

# DEFENDING DEMOCRACY:

Confronting Modern Barriers to Voting Rights in America

A Report by the NAACP Legal Defense and Educational Fund, Inc. & the NAACP



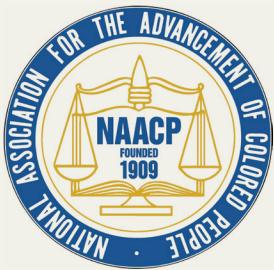
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The NAACP Legal Defense and Educational Fund (LDF) is America's premier legal organization fighting for racial justice.

Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate racial disparities, and achieve racial justice, to create a society that fulfills the promise of equality for all Americans.

LDF also defends the gains and protections won over the past 70 years of civil rights struggle and works to improve the quality and diversity of judicial and executive appointments.



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Founded in 1909, the NAACP is the nation's oldest and largest civil rights organization. Our mission is to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial discrimination. For over one hundred years, the NAACP has remained a visionary grassroots and national organization dedicated to ensuring freedom and social justice for all Americans. Today, with over 1,200 active NAACP branches across the nation, over 300 youth and college groups, and over 250,000 members, the NAACP remains one of the largest and most vibrant civil rights organizations in the nation.

**This report is dedicated to the memory and legacy of Harry T. and Harriet Moore and the countless other martyrs who gave their lives in the fight to secure voting rights for all Americans.**

Dear Friend,

The NAACP Legal Defense & Educational Fund, Inc. (LDF) and the NAACP have been tracking the rising tide of legislative measures designed to block access to the polls for voters of color. What our research has uncovered is a cause for grave concern: a coordinated and comprehensive assault has been launched against our voting rights.

The findings of our research are gathered in this report, *Defending Democracy: Confronting Modern Barriers to Voting Rights in America*. The report reveals direct connections between the trend of increasing, unprecedented turnout among voters of color and the proliferation of restrictive measures across the country designed to thwart electoral strength among people of color—particularly those who are poor, young, or elderly.

These voting restrictions have been pushed in states with large communities of color where political participation has surged. The measures range from new and enhanced voter identification requirements to provisions that will curtail voter access to registration, inhibit critical voter registration drives, limit voting periods, and tighten the ability to cast ballots.

In all, 14 states have passed 25 various measures designed to restrict or limit the ballot access of voters of color, threatening to disfranchise millions of people, a disproportionate number of whom are people of color.

Since the ratification of the 15th Amendment and, later, the Voting Rights Act, we have been summoned to fight to protect the power and potential of the African-American vote from attempts to undermine the promise of democracy. Not surprisingly, the states with the highest voter turnout among people of color in the 2008 elections and population growth among voters of color are the states pushing the most restrictive voting laws in the past year.

Whether these measures target voter registration, third-party voter registration, absentee or early voting, people with felony convictions, or simply make it more difficult for registered voters to cast their ballots on Election Day, they all threaten to keep voters of color from exercising the fundamental right that is preservative of all other legal rights.

To that end, we have created this report as a tool to sound the alarm, to inform voters, and to initiate a campaign to protect the free and equal exercise of our right to vote. This ambitious public education tool will equip voters with the information they need to protect the vote, to provide organizing points, and to mount voter education activities in local communities.

The right to vote is indeed the cornerstone of our democracy. Please join us as we continue our quest to preserve and to protect that right for all Americans.

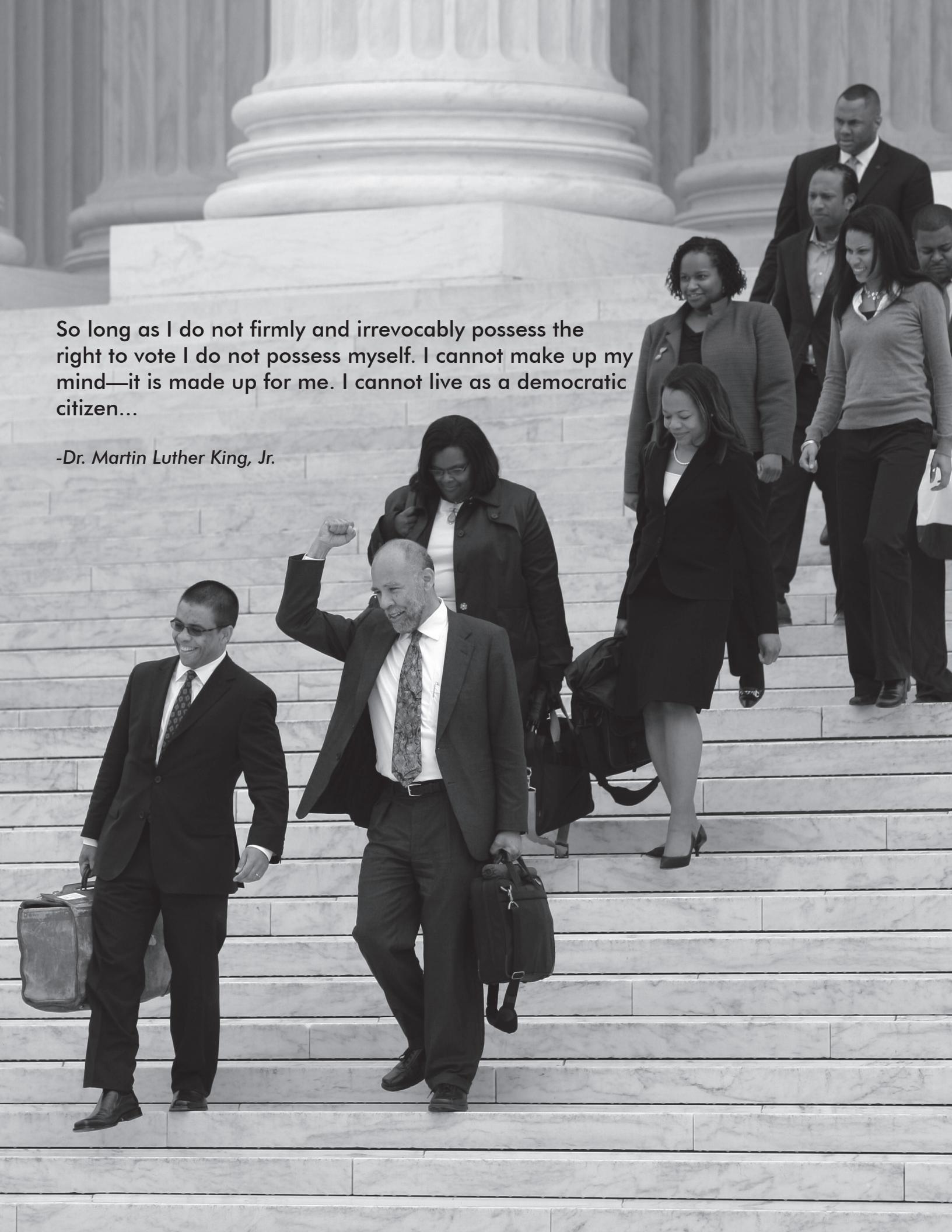
Sincerely,

**NAACP Legal Defense & Educational Fund, Inc. (LDF)**

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So long as I do not firmly and irrevocably possess the right to vote I do not possess myself. I cannot make up my mind—it is made up for me. I cannot live as a democratic citizen...

-Dr. Martin Luther King, Jr.

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## EXECUTIVE SUMMARY

The right to vote is the cornerstone of American democracy. Our votes affirm the legitimacy of our democracy. The right to vote is so essential because we use it to preserve and protect all other Constitutional rights. It serves as a check on our political leaders and as a source of power for their constituents. In this way, the vote is both a tangible measure of what we are as a nation, and of what we aspire to be.

Thus, the question that every American should ask is: How can we collectively encourage *more* people to participate in the political process?

Instead of embracing this important democracy-inclusion principle, however, some are seeking to make it harder for Americans to vote through concerted efforts. Indeed, we are experiencing an assault on voting rights that is historic, both in terms of its scope and intensity.

This assault—which was launched to affect the 2012 elections, as well as future ones—threatens to undermine the record levels of political participation achieved during the historic 2008 Presidential Election, by suppressing the political participation of people of color, the poor, the elderly, and young voters.

These concerted “block the vote” efforts are a direct response to two important recent developments: (1) the unprecedented levels of political participation by African Americans and other voters of color in the 2008 Presidential Election, and (2) the significant growth of communities of color, as reflected in the 2010 Census.

This report examines these coordinated efforts to suppress the growing voting strength of communities of color, the poor, the elderly, the disabled, and the young, and offers some important democracy-enhancing responses.

America’s expansion of the franchise has been significantly challenged this year.

The assault on voting rights in 2011 has been historic, both in terms of its scope and its intensity.



*First*, the report provides the context for the emergence of these block the vote measures.

*Second*, it details various block the vote initiatives proposed or implemented in a number of states, and the disproportionate effects of those measures on voters of color in particular, including minority voters who are poor, elderly, and young.

