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STATEMENT OF

THE NATIONAL BAR ASSOCIATION

Submitted to:

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

For the Voting Forum:

**New State Voting Laws II: Protecting the Right to Vote in the Sunshine
State**

On

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Submitted by the National Bar Association
Submitted before the
Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
For the Voting Forum: New State Voting Laws II:
Protecting the Right to Vote in the Sunshine State

Introduction

The National Bar Association (“NBA”) is the oldest and largest organization of African American attorneys and judges in the world representing more than 44,000 lawyers, judges, legal scholars and law students domestically and abroad. While the legal profession and the needs of our constituency have greatly evolved, the NBA remains committed to the objectives it established at its formation:

“to advance the science of jurisprudence; improve the administration of justice; preserve the independence of the judiciary and to uphold the honor and integrity of the legal profession; to promote professional and social intercourse among the members of the American and the international bars; to promote legislation that will improve the economic condition of all American citizens, regardless of race, sex or creed in their efforts to secure a free and untrammelled use of the franchise guaranteed by the Constitution of the United States; and to protect the civil and political rights of the citizens and residents of the United States.”

Voting is a fundamental right, and a cornerstone of our democracy and the NBA thanks Senator Dick Durbin for convening this important forum to examine the alarming consequences of Florida’s law, H.B. 1355, which restricts early voting and overly burdens third-party groups in their efforts to help register people to vote. Sadly, this legislation functions to create impediments to exercising this fundamental right. We appreciate this opportunity to comment upon the negative effect this law will have upon the right to vote and the disparate impact it will have upon the voting rights of historically disenfranchised citizens.

As a Presidential Election year, 2012 will serve as a crucial year in the fight to protect voter’s rights. The impediments put in place by the enactment of H.B. 1355 are of the same spirit as the obstacles being put in place by state legislatures nationwide. This past year, state governments across the country have proposed and enacted an array of new laws and policies making it harder to vote. As a major legal partner in the Election Protection Coalition, the NBA established its own Election Protection Task Force within the Bar to work closely with the Lawyers’ Committee for Civil Rights Under Law along with other organizations in this battle to protect the rights of voters. As we have done in past election, our members will work across the country and lead on the ground efforts and inform the public on new election laws, participate in legal field deployments on Election Day, serve as poll watchers, and hotline call center volunteers on or before Election Day.

Restrictions on Early Voting

Pursuant to the provisions of H.B. 1355, the time period during which early voting is conducted, is restricted for both federal and state elections. In the past, early voting lasted for a full two-

week period, beginning on the 15th day before an election and ending on two days before the election. The new law, however, restricts early voting to a more limited, eight-day, period and will eliminate the provisions for early voting during the Sunday before the election.

Restricting early voting opportunities will, regrettably, have a significant negative effect on both the African-American and Hispanic voting communities. Election data for several counties in Florida, in fact, indicate that in both the 2008 and 2010 general elections, African-American voters disproportionately relied more on early voting more than their white counterparts.¹ In addition, the data also demonstrates that black voters disproportionately voted more during weekend hours than during weekday hours.

One particular concern is the law's restriction preventing voting on the Sunday before the election. This restriction will have a tremendous impact upon historically disenfranchised voters, which the Civil Rights laws are specifically designed to protect. Places of worship, historically, have, in fact, rallied their members to travel from their churches to their voting sites. This practice, specifically, had a significant impact in the 2008 general election. Statistical evidence also shows that both African-Americans and Hispanics participated in, and benefited from, voting drives of this nature in proportions far greater than whites. Indeed, 33.2 percent of those who voted early on the Sunday before election day, during Florida's 2008 general election, were black and 23.6 percent were Hispanic, whereas blacks only constituted 13.4 percent of all early voters statewide (for all early voting days) and Hispanics constituted 11.6 percent.²³

Burdensome Restrictions on Individual Citizens and Citizen Groups' Ability to Conduct Voter Registration Outreach

The new restrictions enacted under H.B. 1355 unnecessarily burden the ability of individual citizens and citizen groups to conduct voter registration outreach. The enacted changes will 1) require all third-party voter registration organizations to register with and provide the names of all volunteers to the state; 2) all third-party voter registration organizations must submit a sworn statement from each registration agent; 3) all third-party voter registration organizations must deliver to election officials each and every completed voter registration application that it collects within 48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period; and 4) the Florida Attorney General is granted new authority to sue to enforce the registration restrictions or to enjoin any voter registration activity which fails to conform with H.B. 1355.

¹ Letter from Lee Rowland, Democracy Counsel, Brennan Center for Justice & Mark A. Posner, Senior Counsel, Lawyers' Comm. for Civil Rights Under the Law, to Chris Herren, Chief, Voting Section, U.S. Dep't. of Justice (July 15, 2011), *available at* http://brennan.3cdn.net/4713a8395c96f48085_p7m6iv6sh.pdf.

