



**Testimony of Judith A. Browne-Dianis
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Hearing on “New State Voting Laws: Barriers to the Ballot?”

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Chairman Durbin and Members of the Subcommittee on the Constitution, Civil Rights and Human Rights, thank you for the opportunity to testify today about new barriers to voting, which are threatening to undermine our democracy.

My name is Judith Browne Dianis. I am Co-Director of Advancement Project—a national, civil rights organization that advances universal opportunity and a just democracy. For almost 20 years, I have been a civil rights litigator bringing cases on behalf of individuals and organizations on a range of issues including housing, education and voting rights. I served as lead counsel in a lawsuit against the State of Maryland for failure to fully implement the “Motor Voter” Law. In November 2000, I investigated civil rights violations after the election in Florida, providing the basis for the *NAACP v. Harris* lawsuit, in which I served as counsel. In 2004, I successfully advocated to preclude the use of the infamous Florida felon purge list, and served as counsel in *DNC v. RNC*, which stopped the RNC from challenging voters of color based upon an illegal voter caging program. In 2008, I represented the Virginia NAACP in litigation against the Commonwealth of Virginia and several jurisdictions for racial disparities in the allocation of voting machines. Since 2001, Advancement Project’s Voter Protection Program has eliminated barriers to voting and improved election administration in advance of Election Day by working closely with local civic engagement groups and election officials.

Chairman Durbin and Members, based on my experience, expertise, and the work Advancement Project is doing around the country, I must report that the threat to an inclusive democracy, full participation by Americans in the electoral process, is quite real and quite pernicious. It is being effectuated through a well-organized and well-financed campaign. The right to vote, particularly for racial minorities, young voters, senior citizens, the working poor and people with disabilities, is under assault. There is a growing body of evidence to establish that well-funded reactionaries are determined to execute a voter suppression campaign against voters of color, in particular, who are growing in number and who reactionaries fear will vote their interests. The country has not seen this level of attempted suppression since the days of poll taxes and literacy tests. Advancement Project and its partners are battling a systematic campaign supported by the development and strategic distribution of repressive model legislative proposals crafted by the American Legislative Exchange Council, a conservative legislative advocacy group that receives funding from the Charles G. Koch Charitable Foundation and other

Tea-party backed interests. Some 38 states introduced legislation this year, based on ALEC's model legislation, designed to impede voters at every step of the voting process.¹ At least a dozen states passed laws this year that could prevent millions of hard working, taxpaying Americans - especially racial minorities, young voters, the working poor, people with disabilities, people with criminal records and senior citizens - from casting ballots in 2012 and beyond, making this the most significant setback to voting rights in a century.

In my testimony today, I will highlight new barriers to voting that have been enacted in the past 8 months; to describe the specific harms these barriers pose for people who are and will be eligible to vote in the 2012 election cycle; and to underscore the compelling necessity of eliminating these barriers in order to guarantee fair elections. This rash of newly enacted voting laws place restrictions on the number and types of acceptable forms of voter identification, early voting opportunities, and access to voter registration. Advancement Project has been at the forefront of combating the spate of new voting restrictions this year, working with local groups in at least a dozen states. In April, Advancement Project published *What's Wrong With This Picture?*,² which analyzes and sounds the alarm on pernicious voter identification proposals. Advancement Project and its partners filed litigation in Missouri to challenge the ballot initiative that could lead to voter ID restrictions in that state.

Record turnout by Black and Latino voters in 2008 impacted federal and state elections across the nation. According to Pew Research Center, Black turnout increased almost five percentage points, from 60% in 2004 to 65% in 2008, nearly matching White turnout (66%). Latino turnout also rose, from 47% to 50%. New barriers to voting may neutralize these surges and systematically disenfranchise already registered voters. These barriers to voting can be notably seen in the following instances:

- Introduction of pernicious, restrictive voter identification laws, introduced in 34 states this year that stand to disenfranchise millions of voters nationwide.
- Legislation to limit early voting, such as bills passed in Florida, Ohio, Tennessee, Georgia and West Virginia.
- Laws, such as those passed in Florida and Texas, making it more difficult for groups like the League of Women Voters to register voters.
- Laws, such as those passed in Kansas and Alabama, requiring documentary proof of citizenship to register to vote.
- Policies such as those in Florida, Iowa and Virginia, that make it harder for people with past criminal records to regain the right vote even after they have paid their debt to society.

¹ Eliza Newlin Carney, "Voting: The Rising Degree of Difficulty," *National Journal*, March 13, 2011, <http://nationaljournal.com/columns/rules-of-the-game/voting-the-rising-degree-of-difficulty-20110313> ("Many GOP-controlled legislatures are working from model legislation produced by the American Legislative Exchange Council, a conservative group that has received funding from the Charles G. Koch Charitable Foundation, the progressive group Campus Progress recently disclosed.")

² *What's Wrong with this Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights*, April 2011, <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf>

- Coordinated plans to place millions of challengers at polls in 2012 to challenge voters' eligibility in ways that may intimidate eligible voters and disrupt polling place operations.³

The historical struggle to gain equal voting rights in our nation for citizens of color has been a long and painful one. Ratification of the 15th Amendment prohibited the denial of the right to vote on the basis of race, color or previous condition of servitude. For almost one hundred years after, people continued to suffer, bleed, and die to ensure that individuals can express their voices equally through the ballot box. The sudden increase of new legislation restricting voting combined with voter intimidation tactics collectively could result in mass disenfranchisement of eligible voters in 2012 and beyond.⁴

I. VOTER IDENTIFICATION RESTRICTIONS

The most pervasive new threat to voting rights has been voter identification restrictions, which were introduced in 34 states this year. Thirteen states this year passed laws restricting identification voters may show before being allowed a ballot. Such bills were vetoed by governors in 5 states: Montana, Minnesota, Missouri, North Carolina and New Hampshire. Missouri and Minnesota are considering constitutional amendments to enshrine photo ID requirements. Newly enacted laws in some states, like Texas, South Carolina and Alabama, face review by the Justice Department before they can be implemented. In other states, like Wisconsin, Kansas, and Tennessee, implementation will soon be underway. While these new laws vary slightly from state to state, they all limit the forms of identification voters must show before being allowed to cast a ballot to only non-expired, photo ID issued by that state or the federal government. The issue is less about *whether* voters should be made to demonstrate their identity at the polls, but rather *how restrictive* the allowable forms of identification should be.

Federal law requires first-time voters by mail to present ID,⁵ and more than half the states already require all voters to show ID at the polls, but most allow a range of forms of acceptable ID. Prior to this year's new laws, eight states required photo ID from voters but only two – Georgia and Indiana – prevented voters from casting regular ballots if they lacked a photo ID.⁶ The other states had provisions allowing voters without ID to vote a regular ballot upon completion of an affidavit attesting to their identity. The new laws do not afford that option to voters, and in nearly every state that passed such a law, the laws are more restrictive in the forms of allowable ID than the corresponding laws in Indiana and Georgia, which until this year had the most restrictive voter identification laws in the country.

A. These new laws significantly alter the voting process and make it much harder for people to vote.

³ Mary Tuma, "King Street Patriots aim to recruit 1 million volunteers to monitor 2012 elections," The American Independent, Mar. 27, 2011, <http://www.americanindependent.com/175736/king-street-patriots-aim-to-recruit-1-million-volunteers-to-monitor-2012-elections>.

