative majorities."

⁵ Help America Vote Act of 2002, Pub. L. No. 107-252, 42 U.S.C. § 15301 et seq. (2002)

⁶ See, Ind. Code §§ 3-5-2-40.5; 3-11-8-25.1.; Ga. Code § 21-2-417.

- The new laws create unprecedented, expensive and unnecessary duties and training needs for overburdened poll workers.
 - Following July's "soft rollout" of Wisconsin's new photo ID law during its recall elections, Maribeth Witzel-Behl, Madison County Clerk, expressed concerns about the burdens caused by the implementation of the new law. "Between showing ID and signing the poll book, the amount of time each voter needs to spend at the poll book has at least doubled," she wrote. "The minimum number of Election Officials needed at each polling place will increase from 5 workers to 9 workers for small elections at polling places that have only one ward because of the need to check IDs . . . Election Officials are very concerned about dealing with voter lines that could easily become two or three hours long."⁷
 - In the face of staggering budget shortfalls, implementing photo ID laws could cost cash-strapped states \$20 million or more to cover costs of providing ID at no cost to those who lack one, notifying voters and facilitating the process of getting an ID, informing and educating voters, training staff and poll workers, and increased administrative costs associated with implementing the new law and of processing the increase in provisional ballots cast by voters without the requisite ID.⁸ A photo ID bill pending right now in Pennsylvania could cost taxpayers \$11 million.⁹ Indiana spent \$12.2 million implementing its law;¹⁰ Missouri estimated \$17.4 million over three years to inform its 4 million voters of new ID requirements.¹¹
 - Poll workers receive less training than the average bouncer in assessing IDs, and people often do not look like their photos. Texas Senator Judith Zaffirini brought this point home during floor debates on the new Texas law, presenting an enlarged image of the ID of her chief of staff, who was known to everyone in the room and sitting right next to her during the demonstration. Legislators could not identify the identification as belonging to the aide, as his hair had thinned considerably since the photograph was taken.¹²
 - Poll workers already disparately administer identification laws. A Pew report following the 2008 elections found that African American and Latino voters

⁷ Email from Maribeth Witzel-Behl, Madison County Clerk, July 21, 2011.

⁸ "The Cost of Voter ID Laws: What the Courts Say" Brennan Center for Justice, Feb. 17, 2011, http://brennan.3cdn.net/2f0860fb73fd559359_zzm6bthuid.pdf.

⁹ Pennsylvania Budget & Policy Center, "Voter Mandates Costly to Taxpayer," May 10, 2011, <http://www.pennbpc.org/voter-mandates-costly-taxpayer>.

¹⁰ "Report on Photo ID for Voting Purposes," ISACA Photo ID Exploratory Committee, http://www.iowaauditors.org/index_files/ISACAVoterIDReport020211final.pdf.

¹¹ 2010 Missouri Committee on Legislative Research Oversight Division - Fiscal note, <http://www.southernstudies.org/MO%202010%20Voter%20ID%20Fiscal%20Note.pdf>

¹² "Guess Who?", *The Party Insider*, Jan. 26, 2011, <http://www.txdemocrats.org/2011/01/26/guess-who/>

- were asked to show “picture ID” more than whites – 70% for African Americans, 65% for Latinos, compared to 51% for Whites.¹³
- In testimony to the U.S. Senate Rules Committee, Missouri Secretary of State Robin Carnahan reported, “nearly one out of every five complaints received by my office concerned a voter being asked for the wrong type of identification at the polls on Election Day. In fact, I was one of those voters. If it can happen to me and I’m the Secretary of State, it can happen to anyone.”¹⁴
 - Ohio Republican Secretary of State Jon Husted publicly opposed a photo ID proposal in Ohio this year, saying that existing ID laws allowing a broader range of IDs were sufficient: “I believe that if you have a government-issued check, a utility bill in your name with your address on it, that no one made that up. They didn’t call AEP and establish utilities in their name to commit voter fraud. Let’s be clear about this. There are some other forms that are legitimate. . . . What if I lose my ID on Election Day? Should there be no other alternative I can use to cast my ballot? I think that there should be.”¹⁵
 - They eliminate legitimate forms of identification owned by many voters that can effectively verify a person’s identity at the polls.
 - Thomas Bloom, 22, a registered voter in Missouri, has two forms of current valid photo ID, including a student ID from St. Louis University and a valid driver’s license from Iowa, neither of which would be allowed in order to vote in the state under a photo ID law vetoed by the Governor this year but that could become law if a proposed constitutional amendment is passed in the state in 2012.¹⁶
 - Emmanuell Aziz, 43, is registered voter in Missouri who has a Missouri driver’s license and a passport, but both have expired in the last two years as his physical condition due to multiple sclerosis has left him unable to drive. He is confined to a wheelchair and no longer employed. Under current law, he would be able to present his existing Missouri driver’s license or passport, even though expired, but those could be deemed invalid by a proposed photo ID amendment pending in the state. In addition to having no practical need to renew his driver’s license, he would face nearly insurmountable obstacles to doing so. The skilled nursing facility where he lives does not have ready access to public transportation. The cost of obtaining a new state identification would impose a significant hardship on him, in terms of getting to the offices necessary to get a certified copy of his birth certificate and a new

¹³ R. Michael Alvarez; Stephen Ansolabehere, and Adam Berinsky, Gabriel Lenz, Charles Stewart III and Thad Hall, “2008 Survey of the Performance of American Elections Final Report,” (Feb. 18, 2009), http://www.pewtrusts.org/uploadedfiles/wwwpewtrustsorg/Reports/Election_reform/Final%2520report20090218.pdf

¹⁴ Missouri Secretary of State Robin Carnahan, Testimony for U.S. Senate Rules Committee, http://www.sos.mo.gov/elections/carnahan_senate_rules_testimony.pdf

¹⁵ Husted Opposes Photo ID Mandate, State elections chief says other voter verifications valid, *Columbus Dispatch*, April 8, 2011, <http://www.dispatch.com/content/stories/local/2011/04/08/husted-opposes-photo-id-mandate.html>

¹⁶ Aziz v. Mayer, Petition, para. 4, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

identification as well as paying for the documents. Moreover, as a result of his disability, the quality of his handwriting has deteriorated, which causes his ability to replicate his signature difficult; consequently, if required to vote by provisional ballot, his ballot would be rejected due to a non-matching signature.¹⁷

- Unlike existing photo ID laws in Indiana and Georgia, new voter ID restriction laws in Wisconsin, Texas, Kansas, Tennessee and South Carolina do not allow a broad range of state-issued ID, such as an employee identification card, public benefits card, student ID or veterans card. These more restrictive laws stand to disenfranchise voters who have forms of identification that can verify their identity but may not be on the limited list of acceptable forms of ID.
- They privilege certain classes of voters based on income, employment, education, and culture, while forcing other voters to accept second-class ballots at the polls.
 - Gail Bloom of Rhinelander, WI, wrote about the challenges her 101-year old mother (who has been voting for 83 years) will face under Wisconsin's new photo ID law: "Because she no longer has an unexpired driver's license and her baptismal record isn't acceptable as proof of her identity, she has had to apply for and pay \$20 for a state certified birth certificate. She is not exempt from needing an ID as those in nursing homes are because my sister and I have been able to care for her in her home. The next step is to take her in her wheelchair to the Department of Transportation to wait in line to have her picture taken. If she doesn't request a free voter ID, she will have to pay an additional \$28. My mother is fortunate that she has someone to take her through this vote suppressing procedure. How many elderly or disabled residents do not?"¹⁸
 - Joy Lieberman, 80, a former elected official, stands to be relegated to second-class citizenship under a photo ID proposal in Missouri, because her original birth certificate does not include her middle name, which is the name under which she is registered to vote, and thus, she will face difficulty renewing her ID once it expires. Even if she qualifies for the proposed law's exemptions for senior citizens, she would be forced to cast a provisional ballot, which would not be counted unless her signature matches that on her original voter registration. Unfortunately, a severe hand tremor now prevents her from duplicating her signature, and any provisional ballot she casts will not be counted. Her vote will likely never count again. "I am NOT a provisional citizen," she wrote in a letter to the Governor urging him to veto the legislation. "I and the 230,000 other registered Missouri voters who will be disenfranchised are NOT provisional/marginal people. We are proud

¹⁷ Aziz v. Mayer, Petition at para. 2, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

¹⁸ Dave Zweifel, "Plain Talk: 101-year-old disgusted with Walker's voter ID law," *The Cap Times*, July 22, 2011, http://host.madison.com/ct/news/opinion/column/dave_zweifel/article_1b510a4c-0845-5bcc-afbe-bd19138314a6.html#ixzz1SqBDGmzw

Americans, proud Missourians who deserve to vote. Driving is a privilege—voting is a RIGHT!”¹⁹

- Under Texas’ new law, a voter who does not present one of the limited forms of identification and who does not fall within the scope of the Act’s very narrow exemptions,²⁰ may vote provisionally, which will only be counted if the voter returns to the election authority within six days with one of the limited forms of acceptable photo ID.
- Under Wisconsin’s new law, a voter without the required statutory ID will be allowed to cast a provisional ballot.²¹ The ballot will be counted only if the voter provides sufficient ID to election officials before the polls close or to the municipal clerk by the Friday following Election Day.²²
- The sponsors and advocates of these laws ignore the substantial hurdles, including cost factors, involved in obtaining the specific type of ID required under the new laws.
 - Nora Elze, 88, may not be able to get a Georgia ID because of difficulty tracking down her marriage license from 1946 that documents the legal change of name from her birth certificate. When she went to get her Georgia ID recently, she was told that because her birth certificate had her maiden name on it and her Pennsylvania ID had her married name, she would need to prove that she was married by producing the marriage license.²³
 - Maria Sapp, 35, a U.S. citizen and registered voter in Missouri, is having difficulty renewing her Missouri ID because her original birth certificate is in Russian and is not accepted by state officials as documentation of identity.²⁴
 - Cindy Dunne, of Winston-Salem North Carolina, wrote of the difficulties her sister would face under a photo ID law that was vetoed by the governor this year but could resurface next year: “I have a sister who worked as a home healthcare aide for 20+ years, even as her own health was failing. She was forced to stop working after having a diabetic blackout. It took her several months to make the many adjustments to her life --- loss of freedom because she couldn’t drive, loss of income, and medical coverage because she couldn’t work, etc. She had to learn to live on even less than the \$20,000/year she had been making. She is neither computer, nor cell phone literate. Now, she is on

¹⁹ Aziz v. Mayer, Petition at para. 6, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

²⁰ The Act exempts persons who cannot be photographed for religious reasons, those with disabilities, and those who can prove that they have been the victims of a natural disaster, which is defined very narrowly. See Submission Letter at 5 (disabilities), 8 (religious objection and natural disasters).

²¹ § 6.79(2)(d), (3)(b); Sections 47-50

²² § 6.97(3)(b); Section 90.

²³ “Savannah Woman told she needs Proof of Marriage to get Driver’s License,” Aug. 29, 2011, <http://www2.wsav.com/news/2011/aug/29/savannah-woman-told-she-needs-proof-marriage-get-d-ar-2337843/>

²⁴ Aziz v. Mayer, Petition at para. 5, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

Medicaid, getting food stamps and she started taking Social Security payments at age 63. She is still just barely making it and has lost some of her self-esteem due to all the losses she has experienced over the past several months. How can the government actually think the expense of getting a picture ID will not be costly to set-up the infrastructure and more bureaucracy, but also to elderly individuals like my sister? Are the people who were elected to represent us that far removed from us that they truly can't identify with the hardships they will be causing?"²⁵

- In Wisconsin, which passed a new photo ID restriction law, DMV offices currently have no weekend hours and few full-time offices, with 25% of offices open less than one day a month.
- With office closings and reduced hours, 401,374 Latinos and 93,651 Blacks live in 127 counties in Texas without ready access to a Department of Public Safety office in their county to secure an ID for voting as required by the new law there.²⁶
- In Tennessee, which passed a photo ID law this year, only one-third of counties have a DMV office to secure the required ID.
- Tina Hutchinson is an African American registered voter in Missouri who is challenging a proposed constitutional amendment to allow strict photo ID requirements in the state. She has been rendered disabled by an accident and, as a result, is no longer able to work and must sustain herself on a fixed income. She has no car or ready access to transportation. Because she has two plates and thirteen screws in her left leg, it is difficult for her to go places using any available transportation. She currently still has a driver's license that will expire in 2013. The cost of securing the necessary documents to renew her driver's license, as well as the cost of the renewal itself, would impose a significant hardship for her. She believes that these hardships will prevent her from renewing her license and acquiring an ID acceptable for voting under a proposed constitutional amendment in the state when her license expires.²⁷

Photo ID restrictions disenfranchise eligible registered voters. After Indiana's photo ID law was implemented, the media reported about a group of elderly nuns who lacked driver's licenses and current passports who were turned away from the polls, despite the fact that the poll worker who turned them away was a member of their own order and personally knew the sisters.²⁸ The *Los Angeles Times* reported the case of a 19-year-old Indiana college student, a

²⁵ <http://www.democracy-nc.org/VoterIDStories.html>

²⁶ Data referenced in this section available at <http://quickfacts.census.gov/qfd/states/48000.html>.

²⁷ *Aziz v. Mayer*, Petition at para. 9, avail at <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>.

²⁸ "ID law keeps nuns, students from polls," *Los Angeles Times*, May 7, 2008, <http://articles.latimes.com/2008/may/07/nation/na-voterid7>; see also, "Elderly Nuns, Sec. of State Charlie White and a Rare Encounter with Voter Fraud," *Ideas and Action*, March 4, 2011, <http://www.ideasactionblog.org/2011/03/elderly-nuns-sec-of-state-charlie-white.html>

registered voter in Indiana who was turned away from her polling site in South Bend, where she was attending college. Officials at the local motor vehicles office would not accept her Illinois license as proof of identification to get an Indiana ID.²⁹ The state's non-partisan Election Protection hotline that year fielded a number of calls from registered Indiana voters who were turned away at the polls because they lacked state or federal photo identification. One newly married woman said she was told she couldn't vote because the name on her driver's license didn't match the one on her voter registration record. Another was turned away because she had only a college-issued ID card and an out-of-state driver's license.³⁰

Even when they have the required ID, voters still risk being disenfranchised by poorly trained poll workers implementing new ID requirements. The proposals place near total discretion at the hands of poll workers to determine the sufficiency of the ID and to verify identity based upon the photo. Each of the newly enacted laws, like South Carolina's, allow poll workers to determine if they believe the ID is not the voter, in which case the voter would be made to cast a provisional ballot.³¹ None of the new laws allow voters to contest an election authority's decision to not count a provisional ballot, and most of the photo ID laws fail to provide adequate funding for poll worker training, leaving the average poll worker less trained at scrutinizing voter ID's than the average bouncer – much less the average TSA agent. This opens the door to arbitrary and discriminatory enforcement. Such discretion opens the door to covert bias. As one Harvard University study showed, African Americans are already more likely to have their IDs more harshly scrutinized at the polls: A survey of voters after the 2006 elections found that 47% of whites were asked for photo identification whether it was required or not, compared to 54% of Hispanics and 55% of African Americans.³²

B. Minorities are disproportionately impacted.

Millions of voters who lack or would have significant difficulty getting the requisite ID stand to be disenfranchised by these policies. An estimated 11 percent of US citizens – 21 million people – do not have current, government-issued photo ID.³³ In South Carolina, whose new photo ID bill is currently under scrutiny by the Justice Department, 178,000 registered voters lack a driver's license or state identification card, according to the state election commission. The Pennsylvania Department of Transportation estimates that a photo ID proposal currently pending in the state could impact 318,000 registered voters who lack a state ID. In Wisconsin, 178,000 seniors – 23 percent of voters 65 and older – lack a state ID. Minorities are disproportionately impacted. African Americans are more than twice as likely to lack adequate ID - 25% of African-American voting-age citizens – more than 5.5 million people – have no current, government-issued photo ID. At least 15% of voting-age citizens earning less than

²⁹ "ID law keeps nuns, students from polls," *Los Angeles Times*, May 7, 2008, <http://articles.latimes.com/2008/may/07/nation/na-voterid7>.

³⁰ "Nuns with Dated IDs Turned Away at Ind. Polls," *Associated Press*, May 6, 2008, http://www.msnbc.msn.com/id/24490932/ns/politics-decision_08/.

³¹ HB3003 (SC 2011), http://www.scstatehouse.gov/sess119_2011-2012/prever/3003_20110126.htm

³² Stephen Ansolobehere, "Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day," *PS: Political Science & Politics* (2009), 42:127-130 Cambridge University Press, *The American Political Science Association* 2009

³³ *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice at NYU School of Law, <http://www.federalelectionreform.com/pdf/Citizens%20Without%20Proof.pdf>

\$35,000 per year do not have a non-expired government-issued photo ID. And 18% of American citizens age 65 and above – or more than 6 million seniors – do not have non-expired, government-issued photo ID.³⁴ In Wisconsin, which recently enacted the nation’s strictest ID law, half of the state’s African Americans and Latinos lack a Wisconsin ID.³⁵ Among young voters, the disparate impact is even starker – of those age 18-24, 78% of African American men, 66% of African American Women, 59% of Latino men and 46% of Latina women in Wisconsin lack a state ID.³⁶ The legislative fiscal impact statement for Wisconsin’s legislation estimated that 20% of Wisconsin residents do not possess the type of identification required by the law³⁷ (compared to Indiana, where 99 percent of voters have a state ID). It is clear after the Supreme Court’s decision in *Crawford v. Marion County Election Board* (upholding Indiana’s voter identification law) that states are legally bound to take steps to accommodate voters who do not have ID.³⁸ Unfortunately, most of the new laws fail to allocate sufficient funding for an effective outreach and education campaign, and many of the newly enacted laws do not provide adequate fail-safes for such voters. In this way as well, the new laws passed in Texas, Wisconsin, Kansas, Tennessee and others are more restrictive than the photo ID laws in place in Indiana and Georgia.

C. Many voters face substantial hurdles to obtaining the particular ID prescribed by the new laws.

The hurdles for those without requisite ID can be substantial. State IDs may cost \$10 to \$30 to obtain and many state license bureaus have limited hours and locations for obtaining an ID. Even if states provide ID without cost to those who don’t have one, the underlying documents necessary to procure a state ID are not cost-free, and can be difficult, time-consuming and sometimes impossible to obtain.

D. Costs of getting the newly required ID can be significant.

The cost of obtaining identification to vote is tantamount to a poll tax. While the specific rules vary state to state, in general, as states implement provisions of the REAL ID act, voters must present several underlying primary and secondary forms of identification, such as a certified birth certificate or passport, to prove identity, citizenship, and place of residence in order to get a state ID. In some instances, voters must present a social security card, proof of residence, court documents or marriage and divorce records if names have changed from that on their birth certificate. A copy of a Missouri birth certificate costs \$15, and in Indiana it costs between \$12 and \$20. In Texas, it costs \$22. In some states, it may cost up to \$45 for a birth certificate. A current U.S. passport can cost between \$85 and \$145, while naturalization papers can cost up to \$200. Making matters more difficult, seventeen states plus Puerto Rico and Guam require a photo ID before they will issue a copy of one’s birth certificate, or alternatively require

³⁴ Id.

³⁵ John Pawasarat, “The Driver License Status of the Voting Age Population in Wisconsin,” <http://www4.uwm.edu/eti/barriers/DriversLicense.pdf>.

³⁶ Id.

³⁷ Wisconsin Department of Administration, Division of Executive Budget and Finance, Fiscal Estimate - 2011 Session, LRB Number 11-0089/1, Introduction Number AB-0007.

³⁸ *Crawford v. Marion County Election Bd.* 553 U.S. 181, 198-99, 201 (2008) (relying on the fact that Indiana’s law allowed people over 65 to vote absentee without ID, that the indigent could vote without ID upon signing an affidavit of their identity, and that those without a birth certificate could present other forms of ID as their primary document).

multiple pieces of secondary forms of ID to get a birth certificate, which is then necessary to present in order to get a photo ID. In some states, the wait to get a copy of a birth certificate or other records can be weeks or months. There may be other hidden costs such as transportation to various agencies and fees related to acquiring supporting documents. These significant hurdles led the Missouri Supreme Court to conclude in 2006 that the state's photo ID law amounted to a poll tax and unconstitutionally disenfranchised voters – even if the state provided ID without cost to those who lacked one.³⁹

Texas' new photo ID law requires all voters to produce one of the following in order to vote by regular ballot: a Texas-issued driver's license, a Texas state identification card, a license to carry a concealed handgun, a U.S. military card, or a U.S. passport, each of which must be current or have expired no earlier than 60 days before the date of presentation; or a U.S. citizenship certificate that contains a photograph of the voter.⁴⁰ The costs of obtaining such ID are not insignificant.

- The cost of a driver's license is \$25. The cost of a state ID card is \$16.⁴¹ To get one, voters must present at least one primary and two secondary documents. A copy of a birth certificate is \$22⁴²; the cost of a marriage license is \$71.
- The cost of handgun license is \$140, and requires a state ID card (\$26 or \$16), fingerprints (\$9.95) and a training class (\$70-\$120).⁴³
- The cost of a U.S. Passport is \$110, plus \$30 for the card, plus an execution fee of \$25.⁴⁴
- A citizenship certificate costs \$600⁴⁵ not including the costs of the underlying documents to secure the certificate, including: certified birth certificate (\$22); marriage license or divorce decree (\$71)

For voters who lack one of those forms of ID and attest that they cannot afford one of the above forms of ID, Texas law requires the state to provide "an entirely new identification

³⁹ *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006) (found: "[I]n addition to the monetary costs imposed on persons seeking to obtain the proper photo ID, the process to do so imposes additional practical costs, including navigating state and/or federal bureaucracies, and travel to and from the Department of Revenue and other government agencies. One of these practical costs is the time it takes to receive the appropriate documentation. In Missouri, the waiting period for a birth certificate alone is six to eight weeks. In Louisiana, the birthplace of many Katrina refugees who have taken shelter in Missouri, the processing period is eight to ten weeks. Should citizens need additional documents, the bureaucratic hurdles and waiting periods would increase.")

⁴⁰ See Senate Bill 14, Charter 123, 82nd Legislature 2011, <http://www.sos.state.tx.us/statdoc/bills/sb/SB14.pdf>.

⁴¹ "TxDPS – Driver License or ID Requirements," Texas Department of Public Safety, <http://www.txdps.state.tx.us/DriverLicense/identificationrequirements.html>

⁴² "Where to Write for Vital Records – Texas," Centers for Disease Control and Prevention, <http://www.cdc.gov/nchs/w2w/texas.htm> (birth certificates); "

⁴³ "DPS Concealed Handgun License Fee Schedule," Texas Department of Public Safety, http://www.txdps.state.tx.us/administration/crime_records/chl/feesReqDocs.pdf (handgun licenses)

⁴⁴ "Passport Fees," Travel.State.Gov, http://travel.state.gov/passport/fees/fees_837.html (passports)

⁴⁵ "Instruction for N-600, Application for Certificate of Citizenship," Department of Homeland Security, <https://www.uscis.gov/files/form/n-600instr.pdf> (citizenship certificate).

document that the State must provide free of charge to voters who attest to their inability to pay for the State's required forms of identification."⁴⁶ This so-called safeguard is anything but.

This election identification certificate will be issued by the Texas Department of Public Safety (TDPS) to any registered voter (or voter applicant), free of charge, who attests that s/he is obtaining the certificate because s/he does not have one of the required forms of identification. The new law does not outline what a voter must provide in order to secure this certificate, but authorizes the TDPS to "require applicants [for the election identification certificate] to furnish the same information required for a driver's license."⁴⁷ The provision is baffling and troubling.

First, it is unclear whether this provision -- requiring voters to provide the same information required for a driver's license -- is the actual requirement for the certificate or whether regulations will be issued at a later date outlining the requirements for the certificate. To the extent that this is the actual requirement for the certificate, in order to secure a driver's license in the State of Texas, a driver must provide (i) one "primary" form of identification, (ii) two "secondary forms of identification," or (iii) one "secondary" form of identification and two "supporting" forms of identification.⁴⁸ Each of these categories of documents contains forms of identification that cost money to secure. For example:

- A primary form of identification includes an expired driver's license and a current passport, which cost, respectively, \$25 and \$110 (for passbook passport);⁴⁹
- A secondary form of identification includes a birth certificate, which costs \$22;⁵⁰ and
- A supporting form of identification includes a marriage license or divorce decree, which costs approximately \$71.⁵¹

Given these requirements, this "free" election identification certificate is hardly free to voters.

In Wisconsin, the state will provide a state ID without cost but only if the voter knows to check a small box on the ID application form in which the voter attests that the ID is needed in order to vote. DMV staff have been instructed not to inform customers of the free ID unless they ask,⁵² and customers who fail to attest that they need the ID to vote are charged \$28. And, just as with the law in Texas and the other states that passed photo ID laws this year, the underlying documents necessary to obtain the ID are not free.

⁴⁶ See Letter from Ann McGeehan, Director of Elections, Texas Secretary of State to T. Christian Herren, Jr., Chief Voting Section, Civil Rights Division, Department of Justice (July 25, 2011) at p. 11.

⁴⁷ Submission letter at 9

⁴⁸ See "Identification Requirement for Texas Driver's License or Identification Card," <http://www.txdps.state.tx.us/driverlicense/identificationrequirements.htm>.

⁴⁹ For driver's license information, see "TxDPSS - Driver's License Fees," Texas Department of Public Safety, <http://txdps.state.tx.us/DriverLicense/dlfees/htm>, and for information on passport fees, see "Passport Fees," Travel.State.Gov, http://travel.state.gov/passprt/fees/fees_837.html.

⁵⁰ "Where to Write for Vital Records - Texas," Centers for Disease Control and Prevention, <http://www.cdc.gov/nchs/w2w/texas.htm>.

⁵¹ "Personal Records: Fee Schedule," Harris County Clerks Office, http://www.cclerk.hctx.net/Personl_Rec/FeeSchedule.aspx.

⁵² Top DOT official tells staff not to mention free voter ID cards to the public - unless they ask, The Capitol Times, Sept. 7, 2011, http://host.madison.com/news/local/govt-and-politics/capitol-report/article_335f59fa-d8fe-11e0-8a23-001cc4c03286.html.

Minorities are less likely to be able to secure the types of ID required by these strict laws. Census data demonstrates that racial minorities are far more likely to live in poverty than their white counterparts. For example in Texas, the median income for Black and Latino voters (\$39,000) is 44% less than the median income for White voters (\$56,587). Moreover:

- 8.8% of White Texans live below the federal poverty level of \$22,350, compared to 22.8% of African-Americans and 25.8% of Latinos in Texas. Among voting age Texans, the poverty rate for Whites is 8.3%, while the poverty rate for Blacks is 18.8% and for Latinos is 20.8%.

Because of these stark economic disparities, the cost of securing the required documents, the cost of the required documents themselves, and the time and cost associated with securing all necessary documents, will disproportionately affect voters of color. And, the effects will be quite adverse as these costs, in the aggregate, are not insubstantial.

E. Underlying documents can be difficult or impossible to access.

In addition to cost, the underlying documents necessary to obtain an acceptable ID can be difficult and even impossible to obtain. For people born out of state, who lack transportation to offices to get these documents, cannot afford these documents, work multiple jobs or inflexible hours, have disabilities or are home-bound, the hurdles can be significant. Others, such as those born at home or informally adopted, those with no permanent residence or who changed their names, or those whose records were destroyed, may not be able to acquire the underlying documents at all.

F. Locations to secure an ID are difficult to access.

In the face of severe budget cutbacks, many states have reduced the hours and locations of motor vehicle offices. These closures and the difficulty of getting to these offices, create significant hurdles to obtaining an ID even if the state provides it without charge.

- Tennessee: only one-third of counties have a license bureau, resulting in wait times of up to four hours in urban areas servicing disproportionately minority customers.⁵³ In contrast, the state-wide average wait time is 45 minutes.
- Wisconsin: DMV offices currently have no weekend hours and few full-time offices. State officials are considering plans to close some DMV offices in major urban areas in order to expand hours in other parts of the state.⁵⁴ Wisconsin's state budget now requires that DMV driver license and ID card services be offered in all 72 counties at least 20 hours a week. Currently, only 30 counties offer this, with 25% of DMV offices statewide open less than one day a month. Studies from the University of Wisconsin show that 50% of African American and Latino voters lack a state ID. In contrast, Indiana – where 99% of voters have ID – has accessible DMV offices with full-time hours in every county. Voters in Wisconsin have begun to get a taste of the challenges of navigating the DMV for an ID as the state has instituted trial implementation of the photo ID restriction law during this summer's recall elections. The law is slated to go into full force in February. Numerous news reports document voters not being informed that the ID must be provided for free and instead being charged \$28. Further, there are reports of DMV officials contesting the sufficiency of underlying documents proving residency, such as bank statements.

⁵³ "Will long lines sink photo ID law?" Tri-State Defender, July 15, 2011, <http://www.tri-statedefenderonline.com/articlelive/articles/6429/1/Will-long-lines-sink-photo-ID-law/Page1.html>

⁵⁴ "Wis. DMV says closure decisions aren't final," Associated Press, July 22, 2011, http://www.forbes.com/feeds/ap/2011/07/22/business-us-wi-dmv-centers_8579755.html.

- Texas: With office closings, and reduced hours, estimates show that up to 401,374 Latinos and 93,651 Blacks live in 127 counties in Texas without access to a Department of Public Safety office in their county.
 - A study of available data reveals that there are 34 counties in Texas that either have no TDPS office or the office has been closed. In four of those, the Hispanic population is over 75%⁵⁵. There are 46 counties where the TDPS office has been temporarily closed, and the state has not said when, if at all, these offices will be re-opened. Of those, 16 counties either have a Hispanic population over 50% or a combined minority population of over 50%.⁵⁶ In addition, there are 46 counties where the TDPS office has reduced business hours, meaning that these offices are open only a few days a week, are open for less than 8 hours a day, or a combination of both. Of those, 14 have a Hispanic population over 50% or a combined minority population over 50%.

The limited opportunity to obtain identification due to reduced hours and locations is further exacerbated by a lack of public transportation. Moreover, minorities, as a general matter, are more likely to lack transportation than whites.⁵⁷ Therefore, the burden of having to drive to a license office in another county creates an additional obstacle for voters, especially minorities, even when the ID is provided for free.

G. Fail-safes are insufficient

The laws passed this year offer little option for voters who lack or are unable to get an acceptable form of ID. While these laws may offer limited exemptions, they nevertheless require voters without ID to cast provisional ballots which will not be counted unless various conditions are met. Provisional ballots will be counted only if the voter returns to the election authority within a short amount of time – six days in Texas, three days in Wisconsin – with a proper form of ID. This additional burden on the voter renders this failsafe nearly non-existent. This “cure” period for provisional ballots fails to address the burdens that voters will have in securing the required identification, as detailed above. If a voter has not already overcome the barriers to obtaining the ID prior to Election Day, the additional small window of time after the election will not likely change these circumstances. For voters exempt from the ID requirements (in some cases senior citizens, people with disabilities, people with religious objections to being photographed), the proposed laws require the voter to cast a provisional ballot that won’t be counted unless the voter returns to the election authority to execute an affidavit attesting (and in some cases documenting) eligibility for the exemption. Additionally a voter’s provisional ballot will be rejected, under laws like the one vetoed this year in Missouri, if the signature on the provisional ballot envelope does not match the signature on the voter’s original registration. This carries a host of problems for those most likely affected by the provisions, including elderly voters and people with disabilities.

The purported fail-safe provisions in these laws hardly ensure that a qualified voter’s provisional ballot will be counted, given the widely-reported problems concerning the high rate that provisional ballots are rejected, often for reasons unrelated to the voter’s actual eligibility.

⁵⁵ <http://quickfacts.census.gov/qfd/states/48000.html>.

⁵⁶ <http://quickfacts.census.gov/qfd/states/48000.html>.

⁵⁷ In Texas for example, see: http://factfinder.census.gov/servlet/STTable?_bm=y&-state=st&-context=st&-qr_name=ACS_2009_5YR_G00_S0802&-ds_name=ACS_2009_5YR_G00_&-tree_id=5309&-redoflag=false&-caller=geoselect&-geo_id=04000US48&-format=&-lang=en

In the 2004 presidential election, for example, 78.6% of the provisional ballots cast in Texas were rejected.⁵⁸ Notably, several of those provisional ballot rejections occurred in counties with predominately minority populations. In contrast, Michigan, which has a photo ID requirement, does not require voters without ID to cast provisional ballots; rather, such voters may sign an affidavit under oath attesting to their identity and cast a regular ballot.

Moreover, the training and notice requirements outlined in most of the new laws do not increase the number of voters who possess the required forms of identification. And, it will do little to guarantee that there will not be disparities, as those noted above, in the difficulty in securing the required forms of identification. Training and education will do nothing to improve the accessibility of these forms of identification to voters, particularly those who live in poverty or are nearly impoverished.⁵⁹ In short, training and education, no matter how elaborate, will do nothing to improve the disparities in the possession of and access to the forms of identification required by this law.

In short, the new restrictions on voter identification degrade the integrity of elections by systematically excluding large numbers of eligible voters from both being able to cast a ballot and have that ballot counted.

II. RESTRICTIONS ON VOTER REGISTRATION

New laws passed this year not only make it harder to vote but also to register to vote. Historically, restrictions on voter registration activities were used throughout the South to limit opportunities for people of color to register to vote. This year, six states introduced bills to impose restrictions on voter registration groups. The most onerous of these is Florida's HB1355, which imposes a myriad of requirements on third party voter registration groups. It will unduly burden voter registration groups by requiring anyone assisting citizens in registering to vote to register themselves with the state, to account for each registration form in their possession, and introduce rules requiring registration forms to be submitted within 48 hours (down from ten days). Groups that fail to verify the completeness of each application and submit them to election officials within 48 hours face fines of up to \$50 per application for missed deadlines; up to \$1,000 for each application; and even felony prosecution for other infractions.⁶⁰ The impact of this law is alarming. As a result of these new requirements and penalties, the League of Women Voters – which has been registering voters in Florida for nearly 70 years - will shut down its voter registration activities in Florida out of fear that they simply could not keep up with the legislation's onerous requirements.⁶¹ These restrictions have a disparate impact on voters of color: African-Americans and Latinos are more than twice as likely as white voters to register

⁵⁸ "Provisional Voting and Voter Identification," Rutgers, Eagleton Institute of Politics, http://www.eagleton.rutgers.edu/research/provisionalvoting_voterID.php
<http://www.sos.state.tx.us/elections/historical/prov2004.shtml>.

⁵⁹ The problems cited herein will not be alleviated by education to help voters find their local DPS or DMV offices. Instead, the problems relate to the number and hours of these offices and the issues related to transportation to these offices, all of which will continue to exist even if notified of office locations.

⁶⁰ Fla. Stat. 97.0575(2), (3)(a) (Fla. Laws ch. 2011-40, HB1355, Sec. 4)

⁶¹ "Elections bill prompts League of Women Voters to stop registration," May 9, 2011, http://blogs.orlandosentinel.com/news_politics/2011/05/elections-bill-prompts-league-of-women-voters-to-stop-registration.html

through a voter registration drive⁶². The U.S. Census Bureau reported that, in Florida in 2008, African Americans had a registration rate of 53.6%, Latinos a rate of 47.4%, and Asians a rate of 35.3%, as compared with an overall average registration rate in Florida of 62.4%, and an average for white Floridians of 69.2%.⁶³ Leon Russell of the Florida State Conference of the NAACP, which has a long history of registering African-American voters in Florida, said that the provision “would likely discourage participation in voter registration efforts.”⁶⁴ State Senator Arthenia Joyner noted that the “48 hour cap will cripple voter registration efforts.” She stated that, “[i]n the Black churches there’s ongoing voter registration,” but under the proposed change, “you have to have someone every day” turn in registration forms, which would be a significant burden. Representative Darryl Rousson said the new rule would “stifle” voter registration.⁶⁵ Florida, treating the legislation as an emergency measure, began implementation of the law immediately, despite that it was required to submit the changes to the Justice Department for review under Section 5 of the Voting Rights Act.⁶⁶

The restrictions were implemented despite strong objections from election officials themselves, several of whom have filed motions to intervene in a federal court assessing whether the law has a retrogressive impact in five Florida counties under the Voting Rights Act.

III. REDUCTION OF EARLY VOTING

Other legislative trends reduce opportunities for voting to make it less convenient and less accessible for voters. New laws in Florida and Ohio significantly shorten opportunities for early voting. In Florida under HB1355, early voting will be reduced from 14 days to eight days, and in Ohio under HB194 it will be reduced from 35 days to 11 days, eliminating Sunday voting, and reducing hours of availability. Early voting offers convenience for those who have difficulty getting to the polls on Election Day. That includes voters who work hourly wage jobs, single mothers, and others who have caretaking obligations or work more than one job. This too has a disparate impact on voters of color and the working poor. In 2008, African-American voters were disproportionately far more likely to vote early, and the elimination of Sunday voting in both Ohio and Florida eliminates an option disproportionately used by Black churches to mobilize voters.⁶⁷ Studies show that voters of color are more likely to vote early, while White

⁶² U.S. Census Bureau Population Survey, <http://dataferrett.census.gov/run.html>, for the Current Population Survey, Nov. 2006, Nov. 2008, and Nov. 2010. See “Voting Law’s Sunday Punch,” *Sarasota Herald-Tribune*, June 15, 2011, <http://www.heraldtribune.com/article/20110615/OPINION/110619722/-1/news?Title=Voting-law-s-Sunday-punch>.

⁶³ U.S. Census Bureau, *Voting and Registration in the Election of November 2008*, (Reported Voting and Registration of the Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2008), <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

⁶⁴ Letter to Chris Herren from NAACP Legal Defense and Education Fund, Florida Conference of Black State Legislators, Florida State Conference NAACP, June 17, 2011, http://naacpldf.org/files/case_issue/2011-06-17%20LDF%20joint%20statement%20to%20AG%20regarding%20Florida%20election%20laws%20.PDF

⁶⁵ Id.

⁶⁶ Marc Caputo, “Elections supervisors in key counties refuse to implement new law,” *St. Petersburg Times*, May 28, 2011, <http://www.tampabay.com/news/localgovernment/elections-supervisors-in-key%20counties-refuse-to-implement-new-law/1172246>.

⁶⁷ “New election law may disparately affect black voters,” Associated Press, June 14, 2011, citing study by Michael McDonald, professor of government and politics at George Mason University, showing that on the final Sunday before the 2008 presidential elections, Black voters (who represent 13 % of voters) accounted for

voters are more likely to vote absentee by mail, a process not covered by the new limitations. In Florida nearly 30 percent of voters cast early ballots in 2008, with twice as many African Americans doing so than whites – 53% of African-American voters cast early ballots compared to 27% of White voters.⁶⁸

Florida's election officials are concerned about the impact of reductions in early voting. Monroe County Elections Supervisor Harry Sawyer, Jr., said, "Limiting early voting options is a dangerous path which will only make it more difficult to vote." "Monroe County has five early voting sites, one of which is in an African-American neighborhood. In the 2008 general election, 27 percent of Keys voters voted early and nearly 8 percent of Keys registered voters voted early in the November 2010 general election."⁶⁹ The reductions in early voting stand to create chaos at the polls on Election Day in 2012 as precincts will be forced to process more voters, resulting in longer lines. Florida's law is currently under review by the Justice Department and a petition in Ohio seeks to ask voters to repeal the new law.

Another provision of Florida's new law would eliminate voters' ability to update their registrations at the polls, likely resulting in more provisional ballots cast. Tens of thousands of voters, including many young voters, students and women who had changed their names due to marriage, updated their registrations at the polls in 2008. Those voters will now be forced to cast provisional ballots, most of which will not be counted.

- Broward County processed 5,000 name and address changes on Election Day 2008, according to Evelyn Perez-Verdia, of the Broward County Supervisor of Elections' office.⁷⁰
- In Orange County, 8,000 voters updated their addresses on Election Day in 2008, with about 3,000 of those moving from another county, according to Supervisor of Elections Bill Cowles. Under the new law, those voters would have to cast provisional ballots. "The average voter is not paying attention and they will not pay attention until they're hit with this on Election Day," Cowles said.⁷¹

IV. DISENFRANCHISING VOTERS WITH CRIMINAL RECORDS

In addition to making it harder to register voters and harder for eligible voters to cast a ballot, this year's voter suppression activities also include efforts to eliminate certain categories of voters from eligibility altogether. These efforts mark a reversal of trends making it easier to

32% of the daily early vote turnout in Florida. Similarly, Hispanic voters (who represent 11% of the electorate, were 25% of the early voters on the final Sunday before the elections in Florida).
<http://www.ocala.com/article/20110614/WIRE/110619889?p=1&tc=pg>

⁶⁸ County Early Voting Reports, <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>. In the 2008 general election, 2.1 million Florida voters cast early ballots. African Americans, who make up about 13% of the electorate, cast 22% of those votes. Half of African Americans who voted, cast early ballots at advance voting sites.

⁶⁹ Kevin Wadlow, "Election chief may join federal voting-rights suit," Aug. 31, 2011, <http://www.keysnet.com/2011/08/31/373188/election-chief-may-join-federal.html>

⁷⁰ Kathleen Haughey, "Proposed bills would make voting harder for many Floridians," Florida Sun-Sentinel, April 25, 2011, http://articles.sun-sentinel.com/2011-04-25/news/fl-elections-bill-makes-voting-harder20110425_1_early-voting-voter-fraud-elections-office

⁷¹ Steve Bousquet, "Gov. Rick Scott signs controversial election bill into law," Miami Herald, May. 19, 2011, <http://www.miamiherald.com/2011/05/19/v-print/2224624/gov-rick-scott-signs-controversial.html>

restore rights to people with previous criminal convictions. Executive orders issued this year in Florida and Iowa make it far harder to get those rights restored.

Laws vary from state to state, but most states restore voting rights to those convicted of crimes and allow them to register to vote after they have completed their sentences or after completion of probation or parole. Some states make this harder than others. Approximately, 5.3 million people in this country cannot vote because of felony convictions, disproportionately people of color.⁷²

Florida is one of only three states that strip all citizens with past felony convictions of their civil and voting rights for life. In Florida, this voting and civil rights ban dates back to the Reconstruction Era after the Civil War when newly-freed slaves were granted the right to vote. Today, nearly one in four African-American men in Florida cannot vote because of this system.⁷³ The only way to restore civil and voting rights in Florida is through clemency from the Governor, which can be a burdensome and highly arbitrary process. In 2007, Governor Charlie Crist restored voting rights to 154,000 people with felony convictions and liberalized the procedures for executive clemency, offering a near automatic path to restoration for those convicted of nonviolent crimes. In March, Gov. Rick Scott overturned this policy⁷⁴, eliminating the path to automatic restoration, which could prevent one million people from becoming eligible to vote, and had the effect of stripping the voting rights of nearly 100,000 people who had been eligible to vote under the old rules. Iowa Governor Terry Branstad implemented a similar rollback almost immediately upon taking office, rescinding a prior executive order issued by former Gov. Thomas Vilsak that restored voting rights to 100,000 people with past felony convictions. Now, such voters will need to submit an individual request to have their rights restored, contingent on payment of any outstanding financial obligations.

These laws stand to deny people basic rights of citizenship in many realms of public life even after they have completed their sentences.

- **Desmond Meade** –currently heads the Florida Rights Restoration Coalition, which works to organize grass roots advocacy to help people with criminal records regain the right to vote. Desmond, who is currently in law school, is an affected voter himself due to a past criminal conviction, and thus cannot vote. He cannot vote or take the bar exam until his rights are restored. Meade, who was eligible to have his rights restored under the old rules, is in limbo and will have to wait years to have his rights restored because his application for clemency is part of a backlog of 100,000 clemency applications. Now, under the new rules, Meade will have to wait even longer; he must wait 7 years after fulfilling his sentence to apply. Since his release from prison, Meade - who was homeless in 2005 and now attends law school at Florida International University - said he's chalked up more than 8,000 hours of community service, stints on Attorney General Bill McCollum's Statewide Gang Reduction Task Force, the Homeless/Formerly

⁷² 13% of African American men nationwide can't vote. "Loosing the Vote, The Impact of Felony Disenfranchisement Laws in the United States." The Sentencing Project, http://www.sentencingproject.org/doc/File/FVR/fd_loosingthevote.pdf

⁷³ Kevin Krajak, "Why Can't Ex-Felons Vote?," *Washington Post*, Aug. 16, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A9785-2004Aug17.html>.

⁷⁴ See Fl. Rules of Exec. Clemency 9(A) (2011), among other things, imposing a new five-year waiting period before individuals who have completed their sentences for certain classes of non-violent felonies may petition for restoration of their civil rights in order to register to vote.

Homeless Forum and the Miami-Dade Homeless Trust Board. "My question is how much more do I have to do?" he asked. "To think I'm still not eligible to have my rights restored, it's almost like a slap in my face. Here I am a perfect example of someone who's clearly demonstrated that I've been rehabilitated."⁷⁵

* * *

These legislative measures collectively represent the largest legislative effort to rollback voting rights since the post-reconstruction era, motivated by a similar insidious intent to make voting harder for groups who saw increased registration and turnout in the 2008 elections.⁷⁶ These laws collectively effectuate a trifecta of voter suppression— making it harder to register to vote, harder to cast a ballot and harder to have a vote counted – and the impact is not evenly distributed, and indeed is designed to effectuate political results. Study after study documents that voter impersonation fraud used to justify these restrictions almost never occurs.⁷⁷ It is imperative that members of Congress, state election officials, and voters themselves understand the impact of these laws in order to hold elected officials, the Justice Department and the courts accountable for ensuring that illegal and unconstitutional laws are not allowed to be implemented. Where implemented, election officials ought to implement these laws with an eye towards effective education and training to ensure that eligible voters are not needlessly disenfranchised. Moreover, Congress should pursue common-sense legislative proposals to expand - not restrict - access to voting, including:

- House Joint Resolution 28, proposing an amendment to the U.S. Constitution establishing a fundamental constitutional right to vote.⁷⁸
- Voter Registration Modernization, which would significantly automate and streamline the voter registration process by removing the onus of voter registration from the voter, by placing the responsibility for maintaining voter registration with state governments.⁷⁹
- Deceptive Practices and Voter Intimidation Prevention Act,⁸⁰ "to protect Americans from tactics that intimidate voters and prevent them from exercising their right to vote on Election Day."

⁷⁵ Dara Kam, "Five year wait to have civil rights restored 'like a slap in the face,' rehabilitated felons say," Palm Beach Post, April 9, 2011, <http://www.palmbeachpost.com/news/state/five-year-wait-to-have-civil-rights-restored-1388449.html>

⁷⁶ Proportion of electorate voting for the first time was virtually unchanged between 2004 (11%) – 2008 (12%); However, the proportion of Black and Brown, low income and high school educated first-time voters increased considerably. (Black voters: 17% were first-time voters in 2004; 19% in 2008; Latino: 22% in 2004; 28 percent in 2008. Those making \$15,000 or less: 18% in 2004; 34% in 2008; high school educated: 18% in 2004; 22% in 2008.

⁷⁷ See, Lorraine C. Minnie, *The Myth of Voter Fraud*, Cornell Univ. Press (2010), showing that allegations of widespread voter impersonation fraud at the polls are unsupported by empirical evidence. In state after state, the rate of voter fraud is extremely low: .0003% (fewer than 1 in 333,000) in Missouri; .0002% (one in 500,000 in Wisconsin; .000009% (1 in 11 million) in New York. See, Brennan Center, "The Truth About Voter Fraud," <http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>

⁷⁸ H.J.RES.28 (112th Cong.), <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.j.res.00028>;

⁷⁹ H.R.1719 (111th Cong.), <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1719>

- Democracy Restoration Act,⁸¹ which would “secure the Federal voting rights of persons who have been released from incarceration.”
- Pursue measures to strengthen prohibitions on voter caging.⁸²

Our legacy of voting in this country is not a proud one, and while the last century has seen a push towards expansion of the franchise, these new laws stand to turn back the clock. History tells us the dangers of this trend. The decade following the rash of legal measures restricting voting in the post reconstruction era saw dramatic reductions in voting rights for previously eligible voters. Between 1890 and 1910, African Americans were removed from the voter registration rolls in large numbers and denied the right to vote. Louisiana, for example, had over 130,000 African Americans registered to vote in 1896. After amendments to the state constitution in 1898, by 1900 fewer than 5,000 African Americans were registered to vote. By 1910, only 730 Blacks were registered in the state.⁸³ The disenfranchisement lasted for decades until the first series of civil rights laws, starting after *Brown v. Board of Education* with the Civil Rights Act of 1957, began to dismantle this structure. While there are many laws and safeguards in place to likely prevent that level of large-scale disenfranchisement, the legacy of any disenfranchisement remains and is difficult to dismantle. The new laws stand to relegate millions of eligible voters to second class citizenship. It is imperative we understand the implications of these proposals or we are bound to repeat our sordid history. These new repressive voting laws undermine the fabric of our democracy by limiting participation. Congress must act to ensure that all Americans have a voice.

* * *

Thank you for your kind consideration of my testimony and for ensuring that all voters have the opportunity to vote, have their vote counted, and receive equal protection under the law. Advancement Project is pleased at any time to provide technical advice, assistance, and testimony to this Committee as it develops legislative reforms that will safeguard the ability of eligible voters to participate in elections.

⁸⁰ H.R.97 (111th Cong.), <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.97>;

⁸¹ H.R.2212 (112th Cong.), <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.2212>;

⁸² H.R.107 (112th Cong.), <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.107>;

⁸³ See, Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, Basic Books (2000).

STATEMENT OF
Melanie Campbell
President & CEO
The National Coalition on Black Civic Participation
Convener
The Black Women's Roundtable

BEFORE THE
SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS,
AND HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED
“NEW STATE VOTING LAWS: BARRIERS TO THE
BALLOT?”

PRESENTED
SEPTEMBER 8, 2011



Chairman Durbin, Ranking Member Graham, and members of the Subcommittee. On behalf of *The National Coalition on Black Civic Participation*, *The Black Women's Roundtable* and *Black Youth Vote!* thank you for the opportunity to submit this testimony to address the health and posterity of our democracy during these uncertain and discordant political times.

Over the past 35 years, *The National Coalition on Black Civic Participation* (The National Coalition) has actively worked to increase the civic and voter participation of black women, men, and youth on a local, state, and national level. Our work mobilizes underserved and other marginalized communities to eliminate barriers to civic and voter participation - ultimately enhancing the quality of African American life.

Mr. Chairman, in the midst of these troubling economic times and an unstable job market; state legislatures across this country, have prioritized restricting the voting rights of marginalized communities under the guise of voter fraud. Reports released by numerous nonpartisan think tanks and notable research agencies have indicated what many of us have known to be true. The ill-perceived mass pandemic of voter fraud is essentially nonexistent. According to the *Brennan Center for Justice*, during Wisconsin's 2004 election "*there were only 7 substantiated cases of individuals knowingly casting invalid votes that counted -- all persons with felony convictions.*" In fact, Wisconsin isn't an isolated example of statistics that prove the irrelevance and misdirection of these voter ID laws. To date voter ID laws have been passed in six states to include: South Carolina, Kansas, Rhode Island, Alabama, Tennessee, Texas and Wisconsin.

These restrictive laws will turn the hands back on our clock of progress; back to the dark days where Jim Crow was the rule of law and subsequently created a caste system felt to this very day where black and marginalized communities are viewed as second class citizens.

While some decision makers believe they are making an attempt to fix a broken system they are systematically leaving behind those most impacted by today's social and economic policies. This is evident in reports that highlight the thousands of black voters who will be disenfranchised by these laws. For example in Wisconsin, 55% of African-American men and 66% of African-American women are without the proper identification to cast a ballot as prescribed by the law.ⁱ *Brennan Center for Justice* estimates that "a quarter of African-Americans and 15 percent of low-income voters don't have a photo ID"ⁱⁱ In South Carolina, home to eight historically black colleges and universities, thousands of students will not be allowed to use their student IDs to vote.ⁱⁱⁱ I strongly believe that these laws will adversely impact the excitement and engagement that we've seen in these past elections by black youth.

Aside from passing Voter ID laws, state legislatures to include Florida and Texas have also made cuts to Early Voting and have added additional barriers to voter registration. According to *The Rolling Stones* September 15th article "*The GOP War on Voting*" by Ari Berman, the author makes mention of the "boost in turnout in a number of states" because of early voting; with former Republican Governor Jeb Bush adding his support for the expanded access to the polls.^{iv} Despite the fact that many state legislatures have recessed. The civil rights community reminds vigilant for additional attempts to suppress the vote.



Mr. Chairman, it is my hope that we redirect this conversation so that is not grounded in partisanship but that is focused on preserving, expanding, and ensuring that everyone can be full participants in our democracy. We must put the focus back on issues that will aid in the upward mobility of the marginalized and dispossessed. This is not the time for us to subscribed or revert back to an antiquated and dysfunctional version of democracy reminiscent of Jim Crow.

¹ John Pawaserat, *The Driver License Stats of the Voting Population in Wisconsin*, June 2005 Employment and Training Institute of Wisconsin - Milwaukee

² Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification, Brennan Center for Justice, November 2006

³ ACLU's August 5th letter to U.S. Department of Justice http://bradblog.com/Docs/comment_under_section_5_re_submission_no__2011-2495.pdf



*Testimony by
Chairman Emanuel Cleaver, II
before the
Senate Committee on Judiciary
Subcommittee on the Constitution, Civil Rights and
Human Rights
on
"New State Voting Laws: Barriers to the Ballot?"
Thursday, September 8, 2011
226 Dirksen Senate Office Building
2:00 PM*

Good afternoon. Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee, I am pleased to testify before you today on one of the most important civil rights issues of our time (in our lifetime). I am pleased to be the Chairman of the Congressional Black Caucus (CBC) during the 112th Congress and during the 40th Anniversary of the CBC. On behalf of our membership, I can say that the issues surrounding voter suppression are particularly troubling to us. Many of us come from families who fought diligently to earn the right to vote, so it is a moral imperative for the members of the CBC to fight to protect the right to vote for all Americans.

Mission of the CBC

Forty years ago the Congressional Black Caucus was founded "to positively influence the course of events pertinent to African Americans and others of similar experience and situation." In the years since, we have earned the moniker "the Conscience of the Congress" because of our unyielding commitment to our communities and our country. We know that our mission is to help our country become a more perfect union. Forty years after our founding, we boast the largest membership roster in the history of the CBC—we are 43 members strong, representing a strong contingent of over 9,000 African American elected officials all over the country. I can say with absolute certainty that our numbers have grown in large part because of the enforcement of the Voting Rights Act and the other laws that ensure election protection and parity at the polls for America's electorate. In 2009, one of our members and one of your former colleagues, President Barack Obama, was sworn in as the first African American and 44th President of the United States of America.

Today, I am before you to express my steadfast commitment to protect the gains we have made throughout history. I am also here to express the deep and abiding concerns the CBC has with this year's onslaught of voter suppression laws, which have not so ironically arrived in time for the 2012 elections. It is also not ironic that early voting days have been cut short, stiffer identification requirements have been implemented, and proof of citizenship is required—all of these policies are statistically proven to impact people of color disproportionately.

