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THE STATE OF THE RIGHT TO VOTE AFTER THE 2012 ELECTION

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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THE STATE OF THE RIGHT TO VOTE AFTER THE 2012 ELECTION

WEDNESDAY, DECEMBER 19, 2012

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Durbin, Whitehouse, Coons, Grassley, and Lee.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. I am told that Senator Grassley is on his way, and I am going to start and, of course, yield to him when he comes.

Our Nation has grown stronger since its founding as more Americans have been able to exercise their right to vote. The actions taken by previous generations—through a Civil War, through constitutional amendments—in fact, Senator Grassley is here—and through the long struggles of the civil rights movement—have worked to break down barriers that stood in the way of all Americans participating in our democracy. Yet as we saw in last month's election, our work is far from done. Barriers to voting continue to exist and evolve.

In my State of Vermont, where we have the town meeting with open participation, democracy, Vermonters cannot understand why there is this barrier to voting.

You know, the right to vote and to have your vote count is a foundational right because it secures the effectiveness of the other protections of the law and the Constitution. Before the election, we held a hearing that focused on new barriers to the right to vote, building on the work done in field hearings held by Senator Durbin in Florida and Ohio. We heard testimony about the renewed effort in many States to deny millions of Americans access to the ballot box through voter purges and voter identification laws. I was concerned that these barriers would stand between millions of Americans and the ballot box.

What we saw during the election shows that we were right to be concerned. Purges of voter rolls, restrictions on voter registration, and limitations on early voting—which in previous elections enabled millions to vote—led to unnecessary and avoidable problems on election day.

You had onerous and confusing voter identification requirements, complications in places like Pennsylvania, Arizona, Texas, and South Carolina. And throughout the country, misleading political advertising and robocalls worked to sow confusion and suppress the vote.

Just because millions of Americans successfully overcame abusive practices in order to cast their ballot does not make these practices right. It does not justify the burdens that prevented millions more from being able to vote. Barriers that remind us of a time when discriminatory practices such as poll taxes, literacy tests, and grandfather clauses were commonplace have no place in 21st century America. Barriers that seem to fall heaviest on African Americans, Hispanics, military veterans, college students, the poor, and senior citizens risk undermining our Constitution's core values.

The Constitution is for all of us. Ensuring that all Americans are able to vote and have their vote counted should be an issue of concern to Democrats and Republicans. It should be a matter of conscience for all of us regardless of what political party we belong to. That is how it was 6 years ago when Members of Congress, Republicans and Democrats, stood together on the Capitol steps to reaffirm our commitment to full democratic participation when we reauthorized the key provisions of the Voting Rights Act of 1965.

Our work in 2006 to reinvigorate and reauthorize the Voting Rights Act stood in stark contrast to the tremendous resistance and bitter politics which met the initial enactment of that landmark law. And the Committee played a key role. After nearly 20 hearings in this Committee and the House Judiciary Committee, we found that Section 5 of the Voting Rights Act continues to be an effective and necessary tool for protecting voting rights against modern-day barriers to voting. The legislation contained specific findings about the need for reauthorization and concluded that without reauthorization the gains we have made would be undermined. Our efforts reached completion when President Bush signed the bill into law after a unanimous vote in the Senate and nearly unanimous vote in the House.

The Supreme Court got it right three years ago when it upheld a challenge to the constitutional authority of Congress to reauthorize Section 5. Next year, the Supreme Court is going to have a similar challenge. Neither the words of the Constitution nor the importance of these critical provisions for protecting the right to vote has changed in the last three years. Under the specific words of the 14th and 15th Amendments, Congress has the power to remedy discrimination and enforce these Amendments by enacting laws that address racial discrimination in connection with voting. We did that virtually unanimously six years ago.

The Voting Rights Act transformed America by ushering the Nation out of a history of discrimination into an era of greater inclusion. So we cannot turn away from our commitment to the right to vote for all Americans, every single American, Republican, Democrat, Independent, no matter who they are.

I thank the witnesses for being here, and I am going to turn to Senator Grassley, but I do want to mention again what a great service Senator Durbin did in holding these field hearings. They

were extremely important. And I know Senator Nelson was there in Florida and is here today.

Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you, Mr. Chairman, and also to all of our witnesses. This is a very important hearing because voting is a vital part of citizenship and a right of citizenship. It seems to me today that in any election or in any discussion of voting rights, the term "suppression" on the one hand or "disenfranchisement" on the other are thrown about, sometimes in a cavalier fashion. That approach is not helpful to protecting voting rights.

The history of voting in this country was expanded with great effort and sometimes with great bloodshed. Those who oppose expanding the franchise to our fellow citizens sometimes use force and trickery. Comparing common-sense voter ID requirements, which enjoys the support of three-fourths of the electorate and even a majority of the Democrats, to poll taxes or worse trivializes the sufferings of millions of Americans who were denied the right to vote.

We also hear that voting should be expanded in any way possible and the fewer the restrictions on voting the better. We should never trivialize efforts to expand the voter rolls, but we should make sure that those people that get on the voter rolls are entitled to be there.

But fraud does exist. It is a fact of life. And it will be discussed at this hearing, and it will get worse if the only response is denial.

The States are as justified in taking measures to deter potential fraud as to prosecute actual fraud. Earlier this year, the Pew Center on the States issued a report that found that there are 24 million voter registrations in this country that are no longer valid or are inaccurate. Who can justify that? It concluded that there are almost 3 million individuals who are registered to vote in multiple States. Who can justify that? Tens of thousands are registered to vote in three or more States. Who can justify that?

The study also identified close to two million dead people on the voter rolls. Who can justify that? NBC News found 25,000 names of likely deceased voters on California rolls. Who can justify that? Some voted years after they died. One woman who died in 2004 voted in 2008 and 2012. Who can justify that? A man who died in 2001 has voted eight times since 2005. Who can justify that?

The New York Times recently wrote that, "In Florida, absentee ballot scandals seem to arrive like clockwork."

I am pleased that two Secretaries of State are with us today. I welcome Iowa's Secretary of State, Matt Schultz. State election officials are well versed on the procedures that are needed to run fair elections. Conscientious State officials, such as my Secretary of State, have sought to remove non-citizens from the voter rolls. Federal officials did not assist them in ensuring that legal votes are not diluted by the counting of votes from ineligible voters. In fact, the Department of Homeland Security did all it could to prevent maintaining the integrity of voting rolls.

We will hear that turnout rises when ballot integrity is fostered. States have a fair amount of discretion in how they choose to run elections. Early voting has grown in popularity, but there is a cost even beyond the lack of a common civic engagement on election day.

I look forward to this hearing and hope that we get answers to these questions. But circumstances could change or new arguments or deliberations could lead someone to later wish to have voted differently. That is one of the issues with early voting. There should not be a one-way ratchet in which States that experiment with loosening voting rules can never try another approach. Of course, apparently neutral voting changes can hide bad motives.

I voted to reauthorize the Voting Rights Act. In fact, I remember as a new member of this Committee in 1981 when the reauthorization was up, I think for the first time, I went to Senator Biden and said, "I would like to help you." He probably said he wanted help. But at the time, you know, Republicans had just taken over the Senate. Everybody thought we were not going to reauthorize it. And Senator Biden said——

Chairman LEAHY. You were a stalwart.

Senator GRASSLEY. OK. I want to finish this story.

[Laughter.]

Senator GRASSLEY. I do not think he believed me, but four or five months later, as the bill was going through the Senate, he says, "You know, you were true in your wanting to help us reauthorize this," because voting is the basis of our representative system of Government and ought to be preserved for all people. But nobody's vote should be diluted by people that are not eligible to vote voting.

I yield the floor.

Chairman LEAHY. Well, thank you very much, and you were a stalwart then, and, again, one of the reasons why Senator Grassley and I have been such good friends all these years.

I have to go to the floor to manage an appropriations bill. I am also on the Appropriations Committee. And Senator Durbin has agreed to take over the hearing, and we are going to have statements for the record from Senator Warner on voting problems in Virginia and also from other organizations. Those will be placed as part of the record.

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

Chairman LEAHY. Senator Durbin has been such a stalwart on this, and I wonder, Senator Durbin, if you would take my place here in the chair. And, Senator Grassley, thank you as always.

Senator DURBIN. I think you are a stalwart, too, Senator Grassley.

[Laughter.]

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

Senator DURBIN. Thank you all for being here, and I am just going to make a brief opening statement and invite my colleagues if they would like to do the same.

I see Senator Nelson here, and I can recall going to Tampa, Florida, with Senator Nelson with a hearing of our Subcommittee on

the Constitution and Civil Rights. And if you will recall, the first panel of experts that we had from your home State of Florida were election officials, Democrats and Republicans. And the first question I asked them was: What was the evidence of voter fraud and vote abuse that you believe led to these changes in the law restricting opportunities to vote in Florida? And they said there were none. There were none. And I asked them if there were prosecutions of voter fraud in Florida that caused a scandal that led to this, and they said, no, there were not. It turns out there were almost none when it came to actually prosecutions.

I did the same thing in Ohio with Senator Brown in Cleveland, the same witnesses of Ohio election officials, same questions, same answers. And this is what I have concluded. It has come down to this: Elections in America are supposed to be about a contest between candidates with voters making the ultimate judgment. Instead, in too many States, elections have become contests between voters and special interest groups like ALEC which are hellbent on limiting the right of Americans to vote. And look what happened during this last election, things that I think need to be changed and are embarrassing to us.

How can we be satisfied when our fellow citizens stand in line for seven hours to vote until 2:30 in the morning? Does it make sense for State legislatures to reduce early voting opportunities and the flexibility many working Americans need to exercise their right to vote? How can we watch laws being passed in legislatures requiring identification which the legislators know full well that hundreds of thousands of people will never be able to obtain in time to vote? Shouldn't we be disappointed by the increasing number of provisional ballots issued and the fact that a disproportionate number of those provisional ballots were given to minority voters in the United States of America? Is it really necessary to threaten high school teachers with criminal conviction and thousand dollar fines just for offering to help students register to vote?

That was the reality of this election cycle. That is the challenge to us. I know there are many other things I can speak to, but I do believe we have got to be honest in this coming Congress. I believe that when it comes to Federal elections, we have a Federal responsibility to make sure that qualified voters do not have obstacles thrown in their paths. And to those who will, I hope you took a lesson from November 6th. There were people who stood there for seven hours to defy you, to tell you that every obstacle you threw in their path was another challenge for them to stand and vote and be counted, whatever the time, whatever the cost. Thank goodness they did. It was a reaffirmation of who we are as Americans.

Senator Whitehouse.

STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. Thank you, Chairman. I will just speak very briefly. I am delighted that we are having this hearing. The right to vote is perhaps the basic American right. It is the anchor of our democracy, and, unfortunately I believe it is being challenged. I think the modern-day Republican Party has a problem, which is that most of the goals of the party are ones that Ameri-

cans do not support. And so they have to resort to strategies to try to push their agenda that allow them to get around the problem that most Americans do not support the radical Tea Party agenda. Those include using hostage theory-type negotiating tactics in the legislature. We saw that with the debt limit. We are seeing it right now with the fiscal cliff. "Unless you give us things that the American public does not want, we are going to do something worse to the country" is fundamentally the threat there. And we have seen it with voter suppression. We have seen it over and over with voter suppression, election after election with voter suppression. And I have the greatest respect and admiration for the Ranking Member, but I do think that "voter suppression" is actually the appropriate term to use.

As a former prosecutor, we sometimes look at the question of motive when you are looking at—it is only one element, but you do look at motive, and the motive, I think, has long been established by the Republican Party in the voter caging cases in which they have actually been put under court order to stop, cease and desist the practice of trying to clear voters off the rolls through voter caging efforts directed at particularly minority communities.

So I think this is a very live issue. I think it is a very important issue. It is vital to our democracy, and I am delighted that we are having this hearing where not only my view but the distinguished Ranking Member's views and others' can all be ventilated here.

Senator DURBIN. Senator Coons.

STATEMENT OF HON. CHRISTOPHER COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator COONS. Thank you, Senator Durbin. Thank you for the opportunity to join you in this important hearing today.

Like all of us, I watched the outcome on the night of the election and then for days afterwards with a sinking heart and with a growing concern. As someone who treasures the right to vote and who believes, as I know all of us do, Republican and Democrat, that it is one of the most fundamental civil rights in the United States, what we have seen is the steady whittling away of the opportunity to actually exercise that right in meaningful ways. In the last election and after the last several elections, this is of grave concern to me.

Now, there are number of bills that have been introduced. I am a sponsor of one. A number of you are cosponsors, Senator Gillibrand, Senator Boxer; there are a number of others. Some seek, as mine does, to inspire a competition between States in partnership with the Federal Government to improve timeliness, access, accuracy. Others mandate a Federal standard. I look forward to hearing from this range of witnesses today about the real impact on the ground, its impact on access to the ballot, its impact on outcomes, and the questions that it raises in my view about the Voting Rights Act. We do not yet know the Supreme Court's path, but I think regardless of what happens in the upcoming Supreme Court case, this Committee, this Congress, has a duty, in my view, to reauthorize, to strengthen, and extend the Voting Rights Act in a way that takes into account the very real concerns about voting

and accessing the right to vote in this country that this most recent election brought forward.

Thank you.

Senator DURBIN. Thanks, Senator Coons.

We welcome our colleague, Senator Bill Nelson. Bill has just gone through an election contest in a State where this was an issue, and, Bill, please submit your testimony and give us a few words here to start our hearing.

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

Senator NELSON. Mr. Chairman, thank you for your leadership. Thank you for coming to Florida so that you could receive direct testimony. You did that early in this year, and we have just closed a very ugly chapter in Florida political history, a chapter that occurred over the last 2 years, of an attempt to suppress the rights of voters, to suppress that vote, and I want to bring you some proof today.

First of all, I would like to submit my written statement for the record. I would like to submit for the record a summary of what I am about to say that came in the Palm Beach Post in their Sunday, October 28, 2012, article, an investigative piece. And, third, I would like to submit for the record the deposition of an Emmett Mitchell IV, serving as the general counsel for the Florida Republican Party, when he gave a deposition in the case styled *State of Florida* v. *United States of America*, a deposition that was given earlier this year, when the State of Florida sued the U.S. Government for court determination of the preclearance under the Voting Rights Act of 1965, preclearance of five counties for discrimination; and, further, sued the U.S. Government by questioning the constitutionality of the 1965 Voting Rights Act.

In the discovery for that case, the testimony was taken of this former general counsel of the Florida Republican Party, and what I would like you to know is this key individual who—with your permission, with the Committee's permission, I would like to insert those documents in the record.

In his testimony, given in April, Mr. Mitchell said—and it is in the sworn testimony—that he was asked to draft the original version of the legislation that became law. He was asked to draft it by Republican Party leaders specifically after consultations with Andy Palmer, then the executive director of the Florida GOP; Frank Terrafirma, head of the GOP State House campaigns; and Joel Springer, head of the State Senator Republican campaigns; and in early talks with executive director of the Florida GOP. And with this full testimony, you will see that there was a deliberate effort to change the election law of Florida in order to do a number of things.

Now, it was not the first time that Mr. Mitchell's name has surfaced with voting-related controversy, because back in the infamous 2000 election, when there was the State of Florida's efforts to purge possible felons from the voter rolls, and that effort led to thousands of eligible voters being turned away at the polls during that Presidential election year because their names were removed from the rolls, I said thousands of eligible voters who were purged.

This latest election law was introduced and passed in spite of the vehement opposition of the elections officials in the counties that conduct the elections, the supervisors of election. They collectively, through their State association and a wide array of other groups, had vehement opposition to the proposed bill that became law, reducing the number of early voting days from 14 to 8, which very conveniently eliminated the Sunday voting before the Tuesday election, which Professor Dan Smith from the University of Florida testified at your hearing in Tampa, in fact, that his investigation, his university investigation, found that there were two particular groups that utilized in the history of Florida early voting over the previous decade Sundays as the time that they voted: one was African Americans, and the other was Hispanics. That was one thing the legislation did.

The law also made voting harder for people who had moved from one county to another and had a different address, because when they showed up to their new voter registration, if they did not have in their documentation, such as their driver's license, which likely they had not updated from their old address, if it was a different county, they were not allowed a ballot. They were given a provisional ballot, and we know from the 2008 election of the provisional ballots cast, one-half of them in 2008 were thrown out.

Now, as a result of the new voter suppression law—you have already stated it, Mr. Chairman—long lines, an avalanche of provisional ballots, court challenges, all of it has come to pass. You are going to have to draw your own conclusions, Mr. Chairman and this Committee, but it is pretty straightforward for the senior Senator from Florida. Florida's 2011 election law changes were politically motivated by the documents that I submit, and they were clearly designed to disenfranchise likely Democratic voters and not, as the Republican sponsors in the legislature contended, to prevent voter fraud. You will see in the documentation where Mr. Mitchell, when asked directly, "Do you think that voter fraud is a problem?" he says no. When asked, on voter registration that eliminated organizations like the League of Women Voters for a year and a half to stop their registration of voters because it changed the previous law from 10 days to turn in the names to 48 hours, which also added a huge fine for the person collecting the signatures if they did not get it in in 48 hours—by the way, 48 hours included Saturdays and Sundays. And when asked in this deposition, "Did, in fact, you think that 48 hours was long enough?" he says no. He felt comfortable with the 10 days.

And so, Mr. Chairman, I thank you for the opportunity that I can bring this documentation to you, setting the stage for testimony that will follow me by the panel. And do not forget that what I am telling you about that happened in Florida took place against a backdrop of a broader Republican-led campaign to restrict voting in at least a dozen States. And those were States that were controlled by the Republicans, and they approved new obstacles to voting as part of a campaign that was linked to the American Legislative Exchange Council, ALEC, which receives substantial funding from the Koch brothers.

And so, Mr. Chairman, I conclude by saying that singling out Americans, stopping those or trying to stop those, as they failed in

Florida because of the seven hours that they stood in line that you already noted, and trying to stop them from going to the polls, this is against the American way. It is against one of our most precious rights, and it is against what is guaranteed to us by the Constitution of the United States.

Mr. Chairman, I thank you for the privilege of being here.

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

Senator DURBIN. Thank you, Senator Nelson. The documents you have referred to will be made part of the record. We appreciate your testimony and your continuing interest in this issue.

[The documents appear as a submission for the record.]

Senator DURBIN. I now would like to call the first panel of witnesses, if they would please come forward and stand for the oath, the traditional, customary oath that is administered in these hearings before the Judiciary Committee. Please raise your right hand. Do you affirm that 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?

Mr. CRIST. Yes.

Mr. SCHULTZ. Yes.

Ms. COBB-HUNTER. Yes.

Mr. BENNETT. Yes.

Ms. PERALES. Yes.

Senator DURBIN. Thank you. Let the record reflect that the witnesses all answered in the affirmative, and I am going to start with Governor Charlie Crist. He served as Governor of the State of Florida from 2007 to 2011. Under Governor Crist's leadership, Florida passed a number of laws relating to voting, and clearly Florida has been front and center as the beginning of our discussion in this Committee today. We welcome your testimony. Your entire written statement and any documentation you would like to submit will be made part of the record, without objection. So please proceed, Governor.

STATEMENT OF THE HONORABLE CHARLES CRIST, JR., FORMER GOVERNOR OF FLORIDA, ST. PETERSBURG, FLORIDA

Mr. CRIST. Great. Thank you very much, Mr. Chairman, Ranking Member Grassley, and thank you, members of the Judiciary Committee, for inviting me to testify today on what is the most fundamental of rights for our fellow Americans—the right to self-determination through voting.

Quite literally, we are here today because just over 236 years ago, 56 brave American patriots signed away their lives by declaring independence from Great Britain in the name of all who lived in the colonies. At the core of their statement—our Declaration of Independence—"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, among these are life, liberty, and the pursuit of happiness, that to secure these rights governments are instituted among men"—embodies the simple principle that everyday Americans, the people who we all represent, hold the power; that government is truly for the people, by the people, and not the other way around.

In fairness, they did not get it totally right at the beginning. Far too many Americans were initially denied the right to vote, and far too many more died in the ensuing battles to ensure that every American adult would have the right to participate in self-determination. But throughout the history of this great Nation, whether through laws or conflicts, America has always taken steps forward to make voting easier and more accessible—well, until this year.

For a good part of my adult life, I was employed in the service of the people of the great State of Florida, a State that has had more than its share of voting drama. For four of those years, I had the truly humbling privilege serving as Florida's Governor, and during those four years, we undertook some important steps to make it easier for Floridians to vote.

We eased the State's vote-by-mail laws to make it easier for Floridians to choose to vote from the comfort of their home.

We instituted a standard 14 days of in-person early voting.

We made paper ballots mandatory to ensure that there would be a record in the case of a recount.

We streamlined the system so Floridians who had paid their entire debt to society could regain their right to vote and have their rights restored.

And when, during the historic election of 2008, long lines at early voting sites led to some Floridians waiting many hours to cast a ballot, I as Governor signed an executive order extending early voting hours so that no Floridian would be faced with an unnecessary wait at the polls. In the end, some 54 percent of Floridians cast a ballot before election day in 2008. And thanks to the steps we had taken, despite a record 8.3 million votes cast that year, we knew the outcome of the State election before the 11 o'clock news.

Unfortunately, the last few years in Florida have not been so forward thinking. In 2011, the State legislature voted for and Governor Scott signed a massive election law designed, I believe, to make it harder for some Floridians to legally vote, and designed to encourage a certain partisan outcome. The law, among other things, put ridiculous restrictions on the rights of everyday law-abiding Floridians to register their fellow citizens to vote and reduced the number of early voting days from 14 to 8—and under the law before the Justice Department demanded changes, could have reduced early voting hours to as few as 48 in some of our counties. Furthermore, changes to the law made it harder for voters who went to the wrong precinct to cast a legal vote, which when combined with budget cuts in many counties that reduced the number of election day polling locations, resulted in unnecessary confusion and suppression on election day. In addition, the State tried to purge nearly 200,000 legal Floridians from the polls. Thankfully, public pressure as well as questions from the Justice Department, forced the State to back down.

The outcome of these decisions was quite obvious. Florida, which four years earlier was a model for efficiency, became once again a late night TV joke. Voters who wanted to vote early were frequently subjected to lines of 3 and 4 hours; and as Governor Scott refused to take action to ease the lines, in some cases those lines extended to six and seven hours. Election day confusion led to horrifying lines again on election day itself, which played a role in

Florida remaining in the undecided category until Thursday, some two days after the last ballot was cast. Thankfully, this time the Presidency did not hang in the balance.

Senators, as you spend time thinking about how we can make voting easier and more accessible, I would encourage you to think long and hard about establishing some national standards, standards that would ensure lengthy in-person early voting, as well as common-sense provisions.

And I leave you once again with the words of our Founding Fathers: "Governments are instituted among men (and women), deriving their powers from the consent of the governed." Ladies and gentlemen, we work for them. We offer ourselves to their service, and they choose. And as any of us knows who has lost well know, we do not always like the outcome. But that is how this works. In the end, America wins and democracy thrives when more people vote.

Thank you again for the invitation. I look forward to the discussion.

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

Senator DURBIN. Thanks, Governor.

Our next witness is the Iowa Secretary of State, Matt Schultz, elected to office in 2010 as the youngest Secretary of State in the country, currently serving his first term. He was elected to public office in 2005 as a city councilman in Council Bluffs, where he was re-elected and served for a total of five years.

Secretary Schultz, thank you for coming, and please, any written testimony that you have will become a part of the record, and I would like you to take five minutes or whatever you can use to give us your thoughts on this issue.

STATEMENT OF THE HONORABLE MATT SCHULTZ, SECRETARY OF STATE OF IOWA, DES MOINES, IOWA

Mr. SCHULTZ. Thank you, Mr. Chairman. As you stated, my name is Matt Schultz, and I am the Secretary of State of Iowa. I do appreciate the opportunity to testify before your Committee today. I especially want to thank Senator Grassley for extending the invitation to appear before the Committee.

I was elected to the office of Secretary of State in 2010. Fighting for election integrity in Iowa was a cornerstone of my campaign.

It seems clear that a lack of confidence in the integrity of our elections is one of the reasons people do not vote. Some believe their votes do not matter, and that belief is a true cause of voter suppression across this country.

We have seen that measures adopted to protect the integrity of elections, such as voter identification laws, have actually led to an increase in voter participation.

Opponents of these measures frequently claim that laws meant to enhance election integrity are suppressing the vote. Yet they offer no evidence to support their claims, only theories often cloaked in political rhetoric.

The truth is that when election officials take steps to secure the integrity and safety of the ballot box, confidence in the outcome rises, and voter participation increases.

Iowa is nationally known for having a model election system. However, as with any system, there is room for improvement, and I have been advocating for those improvements for the past two years. One of my significant initiatives in this area involves an agreement with the Iowa Department of Public Safety to have a special agent from the Iowa Division of Criminal Investigation assigned to investigate election misconduct.

The DCI agent is conducting multiple investigations into absentee ballot fraud, voting by individuals who are ineligible, and double voting. Since August 2012, charges have been filed in eight election misconduct cases based on information received from my staff, our local election officials, and members of the public. Anyone who says that voter fraud does not exist should look at the numbers that have been produced in a few short months. We all know that criminal investigations take time, and we expect many more charges related to election misconduct to be filed in the coming months.

In our efforts to ensure election integrity, my office has taken several steps to maintain accurate voting lists in order to prevent people from taking advantage of loopholes in our election system. First, Iowa is one of numerous states participating in the Kansas Project, the purpose of which is to identify voters who may be registered or voting in more than one State.

Second, Iowa matched voter registration records with death records from the Social Security Administration. More than 3,000 individuals were identified who were deceased and registered to vote.

Finally, my office compared a list of non-citizens with a driver's license to Iowa's voter registration data base. This comparison resulted in the unfortunate discovery that Iowa potentially had thousands of non-citizens who were registered to vote and over a thousand that may have cast illegal ballots.

In determining how to proceed in light of this information, I recognized the delicate balance between the need for integrity in our elections and the fundamental right of voters to participate in the electoral process. Thus, it was important to proceed with the utmost caution to ensure that no citizen's right to vote was improperly challenged.

As such, my office attempted to work with the Federal Department of Homeland Security over several months to develop a system that would enable us to enact appropriate measures in dealing with this issue. We realized it was likely that some of the individuals identified during this process subsequently might have become naturalized citizens of the United States.

Therefore, a vital part of our effort was an attempt to gain access to the Systematic Alien Verification and Entitlements (SAVE) data base. Our intent was to use SAVE in order to determine if those individuals who were identified as being non-citizens were indeed still non-citizens.

Throughout this process, I have worked with our Democratic Attorney General, Tom Miller, in a bipartisan manner to ensure that Iowa maintains the delicate balance between voters' rights and election integrity.

While some States have found this balance difficult to navigate, in Iowa we have worked hard to achieve this result. Attorney General Miller has supported my efforts and recently said that his goal, my goal, is zero voter fraud, zero voter intimidation.

Critics of this bipartisan effort to prevent non-citizens from illegally voting continually argue that voters are being suppressed. I am pleased to sit before you and report that Iowa had the largest voter turnout in our State's history. This shows that our election integrity efforts did not have a suppressing effect in Iowa. That is a result of working together across party lines.

Again, thank you Mr. Chairman and members of the Committee for the opportunity to testify today. I will be happy to answer any questions that you may have.

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

Senator DURBIN. Thank you very much, Secretary Schultz. We appreciate your testimony, and we will have some questions.

I would like to now recognize the Honorable Gilda Cobb-Hunter, who is here today representing the South Carolina House of Representatives, where she has been a representative from Orangeburg County, District 66, for over 21 years. Ms. Cobb-Hunter is also the first African American woman in Orangeburg County ever elected to statewide office.

Thank you for joining us today. The floor is yours, and any written testimony will be made part of the record.

STATEMENT OF THE HONORABLE GILDA COBB-HUNTER, HOUSE OF REPRESENTATIVES, STATE OF SOUTH CAROLINA, COLUMBIA, SOUTH CAROLINA

Ms. COBB-HUNTER. Good morning, and thank you, Senator, and to Ranking Member Grassley and all other members of this Committee. I really appreciate you all having this hearing.

I am here really to paint a face on a lot of information that you have read to hopefully make this real so that you understand as you deliberate the importance of the Voting Rights Act, that there are actual people who are affected by this.

I am here in my capacity as a veteran legislator to talk specifically about South Carolina and about the implementation of the Voting Rights Act and how I want to offer two examples to show how important it is.

First, of course, are efforts to enact a voter ID bill. The Ranking Member talked about a common-sense voter ID bill, and I assure you those of us in South Carolina who opposed this legislation agree that common-sense voter ID bills are certainly things that are important. We would argue that the legislation that passed in South Carolina was not a common-sense bill, and I would like to tell you why.

I represent a rural area. I represent a district that is 63 percent black. Over 97 percent of the students are on free and reduced lunches. A lot of my constituents were born on farms. They were delivered by midwives. It sounds easy to say a free ID, as was offered by our State. It is more complicated than that. There are a number of documents that are required to get a free ID,—a birth certificate, for example. When you live in a rural community, it is

very difficult, if you are 70 miles from the county seat—and that is 70 miles round trip—to have to pay someone to take you to the health department, to the DMV office, or wherever to get that. So there are barriers there that I think is important for us to keep in mind.

I am here because, were it not for Section 5 of the Voting Rights Act, this notion of reasonable impediment that is a part of the South Carolina statute would still be there. It was only because of the preclearance that is required under Section 5 of the Voting Rights Act and it was only because South Carolina was forced to have this aired before a three-judge panel that we got some expansion of that definition at the trial.

It is important, in my opinion, to note that when we talk about South Carolina, we need to understand the importance of the patterns and history of racism and discrimination that unfortunately we are still suffering. There are a number of things that suggest that we live in a post-racial society. I would respectfully suggest to you that that is not the case in South Carolina.

I want to just kind of bring closure to my comments by suggesting to you that I have submitted written testimony that expands what I think are the important points, and I have chosen to take this opportunity to just talk with you a bit about the district, the people who were there.

I assure you that communities of color in South Carolina and across this country take the right to vote very seriously. There is no sentiment in my community or any other community that I am aware of for tolerating voter fraud.

I would point out to you, Mr. Chair and other members of this Committee, that in South Carolina, when we debated this legislation and the question of voter impersonation using an ID was posed, there was not one example that was cited, and much with what Senator Nelson talked about in the State of Florida.

So I encourage you to recognize the importance of the Voting Rights Act, to recognize that it has a function of preventing discrimination, hopefully before it takes root, and in the case in South Carolina, it most certainly did that. I do not think it is too strong language to say that the legislation was a poll tax as implemented in our State.

Thank you for the opportunity.

[The prepared statement of Ms. Cobb-Hunter appears as a submission for the record.]

Senator DURBIN. Thank you very much, Representative. We appreciate your testimony, and there will be some questions to follow.

Our next witness is Ken Bennett. He has served as Arizona's Secretary of State since 2009, previously served as president of the Arizona State Senate for four years, and in private business was the chief executive officer of GeoBio Energy. He has a long bio that will be made part of our record here, and we invite you now for your oral testimony and to submit any written testimony that you would like for the record.

STATEMENT OF THE HONORABLE KEN BENNETT, SECRETARY OF STATE OF ARIZONA, PHOENIX, ARIZONA

Mr. BENNETT. Thank you, Mr. Chairman and members, for allowing me to be here today. I have submitted written testimony and ask that it be accepted, but I am going to speak more from the heart today and tell you a little bit about what is going on in Arizona.

First, I would like to just take a moment and bring the thoughts and prayers of Arizonans to the folks in Connecticut. Having experienced, not as large but a similar incident a few years ago with Representative Giffords, who sat next to me on the floor of the State Senate, we know the heartache, and our thoughts go out to them.

Even though the Secretary of State is the chief elections official in Arizona, the real work mostly is done at the county level. Within our 15 counties, we have county recorders and election directors who are very bipartisan, multi-partisan, and work across party lines within their counties and across county lines to try to make sure that every Arizonan who is eligible to vote gets to vote. We have very dedicated people at the county level, and it is kind of a misnomer to say that the chief elections official is at the State and people get the idea that the State runs elections. In Arizona, it is really the counties.

I think Arizona has been served very well by having local officials elected by their friends and neighbors in those counties and communities that actually conduct the elections, and they are, more than anyone else, interested in making sure that all of their citizens who are eligible to vote get the right to do so and make it as convenient as possible.

Elections in Arizona really happen in one of four phases, and I will go briefly through each one. The first phase is the voter registration process. We have a little over 3.1 million registered voters in Arizona. That is down slightly from a high point a couple years ago at a little over 3.2 million. Most of that drop occurred with cleaning up the rolls in 2011 per Federal and State legislation. I know of no complaints or thoughts that anyone was removed or purged—in fact, it was not a purge. It was just a normal cleaning of the rolls that Federal and State laws call for.

Arizona was the first State to allow online voter registration. Almost 80 percent of our voter registrations occur through that process. It goes through the Department of Motor Vehicles.

We also allow what is called the Permanent Early Voter List where voters can be on a list and be mailed a ballot for every election that they are eligible to vote in without having to request each time.

For the last 40 years, Arizona's voter participation in elections has been very steady around the 75-percent level. Again this year, we were at 74.6 percent, I think it was.

In 2004, the citizens of our State did pass a proof of citizenship and ID at the polls legislation that we have been implementing, and, you know, I would agree that our fundamental first right is our right to vote. I think closely behind it or maybe equal with it is the right to know that our vote is not being canceled out or offset by somebody who is not allowed to vote or eligible to vote.

The second part of our system is how candidates get on the ballot. I do not think there is anything real unique about Arizona. We had a couple of redistricting issues and a couple of Congresspeople combined into the same district, and we had some challenges there. But we worked all through those.

The third phase in our system is how do we get the ballots to the voters and get them back. In Arizona, about two-thirds of our voters vote by mail, most of them on this Permanent Early Voter List. The other third still enjoy going to the polls. The voters rejected within the last 10 years a ballot proposition to go to all-mail elections. And so we have about two-thirds that vote by mail, one-third that go to the polls. This year we had a significant reduction in the numbers who went to the polls and had to come back to show ID. Those number of voters dropped by almost half.

And then I see my time is quickly going away, so I will go to the fourth phase of our election system. That is the counting of the ballots. We focus on two things there: accuracy and the inclusion of as many voters as possible. I personally sat with officials and volunteers from both parties in the counties working through processing ballots and identifying when somebody has spilled something on their ballot and the machine cannot count it. Tens of thousands of ballots meticulously duplicated so that we can include and count the ballot of every eligible voter.

And as far as accuracy, we had a unique situation, and I will conclude very briefly. Two years ago, we had the first recount of a statewide election in the State's history. One of the ballot measures was losing by about 126 votes out of over 1.8 million votes cast for or against that ballot measure. To make a long story short, as an accounting graduate, I began to fear that when we did the recount—which State law says you have to have a recount if it is less than 200 vote difference between the winner and loser. I realized that if we were 99 percent accurate in the recount, we could be off by about 18,000 votes from the first count. If we were 99.9 percent accurate, it would be 1,800, or 99.99 percent accurate, 180 still in excess of the difference between the yeses and noes. When it was all said and done, the vote total on the second recount changed by 66 votes out of 1.8 million. I think our accuracy percentage was 99.9994 percent.

Our goal in Arizona is to have the best election system in the world. We are on the way there. We are not perfect. We have a lot of improvements that we can make, but we have a lot of dedicated individuals from both parties that are working hard to make sure that every Arizonan that is eligible to vote can and does so.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bennett appears as a submission for he record.]

Senator DURBIN. Thank you very much, Mr. Bennett.

Nina Perales is vice president of litigation for MALDEF, the Mexican American Legal Defense and Educational Fund. She is well known in the civil rights community for her work on voting rights, and her cases includes *LULAC* v. *Perry*, a challenge to Texas' congressional redistricting, which she led through trial and a successful appeal to the U.S. something.

Ms. Perales, the floor is yours.

STATEMENT OF NINA PERALES, VICE PRESIDENT OF LITIGATION, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (MALDEF), SAN ANTONIO, TEXAS

Ms. PERALES. Mr. Chairman, Ranking Member Grassley, and members of the Judiciary Committee, thank you for inviting me to testify today.

Today, Latinos constitute the largest racial minority group in the United States. Over the same decade, the number of Latino eligible voters—U.S. citizen adults—increased from 13 million to 21 million.

As the Latino and other racial minority communities have grown and expanded their share of the U.S. electorate, some States have attempted to slow registration and participation of new voters.

For example, Arizona adopted a new law in 2004 that changed voter registration rules to require only new voter registrants to provide documentary proof of U.S. citizenship. Prop 200, as it is called, has had a broad negative impact on voter registration across Arizona. Following enactment of the law, over 30,000 individuals were rejected for voter registration.

Prop 200 does impose special burdens on naturalized U.S. citizens. Although registrants are encouraged to write their driver's license number on the registration form, naturalized citizens who obtained their driver's licenses years earlier, when they were permanent legal resident immigrants and, unbeknownst to them, were coded as foreigners in the driver's license data base, are flagged for rejection of their voter registration applications. This often forces them to have to register twice and sometimes even register in person because the naturalization certificate says on its face that it should not be photocopied.

The Ninth Circuit, sitting en banc, invalidated Prop 200 as inconsistent with the National Voter Registration Act. Arizona's appeal is now pending in the U.S. Supreme Court.

Although Prop 200 states that its purpose is to combat undocumented immigration, Arizona has not identified a single instance in which an undocumented immigrant registered or voted in Arizona.

In Texas, in 2011, the legislature enacted the strictest photo voter ID law in the Nation. The law has not gone into effect, however, because a Federal court in Washington, D.C., concluded that it violated the Federal Voting Rights Act.

Texas already has a voter ID requirement. The 2011 law reduced the list of acceptable ID, eliminating, for example, voter registration cards, birth certificates, student ID cards issued from State universities, and employment identification cards with photos. Although there is no logical connection between citizenship and holding a driver's license, during the enactment of the Texas voter ID law elected officials consistently affirmed that a State-issued photo voter ID was needed to prevent non-citizens from voting.

In her testimony in the voter ID case, State Representative Debbie Riddle, when asked about specific incidents that she knew of voter fraud, described one incident in which she saw a Hispanic, Spanish-speaking woman who needed assistance voting. Representative Riddle offered this incident as an example of voter fraud, de-

spite the fact that she also testified she had no knowledge whether the voter was a citizen or not, only that she was Hispanic.

In 2012, both Florida and Colorado launched voter purges, claiming an urgent need to remove thousands—thousands—of non-citizens from the rolls. In both cases, the purges were based on the same flawed driver's license data base searches that were found by the Arizona Federal court in 2008 to misclassify naturalized citizens as non-citizens. Both purge efforts, after sending letters to thousands of voters threatening to remove them from the voter rolls for non-citizenship, diminished to less than 200 voters in each State. In terms of identifying actual non-citizens, the outcome was predictably small.

In Miami-Dade, 13 registrants reported they were not citizens, two of whom had voted. In Colorado, 14 voters were removed from the rolls. None had voted.

The Texas 2011 redistricting also targeted Latino voters. Despite the fact that Latinos constituted 65 percent of the State's overall population growth over the past decade and was, therefore, the leading reason that Texas gained four new congressional seats, the Texas legislature enacted redistricting plans that intentionally thwarted the growing Latino electorate. The plans for Congress and House of Representatives were blocked by a Federal court in Washington, D.C., on the ground that both plans reduced minority political strength and that the congressional redistricting plan was purposefully discriminatory on the basis of race.

Although Latino registration and voting rates still lag behind those of Anglos, Latino voters are steadily increasing in number and achieving higher levels of voter participation. State practices that seek to freeze in place their current electorates and limit the entry of Latino voters can run afoul of Federal law as well as the Constitution and are fundamentally undemocratic.

Thank you for the opportunity.

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

Senator DURBIN. Thank you very much for your testimony.

I would like to ask the election officials here, Mr. Bennett and Mr. Schultz, the following: If you believe—and we all do—that voter fraud is, if not a crime, a serious act that should be dealt with in terms of our policy and laws, and if you believe that such cases should be investigated and prosecuted because of the serious nature of those cases, I would like for both of you to give me the evidence in Iowa and Arizona of convictions for voter fraud that have led to your changes in the law.

Mr. SCHULTZ. Do you mind if I got first, Mr. Chairman?

Senator DURBIN. Please.

Mr. SCHULTZ. Thank you. I think that is a great question, and I think it is a very difficult question in some ways because not until now have we had resources to even go after this.

Senator DURBIN. I beg your pardon?

Mr. SCHULTZ. Not until recently have we as the Secretary of State's office had resources dedicated toward an investigator to go and do investigations into these crimes.

Senator DURBIN. Excuse me, sir. You are saying that the law was changed in Iowa even before the investigation began?

Mr. SCHULTZ. Well, let me back up. The law has not been changed in Iowa. I would say Iowa—let me address some of your concerns that you stated in your opening statement. Iowa has 40 days of early voting. Our polls are open from 7 to 9 on election day. We do everything we can to encourage people to go vote.

The question is then, when you have non-citizens who are registered to vote and voting, you have potential people double voting, you have absentee ballot fraud——

Senator DURBIN. Do you have evidence of non-citizens voting in Iowa?

Mr. SCHULTZ. Yes, we have actually arrested—since August 2012, six people have been arrested——

Senator DURBIN. Six. How many have voted since——

Mr. SCHULTZ. All of those who had voted.

Senator DURBIN. No. I am saying of the total number of voters since 2012.

Mr. SCHULTZ. Well, it is a difficult question because we have three—we identified 3,582 non-citizens who were registered to vote, but we were not sure if they were still non-citizens.

Senator DURBIN. I am guessing that millions—millions have voted?

Mr. SCHULTZ. 1.6 million——

Senator DURBIN. 1.6 million, and there were six cases.

Mr. SCHULTZ. No. That is what we have so far. We just started these investigations in August.

Senator DURBIN. Well, let me ask Mr. Bennett that same question. You have heard Ms. Perales' comments. It strikes me that there are legitimate questions as to why, if voter fraud is a serious issue, you have decided to only ask for proof, a birth certificate, of new voters as opposed to all voters.

Mr. BENNETT. Well, I think that paints an incorrect picture of what the voters passed in 2004. What they did is grandfather anyone who had a State driver's license or a State-issued ID before a certain cutoff. I think it was 1996.

Senator DURBIN. I think that is what she said.

Mr. BENNETT. So that essentially everyone was grandfathered in, and then as new voters move around and come in, they are asked to provide proof of citizenship.

As to the evidence of voter fraud, we have prosecuted about 15 cases within the last 18 months or so of people who were found to have voted in an election—these were all the Presidential election of 2008, I believe it was—voters who had been found to have voted in Arizona in an election that they also voted in another State. We have counties that report to us that they remove hundreds of voters from the registration voter rolls monthly who report on forms that are sent out to potential jurors that they are, in fact, not citizens and cannot serve on a jury, but when those juror questionnaires are reviewed by the county officials, hundreds who are found to also be on the voter rolls have to be removed from the voter rolls.

I do not know of any——

Senator DURBIN. Fifteen have been prosecuted? You say 15 have been prosecuted?

Mr. BENNETT. Fifteen have been prosecuted during the last 18 months or so.

Senator DURBIN. And how many voted, for example, in the November 6th election in Arizona?

Mr. BENNETT. About 2.3 million.

Senator DURBIN. Ms. Perales, I would like you to take this to the obvious question. We are not looking to justify voter fraud, make it easy for those who are ineligible to vote. We are trying to stop those obstacles and intimidation of voters, which holds many people back who are eligible. So how are we to deal with this question, do you believe, in a fair fashion?

Ms. PERALES. Thank you, Senator. What we have learned through these efforts by the States, some of which have been described here, is that there are very, very, very tiny numbers, sporadic, isolated incidents of people being registered when they are not eligible because of citizenship. The numbers are very consistent across the States, less than 10, less than 20. And Arizona, when it had the opportunity to prove this in court, came up with less than 20, most of whom were Canadians, by the way, for some strange reason.

Senator DURBIN. A serious problem.

[Laughter.]

Ms. PERALES. And less than 10 who had voted. So we know the numbers are very tiny, very consistently small—in fact, so small that they are even smaller than the 99.9994 accuracy level that Secretary Bennett is rightfully proud of in terms of the accuracy of counting ballots.

Contrast that with the efforts themselves where thousands of letters have been sent to persons who have been erroneously identified as non-citizens because of the use of flawed driver's license data bases. I have to take one small issue with Secretary Schultz, who said he had identified 3,500 non-citizens using the driver's license rolls. He did not. He identified 3,500 people who were non-citizens at the time that they obtained their driver's licenses, and we know that since that time and before they registered to vote, the overwhelming majority—and perhaps all of them—have become naturalized citizens.

So any State at this point that undertakes to accuse people of non-citizenship based on driver's license rolls is on notice that this is not correct and should not be done. It is fundamentally unfair.

So, yes, are there tiny numbers—and Senator Grassley did a wonderful job of describing also much greater numbers of persons, for example, who are registered in more than one State. And these things ought to be approached in a very common-sense, fair way with very individualized looks at people who might possibly be ineligible. But sending out thousands of letters to people accusing them of non-citizenship, telling them they will be thrown off the rolls if they do not respond with paperwork within 30 days is not the way to go about it.

Senator DURBIN. Governor Crist, my time is up, but I wanted to note one fact here. It is my information that some 8.3, 8.4 million people cast votes in the Presidential election in Florida, and the President's margin was about 74,000, which is a very, very small margin.

When I came down to Florida, the thing that I found interesting was most of the legislative activity had been focused on early voting and registration as opposed to absentee voting.

Mr. CRIST. Yes, sir.

Senator DURBIN. Historically, we had testimony in Florida that Republicans have used absentee voting much more effectively than Democrats. Democrats have used early voting.

Mr. CRIST. I have seen it.

Senator DURBIN. I will bet you have. If you were out to stop voter fraud and believe that you have got to limit early voting, would it not also stand to reason that you would be making some limitations on absentee voting? And I do not believe Florida did.

Mr. CRIST. Well, yes, sir, to answer your question in the affirmative. But I think that what all of us want are free, open, and fair elections for everyone, and I think the unfortunate thing that we have seen over the last couple of elections is, through interest groups like ALEC, a concerted effort to try to make it easier for one party to win over another. And I think the greatest example of that, Mr. Chairman, is the elimination in my State of the Sunday voting before the Tuesday election. And my friend Senator Nelson pointed this out in his opening testimony about the fact that in two specific communities, generally you see a historic tradition of citizens that are Hispanic or African American take the opportunity, typically after church, on that Sunday before the Tuesday election to go to the polls. That was eliminated in my State in 2011. We had in 2008. And what we did to adjust to that this year was organize a "Souls to the Polls" effort two Sundays before the Tuesday election, and it was pretty successful. But it pointed out something else, that even when these road blocks are put in place—and I was very proud of my fellow Floridians. They at first I think were frustrated, but I think ultimately became infuriated that somebody was daring to try to take away their opportunity and put obstacles in place in front of them for simply trying to exercise this precious right to vote. And so in Florida, even though the race had already been called for the Presidency, my fellow Floridians, as I think you indicated, continued to stay in line after the decision had been concluded because they were not going to be denied their right to vote in that election, and God bless them for that.

Senator DURBIN. Thank you.

Senator Grassley.

Senator GRASSLEY. Thank you very much. Thank you all for appearing, and particularly my own Secretary of State for coming, and my first question would be to my Secretary of State, applauding your efforts to give non-citizens who you thought were on the voter rolls that should not be there notice and an opportunity to be heard before they were removed from the rolls, and I think that our own Attorney General, a Democrat, has thought your efforts were well-meaning. But you have been unable, am I right, to proceed fairly to remove ineligible voters because you have received no cooperation from the Department of Homeland Security? So I would like to give you an opportunity to describe your request for assistance from that Department, their response, and have they shown any concern that ineligible voters may be diluting the votes of citizens?

Mr. SCHULTZ. Thank you, Senator. I think it goes back to in March, when we did this match—and I would be very clear—of potential non-citizens. Unlike Florida and other States, we did not ask to have these people removed, we did not send any notices, because we recognized there was a potential for these individuals, that they may have, when they got their driver's licenses, been non-citizens and then later became citizens and voted. And so we attempted to try and get access to the SAVE data base. U.S. Code is very clear that we should have access to that information. And so we started talking to SAVE and its representatives in March and put our initial application in April, and then there was a lot of back-and-forth until July when they finally said that they would give us access to it. But then we did not get access to it, and we still have not received access to it.

Now, in all fairness, in late August we were sued by the ACLU, but that did not prevent us from being able to get access to the data base. It was more of what we would be able to do with it after that point. We still have not received access to the data base. The discussions have just basically gone silent. And, you know, it is disappointing because we are trying to do the right thing. We do not want to accuse somebody who is a citizen of the United States that they are not able to vote and that they are not a citizen. That SAVE data base gives us real-time information on an individual's citizenship and would allow us to make sure, of those 3,582, that we would be able to find out who is a citizen and who is not. We do know at least six of those individuals were not citizens because our Department of Criminal Investigation did find that out through investigative work, but that takes a lot of time. Had we been able to get access to this information, we would have been able to do this differently.

Senator GRASSLEY. Governor Crist, the charge that the Florida law suppressed voting and was designed to do so, it is my understanding in *Brown* v. *Detzner* that the court rejected that argument, finding that the law's voting changes neither had the intent nor the effect of discriminating on the basis, and that means the court rejected the claim of voter suppression.

So isn't it the case then that the Federal court rejected the argument of Floridians, and maybe your argument as well, that the Florida law "resulted in the suppression on election day"?

Mr. CRIST. Perhaps by that interpretation, but I have the experience of having been in Miami Gardens in Miami-Dade County during early voting, as well as Aventura in Miami-Dade County during early voting, and witnessing firsthand the long lines that were created by the law that was passed in my State in 2011 and signed by our current Governor. There were lines in Miami Gardens, which is largely African American, 3 and 4 hours people had to wait to vote in early voting. And over in Aventura on the same afternoon, I saw lines that were requiring people to wait 2½ to 3 hours for early voting. So I am not sure what the court was looking at, but I know what I saw, and it was suppressive.

Senator GRASSLEY. Thank you, Governor.

I would go to Secretary Bennett. I believe that the voter ID laws are common-sense measures to prevent voter fraud, so, Secretary Bennett, it is my understanding that Arizona does have a voter ID

law. From your own experience and that in other States, has the adoption of voter ID laws suppressed minority turnout? Or maybe I should say turnout generally, but I think you ought to answer from the——

Mr. BENNETT. Thank you, Mr. Chairman, Senator. Actually, we have the highest number of registered Latino voters in Arizona and as a percentage of our total voter base now, eight years after the adoption of Prop 200, as was mentioned by Ms. Perales. So there is no evidence in Arizona that voter ID or proof of citizenship in order to register has had a negative effect on minorities. And the only one—we do not collect ethnic data in any way on our voter registration form. The only way we can really do these studies is by exit polling or some of our larger counties do Hispanic surname evaluation. From the Hispanic surname evaluation, we have the largest percentage of Latino voters of our population now, 8 years after Prop 200 went in. We have the highest number of total Latino voters in Arizona than we have ever had. And they are participating at the polls in higher percentages than ever before.

Just 2 weeks ago, I met with two individuals, heads of organizations, that did large Hispanic and Latino voter registration drives in Arizona. Just between these two organizations alone, they registered over 34,000 Latino voters in a matter of weeks or a couple of months maybe before the primary and general elections. And the voter turnout is higher than it has ever been from that group.

Senator GRASSLEY. Thank you all.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you.

Senator Coons.

Senator COONS. Thank you, Senator Durbin. I would like to thank the whole panel for your testimony today and for your determination to make sure that we have a free, fair, open electoral system in the United States.

It seems to me that the core issue in this hearing is one of balance, of understanding consequence and scale. As Senator Durbin I think rather pointedly questioned the two State election officials, voter integrity, vote integrity is a critical issue. But you can only point to a handful of instances where there are real demonstrated challenges. And in my view, what we have heard in this hearing and in other hearings and what I have read and observed, denial of access to polling places, whether through very long lines or through aggressive purges of the rolls or through a variety of other tactical or technical means, has a significantly greater impact on the actual ability to exercise the franchise.

And in reality, a lot of this comes down to being outcome determinative, as lawyers tend to say. When Florida had an election in 2000 where the Presidential election hung in the balance and the initial difference was, I think, 537 votes, you suddenly begin to focus a lot of attention on these very minor—you know, 99.999 versus 99.9999 can actually determine who is Governor, who is Senator, who is President.

And so I think it is deserving of real thorough attention to what the impact is on the ability to vote of some of these very restrictive changes, and I was truly disturbed and troubled by Senator Nelson's testimony and by former Governor Crist's testimony about

what may have motivated some of the changes and decisions that may have been taken in Florida and their impact on access to the polls.

So if I might, with a first question to Governor Crist, what do you view as the most important election administration reforms that would actually sustainably and successfully improve access to the ballot and ease of voting?

Mr. CRIST. Well, I think there are several things, and, Senator, I appreciate the question. Number one, if you would restore the early voting days from the now restricted 8 days back to 14, I think that would be a step in the right direction.

I also think, as we chatted about earlier, the fact that reopening that Sunday before the Tuesday election would be honoring of a lot more people, candidly, and the practice that they may want to participate in, in the fashion they want to participate in it.

I also think that as it relates to voting by mail, the new law in Florida passed in 2011 said that when people sent in their mail ballot—and I am pretty sure I have got this right—the only evidence that could be utilized to determine that the person sending in the ballot was actually the one purporting to do so was their signature on that ballot when they sent it in and that it matched up with the signature at the supervisor's office.

Well, if you are in a situation like my mother, who last year, unfortunately, had a stroke—by the grace of God, she is doing pretty well now, and literally, thank God for that. But one residual that is lingering is that she is not able to write with her right hand, and she is right-handed. And so how in the world are you going to have your signature match up with the signature that is on file with the supervisor's office if you have suffered that difficulty.

So there are several things that I think are just common sense: more time to vote, make it more convenient to vote, appreciate that some people's ability to sign their signature as they did before may have altered or changed, and just be respectful to the voter, the people that we are supposed to work for, and allow them to exercise this wonderful opportunity and privilege that we have in America to choose our leaders and have the chance to exercise that right that so many have fought and died for in a common-sense way.

Senator COONS. Well, thank you, Governor. One of the things I have tried to contribute to the conversation here in the Senate is a bill, the Fair, Accurate, Secure and Timely, or FAST, Voting Act that urges States to compete for a pot of Federal matching funds and to put forward proposals for things that they might do—online, registration, voting by mail, expanding the days available—to ensure that we have got as much access to the opportunity to exercise the right to vote as reasonably possible. Other bills impose Federal minimum standards in terms of access, and I would be interested—if I might, to Secretary Bennett, I admire your stated goal of having the best election system, I think you said "in the world." I serve on the Foreign Relations Committee with Senator Durbin, and we both are quite interested in and engaged in the promotion of democracy in the developing world. It is an embarrassment, I think, to this country, when we have an election where there are 6-, 7-, 8-hour waiting lines, and I am really concerned and troubled by

what seem to be some of the motivations behind more aggressive registration and voter ID laws.

Help me understand—you made passing reference to county officials—as a former county official. What do you see as the capability, the capacity of States and counties to comply with Federal mandates, minimum standards to ensure that we really do have the best voting system in the world?

Mr. BENNETT. Thank you, Senator. It has probably been better than ever before since the passage of HAVA and the related Federal dollars that came out because of that. But I think we are at the point where, at least in Arizona, and from conversations I have had with people around the country, a lot of the equipment that was purchased with those dollars are nearing end-of-life cycles. That is a point that I have discussed with the 15 county recorders and election directors in Arizona as recently as last week to come up with a funding stream. I have proposed something along the lines of maybe $3 or $5 per voter per year be budgeted at each of the county levels as well as out of the State general fund budget. To me, $5 a year per registered voter is a reasonable sum to accomplish the very fundamental purpose of allowing people to vote without having to set in long lines, upgrade equipment, maybe more in the direction of voting centers—two of our counties, for example, have already moved in that direction—where any voter from a county can go to any voting center, and you do not have the phenomenon of, "I am in the wrong polling location, and the ballot that I cast did not count because I did not find the right polling location."