⁴ Id. The *National Journal* reported, "The movement to challenge voters in person is only one prong of a multi-part national campaign to fight supposed fraud by erecting new barriers to voting. These include proposed photo IDs and proof-of-citizenship bills; plans to eliminate same-day voter registration, and efforts to restrict voting access for students and felons. The movement is fueled in part by new GOP legislative majorities."

⁵ Help America Vote Act of 2002, Pub. L. No. 107–252, 42 U.S.C. § 15301 et seq. (2002)

⁶ See, Ind. Code §§ 3-5-2-40.5; 3-11-8-25.1.; Ga. Code § 21-2-417.

- The new laws create unprecedented, expensive and unnecessary duties and training needs for overburdened poll workers.
 - Following July’s “soft rollout” of Wisconsin’s new photo ID law during its recall elections, Maribeth Witzel-Behl, Madison County Clerk, expressed concerns about the burdens caused by the implementation of the new law. “Between showing ID and signing the poll book, the amount of time each voter needs to spend at the poll book has at least doubled,” she wrote. “The minimum number of Election Officials needed at each polling place will increase from 5 workers to 9 workers for small elections at polling places that have only one ward because of the need to check IDs . . . Election Officials are very concerned about dealing with voter lines that could easily become two or three hours long.”⁷
 - In the face of staggering budget shortfalls, implementing photo ID laws could cost cash-strapped states \$20 million or more to cover costs of providing ID at no cost to those who lack one, notifying voters and facilitating the process of getting an ID, informing and educating voters, training staff and poll workers, and increased administrative costs associated with implementing the new law and of processing the increase in provisional ballots cast by voters without the requisite ID.⁸ A photo ID bill pending right now in Pennsylvania could cost taxpayers \$11 million.⁹ Indiana spent \$12.2 million implementing its law;¹⁰ Missouri estimated \$17.4 million over three years to inform its 4 million voters of new ID requirements.¹¹
 - Poll workers receive less training than the average bouncer in assessing IDs, and people often do not look like their photos. Texas Senator Judith Zaffirini brought this point home during floor debates on the new Texas law, presenting an enlarged image of the ID of her chief of staff, who was known to everyone in the room and sitting right next to her during the demonstration. Legislators could not identify the identification as belonging to the aide, as his hair had thinned considerably since the photograph was taken.¹²
 - Poll workers already disparately administer identification laws. A Pew report following the 2008 elections found that African American and Latino voters

⁷ Email from Maribeth Witzel-Behl, Madison County Clerk, July 21, 2011.

⁸ "The Cost of Voter ID Laws: What the Courts Say" Brennan Center for Justice, Feb. 17, 2011, http://brennan.3cdn.net/2f0860fb73fd559359_zzm6bhnld.pdf.

⁹ Pennsylvania Budget & Policy Center, "Voter Mandates Costly to Taxpayer," May 10, 2011, <http://www.pennbpc.org/voter-mandates-costly-taxpayer>.

¹⁰ "Report on Photo ID for Voting Purposes," ISACA Photo ID Exploratory Committee, http://www.iowaauditors.org/index_files/ISACAVoterIDReport020211final.pdf.

¹¹ 2010 Missouri Committee on Legislative Research Oversight Division - Fiscal note, <http://www.southernstudies.org/MO%202010%20Voter%20ID%20Fiscal%20Note.pdf>

¹² “Guess Who?”, *The Party Insider*, Jan. 26, 2011, <http://www.txdemocrats.org/2011/01/26/guess-who/>

- were asked to show “picture ID” more than whites – 70% for African Americans, 65% for Latinos, compared to 51% for Whites.¹³
- In testimony to the U.S. Senate Rules Committee, Missouri Secretary of State Robin Carnahan reported, “nearly one out of every five complaints received by my office concerned a voter being asked for the wrong type of identification at the polls on Election Day. In fact, I was one of those voters. If it can happen to me and I’m the Secretary of State, it can happen to anyone.”¹⁴
 - Ohio Republican Secretary of State Jon Husted publicly opposed a photo ID proposal in Ohio this year, saying that existing ID laws allowing a broader range of IDs were sufficient: “I believe that if you have a government-issued check, a utility bill in your name with your address on it, that no one made that up. They didn't call AEP and establish utilities in their name to commit voter fraud. Let's be clear about this. There are some other forms that are legitimate. . . . What if I lose my ID on Election Day? Should there be no other alternative I can use to cast my ballot? I think that there should be.”¹⁵
 - They eliminate legitimate forms of identification owned by many voters that can effectively verify a person’s identity at the polls.
 - Thomas Bloom, 22, a registered voter in Missouri, has two forms of current valid photo ID, including a student ID from St. Louis University and a valid driver’s license from Iowa, neither of which would be allowed in order to vote in the state under a photo ID law vetoed by the Governor this year but that could become law if a proposed constitutional amendment is passed in the state in 2012.¹⁶
 - Emmanuell Aziz, 43, is registered voter in Missouri who has a Missouri driver’s license and a passport, but both have expired in the last two years as his physical condition due to multiple sclerosis has left him unable to drive. He is confined to a wheelchair and no longer employed. Under current law, he would be able to present his existing Missouri driver’s license or passport, even though expired, but those could be deemed invalid by a proposed photo ID amendment pending in the state. In addition to having no practical need to renew his driver’s license, he would face nearly insurmountable obstacles to doing so. The skilled nursing facility where he lives does not have ready access to public transportation. The cost of obtaining a new state identification would impose a significant hardship on him, in terms of getting to the offices necessary to get a certified copy of his birth certificate and a new

¹³ R. Michael Alvarez; Stephen Ansolabehere, and Adam Berinsky, Gabriel Lenz, Charles Stewart III and Thad Hall, “2008 Survey of the Performance of American Elections Final Report,” (Feb. 18, 2009), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election_reform/Final%2520report20090218.pdf

¹⁴ Missouri Secretary of State Robin Carnahan, Testimony for U.S. Senate Rules Committee, http://www.sos.mo.gov/elections/carnahan_senate_rules_testimony.pdf

¹⁵ Husted Opposes Photo ID Mandate, State elections chief says other voter verifications valid, *Columbus Dispatch*, April 8, 2011, <http://www.dispatch.com/content/stories/local/2011/04/08/husted-opposes-photo-id-mandate.html>

¹⁶ Aziz v. Mayer, Petition, para. 4, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

identification as well as paying for the documents. Moreover, as a result of his disability, the quality of his handwriting has deteriorated, which causes his ability to replicate his signature difficult; consequently, if required to vote by provisional ballot, his ballot would be rejected due to a non-matching signature.¹⁷