*Finally*, the report places the focus where it belongs—on the democracy-expanding efforts that we all can work to ensure. The report offers a call to action to empower you and members of your community to stand for greater inclusion in our democracy by: (1) *Informing yourself* about restrictive voting laws or proposals that have been adopted or are being considered in your state, how they may affect you, and how to overcome them; (2) *Equipping your community* with the information needed to ensure that each member who wants to vote in your community is able to do so, and that the votes from your community are counted; (3) *Practicing “Each One, Bring One”* by bringing an eligible first-time voter, or returning voter who otherwise might not vote, with you when you vote on Election Day; (4) *Volunteer to serve as a poll monitor* who assists voters on Election Day; (5) *Taking action* by urging your elected officials and the United States Department of Justice to fight these voter suppression tactics; and (6) *Spreading the word about the National Voter Registration Act*, designed to bring our democracy closer to the people by facilitating voter registration at state agencies that serve the public.

This call to action serves as an important roadmap for voters and their communities to begin to actively counter the block the vote efforts.

Viewing the current attacks on voter access as a whole, several key points emerge:

- Fourteen states enacted a total of twenty-five measures that will unfairly and unnecessarily restrict the right to vote and exact a disproportionate price on African-American and other voters of color. Dozens more restrictions have been proposed nationwide, in a coordinated assault on voting rights.
- Several of the very states that experienced both historic participation of people of color in the 2008 Presidential Election and substantial minority population growth according to the 2010 Census are the ones mounting an assault to prevent similar political participation in 2012. These states include those that experienced the largest growth in total African-American population during the last decade (Florida, Georgia, Texas, and North Carolina), and three states that saw the highest growth rates in Latino population (South Carolina, Alabama, and Tennessee).
- The restrictive measures adopted by these states include:
  - Tightening the requirements for voter registration or making the voter registration process unnecessarily difficult by imposing severe restrictions on persons who conduct voter registration drives or requiring individuals to produce documentary proof of citizenship in order to register to vote.
  - Increasing disfranchisement of people with felony convictions.
  - Substantially reducing the opportunity to vote early or by absentee ballot.

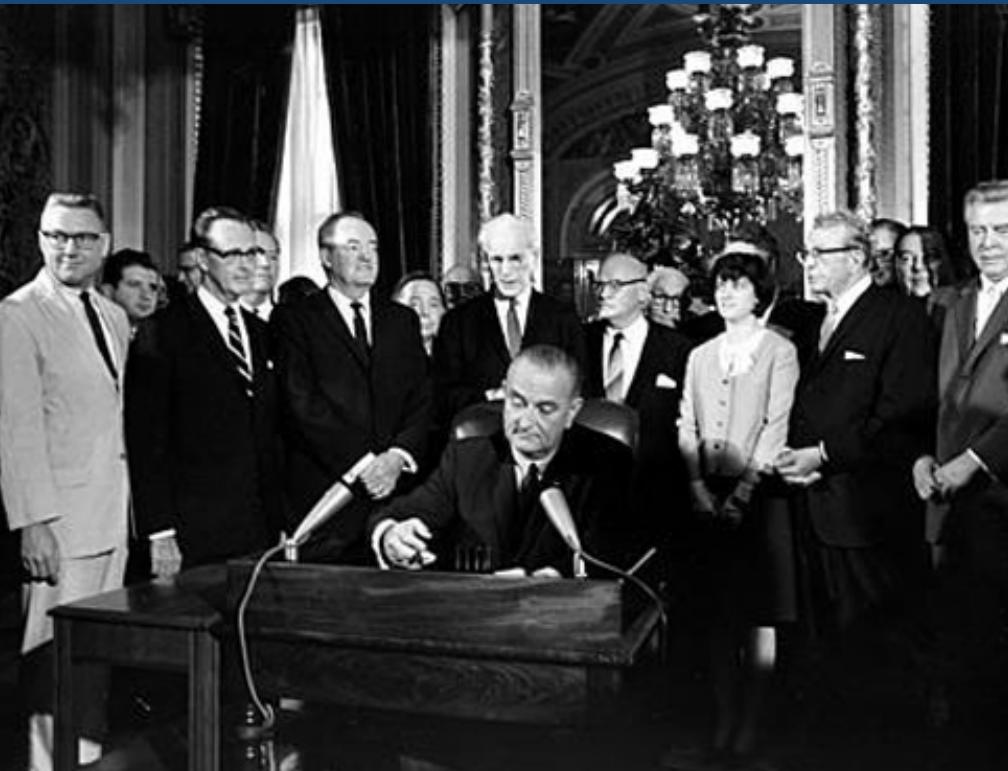
- Erecting barriers to participation on Election Day itself. The heart of the modern block the vote campaign is a wave of restrictive government-issued photo identification requirements. In a coordinated effort, legislators in thirty-four states introduced bills imposing such requirements. Many of these bills were modeled on legislation drafted by the American Legislative Exchange Council (ALEC)—a conservative advocacy group whose founder explained: “our leverage in the elections quite candidly goes up as the voting populace goes down.”<sup>1</sup>
- According to one estimate by the Brennan Center for Justice, these block the vote efforts could impede as many as five million eligible voters from registering and/or casting ballots in 2012.<sup>2</sup> While the sheer volume of the affected eligible voters is alarming in itself, the threat is compounded when you consider that the effects will not be felt evenly throughout society. In the context of state photo identification requirements, for example, an astonishing 25% of African Americans (over 6.2 million African-American voters) and 16% of Latinos (over 2.96 million Latino voters) do not possess valid photo ID.<sup>3</sup> By comparison, only 8% of whites are without a current government-issued photo ID.<sup>4</sup>
- These vote-blocking efforts impose disproportionate burdens on our society’s most vulnerable members, by exploiting socio-economic disparities among voters based on income, vehicle and home ownership, foreclosure rates, education, and mobility—many socio-economic disparities that are closely correlated with race.
- For nearly 50 years, the Voting Rights Act of 1965 has stood as the core protection against racial discrimination in voting. Key provisions of the law were reauthorized in 2006 based on Congress’s analysis of continuing voting discrimination and its prediction that additional discrimination would occur in the future. Nevertheless, at the same time that these vote-narrowing efforts are spreading, several states and activists are attacking the core protections of the Voting Rights Act in court on constitutional grounds. These cases question the continuing need for the Act’s protections, and thus seek to eliminate part of the very law that has done more to ensure the right to vote for people of color than any other.

Far from being measured reactions to discernible problems, these block the vote efforts are rooted in the worst traditions of America’s contested history of democracy. Throughout our nation’s history, the expansion of opportunity and participation has often been met by reactionary measures intended to cut back on hard-won progress.

2011 was the latest chapter in that story, as the struggle to ensure that all Americans can participate equally in the political process continues.



## BACKGROUND AND INTRODUCTION



The story of America's democracy...has been a contested one, characterized by expansion often followed by swift contraction: gains in political participation by communities of color too often are met with corresponding efforts to constrict the franchise.

Nearly fifty years ago, in his speech proposing the bill that would become known as the greatest piece of civil rights legislation ever passed—the Voting Rights Act—President Lyndon Johnson framed the challenge posed by our nation’s dark tradition of racial discrimination in voting:

Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to ensure that right.<sup>5</sup>

The story of America’s democracy, however, as noted by historian Alexander Keyssar, has been a contested one, characterized by expansion often followed by swift contraction: gains in political participation by communities of color too often are met with corresponding efforts to constrict the franchise.

This story begins with the end of the Civil War and the passage of the Fifteenth Amendment, which extended voting rights to former slaves. That watershed moment was followed by a dramatic backlash, and offers a bitter lesson about the consequences of the failed political will in that era to sustain comprehensive protections for voting rights. Discriminatory voting laws proliferated, as states implemented grandfather clauses, voter roll purges, poll taxes, and literacy and “understanding” tests, each of which was discriminatorily enforced against African-American voters at the polls.<sup>6</sup>

To ensure that disfranchisement was complete, states also tailored laws that disqualified people convicted of criminal offenses to crimes thought to be committed by the newly-freed slaves but not by whites.<sup>7</sup>

The Supreme Court slowly, and reluctantly, invalidated these practices throughout the 20th century,<sup>8</sup> but the states, for nearly a century after the passage of the Fifteenth Amendment, nevertheless proved “unremitting and ingenious”<sup>9</sup> in their methods of excluding African Americans from the political process.

In addition, states passed “second generation” barriers to prevent African-American participation in voting, enabling county councils and school boards to use at-large elections to submerge newly-registered minority voters within white majorities, draw racial gerrymanders, close or secretly move polling stations in minority neighborhoods, and employ countless other strategies to minimize or to cancel out minority voting strength.



Finally after mass civil rights mobilization—a cause in service of which many heroes were murdered and scores of others badly beaten—Congress enacted the Voting Rights Act (VRA) to “combat the widespread and persistent discrimination in voting.”<sup>10</sup> The VRA aims not only to guarantee the right of all citizens to participate in the electoral process, but also to provide a legal framework to prohibit and/or remedy a wide array of barriers that are used to threaten that right.

The heart of the VRA is Section 5, which requires certain states and sub-jurisdictions with the most egregious histories and ongoing records of voting discrimination to submit any proposed changes to their voting and election laws either to the Department of Justice or the federal district court in Washington, D.C. for “pre-clearance” before that proposed change can be enacted.