Senator COONS. That is compelling.

Mr. BENNETT. So there are technological advances and things that we can do. There is no more Federal money. We still have a little bit of it left in Arizona that we will probably make available as seed money to the counties, maybe in a matching thing, to address the renewal of our equipment. But the resources are getting very thin.

Senator COONS. Understood. I appreciate that input, and the regional voting centers idea strikes me as compelling.

Mr. Chairman, might I have one last question? Thank you.

Ms. Perales, would you agree—I believe from your testimony you would agree—that access to the ballot is diminished by long waiting times and that we should be concerned about disparate impact? A recent study by Hart Research showed that in this election, 2012, 22 percent of African Americans and 24 percent of Latinos had to wait more than 30 minutes, 30 minutes or longer, but only 9 percent of Caucasian or white voters had to wait 30 minutes or longer. Would you care to think and share with me about the cause of this disparity, what can be done to remedy it, and what does it say about the continued value of the Voting Rights Act at a time when the Supreme Court is reviewing its appropriateness?

Ms. PERALES. Well, thank you. I do not have an explanation for why there are longer lines for some minority groups nationwide. I think the explanation may vary State by State. But it is very discouraging to have to wait such a long time to be able to cast your vote. And if you have a job where you do not have the flexibility to take time off to vote, it makes it even tighter because you are

in line and you realize you have to go back or you are going to get in trouble with your boss. Or many of us face, you know, the after-work attempt to vote where you have got to get home and you have got to cook dinner, and you have these things that you have to do with your family. So it makes it very difficult, and we have seen a lot of people just get out of line and go home.

With respect to Section 5, I have to say that it has been so critically important for the minority community over time and since the time that the covered jurisdictions were covered in 1965 and 1975. Just this year, speaking from my perspective as a litigator, it has continued to be critical and very much alive for us. In Texas, when the legislature passed a plan that absolutely, clearly discriminated against Latinos and African Americans, and even was found to have purposefully racially discriminated, if we did not have Section 5, those plans would have gone into effect while we struggled in court with our limited resources to assemble enough experts and other witnesses to convince a three-judge panel in Texas that eventually it would have to be enjoined.

You know, Section 5 shifts the burden properly to jurisdictions that are covered to show at the outset that their laws are not discriminatory. In the case of Texas and the 2011 redistricting, Texas could not prove that its plans were non-discriminatory in the D.C. court, and the plans were rightfully enjoined. And as a result, we had elections under interim plans that were vastly more fair than they would have been otherwise.

So Section 5 is very much alive for us. That is not the only example I could give, but I am giving you a short answer. It is alive, it is vibrant, and it is so needed. It is precious to us and the core of the most effective piece of civil rights legislation ever passed by Congress.

Senator COONS. Thank you very much. Thank you both for your testimony and for your very hard work litigating what I know are complex and difficult cases.

Just in closing, if I might, Mr. Chairman, say that I, too, am passionate about ensuring that the Voting Rights Act remains alive and relevant and that the ugly history that led to the 1965 Voting Rights Act and to these preclearance requirements, there is plenty of evidence—and you cite the Texas case—to suggest that these are, sadly, still valid concerns and that they require strong Federal legislative action to ensure access to the polls, that a safe, that a fair, and that an open electoral system remains a part or is a part, becomes a part of America's electoral future, because our history suggests that in the absence of determination and rigor, we may lose one of the most foundational civil rights in this country.

Thank you for your work. Thank you all for your testimony today.

Senator DURBIN. Thanks, Senator Coons.

Let me ask Representative Cobb-Hunter and Ms. Perales the following question. I think I know—I do know the answer, but I want to hear your response.

What is the big deal? If I want to ride on an airplane, I have got to show an ID. If I want to rent a car, I have got to show an ID. Sometimes even to go to a Presidential rally, I have to show an ID.

So what is the big deal of showing an ID to vote, for goodness' sakes, to make sure that I am who I say I am?

Ms. COBB-HUNTER. Well, Senator, we heard that question a lot during the debate in South Carolina, and I will tell you what the big deal is for my constituents. An ID is something that is difficult to come by, and my perspective is rural and dealing with people who do not have documentation that might be necessary.

It is important to note that the notion of an ID in and of itself is not the problem. We, those of us in South Carolina, members of the Legislative Black Caucus, who walked out of our legislature during the debate on this, where we came down in disagreement was that the barriers that requiring a photo ID set in some communities were just simply too much for our constituents to deal with.

For example, there was the offer of a free ID, just go to the DMV and you can get a free ID. The reality, as I said earlier and as is in my written testimony, is that it is not that simple.

For example, women who are divorced, if you go to the DMV and a name is different than what you had, then you are talking about incurring expenses of going through name changes because it does not match what is on the original voter registration. If you lived on a farm and you were delivered by a midwife and the record of your birth, for example, is in a family Bible—in a lot of communities of color, births are recorded in family Bibles.

So the issue is not the ID. The issue for us in South Carolina was the documentation that is required to get an ID. And so it is not that we support fraud, and I would point out again that there were absolutely zero—I have heard six, I have heard different numbers here. In South Carolina, there was not and is not one case that can be cited of a person showing up at the polls with the ID of another person attempting to vote.

It is critical for us in South Carolina that the preclearance requirement of Section 5 be maintained, and let me just end by saying we were fortunate in our State that the three-judge panel ruled that this ID law could not take effect before the November elections. Where we are concerned is that, given my history in the legislature in South Carolina, all of the conversation and explanation that we had before the three-judge panel, where our State election officials and their discussion of reasonable impediment, in effect creates a new law. I am concerned about what the implementation will actually look like.

We have no record of saying—in response to the other question about whether or not these voter ID laws had impacted voter turnout, we cannot answer that question yet in South Carolina because it has not been implemented. But I will say that there is mass confusion in the State. We have got an election that will come up in January, a local election, and there is confusion because people are still under the impression that the law that was litigated before the three-judge panel is the law that will take effect then.

So we are all for integrity, but we are not for barriers that preclude people the right to vote.

Senator DURBIN. Ms. Perales, would you like to add something?

Ms. PERALES. Thank you, yes. So the big deal is that most people do have a photo ID that could use to vote, depending on what State

you are in. But many people do not, and there are higher numbers of these people in certain subcommunities, so I will mention briefly the clients that I had in the voter ID litigation in Texas.

Two young women, recently graduated from high school, Victoria and Nicole Rodriguez, top of their class, the pride of our community, full scholarships to college. They had student IDs from high school, but they did not have driver's licenses because it was too expensive in their very limited income home to put them on the car insurance, because when you get a driver's license, your parents' car insurance goes through the roof, especially if there are two of you.

And so these young women actually came to D.C. and testified, and they boarded a plane using their student ID. They got here. They were able to check into a hotel, and we helped them along the way. But this was ID that under the Texas new law was not going to be sufficient. So the tighter the voter ID law is, the more difficult it is for certain groups.

Victoria and Nicole were young, and they were poor, quite frankly. And in that group, especially if you are dependent on public transportation, there are going to be much higher rates of people without voter ID.

The first analysis done by Texas in the preclearance process in front of DOJ yielded a statistical result that Latinos were twice as likely as non-Latinos to lack an official driver's license issued by Texas. Nobody is really sure whether that is the true number, but that was the first number that Texas came up with.

Senator DURBIN. Thank you.

Mr. Bennett, I am going to ask you the last question here. Could you say in just a few words, could you describe to me why a person in Arizona, when they attempted to vote, would receive a provisional ballot?

Mr. BENNETT. The most common reason is that—this past year, this past election just a month ago, the most common reason is that they had been mailed an early ballot and either lost it in their household shuffle or whatever and showed up on election day at a polling location to vote. At that point, there is an indication by their name that they have a live ballot that was mailed to them at home. So that they do not inadvertently get to vote twice, they are asked to vote a provisional ballot. The provisional ballots are set aside for a day or two until all of the late-arriving ballots by mail are verified. And then once we know that we did not receive a ballot by mail from that voter, then their provisional ballot is cast.

We had many voters who admitted that they heard on the media or whatever that, you know, if you had mailed your ballot on Friday or Saturday, with the election on Tuesday, it might not get there in time, so as a fail-safe, go down and vote a provisional ballot. So the first reason why people were asked to vote provisionals was they had already been mailed a live early ballot.

Senator DURBIN. So did you detect any trends in terms of this instance where people were given a provisional ballot based on being sent an early ballot? I mean, were there more whites, more blacks, more Hispanics, more women, more men?

Mr. BENNETT. No. In fact, our largest county, Maricopa County, around the Phoenix metropolitan area—I should probably have provided you with a wonderful map that they did that identifies the Hispanic surname voters in the precincts throughout Maricopa County, and the higher percentages are a darker color. And then they have done an evaluation already of where did the provisional ballots come in. And the provision ballots are scattered all throughout the county.

Senator DURBIN. So the largest or the most dominant reason for issuance of provisional ballots appeared to be across the board, affecting everybody.

Mr. BENNETT. Yes, absolutely.

Senator DURBIN. That is why I wanted to ask you this question, because you spoke about Maricopa County in your testimony here. Statewide in Arizona, in the 2012 election, 172,000 provisional ballots, roughly, were cast. That is 7.4 percent of the total number of ballots cast. More than two-thirds of the provisional ballots cast statewide, however, were cast in Maricopa County, where a large number of Arizona's minority voters reside. Nineteen percent of all provisional ballots in the State were rejected and not counted.

According to an analysis by the Arizona Capitol Times, Maricopa County voters living in precincts with higher percentages of minorities had a greater chance of casting provisional ballots in the November 6th election. Eighty-two percent of the voters in the Holly precinct, north of Phoenix, are minorities. In that precinct, 18.5 percent of all ballots cast were provisional. In Tempe's Hudson precinct, where 43 percent of the residents are minorities, 32 percent of all ballots cast were provisional.

Can you explain why voters in Arizona's predominantly minority precincts were so much more likely to receive and cast provisional ballots that may ultimately not be counted?

Mr. BENNETT. First of all, Senator, the data that you are referring to in the Capitol Times article is not data that I have heard from the counties themselves. What I did glean from the meeting that I referred to with the two Hispanic voter registration groups, one of them admitted that of the 34,000 Latino voters that they registered within the last few weeks or a month or two before the election, on many of those voter registration forms, the voter themselves had not checked the box to be on what is called the Permanent Early Voter List and receive their ballot by mail.

For the purposes of the organization that was pushing the drive, I was frankly a bit surprised that they admitted to me that the organization officials had checked a box on the voter registration form that the voter may not have known had been checked by the group that they gave it to, which caused a ballot to be mailed to those folks, and they were thinking, "I am going to go to the polls and vote." Then a ballot shows up. Perhaps they thought it was a sample ballot or whatever. So there was at least some anecdotal evidence of these groups that registered large Latino voters——

Senator DURBIN. I understand that, but what you said earlier was when you looked at provisional ballots, they were across the board; but what the statistics show is that provisional ballots were more likely in the minority precincts——

Mr. BENNETT. I do not think statistically that is correct, Senator. I think they could find, as I think that article indicates, that of the darker blue—the color that they used on these maps. Of the darker blue precincts that had a higher percentage of minorities or Hispanic surname registered voters, I am sure some of those precincts did have higher percentages maybe than the average. But when you look at the map of where the provisional ballots came in from across the county, they were scattered throughout the county, came from some of our—I personally sat at a table with a volunteer and processed a large group of provisional ballots from one of our predominantly non-minority precincts. And so I would respectfully suggest that they might be picking one or two precincts that correlate between high voter registration—or high minority registration and high provisional ballots. But there were as many or more precincts that did not, that had low minority percentages.

Senator DURBIN. So we will take a look at that and perhaps compare some statistics.

Mr. BENNETT. Thank you.

Senator DURBIN. I want to thank this panel, and I want to thank all of you who have followed this hearing today. The obvious question is: The election is over. Why are you concerned about it? And we are concerned about it for something very basic stated by our courts. The Supreme Court said the right to vote is indeed "preservative of other basic civil and political rights." I remember when that question was asked I think of every Supreme Court nominee if they understood how important this one right was. And, in fact, they all testified that they did, and we should not forget it.

So we have a lot of organizations that want to put written statements in the record: Leadership Conference on Civil and Human Rights, Lawyers Committee for Civil Rights, Center for American Progress, African American Ministers Leadership Council, the American Civil Liberties Union, and DEMOS. Without objection, the statements will be put in the record. No objection.

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

Senator DURBIN. The hearing record will be held open for 1 week for additional statements. Written questions may be sent your way to the witnesses at the close of business. We hope that 1 week from today you will spend Christmas Eve and Christmas Day completing the questionnaire and get them back to us. We will ask the witnesses to respond promptly so we can complete the record. And if there are no further comments from our panel or my colleagues, I thank the witnesses for attending and colleagues for participating.

The hearing stands adjourned.

[Whereupon, at 11:53 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

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From Senator Amy Klobuchar

"The State of the Right to Vote After the 2012 Election"

December 19, 2012

Questions for Nina Perales

Voter ID Laws:

- To the best of your knowledge, did the implementation of new voter identification requirements cause confusion or contributed to long lines at the polls in this year's election?

First, I would like to thank Senator Klobuchar and the Senate Judiciary Committee for the opportunity to provide additional information regarding restrictive voter identification requirements at the polls. As I mentioned in my oral testimony, we believe there are many reasons for long lines at the polls on Election Day and that restricting voter identification rules are a contributing factor to poll worker and voter confusion that can and often does lead to longer lines.

In Texas for example, the proposed photo voter ID law enacted by the Texas Legislature under SB 14, but not implemented because it failed to gain preclearance under section 5 of the federal Voting Rights Act, did result in confusion for poll workers and election officials. On March 12, 2012, the United States Attorney General denied administrative preclearance of the Texas photo voter ID law (SB 14), concluding that Texas had failed to show that SB 14 will not have "the effect of denying or abridging the right to vote on account of race." On August 30, 2012, the United States District Court for the District of Columbia issued an order in *State of Texas v. Holder*, Civil Action No. 1:11-CV-00128, denying the state's request for a declaratory judgment preclearing SB 14. Nonetheless, the Texas Secretary of State required county election officials to add language to the registration certificates sent to every Texas voter describing the requirements of the photo voter ID that never went into effect.

The voter registration certificate designed by the Secretary of State stated:

> Upon federal approval of a photo identification law passed by the Texas Legislature in 2011, a voter must show one of the following forms of photo identification at the polling location before the voter may be accepted for voting: Driver's license, election identification certificate, personal identification card or concealed handgun license issued by the Texas Department of Public Safety; United States Military identification card that contains the person's photograph; United States citizenship certificate that contains the person's photograph; or a United States passport.

Because Texas counties are required by law to send this certificate to all registered voters, including those who registered to vote following August 30, 2012, millions of individuals continued to carry an official election document stating inaccurate information regarding the requirements for voting in the November 6, 2012 election.

The voter confusion created by the dissemination of inaccurate voter registration certificates was compounded by the incorrect information provided to voters by the Texas Secretary of State on her websites.

The website for the Elections Division of the Secretary of State provided a number of links for voter information, including a tab for "Voter Information" and "Frequently Asked Questions." These tabs guided the voter to the website VoteTexas.gov (also maintained by the Secretary of State) and a page titled "Need ID?" which did not provide a complete list of acceptable voter identification documents established by the Texas Election Code §§ 63.001 and 63.0101. Most important, the Secretary of State excluded from her list the voter registration certificate, which is acceptable voter identification under current Texas law and also the most accessible form of identification because it does not cost money and comes to the voter by mail before an election. The Spanish language translation of the site contained the same error. Thus Texas voters searching online for information from the Secretary of State on acceptable voter ID were seriously misinformed about their ability to vote at the polls on Election Day.

Many Texas county election officials provided links to the erroneous Secretary of State election webpages on their own websites, which further exacerbated the problem of misinformation on voter identification. Even worse, some counties that correctly stated that voters may use their voter registration certificates as voter identification at the polls contradicted themselves by linking to the websites maintained by the Texas Secretary of State. Finally, other counties that relied on the Secretary of State websites for voter identification information provided contradictory information in English and Spanish. For example, Tarrant County correctly stated on its website in English that voters may use their voter registration certificates as voter identification, but then directed Spanish speaking voters to the incorrect information on the Secretary of State websites.

Media outlets in Texas that relied on the information distributed by the Secretary of State also reported incorrect lists of voter identification. For example, in McAllen, Texas, a city of more than 125,000 that is also 85% Hispanic, the local television station reported an incorrect list of acceptable voter ID.

Thus, voters who were initially confused by the restrictive SB 14 identification requirements printed on their voter registration certificates were further misled by the information presented by the Texas Secretary of State as well as local election officials and news outlets that relied on the Secretary of State's websites.

Texas poll worker confusion regarding voter identification was chronicled by Wayne Slater, a Dallas Morning News Reporter, when he attempted to vote in Williamson County utilizing his

utility bill (an acceptable form of voter identification in Texas) and was asked by the poll worker for additional identification.[1]

The nonpartisan Election Protection coalition in 2012 reported misinformation and confusion about voter identification in Michigan and Pennsylvania.[2] In Pennsylvania many voters reported being confused and deterred by requests for ID. Election Protection received reports from across the state from voters who were improperly turned away for lacking photo ID and reported the following:

> This was exacerbated by widespread misinformation disseminated at polling places. Voters in polling places in Dauphin County, for example, were greeted with misleading signs stating that voters must show an approved form of photo ID to vote. The state itself put out such misleading information, issuing a mailing the week before the election that read, 'If you want to vote, SHOW IT....Under a new law, voters are supposed to show a form of ID' and contained no mention that voter's did were not required to show photo identification in order to vote on Election Day.[3]

Ultimately, it's difficult to quantify the confusion caused by strict voter identification requirements (enacted or proposed) and its relationship to long lines in polling places. Voters obtain election information from multiple sources including media, word of mouth, official and non-official websites, mailers and emails from political parties, poll workers, county officials, candidates, and third parties. In states with litigation over enacted voter ID laws such as Texas and Pennsylvania, misleading and inaccurate information, in some cases from the election officials themselves, likely caused confusion among voters and poll worker alike as well as delays in accepting voters on Election Day when poll workers demanded the wrong types of ID.

➢ In your opinion, are any types of voter ID laws consistent with protecting voting rights?

The short answer to your question is yes. MALDEF does not contend that all voter identification requirements will automatically result in violations of the Voting Rights Act or any other Constitutional or legal protections. With that said, MALDEF believes that any voter identification requirement ought to allow eligible voters who do not have preferred identification to participate by showing other forms of identification, signing an affidavit, and/or providing other identifying information. Furthermore, any substantive change in voting policies, including a change in identification requirements, must be accompanied by a robust and multi-faceted public education campaign. Last, voting should not cost money, and any additional identification requirement should be accompanied by a program to ensure that required identification is free of cost, including underlying identification needed to obtain voter ID, such as birth, marriage and naturalization certificates as well as, where feasible, mobile identification units to provide identification to those who cannot physically go to government agencies that issue state photo identification documents.

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[1] Available at http://trailblazersblog.dallasnews.com/2012/10/voter-id-is-not-the-law-in-texas-but-law-schmaw-demand-it-anyway.html/

[2] See http://www.lawyerscommittee.org/admin/site/documents/files/EP-2012-Preliminary-Report-to-Congress-FINAL.pdf at 15.

[3] Id.

The most detailed information we have about the impact of voter identification laws comes from the litigation in which MALDEF represents eligible voters who were turned away or would have been turned away from the polls as well as voter organizations. These cases include *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) and *Texas v Holder*, 2012 WL 3743676 (D.D.C. 2012).

At the trial of *Gonzalez v Arizona*, Arizona could not produce any example of impersonation voter fraud to justify its voter ID law. The lack of evidence of even a single incident of impersonation voter fraud is consistent with the U.S. Supreme Court's observation in the Indiana voter ID case that "the record contains no evidence of any such fraud actually occurring in Indiana at any time in its history." *Crawford v. Marion County Election Board*, 553 U. S. (2008) (slip op at 11). What we have learned about voter ID laws is that they are unjustified by a real problem of impersonation voter fraud and are thus a solution in search of a problem.

Although unsupported by the evidence, Arizona's voter ID law has resulted in thousands of voters being turned away from the polls. During these elections, a voter whose name was on the rolls but who could not provide the required ID was given a conditional provisional ballot and told to return within five days with ID or the ballot would not be counted.

Because of Arizona's voter ID law, many eligible voters whose names were on the voter rolls found themselves suddenly unable to vote because of one problem – they did not have the specific combination of documents required by the Arizona voter ID law. These citizens – all ages, races, party affiliations and income levels – were representative of the general electorate but found themselves excluded from the democratic process.

For example,

- Karen Lewsader, a police officer and registered Republican, was forced to cast a conditional provisional ballot because her driver's license listed a different address than the address assigned to her in the voter rolls. She had previously moved and changed her address with the Motor Vehicles Department, but the practice of the agency is to change the records in its database and not replace the physical driver's license unless the driver pays an additional fee. When she was at the poll Ms. Lewsader went back to her car to try to find another form of identification with the correct name and address so she could cast a regular ballot, but the vehicle registration information she found was under her husband's name. When the demands of her job prevented her from returning to the county to show additional ID, her vote was not counted.

- Kristopherlee Russell, a registered Democrat, was forced to cast a provisional ballot because his driver's license and voter roll addresses did not match. His license had the address from his time as a student at the University of Arizona. After graduation he went to the DMV to update his information, but did not pay for a replacement license. When he went to vote his valid driver's license and voter registration card were not sufficient proof of identification. Mr. Russell did not have any other acceptable form of identification with him at the time and ultimately cast a provisional ballot. Minutes after leaving the polling place he found his Vehicle Registration and Proof of Insurance information in his car and attempted to present them at the same polling place as proper

forms of identification, but the poll workers did not allow him to change ballots. Mr. Russell's vote was not counted.

- Caleb LaPorte is a technician who works in chemical pumps and mines in Phoenix. Poll workers gave him a provisional ballot because the address on his license did not match the address on the voter rolls, even though he brought a letter from the voting bureau that stated it received his change of address and that he could use the letter as a form of identification. Mr. LaPorte was living with his girlfriend in her apartment at the time, and all the utility bills were in her name. When a poll worker explained that any form of mail would suffice as identification for voting, Mr. LaPorte returned with the only mail he received at that address- advertisement mail. Upon showing the envelope to the poll workers, they concluded it was not acceptable and gave him a conditional provisional ballot. The poll workers told Mr. LaPorte that the only way he could "cure" his ballot was to get a new driver's license. Mr. LaPorte did not have the time to do this before the 5-day deadline and his ballot was not counted.

- Georgia Morrison-Flores was a newlywed when she registered to vote and she registered under her married name. However, when she went to vote her maiden name on her driver's license did not match her married name under which she was registered. Because the names did not match, even though her valid ID showed her photo, birth date and first name, Ms. Morrison-Flores was turned away from the poll by an election worker who knew her and had been her childhood neighbor. Ms. Morrison-Flores was unable to cast a ballot of any kind, despite her status as a qualified voter.

Although the federal courts upheld the Arizona voter ID law is not unconstitutional, the examples of eligible voters turned away at the polls remain in the record as a stark reminder of the disenfranchising effects of such laws.

In Texas, the enacted, but not pre-cleared SB 14 would have been far stricter than Indiana's or Georgia's voter ID laws[4] as well as Arizona's in terms of acceptable identification and the lack of exceptions for potentially eligible voters that lacked the necessary identification. In *Texas v. Holder*, the U.S. District Court for the District of Columbia found that Texas could not bear its burden to prove by a preponderance of the evidence that the photo ID legislation lacked a retrogressive effect in part because the Legislature rejected amendments that would have ensured appropriate safeguards including, but not limited to, waiving all fees for indigent persons who needed underlying documents, reimbursing low-income Texans that for travel to obtain an ID, including student IDs and Medicare cards in the list of acceptable photo IDs, and accepting expired driver's licenses.[5]

Restrictive photo ID legislation forces certain voters to take additional steps to acquire acceptable forms of identification or exclude these voters from voting altogether. In addition, because these laws force some voters to return home for more documentation before returning to the polls for a second attempt at voting, the present themselves for voting a second time, the laws discourage voters from exercising the franchise.

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[4] *Texas v Holder* opinion at 26.
[5] See ID at 26, 55-56.

This type of legislation also creates the likelihood that election officials will refuse to accept voters whose photo identifications list an address or name that does not match their address or name on the voter rolls. For example, a voter who changes addresses before his driver's license expires will have an address on that license that differs from the address in the voter rolls. If you want a license that reflects your new address, you have to pay additional fees. Poll workers are often unsure about what to do with a voter whose photo identification lists a name that is different from that on the voter rolls, and sometimes poll workers respond by turning away the voter, or allowing the voter to cast only a provisional ballot that is ultimately not counted.

MALDEF recognizes that not all voter identification laws are the same. Many voter identification requirements include safeguards to ensure voters will not be disenfranchised. Many of these safeguards are more effective than others and if safeguards are combined, it can significantly reduce potential disenfranchisement of eligible voters. These include:

Effective

- Allowing a county or government issued voter registration certificate as acceptable form of identification;
- A broad list of identification documents that includes student identification, non-photo government-sent correspondence and other documents consistent with the Help America Vote Act list of documents for first-time registrants in a state that does not have a statewide voter database;
- An affidavit process similar to Michigan, New Mexico or Florida to ensure eligible voters are not disenfranchised; these safeguards have proven effective in reducing legal challenges;
- Free identification cards become less effective if voters are subject to rules that require other documents that are not free.

Less Effective

- Limiting acceptable identification to photo identification excludes voters who lack a photo ID but who do have other forms of non-photo identification;
- Narrow exceptions for the disability community and those over a certain age fail to provide a meaningful opportunity for many voters who lack ID;
- Short "cure" periods in which voters who cast provisional ballots must return with satisfactory ID present serious barriers to voters with inflexible work schedules or limited access to transportation.

Conclusion:

Ultimately, laws related to voter identification must strike the right balance between security and access to the polls. Attempts to make the identification requirement exceptionally strict are often not rooted in good policy, or even reality, and can result in significant disenfranchisement. Any law that requires an identification requirement beyond what is required by HAVA for first time registrants should be viewed skeptically and should not implemented without a significant efforts to determine the impact on racial minorities, students, the elderly, the disability community, and the indigent. Any change in voter identification laws must be accompanied by a robust education campaign that encourages voters to obtain the necessary and easily obtainable identification and to exercise their franchise. If the proper conditions and safeguards are met, MALDEF does object to reasonable identification requirements to vote at the polls.

SUBMISSIONS FOR THE RECORD

ASIAN AMERICAN JUSTICE CENTER

MEMBER OF ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE

Statement of
Mee Moua
President and Executive Director, Asian American Justice Center

Before the
Committee on the Judiciary
United States Senate

Hearing on
"The State of the Right to Vote after the 2012 Election"
December 19, 2012

Introductory Statement

The election cycle of 2012 was an important one for Asian American voters. Not only did we see increased excitement and participation by Asian American voters, as evidenced by numerous surveys, it was also the first major election since the new determinations under Section 203 were made based on census 2010 data. The Asian American Justice Center (AAJC) submits this statement about Asian Americans and the 2012 election and asks that it be made part of the record.

Organizational Background

AAJC is a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans, and build and promote a fair and equitable society for all. AAJC is a member of the Asian American Center for Advancing Justice ("Advancing Justice") along with three affiliates: the Asian American Institute in Chicago, the Asian Law Caucus in San Francisco, and the Asian Pacific American Legal Center in Los Angeles. All members of Advancing Justice have been engaged in working with their community members to ensure their right to vote. AAJC also has 120 community partners serving their communities in 60 cities across 30 states, and Washington, D.C.

AAJC, and the other members of Advancing Justice, work to eliminate barriers to the participation of Asian Americans in our nation's political process. This includes working to defend and enforce the Voting Rights Act (VRA), encouraging voter registration through enforcement of the National Voter Registration Act, improving election systems, and providing analysis of Asian American electoral participation. AAJC also provides training and technical assistance to local groups on a wide range of issues that remove barriers to voting, such as implementation of the Help America Vote Act (HAVA) and enforcing the language assistance provisions of the VRA.

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Election Protection

For the 2012 election, AAJC and the other members of Advancing Justice conducted a comprehensive Section 203 advocacy and monitoring project, focusing on jurisdictions with newly-covered languages and newly-covered jurisdictions under Section 203. The project supported local partners in their advocacy efforts with local elections officials through advocacy training and materials, community education materials, and technical assistance from AAJC and the other members of Advancing Justice. The project also included a coordinated poll monitoring effort. On Election Day, AAJC, the other members of Advancing Justice, and our community partner organizations sent close to 500 poll monitors to nearly 900 election precincts across eight states.

AAJC also launched a project with the other Advancing Justice members and other national Asian American organizations to increase Asian American civic participation and protect Asian American voting rights during the 2012 election cycle. AAJC produced in-language, state-specific "Know Your Rights" palm cards for our partners to distribute to community members in nine states: Florida, Georgia, Illinois, Michigan, Minnesota, Nevada, Ohio, Texas and Virginia. For each state, we created palm cards in four languages: one in English and the remainder in three Asian languages chosen in consultation with local partners.

Working with the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), AAJC and APIAVote launched the first ever multilingual Asian language Election Protection hotline—1-888-API-VOTE—in Virginia and Florida. The hotline provided assistance to the Asian American community in two critical states with a growing Asian American population. The hotline fielded numerous complaints from Asian Americans attempting to exercise their right to vote.

Asian American Community Profile

As the fastest growing minority group in the U.S., with a growth rate of 46%, surpassing that of the Latino community, the current political climate has created numerous opportunities and challenges, particularly in the realm of voting for the Asian American community. As a majority immigrant community, there are now over 17.3 million Asian Americans, comprising 6% of the nation's population. This growth is occurring in states with large, established Asian American populations, such as California and New York, as well as in states with emerging Asian American communities, such as Nevada, which is home to the nation's fastest growing Asian American population, Arizona, North Carolina, and Georgia. Texas and New Jersey became home to the third and fourth largest Asian American populations, overtaking Hawaii in numbers of Asian Americans since the previous census.[1]

The rising diversity of America's populace has resulted in more voices participating in the political debate, with many racial and ethnic groups seeing an overall increase in civic engagement. For example, approximately 600,000 additional Asian Americans voted in the

[1] Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans in the United States 2011*, (Los Angeles, 2011), 6, http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf.

2008 Presidential election as compared to 2004.[2] In addition, we have seen the Asian American voters' political voice being heard through the election of Asian American candidates. A record number of Asian Americans won Congressional seats in the November 2012 election with six new AAPI leaders, who will be joining eight returning members to serve in the 113th Congress.[3] Nevertheless, we still see a gap between voter registration rates of non-Hispanic Whites and Asian Americans. In 2008, 55% of voting-age Asian American citizens registered to vote compared to 74% of non-Hispanic White citizens.[4] Once Asian Americans are registered, however, the turnout gap narrows significantly, with 86% of registered Asian American voters turning out compared to 90% of non-Hispanic White voters.[5]

Election 2012 & Asian Americans

While Asian American voters suffered from many of the same election administration issues faced by voters across the country, such as long lines and lack of enough voting equipment, language issues continued to be a significant barrier for Asian American voters in the 2012 elections. Nearly three out of four Asian Americans speak a language other than English at home and roughly one-third of them are limited-English proficient (LEP).[6] Additional language and cultural barriers occur for LEP Asian Americans when confronted by the complex election process.

Election after election, LEP Asian American voters experience discrimination while attempting to vote or continue to be denied needed assistance at the polls. For example, in Annandale, Virginia, poll workers attempted to separate LEP Korean American seniors from native-English speakers, in an attempt to eliminate long lines. According to Virginia voting procedures, poll workers are required to ask all voters to repeat their names and home addresses—a simple request for a native English speaker. However for the Korean American seniors, many of whom had never voted in previous elections, they had difficulty completing the task asked of them. Unable to respond promptly, the poll workers became frustrated with the Korean American seniors who were having difficulty answering due to language barriers. They attempted to place the LEP Korean Americans into separate line and then proceeded to help the English-speaking voters before addressing the Korean Americans.[7] Unaware of why two lines were being formed, many of the Korean American seniors expressed their confusion and irritation with the voting procedure and the way in which the poll workers handled the situation.

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[2] U.S. Census Bureau, *Voting and Registration in the Election of November 2008*, May 2010, 2-4, http://www.census.gov/prod/2010pubs/p20-562.pdf.
[3] "Asian-Americans make historic gains in Congress," Compiled by Associated Press Writer Ron DePasquale in New York, New England Cable News (Nov. 13, 2012) at http://www.necn.com/11/13/12/Asian-Americans-make-historic-gains-in-C/landing_nation.html?&apID=35172b55ca824722b03d463e5adf1b64
[4] U.S. Census Bureau, *Voting and Registration in the Election of November 2008*, May 2010, at 2-4, http://www.census.gov/prod/2010pubs/p20-562.pdf.
[5] *Ibid.*, 4.
[6] Asian American Center for Advancing Justice, *A Community of Contrasts*, 24.
[7] Jason Cherkis, "Election Problems Included Confusion, Intimidation, Untrained Poll Workers," *The Huffington Post*, November 12, 2012, http://www.huffingtonpost.com/2012/11/08/election-problems-confusion-intimidation_n_2095384.html.

In another part of the country, at a precinct in Minnesota, poll workers asked a group of elderly Hmong American voters to provide identification. When the white male in line behind the Hmong American voters was in the process of getting out his wallet to provide his ID to the poll worker, the poll worker told him that he did not need to provide identification. However, the poll worker continued to insist on identification from the Hmong voters. Also in Minnesota, a volunteer attorney and interpreter was told that she was only allowed to help up to three voters and the head election judge called the police to the polling location to confront the volunteer attorney for providing language assistance to Hmong elders who struggled to read elections materials and ballots.

Improve Section 203 Compliance

Section 203 jurisdictions are required to provide language assistance throughout the election process.[8] Language assistance includes written, translated voting materials, oral assistance on Election Day, and community outreach and publicity regarding the availability of language assistance to the covered language group. While Section 203 jurisdictions made an effort to provide adequate language assistance to LEP voters at numerous polling sites, many had serious problems, indicating that further education and training is required. These problems included a lack of bilingual poll workers and translated ballots and resistance to providing language assistance, which in some cases required prompting from outside poll monitors before poll workers complied. Additionally, there were also a number of jurisdictions that purposely refused to comply with Section 203 requirements.

For example, in Kings County, New York (Queens), the Board of Elections failed to provide a Bengali translation of the ballot for the November 2012 election. While the Queens Board of Election blamed their vendor for having significant technical difficulties with incorporating Bengali into its voting system and provided some interim steps to address the Bengali language needs, it was clear that Kings County was not in compliance with Section 203 and had not done enough to meet their obligation. Section 203 determinations were announced in October 2011, giving the jurisdiction over a year to determine which Asian Indian languages for which it needed to provide assistance and how to actualize the assistance.[9]

In Bergen County, New Jersey, elections officials did not provide Korean translations of the candidate names on the sample ballots and ballots. Although Bergen County Clerk officials were following their interpretation of New Jersey election law, which states candidate names cannot be translated into any language, refusing to provide a transliteration of candidate names runs afoul of the county's obligations under Section 203. This failure to provide the Korean transliteration of the candidate's name was particularly problematic because many Korean voters heavily rely on the Korean ethnic media for the information on elections and candidates, and almost all Korean media only have candidate names in Korean.[10] In fact, when Korean

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[8] 42 U.S.C. § 1973aa-1a

[9] Terence M. Cullen, "Board of Elections leaves Bengali off ballot," *The Queens Courier*, September 7, 2012, http://queenscourier.com/2012/board-of-elections-leaves-bengali-off-ballot/.

[10] Candidate name should be transliterated in Bergen County – that is, the selection of Asian language characters to represent the phonetic equivalent of the syllables of an English name, or a name in any other language that is not traditionally written using Asian language characters.

American Civic Empowerment (KACE) conducted an independent exit poll during the primary election to assess the voting patterns of the Korean American community and measure the impact of not having translated candidate names, KACE found that about 52% of Korean American voters were receiving information about candidates and elections from Korean media, which only uses Korean transliteration of candidate names and 28% of Korean American voters experienced difficulties voting because of the lack of Korean translation of candidate names. Thus, the failure of Bergen County to translate the candidate names had real-life consequences and impaired these individuals' right to vote.

Even when jurisdictions are willing to translate documents, issues about the quality of the translations continue to be a concern. For example, in Harris County, Texas, after the County Clerk shared translations with its advisory committee for review, an advisory committee member discovered a poor translation that failed to distinguish between state and federal level positions on one of the ballot measures for a municipality. The titles in English were the same (i.e., Secretary of State), but in context should have used a different translation. When the County Clerk's office informed the municipality that the translation was incorrect on their ballot measure, the municipality told the county to leave it as is with the incorrect translation. For future elections, it will be important that all translations provided by the various municipalities be reviewed by the local advisory committee for accuracy. Also, again in Bergen County, New Jersey, the Korean advisory committee utilized by KACE reviewed the translations of the mail-in ballots and instructions and found an erroneous translation on voting machine instructions. Other instances of poor translations included a translation error that occurred in Clark County, Nevada, on their Tagalog voter registration form, where the only way a reader was able to understand the translation was to compare it to the original English. In San Diego County, the word for "registration" was initially translated using a term associated with communist prison camps.[11]

On Election Day, we saw numerous polling sites in numerous jurisdictions that did not provide effective language assistance to LEP Asian American voters, either because of poor written language assistance or poor bilingual oral assistance. For example, in Hamtramck, Michigan poll workers were not responsive to requests to comply with language access requirements and precincts often lacked signs indicating bilingual assistance, leaving voters confused and without any help or direction. One person reported that poll workers were withholding assistance to Bengali speaking voters. Poll workers denied requests to offer bilingual ballots and to post a sign indicating that Bengali assistance was available at the site. One poll worker questioned the need to tell voters about the availability of Bengali ballots, that doing so would be "racial profiling," and indicated that voters should know about the in-language ballots before coming to the polls. None of the poll workers were wearing name badges indicating their language ability and thus were not identifiable as bilingual poll workers.

This situation was not unique to Hamtramck, Michigan. For example, in a number of covered counties in California, polling sites with a high number of recently naturalized Asian American voters had instances of missing translated ballots in certain Asian languages, of

[11] Timothy Pratt, "More Asian Immigrants Are Finding Ballots in Their Native Tongue," *New York Times*, October 18, 2012, http://www.nytimes.com/2012/10/19/us/politics/more-asian-immigrants-are-finding-ballots-in-their-native-tongue.html?_r=0.

materials stacked on top of one another, or a lack of space to adequately display materials making the materials hidden from voters. For example, at Global Family Elementary School in Oakland, the bilingual Vietnamese/English ballots and the Tagalog/English ballots were unavailable to voters. At the Popular Recreation Center, also in Oakland, monitors noted a lack of bilingual signage to indicate the availability of Chinese language assistance. Similarly in Cook County, Illinois, materials were often not made available to voters unless requested and not well displayed, going against the spirit of Section 203.[12] In some counties, no bilingual poll workers were present. For example, in Los Angeles County, over one out of five election precincts lacked bilingual poll workers because the workers failed to show up.

Lack of Clarity on Assistance Requirements under Section 208

Another common language assistance issue that arose with poll workers was a lack of understanding about Section 208 of the Voting Rights Act. Section 208 requires assistance for voters by reason of blindness, disability, or inability to read or write English. Any such voter may be given assistance by a person of the voter's choice, other than the voter's employer, agent of the employer, or officer or agent of the voter's union. Section 208 applies nationwide, and is particularly important for LEP voters because it allows them to take a person into the voting booth with them to assist them in understanding the ballot (without needing to meet a threshold or be of a certain language group as required under Section 203).

Unfortunately, many poll workers are unaware of Section 208's requirements and refuse to allow language minority voters to take an assistor of choice into the voting booth, often expressing suspicion about the voter. This exact scenario occurred in November 2012 in Quincy, Massachusetts, in which a voter was not allowed to use a helper inside the voting booth. In Minnesota, individuals at certain precincts who were providing language assistance to voters in the polling booth ran into similar issues with poll workers. Poll workers limited each assistor to only three voters, even though Section 208 does not place any limits on such assistance. Poll workers stated that they were complying with their understanding of Minnesota law as opposed to complying with federal law. While a compromise was struck with the County Attorney's office where assistors could help more than three voters so long as two election judges were observing the assistance provided, this compromise also did not comply with federal law and was only accepted in order to expedite language assistance for the remainder of Election Day. It is clear that more thorough training of poll workers and elections officials on Section 208 is needed to ensure that LEP voters can access Section 208 assistance in future elections.

Conclusion

As evidenced above by the experiences of Asian American voters in the 2012 election cycle, it is clear that election officials have more work to do in ensuring that effective language assistance is provided for LEP voters. Quality translated materials are extremely helpful for LEP voters. From bilingual signs and poll worker nametags to translated ballots and sample ballots, increasing the production and utilization of these materials would improve language assistance and demonstrate a commitment by the jurisdiction to Section 203 implementation. Just as

[12] Odette Yousef, "Precincts hit bumps with Asian Indian language voting requirement," *WBEZ 91.5*, November 8, 2012, http://www.wbez.org/news/precincts-hit-bumps-asian-indian-language-voting-requirement-103766.

important is the need for well-trained poll workers. In both Section 203 jurisdictions and other jurisdictions with LEP voting populations, thorough poll worker training on language assistance rights is necessary to ensure that LEP voters can effectively cast their ballots on Election Day. By understanding the rights of voters under Section 208 and Section 203, poll workers not only provide the assistance needed, but can make Election Day run smoother for everyone.

AAJC and the members of Advancing Justice are currently developing a national report analyzing the effectiveness of language assistance in Section 203 jurisdictions, which includes best practices and recommendations for implementation. This report will be available in early 2013. I thank the committee for the opportunity to submit today's testimony and press upon the Senate and Congress to address these issues of importance. AAJC stands willing and able to assist the committee in policy reforms that ensure every American has the right to vote.

December 19, 2012

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Hearing, "The State of the Right to Vote After the 2012 Election"

Dear Chairman Leahy:

Thank you for holding this hearing on this critical issue.

In 2011 and 2012, 19 states passed laws and executive actions making it more difficult for their citizens to cast ballots. From voter ID laws to restrictions on early voting to uneccessary registration hurdles, these laws intentionally targeted those who have been traditionally disenfranchised: African Americans, people with low incomes, and the young. This year, I worked with a network of 1,100 African-American churches in 22 states to counteract these laws as best we could by educating, motivating and turning out our congregations and communities. The result was historically high African-American turnout. We're tremendously proud of the work we did this year, but we fear that as more voting restrictions targeted at African Americans go into effect, the promise of "one person, one vote" will be a harder one for our country to keep.

Across the country, restrictions on voting led to confusion and discouragement among voters. But they also were a powerful motivator, especially for those of us who lived and fought through the Civil Rights Movement. As Elder Lee Harris of Mt. Olive Primitive Baptist Church in Jacksonville, Florida, put it, "We've come too far and fought too hard to let anybody take away our vote again." Our task was to reach out to as many voters as we could to educate them on what they needed to vote and to make sure they got to the polls and stayed there.

Some of the strongest attacks on voting rights came in Ohio, where they met with strong opposition from members of People For the American Way Foundation's African American Minsters Leadership Council. In the months leading up to the election, Ohio's legislature and elections officials passed a number of measures aimed at suppressing voter turnout, especially among African Americans – intentionally, as one county elections official admitted. Notable among these were restrictions on early voting that hit heavily African-American counties the hardest. One early voting restriction – which ordered the polls closed in the all-important three days leading up to the election – was ultimately rebuffed by the courts, but voters still faced unacceptably long lines at their polling places.

Rev. Dr. T.C. Thomas of Metropolotin CME Church in Cincinnati reported that the main obstacles he faced in turning out the vote were confusion over the rules and long lines at polling places. To counter these challenges, Dr. Thomas worked together with clergy in the area to hold nonpartisan get-out-the-vote rallies and educate their communities on their rights at the polls. On Election Day, Dr. Thomas and

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church volunteers provided shuttle service to polling places and checked in on polling places with long lines to make sure that those who were unable to stand for long periods got to the front of the lines.

Dr. Tony Minor of Community of Faith Assembly in Cleveland was one of the most outspoken voices against voter suppression in Ohio, penning an op-ed in the *Cleveland Plain Dealer* and appearing on several radio and television news shows. Rev. Minor and his fellow clergy in Cleveland organized a ride to the polls hotline, which they advertised in area churches and which ended up providing hundreds of rides on Election Day.

In all, the African American Ministers Leadership Council in Ohio arranged for over 5,000 rides to the polls during early voting and over 3,000 rides on Election Day through the "I am a VESSEL and I Vote" program.

Some of the worst voter suppression measures in the country were implemented in Florida, where new voter registration restrictions shut down major nonpartisan registration operations and severely cut down on early voting hours. We all remember seeing photographs of voters standing in line until 2:00 am on election night, waiting to cast their ballots even after the presidential election had been called.

Behind the turnout in Florida were the efforts of many community organizers, including clergy leaders. Elder Lee Harris of Mt. Olive Primitive Baptist Church in Jacksonville also cited confusion about polling places and voting rules and long lines at the polls as the main obstacles facing voters. In response, Elder Harris said, he and his fellow clergy "just tried to leave no stone unturned." A coalition of African-American clergy in five counties organized to air public service announcements about the importance of voting, bought paid radio spots in the week leading up to the election, and distributed fliers about their rides to the polls program in churches and malls. They pooled their church vans to provide free rides to the polls on every day of early voting and on Election Day. In Florida, members of the African American Ministers Leadership Council transported over 1,000 people to the polls.

In all, members of the African American Ministers Leadership Council facilitated over 400,000 voter registrations and transported over 27,000 people to the polls.

We are proud of the work that we did to bring thousands of African Americans to the polls. But we're reluctant to claim victory over voter suppression. A number of suppressive laws, including voter ID requirements in Pennsylvania and South Carolina, may go into effect next year. Cutbacks in early voting days in Ohio and Florida created barriers to voting we should never see in our democracy. In addition, ever-changing rules about voter registration and provisional ballots create confusion among voters, especially new and infrequent voters.

In the end, our efforts to educate and organize can only go so far. Equally important in the effort to maintain the right to vote has been the role of state and federal courts, where Americans can turn when powerful forces seek to deprive them of their right to vote. Federal courts play a particularly important role in protecting the guarantees set forth in the Voting Rights Act. From Ohio to Florida to Pennsylvania to South Carolina to Texas, the courts were critical in tamping down efforts to suppress the votes of African Americans and other targeted groups. As the Supreme Court prepares to review Section 5 of the Voting Rights Act, this year offered us many powerful reminders that the preclearance

provisions of the VRA are still relevant and still vitally necessary. In August, when a federal court struck down Texas' new voter ID requirement, Rev. Dr. Simeon L. Queen of Prairie View, Texas, offered these words:

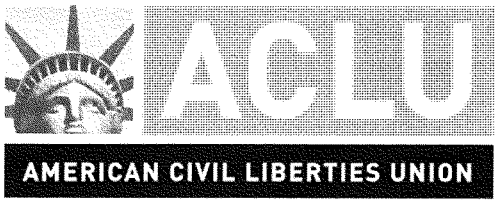
"It is inexcusable that nearly 50 years after the passage of the Voting Rights Act, politicians are still trying to make it harder for African Americans in Texas to vote. I wish the Voting Rights Act wasn't still necessary, but thank the Lord it's still there. African Americans in Texas have struggled throughout our history to exercise all of our rights as citizens, including the right to vote without unnecessary restrictions meant to discourage and disenfranchise. Today, thanks to the Voting Rights Act, a major threat to that effort has been defeated."

The civil rights movement continues in many places, and chief among those is the voting booth. As African-American clergy, we see it as our duty to make sure our communities' voices are heard at the polls, and that every single one of us can and does cast a vote that counts. Just as the Voting Rights Act continues to protect us against attacks on our rights, the Black Church continues to stand up for the right of every American to vote.

Sincerely,

Minister Leslie Watson Malachi
Director, African American Religious Affairs
People For the American Way Foundation

CC: Ranking Member Chuck Grassley
Committee Members



American Civil Liberties Union
Statement For

"The State of the Right to Vote After the 2012 Election"

Hearing Before the U.S. Senate Committee on the Judiciary

Submitted by

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December 19, 2012

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, is pleased to submit this statement for the record for the "The State of the Right to Vote After the 2012 Election" Hearing, before the U.S. Senate Committee on the Judiciary. 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. The ACLU works at the federal, state and local levels to lobby, litigate, and conduct public education in order both expand opportunities and to prevent barriers to the ballot box.

In the wake of significant voter suppression efforts and other election administration concerns that arose on Election Day, which threatened the electoral participation of millions of Americans, disproportionately racial and ethnic minority voters, it is particularly crucial and timely for the Senate Judiciary Committee to consider the state of our most fundamental right as citizens. We thank the Committee for its attention to these barriers, and we ask that the Committee consider advancing the federal reforms outlined in this statement in order to ensure full electoral participation.

I. The State of the Right to Vote in 2012

Although state voter suppression efforts are not a new phenomenon, during the past two state legislative sessions, there was a dramatic proliferation of bills that would restrict access to the ballot. Regressive measures were introduced in 38 states in 2011[1] and in 22 states in 2012,[2] with 25 new or expanded barriers signed into law since January 2011.[3] These laws cumulatively represented a significant retrenchment in voting rights, and they had the potential to disfranchise as many as five million Americans during the 2012 election.[4]

However, due to a series of successful legal challenges and advocacy in support of voting rights, the effect of many of these new laws was blunted in time for the 2012 election. Notably, voter ID laws were enjoined from going into effect in time for the 2012 election in Pennsylvania, Texas, Wisconsin, and South Carolina. Other legal challenges resulted in the preservation of early voting on the three days before Election Day in Ohio,[5] the allotment of the same number of early voting hours in Florida as in 2008 (albeit over 8 days, rather than 14), and the removal of strict restrictions on third-party voter registration in Florida.[6]

Yet, despite the injunction or defeat of several laws that would likely have disfranchised millions of Americans, access to the ballot was nonetheless limited in many places across the country. Reports from news organizations, poll monitors, and non-partisan election protection officials indicated that certain election administration problems, such as polling places that were not properly equipped, outdated or inaccurate voter rolls, and poll workers who were poorly or inadequately trained on issues like the use of provisional ballots or the type, if any, of identification required of voters in their state, were national in scope.

Some of these types of issues recur every presidential election year, when voter turnout is at its highest nationally, but the 2012 election proved particularly difficult to administer in states that enacted suppressive voter measures because those laws often strain resources and create

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[1] BRENNAN CENTER FOR JUSTICE, APPENDIX: SUMMARY OF STATE LAWS AND BILLS (2011), *available at* http://brennan.3cdn.net/28377eda8414bb7b55_rxm6ibk4c.pdf [hereinafter *State Laws Appendix*]; *See also* ACLU Map, *2011: Voting Rights Under Attack in State Legislature, available at* http://www.aclu.org/maps/2011-voting-rights-under-attack-state-legislatures; Letter from American Civil Liberties Union and Lawyers' Committee for Civil Rights Under Law to T. Christian Herren, Chief, Voting Section, Civil Rights Division (September 28, 2011), *available at* http://www.lawyerscommittee.org/admin/voting_rights/documents/files/LC-ACLU-comment-letter-final.pdf; Jessica Bakeman, *Voter ID Initiative Passes,* The (Jackson, MS) Clarion-Ledger, November 9, 2011, *available at* http://www.clarionledger.com/article/20111109/NEWS04/111090358/Voter-ID-initiative-passes?odyssey=modldefconlimglHome.

[2] *See generally*, WENDY R. WEISER & DIANA KASDAN, BRENNAN CTR. FOR JUSTICE, VOTING LAW CHANGES: ELECTION UPDATE, *available at* http://www.brennancenter.org/content/resource/voting_law_changes_election_update/ [hereinafter *Voting Law Changes*].

[3] *Id.*

[4] *Id.* at 1.

[5] *See* Obama For America v. Husted, 2012 WL 4753397 (6th. Cir. 2012); *Florida v. United States*, CA No. 11-01428 (D.D.C.).

[6] League of Women Voters v. Browning, 2012 WL 1957793 (N.D. Fla.).

additional bureaucratic challenges for election officials and poll workers. Minority voters were also disproportionately impacted by both the retrogressive state election laws, as well as election administration challenges. According to Hart Research Associates, African American and Hispanic voters are between two to three times more likely than white voters to wait more than 30 minutes to vote.[7]

This statement will explore the impact of different changes to state election laws and the election administration concerns, their effect on minority voters, and suggestions for federal reforms. Federal legislative reform is sorely needed in order to establish uniform national standards, not only to help protect the fundamental right of every American to participate across the states, but also to help produce a modern, more streamlined election process that works for all voters.

II. Voting Law Changes Impacting Access to the Polls

A. Cutbacks to Early Voting

Generous early voting periods, that include weekend days, facilitate voter participation.[8] 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 deficiencies in election administration, including inaccuracies in voter rolls, which could prevent votes from being timely cast and counted, if encountered for the first time on Election Day itself. Early voting is an increasingly popular option for citizens, particularly minority voters. Yet, five states passed legislation to reduce their early voting after the 2010 election, including Florida and Ohio – both of which eliminated early voting on the Sunday before Election Day.[9] Although legal challenges resulted in voters being able to vote early during the three days before Election Day in Ohio, including Sunday[10], and for the same number of cumulative early voting hours in Florida as in 2008 (96 hours over 8 days, rather than the 14 days of early voting),[11] the reductions in early voting days foreclosed the option of voting early for hundreds of thousands of people and resulted in long lines for residents of both states.[12] In Florida, for instance, about 300,000 fewer vote were cast early in 2012 (2.4

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[7] Hart Research Associates, AFL-CIO Election Night Survey 2012 (2012), https://docs.google.com/presentation/d/1TGQPrvxJ5ODgSPf4CL-aS1HKVmrzM4UF70gso4IUa1o/present?pli=1&ueb=true#slide=id.p59. *See also* Ari Berman, *The GOP's Voter Suppression Strategy*, NATION, Dec. 10, 2012, *available at* http://www.thenation.com/article/171404/gops-voter-suppression-strategy#; Paul Leonard, Study Finds Blacks More Likely to Wait in Long Lines at Polls, http://carrollgardens.patch.com/articles/study-finds-blacks-more-likely-to-wait-in-long-lines-at-polls.

[8] 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.electononline.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.

[9] *Voting Law Changes, supra note 2*, at 3.

[10] Obama For America v. Husted, 2012 WL 4753397 (6th. Cir. 2012).

[11] League of Women Voters v. Browning, 2012 WL 1957793 (N.D. Fla.); Florida v. United States, CA No. 11-01428 (D.D.C. Oct. 28, 2011).

[12] Luke Johnson, *Ohio Early Voting: Long Lines Reported Outside Polling Places*, THE HUFFINGTON POST, Nov. 4, 2012, http://www.huffingtonpost.com/2012/11/04/ohio-early-voting_n_2073287.html.

million), in comparison with 2008 (2.7 million), which academic observers attributed to the state legislature's decision to sharply reduce early voting by six days.[13]

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.[14] In 2008, 13% of all votes nationwide were cast during early voting periods;[15] the total number of early voters in 2012 was comparable to 2008 – 32 million voted early.[16]

Many battleground states including Colorado, Florida, Iowa, and Ohio experienced increases in early voting numbers in 2012 compared with 2008.[17] Early voting options are also used more frequently by voters of color. In Florida in 2008, for example, African Americans comprised 13% of the electorate, but cast 22% of early votes.[18] Although comparable data for 2012 is not yet available, reports of the first few days of early voting in Florida indicate that a similar percentage of early votes (23.7%) were cast by African Americans.[19] Likewise, approximately half of African American voters in North Carolina voted early in 2008 and 2012, compared to about 40% of white North Carolina voters.[20]

The option of voting on the Sunday before Election Day is particularly popular with African American and Latino voters, a significant number of whom participate in voter turnout efforts organized by churches on that day. For instance, on that Sunday before Election Day in 2008 in Florida, one-third of the voters were African American, even though they only comprise 13% of the state's electorate.[21] In an effort to encourage early voting and highlight the negative

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[13] Lloyd Dunkelberger, *Change in Florida voting law is felt at polls*, HERALD-TRIBUNE, Nov. 5, 2012, *available at* http://politics.heraldtribune.com/2012/11/05/change-in-florida-voting-law-is-felt-at-polls/.