- Unlike existing photo ID laws in Indiana and Georgia, new voter ID restriction laws in Wisconsin, Texas, Kansas, Tennessee and South Carolina do not allow a broad range of state-issued ID, such as an employee identification card, public benefits card, student ID or veterans card. These more restrictive laws stand to disenfranchise voters who have forms of identification that can verify their identity but may not be on the limited list of acceptable forms of ID.
- They privilege certain classes of voters based on income, employment, education, and culture, while forcing other voters to accept second-class ballots at the polls.
 - Gail Bloom of Rhinelander, WI, wrote about the challenges her 101-year old mother (who has been voting for 83 years) will face under Wisconsin's new photo ID law: "Because she no longer has an unexpired driver's license and her baptismal record isn't acceptable as proof of her identity, she has had to apply for and pay \$20 for a state certified birth certificate. She is not exempt from needing an ID as those in nursing homes are because my sister and I have been able to care for her in her home. The next step is to take her in her wheelchair to the Department of Transportation to wait in line to have her picture taken. If she doesn't request a free voter ID, she will have to pay an additional \$28. My mother is fortunate that she has someone to take her through this vote suppressing procedure. How many elderly or disabled residents do not?"¹⁸.
 - Joy Lieberman, 80, a former elected official, stands to be relegated to second-class citizenship under a photo ID proposal in Missouri, because her original birth certificate does not include her middle name, which is the name under which she is registered to vote, and thus, she will face difficulty renewing her ID once it expires. Even if she qualifies for the proposed law's exemptions for senior citizens, she would be forced to cast a provisional ballot, which would not be counted unless her signature matches that on her original voter registration. Unfortunately, a severe hand tremor now prevents her from duplicating her signature, and any provisional ballot she casts will not be counted. Her vote will likely never count again. "I am NOT a provisional citizen," she wrote in a letter to the Governor urging him to veto the legislation. "I and the 230,000 other registered Missouri voters who will be disenfranchised are NOT provisional/marginal people. We are proud

¹⁷ Aziz v. Mayer, Petition at para. 2, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

¹⁸ Dave Zweifel, "Plain Talk: 101-year-old disgusted with Walker's voter ID law," *The Cap Times*, July 22, 2011, http://host.madison.com/ct/news/opinion/column/dave_zweifel/article_1b510a4c-0845-5bcc-afbe-bd19138314a6.html#ixzz1SqbdGmzw

Americans, proud Missourians who deserve to vote. Driving is a privilege— voting is a RIGHT!”¹⁹

- Under Texas’ new law, a voter who does not present one of the limited forms of identification and who does not fall within the scope of the Act’s very narrow exemptions,²⁰ may vote provisionally, which will only be counted if the voter returns to the election authority within six days with one of the limited forms of acceptable photo ID.
- Under Wisconsin’s new law, a voter without the required statutory ID will be allowed to cast a provisional ballot.²¹ The ballot will be counted only if the voter provides sufficient ID to election officials before the polls close or to the municipal clerk by the Friday following Election Day.²²
- The sponsors and advocates of these laws ignore the substantial hurdles, including cost factors, involved in obtaining the specific type of ID required under the new laws.
 - Nora Elze, 88, may not be able to get a Georgia ID because of difficulty tracking down her marriage license from 1946 that documents the legal change of name from her birth certificate. When she went to get her Georgia ID recently, she was told that because her birth certificate had her maiden name on it and her Pennsylvania ID had her married name, she would need to prove that she was married by producing the marriage license.²³
 - Maria Sapp, 35, a U.S. citizen and registered voter in Missouri, is having difficulty renewing her Missouri ID because her original birth certificate is in Russian and is not accepted by state officials as documentation of identity.²⁴
 - Cindy Dunne, of Winston-Salem North Carolina, wrote of the difficulties her sister would face under a photo ID law that was vetoed by the governor this year but could resurface next year: "I have a sister who worked as a home healthcare aide for 20+ years, even as her own health was failing. She was forced to stop working after having a diabetic blackout. It took her several months to make the many adjustments to her life --- loss of freedom because she couldn’t drive, loss of income, and medical coverage because she couldn’t work, etc. She had to learn to live on even less than the \$20,000/year she had been making. She is neither computer, nor cell phone literate. Now, she is on

¹⁹ Aziz v. Mayer, Petition at para. 6, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

²⁰ The Act exempts persons who cannot be photographed for religious reasons, those with disabilities, and those who can prove that they have been the victims of a natural disaster, which is defined very narrowly. *See* Submission Letter at 5 (disabilities), 8 (religious objection and natural disasters).

²¹ § 6.79(2)(d), (3)(b); Sections 47-50

²² § 6.97(3)(b); Section 90.

²³ “Savannah Woman told she needs Proof of Marriage to get Driver's License,” Aug. 29, 2011, <http://www2.wsav.com/news/2011/aug/29/savannah-woman-told-she-needs-proof-marriage-get-d-ar-2337843/>

²⁴ Aziz v. Mayer, Petition at para. 5, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

Medicaid, getting food stamps and she started taking Social Security payments at age 63. She is still just barely making it and has lost some of her self-esteem due to all the losses she has experienced over the past several months. How can the government actually think the expense of getting a picture ID will not be costly to set-up the infrastructure and more bureaucracy, but also to elderly individuals like my sister? Are the people who were elected to represent us that far removed from us that they truly can't identify with the hardships they will be causing?"²⁵

- In Wisconsin, which passed a new photo ID restriction law, DMV offices currently have no weekend hours and few full-time offices, with 25% of offices open less than one day a month.
- With office closings and reduced hours, 401,374 Latinos and 93,651 Blacks live in 127 counties in Texas without ready access to a Department of Public Safety office in their county to secure an ID for voting as required by the new law there.²⁶
- In Tennessee, which passed a photo ID law this year, only one-third of counties have a DMV office to secure the required ID.
- Tina Hutchinson is an African American registered voter in Missouri who is challenging a proposed constitutional amendment to allow strict photo ID requirements in the state. She has been rendered disabled by an accident and, as a result, is no longer able to work and must sustain herself on a fixed income. She has no car or ready access to transportation. Because she has two plates and thirteen screws in her left leg, it is difficult for her to go places using any available transportation. She currently still has a driver's license that will expire in 2013. The cost of securing the necessary documents to renew her driver's license, as well as the cost of the renewal itself, would impose a significant hardship for her. She believes that these hardships will prevent her from renewing her license and acquiring an ID acceptable for voting under a proposed constitutional amendment in the state when her license expires.²⁷

Photo ID restrictions disenfranchise eligible registered voters. After Indiana's photo ID law was implemented, the media reported about a group of elderly nuns who lacked driver's licenses and current passports who were turned away from the polls, despite the fact that the poll worker who turned them away was a member of their own order and personally knew the sisters.²⁸ The *Los Angeles Times* reported the case of a 19-year-old Indiana college student, a

²⁵ <http://www.democracy-nc.org/VoterIDStories.html>

²⁶ Data referenced in this section available at <http://quickfacts.census.gov/qfd/states/48000.html>.

²⁷ *Aziz v. Mayer*, Petition at para. 9, avail at <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>.