I regret, that as the Martin Luther King Jr. Memorial was recently unveiled in our nation's capital, I am here today to put you on notice that we are still fighting the battle to protect the right to vote--one of the causes Dr. King died for and one that is reminiscent of the 1960s. Additionally, this is the same battle John Lewis fought. As you all know, Congressman Lewis is not only a proud member of the CBC, he is also a civil rights icon amongst us. My good friend Congressman Lewis nearly gave his life to protect our rights. He led a peaceful march across the Edmund Pettus Bridge so that you and I could cast our votes. In fact, that "Bloody Sunday" helped hasten the passage of the Voting Rights Act of 1965.

I would like to introduce Congressman Lewis's *New York Times* op-ed entitled "A Poll Tax By Another Name" for the record.

Given the disproportionate impact the voter suppression laws will have on African American voters, these laws are reminiscent of the poll taxes used in the Jim Crow South.

The laws are "solutions in search of problems", especially when it comes to Voter ID because there is basically no evidence of voter fraud.

Requiring voters to provide a *specific, narrowly defined*, piece of photo identification is unnecessary. The safeguards currently in place to verify voters' identity works. That much is clear because there has been no evidence of substantial voter impersonation fraud, the only type of fraud requiring voters to provide a specific type of government issued photo ID guards against.

- The behavior often relied upon by proponents of state ID laws is not really fraud at all--absentee ballot fraud and disenfranchised felons voting.
- In the 23 states and DC where voters are allowed to show both photo and non-photo IDs – such as a utility bill and bank statement – there is no evidence that voter impersonation fraud is occurring.

History of Jim Crow Voting Rights

After the Reconstruction era ended in 1877, African Americans ceased to hold significant political power in the South. In the 1890s, the Populist Party attempted to merge the common economic interests of poor African American and white

farmers. The elite party in the South—at the time, the Democratic Party—wanted to retain their power, so they worked diligently to disenfranchise African Americans to ensure their continuity of power.

The Fifteenth Amendment forbade racial restrictions on suffrage, but white supremacists used thinly disguised laws to purge African Americans from the voter rolls. These included poll taxes that poor blacks (and whites) could not pay and literacy tests. Racial violence, especially lynching, was used to discourage African Americans from voting as well as to maintain the unwritten racial and economic order that characterized the South.

In addition to disfranchisement, African Americans were also subject to racist laws, known as Jim Crow legislation, which spread throughout the South in the late 1890s. Jim Crow racially segregated all public facilities, including bathrooms, hospitals, schools, and streetcars. The U.S. Supreme Court upheld segregation in the 1896 *Plessy v. Ferguson* case. It would be more than 60 years before African Americans would regain the voting and civil rights that Jim Crow legislation violently took from them.

The laws to prevent African Americans from voting were complex because they could not directly violate the Fifteenth Amendment. Among these restrictions was the poll tax, which required voters to pay an additional tax to vote. It was designed primarily to exclude African Americans, who were usually too poor to pay the tax, but also excluded many poor whites. The literacy test was also a common tactic used to prevent African Americans from voting.

During the early 1960s, African Americans in the South formed groups like the Southern Christian Leadership Conference (SCLC), Student Non-Violent Coordinating Committee (SNCC) and the Congress of Racial Equality (CORE) to demand equality and register African Americans to vote. The people who participated in this project routinely risked their jobs and their lives against the violence of groups of white supremacist groups like the Ku Klux Klan, which often worked hand in hand with local police and politicians.

Purpose of Voting Rights Act of 1965

After the Voting Rights Act (VRA) passed Congress in August of 1965, President Lyndon B. Johnson finally signed it into law. After a century of deliberate and violent denial of the vote to African Americans in the South and Latinos in the Southwest – as well as many years of entrenched electoral systems that shut out citizens with limited fluency in English – the VRA was a necessary step forward in civil rights. For good reason, the VRA is widely regarded as enabling the enfranchisement of millions of minority voters and diversifying the electorate and legislative bodies at all levels of American government.

Congress has reauthorized the VRA five times, most recently in 2006, when both the House and the Senate approved the measure overwhelmingly in a bipartisan

manner. Congress conducted over 20 hearings, heard from over 50 expert witnesses, and collected over 17,000 pages of testimony documenting the continued need for and constitutionality of the statute. We know the significance of the VRA because we have personally be impacted by the laws that protect our electorate.

MODERN DAY POLL TAX

Challenges with Photo Identification:

There is a cost for a state ID in every single state in the U.S. for some portion of the voting population

- A new requirement that has advanced in 35 states and passed Republican-led state legislatures in nine states is the mandate to provide an unexpired, government-issued photo identification at the polls.
- Certain groups – primarily poor, elderly, and minority citizens – are less likely to possess these forms of documentation than the general population.
- Approximately 11 percent of American citizens – more than 21 million individuals – do not have government-issued photo identification (driver's license, military ID, or passport).
- 25 percent of African-American voting-age citizens, or 5.5 million individuals, have no current government-issued photo ID, compared to 8 percent of white voting-age citizens.
- 18 percent of American citizens age 65 and above, or 6 million senior citizens, do not have current government-issued photo ID.
- 10 percent of voting-age citizens who have current photo ID do not have photo ID with both their current address and their current legal name.
- As many as 18 percent of citizens aged 18-24, 4.5 million individuals, do not have photo ID with current address and name.

At this time I would like to enter the NAACP's Issue Brief from July 11, 2011 into the record.

There is an attack on the right to vote by substantially limiting opportunities for early voting.

Several state legislatures have also implemented laws that severely hinder the ability for individuals to cast their votes. Early voting is disproportionately used by African Americans and other people of color. According to the Brennan Center for Justice, African Americans and Latinos were more than twice as likely as white voters to register through a voter registration drive.

CBC Action on Voter Suppression

The CBC was greatly alarmed by the targeting of minority communities, so we have taken swift action to address the problematic voter suppression laws adopted by several states throughout the country. The CBC remains vigilant about protecting the fundamental right to vote. To that end, we have made the following steps to quickly address the attacks on our right to vote.

Letter to Attorney General Holder: CBC Members accompanied by several other Members of the House of Representatives, including all Democrat leadership, sent a letter to Attorney General Holder urging him to protect the voting rights of Americans by using the full power of the Department of Justice to review the 47 pending or passed state voter identification bills and scrutinize their implementation.

Meeting with the Department of Justice: The CBC called an emergency meeting with the Department of Justice to voice concerns about redistricting and voter suppression legislation.

Press Conference: On July 12th, the CBC accompanied by national civil rights leaders, held a national press conference to discuss the 47 passed and pending state election reform bills that will disenfranchise millions of American voters.

Voter Protection Legislation: CBC Member, Rep. Marcia Fudge introduced the Voter Protection Hotline Act of 2011 – HR 2540 - establishing a congressionally mandated voter protection hotline. The purpose of this hotline is to provide an easily accessible and identifiable number for every American voter to use. If a state voter suppression bills become law, voters will have one national number to call to report intimidation and retaliation and access voter information.

Thank you for the opportunity to testify today. The Congressional Black Caucus will remain steadfast in the struggle to protect the voting rights for all Americans.

COMMITTEE ASSIGNMENTS

VICE CHAIR
Licenses Committee

MEMBER
Finance & Personnel Committee



MILELE A. COGGS
6th District Alderwoman

Assistant Majority Leader
Senator Dick Durbin

Hearing Before the Senate Judiciary
Subcommittee on the Constitution,
Civil Rights, and Human Rights

September 8, 2011
New State Voting Laws: Barriers to the Ballot?

WI "Voter ID" Bill: A Pricy Solution in Search of a Problem

Statement of Alderwoman Milele A. Coggs City of Milwaukee

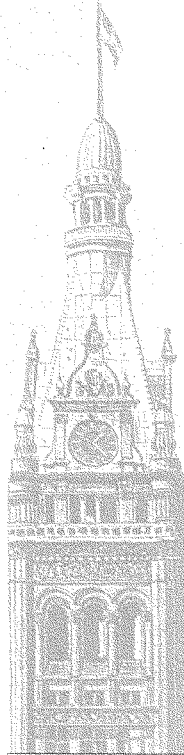
In the 2008 Presidential election, Wisconsin recorded the fourth highest voter participation in the nation. However, after the Wisconsin Legislature passed a controversial, highly restrictive, confusing, and ever changing "Voter ID" bill earlier this year, I am concerned that Wisconsin will plummet from one of the highest voter participation states to a much lower position.

The Wisconsin "Voter ID" bill:

- Requires voters to show a Wisconsin driver's license, a state-issued ID card, a military ID, a passport or a naturalization certificate. Students attending University of Wisconsin schools and other colleges would only be allowed to use school IDs that were issued within two years of the election. In fact, no Wisconsin student IDs meet the current format of acceptable photo ID in the new law.

This requirement **disenfranchises** not only students, but also elderly residents who often do not have transportation to get to a Department of Motor Vehicle (DMV) office, or have ailments that prevent them from applying for ID at a DMV office. And it does the same to low-income and hourly wage workers who cannot afford to pay for a copy of their birth certificate (\$20 per copy in Milwaukee County) – a key way for them to get the necessary form of ID. In addition, these workers typically cannot afford to take time off to obtain an ID at a DMV office. Additionally, in some parts of Wisconsin the DMV offices are only open one day per month.

-More-



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- Takes away a Wisconsin voter's ability to vote a straight-party ticket, although state military and overseas voters still could vote straight-party because of federal law. Thus taking away the ease with which many have cast votes in Wisconsin for years.
- Requires people to have lived at their residence for 28 days before the election – a huge jump from the current 10 days - to vote at their polling place. Those who lived at their residence for less than 28 days could vote from their previous polling place if it were in Wisconsin. Which poses a confusing possible scenario particularly in close local races, one could cast a vote in a district in which they have not lived for 27 days, helping to determine the representation for others. This is a true possibility given that in recent local elections candidates have beat their opponents by razor sharp margins. Again, this change would require voters during each election to prove where they live.

Some components of the bill have already been implemented, but most would go into effect at one of the worst possible times – the February 21, 2012 Spring Primary election – when a larger-than-normal voter turnout can be expected in Milwaukee (the State's largest city), as the city and county races (including Mayoral and County Executive primary races) pare down for the April 3rd Spring General election. Additionally, the bill allocated \$1.9 million for “voter education” efforts, but with only five months to go before the 2012 Spring primary election the state has offered little or no such education programming. For the most part, groups and individuals are attempting to mount grass roots voter education initiatives, with mixed results. And Municipalities opting to attempt their own voter education efforts is bearing that expense alone.

So in February, not only will there be throngs of voters going to the polls, but those voters will very likely not be fully aware of the many changes brought by the bill. Clerks around the state will be dealing with confused and angry residents who will either lose their ability to vote and/or who will become so frustrated they will simply give up on casting their ballot.

Also, the bill authorized “free” Wisconsin IDs for the purpose of voting. However, these free IDs require proof of identity and residency, and the IDs are **not** available:

- If you currently have a valid, unexpired drivers license (DL), you are not eligible under Wisconsin law to obtain an ID. This may be a big surprise to persons who lose or misplace their DL and are then rejected when trying to get a Wisconsin ID because it shows they have a valid DL in the system.
- If you already have a Wisconsin ID card that is not eligible for renewal (you may renew your ID card up to one year prior to its expiration date).

Further, citizens who do not specifically state when they approach the counter that they “wish to receive a free ID for the purpose of voting” are being charged full price (\$28)! The hurdles to receive the free Wisconsin ID are simply insurmountable to too many citizens, and that is, in my opinion, a clear suppression of one's lawful right to vote.

-More-

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Ironically – in a budget-cutting atmosphere not seen in Wisconsin (and other states) in some years – the Voter ID legislation carries an estimated **cost** of at least \$5 million (based on state fiscal estimates). That irony is multiplied when you consider the bill’s “other” costs -- disenfranchised voters, votes lost and the services and jobs that the money could be used for. For example, a full \$5 million could save jobs and programming in the state’s public school systems, restore some much needed funding for recycling, and fill a few more potholes in cities across the state next year.

In Milwaukee alone, \$5 million could restore approximately almost half of the estimated \$10.3 million anticipated cut in shared revenue. It could restore nearly all of the estimated \$5.5 million cut to Milwaukee County Transit Aids, and it could erase “High Poverty Aid cut” of 10% (\$1.9 million) which goes to school districts with at least 50% of their enrolled students qualifying for free or reduced price lunches.

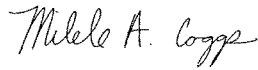
As legislators, we have the power to make laws that impact the lives of those we serve. One would hope and expect that much thought and research goes into the legislation we create and that legislation with a price tag as large as this is based on an evidenced need. In this case, I believe there is no REAL need.

In a study of three million ballots cast in Wisconsin in November 2008, only 20 (0.000007%) were found to have probable voter fraud (most by felons who illegally voted). This bill does nothing to address how the law was allegedly broken in the majority of those 20 cases.

So with little to no demonstrated evidence of necessity, much dialogue has centered on “restoration of voter confidence,” with “Voter ID” being offered as a placebo to gain that confidence. But given the happenings in the most recent statewide Supreme Court election in Wisconsin earlier this year, I strongly believe voter confidence would actually be strengthened by greater attention being paid to education of election staff, improved election equipment/technology and more standardized computer software utilized to calculate and report vote totals in elections.

Here in Wisconsin the majority of legislators in Madison approved what they call a “Voter ID” bill, but it actually is a Voter Suppression bill that is a pricey solution in search of a problem.

Peace, Love, & Justice,



Milele A. Coggs
6th District – Alderwoman
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September 7, 2011

Hon. Richard Durbin
 Chairman, Senate Judiciary Committee
 Subcommittee on the Constitution, Civil
 Rights and Human Rights
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Durbin:

To assist the Subcommittee in its consideration of the issues to be presented at its September 8, 2011 hearing on “New State Voting Laws: Barriers to the Ballot,” we write to briefly chronicle the constitutional text and history that establish the right to vote as a fundamental constitutional right, critical to the Constitution’s promise of equal citizenship for all persons. The Constitution was ratified through a process that was, for its time, stunningly democratic, and six separate constitutional Amendments adopted since then have ended discriminatory exclusions from access to the ballot and made our system of government more democratic. Perhaps more so than any other constitutional guarantee, the right to vote is deeply embedded in the Constitution’s text and history. This text and history render constitutionally suspect any state efforts to impose unreasonable, arbitrary restrictions on the right to vote or to deny any group of voters equal access to the ballot.

The Constitution was born in one of the most democratic moments that had ever existed at that time in human history. “In 1787, democratic self-government existed almost nowhere on earth. Kings, emperors, czars, princes and sultans, moguls, feudal lords held sway across the globe.”¹ In Our new Nation was different. The Framers of our Constitution insisted on ratification of the Constitution by “We the People.” James Wilson – one of only six Framers who signed both the Declaration of Independence and the Constitution – called the ratification “the most dignified one that has yet appeared on our globe,” namely “[a] people free and enlightened, establishing and ratifying a system of government, which they have previous considered, examined, and approved!”² During the ratification process, states took extraordinary measures to make the process as democratic as possible. As constitutional scholar Akhil Amar has recounted, “several states waived standard voting restrictions and allowed a uniquely broad class of citizens to vote for ratification convention delegates. For instance, New York

¹ AKHIL REED AMAR, *AMERICA’S CONSTITUTION: A BIOGRAPHY* 8 (2005).

² James Wilson, *Oration Delivered on the Fourth of July, 1788, at the Procession Formed at Philadelphia to Celebrate the Adoption of the Constitution of the United States* (available at http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=2072&chapter=156432&layout=html&Itemid=27).

temporarily set aside its usual property qualifications and, for the first time in history, invited all free adult male citizens to vote.”³ In a significant number of states, African Americans had the right to vote for delegates to the ratifying conventions. As Professor Michael McConnell has observed, “[n]o fewer than five of the original thirteen states at the time of the formation of the Union not only recognized free persons of color as citizens but accorded them the vote.”⁴

The Constitution’s “chronological format highlights the grand arc of constitutional history,” demonstrating at a glance “how democracy has swept forward across the centuries.”⁵ While “America’s Founding gave the world more democracy than the planet had thus far witnessed,”⁶ it nonetheless took almost two centuries of constitutional Amendments to achieve the full promise of what President Abraham Lincoln called “government of the people, by the people, and for the people.”⁷ In adding six separate voting rights Amendments to the Constitution, “We the People” have insisted that democracy is at the core of the Constitution and that the right to vote is the basis of our liberties, the fundamental right “preservative of all rights.”⁸

The original Constitution contained only a handful of restrictions on the actions of state governments, but in the wake of the Civil War and the destruction of slavery, “We the People” fundamentally altered our country’s federal system, and introduced into the Constitution explicit protection for the right to vote. The Fifteenth Amendment, ratified in 1870, guaranteed the right to vote to all citizens free from racial discrimination, and gave the federal government broad power to make sure the right to vote was actually enjoyed. The Framers of the Fifteenth Amendment explained that the Amendment would be “the capstone in the great temple of American freedom”⁹ that would “make every citizen equal in rights and privileges.”¹⁰ Observing that “[t]he irresistible tendency of modern civilization is in the direction of the extension of the right of suffrage,”¹¹ the Amendment’s Framers emphasized that the right to vote was a fundamental right, indispensable to ensuring freedom for African Americans. “The ballot is as much the bulwark of liberty to the black man as it is to the white. . . . No class, no race is truly free until it is clothed with political power sufficient to make it the peer of its kindred class or race.”¹²

During the Progressive Era, the American people added new Amendments to the Constitution to further guarantee the right to vote, making additional, far-reaching changes to our system of government. The Seventeenth Amendment, ratified in 1913, gave Americans the right

³ AMAR, *supra*, at 7.

⁴ Michael W. McConnell, *The Fourteenth Amendment: A Second American Revolution or the Logical Culmination of Tradition?*, 25 LOY. L.A. L. REV. 1159, 1173 (1992).

⁵ AMAR, *supra*, at 459.

⁶ *Id.* at 14.

⁷ Abraham Lincoln, *Gettysburg Address* (Nov. 19, 1863).

⁸ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

⁹ Cong. Globe, 40th Cong., 3rd Sess. 724 (1869) (Rep. Ward).

¹⁰ *Id.* at 672 (Sen. Wilson).

¹¹ *Id.* at 709 (Sen. Pomeroy).

¹² *Id.* at 983 (Rep. Ross).

to vote for the Senators who represent them in Congress, recognizing that fundamental constitutional values demanded that U.S. Senators be chosen *by* the American people, not *for* them. Going forward, both Houses of Congress would be selected in popular elections. Striking a blow against corruption in the appointment of Senators by state legislatures, the Seventeenth Amendment made the Senate directly accountable to the people, aiming to create a “cleaner, less corrupt government” and to “counter the undue effects of large corporations, monopolies, trusts, and other special interest groups in the Senate election process.”¹³

Less than a decade later, in 1920, the American people ratified the Nineteenth Amendment, securing to women the right to vote free from gender discrimination and ending the exclusion of one-half of the population from the Constitution’s promise of equal citizenship. “Some ten million women who had never been allowed to vote in a general election became the full political equals of men,”¹⁴ the culmination of more than a half century of intense campaigning by women’s suffrage activists. In ratifying the Nineteenth Amendment, “We the People” decided and decreed that women must be treated as full and equal citizens with the same right to vote and participate in the public sphere as men.¹⁵ Modeled on the Fifteenth Amendment, the Nineteenth Amendment also gave Congress broad enforcement power to protect the exercise of the right to vote.

Later in the 20th Century, three additional amendments to the Constitution further undermined the notion that the right to vote was simply a privilege to be distributed as the states saw fit, and added to congressional power to protect voting rights. The Twenty-Third Amendment, ratified in 1961, gave residents of our nation’s capital the right to vote in presidential elections, while the Twenty-Fourth Amendment, ratified in 1964, abolished the use of poll taxes in federal elections, recognizing that “such a system tends to discourage our poorer citizens from the exercise of their precious right of choosing their officials.”¹⁶ The Framers of the Twenty-Fourth Amendment were insistent that, “as a matter of right, every citizen of the United States should be entitled to vote for President, Vice-President, Senators, and Representatives on . . . terms of equality with the citizens of every other State in this Union”¹⁷ Finally, the Twenty-Sixth Amendment, ratified in 1971, affirmed that the constitutional right to vote extended equally to young adults. In the wake of the Vietnam War, the American people decided that young adults, who were risking their lives in serving in the nation’s armed forces, should have the same right to vote for their elected representatives as did older Americans.

The Constitution’s six Voting Rights Amendments fundamentally changed our system of government, making the right to vote a constitutional guarantee of the highest order,

¹³ AMAR, *supra*, at 412.

¹⁴ *Id.* at 419.

¹⁵ See Reva B. Siegel, *She The People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947 (2002).

¹⁶ 108 Cong. Rec. 4,382 (Mar. 17, 1962). For a comprehensive discussion of the Twenty-Fourth Amendment, see Bruce Ackerman & Jennifer Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*, 103 NW. U. L. REV. 63 (2009).

¹⁷ 108 Cong. Rec. at 4153.


necessary to securing the Constitution's protection of equality and democracy. Together, these Amendments cast doubt on state efforts to erect unreasonable, arbitrary barriers to the right to vote, or deny to any citizens the right to vote on terms of equality with other citizens.

We thank the Subcommittee for providing a forum to discuss these significant issues, which are of great consequence to every American and particularly to those of us who work to secure the progressive promise of the Constitution.

Sincerely,



David H. Gans
*Director of the Human Rights, Civil Rights
Citizenship Program*



Douglas Kendall
Founder and President
CONSTITUTIONAL ACCOUNTABILITY CENTER

cc: Members of the Senate Judiciary Committee,
Subcommittee on the Constitution, Civil
Rights and Human Rights

Statement of Senator Cornyn

Voter fraud is a well-documented and widespread problem that threatens to undermine the public's trust in government. For this reason, I would like to express my strong support for the voter identification law recently enacted by the Texas State Legislature and signed by the Governor. This law will ensure the integrity of Texas elections by preventing the abuse of one of our most sacred rights, the right to vote. I am proud that Texas has taken strong affirmative steps to address this growing problem.

The new Texas law will require prospective voters to present a valid form of photo identification at their polling place prior to casting their ballot. Under the law, valid forms of photo identification include: driver's licenses, state-issued personal identification cards, U.S. military identification cards, U.S. citizenship certificates, U.S. passports and concealed handgun licenses. Prior to the enactment of this law, any person could vote in Texas after presenting minimal documentation such as a utility bill, cable bill, bank statement, or paycheck. It is not difficult to see how such a lax process would invite fraud and abuse. The new Texas law merely requires voters to produce the same form of documentation that they must produce in order to cash a check, board an airplane, or operate an automobile.

To ensure that no citizen will be deprived of their right to vote, the Texas legislature included multiple protections in their voter identification law. For instance, it does not apply to citizens that are disabled or more than 70 years of age from the requirement, exempting those that are most likely to lack the means to obtain valid photo identification. The law also provides a safe harbor for honest oversights by allowing voters who forget their identification to cast a provisional ballot and by allowing the use of expired forms of photo identification, so long as that identification has not been expired for more than 60 days. Finally, the law provides additional safeguards by giving all eligible voters the right to request a state personal identification card free of charge and requiring election officials to provide physically posted and advanced written notice of the new identification requirement.

In order to fully protect the integrity of our electoral process, we must also take a tough stand against those who commit voter fraud. The Texas voter identification law accomplishes this by making illegal voting a second degree felony requiring a two- to 20-year prison sentence and by making attempted illegal voting a state jail felony requiring a sentence of six months to two years. The message is clear: if you attempt to undermine the right to vote in Texas, you will lose your right to vote.

Based on the narrowly tailored nature of the Texas voter identification law and the strong protections that it provides, there is no question that it is within both the letter and the spirit of the Constitution. This law is a negligible burden on voting that protects the people's extremely strong interest in fair elections. It is important to note that, even though similar voter identification laws in other states have been heavily litigated, plaintiffs challenging those laws have been unable to produce a single individual who either did not already have an ID or could not easily obtain one.

I believe the enactment of the Texas voter identification law should serve as a guide for the rest of the nation. In Texas, an overwhelming majority of the people's elected representatives crafted a commonsense solution that was demanded by an overwhelming majority of the people. I hope that Congress and the Administration will take note of the Texas example and work hard to protect the integrity of American elections by addressing the widespread problem of voter fraud.


 Demos

SEPTEMBER 8, 2011

**HEARING OF THE U.S. SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND HUMAN RIGHTS**

**New State Voting Laws:
*Barriers to the Ballot?***

VOTE SUPPRESSION IN 2011

Demos is a non-partisan public policy research and advocacy organization founded in 2000. Headquartered in New York City, Demos works with advocates and policymakers around the country in pursuit of four overarching goals: a more equitable economy with widely shared prosperity and opportunity; a vibrant and inclusive democracy with high levels of voting and civic engagement; an empowered public sector that works for the common good; and responsible U.S. engagement in an interdependent world. We appreciate this opportunity to share with the Committee on the Judiciary our grave concern about the rash of strict voter identification requirements and other vote suppressive measures that have been adopted in a number of states in recent years.

The assault on the right to vote that has taken place in 2011 is historic in terms of its geographic scope and intensity. The state laws that have been passed to curtail early voting, make voter registration more difficult, and require voters to present government-issued photo identification and/or prove citizenship to register to vote are difficult to interpret as anything but blatant vote suppression. Absent intervention by the U.S. Department of Justice in those states subject to pre-clearance under the Voting Rights Act, stringent voter identification requirements will be in place for the 2012 federal elections in Indiana, Georgia, Texas, Tennessee, South Carolina, Wisconsin, Alabama and Kansas. With the exception of Indiana and Georgia, these regressive statutes were all enacted within the last six months. A restrictive voter ID initiative will also be on the ballot this year in Mississippi, possibly followed next year by ballot initiatives in Minnesota and Missouri.

Each of the voter ID laws would require every voter to present government-issued photo identification in order to vote, with some variation. And while the courts have for the moment upheld the ID laws enacted in Indiana and Georgia,¹ some of the other new restrictions go beyond those that have withstood judicial scrutiny. Wisconsin, for example, will not accept a student ID, a form of identification accepted by both Indiana and Georgia. Only identification issued by the Wisconsin Department of Transportation, a military ID, a passport, naturalization papers or ID from a federally-recognized tribal nation will be accepted.² Texas likewise elected to exclude student identification from the list of acceptable IDs. Only a driver's license, personal ID card issued by the state, military ID, passport or concealed handgun permit will suffice.³ Similar laws were proposed and are likely to come up again in dozens of more states.

DISCRIMINATORY IMPACT

While unnecessarily restrictive voter identification requirements infringe upon every citizens' fundamental right to vote, they fall most heavily upon African Americans, Latinos, young people, low-income Americans, the elderly and persons with disabilities. The research clearly demonstrates that a disproportionately large number of such voters do not have the type of ID these laws require. What's more, the procedures for obtaining such identification may in some cases be next to impossible to overcome without paying what amounts to a poll tax. For example, 18 percent of Americans over the age of 65 do not have a photo ID.⁴ Fully one-quarter of African-Americans and 15 percent of low-income voters do not possess photo identification.⁵ A 2007 survey in Indiana found that one in five young voters do not have a driver's license, the most commonly accepted form of photo ID.⁶ The Federal Highway administration reported the following data in 2009.

AGE	% WITHOUT DRIVER'S LICENSE
18	35.6
19	27.1
20	21.9
21	19.9
22	18.7
23	17.8
24	16.8
25-29	14.7

According to scholars, white voters are approximately 10 percent more likely to have driver's licenses than non-whites. For five out of six other basic types of voter identification, Latinos, Asian Americans, blacks and immigrants were statistically less likely to have access to ID, as compared to whites and the native born. Asian Americans and blacks were over 20 percent less likely to have two forms of identification, as compared to whites, while Latinos were 13 percent less likely.⁸ A report by the Center for American Progress Action Fund shows that voter ID bills could lower Latino voter turnout by as much as ten percent.⁹

Wisconsin presents a vivid illustration of the problem. In Wisconsin, the Legislative Fiscal Bureau has estimated that 20 percent of Wisconsinites do not possess the kinds of identity documents required by the new state law.¹⁰ Included among Wisconsinites without the requisite ID are over 177,000 elderly persons; 55 percent of African American men and 49 percent of African American women; 46 percent of Latino men and 59 percent of Latino women; 78 percent of African American men age 18-24 and 66 percent of African American women age 18-24.¹¹

Proponents of strict voter ID requirements typically respond to objections raised against their proposals by offering "free" ID, issued by state departments of motor vehicles (DMVs), to voters who are without them. The catch is that in order to get the "free ID," individuals must typically produce all sorts of other documentation and identification which they are also unlikely to possess, such as birth certificates -- documents that are not themselves cost-free. And then there is added burden of the DMV visit itself; that hardship may be insurmountable. At the time of enactment, 26 percent of Wisconsin's 91 DMVs were open one day a month or less. Wisconsin had only one DMV with weekend hours. Three Wisconsin counties had no DMVs. And over one-half of Wisconsin's 91 DMVs were only open on a part-time basis.¹²

The burdens occasioned by strict voter ID requirements are not theoretical; real-life examples of the problems these laws have created are now emerging. Reports have surfaced of Tennessee citizens waiting in line for several hours in tremendous heat at DMVs to get "free" ID, sometimes only to be sent away for having insufficient documentation.¹³ A Wisconsin newspaper columnist recently received the following email from one reader:

How many of us can say we have voted for the past 83 years? As far as our family knows, my 101-year-old mother, Gladys Lassig Butterfield, has voted in every federal, state and local election since she turned 21. However, Scott Walker and the current Wisconsin Legislature have determined that she can't vote as conveniently as she has in the past; she must apply for a voter ID.

Because she no longer has an unexpired driver's license and her baptismal record isn't acceptable as proof of her identity, she has had to apply for and pay \$20 for a state certified birth certificate. She is not exempt from needing an ID as those in nursing homes are because my sister and I have been able to care for her in her home.

The next step is to take her in her wheelchair to the Department of Transportation to wait in line to have her picture taken. If she doesn't request a free voter ID, she will have to pay an additional \$28.

My mother is fortunate that she has someone to take her through this vote suppressing procedure. How many elderly or disabled residents do not?

Are Scott Walker and his followers deliberately making it difficult for the elderly, disabled, poor and young to vote? My mother thinks so.¹⁴

At the same time, research has repeatedly shown that pro-ID advocates are misleading and dramatically misstating the purported rationale for these laws. They invariably invoke the mantra of voter "fraud" without explaining how voter ID requirements would eliminate any fraud that might exist in our elections systems. Their reticence is understandable. Studies over the last several years have consistently shown that one person's impersonation of another at the polls — the one type of voter fraud that might be prevented with a photo ID requirement -- virtually never happens.¹⁵ Voter ID advocates instead conflate the various and different kinds election irregularities and offer photo ID as the remedy. In point of fact, these voter ID requirements would do nothing to address the kinds of problems that do arise in contemporary elections — e.g., fraudulent absentee balloting, ballots knowingly or unknowingly cast by persons disfranchised by felony conviction, submission of fraudulent voter registration applications. Yet instances of fraudulent activities like these are invariably invoked as the rationale for disfranchising voter requirements.

An extensive analysis by Professor Lorraine C. Minnite, then at Barnard College, showed that at the federal level only 24 individuals were convicted of or pleaded guilty to illegal voting between 2002 and 2005 -- an average of eight people a year. The available evidence of voter fraud convictions at the state level, which Minnite culled from interviews, newspapers, and court proceedings, was also negligible. It included 19 individuals who were ineligible to vote—five because they were still under state supervision for felony convictions and 14 who were not U.S. citizens—and five persons who voted twice in the same election. Even an intensive, five-year investigation by the U.S. Department of Justice in the George W. Bush Administration famously netted only 86 voter fraud convictions. Most of these were for offenses like vote-buying schemes or ineligible voters registering to vote—not for voter impersonation at the polls, the type of voter fraud that might have been prevented by presentation of photo identification.¹⁶

The prioritization of voter ID initiatives by many state legislatures in a year where many are slashing government spending is baffling, considering the costs associated with voter ID programs. Indiana reports that it cost the state almost \$4 million to provide 168,264 IDs in 2010, a non-presidential election year.¹⁷ (One can presume a greater demand for government-issued photo identification in presidential election years.) Those costs did not include the millions of dollars that states must invest in voter education, additional poll workers to ensure reasonable wait times, and poll worker training in order to comply with court rulings on ID laws. The Indiana Bureau of Motor Vehicles reported that it has cost that agency over \$10 million to distribute free ID since the law was put into effect.¹⁸ The head of the Wisconsin Municipal Clerks Association, testifying before that state's voter ID law was enacted, said that the provision would force her to choose between using her resources to implement a voter ID law and providing services, positions and machinery for emergency operations in a timely manner.¹⁹

WHY THIS MIGHT BE HAPPENING

One of the most salient features of the 2008 presidential election was the surge in voting among people of color and youth. Their increased participation propelled Barak Obama into the White House. Approximately 2 million more African-American, 2 million more Latinos, and about 600,000 more Asian-Americans voted in 2008 than in 2004 – while the number of white voters remained virtually unchanged. Voting rates hit 49 percent among young voters between ages of 18 and 24, compared with 47 percent in 2004. African American youth increased their voting rate to 55 percent – 8 percent higher than in 2004.²⁰ And the overall African American vote rose by 4.9 percent, from 60.3 percent in 2004 to 65.3 percent of eligible voters in 2008.²¹ 2.7 percent more Latinos cast a ballot in 2008 than four years earlier.²²

Given the groundless policy rationale for strict voter ID requirements and their high costs, politics offer the only credible explanation for the rash of new voter ID proposals in 2010. The fact is that anti-voter laws that disproportionately disfranchise the very groups that accounted for Barak Obama's victory in 2008 were rammed through the states by Republican majorities in an unprecedented fashion two years later. Not only did several states manage to pass laws such as those that require government-issued photo identification in order to vote, sponsors of such bills and their gubernatorial benefactors often made it clear that it was the foremost priority of the 2011 legislative session. Governor Rick Perry in Texas even deemed it "emergency legislation" that had to be dealt with before any other matters could be taken up. In Wisconsin, the very first bill the legislature took up when the Democrats fled the state because of the fight over collective bargaining rights was voter ID.

CONCLUSION

Since the 2000 election revealed a variety of problems in our election system, Congress and state legislatures have endeavored to make the process more fair, accurate and efficient. The raft of strict voter ID bills that have been passed state legislatures of late seek to undermine that progress and skew election results for parochial political purposes. That this is taking place at a time when Americans are most concerned about keeping their jobs and holding on to their homes makes it all the more deplorable.

The U.S. Department of Justice must make serious and rigorous inquiries into the discriminatory impact of these laws. As members of this body and the House of Representative have observed, the Department has the power to deny preclearance of voter ID bills passed in those states covered by Section 5 of the Voting Rights Act if they find them to be racially retrogressive, and must exercise vigorous oversight of the implementation of voter ID requirements in other states under Section 2 of the Voting Rights Act.

Given the reality that these disfranchising laws will be in effect in several states in the 2012 election, resources must be made available to election administrators, nonpartisan organizations, and others to help ensure that every American eligible to vote has the ID necessary to do so.

Finally, organizations, individuals and policymakers in Congress and in state legislatures must continue the fight to prevent more states from enacting these voter disfranchisement measures. This era must not go down in history as one in which the right to vote in this country took huge strides backward toward discrimination and exclusion.

ENDNOTES

1. See *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008) and *Democratic Party of Georgia, Inc. v. Perdue et al.*, 707 S.E.2d 67 (Ga. 2011). Georgia requires that voters show a driver's license (which may permissibly have expired), a photo ID from any entity of the US government or state government, a passport, a military ID or a tribal ID. Student identification from a state institution of higher learning will be accepted. GA. CODE ANN. § 21-2-417 (2006). Indiana requires that voters present a photo ID issued by the federal or state government, and may include student ID from a state school. IND. CODE § 3-5-2-40.5 (2007).
2. A.R. 7, 2011-12 Biennial Sess. (IWs, 2011).
3. S.B. 14, 82nd Leg., Reg. Sess. (Tex, 2011).
4. Tova Wang, *Voter Identification Talking Points and Fact Sheet*, Dēmos (Jan. 5, 2010), available at <http://www.demos.org/pubs/voterIDalkingpoints.pdf>.
5. *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification*, Brennan Center for Justice (Nov. 2006), available at http://www.brennancenter.org/content/resource/citizens_without_proof_a_survey_of_americans_possession_of_documentary_proof/.
6. Brief Amicus Curiae of Rock the Vote, National Black Law Students Association, National Black Graduate Student Association, The Feminist Majority Foundation and The Student Association for Voter Empowerment Supporting Petitioners in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), available at http://brennan.3cdn.net/b16ac2f120968ad76_r1m6i6w.pdf.
7. U.S. Dep't of Transp. Fed. Highway Admin., *Highway Statistics 2009: Distribution of Licensed Drivers - 2009 by Sex and Percentage in Each Age Group and Relation to Population* (Dec. 2010), available at <http://www.fhwa.dot.gov/policyinformation/statistics/2009/dl20.cfm>.
8. Matt A. Barreto, Stephen A. Nuño, Gabriel R. Sanchez, *Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters*, prepared for presentation at 2007 American Political Science Association Annual Conference (Sept. 1, 2007), available at http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf.
9. Shakir, Faiz et al. eds., *REPORT: In 22 Statehouses Across The Country, Conservatives Move to Disenfranchise Voters*, Think Progress: The Progress Report (Apr. 15, 2011), available at <http://thinkprogress.org/politics/2011/03/05/147035/state-disenfranchisement-schemes/>.
10. Bob Lang, Director, Legislative Fiscal Bureau of Wisconsin, *Memo to Members of Wisconsin Legislature* (May 11, 2011), p. 4, available at http://legis.wisconsin.gov/lfb/2011-13bills/2011_05_11_WLeg_ASA%20to%20AB%207_Voter%20ID.pdf.
11. John Zwiarski, *The Driver License Status of the Voting Age Population in Wisconsin, Employment and Training Institute, University of Wisconsin-Milwaukee* (June 2005), available at <http://www.uwm.edu/eti/barriers/DriversLicense.pdf>.
12. One Wisconsin Now, *Voter ID Plan Will Likely Hike Deficit Tens of Millions of Dollars, No Private Sector Jobs*, Press Release (Jan. 12, 2011), available at <http://www.onewisconsinnow.org/press/voter-id-plan-will-likely-hike-deficit-tens-of-millions-of-dollars-no-private-sector-jobs.html>.
13. Linda S. Wallace, *Will Long Lines Sink Photo ID Law?*, TRI-STATE DEFENDER, July 15, 2011, available at <http://www.tri-statedefenderonline.com/articlelive/articles/6429/1/Will-long-lines-sink-photo-id-law/Page1.html>.
14. Doye Zweifel, *Plain Talk: 101-year-old disgusted with Walker's voter ID law*, THE CAPITOL TIMES, July 22, 2011, available at http://host.madison.com/ct/news/opinion/column/doye_zweifel/article_11513d9e-0845-5bcc-afbe-bd19138314a6.html.
15. See Justin Levitt, *The Truth About Voter Fraud*, Brennan Center for Justice (2007), available at <http://www.truthaboutvoterfraud.org/pdf/TruthAboutVoterFraud.pdf>.
16. Lori Minnte, *The Politics of Voter Fraud*, Project Vote (2007).
17. National Conference of State Legislatures, *The Convoys* (Feb. 2011), p. 2. The materials-only cost for those "free" ID cards was \$333,162. Total production costs, including man-power, transaction time and manufacturing" was measured at \$1,309,093. Indiana also incurred \$2,187,432 "loss" (based on \$13 per card) by waiving the typical fee for these ID cards.
18. Iowa State Association of County Auditor, *A Report on Photo ID for Voting Purposes* (Feb. 2, 2011), p. 7, available at <http://www.iwaa.org/Portals/0/IssuesAdvocacy/PDF/SACAN%20Voter%20ID%20Report%2020211%20Final%205B%3A3D.pdf>.
19. Dianne Hermann-Brown, President, Wisconsin Municipal Clerks Association, *Testimony on SB6* (Jan. 25, 2011), available at http://www.866ourvote.org/tools/documents/files/WI-clerks-assn-testimony01_11.pdf.
20. *Minority, Young Voters Pushed 2008 Turnout*, UPI, July 20, 2009, available at http://www.upi.com/Top_News/2009/07/20/Minority-young-voters-pushed-2008-turnout/UPI-11131248098508/.
21. Mark Hugo Lopez, Associate Director, Pew Hispanic Center, Paul Taylor, Executive Vice President, *Dissecting the 2008 Electorate: Most Diverse in U.S. History*, Pew Research Center (Apr. 30, 2009), available at <http://pewresearch.org/pubs/1209/racial-ethnic-voters-presidential-election>.
22. *Id.*

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United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Senator Richard J. Durbin, Chairman

New State Voting Laws: Barriers to the Ballot?
Thursday, September 8, 2011

Opening Statement

(As Prepared for Delivery)

This hearing of the Subcommittee on the Constitution, Civil Rights, and Human Rights will come to order. Today's hearing will examine whether a number of new state voting laws threaten the right to vote.

This year we have watched young people in places like Egypt and Tunisia take to the streets to fight for what we in America sometimes take for granted: the right to elect our leaders. In our country, regardless of how divisive the disagreement or how intense the debate, we settle our political differences at the ballot box.

Constitutional Expansion of Voting Rights

Let us be clear. Throughout our history, the right to vote has been honored in principle but dismissed in practice, in the law and even in our Constitution. Despite enshrining voting as "the right preservative of all other rights," it is a right often honored in the breach.

This is a relatively new development. Only in the last century did Americans win the right to directly elect their U.S. Senators. And for more than half the life of our Republic, a majority of the adult population, the majority of Americans, were not allowed to vote. Even after the franchise was legally expanded, for close to a century, a well-organized, violent, racist campaign successfully prevented many African Americans from exercising the right to vote.

Fortunately, our country – over time – learned from these mistakes and expanded the franchise and the reach of our democracy.

In fact, our Constitution has been amended more to expand and protect the right to vote than for any other issue. Six Constitutional Amendments – the 15th, 17th, 19th, 23rd, 24th, and 26th – ratified over the course of 100 years underscore our nation's commitment to ensuring that all adult citizens enjoy free and full access to the ballot.

Courageous Americans fought for these Constitutional Amendments in order to guarantee the right to vote to all citizens -- regardless of race, sex, class, income, or state of residency. We must be constantly vigilant against threats to these hard-fought victories.

That's why earlier this year I held a hearing on the threat to our democracy posed by the Supreme Court's *Citizens United* decision and the flood of special interest cash into elections, and the need to fundamentally reform the way we finance our campaigns.

New State Laws Threaten the Right to Vote:

Today we will examine another potential threat to our democracy: recently passed state voting laws designed to restrict voting.

I am deeply concerned by this coordinated, well-funded effort to pass laws that could have the impact of suppressing votes in some states, including Wisconsin, Texas, Florida, Indiana, Georgia, Alabama, Tennessee, and South Carolina.

Regardless of the stated intention or goals, many analysts believe these laws will cause widespread voter suppression and disenfranchisement by making it harder for millions of disabled, young, minority, rural, elderly, homeless, and low income Americans to vote.

Let's take a moment to consider some of the new restrictions on voting that we'll discuss today.

Photo Identification

Since the beginning of this year, 7 states have passed laws requiring certain forms of photo identification prior to voting.

- At first blush, it might appear that ID requirements are reasonable. *After all, who can't produce an ID?*
- Well, there is an old saying that applies here: "The devil is in the details." The way these laws are written, not just any ID will do. According to numerous studies, millions of Americans who are currently eligible to vote do not have an ID that would satisfy these new restrictive laws, and these individuals are disproportionately young, low-income, senior citizens, African Americans, and Latinos.
- It is unclear what, if any, efforts are being made to make sure that those who do not have IDs will be able to obtain them before the next election.

Reducing Early Voting

Some states have also passed laws drastically reducing the early voting period.

- Early voting is primarily used by our fellow citizens who cannot get to the polls on Election Day for a variety of reasons.

- They may not have reliable transportation. They may work at a job that does not allow them to take time off on Election Day. They may have trouble finding child care. If they are disabled or elderly, they may not be able to count on receiving the assistance they need to get to the polls on Election Day.
- For these reasons and many others, the number of people voting early has increased with each election. In 2008, for example, 30% of all votes were cast before Election Day.
- Which causes one to ask: *Why are some states reducing the early voting period when the number of early voters is clearly on the rise?*

Restrictions on Voter Registration Drives

Finally, there are two states – Florida and Texas – that have enacted laws that threaten to end voter registration drives by non-partisan organizations.

- The Florida law places onerous administrative burdens on volunteers who sign up to help their neighbors register to vote. If a volunteer fails to meet a series of cumbersome administrative requirements, they could be prosecuted and fined.

This law is so bad that, for the first time ever, the League of Women Voters – a highly respected and nonpartisan organization – indefinitely suspended all voter registration drives in Florida.

Conclusion

These are just three examples of laws that may roll back voting rights.

The proponents of these new restrictive state laws argue they are efforts to reduce voter fraud. Yet as Professor Levitt, a witness on our second panel, has demonstrated, the incidence of voter fraud in America is minimal and the reported fraud is often anecdotal, unsubstantiated and contrived.

I am particularly concerned that the states where these laws were passed have not taken adequate measures to ensure that affected individuals will be able to vote. That is why today I am sending a letter to the governors in three of these states – Florida, Wisconsin, and Tennessee – asking them to inform the Subcommittee of their plans for ensuring that the laws they have enacted will not disenfranchise the citizens of their state.

Protecting the right of every citizen to vote and ensuring that our elections are fair and transparent are not Democratic or Republican values, they are American values.

FAIR ELECTIONS LEGAL NETWORK

New State Voting Laws: Barriers to the Ballot?

*Hearing before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights*

Thursday, September 8, 2011

Statement for the Record

The Fair Elections Legal Network (FELN) stands opposed to changes in law and policy that needlessly restrict access to the polls. Over the past decade, advances in electoral administration have sought to meet the needs of an increasingly mobile and technologically dependent society. Innovations such as online voter registration, Election Day registration, no excuse absentee voting, and early voting recognize that previous models of election administration are outdated and no longer serve the twin goals of access and integrity. Statewide registration databases and related technological innovations now make it possible for elections officials to simultaneously pursue these goals while also promoting efficiencies and cost-savings. Unfortunately, however, the wave of electoral “reforms” currently being pursued in state legislature across the country puts all of these goals in jeopardy, with no clear benefit to voters or the democratic process.

For years, FELN has worked to protect the voting rights of foreclosure victims and other mobile voters. While the statements of other advocates will focus on the direct impact that these new state voting laws have on certain groups, we would like to call attention to their impact on a broader, overarching category of American voters: the mobile electorate.

Each year, roughly 12.5% of U.S. households move to a new address.¹ Movers are retirees, students, victims of foreclosure,² victims of a poor economy, job seekers, adventure seekers, and upwardly mobile individuals. They are your neighbors, parents, children, friends, enemies, and acquaintances, and at some point, “they” are probably you. Whatever the motivation for moving may be, people are changing addresses now more than ever, and

¹ United States Census Bureau, Director’s Blog, “Quality in a Census, Some Overview Thoughts,” Sept. 9, 2010, <http://bit.ly/o1za35>.

² In 2010, banks repossessed 1.05 million homes. According to the 2010 census, there was an average of 2.59 people per household in the U.S. This adds up to a total of approximately 2.7 million people who were forced to move because of foreclosures. Corbett B. Daly, *Home foreclosures in 2010 top 1 million for first time*, REUTERS, Jan. 13, 2011, available at <http://bit.ly/g1Pzhu>; Press Release, U.S. Census Bureau, U.S. Census Bureau Reports Men and Women Wait Longer to Marry (Nov. 10, 2010), available at <http://1.usa.gov/oGv42G>. In addition to the regular barriers faced by movers, victims of foreclosure face additional barriers to voting due to misinformation, lack of clear policies, and difficulty establishing and proving residency. For more information, see Fair Elections Legal Network, *Lose Your Home, Keep Your Vote: How to Protect Voters Caught Up in Foreclosure*, 2010, available at: <http://bit.ly/roMM97>.

movers face very specific barriers to access that are remnants of a less mobile time. These include:

- **Getting registered to vote in the new community.** Voter registration may not be the first thing on a mover's mind, but deadlines for registration or for updating an address in the voter registration file can be as long as 30 days. By the time a new resident becomes aware of an election or has a chance to think about voter registration, it may already be too late. Shorter registration deadlines, same day registration periods, Election Day registration options, and statewide registration portability are innovations that recognize that American voters are far less stationary than ever before. Same day and Election Day options generally include safeguards, such as requiring proof of residency, which balance the need for later deadlines with the concern that registration systems not be vulnerable to abuse. Also, now that states have computerized statewide registration databases as required by HAVA, allowing for in-state address changes up to and including Election Day is a practice that can be administered without jeopardizing the integrity of the rolls.
- **Being required to show a very specific type of identification that reflects the new address.** Movers, especially in urban environments, may not have other reason to get a new driver's license upon moving to a new address. By the time Election Day rolls around, it may be too late to take the necessary steps to get the required identification. Voter ID laws that require a current address on a specific type of photo ID conflate the issues of identity and residency. Allowing voters a variety of options for demonstrating their identity and residency, where proof of either is required, simply makes sense in a mobile era.
- **Not knowing where to go or how to get there.** With all the other details surrounding a move, figuring out how/where to get registered and how/where to go vote can be challenging, and mistakes happen. Even for non-movers, redistricting and polling place consolidation can lead to confusing changes. Allowing people to register and vote at the same time simplifies the process and respects voters' time, an increasingly valuable resource in modern society. Other sensible policies that address these challenges include systematically assisting voters in finding the correct voting location,³ and counting provisional ballots cast in the wrong precinct for all offices/issues that a voter is eligible to vote for.

Yet, instead of improving upon the advances of recent years and implementing new reforms that meet the needs of today's electorate, the policies currently being pursued generally fit into the following categories, each of which poses its own set of obstacles for increasingly mobile Americans:

³ Notably, Ohio's new law, if implemented, will remove the duty of poll workers to direct voters to the correct precinct.

- **Reducing Opportunities for Voter Registration.** State legislatures have lengthened the residency requirement for voter registration (WI), restricted the ability of third party voter registration groups to conduct voter registration drives (FL, TX), and eliminated (or tried to eliminate) modern registration options that allow voters to register and vote at the same time (ME, MN, NC). Florida also restricted the ability of movers to update their address at the polls on Election Day and still receive a regular ballot, a practice that has been in place for decades and which preserved the integrity of the process by requiring a voter's registration in the state to be verified before the voter received a ballot. Instead of recognizing that people, especially in a bad economy, need more opportunities and outlets through which to get registered or to update their address, these changes make it harder for the average American to participate in elections.
- **Reducing Early Voting Locations/Hours.** Ohio and Florida reduced access to early in-person absentee voting options, and a similar effort was pursued in North Carolina. These changes move election administration backwards instead of continuing the progress made over the past decade towards expanding access. In states that have implemented early voting procedures, reducing these options has negative effects in terms of both access and costs, as voters are forced to make use of fewer days, hours, and locations and elections officials find it necessary to increase staff and/or locations that they were able to reduce when early voting was implemented.⁴ For movers, shorter voting periods also reduces the timeframe during which they can identify and solve problems preventing them from successfully voting in their new community.
- **Strict Voter ID Requirements.** The photo ID bills being pursued and implemented this year require voters to produce very specific types of photo ID in order to successfully cast a ballot. The model tends to require a current, valid, U.S. government or state-issued photo ID with an unexpired expiration date. Some laws require a current address and/or only allow for very specific types of acceptable ID. Common forms of ID held by movers, such as out-of-state driver's licenses or student IDs, are often excluded. Proponents are unable to offer factual arguments as to why these requirements must be so narrowly drawn, relying instead on the rhetoric of "voter fraud." This in turn does a disservice to the American people by confusing unrelated issues; the examples of fraud that proponents can point to are not problems that strict photo ID requirements can solve. Instead, these changes operate to exclude otherwise eligible voters, and mobile Americans pay the price.

Though we are all movers at some point or another, some people move more than others. Between 2009 and 2010, 16.7 per cent of Blacks and 15.6 per cent of Hispanics moved,

⁴ See Appendix 1: Gary O. Bartlett, Executive Director, North Carolina State Board of Elections, "Memorandum on House Bill 658," May 18, 2011, available at: <http://bit.ly/nGR3bW>. Also see "Leon County supervisor of elections: Early voting compromise won't save money," THE FLORIDA INDEPENDENT, April 29, 2011, available at <http://bit.ly/iXGHqy>.

compared to 13.9 percent of Asians and 10.8 per cent of Whites.⁵ And in 2010, “23.6 percent of people with incomes below 100 percent of the poverty line had moved within the last year as compared with 16.5 percent of people with incomes between 100 and 149 percent of the poverty line.”⁶ Thus, failing to pursue policies that reflect an increasingly mobile population, or moving backwards by retracting such reforms where they have already been implemented, has disproportionately harmful effects for low-income Americans and certain racial minorities.

To serve the modern American electorate, our elections processes are in need of reform. Policy proposals must carefully balance multiple goals, including access, accuracy, and integrity. Unfortunately, the current trend is to pursue policies that do not achieve any of these goals; instead, they circumscribe the universe of eligible voters by eliminating options and reducing access. Systematically making it more difficult for everyone to vote is profoundly harmful to our democracy and should be of concern to all citizens, including this Subcommittee.

⁵ U.S. Census Bureau, “Census Bureau Reports Housing is Top Reason People Moved Between 2009 and 2010, May 23, 2011, <http://1.usa.gov/44Q32o>.

⁶ Id.



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Memorandum

House Bill 658

Date: May 18, 2011

House Bill 658, as now before the General Assembly, would reduce the period for one-stop, in-person absentee voting ("early voting") by one week. If enacted, the bill would have two direct consequences. It would not accommodate voters' needs and it likely would increase the costs of elections.

Voter Impact

The bill would limit voters' participation choices. In-person voting is extremely popular in North Carolina. One reason for the popularity is that early voting allows voters flexibility in planning their in-person trip to the polling place. Reducing the early voting period by one week would lessen that flexibility and almost surely cause some voters to be unable to vote in person.

The bill likely would cause the in-person voting experience to take more of the voter's time. In the past, voters have faced long lines at polling places. That experience is largely historical, thanks in part to the continued efforts of state and county elections officials to streamline the voting process, but also thanks to the early voting opportunity. With the chance to vote now including a 17 day span for early voting and Election Day, voters naturally have spread themselves out, increasing their convenience by shortening their waits. Reducing the early voting period would result in increased waits, both at early voting sites and at Election Day polling places.

Increased Election Costs

Reducing the early voting period likely would increase the cost of elections. On the surface, reducing the early voting period might seem to be a cost reduction, since county boards of elections would be able to operate early voting sites for fewer days. However, that perceived savings would be more than offset by cost increases for several reasons. The logistics required to maintain an appropriate level of service for North Carolina's voters have associated costs.

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603

First, the popularity of early voting (and corresponding reduction in the proportion of voters voting on Election Day) has allowed counties to combine precincts in certain locations. Shortening the early voting period would reduce this trend. Polling locations would have to be examined to ensure that the facilities are large enough to handle the increased capacity. County boards of elections may have to purchase additional voting equipment for existing precincts (at considerable expense) and some counties may have to open new precincts, equip them (also at considerable expense,) and send the statutorily-required first class mail notice alerting voters of the precinct change. Counties surely will have to employ additional election-day poll workers to handle the increased election-day turnout.