[14] *See Florida Early Voting May Change*, WJHG.COM Apr. 20, 2011, *available at* http://www.wjhg.com/home/headlines/Florida_Early_Voting_May_Change_120255094.html; Editorial, *They Want to Make Voting Harder?*, N.Y. TIMES, June 5, 2011, *available at* http://www.nytimes.com/2011/06/06/opinion/06mon1.html?_r=1 [hereinafter *Voting Harder*]; Early Voting Information Center, Frequently Asked Questions, *available at* http://earlyvoting.net/faq (last visited Aug. 31, 2011).

[15] U.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.

[16] United States Elections Project, 2012 Early Voting Statistics, http://elections.gmu.edu/early_vote_2012.html (last visited Dec. 17, 2012); United States Elections Project, 2008 Early Voting Statistics, http://elections.gmu.edu/early_vote_2008.html (last visited Dec. 17, 2012).

[17] Elizabeth Hartfield, *Early Voting Battleground Tallies*, ABC NEWS, Nov. 6, 2012, *available at* http://abcnews.go.com/Politics/OTUS/battleground-state-early-voting-tallies/story?id=17652724#.UMuH8OSxzXw.

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

[19] Joy-Ann Reid, *African-Americans voting early in large numbers, campaign says*, THEGRIO, Oct. 30, 2012, *available at* http://thegrio.com/2012/10/30/african-americans-early-voting-in-record-numbers/.

[20] *Voting Harder*, *supra* note 12; United States Elections Project, 2012 Early Voting Statistics, http://elections.gmu.edu/early_vote_2012.html (last visited Dec. 17, 2012); African American turnout in NC, THE DAILY KOS, Nov. 4, 2012, http://www.dailykos.com/story/2012/11/04/1155592/-African-American-turnout-in-NC.

[21] *Voting Law Changes*, *supra* note 2, at 4.

consequences of these restrictions for minority voter participation, the ACLU has worked with pastors to protect early voting and their "Take Your Souls to the Polls" programs.[22]

Thus, legislation reducing early voting on the weekend before Election Day not only complicates administration of polling places during the general election, but it also has a disparate negative impact on voting by people of color. In Ohio, voting during the three days prior to Election Day was ultimately restored after a legal challenge.[23] Litigation challenging the prohibition on early voting in the three days prior to Election Day succeeded on equal protection grounds, since Ohio was permitting military and overseas voters to vote during that time period, thereby providing differential treatment to one group of voters over another.[24]

The Ohio Secretary of State also prompted public indignation over disparities in early voting hours between counties with more registered Republicans and counties with more registered Democrats, with the Democratic-dominant counties of Cleveland and Cincinnati receiving shorter early voting hours.[25] This differential also had a disparate impact on voters of color, as counties with longer early voting hours – like Butler and Warren – tended to have fewer minority voters, while counties with shorter early voting hours – like Cincinnati and Cleveland – have majority-minority populations.[26] In response to public pressure, Secretary Husted standardized the early voting hours statewide.

In Florida, voters facing lines up to seven hours in the state's most populous counties on the Saturday before Election Day – the last day of early voting – were granted a reprieve when federal lawsuits were filed the following day to force the state to extend early voting.[27] Although early voting was not available to Florida voters on the Sunday or Monday before Election Day,

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[22] Take Your Souls to the Polls is an effort organized by African American churches to take advantage of early voting, and most recently, to combat voter suppression laws. The program initially encouraged voting by taking church members directly from Sunday services to the polls. *See* ACLU, Take Your Souls to the Polls: Voting Early in Ohio,
http://www.aclu.org/voting-rights/take-your-souls-polls-voting-early-ohio (last visited Dec. 12, 2012).
See also Deborah J. Vagins & Mike Brickner, *Keeping Ohio's Souls at the Polls: Sen. Durbin Holds Field Hearing on Ohio Voting Law*, ACLU, (May 4, 2012), http://www.aclu.org/blog/voting-rights/keeping-ohios-souls-polls-sen-durbin-holds-field-hearing-ohio-voting-law (Congressional field hearing in Ohio); Remarks of Deborah J. Vagins, ACLU Senior Legislative Counsel, at Congressional Black Caucus: Inaugural Faith Leaders Summit on Voting Rights, U.S. Voting Rights Forum (May 30, 2012), *available at* http://www.c-spanvideo.org/program/SVot.

[23] Obama for America v. Husted, 2012 WL 4753397 (6th Cir. Oct. 5, 2012); *Senate Field Hearing: New State Voting Laws III: Protecting the Right to Vote in America's Heartland Before the Subcomm. on Constitution, Civil Rights and Human Rights on the Judiciary*, 112th Cong. (2012) (statement of the American Civil Liberties Union of Ohio), *available at*
http://www.acluohio.org/issues/VotingRights/TestimonyStatementForSenateFieldHearing2012_0507.pdf.

[24] Obama For America v. Husted, 2012 WL 4753397 (6th. Cir. Oct. 5, 2012).

[25] Editorial, *Overt Discrimination in Ohio*, N.Y. TIMES, Aug. 14, 2012, at A22, *available at*
http://www.nytimes.com/2012/08/15/opinion/overt-discrimination-in-ohio.html?_r=2&hp.

[26] *Id.* ("Cincinnati, for example, is 45 percent black, and Cleveland 53 percent. Butler County, however, is 8 percent black, and Warren 3.5 percent.").

[27] Florida Democratic Party v. Detzner, 1:2012cv24000 (November 4, 2012), *available at*
http://images.politico.com/global/2012/11/fdp_v_detzner-_complaint.pdf; Warren Richey, *Democrats reach settlement in Florida early-voting lawsuit*, CHRISTIAN SCIENCE MONITOR, Nov. 5, 2012, *available at*
http://www.csmonitor.com/USA/Elections/2012/1105/Democrats-reach-settlement-in-Florida-early-voting-lawsuit;
Lizette Alvarez, *Democrats Sue to Extend Florida's Early Voting*, N.Y. TIMES, Nov. 4, 2012,
http://thecaucus.blogs.nytimes.com/2012/11/04/democrats-sue-to-extend-floridas-early-voting/

election supervisors in Miami-Dade, Palm Beach, and Broward Counties permitted individuals to request and to vote by in-person absentee ballots on those days in recognition of their inability to accommodate all of the voters who sought to cast an early ballot.[28]

B. Voter ID Laws

Voter ID laws have become increasingly common across the country. Today, 33 states have laws requiring voters to present some form of identification to vote in federal, state and local elections,[29] although some laws or initiatives passed since 2011 have not yet gone into effect.[30] Some must also be pre-cleared under the Voting Rights Act prior to implementation. In 11 of those 33 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 regular ballot.[31] Strict photo ID laws were only in effect in 4 states – Georgia, Indiana, Kansas, and Tennessee – for the general election this year, due to ongoing legal challenges, the need for Section 5 preclearance under the Voting Rights Act, or a delayed implementation date for the new photo ID law. However, confusion over whether these photo ID laws were in effect appeared to have depressed voter participation in at least once of the states – Pennsylvania – where litigation postponed the law's implementation. Pennsylvania voter turnout was down by 7% from 2008, despite extensive outreach by both presidential campaigns and non-partisan get-out-the-vote efforts.[32]

Strict 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 forms of identification accepted for voting. Since so many Americans of voting age – 21 million, in total – lack documentation that would satisfy photo ID laws,[33] there was a substantial risk that millions would be disfranchised in the 2012 elections, had all of the new photo ID laws gone into effect. This exclusion from the electorate would have disproportionately impacted low-income Americans, racial and ethnic minorities[34], and the elderly. As many as one in four African Americans of voting age lack government-issued photo ID, compared to only 8% of their white counterparts.[35] Eighteen percent of Americans over the age of 65 do not have government-issued photo ID.[36]

In addition, many of these Americans cannot afford to pay for the documents required to secure a government-issued photo ID. Requiring voters to pay for an ID, as well as the

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[28] Richey, *supra* note 27.
[29] National Conference of State Legislatures, *Voter Identification Requirements*, http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx#OK (last visited Dec. 17, 2012) [hereinafter NCSL Map].
[30] *Id.*
[31] These states include Alabama, Georgia, Kansas, Indiana, Mississippi, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin. Voters without photographic identification meeting the state statutory requirements are permitted to cast a provisional ballot, and return with their photographic identification within a specified time period after Election Day in order to have their ballot counted. *Id.*; *State Laws Appendix, supra* note 1
[32] Berman, *supra* note 7.
[33] BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION (2006), *available at* http://www.brennancenter.org/page/-/d/download_file_39242.pdf [hereinafter *Without Proof*].
[34] NALEO Educational Fund, Latino Voters At Risk (2012), *available at* http://www.naleo.org/downloads/NALEO_LatinoVotersatRisk_(Condensed).pdf.
[35] *Without Proof, supra* note 33, at 3.
[36] *Id.*

background documents necessary to obtain an ID in order to vote, is tantamount to a poll tax. Although some states issue IDs for free, the birth certificates, passports, or other documents necessary to secure a government-issued ID cost money, and many Americans simply cannot afford to pay for them. Furthermore, obtaining a government-issued photo ID poses significant – at times insurmountable – obstacles to certain members of the electorate, including low-income individuals who lack the funds to pay for documentation, people with disabilities, individuals 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.[37]

However, in advance of the general election, court challenges to many of these laws temporarily halted their implementation.[38] In those states covered by Section 5 of the Voting Rights Act (VRA), the Department of Justice objected to suppressive voting laws by denying preclearance and litigating subsequent challenges. South Carolina and Texas, both of which passed strict voter ID laws within the past two years, were blocked from implementing their laws in this year's election. Both states, which are covered in their entirety by Section 5, were denied preclearance, and then brought unsuccessful challenges in the D.C. District Court.

Demonstrating the critical role of Section 5 of the VRA in blocking regressive voting changes, in each case, the court determined that neither state met their burden to show that their measures would not result in a discriminatory impact on minority voters in the general election.[39] The ACLU intervened in the South Carolina and Texas cases, along with other civil rights organizations, urging rejection of that the proposed changes, because the voting power of minorities would be diluted or diminished.

In the Texas litigation, the district court based its holding on the fact that, "(1) a substantial subgroup of Texas voters, many of whom are African American or Hispanic, lack photo ID; (2) the burdens associated with obtaining ID will weigh most heavily on the poor; and

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[37] *See, e.g., Coalition of Civic Organizations Oppose Texas Voter ID Law, Vote Set For Monday*, LATINO DAILY NEWS, Mar. 18, 2011,
available at http://www.hispanicallyspeakingnews.com/notitas-de-noticias/details/coalition-of-civic-organizations-oppose-texas-voter-id-law-vote-set-fo/6199/ (statement of Terri Burke, Executive Director of the ACLU of Texas).

[38] Elizabeth Titus, *GOP suffers tough week for voting issues in court*, POLITICO, Aug. 31, 2012, http://www.politico.com/blogs/charlie-mahtesian/2012/08/gop-suffers-tough-week-for-voting-issues-in-court-134027.html. Note, however, that the State of New Hampshire's voter ID law (which takes effect in 2013) was precleared by the Department of Justice after the state suspended a proposed change to the affidavit option alternative for those without ID. Thus, voters without ID in New Hampshire next year may cast a regular ballot, after signing an affidavit affirming that they are who they purport to be, that they are qualified to vote, and that they have a legal domicile in the ward or town that they are voting in. Emily Schultheis, *Justice Dept. clears New Hampshire voter ID law*, POLITICO, Sept. 5, 2012, *available at* http://www.politico.com/blogs/burns-haberman/2012/09/justice-dept-clears-new-hampshire-voter-id-law-134499.html; Ryan Reilly, *Justice Department Clears New Hampshire Voter ID Law*, TALKING POINTS MEMO, Sept. 5, 2012, http://livewire.talkingpointsmemo.com/entry/justice-department-clears-new-hampshire-voter-id-law.,.

[39] Texas v. Holder, 2012 WL 3743676 (D. D.C. 2012); South Carolina v. Holder, 2012 WL 4814094 (D. D.C. 2012) (granting preclearance for subsequent elections *but only* because the state law "allows citizens with non-photo registration cards to still vote without a photo ID so long as they state the reason for not having obtained one." This provision, known as the "reasonable impediment" provision, was given the broadest possible interpretation by the court and any future limitations on the exception, according to the court, would be subject to additional Section 5 preclearance. Finally, the court stressed, no voter will be denied the right to vote "if they have the non-photo voter registration card.").

(3) racial minorities in Texas are disproportionately likely to live in poverty." Thus, the court concluded that the photo ID law would "likely 'lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.'"[40] In the South Carolina decision, the court based its decision on similar reasoning, determining that there was not sufficient time to implement the law prior to the 2012 general election in a manner that would not disparately impact minority voters. Yet, the court did grant preclearance of South Carolina's voter ID law for future elections, on the condition that the law create a safety valve for individuals without an ID, who could provide one of certain enumerated reasons for lacking an ID.[41]

In addition to Section 5 litigation this year, strict new voter ID laws were also challenged in Wisconsin and Pennsylvania by the ACLU and coalition partners. These laws were enjoined in both states in time for the general election, on the basis that the photo ID requirements violated their respective state constitutions due to the restrictions they imposed on individuals' access to the ballot and the likely discriminatory impact on minority voters. However, the litigation challenges to the voter ID laws in both Wisconsin[42] and Pennsylvania[43] are ongoing, so eventual implementation of the laws is possible in the near future. The voter ID law in Tennessee, which was also enacted within the past two years, was not fully in effect for the general election.

Finally, on Election Day, Minnesota voters became the first in the nation to reject a voter ID proposal, which would have amended their State Constitution to require voters to present an ID in order to vote.[44]

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[40] Texas v. Holder, 2012 WL 3743676 *26 (D. D.C. 2012) (citing Beer v. United States, 425 U.S. 130, 141 (1976)).
[41] South Carolina v. Holder, 2012 WL 4814094 *3 (D. D.C. 2012).
[42] On March 6, Circuit Court Judge David Flanagan issued a temporary injunction blocking the implementation of the voter ID provisions, finding that the plaintiffs are likely to succeed on the merits at trial and that further implementation of the law would cause irreparable harm. NAACP v. Walker, No. 11 CV 5492 (Wis. Cir. Ct. 2012) (order granting temporary injunction), *available at* http://www.courthousenews.com/2012/03/07/VoterIDInjunction.pdf. This decision was made permanent with a March 12 decision by Judge Neiss granting a permanent injunction against the implementation of the voter ID law, having found it unconstitutional under the Wisconsin constitution. League of Women Voters v. Walker, No. 11 CV 4669 (Wis. Cir. Ct 2012) (order granting permanent injunction), *available at* http://media.jsonline.com/documents/voteridruling.pdf. The ACLU has a pending case challenging Wisconsin's voter ID law under Section 2 of the Voting Rights Act. Frank v. Walker, No. 2:11-cv-01128 (E.D. Wis.).
[43] The ACLU and coalition partners were successful in preventing the implementation of the Pennsylvania photo ID requirement for the general election. The court granted a preliminary injunction against implementation of the requirement for the November 2012 presidential election, concluding that it would cause disfranchisement of voters. A final decision on the merits of the case is pending. *See* Applewhite v. Pennsylvania, 2012 WL 4497211 (Pa. Commw. Ct. Oct 2012).
Karen Langley, *State voter ID law is far from resolved*, PITTSBURGH POST-GAZETTE, Dec. 14, 2012, *available at* http://www.post-gazette.com/stories/local/state/state-voter-id-law-is-far-from-resolved-666312/.
[44] Doug Belden, *Minnesota voter ID amendment defeated*, Nov. 7, 2012, *available at* http://www.twincities.com/elections/ci_21946038/minnesota-voter-id-amendment-trailing-60-precincts-tallied.

C. Restrictions on Third Party Voter Registration

After passage of the National Voter Registration Act (NVRA) facilitated third-party registration efforts, these organizations have registered millions of Americans to vote. For instance, in the 2004 election cycle, the non-profit Project Vote registered 1.2 million voters.[45] During the following election cycle in 2008, Rock the Vote registered 2.5 million voters.[46] Unfortunately, efforts to restrict voter participation have included imposing unjustified restrictions on third-party registration activities. Since 2011, six states have passed laws making it more difficult to register to vote, with Florida and Texas enacting laws that strictly limited the voter registration activities of third-party organizations. Although the laws in Texas and Florida were ultimately lifted prior to the general election, residents of the state were impacted by the absence of groups conducting registration drives for nearly one year.[47] In Florida, for instance, new voter registration was down by 14% from the 2008 election period, prior to the injunction of the law.[48]

Minority voters nationally are vulnerable to the effects of such laws placing restrictions on third-party groups. When the NVRA was initially drafted, it 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."[49] As data from the 2008 election indicated, more than 33% of voters who registered through third-party drives were racial minorities,[50] though minorities constituted only 18% of the voting age population.[51] According to the League of Women Voters working in Florida, African American and Latino voters register with third-party groups at twice the rate of other voters.[52]

The ACLU, along with a coalition of civil rights groups, won an injunction blocking Florida's suppressive law in advance of the general election.[53] The League of Women Voters

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[45] Letter 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.

[46] Ari 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*].

[47] Jesica Vess, *Court overturns Texas voter registration ruling*. KVUE, Sept. 7, 2012, http://www.kvue.com/news/Court--168890916.html;
Adam C. Smith, *League of Women Voters to restart registration drive*, MIAMI HERALD, June 6, 2012, *available at* http://www.miamiherald.com/2012/06/06/2836567/league-of-women-voters-to-restart.html.

[48] Berman, *supra* note 7.

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

[50] *FL Preclearance letter*, *supra* note 18, at 19.

[51] 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.

[52] Dan Wagner, *Voting law's Sunday punch*, SARASOTA HERALD-TRIBUNE, June 15, 2011, *available at* http://www.heraldtribune.com/article/20110615/opinion/110619722.

[53] League of Women Voters v. Browning, 2012 WL 1957793 (N.D. Fla.). On May 31, 2012, the Florida District Court issued a preliminary injunction against enforcement of the most of the third party registration provisions. Following the decision, the state withdrew the remaining changes involving restrictions on third party registration organizations, and advised the court that it had amended some of the changes and would later submit them to DOJ for preclearance. On September 12, 2012, the DOJ precleared the early voting changing providing for 96 hours of

and other organizations resumed their voter registration drives in advance of the general election, after ceasing all registration activity for about a year due to the steep threat of legal consequences for failure to adhere to each of the law's new provision.[54] Unfortunately, new forms of state voting restrictions, modeled after legislation passed in Florida and Texas, could chill registration among these historically disfranchised groups in other states in advance of the next federal election.

D. 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 5.85 million citizens cannot vote as a result of criminal convictions, and nearly 4.4 million of those have been released from prison and are living and working in the community.[55]

Sadly, in reversing a trend over the last decade to dismantle these barriers to the ballot, two states – Florida and Iowa – enacted regressive policy changes through administrative changes to make it nearly impossible for people with past convictions to ever regain their voting rights.[56] Those states now join Kentucky and Virginia in essentially imposing lifetime voting bans on people with felony records.[57] In Florida alone, an estimated 1.5 million citizens may be affected by this draconian policy.[58] In addition to these roll-backs of rights for people with convictions, South Dakota recently passed a law disfranchising people on probation.

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.[59] 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 citizens eligible to vote.[60] These criminal disfranchisement laws also have a troubling history, as they are rooted in the Jim Crow era and were originally intended to bar minorities from voting. The disproportionate impact of these laws on African Americans continues today,

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early voting over an eight day period from 7:00 am to 7:00 pm. Also on September 12, 2012, DOJ filed a notice that all claims were now moot. And on October 15, 2012, all parties filed a joint stipulation of dismissal of all claims. The following day, the court issued its final judgment and order dismissing the case.

[54] Smith, *supra* note 47.

[55] CHRISTOPHER UGGEN, SARAH SHANNON, & JEFF MANZA, THE SENTENCING PROJECT, STATE-LEVEL ESTIMATES OF FELON DISENFRANCHISEMENT IN THE UNITED STATES, 2010 1 (2012), *available at* http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf

[56] Georgeanne M. Usova, *The Democracy Restoration Act: Everyone Deserves a Voice*, ACLU, Apr. 24, 2012, http://www.aclu.org/blog/voting-rights/democracy-restoration-act-everyone-deserves-voice.

[57] UGGEN *et al.*, *supra* note 55, at 3.

[58] *Id.*

[59] *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); *see also* DEBORAH J. VAGINS AND ERIKA WOOD, AMERICAN CONSTITUTION SOCIETY, THE DEMOCRACY RESTORATION ACT: ADDRESSING A CENTURIES-OLD INJUSTICE (2010), *available at* http://www.acslaw.org/issues/democracy-andvoting.

[60] *See* ERIKA WOOD AND RACHEL BLOOM, AMERICAN CIVIL LIBERTIES UNION AND BRENNAN CENTER FOR JUSTICE, DEFACTO DISENFRANCHISEMENT (2008).

as 1 of every 13 of African Americans male citizens have lost the right to vote – a rate seven times the national average.[61]

The disfranchisement of millions of citizens is undemocratic, contributes to confusion in election administration, and it is counterproductive to the rehabilitation and reintegration of these citizens into society. For all these reasons, the ACLU continues to be a leader in supporting the Democracy Restoration Act,[62] introduced by Rep. John Conyers in the House of Representatives and Senator Ben Cardin in the Senate, which would restore 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.[63]

E. Proof of Citizenship Requirements

Laws mandating presentation of proof of citizenship impose a potentially insurmountable burden for a sizable number of Americans, for whom obtaining documentary proof of citizenship is difficult or impossible. Research from the Brennan Center found that an estimated 7% of Americans – more than 13 million people – do not have ready access to proof of their citizenship.[64] 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.[65] Such individuals often cannot obtain a delayed birth certificate because no living birth witness is available.[66] Women of voting age are also disproportionately impacted by these laws, since as many as 32 million women of voting age lack documentation of citizenship reflecting their current legal names.[67]

Despite the significant potential that proof of citizenship laws have to prevent many Americans from registering and casting a ballot, three states – Alabama, Kansas, and Tennessee – passed laws in the past two years implementing such a requirement,[68] joining Arizona and Georgia.[69] In October, the Supreme Court granted certiorari to consider the Ninth Circuit's determination that the National Voter Registration Act superseded Arizona's documentary proof

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[61] Fact Sheet, ACLU, The Democracy Restoration Act of 2011 (2011), *available at* http://www.aclu.org/racial-justice-voting-rights/aclu-factsheet-democracy-restoration-act-2011;
Voting After Criminal Conviction, Brennan Center,
http://www.brennancenter.org/content/section/category/voting_after_criminal_conviction (last visited Dec. 17, 2012).

[62] Democracy Restoration Act of 2011, H.R. 2212/S. 2017, 112th Cong. (2011).

[63] Fact Sheet, *supra* note 61.

[64] *Without Proof, supra* note 33.

[65] 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.

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

[67] *Without Proof, supra* note 33.

[68] WENDY R. WEISER & LAWRENCE NORDEN, BRENNAN CTR. FOR JUSTICE, VOTING LAW CHANGES IN 2012 17 (2011).

[69] *Id.* at 16-17.

of citizenship law.[70] The ACLU, along with other civil rights organizations, won the legal challenge in the lower courts, in the consolidated case of *Gonzalez v. Arizona*.[71] The *en banc* decision by the Ninth Circuit affirmed the panel ruling from October 26, 2010, finding that the NVRA preempted Arizona's proof of citizenship requirement for registration by mail using the federal form.[72]

F. Improper Purges of Voter Registration Rolls

While the maintenance of accurate and current voter rolls is necessary to the efficient administration of elections, improper purges of voter registration may result in the exclusion of duly-registered citizens from the electoral process. Such voter purges often employ incorrect and incomplete information in the decision to cull the voter rolls, and these systematic decisions tend to disproportionately impact – and exclude – minority voters. Furthermore, the utility of these mass voter purges is often questionable, since they may produce very few, if any, erroneously-registered voters.

For example, prior to the 2012 general election, both Florida and Texas engaged in the systematic purges of registered voters from the rolls. In Florida, in an effort to remove "non-citizens" from voter rolls, the state sent an error-ridden list of 2,700 possible non-citizens to county election supervisors for verification.[73] From the list of 2,700 individuals, hundreds responded within the 30 day time frame to prove their citizenship and avert being dropped from the rolls; only 40 individuals were identified as non-citizens by the state, but it is inconclusive if any of those individuals intentionally registered or have ever voted.[74] The threat of being purged did disproportionately target minority voters in Florida. Although minorities comprise only 30% of Florida voters, they constituted 82% of the 2,700 names on the purge list.[75] Thus, this voter purge – and others like it – disproportionately endanger the voting rights of minority citizens without any indication that they are successful in pinpointing non-citizen voters.

Similarly, Texas' voter purge efforts are predicated on outdated information from unreliable sources, prompting even County officials to admit that errors are inevitable.[76] One of the tactics employed in Texas' voter purges is to drop registered voters with identical names to the recently deceased or other individuals who moved to another county in Texas. Yet, in Harris County, Texas alone, more than 100,000 voters share duplicate names; for example, former County Election Commissioner, Sylvia Garcia, shares her name with 35 other individuals in the

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[70] Gonzalez v. Arizona, 677 F.3d 383 (9th Cir. 2012), *cert. granted* Arizona v. Inter Tribal Council (U.S. Oct. 15, 2012) (No. 12-71).
[71] *See* Gonzalez v. Arizona, 624 F.3d 1162, 1169 (9th Cir. 2010).
[72] Gonzalez v. Arizona, 677 F.3d 383, (9th Cir. 2012) (*en banc* decision) *available at* http://www.ca9.uscourts.gov/datastore/opinions/2012/04/17/08-17094.pdf.
[73] Rachel Weiner, *Florida's Voter Purge Explained*, WASH. POST, Jun 18, 2012, *available at* http://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhvcNIV_blog.html.
[74] Marc Caputo, *County Elections Chiefs to State: We Won't Resume Voter Purge Program*, MIAMI HERALD, June 8, 2012, *available at* http://www.miamiherald.com/2012/06/07/2838176/county-elections-chiefs-to-state.html.
[75] Ari Berman, *Florida Voter Purge Is Unlikely to Resume*, THE NATION, July 3, 2012, *available at* http://www.thenation.com/blog/168714/florida-voter-purge-unlikely-resume#.
[76] Lise Olsen, *Watch out for voter registration cancellations*, CHRON, June 7, 2012, *available at* http://www.chron.com/news/politics/article/Watch-out-for-voter-registration-cancellations-3606064.php.

county.[77] Purges under such parameters can result in the removal of voters whose registrations are both current and active.

The potential disfranchisement of Florida and Texas voters, however, was blunted by several litigation challenges to these purge efforts. The ACLU, and many other civil and voting rights organizations filed suit against Florida's voting purge.[78] Representing five citizens threatened with removal from the rolls, the ACLU sought an injunction to block Florida from dropping qualified voters, arguing that the state's actions violated Section 5 of the Voting Rights Act.[79] Since five of Florida's counties are covered jurisdictions under Section 5, any statewide change in election procedures affecting those counties requires DOJ approval.[80] The United States filed a lengthy Statement of Interest that Florida was in violation of Section 5;[81] the litigation is still pending.[82]

Days after the filing of the ACLU's suit against Florida, DOJ also brought suit, under Section 8 of the National Voter Registration Act (NVRA), which prohibits the purging of voter rolls 90 days prior to an election for federal office.[83] DOJ's challenge to Florida's purge of voters was dismissed on October 4, with the court interpreting that the purge based on citizenship challenges was permitted under the NVRA. Although the litigation challenge was unsuccessful, Florida had proactively reduced its swollen purge list of nearly 3,000 names down to 200 during the pendency of legal proceedings.[84]

Similar challenges to voter purges in Texas proved more successful, where a coalition of civil rights organizations reached a settlement with Harris County, after the County incorrectly sent over 9,000 individuals' letters threatening to remove them from voter rolls on the incorrect belief that those individuals were deceased. As a result of the settlement, Harris County agreed to send written notice to each of the more than 9,000 impacted voters to advise them that they would not be removed from the rolls and could vote in the general election.[85]

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[77] *Id.*

[78] Mi Familia Vota v. Detzner, No. 8:12-cv-01294 (M.D. Fla.).

[79] Complaint for Declaratory and Injunctive Relief and Req. for a Three Judge Panel Mi Familia Vota v. Detzner, No. 8:12-cv-01294 (M.D. Fla. June 8, 2012), *available at* http://miamiherald.typepad.com/files/2012-06-acluvoterpurgecomplaint.pdf.

[80] The Department of Justice, Civil Rights Division, Voting Section 5 Covered Jurisdictions, http://www.justice.gov/crt/about/vot/sec_5/covered.php (last visited Dec. 17, 2012).

[81] Press Release, ACLU, Department of Justice Supports ACLU Suit to stop Florida's Inaccurate and Illegal Voter Purge (July 30, 2012), *available at* http://www.aclu.org/voting-rights/department-justice-supports-aclu-suit-stop-floridas-inaccurate-and-illegal-voter-purge.

[82] Mi Familia Vota v. Detzner, No. 8:12-cv-01294 (M.D. Fla. Oct. 29, 2012) (case management and scheduling order), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/OrderSettingTrialDate.pdf.

[83] Press Release, Department of Justice, Justice Department Files Lawsuit Against Florida Alleging Violations of the National Voter Registration Act (June 12, 2012), *available at* http://www.justice.gov/opa/pr/2012/June/12-crt-746.html.

[84] Michael Peltier, *Federal Judge Approves Scaled-down Florida Voter Purge* REUTERS, Oct. 4, 2012, *available at* http://www.reuters.com/article/2012/10/05/us-usa-campaign-florida-voting-idUSBRE89400420121005.

[85] *Lawsuit Forces Partial Settlement for Harris County, Texas Voters*, Project Vote (Oct. 19, 2012), *available at* http://www.projectvote.org/newsreleases/953-lawsuit-forces-partial-settlement-for-harris-county-texas-voters.html.

III. Election Administration Issues Impacting Access to the Polls

In addition to the impact or confusion caused by voter suppression efforts on Election Day this year, voters also encountered difficulty voting because of election administration issues. These included last minute changes to state procedures, failure to maintain accurate voter rolls, inadequate poll worker training, including the improper use of provisional ballots, disproportionate allocation of resources, and technological glitches with voting equipment.

The cumulative impact of election administration issues is significant. Across the country this year, voters waited in line for hours to cast their ballot, with reports of wait times of four to five hours in Texas, Virginia, and Florida.[86] In fact, some voters were still in line when Mitt Romney conceded the presidential race to the incumbent, President Obama.[87] In his acceptance speech, President Obama acknowledged the pervasiveness of the problem, when he thanked everyone who participated, "whether you voted for the first time, or waited in line for a very long time," before adding, "by the way we have to fix that."[88]

These administration issues have become endemic in our national elections despite previous efforts to address them at the federal level through legislation, such as the Help America Vote Act. In the absence of stronger and uniform federal standards for election administration, differences in state or county-level procedures have the potential to turn voters away. These issues are deserving of searching, bipartisan Congressional inquiry. With fewer than 4 million votes separating the presidential candidates this election year, election administration barriers could easily become determinative of election outcomes.[89] The following section represents only a snapshot view of election administration issues in the 2012 election.

A. Last Minute Changes to Election Administration Procedures

On the eve of the election, Ohio Secretary of State Jon Husted issued a last minute directive to election officials on provisional ballots. Previously, poll workers were responsible for correctly recording which form of ID the voter presented when voting provisionally, but Secretary Husted's order placed this burden on the voter. This change in election administration increased the possibility of error, and risked the disfranchisement of those forced to cast a provisional ballot – because his order provided that any incorrectly filled-out provisional ballot would not be counted.[90]

B. Failure to Maintain Accurate Voter Rolls

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[86] Ethan Bronner, *Long Lines, Demands for ID and Provisional Ballots Mar Voting for Some*, N.Y. TIMES, Nov. 6, 2012, *available at* http://www.nytimes.com/2012/11/07/us/politics/long-lines-id-demands-and-provisional-ballots-mar-voting.html.

[87] Scott T. Smith, *Not All Florida Voting Precincts are Created Equally*, CBS12 NEWS, Nov. 17, 2012, available at http://www.cbs12.com/news/top-stories/stories/vid_3179.shtml.

[88] Dan Froomkin, *Obama on Long Lines at the Polls: 'We Have to Fix That,'* HUFFINGTON POST, Nov. 7, 2012, available at http://www.huffingtonpost.com/2012/11/07/obama-long-lines-polls_n_2086291.html.

[89] *See generally*, Alexander Keyssar, *Voter Suppression Returns*, HARVARD MAGAZINE, July-Aug. 2012, *available at* http://harvardmagazine.com/2012/07/voter-suppression-returns.

[90] Ari Berman, *Eleventh-Hour GOP Voter Suppression Could Swing Ohio*, THE NATION, Nov. 4, 2012, *available at* http://www.thenation.com/blog/171011/eleventh-hour-gop-voter-suppression-could-swing-ohio#

In addition to the improper purges, discussed above, voter rolls do not always reflect those who are properly registered. People whose names are not found on the rolls may be denied the opportunity to cast a ballot – even a provisional one. For instance, Arizona sent removal notices to 1.6 million voters in the state, which equates to almost half of the state's total registered voters; the national average ratio of removal notices to number of registered voters was 7.8%.[91] Such removal efforts can significantly reduce the number of people on the voter rolls in advance of an election.

Another election administration issue impacting the accuracy of voter rolls is the failure of a state or locality to enter all of the voter registration forms into their system prior to Election Day. Some localities produce a supplemental voting list the night before Election Day, to account for these late registrations, but not all poll workers or election officials are aware of such lists or that the named individuals are entitled to vote with a regular ballot. In Fulton Country, Georgia and Philadelphia, Pennsylvania, for instance, there were reports of voters being either turned away from the polls or given provisional ballots, because poll workers forgot about or did not consult the supplemental voting list.[92]

C. Inadequate Poll Worker Training

i. Misuse of Provisional Ballots

On Election Day, poll workers across the country were given the daunting task of managing limited resources, confusing interpretations of state law, and higher turnout than was anticipated in many jurisdictions. In the absence of adequate training, too many poll workers misinterpreted the law,[93] as in Pennsylvania, where voters did not need a photo ID to vote in the 2012 election. The temporary order issued in the ACLU's challenge to Pennsylvania's voter ID law permitted poll workers to ask voters for a photo ID, but explicitly provided that voters could cast a regular ballot regardless of whether they could produce an ID on Election Day.[94] The ACLU of Pennsylvania predicted that this order could produce confusion among poll workers on Election Day,[95] and there were multiple reports that poll workers gave provisional ballots to

[91] US ELECTION ASSISTANCE COMM'N, THE IMPACT OF THE NATIONAL VOTER REGISTRATION ACT OF 1993 ON THE ADMINISTRATION OF ELECTIONS FOR FEDERAL OFFICE 2009-2010 (June 30, 2011), *available at* http://www.eac.gov/assets/1/Documents/2010%20NVRA%20FINAL%20REPORT.pdf.

[92] Johnny Edwards, et al., *Fulton elections operations riddled with glitches*, ATL. J. CONST., Nov. 6, 2012, *available at* http://www.ajc.com/news/news/state-regional-govt-politics/fulton-elections-operations-riddled-with-glitches/nSywQ

[93] *Registered Philly voters required to cast provisional ballots in large numbers*, PHILADELPHIA CITY PAPER, Nov. 6, 2012, *available at* http://www.citypaper.net/blogs/nakedcity/177510161.html.

[94] Ryan J. Reilly, *Pennsylvania Judge Rules Poll Workers Can Still Ask For ID*, TPM, Oct. 2, 2012, http://tpmmuckraker.talkingpointsmemo.com/2012/10/pennsylvania_voter_id_law_ruling.php.

[95] Pennsylvania State Education Association, *It's simple: No photo ID required to vote Nov. 6* (Nov. 2012), http://www.psea.org/general.aspx?id=9894 (last visited Dec. 17, 2012). ("'You can't be telling people you need ID if you're not actually requiring ID,' said Vic Walczak, ACLU-PA attorney. 'Confusion is not a good thing on Election Day. Confusion is going to mean some voters stay home. Confusion is going to mean that some poll workers get it wrong.'").

voters without ID under the mistaken impression that the law was fully in effect.[96] In Philadelphia, twice as many voters had to cast provisional ballots as in 2008, and the Lawyers Committee' Election Protection program reported more than 9,000 calls from the state on Election Day, with many voters being told that a photo ID was necessary to cast a regular ballot.[97]

While voters have a right to vote provisionally if their names do not show up on a valid voter list, the Help America Vote Act "does not direct state or local election officials to conduct any particular investigation to determine whether the provisional ballot should be counted."[98] Since individual county boards of elections may determine voter eligibility, in the absence of stronger federal legislation, the decision to give a provisional ballot to a voter may result in their vote not ultimately being counted.

ii. Non-Compliance with Section 203 of the Voting Rights Act and Refusals to Assist Language Minority Voters

Across the country, language minority voters encountered difficulty voting. Under Section 203 of the Voting Rights Act, covered jurisdictions are required to provide language assistance at polling locations and to provide election material in the minority language if a jurisdiction meets certain population thresholds.[99] In covered jurisdictions across the country this year, language minority voters' right to participate was jeopardized after jurisdictions failed to provide, or provided misleading, information to these individuals. The Asian American Legal Defense and Education Fund reported that its poll monitoring uncovered violations of Section 203, including error-ridden election materials, in jurisdictions around the country, ranging from Queens, New York to Harris County, Texas to Cook County, Illinois.[100] The Asian American Justice Center reported similar issues, including indications of violations of Section 203 in covered jurisdictions in California, Illinois, Massachusetts, Michigan, and New Jersey.[101]

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[96] Dan Stamm, *More Provisional Ballots Will Be Supplied if Needed in Philly*, NBC 10, Nov. 6, 2012, *available at* http://www.nbcphiladelphia.com/news/politics/Provisional-Ballots-Philadelphia-Low-177542311.html; Mary Wilson, *Number of provisional ballots, voter ID issues spur call for Pa. probe of voting irregularities*, NEWSWORKS, Nov. 14, 2012, *available at* http://www.newsworks.org/index.php/local//philadelphia/47046-number-of-provisional-ballors-voter-id-issues-spur-call-for-pa-probe-of-voting-irregularities; Ryan J. Reilly, Turmoil Follows As Pennsylvania Voter ID Law Meets Reality, TPM, Nov. 6, 2012).http://tpmmuckraker.talkingpointsmemo.com/2012/11/pennsylvania_voter_id_election_day.php?ref=fpnewsfeed; Ethan Bronner, Long Lines, Demands for ID and Provisional Ballots Mar Voting for Some, N.Y. TIMES, Nov. 6, 2012 at P9, *available at* http://www.nytimes.com/2012/11/07/us/politics/long-lines-id-demands-and-provisional-ballots-mar-voting.html.

[97] Berman, *supra* note 7.

[98] RICHARD L. HASEN, THE VOTING WARS: FROM FLORIDA 2000 TO THE NEXT ELECTION MELTDOWN 112 (Yale University Press 2012).

[99] Department of Justice, The Voting Rights Act of 1965, http://www.justice.gov/crt/about/vot/vra06.php (last visited Dec. 17, 2012); CAROLINE FREDRICKSON & DEBORAH J. VAGINS, ACLU, PROMISES TO KEEP (Mar. 2006), *available at* http://www.aclu.org/voting-rights/promises-keep-impact-voting-rights-act-2006.

[100] AALDEF, LANGUAGE ACCESS FOR ASIA AMERICANS UNDER THE VOTING RIGHTS ACT IN THE 2012 ELECTIONS (2012), *available at* http://aaldef.org/AALDEF%20Election%202012%20Interim%20Report.pdf.

[101] Press Release, Asian American Justice Center, Poll monitors, voter hotline in 10+ states find language assistance for Asian American voters, but also missing bilingual poll workers, lack of knowledge about language access laws (Nov. 7, 2012), *available at* http://www.advancingequality.org/news-releases/poll-monitors-voter-hotline-in-10-

There were also multiple reports of misinformation given to Spanish-speaking voters in Maricopa County, Arizona, including the County listing the wrong election date on Spanish-language election materials, including voter registration cards,[102] and inaccurate bookmarks produced by the County Election Board.[103] In addition, there were multiple incidents across the country in covered[104] and non-covered[105] jurisdictions of polling locations being ill-equipped to handle non-English-speaking voters.[106] Some of these limited-English proficient voters, who were duly-registered and qualified voters, were turned away from the polls or experienced long delays when preferential treatment was provided to English speaking voters.[107] For instance, the Lawyers' Committee National Election Protection program received a report of Korean American senior citizens being segregated into a separate voting line from native-English speakers in Virginia on Election Day.[108] Finally, Native American voters – particularly in states with a significant proportion of tribal members – continue to confront Section 203 violations, in addition to violations of other language access provisions of the VRA, like Section 208.[109]

D. Disproportionate Allocation of Election Administration Resources

Given the highly-localized nature of elections currently, states, and even counties, have adopted different standards for the allocation of scarce election resources. In the absence of additional federal standards for the allocation of resources, there are significant variations in their distribution that can impact voter access. For example, from reports on Election Day, the allocation of electronic voting machines and ballot scanners was highly variable from location to location, sometimes insufficient to meet the voter turnout.[110]

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states-find-language-assistance-for-asian-american-voters-but-also-missing-bilingual-poll-workers-lack-of-knowledge-about-language-access-laws [hereinafter "AAJC"].

[102] Ed Payne & Michael Martinez, *Arizona county gives wrong election date in Spanish voter cards*. CNN, Oct. 18, 2012, http://www.cnn.com/2012/10/18/us/arizona-spanish-election-ballot/index.html.

[103] Matthew Hendley, *Maricopa County Elections Office Had More Materials With Wrong Election Date in Spanish, So It Got a Calendar*, PHOENIX NEW TIMES, Oct. 23, 2012, http://blogs.phoenixnewtimes.com/valleyfever/2012/10/maricopa_county_elections_offi_1.php.

[104] Jean-Paul Salamanca, *Arizona Election Results 2012: Votes Finally Counted, But Many Call For Reform to Ballot-Counting Measures*, LATINOS POST, http://www.latinospost.com/articles/7252/20121123/arizona-election-results-2012-votes-finally-counted.htm.

[105] Borys Krawczeniuk & Laura Legere, *Polls officially closed in Pennsylvania*, TIMES-TRIBUNE, Nov. 6, 2012, *available at* http://thetimes-tribune.com/news/polls-officially-closed-in-pennsylvania-1.1399309.

[106] AAJC, *supra* note 101.

[107] Jason Cherkis, *Election Problems Included Confusion, Intimidation, Untrained Poll Workers*, HUFFINGTON POST, Nov. 12, 2012, http://www.huffingtonpost.com/2012/11/08/election-problems-confusion-intimidation_n_2095384.html.

[108] AAJC, *supra* note 101.

[109] *See, e.g.* Nick v. Bethel, Alaska, No. 3:07-CV-0098 (TMB) (D. Alaska) (The ACLU and the Native American Rights Fund obtained a settlement against the City of Bethel and the State of Alaska on behalf of Yup`ik-speaking voters for violating Section 203 of the VRA, by failing to provide any written assistance and providing little to no oral language assistance, and Section 208 of the VRA, by preventing Yup`ik voters from bringing a person of their choosing into the voting booth to assist them with casting a ballot.).

[110] Adam Brandolph, *Voters report problems with long lines, confusion over voter ID law*, PITTSBURGH TRIB.-REV., Nov. 6, 2012, *available at* http://triblive.com/news/adminpage/2904078-74/outside-county-identification-judge-polls-order-asking-homestead-voters-allegheny#axzz2EBvbh2ZC; Donna Rapado et al., *Voters Endured Delays Amid Election Day Glitches in South Florida*, NBC MIAMI, Nov. 7, 2012, http://www.nbcmiami.com/news/Malfunctioning-Machines-Reported-Throughout-South-Florida-on-Election-Day-

In Florida, for instance, the number of registered voters assigned to polling places can vary from 1,000 to 8,000, which means that some voters – who are assigned to less populated polling sites – will have a greater number of voting booths and ballot scanners at their disposal.[111] These variations can have a disparate impact on predominantly minority communities. An analysis of Orange County, Florida this election year, where the average number of registered voters assigned to each precinct was 3,042, indicated that precincts with a majority of Hispanic voters had an average of 3,575 voters. By comparison, precincts with a majority of white voters (at least 80%) in Orange County had an average of 2,144 voters assigned.[112]

In the absence of federal guidelines providing for equitable distribution of equipment and polling sites, minority communities will continue to be vulnerable to changes in state election procedures or resource allocations.

E. Technological Glitches with Voting Equipment

During early voting and Election Day, there were reports from across the country of machine glitches that impacted voters. Some poll workers encountered difficulty unlocking or activating the electronic voting machines, so they could be operational for voters. In Galveston County, Texas, electronic voting machines at all 45 polling places experienced delays "zeroing out," which is the process by which the machine verifies that no ballots have been recorded prior to the beginning of voting.[113] This delayed the opening of polling places by as long as two hours, and interfered with the ability of hundreds of Galveston County residents to vote during the early morning poll hours.[114] In response to a request from the County Clerk to extend the poll hours to account for the delay, the district judge ordered that the polls remain open approximately two additional hours – rather than the scheduled 7pm closure – but that all ballots cast after 7pm would be provisional.[115]

These technological glitches were not limited to the electronic voting machine themselves, as states with paper ballots experienced technological problems with ballot scanners. In Cuyahoga County, Ohio, multiple cities – including Maple Heights, Cleveland Heights, Cleveland, and Parma – reported that their ballot scanners jammed, forcing voters to put their

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177488311.html; Renee Standera & Jack Kuenzie, *Richland County election investigation: not enough voting machines used*, WISTV, Dec. 9,2012, http://www.wistv.com/story/20223227/richland-county-election-investigation-not-enough-voting-machines-used; Ed Barnes, *Electronic Voting Machine Problems Raise Early Concerns*, FOX NEWS, Nov. 2, 2012, http://www.foxnews.com/politics/2010/11/02/electronic-voting-machine-problems-raise-concerns/; Beth Sawicki, *Election Day glitches frustrate voters*, WXIA-TV, Nov. 6, 2012, http://www.11alive.com/news/article/263250/3/Election-Day-glitches-frustrate-voters.

[111] Scott T. Smith, *Not All Florida Voting Precincts Are Created Equal*, CBS12 NEWS, Nov. 17, 2012, http://www.cbs12.com/news/top-stories/stories/vid_3179.shtml.

[112] *Id.*

[113] Harvey Rice, *Galveston County voting extended two hours*, HOUSTON CHRON., Nov. 6, 2012, *available at* http://www.chron.com/news/houston-texas/houston/article/Galveston-County-voting-extended-two-hours-4012465.php.

[114] *Id.*

[115] *Id.*

paper ballots in a holding box until the scanners were repaired.[116] In Broward County, Florida, there were also reports of scanners malfunctioning throughout Election Day, with some poll workers advising voters to put their ballots in a sealed bag, and others providing voters with the option to wait to scan their ballots themselves when the replacement equipment arrived.[117]

IV. Recommendations for Reform

The 2012 election firmly established the necessity of vigorous enforcement of the Voting Rights Act and other federal voting statutes, as well as of the need for more uniform standards and procedures for the administration of federal elections. Both suppressive voting laws and faulty election administration procedures can result in the denial of the right to vote, and minorities continue to be disproportionately impacted.

A. Additional Enforcement of the Voting Rights Act and Other Federal Voting Rights Statutes

When Congress re-authorized the Voting Rights Act in 2006 on a broad, bi-partisan basis, it concluded that "without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years."[118] In the re-authorization process, Congress extended the Section 5 provisions for another twenty-five years, based on the voluminous record compiled, which unequivocally demonstrated that despite gains, minorities continue to confront pernicious voter suppression tactics in states that have historically excluded them from the electoral process.

It is particularly crucial that the Department of Justice continue to take action under Section 5 in response to voter suppression in states with a sordid history of excluding racial and ethnic minorities. In addition, DOJ should also refuse to pre-clear any new criminal disfranchisement laws, which is has not yet done, because these laws disproportionately impact communities of color.

Indeed, the role of Section 5 is particularly important. Not only does it provide an important deterrent to discrimination, if some states still try to enact discriminatory laws, Section 5 also stands as the bulwark to place the burden on those states to show that their laws do not discriminate, rather than placing that burden on the shoulders of historically disfranchised groups. This is precisely what the congressional drafters of the Voting Rights Act intended. While the nation has made significant progress since the Voting Rights Act first became law in 1965, in 2006, Congress determined that Section 5's broad and remedial powers were still necessary in covered districts to avert a potential backslide to the legacy of entrenched voter

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[116] Sarah Jane Tribble, *Voting equipment down at several locations in Cuyahoga County; elections chief says all votes will be counted*, PLAIN DEALER, Nov. 6, 2012, *available at* http://www.cleveland.com/politics/index.ssf/2012/11/voting_equipment_down_at_scatt.html.

[117] Donna Rapado et al. *supra* note 110.

[118] Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, § 2(b)(9), 120 STAT. 578 (2006).

suppression and ineffective piecemeal litigation challenges that pre-dated the Voting Rights Act.[119] In reaffirming Congress' findings on the continued necessity of Section 5, the D.C. Circuit Court of Appeals, in *Shelby County v. Holder,* found that sufficient evidence exists for Congress to conclude that "intentional racial discrimination in voting remains so serious and widespread in covered jurisdictions that section 5 preclearance is still needed".[120] *Shelby County* will be heard by the Supreme Court this term.[121]

In addition to litigation challenges brought under the Section 5, other challenges under state constitutional provisions successfully forestalled some voter suppression measures that would have impacted the general election. However, the ultimate fate of many of these laws was simply postponed until after the election, so access to the franchise may be restricted in the next election cycle to a greater degree than it was this year – making DOJ's continuing involvement in these and new voter suppression efforts necessary. Therefore, in addition to additional Section 5 objections, where applicable to the voter suppression tactic at issue, the Voting Section of the Civil Rights Division should also increase emphasis on prosecution of Section 2 and 11b cases under the Voting Rights Act, the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA).

DOJ and local agencies should also provide additional training for election officials and poll workers and greater outreach to the public. Polls are often run by dedicated, civic-minded volunteers who generously give their time to help make Election Day run smoothly, but they often are not provided with adequate training or with comprehensive information on election laws specific to their state. Better training for poll workers and election officials will help ensure that everyone has up-to-date information on the often-rapidly changing voting laws in their jurisdictions.

Finally, the ACLU and other civil rights groups will continue to engage in voter empowerment and public education campaigns, but it is also the responsibility of federal, state, and local officials to ensure that voters know what their rights are and what they need to do in order to cast a ballot.

B. Congressional Action Supporting Uniform Standards in Federal Legislation

In a speech this month at the JFK Library in Boston, Attorney General Eric Holder spoke on the urgency of enacting uniform election standards to prevent the problems seen on Election

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[119] Laughlin McDonald & Laura W. Murphy, *Voting-rights struggle isn't over*, POLITICO, Aug. 6, 2011, *available at* http://www.politico.com/news/stories/0811/60787.html.

[120] Shelby County v. Holder, 679 F.3d 848, 866 (D.C. Cir. 2012). The court goes on to hold that, "After thoroughly scrutinizing the record and given that overt racial discrimination persists in covered jurisdictions notwithstanding decades of section 5 preclearance, we, like the district court, are satisfied that Congress's judgment deserves judicial deference" *Id.* at 873.

[121] Shelby County v. Holder, 679 F.3d 848 (D.C. Cir. 2012), *cert. granted* (Nov. 9, 2012) (No. 92-16), *available at* http://www.supremecourt.gov/orders/courtorders/110912zr_d18e.pdf.

Day this year.[122] He echoes the sentiment of the nation -- according to a study by the MacArthur Foundation, nearly 90% of voters support the creation of national election standards.[123]

Congress should heed the Attorney General's call and respond to these ongoing threats to the full democratic participation of citizens. Specifically, Congress should enact legislation providing uniform standards in federal elections that can help address the problems identified in this statement. Among other reforms, such legislation should maintain and expand upon early voting periods, address the distribution, casting and counting of provisional ballots, re-enfranchise all citizens, encourage no-excuse absentee voting, and ensure equitable distribution of resources. More specifically, such reforms should include:

- Longer early voting periods, with uniform requirements across states on the number of days and hours of operation, including the weekend before the election. This would help ensure that voters have more flexibility in participating and ease the burden of accommodating potentially thousands of voters on a single day.

- Greater federal requirements on the use and criteria for distributing, casting, and counting provisional ballots. In his recent speech, Attorney General Holder said: "[w]e must recognize that, in some cases, there is a risk that elections may hang in the balance for days or weeks due to the need to count hundreds – if not thousands or hundreds of thousands – of provisional ballots; and that it is a potential problem if these ballots are subject to counting standards that vary between jurisdictions."[124] This change would help ensure that all eligible voters have their vote counted, in addition to ending the confusion among state and local officials about how to handle provisional ballots.

- Elimination of mandatory excuses to vote absentee. Voters in many states must provide a qualifying "excuse" in order to vote by mail.[125] Requirements to justify the "excuse" vary by state, but can go so far as to require that the voter produce a notary's seal, a doctor's note, or signatures from multiple witnesses to request an absentee ballot. Still other states require a voter to list work hours, explain a religious obligation, or detail the nature of a disability in order to prove that the voter fits into one of the state's "excuse" categories. The disclosure of personal information or the imposition of financial burdens should not be required for citizens to exercise their right to vote. Voters in some states should not be more heavily burdened, simply because of their location, while voters in other states can conveniently, without question or cost, request a mail-in ballot.

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[122] Eric Holder, U.S. Attorney General, Address at the John F. Kennedy Presidential Library (Dec. 11, 2012), http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-121211.html.

[123] A recent study by the MacArthur Foundation found that nearly 90% of those who voted in the general election would support creating national voting standards. Press Release, MacArthur Foundation, New Poll: Americans Strongly Support National Standards for Voting (Nov. 14, 2012), *available at* http://www.macfound.org/press/press-releases/new-poll-americans-strongly-support-national-standards-voting/.

[124] Holder, *supra* note 122.

[125] National Conference of State Legislatures, Absentee and Early Voting, http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx (last visited Dec. 12, 2012).

A federal law is needed to guarantee that all citizens have the same opportunity to vote by mail in federal elections if they so choose. The Universal Right to Vote by Mail Act[126] would give all voters the choice of voting by mail by eliminating the unnecessary, burdensome, and often intrusive "excuse" requirements that some states impose on voters requesting absentee ballots.[127] While this would supplement, not replace, in-person voting, allowing voters this choice could help more voters avoid long lines.

- Increase future funding for election administration and streamline existing resources. Long lines should never be caused by a lack of paper ballots or inequitable distribution of voting machines or ballot scanners. Congress should examine current allocation of resources, working with state officials in assessing inequities, and appropriate or allocate additional funds as needed.

- Re-enfranchise people with past convictions. Congress should also pass the Democracy Restoration Act, which will re-enfranchise millions of citizens with past convictions. These Americans are living and working in our communities, but they are denied their most basic right – to participate in our democracy through exercise of the franchise.

  The provisions of the Democracy Restoration Act[128] would:
  - Restore voting rights in federal elections to the 4.4 million Americans who have been released from prison and are living in the community.
  - Ensure that probationers never lose their right to vote in federal elections.
  - Notify people about their right to vote in federal elections when they are leaving prison, sentenced to probation, or convicted of a misdemeanor.