²⁸ "ID law keeps nuns, students from polls," *Los Angeles Times*, May 7, 2008, <http://articles.latimes.com/2008/may/07/nation/na-voterid7>; see also, "Elderly Nuns, Sec. of State Charlie White and a Rare Encounter with Voter Fraud," *Ideas and Action*, March 4, 2011, <http://www.ideasactionblog.org/2011/03/elderly-nuns-sec-of-state-charlie-white.html>

registered voter in Indiana who was turned away from her polling site in South Bend, where she was attending college. Officials at the local motor vehicles office would not accept her Illinois license as proof of identification to get an Indiana ID.²⁹ The state's non-partisan Election Protection hotline that year fielded a number of calls from registered Indiana voters who were turned away at the polls because they lacked state or federal photo identification. One newly married woman said she was told she couldn't vote because the name on her driver's license didn't match the one on her voter registration record. Another was turned away because she had only a college-issued ID card and an out-of-state driver's license.³⁰

Even when they have the required ID, voters still risk being disenfranchised by poorly trained poll workers implementing new ID requirements. The proposals place near total discretion at the hands of poll workers to determine the sufficiency of the ID and to verify identity based upon the photo. Each of the newly enacted laws, like South Carolina's, allow poll workers to determine if they believe the ID is not the voter, in which case the voter would be made to cast a provisional ballot.³¹ None of the new laws allow voters to contest an election authority's decision to not count a provisional ballot, and most of the photo ID laws fail to provide adequate funding for poll worker training, leaving the average poll worker less trained at scrutinizing voter ID's than the average bouncer – much less the average TSA agent. This opens the door to arbitrary and discriminatory enforcement. Such discretion opens the door to covert bias. As one Harvard University study showed, African Americans are already more likely to have their IDs more harshly scrutinized at the polls: A survey of voters after the 2006 elections found that 47% of whites were asked for photo identification whether it was required or not, compared to 54% of Hispanics and 55% of African Americans.³²

B. Minorities are disproportionately impacted.

Millions of voters who lack or would have significant difficulty getting the requisite ID stand to be disenfranchised by these policies. An estimated 11 percent of US citizens – 21 million people – do not have current, government-issued photo ID.³³ In South Carolina, whose new photo ID bill is currently under scrutiny by the Justice Department, 178,000 registered voters lack a driver's license or state identification card, according to the state election commission. The Pennsylvania Department of Transportation estimates that a photo ID proposal currently pending in the state could impact 318,000 registered voters who lack a state ID. In Wisconsin, 178,000 seniors – 23 percent of voters 65 and older – lack a state ID. Minorities are disproportionately impacted. African Americans are more than twice as likely to lack adequate ID - 25% of African-American voting-age citizens – more than 5.5 million people – have no current, government-issued photo ID. At least 15% of voting-age citizens earning less than

²⁹ “ID law keeps nuns, students from polls,” *Los Angeles Times*, May 7, 2008, <http://articles.latimes.com/2008/may/07/nation/na-voterid7>.

³⁰ “Nuns with Dated IDs Turned Away at Ind. Polls,” *Associated Press*, May 6, 2008, http://www.msnbc.msn.com/id/24490932/ns/politics-decision_08/.

³¹ HB3003 (SC 2011), http://www.scstatehouse.gov/ress119_2011-2012/prever/3003_20110126.htm

³² Stephen Ansolobehere, “Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day,” *PS: Political Science & Politics* (2009), 42:127-130 Cambridge University Press, The American Political Science Association 2009

³³ *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice at NYU School of Law, <http://www.federalelectionreform.com/pdf/Citizens%20Without%20Proof.pdf>

\$35,000 per year do not have a non-expired government-issued photo ID. And 18% of American citizens age 65 and above – or more than 6 million seniors – do not have non-expired, government-issued photo ID.³⁴ In Wisconsin, which recently enacted the nation’s strictest ID law, half of the state’s African Americans and Latinos lack a Wisconsin ID.³⁵ Among young voters, the disparate impact is even starker – of those age 18-24, 78% of African American men, 66% of African American Women, 59% of Latino men and 46% of Latina women in Wisconsin lack a state ID.³⁶ The legislative fiscal impact statement for Wisconsin’s legislation estimated that 20% of Wisconsin residents do not possess the type of identification required by the law³⁷ (compared to Indiana, where 99 percent of voters have a state ID). It is clear after the Supreme Court’s decision in *Crawford v. Marion County Election Board* (upholding Indiana’s voter identification law) that states are legally bound to take steps to accommodate voters who do not have ID.³⁸ Unfortunately, most of the new laws fail to allocate sufficient funding for an effective outreach and education campaign, and many of the newly enacted laws do not provide adequate fail-safes for such voters. In this way as well, the new laws passed in Texas, Wisconsin, Kansas, Tennessee and others are more restrictive than the photo ID laws in place in Indiana and Georgia.

C. Many voters face substantial hurdles to obtaining the particular ID prescribed by the new laws.

The hurdles for those without requisite ID can be substantial. State IDs may cost \$10 to \$30 to obtain and many state license bureaus have limited hours and locations for obtaining an ID. Even if states provide ID without cost to those who don’t have one, the underlying documents necessary to procure a state ID are not cost-free, and can be difficult, time-consuming and sometimes impossible to obtain.

D. Costs of getting the newly required ID can be significant.

The cost of obtaining identification to vote is tantamount to a poll tax. While the specific rules vary state to state, in general, as states implement provisions of the REAL ID act, voters must present several underlying primary and secondary forms of identification, such as a certified birth certificate or passport, to prove identity, citizenship, and place of residence in order to get a state ID. In some instances, voters must present a social security card, proof of residence, court documents or marriage and divorce records if names have changed from that on their birth certificate. A copy of a Missouri birth certificate costs \$15, and in Indiana it costs between \$12 and \$20. In Texas, it costs \$22. In some states, it may cost up to \$45 for a birth certificate. A current U.S. passport can cost between \$85 and \$145, while naturalization papers can cost up to \$200. Making matters more difficult, seventeen states plus Puerto Rico and Guam require a photo ID before they will issue a copy of one's birth certificate, or alternatively require

³⁴ Id.

³⁵ John Pawasarat, “The Driver License Status of the Voting Age Population in Wisconsin,” <http://www4.uwm.edu/eti/barriers/DriversLicense.pdf>.

³⁶ Id.

³⁷ Wisconsin Department of Administration, Division of Executive Budget and Finance, Fiscal Estimate - 2011 Session, LRB Number 11-0089/1, Introduction Number AB-0007.

³⁸ *Crawford v. Marion County Election Bd.* 553 U.S. 181, 198-99, 201 (2008) (relying on the fact that Indiana’s law allowed people over 65 to vote absentee without ID, that the indigent could vote without ID upon signing an affidavit of their identity, and that those without a birth certificate could present other forms of ID as their primary document).

multiple pieces of secondary forms of ID to get a birth certificate, which is then necessary to present in order to get a photo ID. In some states, the wait to get a copy of a birth certificate or other records can be weeks or months. There may be other hidden costs such as transportation to various agencies and fees related to acquiring supporting documents. These significant hurdles led the Missouri Supreme Court to conclude in 2006 that the state's photo ID law amounted to a poll tax and unconstitutionally disenfranchised voters – even if the state provided ID without cost to those who lacked one.³⁹

Texas' new photo ID law requires all voters to produce one of the following in order to vote by regular ballot: a Texas-issued driver's license, a Texas state identification card, a license to carry a concealed handgun, a U.S. military card, or a U.S. passport, each of which must be current or have expired no earlier than 60 days before the date of presentation; or a U.S. citizenship certificate that contains a photograph of the voter.⁴⁰ The costs of obtaining such ID are not insignificant.