² Data on the number of persons casting early-voting ballots were obtained from Florida Division of Elections website, <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>.

³ Letter from Lee Rowland, Democracy Counsel, Brennan Center for Justice & Mark A. Posner, Senior Counsel, Lawyers' Comm. for Civil Rights Under the Law, to Chris Herren, Chief, Voting Section, U.S. Dep't. of Justice (July 15, 2011), *available at* http://brennan.3cdn.net/4713a8395c96f48085_p7m6iv6sh.pdf.

The alarming impact of restrictions like these is that they are accompanied by a dramatic decline in third-party voter registration activity, such as, the approximate 25 percent drop in Florida's voter registration rates since 2006.⁴ Florida's recent history of implementing restrictive rules for voter registration drives began in 2005, when its first major wave of restrictions emerged, just one year after ACORN's success in gathering enough signatures to place a citizen initiative on the ballot to increase Florida's minimum wage. Since that time civic groups have delivered several lawsuits challenging the constitutionality of these restrictions with some success. In May of 2011, however, despite broad opposition from civic and minority rights groups, H.B. 1355 was signed into law. Shortly after its enactment, the detrimental effects of its restrictions were realized when the all-volunteer Florida League of Women Voters, the Boy Scouts, student groups, civic organizations and others who undertake the critical task of helping citizens get registered to vote, announced that they would discontinue their voter registration activities in the state.⁵ The Florida League of Women Voters explained that the new law "imposes an undue burden on groups such as ours that work to register voters," and that "we cannot and will not place thousands of volunteers at risk, subjecting them to a process in which one late form could result in their facing financial and civil penalties."⁶

In Florida, U.S. Census Bureau data from the 2004 and 2008 election cycles show that both African-Americans and Hispanics relied on third-party registration drives more than white voters, and that minority reliance on such drives is greater in Florida than elsewhere in the country. In fact, African-American and Hispanic citizens in Florida are more than twice as likely as whites to register to vote through private drives. In 2004, while 6.6 percent of non-Hispanic whites in Florida indicated they registered through private drives, 17.4 percent of African-Americans and 18.9 percent of Hispanic voters in Florida registered in this manner.⁷ Similarly, in 2008, 6.3 percent of non-Hispanic white registered voters in Florida were registered through drives versus 12.7 percent of black voters and 12.1 percent of Hispanic registered voters,⁸ and 6.3 percent of white voters were registered through drives, versus 11.5 percent of black voters

⁴ Florida Division of Elections, Voter Registration Statistics, <http://election.dos.state.fl.us/NVRA/reports.shtml>; Voter Registration Year To Date Report, October 2006: <http://election.dos.state.fl.us/voter-registration/archives/2006/October/YTDTTotal.pdf>; Voter Registration Year To Date Report, October 2010: <http://election.dos.state.fl.us/voter-registration/archives/2010/October/YTDTTotal.pdf>.

⁵ League of Women Voters of Collier County, available at <http://www.lwvcolliercounty.org/> (last visited September 3, 2011).

⁶ *Id.*

⁷ U.S. Census Bureau, Current Population Survey, November 2004. The national figures in 2004 were: 7.8% of non-Hispanic whites; 12.7% of blacks; and 12.9% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html>.

⁸ U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/apsd/techdoc/cps/cpsnov08.pdf>. All data from the CPS on methods of voter registration is self-reported by survey respondents. The corresponding national figures in 2008 were: 5.4% of non-Hispanic whites registered at private drives; 11.1% of African-Americans; and 9.6% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

and 11.5 percent of Hispanic voters during the same year.⁹

Before the enactment of H.B. 1355, African-American voters began to achieve equity in voter registration rates with their white counterparts, and Hispanic voters benefitting from increased voter registration. These improvements were in large part a result of focused efforts by third-party voter registration groups to register new and underrepresented classes of voters.

Notwithstanding, current voter registration rates indicate that, despite these improvements, Hispanic voters continue to be underrepresented in terms of voter registration. In short, H.B. 1355's restrictions have essentially thwarted the much needed efforts of groups such as the League of Women Voters, the Boy Scouts, student groups, civic organizations and others who undertake the critical task of helping citizens get registered to vote.¹⁰

Conclusion

Our country's history is beleaguered with restrictive voting laws that have been used to keep women, students, and people of color from the ballot box. In 2012 we should be committed to protecting the rights of all people to vote, rather than establishing more roadblocks.

The NBA greatly appreciates the opportunity to testify and the Committee's continued oversight and concern for the integrity of the electoral process. We are eager to continue working with the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights in protecting the right to vote for all American citizens.

⁹ U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/aprd/techdoc/cps/cpsnov08.pdf>.

¹⁰ Official statement from League of Women Voters of Florida president Deirdre Macnab (May 26, 2011).