  Passage of the Democracy Restoration Act would:
  - Create a uniform standard across the country in federal elections.
  - Strengthen our democracy by creating a broader and more just base of voter participation.
  - Aid law enforcement by encouraging participation in civic life, assisting reintegration, and rebuilding ties to the community.
  - Facilitate election administration by streamlining registration issues and eliminating the opportunity for erroneous purges of eligible voters.
  - Eliminate the confusion about who is eligible to vote

[126] The Universal Right to Vote by Mail Act of 2011, H.R. 2084, 112th Cong. (2011).
[127] Letter from Laura Murphy, Director & Deborah Vagins, Legislative Counsel, ACLU Washington Legislative Office to U.S. Senate Committee on Rules and Administration regarding the Universal Right Vote by Mail Act (Apr. 29, 2010), *available at* http://www.aclu.org/voting-rights/aclu-letter-support-universal-right-vote-mail-act-senate-rules-hearing.
[128] Democracy Restoration Act of 2011, H.R. 2212/S. 2017, 112th Cong. (2011).

V. Conclusion

The ACLU thanks the Senate Judiciary Committee for holding this important hearing to address the issues of voter suppression and concerns over election administration during the 2012 election. As Attorney General Holder recently remarked: "we must also acknowledge that which is historically true: that the arc of American history has bent towards expanding the franchise. This generation must be true to that more inclusive history. This is our time; it is not a time to restrict the franchise."[129]

Therefore, it is crucial that additional legal and congressional action be taken to resolve the widespread issues that imped access to the ballot. All the other rights we enjoy as citizens depend on our ability to vote; it is necessary that we safeguard access to the ballot for every citizen.

[129] Holder, *supra* note 122.

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

Hearing on "The State of the Right to Vote After the 2012 Election"
Before the Senate Committee on the Judiciary
Washington, DC
Wednesday, December 19, 2012

Chairman Leahy and Members of the Judiciary Committee, thank you for the opportunity to present testimony on "The State of the Right to Vote After the 2012 Elections," on continued threats to voting in America and opportunities to advance a more just democracy. Mr. Chairman, having testified before the Subcommittee on the Constitution, Civil Rights and Human Rights in 2011 on states' new voting laws that threatened the ability of voters to cast a ballot, I thank you for continuing the needed dialogue on this important right – the cornerstone of American democracy – the right to vote.

I submit this testimony today in my capacity as Co-Director of Advancement Project—a national civil rights organization that advances universal opportunity and a just democracy.[1] Since 2000, we have worked closely with a broad array of local community, voter registration, GOTV groups, statewide civic engagement coalitions, national partners and election officials to eliminate barriers to voting in communities of color. 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 voting rights. In these past twenty years, I have not seen such widespread attempts to disenfranchise voters as we have seen over the past two years. Inclusive democracy has been under attack in ways that continue to disproportionately impact people of color, young voters, senior citizens, veterans, the working poor and people with disabilities. We submit this testimony to strongly recommend enshrining an affirmative right to vote explicitly in the Constitution or federal law to protect our most fundamental right, once and for all.

A glimpse of a more robust democracy prevailed in 2012 as voters pushed back against restrictive new voting laws. As they braved long lines and other barriers on Election Day, we saw voters' determination to protect their most basic right. We saw it in the long lines outside of polling places in Florida, Ohio and Virginia, as citizens showed up for early voting in record numbers. We saw it in the determination of voters like Desilyn

[1] Advancement Project is a next generation, multi-racial civil rights organization, founded in 1999 by a team of veteran civil rights lawyers. With offices in California and a national office in Washington, DC, we exist to fulfill America's promise of an inclusive and just democracy, rooted in the great human rights struggles for equality and justice. We use innovative tools and strategies to strengthen social movements and achieve high-impact policy change. Locally, we provide strategic policy, legal, and communications support to grassroots organizations, increasing their capacity to identify and address racial injustices in their communities. On the national level, we extend and replicate lessons learned on the ground, through the use of legal advocacy, networking, media outreach, and public education.

Victor, who at 103, due to fatigue, had to leave her polling place at North Miami Library after waiting in line for four hours, only to insist on returning later with members of our staff to cast her ballot. When she emerged from the polling place wearing her "I voted" sticker after casting her ballot, hoping this is not the last time she will do so, the crowds still waiting to vote erupted in applause. We saw when Florida poll workers closed their doors on an unexpectedly massive crowd of early voters, only to be met with chants of "We want to vote! We want to vote!" We saw it in black church leaders who, in response to Florida's elimination of the last Sunday of early voting, set a new date for their community's popular "Souls to the Polls" voter mobilization campaign -- and made history with a larger-than-ever early voting turnout.

But thousands of citizens -- disproportionately African Americans and Latinos -- were improperly forced to vote a provisional ballot, particularly in Ohio, Florida and Arizona. At one Tampa precinct, voters were given so many provisional ballots that it was dubbed "Provisional City." And although the resolve of voters who waited in line for up to eight hours was inspiring, it proved that administration of our elections is in dire need of repair. As President Obama said in his re-election victory speech, "We have to fix that."

And fix it we must. If the prologue to this Election Day was an unprecedented effort to hinder voting rights -- the largest since the Reconstruction-era days of poll taxes and literacy tests -- its epilogue will define the character of our nation and the future course of our democracy. How we respond to this election will set the course for our nation's future.

The war on voting is not over, and more threats loom on the horizon as a spate of new state legislative proposals stand to make it harder for people to vote, as states push error-ridden purge practices, and as the Supreme Court undertakes review of the nation's most impactful voting law. This is a critical time to enshrine an explicit, affirmative right to vote under federal law for all Americans. The absence of an explicit federal provision conferring a fundamental right to vote has left Americans at the mercy of state constitutions, state legislatures, elected and appointed judges, local bureaucrats and a patchwork of practices in 13,000 distinct local election jurisdictions. To that end, the continued work to guarantee and protect the right to vote must involve new, affirmative measures to solve the problems with our election infrastructure -- reforms like a modernized, automated voter registration system; Early Voting in every state; same-day voter registration during Early Voting and on Election Day; automatic restoration of rights for people with past felony convictions; and declaring Election Day as a federal holiday or moving it to a weekend to encourage greater voting access and participation. Now is the time to work to finally enshrine the right to vote in federal law to provide national standards for our election system. This election cycle and the threats that lie ahead demonstrate the need to ensure that the right to vote is explicitly protected. Advancement Project has advocated for guaranteeing a fundamental right to vote in federal law.[2]

In Pursuit of an Affirmative Right to Vote

The 2012 elections have energized a movement for election reform, and we must capitalize on this momentum. Several members of Congress have already proposed legislation that begins to address these concerns,[3] but a more comprehensive approach is needed. While proposals such as the Voter Empowerment Act, HR 5799, provide a promising avenue to address systemic election problems, there must be an unambiguous

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[2] Advancement Project, "In Pursuit of an Affirmative Right to Vote," (July 2008), available at: http://b.3cdn.net/advancement/ae94ee5ad8686f5760_27m6vr0j7.pdf

[3] Cong. George Miller, "New Legislation Would Help Shorten Voting Lines, Strengthen People's Ability to Vote," *The Daily Kos*, Nov. 15, 2012, http://www.dailykos.com/story/2012/11/15/1161979/-New-Legislation-Would-Help-Shorten-Voting-Lines-Strengthen-People-s-Ability-to-Vote; Democrats Propose Speeding Up Voting, *Roll Call*, Nov. 15, 2012, http://www.rollcall.com/news/democrats_propose_speeding_up_voting-219234-1.html?pos=hbtxt; Kirsten Gillibrand Introducing Voter Empowerment Act In Senate, *Huffington Post*, 9/21/12, http://www.huffingtonpost.com/2012/09/21/kirsten-gillibrand-voter-empowerment-act_n_1903462.html

commitment to solid, uniform standards that are ultimately enacted and followed by strong, consistent enforcement. The declining reach of the Help America Vote Act to address structural disenfranchisement in our 21st century democracy, including the current weakening of the US Election Assistance Commission it created, make a compelling case for enacting broader, stronger protections for voters .

In the final analysis, most Americans would be surprised to learn that there is no provision in the Constitution or federal law affirmatively guaranteeing all citizens the right to vote. Indeed, the Supreme Court has stated that the "individual citizen has no federal constitutional right to vote for electors for the President of the United States."[4] This impacts the state of voting all over the country. In *Crawford v Marion County Election Board,* the only voter ID case heard by the U.S. Supreme Court so far, the Court upheld Indiana's restrictive photo ID law, applying a lenient level of scrutiny given to rights that are not "fundamental."[5]

Under this standard, courts will generally defer to the wishes of legislators, without requiring them to prove that their law actually achieves tangible results. There was no evidence of fraud in the Indiana case; instead, state officials claimed that they should be able to combat a perception of fraud. This is a kind of deference we would never tolerate with rights that we deem truly fundamental, like the right of free speech, or freedom of religion.

If the right to vote were explicitly constitutionally enshrined, it is likely that a higher level of scrutiny would have required Indiana to demonstrate that the law was narrowly tailored to advance a compelling interest – a threshold the state would have been unable to meet because Indiana had no evidence of a voter fraud problem to support its claim that the strict new photo ID law was needed to combat voter fraud. The difference is meaningful. Indeed, applying that higher standard afforded to "fundamental" rights led the Missouri Supreme Court to reject a similar photo ID law in Missouri, finding that the law imposed "a heavy and substantial burden on Missourians' free exercise of the right of suffrage."[6] There, the court found that the state Constitution, which includes a specific right to vote provision, "establish[es] with unmistakable clarity that the right to vote is fundamental to Missouri citizens" -- a right that the court found "at the core of Missouri's constitution and, hence, receive[s] state constitutional protections even more extensive than those provided by the federal constitution."[7]

Advocates in some states are trying to advance greater protections for voting in the wake of new voting restrictions passed over the last two years and the threats to legal protections like the Voting Rights Act. In Florida, for example, Advancement Project and others are calling on voters to consider a state constitutional amendment to make the right to vote explicit, establishing equal protection standards for violations, and a citizen advisory board to review changes to voting laws.[8]

Proposals like these will be helpful, but the federal government should not leave these corrections to the states. History tells us that the statewide patchwork of election practices, underfunded state bureaucracies and partisan elections officials are more likely to contract, rather than expand, the franchise.

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[4] *Bush v Gore,* 531 US 98, 104 (2000)

[5] *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 190 (2008). The Court found that the voter ID law "impose[d] only a limited burden on voters' rights," and that the interests advanced by the state were sufficient to outweigh that burden. *Id.* at 202–03.

6 *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006)

7 Id.

[8] See, e.g., Dara Kam, "Coalition Calls for Florida Voting Changes, Federal Voting Investigation," *Palm Beach Post,* Nov. 12, 2012, available at: http://www.postonpolitics.com/2012/11/coalition-calls-for-florida-voting-changes-federal-investigation/; Advancement Project, *What We Learned About Voting in Florida This Year and How to Fix It*, at http://www.advancementproject.org/campaigns/protect-your-vote/pages/my-vote-fl.

As former Congressman Jesse Jackson, Jr., noted when he introduced House Joint Resolution 28 to enshrine an explicit constitutional right to vote for all US citizens 18 and older,[9] our present system of voting remains unequal because of a lack of federal legal guidelines protecting the right to vote as we protect other fundamental rights. Voting in the United States is controlled by "50 states, 3,067 counties, and 13,000 different local election jurisdictions," he said, which means that the amount of access Americans have to vote depends on where they live and their social circumstances.[10]

International observers in the U.S. during elections in 2012 made note of this patchwork process, observing that "elections were administered at the state level with many responsibilities delegated to county-level officials, resulting in a wide variety of practices" and noting, "there is no federal election management body with oversight responsibility."[11]

While our federal constitution mentions the right to vote more than any other right, forbidding it from being abridged based on race, gender, age or ability to pay a poll tax, it contains no affirmative language that would make explicit what is already implicit. This would go a long way towards ensuring uniform standards and ensure that voting no longer be treated as a privilege but as a right fundamental to all citizens. Harvard Law Professor Lani Guinier has suggested that "access to voting is like access to water – a necessity for the survival of our democracy."[12]

We still have a long way to go to make voting like water, as an estimated 50 million eligible citizens were not even registered to vote this election, "bringing into question the effectiveness of existing measures to ensure that all persons entitled to vote are able to exercise that right."[13] Congress has the power to regulate voting,[14] and should take up the charge to ensure that the right to vote is strongly protected under law. The government *should* have to demonstrate that it has a compelling reason before it can enact policies that make it harder to vote, and should have to show that the mechanism is narrowly tailored and will actually advance that goal. Yet no provision of federal law makes this explicit. The U.S. is one of only eleven of the 119 democratic countries in the world that do not explicitly provide the right to vote in their Constitutions.[15] The result is a patchwork of state and local rules that are arbitrarily applied, which not only have major political consequences, but profoundly impact the social fabric of our nation. These disparities are an obstacle to eliminating structural disenfranchisement.

A robust and inclusive democracy is the very essence of American exceptionalism. The ballot box is the one place where every citizen -- rich or poor, young or old, and of every race -- has an equal voice in determining the course of our government. But with 50 states administering elections in 50 different ways, it's far too easy to

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[9] H.J. Res. 28, 110th Cong. (2007)

[10] See Jesse L. Jackson, Jr., "Democrats Should Fight for a 'Right to Vote' Amendment," *The Nation*, Nov. 15, 2005, available at http://www.jessejacksonjr.org/query/creadpr.cgi?id=6908.

[11] OSCE/ODIHR LIMITED ELECTION OBSERVATION MISSION
United States of America – General Elections, 6 November 2012, STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS, available at: http://www.osce.org/odihr/elections/96960.

[12] Advancement Project, "In Pursuit of an Affirmative Right to Vote," (2008) at 19, available at: http://b.3cdn.net/advancement/ae94ee5ad8686f5760.

[13] OSCE/ODIHR LIMITED ELECTION OBSERVATION MISSION
United States of America – General Elections, 6 November 2012, STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS, available at: http://www.osce.org/odihr/elections/96960

[14] Pamela S. Karlan, *Congressional Power to Establish an Affirmative Right to Vote* (July 2005) unpublished paper on file with Advancement Project.

[15] Alexander Kirshner, The International Status of the Right to Vote, DEMOCRACY COALITION PROJECT, (2003), at 9, available at http://www.demcoalition.org/pdf/International_Status_of_the_Right_to_Vote.pdf. These eleven countries include: Australia, the Bahamas, Bangladesh, Barbados, Belize, India, Indonesia, Nauru, Samoa, United States of America, and the United Kingdom. *Id.*

manipulate the system. It is imperative that we finally enshrine the right to vote in federal law to provide national standards for our election system.

Greatest Rollback of Voting Rights in a Century

When I testified before the Subcommittee on the Constitution, Civil Rights and Human Rights last year, I described the rash of new voting restrictions in the states the "largest legislative effort to rollback voting rights since the post-reconstruction era" effectuating a trifecta of voter suppression– making it harder to register to vote, harder to cast a ballot, and harder to have a vote counted.[16] Legislative activity in the states since the 2010 midterm elections marked a sharp departure from our historical trend of expanding access, with more than 180 restrictive voting bills introduced in 41 states in the past two years: voter identification restrictions, cutbacks to early voting, restrictions on voter registration activities, proof of citizenship requirements, and more.[17] Their impact was not evenly distributed,[18] and they were designed to effectuate political results.[19] The measures weren't limited to legislation. In Florida, the Secretary of State initiated a deeply flawed program to purge the voter rolls to combat non-citizen voting—a problem that was largely nonexistent. The 2012 Florida purge threatened thousands of U.S. citizens in the process – and a number of other states got in line to do the same.

Voter Suppression Strategy Backfired

The 2012 voter suppression strategy failed. In some cases, the courts and Justice Department stepped in to stop restrictive laws from being implemented. Ten major voting laws were blocked by the courts and turnout among Black and Latino voters and youth – groups targeted by voter suppression initiatives – increased.

For example, we saw restrictive voter ID laws proposed in 38 states but in the end, only Tennessee, Georgia, Indiana and Kansas ended up with strict voter ID laws in place during the 2012 general elections - due to gubernatorial vetoes of photo ID laws in six states, and court or Department of Justice orders blocking restrictive photo ID laws for 2012 in Pennsylvania, Wisconsin, Texas, Mississippi and South Carolina. Federal courts in Florida and Texas struck down new restrictions on voter registration activities, and a federal court rejected efforts in Ohio to eliminate the last weekend before Election Day from the early voting period. In cases brought by

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[16] 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, 112th Cong. 2, at 19 (2011) (statement of Judith Browne-Dianis, Co-Director, Advancement Project), available at http://www.advancementproject.org/sites/default/files/publications/Advancement%20Project%20Barriers%20to%20the%20Ballot%20Testimony%209-8-2011.pdf.

[17] See Brennan Center for Justice, "Voting Changes in 2012," http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/

[18] For example, African Americans were twice as likely to cast early ballots in states that enacted restrictions on early voting. In Florida in 2008, 53% of African Americans cast early ballots compared to 27% of white voters. See Florida Department of State, County Early Voting Reports, https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx. African Americans, who make up about 13% of the electorate, cast 22% of those votes. Half of African Americans who voted, cast early ballots.

[19] See, Ari Berman, "How the GOP's War on Voting Backfired," *The Nation*, Nov. 8, 2012, http://www.thenation.com/blog/171146/gops-failed-voter-suppression-strategy# ("By pushing voter suppression laws, Republicans wanted the 2012 electorate to be older, whiter and more conservative than the young and diverse 2008 electorate."); See also, Dara Kam and John Lantigua, "Former Florida GOP leaders say voter suppression was reason they pushed new election law," *Palm Beach Post*, http://www.palmbeachpost.com/news/news/state-regional-govt-politics/early-voting-curbs-called-power-play/nTFDy/; See Ryan J. Reilly, "Romney Co-Chair: Voter ID Would Have Won Us Wisconsin," *Talking Points Memo*, Nov. 13, 2012, http://tpmmuckraker.talkingpointsmemo.com/2012/11/romney_wisconsin_voter_id.php?utm_medium=referral&utm_source=pulsenews

Advancement Project, a judge in Missouri tossed language of a proposed Photo ID ballot initiative, a court in Ohio ordered that provisional ballots wrongly cast due to poll worker error should be counted, and Pennsylvania and Wisconsin courts provided injunctive relief to freeze the application of strict photo ID laws during the election. Finally, another lawsuit by Advancement Project challenging voter purge practices in Florida led to a favorable settlement.

Even more, voters were determined to make their voices heard. Remarkably, in states that had been targeted for voter suppression laws, voters of color increased their presence at the polls. Prof. Matt Barreto, a founder of polling and research firm Latino Decisions, said: "There were huge organizing efforts in the black, Hispanic and Asian community, more than there would've been, as a direct result of the voter suppression efforts."[20] The youth vote rose from 18 to 19 percent, and the voter turnout by people of color increased from 26 to 28 percent. More African Americans voted in 2012 in Ohio, Virginia, North Carolina and Florida – states fighting some of the worst restrictions on voting – than in 2008.[21] Even in Ohio, where efforts to cut weekend voting substantially reduced early voting in counties with the state's largest African American populations,[22] overall voter turnout by African Americans in Ohio nevertheless increased 4 points from 11 percent in 2008 to 15 percent in 2012.[23] African Americans also saw increased turnout in Florida (13%), North Carolina (23%) and Virginia (20%).[24] Even states like Missouri – where the African American vote was actively recruited in 2008 but not 2012 – saw a meaningful 3-point increase in African American turnout from 13% in 2008 to 16% in 2012.[25]

Turnout by Latinos also increased, from 9 percent in 2008 to 10 percent in 2012.[26] The share of the Latino vote increased in swing states where voter suppression efforts targeted Latinos, such as in Nevada (19%, up 4%), Florida (17%, up 3%), and Colorado (up 1%).[27] Of course, it is hard to predict how many voters were held back by photo ID laws that were in effect in Kansas or Tennessee or how many people didn't vote due to confusion over voting laws under challenge in Pennsylvania or Ohio or any of the 22 states with restrictions on voting rights this year, or how many were dissuaded due to long lines in Florida or Ohio.

Election Day Problems Show Need for Reform

Despite voters' inspiring resolve to cast a ballot, their election experiences show that reform is sorely needed. Reports of 6-8 hour wait times in Florida, voters wrongly made to cast provisional ballots in Ohio, and confusion on voter ID requirements in Pennsylvania, show that voting reform is more needed than ever.

Advancement Project's lawyers and advocates were on the ground in states around the country in support of Election Day monitoring efforts in 2012. The reports show that the election administration structural problems that have lingered since the 2000 election debacle continue to erode our democracy:

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[20] Ari Berman, "The GOP's Voter Suppression Strategy: How voter ID laws inspired progressive voters to fight stronger and turn out in higher numbers," *The Nation*, Nov. 26, 2012, available at: http://www.alternet.org/tea-party-and-right/gops-voter-suppression-strategy?akid=9721.140808.z86XuQ&rd=1&src=newsletter750513&t=13

[21] CNN Exit Polls, http://www.cnn.com/election/2012/results/main

[22] 45,395 people voted early in person in Cuyahoga County in 2012, compared to 54,340 in 2008, a decrease of 16 percent. See, Ari Berman, "Obama's Ohio Early Voting Advantage," *The Nation*, Nov. 5, 2012, available at: http://www.thenation.com/blog/171043/obamas-ohio-early-voting-advantage#

[23] *See*, Ari Berman, "How the GOP's War on Voting Backfired," *The Nation*, Nov. 8, 2012, http://www.thenation.com/blog/171146/gops-failed-voter-suppression-strategy#

[24] CNN Exit Polls, http://www.cnn.com/election/2012/results/main

[25] Id.

[26] Id.

[27] Id.; Latino Decisions, http://www.latinodecisions.com/

- Thousands of citizens -- disproportionately African Americans and Latinos -- were wrongly made to cast provisional ballots, especially in Ohio, Florida, Arizona, and Pennsylvania.[28]
- The day after the election, 600,000 early votes and provisional ballots remained uncounted in Arizona, most of them in Maricopa County, which has a high Latino population.[29]
- The 1-866-Our-Vote Election Protection hotline received more than 9,000 calls from voters in Pennsylvania on Election Day, many who were wrongly told by poll workers that a photo ID was required in order to vote. Twice as many voters in Philadelphia as in 2008 had to cast provisional ballots because their names were missing from voter rolls. Pennsylvania had the sharpest drop in voter turnout among other swing states, down by more than 7 percent from 2008, which some have attributed to confusion over its photo ID law.[30]
- Botched registration rolls caused voters to be turned away or delayed when they found themselves missing from the rolls.[31]
- Voters in Richland County, South Carolina faced six-hour lines when voting machines broke down, even as the county was using only 700 of the more than 900 machines available.[32]
- Some jurisdictions didn't have enough poll workers, causing long lines.[33]

Long lines were epidemic around the country on Election Day and disproportionately impacted Black and Latino voters, who were two to three times more likely than whites to wait more than thirty minutes to vote.[34]

Florida's early voting experience is a case study on the need for reform. In-person early voting dropped from 2008 thanks to Florida's enactment of HB1355, which reduced early voting days.[35] According to a Dartmouth University study of early voting in Florida in 2012, racial minorities were disproportionately impacted by cuts to early voting and the long lines that followed.[36] In Miami-Dade and Palm Beach Counties, notoriously long lines during early voting caused some voters on Saturday November 3 to stay well past midnight, ultimately not casting ballots until Sunday, November 4. Palm Beach County didn't wrap up voting until 2:30 a.m. on Sunday morning. After midnight early voters explain 573 of the early votes cast on Sunday, November 4, 431 in

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[28] Judith Browne-Dianis, "In this Election, Democracy Was on the Ballot," *Huffington Post*, Nov. 14, 2012, available at: http://www.huffingtonpost.com/judith-browne-dianis/in-this-election-democracy_b_2130435.html.

[29] Ari Berman, "The GOP's Voter Suppression Strategy: How voter ID laws inspired progressive voters to fight stronger and turn out in higher numbers," *The Nation*, Nov. 26, 2012, available at: http://www.alternet.org/tea-party-and-right/gops-voter-suppression-strategy?akid=9721.140808.z86XuQ&rd=1&src=newsletter750513&t=13

[30] Id.

[31] Brad Plumer, "Five Ways to Make Long Election Lines Shorter," *Washington Post*, Nov. 8, 2012, available at: http://www.washingtonpost.com/blogs/wonkblog/wp/2012/11/08/five-ways-to-cut-long-election-lines/

[32] "Richland Elec. Official: 'That is Unacceptable'," *WLTX*, Nov. 8, 2012, available at: http://www.wltx.com/news/article/208228/2/Richland-Elec-Official-That-is-Unacceptable

[33] Mike Rego, "Long Lines Await East Providence Voters," *EastBayRI*, Nov. 6, 2012, available at: http://www.eastbayri.com/news/long-lines-await-east-providence-voters/

[34] Hart Research, "2012 Election Night Surveys," Nov. 7, 2012, available at: https://docs.google.com/a/deniselieberman.com/presentation/d/1TGQPrvxJ5ODgSPf4CL-aS1HKVmrzM4UF70gso4IUa1o/edit#slide=id.p59

[35] HB1355's voter registration restrictions also impacted voter registration, which dropped by 14 percent in Florida due to the twelve months when voter registration drives were all but shut down due to restrictions on third party registration activities. See, Ari Berman, "The GOP's Voter Suppression Strategy: How voter ID laws inspired progressive voters to fight stronger and turn out in higher numbers," *The Nation*, Nov. 26, 2012, available at: http://www.alternet.org/tea-party-and-right/gops-voter-suppression-strategy?akid=9721.140808.z86XuQ&rd=1&src=newsletter750513&t=13

[36] Michael C. Herron & Daniel A. Smith, "Early Voting in Florida in 2012," Nov. 7, 2012 http://www.dartmouth.edu/~herron/HerronSmithFloridaEarly2012.pdf. The report reviewed 67 county early voting files made public by the Florida Department of State, and disaggregated the 2.4 million early votes cast by race and ethnicity. It found that racial minorities "were disproportionately more likely… to cast ballots on both the first Sunday and the final Saturday of early voting."

Miami-Dade County and 142 in Palm Beach County.[37] Those voters were disproportionately African Americans.[38] The study concluded that racial minorities were hardest hit by the new voting restrictions:

> "Insofar as the longest early voting lines appear to have occurred on the day in which minority voter turnout was the greatest, it appears that minority voters, and in particular black voters, have borne heavily the burden of House Bill 1355."[39]

Voters of color were also disparately impacted by Florida's flawed voter purge efforts. Naturalized citizens like Karla Vanessa Arcia, whose name was wrongly placed on a list of ineligible voters, were targeted as part of an aggressive program in Florida to remove alleged noncitizens from its list of eligible voters. Miami-Dade's supervisor of elections sent Arcia a letter giving her 30 days to prove her citizenship and residency. The majority of voters sent such letters were Latino, and 82 percent were voters of color.[40] Florida's flawed purge list showed that liberty, at least as exercised at the polling booth, was far less secure than it should be—over 98% of the 562 people who responded to the purge letters in Miami-Dade proved they were U.S. citizens.[41] Although Advancement Project and our partners favorably settled a discrimination claim under Section 2 of the Voting Rights Act, Arcia is now a plaintiff in Advancement Project's ongoing lawsuit. This lawsuit challenges the purge of alleged noncitizens through the inappropriate use of federal SAVE immigration data as a violation of the National Voter Registration Act's prohibition on purging within 90 days of a federal election. Fifteen other states have followed Florida's lead and asked the federal government for access to SAVE, which targets naturalized citizens and makes them subject to removal from the voter rolls if they don't show proof of citizenship. The great majority of naturalized citizens in our country are voters of color.[42]

We saw similar errors in lists developed by private groups associated with True the Vote to remove allegedly ineligible felons from the rolls. The Florida Department of State reviewed a list of voters submitted by Tampa Vote Fair, who were alleged to have had felony convictions in Hillsborough County, and found none were actually ineligible to vote.[43] Moreover, confusion was widespread.[44]

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[37] See "Early Voting Ends With Long Lines, Long Waits," *CBS News Report*, Nov. 4, 2012, available at http://miami.cbslocal.com/2012/11/04/early-voting-ends-with-long-lines-long-waits; "Another election, another legal tangle in Florida," *Sun Sentinel*, Nov. 5, 2012, available at http://www.sun-sentinel.com/news/broward/fl-florida-voting-mess-20121105,0,6901020,full.story .

[38] Michael C. Herron & Daniel A. Smith, "Early Voting in Florida in 2012," Nov. 7, 2012 http://www.dartmouth.edu/~herron/HerronSmithFloridaEarly2012.pdf

[39] Id.

[40] Compl. ¶ 26, *Arcia v. Detzner*, 1:12-CV-22282 (S.D. Fla., June 19, 2012) (82% of voters on purge list of 2,625 Florida voters were voters of color).

[41] Id. at ¶ 39.

[42] See, e.g., Advancement Project, "Segregating American Citizenship: Latino Voter Disenfranchisement in 2012," (Sept. 24, 2012) at 4-7 (citing various sources including federal Census data), available at http://b.3cdn.net/advancement/691d4ca5f1fb88ac7f_gum6yz1ie.pdf.

[43] Of a subset of 27 such voters, 23either did not meet the match criteria established or had not been convicted of a felony, and the remaining four required additional investigation. See Sept. 14, 2012 Email from M. Matthews (Department of State) to M. H. Farris (Hillsborough County), on file with Advancement Project.

[44] On the first day of early voting, Advancement Project staff met Kirk Griffin, a voter who had been standing in line at the Miami Gardens Library polling location for hours. Mr. Griffin had been convicted of a felony 18 years earlier, and thought he had completed the process to have his rights restored. He recalled completing a form and was armed with a voter registration card that he received in the mail a year earlier. But Mr. Griffin's name was not on the voter rolls; some quick research revealed that he was not registered and had likely been removed during a purge of registered voters with prior felony convictions. Mr. Griffin did not receive direct assistance to navigate the bureaucratic maze that is the new restoration of rights process established in the wake of restrictive administrative changes to Florida's restoration process since the 2010 election cycle. (Notes on file at Advancement Project.)

The 2012 elections reveal that our election system lacks uniformity and sufficient protections for voters. We need national standards to ensure that one person, one vote is a guarantee for all eligible Americans.

More Threats Ahead

The war on voting is far from over and more roadblocks lie ahead as last year's legal rulings are on appeal, as legislatures propose new laws to make it harder for people to vote, as states push error-ridden purge practices, and as the Supreme Court undertakes review of the nation's most impactful voting law. All this is occurring as census data shows that voters of color will continue to occupy a growing portion of the electorate and will be particularly vulnerable to these assaults on voting.[45]

Some of the recent court rulings striking voter suppression laws, such as the legal challenges to Pennsylvania and South Carolina's photo ID laws, were partial wins with laws blocked in 2012, but on track to take effect in the next election. Mississippi's law is on hold for now. A federal court recently heard an appeal to Texas' voter registration restrictions. Court orders striking photo ID laws in Wisconsin and Texas are still to be considered by higher courts. And federal challenges to photo ID laws in Wisconsin, including one brought by Advancement Project, remain to have their day in court.

Meanwhile, states plan to forge ahead with flawed purge practices that purport to target non-citizens on the rolls, but in reality target naturalized Latinos and render them second-class citizens. Citizens like Karla Arcia are by no means alone as a victim of a national trend that has seen nearly half of the states erect legislative and regulatory barriers, including strict photo ID and proof of citizenship laws, as well as attempts to access to data to purge voting rolls based on federal immigration databases, which disproportionately affect Latino voters.

Moreover, the spate of new proposals that would make voting harder await state lawmakers as they prepare to reconvene in January, with photo ID restrictions, further cuts to early voting and proposals to eliminate same day registration looming in statehouses around the country.

In addition, officials in states that have passed some of the most restrictive voting laws, instead of pushing meaningful investigation and government accountability to ensure access to voting for all who are eligible, are instead working to protect their ability to implement restrictive voting practices.

- In Florida, Secretary of State Ken Detzner, who championed the state's most onerous voter suppression measures of the 2012 election cycle, has been selected to lead an investigation of what caused long lines on Election Day and advocate reforms.[46]
- Kansas Secretary of State Kris Kobach has asked legislators to give his office new powers to search and prosecute suspected cases of voter fraud, a proposal the *Kansas City Star* criticized as a "distraction" because "there is so little evidence that it actually takes place."[47]
- Wisconsin's new Senate majority leader wants to remove retired judges who currently sit on the state's Government Accountability Board – one of the strongest non-partisan elections oversight bodies in the

[45] According to recently released Census estimates, by 2043, whites will no longer be in the majority, and by 2060, Hispanics will account for nearly one in three people in the U.S., nearly double their share of the population today. Laura Meckler, "Hispanic Future in the Cards" *The Wall Street Journal,* Dec. 13, 2012, available at: http://online.wsj.com/article/SB10001424127887323981504578175284228844590.html

[46] Steve Bousquet, "State elections officials to investigate voting problems in Miami-Dade, Broward and Palm Beach counties," *Miami Herald,* Dec. 4, 2012, available at: http://www.miamiherald.com/2012/12/04/3126158/state-elections-officials-to-investigate.html

[47] See, Editorial, "Just say 'no' to Kris Kobach, the secretary of distractions," *Kansas City Star*, Dec. 3, 2012, available at: http://www.kansascity.com/2012/12/03/v-print/3946973/the-stars-editorial-just-say-no.html

country - and replace them with political appointees, a proposal that Ohio State University Election Law Professor Daniel Tokaji called a "the worst idea I've heard this year."[48]

Even more, the nation's most impactful voting rights law is under threat as the Supreme Court agreed, just three days after the election, to hear a constitutional challenge to Section 5 of the Voting Rights Act, the provision that gives the federal government teeth to enforce the Act's protections against racially retrogressive voting laws. As the experiences of the 2012 election cycle and proposed measures going forward demonstrate, policies that effectively deny racial minorities the opportunity to participate equally in our democracy continue to persist. The preclearance provisions of the Voting Rights Act, which Attorney General Eric Holder has called "the keystone of our voting rights,"[49] ensure that voting discrimination cannot take root because jurisdictions covered by the provision - those with a history of discriminatory voting practices - must submit proposed voting changes for review before they can be implemented. This protection is essential to combat threats to voting. Of the nine states fully covered by Section 5, six passed new voting restrictions since 2010. The Justice Department, however, was able to step in and halt onerous measures in Texas, Florida, and South Carolina. But this protection now hangs in the balance, and could be removed by the Court, which hears arguments in *Shelby* on February 27, 2013. Losing this provision would give the green light to measures that make it harder to vote.

Legal protection for voting is needed now more than ever, both to safeguard hard-fought progress and to defeat persistent and ongoing attempts to narrow the franchise.

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The 2012 elections have energized a movement for election reform, and now is the time to capitalize on this momentum by enshrining an affirmative right to vote to advance America's promise of a robust and inclusive democracy. Our nation was founded on the belief that we all are created equal, but that can't work if all who are eligible don't have a seat at the table. We must take steps to ensure that the most enduring promise of our democracy – our right to vote – is protected.

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[48] Patrick Marley, "Incoming Senate leader favors political appointees over judges on GAB," *Milwaukee Journal Sentinel*, Dec. 3, 2012, available at: http://www.jsonline.com/news/statepolitics/incoming-senate-leader-favors-political-appointees-over-judges-on-gab-cc7sqef-181860151.html

[49] Attorney General Eric Holder Speech at the Lyndon Baines Johnson Library, Austin, TX December 13, 2011, available at: http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-111213.html

Statement for the Record

Submitted by
The Arizona Advocacy Network

Hearing on
"The State of the Right to Vote After the 2012 Election"

Before the

U.S. Senate Judiciary Committee
Submitted on December 26, 2012

Thank you Chairman Leahy, Ranking member Grassley, and members of the U.S. Senate Judiciary Committee for allowing us to submit testimony on the state of the right to vote. Specifically, this testimony addresses the state of voting rights in Arizona, as witnessed by the Arizona Advocacy Network ("AZAN"). AZAN's mission is to secure electoral justice, political rights and full civic participation, especially for underrepresented and marginalized constituencies, to achieve government for the People, not corporations. Through organizing voter registration drives and voter protection efforts, AZAN has become aware of and dealt with the numerous problems encountered by Arizona voters both in the registration process and at the polls on Election Day, particularly with regards to the barriers imposed by Proposition 200, a law passed by Arizona voters in 2004.

History of Voting in Arizona

Arizona has a conflicted history in the protection of voting rights for the citizens of its state and, despite achieving progress, unnecessary and unfair barriers continue to exist to this day. In 1912, the same year it became a state, Arizona joined eight other states to be the first to allow women to vote. More recently, Arizona increased access to the registration and voting process by giving voters the option to vote by mail in every election and becoming the first state in the nation to allow for online voter registration. We are proud of these recent improvements and look forward to continuing strides towards fully open democracy. . Although online voter registration is a great step, it is only accessible to voters who have an Arizona Driver License or non-operating Identification Card issued by the Motor Vehicle Division. Furthermore, in 2004, Arizonans passed Prop 200, a proposition supported by the American Legislative Exchange Council ("ALEC"), after a well-funded propaganda campaign that instilled false fears that the integrity of our electoral process was threatened by Mexicans Nationals who crossed the border to vote in American elections. Proposition 200 instituted a new voter ID requirement and a requirement that new registrants provide documentary proof of citizenship. As explained in further detail below, the passage of this law and its unequal application have resulted in the denial of equal access to the electoral process in the Grand Canyon State

Proposition 200

Proposition 200 has instituted new barriers to registration and voting in Arizona. One part of the law requires voters to present voter identification when voting at the polls on Election Day. A second part requires that applicants for voter registration present documentary proof of U.S. citizenship for their registration to be approved. Initially, this requirement was applied to all voter registration applications regardless of whether the applicant utilized the state or federal voter registration form. As a result of a

lawsuit, *Inter Tribal Council of Arizona, Inc. (ITCA) v. Bennett*, No. 08-17115, to which AZAN is an organizational plaintiff, the documentary proof of citizenship requirement for voter registration was found to be in violation of federal law when applied to the federal voter registration form. Although this case is set to be heard by the Supreme Court, pursuant to an appeal by Arizona officials, the state is under obligation to comply with an order by the U.S. District Court of Arizona to accept the federal voter registration form without applying the documentary proof of citizenship requirement, and to make the federal registration form available to voters.

Unfortunately, despite the favorable ruling in *ITCA v. Bennett*, Arizona voters continue to face barriers to registration and voting when using the federal registration form for various reasons. First, the Secretary of State website does not clarify that documentary proof of citizenship is not necessary if the applicant utilizes the federal registration form. Second, some Arizona counties, including Maricopa, placed registrants who registered using the federal form on a "suspense list" if the applicants registered using the federal form and did not provide the last four digits of their social security number or an Arizona Driver License or non-operating Identification Card on the form.

Applicants who were placed on the suspense list encountered increased barriers. For example, they did not receive sample ballots or voter registration cards; they were not placed on the Permanent Early Voter List ("PEVL") if they requested it and were not sent mail-in ballots; and they were not placed on the voter signature rolls utilized to check voter registration on Election Day. As a result, many of these voters were left without the necessary information to find their assigned polling place and some of them who went to vote on Election Day were turned away for lacking the state required voter ID, a requirement they would not have had to comply with if they been placed on the regular voter rolls and allowed to vote by mail. This procedure had a disparate impact on minorities and high school and college students, who are more likely to lack a driver's license or Arizona issued ID, or the utility bills that would be accepted as proper forms of identification at the polls. Voters in other counties, however, were placed on the regular voter rolls. The defiance of the court order and the varied application of the law from county to county resulted in unequal access to the electoral process and disenfranchised thousands of eligible voters.

Removing Voting Barriers

Arizona State should prioritize removing unnecessary barriers and ensure that the law is evenly applied to ensure free, fair and equally accessible elections throughout the state. In addition to the barriers summarized above, voters face great challenges on Election Day. On November 6, AZAN volunteers witnessed poll workers accepting a type of identification (electronic utility statements) for some voters, but not for others. At the ASU Hudson precinct in Maricopa County, paper utility bills were accepted while electronic ones were incorrectly rejected; a U.S. passport was not enough to prove one college voter's identity, nor were out of state driver's licenses or university photo ID cards sufficient proof of ID for hundreds of students trying to vote in person. A first-time voter was turned away at the Desert Sky polling place, a heavily Latino precinct, because the address on his Arizona Driver's License was not current. Wishing to vote a regular ballot, this voter went home to get a utility bill to satisfy the identification requirement. Unfortunately, upon returning to the polling place, he learned that his name was not on the signature roster despite having a copy of his voter registration form dated five days before the registration deadline. Despite this voter's efforts to comply with the requirements for registration and voting, he nonetheless was forced to vote a provisional ballot. Another voter, a Latina, had moved from Yavapai County to Maricopa County after the voter registration deadline and was denied the right to vote in her new community. She was confused and heartbroken that she could not

even vote for statewide offices or the presidency despite having documents to prove her identity and residence. We are also aware of voters who, although eligible to vote, lacked the necessary identification or documentary proof of citizenship to be allowed to register or cast a regular ballot on Election Day.

Arizonans seek free, fair, and accessible elections and voter registration, but the state has much work to do to accomplish this goal. Voters face continued problems such as lack of information, confusion about their assigned polling place, misapplication of voter ID laws, overuse of provisional ballots, and long lines. Lack of preparation and planning by some election officials also results in great confusion and disorder on Election Day. For example, the use of regional voting centers in Yuma County was extremely problematic. Voters attempting to exercise their fundamental right to vote showed up at the polls only to find that the printers were broken, electronic machines were malfunctioning and the lines were very long. Regional voting centers can be a positive change, particularly because they can help reduce the thousands of ballots cast and not counted because a voter shows up at the wrong polling place. However, regional voting centers should not be utilized in lieu of neighborhood voting locations. Relying solely on regional voting centers would limit access to the polls for individuals who lack transportation, namely low-income, disabled, and elderly voters. In light of these considerations, it is crucial for Election Officials in Arizona to identify continuing barriers and institute reform to ensure that access to the electoral process for eligible Arizona voters is fair and unencumbered.

Conclusion

The right to vote is one of the most fundamental rights afforded to citizens in the United States. This fundamental right protects our individual freedoms and preserves our democratic system. Although progress has been achieved in the expansion of this right to eligible citizens in Arizona, more work needs to be done to ensure that participation in the electoral process is free of unnecessary barriers. The Arizona Advocacy Network firmly believes in the protection of this fundamental right, and appreciates the Senate Judiciary Committee's interest on this issue.

Written Testimony of the Honorable Ken Bennett

Secretary of State
State of Arizona

United States Senate
Committee on the Judiciary

Hearing on
"The State of the Right to Vote After the 2012 Election"

Dirksen Senate Office Building
December 19, 2012
10:00 a.m.

Serving as Arizona's Chief Election Officer allows me the unique opportunity to observe and supervise the state's system of elections. While our office is responsible for transmitting statewide results, certifying candidates and training county election officials; it is important to note that Arizona's County Recorders and Election Directors are on the front lines of election management. From registration to participation, our Recorders implement the laws, procedures and policies set forth by state and federal law.

For nearly four decades, Arizona's voter turnout during a Presidential election has averaged 74%. Forty-three days ago, voters once again participated at that same percentage. While historical rates of turnout have remained consistent over the last 10 presidential elections, many but not all voting trends in the Grand Canyon State have remained the same.

As you know, Arizona makes a process of early balloting available to its citizens. Requesting an early ballot or choosing to join the state's Permanent Early Ballot List (PEVL) allows our County Recorders to mail voters a ballot for each election in which they are eligible to participate.

In 2004, when you had to request an early ballot before each election, more than 800,000 ballots were cast by early ballot. Four years later with the permanent list available, the number swelled to 1.3 million and this year, 1.7 million voters received an early ballot for the general election.

Contrary to published reports, our analysis of ballot processing shows the state's 15 counties handled more ballots in 14 days this year than they did in 15 days in 2008. While it's true that our counties are tabulating more ballots in less time, the 2012 general election saw an increase in the number of "late-arriving" early ballots returned over the final four days of the election cycle.

In Maricopa County, the largest voting jurisdiction in the state, a record 960,000 early ballots were received by the Recorder. One-third were received during the last weekend of the election cycle, and more than 200,000 were actually received on Election Day.

In the days immediately following the election, I witnessed first-hand the size and scope of the challenge that faces our County Recorders and Election Officials who process and count both early and provisional ballots.

Processing early ballots includes the verification of each individual voter's signature to make sure it was the voter who actually signed his or her ballot envelope and then crediting the voter's history for auditing purposes. The ballot is then removed from the envelope by a bi-partisan team and prepared for tabulation.

During this process, bi-partisan teams find thousands of ballots that cannot be read by the tabulating machines because the voter spilled something on the ballot, or used crayon, glitter ink, or other methods to mark his or her ballot. These ballots are given to bi-partisan duplication teams who copy the unusable ballot onto a new ballot that can be successfully counted.

Once the early ballots have been tabulated, the counties can begin tackling provisional ballots. Provisional ballots provide a fail-safe opportunity for every person who shows up at the polls to cast a ballot. It also provides an additional layer of security to prevent a voter from inadvertently casting more than one ballot. Although there was a slight increase in the number of provisional ballots this year, most or all of that increase was the result of voters who were mailed an early ballot but instead voted at the polls.

Additional reasons why a voter would be issued a provisional ballot include: insufficient identification at the polling place; the voter's name does not appear on the signature roster; or the voter has moved but failed to update his or her registration.

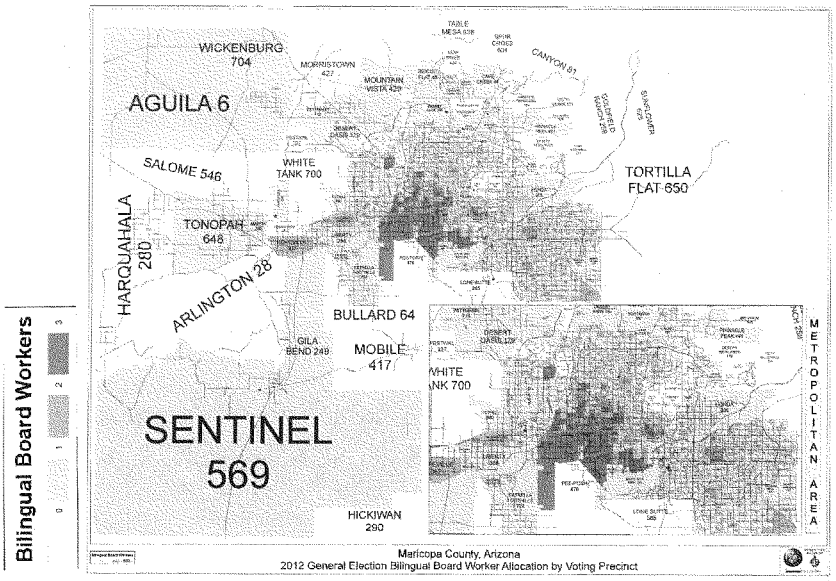
Each of these ballots must be reviewed before it can be counted. Election officials must be sure a voter who was issued an early ballot but who also went to the polling place doesn't vote twice. When a voter moves into a new precinct, the election official has to be sure the voter did not vote at his or her old precinct, etc. This verification process takes time and requires County Recorders to reallocate election resources to assess a voter's registration status, identification, and jurisdiction to determine if his or her ballot can be counted.

Waiting for elections personnel to process ballots can be a frustrating time for voters and candidates alike. As the number of people voting an early ballot continues to increase, we plan to explore options to more effectively manage the increasing number of early ballots arriving late in the election cycle. This would allow us to provide final results to the public sooner. Speed has never been the most important factor, accuracy and assuring that every ballot that can count is counted is our top priority.

Arizona has been on the leading edge of election-related improvements. We were the first state to allow online voter registration and the ability for military and overseas voters to receive and upload a ballot electronically. That said, I believe we can do better. Though the system of counting ballots is functioning as it was designed it doesn't mean that we shouldn't look to make improvements.

Over the next few months, we will be meeting with the County Recorders and Election Directors to review what went well and explore areas where we might have the opportunity to speed up the system of counting ballots. I'm confident that by working together with our counties we can keep the things we're doing well and make adjustments to better handle changes in voter behavior.

Our goal for Arizona is to have the best system of elections in the world. We're focused on fair, accurate and efficient elections that voters can trust. Steps we take to improve the process must be consistent with those principles.


Bilingual Board Workers
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1
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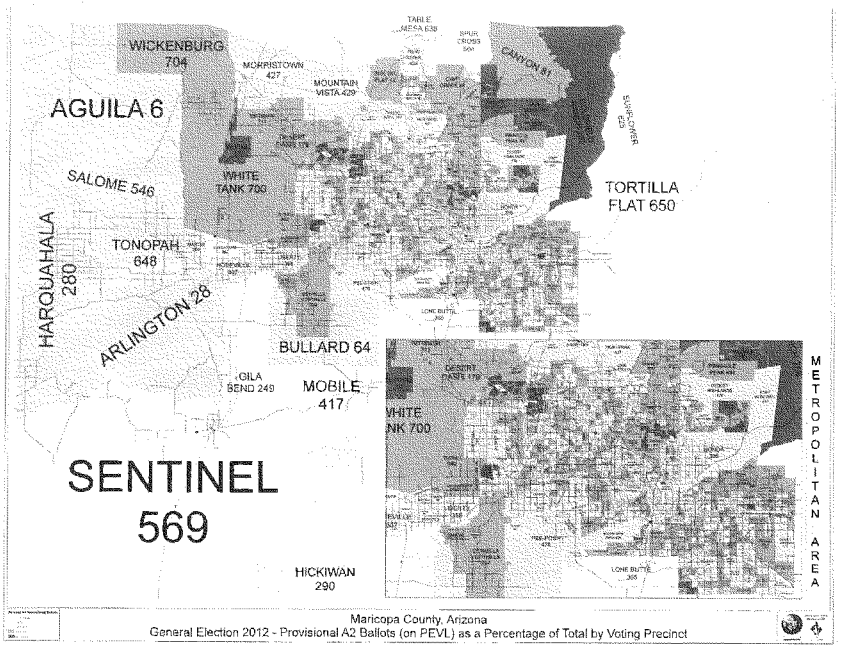
WICKENBURG 704
MORRISTOWN 427
MOUNTAIN VISTA 439
TABLE MESA 608
SPUR CROSS 624
CANYON 87
GOLDFIELD RANCH 268
SUN COUNTRY 429
AGUILA 6
SALOME 546
WHITE TANK 700
TORTILLA FLAT 650
HARQUAHALA 280
TONOPAH 648
ARLINGTON 28
BULLARD 64
GILA BEND 249
MOBILE 417
SENTINEL 569
HICKIWAN 290
DESERT DAISY 437
WHITE TANK 700
PEORIA 476
LONE BUTTE 249
METROPOLITAN AREA
Maricopa County, Arizona
2012 General Election Bilingual Board Worker Allocation by Voting Precinct



Maricopa County, Arizona
General Election 2012 - Provisional A2 Ballots (on PEVL) as a Percentage of Total by Voting Precinct

Percent A2 Provisional Ballots

- No Provisional Ballots
- Less Than 25.00%
- 25.00% - 49.99%
- 50.00% - 64.99%
- 65.00% and Greater

VIA E-MAIL

December 26, 2012

The Honorable Patrick Leahy, Chair
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, and Members of the Committee:

On behalf of the Bus Project Foundation, I express my deep gratitude to the Committee for investigating the state of the right to vote in American following the 2012 elections, and hope that this is the first of significant work to come to improve secure access to the ballot for eligible citizens. I submit this testimony in hopes that it can help shed further light on the successes and challenges of building an ever-better democracy in our country.

The Bus Project Foundation is a charitable nonprofit dedicated to engaging and developing a new generation of public interest leaders in Oregon, and to protecting the right and ability to vote for all citizens. It is our belief that the United States should lead the way in enfranchising all eligible citizens, and that systematic efforts to increase voter registration and participation are possible in the 21st century that were not conceivable in prior eras -- and that we have a unique chance right now to create the legislation, tools, and rules to do so.

As a youth-led organization, the vast majority of our expertise leans toward the experience of younger voters, and of those registering and voting for the first time. We coordinate statewide nonpartisan voter registration drives, based in high schools and at concerts, festivals, churches and transit hubs. Since our founding, we have helped over 85,000 Oregonians register to vote, including over 14,000 in 2012. In addition, we follow up with those registrants to ensure they receive their ballots and have the necessary information to vote securely and ensure that their ballot is counted. This work offers us a wide range of first-hand knowledge of the ability for our eligible citizens to exercise their right to vote.

In Oregon, we take great pride in our democracy. We consider ourselves as one of the strongest democracies in the country (which is, in turn, among the strongest democracies in the world). In such a place, we can never accept complacency and must always strive to improve our systems of elections to make them more accurate, more secure and more accessible to eligible citizens, free of deception and misinformation. Many elements of our democracy are working well and ought to be exported to other states. Several elements need improvement. In general, the chief challenge for our democracy is to tweak a 20th century election system to meet the needs of a 21st century world. Our democracy tends to improve as we modernize it. When we let it lag, it falters.

Perhaps the most famous piece of Oregon's voting system is that we vote entirely by mail, having done away with precinct polling places entirely by the year 2000. While this tends to give us higher than average turnout of registered voters, it does little to improve turnout among the voter eligible population, where we tend to be in the middle of the pack[1]. Studies have shown that while vote-by-mail provides a small impact in improving voter turnout in elections, most of that improvement comes from increased voting among already high-propensity populations -- that is older, whiter, higher-income voters[2]. This fits our experience in Oregon. Younger, lower-income voters (including many voters in communities of color) are highly mobile, often moving once or more in a year. When we move, our ballots do not follow us and our voter registration lapses. Thus, large-scale voter registration drives are necessary in Oregon every two years, merely to maintain consistent voter registration levels.

In urban parts of Oregon, we have a decent supply of ballot drop boxes for those voters who do not have a stamp or do not wish to mail in their ballot. In Washington State and many rural counties in Oregon, ballot drop locations are sparse, forcing citizens to either pay for a stamp or forgo voting. Forcing an eligible citizen to pay to vote (even a small amount) may be found to be a poll tax and thus unconstitutional. As Congress considers vote-by-mail as a potential nationwide reform, we strongly urge a national standard of highly accessible, secure ballot drop boxes, or pre-paid postage for all ballots.

While we support no-excuse absentee voting, universal vote-by-mail is an imperfect reform. A one-size-fits-all approach to voting does not help meet the diverse needs of our populations. For relatively static households, no-excuse absentee voting is an excellent option. For more mobile populations, precinct polling places with early voting and same-day voter registration would improve ballot access. In all cases, modernizing our voter registration system will help tremendously.

Republicans, Democrats, and independents can agree, the process for registering voters in America borders on the ridiculous. When a citizen fills out a paper voter registration form (by far the most common way to register), it is brought to a county election official, who then hand-enters the information into a database, which is generally then sent to a statewide centralized database. The inefficiencies and chance for error in this system are legion. First, the printing cost of paper forms is high, although lower than the cost of employing data-entry workers to process these forms. Meanwhile, anyone who has tried to read a stranger's handwriting can attest to the chance for scriveners errors. On top of that, the chance for data-entry mishaps are high when these elections workers are sometimes processing hundreds or thousands of registrations per day. All told, this makes for a needlessly ungainly, expensive system.

Meanwhile, these same citizens offer all the information necessary to determine their residency and eligibility to other government agencies over the course of the year -- through Departments of Motor

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[1] McDonald, Michael. "2008 General Election Turnout Rates." *United States Elections Project*. George Mason University, 31 2012. Web. 26 Dec 2012. <http://elections.gmu.edu/Turnout_2008G.html>.