- The cost of a driver's license is \$25. The cost of a state ID card is \$16.⁴¹ To get one, voters must present at least one primary and two secondary documents. A copy of a birth certificate is \$22⁴²; the cost of a marriage license is \$71.
- The cost of handgun license is \$140, and requires a state ID card (\$26 or \$16), fingerprints (\$9.95) and a training class (\$70-\$120).⁴³
- The cost of a U.S. Passport is \$110, plus \$30 for the card, plus an execution fee of \$25.⁴⁴
- A citizenship certificate costs \$600⁴⁵ not including the costs of the underlying documents to secure the certificate, including: certified birth certificate (\$22); marriage license or divorce decree (\$71)

For voters who lack one of those forms of ID and attest that they cannot afford one of the above forms of ID, Texas law requires the state to provide “an entirely new identification

³⁹ *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006) (found: “[I]n addition to the monetary costs imposed on persons seeking to obtain the proper photo ID, the process to do so imposes additional practical costs, including navigating state and/or federal bureaucracies, and travel to and from the Department of Revenue and other government agencies. One of these practical costs is the time it takes to receive the appropriate documentation. In Missouri, the waiting period for a birth certificate alone is six to eight weeks. In Louisiana, the birthplace of many Katrina refugees who have taken shelter in Missouri, the processing period is eight to ten weeks. Should citizens need additional documents, the bureaucratic hurdles and waiting periods would increase.”)

⁴⁰ See Senate Bill 14, Charter 123, 82nd Legislature 2011, <http://www.sos.state.tx.us/statdoc/bills/sb/SB14.pdf>.

⁴¹ “TxDPS – Driver License or ID Requirements,” Texas Department of Public Safety, <http://www.txdps.state.tx.us/DriverLicense/identificationrequirements.html>

⁴² “Where to Write for Vital Records – Texas,” Centers for Disease Control and Prevention, <http://www.cdc.gov/nchs/w2w/texas.htm> (birth certificates); “

⁴³ “DPS Concealed Handgun License Fee Schedule,” Texas Department of Public Safety, http://www.txdps.state.tx.us/administration/crime_records/chl/feesReqDocs.pdf (handgun licenses)

⁴⁴ “Passport Fees,” Travel.State.Gov, http://travel.state.gov/passport/fees/fees_837.html (passports)

⁴⁵ “Instruction for N-600, Application for Certificate of Citizenship,” Department of Homeland Security, <https://www.uscis.gov/files/form/n-600instr.pdf> (citizenship certificate).

document that the State must provide free of charge to voters who attest to their inability to pay for the State's required forms of identification."⁴⁶ This so-called safeguard is anything but.

This election identification certificate will be issued by the Texas Department of Public Safety (TDPS) to any registered voter (or voter applicant), free of charge, who attests that s/he is obtaining the certificate because s/he does not have one of the required forms of identification. The new law does not outline what a voter must provide in order to secure this certificate, but authorizes the TDPS to "require applicants [for the election identification certificate] to furnish the same information required for a driver's license."⁴⁷ The provision is baffling and troubling.

First, it is unclear whether this provision -- requiring voters to provide the same information required for a driver's license -- is the actual requirement for the certificate or whether regulations will be issued at a later date outlining the requirements for the certificate. To the extent that this is the actual requirement for the certificate, in order to secure a driver's license in the State of Texas, a driver must provide (i) one "primary" form of identification, (ii) two "secondary forms of identification," or (iii) one "secondary" form of identification and two "supporting" forms of identification.⁴⁸ Each of these categories of documents contains forms of identification that cost money to secure. For example:

- A primary form of identification includes an expired driver's license and a current passport, which cost, respectively, \$25 and \$110 (for passbook passport);⁴⁹
- A secondary form of identification includes a birth certificate, which costs \$22;⁵⁰ and
- A supporting form of identification includes a marriage license or divorce decree, which costs approximately \$71.⁵¹

Given these requirements, this "free" election identification certificate is hardly free to voters.

In Wisconsin, the state will provide a state ID without cost but only if the voter knows to check a small box on the ID application form in which the voter attests that the ID is needed in order to vote. DMV staff have been instructed not to inform customers of the free ID unless they ask,⁵² and customers who fail to attest that they need the ID to vote are charged \$28. And, just as with the law in Texas and the other states that passed photo ID laws this year, the underlying documents necessary to obtain the ID are not free.

⁴⁶ See Letter from Ann McGeehan, Director of Elections, Texas Secretary of State to T. Christian Herren, Jr., Chief Voting Section, Civil Rights Division, Department of Justice (July 25, 2011) at p. 11.

⁴⁷ Submission letter at 9

⁴⁸ See "Identification Requirement for Texas Driver's License or Identification Card," <http://www.txdps.state.tx.us/driverlicense/identificationrequirements.htm>.

⁴⁹ For driver's license information, see "TxDPS – Driver's License Fees," Texas Department of Public Safety, <http://txdps.state.tx.us/DriverLicense/dlfees/htm>, and for information on passport fees, see "Passport Fees," Travel.State.Gov, http://travel.state.gov/passprt/fees/fees_837.html.

⁵⁰ "Where to Write for Vital Records – Texas," Centers for Disease Control and Prevention, <http://www.cdc.gov/nchs/w2w/texas.htm>.

⁵¹ "Personal Records: Fee Schedule," Harris County Clerks Office, http://www.cclerk.hctx.net/Personl_Rec/FeeSchedule.aspx.

⁵² Top DOT official tells staff not to mention free voter ID cards to the public – unless they ask, The Capitol Times, Sept. 7, 2011, http://host.madison.com/news/local/govt-and-politics/capitol-report/article_335f59fa-d8fe-11e0-8a23-001cc4c03286.html.

Minorities are less likely to be able to secure the types of ID required by these strict laws. Census data demonstrates that racial minorities are far more likely to live in poverty than their white counterparts. For example in Texas, the median income for Black and Latino voters (\$39,000) is 44% less than the median income for White voters (\$56,587). Moreover:

- 8.8% of White Texans live below the federal poverty level of \$22,350, compared to 22.8% of African-Americans and 25.8% of Latinos in Texas.

Among voting age Texans, the poverty rate for Whites is 8.3%, while the poverty rate for Blacks is 18.8% and for Latinos is 20.8%.

Because of these stark economic disparities, the cost of securing the required documents, the cost of the required documents themselves, and the time and cost associated with securing all necessary documents, will disproportionately affect voters of color. And, the effects will be quite adverse as these costs, in the aggregate, are not insubstantial.

E. Underlying documents can be difficult or impossible to access.

In addition to cost, the underlying documents necessary to obtain an acceptable ID can be difficult and even impossible to obtain. For people born out of state, who lack transportation to offices to get these documents, cannot afford these documents, work multiple jobs or inflexible hours, have disabilities or are home-bound, the hurdles can be significant. Others, such as those born at home or informally adopted, those with no permanent residence or who changed their names, or those whose records were destroyed, may not be able to acquire the underlying documents at all.

F. Locations to secure an ID are difficult to access.

In the face of severe budget cutbacks, many states have reduced the hours and locations of motor vehicle offices. These closures and the difficulty of getting to these offices, create significant hurdles to obtaining an ID even if the state provides it without charge.

- Tennessee: only one-third of counties have a license bureau, resulting in wait times of up to four hours in urban areas servicing disproportionately minority customers.⁵³ In contrast, the state-wide average wait time is 45 minutes.
- Wisconsin: DMV offices currently have no weekend hours and few full-time offices. State officials are considering plans to close some DMV offices in major urban areas in order to expand hours in other parts of the state.⁵⁴ Wisconsin's state budget now requires that DMV driver license and ID card services be offered in all 72 counties at least 20 hours a week. Currently, only 30 counties offer this, with 25% of DMV offices statewide open less than one day a month. Studies from the University of Wisconsin show that 50% of African American and Latino voters lack a state ID. In contrast, Indiana – where 99% of voters have ID – has accessible DMV offices with full-time hours in every county. Voters in Wisconsin have begun to get a taste of the challenges of navigating the DMV for an ID as the state has instituted trial implementation of the photo ID restriction law during this summer's recall elections. The law is slated to go into full force in February. Numerous news reports document voters not being informed that the ID must be provided for free and instead being charged \$28. Further, there are reports of DMV officials contesting the sufficiency of underlying documents proving residency, such as bank statements.