Second, with a shorter early voting period, an increased number of voters may turn to by-mail absentee voting. Having changed their operations to accommodate the popularity of in-person absentee (early) voting, county elections offices will experience the expense of transitioning to an increased level of by-mail absentee voting.

Third, the state and the counties will face the expenses associated with a voter education campaign. This would ensure voters are aware of the reduction in service time and that confusion is minimized.

Fourth, early voting as now conducted gives counties cost-saving flexibility. The marked difference in turnout numbers between the 2008 Presidential general election and the lower-turnout 2010 general election (illustrated by the chart and graph on page 3) shows the value. County boards of elections have the ability to set the number of additional early voting sites based on projected turnout for different types of elections. Increasing the number of permanent precincts to handle the number of North Carolina voters is a permanent cost that is not flexible based on need.

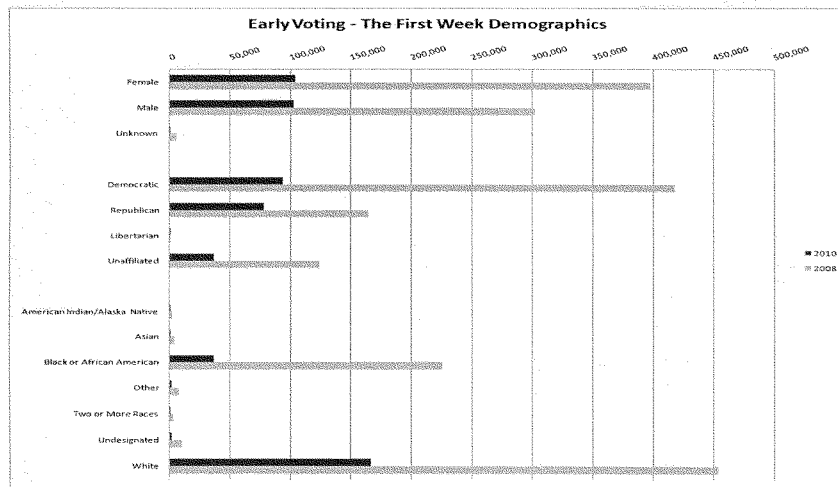
The Utility of Early Voting

The popularity of early voting among voters clearly is evidenced by the proportion of voters choosing to use it. Counties have responded to that voter preference by implementing the early voting period as permitted by current law. The required early voting period currently extends from the third Thursday to the last Saturday prior to the election. The statute allows for the local option of additional hours and days. During the 2008 Presidential election, 89 counties utilized this option to open early, remain open late, and operate during weekends.

The chart below and the graph shown at the end of this narrative represent the voters who chose to cast their ballots during the first week of early voting in both the 2008 Presidential General Election and the 2010 General Election.

FIRST WEEK TURNOUT FOR EARLY VOTING

	2008	2010
Female	397,878	104,173
Male	302,575	102,844
Unknown	5,992	1,034
Democratic	417,617	93,459
Republican	164,538	77,900
Libertarian	494	186
Unaffiliated	123,796	36,506
American Indian or Alaska Native	2,456	749
Asian	3,792	420
Black or African American	225,813	36,640
Other	7,629	1,292
Two or More Races	2,762	346
Unknown	10,318	1,698
White	453,675	166,906
TOTAL FIRST WEEK EARLY VOTERS	706,445	208,051



**“Voter ID Laws Lead to Less Voting,
Not Less Fraud”**

Testimony Before the
Senate Judiciary Subcommittee on the
Constitution, Civil Rights and Human Rights Hearing:
“New State Voting Laws: Barriers to the Ballot?”
September 08, 2011

by

The Honorable Charles A. Gonzalez
Member of Congress for
Texas’s 20th Congressional District
and
Ranking Member, House Subcommittee on Elections

Mr. Chairman and Members of the Subcommittee,

I thank you for the opportunity to testify today about a disturbing trend that has been sweeping our nation. There is no right more fundamental to our national identity and our form and system of government than the right to vote. The genius of our constitution was horribly besmirched by the passages condoning slavery. It took us nearly 80 years and a bloody civil war before we amended the Constitution to end slavery and began to make right that failure. Since then, the Constitution has been amended 14 more times and fully half of those amendments focus on protecting and expanding the right to vote.¹ So it is right and proper that we, as Members of Congress, should examine whether any state law is infringing on that right of American citizens. If any such law exists, it is our duty, as citizens as well as members of the federal government who have taken an oath to uphold the Constitution, to act.

For many years now, we have heard tales of conspiracies to commit voter fraud, but they rarely survive close scrutiny.² During the Administration of George W. Bush, rooting out this rampant voter fraud was one of the Department of Justice's highest priorities. So important was this effort that top officials acted "improperly" and "violated Department policy and federal law".³ And what was the result of this concerted push to find instances of voter fraud? After five years of effort, a period during which hundreds of millions of voters cast their ballots, the Department of Justice brought 95 cases to trial. Twenty-five of those cases were dismissed or resulted in acquittals. As a former judge, I will say that seventy successful prosecutions is not good news. That's seventy examples of people breaking the law, knowingly or otherwise. But, as the New York Times reported, "Many of those charged by the Justice Department appear to have mistakenly filled out registration forms or misunderstood eligibility rules, a review of court records and interviews with prosecutors and defense lawyers show."⁴

What we're seeing, then, are examples of people making honest mistakes, be it registering twice or trying to vote even though their right to do so has been revoked because they've been convicted of a felony. At a hearing in the House Subcommittee on Elections on March 31, 2011, Minnesota Secretary of State Mark Ritchie told the story of a one of these "criminals":

¹ See Amendments 14, 15, 17, 19, 23, 24, and 26. Except for the 14th Amendment, expanding or protecting the right to vote is the sole purpose of each of these amendments.

² See, e.g., Jeannine Koranda, "Dead folks voting? At least one's still alive", *The Wichita Eagle*, October 29, 2010 (<http://www.kansas.com/2010/10/29/1562791/dead-folks-voting-at-least-ones.html>)(describing how Kris Kobach, then a candidate for his current position as Secretary of State, announced that one man on the voter roles was dead. "Reached Thursday at his home where he was raking leaves, Brewer, 78, was surprised some people thought he was dead. 'I don't think this is heaven, not when I'm raking leaves,' he said.") More generally, see, Justin Levitt "The Truth About Voter Fraud", Brennan Center for Justice at NYU School Of Law, 2007 (http://brennan.3cdn.net/c176576c0065a7eb84_gxm6ib0hl.pdf)

³ See "An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General" by the U.S. Department of Justice's Office of Professional Responsibility and Office of the Inspector General, July 28, 2008, at 28, 35, 45, 67, 69, 81, 115, 117, 135, *et alia* (<http://www.justice.gov/oig/special/s0807/final.pdf>).

⁴ Eric Lipton and Ian Urbina, "In 5-Year Effort, Scant Evidence of Voter Fraud", *The New York Times*, April 12, 2007 (<http://www.nytimes.com/2007/04/12/washington/12fraud.html>)

Election day 2008, a young man way up on the Canadian border, just out of the prison, was very proud, getting his life back together, putting his life back together, called his parole officer and got the answering machine and said: "I am getting my life back together. I am going to be a good citizen. I am a very strong supporter of Senator McCain and Senator Coleman. I am going down to vote. Aren't you proud of me for being a citizen and for being active?" He, unfortunately, was not yet off parole. And so he went down, not trying to hide anything, of course, and before his parole officer was able to reach him, he violated the law in Minnesota and committed another felony. His parole officer called him and said, "Don't", and it was too late. And so actually he was prosecuted under a gross misdemeanor, 30 days in the county workhouse, a little tiny county that really can't afford to do a lot of extra prosecutions or put people up for a jail term; very expensive problem for the county and for this young man's life.⁵

Is this the problem which is supposed to pose such a threat that we should pass new laws making it harder for eligible citizens to vote? So that we can, not empower but, rather, dragoon state prosecutors and United States attorneys into diverting limited resources to spend their time throwing people in jail for being overeager to be good citizens? That's not what the evidence proves. What it proves is that we need: to improve voter education about who can and cannot vote; to help the Election Assistance Commission provide more support to state and local governments on things like poll-worker training; and help states to cooperate in preventing multi-state registration. Rather than imposing burdensome solutions to problems we don't have, these are steps that would combat the actual problem that we're facing.

This state of affairs is simply amazing to me and I really do have trouble understanding it. It is a sad fact that only 41% of the voting-eligible population of this country actually cast a ballot last year. Many developed countries regularly see turnout above 70 and even 80% of the voting-age population, a significantly larger group.⁶ Our priority should be engaging our entire population so that everyone who is eligible to vote chooses and is able to participate directly in our democracy.⁷ But instead of removing barriers to voting, state after state, especially in the past eight months, has imposed burdens and thrown hurdles into their path. I almost wrote that these were "new burdens" and "new hurdles" but the sad fact is that too many of them are not. They are, rather, burdens we had imposed in a darker age, hurdles we had cast aside and, it was hoped, smashed into kindling. As my colleague, John Lewis, wrote in the New York Times, in an article submitted for the record, these are "poll taxes by another name."⁸

⁵ See "The 2010 Election: A Look Back at What Went Right and Wrong, March 31, 2011" at 58 (quotation marks added) (http://fiwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_house_hearings&docid=f:67298.pdf)

⁶ See, e.g., [OECD Family Database](http://www.oecd.org/dataoecd/1/20/43200248.pdf), Societal Participation, Section CO4.2: Participation rates of first-time voters, at 1 (<http://www.oecd.org/dataoecd/1/20/43200248.pdf>) showing "voter turnout in the most recent parliamentary elections as based on administrative data". N.B. These figures refer to all voters, not merely first-time voters, information on whom follows in that report.

⁷ I have heard too many times to count that political contributions are a vital means of participating. I would infinitely rather a voter in my district cast a ballot than signed a check.

⁸ John Lewis, "A Poll Tax by Another Name", *The New York Times*, August 26, 2011 (<http://www.nytimes.com/2011/08/27/opinion/a-poll-tax-by-another-name.html>). See also the list of allegations of voter intimidation compiled by the American Center for Voting Rights Legislative Fund, a group which supported voter ID law, archived at <http://web.archive.org/web/20061108140051/http://www.ae4vr.com/reports/072005/RepublicanIncidents.html>

On May 27, 2011, Texas Governor, Rick Perry, signed into law SB 14, a bill which has brought these unfortunate policy mistakes to the second largest state in the country. The governor, for reasons passing understanding, declared that this bill an emergency. This was not because we faced a new problem with voter fraud in Texas. Like every other state in the country, the allegations of voters committing fraud at the polls have consistently come up empty.⁹ And it's not just that there is no evidence of the kind of fraud alleged by supporters of voter ID legislation.¹⁰ There is also the fact that voter ID laws like Texas's wouldn't even counter the kinds of fraud that are likely to occur. As numerous experts have pointed out, in testimony before state legislatures, including Texas's¹¹, and before congressional committees in both chambers, a voter ID law can only combat one type of fraud, that of someone who goes to the polls and pretends to be someone else or to deny that he or she has already voted.¹² It's astonishing to find purported proponents of free market ideology propounding such an illogical course of action. While we can honestly say that every vote counts, even the most cursory cost-benefit analysis demonstrates the illogic of risking 10 years in prison to cast one more vote in even the most important race. Who would risk such a thing?

Actual Electoral Fraud Won't Be Stopped by Voter ID

The answer is that no one would. With few exceptions, chiefly cases of error like those mentioned above, the incidents of voter fraud state and federal prosecutors have actually found are vastly different things. Even in the 19th century, when the kind of fraud photo ID laws are

⁹ Again, this is not to suggest that election law violations are not occurring. A complaint was filed in October, 2010, by Texans for Public Justice with the Texas Ethics Commission against the "King Street Patriots" for funding violations and voter suppression in Houston. (http://www.tpj.org/2010_10_01_archive.html) In June, two aids to former Republican Governor Robert Ehrlich were indicted for "deceptive robocalls intended to suppress votes on the night of the election." Annie Linskey and Julie Bykowicz, "Ehrlich aides indicted in Election Day robocalls case", *The Baltimore Sun*, June 16, 2011.

(http://weblogs.baltimoresun.com/news/local/politics/2011/06/chrlich_aides_indicted_in_elec.html)

¹⁰ See, e.g., Ian Urbina, "Panel Said to Alter Finding on Voter Fraud", *The New York Times*, April 11, 2007, (<http://www.nytimes.com/2007/04/11/washington/11voters.html>). The article describes how a report on whether voter fraud was a problem by the United States Election Assistance Commission was altered to downplay the conclusion of the experts that it was not while voter intimidation was. Republican elections lawyer Job Serebrov, one of the experts who authored the original report, while prohibited from discussing differences between the original report and the finished version, told the *Times* that he and his colleague had produced, "a correct, accurate and truthful report. ... I could care less that the results are not what the more conservative members of my party wanted." According to the draft obtained by the *Times*, only one interviewee "believes that polling place fraud is widespread and among the most significant problems in the system."

(http://graphics8.nytimes.com/packages/pdf/national/20070411voters_draft_report.pdf at 7)

¹¹ See, e.g., testimony of Justin Levitt before the Texas House of Representatives Elections Committee: Voter Fraud and Restrictive ID Requirements

http://www.brennancenter.org/content/resource/justin_levitt_before_texas_house_of_representatives/

¹² See generally, Christopher Beam, "Fake the Vote", *Slate.com*, October 26, 2010.

<http://www.slate.com/id/2272405/pagnum/all/>. See also, a letter from the American Civil Liberties Union Foundation, Inc. to Christian Herren, Chief of the Voting Section at the Department of Justice (http://www.aclu.org/files/assets/comment_under_section_5_re_submission_no_2011-2495.pdf) generally, but specifically at 9 saying that South Carolina's voter ID law: "has the potential to prevent one, and only one, type of voter fraud – voter impersonation. The ID requirement will prevent a person from going to a polling place on Election Day, fraudulently requesting a ballot under the name of a qualified voter of that precinct who has registered to vote but has not voted prior to the fraud, and casting that ballot. The ID requirement will not prevent any other type of fraud, such as double-voting, felon voting, non-citizen voting, absentee fraud, registration fraud, vote buying, or negative vote buying."

supposed to stop was not so uncommon and men were unironically encouraged to “Vote early and vote often!”, that kind of fraud was rarely the determining factor. Tammany Hall’s William “Boss” Tweed has been quoted as saying that he didn’t care who voted as long as he controlled who counted the ballots.¹³ Thus, we find men and women convicted of submitting fraudulent counts of the ballots.¹⁴ Just last month, one of my colleagues in the House announced plans to repeal the federal law that ensures that voters can read their ballots.¹⁵ It’s not easy to vote for your preferred candidate if the ballot’s incomprehensible.

Tweed also said, “I don’t care who does the electing as long as I do the nominating”¹⁶, and a top complaint of many voting rights advocates is improper “ballot access” whereby rules are setup to prevent a rival candidate or political party from even getting on the ballot in the first place. The two independents who ran for governor of Texas in 2006 each had to collect 45,450 valid signatures during a short period of time simply to get on the ballot. And yet they received more than 30% of the vote in that election, indicating that neither was a mere fringe candidate.¹⁷

Another kind of fraud that definitely does exist comes on the other end of the voting process. You don’t have to control the votes cast or counted if you control who gets to vote. While the terrorism of the Jim Crow South is and will remain the quintessential example in American history, this practice is not a relic of a bygone era. In the most significant case of which I’m aware, the Republican National Committee avoid trial on charges of vote caging in New Jersey in the 1980s by signing a federal consent decree never to engage in so-called “ballot security” operations that improperly purged Democratic voters from the registration lists.¹⁸ The RNC has repeatedly sought to be released from that decree, most recently in 2009, when Judge Dickinson R. Debevoise denied the request, holding, “Voter intimidation presents an ongoing threat to the participation of minority individuals in the political process, and continues to pose a far greater danger to the integrity of that process than the type of voter fraud the RNC is prevented from addressing by the Decree.”¹⁹ That this remains a concern was made clear in 2007 when, during her testimony before the House Judiciary Committee, disgraced former Department of Justice official Monica Goodling testified that now-Representative Tim Griffin (AR-2) may have engaged in illegal vote caging during the 2004 presidential campaign.²⁰

¹³ In the 2003 movie “Gangs of New York”, this was rendered as, “the first rule of politics. The ballots don’t make the results, the counters make the results.”

¹⁴ See, e.g., Bill Estep, “Jury convicts all 8 defendants in Clay vote-buying case”, *Lexington Herald-Reader*, March 26, 2010 (<http://www.kentucky.com/2010/03/25/1197075/jury-convicts-all-8-defendants.html>) N.B. While those convicted in that case engaged in multiple types of fraud over several years, none of their chosen methods would have been prevented by voter ID law.

¹⁵ “Coffman Wants to End Bilingual Ballot Requirement”, August 17, 2011, http://coffman.house.gov/index.php?option=com_content&task=view&id=496&Itemid=10

¹⁶ Arthur Twining Hadley, *The Invisible Primary*, © 1976 Prentice Hall, p. 8

¹⁷ The Office of the Secretary of State, Race Summary Report, 2006 General Election, November 7, 2006 (available at <http://elections.sos.state.tx.us/elchist.exe>) indicates that Carole Keeton Strayhorn received 796,851 (18.11%) and Richard “Kinky” Friedman received 547,674 (12.44%).

¹⁸ See, generally, John Schwartz, “U.S. Judge Opposes Republicans on Elections”, *The New York Times*, December 2, 2009 (<http://www.nytimes.com/2009/12/03/us/politics/03voting.html>). The various complaints and briefs are available at “DNC v. RNC Consent Decree” by The Brennan Center (http://www.brennancenter.org/content/resource/dnc_v_rnc_consent_decree/)

¹⁹ *DNC v. RNC*, Civ. No. 81-3876 (DRD), http://electionlawblog.org/archives/dnc_v_rnc_-_opinion_12.01.2009.pdf, at 3.

²⁰ See Dahlia Lithwick, “Raging Caging”, *Slate.com*, May 31, 2007, <http://www.slate.com/id/2167284/pagnum/all/>

In 2005, operatives of the New Hampshire GOP were convicted of organizing a malicious attack on the telephone network of the Democratic senate candidate on Election Day 2002. In a race decided by less than 5%²¹, this electoral fraud may have decided one of our senate elections. This is the kind of electoral abuse about which we need to worry because it is the only fraud that makes sense to the unprincipled people who would even consider committing fraud. In such frauds, a single act can decide the turnout. In the kind of fraud targeted by voter ID laws, hundreds, thousands, or even millions of separate acts by separate people would be required to have the same impact. It simply isn't realistic.

The harmful results of the voter ID laws that purport to combat it, in contrast, are all too real, proven, and well known.

But Voter ID Laws Will Disfranchise Legitimate Voters

In the first place, more than 23 million Americans do not have government issued photo ID.²² During oral argument before the Supreme Court, even the positive spin adopted by the attorney tasked with defending Indiana's misguided voter ID included the admission that at least 25,000 Indianans, and possibly could "be inconvenienced by this law."²³ Defense counsel put the number of people who would face hardship under the law at closer to 200,000.²⁴ That's from a state with 6,483,802 people, according to the 2010 Census.²⁵ If we extend those rates out to the nation as a whole, we get anywhere from 1.2 to 9.7 million people whose right to vote would be harmed by the imposition of voter ID laws that, as stated above, would do nothing to prevent actual fraud.²⁶

These mere numbers, however, are not even the most telling point. It is not acceptable for the state to steal from one man even if it uses the money to provide for 100. There is no more fundamental right than that of voting and a barrier that stops 1% of the people from voting is not acceptable merely because 99% of the people are still able to vote. For, if 1% may be stopped today, 5% may be stopped tomorrow. The Supreme Court has held, "all qualified voters have a constitutionally protected right to vote," and "[t]o the extent that a citizen's right to vote is

²¹ State of New Hampshire, Elections Division, State General Election, November 5, 2002 (<http://www.sos.nh.gov/general2002/sumuss.htm>)

²² This is a conservative estimate. "Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification" by Brennan Center for Justice at NYU School Of Law, November 2006 at 3 (11% of "citizens do not have government-issued photo identification" (http://www.brennancenter.org/page/-/download_file_39242.pdf) and Census Bureau report on US population of 308,745,538 (<http://2010.census.gov/news/releases/operations/cb10-cn93.html>). Eleven percent of the US population would be 33.9 million people. Eleven percent of the voting-eligible population, as calculated by George Mason University's United States Election Project (http://elections.gmu.edu/Turnout_2010G.html) (calculating a VEP of 218,054,301) yields 24 million people.

²³ *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), Tr. of Oral Arg. at 32:17-25 (http://www.supremecourt.gov/oral_arguments/argument_transcripts/07-21.pdf)

²⁴ *Id.* at 30:10.

²⁵ US Census Bureau, "State & County QuickFacts" (<http://quickfacts.census.gov/qfd/states/18000.html>)

²⁶ See, George Mason University's United States Election Project (http://elections.gmu.edu/Turnout_2010G.html) (25,000 and 200,000 are 0.51% and 4.10% of Indiana's Voting-Age Population (VAP); the same percentages were applied to the United States VAP)

debased, he is that much less a citizen.”²⁷ We must never descend to the level of deciding how many voters we’re comfortable disfranchising. If even one voter is disfranchised by these additional barriers, that is one voter too many.

Groups Facing Disparate Impact

For many reasons, the young, the elderly, and the poor are disproportionately represented in this group. All three groups are less likely to own a car, so they don’t need a driver’s license. They’re much less likely to travel abroad, so a passport is a luxury they cannot afford. Securing a photographic ID is also harder for them. A lawyer, doctor, or banker who doesn’t drive or travel abroad can afford to take some time off during the day, and hop in a cab to get over to the DMV to pick up a walker’s ID. She can provide the mortgage paperwork, utility bills, and the like to prove her residence. If she’s misplaced her birth certificate, as so many of us have done over the years, she goes online and puts in her credit card to order a new one. It’s a relatively simple process, the fee – \$22 in Texas,²⁸ which is about average²⁹ – is of no concern, and the only challenge she really faces is time and aggravation. And yet that aggravation is so legendary that jokes about standing in line at the DMV have long been cliché and many of us put off that trip for as long as possible.

For your average hotel housekeeper, the situation’s a bit different. She wakes up around 6:00 in the morning to get her kids ready for school and catch the 07:00 bus to make sure she’s at work by 8:00. She probably can’t leave work during the day; she’s paid by the hour. She can’t risk upsetting the boss by asking for time off to attend to a personal matter like this; there are a hundred out of work housekeepers vying for her job. But she wants to vote. This is her civic duty and it’s important to her. So let’s presume that she, perhaps, happens to get a day off on a day the DMV is open. She puts off the dozens of other chores she needs to get done that day, and hops on the bus. It’s a 90 minute ride, with two transfers, to get to the DMV. She then waits in line for another 45-90 minutes, and spends 15-25 minutes filling out her paperwork³⁰, then 90 minutes more getting back home. If she’s missing some paperwork, the \$22 cost of a new birth certificate is more than 3 hours pay at the federal minimum wage, which is also the minimum wage in Texas³¹ and, because she’s being thrifty to stretch her paycheck, she has neither Internet access nor a credit card with which to purchase lost documents over the Web, and will need to go through the lengthier process of securing one via phone or postal mail. Low-income Americans are twice as likely to be without an accepted photo ID³², and that’s more than half a day our housekeeper must put in if she’s lucky enough to have all the necessary paperwork, to get that workday off, and to be making enough money that she’s only working one job. Is it really just or

²⁷ *Reynolds v. Sims*, 377 U.S. 533, 554, 567 (1964) and, generally *Crawford* Brief for Petitioners at 28 & 37ff (<http://www.aclu.org/voting-rights/crawford-v-marion-county-election-board-brief-petitioners>).

²⁸ Website of the Texas Department of State Health Services Vital Statistics Unit (http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtm)

²⁹ See, for example, \$30 in Frederick County Maryland (<http://www.frederickcountymd.gov/index.aspx?NID=2419>), \$20 in Wisconsin (<http://www.dhs.wisconsin.gov/vitalrecords/birth.htm>), and \$14 in Florida (http://www.doh.state.fl.us/planning_eval/vital_statistics/birth_death.htm)

³⁰ Based on my staff’s conversation with Texas Department of Public Safety officials on the average time required to complete the paperwork, including picture taking, for a voter ID.

³¹ Website of the United States Department of Labor, Wage and Hour Division (WHD) (<http://www.dol.gov/whd/minwage/america.htm#Texas>)

³² “Citizens without Proof” *supra* note 22, at 2

appropriate to require that special effort from her, just to exercise her right as a citizen to participate in our democracy?

Nor should it be ignored that ethnic minorities are less likely to have photo ID than White Americans. One recent study suggests that African-Americans and Hispanics are more than twice as likely not to have an “up-to-date driver’s license or state issued ID card” as Whites, and Asian-Americans are nearly three times as likely.³³ Another study put the number of African-Americans without an acceptable photo ID as high as 25%.³⁴ When they added the restrictive standards of Indiana’s voter ID law, the percentages fell even further. According to that study, 12% of White voter and 19% of minority voters would be unable to vote in Indiana without securing an additional ID.

And what of the elderly man who has never driven? According to the Brennan Center, “Eighteen percent of American citizens age 65 and above do not have current government-issued photo ID.”³⁵ Must he lug his aged bones halfway across town to continue to exercise the same right he’s been exercising every year for most of his life? Or the homeless man, who has no address to point to, no utility bills, and nowhere to have stored his birth certificate since he’s been sleeping on different friends’ couches since his job was shipped overseas 18 months ago? We have seen efforts in several states to purge people from the voter rolls because they’d lost their homes to foreclosure.³⁶ Heaping that additional penalty atop the loss of one’s home must be unacceptable to all of us.

Furthermore, even those who have ID may find that it is sufficiently out-of-date as to have been rendered insufficient under these laws, a problem faced by 18% of Americans 18-24 years old.³⁷ What of the college student whose ID, though issued by the state through his university, is rejected at the polls? Why do we ask him to take additional steps to secure another ID? And what do all of these people do?

Voter ID Laws Lead to Less Voting, Not Less Fraud

It is a truism in economics that when you tax something, you get less of it. Republicans at every level of government and throughout the private sector frequently quote this argument in support of their opposition to the taxes that fund our government, yet they seemingly forget about it when it comes to voting.³⁸ That four hours we’ve demanded of these people before they’re able to vote is a tax on their already far from copious free time and energy. Would it be a surprise if installing such barriers resulted in a drop in voter participation? Nor is that time free.

³³ Gabriel Sanchez, “The Disproportionate Impact of Photo-ID Laws on the Minority Electorate”, *Latino Decisions*, May 24, 2011 (<http://latinodecisions.wordpress.com/2011/05/24/the-disproportionate-impact-of-stringent-voter-id-laws/>)

³⁴ “Citizens without Proof” *supra* note 22, at 3.

³⁵ *Id.* at 3.

³⁶ See, e.g., Eartha Jane Melzer “Lose your house, lose your vote”, *The Michigan Messenger*, September 10, 2008 (<http://michiganmessenger.com/4076/lose-your-house-lose-your-vote>), “Poll Purge for Foreclosed Voters?: Republicans had considered using foreclosure...”, NBC-LA, October 24, 2008 (<http://tinyurl.com/3wkw3d4>), and Associated Press, “Link seen in Ohio foreclosures, provisional votes”, *The Ledger Independent*, July 6, 2008 (http://www.maysville-online.com/news/article_53807aef-d1d1-5085-a51f-bbcb3b879f9.html)

³⁷ “Citizens without Proof” *supra* note 22, at 3.

³⁸ See, e.g., Senators Portman (S4429, July 7, 2011), Grassley (S3720, June 13, 2011), and Sessions (S3077, May 18, 2011).

Someone who must take off from work is literally and directly losing money to collect her ID. If she must drive or take public transportation, those costs, too, come out of her pocket to vote. If he needs to purchase a duplicate birth certificate or other proof of birth or citizenship, that costs money, too. And even if none of these things apply, surely every voter's time is worth something, so these new time costs are an additional tax to exercise one's right to vote. And yet the 24th Amendment to the Constitution forbids anyone being charged to exercise the franchise.³⁹

Policies That Increase Civic Participation

It is disturbing that, even knowing all of this, we continue to place barriers in the path to civic responsibility tread by our most vulnerable fellow citizens. Early voting is a tremendous boon to the workers who cannot make it to the polls on Election Day. It allows them, instead, to come in on a Saturday or non-Tuesday they have off.⁴⁰ It's also a boon to the overworked officials who run our elections. By spreading out the voting period, they can get by with fewer staff on Election Day. And for everyone who doesn't vote early, it's a great deal, too, because each early voter is one less person standing in line ahead of you. Despite this, the past eight months have seen bills to curtail early voting in North Carolina⁴¹, Ohio⁴², and Florida.⁴³

Another way to make everyone's lives easier is absentee ballots. Whether they fill it out on Election Day or the week before, the voters are completing it on their own schedule, when it works for them. The elections workers, similarly, get to handle the ballots when they're able – within reason and certain limits – rather than facing a sea of faces before them of people who can only vote now, Now, NOW! And for the Election Day voter, once again, each absentee ballot is one less person competing for resources. This is why many states and local jurisdictions have made a push in recent years to increase access to absentee ballots. As my colleague, Rep. Zoe Lofgren, former Chairwoman of the Elections Subcommittee, has said, "On average, vote by mail elections cost 30% less than regular polling place elections."⁴⁴ And yet, this past year has seen the reversal of many of these policies and imposition of new hurdles to voters who seek absentee ballots.⁴⁵

³⁹ "The right of citizens of the United States to vote ...shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."

⁴⁰ "It is clear that expanded early voting provided increased opportunities across the board and should be further expanded." "Barriers to the Ballot: 2008 Election and Beyond" *The Advancement Project*, December, 2009, at 9.

(<http://advancementproject.org/sites/default/files/publications/Barriers%20to%20the%20Ballot%20Report%20Final.pdf>)

⁴¹ See, "Bill to curtail early voting is senseless", editorial in the *Winston-Salem Journal*, May 10, 2011

(<http://www2.journalnow.com/news/2011/may/10/wsopin01-bill-to-curtail-early-voting-is-senseless-ar-1018433/>)

⁴² See, League of Women Voters of Ohio Education Fund, "Making Early Voting Easier, Not Harder", may 18, 2011

(<http://www.lwvohio.org/site.cfm/imPACT-Home/Resources/Latest-News/May-2011/Make-Early-Voting-Easier.cfm>)

⁴³ Steve Bousquet, "Florida Republicans push to cut early voting", *Miami Herald*, April 15, 2011

(<http://www.miamiherald.com/2011/04/15/2169699/florida-republicans-push-to-cut.html>)

⁴⁴ Committee on House Administration Subcommittee on Elections hearing, "Expanding and Improving Opportunities to Vote by Mail or Absentee", October 16, 2007, at 3. (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=F40511.pdf)

⁴⁵ See, e.g., Patrick Marley, "Bill affects more than voter ID", *Milwaukee-Wisconsin Journal Sentinel*, April 26,

2011 (<http://www.jsonline.com/news/statepolitics/120748279.html>), Stephen Fay, "Maine Secretary of State

Advocates Restricting Election Day Registration, Absentee Ballot Use", *FenceViewer*, May 13, 2011

(<http://tinyurl.com/3qghprp>), and, Joe Vardon, "Husted forbids unsolicited absentee-ballot mailings", *The Columbus*

Dispatch, August 23, 2011 (<http://www.dispatch.com/content/stories/local/2011/08/23/husted-forbids-unsolicited-absentee-ballot-mailings.html>)

All-Mail Voting in Oregon

We cannot discuss absentee balloting without mentioning the State of Oregon and its decision, more than a decade ago, to handle all voting by mail. This is an important topic not merely because it is such a strong laboratory for how increased access to absentee ballots might play out elsewhere but because, of all kinds of voter-side fraud, as opposed to the counter-side discussed above, absentee voting is the most ripe for fraud. Has Oregon seen an uptick in fraudulent ballots? Have mysterious or devious groups been mass-producing fake ballots?

My staff did some research on voter fraud in Oregon, to see what kind of issues they'd been having. Well, the current Secretary of State, Kate Brown, a former state senator, is very pleased with their system. She responded last year to concerns about voter fraud by noting that, of the 15 million votes Oregonians had cast by mail in the previous decade and the "thousands of fraud complaints" they had investigated, they'd found and prosecuted all of nine cases.⁴⁶ Her predecessor, Bill Bradley, wrote in 2005 of the tremendous success Oregon had seen from the program, with record levels of participation and the same utter absence of the organized fraud campaigns with which we have been threatened in every state in the union.⁴⁷ But my staff did find one case of systemic fraud, and I would be remiss not to mention it.

In late 2004, the State of Oregon's Department of Justice began an investigation of Sproul & Associates in conjunction with a group called "America Votes" after charges surfaced that the group had altered and forged the paperwork of voters who tried to register as Democrats. Two former employees of a Nevada registration group blew the whistle on their former employer. They told the local television station that, "hundreds, if not thousands, of Democratic registration forms were destroyed by a Sproul & Associates group called Voters Outreach of America."⁴⁸ Similar allegations were alleged in Pennsylvania, where a former employee of Sproul & Associates told the Pittsburgh Post-Gazette, "We were only to register Republicans."⁴⁹ CNN reported that "Nathan Sproul, head of Sproul & Associates, disputed the allegations" but added that "Sproul, whose firm received nearly \$500,000 this election cycle from the Republican Party, said that 'it is safe to say we were trying to register Republicans.'"⁵⁰

Once again, then, we're seeing that, while some activists are carrying on the fraudulent traditions of Tweed and Tammany, they still recognize that there are smart ways to stuff the ballot and they're not opting for the single dumb one that voter ID laws might actually impede. What Boss Tweed would say that it is not his party but the opposition that has been linked to so many of these cases is an interesting question for another time. Certainly, one aspect of these vote suppressing laws that would flabbergast Tweed is the push to require voters to provide proof of citizenship.

⁴⁶ Kate Brown, "Voter fraud: Why in Oregon it's extremely rare", *Albany (OR) Democrat-Herald*, April 30, 2010 (http://www.democratherald.com/news/opinion/editorial/article_a3a58f66-548b-11df-ac8e-001cc4c002e0.html)

⁴⁷ Bill Bradbury, "Vote-by-Mail: The Real Winner Is Democracy", *Washington Post*, January 1, 2005 (<http://www.washingtonpost.com/wp-dyn/articles/A40032-2004Dec31.html>)

⁴⁸ Joel Roberts, "Voter Fraud Charges Out West", *CBS News*, February 11, 2009 (<http://www.cbsnews.com/stories/2004/10/14/politics/main649380.shtml>)

⁴⁹ Dennis B. Roddy, "Campaign 2004: Voter registration workers cry foul", *Pittsburgh Post-Gazette*, October 20, 2004 (<http://www.post-gazette.com/pg/04294/398767.stm>)

⁵⁰ Dan Lothian and Phil Hirschhorn, "Nevada investigates voter registration", *CNN International*, October 14, 2004 (<http://edition.cnn.com/2004/ALLPOLITICS/10/14/nevada.registration/index.html>)

Illegal Targeting of Minorities

I have spoken above of the impact that these proposed laws will have on several communities, including minorities, the poor, and young and old voters. We should not, however, forget that these groups are already the targets of illegal actions that depress their voting, including voter intimidation efforts.

For most of our country's history, the United States has fully embraced our status as a nation of immigrants. The words from Emma Lazarus's "The New Colossus" engraved on a plaque inside of the Statue of Liberty reflect our immigration policy that was. Officially, whatever a small group of Know-Nothings felt, we welcomed newcomers from wherever they had come. To encourage them to put down roots and become strong and active members of their communities, naturalization was encouraged. Tammany Hall was not alone in greeting every man off the boat, because those immigrants represented new voters. Our current tradition has changed, and animosity towards immigrants, actual or suspected, appears to be seeing an unfortunate rise. "Latino communities are often alienated by an acrimonious relationship with local government", resulting in lower participation in elections.⁵¹ Another way this has manifested is at the polls. People who have trouble with English or just speak with an accent are hassled at the polls even in jurisdictions where proof of citizenship is not required.⁵²

Minorities are generally more likely than Whites to be challenged when they try to cast a vote.⁵³ As I've discussed above, voter intimidation against African-Americans, however much things have improved since passage of the Voting Rights Act brought to a close a century of voter suppression under color of law, remains a constant and serious problem.⁵⁴ The National Association of Latino Elected and Appointed Officials (NALEO) Education Fund titled a report "'I Was Asked If I Was a Citizen': Latino Elected Officials Speak Out on the Voting Rights

⁵¹ Alice Minor and Ben Serrurier, "Beyond the Ballot: Latino Political Participation in Washington State", Whitman College, December 14, 2009 at 21 (<http://www.walatinos.org/images/aliceminor09final.pdf>)

⁵² See, e.g., Sabrina Williams and Debbie Lopez, "Voter Intimidation Against Latinos Expected on November 2nd in Arizona", *The Advancement Project*, October 14, 2004 (http://www.advancementproject.org/news/press_releases/2004/10/voter_intimidation_against_latinos_expected_on_november_2nd_arizona).

⁵³ See, e.g., James Thomas Tucker, "'I Was Asked If I Was a Citizen': Latino Elected Officials Speak Out on the Voting Rights Act", NALEO Educational Fund, September, 2006

(http://www.naleo.org/downloads/NALEO_VRA_Report.pdf), Ian Urbina, "Polling Places Report Some Snags; Even Top Politicians Have Trouble", *New York Times*, November 8, 2006: "an anti-immigration activist, and a handful of supporters, staked out a South Tucson precinct and questioned Hispanic voters as they entered the polls to determine if they spoke English." (<http://query.nytimes.com/gst/fullpage.html?res=9902E6DC1E3FF93BA35752C1A9609C8B63>), Rachel Weiner, "New Mexico GOP Sued For Voter Intimidation", *The Huffington Post*, October 27, 2008 (http://www.huffingtonpost.com/2008/10/27/new-mexico-gop-sued-for-v_n_138199.html)

⁵⁴ In the summer of 2004, Michigan State Senator and then-State Representative John Pappageorge said of the 85% African-American city of Detroit, "If we do not suppress the Detroit vote, we're going to have a tough time in this election." Chip Reid, "Voter suppression charges on the rise", *NBC Nightly News*, October 13, 2004.

(http://www.msnbc.msn.com/id/6242175/ns/nightly_news/t/voter-suppression-charges-rise/#.Tme_d07K2m8) See also, e.g., Ryan J. Reilly, "DOJ Probes TX Voter Intimidation Complaints During Tea Party Anti-Voter Fraud Drive", *Talking Points Memo*, October 19, 2010 (http://tpmmuckraker.talkingpointsmemo.com/2010/10/the_texas_democratic_party_expanded.php), Linskey and Bykowiec cited at page 4, *supra* note 9, and Erin Ferns Lee, "Living the Past in the Present: Voter Intimidation Tactics Still Thrive in America", *Project Vote*, February 4, 2011 (<http://www.projectvote.org/blog/2010/02/living-the-past-in-the-present-voter-intimidation-tactics-still-thrive-in-america/>)

Act". In it, they reported that more than half the officials surveyed had witnessed, firsthand, anti-Hispanic discrimination in the electoral process.⁵⁵ In February, the former Republican nominee in California's 47th Congressional District was sentenced to 366 days in federal prison for his role in covering up his campaign's efforts to intimidate Hispanics from voting in his 2006 election.⁵⁶ While a single alleged act of voter intimidation against White voters received tremendous coverage over the past two-and-a-half years, similar allegations of intimidation against minorities was ignored.⁵⁷ The result in 2010 was that, as the voting rights group *Demos* put it, "Baseless Fraud Claims Spawn Real Voter Intimidation".⁵⁸

Conclusion

We are none of us perfect and we do not live in a perfect world. Election laws have been violated. In most of the cases where a voter shows up at the polls improperly, requiring a photo ID or proof of citizenship would not prevent the infraction, which typically results from error anyway. In the more serious examples of electoral fraud, it is not the voter who is at fault but political operatives or corrupt government officials, and voter ID laws have no bearing whatsoever. But the variety of circumstances faced by eligible voters mean that voter ID laws have a disparate impact on the poor, the young, the elderly, and the disabled. American demographics mean that these categories are disproportionately minorities. And, however much progress we have made, disparate treatment of and discrimination against minorities remain serious problems. That is why Section 5 of the Voting Rights Act prohibits laws which have, "the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color".⁵⁹ When considering any law that may serve to disfranchise a lawful voter, it is incumbent on us to ask the question, Will this have the effect of discriminating against any particular group?

Proponents of voter ID laws point to similar ID requirements for commercial transactions. This is a false comparison. There is no right to fly on an airplane. The ability to purchase beer or cold medicine is not a foundation stone of our great republic. Voting is the most constitutionally protected right there is. The simple fact is that voter ID laws do not stop voter fraud, first because there isn't much fraud to begin with and, second, because what organized fraud there is won't be stopped or even caught by voter ID laws. But voter ID laws *do* prevent authorized voters from voting, as even the proponents admit. It should not take us long to weigh the promise of zero fraud prevention against the certainty of voter disfranchisement and determine that voter ID laws are a terrible idea.

We have made great progress in the past 235 years in tearing down the barriers that disfranchised millions of Americans. We must not return to those dark days.

⁵⁵ "I Was Asked If I Was a Citizen", *supra* note 53, at 1.

⁵⁶ See, Assistant United States Attorney Gregory W. Staples "Former Congressional Candidate Sentenced to Prison for Lying During Investigation Into Campaign Letters", *Federal Bureau of Investigations*, February 14, 2011 (<http://www.fbi.gov/losangeles/press-releases/2011/1a021411.htm>)

⁵⁷ See, e.g., Z.P. Heller, "Fox News overlooked voter-intimidation allegations against Minutemen", *Media Matters for America*, July 19, 2010 (<http://mediamatters.org/research/201007190022>)

⁵⁸ Tova Andrea Wang, "Voting In 2010: Lessons Learned", *Demos*, November 4, 2010

(<http://www.demos.org/publication.cfm?currentpublicationID=1904A44B-3FF4-6C82-5D5D72F3D3228B7F>)

⁵⁹ 42 USC 1973c



Nikiya Q. Harris
Milwaukee County
2nd District Supervisor

U.S. Senate Committee on the Judiciary
 Sen. Dick Durbin, Assistant Majority Leader
 711 Hart Senate Office Building
 Washington, DC 20510

Dear Honorable Dick Durbin:

The passing of the Voter ID Law has caused a major controversy in Wisconsin. Once again voters are forced to pay a poll tax to cast their vote at the polls. I am in strict opposition of the Voter ID Law as it is a ploy to further disenfranchise the elderly, students, disabled and minorities of their right to cast a free vote. As a member of Milwaukee County's legislative body, I have championed a resolution to ask our State Legislatures to kill the bill during its inception. Unfortunately, we lost the battle to stopping the legislation from going through. In the meantime, I, along with organizations such as the 100 Black Women, Milwaukee Chapter; League of Young Voters; Urban Underground; Wisconsin Voices; League of Women Voters; etc. have worked tirelessly educating and surveying the community of their experiences of getting a free ID and the process of requesting an ID to vote.

The stories have been heartbreaking. Two young black males of voting age were turned away from one Milwaukee Department of Motor Vehicles branch after being told they did not qualify for a free ID because they possessed at least one form of state issued photo ID. This miss information is appalling as there is no stipulation in the law that explains that one must have never had a photo ID in order to qualify for a free ID to vote. Additionally, I have heard on visits to Senior Meal Sites from senior citizens that the process to requesting an absentee ballot is too complicated. They would rather not cast their vote, than to follow the process of requesting a new absentee ballot. The hurdles they contest are too overwhelming. Not to mention citizens who have never owned an ID, college students, the homeless and new voters.

Milwaukee, alone, has one of the lowest voter turnouts among minority communities. With 55% of African American Males, 49% African American Females, 46% of Hispanic Males, and 59% of Hispanic Females of voting age do not have a valid driver's license as opposed to their white counterparts at 17% of white men and women. These staggering statistics are simply mind blowing. And, it speaks to the hundreds of thousands of people who will be able to cast their vote at the polls.

Milwaukee County Courthouse • 901 North 9th Street, RM 201 • Milwaukee, WI 53233-1425
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In closing, it is quite frustrating to know that the only reason we have faced such disenfranchisement and injustice is due to the frivolous accusation of voter fraud. It is shameful that only 20 cases in 2008 were found potentially improper ballots out of nearly 3 million votes cast in Wisconsin. And, this was the fuel that led to this "solution in search of a problem" formally known as Voter ID Law.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikiya Q. Harris". The signature is fluid and cursive, with a prominent initial "N" and a stylized "H".

Nikiya Q. Harris

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Statement of

Ryan P. Haygood

Director, Political Participation Group

NAACP Legal Defense & Educational Fund, Inc.

**“NEW STATE VOTING LAWS:
BARRIERS TO THE BALLOT?”**

Hearing Before the Senate Committee on the Judiciary

**Subcommittee on the Constitution,
Civil Rights and Human Rights**

Thursday, September 8, 2011

Founded under the direction of Thurgood Marshall, the NAACP Legal Defense & Educational Fund, Inc. (LDF) is the nation's premiere civil rights law firm. A pioneer in the struggle to secure, protect, and advance the voting rights of African Americans, LDF has consistently been involved precedent-setting litigation relating to minority voting rights since its founding in 1940.

LDF also strongly supported the passage of the Voting Rights Act of 1965, and each of its subsequent reauthorizations, and other federal voting rights laws and core voting protections. Through extensive litigation, advocacy, public education and election monitoring efforts, LDF has developed significant expertise in combating barriers to full, equal and active political participation for African Americans. I serve as the Director of LDF's Political Participation Group.

Although the right to vote is widely recognized as a constitutionally-protected, fundamental right, barriers to political participation, such as those discussed in my testimony today, threaten to render that right meaningless. It is essential that Congress is both aware of and prepared to carefully scrutinize the precise manner in which these discriminatory voting measures undermine political participation by the most vulnerable citizens in our democracy.

On behalf of LDF, I am pleased to submit written testimony at today's hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, and to address a worrisome trend: a wave of laws that erect barriers to the ballot unlike anything we have seen in decades. My testimony today will address two topics: (1) the discriminatory impact of proposed reductions in early voting days; and (2) nationwide statistics concerning racial disparities in access to state-issued photographic identification ("photo ID"). These are by no means the only problematic measures that have been adopted or proposed recently, but they are among the most troubling.

I. Reductions in Early Voting

As we all know, many states offer their citizens the opportunity to vote in-person prior to official day of an election. This is an important means of access for individuals who might have difficulty reaching the polls on Election Day.

A number of states, however, have recently proposed reductions in the number of days during which they will offer early in-person voting. Given that early in-person voting has been of tremendous benefit to racial minority voters, proposals to reduce the period of early voting will have a discriminatory effect on minority voters, and on African-American voters in particular.

To take one example, the State of Florida has recently proposed a change to its elections code that would reduce the number of early voting days from 15 to 8, and would change the number of hours that early voting sites must operate from a mandatory 8 hours per day (other than weekends), to a discretionary range of 6 to 12 hours per day. Thus, the proposal not only eliminates the first week of early voting in Florida, but it also makes possible a reduction in total hours of early voting from a mandatory 96 hours to a minimum of only 48 hours.

Initially, for perspective, it is important to note that during the 2008 election, nearly 4.38 million votes were cast early in Florida, accounting for an estimated 57.3% of all ballots cast.¹ Significantly, African Americans made up a disproportionate percentage of early voters in Florida. During the 2008 general election, African Americans were 22% of voters during the first week of early in-person voting in Florida statewide, despite being only 13% of the Florida electorate.² Overall, more than half—nearly 54% of Florida's African-American voters—voted in-person at early voting sites in 2008.³

In other words, African Americans were significantly overrepresented in the pool of early voters overall, and were much more likely than white voters to take advantage of the first week of early voting. Florida's current proposal to reduce the number of early voting days would therefore have a disproportionate effect on African-American voters, reducing their access to the polls.

LDF's independent analysis of early voting patterns in the five counties in Florida that are covered by Section 5 of the Voting Rights Act also confirmed that African Americans are more likely to rely on early voting. According to our analysis, African Americans constitute only 12.15% of the voting age population (VAP) in the five covered jurisdictions in Florida, but were 18.86% of early voters during the 2008 General Election:

¹ See United States Election Project, *2008 Early Voting Statistics*, available at http://elections.gmu.edu/early_vote_2008.html.

² See Aaron Deslatte and Vicki McClure, *Battle for Florida: Blacks Turn Out in Droves, but Few Young People Have Voted*, *Orlando Sentinel*, Oct. 30, 2008, available at http://articles.orlandosentinel.com/2008-10-30/news/earlyvote30_1_early-voting-voters-in-florida-black-voters.

³ See "Voting Law's Sunday Punch," *Sarasota Herald-Tribune*, June 15, 2011, available at <http://www.heraldtribune.com/article/20110615/OPINION/110619722/-1/news?Title=Voting-law-s-Sunday-punch>.

Early Voting Period in the Covered Counties - 2008 General Election

	Demographic Breakdown of Early Voters			Demographic Breakdown of County		
	# Black Early Voters	Total # Early Voters	Black Percentage of Early Voters	DOJ BVAP	VAP	Percentage BVAP
Collier	2,694	52,734	5.11%	13,475	258,873	5.21%
Hardee	198	3,271	6.05%	1,446	20,056	7.21%
Hendry	891	4,872	18.29%	3,682	28,254	13.03%
Hillsborough	37,397	146,574	25.51%	136,834	935,018	14.63%
Monroe	508	13,631	3.73%	3,004	62,089	4.84%
TOTALS	41,688	221,082	18.86%	158,441	1,304,290	12.15%

(Data Sources: Florida Division of Elections Early Voting Reports; Florida Voter Registration File; and U.S. Census Bureau.⁴)

A closer analysis of the precise days of early voting that Florida has proposed to eliminate reveals even greater disparities. Most notoriously, Florida has proposed to eliminate early voting on the last Sunday before Election Day, a day on which Black churches in Florida have traditionally conducted their election assistance efforts.

According to Professor Michael McDonald of George Mason University, African Americans comprised 32%—almost one-third of the statewide turnout—on the last Sunday before the 2008 Election.⁵ Although not all of Florida's counties currently do so, those counties in Florida that have the largest populations of African Americans generally

⁴ Early vote totals are calculated using data from the Florida Division of Election, *County Absentee and Early Voting Reports*, available at <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSavailableFiles.aspx>. The demographic breakdown of early voters was calculated by cross-referencing that data against Florida's voter registration file. Voting age population totals for each county are based on 2010 Census data. For purposes of calculating the Black Voting Age Population of the five covered jurisdictions in Florida (referred to as the "DOJ BVAP"), these figures include individuals categorized by the 2010 Census as "Black alone" as well as individuals categorized as "Black in combination" with other races.

⁵ See "Voting Law's Sunday Punch," *Ocala.com*, June 17, 2011, available at <http://www.ocala.com/article/20110617/opinion/110619758>.

offer voting on the last Sunday prior to Election Day⁶—but would now be prohibited from doing so under the proposed changes to Florida’s election laws.

Moreover, as noted, Florida has proposed to eliminate the first week of early voting, but during the first week of early voting in the 2008 General Election, African Americans constituted an even higher percentage of early voters than they did among the total pool of early voters: 20.08% of all early voters in the covered counties (as compared to being only 12.15% of the voting age population in those counties):

First Week of Early Voting Period in the Covered Counties - 2008 General Election

	<u>Demographic Breakdown of Early Voters</u>			<u>Demographic Breakdown of County</u>		
	<u># Black Early Voters</u>	<u>Total # Early Voters</u>	<u>Black Percentage of Early Voters</u>	<u>DOJ BVAP</u>	<u>VAP</u>	<u>Percentage BVAP</u>
Collier	1,258	21,465	5.86%	13,475	258,873	5.21%
Hardee	74	1,503	4.92%	1,446	20,056	7.21%
Hendry	427	2,311	18.48%	3,682	28,254	13.03%
Hillsborough	15,175	54,781	27.70%	136,834	935,018	14.63%
Monroe	186	5,215	3.57%	3,004	62,089	4.84%
TOTALS	17,120	85,275	20.08%	158,441	1,304,290	12.15%

(Data Sources: Florida Division of Elections Early Voting Reports; Florida Voter Registration File; and U.S. Census Bureau.⁷)

As the table above shows, during the first week of early voting in the 2008 General Election, Hillsborough County featured the highest level of racial disproportionality among early voters, with African Americans constituting only 14.63% of the voting age population, but 27.70% of early voters.

It is unsurprising that, as a group, African-American voters have taken advantage of the access currently afforded by the existing early voting period in Florida. Minorities

⁶ See Justin Levitt, “A Devil in the Details of Florida’s Early Voting Law,” *Election Law Blog*, May 23, 2011, available at <http://electionlawblog.org/archives/019579.html>.

⁷ See *id.*

in Florida have lower rates of vehicle ownership⁸ and therefore benefit from the flexibility afforded by a wider range of early voting days. Recent Census data shows that 17.6% of African Americans in Florida's covered counties live in homes without a vehicle, as compared to only 4.8% of whites.⁹ These disparities in access to transportation mean that African-American voters are more likely to encounter greater difficulties obtaining transportation on Election Day, such that an elimination of early voting days would substantially curtail existing levels of access to the polls with a resulting discriminatory impact on minority voters.

Although LDF has not conducted a close analysis of the demographics of early voters nationwide, the statistics we have seen suggest Florida's patterns are replicated elsewhere. African Americans and other minorities tend to have less access to the polls on Election Day, whether because they lack transportation or work schedule flexibility.

Moreover, African Americans reported longer lines and waiting periods to vote on Election Day in 2008, with 27% of African-American voters nationwide having to wait half an hour of more to vote, as compared to only 11% of white voters.¹⁰ Given these facts, it makes sense that African Americans have been more likely to take advantage of early voting periods, and that proposals to reduce those early voting periods would disproportionately burden African-American voters.

II. Racial Disparities in Access to Photo ID

Several states, such as South Carolina and Texas, have recently passed laws requiring voters to show such photo ID before casting a ballot. Given the statistics discussed below, the inevitable effect of many of these laws will be to worsen racial disparities in access to the ballot.

⁸ See Letter from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, to Robert A. Butterworth, Attorney General, State of Florida, dated Aug. 14, 1998, available at http://www.justice.gov/crt/about/vot/sec_5/ltr/l_081498.php.

⁹ This data was obtained through the Census Bureau's Public Use Microdata Sample files ("PUMS files"), which provides data broken down into "Public Use Microdata Areas," or "PUMAs."

¹⁰ R. Michael Alvarez, et al., *2008 Survey of the Performance of American Elections: Final Report* 42 (March 1, 2009), available at <http://www.pewcenteronthestates.org/uploadedFiles/Final%20report20090218.pdf>.

A. National Statistics Concerning Photo ID Access

Photo ID laws burden minority voters disproportionately for the following two reasons: (1) racial disparities in access to photo ID; and (2) uneven enforcement of photo ID laws across racial lines.

First, as one nationwide survey showed, 11% of United States citizens—more than 21 million individuals—lack state-issued photo ID.¹¹ While that number is troubling in itself, there are also substantial racial disparities in rates of photo ID ownership: the same survey indicated that 25% of African-American voting age citizens have no current government-issued photo ID (or a total of over 5.5 million voting-age African-American citizens), compared to only 8% of white voting-age citizens.¹² Numerous regional and statewide studies show similar disparities.¹³ Another survey found that 19% of African Americans, but only 3% of whites, do not possess a driver's license.¹⁴ It is unmistakably clear, given these numbers, that the burdens of photo ID laws fall disproportionately on *qualified* and otherwise eligible African-American voters.