[2] Berinsky, Adam J., Nancy Burns, and Michael W. Traugott. "Who Votes By Mail? A Dynamic Model of the Individual-Level Consequences of Voting-by-Mail Systems." *Public Opinion Quarterly* 65 (2001): 178-197.

Vehicles, the Departments of Revenue, university systems and Departments of Human Services. By integrating these services with voter registration services, we can save states untold millions of dollars while ensuring greater accuracy and security of our voter registration rolls. Meanwhile, the regular address updates that accompany these services can serve to establish greater permanence for voter registrations, diminishing the negative effects of vote-by-mail on highly mobile populations. One early element of modernization we have already used in Oregon is online voter registration.

In 2009, Oregon became the 4th state to allow eligible citizens to register to vote online, using their Drivers License or ID Card. Since then, hundreds of thousands of eligible Oregonians have used the tool, making up a massive portion of new registrations in our state. This expands franchise to Oregonians across demographics, with Democrats and Republicans using the tool at roughly equal rates. The cost of online voter registration is also dramatically less. In Maricopa County, Arizona, the cost of an online voter registration is $.03 per registration, versus $.83 per paper form[3]. The accuracy is also up to five times higher than paper forms[4].

As with many states, Oregon's compliance with the National Voter Registration Act could be much improved, particularly at the human services agency level. As you likely know, the National Voter Registration Act required human services agencies to supply voter registration services with all other services provided, and to keep record of every request, registration and declination. When successfully implemented, this is a highly effective way to securely and accurately register voters often left out by other paths to registration. Federal guidelines for compliance have proven helpful, but further action to ensure compliance at the state level will likely lead to even more eligible voters becoming enfranchised. Using online voter registration technology at these agencies in the context of voter registration modernization will also lead to significant cost savings.

Several other changes can improve our voter registration systems to eliminate redundancies. For instance, lowering the pre-registration age to 16 can significantly expand secure franchise. Roughly half of voter registrations come from the Department of Motor Vehicles, through the highly successful Motor Voter program[5]. These registrations, like all agency registrations, are highly secure as they are done in a government building, with significant supervision. However, many Americans receive their first Drivers License when they are 16-or-17-years-old. Without the ability to pre-register (so as to become a registered voter once one turns 18), these young Americans miss the opportunity to use Motor Voter for up to five years, until their license needs renewal. Creating and standardizing a pre-registration age at 16-years-old can ensure that young citizens become voters once they're eligible and stay voters throughout their lives. As an added benefit, pre-registration can help to empower high school students to hold their own voter

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[3] Maricopa County Elections Department, . "Arizona Online Voter Registration." *IACREOT 2011 National Conference*. Atlantic City: Web. 26 Dec. 2012. <IACREOT 2011 National Conference>.

[4] Ponoroff, Christopher, and Wendy Weiser, eds. "Voter Registration in a Digital Age." *Brennan Center for Justice*. New York University, n.d. Web. 26 Dec 2012. <http://brennan.3cdn.net/806ab5ea23fde7c261_n1m6b1s4z.pdf>.

[5] Rogers, Estelle. "The National Voter Registration Act: Fifteen Years On." *American Constitution Society for Law and Policy Issue Brief*. (2009): n. page. Web. 26 Dec. 2012. <http://www.acslaw.org/sites/default/files/Rogers_-_NVRA_at_15.pdf>.

registration drives on campus, fostering a civic spirit and a social context for civic participation early in their lives.

Lastly, misinformation is a massive problem in our state, particularly as it pertains to the right to vote for formerly incarcerated citizens. While federal standards prevent people convicted of felonies from voting, Oregon restores franchise to these citizens for state and local elections as soon as their incarceration ends. However, parole officers frequently misinform these people, potentially leaving thousands believing they cannot vote. Whether this misinformation is intentional or accidental, it unquestionably disenfranchises a significant number of eligible Oregonians. A simple, system-wide training (or a more democracy-friendly national standard) would likely prevent these problems. While we must all vigorously guard against voter fraud, we must equally guard against misinformation and intimidation.

As lifelong stewards of democracy and champions of preserving the right of eligible citizens to vote, the Bus Project Foundation thanks you for considering our testimony and attempting to improve secure access to the ballot for all eligible Americans.

Caitlin Baggott
Executive Director
Bus Project Foundation

Center for American Progress

Strengthening Our Democracy by Expanding Voting Rights

Scott Keyes December 18, 2012

The past two years were not kind to those who hold dear one of our most cherished rights—the right to vote. After the Republican wave of 2010, which saw conservative majorities swept into governors' mansions and state legislatures, more than a dozen states—including Wisconsin, Florida and Texas—passed legislation making it more difficult for voters to cast a ballot.[1] The conservative cause celebre became legislation enacting voter ID, shortening early voting, and requiring citizens to show a birth certificate or passport in order to register to vote. In the face of this assault on suffrage, voting-rights advocates fought back and were able to block or modify a number of the worst new laws, including voter ID laws in Wisconsin, Texas, and South Carolina, as well as laws in Ohio and elsewhere shortening early voting periods.[2]

With the 2013 legislative session approaching, voting rights advocates have an opportunity to shift their effort from simply stopping bad laws to proposing good ones. It's time to stop playing defense and start going on offense.

Suffrage that is equally accessible to all Americans is the very backbone of our democracy. We rightfully take pride in the fact that no matter how privileged or seemingly disadvantaged someone is, each person's vote counts equally. Our voting laws should reflect this fundamental belief, making the ballot box equally accessible for all. After all, our elections are best when the electorate closely mirrors society. If students and the poor, for example, tended to vote at higher rates—rates more representative of their numbers—it would be more difficult for politicians to ignore their issues. In essence, more voters means more legitimacy.

This paper briefly details 11 pieces of legislation that lawmakers can enact to strengthen voting rights in their state. A number of these policies would make registering to vote more accessible, including online voter registration, Election Day registration, and requiring public schools to help register voters. Others would make it simpler for citizens to cast a ballot, such as expanding early voting, permitting citizens to vote at any polling location, and allowing no-excuse absentee voting. States can also discourage those trying to suppress the vote by outlawing voter caging, strengthening penalties for

knowingly deceiving voters, and reforming the voter-challenge process. Finally, legislators can pass other pro-voting policies, such as restoring voting rights to ex-felons and enacting constitutional language affirming an equal right to vote.

These are not partisan pieces of legislation. States as ideologically opposed as New York and Utah have passed online registration legislation, and states as large as California and as small as New Hampshire allow citizens to register on Election Day. These are simply good-government bills. With voting rights under attack[3] in state legislatures across the country and voters in many states enduring long lines[4] and other hurdles[5] before they can cast a ballot, here are 11 ways for voting rights advocates to turn the tide and help ensure that every American can exercise his or her right to vote. First let's look at voter registration.

Online voter registration

Nowadays most government forms can be filed online. The Internal Revenue Service allows you to e-file your taxes. Many states permit you to register your vehicle on the Internet. Seniors can even apply for Social Security and Medicare online. And all of it is done safely and securely. Yet the vast majority of states still don't allow their citizens to register to vote on the web.

According to Project Vote,[6] less than 63 percent of Americans aged 18-34 were registered to vote in 2009, yet a Nielsen survey[7] found that these young citizens were by far the most electronically connected, with 88 percent having an Internet connection at home. Modernizing the voter-registration process and allowing people to register online would be a boon for the overall number of voters in our country.

States with online voting registration: Arizona,[13] California,[14] Colorado,[15] Delaware (upcoming),[16] Connecticut (implemented by 2014),[17] Hawaii (implemented by 2016),[18] Indiana,[19] Kansas,[20] Louisiana,[21] Maryland,[22] Nevada,[23] New York,[24] Oregon,[25] South Carolina,[26] Utah,[27] and Washington.[28]

A handful of states are bringing voting rights into the 21st century. Already 16 states have passed bills permitting their citizens to register online, and lawmakers in other states are pushing online voter-registration as well.[8] The Brennan Center at New York University School of Law, a key player in the voting-rights discussion, backs online voter registration as a central tenet of modernizing our elections.[9]

Another upside of online registration is that it isn't just good for voters—it's good for state budgets as well. In Maricopa County, Arizona, for instance,[10] processing a paper application costs taxpayers approximately 83 cents; an electronic application will cost them just 3 cents. The state of Washington found that the introduction of online registration reduced overall data entry time by 80 percent in some counties.[11]

One final benefit of registering online is that it prevents many clerical snafus that often result in voters being disenfranchised. In Arizona the number of human and data-entry errors fell significantly because voters could enter and double-check their own information electronically.[12]

Election Day registration

Because voting in the United States is a two-step process—you must register to vote before you can actually vote—many citizens can't cast a ballot because they miss the registration deadline. Though less than two-thirds of eligible Americans typically vote in our presidential elections, the turnout rate among those who have registered to vote is typically between 75 percent and 90 percent.[29]

States with Election Day registration: California,[33] Connecticut,[34] Idaho,[35] Iowa,[36] Minnesota,[37] Montana,[38] New Hampshire,[39] Rhode Island (in presidential years),[40] Washington DC,[41] Wisconsin,[42] and Wyoming.[43]

It's not difficult to see why this is the case. Most states bar their residents from registering in the weeks just before an election—at a time when media coverage is at a fever pitch and less-engaged citizens are just starting to tune in. Some states, such as Pennsylvania, stop allowing people to register 30 days before an election.[30] There were surely thousands of Philadelphia Phillies fans who were paying more attention to their team's 2008 World Series run than they were to the state's voter-registration deadline that October. Procrastination is not a crime and shouldn't preclude one from voting. Certainly dawdlers have as much a right to vote as anyone.

That is why 10 states and Washington, D.C. enable their residents to avoid such deadlines by allowing their citizens to register to vote right up to and on Election Day. This forward-thinking group includes states ranging Wyoming to Wisconsin and New Hampshire to Iowa. In 2008 alone, more than 1 million individuals registered on Election Day in these states. Studies have found that Election Day registration boosts turnout on average by 7-percentage points[31] to 14-percentage points.[32]

Recent momentum has been building for Election Day registration. In 2012 both California and Connecticut passed Election Day registration legislation, coming on the heels of Iowa in 2007 and Montana in 2005. Still, challenges remain. In 2011 Maine legislators tried to eliminate the state's 38 year-old Election Day registration law. A petition drive forced the matter to a statewide referendum, where voters overwhelmingly rebuked the move and reinstated Election Day registration.

Require public schools to help register voters

Young Americans continue to vote at far lower rates than the rest of the citizenry. This year, for instance, only half of the voting-eligible population between the ages of 18 and 24 cast a ballot, compared to more than two-thirds of senior citizens.[44]

States with public school voter registration: California, Connecticut, Georgia, Kentucky, Louisiana, Massachusetts, New Jersey, North Carolina, Ohio, and Rhode Island.[47]

One simple way to encourage students to vote is for states to require that public schools provide voter-registration services. Currently, at

least 10 states[45] require public high schools and colleges to either facilitate registration drives or provide voter-registration forms and accept completed applications.

Though not a state typically known for strong voting protections, Kentucky does an admirable job helping students register to vote. As Project Vote notes,[46] high school principals across the state work in conjunction with the State Board of Elections to provide voter-registration resources to all students eligible to vote.

Let's turn next to the issue of voting legislation.

Expand early voting

Arguably the most successful election reform in the past decade has been the advent of early voting. After widespread voting problems in the 2000 election, many states passed legislation to open up polling sites for more than one month leading up to Election Day. The move has been a win-win for states and voters. Citizens get more flexibility to vote at their convenience—not everyone can take off an hour or two from work on the first Tuesday of November—which leads to higher turnout, something former Florida Gov. Jeb Bush (R) called "wonderful."[48] Meanwhile, early voting allows election officials to spread the process of counting ballots over a number of days or weeks, rather than getting inundated all at once.

States with early voting: Alaska,[50] Arkansas,[51] Arizona,[52] California,[53] Colorado,[54] Florida,[55] Georgia,[56] Hawaii,[57] Idaho,[58] Illinois,[59] Indiana,[60] Iowa,[61] Kansas,[62] Louisiana,[63] Maine,[64] Maryland,[65] Montana,[66] Nebraska,[67] Nevada,[68] New Mexico,[69] North Carolina,[70] North Dakota,[71] Ohio,[72] Oklahoma,[73] South Dakota,[74] Tennessee,[75] Texas,[76] Utah,[77] Vermont,[78] Washington DC,[79] West Virginia,[80] Wisconsin,[81] and Wyoming.[82]

Early voting has been a major boon for minority turnout. Many African American churches, for instance, participate in a "souls to the polls" voting drive on the Sunday before Election Day helping boost black early voting rates. In Cuyahoga County, Ohio a study found that the early vote rate among African American residents was more than 20 times greater the rate for white voters in 2008.[49]

At present 32 states and Washington, D.C. offer some form of in-person early voting with the length of the early-voting period differing from state to state. Leading the way are states like Iowa and South Dakota, which begin their early voting periods in late September, giving their citizens more than one month to vote. Pulling up the rear is Florida, which cut its early voting period from 14 days to just 8 thanks to Gov. Rick Scott (R) and the 2011-12 Republican dominated state legislature. The 16 states that have yet to embrace in-person early voting include some historically progressive states like Minnesota, New York, and Massachusetts.

Advocates looking to expand early voting should target not only the 16 states that don't offer early voting at the moment, but also states—such as Florida, Texas, and Illinois—with relatively short voting periods.

Allow county residents to vote in any polling location

In the past decade some U.S. counties have begun testing an innovative pilot project called "voting centers." Rather than restricting voters to one assigned precinct where they must cast their ballot, a handful of counties now allow residents to vote at any polling location in their home county. Travis County, Texas, home to Austin, for example, conducted a study of its new policy after it was introduced in 2011 and found that allowing voters to cast a ballot at any of the county's 207 polling locations led directly to a 1.4 percent increase in turnout.[83] Approximately one in three voters ended up going to a different polling location than their usual one.

States with countywide voting: Arizona,[84] Colorado,[85] Indiana,[86] New Jersey,[87] New Mexico,[88] South Dakota,[89] Texas.[90]

It's not difficult to grasp why the program is popular. If a voter lives on one side of town but works in another, it's far more convenient for her or him to vote at a location close to his or her job. In addition, polling locations often change between elections, potentially confusing some voters. Providing flexibility could make the difference for many citizens as they decide whether or not they can take time during the day to vote.

Though elections are largely conducted at a county level in the United States, states can encourage counties to allow resident voting at any polling location by providing funding, pilot programs, and studies showing the policy's efficacy.

No-excuse absentee voting

For many Americans taking time off during the work day to vote is not an option. Fortunately for them an increasing number of states are enacting "no-excuse absentee" laws that allow anyone who requests an absentee ballot to receive one, not just individuals who will be out of town or have another reason barring them from voting on Election Day.

States with no-excuse absentee voting: Alaska, Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Montana, Nebraska, Nevada, New Jersey, New, Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Vermont, Washington DC, Wisconsin, and Wyoming.[92]

Making absentee voting more accessible doesn't just benefit voters who work on Election Day, it also allows citizens to research candidates and ballot issues while they have the actual ballot in their hands. With recurring voting machine snafus and long lines at the ballot box, millions of Americans have taken advantage of their state's absentee voting option.[91]

Currently, 27 states and Washington, D.C. allow for no-excuse absentee voting. Others states such as Pennsylvania and Michigan require voters to have a certain excuse for requesting an absentee ballot, such as a physical disability preventing them from reaching the polls. All 50 states should allow their citizens to vote absentee if they so choose.

Let's turn now to the serious issue of voter suppression.

Strengthen penalties for knowingly deceiving voters

Though voter fraud is largely a myth,[93] one form of actual election hijinks occurs when individuals or groups purposefully deceive certain voters about when or how to vote. Such deceptive practices are unfortunately commonplace. Here is a small sample of such instances from the past decade:

States outlawing deceptive voting practices: Florida,[97] Connecticut,[98] Illinois, Kansas, and Minnesota.

- Robocalls to California Latino voters in 2010 reminding them to vote on November 3rd (the election was held on November 2, that year)[94]
- Fliers in South Carolina during the 2000 Republican presidential primary accusing Sen. John McCain (R-AZ) of fathering an illegitimate black child
- Fliers in Maryland's 2006 Senate election falsely claiming that certain prominent African Americans had endorsed the Republican candidate, former Lt. Gov. Michael Steele
- Fliers or robocalls in several states telling people that because of anticipated massive turnout, Republicans are instructed to vote on Tuesday while Democrats should show up at the polls on Wednesday[95]
- Signs at polling places telling voters that photo ID is required when no such requirement actually exists
- A fictional organization called the Milwaukee Black Voters League in 2004 put out flyers in the city's minority areas warning anyone who has "ever been found guilty of anything [that] you can't vote in the presidential election." Doing so could "get ten years in prison and your children will get taken away from you."[96]

States should not only specifically ban deceptive practices, but classify them as a felony. Currently, just five states outlaw deceiving voters about the election. (At least 39 states have laws that bar certain forms of voter intimidation, but they would do well to add clear and specific language banning deceptive practices.)

Outlaw "voter caging"

Voter caging is when an operative or group sends letters to a "target's" home and uses any returned mail to challenge that voter's eligibility on the presumption that they don't live at the listed residence. For years, political operatives have used voter caging as a tactic to suppress turnout among largely minority populations.[99] In 2004 alone hundreds of thousands had their eligibility challenged as part of voter-caging operations

States with strongest legislation banning voter caging: Minnesota,[102] Washington.[103]

in states as widespread as Nevada, Ohio, Louisiana, and North Carolina. More recently, voters in Florida, Kansas, Montana, Michigan, and California were targeted by voter caging attacks.[10]

States should affirmatively ban the practice of voter caging. It's a process that is riddled with problems.[103] There are dozens of reasons why a piece of mail would be returned that are more plausible than a voter intending to commit voter fraud, including as clerical errors or military deployment, and serves primarily to suppress legitimate voters.

At least two states have adopted legislation banning voter caging, but it is clear that more states need to follow suit.

Reform the voter-challenge process

Poll watchers became a household term in the 2012 election as campaigns and outside groups like True The Vote trained thousands of volunteers to challenge voters' eligibility anytime they suspected irregularities. Because volunteers often approached the duty with ulterior motives, frivolous challenges have become commonplace, with voters sometimes being targeted just because of their accent or skin color.

This is not altogether surprising. Like poll taxes and literacy tests, laws allowing for poll challengers have their roots in the Reconstruction Era as a means of suppressing the vote of newly freed slaves. These barriers to the ballot were used extensively to threaten and ultimately suppress black turnout. If poll-challenger laws can't be eliminated entirely, there are still ways to reform and improve them.

States placing the burden on the challenger: Arizona, California, Delaware, Georgia, Idaho, Indiana, Maine, Montana, North Carolina, Rhode Island, Washington, and Washington DC.[105]

States that penalize frivolous challenges: Florida, Rhode Island, South Dakota, and Vermont.[106]

When a poll watcher makes a challenge most states place the burden of proof on the voter to prove he or she is eligible to cast a ballot, a process that does little to disincentivize frivolous challenges. States therefore should pass legislation shifting the burden of proof from the voter to the challenger. In addition, states should impose penalties on individuals and groups who make frivolous challenges. For instance, Florida law classifies frivolous challenges as a first-degree misdemeanor punishable by up to one year in prison and a $1,000 fine.[104]

Here are some other measures that will go a long way in making suffrage equally accessible to all Americans.

Restore voting rights to ex-felons

Felons in most states aren't just barred from voting while in prison; a handful of states strip them of their voting rights for the rest of their life, even after completing their sentence. As a result, 3.1 million Americans were disenfranchised in 2008.[107]

If we as a society want to reintegrate people with felony convictions back into society after they finish their prison terms, it makes little sense to permanently brand them with a scarlet letter.

In all, 11 states disenfranchise certain classes of felons for life.[108] Four of those states permanently strip all felons of their right to cast a ballot. Passing legislation to restore voting rights for individuals in these states would rectify this injustice and help ex-felons become good-standing members of society once more. Currently, only two states allow prisoners to vote (Maine and Vermont); 18 states allow probationers to vote; and 19 states allow felons who have completed their entire sentence to vote.

States that allow ex-felons to vote: Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, Washington DC, West Virginia, and Wisconsin.[109]

Enact constitutional language affirming an equal right to vote

When Wisconsin passed voter ID legislation in 2011 the only thing stopping its implementation in the 2012 election was the state constitution's language affirming Wisconsin residents' right to vote. "Voting is a constitutional right," wrote Judge David Flanagan in March 2012, striking down Wisconsin's controversial voter ID law. Flanagan pointed to the state constitution's provision on voting rights—"Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district"—and noted that any legislation which denies a qualified elector his or her ballot, such as voter ID, is unconstitutional.

Every state constitution has different language regarding the right to vote. Still, the most important thing voting-rights advocates can proactively do to prevent further attacks on voting rights such as voter ID is to strengthen their state's constitutional language regarding the right to vote.

States with model constitutions: Wisconsin.[110]

Admittedly, this can be a difficult task, as a state's constitution is only as good as the judges who interpret it and even the most carefully drafted constitutional amendment cannot defend fully against a state supreme court hostile to voting rights. Nevertheless, voting-rights advocates can mitigate this problem by choosing language that carefully maps the words that the U.S. Supreme Court has used to describe rights deserving the highest degree of constitutional protection, such as stating explicitly that the right to vote is a

"fundamental right" and that any burden on this right will be subject to the most exacting constitutional scrutiny. An ideal amendment would also specifically name common voter-suppression techniques, such as voter ID laws, and explicitly forbid them.

Conclusion

The right to vote is so fundamental in the United States that it's easy to take for granted. After the rapid spread of voter-suppression laws over the past two years, however, complacency is no longer an option. If there's one lesson to take away from the recent attacks on voting rights, it's this: progressives can't just get in the game when they need to play defense.

Each one of the 11 pieces of legislation in this paper goes a long way to increasing access to the ballot box and making our elections as fair and equitable as possible. No one piece is a panacea, but neither is any a pipe dream. Every law has already been tested in states across the nation and been proven effective.

Now, with progressives back in control of state legislatures like Oregon, Maine, Colorado, and Minnesota, voting-rights advocates have a real opportunity to spread voter protection laws. If 2011 and 2012 are immortalized as the years when Jim Crow-style voter-suppression tactics re-emerged, progressives now have an opportunity to make 2013 the most important year for voting rights since the 1960s.

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Endnotes

1 Scott Keyes and others, "Voter Suppression 101" (Washington: Center for American Progress, 2012), available at http://www.americanprogress.org/issues/progressive-movement/report/2012/04/04/11380/voter-suppression-101/.

2 Ibid.

3 Ibid.

4 Judd Legum, "Why The Lines Are So Long In Florida And Ohio," ThinkProgress, November 4, 2012, available at http://thinkprogress.org/politics/2012/11/04/1136701/why-the-lines-are-so-long-in-florida-and-ohio/.

5 Aviva Shen, "Voter Suppression Laws May Discourage 10 Million Hispanics, Study Finds," ThinkProgress, September 24, 2012, available at http://thinkprogress.org/election/2012/09/24/895231/voter-suppression-laws-may-discourage-10-million-hispanics-study-finds/.

6 Project Vote "Research Memo" (2012), available at http://www.projectvote.org/images/publications/Policy/%20Reports%20and%20Guides/PV%20Internet%20Access-VR%20Memo(FINAL).pdf.

7 Nielson, "An Overview of Home Internet Access in the U.S." (2009), available at http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/03/overview-of-home-internet-access-in-the-us-jan-6.pdf.

8 New Jersey bill S2168 for 2012-2013 session, available at http://www.govtrack.us/states/nj/bills/2012-2013/s2168

9 Brennan Center for Justice, "Voter Registration Modernization," (2012), available at http://b.brennan.3cdn.net/219b6b522c9838a204_8jm6bxvrz.pdf.

10 Make Voting Work, "Online Voter Registration (OLVR) Systems in Arizona and Washington: Evaluating Usage, Public Confidence and Implementation Processes" (2010), available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/online_voter_reg.pdf.

11 Ibid.

12 Ibid.

13 "Arizona online voter registration service," available at https://servicearizona.com/webapp/evoter/selectLanguage.

14 "California online voter registration service," available at https://rtv.sos.ca.gov/elections/register-to-vote/(X(1)S(r2hottbvikw3pinp0rkl1qs1l))/FedForm.aspx?AspxAutoDetectCookieSupport=1.

15 "Colorado online voter registration service," available at http://www.sos.state.co.us/voter-classic/secuRegVoterIntro.do.

16 National Conference of State Legislatures, "States with Online Voter Registration," available at http://www.ncsl.org/legislatures-elections/election/electronic-or-online-voter-registration.aspx

17 Ibid.

18 Common Blog, "Online Voter Registration Coming to Hawaii," July 13, 2012, available at http://www.commonblog.com/2012/07/13/online-voter-registration-coming-to-hawaii/.

19 "Indiana online voter registration service," available at https://indianavoters.in.gov/PublicSite/(X(1)A(_OW9bUmQEdLX0kwWHUnhogrnrvE9pkfXC56dj-R6Qrdp18jjtk8WscKt2TyuYyS_rDyxPO1cVqXkbqgEx9d-JVyj2EufO3i-23qFrA27SrFSIm9JhggUbLXUg_dLFYaFDvL-rYRvdutYbRH9yjXTVfN1JJDVRfnJtxdusjgn.aspx?Link=Polling&AspxAutoDetectCookieSupport=1.

20 "Kansas online voter registration service," available at https://www.kdor.org/voterregistration/Default.aspx.

21 "Louisiana online voter registration service," available at http://www.sos.la.gov/tabid/68/Default.aspx.

22 "Maryland online voter registration service," available at https://voterservices.elections.state.md.us/OnlineVoterRegistration.

23 "Nevada online voter registration service," available at http://nvsos.gov/index.aspx?page=703.

24 "New York online voter registration service," available at https://my.dmv.ny.gov/crm/.

25 "Oregon online voter registration service," available at https://secure.sos.state.or.us/orestar/vr/register.do?lang=eng&paganum=505.

26 "South Carolina online voter registration service," available at https://info.scvotes.sc.gov/eng/ovr/start.aspx.

27 "Utah online voter registration service," available at https://secure.utah.gov/voterreg/index.html;jsessionid=a142a0d90b8ba152181990190b55d.

28 "Washington online voter registration service," available at https://wei.sos.wa.gov/agency/osos/en/Pages/myvote.aspx.

29 Scott Keyes, "Why Do States Adopt Election Day Registration?" available at http://studentaffairs.stanford.edu/sites/default/files/haas/files/Scott%20Keyes%20Thesis.pdf.

30 VotesPA, "How to Register," available at http://www.votespa.com/portal/server.pt?open=514&objID=1174117&parentname=ObjMgr&parentid=1&mode=2.

31 Craig Leonard Brians, "Election Day Registration's Effect on U.S. Voter Turnout," *Social Science Quarterly* 82 (1) (2001), available at http://www.socsci.uci.edu/~bgrofman/18%20Brians-Grofman-Election%20day%20registration%27s%20effect.pdf.

32 Staci L. Rhine, "An Analysis of the Impact of Registration Factors on Turnout in 1992," *Political Behavior* 18 (2) (1996), available at http://www.jstor.org/discover/10.2307/586605?uid=3739584&uid=2&uid=4&uid=3739256&sid=21101477291151.

33 Nicole Flatow, "California Governor Signs Bill to Allow Election-Day Registration," ThinkProgress, September 25, 2012, available at http://thinkprogress.org/justice/2012/09/25/906791/california-governor-signs-bill-to-allow-election-day-registration/.

34 Demos, "Connecticut Passes Election Day and Online Voter Registration," Press release, May 9, 2012, available at http://www.demos.org/press-release/ct-passes-election-day-and-online-voter-registration.

35 "Frequently Asked Questions Regarding Voter Registration," available at http://www.idahovotes.gov/voterreg/reg_faq.htm.

36 "Iowa Secretary of State," available at http://sos.iowa.gov/elections/voterinformation/edr.html.

37 "Minnesota Secretary of State," available at http://www.sos.state.mn.us/index.aspx?page=204.

38 "Montana Secretary of State," available at http://sos.mt.gov/elections/Vote/index.asp.

39 Project Vote Smart, "Voter Registration," available at http://votesmart.org/elections/voter-registration/NH#.UMYq_4M&1yx.

40 "Rhode Island Board of Elections," available at http://www.elections.state.ri.us/faq/#presently.

41 "District of Colombia Board of Elections," available at http://dcboe.org/.

42 "Wisconsin Government Accountability Board," available at http://gab.wi.gov/elections-voting/voters/registration-voting.

43 "Wyoming Secretary of State," available at http://soswy.state.wy.us/elections/registeringtovote.aspx.

44 The Center for Information and Research on Civic Learning and Engagement, "Updated Estimate: Youth Turnout was 50% in 2012; Youth Turnout in Battleground States 58%" (2012), available at http://www.civicyouth.org/updated-estimate-50-of-youth-turnout-in-2012-youth-turnout-in-battleground-states-58/.

45 Project Vote. "Enfranchising American Youth" (2012), available at http://projectvote.org/images/publications/Youth%20Voting/2010_Policy_Paper-Enfranchising_American_Youth.pdf.

46 Ibid.

47 Project Vote. "Engaging America's Youth through High School Voter Registration Programs," available at http://landerscommittee.org/files/high_school_voter_registration_programs.pdf.

48 Ari Berman, "The GOP War on Voting," *Rolling Stone*, September 15, 2011, available at http://www.rollingstone.com/politics/news/the-gop-war-on-voting-20110830?print=true.

49 Lawyers' Committee for Civil Rights Under Law, "Early Voting Patterns by Race in Cuyahoga County, Ohio: A Statistical Analysis of the 2008 General Election," available at http://www.lawyerscommittee.org/newsroom/publications?id=0029.

50 "State of Alaska Division of Elections," available at http://www.elections.alaska.gov/vi_ea_ev_ip_about.php

51 "Arkansas Secretary of State," available at http://www.sos.arkansas.gov/elections/Pages/votinginArkansas.aspx

52 "Arizona Voter Guide," available at http://www.azvoterguide.com/early-voting-locations/

53 "League of Women Voters of California," available at http://cavotes.org/vote/in-person#early

54 "Colorado Secretary of State," available at http://www.sos.state.co.us/pubs/elections/docs/2012ElectionCalendar.pdf

55 "Florida Division of Elections," available at http://election.dos.state.fl.us/voting/voting-info.shtml

56 "Georgia Board of Elections and Registration," available at http://elections.cobbcountyga.gov/AdvanceVoting.php

57 "Hawaii Secretary of State," available at http://hawaii.gov/elections/voters/voteabsentee.htm

58 "Idaho Votes," available at http://www.idahovotes.gov/VoterReg/ABSENTEE.HTM

59 "Illinois McHenry County Clerk," available at http://www.co.mchenry.il.us/departments/countyclerk/pdfDocs/General%20Election%20Nov%2006%202012/Early%20Voting%20News%20release%20Nov%2006%202012.pdf

60 "Indiana Secretary of State," available at http://www.in.gov/sos/elections/2402.htm

61 "Iowa Secretary of State," available at http://sos.iowa.gov/elections/electioninfo/absenteeinperson.html

62 "Kansas Secretary of State," available at http://www.kansas.gov/elections/elections_registration_voting.html

63 "Louisiana Secretary of State," available at http://www.sos.la.gov/tabid/168/Default.aspx

64 "Maine Secretary of State," available at http://www.maine.gov/sos/cec/elec/absenteeguide.html

65 "Maryland State Board of Elections," available at http://elections.state.md.us/voting/early_voting.html

66 "Montana Secretary of State," available at http://sos.mt.gov/elections/FAQ/index.asp#MailBallotElections

67 "Nebraska Secretary of State," available at http://www.sos.ne.gov/elec/voter_info.html

68 "Nevada Secretary of State," available at http://nvsos.gov/index.aspx?page=1989

69 "New Mexico Secretary of State," available at http://www.sos.state.nm.us/Voter_Information/Absentee_and_Early_Voting.aspx

70 "Chatham County North Carolina website," available at http://www.chathamnc.org/index.aspx?page=407

71 "Long Distance Voter," available at http://www.longdistancevoter.org/early_voting_rules#.UMY0_4M81vw

72 "Ohio Secretary of State," available at http://www.sos.state.oh.us/sos/elections/Voters/absentee/reqAbsenteeVoters.aspx

73 "Oklahoma State Election Board," available at http://www.ok.gov/elections/faqs.html#c97

74 "Long Distance Voter," available at http://www.longdistancevoter.org/early_voting_rules#.UMY0_4M81vw

75 "Tennessee Secretary of State," available at http://www.tennessee.gov/sos/election/earlyvoting.htm

76 "Texas Secretary of State," available at http://votetexas.gov/early-voting/

77 "Utah Davis County Clerk," available at http://www.bountifulutah.gov/WorkArea/showcontent.aspx?id=6646

78 "Vermont Secretary of State," available at http://vermont-elections.org/elections/absentee_overview.html

79 District of Columbia Board of Elections and Ethics," available at http://www.dcboee.org/faq/voter_reg.asp

80 "West Virginia Secretary of State," available at http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=19711&Format=PDF

81 "Wisconsin Government Accountability Board," available at http://gab.wi.gov/elections-voting/voters/absentee

82 "Wyoming Secretary of State," available at http://soswy.state.wy.us/Elections/AbsenteeVoting.aspx

83 Farzad Mashood, "Travis County residents can vote at any polling place on Election Day," *The Austin Statesman*, November 4, 2012, available at http://www.statesman.com/news/news/local-govt-politics/travis-county-residents-can-vote-at-any-polling-pl/nSxLf/.

84 KJZZ, "Two Arizona counties may have found the future of Election Day," available at http://www.kjzz.org/content/1211/two-arizona-counties-may-have-found-future-election-day.

85 "Weld County Clerk and Recorder," available at http://www.co.weld.co.us/Departments/Clerk&Recorder/ElectionInformation/VoteCenters.html.

86 "Indiana Secretary of State," available at http://www.in.gov/sos/elections/3974.htm.

87 NewsWorks, "New Jersey Shore towns using consolidated voting centers in wake of Sandy," available at http://www.newsworks.org/index.php/local/item/46622.

88 Maggie Toulouse Oliver "Vote Centers an Election Success," ABQ Journal, November 10, 2012, available at http://www.abqjournal.com/main/2012/11/10/opinion/vote-centers-an-election-success.html.

89 Nathan Johnson, "Voting Centers A Success, With A Few Challenges," *Yankton Press & Dankton*, November 8, 2012, available at http://www.yankton.net/article/2012/11/08/community/doc509b3409addd7930659304.txt.

90 Mashood, "Travis County residents can vote at any polling place on Election Day."

91 United States Elections Project, "2008 Early Voting Statistics," available at http://elections.gmu.edu/early_vote_2008.htm.

92 National Conference of State Legislatures, "Absentee and Early Voting," available at http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx

93 Brennan Center for Justice, "Policy Brief on the Truth About Voter Fraud" (2006), available at http://www.brennancenter.org/content/resource/policy_brief_on_the_truth_about_voter_fraud/

94 Kim Zetter, "Malicious RoboCalls Aim at Suppressing Election Day Turnout," November 2, 2010, available at http://www.wired.com/threatlevel/2010/11/robocalls/.

95 Gilda R. Daniels, "Voter Deception," *Indiana Law Journal* 43 (343), available at http://www.iulaw.indy.indiana.edu/ilr/pdf/vol43p343.pdf.

96 Ibid.

97 "Florida Statute 104.0615," available at http://www.flsenate.gov/Laws/Statutes/2012/104.0615.

98 "Connecticut House Bill No. 5022," available at http://www.cga.ct.gov/2012/ACT/PA/2012PA-00193-R00HB-05022-PA.htm.

99 Project Vote, "Voter Caging: A Fifty-Year History of Challenges to Minority Voters" (2007), available at http://www.projectvote.org/images/publications/Voter%20Caging/VoterCagingMap.pdf.

100 Project Vote, "Voter Intimidation And Caging" (2010), available at http://projectvote.org/images/publications/2010%20Issues%20in%20Election%20Administration/2010%20Legislative%20Brief%20-%20Voter%20Intimidation%20and%20Caging.pdf.

101 Ibid

102 "Minnesota Office of Revisor of Statutes," available at https://www.revisor.mn.gov/statutes/?id=204C.07.

103 Project Vote, "Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters" (2007), available at http://projectvote.org/images/publications/Voter%20Caging/Caging_Democracy_Report.pdf.

104 "Florida Statute 101.111," available at http://www.flsenate.gov/Laws/Statutes/2012/101.111.

105 Project Vote, "The Role of Challengers in Elections," available at http://projectvote.org/images/publications/Policy%20Briefs/PB10_ElectionChallenger2.pdf.

106 Ibid.

107 United States Elections Project, "2008 General Election Turnout Rates," available at http://elections.gmu.edu/Turnout_2008G.htm.

108 American Civil Liberties Union, "Map of State Felony Disfranchisement Laws," available at http://www.aclu.org/map-state-felony-disfranchisement-laws.

109 Ibid.

110 "Article III, Section 1 of Wisconsin State Constitution," available at http://legis.wisconsin.gov/rsb/unannotated_wisconsin.pdf.

Testimony of Representative Gilda Cobb-Hunter,
South Carolina House of Representatives

United States Senate
Committee on the Judiciary

Hearing on
"The State of the Right to Vote After the 2012 Election"

Dirksen Senate Office Building
December 19, 2012
10:00 a.m.

Good morning. Chairman Leahy, Ranking Member Grassley, and all other Members of the Senate Judiciary Committee, thank you for holding this important hearing on voting rights. My name is Gilda Yevette Cobb-Hunter. I appreciate the opportunity to testify today.

I am here to address the critical role of the Voting Rights Act in protecting the most precious of all civil rights—the right to vote. I am a twenty-one year veteran member of the South Carolina House of Representatives. In that capacity, I would like to focus my testimony on the following two points: *first*, South Carolina's efforts to enact Act R54, a photo identification measure that requires voters to present a designated form of photo ID to vote in-person in South Carolina, which has a discriminatory effect *but for* an ameliorative "reasonable impediment" exemption from that photo ID requirement; and *second,* the essential role that Section 5 of the Voting Rights Act played in protecting the most vulnerable of my constituents in South Carolina's District 66, and voters in the State more broadly, from the implementation of a restrictive photo ID law for the November 2012 general election.

Background on District 66

Before I discuss the events surrounding South Carolina's attempt to implement Act R54, I would like to tell you about the voters that I represent in District 66, which encompasses eastern Orangeburg County, South Carolina.

Considered a part of the Low Country, District 66, which is 63 percent African-American, is a poor, rural stretch of South Carolina, where agriculture is the main industry. Some of my constituents were born on a farm and/or delivered by mid-wives and thus lack birth certificates. In my district, nearly 100 percent of the students receive free and reduced price lunch, broadband Internet access is scarce, and there is *no* public transportation. The city of Orangeburg, the county seat, and other areas where my constituents conduct business, has only recently become accessible through some public transportation. I am humbled, incredibly proud, and honored to serve my constituents, who represent the very best of South Carolina, and, who, in the finest democratic traditions of our country and their culture, take exercising their right to vote very seriously. That said, my constituents, for a variety of reasons, including lack of transportation and ready access to birth certificates, are among the least likely voters in South Carolina to possess the type of photo ID that Act R54 requires.

South Carolina's Passage of Act R54

Citing the need to combat non-existent in-person voter fraud, members of the South Carolina General Assembly championed a requirement that voters produce restrictive photo ID to vote in-person. I strongly opposed the measure because I understood how it would materially burden the voting rights of my constituents in District 66 and many other South Carolinians. Given South

Carolina's horrible history and modern day experiences with racial discrimination in voting, our legislature should have actively sought ways to harness the historic rate at which my constituents voted in the 2008 Presidential election by encouraging *more* people to participate in the political process. Instead, Act R54's proponents, citing a solution in search of a non-existent problem of voter fraud, sought to make voting *more difficult* for many of my constituents who, because of their poverty and lack of access to transportation, among many other reasons, simply do not have access to the unnecessary photo ID required by Act R54. For example, a voter residing in the easternmost part of my district would have to incur the costs of traveling approximately 70 miles roundtrip to the county seat to obtain a photo ID. Some of my constituents live even further away from the county seat.

To make matters worse, when pressed to provide an example of voter impersonation, Act R54's proponents could not cite *one* case as a basis for enacting the photo ID law. There's a good reason for that: studies show that one is more likely to be struck by lightning than to witness an instance of in-person voter fraud.

But here, however, the racially discriminatory effects of South Carolina's proposed photo ID measure were not lost on its proponents. In October 2011,

political strategists in South Carolina publicly boasted that suppression of the African-American vote was "why we need [voter ID laws in South Carolina]."[1]

Given this reality, I strongly opposed Act R54 on the floor of the South Carolina House of Representatives and in public and private conversations with proponents of the legislation. My opposition, and that of every member of the Legislative Black Caucus, was ignored. Also ignored were all of our suggestions for ameliorative provisions to Act R54, including expanding the universe of acceptable IDs to include, among others, student IDs and federal and state employee IDs, or exempting voters 65 years and older. Indeed, we became so frustrated with the process and the absence of consideration of the wisdom and experience of the House Legislative Black Caucus and the people that we represent, that we, along with supportive white colleagues, walked out of the General Assembly in protest of Act R54.

Section 5 Preclearance – the DOJ & Federal District Court's Review

Unfortunately, South Carolina ultimately enacted Act R54 in May 2011. But, thankfully, the story did not end there. South Carolina, because of its history of racial discrimination in voting, is fully covered under Section 5 of the Voting Rights Act, and is thus required to submit *all* of its proposed voting changes to the

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[1] *See* Joan McCarter, *South Carolina GOP Operative Admits Suppressing Black Vote is Goal of Voter ID Law,* Daily Kos, Oct. 19, 2011, http://www.dailykos.com/story/2011/10/19/1028056/-South-Carolina-GOP-operative-admits-suppressing-black-vote-is-goal-of-voter-ID-law (last visited Dec. 17, 2012).

United States Department of Justice ("DOJ") and/or to a three-judge panel of the District Court of the District of Columbia to ensure that they are free of racial discrimination *before* they can be implemented. South Carolina ultimately did both. I am pleased to report today that Section 5 protected my constituents and other voters across South Carolina from implementation of this discriminatory measure in both instances.

First, South Carolina submitted Act R54 to the DOJ for preclearance. Thankfully, in December 2011, the DOJ denied preclearance under Section 5, finding, based on South Carolina's own data, that "minority registered voters were nearly 20% more likely to lack DMV-issued ID than white registered voters," and would be effectively disfranchised by the state's proposed requirements.[2]

South Carolina defended the discriminatory effect of this law by relying on the Act R54's so-called "reasonable impediment" exemption for voters who lacked the designated IDs. However, the DOJ also found that Act R54 failed to define what constitutes a "reasonable impediment" that would prevent a voter from obtaining photo ID, and also to provide guidance for the individual county boards of registration and elections about how to interpret and apply this provision. Because of the uncertainty surrounding this purported exemption from the photo

[2] Letter from Assistant Attorney General Thomas E. Perez of the U.S. DOJ, Civil Rights Division, to Assistant Deputy Attorney General C. Havird Jones, Jr. of South Carolina, dated Dec. 23, 2011, *available at* http://brennan.3cdn.net/594b9cf4396be7ebc8_0pm6i2fx6.pdf.

ID requirement, the DOJ determined that the provision could not mitigate, but in fact could exacerbate, the law's discriminatory effects.

Second, undeterred by DOJ's rejection of its discriminatory photo ID measure, South Carolina, in February 2012, filed a lawsuit in federal district court seeking judicial preclearance of its photo ID measure in time for the November 2012 election.[3] Significantly, in October 2012, this three-judge district court panel found that there was insufficient time before the 2012 November election to implement the voter ID law, particularly the "reasonable impediment" provision in a non-discriminatory manner.[4]

Because of Section 5 of the Voting Rights Act, the "reasonable impediment" provision was significantly revised during the course of the preclearance trial such that a three-judge federal district court panel, composed of two George W. Bush appointees (Judges Brett Kavanaugh and John Bates) and one Bill Clinton appointee (Judge Colleen Kollar-Kotelly), referred to it as a "new" and "expansive" provision.[5] The "reasonable impediment" provision, during the Section 5 preclearance process, was expanded to provide every South Carolina voter who lacks a photo ID an opportunity to assert *any* reason for lacking one of the required photo IDs. In practice, eligible voters in my district who lack

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3 *See State of South Carolina v. Holder*, Civ. A. No. 12-203 (BMK) (CKK) (JDB).
4 *Id.*
5 *See, e.g., id.* at 2-3 (panel opinion)

transportation and/or a birth certificate to access the required photo ID under the law should be able to use this provision to cast a ballot that counts in South Carolina elections. According to Judge Bates, "the evolving interpretations of . . ., particularly the reasonable impediment provision, subsequently presented to this Court were driven by South Carolina officials' efforts to satisfy the requirements of the Voting Rights Act."[6]

While the federal court rejected South Carolina's implementation of its photo ID measure for the November 2012 election, it ultimately permitted the law to go into effect for future elections. Judge Bates recognized that:

> Act R54 as now precleared is not the R54 enacted in May 2011. . . . An evolutionary process has produced a law that ... protect[s] every individual's right to vote and a law that addresses the significant concerns raised about Act R54's potential impact on a group that all agree is disproportionately African-American.[7]

Judge Bates also made clear "the vital function that Section 5 ... has played [in South Carolina's preclearance request]. Without the review process under the Voting Rights Act, South Carolina's voter photo ID law certainly would have been more restrictive."[8] Moreover, Judge Bates reasoned that the "Section 5 process here did not force South Carolina to jump through unnecessary hoops. Rather, the history of Act R54 demonstrates the continuing need for Section 5 of the Voting

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6 *Id.* at 2 (Bates, J. concurring).
7 *Id.* at 1 (Bates, J. concurring).
8 *Id.*

Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws."[9]

Even after the new law's implementation, Section 5 remains a needed protection for South Carolina voters if the State alters its interpretation of the "reasonable impediment" provision *or* any other aspect of the precleared Act. And my history in this Legislature suggests that South Carolina may develop selective amnesia about the expansive and thus nondiscriminatory interpretation of the "reasonable impediment" provision that the court precleared. Even more, Section 5 review protects voters from *any* other voting change that South Carolina may enact in the future.

Conclusion

Even as our country has made significant progress in combating serious racial discrimination in our political system—in great measure *because of* the protections afforded under the Voting Rights Act—South Carolina's efforts to implement a discriminatory photo ID law make plain that there are continuing efforts to deny voters of color the opportunity to participate meaningfully in our shared democracy which require aggressive protection.

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[9] *Id.* at 2 (Bates, J. concurring).

Here, Section 5 blocked South Carolina's discriminatory photo ID law *before* it took root and had the opportunity to diminish the voting rights of my constituents in District 66 and other voters in South Carolina. Section 5 of the Voting Rights Act, based on South Carolina's recent and not as recent history of voting discrimination, is needed now more than ever, both to safeguard hard-fought progress, *i.e.*, historic turnout of voters of color resulting in the election of the first person of color to the highest office in this country, *and* to defeat persistent attempts, *e.g.*, nonexistent voter impersonation fraud as a basis for adopting photo ID legislation, to narrow the franchise. Unfortunately, it is wishful thinking that we live in a post-racial society.

For these reasons, Section 5 remains vital to ensuring fairness in our democratic process and answering the ultimate question that the Senate Judiciary Committee is considering today: how can we collectively encourage *more* people to participate in the political process?

Thank you.

Common Cause Testimony for the
Senate Committee on the Judiciary
"The State of the Right to Vote After the 2012 Election"
Wednesday, December 19, 2012 at 10:00 a.m.

Submitted By
Jenny Rose Flanagan
Director of Voting & Elections
Common Cause

Common Cause is a nonpartisan, nonprofit organization that is dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. Thank you for the opportunity to submit testimony on the state of the right to vote after the 2012 election.

Voting should not be an endurance sport in our country, yet tens of thousands of Americans from every political stripe faced lines up to six hours long on Election Day because of inadequate planning, unfair rules and restricted access to the ballot box. Voter suppression became a catch-all name for the many restrictive voting laws and policies underlying the 2012 election cycle.[1] The resulting impact on voters was profound – long lines, hundreds of thousands of provisional ballots, confusion over ID rules and intimidation frustrated our right to vote. What we learned from voters at polling locations across the country makes a compelling case for significant changes to our elections process.

Common Cause and our partners ran a coordinated campaign with the national Election Protection coalition to protect the voters. Together, we worked directly with election officials, litigated when necessary to strike down restrictive voting laws, and rallied thousands of Americans to stand up against ballot box bullies. Common Cause organized partners and coordinated thousands of grassroots volunteers who served as election workers and election monitors defending the bedrock freedom of our democracy: casting a ballot and having it counted.

For months leading up to Election Day, Common Cause recruited thousands of nonpartisan poll monitors and hundreds of poll workers across the country –in swing states, red states, and blue states. We worked in Florida, California, Colorado, Illinois, Massachusetts, Michigan, Ohio, Pennsylvania, Texas, Virginia, Arizona New Mexico and New York. These volunteers were our eyes and ears – and boots on the ground – in our efforts to help voters with nonpartisan, critical election information. Clad in dark blue Election Protection t-shirts, palm cards in hand, they

[1]Michael Cooper, "New State Rules Raising Hurdles at Voting Booth," New York Times, Oct. 2, 2011, http://www.nytimes.com/2011/10/03/us/new-state-laws-are-limiting-access-for-voters.html?pagewanted=all

helped voters find precincts, assisted voters confused by new identification requirements where necessary, and documented the challenges voters faced on Election Day.

The Problems on Election Day

The problems we saw on Election Day presented as long lines, inadequate poll worker trainings, and too few options to cast a ballot. Underneath these problems were antiquated voter registration systems, under-resourced election offices, and restrictive voting laws and deceptive practices targeted at minimizing participation by specific populations. Florida and Ohio have gained national attention as places with significant election administration problems. However, in our experience, problems existed in every state in our nation. From Pennsylvania and Virginia to California and Arizona and everywhere in between, eligible American voters were turned away because of problems such as improper training of poll workers, faulty voter registration records, and long, long lines.

In this section we provide a summary of some of the problems voters faced, with state specific reports we received. This summary is not exhaustive, but highlights some of the most egregious problems that voters experienced on Election Day.

Voter Registration: Plain and simple, our antiquated voter registration process prevents eligible Americans from voting. In fact, registration issues were the most frequent problem we addressed with our partners at Election Protection.

The 2012 election provided yet another demonstration of a failed voter registration system that has not worked for years. According to a Harvard/MIT study, in 2008, an estimated 2 million to 3 million eligible Americans tried to vote but could not because of voter registration problems; millions more were thwarted by registration deadlines and residency requirements.[2] Nationwide, we received reports of voters who thought they were registered but found they were not on the rolls when they went to their precincts.

Of course, official list maintenance presents its own challenges. In the lead up to Election Day, state administrators and officials in some jurisdictions threatened to 'purge' voter rolls of non-citizens. Their efforts caused unnecessary confusion, fear and serious administrative errors with voter records.

- In Pennsylvania, voters who were in fact properly registered and at the correct polling location were told they were not in the voter registration book. Common Cause and our partners independently verified these voters' registration records. It appears the issue in some locations was that supplemental pages of the voter rolls were not sent by the county to the polling place. Some voters felt the response by poll workers to their problems was inadequate, because the officials treated them as a nuisance rather than a citizen who deserved full attention.

[2] Wendy R. Weiser, "We Have to Fix That," Brennan Center for Justice, Nov. 9, 2012, http://www.brennancenter.org/blog/archives/we_have_to_fix_that/.

- Colorado and Florida took the most aggressive action to 'purge' non citizens from the voter rolls, using a faulty process that captured eligible voters threatening their right to vote.[3]
- In New Mexico, the Secretary of State mailed nearly 178,000 potential purge cards, which stated "If this card is not returned and you do not vote in any election from the date of this notice through the November, 2014 general election, your name will be removed from the voter registration list."[4] This mailing went to many eligible voters, causing confusion and fear in the lead up to Election Day.

Poll Worker Training: Poll workers serve on the front lines of our elections and can be a defining influence on the success or failure of an election. Across the country, county administrators struggled to meet the demands of poll workers. We witnessed a consistent problem of too few adequately trained poll workers. Even worse, we received reports about poll workers and election observers whom some voters found intimidating and discouraging of their effort to cast ballots.

- In Colorado, issues arising from poorly trained judges included judges asking for photo ID (which is not required), requesting more than one form of ID, requiring an address match between the poll book and the voter's ID (only a Colorado address is required), failing to properly consult the poll books and supplements and therefore informing voters that they were not registered (Jefferson County in particular), incomplete understanding of the emergency registration process, and inconsistent practices within and among counties on directing voters to correct polling locations versus offering them a provisional ballot.

Provisional Ballots: In several states - Colorado, Ohio, and Florida to name a few - many voters reported that officials instructed them to vote a provisional ballot rather than directing them to the correct polling place. Other voters reported that officials offered a provisional ballot as a way of speeding up lines at the polling locations. Even worse, some voters reported that they were never even offered a provisional ballot when it should have been provided as a matter of right. Confusion around rules for provisional ballots can also result in over-use of provisional ballots, many of which will not be counted.

- Ohio relies heavily on provisional ballots, with over 206,000 cast in 2008 – more than any other state except California and New York. Over 80% of those ballots were eventually counted, but that still left almost 40,000 uncounted. On the Friday before Election Day, the Ohio Secretary of State established a rule that voters (rather than poll workers) had to fill out identification information on provisional ballots and that boards of elections were not permitted to count the vote if the information was not filled out correctly. This directive circumvented Ohio law and created a real obstacle

[3] Corey Dade, "Florida, Colorado Voter Purges Net Few Noncitizens, So Far," NPR, Sept. 5, 2012, http://www.npr.org/blogs/itsallpolitics/2012/09/05/160624313/florida-colorado-voter-purges-net-few-noncitizens-so-far

[4] Steve Terrell, "Secretary of State's Voter Roll Cleanup Targets 'Shocked' Voting Rights Advocate," *The New Mexican*, Aug. 9, 2012, http://www.santafenewmexican.com/Local%20News/081012SOS

to voters' access to casting a ballot that is properly counted. Unfortunately, on Election Day 2012, Ohioans cast 204,927 provisional ballots.

Early Voting: We saw a serious cut-back of days and hours available for early voting. We particularly note that in Florida and Ohio these early voting options were reduced and voters suffered the consequences. These reductions raised questions about partisan manipulation of election rules, and ultimately resulted in longer lines, mass confusion and headaches for election officials.[5]

Polling Place Preparedness and Technology: While technology will continue to do wonders for our elections, untested technology and a lack of resources plague our elections. We saw a reduction in the number of machines available to cast ballots. Many machines purchased with federal HAVA money are reaching the end of their shelf life and are breaking down. We also met confusion at the polling place about when to deploy emergency ballots and how to deal with equipment malfunctions. These resulted in heartbreakingly unnecessary delays and voters forced to wait.

- Virginia stands out as example where we saw some of the longest lines on Election Day. Several factors contributed to the long lines, including limited numbers of voting machines.[6]
- Even Rhode Island, a state that has **not** historically seen significant lines at polling locations, caught many voters off-guard. In at least two jurisdictions, incorrect ballots were delivered and polls did not open. Other polling locations suffered mechanical problems with ballot scanners, as well as problems running out of materials (ballots, ballot applications).
- New York and New Jersey faced unprecedented challenges due to the intensity of Hurricane Sandy. Election officials - through heroic efforts - made voting available despite sever power outages and treacherous conditions. The last minute crisis demonstrates the need for us to adopt national standards for emergency planning in the face of future disasters.
- New Jersey's last-minute decision to allow voters to send ballots over the Internet was an honorable, but failed effort for voters and election officials. New Jersey law requires that voters also send in a hard copy of their ballot to provide a necessary paper back-up, but this provision was not outlined in the original directive, which caused voter confusion. Local election officials described the email voting plan as a "disaster" and "catastrophe" as servers crashed and email inboxes overflowed with voters' absentee ballots and applications disenfranchising an untold number of voters.[7]

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[5] Dara Kam & John Lantingua, "Dems to Justice Department: Probe Florida Election Law," Palm Beach Post, Dec. 13, 2012, http://www.palmbeachpost.com/news/news/state-regional-govt-politics/dems-to-justice-department-probe-florida-election-/nTWRf/.