⁵³ “Will long lines sink photo ID law?” Tri-State Defender, July 15, 2011, <http://www.tri-statedefenderonline.com/articlelive/articles/6429/1/Will-long-lines-sink-photo-ID-law/Page1.html>

⁵⁴ “Wis. DMV says closure decisions aren't final,” Associated Press, July 22, 2011, http://www.forbes.com/feeds/ap/2011/07/22/business-us-wi-dmv-centers_8579755.html.

- Texas: With office closings, and reduced hours, estimates show that up to 401,374 Latinos and 93,651 Blacks live in 127 counties in Texas without access to a Department of Public Safety office in their county.
 - A study of available data reveals that there are 34 counties in Texas that either have no TDPS office or the office has been closed. In four of those, the Hispanic population is over 75%⁵⁵: There are 46 counties where the TDPS office has been temporarily closed, and the state has not said when, if at all, these offices will be re-opened. Of those, 16 counties either have a Hispanic population over 50% or a combined minority population of over 50%.⁵⁶ In addition, there are 46 counties where the TDPS office has reduced business hours, meaning that these offices are open only a few days a week, are open for less than 8 hours a day, or a combination of both. Of those, 14 have a Hispanic population over 50% or a combined minority population over 50%.

The limited opportunity to obtain identification due to reduced hours and locations is further exacerbated by a lack of public transportation. Moreover, minorities, as a general matter, are more likely to lack transportation than whites.⁵⁷ Therefore, the burden of having to drive to a license office in another county creates an additional obstacle for voters, especially minorities, even when the ID is provided for free.

G. Fail-safes are insufficient

The laws passed this year offer little option for voters who lack or are unable to get an acceptable form of ID. While these laws may offer limited exemptions, they nevertheless require voters without ID to cast provisional ballots which will not be counted unless various conditions are met. Provisional ballots will be counted only if the voter returns to the election authority within a short amount of time – six days in Texas, three days in Wisconsin – with a proper form of ID. This additional burden on the voter renders this failsafe nearly non-existent. This “cure” period for provisional ballots fails to address the burdens that voters will have in securing the required identification, as detailed above. If a voter has not already overcome the barriers to obtaining the ID prior to Election Day, the additional small window of time after the election will not likely change these circumstances. For voters exempt from the ID requirements (in some cases senior citizens, people with disabilities, people with religious objections to being photographed), the proposed laws require the voter to cast a provisional ballot that won’t be counted unless the voter returns to the election authority to execute an affidavit attesting (and in some cases documenting) eligibility for the exemption. Additionally a voter’s provisional ballot will be rejected, under laws like the one vetoed this year in Missouri, if the signature on the provisional ballot envelope does not match the signature on the voter’s original registration. This carries a host of problems for those most likely affected by the provisions, including elderly voters and people with disabilities.

The purported fail-safe provisions in these laws hardly ensure that a qualified voter’s provisional ballot will be counted, given the widely-reported problems concerning the high rate that provisional ballots are rejected, often for reasons unrelated to the voter’s actual eligibility.

⁵⁵ <http://quickfacts.census.gov/qfd/states/48000.html>.

⁵⁶ <http://quickfacts.census.gov/qfd/states/48000.html>.

⁵⁷ In Texas for example, see: http://factfinder.census.gov/servlet/STTable?_bm=y&-state=st&-context=st&-qr_name=ACS_2009_5YR_G00_S0802&-ds_name=ACS_2009_5YR_G00_&-tree_id=5309&-redoLog=false&-caller=geoselect&-geo_id=04000US48&-format=&-lang=en

In the 2004 presidential election, for example, 78.6% of the provisional ballots cast in Texas were rejected.⁵⁸ Notably, several of those provisional ballot rejections occurred in counties with predominately minority populations. In contrast, Michigan, which has a photo ID requirement, does not require voters without ID to cast provisional ballots; rather, such voters may sign an affidavit under oath attesting to their identity and cast a regular ballot.

Moreover, the training and notice requirements outlined in most of the new laws do not increase the number of voters who possess the required forms of identification. And, it will do little to guarantee that there will not be disparities, as those noted above, in the difficulty in securing the required forms of identification. Training and education will do nothing to improve the accessibility of these forms of identification to voters, particularly those who live in poverty or are nearly impoverished.⁵⁹ In short, training and education, no matter how elaborate, will do nothing to improve the disparities in the possession of and access to the forms of identification required by this law.

In short, the new restrictions on voter identification degrade the integrity of elections by systematically excluding large numbers of eligible voters from both being able to cast a ballot and have that ballot counted.

II. RESTRICTIONS ON VOTER REGISTRATION

New laws passed this year not only make it harder to vote but also to register to vote. Historically, restrictions on voter registration activities were used throughout the South to limit opportunities for people of color to register to vote. This year, six states introduced bills to impose restrictions on voter registration groups. The most onerous of these is Florida's HB1355, which imposes a myriad of requirements on third party voter registration groups. It will unduly burden voter registration groups by requiring anyone assisting citizens in registering to vote to register themselves with the state, to account for each registration form in their possession, and introduce rules requiring registration forms to be submitted within 48 hours (down from ten days). Groups that fail to verify the completeness of each application and submit them to election officials within 48 hours face fines of up to \$50 per application for missed deadlines; up to \$1,000 for each application; and even felony prosecution for other infractions.⁶⁰ The impact of this law is alarming. As a result of these new requirements and penalties, the League of Women Voters – which has been registering voters in Florida for nearly 70 years - will shut down its voter registration activities in Florida out of fear that they simply could not keep up with the legislation's onerous requirements.⁶¹ These restrictions have a disparate impact on voters of color: African-Americans and Latinos are more than twice as likely as white voters to register

⁵⁸ "Provisional Voting and Voter Identification," Rutgers, Eagleton Institute of Politics, http://www.eagleton.rutgers.edu/research/provisionalvoting_voterID.php
<http://www.sos.state.tx.us/elections/historical/prov2004.shtml>.

⁵⁹ The problems cited herein will not be alleviated by education to help voters find their local DPS or DMV offices. Instead, the problems relate to the number and hours of these offices and the issues related to transportation to these offices, all of which will continue to exist even if notified of office locations.