¹¹ See Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006), at 3, available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

¹² See *id.* at 3. See also *Crawford v. Marion County Bd. Of Elections*, 553 U.S. 181, 221 n.25 (2008) (Souter, J., dissenting) (observing that “[s]tudies ... suggest that the burdens of an ID requirement may also fall disproportionately upon racial minorities”) (citing Spencer Overton, “Voter Identification,” 105 *Mich. L. Rev.* 631, 659 (2007)).

¹³ In Georgia, for example, African-American registered voters are nearly twice as likely to be without driver's licenses as white registered voters. M.V. Hood, III & Charles S. Bullock, III, *Worth a Thousand Words? An Analysis of Georgia's Voter Identification Statute*, 15 (Apr. 2007), <http://www.vote.caltech.edu/VoterID/GAVoterID> (BullockHood).pdf. Similarly, a study of California, New Mexico and Washington voters found that minority voters are less likely to have various forms of identification, such as driver's licenses, birth certificates, or bank statements. Matt A. Bareto, et al., *Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters*, Am. Pol. Sci. Ass'n Presentation (Sept. 1, 2007), available at http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf. Evidence from individual counties is also striking: in Milwaukee County, for instance, fewer than 47% of Black adults and 43% of Latino adults, compared to 85% of White adults, have a driver's license, and for young Black males, the difference was even more striking: only 22% of African American men between the ages of 18 and 24 had a driver's license. See Daniel P. Tokaji, *If It's Broke, Fix It: Improving Voting Rights Act Preclearance*, 49 *Howard L.J.* 785, 814 (2006) (citing John Pawasarat, *The Driver License Status of the Voting Age Population in Wisconsin*, available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>).

¹⁴ See Charles Stewart III, “What More Can We Learn from SC?,” available at <http://electionupdates.caltech.edu/?p=4185> (citing Alvarez, *supra* note 10).

Second, empirical evidence demonstrates that the effects of these laws are not limited only to those voters lacking photo ID. Rather, due to uneven enforcement, these restrictions are felt disproportionately by African-American voters as a whole. Nationally, 70% of all African-American voters were asked to show photo identification at the polls during the 2008 Election, as opposed to only 51% of white voters.¹⁵ These *eligible* African-American voters were forced to cast provisional ballots at a rate four times higher than were white voters.¹⁶ Unfortunately, numerous studies have shown that provisional ballots are not always counted as frequently as regular ballots.¹⁷ In other words, photo ID laws place disproportionate burdens on *all* African-American voters, not just those who lack a photo ID.

B. Socio-Economic Context

There are also pronounced disparities in access to photo ID because of broad socio-economic disparities with respect to factors that correlate with photo ID ownership and access. The most common form of state-issued photo ID is a driver's license, but there are substantial racial disparities nationwide in terms of vehicle use and ownership: 19% of African Americans and 13.7% of Latinos nationally live in a household without a car (as compared to only 4.6% of whites).¹⁸ It follows that African American voters would be less likely to possess photo ID than white voters.

Moreover, while African Americans tend to have less access to motor vehicles, they also tend to be more likely than whites to live at an address different from the one on their licenses. According to the most recent Voting and Registration Supplement released by the Census Bureau, 50% of African-American respondents stated that they had lived at their current address for four years or fewer, as compared with only 38% of white respondents, which helps explain why, even among those citizens who have driver's licenses, African Americans are less likely to have licenses with their current address on it (only 68% of African Americans, as compared to 87% of whites).¹⁹

¹⁵ See Alvarez, *et al.*, *supra* note 10, at 43; Charles Stewart III, *et al.*, CalTech/MIT Voting Technology Project, Working Paper #82, *Racial Differences in Election Administration* 29 (July 2009), available at <http://www.vote.caltech.edu/drupal/node/278>.

¹⁶ See Stewart, *supra* note 15, at 31.

¹⁷ See Pew Center for the States, *Provisional Ballots: An Imperfect Solution* (July 2009) (noting that 40% of provisional ballots were not counted during the 2008 election, and the rates and reasons for rejection of provisional ballots vary widely among and within states), available at http://www.pewcenteronthestates.org/uploadedFiles/ELEC_ProvBallot_Brief_0709.pdf.

¹⁸ See Alan Berube, The Brookings Institution, *et al.*, *Socioeconomic Differences in Household Automobile Ownership Rates: Implications for Evacuation Policy* 7 (June 2006), available at gsppi.berkeley.edu/faculty/sraphael/berubedeakenraphael.pdf.

¹⁹ See Stewart, *supra* note 15 (citing Alvarez, *et al.*, *supra* note 10).

More broadly, there are meaningful racial disparities nationwide with respect to the poverty rate: as of 2009, 25.8% of African Americans and 25.3% of Latinos lived in poverty, compared to only 9.4% of non-Hispanic whites.²⁰ Given that citizens earning less than \$35,000 a year are more than twice as likely as others to lack a current state-issued photo ID card,²¹ photo ID laws impose an undue burden on the right to vote for many poor people, and have a racially disproportionate impact.

This is equally true regardless of whether photo ID is offered free of charge. For instance, in Texas, although photo ID is purportedly offered free to those who cannot afford it, in order to obtain a photo ID card from the Texas Department of Motor Vehicles, a person must present another form of government-issued identification, such as a passport or a combination of documents, such as a birth certificate *and* a certified copy of court order indicating the applicant's name and date of birth.²² These supporting documents are *not* offered free of charge. Obtaining a birth certificate in Texas, for example, costs \$22,²³ and the underlying costs are similar in other states.²⁴ Although some photo ID laws contain exemptions—for instance, for individuals who have a religious objection to being photographed—most lack adequate safeguards for those individuals who simply cannot afford an ID card.

Additionally, the direct cost of obtaining a photo ID is exacerbated by the additional transportation expenses of traveling to an office of the state Department of Motor Vehicles. Given the substantial racial disparities in vehicle access cited above, the burden of traveling to a motor vehicle office will likely be felt disproportionately by minority voters. This is not to even discuss the greater rigidity in working schedules for many minority voters.

For many individuals, these underlying costs are, as a practical matter, prohibitive. Although these amounts may not seem substantial to some, poll taxes of as little \$1.50

²⁰ See National Poverty Center, The University of Michigan, *Poverty in the United States*, available at <http://www.npc.umich.edu/poverty/#4>.

²¹ See Brennan Center for Justice, *supra* note 11, at 3.

²² See Texas Department of Public Safety, *Identification Requirements for a Texas Driver License or Identification Card*, available at <http://www.txdps.state.tx.us/DriverLicense/identificationrequirements.htm>.

²³ See Texas Department of State Health Services, *Certified Copy of a Birth Certificate*, available at http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtm.

²⁴ See Julien Kern, "As Applied Constitutional Challenges, Class Actions, and Other Strategies: Potential Solutions to Challenging Voter Identification Laws After *Crawford v. Marion County Bd. of Election*," 42 *Loyola of L.A. L. Rev.* 629, 636 (2009) (noting fees of up to \$28).

have been deemed an unconstitutional burden on the right to vote.²⁵ For impoverished individuals—who are disproportionately people of color—the \$15 that they must spend “in order to obtain their birth certificates and vote is \$15 that they must subtract from their meager ability to feed, shelter and clothe their families.”²⁶

No one should have to choose between feeding one’s family and exercising the most fundamental right of our democracy.

Moreover, the oldest and youngest members of the African-American community will be disproportionately burdened by these laws. At one end of the spectrum, photo ID laws have a uniquely burdensome impact on elderly African-American voters, many of whom, because they were born when *de jure* segregation prevented equal access to hospitals,²⁷ lack the requisite birth certificates necessary to obtain a government-issued photo ID.²⁸ As a state-issued photo ID generally cannot be obtained without a birth certificate, many elderly African Americans are, by virtue of history and their race, entirely incapable of satisfying the requirements of these laws.

In South Carolina—which recently submitted a proposed photo ID law for review under Section 5 of the Voting Rights Act—one local news station recently carried a story of one such individual: 85 year-old Larrie Butler, an African-American man who was born without a birth certificate, and cannot obtain a state-issued photo ID card.²⁹ Even where the burden of cost can be overcome, obtaining accurate birth certificates still presents a significant hurdle because of inaccurate and incomplete records. This is particularly in rural areas, and for individuals born before the 1970s.³⁰ Given the history of segregation in many states, Mr. Butler is likely to be one of thousands of examples of

²⁵ See *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966) (striking down poll tax of \$1.50, and holding that “[w]ealth or fee-paying ... has no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened”).

²⁶ *Weinschenk v. State*, 203 S.W.2d 201, 214 (Mo. 2006).

²⁷ See David Barton Smith, *Health Care Divided: Race and Healing a Nation* 14 (1999).

²⁸ See Sam Shapiro, “Development of Birth Registration and Birth Statistics in the United States,” 4 *Population Studies* 86, 99 (1950); Kevin Outterson, “Tragedy and Remedy: Reparations for Disparities in Black Health,” 9 *DePaul J. Health Care L.* 735 (2005).

²⁹ See Steven Dial, “DOJ Requests More Information on SC’s Voter ID Law,” WLTX.com, Columbia, SC, Aug. 29, 2011, available at <http://www.wltx.com/news/article/149280/2/DOJ-Requests-More-Information-on-SCs-Voter-ID-Law>.

³⁰ See Dawn Hinshaw, “No Photo ID? These Doctors Are on the Case,” *The State*, July 18, 2011, available at <http://www.thestate.com/2011/07/18/1901858/no-photo-id-these-doctors-are.html> (describing rural doctors in South Carolina who have encountered thousands of patients without state-issued photo ID).

elderly African Americans who will be unable to exercise the right to vote because he literally cannot comply with the requirements of a proposed photo ID law.

At the other end of the spectrum, participation of the newest generation of African American voters is also threatened by the proposed photo ID laws. For instance, the State of Texas has proposed a photo ID law pursuant to which students will not be permitted to rely on their student identification cards—even those identification cards issued by the State itself—in order to verify their identities at the polls.³¹

One recent investigation conducted by the League of Young Voters indicated that Texas's proposed photo ID law will effectively disfranchise hundreds of students at Texas's historically Black colleges and universities, where many students do not have and cannot obtain a Texas state-issued identification card other than a student ID card. Many of these students do not have underlying documentation necessary to obtain a state-issued photo ID, cannot afford to pay for those underlying documents, come from out of state and cannot locate those underlying documents, or simply lack transportation to obtain a state-issued photo ID.

For example, in explaining the hardship that the proposed photo ID law would impose on them, students at the historically Black college Prairie View A&M students told investigators:

- “[M]y hometown is 500 miles away and it will be nearly impossible to get my birth certificate in a timely manner.”
- “I am an out of state student and do not have the funds to get my birth certificate.”
- “I will not [be able to] vote because I do not have enough money to get my birth certificate.”
- “[H]aving my birth certificate sent here would be too long and [would cost] too much money.... I am now a freshman at Prairie View without the ability to drive, [and] I am not able to get the items that I need” to obtain a state-issued photo ID card.
- “I don’t have money to get another birth certificate because I am a college student...”
- “I do not have my birth certificate with me at the university.”

³¹ See Texas SB 14 § 14 (listing acceptable forms of identification).

- “I don’t have a car ... and my birth certificate is in Washington State.”
- “I do not have transportation [to travel] to the voter registration building...”
- “This law would prevent me from voting because I don’t have a car...”
- “It would be a burden to me to have to obtain the documents necessary.... I do not own a car...”

Dozens of students at Prairie View A&M indicated that they would be effectively prohibited from voting by the proposed photo ID law. In all, thousands of students across the state at Texas’s historically Black colleges and universities—a new generation of citizens who are eligible to vote or who are already registered to vote—would be disfranchised by Texas’s proposed photo ID law. Unfortunately, for many young African Americans, the discouraging burdens of these laws will shape their very first experiences with voting and political participation; the effects of these laws on young voters may be long-lasting.

C. The Absence of a Rationale for Photo ID Laws

Although I do not in this testimony today purport to address in detail the impoverished rationale for photo ID laws—namely, to prevent in-person electoral fraud—it is important to underscore that there appears to be no record of voter fraud with respect to in-person voting that would justify the photo ID laws that have recently been passed or proposed. As Royal Masset, the former Political Director of the Republican Party of Texas has stated in reference to rumors of in-person voter fraud in Texas: “It’s a lie. It’s not true. It does not exist.”³²

To be sure, there have been limited, isolated instances of voter fraud that can and should be addressed—but these cases have almost always involved absentee ballots, which photo ID laws do not implicate in any way.³³ By contrast, there have been a grand

³² R.G. Ratcliffe, “Voter fraud in Texas: ‘It’s a lie.’”, *Houston Chron.*, May 17, 2007, available at <http://blog.chron.com/texaspolitics/2007/05/voter-fraud-in-texas-its-a-lie/>

³³ See, e.g., Tom Glaze, *Waiting for the Cemetery Vote: The Fight to Stop Election Fraud in Arkansas* (2011); Bob Gardinier, “Democrat Admits Role in Voter Fraud Case,” *Albany Times-Union*, Aug. 26, 2011, available at <http://www.timesunion.com/local/article/Democrat-admits-role-in-voter-fraud-case-2142541.php>; Sid Salter, “Absentee Ballot Fraud More a Threat than Voter ID,” *Hattiesburg American*, Aug. 24, 2011, available at <http://www.hattiesburgamerican.com/article/20110825/OPINION/108250307/Absentee-ballot-fraud-more-threat-than-voter-ID>; Meg Coker, “Sowers Guilty on Ten Voter Fraud Counts,” *Tunica Times*, April 21, 2011, available at

total of 9 suspected fraudulent votes that could have been prevented by restrictive photo ID laws since 2000—a period in which over 400 million votes were cast in general elections alone.³⁴ Against this alleged 0.000002% fraud rate, photo ID laws that would prevent thousands of eligible citizens—and perhaps more—make little sense.

These statistics are troubling. In balancing the virtually non-existent risk of in-person vote fraud against the measurable and identifiable record of actual disfranchisement of qualified voters, we should err on the side of permitting qualified voters access to the polls.³⁵

Conclusion

As the statistics and examples above demonstrate, many of the recently proposed and enacted voting measures will present significant hurdles for qualified voters who seek to exercise their right to vote. Disproportionately, these disfranchised Americans will be people of color. LDF urges that these efforts be carefully scrutinized in order to determine whether the costs and burdens imposed on the rights of voters far outweigh any conjectural benefits. Moreover, LDF urges Congress to prioritize those efforts that are aimed at ensuring equal and full participation for all voters. The future of American democracy remains tied to our ability to address the persisting discriminatory barriers that exclude scores of citizens from being able to register and cast their ballots for their candidates of choice.

http://www.tunicatimes.com/index.php?option=com_content&view=article&id=1176:sowers-guilty-on-ten-voter-fraud-counts&catid=2:paid&Itemid=26.

³⁴ Justin Levitt, “The Real Victims of Election ID Laws,” *Politico.com*, June 14, 2011, available at <http://www.politico.com/news/stories/0611/56939.html>.

³⁵ See *Purcell v. Gonzalez*, 126 S. Ct. 5, 7 (2006) (*per curiam*) (“[T]he possibility that qualified voters might be turned away from the polls would caution any district judge to give careful consideration to the plaintiffs’ challenges”).

Statement of
Janaye Ingram
DC Bureau Chief
National Action Network
“A Poll Tax By Any Other Name”
Subcommittee on the Constitution, Civil Rights and Human Rights – Senate Committee on the Judiciary
September 8, 2011

On behalf of the National Action Network, I want to thank Chairman Durbin, Ranking Member Graham and members of the Subcommittee for receiving statements and hearing testimony on this matter. I am Janaye Ingram, DC Bureau Chief for the National Action Network. Since its founding in 1991 by Rev. Al Sharpton, the National Action Network has worked to protect the civil rights of disadvantaged and underserved populations. Under the leadership of Rev. Al Sharpton along with current Executive Director, Tamika Mallory, we have worked tirelessly to ensure that minorities, the elderly, young people, low-income populations and the disabled are not left behind, are extended equal rights and protections, and ensuring that they are treated as full citizens. However, the recent voter id legislation and legislative efforts in states across this country will limit their voting rights and prevent those groups of citizens from having full participation in the democratic process.

Voting is a right that should be granted to anyone who is eligible. Despite having the right to vote, millions of voters are now seeing barriers that prevent them from exercising that right. At stake is the ability of certain groups of people to vote for the person whom they deem to be best equipped to address the daily issues that affect all of us; issues like healthcare, education, housing, public safety, and economic opportunity are at stake when eligible voters are made ineligible by legislation that prevents them from exercising their rights. Current efforts in 38 states that prevent voting among these populations include voter photo identification legislation, shortened early voting periods, restrictions on third-party and same day registration, proof of citizenship requirements, and voting restriction of ex-felons¹. Though many feel we have come a long way from the days of literacy tests, poll taxes, and physical violence and intimidation, these new barriers to voting are just as damaging to the American democratic process and disenfranchise millions of active and potential voters.

The reason for the legislation being introduced and in some states, enacted, is a claim that the legislation prevents voter fraud. However, voter fraud is very rare and the laws really make it more complicated for people to vote. In the instance of voter photo identification, the legislation only protects from voter impersonation, not other cases of fraud. Research by the Brennan Center for Justice has found, “virtually no confirmed examples of impersonation fraud.”² Moreover, the Department of Justice investigated and prosecuted cases of voter fraud from 2002 through 2007 and in those five years not one case of impersonation fraud was prosecuted.³ According to Advancement Project, 11% of the population, or approximately 21 million people, lack a current government photo ID. Represented in that 11% are 25% of voting age African Americans; 15% of those earning less than \$35,000 18% of those ages 65 and above; and 20% of voters ages 18-29.⁴ The cost of getting a photo ID in and of itself is the equivalent of a poll tax. Even in states where the ID will be provided for free, the ability to get supporting documents makes obtaining the voter photo ID more difficult. Many of the people affected by this legislation are on tight or fixed incomes. Without documentation like birth certificates, it is impossible to be able to get a voter photo ID. In states where there may be a “nominal” fee, the cost may still be too high for certain populations. A nursing facility employee in North Carolina wrote in to the Burlington Times News to talk about her experience saying, “Cutting down on early voting hurts the residents (of the nursing facility). Most residents only get \$30 a month and a photo ID cost(s) \$10 or more at DMV.”⁵

In states where there have been cuts to early voting, this again affects the aforementioned populations. In Florida during the 2008 Presidential election, nearly 1/3 of all the early votes on the Sunday before the

Presidential election were cast by blacks.⁶ The new law in Florida will prevent voting on the Sunday before the election. One Florida resident, Evelyn Garcia, described why it was so popular, saying, "We go to church on Sunday, and then we go together and early-vote. People try to help each other because transportation was a problem and knowing where to vote was a problem with some people who were new in the community."⁷ By eliminating the Sunday prior to the election as an early voting day, it will serve as an impediment to voting access and will not help to eliminate claims of voter fraud. Limiting third party registration is a clear suppression effort that makes it extremely difficult for nonpartisan nonprofit organizations to register voters and turn in the forms under the strict timelines. If these organizations and the volunteers they use to help register voters fail to turn in the forms within 48 hours, they will face a fine of up to a \$1,000.⁸ The League of Women Voters has said they will stop registering voters in the State of Florida.⁹ That could have a huge impact on the amount of people who even take the first step to be engaged in the political process within that state.

Aside from the disenfranchisement of voters are the financial implications these laws have within the states. Many states will spend millions of dollars to implement this type of legislation, even while facing budget deficits and cuts. For example, a voter ID program could cost Missouri more than \$20 million over three years.¹⁰ There have been many who have fought and given their lives for the right to vote, and while many have made strides to protect it, what we are now seeing is that there are still some who believe that the right to vote should not be extended to every person who is eligible. While there is room to improve the election process across the country, these latest tactics are not the way. These state governments are making it harder for their constituents to vote when they should be making it easier. The National Action Network will continue to fight these efforts and where there is a law, we will fight within the law to ensure that as many people who are eligible exercise their right to vote. Thank you for the opportunity to speak about this very important issue.

¹ Ari Berman. "The GOP War on Voting." *rollingstone.com*. Wenner Media. August 30, 2011. <http://www.rollingstone.com/politics/news/the-gop-war-on-voting-20110830>

² Adam Skaggs. "Myth of Voter Impersonation Fraud at the Polls: Testimony to Texas Senate." *Brennancenter.org*. The Brennan Center for Justice. March 10, 2009.

http://www.brennancenter.org/content/resource/myth_of_voter_impersonation_fraud_at_the_polls/

³ Ari Berman. "The GOP War on Voting." *rollingstone.com*. Wenner Media. August 30, 2011.

<http://www.rollingstone.com/politics/news/the-gop-war-on-voting-20110830>

⁴ Advancement Project. "What's Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights," p.iii, April 7, 2011.

<http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf>

⁵ Linda Snipes-Martinez. "Voter ID Would Impair Rights for Elderly, Students and Minorities," *TheTimesNews.com*. The Burlington Times News. June 8, 2011. <http://www.thetimesnews.com/articles/residents-44768-voting-photo.html>

⁶ Frank Cerabino. "Early Voting Change Might Reduce Black Participation," *PalmBeachPost.com*. The Palm Beach Post. July 6, 2011. <http://www.palmbeachpost.com/news/cerabino-early-voting-change-might-reduce-black-participation-1587638.html?printArticle=y>

⁷ *Ibid.*

⁸ Sarasota County Supervisor of Elections. *It's the Law – Third Party Voter Registration*.

<http://www.srlections.com/Content.aspx?ID=151>

⁹ Brendan McLaughlin. "League of Women Voters Accuses Legislature of Voter Suppression," *abcactionnews.com*. Action News. May 11, 2011. <http://www.abcactionnews.com/dpp/news/political/league-of-women-voters-accuses-legislature-of-voter-suppression>

¹⁰ Advancement Project. "What's Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights," p.15, April 7, 2011.

<http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf>



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STATEMENT OF

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

BEFORE THE

**SENATE COMMITTEE ON THE JUDICIARY
Subcommittee on the Constitution, Civil Rights and Human Rights**

On

“New State Voting Laws: Barriers to the Ballot?”

September 8, 2011

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The Lawyers' Committee was formed at the request of President John F. Kennedy in 1963



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Submitted by Tanya Clay House, Director of Public Policy
 Lawyers' Committee for Civil Rights Under Law
 Before the U.S. Senate Judiciary Committee
 Subcommittee on the Constitution, Civil Rights and Human Rights

September 8, 2011

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The Lawyers' Committee for Civil Rights Under Law thanks Senator Durbin for convening this critically important hearing on "New State Voting Laws" Barriers to the Ballot" to highlight the current assault on voting rights. We appreciate this opportunity to comment on the wave of restrictive voting laws affecting voters across the country. We hope this hearing will be one of many steps taken by Congress to address this issue and highlight the importance of protecting the right to vote for all Americans, particularly the most vulnerable amongst us.

The Lawyers' Committee for Civil Rights Under Law was established in 1963 as a nonpartisan, nonprofit organization at the request of President John F. Kennedy. Our mission is to involve the private bar in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under law. For over 48 years, the Lawyers' Committee has advanced racial equality by increasing educational opportunities, fair employment and business opportunities, community development, open housing, environmental health and justice, criminal justice and meaningful participation in the electoral process. Through this work, we have learned a great deal about the challenges confronting our nation as it continues to tackle issues of race and equality of opportunity for all. It is through this lens that the Lawyers' Committee works at the national, state and local levels to eliminate the racial disparities existing in our electoral system and to protect the franchise for all Americans.

As part of our ongoing commitment, the Lawyers' Committee serves as the legal lead in the Election Protection Coalition efforts to protect the right to vote. Election Protection is the nation's largest non-partisan voter protection coalition and has become an invaluable resource for traditionally disenfranchised voters. It is a diverse coalition of more than 160 national, state and local grassroots, civil rights, and civic engagement organizations and maximizes the resources and expertise of the groups involved. The work of the Election Protection Legal Committees (EPLCs) involves the entire voter engagement process, including meeting with election officials, supporting non-partisan grassroots organizations, and providing valuable voter education

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and voter protection materials and resources. In addition to the critical programmatic and litigation efforts of our Voting Rights Project, our decade long record of successful coalition work through Election Protection has provided the Lawyers' Committee with the knowledge and experience to counter the ongoing assault on voters' rights.

One of the cornerstones of the Election Protection program is 1-866-OUR-VOTE, the nation's largest voter services hotline which, since its inception, has responded to over 500,000 calls from voters across the country, including over 240,000 during the 2008 election cycle. The stories that make up over 100,000 reports in our database paint the most complete picture available of the American voting experience from the perspective of the voter. As we can see, the root institutional problems, which led the public to realize our election administration system is fraught with opportunities for mass disenfranchisement, endure. Over the last four major election cycles, the top problems reported to Election Protection have remained the same:

- 2004 – Registration problems (44%), polling place problems (19%), absentee ballot problems (11%), voting equipment problems (7%)
- 2006 – Polling place and voting equipment problems (53%), registration problems (17%), voter intimidation problems (9%), absentee ballot problems (6%)
- 2008 – Registration problems (34%), polling place problems (26%), voting equipment problems (15%), absentee ballot problems (9%)
- 2010 – Polling place problems (29%), registration problems (24%), voting equipment problems (11%), absentee ballot problems (8%)¹

Statistics like these reveal that voter registration challenges continue to be greatest barrier to the ability to vote for most Americans. Noticeably absent in this list are mass reports of voter impersonation fraud which continues to be the primary justification for the rash of restrictive voter laws being proposed and implemented across the country. Instead of debating bipartisan solutions to modernize our cumbersome voter registration system and other solutions to the barriers that block access to the ballot box, state legislatures across the country are erecting further barriers through the enactment of burdensome voter ID requirements, proof of citizenship laws, restrictions on early voting

¹ Lawyers' Committee for Civil Rights Under Law, *2010 Election Protection Report* (2010) available at www.866ourvote.org

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and unnecessary requirements to vote by mail, to name a few. These bills are a solution in search of a problem that only serves to inhibit voters from fully participating in the electoral process.

Discriminatory Impact

The 2008 Presidential Election vividly highlighted the fact that a new electoral majority is emerging with Blacks, Latinos and youth voting in record numbers. Black and Latino voters today make up 20 percent of the vote, and are projected to rise to 45 percent by 2050. That is a critical swing vote in many states. Rest assured that this has not gone unnoticed. It is through this lens that we must consider the utility and impact of recent voter suppression efforts in the states.

Restrictive voter ID laws only have one true impact, the disenfranchisement of eligible voters—especially the elderly, young voters, minorities, and low-income voters. Despite rhetorical flourishes, studies consistently estimate that approximately 10 percent of voting-age citizens in the country—or more than 20 million individuals—lack a government-issued photo ID.²

Research at the state level confirms that a significant portion of the population lacks government-issued ID. Specifically, a recent survey found that roughly 13 percent of registered Indiana voters lack an Indiana driver's license or an alternate Indiana-issued photo ID.³ The Georgia Secretary of State estimated that 198,000 registered Georgia voters lack a driver's license or alternate state photo ID.⁴ The Secretary of State of Arizona estimated that 12 percent of the registered voters in that state—or 375,000 individuals—have no driver's license or state non-operator ID.⁵ And the state of Missouri, in its

² See Comm'n on Fed. Election Reform, *Building Confidence in U.S. Elections* 73 n.22 (2005); Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006) available at <http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf>; Carter-Ford Commission on Election Reform, *To Assure Pride and Confidence in the Electoral Process: Task Force Reports to Accompany the Report of the National Commission on Election Reform, No. VI: Verification of Identity* (Aug. 2001), available at http://www.tcf.org/Publications/ElectionReform99_full_report.pdf.

³ Matt A. Barreto, et al., Washington Institute for the Study of Ethnicity and Race, Working Paper, *The Disproportionate Impact of Indiana Voter ID Requirements On The Electorate* available at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf

⁴ See Sonji Jacobs & Megan Clarke, *No ID? Votes Cast Can Become Castoffs*, Atl. J. Const., Nov. 2, 2007, at 1A.

⁵ Report of R. Anthony Sissons at 8, *Gonzalez v. State of Arizona*, No. CV06-1268-PHXROS (D. Ariz.), available at



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unsuccessful defense of its restrictive photo ID law, found that between 169,000 and 240,000 registered Missouri voters lack a driver's license or alternate state photo ID.⁶

Low-Income Voters

Restrictive voter ID laws disproportionately impact those who can least afford it. A 2006 nationwide survey concluded that voting-age citizens earning less than \$35,000 in annual income were more than twice as likely to lack a government-issued ID as those earning more than \$35,000.⁷

The obligation to either offer free identification or provide additional voter education and poll worker training is also an issue. While many states (Ohio, Wisconsin, Georgia, etc.) have included the ability for voters to obtain "free" voter ID in order to vote, this not a simple process, nor in many instances, even a free process. In fact, in Wisconsin, one must now to ask for free ID before the state will accommodate the voter, thus resulting in many voters paying a poll tax to vote.⁸ Furthermore, the transportation and ancillary costs of obtaining one's birth certificate or other supporting documentation in order to obtain the requisite voter ID still remains and is extremely troubling. States still fail to properly address this concern and the photo ID advocates fail to acknowledge the inherent unfairness and discriminatory impact upon certain voters.

African Americans and Latino Voters

Hyperbole is unnecessary when speaking about the racial impact of restrictive voter ID laws and other restrictive measures. Numerous studies have shown that minorities disproportionately lack government-issued photo identification. The same 2006 nationwide study of voting-age citizens cited above found that African-Americans are more than three times as likely as Caucasians to lack a government-issued photo ID, with *one in four* African-

<http://moritzlaw.osu.edu/13electionlaw/litigation/documents/exhibits1924mntnforpreliminjunct ionarizona.pdf>.

⁶ *Weinschenk v. Missouri*, 203 S.W.3d at 206.

⁷ Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006) available at <http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf>

⁸ The Capital Times, *Top DOT official Tells staff not to mention free voter ID cards to the public – unless they ask* (Wednesday, September 7, 2007) available at http://host.madison.com/ct/news/local/govt-and-politics/capitol-report/article_335f59fa-d8fe-11e0-8a23-001cc4e03286.html

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Americans owning no such ID.⁹ Information from individual states confirms the racial imbalance. A 2005 study of voting-age citizens in Wisconsin determined that 55% of African-American males and 46 percent of Hispanic males—as compared with 16 percent of white males—lack a driver's license (and the corresponding figures for females are 49 percent of African-Americans, 59 percent of Latinas, and 17 percent of whites).¹⁰ An examination of registered voters in Georgia similarly found that African-Americans and Latinos were roughly twice as likely as whites to lack a driver's license or other state-issued photo ID.¹¹

Furthermore, the detrimental impact upon minority voters is not limited to only the effect of restrictive voter ID laws. Other suppressive initiatives such as those restricting early voting and the ability to register voters are equally discouraging and similarly disproportionate against minority voters. In Florida, during the debate of H.B. 1355, the racial undertones and historical insensitivity was palpable. The voting changes made in H.B. 1355 included 1) a panoply of burdensome and wholly unnecessary restrictions on the ability to conduct voter registration drives, 2) a reduction in the number of days during which early voting will be conducted, and a possible resulting reduction in the number of early voting hours, and 3) a limitation on registered voters' existing opportunity to vote when they move between Florida counties and do not re-register to vote in their new county.

As justification for these changes, state Senator Michael Bennett suggested emphatically that voting and voter registration should be made more difficult under Florida law:

You say it is inconvenient. Ever read the stories about people in Africa? People in the desert who literally walk 200-300 miles so they could have an opportunity to do what we do? And we want to make it more convenient? How much more convenient do you want to make it? Want to go to their house? This is a hard fought privilege. This is something people died for. And you want to make it convenient? ... Why would we make it any easier? I want 'em to fight for it. I want 'em to know what it's like. I want 'em to have to walk across town to

⁹ *Id.*

¹⁰ John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

¹¹ M. V. Hood III & Charles S. Bullock, III, *Worth a Thousand Words? An Analysis of Georgia's Voter Identification Statute 15* (2007).



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go over and vote. I want 'em to at least know the date of when they're supposed to vote. I don't think so. . . . This is Florida and we should count. We do make it convenient for people to vote but I gotta tell ya I wouldn't have any problem making it harder. . . . I want the people in the State of Florida to want to vote as bad as that person in Africa who is willing to walk 200 miles for that opportunity he's never had before in his life. This should not be easy. This should be something you feel with a passion.¹²

This comment is in stark contrast to the experiences of state Representative Cynthia Stafford stating:

"When I read this bill, I thought about my 86 year old grandmother. . . . I thought about her as I read the provisions in this bill that, in my opinion, create barriers to voting. I thought about my grandma who was born in this country but was not allowed to vote in this country until 1965 because of the color of her skin. When my grandma was finally granted the right to vote in 1965 there were barriers put in place to exercising the right to vote. I submit to you that this bill creates barriers to exercising the right to vote. . . . Are we now criminalizing voter registration efforts? . . . Anything that makes it harder for a person to vote or harder for that vote to count is very concerning and alarming.¹³

Elderly voters

Restrictive voter ID requirements also disproportionately affect older voters. Specifically, 18 percent of citizens nationwide who are above the age of 65 lacks a current, government-issued photo ID.¹⁴ A study in Wisconsin likewise determined that roughly 23 percent of voting-age citizens over 65 lacked a driver's license or other state-issued photo ID.¹⁵ In Georgia, similarly, 25 percent of registered voters over 65 own no driver's license or Georgia ID

¹² FLA. SENATE DEB.: Final Passage, Senator Bennett (May 5, 2011, 35:40-38:24).

¹³ FLA. HOUSE DEB.: 3rd Reading, Rep. Stafford (April 21, 2011, 37:35-40:09).

¹⁴ Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006) available at <http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf>.

¹⁵ John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.



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card.¹⁶ Again, the disproportionate effects reflect disparities in access to motor vehicles: While 10 percent of all households had no access to a vehicle, 17.5 percent of over-65 households lacked access to a vehicle.¹⁷

Youth and Student Voters

Young people and students are particularly harmed by restrictive voter ID requirements. An examination of Federal Highway Administration data concerning citizens aged 18 to 23 found that the share of persons without a driver's license ranged from 32.5 percent for 18-year-olds to 18 percent for 23-year-olds.¹⁸ When age and race are considered together, the disparities predictably become more pronounced. In Wisconsin, an astounding 78 percent of African-American males (as compared with 36 percent of white 17 males) aged 18-24 lack a driver's license, and 66 percent of African-American females (as compared with 25 percent of white females) aged 18-24 lack a driver's license.¹⁹ Further, even if a young voter is attending college, their student ID will not work.

Impact Story from Past Election

Studies and statistics provide the context for the discussion about the discriminatory impact of the wave of restrictive voter laws, but personal stories always help to more fully illustrate their negative impact. The story of a group of nuns in Indiana is one of those stories that continue to crystallize the negative impact of these laws. On May 6, 2008, as Indians headed to the polls for the first time since the Supreme Court decided *Crawford*, Election Protection was on the ground assisting voters who had questions or problems at the polls. Early that morning, Election Protection volunteer and Lawyers' Committee board member, John Borkowski, a partner at the law firm of Hogan and Hartson, LLP, walked into a polling place on the campus of St. Mary's College in his hometown of South Bend. Students from the college were being turned away because they only had a student ID from the private college and not a government issued photo identification with an expiration date. The students were devastated. While talking to Sister Julie

¹⁶ *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005)

¹⁷ U.S. Census Bureau, *Tenure by Vehicles Available by Age of Householder* (2000), available at http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=D&-ds_name=D&-lang=en&-mt_name=DEC_2000_SF3_U_H045.

¹⁸ Spencer Overton, *Voter Identification*, 105 Mich. L. Rev. 631, 659 (2007).

¹⁹ John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

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McGuire, one of the poll workers, John discovered that it was not just the students that were the victims of this misguided policy, but many of the nuns who lived in the convent that housed the polling place. John talked to a number of retired nuns, between 70-90 years old who either did not have ID or only had an expired license. These nuns no longer drove and had no need for current, government issued photo identification. They lived in the convent, among a community of their sisters. John discovered many of the sisters who were ineligible did not attempt to come to the polls. And that is the true scope of this tragedy. Most of the citizen voices made silent because they do not have this type of ID, as many as 21 million eligible voters across the country, will not show up because they know they will be turned away. Hence, we cannot simply say that voter ID does not impact voter turnout.

That night, John summed it up best, referring to the voter ID law he said it "definitely had the effect of preventing many people who were highly motivated to participate in this primary election from exercising their right to vote. It seems very ironic to me that a law intended to prevent voter fraud prevented members of a single community, essentially a family, who have lived together for years, from accepting the votes of their own sisters."

Financial Costs of Restrictive Voter Laws

In addition to the discriminatory impact, the financial burden unnecessarily placed upon state budgets is astounding. In this climate of economic crisis and cost containment, some states have somehow found the money to restrict voting rights, yet still cannot find money for public education or health care. Data reveals that states have found that implementing these laws increase their spending on elections by as much as 50 percent.²⁰ With the passage of Georgia's ID law, the Secretary of State of Georgia had to send letters out to citizens suspected of not having the identification instructing them how to obtain ID, advertise in print and on-air media, and mail out information packets and reminders. Missouri estimates that a new voter ID would cost the state over \$20 million to implement over the next three years. The Institute for Southern Studies estimated it could cost North Carolina \$14 million or more over three years to educate its 6 million voters about that state's proposed voter ID law.²¹ Furthermore, in Wisconsin which has become a battleground

²⁰ Agraharkar, V., Weiser, W., and Skaggs, A. (2011) *The Costs of Voter ID Laws: What the Courts Say*. Brennan Center for Justice at NYU School of Law. Available at http://brennan.cjdn.net/2f0860fb73fd559359_zzm6bhnd.pdf.

²¹ Chris Kromm, "Voter ID Laws Carry Hefty Price Tag for Cash Strapped States," Institute for Southern Studies, January 27, 2011.



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state on issues such as voting and the right to collectively bargain, the state's own Legislative Fiscal Bureau's analysis of its restrictive voter ID bill estimated that its recently passed ID law would cost over \$2.7 million dollars in lost revenue to supply free identification cards, \$61,680 in new systems for the Department of Transportation to issue free IDs, and \$2.1 million in public education and training costs.²²

Efficacy of Restrictive Voter Laws

Proponents of restrictive voting requirements have failed to produce any credible evidence of a massive conspiracy to impersonate eligible voters at the polling place—the only type of election misconduct that photo ID actually guards against. There are no shadow bands of ineligible voters roving from polling place to polling place to affect election results. Moreover, the justification for restrictions on early voting or voter registration campaigns is similarly evasive.

Regarding voter impersonation fraud, the prospects of affecting election outcomes are quite low. Such a scheme would require coordinating an army of individual impersonators in order to generate enough votes to sway an election, and each impersonator ostensibly would have to:

- Take steps to ensure an accurate forging of the voter's signature;
- Travel to the appropriate polling precinct site for the particular voter;
- Make sure the voter has not voted absentee or requested an absentee ballot;
- Have accurate knowledge that the voter has not been removed from the rolls or moved and re-registered at a different location;
- Wait in line, that can often be in excess of three hours, at the polling place to cast a ballot in that voter's name;
- Know that the registered voter has not already voted that day and does not plan to before the polls close; and

²² *Id.*, page 3



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- Risk detection by a hard working poll worker who may know the registered voter personally.

International Treaty Obligations and Felony Disenfranchisement

As we discuss the voter suppression tactics in the states, we must also highlight arguably the greatest disenfranchisement tactic by the states – felony disenfranchisement laws. Sadly, the United States stands out in terms of the breadth, depth, and severity of additional practices, which curtail and deny the right to vote – felony disenfranchisement laws. In the United States, nearly two million African Americans – or 8.25 percent of the African American population – are disenfranchised, a rate *three* times the national average.²³

Because each state in the United States has established its own felony disenfranchisement laws they widely across the country. Thirty-five states go so far as to prohibit voting by individuals who are not incarcerated but are on parole; thirty deny voting rights to persons on felony probation;²⁴ ten states restrict the voting rights of certain individuals who have entirely completed their sentence; and in two of these states, all individuals with felony convictions must obtain clemency from the governor before they can vote again.²⁵ Only two states do not disenfranchise individuals with felony convictions while incarcerated, notable exceptions to the rule.²⁶ At present, states with greater nonwhite prison populations are more likely to ban convicted persons from voting than states with proportionally fewer

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²³ Jeff Manza & Christopher Uggen, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* 253 (Oxford University Press 2006).

²⁴ Probation is a sentence ordered by a judge, usually instead of, but sometimes in addition to, serving time in jail. Parole is the conditional release of a prison inmate after serving part (if not all) of his or her sentence.

²⁵ Two states deny the right to vote to all ex-felons who have completed their sentences. Nine others disenfranchise certain categories of ex-offenders and/or permit application for restoration of rights for specified offenses after a waiting period (e.g., five years in Delaware and Wyoming, and two years in Nebraska). The Sentencing Project, *Felony Disenfranchisement Laws in the United States* (2008), http://sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf.

²⁶ Rare outliers, Maine and Vermont comprise the two states that do not deny those with felony convictions the right to vote. The Sentencing Project, *Felony Disenfranchisement Laws in the United States* (2008), available at http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinus.pdf

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nonwhites in the criminal justice system.²⁷ Furthermore, African Americans are not only disproportionately disenfranchised, but are also less likely to have their voting rights restored.²⁸

The right to vote and the right to be free from discrimination have long been recognized in the international system. Ratified by the U.S. in 1992, the International Covenant on Civil and Political Rights (ICCPR) requires the United States "to respect and to ensure" that all persons have a wide range of civil and political rights.²⁹ The treaty states:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."³⁰

Thus, the ICCPR not only prohibits state sponsored discrimination, but creates an affirmative obligation to ensure "effective protection against discrimination."

This International obligation must be ignored through neglect by Congress, nor this Administration. In recent years, the Lawyers' Committee has been actively involved in monitoring and responding to reports written by the United States in response to the requirements of both ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Ratified by the United States in 1994, CERD also prohibits racial discrimination and requires that state parties "undertake to pursue by all appropriate means and without delay a policy of eliminating

²⁷ Angela Behrens, Christopher Uggen, & Jeff Manza, *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 *AJS* 559, 596 (Nov. 2003). See also, Jeff Manza and Christopher Uggen, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 67* (Oxford University Press, 2006) (Chapter 2, *The Racial Origins of Felon Disenfranchisement*, co-written with Angela Behrens) (where African Americans make up a larger proportion of a state's prison population, the state is significantly more likely to adopt or extend felon disenfranchisement).

²⁸ *Id.* at 592.

²⁹ International Covenant on Civil and Political Rights art. 2.1, available at <http://www2.ohchr.org/english/law/ccpr.htm>.

³⁰ *Id.* at art. 26.

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racial discrimination in all its forms.³¹ In ratifying the treaty each state commits, among other steps, to “ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.”³²

The U.S. is obligated to fulfill its obligations under the treaties it has ratified, yet the continuation and even retrenchment in states such as Florida and other shows that the U.S. still has much to do in order to meet its treaty obligations under ICCPR and CERD. As indicated earlier, while voter suppression advocates focus upon the eradication of phantom impersonation squads, they fail to address the real problems with our electoral system that are perpetuating the ongoing disenfranchisement of millions of Americans. While the Lawyers’ Committee calls upon Congress and the states to address these voter suppression laws, so too does the larger international community. Notably, when the CERD Committee released its Concluding Observations, it stated,

“The Committee remains concerned about the disparate impact that existing felon disenfranchisement laws have on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, who are disproportionately represented at every stage of the criminal justice system. The Committee notes with particular concern that in some states, individuals remain disenfranchised even after the completion of their sentences. (Article 5 (c))³³

Litigation in the States

While legislative advocacy in the states is preferred, legal recourse is often the result. Despite the almost unanimous reauthorization of the Voting Rights Act in 2006, Section 5 remains under attack and many states have become brazen in their efforts to undermine its effectiveness. The obligations under Section 5 of the Voting Rights Act require certain covered states and jurisdictions to preclear any voting change. Unfortunately, some states continue to boldly challenge these requirements. In South Carolina, the Lawyers’ Committee was forced to join its allies with the ACLU and other voting rights groups to oppose the state’s submission with the Department of Justice. The new law limits the type of ID eligible voters can present in order to vote to only photo ID and among other things creates a discriminatory impact upon African

³¹ *Id.* at art. 26

³² *Id.* at art. 26.

³³ Convention on the Elimination of Racial Discrimination Concluding Observations, pg. 9, #27 (February 2008)

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American voters in the State. We are glad to see the DOJ taking actions to force compliance and we will continue to monitor the situation accordingly.

Similarly, in Alabama, the Lawyers' Committee intervened in the lawsuit to defend the constitutionality of Section 5 against a challenge by Shelby County (a largely white suburb of Birmingham). Shelby County filed suit in federal court in Washington, DC asking that Section 5 of the Voting Rights Act be declared unconstitutional. *Shelby County, Alabama v. Holder*, No. 1:10-cv-00651 (D.D.C.). In Ohio, As a result of complaints received by Election Protection in November 2004, the Lawyers' Committee, on behalf of the League of Women Voters of Ohio and individual plaintiffs, filed a lawsuit in 2005 against then Governor Bob Taft and Secretary of State J. Kenneth Blackwell. (The case concluded as *League of Women Voters of Ohio v. Brunner*. The complaint detailed the challenges that voters faced in exercising their right to vote and casting a meaningful ballot. The lawsuit resulted in an agreement that sought to ensure that the problems of 2004 would remain in the past. However, with continual voter suppression efforts in Ohio, including the recent passage of H.B. 194, we remain concerned that new laws may threaten to revive the very problems that this state is on its way to addressing and overcoming.

Additionally, the Lawyers' Committee joined with the League of Women Voters of Florida, Democracia USA, and the Brennan Center for Justice to oppose preclearance of three sets of provisions of a new Florida law, H.B. 1355 (2011), which dramatically impact the State's voter registration and voting processes. We believe that the State's recent decision to withdraw four portions of their Section 5 administrative submission so close to the Department of Justice's (DOJ) 60-day deadline amounts to an admission that it has not been able to prove that these provisions are non-discriminatory.

Proactive Efforts to Combat ACTUAL Voter Fraud

In 2008 this nation witnessed an historic election with record-breaking turnout across the country. Sadly, these challenges in the states are part of the larger voter suppression effort that we have seen increase exponentially since the last Presidential Election. As stated throughout, voter impersonation fraud is not the primary problem with our nation's electoral system. Instead of correcting abuses, restrictive voter laws are erecting barriers to the ballot and disenfranchising voters, particularly minority, low-income, elderly, students and voters with disabilities. Furthermore, states continue to ignore the ongoing voter disenfranchisement that occurs through felony

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disenfranchisement laws, voter intimidation tactics, and other restrictions to the ballot box.

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Rather than pursuing these restrictive voter laws, we urge state legislators to modernize our election system and implement new reforms that expand the franchise for voters from all walks of life. New voters and long time voters are already at risk of disenfranchisement because of the challenges with the voter registration system. Modernizing voter registration will make this essential government service far more efficient and far less expensive versus expending unnecessary dollars to enact restrictive voter ID and other laws that limit or block access to full participation on our electoral process. Additional "fraud-protection" measures could include *accurate* cleansing of voter registration rolls, the continued vigorous prosecution of intimidation and harassment claims that have become increasingly rampant in the most recent federal elections, and the passage of state deceptive practices prevention laws which address documented instances of deceptive practices and tactics in the recent elections. Furthermore, we urge the federal government and the states to follow the recommendations of the CERD Committee and "adopt all appropriate measures to ensure that the denial of voting rights is used only with regard to persons convicted of the most serious crimes, and that the right to vote is in any case automatically restored after the completion of the criminal sentence."³⁴ These are real solutions to actual problems.

Conclusion

The 2010 elections reinforced what we have known since November 2000: our system of election administration needs reform and efforts to deny minority voters full access to the franchise persist. Those who fought to break the hold of disenfranchisement and make the gains of the civil rights movement a reality put their lives and livelihoods on the line to see that election laws would be agents for progress and not instruments of oppression. It is the fruits of those labors that are at stake today. The erection of new barriers to the ballot is exactly the opposite of what is needed to ensure the protection of all eligible voters throughout the electoral process. The well-funded and coordinated assault on the right to voter particularly upon communities of color is alarming and serves to heighten our need for vigilance

³⁴ Convention on the Elimination of Racial Discrimination Concluding Observations, pg. 9, #27 (February 2008)



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on the national, state and local levels.³⁵ As the eminent historian C. Vann Woodward wrote in his definitive work *The Strange Career of Jim Crow*:

The South's adoption of extreme racism was due not so much to a conversion as it was to a relaxation of the opposition. All the elements of fear, jealousy, proscription, hatred, and fanaticism had long been present, as they are present in various degrees of intensity in any society. What enabled them to rise to dominance was not so much cleverness or ingenuity as it was a general weakening and discrediting of the numerous forces that had hitherto kept them in check.

The Lawyers' Committee will continue to aggressively protect the right to vote for ALL voters and work to ensure the enforcement of our nation's voting rights laws. We urge voter ID advocates to do the same and not selectively disregard and undermine the very rights that so many have fought and died for. Thank you.

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³⁵ Van Ostern, Tobin. "Conservative Corporate Advocacy Group ALEC Behind Voter Disenfranchisement Efforts." *Campus Progress Blog*, 8 March 2011. Web. 9 March 2011. http://www.campusprogress.org/articles/conservative_corporate_advocacy_group_alec_behind_voter_disenfranchise/].

The Lawyers' Committee was formed at the request of President John F. Kennedy in 1963

The Leadership Conference
on Civil and Human Rights

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**STATEMENT OF
WADE HENDERSON, PRESIDENT & CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

“NEW STATE VOTING LAWS: BARRIERS TO THE BALLOT?”

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN
RIGHTS
SENATE COMMITTEE ON THE JUDICIARY
SEPTEMBER 8, 2011**

Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee: I am Wade Henderson, president & CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit testimony for the record regarding the problem of voter identification laws and other barriers to the ballot.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. The Leadership Conference's more than 200 national organizations represent persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups.

The Leadership Conference is committed to building an America that is as good as its ideals – an America that affords everyone access to quality education, housing, health care, collective bargaining rights in the workplace, economic opportunity and financial security. The right to vote is fundamental to the attainment and preservation of all these rights. It is essential to our democracy. Indeed, it is the language of our democracy.

Thankfully, in securing the right to vote, the days of poll taxes, literacy tests, and brutal physical intimidation are behind us. But today's efforts at disfranchisement, while more subtle, are no less pernicious.

Recently erected barriers to the ballot like photo ID requirements, shortened early voting periods, limits on poll worker assistance, proof of citizenship requirements at the polls, restrictions on same day and third-party registration, and disenfranchisement of former felons are nothing less than an all-out assault on the progress of the last century; indeed, on the very legacy of the civil and human rights movement.



These barriers, particularly laws requiring voters to show government-issued IDs at the polls to vote, are not the product of independent actions coincidentally occurring throughout the country. Supporters of these requirements spuriously claim IDs are a meaningful tool for fraud prevention. The truth is that they are very much part of a coordinated political effort to disenfranchise millions of Americans – particularly traditionally disenfranchised, groups that saw an increased turnout in the 2008 elections – throughout the country.

A Euphemism for Voter Suppression

Photo ID requirements disproportionately deny voting rights to people of color, people with disabilities, students, low-income workers, and seniors. A full 11 percent of voters currently do not have ID, and most of them are seniors, people of color, people with disabilities, lower-income individuals, and students.¹ In fact, about 1 out of 5 nonwhite citizens and citizens over 64 years old do not have government-issued ID.² Political architects are seizing on this fact and attempting to shape the turnout in future elections by denying these groups access to the ballot.

For those without an ID, the hurdles to obtaining one can be far greater than most people would think. One needs the time, access to transportation, access to childcare or work leave, and underlying documentation to obtain an ID. This translates into time and money that lower-income citizens, people with disabilities, seniors, students, and people of color are far less likely to have. Long lines at driver services offices take away from time at work and with family. Reliable transportation may not be available. Time off of work and money for someone to watch the kids may be hard to come by.

Further, many may not have the supporting documents necessary to obtain an ID. To get an ID, one must present documents showing identity, citizenship and residence, including a certified birth certificate. In some cases, one must show a Social Security card, marriage or divorce records, or naturalization papers. This translates into more time and more money. A copy of a certified birth certificate can cost \$45, and in a bizarre *Catch-22*, 17 states require a photo ID to *get* a copy of the birth certificate in the first place. Naturalization papers can cost up to \$200.

In other cases, supporting documents like a birth certificate may not even exist. Those who were informally adopted at birth, born in rural settings, born outside of the United States, or whose records were destroyed in natural disasters like Hurricane Katrina, may all be disenfranchised by new ID requirements.

Brenda Williams and her husband Joseph, physicians in the small town of Sumter, South Carolina, illustrate the challenges that new ID laws pose. *The Sun News* recently featured their story.³ For the

¹ Advancement Project, "What's Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights," ii, <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf>.

² Tova Wang, "Voter Identification Talking Points and Fact Sheet," Demos.org, <http://www.demos.org/pubs/voterIDtalkingpoints.pdf>.

³ Dawn Hinshaw, "S.C. husband-and-wife doctor couple at center of voting-rights movement," *The Sun News*, <http://www.thesunnews.com/2011/07/18/2283993/sc-husband-and-wife-doctor-couple.html>.



last 29 years, this couple has signed up their patients to vote during their medical visits. They have collectively registered about 1,000 voters. When the state's new photo ID law was enacted, they recall, their task seemed simple enough: collect enough money to pay for an individual's ID, and take that person to go get it.

In Brenda's words, however, "I was in for the education of my life."⁴ Documentation proved to be a major barrier to obtaining IDs. Like many of their rural, lower-income or people of color counterparts in the South and elsewhere, many of the Sumter residents had no birth certificates at all. This is because, before the 1970s, many women used midwives. Those midwives may have failed to file birth certificates or filed incomplete or incorrect certificates. This factor helps explain why more than half of South Carolina voters without an ID are 45 years of age or older.⁵

Struggles in other states illustrate the barriers that exist even when an individual has documentation and the ability to get to a Department of Motor Vehicles (DMV) office. In Wisconsin, a mother recorded her son's interaction with a DMV clerk while trying to apply for an ID to comport with the new voter ID law.⁶ The son used a bank statement as proof of residency. The untrained clerk examined the son's bank account statement and, going beyond even Wisconsin's stringent requirements, proceeded to interrogate him about exactly how *often* he used the account and whether there was enough activity to allow him to qualify for an ID. Luckily, the clerk decided the son's Amazon purchase allowed him to 'qualify' as an active user of his own bank account. A less persistent individual, however, or one with a less active bank account or no bank account at all may have been turned down by that clerk on that day and disenfranchised entirely.

Even when a state promises to waive fees for ID cards that are used for voting, problems can still occur. This is because many DMVs like Wisconsin's also require an applicant to *know* that that the ID is supposed to be free before they can get it for free. That is, they must locate and check a certain box on their ID application indicating that they want the ID for voter identification purposes. Otherwise, they are automatically charged a fee.⁷ This equates to a poll tax.