The Department of Justice rejects proposed changes that it deems retrogressive—that is, those which effectively worsen the position of minority voters in relation to existing rules—and those that are tainted by intentional discrimination,<sup>11</sup> or request more information from states or jurisdictions about the proposed changes’ impact.<sup>12</sup>

Over time, assisted by litigation and other tools provided in the VRA, community activism, education, and political action, a number of barriers have been successfully challenged.<sup>13</sup>

As explained further below, however, history is repeating itself: following record minority participation in the political process in 2008 and substantial growth of communities of color in the last decade, a new wave of “third generation” voting barriers has recently emerged. And, in an effort to keep voters from challenging these barriers in the future, states are simultaneously attacking the VRA itself, seeking to eliminate indispensable tools to prevent these discriminatory voting laws from taking root and becoming entrenched.<sup>14</sup>

# THE RISE OF ELECTORAL STRENGTH OF VOTERS OF COLOR

Political participation by communities of color has grown significantly in recent years, as demonstrated by two recent events.

*First*, during the 2008 elections, citizens of color participated in the election in record numbers, and, more importantly, comprised a larger share of the eligible voting population than ever before.<sup>15</sup>

*Second*, the data provided by the 2010 Census demonstrates that minority populations—and eligible voters within those populations—are expanding rapidly.<sup>16</sup> The Census Bureau reports that this growth will accelerate in the years to come.<sup>17</sup>

**The unprecedented minority voter turnout in the 2008 general elections provided a dramatic demonstration of the impact of significant minority presence at the polls.**

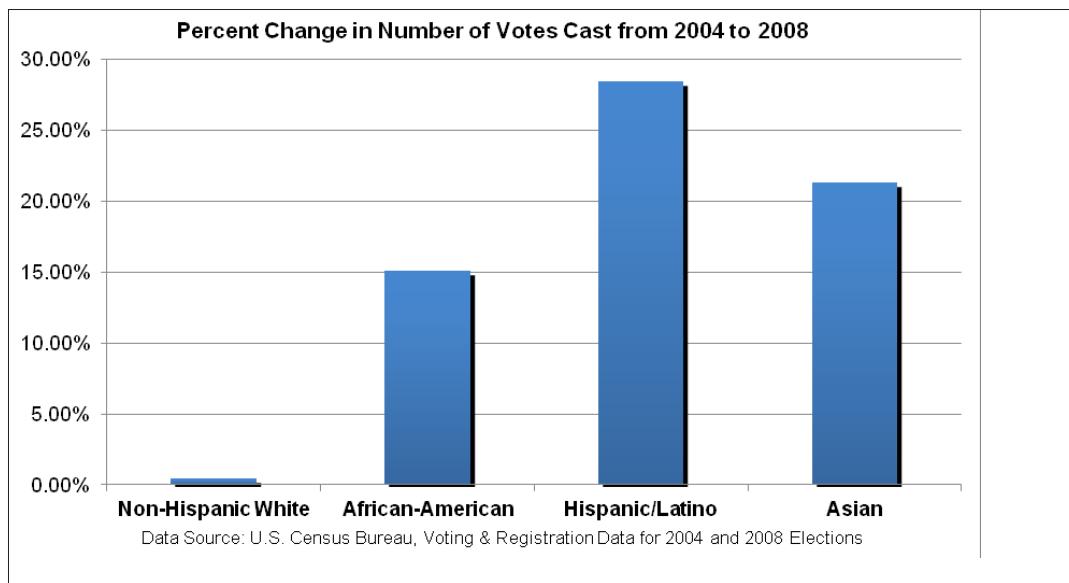
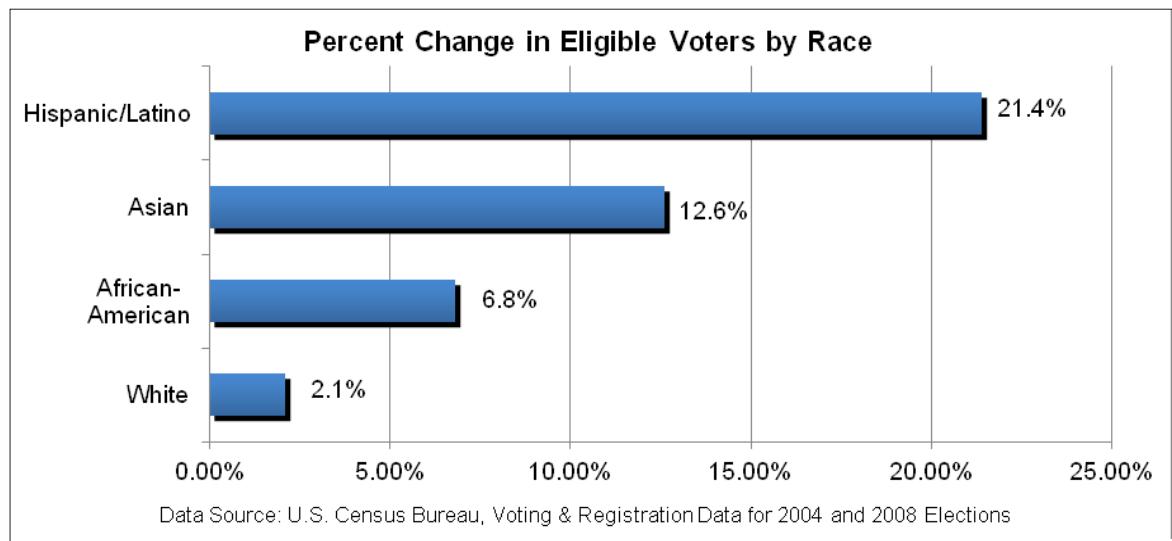
## I. Historic Minority Participation in the 2008 Elections

The 2008 elections marked an historic moment in the racial composition of the American electorate, the “most diverse in U.S. history.”<sup>18</sup> People of color in 2008 comprised 26.6% of all U.S. citizens of voting age—a record share.<sup>19</sup>

Translating this demographic shift into political strength, voters of color registered and participated in the 2008 Presidential Election in the following record numbers:

- Nationally, the gap in voter turnout rate between eligible white voters (66.1%) and eligible African-American voters (64.7%) was nearly eliminated.<sup>20</sup>
- African-American women had the highest voter turnout rate (68.8%)—a first for the nation.<sup>21</sup>
- The number of African-American voters who cast ballots in 2008 was 15.1% higher than in 2004, representing an increase of 2.1 million African-American voters.<sup>22</sup> The number of Latino voters who cast ballots in 2008 was 28.4% higher than in 2004, representing an increase of nearly 2.2 million Latino voters.<sup>23</sup>





- African-American voters constituted 12.3% of voters nationally, an increase from 11.1% in 2004. Latino voters made up 7.4% of voters nationally, up from 6.0% in 2004.<sup>24</sup>

Importantly, evidence from the 2010 midterm elections demonstrates that, rather than representing an anomalous moment, the increased participation of voters of color has been sustained since 2008.

Although 2010 voting data reveals only a slight uptick in overall voter turnout from the 2006 midterm elections—40.9% in 2010 versus 40.4% in 2006<sup>25</sup>—voters of color increased substantially as a share of the electorate in several states.

In Texas, for example, African Americans increased from 8% of the voters in 2006 to 13% in 2010; in Ohio, African Americans increased from 12% to 14% of voters; and in New York, African Americans increased from 10% to 18% of voters.<sup>26</sup>

Perhaps more compelling evidence that the historic 2008 turnout will be carried forward to future elections is the strong showing among young African-American voters. Participating at the highest rate among all young people in 2010, African-American youth turned out to vote at a rate of 27.5%, as compared to 24.0% in 2006.<sup>27</sup> This increase

in turnout continues a trend from 2008, when young African Americans showed the highest turnout rate among any youth racial group since 1972.<sup>28</sup>

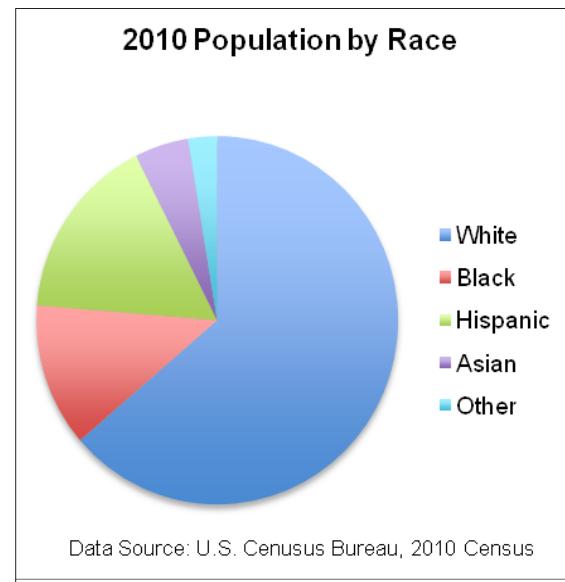
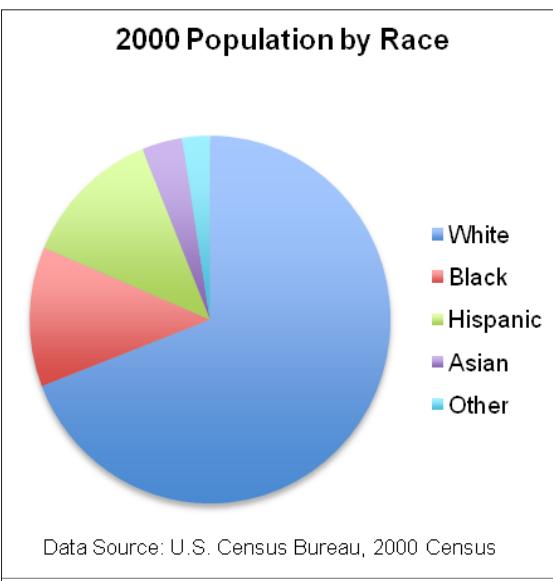
## II. The 2010 Census: The Growth of Communities of Color

The 2010 Census data reveals that the 10% population growth that America experienced over the last decade was almost entirely accounted for by growth among minority populations.