[6] Anne E. Marimow, "Long Voting Lines Blamed on High Turnout, Too-Few Poll Workers and Voting Machines," Nov. 7, 2012, http://articles.washingtonpost.com/2012-11-07/local/35504612_1_poll-workers-electronic-machines-touch-screen-machines

[7] Bob Sullivan, "New Jersey's Email Voting Suffers Major Glitches, Deadline Extended to Friday," Nov. 6, 2012, NBC News, http://usnews.nbcnews.com/_news/2012/11/06/14974588-new-jerseys-email-voting-suffers-major-glitches-deadline-extended-to-friday?lite

Photo ID Requirements: Common Cause and its allies in the voting rights community have fought against unreasonably restrictive photo identification requirements because they prevent eligible voters from participating, impose enormous and unjustified costs on states, and do not serve the goals that are put forward.

Millions of citizens residing in states with these restrictive laws do not currently possess the requisite photo ID and may be unable to exercise their right to vote on Election Day. Studies show that those without ID are disproportionately likely to be African American, Latino, low-income voters, young adults, senior citizens, and people with disabilities. For many of these eligible persons, it is no simple matter to obtain the necessary ID — the hurdles involved can make doing so difficult, and in some cases, impossible.[8]

With 13 states passing new laws to require voter ID at the polls, Pennsylvania's restrictive photo ID requirement stood out as the example of why restrictive ID requirements serve to discriminate and potentially keep people from voting.

- In the weeks leading up to the election, Pennsylvania's state government ran a large number of misleading ads telling voters "if you care about this election...show it [photo ID]." While the Pennsylvania court did allow election officials to ask for photo ID, it was *not* required, and this state-sponsored message contributed to mass confusion on Election Day.
- On Election Day, our volunteers in the field heard direct reports of poll workers misinforming voters about the voter ID law. Some poll workers called the Election Protection hotline, alarmed that they were instructed to place posters around the polling places telling voters to show photo ID. We spoke with appalled voters who truly felt discriminated against. In one instance, a voter shared that even though he was able to vote, he was made to feel that his vote did not matter.

There was also confusion about photo ID requirements in states that did not have photo ID laws in place or where last minute changes to the law kept things in limbo. Virginia was one of the states to adopt a new voter ID requirement, and we received numerous calls from voters concerned about the new rules and what they meant for the right to vote. In several counties in New Mexico, election judges were asking for ID where it was not required. Voting rights advocates had to engage county officials to step in and correct their actions to ensure voters were able to vote.

Deceptive Voting Practices: Usually targeted at minorities and in minority neighborhoods, deceptive practices are the intentional dissemination of false or misleading information about the voting process with the intent to prevent an eligible voter from casting a ballot. It is an insidious form of voter suppression that often goes unaddressed by authorities and the perpetrators are virtually never caught. Historically, deceptive practices have taken the form of flyers distributed in a particular neighborhood; in recent years, with the advent of new technology, "robocalls"

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[8]Common Cause, Dēmos, Fair Elections Legal Network, Lawyers' Committee for Civil Rights Under Law, "GOT ID? HELPING AMERICANS GET VOTER IDENTIFICATION," http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/GOT%20ID%20FINA%204-18-12.PDF

have been employed to spread misinformation. Deceptive practices are often targeted toward communities of color, students, and other populations to suppress turnout. They are becoming more sophisticated through the use of hacking.

- Virginia voters received robo calls claiming people could vote by phone just weeks before Election Day. The suspicious phone calls incorrectly informed voters that they couldvote early and over the phone, due to the possibility of long lines at the polls on Election Day.[9] It's not clear how many voters received this call.
- Billboards in Ohio and Wisconsin were placed in predominantly African American and Latino communities as well as around student populations which displayed a massive gavel, and written text warning that "VOTER FRAUD IS A FELONY! Up to 3 ½ YRS & $10,000 Fine." These billboards were placed with the clear intent to deter responsible, eligible Americans from voting by placing a stigma on these communities.
- Florida voters received letters in the mail, under that auspices of a state seal, falsely notifying them that their registration was purged.[10] Intimidation at the Polls: Common Cause Texas poll monitors observed individuals during early vote who were circulating an anti-immigration petition confront Hispanic voters who would not sign their petition and say things like, "Go back where you came from" or "Are you even a citizen?"

Challenges: In the months and weeks leading up to the election, groups with close ties to the Tea Party announced plans to recruit tens of thousands of volunteers to serve as poll watchers.[11] Although poll watching and poll challenging is legal in most states, there was substantial concern that ill-trained volunteer poll watchers would foster a climate of fear and intimidation given the unsubstantiated rhetoric around in-person voter impersonation fraud and published reports of voter intimidation during the 2010 midterm elections.[12] A leader of one prominent challenger group, True the Vote, told an audience of volunteers in Florida that poll watchers should make polling places feel "like driving down the road and looking up in that rearview mirror and seeing that there is an officer of the law following you."[13] Disturbingly, the self-published poll watcher training materials that some volunteer groups disseminated contained false information about the voting process that had no basis in law and could have been used to justify illegitimate challenges that disenfranchised voters.[14]

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[9] WDBJ, "Phone Scam Targets Voters," Oct. 12, 2012, WDBJ7.comhttp://www.wdbj7.com/news/wdbj7-2phone-scam-targets-voters-20121012,0,7642527.story

[10] Associated Press, "FBI joins probe of bogus FL vote purge letters http://www.krqe.com/dpp/elections/president/FBI-joins-probe-of-bogus-Fla-vote-purge-letters_22206013

[11] Stephanie Saul, "Looking, Very Closely, for Voter Fraud," *New York Times*, Sept. 16, 2012, *available at* http://www.nytimes.com/2012/09/17/us/politics/groups-like-true-the-vote-are-looking-very-closely-for-voter-fraud.html?pagewanted=all&_r=0&pagewanted=print; Mariah Blake, "The Ballot Cops," *The Atlantic*, October 2012, http://www.theatlantic.com/magazine/archive/2012/10/the-ballot-cops/309085/.

[12] *See* Liz Kennedy et al., BULLIES AT THE BALLOT BOX (Common Cause & Dēmos), September 2012, *available at* http://www.commoncause.org/bullies; Letter from Rep. Elijah Cummings, Ranking Member of House Committee on Oversight and Government Reform to Catherine Engelbrecht, President of True the Vote, Oct. 18, 2012.

[13] True the Vote National Summit *Remarks by Bill Ouren*, April 27-28, 2012, http://vimeo.com/42865480.

[14] Sam Levin, "True the Vote Promoting False Information, Possible Intimidation, Says Common Cause," Denver Westword, Nov. 2, 2012,

- Moreover, groups organizing poll watchers to carry out challenges on Election Day were also training volunteers with proprietary software to scour voter registration databases and challenge voters' registrations *before* Election Day.[15] Unfortunately, their dubious investigatory techniques threatened to kick many eligible voters off the rolls – including students, elderly Americans, military voters and other transitory populations.[16] The problem, according to one prominent professor of election law, is that "some citizen vigilantes see the law as they want it to be, not as it is. They hunt voters registered at business address, ignoring the fact that small business owners or managers may live where they work. They hunt immigrants, ignoring the fact that noncitizens may have become naturalized. They hunt students and others in group housing, ignoring the fact that legal residence may not be intuitive."[17]
- In Ohio, for example, a tea party group challenged at least 2,100 names on the voter rolls.[18] Hundreds of students at Ohio colleges and universities faced challenges to their voter registration for the sole reason that they failed to include a dorm room number.[19] This information was not required under Ohio state law.[20] Fortunately, in many jurisdictions, all of these challenges were dismissed.[21]

"We Need to Fix That"

The images of voters waiting in lines, and the frustrations we heard from voters who were made to feel that their vote did not matter are no way to run a free, fair and accessible election. The health of our democracy and our right to vote requires decisive action now to ensure that ***all*** Americans can truly participate in our elections. Reform is not only possible, but already outlined and embodied in the Voter Empowerment Act (VEA) (S. 3608) and other pieces of legislation noted below. The VEA offers comprehensive legislation that would go a long way to reducing long lines at the polls, reducing other significant barriers to voting, and ensuring that every vote is counted as cast.

We must continue the fight for free, fair and accessible elections:

Modernize: Bringing our elections into the 21st Century requires us to ensure that all eligible Americans are registered to vote. Four key reforms will increase accuracy and save on costs:

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http://blogs.westword.com/latestword/2012/11/true_the_vote_false_information_voter_intimidation_colorado_common_cause.php.

[15] A.J. Vicens & Natasha Khan, "Voters Feel Intimidated by Election Observers," News21, Aug. 12, 2012, http://votingrights.news21.com/article/poll-watchers/.

[16] Justin Levitt, "The Danger of Voter Fraud Vigilantes," *New York Times*, Oct. 29, 2012, http://campaignstops.blogs.nytimes.com/2012/10/29/the-danger-of-voter-fraud-vigilantes/.

[17] *Id.*

[18] Michael Finnegan, "Tea Party Groups Work to Remove Names from Ohio Voter Rolls," *Los Angeles Times*, Sept. 26, 2012, http://www.latimes.com/news/nationworld/nation/la-na-ohio-voting-fight-20120927,0,1010709,full.story.

[19] *Id.*

[20] Josh Jarman, "Voter-Roll Challenges Dismissed," *The Columbus Dispatch*, Sept. 25, 2012, http://www.dispatch.com/content/stories/local/2012/09/25/voter-roll-challenges-dismissed.html.

[21] *Id.*

- Automated Registration: Election officials automatically register eligible citizens by electronically transmitting reliable information from government list;
- Portability: Once an eligible citizen is on a state's voter rolls, she remains registered and her records move with her so long as she continues to reside in that state;
- Safety Net: Eligible citizens can correct errors on the voter rolls before and on Election Day; and
- Online Access: Voters can register, check and update their registration records through a secure and accessible online portal. The Voter Empowerment Act serves as a model to modernize our voter registration process.

Improve: To reduce long lines, we need to expand access to voting by broadening voting options - including providing for early voting and no-fault absentee balloting. According to George Mason University Professor Michael McDonald, 34% of Americans voted early in 2012, and 12 states saw increases in participation during early vote as compared to 2008.[22] Yet 15 states do not have *any* form of early voting, and for states *with* early voting, the number of days varies greatly between states and counties. We need to adopt federal standards to determine the minimum days for early voting, locations of polling places, voting machine requirements, emergency and paper back-ups, poll worker training and provisional ballots. Congressman Miller's "Streamlining and Improving Methods at Polling Locations and Early (SIMPLE) Voting Act" (H.R. 6591) is a strong model for reforming early voting and polling place preparedness, as well as the Voter Empowerment Act (VEA) (S. 3608) as noted above.

Provisional ballots should be counted for all races and questions for which the voter is deemed eligible to vote. Election judges should be trained more thoroughly on the laws surrounding provisional ballots, including redirecting a voter who may be in the wrong precinct or county; and an ample and easily accessible supply of provisional ballots in all ballot styles should be printed and supplied to all polling places/vote centers in each county.

***Secure*:** We urge careful thought and deliberation before plans are adopted to alleviate the problems of lines at the polls. Many ideas will be fielded, including allowing voters to cast a ballot from their home computer or other device.

We are compelled to state: **Voting by Internet, Email or Fax is Not the Solution**. Cyber security experts at the Department of Homeland Security and at the National Institute for Standards and Technology have warned that because the security tools currently available would not be able to protect these votes from cyber-attacks, Internet voting is not recommended at this time because it places our elections at risk.[23]

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[22] http://www.capitalgazette.com/news/government/turnout-should-be-key-factor-in-any-expansion-of-early/article_327f712c-1389-528b-b1b8-cc61a14ed29b.html

[23] NIST Activities on UOCAVA Voting, http://www.nist.gov/itl/vote/uocava.cfm; Nelson Hastings et al., SECURITY CONSIDERATIONS FOR REMOTE ELECTRONIC UOCAVA VOTING, National Institute of Standards and Technology, United States Department of Commerce, February 2011, http://www.nist.gov/itl/vote/upload/NISTIR-7700-feb2011.pdf; Pam Fessler, "Online Voting 'Premature,' Warns Government Cybersecurity Expert," NPR News, March 29, 2012, http://www.npr.org/blogs/itsallpolitics/2012/03/29/149634764/online-voting-premature-warns-government-cybersecurity-expert

Additionally, any new funding allocated towards the purchase of new voting systems should only be appropriated if those systems produce a voter verifiable paper record or ballot that the voter can review. Without a paper record of the votes cast, there is no way for election officials to conduct a meaningful recount or to conduct post-election audits.

Post-election audits to verify that the outcome of the election is correct should be mandatory. We cannot simply rely on the machine counts without a manual check on whether votes were recorded correctly. Too many times, simple software glitches and human errors have led to miscounts which were caught by post-election audits. In a municipal election in Palm Beach County, Florida, in March 2012, a problem with election management software allotted votes to the wrong candidate and the wrong contest.[24] The official results were only changed after a court-sanctioned public hand count of the votes. States which do not conduct post-election audits have no way of catching these types of errors which can lead to the wrong person assuming elected office.

States should be required to conduct robust ballot accounting and reconciliation practices. These basic procedures, including reconciling the number of votes cast to the number of voters who signed in and reconciling precinct totals with county-level totals, help ensure that no ballots are lost or added as the votes are tallied and aggregated from the local up to the state level.

Protect: Intimidation and deceptive voting practices cannot be tolerated, bad actors need to be accountable, and penalties must be increased to prevent these acts from keeping people from voting. The ***Deceptive Practices and Voter Intimidation Prevention Act of 2011***(S. 1994) is designed to protect voters across the nation from election fraud and voter intimidation by creating criminal penalties for deceptive voting practices and by giving individual voters the right to take action

Addressing challengers at the polls is critical, as state law is varied as to how pre-Election Day and polling place challenges are resolved. There are certain practices that could better protect voters from unlawful challenges before Election Day or in the wake of overzealous volunteers self-policing at the polls. Many of these recommendations are included in a report by Common Cause and Dēmos, *Bullies at the Ballot Box: Protecting the Freedom to Vote Against Wrongful Challenges and Intimidation.*[25]

As for challenges before Election Day, challengers should be required to bear the burden of proof throughout the process and only base their challenges on first-hand personal knowledge by written sworn statements. Challenges should not be allowed too close to Election Day and should be resolved far in advance. This will help to ensure that administrative burdens do not further distract officials from their voting preparations. Frivolous challenges should be a

[24] George Bennett et al., "Recount Shows Wrong Winners Declared in Two Wellington Election Races," Palm Beach Post, Mar. 20, 2012, http://www.palmbeachpost.com/news/news/recount-shows-wrong-winners-declared-in-two-well-1/nLhmx/.

[25] Liz Kennedy et al., BULLIES AT THE BALLOT BOX (Common Cause & Dēmos), September 2012, *available at* http://www.commoncause.org/bullies

misdemeanor. Moreover, before any voters are kicked off of the rolls before Election Day, they should be afforded the opportunity for a hearing.

As for challenges to voter registration on Election Day, rules should be exceptionally clear as to what can provide the basis for a challenge. States vary in this regard. Only election officials should have the authority to challenge a voter's eligibility, which should be in writing with supporting facts, including documentary evidence in support thereof. Grounds for challenge should be limited to citizenship, residency, identity and age, and there should be strong penalties for frivolous challenges. Challengers should be required to show by clear and convincing evidence that a person is ineligible to vote. Importantly, returned mail should not be considered prima facie evidence that an individual is unlawfully presenting herself to vote because that is an inadequate basis to prove eligibility. And if a challenged voter swears to her eligibility by affidavit, she should be able to vote a regular ballot.

Perhaps most importantly, voters should be protected from inappropriate behavior by poll watchers, which includes communicating directly with voters, or videotaping and photographing voters inside of polling places. Under absolutely no circumstances should a poll watcher be able to observe a voter's ballot.

Voting Rights Act

In addition to these proactive reforms to modernize, improve, secure and protect our elections, we must also ensure that *all* American voters are afforded their right to vote. With section 5 of the Voting Rights Act under attack, minority voters have reason to fear that their right to vote is at risk. The reality is that targeted Americans, particularly people of color, low income individuals and youth continue to be pushed out of the voting process. The Voting Rights Act is an essential tool to combat the recent assault on our voting rights, protecting us from discriminatory local, state, and federal redistricting plans, attempts to strictly reduce early voting, and discriminatory government issued photo identification laws. This protection is needed now more than ever, both to safeguard hard-fought progress and to defeat persistent and clever attempts to narrow the franchise.

Conclusion

No American citizen should have to question whether or not they have the right to vote, or if their vote will be counted. No American should wait for hours in a line to vote, only to be told they are not on the registration rolls when they took the steps necessary to participate. The stories of thousands of Americans who had trouble voting in 2012 define our current election process, because when eligible Americans are obstructed in their right to vote, the integrity of our democracy comes into question.

We look forward to working with you, our members, and the public to reform our voting process so that every eligible citizen can easily register to vote, cast a ballot without undue burden, and be assured that those ballots are counted as cast.

Testimony of The Honorable Charles Crist, Jr.
Former Governor of Florida

United States Senate
Committee on the Judiciary

Hearing on
"The State of the Right to Vote After the 2012 Election"

Dirksen Senate Office Building
December 19, 2012

10:00 a.m.

Thank you Chairman Leahy, Ranking Member Grassley and thank you members of the Judiciary Committee for inviting me to testify today on what is the most fundamental of rights for Americans—the right to self-determination through voting.

Quite literally, we are here today because just over 236 years ago, 56 brave American patriots signed away their lives by declaring independence from the Great Britain in the name of all who lived in the colonies. At the core of their statement – our Declaration of Independence -- "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, among these are life, liberty, and the pursuit of happiness, that to secure these rights governments are instituted among men" – embodies the simple principle that everyday Americans – the people who we all represent hold the power – that government is truly for the people, by the people – not the other way around.

In fairness, they didn't get it totally right at the beginning. Far too many Americans were initially denied the right to vote, and far too many more died in the ensuing battles to ensure that every American adult would have the right to participate in self-determination. But throughout the history of this great nation, whether through laws or conflicts, America has always taken steps forward to make voting easier and more accessible – well, until this year.

For a good part of my adult life, I was employed in the service of the people of the great state of Florida, a state has had more than its share of voting drama. For

four of those years, I had the truly awesome privilege serving of state's Governor, and during those four years, we undertook some important steps to make it easier for Floridians to vote.

- We eased the state's vote by mail laws to make it easier for Floridians to choose to vote from the comfort of their own home.
- We instituted a standard fourteen days of in person early voting.
- We made paper ballots mandatory to ensure that there would be a record in the case of recounts.
- We streamlined the system so Floridian who had paid their entire debt to society could regain their right to vote.

And when, during the historic election of 2008, long lines at early voting sites led to some Floridians waiting for many hours to cast a ballot, your former colleague – and my former Chief of Staff George Lemieux and I figured out a legal justification for extending early voting hours so that no Floridian would be faced with an unnecessary wait at the polls. In the end, some 54% of Floridians cast a ballot before election day in 2008 – and thanks to the steps we had taken, despite a record 8.3 million votes cast that year, we knew the outcome of our state's election before the 11:00 news.

Unfortunately, the last few years in Florida haven't been so forward thinking. In 2011, the state legislature voted for and Governor Scott signed a massive elections law designed, I believe, to make it harder for some Floridians to legally vote – and designed to encourage a certain partisan outcome. The law, among

other things, put ridiculous restrictions on the rights of everyday law abiding Floridians to register their fellow citizens to vote and reduced the number of early voting days from 14 to 8 – and under the law before the Justice Department demanded changes, could have reduced early voting hours to as few as 48 in some counties. Furthermore, changes to the law made it harder for voters who went to the wrong precinct to cast a legal vote – which when combined with budget cuts in many counties that reduced the number of election day polling locations – resulted in unnecessary confusion and suppression on election day. In addition, the state tried to purge nearly 200,000 legal Floridians from the polls. Thankfully, public pressure as well as questions from the Justice Department, forced the state to back down.

The outcome of these decisions was obvious. Florida, which four years earlier was a model for efficiency, became once again a late night tv joke. Voters who wanted to vote early were frequently subjected to lines of three and four hours – and as Governor Scott refused to take action to ease the lines, in some cases those lines extended to six and seven hours. Election Day confusion led to horrifying lines again on Election Day, which played a role in Florida remaining in the undecided category until Thursday, some two days after the last ballot was cast. Thankfully, the Presidency didn't hang in the balance.

Senators, as you spend time thinking about how we can make voting easier and more accessible, I would encourage you to think long and hard about establishing some national standards, standards that would ensure lengthy in person early

voting, as well as common sense provisions such as same day voter registration and allowing voters to vote at the precinct most convenient for them.

I leave you once again with the words of our founding fathers – "Governments are instituted among men (and women), deriving their powers from the consent of the government." Ladies and gentlemen – we work for them. We offer ourselves to their service and they choose – and as any of us who have lost well know, we don't always like the outcome. But that is how this works. In the end, America wins and democracy thrives when more people vote.

Thank you again for the invitation. I look forward to speaking with you further about this important issue.

Demos
IDEAS & ACTION

2012 Election Lessons Learned: How Voters Stood Up Against Suppression, ID, and Intimidation

By Tova Andrea Wang, Senior Democracy Fellow, Demos

The right to vote is just that - a fundamental right which is the cornerstone of American democracy. In the 2012 election, that sacred value was challenged in a way we have not seen in a couple of generations, perhaps since the civil and voting rights movements of the 1960s. Some powerful people tried to deny this right; legislatures in many states decided that the freedom to vote should be restricted, and they erected many unnecessary and discriminatory barriers to registration and voting.

The measures taken were so blatant and widespread that they served to energize coalitions of citizens to fight for voting rights harder than ever, and made many voters more determined to vote and have their vote count. The U.S. Department of Justice was compelled to intervene through its powers under Section 5 of the Voting Rights Act, because the laws enacted in several covered states were clearly discriminatory in purpose and/or effect. State and federal courts also struck down or delayed many of the worst of these laws. And where identification laws did come into effect, some were made more flexible and less of a burden on voters after having gone through Department of Justice and court review.

President Obama himself confirmed the need for national attention to protecting the freedom to vote in his acceptance speech on election night, noting the problems that many Americans had faced in attempting to vote, and declaring "we need to fix that." President Obama is right. His call to action frames both the unacceptable problems that affected the right to vote in 2012 and the need for action going forward to ensure that all eligible Americans can exercise their right to vote.

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As will be discussed below, the measures to make voting harder for eligible Americanstook many forms. Most of them were instigated by Republican dominated state legislatures which in 2010 and 2011 passed laws that would disproportionately exclude certain groups from the voting process, particularly African Americans, youth and Latinos. It was for obvious reasons: African Americans, Latinos and young people tend to vote for Democrats. And in 2008 these three groups came out in record numbers. So the vote suppression efforts were, unfortunately, focused on demographic groups that historically have been targeted in efforts to restrict voting rights.

The new laws and procedures included strict photo identification and proof of citizenship laws; rules making it harder for former felons to regain their voting rights; laws making voter registration more difficult; pre-election purges of eligible voters; cutbacks on early voting which predictably resulted in unacceptably long lines at the polls; and misuse and manipulation of rules around provisional ballots. Other problems that arose included challenges to voters' right to vote by organizations connected to or empowered by True the Vote; disregard by state election officials of legal requirements to provide language assistance at the polls; and efforts by groups and individuals to intimidate and mislead voters about voting procedures. There were also new, unanticipated challenges on the East Coast as a result of the damage wrought by Hurricane Sandy.

In the end, however, many of the attempts at voter exclusion went just too far, and backfired on those who would seek to make disenfranchisement an election strategy. Given the strong turnout of the very groups that were targeted, it seems that the American voters were ready to take on this challenge. African Americans matched their record turnout of 2008 and were 13 percent of the electorate. Latinos raised their share -- they were 10 percent of the electorate this year, up from 9 percent in 2008. For all the talk of youth disengagement, the proportion of the electorate under 30 went from 18 to 19 percent. Indeed, just as significant a sign that the tide has turned is the fact that a ballot amendment that would have made photo identification a requirement to vote went down to defeat in Minnesota. At one time the polls showed 80 percent support for the measure. But a strong grassroots campaign to educate the

public about the measure turned the tide. As noted in one press report, "volunteers made contact with more than 1.5 million voters over the past four months to explain the costs, complications and consequences of the amendment." The success of this campaign may be the strongest indicator yet of public opinion turning against these efforts to put up unnecessary red tape around the voting process.

The pushback against vote suppression laws was facilitated by the efforts before Election Day of a coalition of pro-voter organizations and citizens who came together and fought back on efforts to exclude Americans from voting. Restrictive photo ID requirements were blocked by the Department of Justice and/or the courts in Pennsylvania, South Carolina, Texas, and Wisconsin, and vetoed by governors in Minnesota, Missouri, Montana, New Hampshire, and North Carolina. Extreme restrictions on voter registration drives were permanently blocked by the courts in Florida. Cutbacks to early voting were reversed in Ohio. Finally, an Arizona law that required documentary proof of citizenship to register to vote was blocked by the courts.

Moreover, the threats made by True the Vote and its allied organizations to challenge peoples' rights at the polls turned out to be more bark than bite. Demos and other groups worked to put a spotlight on their misguided and possibly illegal intentions, and relatively few of these threats materialized.

Nonetheless, there was plenty of disenfranchisement and possible exclusion in the 2012 election that will help point us in a new direction going forward: enacting election reforms that expand access to the ballot and create a more inclusive democracy. These measures include Same Day Registration and other reforms to modernize our voter registration system; expansion of early voting to avoid long lines on Election Day; laws to prevent unfounded challenges and other forms of voter harassment and intimidation and greater efforts to ensure Americans who are not proficient in English can exercise their right to vote.

Impact of Voter ID Laws

Alabama, Kansas, Mississippi, Pennsylvania, South Carolina, Tennessee, Texas, and Wisconsin all passed new strict photo ID laws in their 2011 or 2012 legislative sessions. As has been repeatedly demonstrated, requiring people to show government issued photo identification in order to vote is unnecessary, discriminatory and has the potential to disenfranchise hundreds of thousands of people.

The Department of Justice objected to the laws in Texas and South Carolina under the Voting Rights Act -- those two states are covered by Section 5 of the Act and all changes in election procedures must be approved before they can be implemented. The states filed lawsuits to obtain approval of these laws in the federal district court for the District of Columbia, but the courts rejected those efforts, and blocked the photo ID laws from being implemented in the 2012 election. In the process, Texas' own data showed that 795,955 registered voters did not have the ID required and these voters were disproportionately Latino and African American. South Carolina's own statistics showed 239,000 registered voters in that state did not have the requisite ID. In Wisconsin the courts struck the law down as unconstitutional under the state constitution. In Pennsylvania the courts also said that the photo ID law passed there could not be implemented this year because the state had not taken the necessary steps to educate voters about the new requirements and ensure that people could obtain IDs.

Therefore, four states had strict photo ID laws in force—Kansas, Georgia, Indiana, and Tennessee. We already know from past elections that many people have been disenfranchised by Indiana's voter ID law, and we know that the voter ID law in Indiana impacts the ability of African Americans and Latinos in that state much more than other groups. Advocates fighting the Tennessee law estimate that 390,000 registered voters in that state do not have the picture ID now required to vote in that state. Yet the state has only "issued 20,923 state IDs for voting purposes." Research will reveal what impact these laws had in 2012.

Then there was the problem of voter and poll worker confusion, especially in states such as Pennsylvania. In that state shortly before the election, the courts

finally halted the state's new ID law, yet the State continued running advertisements claiming ID would be required at the polls.

All of the polling places in Crawford County, Pennsylvania, posted signs saying that identification was required to vote. This was not true. An Allegheny County judge issued an order to halt electioneering outside a polling location in Homestead, Pennsylvania when it was found that Republicans outside a polling location were stopping people outside the polls and asking for identification. As predicted by voting rights advocates, many voters across Pennsylvania encountered poll workers wrongfully requiring identification, turning some voters away or requiring them to vote provisional ballots

Less Noticed—Proof of Citizenship Laws
Arizona enacted a requirement that citizens provide documentary proof of citizenship before being allowed to register to vote in 2004. It has been in litigation ever since and the Supreme Court has just agreed to hear the case. The argument in the case is that the Arizona law violates the National Voter Registration Act, which requires states to accept the federal voter registration form. The federal form does not have a proof of citizenship requirement, and the NVRA does not permit states to add their own requirements as a condition of accepting the form. Apart from its inconsistency with the NVRA, the Arizona law threatened to disenfranchise eligible voters who may not have ready access to documentation of their citizenship. Furthermore, such requirements create tremendous barriers to voter registration drives. People don't always walk around with proof of their citizenship, and groups doing voter registration don't usually walk around with photocopying machines to copy such citizenship documents, as the law requires. Georgia, Kansas and Tennessee have also enacted proof of citizenship laws, and again it remains to be seen what their impact was in 2012.

Felon Disenfranchisement Continues
We know that some 5.85 million American citizens were excluded from the voting process on November 6. These are the Americans who at one point in their lives committed a felony and are barred by laws in most states from voting —even though 4.4 million of those Americans have served their time. Thirteen

percent of African American men are denied the right to vote in this country because of such laws.

In two states—the swing states of Florida and Iowa—Republican governors made it even harder for a former felon to regain his or her voting rights in the last two years. In Florida there is a mandatory 5 year waiting time before a citizen can even apply to the governor's clemency board and there is a backlog now of over 100,000 applications awaiting action. The Sentencing Project says there are about 1.3 million disenfranchised ex-felons just in Florida. One-quarter of African American voting age men in Florida were disenfranchised on November 6 because of this antiquated and anachronistic rule.

Voter Registration Made More Difficult, Especially In Florida
Voter registration has been demonstrated to be the key to voter participation. Once people are registered, they vote. Unfortunately, the US is one of only a few western democracies that puts the burden on citizens to get through the registration process and make sure they continue to update their registration every time they move or change their name. The burdens of the voter registration process particularly depress participation by low income Americans and communities of color. Yet, some states attempted to make registration even harder prior to the 2012 election.

Nowhere was this more the case than in Florida. Rock the Vote and the League of Women Voters stopped conducting registration drives in Florida last year because a new law passed by that state's Republican legislature required groups to turn in voter registration forms within 48 hours after collecting them or face a fine of up to $1,000. As noted in a recent law review article by Ryan Haygood of the NAACP Legal Defense & Educational Fund, community based voter registration drives are particularly important for registering communities of color and low-income communities:.

For example, in 2004, while only 7.4% of white voters registered at private drives, 12.7% of African American voters and 12.9% of Latino voters used this channel to register. The disparity was likewise apparent in 2008: while only 5.0% of white voters registered at private drives, 11.0% of African American

voters and 9.6% of Latino voters registered at these events. And 2010 was no different: 6% of white voters registered through a voter registration drive, as compared with 14% of Latino voters and 12% of African American voters.

Purges

Partisan election administrators and the group True the Vote (TTV) and its affiliates attempted to purge thousands of voters from the rolls before the election, claiming they were not citizens or had died.

For example, right before the election a group calling itself The Voter Integrity Project in North Carolina challenged thousands of registrations claiming people were dead. In addition to wasting the time of already stressed elections officials who threw many of the challenges out because the data matching the group used was so flawed, hundreds of people in NC had to prove they weren't dead to the BOE.

According to the Houston Chronicle, in Texas state election officials "repeatedly and mistakenly matched active longtime Texas voters to deceased strangers across the country - some of whom perished more than a decade ago - in an error-ridden effort to purge dead voters just weeks before the presidential election...Voters in legislative districts across Texas with heavy concentrations of Hispanics or African-Americans were more often targeted in that flawed purge effort, according the Chronicle's analysis of more than 68,000 voters identified as possibly dead."

In Florida earlier this year, the governor and secretary of state claimed 182,000 noncitizens had been flagged on the state's voter rolls. But reporters and activists found hundreds of native and naturalized U.S. citizens among them. Additionally, advocates found that a hugely disproportionate share of the flagged group was Latino or black. The list of potential ineligible voters eventually whittled down to 198, with even that number in question.

After being embarrassed by his own inaccuracy, Colorado Secretary of State Scott Gessler (R) decided not to pursue a voter purge he initiated by sending letters asking almost 4,000 voters to prove their citizenship. After 482 people

responded with proof and almost 90 percent of the suspected non-citizens were verified through a federal database, Gessler planned to challenge 141 names still in question, but did not have enough time to handle the hearings before Election Day. Then after early voting had actually begun in the state, Gessler announced that a new round of checks revealed more individuals who he believes are illegally registered. However, only fourteen of the 141 flagged in that first round were actually removed from the rolls -- and none have a record of voting.

Cutbacks on Early Voting

Another mode of attack was to reduce the number of days people could vote early, and more particularly to cut out the last Sunday before Election Day. Nearly 54% of Florida's African American voters in 2008 voted at early-voting sites. Florida legislators knew very well about the "Soul to the Polls" program that had become a tradition in the last few election cycles. African American churches had come to routinely organize their congregations to, after services, go to an early voting site together and vote. African Americans comprised one-third of the entire statewide turnout in Florida on the last Sunday before the 2008 election. The Ohio State legislature similarly tried to cut back on early voting days and its new law was also struck down by the courts - the Secretary of State appealed to the Supreme Court which turned down his request for an emergency stay.

According to reports, the cutbacks to early voting may have reduced the number of Florida voters who participated in early voting this year by 300,000 votes. According to an analysis by the Herald Tribune the drop in the early voting hit the Democrats harder because they accounted for 46 percent of the early votes to the Republicans' 36 percent — or a 248,000-vote edge, based on party registration.

Long lines

The other sad outcome of Governor Rick Scott's cutting of early voting was that many Floridians were forced to wait hours in line during the days that were available. Long lines were reported across the state, including a six-hour wait time at one early-voting site in Miami-Dade County. In Palm Beach County,

early voting went on until 2:30 a.m. Sunday morning the weekend before the election because of long lines of voters who were waiting to vote before 7 p.m. Saturday, the official ending time.

Scott refused to extend early voting hours to accommodate more votes. In response, Miami-Dade County and other counties allowed in-person absentee balloting on Sunday and Monday. The Florida Democratic Party filed a lawsuit to force Governor Scott to extend the early voting period. A settlement was reached the day before the election, allowing people to vote by in-person absentee ballot on Monday until 5 pm. On Monday, as the controversy wore on, and the lines for absentee voting grew, Broward Supervisor of Elections Brenda Snipes extended in-person absentee voting to 7 p.m.

Long lines continued to plague Florida on Election Day, when voters were still in line in the early morning hours of Wednesday, November 7, after Governor Romney had conceded. And it wasn't just Florida. In Virginia and Texas some voters waited in line for four hours. There were reports of long lines and hours long wait times throughout the country, inevitably leading to stories of some voters having to walk away without voting.

In addition, throughout the country but especially in Philadelphia and Pittsburgh, high numbers of people who were registered to vote were not on the voter registration lists, especially first time voters. The causes for this are still being investigated.

Provisional Ballots

One of the most under-the-radar ways in which people are disenfranchised is the treatment of provisional ballots. When voters show up at the polling place, and their names aren't on the list of registered voters, poll workers are instructed to tell voters to complete provisional ballots. Often, those ballots are simply not counted because it turns out these voters were at the wrong precinct. Despite Ohio Secretary of State John Husted's appeals the courts ruled that ballots cast at the wrong precinct but the correct polling place must be counted. However, several swing states, such as Florida, Nevada, Iowa, and Virginia, do not count ballots cast in the wrong precinct, even if it was through

no fault of the voter. Moreover, the legal ruling in Ohio did not stop Secretary Husted from continuing to try to disenfranchise voters through provisional balloting. Just three days before the election, he issued a directive ordering county boards of election to reject provisional ballots when the identification information contained in Step 2 of the ballot affirmation form is not filled out by the voter - a step that poll workers, not voters, are supposed to take. The directive was in clear contradiction to Ohio law. The issue is still being litigated.

Challengers from True the Vote and Others

An organization called True the Vote (TTV), which grew out of a Texas tea party group, claimed in the months leading to the election that it wanted to recruit one million citizen activists to challenge peoples' right to vote at the polling place on Election Day. Early signs indicated that as in 2010, such challenges were targeting minority neighborhoods. Before the election, various groups challenged the right of certain citizens to be on the registration lists in a number of swing states using deeply flawed name matching systems, even using Facebook to verify citizens' information. They said they wanted to make the experience of voting to be "like driving and seeing the police following you." On Election Day, however, after extensive criticism from voting rights advocates and the media, they were hardly seen or heard from.
Challenges by individuals did occur during early voting in North Carolina. Officials reported "people showing up at polling places and thinking they have the right to walk right in and inspect things. 'People have a skewed idea about their rights at these polling locations,'" said one election administrator. "'And even observers seem to have a misguided definition of what their role is. They think they are election police. That is not what they are there for. Observer is a title for a reason. It says you can observe. It does not say you are in charge... Many observers "felt like it was their job to go up and tell a voter that they couldn't do a particular thing," McLean said. "They thought they had more authority."

On Election Day the Franklin County, Ohio Board of Elections determined that True the Vote may have falsified the forms submitted for election observers, who must be appointed by a group of candidates. According to the news article,

"The new observer forms, filed over the past few days by True the Vote representative (and Hilliard Tea Party Member) Jan Loar, used candidate signatures copied from a previous set of forms filed in early October. All but one of the six candidates whose names appeared on the original form had withdrawn permission to use their signatures." TTV observers were banned from the polls in that county.

In Racine, Wisconsin, which had been the scene of disruptive challenges to African American and Latino voters in the June recall election for Governor Scott Walker, reports indicated that on November 6, election officials more tightly enforced the laws preventing disruption by election observers, and were better able to protect voters from intimidation by challengers who did show up.

For the most part, however, the threat of thousands of challengers at polling places on Election Day did not materialize. The failure of these efforts will hopefully deter organizations in the future from exploiting the challenge process to try to intimidate and possibly disenfranchise American voters, and lead to reform of the laws that allow groups to engage in these kinds of tactics going forward.

Voter Intimidation and Deceptive Practices

In early October, billboards began appearing - 85 in the Milwaukee area and 30 each in Cleveland and Columbus - saying "Voter Fraud is a Felony!" punishable by up to 3 1/2 years in prison and fines of $10,000. The billboards only appeared in low income, minority areas.

After Demos and other voting rights advocates attacked the billboards as blatantly meant to intimidate, Clear Channel Outdoor took them down. Even better, they were replaced by billboards in Cleveland, Columbus, Cincinnati, and Milwaukee with signs that urged residents to "Stand Up and Have Your Say - VOTE." A second set of billboards reminded voters that "When We Vote, We Are All Equal." The pro-voter billboards also included the Election Protection coalition's voter hotline number, 1-866-OUR-VOTE.

In addition to the challenges in North Carolina, there were other attempts to deter voters in that state during early voting. The Board of Election put out a memo, stating "This office is also receiving reports of voters purposefully being given misinformation about the 2012General Election." For example:

- Voters are being told that they can vote by phone or online
- Voters are being told that if they are affiliated with a certain political party that they must vote
- on Wednesday, November 7th instead of Tuesday, November 6th.
- Voters are being visited by individuals who are misrepresenting themselves as county board of
- elections officials who are charged with conducting voter surveys
- Voters who have already voted are receiving phone calls advising them that their absentee
- ballot is already in the mail.
- Voters are being told that if they have an outstanding ticket, they cannot vote
- Voters are receiving misinformation that they are required to re-register each time they vote.

Some voters, primarily African American, in the swing states of Florida, North Carolina and Virginia received phones calls for weeks erroneously telling them they could vote by phone.
Phoenix NBC Channel 12 reported that Republican Jeff Flake's US Senate campaign made robo-calls over the weekend to registered Democrats and gave them the wrong polling place location.

Registration forms were also a route used to disenfranchise some voters.
A voter registration worker associated with the Republican Party was charged with voter registration fraud for throwing filled out registration forms in a garbage bin. His arrest came just weeks after the Republican National Committee said it had cut ties with his employer, Nathan Sproul, after several Florida counties complained that Sproul's firm had submitted hundreds of voter registration forms with irregularities or missing information.

In addition, disturbingly both the Romney Campaign and TTV affiliates were found to be giving wrong information to people they were training to work the polls, such as with regard to voter identification requirements and ex-felon voting rights.

Language Assistance
Once again, groups found that language assistance requirements were not consistently implemented at the polls. The Asian American Legal Defense and Education Fund reported a number of failures, stating, "States with the most egregious violations include Virginia, where Korean American voters were segregated from other voters into a separate line; Philadelphia, where Vietnamese American voters faced a severe shortage of language assistance [and] Michigan, where Bengali materials were severely mistranslated." In New Orleans it was reported that in at least three major polling places, language services were not provided to voters needing help with translations.

Hurricane Sandy
The human toll of Hurricane Sandy was immeasurable in states on the East Coast. It also took a toll on the ability of people to vote. As a result extraordinary measures were taken. In New York and New Jersey those displaced by the storm were allowed to cast a provisional ballot anywhere in the state and have it counted in elections for which the voter was eligible, which included at least statewide races and the Presidential race. New Jersey also allowed people unable to get to their polling site to vote by e-mail, but there were significant problems with that process leading the governor to announce that faxed and email ballots would be accepted until Friday after the election. New Jersey also used military trucks using generators in replacement of traditional polling places that had been damaged or destroyed. The state also extended the deadline for when county clerks could accept mail-in ballot applications to the close of business the Friday before the election.

As of Monday night, more than 100 polling places in New York State had been changed, including about 60 in the city. New York State extended the deadline for absentee ballots to be received and counted to 13 days after Election Day,

from seven days. The biggest challenge was on Long Island, among the hardest hit places.

As might have been predicted there were long lines and lots of confusion in those two states on Election Day.

In person absentee balloting and early voting days were lost in Virginia and North Carolina because of Sandy. In Connecticut, the governor signed an executive order extending the voter registration deadline until the Thursday before Election Day for those affected by the storm. In Pennsylvania, the governor ordered the deadline for county election offices to receive applications for absentee ballots to be extended, on a county-by-county basis

A Pro-Voter Agenda

In the lead-up to the 2012 election, the fight against vote suppression laws and the threat of voter intimidation and harassment consumed enormous amounts of time and energy for pro-voter organizations. As important as that battle was, the real problem with the American voting process remains - as it has been for years -- that too many eligible people don't participate at all because of unnecessary red tape around the voting process. Now that we have beaten back some of the worst attempts at voter exclusion (and we will continue to fight them), it is time to move toward pro-voter reforms that welcome Americans into the voting process and create greater access to the ballot box.

Such reforms must begin with the voter registration process, which remains the biggest structural barrier to full participation.

- Prior to the election, approximately 51 million eligible Americans were still not registered to vote. This represents almost one in four eligible persons, disproportionately low-income voters, people of color, and younger Americans. Among eligible voters, some 30 percent of African Americans, 40 percent of Hispanics, 45 percent of Asian Americans, and 41 percent of young adults (age 18-24), were not registered to vote in the historic 2008 election.

- In the 2008 elections, the voting rate for all eligible persons of voting age was only 64 percent, while the voting rate for people who were registered to vote was 90 percent - showing that registration is key to turnout.
- In many states, pre-election registration deadlines of 25-30 days prior to the election have not been updated for decades; such deadlines may have been adopted long before the age of the Internet or computers, and no longer make sense in today's world.
- In the 2008 election, 2 to 3 million registered voters were prevented from voting because of various administrative problems, and 9 million eligible Americans were not registered because of residency rules or registration deadlines.

While there are certainly social and cultural reasons for low participation, there are legal changes that can be made that will make a significant impact on participation rates.

SAME DAY VOTER REGISTRATION

The single most effective change we can make is to allow for Same Day Registration. Eleven states, plus the District of Columbia, have now adopted Same Day Registration in order to ensure that eligible voters are not turned away because of errors with their registrations or failure to register in advance of Election Day. Same Day Registration eliminates arbitrary pre-election deadlines and allows voters to register and vote on the same day, making it a more convenient one-stop process and ensuring that eligible individuals who are not on the lists can register to vote, or correct inaccurate existing registration information. Same Day Registration means that voters no longer are without recourse when faced with registration problems that threaten their right to vote.

Same Day Registration increases political participation, without undue costs or administrative burdens. States that allow Same Day Registration have consistently led the nation in voter participation. Indeed, the top five states for voter turnout in 2008 all had Same Day Registration, and average voter turnout was seven percentage points higher in Same Day Registration states in the 2008 presidential elections.

Experts have projected substantial voter turnout increases in states that have considered adopting Same Day Registration, with average voting projected to rise by over 4 to nearly 9 percent. Even greater increases are estimated for young people, low-income populations, people of color, newly naturalized citizens, and those who have recently changed residences.

OTHER REFORMS TO MODERNIZE VOTER REGISTRATION

In addition to Same Day Registration, we need a modernized voter registration system in which eligible citizens interacting with the government will be asked if they consent to being registered to vote, and will be added to the rolls through a paperless process if they do. This shifts the administrative burden off of the individual voter and onto the government to register eligible citizens to vote.

Voter registration should become portable and permanent for persons who move within a state, by automatic updates to registration records as citizens change their address. Because all states now are required to have statewide voter registration databases, there should be no need for persons to register anew each time they move within a state.

BLOCKING THE BULLIES: LIMITING CHALLENGES AND PREVENTING VOTER INTIMIDATION

Every election cycle we have political parties, groups and individuals taking it upon themselves to try to knock people off the voter registration list and challenge Americans' right to vote at the polls based on flawed and often discriminatory targeting. This problem threatened to be much worse this year with the efforts of True the Vote and similar organizations to recruit thousands of challengers. Unwarranted challenges to the right to vote, and behavior that creates disruption and intimidation at the polling place need to end.

As Demos made clear in Bullies at the Ballot Box the procedure of making and adjudicating challenges to a voter's qualifications should be designed more explicitly to protect a voter's right to vote. States could quite easily eliminate the problem of registered Americans showing up at the polls to find that their

right to vote has been challenged by prohibiting Election Day challenges by private individuals. If some states wanted to preserve a voter protective procedure for challenging voters on Election Day, they could reserve that power for an Election Judge to administer.

If states allow challenges by private individuals, a person who wants to challenge another voter's right to vote should be required to have personal knowledge of the cause for which they are challenging that voter. Returned mail should not be considered prima facie evidence to sustain a challenge.

People who seek to jeopardize the voting rights of another citizen should at the very least have to sign their challenge as an oath. They should declare under penalty of perjury that the "statement of facts are true and based on my own personal knowledge."

The burden of proof must rest on the challenger to establish a legitimate basis for the challenge, and there should never be a presumption that a challenged voter is ineligible. The tie has to go to the voter. The challenged voter should be able to vote a regular ballot if she answers the poll workers' questions regarding eligibility or signs an affidavit affirming her eligibility.

There are also steps we can take to strengthen protections against intimidating behavior at the polls, beyond just voter challenges. Poll watchers or poll observers should not be allowed to interfere with voters inside the polling place. Elections officials should have statutory authority to reject anyone interfering with the orderly conduct of elections, and interfering with the orderly conduct of elections should be prohibited by law.

Finally, deceptive practices meant to burden a person's right to vote should be made a crime. The Voting Rights Act already prohibits intimidation, threats, or coercion with respect to the exercise of the right to vote. However, we need more specific legal protections against insidious practices such as making calls telling people they can vote by phone if they have been long-time voters, and pretending to record their vote by phone; voters being told that if they have an outstanding traffic ticket, or unpaid child support obligations, they cannot vote

and may even be arrested at the polling place; and calls telling voters that their polling station has moved when it hasn't. Federal law should enable the Justice Department to prosecute people for these types of deceptive practices, and give voters who have been harmed the right to sue to stop the deceptive practices.

LONG LINES

A modern democracy should not depend upon the willingness of eligible voters to stand in line for hours (in some states, in excess of three, four, five or six hours) in order to exercise the right to vote. Many voters who have jobs that depend on strict attendance simply cannot exercise their fundamental right to vote when wait times approach such extremes. Florida was a prime example in the 2012 election - the state's Republican leadership decided to reduce early voting hours that had been critical to allowing communities of color to vote, especially on the Sunday before Election Day. The long lines noted above in Florida and elsewhere confirm the need for states to provide early voting in order to avoid logjams on Election Day. North Carolina could be a model for this; North Carolina allows Same Day Registration during early voting - people who come to early voting sites are able to register and vote on the same day during the early voting period. This is a tremendous win-win for voters. When North Carolina first implemented Same Day Registration in the 2008 election, over 250,000 voters took advantage of it and used it to register and vote on the same day.

LANGUAGE ASSISTANCE

We must ensure that Latino, Asian, and Native American voters get the assistance they ought to receive if this is to be a fully participatory democracy. Existing mandates regarding language assistance must be better enforced. In addition, though many states provide election information and material on their websites in alternative languages, even some that are covered by the language translation requirements of Section 203 of the Voting Rights Act do not; as web use becomes increasingly prevalent across a wide spectrum of groups, the parties should advocate measures that require states to do so. All states should be strongly encouraged to provide web-based information and materials, such as registration forms, in alternative languages known to be commonly used. Several states already do this: for example, Minnesota provides voter

registration forms in Hmong, Spanish, Somali, Russian, and Vietnamese. Iowa provides forms in Spanish, Vietnamese, Lao, and Bosnian. This is an easy, inexpensive way to get more information and easier access to limited-English speakers and should be done elsewhere.

CONCLUSION

The last two years saw a tremendous battle for voting rights supporters, with laws being passed in a tidal wave that were designed to suppress the votes of millions of voters. At the end of the day, the American people and American democracy won. Despite it all, because of the efforts of advocates and the strength and courage of the voters, the American people made their voices heard. But there is much left to do to ensure we become a more inclusive and representative democracy. That work begins today.

Written Testimony by

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On

"The State of the Right to Vote After the 2012 Election"

United States Senate

Committee on the Judiciary

December 26, 2012

Thank you Chairman Leahy, Ranking Member Grassley and the members of the Senate Judiciary Committee for allowing me to submit a testimony on the current state of elections in Florida and the preparations being made to further improve voter accessibility and overall fairness in elections.

I am fortunate to be serving as Florida's Secretary of State and therefore the state's Chief of Elections for a second time. In addition to the privilege it is to again serve the people of Florida, a second appointment has given me a unique perspective to see and experience how Florida's election system has changed since my last appointment nearly 10 years ago, and specifically how Florida elections have become more accessible to voters.

Today, I am proud to report that Florida is one of only three southeastern states, and one of only 26 states nationwide, that offers both early voting and no-excuse absentee voting. This flexibility for voters in the 2012 General Election allowed more than 2.4 million Floridians to vote "early" and nearly 2.4 million Floridians to vote absentee – a Florida election record.

During the 2012 General Election, more Floridians voted than in any election in our state's history, with more than 8.5 million Floridians casting a ballot. The array of improvements to Florida's election system during the last 10 years certainly contributed to this historic election. But while the record vote total was a tremendous achievement, we intend to do better. Florida Governor Rick Scott has already tasked me with making preparations to ensure Florida's voting system is the most fair and accessible elections system in the United States.

Since Election Day, I have been traveling the state and seeking out the opinions of Florida's supervisors of elections to get their input on how to improve Florida's election system. I have also been in close contact with other knowledgeable Floridians, among them the Miami-Dade County Mayor who created a local task force to analyze the election and make recommendations. Additionally, I have asked my staff to do their own thorough assessment of the election. These efforts will ensure our recommended improvements reflect a variety of opinions that include local and statewide perspectives.

My fact-finding efforts are not yet complete, but there are already areas that have been identified for improvement. The most prominent and widely-cited issue for improvement involves taking further steps to increase the accessibility of Florida elections. There is no reason Floridians should have to wait hours in line to vote.

Several factors appear to have contributed to Florida's long lines at the polling places. These factors include a long ballot, fewer polling locations and a record number of voters. But these are all issues that can be corrected or be better anticipated during the planning process. I strongly support Governor Scott's call for bipartisan legislation that deals with the length of the ballot, the size of voting sites and the number of early voting days. Improvements in each of these areas will allow more Floridians to vote and to do so in a timelier manner.

In addition to steps taken at the statewide level, I intend to hold local officials publicly accountable if they do not meet the needs of their constituents. The local administration of an election is a key component to the success of an election, and all but one of Florida's 67 county supervisors of elections are elected to make the best decisions for their county. But all of the supervisors have a responsibility to ensure fair elections. One county that doesn't properly serve its voters does a disservice for the entire state and has the potential to cloud the positive steps taken by the rest of the state to conduct a fair and accessible election.

I can confidently say Florida conducted a fair and accessible election in 2012. But I am just as confident we can improve upon the election, because every election can be improved upon. Technology changes, needs change and experience encourages more innovation. When Governor Scott and the Florida Legislature recognized ways to improve our state's election system in 2011, the appropriate changes were made without delay. In 2013, Florida will make the right adjustments again because it's what Florida voters expect, need and deserve.

In the last 10 years, I have witnessed continual improvements in Florida elections, and I know Florida will continue its tremendous progress. My goal is to be able to report to you in two years that Florida conducted the *most* fair and *most* accessible election in 2014.

Florida is soon to be the third largest state in the nation. We do not intend to settle for good elections. We have a responsibility to conduct great elections. Elections are a symbol of our nation's freedom, and we need to show the world how great it is to live in a country with a government of the people, by the people and for the people.

Thank you again for allowing me to submit a testimony on this very important issue to my state and our country.

VIA E-MAIL

December 26, 2012

The Honorable Patrick Leahy, Chair
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, and Members of the Committee:

Forward Montana Foundation (FMF) thanks the Committee for holding this hearing on the state of the right to vote following the 2012 elections. We write to offer our insight and perspective on this cornerstone American right.

FMF trains, mobilizes, and educates the next generation of civic leaders for the State of Montana. With the decline in civic education through public schools, organizations like ours have taken on an increased role in developing the citizenship habits of the youth in our state. In 2012 alone, Forward Montana Foundation mobilized over 530 volunteers and helped 11,421 Montanans register to vote, a number that includes more than 1.5% of the total population of our state. In fact, we must acknowledge that some of the problems we highlight are a result of renewed interest in our democracy. After waning participation in the mid-90s, registration and turnout have risen back to levels previously seen in the 1970s.

Earlier this month, Montana District Court Judge Stewart Stadler wrote, "[T]he right to vote and to have that vote recorded is a fundamental right". (*Helena IR,* "Recount ordered in schools superintendent race
," Dec. 7, 2012). Unfortunately, inadequate resources, poorly drafted laws, and election administration errors threaten to disenfranchise and deny these rights to many Montanans.

This year, in the final weeks of the election and on Election Day itself, FMF fielded hundreds of inquiries from voters, many of whom we helped register or re-register to vote. Their concerns ranged from never receiving absentee ballots to inaccurate information provided through the Montana Secretary of State's website provided to allow voters to access information. In addition, on Election Day, FMF staff and volunteers helped provide information regarding polling place location to hundreds of confused voters directed to the county elections office in Missoula, MT, where our office is based.

The challenges around maintaining and protecting our right to vote largely fall within three categories: 1) out-of-date laws related to voter registration, mail and early voting, and polling place access; 2) inadequate resources and poor management of available resources to administer elections; and 3) inadequate safeguards against malicious attempts to suppress

eligible votes.

In Montana, voter registration forms and request forms for absentee ballots (with the exception of overseas voters) must be prepared and submitted on paper. The reliance on paper increases costs from data entry, increases the likelihood of data errors due to sloppy handwriting, and increases the workload for proper implementation of the National Voter Registration Act. In addition, simple generational expectations are not being met. Many of the young adults we encounter while helping voters register simply state that they will register online, often not understanding that in many states this option is unavailable.