There is also a high risk of disenfranchisement on voting day. That is, even if a voter has the required ID, he or she may still be disenfranchised by poorly trained poll workers. Poll workers have nearly full discretion to determine whether the photo on the ID actually portrays the potential voter. This allows for arbitrary and discriminatory enforcement. Dyed hair, weight gain or loss, or simple aging can all cause someone to look different than the photo on their ID.

More importantly, African Americans and Hispanics are *already* more likely to have their IDs more harshly scrutinized at the polls. A Harvard University study after the 2006 elections revealed that 55

⁴ Id.

⁵ Id.

⁶ "Voter ID at the DMV," <http://www.youtube.com/watch?v=x0G01zbHGM8>.

⁷ Id.



percent of African Americans and 54 percent of Hispanics were asked for photo ID whether it was required or not, compared to only 47 percent of whites were asked for photo ID.⁸

New regressive voting laws are thus taking communities that have traditionally struggled for ballot access – and that have fought long and hard for the access they have – and setting back the clock on their progress.

A Solution in Search of a Problem

Proponents of voter ID laws claim that voter fraud is commonplace, yet multiple studies have shown that the problem is essentially nonexistent. And anecdotal evidence held up by these politicians is consistently debunked as myth.

First, the only type of voter fraud that a photo ID could address would be voter impersonation – that is, when voters show up at the polls and pretend to be someone they are not. This kind of fraud simply does not exist at a significant level anywhere in this country. “It is more likely that an individual will be struck by lightning than that he will impersonate another voter at the polls,” according to a recent report on voter fraud by the Brennan Center for Justice.⁹ Indeed, another recent analysis of data from all fifty states and the U.S. Department of Justice found that voter impersonation – again, the only type of fraud that a photo ID can address – is exceptionally rare.¹⁰ Only 24 people were convicted or plead guilty to illegal voting at the federal level between 2002 and 2005.¹¹ On the state level, there were 19 cases of voting by ineligible voters.¹² Of those, five were prohibited because of felony convictions, fourteen were not citizens, and five voted twice in the same election.¹³ *None* of them were attempting to impersonate someone else.

Furthermore, voter fraud, if it existed, is already illegal and punishable by jail time and fines. Already-existing punishment is why voter impersonation is so rare. It is simply not worth the risk.

If these laws truly aimed to confirm a voter’s identity, they would allow for the many ways that a person can prove who they are. People would be able to use a broader range of documents such as expired photo IDs, utility bills, bank statements, or paychecks. States could also explore less

⁸ Stephen Ansolabehere, “Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day,” *PS: Political Science & Politics* (2009), 42:127-130 Cambridge University Press, The American Political Science Association 2009.

⁹ Justin Levitt, “The Truth About Voter Fraud,” The Brennan Center for Justice at New York University School of Law, 4, at <http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>.

¹⁰ Advancement Project, “What’s Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights,” 4,

<http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf> (citing Lorraine C. Minnite, *The Myth of Voter Fraud*, Cornell Univ. Press (2010), showing that allegations of widespread voter impersonation fraud at the polls are not supported by empirical evidence).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*



oppressive alternatives. They could better publicize existing election laws and penalties to promote awareness. They could more widely post eligibility requirements at the voting polls for both voters and poll workers. They could start an election hotline like Georgia's Stop Voter Fraud Hotline. Finally, they could invest in updating voter registration rolls so that poll workers would have up-to-the-minute data on voter eligibility. These steps will likely not be taken, though, because most states know that voter fraud is not the issue.

A Financially Irresponsible Move

Photo ID requirements are also an unnecessary financial burden on state and local government. Because charging for the IDs would be an outright unconstitutional poll tax, states must offer photo IDs to voters for free. This is costly. For example, in Indiana, the state spent more than \$10 million on over 700,000 cards in just four years.¹⁴ And these figures are just the beginning. Related costs like public awareness campaigns, provisional ballot preparations, and poll worker training all raise the price tag on these laws. In fact, Missouri recently estimated that it would cost the state more than \$16.9 million in its first three years to implement a photo ID law.¹⁵ Local jurisdictions will have extra costs to deal with elections offices, longer lines, and more complicated procedures to navigate with the new requirements.

In a time of such financial crisis, there is simply no rationale to spend millions of dollars on a photo ID requirement. Too many people are working harder and getting paid less – if they are working at all. People are frustrated, angry, and wondering just when the pain will end. States should be investing in resources like education, housing, and job-creation that will further empower and enfranchise their citizens, rather than on measures which will directly exclude them from participating in civil society. States will be spending money on enforcing ID laws that will hurt the very groups that need their protection the most. Not only is this a perverse reversal of the government's role in a democracy, it is simply bad budgeting.

Conclusion

Governors who vetoed corrosive voter ID laws in their states should be commended for their leadership in squelching harmful voter ID legislation in their states. Yet many others have fallen prey to the rhetoric—or orchestrated and perpetuated the rhetoric themselves—in an attempt to disenfranchise thousands of voters across the country for their own political gain. Rhetoric like that of Nevada Governor Brian Sandoval that “the right to vote is a privilege” – a contradiction in terms if I have ever heard one – cannot be tolerated in a democracy founded on equality.¹⁶ Explanations from

¹⁴ Advancement Project, “What’s Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights,” v, <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf>.

¹⁵ *Id.* at vi.

¹⁶ “Why We Don’t Need Felony Disenfranchisement Laws Anymore,” Unfinished Business, The Leadership Conference on Civil and Human Rights, June 20, 2011, <http://www.unfinishedbusiness.org/20110620-felony-disenfranchisement/>.



New Hampshire House Speaker that college students are “foolish” and just “vote their feelings” and so should not be able to cast a ballot have no place in the 21st Century.¹⁷

It should be the duty of our policymakers to remove the barriers to participation for all citizens, not to erect new ones under the guise of political rhetoric. Removing barriers involves modernizing the voting system with automated registration, online access to records, and accessible voting machines that would allow over **65 million eligible Americans to participate**. Investing in a uniform, simplified process for voting would eliminate unnecessary bureaucratic processes, save states money, and save election officials time. Right now state legislators are committed to doing the opposite. Requiring photo ID and imposing other restrictions on the right to vote will not preserve our democracy. It will only serve to exclude many Americans from participating in the important decisions that face us all.

Thank you for your leadership on this critical issue.

¹⁷ Peter Wallsten, “In states, parties clash over voting laws that would affect college students, others,” *The Washington Post*, March 8, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/06/AR2011030602662.html?hpid=topnews&sid=ST2011030802271>

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
Hearing On "New State Voting Laws: Barriers To The Ballot?"
Before The Subcommittee On The Constitution,
Civil Rights And Human Rights
September 8, 2011**

Three years ago, in the wake of the Supreme Court's disappointing decision in *Crawford v. Marion County Election Board*, I chaired a hearing to examine modern-day barriers to our most fundamental civil right, our right to vote. At that time, Indiana and Georgia were the only states in the Nation with restrictive photo ID laws. This year, however, a majority of states passed or considered amending voting laws to require specific identification. Today, the Senate Judiciary Committee examines this growing trend of disenfranchisement.

Many Americans associate barriers to voting with a dark time in our Nation's history. We will never forget the courageous and resilient Americans who were attacked by dogs, blasted with water hoses, or beaten by mobs simply for attempting to register to vote. We remember a time when stubborn and recalcitrant state officials used discriminatory devices such as poll taxes, grandfather clauses, and literacy tests to exclude American citizens from their democracy. We cannot backslide on the progress we have made protecting every American's right to vote.

Five years ago, members of Congress stood together on the Capitol steps to reaffirm our commitment to achieving full democratic participation by reauthorizing the Voting Rights Act. This Committee played a key role in reinvigorating and reauthorizing that landmark law. After nearly 20 hearings held by the House and Senate Judiciary Committees, we found that modern day barriers to voting continue to persist in our country. We have made great progress in our national quest for a more inclusive democracy, and while today's tactics are nowhere near as vile, we must understand that today's voting restrictions are not only harmful but run contrary to our Constitution's text and history.

New voter disenfranchisement tactics arise almost every year. In fact, according to the National Conference of State Legislatures, since 2001, nearly 1,000 voter ID bills have been introduced in 46 states. This year, 35 states advanced legislation requiring citizens to obtain and display unexpired government-issued photo identification. Such legislation was passed by Republican legislatures in 12 states including Alabama, Minnesota, and Missouri. Only three states-- including my home state of Vermont -- do not have a voter ID law and did not consider voter ID legislation this year.

This Committee has already received expert testimony that voter ID laws will disenfranchise African-Americans, Hispanics, military veterans, college students, the poor, and senior citizens. And these laws are universally opposed by the AARP, the League of Women Voters, and traditional civil rights organizations who have long worked to protect Americans' access to the ballot box like the NAACP and MALDEF. So why is this the focus of so much effort in state legislatures? Beyond formal voting restrictions, in recent elections we have witnessed overt threats by armed vigilantes attempting to intimidate Hispanic voters at the polls in Arizona. We witnessed cross burnings intended to intimidate African-American voters on the eve of an

election in Louisiana. We also saw organized efforts in Maryland to deceive minority and low-income voters with false information about polling locations and phony endorsements. Yet these are not the stories or concerns we hear about when partisans advance new voting restrictions.

On the contrary, to justify their ill-conceived and ill-advised voter ID legislation, politicians allege wide-spread voter fraud. We even heard Congresswoman Gabrielle Giffords' 2010 challenger cite to "rumors" that his opposition was busing in people from across the Mexican border to vote illegally in a U.S. election. Of course, the Secretary of State in Arizona dismissed that allegation saying that it was simply an "urban legend." A previous Senate Rules Committee hearing examined the myth of wide-spread voter fraud and concluded that there was no credible evidence of in-person voting fraud, even in states like Indiana. That lack of evidence, however, has not stopped efforts by Republican state legislators in some states to pass restrictive photo ID laws.

Following the passage of Indiana's photo ID law, a dozen elderly nuns were turned away from the polls because they did not possess the required photo ID. I understand that several of them held expired photo IDs that were not sufficient under Indiana's restrictive law. Interestingly, the strict Indiana law did not prevent the Indiana Secretary of State, a politician who has made voter fraud prevention a priority, from committing fraud himself, resulting in a grand jury indictment. One can only conclude that at least in Indiana, the restrictive photo ID law did not prevent voter fraud while it certainly did prevent many otherwise-eligible voters from exercising their constitutional right.

It is regrettable that the Supreme Court did not protect the fundamental right to vote three years ago when it failed to invalidate Indiana's restrictive photo ID law. Had just two Justices been more protective of the right to vote, the nuns in Indiana would have been able to vote in that year's primary election. Because the burdensome law was allowed to stand, those sisters and untold others were disenfranchised and other state legislators were encouraged to make it more difficult for the elderly and the poor to vote.

Four decades ago when Virginia passed a law requiring voters to pay a \$1.50 poll tax the Supreme Court invalidated the law. Simply because the tax would apply to every voter did not make it permissible under the Constitution. Justice Douglas noted that "the right to vote is too precious, too fundamental to be so burdened or conditioned." I agree.

Our great Nation was founded on participatory democracy. Our founding document begins with "We the People." Successive generations of Americans have come together to amend our Constitution six times to expand the participation of its citizenry in the election of the government--to former slaves, to women, to young people, to include the direct election of Senators, and to prohibit poll taxes. In this way, "We the People" have reiterated and affirmed the fundamental importance of the right to vote. We should all remember Judge Wisdom's analysis in the 1963 case of *United States v. Louisiana*, where he concluded that a law which burdens a citizen from access to the franchise is a wall that must come down. His words are as true today as they were 48 years ago.

Thank the Chairman of the Subcommittee on the Constitution, Civil Rights and Human Rights for calling this important hearing and the witnesses for traveling to be with us today.

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Testimony of
Professor Justin Levitt,
Loyola Law School, Los Angeles

Before the
United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

New State Voting Laws: Barriers to the Ballot?

September 8, 2011

Chairman Durbin, Ranking Member Graham, and distinguished Members of the Subcommittee, thank you for inviting me to speak here today.

My name is Justin Levitt; I teach constitutional law and election law at Loyola Law School, in Los Angeles.¹ I have had the privilege to practice election law as well, including work with civil rights institutions and with voter mobilization organizations, ensuring that those who are eligible to vote and wish to vote are readily able to vote, and to have their votes counted. My work has included the publication of studies and reports; assistance to federal and state administrative and legislative bodies with responsibility over elections; and, when necessary, participation in litigation to compel jurisdictions to comply with their obligations under federal law and the Constitution.

I now focus on research and scholarship, confronting the structure of the election process while closely observing and rigorously documenting the factual predicates of that structure. I have paid particular attention in recent years to claims of voter fraud, and to policies purporting to protect against fraud. I have collected allegations of fraud cited by state and federal courts, bipartisan federal commissions, political parties, state and local election officials, authors, journalists, and bloggers. I have analyzed these allegations at length, to distinguish those which are supported from those which have been debunked; furthermore, I have created and published a methodology for investigating future claims, to separate the legitimate from the mistaken or overblown. With the support of the Brennan Center for Justice at NYU School of Law, I have published a monograph reflecting this analysis, entitled "*The Truth About Voter Fraud*," which compiled for the first time the recurring methodological flaws behind the allegations of widespread voter fraud that are frequently cited but often unsupported.² Brennan Center

¹ My comments represent my personal views and are not necessarily those of Loyola Law School or any other organization with which I am now or have previously been affiliated.

² Justin Levitt, *The Truth About Voter Fraud* (2007), available at <http://www.brennancenter.org/content/resource/truthaboutvoterfraud/>.

colleagues and I have similarly examined claims of voter fraud in *amicus* briefs filed with courts around the country, including cases at the appellate level and with the Supreme Court.³

I have also analyzed, in detail, the effect of policies and laws that contribute to the burdens on eligible citizens as they attempt to exercise the franchise. I attempt to bring reliable data to bear on the effort to assess the nature and magnitude of the impact of new election rules. In helping to quantify the impact of these rules, I have helped to conduct surveys and sophisticated statistical analyses; I have collected affidavits and anecdotes; and I have conducted in-depth review of voter registration forms and voter registration rolls, line by line. It is in this role as researcher and scholar, grounded in reliable data, that I appear before you today.

I thank you for holding this hearing — and for providing the opportunity to discuss some of the new state voting laws and their effects on eligible American citizens. As has been repeatedly recognized, voting, the right preservative of all other rights,⁴ “is of the most fundamental significance under our constitutional structure.”⁵ And so it is vital that this body closely examine regulations of the franchise to ensure that this most fundamental of rights is never unduly burdened. Only then can there be assurance that elections are conducted with the integrity necessary for the public to rely on their results. Less than two miles from the new memorial to Dr. Martin Luther King, Jr., and within a few weeks of its opening, it is a worthy endeavor indeed to continue his work striving to ensure that all citizens, regardless of race, ethnicity, or social status, are able to participate fully in our representative democracy.

Unfortunately, a spate of recent state regulations seem headed in the wrong direction. These laws exact real burdens on real Americans, making it more difficult for citizens to exercise their rights to vote. Crucially, these burdens are not only real but unnecessary, which renders them suspect as a matter of constitutional law, and fundamentally flawed as a matter of public policy. Not only do they make it more difficult for Americans to vote, but they do so without any meaningful benefit. Indeed, in several circumstances, the new laws are directly counterproductive.

Although there are several types of state laws or policies that deserve attention, I would like to focus my remarks today on three particular types of restrictions that together demonstrate

³ Brief of the Brennan Center for Justice *et al. as Amici Curiae* Supporting Petitioners, *Crawford v. Marion County Election Board*, 128 S. Ct. 1610 (2008) (“Brennan Center Brief”); Brief of Brennan Center for Justice at NYU School of Law as *Amicus Curiae* in Support of Plaintiffs-Appellants and Reversal, *Crawford v. Marion County Election Board*, 472 F.3d 949 (7th Cir. 2007); Brief *Amicus Curiae* of the Brennan Center for Justice at NYU School of Law in Support of Plaintiffs/Appellants and Reversal, *Gonzalez v. Arizona*, 485 F.3d 1041 (9th Cir. 2007); Brief of Brennan Center for Justice at NYU School of Law as *Amicus Curiae* in Support of Plaintiffs/Appellees and Affirmance, *ACLU of N.M. v. Santillanes*, 546 F.3d 1313 (10th Cir. 2008); Brief of Brennan Center for Justice at N.Y.U. School of Law as *Amicus Curiae* in Support of Plaintiffs-Appellants and Reversal, *Common Cause/Georgia v. Billups*, 554 F. 3d 1340 (11th Cir. 2009); Brief of Brennan Center for Justice at N.Y.U. Law School as *Amicus Curiae* in Support of Plaintiffs-Appellees and Affirmance, *Common Cause/Georgia v. Cox*, Case No. 05-15784-G (11th Cir. Jan. 14, 2006); Brief of Brennan Center for Justice at NYU School of Law as *Amicus Curiae* in Support of Plaintiffs’ Motion for Summary Judgment, *ACLU of N.M. v. Santillanes*, 506 F. Supp. 2d 598 (D.N.M. 2007).

⁴ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

⁵ *Crawford v. Marion County Election Bd*, 553 U.S. 181, 210 (quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)).

the breadth of the concern. The first involves new limits on the ability to help citizens register to vote. The second involves new limits on citizens' ability to cast ballots before election day. And the third involves new limits on citizens' ability to establish their identity at the polls on election day itself. Getting on the rolls, early voting, and voting on election day: all have been subject to new, and unjustified, limits.

RESTRICTIONS ON REGISTRATION

First, there have recently been renewed efforts to restrict the ability of citizens to offer their colleagues assistance in registering to vote. These efforts are exemplified by troublesome provisions of HB 1355, which was passed in Florida earlier this year, and is at present still subject to preclearance under section 5 of the Voting Rights Act.⁶

HB 1355 is Florida's latest in a series of attempts to restrict voter registration over the past few years; its earlier efforts were also highly controversial, and challenged in court by organizations including the Brennan Center for Justice at NYU School of Law, Advancement Project, the NAACP, and the League of Women Voters.⁷ In 2005, ostensibly concerned by organizations withholding registration forms that they collected, the legislature imposed, inter alia, substantial restrictions on organizations conducting voter registration drives. These restrictions included substantial fines, with both individual and organizational liability, for each and every form delivered to elections officials more than 10 days after the form was completed.⁸ The fine structure was sufficiently severe to cause the nonpartisan League of Women Voters — concerned citizens volunteering their time to help other eligible citizens register to vote — to stop its Florida voter registration activity for the very first time in the organization's 67-year history.

In subsequent litigation, a federal court rightly recognized that voter registration drives entail core political speech, protected by the First Amendment and inextricably intertwined with efforts to “persuade others to vote, educate potential voters about upcoming political issues, communicate their political support for particular issues, and otherwise enlist like-minded citizens in promoting shared political, economic, and social positions.”⁹ And it rightly recognized that undue efforts to restrict registration drives impermissibly limit both political speech and association. The court explained that Florida had not “provided any evidence[,]

⁶ Fla. Laws ch. 2011-40 (H.B. 1355).

⁷ Though not discussed in testimony today, Florida practices precluding voter registration in the event of minor errors on registration forms were challenged in *Diaz v. Cobb*, 541 F.Supp.2d 1319 (S.D. Fla. 2008), and *Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008); Florida's error-laden practices for purging the registrations of voters based ostensibly on disenfranchising convictions were challenged in *NAACP v. Harris*, Case No. 01-0120 (S.D. Fla.).

⁸ *League of Women Voters of Florida v. Cobb*, 447 F.Supp.2d 1314, 1322 (S.D. Fla. 2006).

⁹ *Id.* at 1333.

much less an explanation,” supporting the need for its fine structure — and preliminarily enjoined the implementation of this portion of the law.¹⁰

One year later, the legislature enacted an amended law; the new law retained the 10-day deadline, but substantially reduced and capped total fines, and exempted organizations from fines due to situations beyond their control. The new law was challenged, and upheld based on the more tailored regulatory structure — and based on the fact that the law did not place any direct preconditions on the protected activity of conducting a voter registration drive.¹¹

HB 1355 marks a severe step backward on both fronts flagged by the courts: it is no longer reasonably tailored to any existing problem, and imposes serious obstacles to organizations as preconditions of conducting voter registration drives. It requires any person — any individual or group — to fill out an official state form before offering to help distribute, collect, and submit the registration form of anyone other than immediate family; this registration includes the name, address, and sworn declaration of every single individual soliciting or collecting registration forms, whether employee or casual volunteer.¹² Groups may not offer to collect and turn in a single form until they have been issued a number by the state; individuals who are not working with organized groups are subject to the same requirements. The law requires that every individual and group account monthly for every registration form used by any volunteer, including blank forms simply printed off of public websites; county election officials have new *daily* reporting requirements.¹³ And without any indication that the ten-day deadline was insufficient to compel the prompt return of completed forms, the deadline has now become just 48 hours, with any waiver for circumstances beyond the organization’s control now solely in the hands of the Secretary of State, a partisan elected official.¹⁴

It is worth restating what the new law requires. Before offering to touch a voter registration form from anyone other than a family member, citizens volunteering their time must wait for permission from the government. In addition to tracking each and every registration form, blank or complete, a volunteer collecting a registration form must ensure that it is delivered to county officials within 48 hours, or face substantial fines issued or waived at the discretion of a partisan official.

These are stark limitations of, and penalties on, fundamental public engagement. They are the most restrictive provisions in the country, though recent legislation in Texas has some similar hallmarks.¹⁵ They should draw the ire of observers and policymakers across the political

¹⁰ *Id.* at 1338.

¹¹ *League of Women Voters of Florida v. Browning*, 575 F.Supp.2d 1298, 1321-22 (S.D. Fla. 2008).

¹² Proposed rules — not yet final — would narrow the statute’s application from “any” assistance with voter registration to soliciting for collection or collecting voter registration applications. Proposed Rule 1S-2.042(2)(b), (3). If adopted, such a rule would limit, but not remove, the unconstitutional application of the law. Fla. Stat. §§ 97.021(37); 97.0575.

¹³ Fla. Stat. § 97.0575(2); Proposed Rule 1S-2.042(5), (7)(c).

¹⁴ Fla. Stat. § 97.0575(3).

¹⁵ 2011 Tex. Law ch. 507 (H.B. 1570) (amending Tex. Election Code §§ 12.006, 13.031, 13.047).

spectrum. Indeed, far *less* onerous regulations of political campaign spending in Florida were recently challenged as severe constitutional burdens by the Institute for Justice.¹⁶

Given its burdens, the law will have some predictable effects — few of which increase the reliability of the registration system in any meaningful respect. Instead, the law has caused both Democracia USA, one of the larger civic engagement organizations in Florida dedicated to empowering the Latino electorate, and the League of Women Voters, a nonpartisan civic engagement enterprise of unparalleled lineage, to declare a halt to all voter registration activity within the state.¹⁷

When voter registration drives are unable to offer their assistance, citizens lose one vital means to ensure that they are properly registered to vote — not merely new registrants, but also the 14% of Floridians who move within the state and need to re-register.¹⁸ Moreover, the population impacted by such restrictions is not evenly distributed. According to the U.S. Census Bureau's Current Population Survey,¹⁹ minority citizens disproportionately register and re-register through voter registration drives: while 6% of non-Hispanic white voters reported registering through a voter registration drive in 2008, twice as many — 12% of Hispanic voters and 13% of non-Hispanic African-American voters²⁰ — reported registering through a drive.²¹ Statistics from non-presidential years are similarly lopsided. In 2006, 8% of non-Hispanic white voters reported registering through a voter registration drive, compared to 11% of Hispanic voters and 11% of non-Hispanic African-American voters; in 2010, 6% of non-Hispanic white voters reported registering through a voter registration drive, compared to 14% of Hispanic voters and 12% of non-Hispanic African-American voters.²²

¹⁶ A motion for summary judgment is currently pending in federal court. *Worley v. Roberts*, Case No. 4:10-cv-00423 (N.D. Fla.).

¹⁷ Letter to Chris Herren from Lee Rowland & Mark Posner, July 15, 2011, at 14-15, at <http://www.scribd.com/doc/60105826/Florida-HB-1355-Sec-5-Comment-Letter>; Lizette Alvarez, *Florida Passes Bill to Limit 3rd-Party Voter Registration*, N.Y. TIMES, May 5, 2011.

¹⁸ U.S. Census Bureau, 2005-2009 American Community Survey, tbl. B07003, at <http://1.usa.gov/nh33ls>.

¹⁹ Data were retrieved using the U.S. Census Bureau's DataFerrett application, <http://dataferrett.census.gov/run.html>, for the Current Population Survey, Nov. 2006, Nov. 2008, and Nov. 2010.

²⁰ The figures in each year are substantially similar — a few tenths of a percentage, but not enough difference to register when rounded to whole numbers — for all African-American voters, Hispanic and non-Hispanic.

²¹ The statistics include all registered voters who reported registering to vote in a particular manner. This tally may overrepresent the true total in certain ways — for example, by excluding voters who did not know how they were registered, but may have been registered through a source other than a voter registration drive. This tally also likely underrepresents the true total in certain ways — for example, the figures for voter registration drives do not include voters who reported registering through the mail (19% of registrants in 2008), or at a school, hospital, or on campus (4% of registrants in 2008), both of which were likely to involve, at least in part, non-governmental individuals or entities assisting with the registration process. And both Hispanic voters and African-American voters reported using both of these latter categories (mail and school/hospital/campus) at higher rates than non-Hispanic white voters.

²² Although the self-reporting captured in the Current Population Survey may raise some concerns about the accuracy of the data as an absolute matter — not all voters are accurately able to articulate the method by which they became registered to vote — there does not appear to be reason to expect systematic bias in the *relative* rates at which individuals report that they were registered through voter registration drives.

What is particularly galling to many is that the new restrictions on civic participation put Florida's League of Women Voters out of the voter registration business unnecessarily. That is, there is no compelling public policy need for such prerequisite burdens on informal voter registration drives on campuses, in houses of worship, and in the many other circumstances in which individuals assist their fellow citizens without first creating a bureaucratic documentation, reporting, and tracking apparatus. Florida already had legal provisions requiring voter registration forms to be delivered in timely fashion.²³ Florida already had legal provisions vigorously defended in court as ensuring the accuracy of registration form information.²⁴ Florida already had legal provisions penalizing any intentional wrongdoing in the registration process.²⁵ The new regulations impose a burden out of proportion to their incremental benefit.

Indeed, the new regulations might well *increase* the expense to election officials. Only the most formally structured voter registration drives will, practically, be able to comply with the advance documentation requirement; less formal citizen organizations will find it prohibitively impractical to ensure that volunteers at bake sales have submitted sworn paperwork before they offer to help send in a neighbor's voter registration form. Many of these formally structured drives have historically conducted quality assurance, reviewing forms for errors or suggestions of impropriety, and flagging those forms for election officials to expedite processing. The 48-hour time limit on returning forms, however, will seriously constrain organizational ability to conduct centralized quality review. Instead, rational organizations seeking to forego liability will likely curtail centralized quality assurance in favor of speedy delivery, shifting processing and error-correction costs unnecessarily to the county supervisors.

RESTRICTIONS ON EARLY VOTING

Second, there have recently been efforts to limit opportunities for citizens to cast valid ballots in advance of Election Day. Here too, Florida's HB 1355 provides an example.

At least since 1998, Florida has allowed electors to vote ballots in-person before Election Day.²⁶ Such votes could originally be cast as soon as absentee ballots were available, on any day that the county supervisor's office was open. Beginning in 2004, the state limited its early voting period to two weeks, beginning on the 15th day before an election, and ending on the day before Election Day; the next year, the legislature eliminated early voting on the Monday before an election.²⁷ Jurisdictions were required to offer early voting for 8 hours per weekday, and 8 hours in the aggregate per weekend — 96 early-voting hours total — but had discretion to apportion those weekend hours as they chose.

²³ Fla. Stat. § 97.0575(3) (2010).

²⁴ Fla. Stat. § 97.053(6).

²⁵ Fla. Stat. §§ 104.011; 104.012; 104.0615.

²⁶ Fla. Laws ch. 98-129, § 17 (C.S.S.B. No. 1402).

²⁷ Fla. Laws ch. 2004-252, § 13 (C.S.S.B. No. 2346); Fla. Laws ch. 2005-277, § 45 (H.B. 1567).

HB 1355 would change the early voting schedule again, restricting local authority. The new early vote period would run from Saturday (10 days before Election Day) to Saturday (3 days before Election Day), with 6-12 voting hours per day.²⁸ If county supervisors choose to offer the maximum permissible early vote schedule under HB 1355, voters would continue to have 96 total early-voting hours.

The allocation of these hours, however, represents a significant change for the worse. The most significant restriction is that jurisdictions would no longer have the option to offer early voting on the Sunday before Election Day.²⁹ This was an option that several counties offered in the past, as a service to their constituents, many of whom work long hours during the week, are more available on the weekend, and are most energized just before Election Day. The list of jurisdictions choosing to offer early voting on the Sunday before Election Day in the past includes the state's largest, most urban, and most diverse counties. In 2008, Bradford, Broward, Dixie, Duval, Jackson, Miami-Dade, Palm Beach, Pinellas, Sarasota, and Seminole counties offered early voting on the Sunday before Election Day; in 2010, Bradford, Charlotte, Clay, Duval, Manatee, Miami-Dade, Palm Beach, Pinellas, Sarasota, and Seminole counties offered early voting on that Sunday.³⁰ Under HB 1355, they do not have this latitude.

The change has a direct impact on a particularly notable form of mobilization in Florida: many houses of worship, particularly in minority communities, encourage their congregations in nonpartisan fashion to discharge their civic obligations after fulfilling their spiritual ones. So after Sunday morning church services, many congregants would travel to the polls, in the counties that offered Sunday voting. After HB 1355, this is no longer an option.

As with the restriction on registration drives, the elimination of early voting on the Sunday before the election does not fall evenly on the population as a whole. In the past, minority citizens disproportionately voted on the final Sunday before Election Day.³¹ In 2008, for example, African-Americans represented 13% of the total voters, and 22% of the early voters, but 31% of the total voters on the final Sunday; Hispanic citizens represented 11% of the total voters, and 11% of the early voters, but 22% of the total voters on the final Sunday. Notably, the pattern is similar in 2010: African-Americans represented 12% of the total voters, and 13% of the early voters, but 23% of the voters on the final Sunday; Hispanics represented 9% of the total voters, and 8% of the early voters, but 16% of the voters on the final Sunday.

²⁸ Fla. Stat. § 101.657(1)(d).

²⁹ Georgia's new law (HB 92) has a similar effect: it closes early voting on the Friday before Election Day. Ga. Code § 21-2-385(d). In this respect, Ohio's new law (HB 194) is even more restrictive: it precludes early voting on any Sunday during the early voting period. Ohio Stat. § 3509.01(B)(3) (2011).

³⁰ Data were retrieved from county Early Voting Reports, available at <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAAvailableFiles.aspx>.

³¹ In order to determine the race and ethnicity of early voters by day, I retrieved the individual early vote information from county Early Voting Reports, at <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAAvailableFiles.aspx>, and matched voters' unique registration numbers to the registration records on Florida's voter file, which list self-reported race and ethnicity. The percentages listed below represent conservative estimates of the impact on minority voters: voters of unknown race or ethnicity were treated for purposes of this analysis as white. If any such citizens were actually minority voters, the relevant percentages would be correspondingly higher.

Voters on the final Sunday before the election were also predictably newer voters. In 2008, first-time Florida voters were 12% of the electorate but 22% of the final Sunday voters. And they continued this pattern; in 2010, voters casting a ballot for the first or second time were 13% of the electorate, but 17% of the final Sunday voters.

As above, the costs of eliminating the final Sunday from early voting far exceed the potential benefits, because restricting county flexibility in this fashion has no appreciable upside. Before HB 1355, counties had the option to offer early voting on the final Sunday before Election Day *if they wished*. If county constituents used Sunday voting, if offering Sunday voting increased convenience, if Sunday voting offered a logistical means to ease excessive lines on Election Day, if Sunday voting were cost-effective, county supervisors were authorized to decide for themselves to open early voting stations. If Sunday voting were not cost-effective for the electorate of a particular county, the supervisors could opt to use the weekend time exclusively on Saturday instead. HB 1355 removes that flexibility, forcing the counties to shut their early-voting doors on Sunday whether they would prefer to do otherwise or not. For counties that had previously offered Sunday voting because they found it worthwhile, HB 1355 only increases expense and inconvenience.

RESTRICTIONS AT THE POLLS

Third, there have recently been renewed efforts to limit opportunities for citizens to cast a valid ballot at the polls, most notably in the form of new restrictions on how those citizens may demonstrate their identity. In 2011, four states — Kansas,³² Tennessee,³³ Texas,³⁴ and Wisconsin³⁵ — passed new restrictive laws requiring most citizens to show particular types of government-issued photo identification cards in order to cast a ballot at the polls that can be counted. The Texas law is still subject to preclearance under the Voting Rights Act.

Substantial misinformation surrounds this new spate of restrictive voter identification laws, and so I devote disproportionate space to the issue below. Though it may not be possible to clarify all of the relevant misinformation in the context of this testimony, it is worth addressing a few of the more substantial and oft-repeated myths.

³² 2011 Kan. Laws ch. 56, § 11 (H.B. 2067) (amending Kan. Stat. § 25-2908).

³³ 2011 Tenn. Laws ch. 323, §§ 1, 7 (S.B. 16) (amending Tenn. Code § 2-7-112).

³⁴ 2011 Tex. Laws ch. 123, §§ 9, 14 (S.B. 14) (amending Tex. Election Code §§ 63.001, 63.0101).

³⁵ 2011-12 Wis. Laws Act 23, §§ 1-2 (2011 A.B. 7) (amending Wis. Stat. § 5.02).

The Current Identification Landscape

Before 2011, only two states in the country — Indiana³⁶ and Georgia³⁷ — required government-issued photo identification in order to cast a ballot at the polls that can be counted. The five additional states mentioned above represent disturbing additions, but they remain, together, only a small minority of jurisdictions.

Instead, the vast majority of states allow legitimate citizens a broader set of options to prove their identity, without sacrificing any appreciable measure of security. The alternatives range from signature comparisons, to sworn affidavits, to identification documents like utility bills, bank statements, employee IDs, and the like.³⁸ Some of these other states ask those without government-issued photo identification to vote provisional ballots, which can be further investigated if there arises additional doubt about a voter's identity; these provisional ballots, however, can be counted without requiring the voter to provide the same photo identification card that she could not produce at the polls.³⁹ And all of these identification provisions are layered atop the considerable security safeguards of the federal Help America Vote Act of 2002 (“HAVA”), which requires that each of a jurisdiction's first-time voters registering by mail have her identity confirmed — either by verifying her social security digits or driver's license number against reliable lists, or by presenting reliable documentation from a long and inclusive menu — before her ballot may be counted.⁴⁰

These other 43 states offer alternatives for a reason. They recognize that there are some legitimate, eligible American citizens who do not possess government-issued photo identification

³⁶ Ind. Code §§ 3-5-2-40.5; 3-11-8-25.1.

³⁷ Ga. Code § 21-2-417.

³⁸ In 2011, Alabama passed a new law requiring either photo identification or sworn voucher by two election officials; it is not clear whether the voucher provision will reliably operate to allow eligible individuals without identification to vote a valid ballot. Ala. Laws Act 2011-673 (H.B. 19). It also appears unclear under current Alabama law whether voters without the required photo identification may cast provisional ballots that may be counted, and under what circumstances they will likely be counted. *See, e.g.*, Ala. Code § 17-10-2 (referring to particular voter identification provisions, but not those newly requiring a photo identification card). It does not appear that H.B. 19 has yet been submitted for preclearance under the Voting Rights Act.

South Carolina also passed a new law in 2011, requiring photo identification in many circumstances. 2011 S.C. Laws Act 27 (H.B. 3003). The new law allows voters to submit an affidavit in lieu of the preferred photo identification, if the voter “suffers from a reasonable impediment that prevents the elector from obtaining photograph identification,” whereupon the voter will submit a provisional ballot deemed valid unless there are grounds to believe that the affidavit is false. *Id.* § 5 (amending S.C. Code § 7-13-710(D)(1)(b), (D)(2)); Op. S.C. Att’y Gen. to Marci Andino, Exec. Dir., S.C. Election Comm’n, Aug. 16, 2011, available at <http://www.scag.gov/wp-content/uploads/2011/08/andino-m-os-9319-8-16-11-Photo-ID-Voter-ID-legislation.pdf>. It is not clear whether this provision will reliably operate to allow eligible individuals without identification to vote a valid ballot. H.B. 3003 is still subject to preclearance under the Voting Rights Act; on August 29, 2011, the Department of Justice requested more information, including more information about the operation of this “reasonable impediment” provision. Letter from T. Christian Herren, Jr., Chief, Voting Section, Civil Rights Div., Dep’t of Justice, to C. Havird Jones, Jr., Esq., S.C. Asst. Deputy Att’y Gen., Aug. 29, 2011, available at <http://media.charleston.net/2011/pdf/dojvoterid08292011.pdf>.

³⁹ *See, e.g.*, Fla. Stat. § 101.048(2)(a).

⁴⁰ 42 U.S.C. § 15483(b).

cards. And they do not wish to make it unduly difficult for these citizens to exercise the most fundamental right in our constitutional order.

The Harm of Restrictive Identification Rules

There is no question that government-issued photo identification makes many common practices easier. Those who do not have such ID are likely to find it more difficult to take advantage of many of the privileges of modern society. It is true, for example, that you have to show photo identification to buy full-strength Sudafed.⁴¹ It is also deeply beside the point. No American ever gave her life for the fundamental right to buy decongestants.

There is also no question that most eligible citizens have government-issued photo identification. It is likely that each of the individuals attending today's hearing has some form of government-issued photo identification. But the right of the franchise — and the responsibility to ensure its continued reasonable access — is not limited to the individuals attending today's hearing, or even to the majority of the American public. Voting is a fundamental right for more than just most of us. It is a right that must be zealously safeguarded for every eligible American citizen.

It is, concededly, difficult to pin down the precise number of eligible American citizens who do not have the identification required by the most restrictive states above. But of the three methods that have been used, two are substantially less reliable. First, some commentators have compared the number of records maintained on state Department of Motor Vehicles systems to the number of voting-age citizens reported by the Census Bureau.⁴² Such comparisons are laden with error, including duplicate driver's licenses (commercial and non-commercial), expired licenses, and the impact of the 2% of Americans each year who move between states, often without canceling their motor vehicle record in the state that they have left.⁴³

Second, other commentators have attempted to assess the number of eligible citizens without the required identification by analyzing turnout: examining past voting patterns, and trying to extrapolate the degree to which change in participation for any given election is due to the impact of particular identification laws.⁴⁴ These studies' methods vary, and there are

⁴¹ Lizette Alvarez, *G.O.P. Legislators Move to Tighten Rules on Voting*, N.Y. TIMES, May 29, 2011 (“‘If you have to show a picture ID to buy Sudafed, . . . you should show a picture ID when you vote,’ Gov. Nikki Haley said this month when she signed the bill into law in South Carolina, using a common refrain among Republicans.”); Opinion, Kris W. Kobach, *The Case for Voter ID*, WALL ST. J., May 23, 2011 (“Carrying a photo ID has become a part of American life. You can’t . . . buy full-strength Sudafed over the counter without one.”).

⁴² Kobach, *supra* note 41.

⁴³ See U.S. Census Bureau, *Current Population Survey, Geographical Mobility: 2009 to 2010 tbl. 1*, at <http://www.census.gov/hhes/migration/data/cps/cps2010.html>.

⁴⁴ See, e.g., Opinion, Hans A. von Spakovsky, *ID Laws Ensure Election Integrity*, USA TODAY, June 12, 2011; see also Jason D. Mycoff et al., *The Empirical Effects of Voter-ID Laws: Present or Absent?*, 42 PS: POLITICAL SCIENCE & POLITICS 121 (2009); John R. Logan & Jennifer Darrah, *The Suppressive Effects of Voter ID Requirements on Naturalization and Political Participation*, Jan. 2, 2008; Jeffrey Milyo, *The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis* (Inst. of Pub. Pol’y, Univ. of Mo., Report 10-2007, 2007); R.

substantial differences in the results. But more fundamentally, the basic approach is flawed. For example, it is conceptually incomplete: even if turnout provided an accurate assessment of the impact on past voters, it would cover only the impact on *past voters*, without any assessment at all of the impact on eligible Americans who have not yet participated but have every right to participate in the future.

Moreover, even if turnout provided the right measure of impact, we're not yet able to mine it for useful information on the question presented. It is exceedingly difficult to interpret a few years of turnout data to parse the impact of any given legal change. For example, proponents often cite the change in turnout — particularly minority turnout — in Georgia and Indiana before strict ID laws (in 2004) and after strict ID laws (in 2008), as evidence that ID laws do not impose any substantial impediment.⁴⁵ But those proponents also often fail to note that both Georgia and Indiana were newly battleground states in 2008, with a minority candidate at the top of a major-party ticket for the very first time. Under those circumstances, any reasonable observer would have expected extraordinary increases in minority turnout, with or without ID laws. And under those circumstances, it is difficult to know whether a 19% increase in turnout⁴⁶ reflects an 15% increase because of the 2008 election with a 4% increase because of ID laws, or a 30% increase because of the 2008 election and an 11% decrease because of ID laws ... or any other combination of causal responsibility.

This is a specific example of a general problem: in any given election, turnout may be affected by the competitiveness of high-profile races, candidate quality, fundraising and campaign spending, the media environment, the presence or absence of salient ballot measures, the efforts of mobilization groups on the ground, other legal restrictions or policies that facilitate access, and a host of other conditions, including the weather on Election Day. Without thousands of data points to account for all of the other factors that could instead be driving turnout up or down, it is unreliable to draw conclusions about the impact of identification rules by looking at how many people vote in a given election.⁴⁷

Michael Alvarez et al., *The Effect of Voter Identification Laws on Turnout* (Caltech Soc. Sci. Working Paper No. 1267, 2007), at http://www.brennancenter.org/dynamic/subpages/download_file_50882.pdf; David B. Mulhausen, Ph.D., & Keri Weber Sikich, *New Analysis Shows Voter Identification Laws Do Not Reduce Turnout*, Sept. 10, 2007, at <http://www.heritage.org/Research/Reports/2007/09/New-Analysis-Shows-Voter-Identification-Laws-Do-Not-Reduce-Turnout>; Jason D. Mycoff et al., *The Effect of Voter Identification Laws on Aggregate and Individual Level Turnout* (2007), at http://www.brennancenter.org/dynamic/subpages/download_file_50900.pdf; John R. Lott, Jr., *Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud have on Voter Participation Rates*, Aug. 18, 2006, at <http://ssrn.com/abstract=925611>; Report to the U.S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002, June 28, 2006; *see generally* Brief of R. Michael Alvarez et al. as Amici Curiae in Support of Petitioners, at 10-14, *Crawford v. Marion County Election Board*, Nos. 07-21, 07-25 (U.S. Nov. 13, 2007) (reviewing such studies).

⁴⁵ *See, e.g.*, Opinion, Hans A. von Spakovsky, *Voter ID Was a Success in November*, WALL ST. J., Jan. 30, 2009.

⁴⁶ This was Georgia's increase from 2004 to 2008, as reflected by the United States Election Project, *Voter Turnout, Turnout 1980-2010.xls*, at <http://elections.gmu.edu/Turnout%201980-2010.xls>.

⁴⁷ *See* Robert S. Erikson & Lorraine C. Minnite, *Modeling Problems in the Voter Identification — Voter Turnout Debate*, 8 ELECTION L.J. 85 (2009).

Instead of comparing motor vehicle records to Census numbers, or reading the uncertain tea leaves of turnout, there is another methodology to determine how many eligible citizens have the sort of identification documents required by the most restrictive state laws: ask them. There have been several surveys asking eligible Americans about the documentation they possess, with some varying conclusions.

Some of this research surveys either registered voters or actual voters — as explained in the discussion of turnout, above, such numbers understate the impact of strict identification requirements, because they do not include eligible Americans who may participate in the future. A 2008 survey found that 4.9% of registered voters responding nationwide did not have current government-issued photo identification; an additional 3.1% of respondents did not have current government-issued photo identification listing their full legal name (rather than, for example, a nickname or maiden name).⁴⁸ Another 2008 survey found that 5.7% of registered voters nationwide did not have a current valid driver's license or passport; an additional 1.1% of respondents had those documents, but not listing their full legal name.⁴⁹ (The same survey found that 4.7% of respondents had no valid driver's license or passport, but did have other government-issued photo identification; the survey did not inquire whether this latter ID was current.)⁵⁰ Still another 2008 survey found that 1.2% of registered voters in Indiana, Maryland, and Mississippi did not have any government-issued photo identification, but did not inquire whether the subjects' ID was current or reflected the same name on the registration rolls.⁵¹ A 2007 survey found that 13.3% of registered voters in Indiana did not have a current government-issued photo identification card; an additional 3% of respondents did not have current identification listing their full legal name.⁵² A 2006 survey found that 12% of actual midterm voters in California, New Mexico, and Washington did not have a valid state driver's license, but did not inquire whether the subjects had a non-driver's government-issued photo identification card.⁵³

Other research surveys voting-age American citizens, whether currently registered or not. A 2007 survey found that 16.1% of voting-age citizens in Indiana did not have current government-issued photo identification; an additional 2.8% of respondents did not have current

⁴⁸ 2008 Collaborative Multi-Racial Post-Election Study (CMPS), questions D21-D21A, at <http://cmpstudy.com/>; Matt A. Barreto, New Empirical Evidence on Access to Photo ID (visited Sept. 6, 2011), at http://faculty.washington.edu/mbarreto/research/voterid_090611.pdf; see also Gabriel R. Sanchez et al., The Disproportionate Impact of Photo-ID Laws on the Minority Electorate, May 24, 2011, at <http://latinodecisions.wordpress.com/2011/05/24/the-disproportionate-impact-of-stringent-voter-id-laws/>.

⁴⁹ Email from Charles Stewart III, MIT, to Justin Levitt, Loyola Law School (Sept. 6, 2011, 13:27 PST); R. Michael Alvarez et al., 2008 Survey of the Performance of American Elections, Final Report, at <http://www.vote.caltech.edu/drupal/files/report/Final%20report20090218.pdf>.

⁵⁰ *Id.*

⁵¹ Robert A. Pastor et al., *Voting and ID Requirements: A Survey of Registered Voters in Three States*, 40 AM. REV. PUB. ADMIN. 461 (2010).

⁵² Matt A. Barreto et al., The Disproportionate Impact of Voter-ID Requirements on the Electorate — New Evidence from Indiana, 42 PS: POLITICAL SCIENCE & POLITICS 111, 113 (2009).

⁵³ Matt A. Barreto et al., Voter ID Requirements and the Disenfranchisement of Latino, Black and Asian Voters (2007), available at http://www.brennancenter.org/dynamic/subpages/download_file_50884.pdf.

identification listing their full legal name.⁵⁴ And a 2006 survey found that 11% of voting-age citizens nationwide did not have current government-issued photo identification.⁵⁵

Each of the above surveys appears reliable. Some of the variance can be explained by the difference in the questions asked (e.g., whether particular forms of identification are specified, or whether the identification is identified as current) or the difference in the target population; some of the variance may simply reflect differences from state to state. Additional variance may simply reflect the natural variability inherent in surveys, which are estimates and subject to different weighting schemes and margins of uncertainty. Further reliable surveys — both national and state-specific — would be welcome.

But it is important to note that even choosing the most conservative estimate — a survey targeting registered voters in select states, rather than the electorate as a whole — 1.2% of registered voters do not have the identification required by the most restrictive states. Even this substantially conservative result amounts to an impact reaching more than two million registered voters if applied nationwide.⁵⁶ And the larger estimates show an impact reaching more than twenty-two million voting-age citizens.⁵⁷

Moreover, every study to have examined the issue has found that those without government-issued photo identification are not evenly spread across the electorate. Just as the surveys differ in their overall assessment of the magnitude of the problem, they differ in their assessment of magnitude of the disparate impact. But the available data clearly show that those without government-issued photo identification are more likely to be nonwhite, more likely to be either younger voters or seniors, more likely to be from low-income households, and more likely to have less formal education.⁵⁸ And while I am not aware of a reliable measurement of the incidence of government-issued photo identification among persons with disabilities, there is reason to be concerned that they, too, are less likely to have the identification required by the most restrictive states.

These impacts are both substantial and statistically significant. For example, one 2008 survey found that while 3.7% of responding white registered voters nationwide did not have current valid government-issued photo identification, 7.3% of Latino voters and 9.5% of

⁵⁴ Barreto et al., *supra* note 52, at 113.

⁵⁵ See Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification 3* (2006), *available at* http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf.

⁵⁶ See U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2007-2008*, at 29 (2009), *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf> (reporting at least 174,101,505 active registered voters as of the 2008 general election).

⁵⁷ See U.S. Census Bureau, 2006 American Community Survey tbl. B05003 (reporting 206,287,902 voting-age citizens as of the 2006 survey period).

⁵⁸ See sources cited *supra* notes 48-53.

African-American voters lacked this ID.⁵⁹ And among voting-age citizens rather than registered voters, a 2006 national survey found that 8% of white citizens but 16% of Latino voting-age citizens and 25% of African-American voting-age citizens do not have current, valid, government-issued photo identification.⁶⁰ While other studies differ in the precise magnitude of these (and other) differential ID rates, all show a substantial effect, with historically underrepresented groups much less likely to have current government-issued photo identification.

These statistics are not merely important for their reflection of the status quo, but for their reflection of significant impact into the future. It often takes ID to get ID. For example, most native-born citizens in Arkansas seem to require an official copy of a birth certificate to get a government-issued photo identification card⁶¹ ... and seem to require government-issued photo identification to get an official copy of a birth certificate.⁶²

Even without this sort of vicious loop, those without current government-issued photo identification often face some difficulty in procuring it. All states of which I am aware require documentation to procure state-issued identification. Even when the identification card itself is offered free of charge, an individual without identification must collect this documentation, which involves time and expense, and travel (without driving) to a government office open during limited (working) hours, which involves time and expense. Official copies of birth certificates cost between \$7 and \$30 depending on the state, with a median of \$15; expedited processing will cost more.⁶³ A passport costs at least \$55, and a replacement naturalization certificate costs \$345.⁶⁴

Moreover, some eligible citizens will simply not be able to procure the requisite underlying documentation, no matter how much they are able to spend or how much time they are able to take. Just three weeks ago, South Carolina's Attorney General recognized, in a formal opinion interpreting the state's new identification law, that there are legitimate electors

who have a valid reason, beyond their control, which would prevent them from obtaining a Photo ID. One such reason which is obvious is that there are numerous South Carolinians, generally over age 50, who do not have a birth certificate. A primary cause is that, decades ago, many babies were

⁵⁹ See sources cited *supra* note 48.

⁶⁰ Brennan Center for Justice, *supra* note 55.

⁶¹ See Arkansas Driver Services, Frequently Asked Questions, at <http://www.dfa.arkansas.gov/offices/driverServices/Pages/FAQ%27s.aspx#e>.

⁶² See Arkansas Dep't of Health, Birth Records, Frequently Asked Questions, at <http://www.healthy.arkansas.gov/programsServices/certificatesVitalRecords/Pages/BirthRecords.aspx>.

⁶³ National Center for Health Statistics, Where to Write for Vital Records, June 21, 2011, at <http://www.cdc.gov/nchs/w2w/w2w.pdf>.

⁶⁴ U.S. Dep't of State, Passport Fees, at http://travel.state.gov/passport/fees/fees_837.html; U.S. Citizenship and Immigration Services, Form N-565, Application for Replacement Naturalization/Citizenship Document, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextoid=a910cac09aa5d010VgnVCM10000048f3d6a1RCRD>.

not born in hospitals, but were delivered by midwives and thus no birth certificates were obtained. See, "Many Face Fight to Prove Identity," *The State*, July 19, 2011. In addition, persons with disabilities also might be unable to obtain a Photo ID.⁶⁵

These eligible Americans have names. Dr. Brenda Williams, of Sumter, South Carolina, has recently been attempting to assist some of her patients in getting the government-issued photo identification required by South Carolina's new law. Her comments to the Department of Justice show that she has spent hundreds of dollars helping her patients attempt to get the necessary ID.⁶⁶ And still some have been stymied. For example, Dr. Williams wrote to the Department of Justice about Mrs. Naomi Gordon and her brother, Mr. Raymond Rutherford.⁶⁷ Mrs. Gordon's first name was apparently misspelled "Llnoie" by a midwife; a midwife also apparently misspelled Mr. Rutherford's first name "Ramon." The misspellings appear on both of their birth certificates; Mr. Rutherford has the particular difficulty of possessing a birth certificate with an incorrect spelling and a Social Security card with a correct spelling. They have been told that they have to have their names changed through the courts before they will be able to get government-issued photo identification; neither has yet been able to procure the appropriate ID.

Nora Elze, in Savannah, Georgia, is 88, and has been married for 65 years.⁶⁸ But because the name on her birth certificate (her maiden name) and the name on her out-of-state ID (her married name) don't match, she has to produce a 65-year-old marriage license in order to get government-issued photo identification. At last report, she had not found the license, and had not been able to acquire the necessary identification.

In 2008, at least ten retired nuns in South Bend, Indiana, all citizens in their 80s or 90s, were reportedly turned away from the polls because they did not have current government-issued photo identification. One of the nuns noted that "many others among the 137 retired sisters living at the Congregation of the Sisters of the Holy Cross convent were dissuaded from voting upon learning that several had been turned away."⁶⁹

Royal Masset, former political director of the Texas Republican Party, discussed a personally relevant situation in the press:

⁶⁵ Op. S.C. Att'y Gen. to Marci Andino, Exec. Dir., S.C. Election Comm'n, Aug. 16, 2011, at <http://www.scag.gov/wp-content/uploads/2011/08/andino-m-os-9319-8-16-11-Photo-ID-Voter-ID-legislation.pdf>.

⁶⁶ See, e.g., Email from Dr. Brenda Williams to Chief, Voting Section, re File #2011-2495 (Aug. 14, 2011, 15:44 ET).

⁶⁷ See, e.g., Email from Dr. Brenda Williams to Chief, Voting Section, re File #2011-2495 (Aug. 14, 2011, 18:59 ET).

⁶⁸ See JoAnn Merrigan, *Savannah Woman Told She Needs Proof of Marriage to Get Driver's License*, WSAV, Aug. 29, 2011.

⁶⁹ Greg Gordon, *Retired Nuns Blocked from Voting in Indiana*, CONTRA COSTA TIMES, May 6, 2008; Deborah Hastings, *New ID Law Keeps Nuns From Voting*, SOUTH BEND TRIBUNE, May 7, 2008; Meghan Ashford-Grooms & Ciara O'Rourke, *Nuns Couldn't Cast Ballots, But They Were Given Other Options*, AUSTIN AMERICAN-STATESMAN, Feb. 5, 2011.