From 2000 to 2010, the country's non-Hispanic white population, which comprises approximately two-thirds of the total population, grew by only 1.2%.<sup>29</sup> As a result of this modest growth, the white population actually decreased as a percentage of the total population from 75.1% to 72.4%—the only major racial group to experience such a decline.<sup>30</sup>

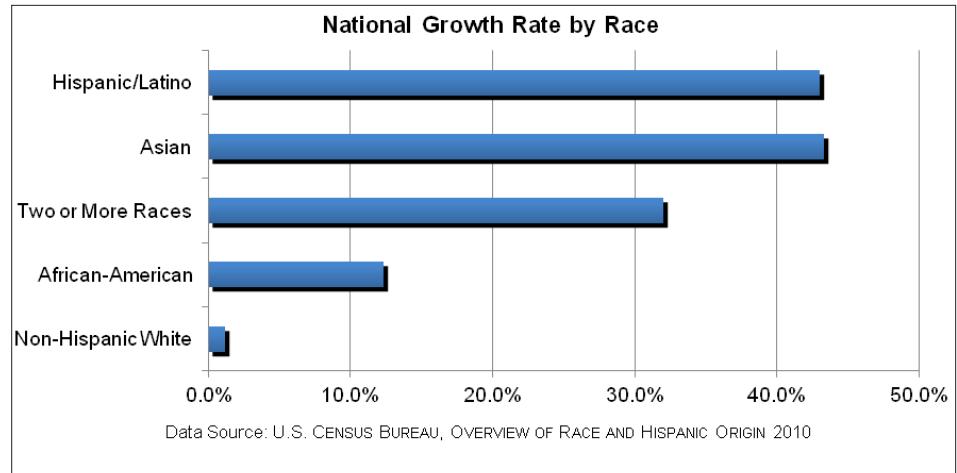
Communities of color, meanwhile, grew at significant rates. The Census data reveals:

- **The African-American population grew 12.3% (to 38,929,319), significantly outpacing white population growth.<sup>31</sup>** As an absolute value, most of this growth came from the South (i.e., Florida, Texas, North Carolina, Maryland).<sup>32</sup>
- **The Latino population grew a dramatic 43.0% (to 50,477,594), bringing it to 16.3% of the total population, up from 12.5% in 2000.<sup>33</sup>** This growth represents more than half of the increase in the total population nationwide (15.2 million out of 27.3 million). As an absolute number, most of this growth occurred in states with existing sizeable Latino communities, such as California, Texas, and Florida. The highest growth rates, however, occurred in the Deep South, where Latino populations doubled. South Carolina's Latino population, for example, grew at a rate of 148%.<sup>34</sup>
- **Other minority groups experienced similar surges in their populations.** Most significantly, the Asian population increased by 43.3%, bringing it to 4.8% of the total population, up from 3.6% in 2000.<sup>35</sup> At the same time, the American Indian and Alaska Native population grew 18.4%, and the Native Hawaiian and Other Pacific Islander population grew 35.4%.<sup>36</sup>



These demographic trends among minority populations confirm that America will soon be a majority-minority nation, with the Census Bureau projecting that this tipping point will occur by 2042.<sup>37</sup>

Indeed, the 2010 Census reveals that a number of states, particularly those in the South and West, where minority population growth was most significant, have already achieved or are on the cusp of achieving majority-minority status. The state of Texas joined California, the District of Columbia, Hawaii, and New Mexico in having majority-minority populations; five additional states approached 50% minority populations: Arizona (45.2%), Florida (42.1%), Georgia (44.1%), Maryland (45.3%), and Nevada (45.9%).<sup>38</sup>



The unprecedented minority voter turnout in the 2008 general elections provided a dramatic demonstration of the impact of significant minority presence at the polls. Even if this level of political participation were not sustained in 2010, the substantial and accelerating population growth among minority populations shows that the 2008 display of minority voting strength is not a passing phenomenon.



Taken together, these voting and demographic trends presage a political landscape in which communities of color will increasingly play a leading role. Indeed, as discussed more fully below, it is precisely this burgeoning political power that has engendered a backlash.

# DEMOCRATIC CONTRACTION: BLOCKING THE VOTE

In the face of far-reaching demographic and electoral trends revealing unprecedented minority political mobilization in America, an assault on voting rights accelerated in 2011. In this year alone, over a dozen states imposed obstacles to voting at each key stage of the democratic process.

These restrictive voting measures will have a disproportionate impact on minority, low-income, disabled, elderly, and young voters, and threaten to substantially undermine the political strength already harnessed by minority communities during the 2008 Presidential Election.

## Summary of Block the Vote Efforts

Recently, states have enacted a broad array of voting restrictions and discriminatory laws, or have otherwise impeded political participation. These various restrictive measures fall into three general categories, each of which operates at a different point in the voting process: *first*, at the voter registration stage; *second*, at the early voting stage; and *third*, on Election Day itself. The measures, and other efforts that discourage or suppress political participation, can be summarized as follows:

**I. Restrictions on Registration.** Various states have sought to restrict the voter registration process in five principle ways:

### (1) Restrictions on Access to Voter Registration Channels, such as:

- *Restrictions on Voter Registration Drives:* Two states (Florida and Texas) passed laws that substantially restrict voter registration drives, to the detriment of African-American and Latino voters, who rely heavily on voter registration drives. For example, in Florida, 15% of Latinos and nearly 20% of African Americans registered to vote through registration drives in Florida in 2008, as compared to only 6% of whites.<sup>39</sup>

Restrictive voting measures will have a disproportionate impact on minority, low-income, disabled, elderly, and young voters, and threaten to substantially undermine the political strength already harnessed by minority communities during the 2008 Presidential Election.



- *Non-Compliance with the National Voter Registration Act (NVRA)*: Several states, including Louisiana, Georgia, and Texas are failing to comply with their obligation under the NVRA to provide voter registration services to low-income constituents at state public assistance agencies. Because African Americans and Latinos have registered to vote at public assistance agencies three times as frequently as white voters, non-compliance with the NVRA closes off a crucial avenue for registration for minority voters.<sup>40</sup>

**(2) Limitations on When and Where Individuals Can Register.** Four states (Florida, Maine, Ohio, and Wisconsin) enacted laws restricting the time and/or place at which a person can register to vote. Ohio eliminated a one-week period during which a person could register to vote and cast a ballot at the same time, a restriction expected to have a disproportionate effect on minority voters.<sup>41</sup>

**(3) Enhanced Eligibility Requirements**, including:

- *Requiring Documentary Proof of Citizenship to Register to Vote*. Three states (Alabama, Kansas, and Tennessee) enacted legislation requiring documentary proof of citizenship to register to vote. While these requirements will impose burdens on all voters of limited means, they will have a uniquely burdensome impact on elderly African-American voters, many of whom, because they were born when *de jure* segregation prevented equal access to hospitals, were never issued birth certificates.<sup>42</sup>
- *Durational Residency Requirements*. Wisconsin increased the period of residency required in order to register to vote, which will have a disproportionate effect on African Americans and Latinos, who tend to move more frequently than whites.<sup>43</sup>

**(4) Increasing Disfranchisement of People with Felony Convictions.** Two states (Florida and Iowa) reversed executive orders that restored the voting rights of people who had finished serving their sentences for felony convictions, permanently denying the franchise to hundreds of thousands of citizens. These measures will operate to the particular detriment of minority communities because African Americans and Latinos suffer disproportionate rates of criminal convictions and incarceration.

**(5) Voter Purges.** Several states, such as Florida and Mississippi, are also improperly purging voters from the registration rolls. Purge programs purport to maintain the purity of voter registration lists by removing the names of individuals ineligible to vote in that state or jurisdiction, but too often disqualify eligible voters. For example, in Florida, a flawed purge program erroneously flagged and purged 12,000 voters (mostly due to typos and other obvious clerical errors). Over 70% of those flagged voters were African American or Latino.<sup>44</sup>

**II. Substantial Reductions in Early Voting.** Florida, Georgia, Ohio, Tennessee, and West Virginia enacted bills that reduce early voting. These measures will substantially and unduly burden minority voters. For instance, in Florida, which reduced its early voting period from 14 to 8 days, African-American voters have been much more likely to take advantage of early voting, accounting for 22% of early voters during the 2008 general election, despite being only 13% of the Florida electorate.<sup>45</sup>

**III. Blocking the Vote on Election Day.** A wave of restrictive government-issued photo identification requirements have been proposed throughout the country, and have to date passed in seven states (Alabama, Texas, Mississippi, South Carolina, Kansas, Rhode Island, Tennessee, and Wisconsin). Eleven percent of U.S. citizens nationwide—

approximately 22.9 million people—do not have government-issued photo IDs.<sup>46</sup> Twenty-five percent of African-American voting age citizens (over six million people), and 16% of Latino voting age citizens (nearly three million people) do not possess valid government-issued photo ID. Recent years have also seen a reprise of voter intimidation and suppression efforts on Election Day.