With a significant uptick in participation in vote-by-mail, Montana has considered shifting entirely away from polling place-based elections. In the meantime, increased polling place consolidation has been motivated at the county level by a lack of financial and human resources. This consolidation of polling places has highlighted a significant concern with shifts to mail elections, especially if implemented without standards regarding availability of free ballot drop boxes. Historically disenfranchised populations such as American Indians are very likely to live great distances from county seats, increasing the chances that they'll face burdens to participate in elections under polling place consolidation or mail balloting.

This lack of resources is not entirely the fault of local governments. Many of the highest cost elections include significant federal and state questions, especially with an expansion in the number of ballot measures being referred by legislators and citizens. These questions can cost significant resources, but generally come with little to no financial support for ongoing election administration. Meanwhile, counties are expected to comply with state laws that may not prioritize efficient and secure election administration as much as partisan desires to shape the electorate. Despite our concern that current resources are inadequate, there is some indication that resources are also poorly spent. Election offices spend significant money on mailings and billboards to educate people about voting issues without much evidence that these expensive communication methods accomplish much in terms of informing the public.

Finally, the right to vote is not threatened simply by a sometimes chaotic and dysfunctional public system. It also frequently comes under attack by outside partisan interests. Shortly after 8pm on Election Day, as roughly 275 people waited in line to vote, two poll watchers threatened to challenge every person remaining in line (*Missoulian,* "Poll Watchers Challenge All Late-Registering Voters in Missoula," Nov. 6, 2012). This effort comes on the heels of a high profile effort in 2008 by the Montana Republican Party to challenge nearly 6,000 voters including one World War II hero and one deploying soldier, both properly registered, on the apparent basis of living in highly Democratic counties (*TPM*, "Montana GOP Targets War Hero in Voter Challenge," Oct. 6, 208). None of these challenges resulted in legal consequences despite sowing confusion, carrying virtually no chance of success, and imposing significant burdens upon election administration.

FORWARD MONTANA
FOUNDATION

Addressing these issues should not raise partisan concerns. Improving the efficiency and accuracy of our registration and voting systems should strengthen the security of the system while also making it easier to audit for deficiencies. While we agree that we must safeguard against voter fraud, we must be equally vigilant about malicious efforts to deny eligible Americans' right to vote.

Thank you for your consideration of our comments on the issue of the right to vote.

Andrea Marcoccio,
Executive Director
Forward Montana Foundation

TESTIMONY OF

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

SUBMITTED TO:
THE U.S. SENATE COMMITTEE ON THE JUDICIARY

On

"The State of the Right to Vote After the 2012 Election"

December 19, 2012

Testimony Submitted by Tanya Clay House
Public Policy Director, Lawyers' Committee for Civil Rights Under Law

Before the U.S. Senate Committee on the Judiciary

"The State of the Right to Vote After the 2012 Election"

Chairman Leahy and Ranking member Grassley, the Lawyers' Committee for Civil Rights Under Law appreciates this opportunity to provide testimony on the critical matter of our electoral system. The 2012 election demonstrated to us that many Americans are willing to go beyond any reasonable expectation in order to participate in their civil duty of voting; however it also showed us that election officials have much work to do to make sure that all eligible voters are able to cast a ballot and that voters are not subjected to unnecessary or malicious barriers to the ballot. The fact that in many states, voters were forced to wait in line for hours on end is unacceptable Through the non-partisan Election Protection coalition, we were able to document a great deal of useful information that we hope will provide a foundation for necessary improvements in our electoral system. This testimony will discuss some of these points and includes a Preliminary Report of the data collected by the Election Protection coalition's efforts during the recent 2012 Presidential Election.

BACKGROUND

The Lawyers' Committee was founded in 1963 following a meeting in which President John F. Kennedy charged the private bar with the mission of providing legal services to address racial discrimination. We continue to work with private law firms as well as public interest organizations to advance racial equality in our country by increasing educational opportunities, fair employment and business opportunities, community development, fair housing, environmental health and criminal justice, and meaningful participation in the electoral process.

Indeed, since our inception, voting rights has been at the center of our work. As part of our voting and elections work, we are also leaders in the Election Protection coalition. Election Protection works throughout the election cycle to expand access to our democracy for all eligible Americans, educates and empowers voters through various tools, including the 1-866-OUR-VOTE, 1-888-VE-Y-VOTA and 888-API-VOTE hotlines, collects data about the real problems with our election system, and puts a comprehensive support structure in place on Election Day. Since its inception, the 1-866-OUR-VOTE hotline has received calls from over half a million voters. Most recently, the Election Protection hotline received over 170,000 calls from voters seeking information and assistance during the 2012 Election cycle. As a supplement to this testimony, we have included a Preliminary Report of Election Protection that highlights the program for the 2012 Election cycle. The final report will be released in **January 2013.**

Major Issues of Concern

Throughout the year prognosticators and pundits kept searching for this year's version of the hanging chad that would come to define the 2012 elections. It turns out it wasn't clairvoyance that was necessary to predict the problems that would most plague this year's election, but rather an understanding of recent history (or a quick read of Election Protection's previous four post-election reports). Because the breakdowns that most bedeviled election officials and led to problems for voters in 2012 weren't new; many of the problems mirrored past years: voters turned away or being forced to cast a provisional ballot due to problems with our antiquated voter registration system, inadequately trained poll workers misapplying voter ID laws or mismanaging polling sites, confusion over polling locations, problems with absentee voting, long lines, and deceptive and intimidating practices. The true tragedy in all of this is that our elected leaders had opportunities to fix these problems and too many of them chose another path that only exacerbated the situation.

Voting Registration

This hearing is critical because Congress must come together in a bi-partisan way to ensure that all Americans are able to participate in our country's democracy in a meaningful way. As this testimony will show, it is imperative that our voter registration be modernized. The Lawyers' Committee took thousands of calls prior to Election Day answering registration questions alone. Voter registration problems led to countless additional issues during the election including the overuse of provisional ballots and ultimately the disenfranchisement of countless voters.

Early Voting

In addition to modernizing our registration system, it is critical that we continue to expand options for early voting. As documented through the Election Protection Hotline and on the ground efforts, limiting early voting only serves to create massive voter confusion and disenfranchisement at the polling place.

Poll Worker Training

This testimony highlights the ongoing problems with the lack of poll worker training and poll worker confusion at the polls. This resulted in numerous errors ultimately disenfranchising voters, particularly those with disabilities, low-income voters, students and the elderly.

Deceptive Practices and Voter Intimidation

Modernizing voting registration and expanding early voting practices is only a part of the puzzle. It is also critical that Congress address the problem of deceptive election practices. During the 2012 election deceptive practices unfortunately continued to play a prevalent role in confusing voters regarding their voting rights, including time, manner and place of voting as well as false information regarding who is able to vote. For example, in North Carolina, voters received phone calls informing them they would be able to "vote by phone." Other examples include the hundreds of suppressive billboards erected in predominately African American and Latino communities in certain states. These types of practices unfairly and maliciously deprive eligible voters of their right to vote. **More of these deceptive practices are document in the attached Preliminary Report and in the upcoming Final Report to be released in January of 2013.**

Voter ID

Since the 2010 mid elections, many state legislatures passed new laws requiring that voters show restrictive photo identification in order to get a ballot. However, litigation against several of these laws was successful and courts struck down or expanded the identification options. These laws passed created mass confusion at the polls and exacerbated long lines. Some states did not meet their obligations and provided Voters with limited education and information in many cases about the change in voter ID requirements. In addition, many poll workers were also confused about what identification voters were required to provide. This kind of confusion results in handing out unnecessary provisional ballots as well as adding wait time to vote. States like Pennsylvania experienced massive confusion on Election Day and this is highlighted more in the attached Preliminary Report.

Highlighted States of Concern

In addition to widespread issues across various states, we are especially concerned about several states that seemed to have particularly unique or acute problems including unreasonably long lines, widespread poor election administration, heightened instances of deceptive practices and widespread confusion regarding new election laws. While we discuss other states more in our "Preliminary Election Protection Report," we wanted to highlight a few states - Florida, Michigan and Ohio – which remain at the top of our list of states that must address their election law deficiencies prior to the 2014 midterm elections in order to prevent disenfranchisement.

Florida

This year, voters in Florida had to navigate a series of obstacles including incredibly long lines, absentee ballot issues, poorly trained poll workers, and inadequate election administration. Election Protection had over 500 volunteers in Miami-Dade, Broward, Hillsborough, Orange and Leon County to help and protect voters. In 2011, Florida passed HB 1355, a law that shortened early voting days, created extra steps for voters who moved to new counties and limited third party voter registration. The third party voter registration restrictions were held unconstitutional; however, the shortened early voting days and confusion over the additional requirements for voters who relocated to different counties compounded the problems that had already existed in Florida's tumultuous elections history.

Early Voting Highlights

Voters across Florida faced incredibly long lines during early voting and on Election Day. In Miami-Dade County, voters waited on line at the North Miami Library for over 8 hours on the Saturday before Election Day with the last voters voting after midnight. Despite repeated calls for Governor Scott to extend early voting to include the Sunday before Election Day, he refused. Miami-Dade attempted to help the problem by allowing voters to cast absentee ballots in person on Sunday. However, shortly after voting began, the Supervisor of Elections shut down voting after being overwhelmed by the number of voters. After hundreds of voters waiting outside protested, the Supervisor reopened the office for voting.

Election Day Highlights

On Election Day, Floridians continued to face long lines with the longest lines in Orange County, Miami-Dade County and Broward County. In Miami-Dade County, voters were incredibly determined to have their vote counted that they continued to vote after the presidential election was called.

- In Orlando, at the Lake Nona YMCA precinct, over 100 people were still in line to vote at 9:30 p.m. In Broward County, voters waited for hours and until at least 10pm in Tarmac and Weston.
- In Miramar, the long lines became even more problematic when precinct 27 ran out of ballots. Additional ballots didn't arrive until almost 7 p.m.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Voters with Disabilities

Voters with disabilities faced huge problems. During early voting and on Election Day, we received numerous calls from voters who were unable to stand in long lines. When they asked a

poll worker for assistance, or for a place to sit down while they waited for their turn in line, they were told there was nothing that could be done.

- A diabetic voter in Orlando, who had recent foot surgery, went to vote in Orange County. When she asked for a place to sit down while she waited, she was told there were no extra chairs. The voter had to stand in line for three and a half hours.
- A voter in Miami-Dade was unable to stand on the four hour line, when he asked for a place to sit down, he was told there was no room and to come back later. He came back twice before he was finally able to vote. Election Protection discussed these problems with the Supervisor's office *but due to the restrictions on locations for early voting sites, there was not enough room at these locations to increase waiting areas for voters who could not wait in line.*

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Absentee Ballot Problems

Voters were also plagued with absentee ballot issues. In Palm Beach, a printing error forced the county to hand copy 35,000 returned absentee ballots so they could be counted. When the county realized there was a problem, they halted sending out remaining absentee ballots but failed to notify voters who were waiting to receive them. In Broward County, we received numerous reports of voters who were not receiving the absentee ballots they had requested. For those who did not receive their absentee ballots, when they went to vote in person, they faced problems when poll workers attempted to determine if the voter had been sent the ballot.

Another problem was the signature match requirement in Florida. Throughout the year, the Lawyers' Committee worked with state partners to educate voters on the signature match and to urge voters to update their signature. Despite these efforts, Election Protection received numerous calls from voters who received letters that their absentee ballot was rejected. It is estimated that 1-3% of absentee ballots were rejected.

Poll Worker Confusion

Additionally, poll workers were confused over the new requirements for voters who moved to a different county. Voters who moved to a new county and failed to update their address were required to vote provisional ballots. This change did not impact voters who moved within their county. Across the state, voters who moved within their county were told by poll workers that they must vote a provisional ballot. Election Protection contacted Supervisors of Elections to notify them of this error. In some instances, the poll workers were reminded of the law, in others, the Supervisors did not have the capability to reeducate them.

Poll Location Confusion

Voters faced confusion when they voted in polling locations that housed more than one precinct and when polling locations moved. In Hillsborough, voters arrived to a polling location for three precincts and didn't know which precinct line to stand on. The site only had three computers for a voter to look up their precinct number; however, the computers ran slowly and broke down during different times during the day. If a voter waited on the wrong precinct line, when they were not on the list of voters for the precinct, the poll worker was supposed to direct them to the right precinct, however, because of computer and phone problems at the Hillsborough Supervisor's office, they were unable to do so. In our upcoming report, we will document examples of voters who were directed to the wrong polling place because of misinformation obtained at another polling place.

Fortunately, when Election Protection spoke to the Hillsborough Supervisor of Election's office about problems with voters in the wrong polling location, we asked if there was anything we could do to assist with this problem. The office encouraged us to ask voters arriving at the polls to check the Election Protection App to make sure they were in the right polling location. This helped to ease the burden on the poll workers.

Michigan

On Election Day, Michigan voters were met with considerable disorganization, widespread machine failures, inadequate staffing, and long lines. Election Protection volunteers, in close collaboration with the Michigan Election Coalition, were deployed at precincts throughout the state including Detroit, Ann Arbor, Ypsilanti, Southfield, Oak Park, Pontiac, Flint, Saginaw, Dearborn, Hamtramck, Lansing, East Lansing, Allegan, Benton Harbor, and St. Joseph. Volunteers were also dispatched to Warren, Westland, and Taylor as needed. Voters suffered from a combination of resource deficits, poor planning by election officials, and legislative distractions that took focus away from the real problems voters face on Election Day.

Long Lines

Long lines were the problem of the day. In Wayne and Oakland counties voters experienced machine breakdowns and malfunctions, long lines, and poor polling place management. Detroit had wait times that lasted several hours.

- At the Wayne County Community College polling site, a voter reported waiting in a line that was 300 people deep and several other polling places had wait times of three hours or longer.
- An elderly couple in their eighties who had been standing in line for over an hour asked to move to the front of the line, but were denied and left without voting.

- Long lines were also a persistent problem in in Battle Creek, Flint, Lansing, Saginaw, and Grand Rapids and many other smaller towns such as Hamtramck, Belleville, and Westland.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Election Protection volunteers helped alleviate lines by assisting voters to verify registration and polling place information, working with election officials to cut wait times, and even obtaining privacy screens so more voters could vote at one time. Midway through Election Day, Election Protection transitioned poll monitors in high-traffic polling locations out of their roles handing out voter rights information, and instead encouraging voters to stay in line. Many of them distributed coffee and snacks which were well-received by impatient and cold voters standing outside.

Voting Machine Failures

Contributing to the long lines were voting machine failures around the state.

- In East Lansing at the Vineyard Church polling site a paper jam in the ballot counter, caused poll workers to unlock the ballot box to place the ballots there for safekeeping until the machine was fixed and the ballots could actually be fed in. The voter, not trusting that process, waited until the machine was fixed to watch her ballot be fed to the vote machine, however the voter reported that most people around her were just putting their ballots in the ballot box but uncounted.
- Another voter from Oakland County reported that a voting machine rejected the ballot of a voter in front of her, that the vote counter did not go up when she entered hers, but did go up when voter behind her entered his. Again, the voter was concerned that her vote would not count.

Machine problems were reported from Detroit, Taylor, Macomb County, Lake Charter, Bellville, Ypsilanti, Van Buren, Livonia, and other areas around the state.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Voter ID Problems

One of the most frequent problems reported was with voters who were not being issued an identification affidavit in lieu of providing a photo ID, as required by Michigan law. In Royal Oak, Michigan, a voter reported that while she was waiting in a long line at the Emanuel Bethel Church polling location, a woman was standing outside shouting at the people in line, "Don't forget you need your ID to vote." When the voter asked a poll worker, the poll worker responded that it was true that voters need photo ID to vote, but when the voter persisted the poll

worker finally admitted no ID was required. While the voter was ultimately able to vote without ID, many reports were received from voters who were being turned away because they did not have photo ID. This has been a recurring and significant problem every election since Michigan passed its photo ID law. This problem was reported in Detroit, Oakland County, Macomb County, Benton Harbor, Grand Rapids, Dearborn, Warren, and Waterford.

Polling Location Confusion

Election Protection volunteers attributed the disorganization to polling locations housing multiple precincts and inadequate signage and supervision to direct voters to the correct line. Much of the chaos and wait times at the polling locations were the result of poor organization and supervision of multi-precinct polling locations. Voters were extremely frustrated at the prospect of waiting in a two-hour line with no knowledge of whether they were standing in the correct line and many left in frustration. Disorganization at multi-precinct polling sites combined with malfunctioning machines and poorly trained poll workers became a recipe for chaos and voter frustration. It became obvious to Election Protection that more and better trained poll workers were needed. Election administration planning and contingency protocols were lacking in the face of equipment failures and ballot shortages.

Voter Registration Problems

Other widespread problems reported were from voters who had registered to vote but who were not showing up on the voter rolls at their polling place. This problem was reported from around the state with voters insisting they registered to vote. In some cases, Election Protection was able to verify a voter as properly registered even though they were not on the rolls. For instance:

- In Flint, a voter reported that she was told she was not registered even though she registered to vote in April 2011. She asked to vote a provisional ballot, but was turned away. Similar stories of poll workers refusing to issue provisional ballots were reported from voters in West Flint, Detroit, and Davison after waiting in line for hours.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Election Day Resources and Additional Concerns

Several jurisdictions also ran out of election materials, including ballots and ballot applications. One caller reported in the city of Warren that their polling location ran out of ballots at 10:45 am. Election Protection volunteers were able to ensure that supplies were replenished before voters were turned away.

Overall, Election Protection responded to over 500 calls and countless field volunteer alerts across the state, which had a significant impact on the experience of Michigan voters and the integrity of the election. In addition to Election Day assistance, Election Protection and the Michigan Election Coalition worked with clerks to identify counties in need of resources – including bilingual poll workers and encouraged trained volunteers to apply.

Ohio

While Election Day went smoothly for many of Ohio's voters, many others dealt with distinct and recurring voting problems. Issues with provisional ballots, voting machine failures, voters missing from the rolls, voter identification rules, and poll worker confusion were reported around the State. Some counties, like Cuyahoga County, were better organized and efficiently responded to issues as they came up on Election Day, while others, such as Summit County, suffered general disorganization at the polling locations with poll worker problems, inadequate staffing, ballot shortages, poor signage, and inadequate response to equipment failures. The Ohio Election Protection program took calls from around the state and administered comprehensive field programs with hundreds of volunteers monitoring polling locations in target counties that included Hamilton, Franklin, Cuyahoga, Montgomery, Lucas, Mahoning, and Trumbull. Election Protection also deployed field volunteers to Summit and Stark counties on Election Day to respond to recurring problems reported into the hotline.

State Legislative Changes Caused Confusion at the Polls

Well before Election Day, Ohio elections were marred by a series of election bills designed to change voting rules of the state. In early 2011 Ohio Secretary of State Jon Husted announced a legislative proposal entitled "Ready 2012 and Beyond" (Ready 2012). Ready 2012 was a package of changes to Ohio's election laws that, among its numerous proposals, aimed to reduce the early voting period from 35 days to 16 days, limit the hours that county boards of elections were able to offer early voting on Saturdays, eliminate early voting on Sundays altogether, and eliminate the last three days of the early voting period. The cuts to early voting were extremely controversial due to the fact that early voting has become an extremely popular way for voters to cast their ballots, especially among Ohio's African American voters. In 2008, African American churches organized massive GOTV efforts on Sundays, popularly known as "Souls to the Polls," and the elimination of Sunday voting was regarded by many within the community as a racially motivated effort to suppress turnout because of perceived political ideologies. The legislation was also unpopular given the provision eradicating the last three days of early voting which had historically been the period with the highest voter turnout during the early voting period. In addition to the reductions in early voting, the Ready 2012 proposals would have reduced the absentee voting period from 35 to 21 days prior to an election, eliminated "Golden Week" which allows voters to register to vote and vote early at the same time, and prohibited county boards of

election from encouraging absentee ballot participation by prohibiting counties from sending unsolicited absentee ballot applications, and from paying return postage on applications or voted ballots.

Unfortunately, HB 194 quickly passed through the Ohio legislature and was signed into law by Governor John Kasich. In response, voter advocates initiated an effort to put HB 194 to a referendum vote in the November 2012 election and were successful in obtaining enough signatures – over 250,000 certified signatures –effectively halting the effect of the law until after Election Day. Ultimately, a repeal bill was introduced and SB 295 was the first bill in Ohio history that repealed a bill awaiting referendum by voters.

The early voting fight, however, did not end with HB 194's repeal. A subsequent bill, HB 224, was enacted which separately eliminated the last three days of early voting for most of Ohio's voters and, when combined with the repeal of HB 194, established a more generous early voting deadline for military and overseas voters. A lawsuit filed by the Presidential campaign of Barack Obama (Obama for America or "OFA"), challenged the disparate early voting deadlines and sought to restore early voting for the three days prior to Election Day for all Ohio voters. In support of its challenge, OFA claimed that "tens of thousands of Ohio voters" would attempt to cast ballots on those days, and that early voters are disproportionately members of minority groups and the working class. To support these assertions, OFA cited election studies to estimate the minority component of the early in person voter universe that the proposed restrictions to the early in person voting period in Ohio disproportionately harm African Americans in Cuyahoga County, where over half of early voters are estimated to be African Americans . Ultimately, these arguments and empirical reports factored into a federal judge's decision to grant OFA a preliminary injunction, thereby temporarily reinstating the prior Ohio early voting period.

Finally, on August 15, 2012, in response to a series of tie votes submitted by boards of elections on the issue of extended early voting hours, which was widely offered by boards of election during the 2008 election, the Secretary of State issued Directive 2012-35, which effectively prohibited counties from offering any weekend voting hours whatsoever and limited the number of hours boards of election were able to offer early voting on weekdays beyond regular business hours.

Voter ID Problems

One of the most extensively reported problems statewide was too many provisional ballots being issued by widespread misapplication of the voter ID requirements – specifically, forcing voters with valid driver's licenses to vote provisionally even though such voters were entitled to a regular ballot. Ohio law permits driver's licenses with outdated addresses to be used as an acceptable form of identification so long as the voter is properly registered at their current address.

- A voter from Cincinnati reported that a poll worker at the Little Sisters of the Poor nursing home told him he had to vote provisionally because they would not accept his driver's license with his previous address, even though he was properly registered to vote at his current address. The voter was able to provide the additional proof and was given a regular ballot, but was but was concerned that other voters would be wrongly required to vote a provisional ballot.
- This problem came up frequently in in Lucas, Montgomery Hamilton, Franklin, Cuyahoga, Stark and Summit counties.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Voting Machine Failures

Machine failures were a systemic problem on Election Day, with multiple reports from Cuyahoga, Hamilton, Lorain, Lucas, Montgomery, Summit, and Franklin counties. Election Protection documented at least 10 polling locations in Cuyahoga County where there were machine breakdowns or malfunctions such as:

- The Deborah Delisle Educational Center polling location in Cleveland Heights, where a voter reported that the optical scan machine was not working and she was instructed to put ballot in an emergency slot, which was overflowing with ballots. The voter was concerned her vote would not be count. This was not an unusual occurrence or concern reported by voters to Election Protection.

The Cuyahoga County Board of Elections was responsive to machine issues as they arose, however the problems continued to occur throughout the day. For example:

- In Canton, a voter reported that only three out of seven machines were printing out the verified paper record for voters, leading to longer lines. Election Protection worked with the Stark County Board of Elections, which deployed a technician to polling site and directed poll workers to issue emergency paper ballots in the interim.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Poll Worker Confusion

Enlarging the problem of machine failures were poll workers who did not follow appropriate procedures when machine issues occurred, often leaving voters distressed that their vote would not count. For example:

- A disabled veteran accidentally selected two choices on his ballot for President and the smudge was picked up by the machine, and gave him an option to recast the

ballot. The poll worker hit the decline option to recast on the machine without the voter's permission, even though the voter wanted to recast his ballot. Under Ohio law, voters with spoiled ballots are entitled to cast three ballots.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Long Lines

Long lines were reported in in Summit, Cuyahoga, Warren, *Franklin*, and Montgomery counties.

- A caller from Summit County reported that voters were waiting for over two hours to vote at the Laurel Lake location, a retirement community, and that elderly voters were having trouble standing in line for that long.
- Adding to the delay was confusion among Ohio State student voters about their proper polling location who mistakenly believed the Ohio Union served all Ohio State University students. Election Protection deployed a team of volunteers to help verify the polling locations of students.

Montgomery County in particular experienced much longer lines than in 2008. In addition to machine breakdowns and inefficiencies at the polling sites, Montgomery instituted the most far reaching precinct and polling place consolidation in the State after the 2008 presidential election. There were very few lines in 2008 and those that formed were only for a few minutes in the morning. This year, Election Protection visited at least ten locations that had lines in the mornings, half of which continued into the early afternoon.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Ineffective and Confusing Administrative Procedures

Another issue identified in Cuyahoga and Franklin counties was inadequate matching protocols which identified a large number of voters who requested absentee ballots as unregistered, when they were in fact registered. Voting advocates worked with the Cuyahoga County Board of Elections to correct this with improved matching techniques and the Board followed up with these voters. However, the same deficient matching process is also potentially being employed by other counties to verify the eligibility of voters who cast provisional ballots. In response to these concerns, voting advocates worked with the Ohio Secretary of State's office to develop best practices for Boards of Election to use when matching voters to the voter file.

Voter Registration Problems

Finally, Election Protection received reports from around the state of list maintenance problems with the voter registration list. A number of voters reported not being on the rolls even though

they registered to vote. This problem was reported in Hamilton, Franklin, and Cuyahoga counties. For example:

- In Franklin County, voters reported they had Franklin County Board of Election registration cards verifying their precincts, but poll workers were unable to find them in the poll books.

Election Protection observed that many of the voting problems experienced on Election Day are attributable to poll worker problems and inadequate training. Election Protection volunteers who attended the trainings stated that they were quick and did not provide adequate instructions to poll workers.

***More information with be in the forthcoming Final Election Protection Report in January of 2013**

Policy Recommendations

Overhaul the American Electoral System

While the American electoral system is primarily controlled by the states, the federal government does have very important and substantial role to play in ensuring that the rights of all voters are protected. If the continuing problems of the recent elections are any guide, among other things, the modernization of the nation's voter registration system is long overdue. Such a structural overhaul would substantially decrease, if not eliminate, many of the problems just highlighted in this testimony and our Preliminary Election Protection Report. Once again, as in previous elections, in 2012, a high percentage--of all problems reported to Election Protection were a result of registration. Modernizing the registration system will not only improve the foundation of our democracy, it will allow communities to reinvest these resources in other critical functions. Modernizing voter registration will make the American electoral system far more efficient and effective.

Voter Registration Modernization

This concept of voter registration modernization is a comprehensive approach to overhauling the primary way in which voters register, maintain and update their registration. This would include adopting such policies as automatic and permanent registration and same-day voter registration. While this may simplistic, the reverberating effects of such changes are momentous. If implemented correctly, these basic changes could help to correct the following problems almost immediately: under-registration of traditionally disenfranchised communities, including people of color, low income, students, elderly, people with disabilities and more; missing names from

voter registration rolls; challenges to registration status and the misuse and overuse of provisional ballots because of clerical errors, voter change in residency or other issues.

Currently, the primary vehicle that includes a version of such a policy prescription is the Voter Empowerment Act (VEA). Many Americans, particularly communities of color as well as other historically disenfranchised groups, face significant barriers preventing them from freely casting a ballot on Election Day. In order to ensure that all Americans can exercise their fundamental constitutional right to vote, the Voter Empowerment Act , introduced by Congressman John Lewis in June 2012, would make voter registration more accessible for all Americans and improve the integrity of our elections by creating greater accountability for election officials. By ensuring that eligible voters can participate on Election Day, the VEA will safeguard the vitality of our democracy and the Lawyers' Committee strongly supports this effort.

Expand Early Voting Opportunities

In addition to modernizing our registration system, it is critical that we continue to expand options for early voting. The long lines that were experienced in several states during this election cycle demonstrate why it is important that expanded opportunities are crucial. Allowing people to excise their right to vote early helps to alleviate long lines on Election Day and prevents polls from having to stay open later than anticipated, which costs counties additional money. The Lawyers' Committee supports legislative options to expand such early voting opportunities.

Election-Day Registration

Voters may not realize that their registration is not updated before Election Day, at which point, in states without same day registration, these voters will be unable to take any remedial steps to be able to cast a ballot. By utilizing already-existing databases with updated information about, for example, a voter's current address, states may make it easier for voters to ensure that their registration remains current. Additionally, same day registration permits voters to update their registration or even register for the first time on Election Day. Other reforms such as online registration make voting more accessible for eligible voters.

Criminalize Deceptive Practices and Voter Intimidation

Voters are often given false information about elections from parties who wish to manipulate the result of that election. Perpetrators of deceptive practices and voter intimidation disenfranchise voters by deliberately disseminating misinformation about an election or exercising coercive influence over a voter's choice of candidate. Most states do not have laws addressing deceptive practices, or, in states that do have these laws, they are not enforced due to ambiguity about the types of deceptive practices they cover. Deceptive practices and voter intimidation prevent elections from being an accurate reflection of the peoples' electoral choice.

For these reasons and more, Congress should immediately pass a law that provides counties and states with the tools necessary properly punish dirty tricks and voter intimidation. Again, as highlighted in this report, deceptive voter practices include the creation and distribution of resources listing the wrong date or time for the election, giving inaccurate information about voter ineligibility, or promoting false endorsements of candidates. Sadly, these dirty tricks continue to proliferate every election cycle. Current law is clearly deficient in protecting voters' rights against these onerous practices. There needs to be a clear civil action to an additional deterrent and give more resources for enforcement officials to go after perpetrators of voter deception. Of course, once the false information has been disseminated, the damage has been done. A mechanism must be put in place to ensure the government quickly and widely publicizes corrective information so voters are not fooled by this activity.

On December 14, 2011, Senators Ben Cardin (D-MD) and Charles Schumer (D-NY) introduced the bill, *Deceptive Practices and Voter Intimidation Prevention Act of 2011,* to create tough criminal and civil penalties for those who use voter deception tactics[1]. This bill will clarify the definition of deceptive practices for law enforcement officials, making it easier for these officials to prosecute perpetrators of deceptive practices. Additionally, the bill's criminal provisions create deterrence measures to prevent future acts intended to intimidate and mislead voters, and also ensure that perpetrators face real consequences when they mislead voters. Finally, the bill will also require the federal government to investigate allegations of deceptive practices. This is necessary so that it can take an active role in protecting voters against false information regarding the ability to participate in elections by immediately taking action and publicizing corrective information if it receives credible reports of deceptive voting practices. The immediate dissemination of this information will mitigate the potentially disenfranchising confusion perpetrators of these actions are trying to sow.

This legislation sheds light on the severity of deceptive voter practices that threaten our democracy and recognizes the power of Congress to prohibit discriminatory tactics in elections as stated under the Fifteenth Amendment and the 1965 Voting Rights Act[16]. The *Deceptive Practices and Voter Intimidation Prevention Act of 2011* has been endorsed by the Lawyers' Committee for Civil Rights Under Law and we urge its swift passage.

Prohibit Voter Caging

Some individuals or organizations targeting particular groups of voters practice "voter caging," in which the individual or group sends out a non-forwardable mass mailing, challenging voters whose mailings are returned. The Lawyers' Committee supports legislation like that introduced by Senator Whitehouse that would institute criminal penalties for individuals engaging in voter caging, protecting voters from disenfranchisement on Election Day.

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[1] Op-ed piece by U.S. Senator Ben Cardin "Deceptive Voter Practices Cannot Be Tolerated" available at http://cardin.senate.gov/newsroom/news/deceptive-voter-practices-cannot-be-tolerated

Conclusion

Federal funding is desperately needed. Election officials are under-resourced and over-worked. Voting equipment regularly malfunctions and many jurisdictions' machines are at the f offices need to be professionally staffed at the proper capacity. Technology must be adopted to create greater efficiencies across the system, especially for modernizing voter registration. Voter education is so minimal that it has little effect to actually informing voters of the labyrinth of rules and procedures they must follow to exercise their right to vote. Even as Ohio Secretary of State Jon Husted recently stated, "You can't run elections on the cheap." Democracy is at the very core of how we define ourselves as Americans. Election funding should be a top priority for our nation's leaders.

It is far past time that we take advantage of advances in technology to modernize our system of registration in order to save money, ensure all voters are able to participate in our democracy, and improve voter confidence. An opportunity has been created for Congress to lead in a bi-partisan fashion and set our country on the course to a truly accessible and secure system of elections. The Lawyers' Committee for Civil Rights Under Law looks forward to working with leaders on both sides of the aisle to make that opportunity a reality.

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STATEMENT OF
WADE HENDERSON, PRESIDENT & CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

"THE STATE OF THE RIGHT TO VOTE AFTER THE 2012 ELECTION"

SENATE COMMITTEE ON THE JUDICIARY

DECEMBER 19, 2012

Chairman Leahy, Ranking Member Grassley, and Members of the Committee: 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 state of the right to vote after the 2012 election.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership 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 believes that voting in a democracy is a critical civil right. In fact, the right to vote is fundamental to the attainment and preservation of every other civil right. It is essential to our democracy. Indeed, it is the language of our democracy.

Our communities fought hard to secure the right to vote, and to eliminate the barriers to voting -- the poll taxes, literacy tests, and brutal physical intimidation that marred our nation's history. We fought for the passage of the Voting Rights Act, and for each of the overwhelmingly successful reauthorization efforts. Today's efforts at disfranchisement, while more subtle, are no less pernicious.

A National Pattern of Voter Suppression

Over the past few years, there has been an assault waged against our constitutional right to vote that is nothing short of a concerted effort to decide the outcome of the 2012 elections before any ballot was cast.

These efforts were part of a coordinated, insidious effort to restrict voting rights across the country led by the corporate-sponsored American Legislative Exchange Council (ALEC), among others, which provided model voter suppression legislation to state legislators.

Since the 2010 midterm elections, state legislators across the country have introduced and passed an unprecedented number of voting measures that threaten our democracy by suppressing voter participation. Recently erected barriers included photo ID requirements, shortened early voting periods, limits on poll worker assistance, proof of citizenship requirements, restrictions on same day and community-based registration, and the disenfranchisement of formerly incarcerated persons. The Brennan Center for Justice, in its report "Voting Law Changes in 2012," estimated that more than five million Americans would be disenfranchised by these laws.[1]

In 2011 alone, voter suppression bills were introduced in 34 states and laws passed in 14 of those states. This past year, legislation was pending in 32 states, which included new voter ID proposals in 14 states, proposals to strengthen existing voter ID laws in ten states, and bills in nine states to amend the new voter ID laws passed in 2011. The governors of both Pennsylvania and Virginia signed new voter ID bills passed by their states' legislatures. As the Brennan Center for Justice noted, the states that have passed such laws account for 171 electoral-college votes, two-thirds of the 270 needed to win the presidency.[2]

Voting rights advocates fought these laws in all imaginable ways. Groups such as Color of Change put pressure on corporations with membership in ALEC, resulting in almost a dozen high profile corporation and foundation withdrawals from ALEC, and forcing ALEC to disband its Public Safety and Elections Task Force, which provided the model Voter ID bills.

While we can only hope that ALEC will truly move away from its attempts at voter suppression, such laws continue to proliferate and we have seen a continuation of state-sponsored suppressive voting legislation throughout the country as state legislative session begin to resume. Many advocates worked state by state, educating voters, collecting signatures, filing lawsuits, and lobbying the state legislatures to reverse this damaging trend. The League of Women Voters and the ACLU brought suit in Wisconsin challenging voter ID and registration changes,[3] Project Vote, Advancement Project, Fair Elections Legal Network, and Latino Justice PRLDEF filed suit in Florida challenging purges of voter rolls;[4] the Advancement Project along with local advocates, filed suit challenging Pennsylvania's photo ID law;[5] and the Brennan Center for Justice and Common Cause Colorado challenged the Colorado Secretary of State's effort to limit which voters got ballots mailed to them.[6] In Wisconsin and Ohio, as the election neared, anonymously-funded billboards appeared in predominantly low-income and minority

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[1] Brennan Center for Justice, "Voting Law Changes in 2012" http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/
[2] *Id.*
[3] http://colorlines.com/archives/2012/03/judge_halts_wisconsins_toughest-in-the-nation_voter_id_law.html
[4] http://www.projectvote.org/newsreleases.html?start=30
[5] http://www.citizenscall.net/public-accountability/pa-voting-rights-advocates-file-suit-over-voter-id-law-and-seek-injunction-to-block-enforcement-for-nov-election/
[6] http://www.brennancenter.org/content/resource/gessler_v._johnson/

neighborhoods threatening "Voter Fraud is a Felony! up to 3 ½ years & $10,000 Fine." National advocacy groups banded together to pressure the billboard companies to remove the signs, and then funded countervailing billboards urging citizens to vote. [7] In Ohio, after the state legislature passed HB 194, a law that would have severely limited early and absentee voting, prohibited poll workers from assisting voters, and made it more difficult for local boards of elections to promote early voting to registered voters, advocates organized in massive numbers to fight these restrictive measures. The citizens of Ohio, led by Fair Elections Ohio and a coalition of allies that included labor, civil rights, the faith community, and good government groups organized to protect the right to vote by utilizing the constitutional referendum process. As proof of its strength and commitment, this coalition collected 400,000 signatures, significantly more than the 231,000 required, to put HB 194 on the ballot for the November 2012 presidential election. Fearing reversal, the state legislature introduced a new bill to repeal most of HB 194.

The Department of Justice (DOJ) also played a crucial role in ensuring that access to the vote was protected. Attorney General Eric Holder spoke several times on the importance of voter access and the Civil Rights Division has used the Voting Rights Act to protect against the implementation of discriminatory laws.

The Continued Need for the Voting Rights Act

The 2012 election, for all its problems, reaffirmed the tremendous power of the vote. In spite of attempts to disenfranchise a targeted group of citizens, the American people showed up to make their voices heard. Although results are still being tabulated, the power of the Black vote, the Latino vote, the Asian American vote, the youth vote, and the vote of women in the 2012 election confirmed our hopes coming out of the 2008 election – that the profound demographic shifts taking place in our country can be harnessed to create a new coalition of voters whose voices cannot be ignored.[8]

But these voters had the Voting Rights Act (VRA) and the Department of Justice to thank for helping to ensure that their vote was protected. Without the protection of the VRA, especially Section 5, the threat to the right to vote would have been much greater.

Just this past year, DOJ objected to a total of 16 proposed changes under Section 5. The Justice Department used the VRA to block voter ID laws in Texas and South Carolina, to invalidate new district maps in Texas, and to prevent some jurisdictions in Florida from reducing early voting.[9] The value of Section 5 as the primary means to protect the right to vote of traditionally disenfranchised groups cannot be overlooked or understated. In a recent speech, Attorney General Holder reaffirmed this sentiment when he stated "the unfortunate reality is that, even today, too many citizens have reason to fear that their right to vote, their access to the ballot – and their ability to have their votes counted – is under threat. In too many places, troubling

[7] http://www.npr.org/blogs/itsallpolitics/2012/10/18/163158185/swing-state-billboards-warning-against-voter-fraud-stir-backlash
[8] http://www.gallup.com/poll/154559/us-presidential-election-center.aspx
[9] http://www.propublica.org/article/the-state-of-section-5

divisions and disparities remain. And, despite the remarkable, once-unimaginable progress that we've seen over the last half century – indeed, over the last four years – Section 5 remains an indispensible tool for eradicating racial discrimination."[10]

That is why so many agree that Section 5 remains essential to protecting the rights of millions across this country. It is so powerful that in many instances, jurisdictions withdraw their proposed changes rather than have the federal government block them. A 2007 Columbia University paper[11] found that of the 800 times since 1982 the Department of Justice *merely asked* for more information from states and local governments about proposed changes, more than a quarter of those jurisdictions voluntarily withdrew their proposals. This prophylactic effect is often overlooked, but is critical to the success and continued need of Section 5. Without Section 5, it is entirely possible that we would be dealing with a wave of discriminatory voting laws that would be practically impossible for voting rights advocates and litigators to handle.

In 2006, after review of an extensive record with overwhelming evidence of voting discrimination against minorities in the covered jurisdictions, Congress, almost unanimously, reauthorized Section 5 for an addition 25 years. Notably, the VRA includes a provision that allows jurisdictions to bail out if they meet certain conditions. The Attorney General noted, "since the provision took effect in 1984, bailout has been granted in 38 separate cases – with 20 of those cases in the past three years alone."[12] In Virginia alone, 18 jurisdictions have successfully bailed out of Section 5 preclearance. Kings County, North Carolina and Sandy Springs, Georgia became the first non-VA jurisdictions to bailout of coverage on September 22, 2010.[13] The effectiveness of this provision proves that Section 5 is not only necessary, but proportionate to the challenges it seeks to address.

Voting Rights Reform Moving Forward

While the VRA is a crucial tool in the arsenal of securing the right to vote, we believe there are several measures Congress can take to strengthen our democracy and improve the overall administration of elections.

Election Day 2012 showed everyone what civil and human rights advocates have known for a very long time: our electoral system is outdated, inefficient, confusing, and difficult for citizens to easily navigate. Many people stood in lines for nearly eight hours in places like Virginia, Florida, Pennsylvania and Ohio to cast their vote[14] and, despite legislation passed over the last few decades, such as the Help American Vote Act and the National Voter Registration Act to improve registration and voting, too many people were turned away or forced to vote

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[10] Attorney General Eric Holder Speaks at the John F. Kennedy Presidential Library Boston Tuesday, December 11, 2012 http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-121211.html

[11] http://valelawjournal.org/the-vale-law-journal-pocket-part/election-law/the-promise-and-pitfalls-of-the-new-voting-rights-act-%28vra%29/

[12] Attorney General Eric Holder Speaks at the John F. Kennedy Presidential Library Boston Tuesday, December 11, 2012 http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-121211.html

[13] http://www.justice.gov/opa/pr/2010/September/10-crt-1067.html

[14] http://www.usatoday.com/story/news/politics/2012/11/06/voting-problems-presidential-election/1685783/

provisionally in many states because of clerical errors, lack of resources, and problems with poll worker training.

On election night, President Obama noted the long election lines and recognized the need to fix our system. The Voter Empowerment Act, introduced earlier this year, is a comprehensive bill which includes the components necessary to address many of the problems in the system. We believe that any comprehensive electoral reform legislation must include modernized voter registration that should be automatic, online, and portable; same-day registration; national standards for poll worker training; requirements that states equitably allocate staff, equipment, ballots and voting locations to ensure that the voting experience is as easy as possible; and early voting to avoid unreasonable election day lines. It is imperative that we bring our elections into the 21st century, in order to improve their integrity and conserve taxpayer dollars.

We urge you to work 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 more than **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.

Conclusion

In a speech last year on voting, the Attorney General stated, "all eligible citizens can and should be automatically registered to vote. The ability to vote is a right – it is not a privilege."[15]

Though voting is the language of democracy, we have gotten into the habit of focusing on it primarily in election years when there are threats or when it is time to engage our communities in the process. Our commitment to protecting the right to vote and encouraging civic participation has to become embedded in the daily business of our work going forward, rather than driven by election cycles. Now is the time to look forward to the future of our democracy and work on how to perfect it. That endeavor starts with improving the overall voting process.

Thank you for your leadership on this critical issue.

[15] http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-111213.html

Chairman Patrick Leahy
Senate Judiciary Committee
Hearing on the State of the Right to Vote After the 2012 Election
December 19, 2012

Our Nation has grown stronger since its Founding as more Americans have been able to exercise their right to vote. The actions taken by previous generations -- through a Civil War, through Constitutional amendments, and through the long struggles of the civil rights movement-- have worked to break down barriers that stood in the way of all Americans participating in our Democracy. Yet, as we saw in last month's election, our work is far from done. Barriers to voting continue to exist and evolve.

The right to vote and to have your vote count is a foundational right because it secures the effectiveness of the other protections of the law and the Constitution. Before the election, we held a hearing that focused on new barriers to the right to vote, building on the work done in field hearings held by Senator Durbin in Florida and Ohio. We heard testimony about the renewed effort in many states to deny millions of Americans access to the ballot box through voter purges and voter identification laws. I was concerned that these barriers would stand between millions of Americans and the ballot box.

What we saw during the election shows that we were right to be concerned. Purges of voter rolls, restrictions on voter registration and limitations on early voting – which in previous elections enabled millions to vote-- led to unnecessary and avoidable problems on Election Day. In places like Florida and Virginia, voters including senior citizens were required to stand in line for hours before casting a vote. In Ohio, provisional ballots were used in place of regular ballots in far too many precincts, particularly those with heavier minority populations, and some voters were wrongly denied the ability to cast ballots at all. Onerous and confusing voter identification requirements led to complications in places like Pennsylvania, Arizona, Texas, and South Carolina. Throughout the country, misleading political advertising and robo calls worked to sow confusion and suppress the vote.

Some Republican officials behind these barriers have been remarkably honest that they enacted these laws to help their candidates win elections. A consultant to the campaign of the Republican presidential candidate said recently, "A lot of us are campaign officials -- or campaign professionals -- and we want to do everything we can to help our side. Sometimes we think that's voter ID, sometimes we think that's longer lines -- whatever it may be." Before the election, Pennsylvania's House Republican leader said they passed Pennsylvania's new voter ID law in order to "allow" Republican presidential nominee Mitt Romney to win the state. These are not good enough reasons to take away the right to vote and they are shameful.

Just because millions of Americans successfully overcame abusive practices in order to cast their ballot does not make those practices right. It does not justify the burdens that prevented millions more from being able to vote. Barriers that remind us of a time when discriminatory practices such as poll taxes, literacy tests, and grandfather clauses were commonplace have no place in 21st century America. Barriers that seem to fall heaviest on African-Americans, Hispanics, military veterans, college students, the poor, and senior citizens risk undermining our Constitution's core values.

Ensuring that all Americans are able to vote and have their vote counted should be an issue of concern to Democrats and Republicans, and a matter of conscience for all of us regardless of political party. That is how it was six years ago, when members of Congress, Republicans and Democrats, stood together on the Capitol steps to reaffirm our commitment to full democratic participation by reauthorizing the key expiring provisions of the Voting Rights Act of 1965.

The Voting Rights Act was the result of a historic struggle for civil rights, which reached a crucial turning point on March 7, 1965, on the Edmund Pettis Bridge in Selma, Alabama, when state troopers brutally attacked John Lewis and his fellow civil rights marchers who were trying to exercise their civil rights. The events of that day, now known as "Bloody Sunday," were a catalyst to the passage of the landmark Voting Rights Act, which finally ensured 100 years after the enactment of the Civil War amendments that the Constitution's guarantees of equal access to the political process, regardless of race, would not be undermined by discriminatory practices.

Our work in 2006 to reinvigorate and reauthorize the Voting Rights Act stood in stark contrast to the tremendous resistance and bitter politics which met the initial enactment of that landmark law. This Committee played a key role. After nearly 20 hearings in this Committee and the House Judiciary Committee, we found that Section 5 of the Voting Rights Act continues to be an effective and necessary tool for protecting voting rights against modern day barriers to voting. The legislation contained specific findings about the need for reauthorization and concluded that without reauthorization the gains we have made would be undermined. Our efforts reached completion when President Bush signed the bill into law after a unanimous vote in the Senate and nearly unanimous vote in the House.

The Supreme Court got it right three years ago when it upheld a challenge to the constitutional authority of Congress to reauthorize Section 5. Next year, the Supreme Court will hear a similar challenge. Neither the words of the Constitution nor the importance of these critical provisions for protecting the right to vote has changed in the last three years. Under the specific words of the 14th and 15th Amendments, Congress has the power to remedy discrimination and enforce these Amendments by enacting laws that address racial discrimination in connection with voting. That is what we did nearly unanimously just six years ago.

The events of this year's election only serve to remind us anew of the continuing need for Section 5 of the Voting Rights Act. Despite the gains we have made in building a more inclusive democracy, the law's work is not yet complete. Earlier this year, panels of judges appointed by presidents of both parties found that Texas intentionally discriminated against minority voters in redistricting, and that Texas failed to demonstrate that its voter ID law does not impose greater burdens on minority voters. A separate panel of three federal judges approved South Carolina's voter identification law under Section 5 starting next year, with judges appointed by Republican and Democratic Presidents noting that South Carolina legislators passed a less restrictive law than they desired specifically in order to comply with the Voting Rights Act. Without Section 5 of the Voting Rights Act, worse laws would be in place and the fundamental rights of many Americans would be diminished.

Our witnesses today will help us better understand the impact of the new barriers being placed on voters across the country. I look forward to exploring at this hearing and in the months ahead how we can ensure that the abusive practices we saw in the recent election are never repeated.

The Voting Rights Act transformed America by ushering the nation out of a history of discrimination into an era of greater inclusion. We must not turn away from our commitment to the right to vote for all Americans. I thank the witnesses for being here today and look forward to their testimony.

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Statement of U.S. Sen. Bill Nelson
Senate Judiciary Committee
December 19, 2012

Chairmen Leahy and Ranking Member Grassley, thank you for holding this hearing on "The State of the Right to Vote After the November 2012 Election."

Our goal is get to the bottom of why many places around the country, including my home state of Florida, experienced embarrassingly long lines at the polls and encountered unacceptable roadblocks to voting during this year's November election.

I want to take this opportunity to share what we've learned so far with regards to attempts to suppress registration of new voters and voting itself in Florida.

Since Sen. Durbin brought his subcommittee to Tampa in January 2012, some new information has come to light.

As it turns out, we now know that a key individual behind Florida's controversial voting law was none other than the general counsel of the Florida Republican Party - Emmett "Bucky" Mitchell IV.

According to testimony he gave in April as part of a federal voting rights lawsuit, Mr. Mitchell said he was asked to draft the original version of the legislation by state Republican Party leaders, including its executive director and two state GOP campaign operatives.

I would like to submit Mr. Mitchell's full testimony from that lawsuit as part of the official congressional record on this matter.

And I would also note this isn't the first time Mr. Mitchell's name has surfaced with voting-related controversy.

In 2000, he was at the center of the State of Florida's efforts to purge possible felons from the voter rolls. That misguided effort led to thousands of eligible voters being turned away at the polls during the presidential election because their names were removed from voter rolls.

The latest election law was introduced and passed in spite of vehement opposition from a wide array of groups because the law, among other things, reduced the number of early-voting days and canceled voting on the Sunday right before the Tuesday election. The law also made voting harder for people who recently moved to another county and had a different address, because they couldn't change their address anymore at the polls.

Practically every one of the concerns of these groups – possible long lines, an avalanche of provisional ballots, court challenges – have come to pass.

Mr. Chairman, this committee will have to draw its own conclusions, but for me it's pretty straight forward: Florida's 2011 election law changes were politically motivated and clearly designed to disenfranchise likely Democratic voters – and, not, as its Republican sponsors contended, to prevent voter fraud.

Those who asked for the voting restrictions in Florida – including reduced early voting - held jobs with the sole aim of electing Republican lawmakers.

The attorney who obliged them, the lawyer who wrote the bill, represented the state Republican Party. He's the same lawyer who is identified in separate testimony before the U.S. Civil Rights Commission as the person who created the 2000 purge list that led to thousands in Florida being erroneously identified as possible felons.

And let's not forget that this effort in Florida took place against the backdrop of a broader Republican-led campaign to restrict voting. Leading up to the 2012 election, at least a dozen states controlled by Republicans approved new obstacles to voting as part of a campaign linked to the American Legislative Exchange Council, which receives substantial funding from the Koch brothers.

Singling out Americans, stopping those who want to vote from going to the polls, and all the other solutions in search of non-existent problems must be stopped. Not because of politics, but to protect the founding document of our nation, the Constitution.

So, thank you Mr. Chairman for this opportunity. I look forward to continuing our work together on these issues that are critical to my home state of Florida and the country.

National Action Network
Reverend Al Sharpton, President and Founder
Reverend Dr. W. Franklyn Richardson, Chairman
Tamika Mallory, National Executive Director

Statement for the Record
Submitted by
National Action Network

Testimony on
"The State of the Right to Vote After the 2012 Election"

Before the
U.S. Senate Judiciary Committee

Submitted December 19, 2012

Thank you Chairman Leahy and members of the U.S. Senate Judiciary Committee for allowing us to submit testimony regarding individual's right to vote after the 2012 election. National Action Network ("NAN"), a leading civil rights organization that fights for one standard of justice, decency and equal opportunities for all people regardless of race, religion, national origin, and gender, fully supports the hearing on and exploration of "The State of the Right to Vote after the 2012 Election".

During this past election cycle, NAN was focused on ensuring that every eligible voter in the United States had the opportunity to cast a ballot. It is unimaginable that in 2012 we had to make such a concerted effort, but with the constant law revisions that created barriers to the polls, we had to ensure that voters across the country were aware of the changes and able to cast their ballot. Since the 2008 election, there has been a calculated effort by certain groups to restrict the voting rights of millions of eligible voters across the United States. Rather than removing barriers allowing for voting to be easier for the general population, state legislatures enacted suppressive voting laws that often made it harder for people to vote. These laws required voters to present a government issued photo IDs, reduced the period for early voting, and shortened the voter registration period. These laws affected all Americans but specifically

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the elderly, low income families, college students, disabled, and minorities. It was estimated by the Brennan Center for Justice that nearly 5 million voters would not be able to vote with the restrictive laws in place. Upon hearing about the regressive law changes and the potential to disenfranchise Americans, NAN fought to make sure every vote in every community across the nation was counted.

In December 2011, NAN held a 25 city one day rally where we spoke out against voter suppression. We held rallies in the following cities where the state legislature passed or were trying to pass voter suppression laws: Houston, TX; Cleveland, OH; Akron, OH; Columbus, OH; Memphis, TN; Montgomery, AL; Milwaukee, WI; Columbus, MO; and Atlanta, GA. During these rallies community leaders, activist, and clergy implored state's legislature to vote against or repeal voter suppression laws. In March, we re-enacted the 1965 Selma to Montgomery March to underscore the importance of voting. In 1965, the march was to fight for equal voting rights for all, and once again in 2012 we were marching to fight for equal voting rights for all. Dr. Martin Luther King and other leaders of the civil rights movement marched from Selma, Alabama to Montgomery, Alabama to raise awareness and make a plea to Alabama and the entire country to pass and enforce the Voting Rights Act of 1965. In 2012, NAN, along with civil rights organizations, labor unions, activists and everyday citizens, were in Alabama to oppose the harsh legislation that potentially stood in the way of many people's ability to cast a ballot. Thousands came to Alabama to support and participate in the 60 mile march across Alabama.

In June 2012, NAN started our Voter Engagement Tour with a goal to educate and empower the electorate on how to combat these restrictive new voter requirements and ultimately protect voter rights. Our tour focused on states impacted by voter suppression laws. We toured Cleveland, Ohio; Miami, Florida; Orlando, Florida; Atlanta, Georgia; Detroit, Michigan; Dallas, Texas; Columbia, South Carolina; Richmond, Virginia; Philadelphia, Pennsylvania; and Harrisburg, Pennsylvania. The day-long program began with a luncheon with clergy members

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and community leaders and was focused on creating an infrastructure in each city to continue voter education and protection. Teaming up with Education for a Better America, we hosted a workshop during the latter part of the afternoon designed to inform the voting public about new and existing laws that would impact them in their respective communities. Later in the evening we hosted a rally at a local church which was keynoted by our Founder and President, Reverend Al Sharpton. During our afternoon and evening sessions we held voter registration drives to register any eligible individuals who were not registered to vote. Our voter engagement tours allowed us to speak with thousands of potential voters, educating them on new identification requirements, early voting periods (if applicable), and any possible problems that may arise at the polling site.

During each tour stop, we instated state leads to continue the work established by the voter engagement tour. Our state leads continued to register people to vote up until the state's registration deadline. They partnered with local organizations and clergy to hold additional voter education workshops. We widely promoted the use of early voting in states which allowed for early voting. In Florida, we organized "Souls to the Polls" efforts, where church congregations would head to the polls to early vote after attending their church services on Sunday. In Ohio, Michigan, Virginia, and Georgia, we organized church vans to drive people to and from the polls. We interacted with voters continuously to encourage people to register, educate themselves and their families, get out to vote, and report any problems at the polls.