I was a big fan of voter ID until the federal government declared my mother Aimee dead. The reason I've not been heavily involved in the political arena for the last three years is because I've been taking care of my 91-year-old mother who is a complete invalid but is very much alive. [¶] I found there was no way of proving her alive. Invalid 91 year olds do not have driver's licenses, passports, employment badges, gun permits & etc. Since I'm taking care of her in my home she has no bills with her name and address. I can't even get her a birth certificate since she lacks the ID necessary for a notary to verify. Under HB 218 my mother, who is a registered voter in Austin, cannot vote in Texas. Anyone who says all legal voters under this bill can vote doesn't know what he is talking about. And anyone who says that a lack of IDs won't discriminate against otherwise legal minority voters is lying.⁷⁰

Agnes Cowan and her husband lost many of their personal documents in a fire, including her husband's veterans' ID card.⁷¹ At 81 in 2008, and confined to a wheelchair, Ms. Cowan said that it was virtually impossible for her to cobble together replacement documentation in order to get a government-issued photo ID before Georgia's 2008 primary election, making it the first major election that Ms. Cowan had missed in 63 years.

Among the Indiana citizens prevented from voting a valid ballot in 2007 was 61-year old Republican Valerie Williams. Ms. Williams brought her telephone bill, a Social Security letter, and an expired state driver's license to the polls — but she did not have the current government-issued photo ID that Indiana required. Her provisional ballot was never counted.⁷²

In 2006, Eva Steele was an Arizona resident; her son was an Army reservist deployed in Iraq.⁷³ Her disabilities left her in a wheelchair and unable to drive. "I don't have a driver's license," she said. "I don't get utility bills. I've never had a passport. I don't have property tax statements. All I did was raise my children and teach them to be good citizens and to vote. And now I'm the one who's on the outside looking in."⁷⁴

Mary Wayne Montgomery Eble was 92 and on oxygen in 2008, living on a family farm outside Rockport, Indiana.⁷⁵ She had no driver's license because she could not see well enough to drive; she did not know if she had a birth certificate, because she was born at home.

⁷⁰ *A Republican, His Mother, and Voter ID*, HOUSTON CHRONICLE BLOG, Apr. 24, 2007, at <http://blog.chron.com/texaspolitics/2007/04/a-republican-his-mother-and-voter-id/>.

⁷¹ Denise Dillon, *Elderly Couple Loses ID in Fire, Fear They Can't Vote*, FOX 5 ATLANTA, July 14, 2008, at http://electionlawblog.org/wp-content/uploads/20080714-GA_cowan.pdf.

⁷² Ian Urbina, *Voter ID Laws Are Set to Face a Crucial Test*, N.Y. TIMES, Jan. 7, 2008.

⁷³ E.J. Montini, *A Soldier's Mother is Denied Her Right to Vote and to Speak*, ARIZ. REPUBLIC, Aug. 13, 2006; Joyce Purnick, *Stricter Voting Laws Carve Latest Partisan Divide*, N.Y. TIMES, Sept. 26, 2006.

⁷⁴ Montini, *supra* note 73.

⁷⁵ Associated Press, *ID Laws Spur Voting Legal Battle*, USA TODAY, Jan. 23, 2008.

Chris Conley, a 50-year-old veteran of the Navy and Marines, tried to vote in Indiana's 2008 primary, but his Veterans Administration photo ID card did not have an expiration date, and therefore did not meet the state requirements.⁷⁶

Birdie Owen was displaced from Louisiana after Hurricane Katrina, where her birth certificate was lost in the storm. Without a birth certificate, she found herself unable to get a state-issued photo identification card in Missouri.⁷⁷

The stories above represent just a selection of the reports of individuals — real American citizens — without government-issued photo identification. Reliable statistics indicate that there are many others.

The Lack of Justification for Restrictive Identification Rules

As with the other restrictions discussed above, the heavy costs on Mrs. Gordon and other eligible American citizens are not justified by any substantial benefit. Laws preventing citizens from proving their identity at the polls by anything other than certain government-issued photo identification cards are often justified by the need to prevent election fraud. Here too, there appear to be particularly pernicious misconceptions.

Requirements to present certain identification at the polls provide even theoretical protection against only one form of fraud: someone who arrives at the polls and pretends to be someone else. As explained in more detail below, and as I have described extensively in previous publications and official testimony,⁷⁸ all of the available evidence demonstrates that the incidence of any fraud that identification rules could prevent is extraordinarily rare. Though it does occur, there are only a handful of recent accounts, even fewer of which have been substantiated. During this same period, hundreds of millions of ballots have been cast. The most notable significance of the incidents that have surfaced is how rare they appear to be.⁷⁹

⁷⁶ Nick Werner, *Voter ID Causes Some Problems*, STAR-PRESS (Muncie, Ind.), May 9, 2008.

⁷⁷ Robin Carnahan, *Elections Can't Really be Fair, Free and Accurate if Eligible Voters Can't Vote*, HUFFINGTON POST, May 9, 2008.

⁷⁸ See, e.g., Levitt, *supra* note 2; *In Person Voter Fraud: Myth and Trigger for Disenfranchisement?: Hearing Before the S. Comm. on Rules & Admin.*, 110th Cong. (Mar. 12, 2008), at http://brennan.3cdn.net/02f93775d26a119ad0_dam6iyw3s.pdf; *Hearing on S.B. 14 Before the H. Select Comm. on Voter Identification and Voter Fraud*, 82d Leg. (Tex. Mar. 1, 2011); *Hearing on S.B. 362 Before the H. Comm. on Elections*, 81st Leg. (Tex. Apr. 6, 2009), at http://brennan.3cdn.net/6672fa43792018edac_jpm6bxb6c.pdf; *Hearing Before the H. Comm. on Elections*, 80th Leg. (Tex. Jan. 25, 2008), at <http://www.house.state.tx.us/tx/av/committee80/80125a13.ram>; see also Brennan Center for Justice, Investigator's Guide to "Voter Fraud" (2006), at http://www.brennancenter.org/content/resource/investigators_guide_to_voter_fraud/.

⁷⁹ I have arrived at this conclusion through a focus on evidence: extensive research of reports, citations, and claims of fraud, in popular and scholarly publications, and in documents provided to and produced by public and private investigations. I have prioritized more recent claims, and particularly claims purporting to reveal in-person impersonation fraud. My review and analysis spans thousands of accounts, including every single assertion of fraud in the most comprehensive collection of claims of in-person impersonation fraud to date: the citations presented to the Supreme Court in the *Crawford v. Marion County Election Board* case. See, e.g., Justin Levitt, Analysis of

In order to assess the incidence of fraud that identification rules could possibly prevent, it is first necessary to cut through a large amount of noise. Some reports or allegations of fraud are simply mislabeled; the substance of a newspaper story simply does not support a headline claim of “fraud.”⁸⁰ Other reports claim fraud but instead reveal straightforward administrative errors, or administrative practices that concern some, but are not errors at all.⁸¹

Some of these reports actually do present worrisome evidence of fraud — but not any sort of fraud that identification rules could prevent. Instead, they allege schemes involving fraudulent absentee ballots,⁸² or absentee voters who have been coerced,⁸³ or conspiracies to buy votes;⁸⁴ or efforts to tamper with ballots or machines or counting systems.⁸⁵ There are occasional reports of double-voting, by individuals voting in their own names and without appropriating another’s identity.⁸⁶ There are occasional schemes of insider complicity and/or forgery;⁸⁷ when pollworkers and officials are willing to break the law, or miscreants are willing to forge documents, additional requirements for pollworkers to review official documentation cannot prevent the wrongdoing. It is impossible to stop local bosses intent on breaking the law by giving them a new law to break.

Alleged Fraud in Briefs Supporting *Crawford* Respondents (2007), at <http://www.truthaboutfraud.org/pdf/CrawfordAllegations.pdf>.

⁸⁰ See, e.g., Megan Matteucci, *Riverdale Suit Alleges Election Fraud*, ATLANTA J.-CONST., Nov. 20, 2007; Sandy Coleman, *Randolph Petition Claims Voter Fraud*, BOSTON GLOBE, May 21, 2006, at 5.

⁸¹ See, e.g., Laurel Walker & Patrick Marley, *Waukesha Canvass Gets OK*, MILWAUKEE J.-SENTINEL, Apr. 20, 2011; Dave Umhoefer, *New Nickolaus Accusations Unfounded*, MILWAUKEE J.-SENTINEL, Aug. 11, 2011; Grand Jury Report Regarding the Election of Nov. 2, 2010, Saguache County, Colo. (2011); Michelle Hillen, *Recount of Runoff Reverses 1st Result*, ARK. DEMOCRAT-GAZETTE, June 20, 2006.

⁸² See, e.g., *Pabey v. Pastrick*, 816 N.E.2d 1138, 1144-46 (Ind. 2004); *In re The Matter of the Protest of Election Returns and Absentee Ballots in the November 4, 1997 Election for the City of Miami, Florida*, 707 So.2d 1170 (Fla. Ct. App. 1998).

⁸³ See, e.g., Anastasia Hendrix, *City Workers: We Were Told To Vote, Work for Newsom*, S.F. CHRONICLE, Jan. 15, 2004; Matthew Purdy, *5 Bronx School Officials Are Indicted in Absentee Ballot Fraud*, N.Y. TIMES, Apr. 25, 1996.

⁸⁴ See, e.g., Beth Musgrave, *Three Sentenced in Bath Vote Fraud*, LEXINGTON HERALD-LEADER, Sept. 25, 2007; Nicklaus Lovelady, *Investigation Into Vote Fraud in Benton County Nets 14th Arrest*, MISS. CLARION-LEDGER, Aug. 31, 2007; Tom Searls, *Six To Learn Fate in Lincoln Vote Buying Case*, CHARLESTON GAZETTE (W.Va.), May 3, 2006, at 1C; Michael E. Ruane, *FBI's Sham Candidate Crawled Under W. Va's Political Rock*, WASH. POST, Dec. 2, 2005, at A1.

⁸⁵ See, e.g., John M. Glionna, *S.F., State Wade Into Vote Count Controversy*, L.A. TIMES, Nov. 21, 2001.

⁸⁶ See, e.g., Criminal Complaint, *Wisconsin v. Gunka*, Case No. 2010ML005173 (Wis. Circuit Ct., Milwaukee County Mar. 8, 2010).

⁸⁷ See, e.g., Eva Ruth Moravec, *Woman, 81, Jailed in Vote-Fraud Case*, SAN ANTONIO EXPRESS-NEWS, Oct. 5, 2010; Hans A. von Spakovsky, *Where There's Smoke, There's Fire: 100,000 Stolen Votes in Chicago* (Heritage Foundation Legal Memorandum No. 23), Apr. 16, 2008; *United States v. Brown*, 494 F. Supp. 2d 440, 486 n.73 (S.D. Miss. 2007), *aff'd*, 2009 WL 485709 (5th Cir. 2009); Michael Cass, *Poll Worker Indicted in Vote Probe*, THE TENNESSEAN, Dec. 20, 2007; Manny Garcia & Tom Dubucq, *Unregistered Voters Cast Ballots in Dade: Dead Man's Vote, Scores of Others Were Allowed Illegally, Herald Finds*, MIAMI HERALD, Dec. 24, 2000; Grand Jury Report, *In the Matter of Confidential Investigation R84-11* (N.Y. Sup. Ct., Kings County, 1984).

There are also reports of fraudulent registration forms, though they involve rogue workers hoping to cheat nonprofit organizations out of an honest effort to register real citizens.⁸⁸ These forms are usually subject to the safeguards of HAVA, which flags potentially invalid registration forms for further security measures before a corresponding ballot can be cast.⁸⁹ I am aware of no recent substantiated case in which such registration fraud has resulted in a fraudulent vote.

The above forms of fraud do, sadly, exist. They are real, legitimate concerns, though fortunately not as common as media attention may make them appear. They should be both prevented and punished, where doing so does not exact an even greater cost to the system and to legitimate electors therein. But extreme limits on the ways in which individuals prove their identity at the polls do nothing to address them. Using restrictive identification rules to prevent this fraud is like amputating a foot to get rid of the flu.

In addition to the noise created by allegations of fraud that identification rules cannot possibly prevent, noise has been generated by sloppy science. Some reports purport to reveal evidence of fraud based on attempts to match registration rolls to other government sources, like registries of the deceased, but these reports often betray familiar, and significant, methodological flaws. One particularly common error is the seemingly straightforward assumption that individuals with the same name and date of birth are the same person. As Professor Michael McDonald and I have demonstrated, elementary statistics confirms that in any substantial pool, it is quite common to find two different individuals who share the same name and date of birth.⁹⁰ When comparing one list of millions of voters to another list of millions of ineligible individuals, it should not be surprising to find hundreds of perfect “matches” that actually represent different individuals, known to record-linkage experts as “false positives.” The incidence of such matches reveals statistics at work, not fraud.

The Negligible Fraud that Restrictive Identification Rules Could Possibly Prevent

In sum, my research confirms that there are hundreds of reports of alleged fraud, in thousands of elections, with millions of ballots cast. Yet after wading through the unreliable and irrelevant reports categorized above, only a handful of reports remain that even allege, much less substantiate, instances of fraud that increased identification requirements at the polls could prevent.⁹¹

Even fewer of these allegations stand up to real scrutiny. Indeed, careful investigation has more often than not debunked, not confirmed, allegations of impersonation fraud at the polls.

⁸⁸ See, e.g., Todd C. Frankel, *8 Charged in StL Voter Fraud*, ST. LOUIS POST-DISPATCH, Dec. 21, 2007; Keith Ervin, *Felony Charges Filed Against 7 in State's Biggest Case of Voter-Registration Fraud*, SEATTLE TIMES, July 26, 2007; Carlos Campos, *Bogus Voter Forms Pop Up in Fulton*, ATLANTA J.-CONST., Oct. 21, 2004.

⁸⁹ 42 U.S.C. § 15483(b); see also *supra* text accompanying note 40.

⁹⁰ Michael P. McDonald & Justin Levitt, *Seeing Double Voting: An Extension of the Birthday Problem*, 7 ELECTION L.J. 111 (2008).

⁹¹ Other scholars' thorough research confirms these conclusions. See, e.g., LORRAINE C. MINNITE, *THE MYTH OF VOTER FRAUD* (2010).

One notorious and recurring example is a 2000 investigative report in the Atlanta Journal-Constitution, claiming that “the actual number of ballots cast by the dead” was “5,412 in the past 20 years.”⁹² The article has been favorably cited by an Assistant U.S. Attorney General,⁹³ a Governor,⁹⁴ a state Secretary of State,⁹⁵ and several state Attorneys General,⁹⁶ among others.

This article did not, however, actually reveal 5,412 ballots cast by the dead, much less 5,412 instances of in-person impersonation fraud.⁹⁷ Instead, it revealed 5,412 matches of Social Security death records to voting records. And it further revealed that these matches are flawed. The reporter acknowledged that death records contain errors, listing people as dead who are actually alive, but apparently did not investigate how many of the 5,412 identified ballots suffered from this error. The reporter also acknowledged that voter records contain errors, reflecting data entry mistakes and those who sign the wrong line of a pollbook, but apparently could not or did not investigate how many of the 5,412 identified ballots suffered from this error. The reporter neither acknowledged nor apparently accounted for the statistical likelihood that a record of John Smith dying and a record of John Smith voting might in fact reflect different “John Smith”s with the same date of birth.⁹⁸ Finally, the reporter did not indicate how many of these 5,412 ballots were cast in person, rather than absentee.

Indeed, the article identified only one individual concretely alleged to have been the victim of in-person impersonation fraud. It cited the case of “[Alan Jay] Mandel, the tobacco shop owner, whose voter certificate was signed at the polls by someone after his death.”⁹⁹ Repeated the reporter, “[S]omebody *definitely* signed his name on a voter certificate on Nov. 3, 1998.”¹⁰⁰

This allegation, though amounting to only one concrete allegation of in-person impersonation fraud in approximately twenty million votes over 20 years,¹⁰¹ would nevertheless

⁹² Jingle Davis, *Even Death Can't Stop Some Voters*, ATLANTA J.-CONST., Nov. 6, 2000.

⁹³ Letter from William E. Moschella, U.S. Assistant Attorney General, to Christopher S. Bond, U.S. Senator (Oct. 7, 2005), at http://www.justice.gov/crt/about/vot/misc/ga_id_bond_ltr.php.

⁹⁴ Darryl Fears & Jonathan Weisman, *Georgia Law Requiring Voters to Show Photo ID Is Thrown Out*, WASH. POST, Sept. 20, 2006, at A6.

⁹⁵ Brief of State Respondents, at 2, Crawford v. Marion County Election Board, 128 S. Ct. 1610 (2008).

⁹⁶ Brief of Texas *et al.* as *Amicus Curiae* Supporting Respondents, at 8, Crawford v. Marion County Election Board, 128 S. Ct. 1610 (2008).

⁹⁷ Over twenty years and approximately 20 million votes cast, even if all 5,412 ballots had in fact been fraudulent, the overall rate of fraud would have been 0.027%. Secretary of State Cathy Cox, *The 2000 Election: A Wake-Up Call For Reform and Change* 11 n.3 (2001), available at http://www.sos.state.ga.us/acrobat/elections/2000_election_report.pdf. In reality, many of these ballots are likely attributable to clerical error, data error, or statistical coincidence.

⁹⁸ Indeed, if the voter voted in several elections over the twenty-year span reflected in the voter history, each such mismatch would likely account for several “false positive” ballots. Thus, the 5,412 identified ballots might reflect far fewer matched — or mismatched — voters.

⁹⁹ Davis, *supra* note 92.

¹⁰⁰ *Id.* (emphasis added).

¹⁰¹ Cox, *supra* note 97, at 11 n.3.

be disturbing — if it were true. Further investigation, however, proved the allegation false. The signature (and voter certificate) in question belonged to Alan J. Mandell (with two “l”s), who was very much alive and eligible in 1998, but whose vote was mistakenly recorded in the name of Alan Jay Mandel (with one “l”).¹⁰²

Investigation as thorough as the investigation into the vote of Mr. Mandel/Mandell is rare. Nevertheless, when researchers do expend the effort to follow through on initial allegations of in-person impersonation fraud, they often find those allegations to be unwarranted. A 2008 investigation of 48 purported “dead voters” in Dallas, for example, revealed only clerical error, voter mistake, and confusion; of all the cases investigated, “none involved a fraudulently cast vote.”¹⁰³ A 2007 investigation of approximately 100 “dead voters” in Missouri revealed that every single purported case was properly attributed either to a matching error, a problem in the underlying data, or a clerical error by elections officials or voters.¹⁰⁴ Likewise, after compiling a list of potential “dead voters” in New York state, a Poughkeepsie journalist investigated seven local cases — and found that seven out of seven reflected clerical errors or other mistakes, not fraud.¹⁰⁵ An investigation in Hawaii in 1999, after reviewing precinct pollbooks and calling allegedly deceased citizens, similarly found that not one of 170 potential “dead voters” actually reflected fraud.¹⁰⁶

The most prominent recent examination of voter fraud — the evidence presented to the Supreme Court in *Crawford v. Marion County Election Board*¹⁰⁷ — precisely fits the overall pattern that I have described above. There were many claims of wrongdoing and irregularity, but few that even alleged the sort of fraud that in-person identification rules could possibly prevent, and a tiny portion, if any, that substantiated the allegations.

The *Crawford* case is often said to have validated laws requiring photo identification at the polls. It did no such thing. In *Crawford*, the fractured court rejected the plaintiffs’ challenge to the law as overbroad, in light of the limited evidence in the record on the extent of the law’s burdens.¹⁰⁸ That is, without solid proof of burden in the record, Indiana’s asserted justifications were deemed legally sufficient to sustain the law against the particular facial challenge that was

¹⁰² Jingle Davis, *State Plans to Update Voter Lists*, ATLANTA J.-CONST., Feb. 10, 2001, at 4H; Cox, *supra* note 97, at 11 n.3.

¹⁰³ Rudolph Bush, *Vote Fraud Review Comes Up Empty*, DALLAS MORNING NEWS, Dec. 14, 2008.

¹⁰⁴ Steve Chamraz, “The Dead List” Backstory . . . , News 4 Daily Briefing, May 7, 2007, at http://www.beloblog.com/KMOV_Blogs/n4dailybriefing/2007/05/the_dead_list_backstory.html.

¹⁰⁵ John Ferro, *Deceased Residents on Statewide Voter List*, POUGHKEEPSIE J., Oct. 29, 2006.

¹⁰⁶ Waite David, *Review Turns Up No Signs of Fraud*, HONOLULU ADVERTISER, Mar. 16, 1999, at A1.

¹⁰⁷ *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

¹⁰⁸ *Id.* at 188-89, 200-03 (Stevens, J.). Part of the difficulty is that the case was a pre-enforcement challenge, brought before Indiana’s law was put into effect and therefore without direct evidence of past harm. See generally Justin Levitt, *Crawford—More Rhetorical Bark than Legal Bite?*, May 2, 2008, at http://www.brennancenter.org/blog/archives/crawford_more_rhetorical_bark_than_legal_bite/.

lodged. The Court did not issue a blanket statement declaring restrictive identification laws to be legal. And it certainly did not validate ID laws as a matter of good policy.¹⁰⁹

The policy decision, instead, starts with the rationale for such a law. Because the Supreme Court represented such a high-profile forum, it provided the most prominent focal event to date for supporters of an identification law to justify their support by showing their rationale to be real. *Crawford* was a national stage for those who believe in-person impersonation fraud to be a legitimate concern to present their proof. In the case, the lower courts cited several media accounts that, the courts claimed, reflected reports of in-person impersonation fraud.¹¹⁰ In the Supreme Court, respondents and *amici* supporting respondents added citations to more than 250 reports, encompassing decades of elections.¹¹¹

I thoroughly examined each and every one of these citations.¹¹² The evidence of in-person impersonation fraud was strikingly sparse. The vast majority of cited reports reflected either allegations that could not possibly be related to in-person impersonation fraud and which an identification law could not possibly fix (*e.g.*, absentee ballot problems, vote-buying schemes, or ballot tampering), or allegations that did not mention whether the alleged wrongdoing was committed in-person or through more susceptible absentee ballots.¹¹³ Two reports involved single votes that were the product of official pollworker misconduct or forged documentation, which also could not be prevented by laws requiring pollworkers to examine documentation.¹¹⁴ Two reports involved unsuccessful attempts to vote in the name of another.¹¹⁵

¹⁰⁹ Indeed, six Justices recognized that restrictive ID laws might unduly burden some eligible voters, particularly poor and elderly citizens. *Crawford*, 553 U.S. at 199 (Stevens, J.); *id.* at 209-22 (Souter, J., dissenting); *id.* at 237-39 (Breyer, J., dissenting).

¹¹⁰ *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 826 (S.D. Ind. 2006); *see also id.* at 793-94; *Crawford v. Marion County Election Board*, 472 F.3d 949, 953 (7th Cir. 2007).

¹¹¹ Brief of State Respondents, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief for the United States as *Amicus Curiae* Supporting Respondents, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief of the American Unity Legal Defense Fund as *Amicus Curiae* Supporting Affirmance, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief of Democrat and Republican Election Professionals as *Amici Curiae* in Support of Affirmance, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief of *Amicus Curiae* Evergreen Freedom Foundation in Support of Respondents, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief for Lawyers Democracy Fund as *Amicus Curiae* in Support of the Respondents, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief of United States Senators Mitch McConnell *et al.* as *Amici Curiae* in Support of Respondents, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief of the Republican National Committee as *Amicus Curiae* Supporting Respondents, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief of Texas *et al.* as *Amicus Curiae* Supporting Respondents, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); Brief of Washington Legal Foundation, as *Amicus Curiae* in Support of Respondents, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

¹¹² Levitt, *supra* note 79; Justin Levitt, *Crawford—Just the Facts*, Apr. 30, 2008, at http://www.brennancenter.org/blog/archives/just_the_facts/.

¹¹³ Levitt, *supra* note 79, at 2.

¹¹⁴ Cass, *supra* note 87 (discussing one incident in Tennessee in 2007); Garcia & Dubucq, *supra* note 87 (discussing one incident in Florida in 2000).

¹¹⁵ Madeline Friedman, *Anatomy of Voter Fraud*, HOBOKEN REPORTER, July 1, 2007 (discussing one attempt in New Jersey in 2007); LARRY J. SABATO & GLENN R. SIMPSON, DIRTY LITTLE SECRETS 292 & n.70 (1996) (*citing* Doug

That left, since 2000, nine allegations of votes that might have involved votes cast by individuals impersonating others, which identification rules might have prevented. There is also an alternative explanation for each of the nine votes: either pollworker error or voter confusion might have caused a different, legitimate elector to sign the wrong line of the pollbook, or a data entry error might have caused an elector's voter record to register a vote for an election when no corresponding voter ever signed in at the polls.¹¹⁶ There are plentiful reports of similar mistakes, with fathers confused for sons, and vice versa.¹¹⁷ Investigation of the pollbooks themselves could distinguish fraud from error, but in my research to date, I have not been able to find any evidence that the necessary investigation was undertaken.

This evidence is remarkable. There have been allegations of impersonation at the polls. But they are notable for their rarity. In the most prominent forum to date for collecting such allegations, proponents of these rules cited nine votes since 2000 that were caused either by fraud that in-person identification rules could possibly stop . . . or by innocent mistake. During the same period, 400 million votes were cast, in general elections alone.¹¹⁸ Even assuming that each of the nine votes were fraudulent, that amounts to a relevant fraud rate of 0.000002 percent. Americans are struck and killed by lightning more often.¹¹⁹ And every year, there are far more reports of UFO sightings.¹²⁰

Some have claimed that the incidence of alleged in-person impersonation fraud is extremely low because in-person impersonation fraud is difficult to detect.¹²¹ This is distinct from the issue of whether in-person impersonation fraud is difficult to prosecute: littering clearly exists, but is difficult to address through the criminal justice system, because the wrongdoer is not easily identified. Here, not only are there virtually no prosecutions of in-person impersonation fraud, but there are even strikingly few reports of potential impersonation. It is as if individuals were complaining about littering, but could find no garbage in the street. For those believing in impersonation at the polls, the answer is that this sort of fraud is simply difficult to detect.

Haaland and Doug Swordstrom, A Report on Election Law Irregularities: California 16th Senate District 10 (1995) (discussing one attempt in California in 1994).

¹¹⁶ Levitt, *supra* note 79, at 2.

¹¹⁷ See Will Garvey, *My Opportunity for Voter Fraud*, LINCOLN TRIBUNE, July 20, 2011 (revealing that a vote ostensibly cast in the name of Will Garvey IV was actually cast by his father, Will Garvey III); Michael Mayo, *Determined Voters Tackle the Obstacles and Triumph*, FT. LAUDERDALE SUN-SENTINEL, Nov. 5, 2008 (revealing that a vote ostensibly cast in the name of Michael Curry was actually cast by his son, Michael Curry, Jr.); see also Davis, *supra* note 102 (revealing that a vote ostensibly cast in the name of Alan J. Mandel was actually cast by Alan J. Mandell (with two "l"s); *supra* text accompanying notes 103-106.

¹¹⁸ United States Election Project, *supra* note 46.

¹¹⁹ Nat'l Oceanic & Atmospheric Admin., Nat'l Weather Service, Lightning Safety: Medical Aspects of Lightning, at <http://www.lightningsafety.noaa.gov/medical.htm> (last visited Sept. 6, 2011); Ron Holle, Lightning Fatalities by State, 2001-2010 (2011), at http://www.lightningsafety.noaa.gov/stats/01-10_deaths_by_state.pdf.

¹²⁰ See, e.g., UFO Casebook, Breaking UFO News Reports, at <http://www.ufocasebook.com/>.

¹²¹ See, e.g., Crawford v. Marion County Election Board, 472 F.3d 949, 953 (7th Cir. 2007).

In truth, there are multiple means to discover in-person impersonation fraud, all of which should yield many more reports of such fraud, if it actually occurred with any frequency. An individual seeking to commit in-person impersonation fraud must, at a minimum, present himself at a polling place, sign a pollbook, and swear to his identity and eligibility. There will be eyewitnesses: pollworkers and members of the community, any one of whom may personally know the individual impersonated, and recognize that the would-be voter is someone else.¹²² There will be documentary evidence: the pollbook signature can be compared, either at the time of an election or after an election, to the signature of the real voter on a registration form, and the real voter can be contacted to confirm or disavow a signature in the event of a question.¹²³ There may be a victim: if the voter impersonated is alive but later arrives to vote, the impersonator's attempt will be discovered by the voter. (If the voter impersonated is alive and has already voted, the impersonator's attempt will be discovered by the pollworker; if the voter impersonated is deceased, it will be possible to cross-reference death records with voting records, as described above, and review the actual pollbooks to distinguish error from foul play.) If the impersonation is conducted in an attempt to influence the results of an election, it will have to be orchestrated many times over, increasing the likelihood of detection.

As in all law enforcement, none of these detection mechanisms are perfect. Yet in hundreds of millions of ballots cast, they have yielded only a handful of potential instances of in-person impersonation fraud, precisely during a period when investigating voter fraud was expressly deemed a federal law enforcement priority,¹²⁴ and when private entities were equipped and highly motivated to seek, collect, and disseminate such reports.¹²⁵ The phone should have been ringing off the hook, but instead there was barely a whisper.

A more logical explanation for the extraordinary rarity of reported impersonation fraud at the polls is that such fraud is extraordinarily rare. It is an extremely inefficient means to influence an election. For each act of in-person impersonation fraud in a federal election, the perpetrator risks 5 years in prison and a \$10,000 fine under federal law, in addition to penalties under state law.¹²⁶ In return, the perpetrator gains at most one incremental vote. It is sensible that few individuals believe such a trade-off worthwhile.

¹²² See *Crawford v. Marion County Election Board*, 553 U.S. 181, 226-29 (2008) (Souter, J., dissenting).

¹²³ It is no answer that the individual may have submitted a fraudulent registration form in a fictitious name, presumably outside of the presence of an election official, before arriving in person to vote in that fictitious name. Federal law already contemplates this hypothetical and unlikely possibility, by providing that any registrant new to the jurisdiction who submits a registration form by mail must at some point, and through a broad range of means, offer reliable proof of his identity before voting. 42 U.S.C. § 15483(b).

¹²⁴ See Dep't of Justice, Fact Sheet: Department of Justice Ballot Access and Voting Integrity Initiative, July 26, 2006, at http://www.usdoj.gov/opa/pr/2006/July/06_crt_468.html; Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. TIMES, Apr. 12, 2007.

¹²⁵ See, e.g., Republican National Committee, You Can't Make This Up!, at <http://web.archive.org/web/20080709002402/http://www.gop.com/ycmtu.htm>.

¹²⁶ 42 U.S.C. § 1973i(c).

Balancing Costs and Benefits

In weighing the costs and benefits of restrictive identification rules, the limited incidence of any fraud that these rules could prevent is significant. Because most American citizens have the identification required, the number of eligible voters without ID is relatively small. But even the most conservative estimates of impact show that the “cure” of restrictive identification is — mathematically — half a million times worse than the ostensible disease. Even if only 1.2% of registered voters do not have the required identification, burdening 1.2% of the voters in order to address an 0.000002% fraud rate simply does not add up. Put differently, burdening more than two million registered voters to address nine potential fraudulent votes seems a particularly poorly tailored response. It is true that the outcome of a close election could hang in the balance¹²⁷ — indeed, in one 2010 Indiana school board race, a tie vote with one provisional ballot cast by a voter without the requisite identification, it already has.¹²⁸ This calculus shows precisely why it is so foolish to erect a real barrier to millions of real citizens in order to increase existing protections against an unlikely hypothetical. It is like amputating a foot in order to prevent a potential hangnail.

Indeed, preliminary evidence indicates that restrictive identification rules may have *already* prevented more individuals from voting than any incidence of fraud to justify the impact. The evidence submitted in *Crawford* cited nine potentially fraudulent votes — nationwide and over seven years — that strict identification rules might have prevented. The individual stories above¹²⁹ represent just some of the individual stories of citizens without government-issued photo identification, more than nine of whom have already been prevented from casting valid ballots due solely to restrictive identification laws. And there are many more. In just one Indiana county, in just one off-cycle limited-turnout election in 2007, 32 voters cast ballots that could not be counted because of Indiana’s new restrictive identification law; fourteen of these voters had previously voted in at least ten elections.¹³⁰ In the 2008 presidential primary election, approximately 321 Indiana ballots seem to have been rejected because of the identification law;¹³¹ in the general election, 902 Indiana ballots seem to have been rejected because of the identification law.¹³² Similarly, in a 2007 off-cycle Georgia election, 33 voters’ ballots were rejected because of that state’s new, restrictive identification law,¹³³ and in the 2008 presidential

¹²⁷ See Opinion, Hans A. von Spakovsky, *ID Laws Ensure Election Integrity*, USA TODAY, June 12, 2011.

¹²⁸ Christin Nance Lazerus, *School Race Hinges on Voter’s ID*, GARY POST-TRIBUNE, May 14, 2010; Bill Dolan, *Lake Ridge School Officials Asked to Break Candidate Tie*, NWL.COM, May 25, 2010; Carmen M. Woodson-Wray, *Glen Johnson’s Credentials Not Good Enough for Lake Ridge School Board*, GARY CRUSADER, June 12, 2010.

¹²⁹ See *supra* text accompanying notes 66-77.

¹³⁰ Brief for Respondent Marion County Election Board at 8-10, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

¹³¹ Michael J. Pitts, *Empirically Assessing the Impact of Photo Identification at the Polls Through an Examination of Provisional Balloting*, 24 J. L. & POL. 475 (2008).

¹³² Michael J. Pitts & Matthew D. Neumann, *Documenting Disenfranchisement: Voter Identification During Indiana’s 2008 General Election*, 25 J. L. & POL. 329 (2009).

¹³³ Shannon McCaffrey, *Votes of Some Who Lacked Photo ID in November Didn’t Count*, THE LEDGER-ENQUIRER (Columbus, Ga.), Jan. 29, 2008.

primary, 254 Georgian ballots were rejected because of the new law.¹³⁴ It is impossible to know how many other voters without the proper identification came to the polls but did not cast provisional ballots (which would not have counted without identification), or how many declined to make the trip to the polls in the first instance (which would have been futile).¹³⁵ And though it is theoretically possible that each and every one of the provisional ballots listed in this paragraph represented a fraudulent vote, there is no further evidence to support that conclusion.

Despite their demonstrated impact on many American citizens, some seek to justify overly restrictive identification laws by claiming that they will at least increase public confidence in the election process. Even if the unfounded fears of the many were sufficient justification to burden the constitutional rights of the few, however,¹³⁶ a careful study cited in the *Harvard Law Review* casts serious doubt on the validity of such assertions. The data show no support for the notion that requiring identification will increase voter confidence; the study found no statistically significant correlation between the rate at which citizens were asked to produce photo ID and their perception that either voter fraud generally, or voter impersonation in particular, exists.¹³⁷ Apparently, those who are inclined to believe that elections are, by and large, secure will continue to believe that they are secure — and those who are inclined to believe that elections are, by and large, insecure will continue to believe that they are insecure — no matter what the identification regime. Restrictive identification laws do not, in short, appear to make citizens feel more secure about their elections.

Finally, in addition to the negligible benefits of the most restrictive laws requiring government-issued photo identification, it is worth noting real costs of the policy, even beyond the cost to legitimate citizens who do not have the necessary identification. Indeed, as with the registration and early-vote policies reviewed above, the new laws may well be *counterproductive*. For example, Georgia and Wisconsin have both dramatically limited the identification that citizens may use to vote at the polls, but also offer no-excuse absentee voting

¹³⁴ Robert A. Simms, Ga. Deputy Sec'y of State, Testimony Before the U.S. Senate Comm. on Rules and Admin.: In-Person Voter Fraud: Myth and Trigger for Disenfranchisement? 5, Mar. 12, 2008; *see also* Shannon McCaffrey, *More Than 400 Voters Lacked Photo IDs in Feb. 5 Primary*, THE LEDGER-ENQUIRER (Columbus, Ga.), Feb. 14, 2008 (reporting 296 voters without ID casting provisional ballots that were not counted).

¹³⁵ In limited-turnout local elections in 2008 in Palm Beach, Florida, 14 voters cast provisional ballots because they did not have photo identification with them. William Kelly, *Three-Vote Margin Spurs Palm Beach Mayoral Ballot Recount Saturday*, PALM BEACH DAILY NEWS, Feb. 18, 2009. The mayoral election was decided by 3 votes. *Id.* Florida, however, allows provisional ballots cast without photo identification to be counted if there is no evidence of fraud. If Florida had been operating under the law in Georgia or Indiana — or the states that have joined Georgia and Indiana this year — those ballots might well have made the difference in the election.

¹³⁶ *But see, e.g.*, *Weinschenk v. Missouri*, 203 S.W.3d 201, 218-19 (Mo. 2006) (“[I]f this Court were to approve the placement of severe restrictions on Missourians’ fundamental rights owing to the mere perception of a problem in this instance, then the tactic of shaping public misperception could be used in the future as a mechanism for further burdening the right to vote or other fundamental rights. . . . The protection of our most precious state constitutional rights must not founder in the tumultuous tides of public misperception.”).

¹³⁷ Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder*, 121 HARV. L. REV. 1737 (2008). This research also reveals no support for the notion that the potential for in-person impersonation fraud will cause voters to refrain from voting. The study found no statistically significant correlation between the perception that impersonation fraud exists and the propensity to turn out to vote. *Id.*

without the dramatic ID restrictions.¹³⁸ While the comparative freedom of absentee voting may be seen by some to mitigate the burden on voters without government-issued photo identification,¹³⁹ it will also predictably drive more voters into the absentee system, where fraud and coercion have been documented to be real and legitimate concerns. That is, a law ostensibly designed to reduce the incidence of fraud is likely to increase the rate at which voters utilize a system known to succumb to fraud more frequently.

There is also a monetary cost associated with restrictive identification laws, and that cost can be substantial. As the Brennan Center has documented, courts approving restrictive identification requirements have required not only that the state offer free identification cards to eligible citizens who do not otherwise have the necessary ID, but also that the state prepare an education campaign sufficient to warn the electorate that their votes will not count absent the required identification.¹⁴⁰ These requirements amount to a real fiscal impact of millions of dollars. To produce just 168,000 identification cards in Indiana, the state estimated a \$1.3 million dollar cost, with additional revenue loss of \$2.2 million, which exceeds the Indiana Election Division's total budget for the 2009-2010 fiscal year — even before accounting for any education costs.¹⁴¹ And a more comprehensive fiscal note in Missouri estimated the costs of a photo ID law at \$6 million for the first year, with about \$4 million in recurring costs.¹⁴² Moreover, increasing any restrictions at the polls — identification or otherwise — will likely lead to an increase in the number of voters needing to cast provisional ballots. These ballots must be printed, collected, and processed, all of which leads to increased cost (and increased uncertainty in the event of a close election). In tight budgetary times, these costs weigh heavily on the ledger.

CONCLUSION

This testimony reviews several new state laws impacting the voting process before and on Election Day. There are others of concern as well, beyond the scope of my testimony today — including repeals of election-day registration and repeals of practices easing the restoration of civil rights for those who have been convicted. As a theoretical matter, none of above policies make it impossible to vote. Neither did the poll tax, when it was in place. But in practice, these barriers increase the burdens to eligible citizens of exercising the franchise. More disturbing, the restrictions are unnecessary and unjustified, and even potentially counterproductive. Our most fundamental constitutional right deserves better.

¹³⁸ Ga. Code §§ 21-2-380-81, 21-2-417. In contrast, the new laws in Kansas and Wisconsin also sharply restrict the documentation that absentee voters may use to prove their identity. Kan. Stat. §§ 25-1122, 25-2908(h); Wis. Stat. §§ 5.02(6m), (16c), 6.79(2), 6.85-87.

¹³⁹ *But see* Justin Levitt, *Long Lines at the Courthouse: Pre-Election Litigation of Election Day Burdens*, 9 ELECTION L.J. 19, 23-24 (2010) (arguing that absentee ballots should not be considered substitutes for the ability to vote in person).

¹⁴⁰ *See* Vishal Agraharkar *et al.*, *The Cost of Voter ID Laws: What the Courts Say* (2011), at http://www.brennancenter.org/content/resource/the_cost_of_voter_id_laws_what_the_courts_say/.

¹⁴¹ *Id.* at 1-2.

¹⁴² *Id.* at 1.

These developments are worth monitoring federally, perhaps through the congressional oversight relationship with the Department of Justice, particularly to the extent that the issues above present serious concerns under the Voting Rights Act. But even beyond a vigilant federal eye, there are steps that Congress can take to further ensure that voting rights for all are preserved and strengthened. Such steps involve meaningful solutions to real problems, where the benefits of legislative correction exceed any costs to the system.

The Deceptive Practices and Voter Intimidation Prevention Act, last introduced in the House of Representatives in 2009¹⁴³ and last introduced in the Senate in 2007,¹⁴⁴ represents one example; the bill would have prevented individuals from disseminating basic misinformation about, *inter alia*, the times, dates, and conditions of elections with the intent to disenfranchise. The Caging Prohibition Act, last introduced in the House of Representatives in 2011¹⁴⁵ and last introduced in the Senate in 2009,¹⁴⁶ is another example; the bill would prevent the misuse of unreliable information to prevent an individual from voting, based on that information alone. And I remain convinced that federal legislation could productively assist the task of transforming our paper-based, error-laden, and increasingly expensive voter registration system from the 19th-century system causing mischief in each election cycle, into the 21st-century system we deserve.

I thank you again for the opportunity to testify before you, and look forward to answering any questions that you may have.

¹⁴³ H.R. 97, 111th Cong. (2009).

¹⁴⁴ S. 453, 110th Cong. (2007).

¹⁴⁵ H.R. 107, 112th Cong. (2011).

¹⁴⁶ S. 528, 111th Cong. (2009).

United States Senate
Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing: New State Voting Laws: Barriers to the Ballot?
Statement for the Record of Congressman John Lewis
September 8, 2011

Chairman Durbin and Ranking Member Graham, thank you for holding this important hearing and for inviting me to submit my testimony for the record.

The vote is the most powerful, non-violent tool we have in a democratic society. We cannot separate the debates that are happening all over this nation -- about voter identification requirements, purging voter rolls, and voter registration changes -- from our history and the path we have traveled together as a nation. The Voting Rights Act of 1965 was passed 46 years ago on August 6, 1965 by President Lyndon Johnson. Before the passage of the Voting Rights Act in 1965, not so very long ago, it was almost impossible for some citizens to register and vote. Many were harassed, jailed, beaten, and some were even killed for trying to participate in the democratic process.

I knew some of those people who were killed - Andrew Goodman, Mickey Schwerner and James Chaney were three, young civil rights workers who came to Mississippi in the summer of 1963. These young voting rights activists were arrested by the sheriff, turned over to the Klan, beaten, shot, and killed for trying to make sure that Americans could participate freely in the democratic process.

The history of the right to vote in America is a history of conflict, of struggling for the right to vote. I was beaten, and jailed because I stood up for it. For millions like me, the struggle for the right to vote is not mere history; it is experience.

There are some people who will say that the Civil Rights Movement was ancient history. While I agree that we have come a distance, we have a ways to go. Today people are no longer met by attack dogs, and bull whips, and fire hoses as they demonstrate or attempt to register to vote. Today the tools of discrimination are not poll taxes and literacy tests. But make no mistake, discrimination still exists today and it is preventing people from exercising their constitutional right to vote.

Today, the tools of voter discrimination are much more subtle and just as dangerous. There are some very disturbing trends across the United States, including my home state of Georgia. There is a deliberate, systematic attempt block access to the ballot box and to chip away at the voting rights that many people died to secure. Voting rights are under attack in America.

Today discrimination comes in the form of redistricting and annexation plans, at-large elections, and sudden polling place changes. Burdensome voter identification requirements, illegal purging of voting rolls, and faulty processes of verifying citizenship, like the one used in Georgia, are disenfranchising citizens. We have seen voting machines that malfunction in certain districts, but not others, and long lines in some districts, but not others. Voter intimidation and voter suppression are all too common.

Voter ID requirements are the most pervasive and most dangerous state laws that are disenfranchising millions of American voters. These measures target the elderly, young voters, students, minorities, and low-income voters. Approximately 11 percent of voting-age citizens in the country—or more than 20 million individuals—do not have government-issued photo identification.

Today, too many states require a photo ID in order to vote. Each and every voter ID law is a real threat to voting rights in America. Make no mistake, these voter ID laws are a poll tax. In an economy where people are already struggling to pay for the most basic necessities, too many citizens will be unable to afford the fees and transportation costs involved in getting a government-issued photo ID.

These laws discourage seniors and Americans with limited incomes from participating in the political process. Many people in rural areas must travel long distances to one of the few government offices in the state to be able to obtain the documents and the identification required to vote. To the elderly, the poor, and the disabled this requirement can be prohibitive.

Despite all of the new voter ID laws across the country, there is no convincing evidence -- no evidence at all - that voter fraud is a problem in our election process. The truth is that these laws are intended to suppress traditionally Democratic voters from exercising their constitutional right to vote. It is not intended to protect the integrity of the vote, it is intended to suppress the vote to the benefit the Republican candidates in elections. Today, we should be making it easy,

simple, and convenient to vote. Instead, we are creating another stumbling block. These laws are a barrier to an inclusive democracy. And we continue to step backward toward another dark time in our history.

If we as citizens allow the power of the vote to be neutralized, we will need a new movement and a new non-violent revolution in America to retake the same ground we won 50 years ago. We must open our eyes and look closely at voter intimidation and voter suppression, whatever form it may take, and eradicate this behavior and punish the bad actors, instead of solving a problem that does not exist. We must be engaged. We must pay attention, so that we never go back.

The right to vote is precious and almost sacred, and one of the most important blessings of our democracy. Today we must be vigilant in protecting that blessing. The Voting Rights Act continues to be a powerful tool in the protecting the right to vote, and it must be enforced vigorously. Over 1000 discriminatory voting practices were stopped in the last 25 years because the Voting Rights Act was there to protect minority voters. We must continue to speak out and speak up. We must continue to challenge voter ID laws, as the threat to democracy that they really represent.

We must never give up, we must never give in. We must ensure that all of our citizens have the continued right to participate in the democratic process.



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Bringing America Home

September 6, 2011

Senator Dick Durbin, Chair
 Senator Lindsey Graham, Ranking Member
 U.S. Senate Committee on the Judiciary
 Subcommittee on the Constitution, Civil Rights and Human Rights
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senators Durbin and Graham:

The National Coalition for the Homeless commends the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for exploring recent jurisdictional changes in voting procedures and the very real potential to disenfranchise legitimate voters. The National Coalition for the Homeless has written Attorney General Holder and publicly expressed our concern that the changes in the voting laws may have the intended or unintended consequence of suppressing voter turnout by people experiencing homelessness. We urge the Committee and Congress to direct the Department of Justice to enforce the Voting Rights Act and the 2001 Help America Vote Act and strike down these *de facto* voter suppression actions.

The right to vote is foundational to the democratic process, and any legislation that constructs artificial barriers and prevents legitimate voters from casting a ballot needs to be met with the full scrutiny of the Federal government. If there is wide scale voter fraud or impropriety in elections, we could understand states developing rigorous voter reform. However, experts have indicated that only a handful of questionable votes were cast out of millions of votes cast in the last two national elections. Our experience shows that changes that have passed state legislatures or are awaiting a vote will have the effect of suppressing the vote especially for homeless people, minority populations, the elderly, naturalized citizens, students, and those trying to rebuild their lives after release from incarceration.

This year, South Carolina, Georgia, Wisconsin, Texas, Tennessee, Alabama, and Rhode Island joined seven other states in requiring photographic identification to vote in person. These measures may in fact disenfranchise many American citizens who would otherwise be able to vote. A survey by the Brennan Center for Justice at the New York University School of Law (*Citizens Without Proof: A Survey of Americans Possession of Documentary Proof of Citizenship and Photo Identification*, 2006) found that 11% of American citizens who are of voting age (21 million people) do not have up-to-date photo identification, with that percentage being significantly higher among those with low incomes (15%) and African-Americans (25%). This was a phone survey, so the nation's entire homeless population was, in all likelihood, not remotely accounted for in the results.

In theory, making photographic identification free, as some of these laws also do, should make it easy for citizens to acquire one and be able to vote. However, people who experience homelessness have a high likelihood of loss of identification, not only state-issued ID but birth certificates and social security cards as well. Social service providers in Cleveland find that 45% of those utilizing the shelters do not have a state issued identification as a result of theft or loss in the move from housing to shelter. The key problem here, as outlined by Professor Justin Levitt of Loyola Law School (*Voter ID Debate Ramping Up Again For 2012*, NPR May 24, 2011), is that "it takes ID to get ID." Even if finances are not an issue, which they certainly are for individuals and families experiencing homelessness, it can still be "quite difficult to round up the

Bringing America Home

documentation necessary to get documentation. It ends up a little bit of a bureaucratic cycle," possibly causing voter apathy. The process of obtaining a birth certificate can take many months and can be a significant financial barrier that impedes a person's ability to obtain a state-issued ID, which then provides a significant barrier to a citizen of the United States from legitimately casting a ballot.

Although most of these state laws have alternatives to using identification on election day, such as provisional ballots and affidavit forms, many of them still put a de facto price on voting for those who simply do not have the means to easily obtain a birth certificate, find out their Social Security number, or to make a trip to the local Department of Motor Vehicles for a state-issued ID, such as the impoverished, disabled, and homeless. Provisional ballots in many states are viewed as "second class voting" and are often not counted.

The National Coalition has concerns beyond just the identification provisions. There are a number of other changes in state voting laws that will move the United States away from the principle that every citizen has a right to participate in democracy no matter their housing status. Other changes that have become law will have a serious negative impact on those experiencing homelessness:

- Florida this year restricted third party registration procedures - which will restrict the ability of homeless shelters and case workers to assist their clients in registering to vote - and forced a five year waiting period before a felon can even apply to have his or her voting rights restored.
- Georgia was challenged in court for not enforcing the 1993 National Voter Registration Act commonly called "motor voter law" thus potentially disenfranchising thousands of low income voters. In addition, Georgia is requiring proof of citizenship in order to register to vote, and in some cases is rejecting state identification as proof of citizenship.
- Maine ended same-day voting and registration, which made it much easier for people who became homeless just before an election to register and vote in that election.
- Ohio increased the size of precincts, which could increase the lines on Election Day, a huge problem in the 2004 Presidential election in Ohio. Also, poll workers will not be required to tell voters that they are at the wrong precinct, giving the potential for voter suppression through misinformation. The Ohio Legislature increased the number of technical reasons for not counting provisional ballots, which homeless people are often forced to use because of their residency problems. Finally, laws have reduced the number of early voting days and have outlawed counties from reaching out to voters that have been mailed early voting forms, further reducing assistance for disabled or homeless voters.

Overall, these changes in legislation put unnecessary roadblocks in the way of those experiencing homelessness casting a ballot. It is the position of the National Coalition for the Homeless that any law restricting access to voting should be fully scrutinized. We believe that more legitimate voters will be disenfranchised from voting than fraudulent voters will be prevented from casting an illegal ballot. From previous election experience, we understand that many new voting laws will result in long lines in minority and low income neighborhoods, confusion by the voting public, thousands of voters forced to vote a provisional ballot which are rarely counted, and limiting the number of days a person is able to cast a ballot. Research conducted by the Brennan Center for Justice indicates that a surprisingly large number of Americans, at least 21 million, stand to effectively lose their vote if this legislation spreads nationwide.

Bringing America Home

Moreover, these voting changes make it difficult for homeless people who are forced to move frequently to participate in the selection of elected officials who may in the future take the lead in solving the housing crisis in America. We urge the Subcommittee, Congress and the Department of Justice to fully examine such legislation for the potential to disenfranchise thousands of homeless people. We urge Congress to instruct the Justice Department to enforce existing national voting laws in order to broaden participation in democracy, and push back against state efforts to limit access to the ballot box. The Libyans in Freedom Square in Benghazi are calling for American style democracy with a vote of the entire population. We need be inspired by this quest for freedom by leading the world in developing a mechanism in which all eligible voters cast a ballot.

We appreciate your consideration of this testimony, and the work that you have already done to protect the civil rights of all Americans.

Sincerely,



Neil Donovan
Executive Director

Statement of the National Law Center on Homelessness & Poverty

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

“New State Voting Laws: Barriers to the Ballot?”

September 8, 2011

Chairman Durbin and Ranking Member Graham, thank you for allowing us the opportunity to submit a statement for the record of this important hearing. The mission of the National Law Center on Homelessness & Poverty is to serve as the legal arm of the nationwide movement to end homelessness. We do this through policy advocacy, public education, and impact litigation. For more than 20 years, we have worked to protect the ability of low income and homeless Americans to exercise their fundamental right to vote.

As part of this work, in both 2004 and 2008 we issued comprehensive reports outlining barriers that prevent homeless and poor persons from registering to vote and casting their ballots, and offering recommendations for removing those barriers. We expect to issue a similar report in preparation for the 2012 election.

Since our founding in 1989, we have never seen a year in which such a concerted effort to weaken the voting rights of low income and homeless Americans has been undertaken. Such attacks contravene our government's obligations under international human rights treaties, may violate the Constitution, and surely offend the core principle that all American citizens should be able to both register to vote and cast a ballot that is counted.

Our statement will summarize the types of restrictive voting laws being enacted in states across the country, detail the primary concerns raised by these statutes, and briefly outline potential legal challenges. We hope that the Subcommittee will take any and all appropriate action to oppose these infringements on fundamental rights.

Summary of Recent Laws Restricting the Right of Homeless Persons to Vote

Recent attacks on the right to vote have been focused in four areas: requiring photo IDs at the polls; adding new voter registration restrictions; shortening early voting; and disenfranchising ex-felons.

Voter Identification Laws

Before this year, only nine states had voter ID statutes. In 2011, seven states passed restrictive voter identification measures - Alabama, Kansas, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin. These laws require voters to present certain forms of photo IDs for in-person voting at the polls. The Kansas, Texas, and Wisconsin laws also require a photo ID for absentee voting. Twenty-seven additional states have also considered or are considering photo ID requirements, so it is likely that the number of states requiring photo IDs for in person voting will increase dramatically by the 2012 election.

Voter identification laws create obstacles to voting for individuals who do not possess the correct type of identification or the needed documentation and money to procure

identification. These laws disproportionately impact homeless, poor, minority, elderly, and student voters.

For example, identification requirements have historically posed problems for homeless persons seeking to register to vote. Many state laws make it difficult for homeless persons to obtain identification cards, often because they cannot provide required residential or mailing addresses or cannot afford the fees to get an identification card (or for identifying documentation, such as a birth certificate or passport). Further, homeless individuals may have difficulty maintaining documents required to get an identification card, such as a birth certificate - due to frequent, involuntary movement from shelters or public places and police sweeps that result in destruction or confiscation of their belongings.

State laws compound the difficulty by requiring identification to replace these identifying documents. Essentially, homeless people are placed in the Catch-22 of needing an ID to get an ID. In a 2008 Law Center survey of homeless service providers in 12 states, 45% of providers indicated that their homeless clients had difficulty satisfying identification requirements required to register to vote. Because of the proliferation of identification requirements since 2008, an increased number of homeless individuals will likely experience difficulties registering or when they try to vote on election day.

New Voter Registration Requirements

New laws have also been enacted that make it substantially more difficult for groups running voter registration drives. Six states have introduced new voter registration restrictions in 2011, such as Florida's law requiring anyone who registers voters to return completed forms to the State Board of Elections within 48 hours or face a \$1,000 fine and felony prosecution. Subjecting volunteer registrars acting in good faith to potential criminal liability will limit the number of voter registration drives targeting homeless individuals and other historically disenfranchised populations. In fact, the League of Women Voters has already declared that it will not be able to conduct voter registration drives in Florida due to the stringent requirements of the new law. This is particularly troubling because of the obstacles homeless individuals already face in registering to vote, which are more easily navigated with the assistance of trained volunteers.