## **Block the Vote Measures Enacted in 2011**

According to an estimate by the Brennan Center for Justice, recent block the vote efforts could impede as many as five million eligible voters from registering and/or casting a ballot in 2012.<sup>47</sup> In 2011, 14 states passed 25 various voting measures that threaten to disfranchise millions of voters, a disproportionate number of whom are people of color. These restrictive voting measures can be summarized as follows:

<b>RESTRICTIVE VOTING MEASURES ENACTED IN 2011</b>		
<b>Form of Restriction</b>	<b>States Enacting Such Measures</b>	<b>Total</b>
<b>Barriers to Registration</b>		
Restrictions on Third-Party Registration	Florida; Texas	2
Restrictions on When and Where Individuals Can Register	Florida; Maine; Ohio; Wisconsin	4
Documentary Proof of Citizenship	Alabama; Kansas; Tennessee	3
Durational Residency Requirements	Wisconsin	1
Enhanced Felon Disfranchisement Laws	Florida; Iowa	2
<b>Restrictions on Early or Absentee Voting</b>		
	Florida; Georgia; Maine; Tennessee; West Virginia	5
<b>Photo ID Laws</b>	Alabama; Kansas; Mississippi; Rhode Island; South Carolina; Tennessee; Texas; Wisconsin	8
<b>TOTAL MEASURES ENACTED IN 2011</b>		<b>25</b>

The main thrust of these efforts, however, is not distributed evenly throughout the country. The states that have passed these restrictions, are, in many cases, the very same states that experienced high rates of minority population growth and political participation over the last decade.

For example, block the vote efforts are proliferating in three states that together account for nearly 22% of all African-American voters in 2008: Georgia (1,334,000), Texas (1,253,000), and Florida (1,026,000). Moreover, the eight states that had turnout rates of more than 70% of their eligible African-American voters—Nevada, Missouri, Maryland, Mississippi, South Carolina, Michigan, Wisconsin, and Ohio—are all participants in this block the vote campaign.<sup>48</sup>

Similarly, among eligible Latino voters, two of the states that have seen some of the most aggressive block the vote efforts—Texas and Florida—accounted for 30% of all Latino votes cast in 2008; the three states that had more than 60% of their eligible Latino voters turn out to vote (as compared to a national rate of 50%) — Florida, North Carolina, and Maryland—are also a part of these restrictive voting efforts.<sup>49</sup>

Among the fourteen states listed in the chart above are three of the four states that experienced the largest growth in African-American population during the last decade: Florida, Georgia, and Texas (whose African-American populations grew by approximately 664,000, 601,000, and 575,000, respectively). The fourth state, North Carolina (whose African-American population grew by approximately 300,000), currently has restrictive voting legislation pending. Also among the states in the chart above are the three states that saw the highest growth rates in Latino populations during the previous decade: South Carolina (148%), Alabama (145%), and Tennessee (134%).<sup>50</sup>

These measures, as well as other forms of voter suppression, are discussed in further detail below.

## I. Blocking the Vote at the Voter Registration Stage

Since the substantial 2008 voter turnout and 2010 Census, and in advance of the 2012 federal elections, states are narrowing voters' ability to register in various ways. These voter registration barriers comprise the primary impediment to voting, as evidence shows that making voter registration more difficult means that fewer people will register.<sup>51</sup> Among other things, several states: (1) placed restrictions on important voter registration channels; (2) limited when, where, and for how long voters can register; (3) enhanced registration eligibility requirements; (4) broadened the reach of laws that deny the vote to people with felony convictions; and (5) improperly purged voters from the registration roles.

### (1) Restrictions on Access to Voter Registration Channels

States have restricted two important channels through which minority voters disproportionately register to vote by (a) significantly restricting the manner in which voter registration drives must be conducted; and (b) ignoring the mandates of the National Voter Registration Act (NVRA).

**(a) Restrictions on third-party registration:** Two states—Florida and Texas—enacted measures that place restrictions on nonpartisan, nonprofit organizations that conduct voter registration drives.



These organizations play a critical role in ensuring participation in our democracy. More than any other democracy, the United States places the burden of registration on the voter.<sup>52</sup> Moreover, as one federal court recognized, voter registration drives serve not only as an important avenue for registration, but also entail core political speech protected by the First Amendment. Such drives, the court found, are inextricably intertwined with efforts to “persuade others to vote, educate potential voters about upcoming political issues, communicate their political support for political issues, and otherwise enlist like-minded citizens in promoting shared political, economic, and social positions.”<sup>53</sup>

From 2000 to 2008, registration groups registered tens of millions of new voters, including close to nine million in 2008 alone.<sup>54</sup>

Registration groups typically focus their resources on providing assistance to communities that face the greatest barriers to registration and voting. Voters of color constitute one such community as they generally have limited access to the Internet and fewer interactions with the Department of Motor Vehicles—two of the main channels citizens generally use to register to vote. Thus, these voter registration drives are crucial to increasing voter registration among voters of color who are less likely to register through one of these other means.<sup>55</sup>

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.<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup>

As a result, restrictions that force third-party voter registration organizations to scale back their efforts will disproportionately impact African-American and Latino voters, who are much more likely to register to vote through such drives.

States have nevertheless proposed and implemented burdensome restrictions on third-party registration organizations. Such bills were signed into law in 2011 in Florida and Texas, which provide two prominent examples of these restrictive initiatives:

- **Florida has imposed substantial restrictions on organizations conducting voter registration drives:** Voter registration drives in 2008 were responsible for 176,000 or 8.24% of all registrations in the state.<sup>59</sup> Despite this impressive achievement, on May 19, 2011, Governor Rick Scott signed H.B. 1355 into law, imposing the most restrictive obligations on voter registration groups in the country.<sup>60</sup>

As a precondition to conducting a voter registration drive, the law requires every individual or group to register with and receive permission from the state before so much as offering to touch a voter registration form from anyone other than a family member.<sup>61</sup>

Further, a volunteer collecting a registration form must track each and every registration form, blank or complete, and must ensure that it is delivered to county officials within 48 hours or pay a penalty of \$50 for every late form.<sup>62</sup> Already, a teacher has been fined under the new registration provisions for helping her high school students pre-register in anticipation of their first election cycle as voters.<sup>63</sup>

The law will also have a pronounced adverse impact on minority registration in Florida, where

African-American and Latino voters rely heavily on voter registration drives. In 2008, for example, while only 6% of white Floridians registered to vote in registration drives, 15% of Latino and nearly 20% of African-American Floridians registered at these events.<sup>64</sup>

Indeed, Florida's restrictive change has already caused leading voter registration groups, such as the Florida League of Women Voters, to cancel or to consider canceling their voter registration drives.<sup>65</sup> These obligations will also discourage impromptu community voter registration drives that are often pulled together informally on campuses, in houses of worship, and community centers.

- **Texas has proposed a range of legislation that would restrict the efforts of voter registration groups:** In Texas, third-party registration efforts accounted for at least 26,000 new registrations in 2008.<sup>66</sup> In response to this success, Texas has enacted two bills that will place severe restrictions on those efforts. One requires certain elections officials to receive statutorily-defined training in order to be allowed to assist in voter registration.<sup>67</sup> The other requires, among other things, that an individual who assists others to register to vote be a Texas resident and a qualified voter.<sup>68</sup> Texas has also proposed a number of additional restrictions, including:

- A bill that would increase the residency requirements for deputy voter registrars;<sup>69</sup> and
- A bill that would require deputy registrars to be registered voters.<sup>70</sup>

Because the State of Texas and five counties in Florida are covered by Section 5 of the Voting Rights Act, these laws remain subject to federal review.

- **Other state efforts include:**

- A failed Mississippi bill that would have imposed a range of requirements including pre-registration, reporting, compensation rules, and a ten-day submission deadline.<sup>71</sup>
- A pending bill in Illinois that requires deputy registrars to submit completed voter registration forms within two days and prohibits groups from copying any information from voter registration forms, subject to criminal penalties.<sup>72</sup>

**(b) Noncompliance with the National Voter Registration Act (NVRA):** A number of states are not providing voter registration services to low-income constituents at state public assistance agencies, as required under the National Voter Registration Act of 1993 (NVRA).

**Following litigation that required Ohio to comply with the NVRA, voter registration at social service offices increased dramatically from 24,000 to 191,000 voter registrations a year.**

Section 7 of the NVRA requires states to offer voter registration services at all offices that provide public assistance or that provide services to persons with disabilities. As with third-party registration drives, minority voters register at public assistance agencies at significantly higher rates than their white counterparts. For example, in 2008, African-American and Latino voters registered at public agencies three times as frequently as white voters.<sup>73</sup>



Selma, 1965

A number of states, however, are in violation of their NVRA obligations, which effectively disfranchises the poor and places increased pressure on third-party registration organizations to fill the void.