⁶⁰ Fla. Stat. 97.0575(2), (3)(a) (Fla. Laws ch. 2011-40, HB1355, Sec. 4)

⁶¹ "Elections bill prompts League of Women Voters to stop registration," May 9, 2011, http://blogs.orlandosentinel.com/news_politics/2011/05/elections-bill-prompts-league-of-women-voters-to-stop-registration.html

through a voter registration drive⁶². The U.S. Census Bureau reported that, in Florida in 2008, African Americans had a registration rate of 53.6%, Latinos a rate of 47.4%, and Asians a rate of 35.3%, as compared with an overall average registration rate in Florida of 62.4%, and an average for white Floridians of 69.2%.⁶³ Leon Russell of the Florida State Conference of the NAACP, which has a long history of registering African-American voters in Florida, said that the provision “would likely discourage participation in voter registration efforts.”⁶⁴ State Senator Arthenia Joyner noted that the “48 hour cap will cripple voter registration efforts.” She stated that, “[i]n the Black churches there’s ongoing voter registration,” but under the proposed change, “you have to have someone every day” turn in registration forms, which would be a significant burden. Representative Darryl Rousson said the new rule would “stifle” voter registration.⁶⁵ Florida, treating the legislation as an emergency measure, began implementation of the law immediately, despite that it was required to submit the changes to the Justice Department for review under Section 5 of the Voting Rights Act.⁶⁶

The restrictions were implemented despite strong objections from election officials themselves, several of whom have filed motions to intervene in a federal court assessing whether the law has a retrogressive impact in five Florida counties under the Voting Rights Act.

III. REDUCTION OF EARLY VOTING

Other legislative trends reduce opportunities for voting to make it less convenient and less accessible for voters. New laws in Florida and Ohio significantly shorten opportunities for early voting. In Florida under HB1355, early voting will be reduced from 14 days to eight days, and in Ohio under HB194 it will be reduced from 35 days to 11 days, eliminating Sunday voting, and reducing hours of availability. Early voting offers convenience for those who have difficulty getting to the polls on Election Day. That includes voters who work hourly wage jobs, single mothers, and others who have caretaking obligations or work more than one job. This too has a disparate impact on voters of color and the working poor. In 2008, African-American voters were disproportionately far more likely to vote early, and the elimination of Sunday voting in both Ohio and Florida eliminates an option disproportionately used by Black churches to mobilize voters.⁶⁷ Studies show that voters of color are more likely to vote early, while White

⁶² U.S. Census Bureau Population Survey, <http://dataferrett.census.gov/run.html>, for the Current Population Survey, Nov. 2006, Nov. 2008, and Nov. 2010. See, *See “Voting Law’s Sunday Punch,” Sarasota Herald-Tribune*, June 15, 2011, <http://www.heraldtribune.com/article/20110615/OPINION/110619722/-1/news?Title=Voting-law-s-Sunday-punch>.

⁶³ U.S. Census Bureau, *Voting and Registration in the Election of November 2008*, (Reported Voting and Registration of the Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2008), <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

⁶⁴ Letter to Chris Herren from NAACP Legal Defense and Education Fund, Florida Conference of Black State Legislators, Florida State Conference NAACP, June 17, 2011, http://naacpldf.org/files/case_issue/2011-06-17%20LDF%20joint%20statement%20to%20AG%20regarding%20Florida%20election%20laws%20.PDF

⁶⁵ *Id.*

⁶⁶ Marc Caputo, “Elections supervisors in key counties refuse to implement new law,” *St. Petersburg Times*, May 28, 2011, <http://www.tampabay.com/news/localgovernment/elections-supervisors-in-key%20counties-refuse-to-implement-new-law/1172246>.

⁶⁷ “New election law may disparately affect black voters,” Associated Press, June 14, 2011, citing study by Michael McDonald, professor of government and politics at George Mason University, showing that on the final Sunday before the 2008 presidential elections, Black voters (who represent 13 % of voters) accounted for

voters are more likely to vote absentee by mail, a process not covered by the new limitations. In Florida nearly 30 percent of voters cast early ballots in 2008, with twice as many African Americans doing so than whites – 53% of African-American voters cast early ballots compared to 27% of White voters.⁶⁸

Florida’s election officials are concerned about the impact of reductions in early voting. Monroe County Elections Supervisor Harry Sawyer, Jr., said, “Limiting early voting options is a dangerous path which will only make it more difficult to vote.” “Monroe County has five early voting sites, one of which is in an African-American neighborhood. In the 2008 general election, 27 percent of Keys voters voted early and nearly 8 percent of Keys registered voters voted early in the November 2010 general election.”⁶⁹ The reductions in early voting stand to create chaos at the polls on Election Day in 2012 as precincts will be forced to process more voters, resulting in longer lines. Florida’s law is currently under review by the Justice Department and a petition in Ohio seeks to ask voters to repeal the new law.

Another provision of Florida’s new law would eliminate voters’ ability to update their registrations at the polls, likely resulting in more provisional ballots cast. Tens of thousands of voters, including many young voters, students and women who had changed their names due to marriage, updated their registrations at the polls in 2008. Those voters will now be forced to cast provisional ballots, most of which will not be counted.

- Broward County processed 5,000 name and address changes on Election Day 2008, according to Evelyn Perez-Verdia, of the Broward County Supervisor of Elections’ office.⁷⁰
- In Orange County, 8,000 voters updated their addresses on Election Day in 2008, with about 3,000 of those moving from another county, according to Supervisor of Elections Bill Cowles. Under the new law, those voters would have to cast provisional ballots. “The average voter is not paying attention and they will not pay attention until they’re hit with this on Election Day,” Cowles said.⁷¹

IV. DISENFRANCHISING VOTERS WITH CRIMINAL RECORDS

In addition to making it harder to register voters and harder for eligible voters to cast a ballot, this year’s voter suppression activities also include efforts to eliminate certain categories of voters from eligibility altogether. These efforts mark a reversal of trends making it easier to

32% of the daily early vote turnout in Florida. Similarly, Hispanic voters (who represent 11% of the electorate, were 25% of the early voters on the final Sunday before the elections in Florida).

<http://www.ocala.com/article/20110614/WIRE/110619889?p=1&tc=pg>

⁶⁸ County Early Voting Reports, <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>. In the 2008 general election, 2.1 million Florida voters cast early ballots. African Americans, who make up about 13% of the electorate, cast 22% of those votes. Half of African Americans who voted, cast early ballots at advance voting sites.

⁶⁹ Kevin Wadlow, “Election chief may join federal voting-rights suit,” Aug. 31, 2011, <http://www.keysnet.com/2011/08/31/373188/election-chief-may-join-federal.html>

⁷⁰ Kathleen Haughey, “Proposed bills would make voting harder for many Floridians,” Florida Sun-Sentinel, April 25, 2011, http://articles.sun-sentinel.com/2011-04-25/news/fl-elections-bill-makes-voting-harder20110425_1_early-voting-voter-fraud-elections-office

⁷¹ Steve Bousquet, “Gov. Rick Scott signs controversial election bill into law,” Miami Herald, May. 19, 2011, <http://www.miamiherald.com/2011/05/19/v-print/2224624/gov-rick-scott-signs-controversial.html>

restore rights to people with previous criminal convictions. Executive orders issued this year in Florida and Iowa make it far harder to get those rights restored.

Laws vary from state to state, but most states restore voting rights to those convicted of crimes and allow them to register to vote after they have completed their sentences or after completion of probation or parole. Some states make this harder than others. Approximately, 5.3 million people in this country cannot vote because of felony convictions, disproportionately people of color.⁷²

Florida is one of only three states that strip all citizens with past felony convictions of their civil and voting rights for life. In Florida, this voting and civil rights ban dates back to the Reconstruction Era after the Civil War when newly-freed slaves were granted the right to vote. Today, nearly one in four African-American men in Florida cannot vote because of this system.⁷³ The only way to restore civil and voting rights in Florida is through clemency from the Governor, which can be a burdensome and highly arbitrary process. In 2007, Governor Charlie Crist restored voting rights to 154,000 people with felony convictions and liberalized the procedures for executive clemency, offering a near automatic path to restoration for those convicted of nonviolent crimes. In March, Gov. Rick Scott overturned this policy⁷⁴, eliminating the path to automatic restoration, which could prevent one million people from becoming eligible to vote, and had the effect of stripping the voting rights of nearly 100,000 people who had been eligible to vote under the old rules. Iowa Governor Terry Branstad implemented a similar rollback almost immediately upon taking office, rescinding a prior executive order issued by former Gov. Thomas Vilsak that restored voting rights to 100,000 people with past felony convictions. Now, such voters will need to submit an individual request to have their rights restored, contingent on payment of any outstanding financial obligations.