Shortening Early Voting Periods

Early voting allows people to vote several days to several weeks before election day. It is especially important for those who must rely on others for transportation to the polls. In the 2008 Law Center survey, 48% of service providers indicated that their homeless clients faced transportation issues when trying to vote. Shortening the early voting period disproportionately impacts homeless, poor, elderly, and disabled individuals' right to vote.

Disenfranchising Ex-Felons

Finally, Iowa and Florida have enacted stringent laws that disenfranchise ex-felons by making it illegal for them to cast ballots in state and federal elections. These new laws allow for a restoration of voting rights only after an individual application process, making these laws some of the most burdensome in the nation.

Unsheltered homeless individuals may be disproportionately affected by these new laws, as an inability to access reliable shelter often results in violations of certain “quality of life” ordinances such as sleeping, sitting, or storing belongings in public. While usually a misdemeanor, in some states missing a court appearance is considered a felony. As a result, homeless individuals who engage in innocent, life-sustaining activities are at an increased risk of being summarily disenfranchised. The process of individually applying for a restoration of voting rights presents nearly insurmountable administrative and financial burdens for homeless individuals.

Legal Concerns With Statutes that Infringe on Voting Rights

Violations of International Treaty Obligations

Laws that make it more difficult for homeless and low income persons to vote implicate fundamental human rights concerns. The right to vote without unreasonable restriction is a fundamental right that is the “core of democratic government based on the consent of the people.”¹

In 1992, the United States ratified the International Covenant on Civil and Political Rights (“ICCPR”).² Under the ICCPR, the United States “must take effective measures to ensure that all persons entitled to vote are able to exercise that right. . . . If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote.”³

Voter identification measures that create barriers to homeless persons’ access to registration and voting (such as fees for ID or for documents required to obtain ID, difficulty accessing registration sites, and ID requirements at the polls) directly violate the ICCPR’s requirement of proactively protecting the voting rights of vulnerable populations such as homeless persons.⁴ The federal government should oppose these

¹ General Comment 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Services (Fifty-seventh session, 1996), U.N. Doc. A/51/40 vol. I (1996) 98 at para. 1 [hereinafter General Comment 25].

² International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.M. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

³ General Comment 25, *at* para. 11.

⁴ *See* General Comment 25 at para. 12, *stating* “Positive measures should be taken to overcome specific difficulties such as . . . poverty . . . which prevent persons entitled to vote from exercising their rights effectively.”

laws, working to protect domestic voting rights with the vigor we display in supporting free and fair elections in countries across the globe.

Constitutional Violations

The right to vote has long been recognized as a fundamental constitutional right in our country. The ability of each citizen to participate in our democracy through elections ensures that every person has a role in shaping the policies of our communities and nation. State election laws that burden the right to vote may be unconstitutional, depending on the severity of the burden and the state interests used to justify the laws.⁵

In *Harper v. Virginia Board of Elections*, the Supreme Court held that conditioning the right to vote on payment of a \$1.50 poll tax was unconstitutional and concluded that states may not “make...affluence of the voter or payment of any fee an electoral standard.”⁶ While the Supreme Court upheld an Indiana voter identification law in 2008 in *Crawford v. Marion County Election Board*, it considered only the statute’s broad application to all Indiana voters and from the factual record before it could not determine the statute’s impact on homeless or impoverished, minority, or elderly voters.⁷ Many of the state voter identification laws enacted or pending in the 2011 legislative session are more stringent than the Indiana law and may violate the Constitution.

New registration and voting requirements that have a disproportionate effect on minority voters may also violate the Voting Rights Act. While restrictions affecting persons experiencing homelessness and poverty do not explicitly violate the Act, these may also have a disproportionate effect on minority voters. Minorities are disproportionately affected by homelessness, comprising about 59% of the U.S. homeless population. African-Americans experience homelessness in higher numbers than any other ethnic group, comprising approximately 45% of the U.S. homeless population.

This Subcommittee should continue monitoring state laws that may have a negative impact on the ability of homeless and low income Americans to vote. And we hope that you will urge the Department of Justice to carefully review these laws to ensure compliance with both the Constitution and the Voting Rights Act. Finally, we look forward to working with you to protect one of our most fundamental rights – the right to vote – through any available legislative means.

Thank you for allowing us to submit this statement. We welcome the opportunity to work with the Subcommittee to address the important issues that we have raised today. To do so, please contact our Policy Director, Jeremy Rosen, at (202) 638-2535 or jrosen@nlchp.org.

⁵ *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Crawford v. Marion County Election Board*, 553 U.S. 181, 190-91 (2008).

⁶ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 666 (1966).

⁷ *Crawford*, 553 U.S. at 200-03.

The New York Times

August 26, 2011

A Poll Tax by Another NameBy JOHN LEWIS
Washington

AS we celebrate the Martin Luther King Jr. Memorial, we reflect on the life and legacy of this great man. But recent legislation on voting reminds us that there is still work to do. Since January, a majority of state legislatures have passed or considered election-law changes that, taken together, constitute the most concerted effort to restrict the right to vote since before the Voting Rights Act of 1965.

Growing up as the son of an Alabama sharecropper, I experienced Jim Crow firsthand. It was enforced by the slander of “separate but equal,” willful blindness to acts of racially motivated violence and the threat of economic retaliation. The pernicious effect of those strategies was to institutionalize second-class citizenship and restrict political participation to the majority alone.

We have come a long way since the 1960s. When the Voting Rights Act was passed, there were only 300 elected African-American officials in the United States; today there are more than 9,000, including 43 members of Congress. The 1993 National Voter Registration Act — also known as the Motor Voter Act — made it easier to register to vote, while the 2002 Help America Vote Act responded to the irregularities of the 2000 presidential race with improved election standards.

Despite decades of progress, this year’s Republican-backed wave of voting restrictions has demonstrated that the fundamental right to vote is still subject to partisan manipulation. The most common new requirement, that citizens obtain and display unexpired government-issued photo identification before entering the voting booth, was advanced in 35 states and passed by Republican legislatures in Alabama, Minnesota, Missouri and nine other states — despite the fact that as many as 25 percent of African-Americans lack acceptable identification.

Having fought for voting rights as a student, I am especially troubled that these laws disproportionately affect young voters. Students at state universities in Wisconsin cannot vote using their current IDs (because the new law requires the cards to have signatures, which those do not). South Carolina prohibits the use of student IDs altogether. Texas also rejects student IDs, but allows voting by those who have a license to carry a concealed handgun. These schemes are clearly crafted to affect not just how we vote, but who votes.

Conservative proponents have argued for photo ID mandates by claiming that widespread voter impersonation exists in America, despite overwhelming evidence to the contrary. While defending its photo ID law before the Supreme Court, Indiana was unable to cite a single instance of actual voter impersonation at any point in its history. Likewise, in Kansas, there were far more reports of U.F.O. sightings than allegations of voter fraud in the past decade. These theories of systematic fraud are really unfounded fears being exploited to threaten the franchise.

In Georgia, Florida, Ohio and other states, legislatures have significantly reduced opportunities to cast ballots before Election Day — an option that was disproportionately used by African-American voters in 2008. In this case the justification is often fiscal: Republicans in North

The New York Times

Carolina attempted to eliminate early voting, claiming it would save money. Fortunately, the effort failed after the State Election Board demonstrated that cuts to early voting would actually be more expensive because new election precincts and additional voting machines would be required to handle the surge of voters on Election Day.

Voters in other states weren't so lucky. Florida has cut its early voting period by half, from 96 mandated hours over 14 days to a minimum of 48 hours over just eight days, and has severely restricted voter registration drives, prompting the venerable League of Women Voters to cease registering voters in the state altogether. Again, this affects very specific types of voters: according to the nonpartisan Brennan Center for Justice, African-Americans and Latinos were more than twice as likely as white voters to register through a voter registration drive.

These restrictions purportedly apply to all citizens equally. In reality, we know that they will disproportionately burden African Americans and other racial minorities, yet again. They are poll taxes by another name.

The King Memorial reminds us that out of a mountain of despair we may hew a stone of hope. Forty-eight years after the March on Washington, we must continue our work with hope that all citizens will have an unfettered right to vote. Second-class citizenship is not citizenship at all.

We've come some distance and have made great progress, but Dr. King's dream has not been realized in full. New restraints on the right to vote do not merely slow us down. They turn us backward, setting us in the wrong direction on a course where we have already traveled too far and sacrificed too much.

John Lewis, a Democrat, is a congressman from Georgia.



**NEW STATE VOTING LAWS:
BARRIERS TO THE BALLOT?**

Hearing Before the Senate Judiciary Subcommittee
on the Constitution, Civil Rights and Human Rights

September 8, 2011

Project Vote is pleased to submit this testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights. We are grateful to Assistant Majority Leader Durbin for holding this hearing on new barriers to voting imposed by state laws.

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that our constituencies can register, vote, and cast ballots that count.

In 2011, the same year that a monument to Dr. Martin Luther King, Jr., was erected on the National Mall, state legislatures were busy *contracting* civil rights in this country, and nowhere is the rollback more evident than in the area of voting rights. The rhetoric accompanying this widespread effort has featured appeals to voters' fears that their democracy is being undermined by an epidemic of voter fraud, that their own votes are being neutralized by legions of unauthorized voters—and, yes, even non-citizens—assaulting polling places across America and stealing elections. It has been very effective rhetoric indeed. But nothing could be further from the truth.

Voter ID

Perhaps the most obvious and well-publicized attack on voting rights has occurred in the form of restrictive photographic identification laws, which have passed in the states this year with unprecedented frequency. A number of states that have repeatedly considered and rejected voter ID laws in the past have now enacted them. In a few cases, governors have vetoed them. Alabama, Kansas, Rhode Island, Tennessee, and Wisconsin bills were passed and signed. Texas and South Carolina are in the preclearance process.¹ Minnesota, North Carolina, and New Hampshire's bills were vetoed, as was Missouri's, but the latter veto was overridden by the legislature. There will be a ballot measure before Missouri voters in 2012 to amend the state's Constitution to allow the legislature to enact a photo ID law. At this writing, at least two more state legislatures (NJ and PA) are still considering strict voter ID laws as most legislative sessions have recessed for the year.

A photographic identification requirement was upheld by the United States Supreme Court in a facial challenge to an Indiana law, *Crawford v. Marion County Election Board*,² which denied

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the relief sought based upon the Fourteenth Amendment to the United States Constitution. The court found that plaintiffs could not prove (prospectively) that a significant class of people would be injured by the law, and found that that Indiana provided numerous avenues for obtaining the requisite ID at no cost.ⁱⁱⁱ

However, the Court explicitly left open the possibility of an “as-applied” challenge to the Indiana law^{iv} and litigators are likely to mount such challenges to similar laws that have been enacted more recently in other states. In Wisconsin, for example, legislators opposing the photo ID law, who were ultimately unsuccessful, compiled voluminous data on the limited availability of the required IDs, particularly in rural areas of the state, and compared it to Indiana during debate on the bill. It is expected that these statistics will be featured prominently in any lawsuit challenging the Wisconsin law.^v

“The Indiana case” (*Crawford*) was a constant invocation uttered by proponents of photo ID in state legislatures in 2010-2011. The fact that the case was a pre-implementation challenge and that the court found plaintiffs’ proof of injury wanting—none of the particulars seemed to faze the legislators in other states, who assumed that the Supreme Court had “blessed” photo ID for all time and under all circumstances. In addition to the oft-cited need for voter ID to combat fraud,^{vi} the policy argument most frequently advanced is that “we need IDs to rent a movie or take an airplane—why not require it for voter registration?” And the corollary argument: “Everyone has a photo ID these days; what’s the problem?” We examine each of these propositions in turn. First, neither renting a movie nor taking a flight is a fundamental right. The prerequisites to engaging in such economic transactions have no constitutional dimension, whereas the ability to exercise a fundamental right must meet constitutional standards.

Second, certain populations are less likely to have the required ID. These include the young, the elderly, and racial minorities. For example,

- 11% of citizens do not have current, government-issued photo ID
- 15% of citizens earning less than \$35,000 do not have current photo ID
- 18% of citizens over 65 do not have current photo ID
- 25% of African American citizens do not have current photo ID^{vii}

Finally, most states that have considered restrictive ID laws have learned the lesson that these laws are much more likely to pass and to withstand a legal challenge if free ID is provided by the state. But “free” is a relative concept. In most cases, a birth certificate is required in order to obtain the ID. (And, amazingly, 17 states require a photo ID in order to obtain a copy of a birth certificate!) Those who do not have their birth certificates generally must pay a fee to obtain one. In some cases, especially among the elderly living in rural areas, a birth certificate may not be available at all.

Costs to obtain ID cards can be substantial.

- A current US passport costs between \$85 and \$145
- Naturalization papers cost \$200
- In many states, a copy of a birth certificate costs \$20 or more.^{viii}

A recent article in the Wisconsin State Journal also reported on long waits to obtain the free ID promised by the recent legislation, and some clerks erroneously attempted to charge for it. An even more shocking article in the Capital State Journal of September 7, 2011, reveals a directive from the state's Department of Transportation to the effect that free ID should not be given unless it is explicitly asked for!^{ix}

Another feature of the legislative debates in this era of tight state budgets has been the high cost of implementing photo ID procedures, particularly where "free" ID is provided. States have estimated costs ranging from six million dollars in the first year (Missouri) to "no fiscal impact" (Nebraska). What is notable is how inconsistent the states are in assessing fiscal impact, in some instances leaving out public education and poll worker training costs entirely.^x

It is certain the latest crop of ID bills will be challenged under the National Voter Registration Act of 1993 (NVRA) and the First Amendment to the United States Constitution. (In addition, the Help America Vote Act of 2002, in Sec. 303(b)(2), requires voters who registered by mail to present an ID upon voting for the first time, but provides a wide array of acceptable ID options. It would be anomalous indeed if a first-time voter in strict photo ID states has more latitude than someone who has voted at the same polling place for decades.)

Proof Of Citizenship

In contrast to the spate of activity on voter ID, proof of citizenship laws have been enacted less frequently, and are experiencing more setbacks in the courts. Like photo IDs, citizenship documents are more difficult to obtain by certain demographic groups:

- 7% of US citizens (13 million people) do not have ready access to citizenship documents
- 12% of citizens earning less than \$25,000 a year do not have ready access to citizenship documents
- 34% of women do not have ready access to citizenship documents with their current legal name.^{xi}

In 2011, proof of citizenship bills were filed in Alabama, Kansas, and Tennessee, all of which passed and were signed by their respective Governors. Colorado's bill advanced but was ultimately "postponed indefinitely" in April.^{xii} Although bills were introduced in several other states, none progressed in the legislative process. This relatively low level of activity might be because legislators are waiting for a major test of proof of citizenship laws to make its way through the federal courts.

The test is *Gonzalez v. Arizona*,^{xiii} where plaintiffs raised both statutory and constitutional challenges to Arizona's Proposition 200, a successful ballot initiative that requires proof of citizenship for voter registration (and voting). The NVRA claim was based on the statute's prohibition on notarization or formal authentication requirements.^{xiv} Nevertheless, the trial court rejected the claim, reasoning that the statute does not prohibit documentation requirements, and indeed permits states to "require such identifying information...as is necessary to enable...election official[s] to assess the eligibility of the applicant."^{xv} This result was particularly troubling given the legislative history of the NVRA,^{xvi} which makes it clear that Congress considered but rejected the inclusion of proof of citizenship requirements in the statute. The case was appealed to the Ninth Circuit Court of Appeals, where one of the issues was whether the district court's ruling contravenes Sec. 6(a)(1) of the NVRA, that states must "accept and use" the federal mail form.

The Ninth Circuit resoundingly rejected the district court's decision, ruling that Proposition 200's citizenship provision directly conflicts with the NVRA by requiring additional information to be provided with the federal form.^{xvii} Relying on the Elections Clause of the Constitution, the court found that the NVRA pre-empted the Arizona state requirement that prospective voters provide documentary proof of citizenship. The Elections Clause, said the court, requires states to "affirmatively implement Congress's superseding regulations."^{xviii} The court concluded "the NVRA's central purpose is to increase voter registration by streamlining voter registration procedures." While Arizona may require documentary proof of citizenship with its state voter registration form, anyone choosing to register with the federal form cannot be required to provide proof of citizenship. This case was certified for rehearing en banc, and was argued on June 21, 2011.

Same Day Registration and Early Voting

Same day registration and early voting largely escaped the "epidemic" of legislative rollbacks this year, but two negative developments are worth noting.

"Same day registration" (SDR), often called Election Day registration, has been adopted by a number of states in the past. It is currently the law in Idaho, Iowa, Minnesota, Montana, New Hampshire, North Carolina, Wisconsin, Wyoming, and the District of Columbia.^{xix} However, Maine, which had a successful SDR program for decades, repealed it in the 2011 legislative session.^{xx} Interestingly, SDR states consistently lead the nation in voter turnout^{xxi}—adding credence to the proposition that voter registration itself (in advance) is actually a major barrier to voting. While several states passed SDR in recent years, not one did in 2011. Same day registration has been a boon to civic participation and has had none of the security or fraud problems feared by its detractors. It is truly unfortunate that it should be a casualty of the current wave of disenfranchisement legislation.

Early voting has been a growing trend across the country, but nowhere with more success than in Florida, where 2.1 million people voted early in 2008. Racial minorities are particularly likely to take advantage of an early voting period. In 2008, 22% of the early voters were African American, though only 13% of the electorate was. More surprisingly, nearly 54% of the African Americans voting in that election cast their ballots early! Unfortunately, this year's omnibus election "reform" bill in Florida has significantly restructured the state's early voting period, including eliminating early voting on the Sunday before Election Day Tuesday. This could have a significant negative impact on African American voters, according to Justin Levitt, Associate Professor of Law at Loyola in Los Angeles, who found that that Sunday was the choice for many minority voters in 2008 and 2010 in several of the more urban Florida counties that offered early voting that day. State Rep. Perry Thurston added that a number of African American ministers actively urged their congregants to go and vote that day.^{xxii}

Burdens on Voter Registration Drives

As the pre-eminent organization conducting and giving technical assistance to voter registration drives, Project Vote is especially concerned about state laws impeding our ability to perform this indispensable service.

Community groups jumped into the breach to register voters in part because of the lack of federal enforcement of Section 7 ("agency registration") of the NVRA over many years. In addition to Project Vote, these groups include religious institutions, the League of Women Voters, advocates on behalf of racial minorities, and many others. Some of them routinely organize voter registration drives—often staffed by volunteers—across the country. Others are less frequent and more local. However, the success of these drives has had an unintended consequence. Some state legislators, perhaps alarmed by the numbers, party affiliation, and voting behavior of the new registrants, have proposed laws to curtail third party drives' activities and effectiveness. Some of the legislation has passed; some has been the subject of litigation, with varying results.

In one of the most direct threats to the efficacy of organized voter registration drives, some states have required registration workers to be "deputized" or otherwise made official agents of the state. Texas requires any person who distributes and collects a voter registration application to be a deputy registrar, and that person may only collect applications in the county in which she is appointed. Legislation in 2011 added a new training requirement to the Texas deputy registrar statute.^{xxiii}

In general, formal state requirements, such as deputization, training, registration of the program with the state, and strict time limits on the submission of applications have become more ubiquitous in recent years as devices to control registration drives by community organizations.

Earlier this year, Florida passed an omnibus election "reform" package that includes significant burdens on third-party drives: a 48-hour deadline for submission of applications, onerous paperwork requirements, and a provision that drives must "account for" every form given to

them. The law also imposes fines and penalties for violations--as well as the possibility of an injunction to stop the drive altogether.^{xxiv} Currently, key provisions of the law are in the Section 5 preclearance process in the United States District Court for the District of Columbia.^{xxv}

Several states have prohibited compensation that is based on the number of applications collected, reasoning that such a compensation plan encourages the submission of false or duplicative forms. However, the effect of such laws is to prevent organizations from establishing any reasonable performance standards for employees; taken to their logical conclusion, they could prohibit termination of an underperforming employee, even one who fails to assist a single voter with registration. A law passed in Texas in 2011^{xxvi} makes it a misdemeanor to engage in "performance-based compensation." (This law is subject to Section 5 preclearance, but at this writing has not been submitted to the Department of Justice or the U. S. District Court for the District of Columbia.)

While some of these rules may seem reasonable on the surface, they significantly impair the ability of community groups to help voters to register, a constitutionally protected activity. Besides, there are usually less onerous alternatives that accomplish the legitimate purpose of promoting the integrity of the registration process.^{xxvii}

Procedural impediments to registration may seem mundane but nonetheless have a significant impact on the process. In addition to state statutes that operate to restrict registration drives, numerous administrative rules or informal practices and procedures tend to make registration more difficult. Many of these, whether by design or not, hamper the efforts of community-based voter registration drives that were, in part, spawned by the enactment of the NVRA and the creation of the simplified registration form that could be submitted by mail.

Despite the fact that Section 6 of the NVRA explicitly imposes a duty upon the states to make forms "available for organized registration programs," the day-to-day operation of election offices often undermines this obligation.^{xxviii} These offices frequently limit the number of state forms they distribute at one time, necessitating many return trips to the office by registration drive workers, who are often volunteers paying for their own transportation. In Georgia in 2004, for example, the Secretary of State tried to cap the total number of forms given to one particular registration group at 10,000, even though the group expected to register many more, and in fact ultimately registered over 22,000 voters.^{xxix}

Federal forms are rarely available at election offices at all--instead, they must be downloaded and printed from a website--and if a drive wants to use the federal form (for example, because it is operating in a metropolitan area on both sides of a state line), the group must bear the expense of making hundreds or thousands of copies. (In Ohio in 2004, this expense was compounded by a directive of the Secretary of State dictating a particular weight of paper that was required! The directive was only rescinded after a loud outcry heard across the country.^{xxx})

In New Mexico, state law requires that election officials provide a traceable number on all registration forms so that there is a record of each application processed by a registration drive.^{xxxii} A similar statute is in effect in Nevada.^{xxxiii} While such a requirement seems benign enough, a missing numbered form gives election officials a pretext to harass community registration drives if they fail to turn in all the forms they were given, whatever the reason. One can easily envision a registration drive operating at a county fair, for example, where a mother asks for a form to take home to her 18-year old daughter, who then never sends it back. The registration drive should not be held responsible for this, and yet under such a law, it could.

It should also be emphasized that, in enacting the NVRA, Congress clearly envisioned that voter registration drives would be an indispensable strategy in reaching out to previously underrepresented groups in the electorate--but apparently did not envision the many ways in which the states, with an assist by the courts, would hamper the efforts of those drives to accomplish that goal. Notwithstanding the clear language of the NVRA that the states must "accept and use"^{xxxiiii} the mail form, as a practical matter the myriad of restrictions on the groups disseminating the form—as well as the courts' permissive attitude toward the form itself--amount to very real frustration of the NVRA's purpose.

Given the spotty state compliance with the NVRA (particularly its requirement that social service agencies offer registration) and the numerous procedural barriers to registration, community voter registration drives remain a necessity in reaching hard-to-reach populations. Only with a combination of significant improvement in NVRA compliance and enforcement and the easing of registration restrictions on the state level will their importance recede.

As long as we have voter registration in this country—and 49 states do--there will be barriers to getting on the rolls. But it is the *expansion* of the franchise that should guide legislators and election officials in making policy for registration and voting in the United States of America. And it is the enforcement of the federal laws protecting voting rights that should guide the United States Department of Justice. With a re-energized NVRA and a re-dedicated law enforcement effort, we can move toward a society where it is no more difficult for poor and minority Americans to register than it is for their richer White neighbors.

It is fitting and timely that this Subcommittee, and the Congress as a whole, examines the current and alarming trend of state-based efforts to reverse the dramatic expansion of the franchise we have enjoyed since the "voting rights revolution" of the Twentieth Century. We sincerely hope that this is a first step toward re-asserting Congress's historic role as a guardian of those rights. Project Vote stands ready to offer whatever assistance it can as you consider future legislation, oversight, or enforcement efforts.

*Project Vote
Testimony to the Senate Judiciary Subcommittee on the
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ⁱ The Voting Rights Act of 1965, 42 U.S.C. §§ 1973 et seq., requires certain jurisdictions (listed at http://www.usdoj.gov/crt/voting/sec_5/covered.htm.) to seek “preclearance” of any voting changes before they may go into effect, either by submitting the changes to the Department of Justice or suing the United States in the U.S. District Court for the District of Columbia.

ⁱⁱ *Crawford v. Marion County Election Board*, 555 U.S. 181 (2008).

ⁱⁱⁱ However, the notion of “no cost” identification is really illusory, as discussed below.

^{iv} *Crawford*, 553 U.S. at 200.

^v In fact, the Wisconsin League of Women Voters has announced its intention to file a legal challenge. See:

http://campusprogress.org/articles/wisconsin_voter_id_law_to_face_legal_challenge/

^{vi} See, Justin Levitt, Brennan Center for Justice, *The Truth About Voter Fraud*, <http://www.brennancenter.org/page/-/The%20Truth%20About%20Voter%20Fraud.pdf> (2007) (Demonstrating that voter impersonation fraud is virtually nonexistent). See also generally, Lorraine Minnite, *The Myth of Voter Fraud*, (Cornell Univ. Press) (2010).

^{vii} Brennan Center for Justice, *Citizens Without Proof*, www.brennancenter.org/page/-/download_file_39242.pdf (2006).

^{viii} Advancement Project, *What's Wrong With This Picture?*

<http://www.advancementproject.org/sites/default/files/publications/Picture%20ID%20low.pdf> (2011).

^{ix} Doug Erickson, *Need a Free Photo ID to Vote? Be Prepared to Wait*, Wisconsin State Journal, http://host.madison.com/wsj/news/local/govt-and-politics/article_e1412868-a434-11e0-bc0c-001cc4c002e0.html (July 2, 2011). Jessica Vanegeren and Shawn Doherty, *Top DOT official tells staff not to mention free voter ID cards to the public—unless they ask*, http://host.madison.com/ct/news/local/govt-and-politics/capitol-report/article_335f59fa-d8fe-11e0-8a23-001cc4c03286.html

^x See generally, Pew Center on the States, *Electionline Weekly*, March 17, 2011.

^{xi} *Citizens Without Proof*, *Supra* n. xvii.

^{xii} 2011 Ala. Laws 535 (Signed in June 2011 as part of omnibus anti-immigrant package); 2011 Kan. Sess. Laws 56 (Signed in April 2011); 2011 Tenn. Pub. Acts 235 (Signed in May 2011, requires election officials to check citizen database before enrolling voter rather than requiring applicant to present documentary proof of citizenship); 2011 Colo. HB 1252.

^{xiii} *Gonzalez v. Arizona*, 435 F. Supp. 2d 997 (D. Ariz. 2006).

^{xiv} 42 U.S.C. § 1973gg-7(b)(3).

^{xv} 42 U.S.C. § 1973gg-7(b)(1). *Gonzalez v. Arizona*, 435 F. Supp. 2d 997, 998 (2006).

^{xvi} Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 103-66 §13, at H2083 (1993)

^{xvii} *Gonzalez v. Arizona*, 624 F.3d 1162, 1180 (9th Cir. 2010).

^{xviii} *Id.*, at 1173.

^{xix} Dēmos, *Voters Win with Same Day Registration: 2010 Midterm Elections Factsheet*.

http://www.Demos.org/pubs/Voters_Win.pdf (May 2011).

^{xx} 2011 ME H.P. 1015 (NS) (June 21, 2011).

^{xxi} In the 2008 presidential election, for example, average turnout in SDR states was 69%, as compared to 62% in non-SDR states. Steven Carbó & Regina Eaton, Dēmos, *Voters Win with Same Day Registration*, http://www.Demos.org/pubs/voterswin_feb032010.pdf (updated January 2010).

^{xxii} See, e.g., Lloyd Dunkelberger, *New election law unfairly impacts blacks, critics say*, *Gainesville Sun*, June 13, 2011.

^{xxiii} Tex. Elec. Code Ann. § 13.031 (2009). The training requirement is codified at §13.047.

^{xxiv} 2011 Fla. Laws 40 (West).

^{xxv} *State of Florida v. United States of America et al.*, Case No. 1:11-cv-01428-CKK (Three Judge Court)

^{xxvi} 2011 Tex. Sess. Law Serv. 1002 (West).

^{xxvii} For example, requiring one representative of the organization conducting the voter registration drive to file papers with the state in case election authorities need to contact the drive is a reasonable alternative to forcing every person employed by or volunteering with the drive to register. Allowing drive workers to receive training online is far less onerous than requiring an in-person training course that is offered infrequently at limited locations.

^{xxviii} Although prevention of fraud is the stated rationale for these, and many other, restrictions on voter registration drives, voter registration fraud is exceedingly rare. For example, *amici* in the *Crawford* voter ID case (See text accompanying notes ii and iii.) cited a mere 10 cases of *alleged* voter impersonation fraud (and not one case of proven fraud) during the period 2000-2007, a period in which over 400 million general election ballots were cast! See http://brennan.3cdn.net/45b89e6d14859b0f8e_i2m6bhcv9.pdf

^{xxix} The issue that year was further complicated by a HAVA-imposed redesign of forms. In several states, old forms were in wide circulation, and unsuspecting applicants were eventually rejected despite properly filling out the only form they had. Welfare offices and other agencies were especially likely to give out old forms until they ran out. Even as recently as 2008, old forms surfaced in Indiana, causing the registrations of many elderly residents of a nursing home to be rejected until Project Vote filed a lawsuit and obtained an order requiring that the provisional ballots of such applicants be counted. (Despite that order, however, the named plaintiff was denied a provisional ballot at her polling place and was unable to vote. It is not known how many others had the same experience.)

^{xxx} See Mary B. Beazley and Edward B. Foley, Commentary, *Stealing Votes Before Election Day*, Sept. 29, 2004, http://moritzlaw.osu.edu/electionlaw/ebook/part1/eligibility_rules08.html.

^{xxxi} N.M. Stat. Ann. §§ 1.10.25.8(C), 1.10.25.10(B) (West 2011).

^{xxxii} Nev. Rev. Stat. Ann. 293.425 (West 2011).

^{xxxiii} 42 U.S.C. § 1973gg-4 (2011).



Republican National Lawyers Association

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For Immediate Release
Thursday, September 8, 2011

Contact: Michael Thielen
(703) 719-6335

Getting the Complete Picture on Photo Voter ID

Washington, D.C. – Today, Senator Dick Durbin will chair a Senate Judiciary Committee hearing entitled “New State Voting Laws: Barriers to the Ballot?” A misleading press release on Senator Durbin’s website states that “The overwhelming evidence, however, indicates that voter impersonation fraud is virtually non-existent and these new laws will make it harder for hundreds of thousands of elderly, disabled, minority, young, rural, and low income Americans to exercise their right to vote.”¹

The evidence overwhelmingly contradicts Senator Durbin’s claims. Studies by the University of Missouri, The Heritage Foundation, University of Delaware and the University of Nebraska-Lincoln, American University and John Lott found that voter ID does not decrease the turnout of voters and does not have a disparate impact on minority, poor, or elderly voters.²

The Rhode Island legislature, the vast majority which is composed of Democrats, passed a voter ID law this year. Rhode Island Democrat Senator Harold Metts who sponsored voter ID legislation in the state Senate said, “As a minority citizen and a senior citizen I would not support anything that I thought would present obstacles or limit protections.”³ Independent Governor Lincoln Chafee signed the Rhode Island voter ID bill into law and said, “Notably, I spoke with representatives of our state’s minority communities, and I found their concerns about voter fraud and their support for this bill particularly compelling.”⁴

In a poll conducted by Rasmussen, 75% of American voters believe photo identification should be required at the polls. 85% of Republicans, 77% of voters not affiliated with either major party, and 63% of Democrats support voter ID.⁵ The survey also found that support for voter ID is “high across virtually all demographic groups.”⁶

Michael Thielen, Executive Director of the Republican National Lawyers Association, said, “While liberals in Washington oppose voter ID, the overwhelming majority of Americans, including rank and file Democrats stand for this common sense policy. Mainstream voters recognize that voter ID is a pragmatic policy that ensures elections are fair, open and honest.”

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¹ Durbin to Chair Hearing Examining New State Voting Laws That Threaten to Suppress Turnout Nationwide, Sept. 2, 2011, <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=16aa6ae3-91ad-4671-85fe-b901fccdcf24>.

² Hans von Spakovsky, *Voter Photo Identification: Protecting the Security of Elections*, HERITAGE MEMORANDUM, July 13, 2011, p.

³ <http://www.heritage.org/Research/Reports/2011/07/Voter-Photo-Identification-Protecting-the-Security-of-Elections>.

⁴ Gov. Lincoln D. Chafee Signs Voter ID Legislation, July 6, 2011, <http://www.ri.gov/press/view/14229>.

⁵ *Id.*

⁶ 75% Support Showing Photo ID At The Polls, Rasmussen Reports, June 9, 2011, http://www.rasmussenreports.com/public_content/politics/general_politics/june_2011/75_support_showing_photo_id_at_the_polls.

⁶ r.j



**Written testimony from
Heather Smith, President, Rock the Vote
Regarding the impact of voting laws recently
passed in many states on young voters**

*Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights*

Thursday, September 8, 2011, 2:00 p.m.
Dirksen Senate Office Building Room 226

Dear Chairman Durbin and members of the subcommittee:

I am writing on behalf of Rock the Vote, the nation's largest voter registration organization. Over the last 20 years, we have registered more voters than any other organization or campaign, including more than 2 million registration downloads in 2008 and 250,000 in 2010. Through our various programs – online voter registration, on-the-ground registration drives with volunteers, and our high school civics education program, Democracy Class – we engage young people in our nation's democracy.

Unfortunately, too many young Americans are left of the political process because of outdated and restrictive voter registration practices and barriers encountered when trying to cast a ballot. These problems are escalating in states where politicians are actively making it harder to participate by enacting laws that eliminate election day registration, reduce the early voting window, require identification to vote that many young people do not already have, and placing unnecessary restrictions on the activities of third party voter registration organizations like Rock the Vote.

All of this is being done at a time when young voter participation is on the rise, something we should be encouraging, not trying to stop.

Rock the Vote is concerned that, in states across the country, new laws are pending or have passed that will effectively make it harder for young people to participate in our nation's democracy, excluding them from the elections process.

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The new laws fall into three categories, broadly: Strict photo identification requirements, narrowing the opportunities to register and cast a ballot, and restrictions on third party voter registration efforts.

Strict Photo ID:

Strict photo ID laws result in disenfranchisement, unnecessary costs, and unequal treatment of voters. What may seem like common sense to some is actually a real barrier for many who want to participate, and a significant expense to all of us as tax-payers. The pending photo ID law in Pennsylvania is estimated to cost \$4.3 million according to the state legislature.¹

These strict photo ID laws (which vary state-to-state) have already passed in Texas, Alabama, Kansas, South Carolina, Tennessee, Wisconsin, and Rhode Island this year alone, and are pending in others. They have a particularly suppressive impact on young voters.

For example, in Texas, an expired concealed weapon permit would be accepted at the polls, but not student IDs issued by state colleges and universities. There are over 100 public colleges and Universities in Texas, the biggest being the University of Texas at Austin, with over 50,000 undergraduate and graduate students, who won't be able to use their student ID for voting purposes any longer.²

In Wisconsin, according to a University of Wisconsin-Milwaukee study, 36% of young people, including over 70% of African-Americans under the age of 25, do not have the Wisconsin photo ID or driver's license that is now required to cast a ballot. And while student IDs qualify under the law as a state-issued ID, not a single college or university issues a student ID that meets the requirements of having a signature, an issue date, and an expiration date no later than 2 years after the election.

"For out-of-state students, like myself, this [proposed voter identification] bill would require us to go to the DMV, surrender our out-of-state licenses and obtain a Wisconsin license at \$28 a pop...Furthermore, the bill requires voters to live at their voting address for 28 (rather than the current 10) days before Election Day. This is a direct attack on college students' voting rights as most move into their new residences less than 28 days before the fall primaries. This is shocking, disheartening, and unnecessary to prevent the almost non-existent fraud in Wisconsin elections. Our government should be encouraging students to engage in the civic process." – Sam Polstein, University of Wisconsin student

¹ "PA.'s costly solution in search of a problem," *Philadelphia Inquirer* editorial, August 29, 2011.

² "Texas higher education enrollments," Texas High Education Coordinating Board.

Photo identification isn't the only way you can prove your identity, and many states have figured out ways to prove identity without erecting undue barriers to participation for young people.

States use a number of different unique identifiers in addition to photo IDs to ensure they are providing ballots to the right registered voter, including signature verification, utility bills, paychecks, student IDs, bank statements, requiring voters to provide the last four digits of their Social Security number, asking for their date of birth, and more.

When he came out against Ohio's proposed strict photo ID law, the Republican Secretary of State Jon Husted said that he believes the current identification requirements are sufficient to combat fraud. According to the *Columbus Dispatch*³, Husted said he would not change Ohio's current election-day process in which voters can prove their identities at the polls through a photo ID (such as a driver's license), a current utility bill, bank statement, paycheck or government document with a current name and address.

"I believe that if you have a government-issued check, a utility bill in your name with your address on it, that no one made that up," Husted said to reporters following his speech during League of Women Voters of Ohio annual Statehouse Day. "They didn't call AEP and establish utilities in their name to commit voter fraud."

The county auditors in Iowa -- a collection of 60 Republicans, 38 Democrats and two independents who actually run the elections in the state -- came out against that state's strict photo ID proposal because it was costly and unnecessary to prevent voter fraud. A recent article⁴ highlighted Jasper County and 49 other counties that have systems to ensure integrity and guarantee voters are who they say they are without resorting to disenfranchising methods like only accepting state-issued photo ID.

Jasper County began using laptop computers equipped with the Precinct Atlas Program to check voters at the polls. Forty-nine other counties in Iowa also use the program. Precinct Atlas contains all of the vital information about voters registered in Jasper County to verify their true identity. Poll workers are provided with the voter's birth date, address, telephone number, the last four digits of their Social Security number, a driver's license number, and whether that person is a convicted felon.

If a voter shows up at the wrong polling place to vote, the program prints out a label with the address of the voter's correct precinct and polling place. "With this

³ "Husted offers alternatives to photo-ID rule for voters," *Columbus Dispatch*, April 7, 2011.

⁴ "Photo ID to Vote? Unnecessary says auditors," *Newton Daily News*, March 29, 2011.

information, it would be extremely difficult for a person to pass themselves off as someone else to vote," [Jasper County Auditor Dennis] Parrott said.

Narrowing opportunities to register and vote:

A second category of laws being passed around the country will narrow opportunities for voter registration and voting, and have a profound negative impact on first-time and student voters.

Same Day Registration (SDR) provides the opportunity to register and cast a ballot at the same time during an early voting period or on Election Day itself (also known as Election Day Registration). States with SDR have the highest young voter turnout rates in the country. In 2008, on average, 59% of young Americans whose home state offered Election Day Registration voted; nine percentage points higher than those who did not live in SDR states.⁵

SDR directly helps first time voters who often are unaware of the arbitrary voter registration deadline in their state, show up, and are turned away for not having filled out a registration form before hand. In 2010, Rock the Vote registered nearly 300,000 voters. Of them, nearly 50,000 filled out a registration form on our website after the registration deadline. With SDR, these young people, who clearly were attempting to participate, would have been allowed to vote.

SDR also directly helps those that move often, such as students who typically relocate to a new address at their college campus each fall. These students are often left out of voting in fall primaries and elections because they did not update their registration address in time (or even moved after the registration deadline). SDR allows them to update their registration address at the polls.

And early voting is the opportunity to cast a ballot prior to Election Day. As the electorate and our country change, we need to accommodate work and school schedules, providing access and opportunity for all to cast a ballot. The first Tuesday in November made a lot of sense for the 19th Century voter, but we are no longer a nation of farmers but rather a diverse electorate that leads a very different 21st Century lifestyle. We should be making our elections system meet the needs of voters today.

Unfortunately, this year, Maine eliminated Election Day Registration, marking the end of the 38-year tradition that was used by nearly 70,000 Maine residents during the last two elections.

⁵ "Voting Laws and Youth Turnout," Center for Information and Research on Civic Learning and Engagement at Tufts University, www.civicyouth.org.

And five states so far -- Florida, Georgia, Ohio, Tennessee and West Virginia -- have cut short their early voting periods.

In North Carolina, 2.6 million citizens used early voting to vote before Election Day in 2008, yet the legislature is considering shortening the early voting period and eliminating same day registration. The bill would cut the 16-day early voting period back a week. If the deadline for voter registration slipped by, you will not be able to register the day you vote, a service used by 253,000 voters in 2008.

Restricting 3rd party voter registration drives:

Finally, Florida and Texas both recently passed laws that put onerous restrictions on voter registration drives. The Florida law imposes new bureaucratic requirements on voter registration organizations like Rock the Vote and opens up volunteers who register voters to fines. The *Miami Herald*⁶ suggested that it meant to harass volunteers and voter registration organizations. Sadly, that's exactly right. Groups like the League of Women Voters already have said it would shut down their voter registration drives in the state. Rock the Vote may have to do the same.

Third party voter registration drives typically are conducted by non-profit charity organizations. They intentionally outreach to under-represented communities to encourage them to register to vote. According to the US Census, only 61% of voters ages 18-29 were registered to vote in 2008. And a top reason a young person gives for not being registered is that they didn't know how. It is the role of organizations like Rock the Vote to provide information and voter registration forms to these young people, providing entrée into our nation's democratic process.

Based on current US Census figures, it is estimated that approximately 12,500 Americans turn 18 every single day, and yet there is no systematic way in our country to register them to vote. Our country, our democracy, relies on 3rd party organizations to do this work.

If the strength of a democracy is measured by the participation of its citizens, then these new laws that restrictive the work of third party voter registration organizations to engage citizens in voting are simply undemocratic.

Voter fraud vs. voter disenfranchisement:

Voter fraud is the justification most often cited by those who want to enact these new laws. However, it is far from clear that voter fraud is a real problem in our

⁶ "Another Flori-duh moment?" *Miami Herald* editorial, April 13, 2011.

country. And certainly not one that mandates solutions that will effectively disenfranchise eligible voters.

Specifically, the type of voter fraud that photo ID bills can potentially claim to counter is voter impersonation fraud, which is pretending to be someone else for the purpose of casting that voter's ballot. Numerous studies and extensive criminal investigations have shown that voter impersonation fraud is extremely rare.⁷

In fact, a five-year crackdown by President George W. Bush's Department of Justice yielded only 86 voter fraud convictions (120 million people voted in 2004) and most of those convictions were for problems due to confusion about eligibility to vote and clerical errors, not for voter fraud that could have been stopped by a photo ID law.⁸

As it turns out, the Brennan Center for Justice at NYU School of Law concluded, voter impersonation is more rare than death by lightning.

Consider what someone who wants to impersonate a registered voter at the polls would have to go through for one vote:

- ✓ Travel to the proper polling place for a particular voter whose name and address is memorized
- ✓ Accurately forge the voter's signature
- ✓ Potentially have to provide other information about the voter (utility bill, last four digits of her Social Security number)
- ✓ Make sure that voter has not already voted absentee or requested an absentee ballot
- ✓ Know that the voter has not moved and re-registered at her new location or hasn't been removed from the rolls for another reason
- ✓ Know that the voter has not already voted that day and does not plan to vote before the polls close
- ✓ Wait in line to cast a ballot in that voter's name
- ✓ Risk detection from a poll worker who may know the registered voter
- ✓ Face fines and jail time

No one wants to see the system abused, but the type of abuse that these new laws pretend to address are hard to accomplish and rarely occur. And the solutions being enacted will exclude or deter people who are otherwise legally able to vote. For all Americans, it should be just as unsettling to think that someone could abuse the system as it is to think that someone could be excluded from it.

⁷ "The Truth About Voter Fraud," The Brennan Center for Justice at New York University School of Law, 2007

⁸ "In 5-Year Effort, Scant Evidence of Voter Fraud," *The New York Times*, April 12, 2007.

A 21st Century voting system:

Our voting system needs to improve to meet 21st century standards. Yet here we are fighting to stop politicians from turning back the clock and making it harder for people to vote. It is distracting and disappointing to see proposed laws that use tomorrow's money to solve yesterday's alleged problems when real problems are staring us in the face.

Let's put this issue to rest and move on to envisioning a real 21st century system.

Recently, Rock the Vote conducted an analysis of each state's existing policies and how they impact access to the political process for young people.

The Voting System Scorecard serves as a national benchmark that measures state laws and policies in three key areas: (1) voter registration, (2) casting a ballot and (3) young voter preparation. The 21-point scale evaluated each state's implementation of policies that increase access to the political process. With an average national score of just 41% (8.6 out of 21 total possible points)⁹, we have a lot of work to do to modernize our elections process and ensure it meets the needs of today's electorate.

We all should strive for a modern, secure, just and fully participatory democratic system that we can trust. The real problem faced by our elections process is the antiquated, paper-based voter registration system that keeps people off of the rolls because of clerical and user errors. Too many states have failed to make voter registration more effective and efficient through automatic or online registration, and they continue to lag at making it easier for people to cast a ballot with same day registration and early voting. Plus, our schools have cut civics education, so we have an electorate less familiar with the system and less aware of their rights.

If we truly care about prioritizing participation, reducing barriers and building faith in the system, then we must move forward, not backwards, towards a modern day elections system that makes it easier, not harder, to vote.

Chairman Durbin, I applaud you and the subcommittee for looking into these new restrictive voting laws, and bringing leadership to the efforts to upgrade and protect the elections systems to guarantee equal participation for all citizens in our democracy.

⁹ Voting System Scorecard, Rock the Vote, June 8, 2011. www.rockthevote.com/research/2011-voting-system-scorecard.html

New State Voting Laws; Barriers to the Ballot?

**Testimony before the Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights**

September 8, 2011

Congressman Todd Rokita**As prepared for delivery:**

Chairman Durbin, Ranking Member Graham and members of the Committee, thank you for the opportunity to share my experiences with implementing Indiana's Voter ID law. As you may know, I was the Secretary of State of Indiana for eight years, from 2004-2010 prior to coming to Congress. As Secretary of State, I was also the chief election officer when Indiana's photo ID law was created, helping draft the specific provisions of the bill that became law, and subsequently I oversaw the legal challenges that followed.

Governor Mitch Daniels signed Indiana's voter ID law in the spring of 2005. Indiana's law requires that to vote in person, a voter must present a valid photo ID issued by Indiana or the United States. That ID must have a photo of the voter and an expiration date. No identification is necessary when voting absentee by mail or when voting in person at a precinct located in a state-licensed care facility.

This law was challenged by the Indiana Democrat Party. The case was ultimately decided by the United States Supreme Court in 2008. The U.S. Supreme Court ruled the law constitutional and permitted its continued use in Indiana elections. Most recently, the photo ID law withstood Indiana constitutional challenges before the Indiana Supreme Court. The law is

well settled as to the Indiana voter ID law. Showing a photo ID is constitutional and necessary for a fair election.

NEED FOR THE LAW

Regarding photo identification requirements to vote, the discussion tends to shift to whether there is in fact voter fraud and a need for the law. I can tell you, that after eight years as Indiana's Secretary of State, I can confirm there is voter fraud. Indiana prosecutors and election administrators have dealt with many cases of voter fraud across Indiana for a number of years. Throughout my tenure as Secretary of State, allegations of voter fraud were recorded in Vanderburgh, St. Joseph, Pike, Starke, and Clark counties. In addition, convictions in Madison, Lake and other counties reveal this is not solely an urban or rural crime. Voter fraud is a proven danger that dilutes honest votes and erodes public confidence of our electoral process in all demographics and threatens the foundation of our Republic.

I don't bring up these facts to denigrate Hoosiers or the Great State of Indiana. The people of Indiana in the heart of the Midwest are some of the most hardworking, ethical, and God and Country loving people in the world. But if these examples are just some of what is happening in Indiana, then it is clear to me and I believe clear to the people across this nation, that voter fraud is happening throughout the country, from New York to California.

As Secretary of State, my top priority was to protect the voting rights of our citizens. Not one vote should be cancelled or diluted because of voter fraud and activity that works to defraud the system should not be tolerated. In order to help combat voter fraud and intimidation, my administration worked to ensure that all elections were conducted in a fair and accurate manner.

Opponents of voter ID laws cite the fact that there are not many charges brought or convictions for in-person voter fraud. Make no mistake, the relatively small number of convictions does not mean that voter fraud is not happening. The small number of charges brought is indicative of the nature of the case. In-person voter fraud is hard to prove, witnesses dissipate and these are non violent crimes that don't receive great prosecutorial attention in this era of budget restraints.

Opponents want to focus on criminal charges because it distracts from the underlying principles of the law. The number of charges brought is irrelevant. If you focus on criminal charges and convictions you miss the point entirely. The purpose, which is achieved through voter ID laws, is to instill confidence in the electoral process. We consistently hear people say that voting is one of the most important transactions in which an individual engages. I believe this to be true. We must treat it that way. We must give every citizen who votes that assurance that their time was not wasted. We must give every citizen who votes the assurance that their vote counts as much as any other vote that is cast. Voter ID laws do just that.

BARRIERS TO THE BALLOT

The title of this hearing "Barriers to the Ballot" implies the photo ID law creates a barrier. I reject that notion. Indiana has conducted twelve elections since 2006. **There has never been one person legitimately disenfranchised by our law. Not one!**

Voting is a right, but like every right there comes with it a corresponding responsibility. The voter has a responsibility to be legally registered. The voter has a responsibility to vote for the candidate that best represents his or her values and beliefs. The voter has a responsibility to

make time to vote. The voter has a responsibility to cast a legal ballot. Election administrators are responsible for ensuring that a voter has the opportunity to exercise their right.

In this vein, as Secretary of State, we took the responsibility for implementation and education of the law very seriously. Immediately upon passage, the office began training and outreach efforts to inform local election administrators how to implement the new law and voters on their rights and responsibilities under the new law. Informational literature and publications and training materials were produced to distribute to these groups and the media.

The proof this law is working is in the 12 successful elections and several dozen referenda elections from 2006 through the 2011 Municipal Primary Election Indiana has conducted.

CONCLUSION

Voter ID laws, and the one we specifically implemented in Indiana, are Constitutional, and give greater protection to our voting citizens and integrity of our election process.

STATEMENT OF
Víctor George Sánchez Jr.
President
United States Student Association

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL
RIGHTS AND HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT THE HEARING ENTITLED
“NEW VOTING LAWS: BARRIERS TO THE BALLOT?”

PRESENTED
SEPTEMBER 6, 2011

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee, thank you for the opportunity to submit this testimony. On behalf of the United States Student Association (USSA), I submit this statement regarding an issue that is fundamental to this country's existence. The ability to vote, the most important tool at our disposal as participants in this democracy, is in danger. The many voter suppression laws emerging in various states across the country reek of an awful history that once spewed out grandfather clauses and literacy tests. Although we do not find ourselves in that era anymore, we are not free of those same struggles. And as the official voice for millions of students, I write to voice our concerns.

The United States Student Association is the country oldest, largest and most inclusive student led organization. Since 1947 USSA has been fighting for access and affordability in higher education for all students. USSA's mission is to train and organize students to win concrete victories around issues of educational access. By mobilizing and uniting a powerful grassroots force of students all over the country, we build student power, win concrete victories, and prove that students are not just the future—as some of your colleagues continually reference—but also this nation's present.

As young people, our ability to vote and have our voices heard is key to advancing the issues we care deeply about. We understand that active participation in democracy increases our power and influence in society. As young people, we have few friends who champion our issues in government. And although our wallets may never allow us to influence decision-making through financial contributions, we are a massive community that understands what it means to take ownership of our collective electoral strength through our votes.

This year, the millennial generation celebrates the 40th anniversary of the 26th Amendment, which lowered the voting age to 18 in local, state and federal elections. Students and other millennials 18 to 29—those born after 1982—represent 50 million people and are a significant and growing segment of the electorate. In 2008 we made up 17% of voters, and in 2010 one in five millennials was a voter.¹ Despite this, we remain significantly underrepresented amongst registered voters.

Since the 2010-midterm elections it's become more evident that we are witnessing an intentional suppression of the voting rights for students, low-income, people of color and people with disabilities. The wave of restrictive voting policies around the country commonly known as Voter ID laws deteriorate millennial influence in our democracy by deterring young people from the polls in 2012.

¹ Brian Siebel, *Student and Youth Voters Face Higher Hurdles Than Others to Register and Vote in 2010, August 2010, Fair Elections Legal Network*, <http://fairelectionsnetwork.blogspot.com/2010/08/student-and-youth-voters-face-higher.html>

To date, Kansas, South Carolina, Rhode Island, Alabama, Tennessee, Texas, and Wisconsin have all passed some of the strictest voter ID laws in their 2011 legislative sessions.² According to the National Conference of State Legislatures (NCSL), thirty states require all voters to show some form of ID before voting at the polls. In 16 of these states non-photo forms of identification are acceptable, while 14 states require proper form of photo identification. Of the fourteen states that require photo identification, the National Conference of State Legislatures categorizes seven states with strict requirements, meaning that a person without proper ID will not have his or her vote counted.³

Voter ID laws, especially those that require state-issued photo identification adversely affect millions of eligible voters by suppressing their vote. The Brennan Center For Justice at New York University School of Law notes that as many as 10% of eligible voters do not have, and will not get, the identification required by the strictest of voter ID laws.⁴

Those who regularly move often do not carry ID with their current address. According to the Fair Election Legal Network (FELN), millennials are by far the most mobile segment of the voting population. 34% of millennials will have moved since 2008. This astounding figure is likely higher for college students considering the amount of students who attend institutions of higher learning in other cities, counties and/or states.⁵ There are several more challenges for student voters attending out-of-state schools that are only exacerbated by these laws; some of these include establishing residency, obtaining proper ID and meeting shorter voter registration deadlines.

For student voters, establishing residency can be difficult because many college dorm addresses are not easily accessible or within precinct lines. Some states require student voters to have documentation with their current address; while Federal law allows students to present a utility bill, bank statement, and other government documents with their name and current address.

When it comes to laws that require voters to provide appropriate government issued photo ID, the challenge is in obtaining a photo ID through the DMV, where the process can be lengthy and costly for students on a budget and low income individuals or families. Restrictive voting policies are especially hard on workers who may be forced to choose between having money for rent or a voice at the polls. Depending on the state, the nearest DMV may also not be easily accessible using public transportation, which also adversely affects students and other

² See *Voter ID Laws Passed in 2011*, August 2011, Brennan Center For Justice, http://brennan.ccdn.net/23e1f17ef6989857df_a0m6bxez7.pdf

³ See *Voter Identification Requirements*, August 2011, National Conference of State Legislatures, <http://www.ncsl.org/?tabid=16602>

⁴ See *Voter Identification*, Brennan Center For Justice at New York School of Law, http://www.brennancenter.org/page/-/d/download_file_10059.pdf

⁵ & ⁶ Brian Siebel, *Student and Youth Voters Face Higher Hurdles Than Others to Register and Vote in 2010, August 2010*, Fair Elections Legal Network, <http://fairelectionsnetwork.blogspot.com/2010/08/student-and-youth-voters-face-higher.html>

underrepresented populations. Also, while some states accept school IDs as photo IDs, others only accept them with a signature and current address, rendering students from these states ineligible to vote with their student IDs.