Voting rights organizations took action against a number of states in 2011 for NVRA non-compliance, including:

Louisiana, where registrations from public assistance officers have plummeted 88% since the law was first implemented, from nearly 75,000 in 1995-1996 to a mere 8,688 in 2007-2008.<sup>74</sup>

Georgia, where registrations from public assistance offices have dropped from more than 100,000 in 1995-1996 to a paltry 4,430 in 2010.<sup>75</sup>

Michigan, where there has been an 82.5% decrease in the submission of voter registration applications at public assistance offices.<sup>76</sup>

Texas, where registrations from public assistance agencies have declined from 353,550 registrations in 1995-1996 to 6,337 in 2007-2008—a drop of more than 92%.<sup>77</sup>

## (2) Limitations on When and Where Voters Can Register

In the 2011 legislative cycle, four states (Florida, Maine, Ohio, and Wisconsin) enacted a variety of measures that limit when a person can register to vote or can update her registration information.

As of October 2011, one million low-income people in five different states have registered to vote as a result of proper NVRA enforcement.

Youjin B. Kim and Lisa Danetz, *1 Million New Voters Among the 99%: How Agency-Based Voter Registration Give Low-Income Americans a Voice in Democracy*.

Broad opportunities to register to vote have resulted in increased participation. For example, several states permit same day registration, which allows voters to register and cast a ballot on the same day. The difference in turnout between states that do, and those that do not, offer same day registration has been significant, with those states offering same day registration leading the nation in turnout, historically boasting turnout rates ten to twelve percentage points higher than those states that do not.<sup>78</sup> According to Demos, in the 2010 midterm elections, same day registration allowed almost 640,000 Americans to register to vote—a group of voters larger than the populations of Washington, D.C., Boston, Nashville, Denver, or the state of Vermont.<sup>78a</sup>

Nevertheless, many states are restricting the ability of voters to register on or on the days leading up to Election Day. These registration barriers primarily impede individuals who move frequently, a subset of the population that is disproportionately comprised of minorities.

According to the Pew Research Center, 43% of African Americans and 48% of Latinos moved during the previous five years, as compared to only 27% of whites.<sup>79</sup> African Americans and Latinos similarly report a higher likelihood of moving within the next five years: 59% for African Americans and 43% for Latinos, as compared to only 35% for whites.<sup>80</sup> In 2009-2010 alone, moreover, African Americans had the highest moving rate (16.7%), followed by Latinos (15.6%), Asians (13.9%), and whites with the lowest rate (10.8%).<sup>81</sup>

Many individuals have also been forced to move in the wake of the foreclosure crisis, which has not had even across-all-group effects. The decline in homeownership rates among African Americans and Latinos in recent years (8%) is almost twice that of whites (4.5%).<sup>82</sup> The disparity is likely greater in states more heavily affected by foreclosures, like Florida<sup>83</sup> and Wisconsin<sup>84</sup>—both states that have restricted registration opportunities.

As a result, state measures that shorten the period of time prior to an election during which an individual can register or update his registration information after a move will be formidable obstacles for minority voters.

In 2011, bills that reduce opportunities to register or to update registration information were introduced in seven states, and four of those bills—in Florida, Maine, Ohio, and Wisconsin<sup>85</sup>—were passed and signed into law. Another bill in North Carolina is pending; while the two remaining bills either failed to pass (New Hampshire<sup>86</sup>), or passed but were vetoed by the governor (Montana<sup>87</sup>).

Notable among these initiatives are:

- **Florida eliminated the right of registered voters who move across counties to update their voter registrations to reflect their new addresses at the time of voting:** As part of a recent overhaul of its election laws under H.B. 1355, Florida now prohibits voters who move from one of Florida's 67 counties to another from updating their address information in person at the polls at the time of voting, and only permits such voters to cast provisional ballots.

According to one estimate based on 2008 election figures, nearly 34,000 additional Florida voters will now be required to cast provisional ballots.<sup>88</sup> Because minorities in Florida, as in the rest of the country, have higher mobility and foreclosure rates than whites, they are the voters most likely to move, and will therefore be disproportionately forced to cast a provisional ballot under the new law.<sup>89</sup>

This consequence is troubling because provisional ballots are counted less frequently than are normal ballots. During the 2008 elections, fewer than half (only 48.59%) of all provisional ballots cast in Florida were actually counted.<sup>90</sup>

In addition, voters must return to the local election authority after Election Day and provide supporting documentation to ensure that the ballot is counted. This additional trip during working hours poses a particularly high barrier for minority voters in Florida, who have not only lower rates of vehicle ownership,<sup>91</sup> but also higher rates of poverty, making it more difficult to take time off from work to vote.

This law remains subject to review under Section 5 of the Voting Rights Act.

- **Maine attempted to eliminate a 38-year-old policy allowing Election Day voter registration.** On June 21, 2011, Maine Governor Paul Le Page signed L.D. 1376 into law, seeking to end the state's long practice of Election Day voter registration.<sup>92</sup> This was a striking move, as Maine's policy has



In 2008, nearly  
60,000 people in  
Maine registered  
to vote on  
Election Day.



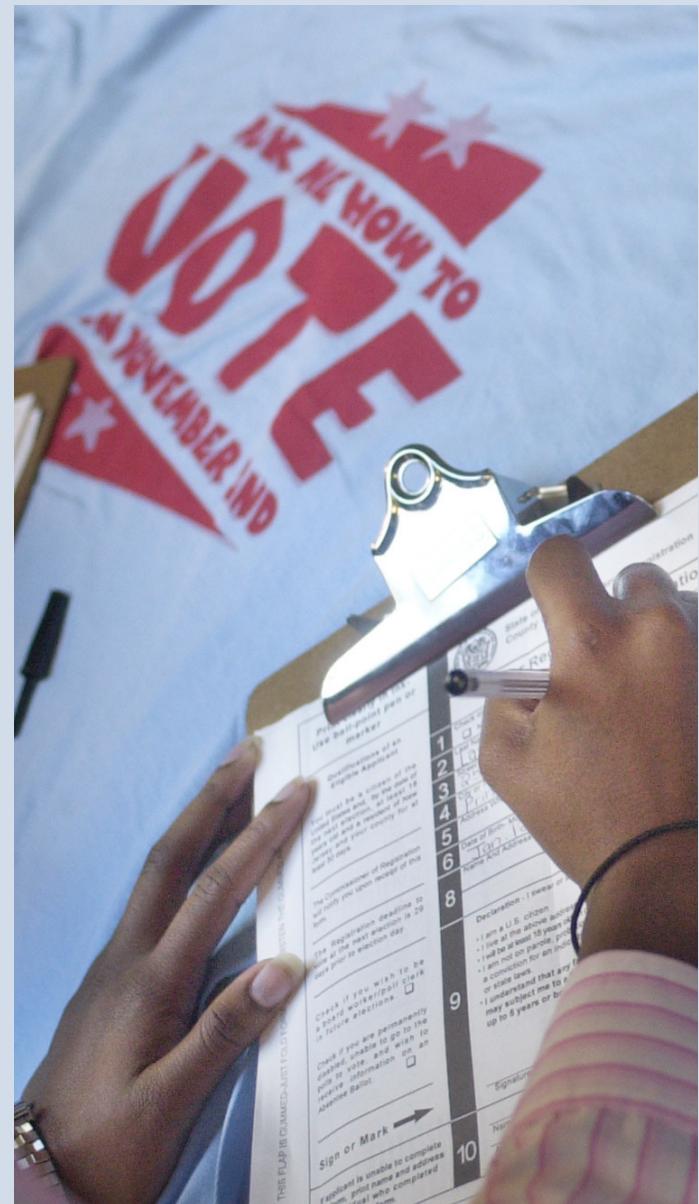
been credited with consistently producing one of the highest turnout rates in the country. In 2008, nearly 60,000 people in Maine registered to vote on Election Day,<sup>93</sup> while in 2010, four out of five same day registration voters registered on Election Day. Soundly rejecting this block the vote measure, the people of Maine voted by a substantial margin to overturn this law and restore Election Day voter registration on November 8, 2011.<sup>94</sup>

- **North Carolina has proposed to eliminate same-day voter registration during the early voting period:** Misleadingly short-titled the “Voting Integrity” bill, S.B. 657 was proposed in April 2011, seeking to revoke “one-stop” registration and voting during the early voting period.<sup>95</sup> “One-stop” registration and voting is an election reform implemented in 2007, in advance of the 2008 Presidential Election.

North Carolina saw a steep rise in voter turnout in the 2008 election—voting rose eight percentage points over the 2004 vote, the greatest increase in the nation. 253,000 individuals used same day registration in the run-up to the elections. 105,000 were first-time voters in their counties; the balance used same day registration to update their voter registration records and avoid the need to vote by provisional ballot.<sup>96</sup>

African Americans were more likely to utilize this one-stop registration and voting mechanism to cast a ballot than any other form of voting.<sup>97</sup> Despite comprising only 20.9% of the citizen population of the state, African Americans were 35.1% of the one-stop voters. White citizens, by contrast, comprised 76.0% of the citizen population, but only 53.9% of the one-stop voters.<sup>98</sup>

- **Ohio eliminated the “golden week”:** As part of an omnibus election overhaul bill signed into law by Governor John Kasich, Ohio has eliminated the so-called “golden week”—the first seven days of the early voting period before a general election, during which the early voting period overlaps with the period before the voter registration deadline. In this one-week period, eligible citizens were able to register and vote on the same day.<sup>99</sup> The elimination of this opportunity is expected to have a disproportionate effect on minority voters.<sup>100</sup>



Appendix 2 provides more details on these state initiatives and proposals.