These laws stand to deny people basic rights of citizenship in many realms of public life even after they have completed their sentences.

- **Desmond Meade** –currently heads the Florida Rights Restoration Coalition, which works to organize grass roots advocacy to help people with criminal records regain the right to vote. Desmond, who is currently in law school, is an affected voter himself due to a past criminal conviction, and thus cannot vote. He cannot vote or take the bar exam until his rights are restored. Meade, who was eligible to have his rights restored under the old rules, is in limbo and will have to wait years to have his rights restored because his application for clemency is part of a backlog of 100,000 clemency applications. Now, under the new rules, Meade will have to wait even longer; he must wait 7 years after fulfilling his sentence to apply. Since his release from prison, Meade - who was homeless in 2005 and now attends law school at Florida International University - said he's chalked up more than 8,000 hours of community service, stints on Attorney General Bill McCollum's Statewide Gang Reduction Task Force, the Homeless/Formerly

⁷² 13% of African American men nationwide can't vote. "Loosing the Vote, The Impact of Felony Disenfranchisement Laws in the United States," The Sentencing Project, http://www.sentencingproject.org/doc/File/FVR/fd_losingthevote.pdf

⁷³ Kevin Krajak, "Why Can't Ex-Felons Vote?," *Washington Post*, Aug. 16, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A9785-2004Aug17.html>.

⁷⁴ See Fl. Rules of Exec. Clemency 9(A) (2011), among other things, imposing a new five-year waiting period before individuals who have completed their sentences for certain classes of non-violent felonies may petition for restoration of their civil rights in order to register to vote.

Homeless Forum and the Miami-Dade Homeless Trust Board. "My question is how much more do I have to do?" he asked. "To think I'm still not eligible to have my rights restored, it's almost like a slap in my face. Here I am a perfect example of someone who's clearly demonstrated that I've been rehabilitated." ⁷⁵

* * *

These legislative measures collectively represent the largest legislative effort to rollback voting rights since the post-reconstruction era, motivated by a similar insidious intent to make voting harder for groups who saw increased registration and turnout in the 2008 elections.⁷⁶ These laws collectively effectuate a trifecta of voter suppression– making it harder to register to vote, harder to cast a ballot and harder to have a vote counted – and the impact is not evenly distributed, and indeed is designed to effectuate political results. Study after study documents that voter impersonation fraud used to justify these restrictions almost never occurs.⁷⁷ It is imperative that members of Congress, state election officials, and voters themselves understand the impact of these laws in order to hold elected officials, the Justice Department and the courts accountable for ensuring that illegal and unconstitutional laws are not allowed to be implemented. Where implemented, election officials ought to implement these laws with an eye towards effective education and training to ensure that eligible voters are not needlessly disenfranchised. Moreover, Congress should pursue common-sense legislative proposals to expand - not restrict - access to voting, including:

- House Joint Resolution 28, proposing an amendment to the U.S. Constitution establishing a fundamental constitutional right to vote.⁷⁸
- Voter Registration Modernization, which would significantly automate and streamline the voter registration process by removing the onus of voter registration from the voter, by placing the responsibility for maintaining voter registration with state governments.⁷⁹
- Deceptive Practices and Voter Intimidation Prevention Act,⁸⁰ "to protect Americans from tactics that intimidate voters and prevent them from exercising their right to vote on Election Day."

⁷⁵ Dara Kam, "Five year wait to have civil rights restored 'like a slap in the face,' rehabilitated felons say," Palm Beach Post, April 9, 2011, <http://www.palmbeachpost.com/news/state/five-year-wait-to-have-civil-rights-restored-1388449.html>

⁷⁶ Proportion of electorate voting for the first time was virtually unchanged between 2004 (11%) – 2008 (12%); However, the proportion of Black and Brown, low income and high school educated first-time voters increased considerably. (Black voters: 17% were first-time voters in 2004; 19% in 2008; Latino: 22% in 2004; 28 percent in 2008. Those making \$15,000 or less: 18% in 2004; 34% in 2008; high school educated: 18% in 2004; 22% in 2008.

⁷⁷ See, Lorraine C. Minnie, *The Myth of Voter Fraud*, Cornell Univ. Press (2010), showing that allegations of widespread voter impersonation fraud at the polls are unsupported by empirical evidence. In state after state, the rate of voter fraud is extremely low: .0003% (fewer than 1 in 333,000) in Missouri; .0002% (one in 500,000 in Wisconsin; .000009% (1 in 11 million) in New York. See, Brennan Center, "The Truth About Voter Fraud," <http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>

⁷⁸ H.J.RES.28 (112th Cong), <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.j.res.00028>:

⁷⁹ H.R.1719 (111th Cong.), <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1719>

- Democracy Restoration Act,⁸¹ which would “secure the Federal voting rights of persons who have been released from incarceration.”
- Pursue measures to strengthen prohibitions on voter caging.⁸²

Our legacy of voting in this country is not a proud one, and while the last century has seen a push towards expansion of the franchise, these new laws stand to turn back the clock. History tells us the dangers of this trend. The decade following the rash of legal measures restricting voting in the post reconstruction era saw dramatic reductions in voting rights for previously eligible voters. Between 1890 and 1910, African Americans were removed from the voter registration rolls in large numbers and denied the right to vote. Louisiana, for example, had over 130,000 African Americans registered to vote in 1896. After amendments to the state constitution in 1898, by 1900 fewer than 5,000 African Americans were registered to vote. By 1910, only 730 Blacks were registered in the state.⁸³ The disenfranchisement lasted for decades until the first series of civil rights laws, starting after *Brown v. Board of Education* with the Civil Rights Act of 1957, began to dismantle this structure. While there are many laws and safeguards in place to likely prevent that level of large-scale disenfranchisement, the legacy of any disenfranchisement remains and is difficult to dismantle. The new laws stand to relegate millions of eligible voters to second class citizenship. It is imperative we understand the implications of these proposals or we are bound to repeat our sordid history. These new repressive voting laws undermine the fabric of our democracy by limiting participation. Congress must act to ensure that all Americans have a voice.

* * *

Thank you for your kind consideration of my testimony and for ensuring that all voters have the opportunity to vote, have their vote counted, and receive equal protection under the law. Advancement Project is pleased at any time to provide technical advice, assistance, and testimony to this Committee as it develops legislative reforms that will safeguard the ability of eligible voters to participate in elections.

⁸⁰ H.R.97 (111th Cong.), <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.97>:

⁸¹ H.R.2212 (112th Cong.), <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.2212>:

⁸² H.R.107 (112th Cong.), <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.107>:

⁸³ See, Alexander Keyssar, [The Right to Vote: The Contested History of Democracy in the United States](#), Basic Books (2000).