Additionally, Rev. Sharpton used his nationally syndicated radio and television show to draw much needed national attention to voter suppression laws occurring throughout the country. Rev. Sharpton talked about the disparate impact on minorities and the elderly that occurred when cutting back on early voting periods. Early voting is a resource that many in the African American community use to participate in the voting process. Early voting allows for people to avoid long lines on Election Day and allows individuals the opportunity to conveniently vote at

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times more suitable for their schedules. Rev. Sharpton directed millions of viewers to National Actions Network's website, where we had a dedicated voter engagement webpage. On the webpage we posted information about voter suppression, including how nearly 25 percent of African Americans lack a suitable ID to vote in states that have restrictive photo ID laws. We also posted all of the state's voting registration deadlines, early voting periods, absentee ballot deadlines, and ID requirements.

Due to the awareness raised by National Action Network and the legal work done by other civil rights organizations, states such as Pennsylvania, Wisconsin, and Ohio were unable to change the voter ID requirement and/or the early voting period for the 2012 election. The Department of Justice also stepped in and prevented other states from enforcing their new voter suppression laws. These actions restored the ability for millions of voters to vote in the election. While some states were able to enforce their voter suppression laws, our efforts to educate the public stopped many minorities from being marginalized during the election process.

Thanks to the hard work of community leaders, clergy, civil rights organizations, and many others there was not a drastic impact on voter turnout. However, on Election Day many voters were met with long lines, poll workers relaying incorrect voting information, malfunctioning voting machines, poll sites closing early, and other issues at the polling site. National Action Network staff members worked the Election Protection Hotline on Election Day and heard many horrific stories about people who were denied the right to vote due to those issues. There were reports that people in Florida had to wait over 8 hours in line to vote. People were incorrectly told they needed to show photo ID, and if they were unable to present an ID they were not allowed to vote. Sites across the country had malfunctioning polling machines, sometimes leaving a location with only one working machine. These recurring issues show the need for Election Day reform. President Obama even made note of the Election Day problems in his acceptance speech.

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Restrictive laws and voting place issues are a hindrance to full participation in the electoral process. Voter Suppression laws prevent individuals from performing their granted right to vote. While some may believe getting a government issued ID is not a difficult task, many seniors, low income citizens, and students do not have the necessary funds, time, transportation, or documentation needed to get a photo ID. Before making laws requiring individuals to have government issued ID, we have to ensure that all citizens are capable of acquire them. Currently, we have not reached that threshold. Likewise, long lines and waiting times at polling locations must be remedied. There are many working Americans who cannot afford a day off of work to stand in lines for extended periods. Waiting in a line on a Tuesday for over 2 hours is unacceptable.

Post-election 2012 we must address these issues legislatively to find a way to make the election process more effective and efficient. Expanding early voting is a solution that could help alleviate the problems which occur on Election Day. Instead of state legislatures trying to reduce or not allow early voting, they should embrace the idea of early voting. Expanded early voting could reduce long lines and could also be used to test the voting machines to guarantee that they will be functional on Election Day. Currently, 32 states and the District of Columbia offer early voting. Each state varies on time availability and locations. All states should offer early voting and should look into ways to make the early voting more efficient so more voters will take advantage of the system. Same day registration could also help in the election process. One of the major issues during the 2012 election were individuals who claimed that they registered to vote but their name did not appear on the voter roll. If voters were allowed to register the same day, the problem of lost registration would be solved because you could register people on the spot. Another option that must be seriously looked at is voting by mail. States such as Oregon and Washington conduct their election all by mail in ballots. This process seems to be very effective and reduces the stress on voters by allowing them to stay in their

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homes to vote. Finally, this past election, we saw an increase in money spent by interest groups to Political Action Committees. These donations gave Political Action Committees incredible amount of influence over the political process that normal citizens do not possess. Their influence helped push the attacks on early voting and voter ID laws with the intent to prevent millions from voting. New policies must be created to protect American citizens from losing their vote to big money committees.

In 2013, National Action Network will continue to work with chapters and members to educate people locally about the laws and ensure that the electorate is in compliance with state laws while continuing to fight for equal protection for all voters. We will work with allied groups to fight and repeal existing suppression laws. Our DC Bureau is willing to work with Congress to create legislation that will extend federal protection to voters and prohibit the use of state based ID in federal elections. On the state level we will strive to ensure that there are adequate voting machines for the voting population to alleviate the long waits to cast a ballot. Finally, we will make sure that the early voting periods are not restrictive to certain groups of people or to certain geographic areas. It is our hope that the Senate Judiciary Committee will have the shared goals and vision.

We once again thank you for allowing us to submit testimony on this matter and look forward to working with the Senate Judiciary Committee on this issue in the future.

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...the power of social work

National Association of Social Workers
Office of the Executive Director

Elizabeth J. Clark, PhD, ACSW, MPH
Executive Director

Senate Committee on the Judiciary
Hearings on
"The State of the Right to Vote after the 2012 Election."

Statement of
Elizabeth J. Clark, PhD, ACSW, MPH
Chief Executive Officer
National Association of Social Workers
December 19, 2012

Chairman Leahy, Ranking Member Grassley, and Members of the Judiciary Committee:

On behalf of the National Association of Social Workers (NASW), thank you for holding this important hearing and allowing our Association the opportunity to submit testimony on this topic. It is both timely and critical to our collective effort to improve the nation's voting process. NASW is a professional membership organization that is comprised of 145,000 members with chapters in all 50 states, several territories, and internationally. We have a dual mission of promoting and protecting our profession, as well as a strong social justice agenda.

The NASW national office and members from our local chapters have been active advocates for Voting Rights activities for many years. We were particularly concerned, during the last Presidential and Congressional elections, about efforts in many states to suppress the votes of individuals from minority communities, the elderly, students, and young people. NASW, with its long history of championing social justice and human rights for those who are disadvantaged or vulnerable in our country, is very supportive of the Committee's effort to examine where the nation is in regards to ensuring free and unencumbered access for each citizen to exercise his or her right to vote.

During the 2012 election cycle, NASW was proud to join the many organizations and individuals that spent countless hours in challenging state laws that appeared to be aimed at suppressing votes. It is our firm belief that were it not for the efforts of the national voters' rights coalitions, that the outcomes of the past election could have been drastically different. For that reason, NASW members recognize that we all must continue to be vigilant and active in monitoring the election processes including ongoing and persistent efforts to suppress the vote. We must join in the process of developing corrective remedies and solutions for such concerns as:

- Efforts to end or severely limit early voting;
- Purges of voter rolls that target minorities;
- Unreasonable voter I.D. laws that appear to be designed to suppress the votes;
- Strategies to ensure inordinately long lines at polling places;
- Excessive non-disclosed campaign funding as a result the Supreme Court's "Citizens United" ruling; and

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- The recent Supreme Court decision to take up a challenge to Section 5 of the Voters Rights Act.

It is also my hope that, as an outcome of the Senate Judiciary Committee's *State of the Right to Vote after the 2012 Election* hearings, a bipartisan as well as a national consensus, will emerge that recognizes the importance of eliminating barriers to voting for all eligible voters in this country.

NASW is committed to continued involvement with the voters' rights issues and will assist in Presidential and Congressional efforts to improve the voting process at federal and state levels. We will also encourage our chapters to join in grassroots effort to engage state legislators and other leaders to initiate reviews of their voters' rights policies.

Senate Judiciary Committee
Hearing on "The State of the Right to Vote After the 2012 Election"
December 19, 2012 10:00 a.m.

The National Disability Rights Network (NDRN) would like to thank Chairman Leahy, Ranking Member Grassley, and the Senate Judiciary Committee for holding this important and timely hearing to assess the right to vote after the 2012 election. We appreciate the opportunity to draw attention to the continuing needs of people with disabilities for increased accessibility to the electoral system. NDRN and the network of Protection and Advocacy Systems have been involved since passage of the Help America Vote Act with advocating for the rights of people with disabilities to vote and monitoring the accessibility of the electoral system. Although the United States has made significant progress toward ensuring that its electoral system is accessible to everyone, there is still much work to be done.

Who Are NDRN and the Protection and Advocacy Systems?

NDRN is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems for individuals with disabilities. The P&As were established by the United States Congress through eight separate statutes to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest. Collectively, the P&A Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

One of the eight statutes establishing the P&A Systems is the Protection and Advocacy for Voter Access (PAVA) program passed in 2002 as part of the Help America Vote Act (HAVA) to address the barriers that people with disabilities face when voting or registering to vote. Congress recognized the need to "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places."

The History of Inaccessibility of Voting Places

Unfortunately, the right to vote has long been denied to many people with disabilities. People with disabilities have faced voting places that did not allow access to the voting booths for people in wheelchairs, have faced voting machines with limited technology

that has denied people with visual impairments the ability to vote confidentially, and other obstacles that have limited the ability of people with other disabilities to register to vote. A 2001 GAO report on the 2000 Presidential election found that 84 percent of polling places had impediments to accessibility for people with disabilities.[1] A similar report based on the 2008 Presidential elections found that the situation for people with disabilities had improved, but there were still significant problems – 73 percent of all polling places studied still had impediments to accessibility.[2] Although 2008 Census data shows that 14.7 million people with disabilities voted in the presidential election, research by Rutgers University shows that the voter turnout rate of people with disabilities was 7 percentage points lower than that of people without disabilities.[3]

Challenges to Polling Place Accessibility in the 2012 Elections

The Protection and Advocacy Network found continued barriers to accessibility in the 2012 election. In addition to challenges faced by people with disabilities in the past, such as polling places that are physically inaccessible and ballots that are not accessible to people with visual impairments, the 2012 election saw people with disabilities unable to vote for other reasons as well. For example, groups ostensibly working to protect the voting process overall inappropriately challenged the ability of people with disabilities to vote based on a perception that they did not have the legal capacity to vote or that they needed a guardian's approval to vote. Often times, people with disabilities were incorrectly informed that they did not have the right to vote.

In one example of this barrier, a North Carolina-based entity that receives and processes applications of individuals for mental health services filed a complaint that one of its contractors registered a person with a disability to vote without the consent of the voter's guardian. The entity characterized the registration of people with mental illness who have guardians to vote as "voter fraud," even though the North Carolina Constitution and state law provides that people with guardians retain the right to vote. Moreover, the North Carolina Division of Medical Assistance (DMA) found that this entity and other mental health care providers did not regularly offer people with mental illness the ability to register to vote. Disability Rights North Carolina, the North Carolina P&A, has filed a complaint with the Department of Justice Voting Rights Section over the refusal of this and other North Carolina mental health care providers to recognize the right of people with mental illness to vote.

In another instance, a District Attorney in a County in Texas announced, before the election, that he would convene a grand jury on election assistance programs in the

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Texas County that has the highest rate of assisted voting in the State. The District Attorney stated that he would subpoena voters to ask them under oath why they requested assistance in voting and threaten prosecution against those who assisted people with voting. Doing so would force many voters to disclose confidential information about the nature of their disabilities and could easily create a chilling effect both on people with disabilities and the people who volunteer to assist them with voting. Disability Rights Texas, the Texas P&A, sent the District Attorney a letter requesting that he refrain from interrogating people who come to their polling places with someone to assist them with voting and not subpoena voters with disabilities to testify before a grand jury.

Other problems that were experienced across the country include a lack of accessible voting machines, poll workers who were not able to assist voters with the machines, a lack of accessible parking, long lines and people not being allowed to sit while waiting to vote, and other problems with physical accessibility of polling places. The Protection and Advocacy agencies will be issuing reports and engaging in follow-up with local Boards of Elections and Secretaries of State to ensure that they are aware of these problems and that work continues toward full accessibility of polling places for people with disabilities. We will be sure to share these reports with the Senate Judiciary Committee to demonstrate the issues surrounding the accessibility of voting for people with disabilities during the 2012 elections.

Voting is perhaps the most fundamental of the rights accorded United States' citizens, and must be made accessible and available to all people. NDRN and the Protection and Advocacy agencies nationwide hope to continue to work with Congress and with state and local voting officials to improve accessibility. In order to continue to improve voter accessibility for people with disabilities, we recommend the following steps:

1) Increase funding for the PAVA program to help ensure that people with disabilities are allowed to participate in this important constitutional right;

2) Allow the Native American Consortium to receive funding under the PAVA program. Although all of the other Protection and Advocacy agencies receive funding under the PAVA program to advocate for voter accessibility, the Native American P&A does not because it does not fit the definition of a "state" under the Help America Vote Act; and

3) Provide funding to State and local election officials to help them address voting accessibility issues.

Again, thank you for holding this timely hearing, and we appreciate this opportunity to provide testimony regarding these important issues. If you would like further information, please contact Patrick Wojahn at (202) 408-9514, x102.

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In one example of this barrier, a North Carolina-based entity that receives and processes applications of individuals for mental health services filed a complaint that one of its contractors registered a person with a disability to vote without the consent of the voter's guardian. The entity characterized the registration of people with mental illness who have guardians to vote as "voter fraud," even though the North Carolina Constitution and state law provides that people with guardians retain the right to vote. Moreover, the North Carolina Division of Medical Assistance (DMA) found that this entity and other mental health care providers did not regularly offer people with mental illness the ability to register to vote. Disability Rights North Carolina, the North Carolina P&A, has filed a complaint with the Department of Justice Voting Rights Section over the refusal of this and other North Carolina mental health care providers to recognize the right of people with mental illness to vote.

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Palm Beach Post

Sunday, Oct. 28, 2012

Architect of felon voter purge behind Florida's new limits

By Dara Kam and John Lantigua

Palm Beach Post Staff Writers

The Republican attorney who engineered the 2000 Florida felons list, which African American leaders said purged thousands of eligible blacks from voter rolls in the state and helped swing that election to the GOP, also wrote the first draft of Florida's controversial House Bill 1355 that has restricted early voting and voter registration campaigns in 2012.

Emmett "Bucky" Mitchell IV, former senior attorney for the Florida Division of Elections, now in private practice in Tallahassee and serving as general counsel for the Florida GOP, testified in April in a federal voting rights lawsuit that he wrote the first draft of 1355. *The Palm Beach Post* uncovered the deposition while researching the origins of the law.

Dierdre Macnab, president of the Florida League of Women Voters, reacted angrily when learning from *The Post* of Mitchell's involvement in writing 1355, which took effect in 2011.

"I'd be deeply concerned to think that members of a political party who are not elected officials, nor staff to legislators, are drawing up voter-suppression laws in back rooms," Macnab said. "It should be deeply troubling to the public."

That 2011 law reduced the number of early voting days from 14 to eight in Florida and threatened independent organizations that register voters — such as the League of Women Voters — with large fines if they did not meet tight schedules for filing registration applications they collect. That latter part of the law was overturned by federal courts this year, but registration groups say that by then their ability to sign up new voters had been curtailed for several months of this year's presidential election campaign season.

The new law also eliminated the ability of people who have moved from one county to another, and have not officially recorded their newaddress, to cast a regular ballot at the polls Nov. 6. They must now cast provisional ballots. Critics say that historically only about 50 percent of provisional ballots are accepted and counted.

Supporters of 1355 say it fights voter fraud. Florida has seen false voter registration forms filed in recent years by the now defunct, left leaning community activism group ACORN, and also by Strategic Allied Consulting, a voter registration firm hired by Republicans.

But critics of 1355 say there ultimately are very few cases of voter fraud in Florida and the real purpose of the bill is to reduce voter registration and turnout. They say that in particular the law will suppress the number of minority and young voters this election year — most of whom would be expected to vote for President Obama.

Dale Landry, chairman of the Florida NAACP Criminal and Civil Justice Committee, said he was also appalled by Mitchell's involvement in 1355.

"It really angers me that people would resort to these tactics," Landry said. "We need an investigation. We really need to look at and see what other damage was done."

In 2001, Mitchell was identified in testimony before the U.S. Civil Rights Commission as the person who directed the creation of the felons purge list that led to thousands in Florida being erroneously identified as possible felons, their names included on lists used to reduce the voter rolls. A disproportionately high number of those people were blacks, who are traditionally Democratic voters.

Mitchell left the Division of Elections — where he worked under Secretary of State Katherine Harris — shortly after the 2000 election. He now works for the Coates Law Firm, which represents the Florida Republican Party. He did not return phone or email requests for comment for this story.

During the deposition in Tallahassee April 4, Mitchell was questioned by attorneys for the League of Women voters, which along with other voter registration organizations had sued to overturn 1355.

He said he was asked to write the early version of 1355 around January 2011, after consultations with three top Florida GOP officials: Andy Palmer, then executive director of the Florida GOP; Frank Terraferma, head of GOP State House campaigns; and Joel Springer, head of State Senate campaigns. Also included in early talks was former executive director of the Florida GOP Jim Rimes, now a senior partner at Enwright Consulting, a Tallahassee political consulting firm that counsels GOP political candidates. Rimes was also a client of Mitchell's.

"Typically, what I do before a (legislative) session begins is, I look at changes that I think would be beneficial to our clients," Mitchell testified, especially regarding campaign finance issues. "In this case, that's how this election bill got started."

The new law required any person registering voters to sign a sworn statement acknowledging that, if they violated any of the registration regulations, they faced criminal penalties and fines as high as $5,000, an increase from the previous maximum aggregate fine of $1,000. Those fines would apply even if inaccuracies were inadvertent.

The law also called for fines for voter registration organizations if forms were turned in more than 48 hours after they were filled out, as compared to a 10-day grace period that applied previously.

Critics of the new law said it was meant to intimidate would-be voter registration workers. Many voter registration organizations in Florida closed down their operations after 1355 became law, afraid of incurring fines they couldn't pay.

In his testimony, Mitchell said he did not think the law should keep those organizations from working. He also said he did not know why his Republican Party clients or Rimes had called for the fines to be increased. In other words, the decision was not his but theirs.

As for the 48-hour provision, Mitchell testified that had been added after he wrote his first draft. "I personally felt like 10 days was fine."

Later in the deposition, Mitchell said the 48-hour restriction was inserted by Republicans in the legislature and that the issue didn't interest him. "I personally thought it might have been too short a period, but I didn't really care," he said.

The 48-hour provision was overturned in August by federal District Court Judge Robert Hinkle, who called the reduced window "harsh and impractical."

"Allowing responsible organizations to conduct voter-registration drives — thus making it easier for citizens to register and vote — promotes democracy," Hinkle said when he granted an original injunction in May.

In regard to the controversial reduction of early voting days, from 14 to eight, Mitchell said he was responding to the desires of some elections supervisors.

"There are a number of supervisors that really don't like the number of hours that are currently provided," he testified. "It's very expensive for them and they don't get lot of additional turn-out from early voting."

But on April 29, 2011, the Florida Association of Supervisors of Elections had issued a document condemning the reduction in early voting days. "Not having the 15-day time frame for the general election could result in crowding and confusion at early voting sites and on Election Day at the precincts," said the supervisors' document, which was quoted during the deposition.

Another facet of the original 1355 was also condemned by the supervisors.

According to Mitchell, the original draft of 1355 would have forced anyone who had changed their address — even within a county — and who had not previously notified a supervisor's office, to file a provisional ballot at a polling place.

Supervisors objected before the final bill was written, saying they would be forced to deal with a flood of provisional ballots on Election Day and Mitchell said he understood the supervisors' concerns. The bill was changed to affect only people moving from county to county, but in their April 29, 2011 document supervisors objected to that as well.

"There are no reports of widespread abuse or double voting," the supervisors said. "This will significantly delay election results." But the change was made anyway.

Backers of that provisional ballot requirement say it will help prevent double-voting by one person but while giving his deposition, Mitchell said he could not name one instance of double-voting in Florida.

"Were you aware of any instances of any voters in Florida voting twice in a single election?" he was asked by League of Women Voters attorney Daniel O'Connor.

"Not specifically, no," Mitchell responded.

"Were you aware of any other types of fraud or misconduct by voters who moved and attempted to update their address at a polling place and vote that same day?" O'Connor asked.

"No," Mitchell responded.

Opponents of the provisional ballot rule also point to the number of such ballots that end up thrown out. Data that emerged during the deposition indicated that of 35,635 provisional ballots cast in 2008, only 17,312 provisional ballots were counted, or 48.58 percent. Common reasons for disqualifying provisional ballots are that voters names do not appear on the voter rolls or they are voting in the wrong precinct.

Another section of the bill gives the secretary of state additional power to issue directives to county supervisors of elections, who traditionally guard their independence tenaciously. The section was toned down after some back and forth between Mitchell and GOP House staffers.

"Staff is revising language to make it seem like less of a power grab," said a note from one anonymous staffer.

At the end of his deposition, Mitchell was asked if any of the changes made in Florida election laws was done for racially discriminatory purposes. He said no. Florida African American leaders have expressed doubts.

During the 2001 Civil Rights Commission hearings, executives for Database Technologies, the Boca Raton firm hired by the Florida Division of Elections to compile purge lists of possible felons who were not eligible to vote, testified that they took their marching orders from Mitchell. They said he ordered them to include names on the list

that simply approximated the names of convicted felons. Those people then had to prove their eligibility to vote.

Supervisors of elections later complained that the lists were full of errors. In one case, Leon County Supervisor Ion Sancho said the purge list he was sent of 690 names were almost all legitimate voters. Only 33 were even contacted and asked to prove their eligibility, he said.

At the time, 15 percent of the Florida population was black, but 54 percent of the state prison population was black. Counties reported that the people on the purge list were disproportionately black. For example, in Palm Beach County, 11 percent of the population was black, but 44 percent of those purged by the felons list were black. Hillsborough County had a black population of 15 percent but 54 percent of the names on its purge list were black. In Miami-Dade, where blacks were 20 percent of the population, a list of 5,762 people contained the names of 3,794 blacks, or 66 percent.

Poll workers later testified that thousands around the state were refused the right to vote because they were not included on voter rolls, in part because of the felon purge lists. GOP candidate George W. Bush won by 537 votes.

Asked about it by a reporter in 2001, Mitchell offered this rationale for the loose standards used in assembling the purge lists: "Just as some people might have been removed from the list who shouldn't have been, some voted who shouldn't have."

Post researchers Michelle Quigley and Niels Heimeriks contributed to this story.

Testimony of Nina Perales, MALDEF Vice President of Litigation

Regarding "The State of the Right to Vote After the 2012 Election"

United States Senate Committee on the Judiciary

December 19, 2012

Chairman Durbin and members of the Judiciary Committee, thank you for the invitation to testify regarding "The State of the Right to Vote After the 2012 Election." My name is Nina Perales and I serve as Vice President of Litigation for MALDEF, the Mexican American Legal Defense and Educational Fund, Inc. MALDEF is a national civil rights organization that conducts community education, policy advocacy and where necessary litigation. Since our founding as a non-partisan civil rights organization in 1968, MALDEF has served as the primary organization that litigates voting rights cases on behalf of Latinos in the United States.

Today, Latinos constitute the largest racial minority group in the United States. According to the Census, the Latino community in the U.S. grew by over 15 million from 2000 to 2010 and accounted for more than half the nation's total growth.[1] Over the same decade, the number of Latino eligible voters—U.S. citizen adults—also increased, from 13.2 million in 2000 to 21.3 million in 2010.[2]

As the Latino and other racial minority communities have grown and expanded their share of the U.S. electorate, some states have attempted to cap or even reduce the electoral strength of minority voters. These new practices target voters at various points in the election process, including registration, voting at the polls and in redistricting. This testimony will focus on three examples of recent state laws that operate to limit Latino political participation.

Arizona Requirement of Documentary Proof of Citizenship

In Arizona, the Latino population increased by almost 600,000 from 2000 to 2010 (reaching 29.6% of the state's population in 2010). In 2004, Arizona voters adopted Proposition 200 which changed voter registration rules to require all new voter registrants to provide documentary proof of U.S. citizenship. Following enactment of Proposition 200, over 30,000 individuals were rejected for voter registration in Arizona.[3] Reflecting the demographic composition of voter registrants in Arizona, over 80% of the rejected

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[1] JEFFREY S. PASSEL, ET AL., CENSUS 2010: 50 MILLION LATINOS HISPANICS ACCOUNT FOR MORE THAN HALF OF NATION'S GROWTH IN PAST DECADE (Pew Hispanic Center, Mar. 24, 2011), *available at* http://www.pewhispanic.org/files/reports/140.pdf.

[2] MARK HUGO LOPEZ, THE LATINO ELECTORATE IN 2010: MORE VOTERS, MORE NON-VOTERS (Pew Hispanic Center, April 26, 2011), *available at* http://www.pewhispanic.org/files/reports/141.pdf.

[3] *Gonzalez v. Arizona*, No. 06-cv-01268, Dkt. No. 1041, at 13 (9th Cir. Aug. 20, 2008).

voters were not Latino.[4] Voter registration in community-based voter drives in the state's largest county plummeted 44%.

The Ninth Circuit, sitting en banc, invalidated Proposition 200 as inconsistent with the National Voter Registration Act, 42 U.S.C. 1973gg *et seq.*[5] The case is now pending in the U.S. Supreme Court.

Proposition 200 has had a broad negative impact on voter registrants across Arizona. Individuals whose voter registration forms are commonly rejected for failure to provide proof of citizenship include Arizona residents who have a driver's license issued before October 1, 1996 (such as those over age 32), who do not have a current Arizona driver's license (including students and new state residents), or who, unbeknownst to them, have a driver's license with a state database code of "Foreign" because the license was issued to them before they became naturalized citizens.

In order to register, these citizens must include with their registration – which otherwise can be a stand-alone form – a copy of their U.S. birth certificate, passport or naturalization papers. Even if a registrant has a document to satisfy the provision, Proposition 200 requires the registrant to locate the document, photocopy it, and mail it to the county recorder. Alternatively, the registrant must travel to the county recorder's office to present the required document. As a result of the additional burdens imposed by Proposition 200, less than one-third of the rejected registrants subsequently registered to vote.[6]

The federal court in Arizona found that naturalized citizens will have difficulty registering with their drivers licenses and are subsequently faced with either purchasing a new license or registering with the naturalization certificate (often in person). This different treatment makes voter registration more difficult for naturalized citizens when compared to native born citizens. The problems for naturalized citizens who try to register are predictable and systemic to Proposition 200 and its implementation by Arizona election officials.

Although most people in Arizona register to vote by providing the number of their Arizona driver's license, which under Proposition 200 constitutes "satisfactory evidence of citizenship" if it was issued after October 1, 1996.23 However, because of flaws in the Arizona Motor Vehicles Division database, naturalized citizens encounter unique problems when attempting to register to vote using their Arizona driver's licenses.

The Arizona MVD codes driver's licenses as "Type F" when the applicant for a driver's license used an identity document showing that he or she has permission by the federal government to be present in the United States. The MVD uses the letter "F" to signify "foreign." Because the Type F license does not show its designation on its face, naturalized citizens who obtained their licenses before they naturalized are unaware that they posses Type F licenses. Instead, they provide their drivers license numbers when they register to vote and are rejected and required to apply to register again and provide different citizenship information.

In 2005 alone, 6,785 people in Arizona naturalized and became eligible to register to vote. The Secretary of State does not know how many of these naturalized citizens

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[4] *Id.*

[5] *See Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012).

[6] *Gonzalez v. Arizona*, No. 06-cv-01268, Dkt. No. 1041, at 14 (9th Cir. Aug. 20, 2008).

hold licenses that are coded Type F in the MVD database but the Secretary of State does know that since January of 2005, Service Arizona, its online voter registration system, has rejected approximately 1,300 voter registration applicants who possess either Type F licenses or licenses issued before October 1, 1996.

Although Arizona knows that its naturalized citizens are likely to possess Type F licenses, it continues to reject these voter applicants, thereby forcing them to suffer rejection of their voter registration application and requiring them to register to vote a second time.

The purpose of Proposition 200's registration requirement, as described in the statute, is to combat undocumented immigration. However, Arizona hasn't identified a single instance in which undocumented immigrants registered or voted in Arizona.

The federal court in Arizona found that there were only a handful of "instances" in which non-citizens had registered to vote and even fewer in which noncitizens cast a ballot.[7] Importantly, the court cited evidence that the small number of non-citizens who had registered to vote had done so mistakenly and without realizing they were ineligible to vote.[8] Consistent with this finding, the Arizona Secretary of State's office wrote prior to the passage of Proposition 200, the "strong desire to remain in the United States and fear of deportation outweigh [noncitizen's] desire to deliberately register to vote before obtaining citizenship. Those who are in the county illegally are especially fearful of registering their names and addresses with a government agency for fear of detection and deportation."

In all, the court found that Arizona had provided evidence that ten non-citizens had registered to vote (four of whom had voted) in 2005 and nine non-citizens – had registered to vote (five of whom had voted) in 2007.[9] The evidence amounts to nine voters having cast ballots out of 2.7 million registered voters in Arizona during this same period. The Ninth Circuit concluded, when denying the stay of its mandate, that "Arizona has not provided persuasive evidence that voter fraud in registration procedures is a significant problem in Arizona; moreover, the [National Voter Registration Act] includes safeguards addressing voter fraud."[10]

The voting restrictions imposed by Arizona's Proposition 200, ostensibly to curb registration by immigrants who are not qualified to vote, come at a time when Latinos comprise Arizona's fastest-growing citizen voting age population and Arizona is engulfed in an often heated debate about immigrants from Mexico living in the state. As Latinos strive to overcome the effects of past exclusion from the political process, Proposition 200 has operated to thwart Latino entry into the electorate.

Texas 2011 Voter ID

In 2011, the Texas Legislature enacted the strictest photo voter ID law in the nation. The law has not gone into effect however because a federal court in Washington DC concluded that it violated the federal Voting Rights Act.

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[7] *Gonzalez v. Arizona*, No. 06-cv-01268, Dkt. No. 1041, at 34 (9th Cir. Aug. 20, 2008).
[8] *Id.* at 15-17 (9th Cir. Aug. 20, 2008).
[9] *Id.*
[10] *Gonzalez v. Arizona*, No. 08-17094 at 8 (9th Cir. June 7, 2012) (order denying stay).

Compared to the pre-existing voter identification law in Texas, the Texas voter ID law, known as SB 14, permits fewer forms of ID for in-person voting. Specifically, SB 14 eliminates the voter registration certificate as an acceptable form of ID as well as other non-photo documents that are acceptable under the current Texas voter ID law such as utility bills, birth certificates and government correspondence. SB 14 also eliminated certain photo ID that was acceptable under the pre-existing Texas voter ID law such as student ID cards and employment identification.[11]

Texas has never disputed, and the federal court found, that "there exists a subgroup of registered voters, including minorities, who lack SB 14-approved photo ID."[12] Even at trial, Texas's "own expert's study" concluded the same.[13] The court found as a matter of "undisputed record evidence," that "racial minorities in Texas are disproportionally likely to live in poverty and, because SB 14 will weigh more heavily on the poor, the law will likely have retrogressive effect."[14] Texas was aware of the provisions of other states' voter identification laws and was also aware that "SB 14 is far stricter than either Indiana's or Georgia's voter ID laws."[15]

The U.S. Department of Justice denied preclearance to SB 14 in part because the statistical analysis provided by Texas in the preclearance process showed that "Hispanic registered voters are more than twice as likely as non-Hispanic registered voters to lack" a DPS-issued driver's license or ID card.

Texas was well aware that its very strict photo voter ID law was likely to have a disproportionate impact on minority voters. In the previous 2009 legislative session, when the Texas House took up the issue of voter ID, the Chairman of the House Elections Committee was aware that minority voters are less likely to have photo voter ID. He also understood that allowing the use of a non-photo ID alternative would "significantly lessen any marginal additional burden" that ID requirements placed on some voters. House members who opposed the 2009 voter ID bill expressed concern about the impact of the bill on minority voters.

In 2011, SB 14 rushed through the legislative process with few amendments to ameliorate its effect on voters who lacked ID. The House Select Committee to which SB 14 was assigned held only one hearing on SB 14 before voting it out of committee. Members of the Select Committee heard expert witnesses explain that restrictive ID requirements adversely impact minority voters, and that most voters who are required to return to the polls and present identification to have their provisional ballots counted do not return.

During House floor consideration, numerous legislators expressed concerns about SB 14's impact on minority voters. Many of the amendments that were offered but did not pass were accompanied by statements that the amendments would mitigate the bill's impact on minority voters, including by prohibiting the Department of Public Safety from charging a fee for underlying ID; reimbursing the costs for indigent individuals to travel to obtain compliant ID; requiring a study showing no adverse impact on minorities;

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[11] TEX. ELEC. CODE § 63.0101.
[12] *Texas v. Holder*, 2012 WL 3743676, at *27 (D.D.C. 2012).
[13] *Id.*
[14] *Id.*, at *14.
[15] *Id.*, at *15.

requiring the Secretary of State to determine whether a majority of voters who cast provisional ballots were minorities; requiring a study by county and ethnicity to determine access to necessary ID and analysis of impact on voters; and allowing county clerks to issue voter ID cards.

Furthermore, although expired driver's licenses would have been acceptable under the predecessor bills to SB 14 so long as they had expired within the past two years SB 14 did not accept driver's licenses, personal ID cards issued by DPS, US passports, or concealed handgun licenses as acceptable forms of photo ID if they had expired more than 60 days prior to their presentation. An amendment to SB 14, adopted in the House, included language that the statewide public education program should target low-income and minority voters. The amendment was subsequently stripped from the bill in conference committee. The SB 14 conference committee, which consisted of eight supporters and two opponents of SB 14, removed tribal ID as one of the allowable forms of ID, and removed a provision that focused SB 14's voter education program at low-income and minority communities. Thus, despite their knowledge of the potential discriminatory effects on minority voters, Texas legislators refused to alter SB 14. Reviewing the evidence of the impact of SB 14, the federal court concluded that, "[s]imply put, many Hispanics and African Americans who voted in the last election will, because of the burdens imposed by SB 14, likely be unable to vote in the next election."[16]

Debates in the three previous legislative sessions on the issue of voter ID often included claims that voter ID was needed to stop voter fraud by non-U.S. citizens. During the year of and before the passage of SB 14, elected public officials in the State of Texas—including Texas State Senators and Representatives, the Secretary of State, the Lieutenant Governor, and the Governor—received a substantial number of letters and emails from constituents that characterized voter ID legislation as legislation related to illegal immigration, often urging them to enact voter ID legislation to stop illegal immigrants from voting, and often using inflammatory references to "criminal aliens," "wetbacks," and similar derogatory phrases and racial epithets to refer to unqualified voters who needed to be stopped from casting ballots through the enactment of voter ID.

Although legal permanent resident immigrants and other immigrants with authorized status possess Texas driver's licenses and state-issued photo ID cards, in responding to constituents, elected officials consistently affirmed that a voter ID was needed to prevent non-citizens from voting. In February 2011, Lt. Gov. Dewhurst wrote to a constituent regarding photo ID, stating, "Voter ID will help stamp out voter fraud and increase public confidence in our election process by ensuring that only U.S citizens -- who are legally eligible -- vote in Texas elections." At the same time, Lt. Gov. Dewhurst's U.S. Senate campaign website listed his support of voter ID legislation under the heading: "David Dewhurst Opposes Illegal Immigration." Under this topic of illegal immigration, which included news articles on strengthening the U.S. Border and increasing the size of the Border Patrol, Lt. Gov. Dewhurst posted news articles describing his "push for the voter ID law for two sessions" and quotes himself as saying: "At the end of the day, there's nothing more important than protecting the sanctity of everyone's right to vote." Upon Senate passage of SB 14, Lt. Gov. Dewhurst issued a press release stating that SB 14 will increase voter confidence "by ensuring only U.S.

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[16] *Id.*, at *29.

citizens – who are legally eligible – vote in Texas elections." Non-citizens, the vast majority of whom in Texas are Latino, thus became the target of the voter ID debate in 2011.

Some legislators went as far as to connect Latinos and Spanish-speakers directly to fraudulent voting. In her testimony in the voter ID litigation case, Rep. Riddle, when asked about specific incidents of voter fraud, described one incident in which she saw a Hispanic, Spanish-speaking woman who appeared at a polling place to vote but needed assistance because she was unable to communicate in English and was unfamiliar with the process. Rep. Riddle offered this incident as an example of voter fraud despite the fact that she also testified that she had no knowledge of whether the voter was a citizen or not, only that she was Hispanic and Spanish-speaking.

Voter Purges in Florida and Colorado

By 2010, Latinos constituted 22.5% of the Florida population.[17] In May 2012 the Florida Department of State launched a deeply flawed voter purge effort that originally identified 180,000 registered voters as potential non-citizens. The Department of State sent letters demanding proof of citizenship to 2,600 registered voters. Sixty percent of the people on the list were Latino even though Latino voters constitute just 13 percent of the state's electorate.[18] Many who received the letters were U.S. citizens. In Broward County, a 91-year-old World War II veteran was forced to provide proof of his citizenship in order to remain on the voter rolls.[19] And in Seminole County, an election official tweeted a picture of himself with one man who received a warning letter. In the picture, the two men stood side by side, holding the suspect voter's U.S. passport.[20]

By September, the purge, which had faltered when county elections officials questioned the methodology, started up again, this time with a much smaller list of 198 registered voters, the majority of whom were also Latino and African American. The list was purportedly from the Department of Homeland Security but also contained serious flaws. For example, Yeral Arroliga, a U.S. citizen who immigrated from Nicaragua in

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[17] JEFFREY S. PASSEL, ET AL., CENSUS 2010: 50 MILLION LATINOS HISPANICS ACCOUNT FOR MORE THAN HALF OF NATION'S GROWTH IN PAST DECADE (Pew Hispanic Center, Mar. 24, 2011), *available at* http://www.pewhispanic.org/files/reports/140.pdf.

[18] Janell Ross, *Florida Voter Purge Will Continue, Defying Federal Warning*, HUFFINGTON POST, June 2, 2012, http://www.huffingtonpost.com/2012/06/02/florida-voter-purge-federal-warning_n_1564131.html.

[19] Greg Allen, *World War II Vet Caught Up In Florida's Voter Purge Controversy*, National Public Radio (May 31, 2012), *available at* http://www.npr.org/blogs/itsallpolitics/2012/05/31/154020289/world-war-ii-vet-caught-up-in-floridas-voter-purge-controversy.

[20] Michael Ertel, *Passport of one of our voters who recently was incorrectly targeted by the State of Florida as a non-citizen*, TWITTER (May 21, 2012), *available at* https://twitter.com/MikeErtel/status/204678285383307264/photo/1.

1995 and has been a Florida voter since 2007, appeared on the new list after he already sent proof of citizenship in response to having been placed on the first purge list.[21]

The results of this effort were wasted government resources, official embarrassment over targeting U.S. citizens for a voter purge, lawsuits, and voter confusion close to the election. In terms of identifying non-citizen voters, the outcome was predictably small in scope. In Miami Dade 13 registrants reported they were not citizens, two of whom had voted. This is consistent with what we know: non-citizen registrants are very few and normally under the mistaken impression that they are eligible to vote. In Florida, after all was said and done, one individual, a Canadian citizen was convicted for voting in the 2008 General Election.[22] There are 12 million registered voters in Florida.[23]

In Colorado, where Latinos constitute 20.7% of the population, the Secretary of State launched a similarly flawed voter purge of alleged citizens that also dwindled to very small numbers. After claiming there were up to 11,000 non-citizens on the Colorado voter rolls, and then sending almost 4,000 letters accusing individual registered voters of non-citizenship, Colorado Secretary of State Scott Gessler admitted that he thought 141 voters were potentially non-citizens and that he could not confirm that any were non-citizens before the General Election.[24] Ultimately 14 of these voters were removed from the rolls; none had voted.[25] There are 3.6 million registered voters in Colorado.[26]

Texas 2011 Redistricting

Following release of the 2010 Census, which showed an increase of over 2.7 million Latinos in Texas, and the increase of four seats in the congressional delegation,

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[21] Marc Caputo, et al., *Fla. Gov. Rick Scott's voter purge efforts start anew*, TAMPA BAY TIMES, Sept. 27, 2012, http://www.tampabay.com/news/politics/national/fla-gov-rick-scotts-voter-purge-efforts-start-anew/1253538.

[22] Toluse Olorunnipa, *Canadian man living in Broward pleads guilty to voting illegally in '08 presidential election*, THE MIAMI HERALD, Aug. 30, 2012, http://www.miamiherald.com/2012/08/30/2977205/canadian-man-living-in-broward.html.

[23] VOTER REGISTRATION STATISTICS, FLORIDA DIVISION OF ELECTIONS, http://election.dos.state.fl.us/nvra/affiliation.asp (last visited Dec. 18, 2012).

[24] *Voter Purging Resurfaces in Colorado* (ABC News/Univision Oct., 24, 2012), http://abcnews.go.com/ABC_Univision/voter-purging-resurfaces-colorado/story?id=17552694#.UM_DKHdsalE.

[25] Sam Levin, *Out of fourteen illegal voters banned after Scott Gessler's campaign, how many voted? Zero*, DENVER WESTWORD BLOGS (Oct. 12, 2012), http://blogs.westword.com/latestword/2012/10/scott_gessler_illegal_colorado_voters_fourteen.php.

[26] TOTAL REGISTERED VOTERS BY STATUS, 2012 VOTER REGISTRATION STATISTICS, COLORADO SECRETARY OF STATE, http://www.sos.state.co.us/pubs/elections/VoterRegNumbers/2012/November/VoterCountsByStatus.pdf (last visited Dec. 18, 2012).

the Texas Legislature enacted redistricting plans that intentionally thwarted the growing Latino electorate. The Legislature's redistricting plans for state House of Representatives and U.S. Congress were blocked by a federal court in Washington DC on the grounds that both plans reduced minority political strength and that the Congressional plan was purposefully discriminatory on the basis of race.

Despite the fact that Latinos constituted 65% of the State's overall population growth over the past decade, and was therefore the leading reason Texas gained four new congressional seats, the State did not increase the number of Latino majority districts in its Congressional redistricting plan. This was a particularly challenging task in light of the fact that most of the Latino growth occurred where there was already substantial Latino population. In addition, all of the Latino majority districts in South and West Texas were overpopulated and this required Latinos to be shifted into other districts in order to comply with the mandate of one person one vote.

In order to equalize population across districts, but not create additional Latino majority districts, Texas engaged in a sophisticated project of racial gerrymandering. First, the Legislature significantly redrew the boundaries of Congressional District ("CD") 23. (This was the district re-drawn in 2006 in response to the Supreme Court's holding in *LULAC v. Perry*, 548 U.S. 399 (2006), that Texas's 2003 Congressional redistricting plan violated section 2 of the Voting Rights Act and bore the mark of racial discrimination against Latino voters). Following the boundary revision by the *LULAC* district court, CD 23 had elected the Latino-preferred candidate in 2006 and 2008. In 2010, an Anglo-preferred candidate Francisco Canseco defeated the Latino-preferred incumbent with 49.3% of the vote. In 2011, Texas redistricting officials feared Mr. Canseco would be defeated in 2012 and sought to make CD 23 safer for Mr. Canseco.[27]

While he was drawing CD 23 using the Texas Legislative Council's computer software, the Legislature's chief Congressional mapper moved precincts into and out of CD 23 for the purpose of strengthening the district for an incumbent who is not the Latino candidate of choice.[28] In particular, he "swapped out" precincts where Latino registered voters were more likely to turn out to vote and "swapped in" precincts with lower Latino turnout. Although benchmark CD 23 was overpopulated by approximately 149,000 and needed to release population to meet the new population ideal, Texas redistricters shifted more than 600,000 people into and out of the district.[29]

An email exchange between lawyers for the Texas House Speaker who were working on the redistricting plans stated that the goal of changes to CD 23 was to "help pull the district's Total Hispanic Pop[ulation] and Hispanic CVAPs up to majority status, but leave the Spanish Surname [Registered Voter] and [turnout numbers] the lowest," which would be "especially valuable in shoring up [CD 23 incumbent] Canseco."

In altering CD 23, the State's mapper testified that he moved majority Anglo counties north of the Pecos River into CD 23, and split the heavily Latino, politically mobilized Maverick County so that half of it would be located outside of CD 23.[30] He did this even though he and Senate Redistricting Committee Chairman Kel Seliger

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[27] *Texas v. United States*, 2012 WL 3671924, at *57 (D.D.C. 2012).
[28] *Id.*, at *60.
[29] *Id.*, at *59-60.
[30] *Id.*, at *60

admitted that "the excess population in CD 23 could have been addressed by simply moving CD 23 down toward the border with Mexico," and Chairman Seliger admitted that if this were done, "Hispanic voters would 'determine[] the outcome' of the election in CD 23."[31] The State's mapper admitted to removing the highly— and increasingly— mobilized Maverick County voters, who are over 95% Latino, from CD 23 because they would not vote for the incumbent he sought to protect.[32]

While redistricters were swapping Latino voters in and out of CD 23, they were keeping a careful eye on both Latino population and how the district performed electorally so that the final product would have the ability to elect the Latino-preferred candidate in only one of ten elections.[33]

The State's own expert witness, Dr. John Alford, testified with respect to the Legislature's changes to CD 23 and the 2003 redistricting of CD 23 that was invalidated by this Court's decision in *LULAC v. Perry*, that "[t]here are some obvious parallels between what happened previously and what happened this time" and "we feel like we are all having déjà vu[.]".

The district court found "an abundance of evidence that Texas, in fact, [used] various techniques to maintain the semblance of Hispanic voting power in the district while decreasing its effectiveness."[34]

In the Dallas Ft. Worth Metroplex, Texas redistricters excised Latino voters from the City of Fort Worth congressional district and joined them with a heavily Anglo electorate to the north in Denton County.[35] This "lightning bolt" extension of the predominantly Anglo CD 26 into Ft. Worth also used race methodically to separate Latino voters from African American voters in the area, splitting 38 precincts in the process.[36]

Based on this evidence, the U.S. District Court for the Western District of Texas, which was tasked with drawing interim plans for use while the enacted plans were being litigated, determined that it could not legally incorporate the enacted CD 26 into its interim plans.[37] The U.S. Supreme Court found in *Perry v. Perez* that the state's redistricting in the Dallas Ft. Worth Metroplex "appear[s] to be subject to strong challenges in the §5 proceeding" and that departing from the State's enacted plan in the interim plan "seems appropriate."[38] Similarly, the U.S. District Court for the District of Columbia found that, "[t]he purpose behind the split VTDs was to move Hispanic populations into enacted CD 26 and split the non-Hispanic population out of the district."[39]

The Legislature's plan for the State House: reduced the number of Latino-opportunity districts; drew oddly shaped districts in areas with concentrated Latino

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[31] *Id.*
[32] *Id.*, at *61.
[33] *Id.*, at *62.
[34] *Id.*, at *16.
[35] *See id.*, at *71-72.
[36] *Id.*
[37] *See Perez v. Texas*, 2012 WL 4094933, at *15 (W.D. Tex, 2012).
[38] *Perry v. Perez*, 132 S.Ct. 934, 944 (2012).
[39] *Texas v. United States*, 2012 WL 3671924, at *72.

populations that impaired Latino voters' ability to elect the candidates of their choice; and refused to draw majority-Latino districts in areas with significant increases in the Latino population.

For example, Texas eliminated House District 33 (HD 33) in Nueces County, a majority-Latino county in South Texas where Latino population growth was substantial. In the benchmark plan, HD 33 is located inside the City of Corpus Christi and contains 55% Spanish-surnamed voter registration. The Legislature's plan relocates HD 33 to Rockwall and Collin counties in North Texas where the district contains 8.5% Spanish-surnamed voter registration and is not a Latino-opportunity district. [40]

In addition to reducing the number of Latino-majority districts, the Legislature also drew districts in areas with substantial Latino populations in ways that minimized Latino voters' opportunity to elect their preferred candidates. In El Paso County, which is 80% Latino, the State re-drew HD 78 into a bizarre shape that maximized the number of Anglo voters in the district. As a result, although the remaining House districts in El Paso County have an average of 74% Latino registered voters, HD 78 in the Legislature's plan contains 47% Latino registered voters. The Legislature's reconfiguration of HD 78 splits 15 voting precincts, and does not follow traditional features such as the mountain range that dominates the area's geography. The U.S. District Court for the Western District of Texas concluded that the "deer antler" protrusions of the district and "the high number of split precincts in the protrusions increases the likelihood that the map-drawers were focused on race because partisan voting data are not available below the precinct level" and found that the plaintiffs in that case had presented a viable claim of purposeful discrimination.[41]

In Bexar County, where Latinos are in the majority and the Latino population over the last decade increased by 250,000, Texas withdrew HD 117 from more active precincts and extended the district into rural areas with relatively lower Latino turnout in order to protect the incumbent who was not Latino-preferred.[42]

The U.S. District Court for the District of Columbia concluded that the Texas Legislature's State House plan reduced minority ability to elect and that "Texas did not create any new ability districts to offset those losses."[43]

Conclusion

Although Latino registration and voting rates still lag behind those of Anglos, Latino voters are steadily increasing in number and achieving record high levels of voter participation in each successive 4-year cycle.[44] State practices that seek to "freeze in

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[40] *Id.*, at *27.
[41] *Perez v. Texas*, No. 11-cv-00360, Dkt. No. 690 at p. 10-11 (W.D. Tex. Mar. 19, 2012).
[42] *Texas v. United States*, 2012 WL 3671924, at *31, 88.
[43] *Id.*, at *26.
[44] MARK HUGO LOPEZ ET AL., A RECORD 24 MILLION LATINOS ARE ELIGIBLE TO VOTE, BUT TURNOUT RATE HAS LAGGED THAT OF WHITES, BLACKS (Pew Hispanic Center, Oct. 1, 2012), *available at* http://www.pewhispanic.org/files/2012/10/trends_in_Latino_voter_participation_FINAL REVISED.pdf.

place" their current electorates and limit the entry of Latino voters can run afoul of federal law as well as the Constitution and are fundamentally undemocratic.

Iowa Secretary of State Matt Schultz Testimony
Senate Judiciary Committee
December 19, 2012

Thank you, Mr. Chairman and Members of the Committee.

My name is Matt Schultz and I am the Iowa Secretary of State. I appreciate the opportunity to testify before your committee today. I especially want to thank Senator Grassley for extending the invitation to appear before this committee.

I was elected to the office of Secretary of State in 2010. Fighting for election integrity in Iowa was a cornerstone of my campaign.

Citizen participation in our democracy is not only a sacred right, but a responsibility. Unfortunately, citizen involvement in elections declined steadily from the 1950's through the 1990's. But there is good news. We have seen voter participation rates rise again since the late 1990's as voter ID laws and election integrity efforts have become more prominent.

It seems clear that a lack of confidence in the integrity of our elections is one of the reasons people do not vote. Some believe their votes do not matter and that belief is a true cause of voter suppression across this country.

We have seen that measures adopted to protect the integrity of elections, such as voter identification laws, have actually led to an increase in voter participation increased.[1]

Opponents of these measures frequently claim that laws meant to enhance election integrity are suppressing the vote. Yet they offer no evidence to support their claims, only theories often cloaked in political rhetoric.

The truth is that when election officials take steps to secure the integrity and safety of the ballot box, confidence in the outcome rises, and voter participation increases.

Iowa is nationally known for having a model election system. However, as with any system, there is room for improvement and I have been advocating for those improvements for the past two years. One of my significant initiatives in this area involves an agreement with the Iowa Department of Public Safety to have a Special Agent from the Iowa Division of Criminal Investigation (DCI) assigned to investigate election misconduct.

The DCI Agent is conducting multiple investigations into absentee ballot fraud, voting by individuals who are ineligible, and double voting. Since August of 2012, charges have been filed in eight election misconduct cases based on information received from my staff, our local election officials, and members of the public. Anyone who says that voter fraud does not exist should look at the numbers that have been produced in a few short months. We all know that criminal investigations take time and we expect many more charges related to election misconduct to be filed in the months to come.

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[1] See Atlanta Journal-Constitution, "Despite Voter ID Law, Minority Turnout Up in Georgia," by Shannon McCaffrey, September 3, 2012.

In our efforts to ensure election integrity, my office has taken several steps to maintain accurate voting lists in order to prevent people from taking advantage of the loop holes in our election system. First, Iowa is one of numerous states participating in the Kansas Project, the purpose of which is to identify voters who may be registered or voting in more than one state.

Second, Iowa matched voter registration records with death records from the Social Security Administration. More than 3,000 individuals were identified who were deceased and registered to vote.

Finally, my office compared a list of non-citizens with a driver's license to Iowa's voter registration database. This comparison resulted in the unfortunate discovery that Iowa potentially had thousands of non-citizens who were registered to vote, and over a thousand that may have cast illegal ballots.

In determining how to proceed in light of this information, I recognized the delicate balance between the need for integrity in our elections and the fundamental right of voters to participate in the electoral process. Thus, it was important to proceed with the utmost caution to ensure that no citizen's right to vote was improperly challenged.

As such, my office attempted to work with the federal Department of Homeland Security (DHS) over several months to develop a system that would enable us to enact appropriate measures in dealing with this issue. We realized it was likely that some of the individuals identified during this process subsequently might have become naturalized citizens of the United States.

Therefore, a vital part of our effort was an attempt to gain access to the Systematic Alien Verification and Entitlements (SAVE) database. Our intent was to use SAVE in order to determine if those individuals who were identified as being non-citizens were indeed still non-citizens.

Although federal law explicitly grants states the right to access the citizenship information contained in the SAVE database, Iowa has yet to gain this access despite the fact that other states have successfully done so. There have been multiple delays in communications attributable to that agency which I will detail shortly.

Throughout this process, I have worked with our Democratic Attorney General, Tom Miller in a bipartisan manner to ensure that Iowa maintains the delicate balance between voters' rights and election integrity.

While some states have found this balance difficult to navigate, in Iowa we have worked hard to achieve this result. Attorney General Miller has supported my efforts and recently said that, "His goal, my goal is zero voter fraud, zero voter intimidation."

Critics of this bipartisan effort to prevent non-citizens from illegally voting continually argue that voters are being suppressed. I am pleased to sit before you and report that Iowa had the largest voter turnout in our state's history. This shows that our election integrity efforts did not have a suppressing effect in Iowa.

The interactions between my office and DHS in attempting to negotiate access to the SAVE database can be summarized as follows:

In March my office reached out to the federal government by contacting DHS, and by mid-April my staff made the first formal application for access to the database. On May 7, DHS staff requested further information concerning our proposed use of the data. On May 22, we provided a detailed response, including information on administrative rules I intended to adopt if SAVE access was granted.

We did not hear back from DHS until July 17. On that date, a DHS staff member called my office and indicated that DHS was in a position to "go ahead and get Iowa signed up" for SAVE access. We were instructed to submit yet another formal application.

On July 20, I adopted administrative rules to implement the process Iowa would use with the SAVE data and submitted a second formal application as requested. We received no further communication from DHS concerning the status of our application until August 15, following a call to DHS from the Chief of Staff of the Iowa Attorney General's office asking for an update.

On August 16, a draft Memorandum of Agreement was received from DHS based on the agreement that had been reached with the State of Florida. On August 22, my staff responded to DHS, indicating my willingness to execute the agreement and DHS again asked for additional information that was provided by my office the same day.

The following day, my staff was advised that the Memorandum of Agreement had been forwarded to the DHS Office of Chief Counsel. On August 27, DHS staff requested the addition of one sentence to the Memorandum. I agreed. Then on September 6, DHS informed my staff that the Memorandum had been sent to its legal counsel for yet another final review.

During this process a lawsuit was filed concerning the proposed administrative rules. On September 14, a temporary injunction was issued prohibiting my office from implementing the rules due to the proximity of the general election. A copy of the court order was emailed to DHS for their information on September 17. We heard nothing further from DHS until October 26, and have yet to receive the Memorandum we negotiated. As such, no agreement has been executed. The multiple delays from DHS during our negotiations and their review of language that was based on an existing template developed by their own office has been frustrating.

Despite what has happened over the past year, I am committed to reaching an agreement with DHS to ensure we continue balancing the rights of voters with the integrity of elections. That is why we are working together across party lines in Iowa.

Again, thank you Mr. Chairman and members of the Committee for the opportunity to testify. I will be happy to answer any questions that any of you may have.

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