### (3) Enhanced Registration Eligibility Requirements

In most states, a voter typically establishes her eligibility to register and to vote by an affidavit attesting to the fact that she is a U.S. citizen over eighteen years old, and that she meets other state eligibility requirements. Some states have recently implemented additional barriers to registration by toughening the eligibility criteria for registration, including: (a) laws requiring documentary proof of citizenship; and (b) extended durational residency requirements. These additional registration hurdles are particularly difficult for many people of color to overcome.



Lillie Lewis, 78, with a letter from the State of Mississippi saying there was no record of her birth on file.

**(a) Documentary Proof of Citizenship:** Three states (Alabama, Kansas, and Tennessee) enacted documentary proof of citizenship requirements. Documentary proof of citizenship, whether to register or to vote, is an especially burdensome eligibility criteria because official documents that actually establish citizenship are limited to items such as an original birth certificate, naturalization papers, or a passport.<sup>101</sup>

Millions of citizens do not have such documents.

One study estimates that as many as 7% of U.S. citizens do not have access to these citizenship documents.<sup>102</sup> In 2008, proof of citizenship would have thus presented a significant registration obstacle to more than 14 million citizens of voting age.<sup>103</sup> In fact, for many citizens, these documents simply do not exist. Individuals born on reservations or outside a hospital, for example, may never have been issued official birth documents, or original documents may have been destroyed over the years. To be sure, many Americans do possess such documents, but they often do not have ready access to them, storing them in safe deposit boxes or with parents far from their current residence. And even those who have ready access to these documents may face difficulties, as their documents may not reflect accurate information. One survey, for

example, found that only 66% of voting-age women with ready access to proof of citizenship documentation have a document with their current legal name.<sup>104</sup>

The difficulty that many Americans would have in meeting a documentary proof of citizenship requirement is alone cause for concern, but the disproportionate effect of this requirement on people of color is even more alarming. Minorities will bear the brunt of proof of citizenship laws because they are the least likely to have ready access to citizenship documents.<sup>105</sup>



In particular, proof of citizenship requirements—such as laws requiring voters to produce government-issued photo identification, discussed later in this report—have a uniquely burdensome impact on elderly African-American voters, many of whom, because they were born when *de jure* segregation prevented equal access to hospitals, simply do not have a birth certificate.<sup>106</sup>

Thus, many elderly African Americans are, by virtue of their race and the history of racial discrimination in this country, *entirely incapable of satisfying the requirements of these laws*.

More broadly, racial disparities in access to citizenship documentation exist because of broad socio-economic disparities correlated with race. For example, citizens earning less than \$25,000 per year are more than twice as likely to lack ready documentation of their citizenship as others, and at least 12% of voting-age citizens earning less than \$25,000 per year do not have a readily available U.S. passport, naturalization document, or birth certificate.<sup>107</sup>

Given the substantial racial disparities nationwide with respect to the poverty rate—as of 2009, 25.8% of African Americans and 25.3% of Latinos lived in poverty, compared with only 9.4% of whites<sup>108</sup>—it is clear that these documentary proof requirements disproportionately burden minorities.

Poverty rate disparities also demonstrate that voters of color are among those who are the least able to bear the costs of obtaining citizenship documentation. In instances where citizenship documents can be replaced or obtained in the first instance, individuals face an expensive and time-consuming process. A replacement birth certificate can exceed \$20,<sup>109</sup> a passport costs \$110,<sup>110</sup> and replacement naturalization documents cost \$345.<sup>111</sup>

## Gonzalez v. Arizona: Challenging Arizona's Restrictive Registration Law

Proposition 200, passed in 2004, requires prospective voters to provide documentary proof of citizenship in order to register to vote, and requires registered voters to present proof of identification in order to cast a ballot at the polls. In its first four years, the law enabled the state to deny registration to an estimated 30,000 applicants for failing to provide the additional paperwork required for voter registration,<sup>y</sup> and thousands more have been turned away at the polls on Election Day for failing to show satisfactory identification.

In 2006, a number of individuals and civil rights groups filed suit in the U.S. District Court for the District of Arizona challenging the documentary proof and identification requirements of Proposition 200. On October 26, 2010, a three-judge panel struck down the proof-of-citizenship mandate as preempted by the federal National Voter Registration Act (NVRA), holding that “Proposition 200’s documentary proof of citizenship requirement conflicts with the NVRA’s text, structure, and purpose.”<sup>e</sup> On April 27, 2011, however, the Ninth Circuit granted Arizona’s petition for rehearing *en banc*. The United States filed an *amicus* brief agreeing with the Proposition’s challengers that the NVRA preempts Arizona’s documentary proof of citizenship requirements. The Ninth Circuit heard oral argument on June 21, 2011.

<sup>y</sup> Dan Levine, Arizona voter citizenship proof of requirement overturned, REUTERS, Oct. 26, 2010.

<sup>e</sup> *Gonzalez v. Arizona*, 624 F.3d 1162, 1181 (9th Cir. 2010), reh’g *en banc* granted, 649 F.3d 953 (9th Cir. 2011).

The additional expense of traveling to the relevant government office to obtain such documents constitutes another burden, particularly for people living in poverty who tend to have less access to transportation.<sup>112</sup> Moreover, a citizen seeking replacement citizenship documents must navigate cumbersome government agencies, which often requires taking (unpaid) time from work in order to travel to a specific office, fill out forms, and wait in long lines.

Prior to 2011, Arizona was an outlier as the only state to require proof of citizenship to vote or to register to vote—a law that is currently being challenged before the Ninth Circuit in *Gonzalez v. Arizona*<sup>109</sup> (see box).

Since then, at least twelve states—Alabama,<sup>114</sup> Colorado,<sup>115</sup> Connecticut,<sup>116</sup> Kansas,<sup>117</sup> Maine,<sup>118</sup> Massachusetts,<sup>119</sup> New Hampshire,<sup>120</sup> Nevada,<sup>121</sup> Oregon,<sup>122</sup> South Carolina,<sup>123</sup> Tennessee,<sup>124</sup> and Texas<sup>125</sup>—have introduced legislation that would require, with some variation, proof of citizenship to register to vote. Alabama,<sup>126</sup> Kansas, and Tennessee passed and enacted proof of citizenship laws in 2011.

In April 2011, the U.S. Department of Justice precleared Georgia’s proof of citizenship requirement (introduced and passed in 2009). Alabama’s proof of citizenship law remains subject to review under Section 5 of the Voting Rights Act.

In 2011 in Tennessee, a 96-year-old woman was denied access to polls in her hometown, with local officials demanding that she produce her decades-old marriage certificate in order to verify her identity before voting.



These laws have already prevented qualified voters from casting ballots. In 2011 in Tennessee, a 96-year-old woman was denied access to polls in her hometown, with local officials demanding that she produce her decades-old marriage certificate in order to verify her identity before voting.<sup>127</sup>

Proof of citizenship advocates argue, as they do for voter photo ID requirements, that this heightened level of documentary proof is essential to keep noncitizens from fraudulently voting. But these concerns are unfounded, as there have been no documented cases in which a noncitizen has either intentionally registered to vote or voted while knowing that she was ineligible. Indeed, most allegations of noncitizen voting are generated by clerical mistakes or errors in data collection, a result of some of the same flawed and error-prone lists and methodologies that render purge programs vulnerable to manipulation.<sup>128</sup>

**(b) Durational Residency Requirements:** Durational residency registration requirements, such as time limitations to register, disproportionately penalize populations that move frequently. As part of the 2011 Wisconsin bill that moves up the deadline for late registration, the state has also extended its durational residency requirement for registering to vote from 10 days to 28 days of consecutive residency.<sup>129</sup> Because minorities have higher foreclosure rates than whites, they are the voters most likely to move. Wisconsin, moreover, ranked in the top ten states with the highest foreclosure rates in July 2011.<sup>130</sup> As a result minority voters in Wisconsin will likely be substantially impeded by this enhanced residency requirement.



Nearly 2 million, or 38%, of the disfranchised are African Americans.

A staggering 13% of all African-American men in this country are disfranchised.

In some states up to one-third of the entire African-American male population is denied the right to vote.

#### (4) Increased Disfranchisement of People with Felony Convictions

Two states (Florida and Iowa) adopted measures that prohibit persons convicted of felonies from voting for life.

Blocking the voting rights of people with felony convictions is one of the most significant barriers to political participation in this country. Nationwide, more than 5.3 million Americans who have been convicted of a felony are denied access to the one fundamental right that is the foundation of all other rights. Four million of the disfranchised have completed their sentences, and live, work, pay taxes, and raise families in their communities.<sup>131</sup> Nearly two million, or 38%, of the disfranchised are African American,<sup>132</sup> and more than 10% are Latino.<sup>133</sup>

See Appendix 4 for a state-by-state overview.