The Fair Elections Legal Network (FELN) notes that from the 12,000+ students in residence halls at two major Wisconsin universities, only 2% of them had a driver's license that reflected their local address.⁶

David Vines, a second year student at the University of Wisconsin Madison, will be one of the thousands of students adversely affected by the suppressive voter ID law passed in Wisconsin early this year. Since David moved to Madison, he has voted in every election he could. He says "given how essential voting is to a successful democracy, I took it as a personal attack when Governor Scott Walker and his Republican allies passed a bill saying that my Student ID, my Driver's license, and my U.S. Passport card weren't enough to prove my identity and that I could not be trusted to vote anymore in his Wisconsin."

As a student without a car, who dedicates a significant amount of his time to school work, student government responsibilities, and political activism, David must now ride his bike three and a half miles to wait for hours at a DMV to get a 4th form of valid photo identification. In his view this process of obtaining proper photo ID is "an unnecessary burden designed to specifically disenfranchise people like me from participating in my democracy. The new residency requirements, which require 30-day residency in order to vote is also a direct slap in the face to me and the tens of thousands of students like myself who move constantly throughout the year." David is an example of the tens of thousands of students who now must navigate the bureaucratic process of obtaining a proper ID for the purpose of voting.

Decision makers leading the fight for stricter voting policies have inaccurately claimed they are necessary due to wide spread fraud or the potential for fraud. Out of 196 million ballots casted since October 2002, 52 individuals have been convicted of federal crimes relating to election fraud.⁷ Take Ohio for example, statewide survey found that out of the 9 million votes casted in 2002 and 2004 there were four instances of ineligible persons voting or attempting to vote- a rate of 0.00004%.⁸ It's hard to believe how proponents continue to argue on the platform that these laws are designed to curtail rampant voter fraud when the statistics in every state suggest that the problem is nearly non-existent. The outcome is clear; there are no serious or widespread problems that justify these restrictive and repressive voting policies.

⁷ & ⁸ See *Voter Identification*, Brennan Center For Justice at New York School of Law, http://www.brennancenter.org/page/-/d/download_file_10059.pdf

Voter ID laws around the country have been and continue to be closely scrutinized and challenged on their legality. The U.S. Department of Justice has responded to Voter ID laws in several states to ensure no voter law violates the Civil Rights Act or the Constitution. Other lawsuits have also been filed in state courts on the legality of Voter ID laws. In Missouri, a voter ID law was struck down by the state's Supreme Court that found the state's constitution had stronger voter protection laws than the federal constitution.⁹ The Missouri Supreme Court in part based its decision on the costs to voters without proper ID would have to incur in order to comply with the law. Regardless, the NCSL points out that South Carolina and Texas laws cannot take effect until they receive "pre-clearance" from the U.S. Department of Justice. The U.S. Department of Justice has requested more information from these states on the new laws before allowing clearance. We will continue to look to the U.S. Department of Justice to ensure that the rights of Americans are not violated by suppressive voting laws.

Voter ID laws are not only an unwarranted attack on voters but in many instances are an expensive burden on the state. The U.S. Supreme Court has instructed states that require strict photo ID requirements to provide those IDs free of cost to voters who do not have them by shifting the cost to the state.¹⁰ According to Brennan Center For Justice, the State of Indiana estimated their photo ID law would cost up to \$1.3 million with an additional revenue loss of nearly \$2.2 million to provide more than 168,000 IDs to voters.¹¹ It is certain that every state that requires strict photo ID requirement will see a significant cost to taxpayers and loss of revenue. And in a time where state budget cuts are being slashed and vital programs and services being eliminated, it is shameful to see that these policy makers would rather challenge our people's ability to vote freely of such repressive restrictions, than ensure their health and a quality education well being as we do our best to weather this economic recession.

Finally, as an organization that represents students across the country we believe that voting is a right, not a privilege. Voting should not be treated as a good or a service because it is and always has been an inalienable right afforded to all citizens. We call on Congress to act swiftly and responsibly to recognize what is happening in our communities. Do not allow the disenfranchisement of communities of color, low income individuals and families, along with students. We should be expanding democracy, not limiting it.

Thank you again for the opportunity to submit this testimony.

⁹ & ¹¹ Vishal Agraharkar, Wendy Weiser, and Adam Skaggs, *The Cost of Voter ID Laws: What the Courts Say*, Brennan Center For Justice at New York University School of Law, http://brennan.3cdn.net/2f0860fb73fd559359_zzm6bhnd.pdf



September 8, 2011

The Honorable Richard Durbin
U.S. Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights
and Human Rights
Washington, DC 20510

The Honorable Lindsey Graham
U.S. Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights
and Human Rights
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham:

The Sentencing Project appreciates this opportunity to submit comments to the Subcommittee on the Constitution, Civil Rights and Human Rights on the occasion of its hearing, "New State Voting Laws: Barriers to the Ballot?" For over a decade The Sentencing Project, a national criminal justice research organization, has reported on the devastating impact of disenfranchisement laws that ban 5.3 million Americans from the voting booth, sometimes permanently, due to a criminal conviction. This year two states, Florida and Iowa, rescinded gubernatorial initiated reforms that had greatly expanded voter access for people with felony records. We urge this subcommittee to review these undemocratic policies that harm civic engagement, stymie rehabilitation and perpetuate racially disparate outcomes. Moreover, we applaud federal efforts, like the previously introduced Democracy Restoration Act, to expand voting rights and we encourage this subcommittee to support them as well.

Every state, except Maine and Vermont, prohibits prisoners from voting and 35 states prohibit voting by citizens on probation or parole in the community, while working and raising their families. Laws in 8 states call for lifetime disenfranchisement for certain categories of people with felony convictions, and four states ban all such persons from voting. In the last 30 years, due to the dramatic expansion of the criminal justice system, these laws have significantly affected the political voice of many American communities, most significantly African Americans. An estimated 1.4 million African American men -- 13% of black men -- are disenfranchised at a rate seven times the national average. Given current rates of incarceration, three in ten of the next generation of black men can expect to be disenfranchised at some point in their lifetime.

Fortunately, these bleak numbers, and a growing awareness of the unfairness associated with sometimes century-old felony disenfranchisement laws, have inspired a promising trend to expand access to previously disenfranchised citizens. Since 1997 23 states, under both Democratic and Republican administrations, increased voter rolls by 800,000 people by streamlining voter registration and restoration processes and granting voting rights to people with felony convictions. Indeed, most recently Virginia's Governor Robert McDonnell prioritized streamlining his voter enfranchisement process, resulting in record voter restoration rates.

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The changes in Iowa and Florida that restrict voting eligibility are troubling and counterproductive. In January, newly elected Iowa Governor Terry Branstad revoked a 2005 executive order that had restored voting rights to all citizens who had completed their sentence for a felony offense, resulting in rights restoration for 100,000 citizens. Now those seeking the right to vote once they have completed their sentence must petition the Governor for his individual approval. The process is cumbersome and slow and discourages many potential voters from applying. In March, Florida, which has the largest disenfranchised population (about one million), repealed 2007 reforms that eliminated the post-sentence waiting period for those convicted of non-violent offenses. Florida now requires everyone with a criminal conviction to apply to the Clemency Board headed by the Governor for restoration of their voting rights after a mandatory five-year waiting period.

Denying the vote to millions of people living in the community, working, and raising their families because of a past felony conviction counters the most fundamental principles of our democratic society and affects public safety. The federal Democracy Restoration Act would restore a strong and healthy democracy by granting federal voting rights to citizens upon their release from prison. Research shows that, among those who have been previously arrested, 27% of non-voters were rearrested compared with just 12% of voters. Voting is a civically responsible behavior that promotes public safety because people who vote are more likely to feel connected to their communities and to avoid falling back into crime.

The recent changes in Iowa and Florida, as well as the continued disenfranchisement of millions of citizens across the country because of a felony conviction, must be addressed. The Sentencing Project urges this subcommittee to review this issue during your hearing today and to offer strong recommendations for more democratic reform.

Sincerely,



Marc Maurer
Executive Director

Cc: Members of the Subcommittee on the Constitution, Civil Rights and Human Rights

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Sear's Last Wish
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SC AFL-CIO
SC Alliance for Retired Americans
SC Assn. of Community Development Corporations
SC Campaign to End AIDS
SC Coalition Against Domestic Violence and Sexual Assault
SC Coalition for Healthy Families
SC Equality Coalition
SC Gay & Lesbian Pride Movement
SC Legislative Black Caucus
SC NAACP
SC Professional Fire Fighters Assn.
SC Rural Education Grassroots Group
SC Voter Education Project
Unitarian Universalist Fellowship, Columbia
Uppstate Secular Humanists



South Carolina Progressive Network
P.O. Box 8325
Columbia, SC 29202

September 3, 2011

Senator Dick Durban, Chair
Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights
Re: New State Voting Laws: Barriers to the Ballot?

Dear Senator Durbin,

The South Carolina Progressive Network (SCPN) is a 16-year-old coalition of organizations and individuals committed to just and equitable state policies. The Network has opposed legislation requiring voters to show a photo ID since the bills were first introduced in 2008. Network Executive Director Brett Bursey participated in every subcommittee and committee hearing on the bill's versions. The H-3003 version of the bill was signed into law by Gov. Nikki Haley March 18, 2011.

The SCPN has submitted affidavits from individuals whose voting rights will be abridged by the photo ID law (see attached DOJ affidavits) to the US Justice Department for consideration in their Section 5 deliberations.

We have absolutely no doubt that this law was promulgated and promoted by the American Legislative Exchange Council and is intended to reduce voting by traditional Democratic voters. The 2008 version of the SC photo ID bill (H-3418 attached) was so completely cribbed from ALEC that it contained a provision that allowed voters to show photo ID up to ten days after an election to have their provisional ballot counted. Indiana (the first state ALEC targeted for photo ID) certifies votes ten days after an election, but South Carolina certifies provisional ballots three days after a general election.

After nearly 250,000 SC voters turned out to vote early in-person absentee in the 2008 general election, Rep. Alan Clemmons (R-Horry) proposed legislation to do away with in-person absentee voting. A majority of those early voters were people of color who likely voted Democrat. Rep. Clemmons was the primary sponsor of the state's photo ID law (H-3003) and the chair of the House Election Laws Subcommittee that heard testimony on his bill.

Rep. Clemmons has stated in committee meetings on early voting that everyone voting during the same 12 hour period on election day is "patriotic".

Royal Masset, the former political director of the Republican Party of Texas, was quoted in the Houston Chronicle during a 2007 debate over photo ID as

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saying that “among Republicans it is an ‘article of religious faith that voter fraud is causing us to lose elections,’ Masset said he doesn’t agree with that, but does believe that requiring photo IDs could cause enough of a drop-off in legitimate Democratic voting to add 3 percent to the Republican vote. (<http://www.chron.com/news/article/In-trying-to-win-has-Dewhurst-lost-a-friend-1815569.php>)”

For the reasons set forth below, The organizations of the SC Progressive Network have requested that the DOJ deny pre-clearance of SC’s photo ID law, as the proposed changes have no legitimate purpose and will place unnecessary burdens on minority voters.

1. There is no rational basis for the law. Under direct examination by SC Progressive Network Executive Director during subcommittee hearings on H-3003 (now Act R54), bill sponsor Rep. Alan Clemmons conceded that there have been no recorded instances of voter impersonation in South Carolina that the legislation is intended to address. Rep. Clemmons stated that his bill would address the “public perception” that voter fraud is a problem in South Carolina. (See Bursey Affidavit and Clemmons letter to SC Attorney General attached).

2. The state issued Department of Motor Vehicle (DMV) photo identification cards, required for in-person voting, require the voter to have a birth certificate in the name they currently use. This requirement is an unreasonable obstacle for voters, especially elderly, black voters who have never had a birth certificate. Affidavits have been submitted (in DOJ comments and attached) detailing how registered voters are being forced to pay a \$150 filing fee to go to go to court to have a name changed, prior to having a birth certificate issued by the Department of Health and Environmental Control (DHEC), prior to getting the DMV ID required to vote.

Mr. Larrie Butler was born at home in 1926 and has never had a birth certificate (Butler affidavit filed in previous comments). The DMV would not accept Mr. Butler’s current and valid Maryland driver’s license in exchange for a SC driver’s license, and sent him to DHEC to get a birth certificate. Mr. Butler gathered documents required by DHEC to issue a “delayed certificate of birth”, including his college, high school, medical and military records. DHEC insisted on Mr. Butler producing his elementary school records. Mr. Butler went to an elementary school in a black church, during the Jim Crow segregation of the 1930’s, that no longer exists. Our organization provided Mr. Butler with a 1930 census report that established when and where he was born, but DHEC would not accept the document because it spelled his first name as “Larry”. Mr. Butler was told that he needs to go to court to get his name established.

Mr. Butler honorably served this country in the Army and has been voting since the end of Jim Crow. Mr. Butler, and other South Carolinians in his situation, view the new photo voter ID law as a new twist on an old game, intended to abridge their right to vote.

3. The offer of a free photo voter registration card, should Act R54 be pre-cleared, does little to mitigate the abridgement of minority voting rights.

There is no doubt that the implementation of photo voter registration card’s required by Act R54 will pose an expense on the taxpayers (the entire photo ID implementation, training and education was funded inadequately at \$535,000: http://www.scstatehouse.gov/sess119_2011-2012/appropriations2011/tas79.htm) and a burden on registered black voters.

The funding for the SC Election Commission to buy one camera for each of the 46 county voter registration offices was finally approved by the legislature on August 2. On August 25, the SC Election Commission filed a "Procedure for Issuing Photo Voter Registration Cards" with DOJ (see attached), that details a cumbersome process. Newly registered voters will receive a voter registration card with a letter advising them they can not vote with the card unless they have approved photo ID. The voter can then travel to the county voter registration office and trade their card in for a "temporary photo voter registration card" that is good for 30 days. The voter will then get their permanent photo voter registration in the card from the state Election Commission.

We know that 178,000+ registered voters do not have DMV ID cards (see attachment: ID statistics). We know that a higher percentage of black voters do not have photo ID and that the majority black counties have the highest percentage of voters without photo ID (ibid). These voters will have to have to travel to their county's voter registration office, a 100 mile round trip for many, to trade their old voter registration card for one with their picture. If you don't have transportation, can't afford time off work, don't have a care-giver for who you are caring for, have disabilities, or are just plain broke, these may be reasons you don't get to cast a regular ballot in the next election.

4. The law requiring photo ID's will be applied unequally.

South Carolina's laws that determine who gets to vote and who counts the votes was established in the Constitution of 1895. That constitution was a product of avowed racist intent to turn back the voting rights blacks had gained following the civil war. This "Jim Crow" legislation put the control of elections in the hands of state senators who appointed the county election boards.

Today, 116 years later, the county election board are appointed by the legislative delegation representing that county. Some are dominate Democrat, most are dominate Republican, but all appointments are political.

DOJ needs to understand that all the decisions regarding provisional ballots and reasonable impediments will be made by majority party appointees:

SECTION 7-5-10. Appointment and removal of board members; training and certification requirements.

(A) Between the first day of January and the fifteenth day of March in each even-numbered year the Governor shall appoint, by and with the advice and consent of the Senate, not less than three nor more than five competent and discreet persons in each county, who are qualified electors of that county and who must be known as the "Board of Registration of County". The Governor shall notify the State Election Commission in writing of the appointments. The members appointed are subject to removal by the Governor for incapacity, misconduct, or neglect of duty.

This law has been modified, and any sense of equal protection confounded, by "local legislation" that established different rules for most counties under separate legal codes. Local legislation is introduced and passed with only the representatives of a particular district voting. Individual county laws are established

by Title 7, Chapter 27 of the state code and found at: <http://www.scstatehouse.gov/code/t07c027.htm>.

Our concern about how provisions of Act R54 would be unequally enforced are substantiated by a 2008 ACLU study of county election commission's responses to questions regarding ex-felon voting rights. Responses ranged from felons can never vote (one county) to they have to bring in "appropriate" forms (39 counties).

State statutes allow ex-felons to vote and do not require any forms beyond signing the voter's oath on the registration form that they are not serving a sentence for a conviction. Demanding that ex-felons bring in proof of completion of their sentence is a locally exercised option not supported by statute.

"The state allows counties to set their own policy regarding documentation. Thirty-nine out of forty-six (85%) county representatives said individuals must present a letter from the parole/probation office, while few had no "special procedure" or said that verbal confirmation from the oath was sufficient. (ACLU 2008 study on criminal disenfranchisement attached)"

5. The "Reasonable Impediment" exemption for photo ID is vague and creates a second class of voters.

SECTION 5. Section 7-13-710 of the 1976 Code, as last amended by Act 459 of 1996, is further amended to read:

(b) If an elector does not produce a valid and current photograph identification because the elector suffers from a reasonable impediment that prevents the elector from obtaining photograph identification, he may complete an affidavit under the penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) the elector suffers from a reasonable impediment that prevents him from obtaining photograph identification. The elector also shall list the impediment, unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of registration and elections before certification of the election by the county board of canvassers.

There is no definition of "reasonable impediment" in the statute. A recent SC Attorney General's opinion on what constitutes a reasonable impediment concluded that a "valid reason" is sufficient cause. The determination of "reasonable" or "valid" will be made by politically appointed, local election boards that are provably subjective and unequal in their enforcement (see #4 comment above).

6. The state Attorney General, in their submission for pre-clearance, claimed that "This office is not aware that the changes in the Act affect any minority or language groups adversely."

The fact that all 28 members of the House Legislative Black Caucus walked out of the chamber, in opposition to this bill, should have sent a message to the all white Republican majority who passed the legislation that the law would affect a minority group adversely. The white majority party does not seem to know why South Carolina is a Section 5 state.

7. The state Attorney General's opinion on the statute's meaning of a "reasonable impediment" (see attached AG's Opinion) contained a single footnote at the end that questioned the constitutionality of the Voting Right Act.

We submit that the footnote: "*We note that the United States Supreme Court recently avoided the question of whether the Voting Rights Act exceeds the constitutional power of Congress to enforce the Fifteenth Amendment, but that Justice Thomas would have decided the constitutional question against the constitutionality of the Act.*" reflects a political and racial bias that should weigh against the pre-clearance of this submission.

For these reasons, the 59 organizations of the South Carolina Progressive Network, requested that DOJ deny pre-clearance of SC's photo ID law (H-3003: Act R54).

For these reasons, we respectfully request this Senate Judiciary Subcommittee find that South Carolina's photo ID law is part of a nationwide partisan effort to suppress citizens' right to vote.



Brett Bursey
Executive Director, SC Progressive Network



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LEGISLATIVE TESTIMONY

**NEW STATE VOTING LAWS: BARRIERS TO THE
BALLOT?**

**Testimony before the Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human
Rights
United States Senate**

September 8, 2011

**Hans A. von Spakovsky
Senior Legal Fellow
The Heritage Foundation**

Chairman Durbin, Ranking Member Graham, and members of the Committee, thank you for the opportunity to testify today. In the pages that follow, I will explain how recent measures by states have enhanced the election process and voter integrity.

My name is Hans A. von Spakovsky.¹ I am a Senior Legal Fellow in the Center for Legal & Judicial Studies and Manager of the Civil Justice Reform Initiative at The

¹ The title and affiliation are for identification purposes. The staff of The Heritage Foundation testify as individuals discussing their own independent research. The views expressed here are my own, and do not reflect an institutional position for The Heritage Foundation or its board of trustees, and do not reflect support or opposition for any specific legislation. The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under § 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from government at any level; nor does it perform any government or other contract work. Heritage is also the most broadly supported think tank in the United States, with over 710,000 supporters in every state, 78% of whom are individuals, 17% are foundations,

Heritage Foundation. By way of background, I have extensive experience in voting matters, including both the administration of elections and the enforcement of federal voting rights and campaign finance laws. I had the privilege of serving as a Commissioner for two years on the Federal Election Commission (2006-2007). Before that, I spent four years at the Department of Justice as a career lawyer, including three years as Counsel to the Assistant Attorney General for Civil Rights (2001-2005), where I coordinated the enforcement of federal laws that guarantee the right to vote.

Additionally, I was a member of the first Board of Advisors of the U.S. Election Assistance Commission. I spent five years in Atlanta, Georgia, on the Fulton County Board of Registration and Elections, which is responsible for administering elections in the largest county in Georgia, a county that is almost half African-American. In Virginia, I am currently the Vice Chairman of the Fairfax County Electoral Board, which administers elections in the largest county in the state. I have also served on the Virginia Advisory Board to the U.S. Commission on Civil Rights.

I have published extensively on election and voting issues. I am a 1984 graduate of the Vanderbilt University School of Law and received a B.S. from the Massachusetts Institute of Technology in 1981.²

This hearing could not be more timely. As the country once again prepares to elect a President, it is critically important to discuss the importance of states implementing measures that improve the security and integrity of our elections. One of the key principles in any fair election is ensuring that the person who casts a ballot is legally eligible to vote. And the fairest way to do that is by requiring individuals to authenticate their citizenship when they register to vote and their identity when they show up at the polls by producing photographic identification. Such measures increase public confidence in our election process.

Fortunately, a number of state legislatures have implemented such requirements. Their legislators understand that the United States has an unfortunate history of voter fraud and that such requirements are a fundamental and necessary component of ensuring the security of the election process. As Governor Lincoln Chafee, an independent, said when he signed Rhode Island's new voter ID law: "requiring identification at the polling place is a reasonable request to ensure the accuracy and integrity of our elections."

It is important that every individual who is eligible have the opportunity to vote, but it is equally important that the votes of eligible voters are not stolen or diluted by a fraudulent or bogus vote cast by an ineligible or imaginary voter. The evidence from academic studies and actual turnout in elections is also overwhelming that – contrary to

and 5% are corporations. Heritage has almost 31,000 members in Pennsylvania. The top five corporate givers provide The Heritage Foundation with 2% of its 2010 income.

² More information on my background and a list of publications is available at <http://www.heritage.org/About/Staff/V/Hans-von-Spakovsky?query=Hans+von+Spakovsky>.

the near hysterical claims of opponents – voter ID does *not* depress the turnout of voters, including minority, poor, and elderly voters. Proof of citizenship requirements also do not prevent eligible Americans from registering and voting. Despite the message in the not-so-subtle title of this hearing, these new state voting laws are not barriers to the ballot. To the contrary, they will ensure the integrity and honesty of elections going forward, and act to root out voter fraud.

The Need for Voter ID

Guaranteeing the integrity of elections requires having security throughout the entire election process, from voter registration, to the casting of votes, to the counting of ballots after the polls have closed. For example, jurisdictions that use paper ballots seal their ballot boxes when all of the ballots have been deposited, and election officials have step-by-step procedures for securing election ballots and other materials throughout the election process.

Everyone would agree that the integrity and security of elections would be severely endangered if county election officials allowed world-wide Internet access to the computers used in their election headquarters to tabulate ballots and count votes – allowing that kind of outside access to the computers used to tabulate votes would invite computer hackers to attempt to steal an election by changing the results.

Requiring voters to authenticate their identity at the polling place is equally necessary to protect the integrity of elections and access to the voting process. Every illegal vote steals or dilutes the vote of an actual legitimate voter. Opponents of voter ID claim that it can only prevent impersonation fraud at the polls, which rarely happens. That assertion is incorrect. Voter ID prevents and deters:

- impersonation fraud at the polls;
- voting under fictitious voter registrations;
- double voting by individuals registered in more than one state or locality; and
- voting by illegal aliens, or even legal aliens who are still not entitled to vote since state and federal elections are restricted to U.S. citizens.

As the Commission on Federal Election Reform headed by President Jimmy Carter and Secretary of State James Baker said in 2005:

“The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.”

Voter fraud exists, and criminal penalties imposed after the fact are an insufficient deterrent to protect against it. In the 2008 case of *Crawford v. Marion County Election Board* in which Justice John Paul Stevens wrote the majority opinion upholding Indiana’s voter ID law, the Court said that despite such criminal penalties:

“It remains true, however, that flagrant examples of such fraud in other parts of the country have been documented throughout this Nation’s history by respected historians and journalists, that occasional examples have surfaced in recent years ...that...demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election.”

Election officials around the country do a good job overall of administering our elections especially given their lack of resources. But there are recurring problems with our voter registration system because many states do not do an adequate job of checking the accuracy and validity of new voter registrations. The potential for abuse and the casting of fraudulent ballots by ineligible voters (like illegal aliens or persons registered in more than one state) or in the names of fake voters, dead voters, or voters who have moved but whose names remain on the registration list exists – and has occurred in reported cases. I provide a more detailed explanation of such matters (with examples of actual voter fraud cases) in my new Heritage publication, “Voter Photo Identification: Protecting the Security of Elections.”³

As the Supreme Court recognized, there is a real risk that voter fraud could affect the outcome of a close election. There are enough incidents and reported cases of actual voter fraud to make it very clear that we must take the steps necessary to make such fraud harder to commit. Requiring voter ID is just one such common sense step that can stop or deter many of these problems.

Voter ID Does Not Reduce Turnout

States must protect the security of the election process, but they must also ensure that every eligible individual is able to vote. Not only does voter ID help prevent fraudulent voting, but where it has been implemented, it has *not* reduced turnout. Despite tiresome false claims to the contrary, there is no evidence that voter ID decreases the turnout of voters or has a disparate impact on minority, poor, or elderly voters – the overwhelming majority of Americans have photo ID or can easily obtain one. State Senator Harold Metts, the Democratic African-American who cosponsored Rhode Island’s new voter ID law, noted that “very few adults lack one of the forms of identification that will be accepted, and the rare person who does can get a free voter ID card.” He added that as “a minority citizen and a senior citizen, I would not support anything that I thought would represent obstacles or limit protections.”

Numerous studies – including those by The Heritage Foundation, the University of Missouri, the University of Delaware, and the University of Nebraska-Lincoln – have looked at turnout data from many states and several elections and concluded that voter ID does not depress turnout. In fact, the Delaware-Nebraska study said that “concerns about voter-identification laws affecting turnout are much ado about nothing.” Democratic

³ Legal Memorandum No. 70 (July 13, 2011); <http://www.heritage.org/Research/Reports/2011/07/Voter-Photo-Identification-Protecting-the-Security-of-Elections>.

Texas state representative Joe Pickett certainly agreed -- he said that "If I really, truly thought that this would disenfranchise somebody, I would've voted against. In these days and times, it's just not the case...Having a basic identification is a function of everyday life."

Polls show overwhelming support for voter ID across all ethnic and racial lines -- Rasmussen reports that "This is a sentiment that spans demographics, as majorities in every demographic agree." That is no doubt because Americans have to use a photo ID to obtain a library card, drink a beer, cash a check, board an airplane, buy a train ticket, or check into a hotel. They understand that requiring voter ID is a common-sense reform and a requirement the vast majority of voters can easily meet and approve. Those in the leadership of organizations opposed to such common-sense reforms are clearly not in touch with their constituents.

Actual election results also confirm that voter ID does not hurt minority turnout. Voting in both Georgia and Indiana *increased* more dramatically in 2008 in both the presidential preference primary *and* the general election in the first presidential elections held *after* their photo ID laws went into effect than in some states *without* photo ID.

There was record turnout in Georgia in the 2008 presidential primary election -- over 2 million voters, more than twice as many as in 2004 when the photo ID law was not in effect (the law was first applied to local elections in 2007). The number of African-Americans voting in the 2008 primary also doubled from 2004. In fact, there were 100,000 more votes in the Democratic Primary than in the Republican Primary.

In the 2008 general election when President Obama was elected, Georgia, with one of the strictest voter ID laws in the nation, had the largest turnout in its history -- more than 4 million voters. Democratic turnout was up an astonishing 6.1 percentage points from the 2004 election when there was no photo ID requirement, the fifth largest increase of any state. Overall turnout in Georgia went up 6.7 percentage points, the second highest increase in the country, a striking increase even in an election year where there was general increase in turnout over the prior presidential election. The black share of the statewide vote increased from 25% in 2004 to 30% in 2008 according to the Joint Center for Political and Economic Studies. According to Census Bureau surveys, 65% of the black voting age population voted in the 2008 election compared to only 54.4% in 2004, an increase of over 10 percentage points.

By contrast, the Democratic turnout in the nearby state of Mississippi, also a state with a high percentage of black voters but without a voter ID requirement, increased by only 2.35 percentage points. Turnout in the 2010 congressional election in Georgia was over 2.6 million voters -- an increase of almost 500,000 voters over the 2006 election. While only 42.9% of registered black Georgians voted in 2006, 50.4% voted in 2010 with the voter ID law in effect, an increase of over seven percentage points. As Georgia's Secretary of State recently pointed out, when compared to the 2006 election, voter turnout in 2010 "among African Americans outpaced the growth of that population's pool of registered voters by more than 20 percentage points."

The Georgia voter ID requirement was upheld in final orders issued by every state and federal court in Georgia that reviewed the law, including the Court of Appeals for the Eleventh Circuit and the Supreme Court of Georgia. These courts held that such an ID requirement is not discriminatory and does not violate the Constitution or any federal voting rights laws, including the Voting Rights Act of 1965.

Just as has happened in every state that has considered voter ID legislation, organizations in Georgia like the ACLU and the NAACP made apocalyptic claims that there were hundreds of thousands of Georgians without photo ID. Yet when the federal district court dismissed all of their claims, the court pointed out that after two years of litigation, none of the plaintiff organizations had been able to produce a single individual who did not have a photo ID or could not easily obtain one. The district court judge concluded that this “failure to identify those individuals ‘is particularly acute’ in light of the Plaintiffs’ contention that a large number of Georgia voters lack acceptable Photo ID...the fact that Plaintiffs, in spite of their efforts, have failed to uncover anyone ‘who can attest to the fact that he/she will be prevented from voting’ provides significant support for a conclusion that the photo ID requirement does not unduly burden the right to vote.”

In Indiana, which the U.S. Supreme Court said has the strictest voter ID law in the country, turnout in the Democratic presidential preference primary in 2008 quadrupled from the 2004 election when the photo ID law was not in effect – in fact, there were 862,000 more votes cast in the Democratic primary than the Republican primary. In the general election in November, the turnout of Democratic voters increased by 8.32 percentage points from 2004, the largest increase in Democratic turnout of any state in the nation. According to Census Bureau surveys, 59.2% of the black voting age population voted in the 2008 election compared to only 53.8% in 2004, an increase of over 5 percentage points.

The neighboring state of Illinois, with no photo ID requirement and President Obama’s home state, had an increase in Democratic turnout of only 4.4 percentage points – only half of Indiana’s increase. Turnout in the 2010 congressional election in Indiana was almost 1.75 million voters – an increase of more than 77,000 voters over the 2006 election. According to the Joint Center for Political and Economic Studies, Indiana was one of the states with a “large and impressive” increase in black turnout in the 2010 election: “the black share of the state vote was higher in 2010 than it was in 2008, a banner year for black turnout.” In fact, the black share of the total vote went from only seven percent in 2008 to 12 percent in 2010.

Just as in Georgia, the federal court in Indiana noted the complete inability of the plaintiffs to produce anyone who would not be able to vote because of the photo ID law:

“Despite apocalyptic assertions of wholesale voter disenfranchisement, Plaintiffs have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting pursuant to [the photo ID law] because of

his or her inability to obtain the necessary photo identification. Similarly, Plaintiffs have failed to produce any evidence of any individual, registered or unregistered, who would have to obtain photo identification in order to vote, let alone anyone who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote.”

Some erroneously claim that requiring an ID, even when the state will provide a free ID, amounts to a “poll tax” because of the incidental costs like possible travel to a registrar’s office or obtaining a birth certificate that may be involved. The federal court in Georgia dismissed this claim, agreeing with the Indiana federal court that concluded that such an:

“argument represents a dramatic overstatement of what fairly constitutes a ‘poll tax.’ Thus, the imposition of tangential burdens does not transform a regulation into a poll tax. Moreover, the cost of time and transportation cannot plausibly qualify as a prohibited poll tax because those same ‘costs’ also result from voter registration and in-person voting requirements, which one would not reasonably construe as a poll tax.”

As a general matter, statistics from the U.S. Department of Transportation show that there are currently 205,781,457 valid driver’s licenses issued by states across the country for individuals 18 years of age or older, while the U.S. Election Assistance Commission cites 186,874,157 total registered voters.⁴ That means there are almost 19 million *more* driver’s licenses than registered voters nationwide. This number does not even include the additional 3 or 4 percent of individuals who, according to a Federal Election Commission study, have an identification card issued by state motor vehicle agencies in lieu of a driver’s license.

These statistics on driver’s licenses and non-driver’s license ID cards do not include the more than 85 million passports issued by the federal government as reported by the Government Accountability Office. These passports are acceptable forms of identification under state voter ID laws. Furthermore, government employees—whether federal, state, or local; whether full-time or part-time—also have valid IDs. In Georgia, for example, the voter ID requirement can be met by a “valid employee identification card containing a photograph” issued by any entity of federal, state, or local government. The same is true in Indiana. Nationwide there are another 22,632,381 people who work for public institutions, all of whom may have this type of ID.

Military ID cards can also be used to satisfy voter ID requirements under most state laws. Active duty military personnel and reservists all possess a military ID with a photograph (Common Access Card or CAC) and veterans have a similar ID card. In states like Georgia and Indiana, there are over 130,000 active members of the military who are eligible to vote using their CAC cards. The Veterans Administration reports that

⁴ See “Without Proof: The Unpersuasive Case Against Voter Identification,” Legal Memorandum No. 72 (August 24, 2011); <http://www.heritage.org/Research/Reports/2011/08/Without-Proof-The-Unpersuasive-Case-Against-Voter-Identification>.

there are about 22.7 million veterans age 17 and over in the U.S, each of whom would have an acceptable ID card under the voter ID laws in Georgia and Indiana, as well as the bills recently passed in Rhode Island and Kansas.

Proof of Citizenship

A number of states such as Arizona, Kansas, and Georgia have also implemented requirements that an individual provide proof of citizenship when registering to vote. This is needed to prevent individuals who are not U.S. citizens from registering and voting in our elections. This problem is explained in extensive detail in a paper published by The Heritage Foundation, "The Threat of Non-Citizen Voting."⁵

The evidence is indisputable that aliens, both legal and illegal, are registering and voting in federal, state, and local elections. In 2005, the U.S. Government Accountability Office found that up to three percent of the 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district court were not U.S. citizens.

Following a mayor's race in Compton, California, in another example, aliens testified under oath in court in 2002 that they voted in the election. In that case, a candidate who was elected to the city council was permanently disqualified from holding public office in California for soliciting non-citizens to register and vote. The fact that non-citizens registered and voted in the election would never have been discovered except for the fact that it was a very close election and the incumbent mayor, who lost by less than 300 votes, contested it.

Similarly, the House of Representatives investigated a 1996 congressional race in California. Democrat Loretta Sanchez won the election by just 979 votes over Republican incumbent Bob Dornan. It is true that his challenge was dismissed – but only after the House Committee on Oversight and Government Reform turned up at least 624 invalid votes by non-citizens who were present in the U.S. Immigration and Naturalization Service (INS) database because they had applied for citizenship, as well as another 124 improper absentee ballots. The investigation, however, could not detect *illegal* aliens who were not in the INS records. As the Oversight Committee pointed out: "[I]f there is a significant number of 'documented aliens,' aliens in INS records, on the Orange County voter registration rolls, how many illegal or undocumented aliens may be registered to vote in Orange County?"

I recently received a copy of an order dated October 13, 2010 from removal proceedings filed in a federal immigration court in Orlando, Florida. The order concerned an immigrant from Cuba who arrived in the United States in April of 2004 and

⁵ Legal Memorandum No. 28 (July 10, 2008); <http://www.heritage.org/Research/Reports/2008/07/The-Threat-of-Non-Citizen-Voting>.

promptly registered and voted illegally and without detection in the November 2004 election.

America has always been a nation of immigrants and we remain today the most welcoming nation in the world. Newly minted citizens, like my parents, assimilate and become part of the American culture very quickly. New citizens should all be encouraged and assisted in registering to vote and taking part in our election process. But allowing noncitizens to register and vote effectively disenfranchises legitimate voters whose votes are diluted. Requiring voters to provide proof of citizenship is a requirement that is easily met that will help protect the integrity of our elections.

Military Voters

The voters who are really being disenfranchised continue to be overseas military voters. A study recently released by The Heritage Foundation found that despite the passage of the MOVE Act in 2009, only an anemic 4.6 percent of eligible military voters were able to cast an absentee ballot that was counted in the 2010 election.⁶ Many states acted promptly to implement the changes required by the MOVE Act; unfortunately, others like New York and Illinois did not. At least 14 states had one or more counties that failed to mail absentee ballots at least 45 days before the election as required by the MOVE Act.

In New York and Illinois, some local election officials waited until October 5, 2010 – more than two weeks after the deadline and less than 30 days before the election – to mail out absentee military ballots. These violations affected more than 45,000 military and overseas voters who requested an absentee ballot in these two states and resulted in lawsuits filed against election officials by the Department of Justice.

Conclusion

Voter ID and proof of citizenship requirements do not affect the turnout of voters. The claims that the implementation of such laws is vote suppression is completely unsupported and a libel on the American people and their elected representatives who understand these are common-sense reforms easily complied with. If these were the equivalent of “Jim Crow” as has been outrageously and inaccurately claimed, then the security requirements imposed by the TSA and Congress itself must also be categorized as “Jim Crow.”

The ability to travel freely within the United States is a basic right. Yet no one can board an airplane at any airport in the United States without showing government-issued photo identification. There have been no claims that such a requirement is somehow “discriminatory” and an imposition of “Jim Crow.” No individual can enter most federal buildings to exercise the First Amendment right to “petition the

⁶ “A President’s Opportunity: Making Military Voters a Priority,” Legal Memorandum No. 71 (July 19, 2011); <http://www.heritage.org/Research/Reports/2011/07/A-Presidents-Opportunity-Making-Military-Voters-a-Priority>

Government” without a government-issued photo ID – yet there have been no comparisons of that requirement to “Jim Crow.”

Similarly, the right to seek employment to support oneself and one’s family is a fundamental and basic right, as important as the right to vote. That right is protected by federal and state anti-discrimination laws. And yet under federal law, no individual can be employed anywhere in the United States without producing documentation authenticating his identity and his U.S. citizenship or legal authorization to work as a legally-admitted noncitizen. Employers must complete the federal I-9 form issued by the Department of Homeland Security “since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986” and “an individual may not begin employment unless this [I-9] form is completed.” States are simply implementing a similar requirement to authenticate identity and citizenship for registering and voting.

Such reforms are supported by the vast majority of voters of all races and ethnic backgrounds and help protect the integrity and reliability of the electoral process. All states have a valid and legitimate state interest not only in deterring and detecting voter fraud, but in maintaining the confidence of their citizens in the security of our elections. As Rhode Island Democratic state representative Jon Brien, who sponsored the state’s voter ID law, said, “Voting is one of the most important rights and duties that we have as Americans and it should be treated accordingly.”

Statement of Professor Daniel P. Tokaji**U.S. Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights****New State Voting Laws - Barriers to the Ballot?
September 6, 2011**

Thank you for the opportunity to present a written statement. I regret that I cannot be there in person for the hearing on this important topic.

By way of introduction, I am a Professor of Law at The Ohio State University's Moritz College of Law and a Senior Fellow at the nonpartisan *Election Law @ Moritz* project, a group of scholars that provides information, analysis, and commentary on election law and policy. I am also a co-author of the casebook *Election Law: Cases and Materials* and the co-editor of *Election Law Journal*, the only peer-reviewed publication in the field. For the last eight years, my primary area of research and scholarship has been election law and administration, in Ohio and throughout the country. This statement is offered solely on my own behalf, not on behalf of any other individuals or entities with which I am associated.

This year, we have seen a number of states adopt significant changes to their voting laws. The most significant changes have been concentrated in three areas: (1) laws imposing stricter identification requirements on voters, (2) laws limiting early and absentee voting; and (3) laws restricting opportunities for voter registration.

This new round of legal changes is in one sense surprising, given that the United States did not experience unusual problems in last year's elections. No election is free from glitches. But on the whole, the 2010 election cycle was much less eventful than those of past years, from the perspective of election administration problems. We have nevertheless seen the highest level of state legislative activity since the immediate aftermath of the 2000 election.

What explains the recent rise in state legislative activity? The most obvious and important change, of course, has been in the control of state legislatures and Governor's offices. These changes, rather than any new problems with our election system, are clearly driving the latest round of changes to state voting laws.

Unfortunately, most of the changes adopted this year have made it more difficult for ordinary citizens to vote and have their votes counted. This is ironic, given that the main problem with American elections is not that too many people are voting; it is that not enough eligible citizens are turning out to vote. In my view, we should be focused on changes that will make it easier to register and to vote, not ones that will make participation more of a challenge.

The comments that follow will focus primarily on the experience of my home state of Ohio. I do so not only because Ohio is the state that I have most closely studied, but also because Ohio is a key swing state which has recently adopted major changes to its election laws. We have also had a vigorous debate over whether to impose a stricter voter identification requirement. Ohio therefore

provides a useful case study, through which to understand election law developments around the country.

The remainder of my statement is divided into three parts. First, I put the recent round of state election law changes in perspective, providing an overview of the last decade of election reform and what lessons this experience should teach us. Second, I will discuss the law that the Ohio legislature recently adopted, aspects of which will upset the stability of our election system and make it more difficult for eligible citizens to vote and have their votes counted. Third, I will discuss the debate over whether to require government-issued photo ID, which remains a contentious issue across the country.

I. A Decade of Election Reform

In the years following the 2000 election, the United States experienced major changes to its election system. At the federal level, the most significant changes were prompted by enactment of the Help America Vote Act of 2002 (“HAVA”), which in turn triggered a number of changes at the state level. These legal changes did not solve all the problems in our election system and, in some respects, made things worse, by upsetting the set of rules and practices to which election officials, poll workers, and voters had become accustomed.

As we all remember, Ohio had enormous difficulties in the 2004 presidential election, in which our state’s votes were pivotal. Among the areas of controversy and litigation were voting machines, voter registration, voter identification, provisional ballots, challenges to voter eligibility, and long lines at some polling places.

In 2005, the Ohio legislature enacted a massive bill, making a variety of legal changes in provisional voting, challenges to voter eligibility, absentee voting, recounts and contests, voter identification, and other subjects. There were some constructive changes made by this legislation but, on the whole, it too had a destabilizing effect on our election system, resulting in multiple lawsuits and court orders – not to mention confusion for election officials, poll workers, and voters alike. It took years to sort out this confusion and restore some stability to our system.

In 2007, my colleagues at the Ohio State election law project and I released a comprehensive study of the election systems of five midwestern states.¹ We ranked Ohio last among these states in terms of the health of its election system. There can be no question, however, that in the years since this study was issued, my state has made enormous improvements in the functioning of its election system.² The most serious problems with Ohio’s system have been resolved through litigation, including court orders in multiple cases. Just as important, the various actors in our election system have become familiar with the changes in election law over the course of time.

¹STEVEN F. HUEFNER, DANIEL P. TOKAJI, & EDWARD B. FOLEY, FROM REGISTRATION TO RECOUNTS: THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES (2007).

²We discuss these changes in a follow-up book, STEVEN F. HUEFNER, NATHAN A. CEMENSKA, DANIEL P. TOKAJI, & EDWARD B. FOLEY, FROM REGISTRATION TO RECOUNTS REVISITED: DEVELOPMENTS IN THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES (2011).

What's the big lesson to be learned from this recent history? Changes in election law, however well-intentioned, invariably have unanticipated consequences. My colleagues and I have used the metaphor of an "ecosystem" to describe how elections work. The idea is that there is a delicate balance among the various component parts of our election system, which major legal changes tend to disrupt. The tendency of such changes is to destabilize the system in the years that follow. The ultimate lesson is that we should be cautious in making major changes to our election system.

II. Ohio's 2011 Election Legislation

This summer, the Ohio legislature adopted and Governor Kasich signed Amended Substitute House Bill 194 (HB 194), which yet again overhauls the state's election laws. This new law will make it more difficult for eligible citizens to vote, and can be expected result in many more years of controversy, confusion, and court involvement in our elections. Below is a summary of some of the key changes in this new law and the problems they create.

- *Reducing opportunities for early voting.* Early voting allows people to vote in person at designated locations prior to election day. This has the advantage of reducing pressure on polling places on election day, including the risk of long lines, without presenting the ballot security concerns that accompany mail voting. One of the best features of Ohio's system has been that it provides people with the opportunity simultaneously to register and vote, in the window between 35 and 30 days before election day.³ Allowing new voters to register and vote on the same day is the only election reform that empirical research has consistently shown to increase turnout in a variety of elections.⁴ Unfortunately, HB 194 closes this window. ORC § 3509.01. Worse still, the bill reduces the period for early voting, eliminating its three busiest days (the Saturday, Sunday, and Monday before Election Day). There are no good reasons for reducing the opportunities for early voting, as this law has done.
- *Eliminating the requirement that poll workers direct voters to the correct precinct.* Under past and present Ohio law, ballots cast in the wrong precinct are not counted. Unfortunately, HB 194 eliminates the requirement that poll workers direct voters to the *correct* precinct. Specifically, it deletes language from ORC § 3505.181(C)(1) that, if a voter appears at the wrong precinct, the poll worker "shall direct" the voter to the correct one, replacing "shall" with "may." This is especially problematic in cases where there are many precincts at a single polling location and voters may appear – or even be directed by a poll worker – to the wrong table. This is a problem so common, it has a name: the "right church, wrong pew" problem. HB 194 makes this problem worse. It can be expected to result in more voters

³By way of disclosure, I was part of the legal team that successfully brought suit to keep this window open during the 2008 election season.

⁴See, e.g., Craig L. Brians & Bernard Grofman, *Election Day Registration's Effect on U.S. Voter Turnout*, 82 SOC. SCI. QUARTERLY 170, 176-77 (2001); James White, *Election-Day Registration and Turnout Inequality*, 22 POLITICAL BEHAVIOR 29 (2000); Benjamin Highton, *Easy Registration and Voter Turnout*, 59 JOURNAL OF POLITICS 565 (1997) Mark J. Fenster, *The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992*, 22 AM. POLITICS RESEARCH 74, 80, 84 (1994).

voting in the wrong precinct, with a concomitant increase in the provisional ballots. It raises serious due process problems, particularly where a poll worker *knows* that a voter is at the wrong precinct and refuses to direct the voter to the right one. It also raises an equal protection problem, as poll workers in different counties, or at different precincts in the same county, may now treat voters differently – some directing them to the right precinct, and others refusing to do so.

- *Eliminating the period for voters to document their eligibility.* HB 194 eliminates the provision allowing voters who have to cast provisional ballots to bring in documentation of their eligibility within 10 days of election day as was provided by ORC §§ 3505.181(B)(8) and 3505.183(B)(2). This would prevent provisional voters without required identification from later bringing in proof that they are in fact eligible and registered, so their votes may be counted. This provision also threatens to deny due process and equal protection, because it will effectively prevent some voters from producing evidence of their eligibility and election officials from considering that evidence.
- *Changing the rules for determining election official error.* HB 194 adds ORC § 3501.40, which alters the rules for both administrative review and legal actions. It prohibits any presumption that election officials have made errors, even where that election official “has been found to have committed an error with respect to a particular person or set of circumstances.” Thus, even if a poll worker is proven to have repeatedly made the same mistake – for example, instructing a certain class of voters to go to the wrong precinct – that official cannot be presumed to have made the same error again. At some point, probably in the context of a disputed election, this provision is likely to be challenged in federal court on the ground that it improperly supplants the factfinding and adjudicatory role of courts and violates the due process rights of voters.

III. The Photo ID Debate

This year, Ohio and other states have also seen battles over whether to impose stricter voter identification requirements. HAVA already imposes a identification requirement, applicable nationwide, requiring first-time voters who registered by mail to provide identifying information. Photo ID is allowed, but other forms of identification (such as a utility bill, bank statement, or government document with the voter’s name and address) will also suffice. A number of states have gone further, requiring voters to present a government-issued *photo ID* in order to have their votes counted. Indiana and Georgia became the first states to impose such requirement, and seven other states have followed this year. So far, Ohio has not joined them, though there has been a contentious debate over the issue. For the reasons that follow, I think that the adoption of a photo ID requirement is a mistake.

A Photo ID Requirement Will Not Advance the Goal of Promoting Electoral Integrity.

For some people, requiring government-issued photo ID to vote sounds like a “common sense” solution to the problem of voting fraud. But the harder one looks at the evidence, the more clear it becomes that the problem is greatly exaggerated and that the solution is completely illusory.

Again, a look at my state’s recent history is instructive. In 2005, the Ohio legislature enacted a bill

that essentially extended HAVA's ID requirement to all voters. While there was not much evidence at the time that these requirements were needed, the 2005 law does not appear to have prevented many people from voting. That is because the vast majority of citizens have one of the permitted forms of ID, which include utility bills, bank statements, and government documents with the voter's name and current address. Any negative impact was further mitigated by the fact that it accommodated the few who do not have one of the permitted forms of identification. Still, this change precipitated several years of litigation, just recently resolved.

Proponents of stricter voter ID laws make sweeping statements about fraud, but they have utterly failed to document the kind of fraud that a photo ID law could hope to prevent. I have closely studied Ohio's election system for the past eight years, and am not aware of a proven case of in-person voter impersonation fraud – that is, a voter going to the polls pretending to be someone he or she is not. If there are any incidents of in-person voter impersonation, they are extremely rare.

In general, photo ID requirements apply to those who vote in person, but not to those who cast absentee ballots by mail. Those who have studied election fraud will recognize that this is exactly backwards. While voting fraud is rare, most documented incidents involve mail-in absentee ballots. The only documented case of impersonation I could find in recent Ohio elections involved absentee voting by a mother pretending to be her daughter.⁵ This is not surprising. The few people who attempt voter impersonation aren't likely to risk criminal prosecution by showing up at the polling place; they are much more likely to try to cheat by mail.

In fact, there are hardly any documented instances of in-person voter impersonation fraud in any state. Yet that is the *only* type of fraud that a government-issued photo ID requirement can even hope to address. The bill will do nothing about mail voting fraud, ineligible felons voting, or any other form of illegal voting.

Though ACORN is often mentioned by those advocating strict ID requirements, a photo ID law will do nothing about the phony registration forms that this group was accused of submitting. To the extent that advocates cite ACORN in support of a photo ID law, they blur the distinction between registration fraud and voting fraud. Mickey Mouse's name may have appeared on a registration form, but Mickey Mouse did not show up to vote. Nor, as far as I am aware, have photo ID proponents documented that any allegedly false registration forms resulted in unlawful votes being cast. They have, accordingly, failed to establish the factual predicate for the new restriction on the ballot they advocate.

A Photo ID Requirement Can Be Expected Suppress Voting by Eligible Citizens, Leading to Legal Challenges.

⁵Dean Narciso, *2 Ballots Coast Woman \$1,000 Plus Probation*, COLUMBUS DISPATCH, Mar. 29, 2009.

Many eligible citizens do not have government issued photo ID.⁶ While it is impossible to know for sure exactly how many will be discouraged from voting, we do know that some segments of the population will be especially hard hit – particularly young, elderly, disabled, and minority voters.

The burden of photo ID requirements do not fall evenly on all citizens. Rather, they are likely to strike hardest against those groups who are already underrepresented in the electorate – specifically, minority voters, people with disabilities, those who are elderly, and poorer citizens.⁷ Studies from various states have documented that African American and Latino voters are much less likely to have a driver's license than White voters. This is probably because members of these groups, statistically speaking, are less likely to drive or own a car.

Photo ID requirements can also be expected have negative impact on younger voters. Some proposed and enacted laws leave out student ID – even from a state university – as an acceptable form of voter identification. These voters will no longer be able to present a utility statement or bank statement, and an as-yet unknown number will be impeded from voting. It is difficult to escape the conclusion that suppressing college students' votes is one of the unspoken goals of the move to require photo ID.

Voting rights advocates can therefore be expected to challenge photo ID requirements that become law. Even if the state makes a serious effort at outreach to low-income voters and provides them with free ID, many voters will not have the documents needed to get state ID handy – and may have to pay for them. There is also the unnecessary burden that the law would impose on voters lacking ID, who will now have to stand in one line at the BMV only to stand in another at the polls on election day. This amounts to a tax on the voter's time.

Photo ID proponents typically cite the U.S. Supreme Court decision in *Crawford v. Marion County Board of Elections*,⁸ which upheld Indiana's law against a facial challenge. But they should not draw much comfort from *Crawford*. There was no majority opinion, and the lead opinion by Justice Stevens was extremely narrow. The decision only involved a facial challenge, leaving open the possibility that the law might be struck down as applied to specific voters or groups – like the nuns

⁶See, e.g., The Brennan Center, *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification, Voting Rights and Election Series* (2006), available at http://www.brennancenter.org/page/-/download_file_39242.pdf (reporting survey results showing that approximately 11% of voting eligible citizens lack unexpired government-issued photo ID).

⁷M.V. Hood III & Charles S. Bullock III, *Worth a Thousand Words?: An Analysis of Georgia's Voter Identification Statute*, 36 AM. POL. RES. 555 (2008); Matt Barreto, Stephen Nuno & Gabriel Sanchez, *Voter ID Requirements and the Disenfranchisement of Latino, Black, and Asian Voters*, Sept. 1, 2007, available at http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf; John Pawasarat, *The Driver's License Status of the Voting Age Population in Wisconsin*, available at <http://www.inclusionist.org/files/wistatusdrivers.pdf>.

⁸553 U.S. 181 (2008).

who were later turned away for having outdated IDs,⁹ or homeless voters. *Crawford*'s lead opinion relied heavily on the fact that those challenging the Indiana law failed to come up with evidence showing a serious burden on voters.

State constitutional challenges to photo ID laws are also likely. When Missouri passed a comparable photo ID law, that state's supreme court struck it down under that state's constitution.¹⁰

Yet another potential claim is for race discrimination under Section 2 of the Voting Right Act (VRA). Section 2 is not limited to *intentional* race discrimination, which is notoriously hard to prove. It also bars a voting law or practice that has discriminatory effects – specifically, one that “results in” the denial or abridgement of the right to vote on account of race. Cases under Section 2 tend to be factually complicated, relying on a combination of statistical, historical, and anecdotal evidence of race discrimination. With further factfinding, there is a good chance that those challenging photo ID laws will be able to mount a successful challenge under Section 2.¹¹ States covered by Section 5 of the VRA are subject to the further requirement of showing that these changes do not have a retrogressive effect or discriminatory purpose. Given the disparities in who possesses photo ID, this is a difficult burden for states to overcome.

In short, there are a number of unsettled legal questions surrounding voter identification laws. In states that enact such laws, we can expect litigation over these questions for years to come.

Conclusion

The recent round of state election laws can be expected to make voting more difficult. If allowed to stand, they threaten to cast a shadow over the 2012 presidential election. Ohio's recent law is a prime example. It will undoubtedly sow confusion for voters and poll workers alike, many of whom have just gotten used to current rules. It will probably increase the number of provisional ballots cast, which will in turn increase the likelihood of post-election disputes over the result. Worse still are proposed and enacted laws requiring government-issued photo ID, which will impede participation by eligible citizens – including people of low income – while doing nothing to prevent fraud. We should be making it easier, not more difficult, for eligible citizens to vote.

⁹*Nuns with Dated ID Turned Away at Ind. Polls*, AP, May 6, 2008, available at http://www.msnbc.msn.com/id/24490932/ns/politics-decision_08/.

¹⁰*Weinschenk v. Missouri*, 203 S.W. 3d 201 (2006).

¹¹Daniel P. Tokaji, *The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 57 S. CAR. L. REV. 689 (2006).