##### (a) The History of Felon Disfranchisement

Laws that deprive people convicted of criminal offenses of the right to vote trace their history to the conclusion of the Civil War, when they were specifically tailored to those offenses that African Americans were thought to be most likely to commit.

These intentionally discriminatory laws were guided by the belief that African Americans in the South (who were newly-emancipated and generally impoverished after the Civil War) were more likely to commit property offenses than were whites, who were thought to commit more “robust” crimes.

For example, the 1890 Mississippi Constitution required disfranchisement for such crimes as theft, burglary, and receiving money under false pretenses, but not for robbery or murder.<sup>134</sup> Through this convoluted reasoning, someone could be disfranchised for stealing a chicken, but not for killing the chicken’s owner.<sup>135</sup>

Today, felon disfranchisement statutes continue to weaken the voting power of African-American and Latino communities. This uneven effect is largely the result of the disproportionate enforcement of the “war on drugs” in African-American and Latino communities, which has drastically increased the class of persons subject to disfranchisement.<sup>136</sup>

Nowhere are the effects of felon disfranchisement more prominent than in the African-American community. A staggering 13% of all African-American men in this country—and in some states up to one-third of the entire African-American male population—are denied the right to vote.<sup>137</sup> Given current rates of incarceration, an astonishing three in ten of the next generation of African-American men will be disfranchised at some point during his lifetime.<sup>138</sup>

The effects of felon disfranchisement are not only limited only to the disfranchised themselves, but also extend to eligible and future voters who are discouraged from voting. Voting, like many forms of civic participation, is often a learned behavior; a child whose parent is unable to vote can herself develop an alienation from the culture of voting. These laws marginalize the voices of community members who are deprived of the collective power of voting alongside relatives and neighbors, and engender a culture of non-participation that erodes mainstream civic engagement.<sup>139</sup>

### (b) Felon Disfranchisement in 2011

In 2011 two states—Florida and Iowa—joined Virginia and Kentucky in holding the distinction as having the most restrictive felon disfranchisement laws in the country. Each of these four states denies the right to vote **permanently** to all individuals convicted of any felony offense.

- **Florida imposed a mandatory five-year waiting period and petition process for the restoration of rights for individuals who have completed their sentences.** In March 2011, Florida, which already had the largest disfranchised population of any state in the country (approximately 1 million),<sup>140</sup> rolled back state rules enacted four years ago that eliminated the post-sentence waiting period and provided for automatic approval of reinstatement of rights for individuals convicted of non-violent felony offenses.

The previous rule was put into effect in 2007, allowing the restoration of rights to more than 154,000 people who had completed their sentences.<sup>141</sup>

Under Florida’s new rules, all individuals who have completed their sentences, even those for non-violent offenses, must wait at least five years before they may petition the Clemency Board for the restoration of their civil rights, including the right to register to vote. Some offenders even have a mandatory seven-year period before they may petition.<sup>142</sup>

Even worse, the five-year waiting period for individuals convicted of a non-violent offense to apply for restoration of voting rights resets if a person is simply arrested for a criminal offense—even if charges are eventually dropped or the person is acquitted of all allegations.<sup>143</sup>

By most accounts, these new clemency rules make Florida’s the most restrictive felon disfranchisement approach in the country.<sup>144</sup>

- Iowa requires all individuals who have completed their sentences to apply for the restoration of their rights—an application that is contingent on the payment of all outstanding financial obligations. In January 2011, Iowa Governor Terry Branstad, in one of his first acts after being sworn into office, rescinded Executive Order 42, a 2005 order that had automatically restored voting rights to individuals with criminal convictions once they had completed their sentences.<sup>145</sup> Under Executive Order 42, approximately 100,000 state citizens had their voting rights restored.<sup>146</sup>

Under Executive Order 70, individuals with felony convictions will now have to petition the governor individually to regain their voting rights. As with all felon disfranchisement laws, the new order will have a disproportionate impact on African Americans, who constitute only 2.8% of the Iowa population, but are about a quarter of the state's prison population.<sup>147</sup>

Particularly troubling is the link that has been drawn between the restoration of voting rights and the monetary obligations of those seeking such restoration. According to Executive Order 70, approval of a restoration application requires not only that the individual complete his sentence, but also that he meet all outstanding financial obligations, including any fines or court costs.<sup>148</sup> This additional impediment to restoration of vot-



ing rights is dangerously similar to the insidious practice of poll taxes—requiring a fee in order to vote. States enacted poll taxes after the passage of the Fifteenth Amendment in order to prevent the recently enfranchised African Americans from voting. The Twenty-Fourth Amendment together with the Supreme Court decision in *Harper v. Virginia Board of Education*<sup>149</sup> announced unequivocally that such taxes were unconstitutional at both the state and federal levels. Just as with poll taxes of the past, Stephanie Fawkes-Lee and Marty Ryan, two Iowa-based public policy advocates, argue: “The right to vote should not be based on a duty to pay. If it were, we would revert back to the days in which wealthy, white, male landowners would be a privileged voting class.”<sup>150</sup>

In addition to these changes in Florida and Iowa, legislators in five other states introduced bills—none of which have yet passed—that would expand felon disfranchisement: Alabama, Maryland, South Carolina, Washington, and West Virginia.<sup>151</sup> Meanwhile, in Nevada, the governor vetoed a bill that would have automatically restored voting rights to any convicted felon who honorably completed his or her sentence.<sup>152</sup>

## (5) Voter Purges

Even registered voters face threats to their registered status. In addition to making it harder to register initially, some states are also improperly purging registered voters from state registration rolls. Purge programs purport to maintain the purity of voter registration lists by removing the names of individuals ineligible to vote in that state or jurisdiction. The purge process, however, lacks transparency, vests substantial discretion in election officials, and relies on flawed and error-prone methods that are vulnerable to manipulation. As a result, purges too often result in the disqualification of eligible voters.<sup>153</sup>

Recent incidents of improper purges show that communities of color are particularly vulnerable to improper purging. For example, in 2000, more than 12,000 eligible voters in Florida were wrongfully purged when the state relied on an unreliable match process to identify registered voters who shared a name with an individual in an electronic database of people convicted of criminal offenses.<sup>154</sup>

Other recent examples include:

- In 2008, the Florida Secretary of State instructed election officials to reject voter registration applications that did not pass an error-prone computer match process. In the first three weeks of the policy, 15% of registrations were initially flagged because of failed computer matches. Although election officials were able to catch and correct obvious typos in about 75% of these cases, they left more than 12,000 unchanged.<sup>155</sup> Of the registrations that were blocked, 39% were African Americans and 34% were Latinos.<sup>156</sup>
- In 2008, Mississippi state Senator Terry C. Burton proposed a bill that would cancel the registration of any voter if he or she did not “appear to vote” in a single election between November 3, 2008 and December 31, 2009.<sup>157</sup>

Purged voters would then have to re-register before voting in subsequent elections. Because minority communities generally have lower turnout rates, purges based on turnout disproportionately affect minority voters. In addition, requiring re-registration for once-purged voters would prevent many minority voters from returning to the polls because of the numerous registration obstacles facing minorities discussed above.



## II. Blocking the Vote at the Early and Absentee Voting Stage

In addition to barriers to registration, a number of states have passed or considered measures that impede the actual casting of ballots by registered voters by placing new restrictions on the early and absentee voting processes. In 2011, five states (Florida, Georgia, Maine, Tennessee, and West Virginia) imposed new restrictions on early and absentee voting.

### (1) Shortening Early/Absentee Voting Periods

Getting to the polls on Election Day is difficult for many voters. Many working individuals cannot afford to take time off of work (or simply lack the flexibility to be able to), low-income voters often lack easy access to transportation to the polls, the elderly and disabled may be unable to travel to the polls, and students and active service members may be absent from their voting precincts on election day.

To assist those voters who cannot reach polls on Election Day itself, almost all states provide some alternative to the traditional in-person, precinct-based Election Day method for casting a ballot. These alternatives usually involve a version of early, and/or absentee, voting.

Whether because of a lack of transportation or an inflexible work schedule, or because of long lines and waiting periods to vote on Election Day (in 2008, 27% of African-American voters reported waits half an hour or more, as compared to only 11% of white voters<sup>158</sup>), voters of color have been more likely to take advantage of the flexibility provided by these additional voting days.<sup>159</sup>

Nevertheless, in the 2011 legislative cycle, bills were introduced in ten states to reduce early or absentee voting periods, with such bills passing in five states: Florida (enacted, subject to preclearance), Georgia (enacted), Maine (enacted),<sup>160</sup> Maryland (pending but with unfavorable committee report),<sup>161</sup> Nevada (no further action allowed),<sup>162</sup> New Mexico (defeated),<sup>163</sup> North Carolina (pending),<sup>164</sup> Ohio (enacted subject to voter referendum), Tennessee (various bills enacted),<sup>165</sup> and West Virginia (enacted).<sup>166</sup>

Highlights of these efforts include:

- **Florida's elimination of the first week of early voting:** Florida has enacted a bill that reduces the number of early voting days from fourteen to eight days. The bill also gives local supervisors of elections discretion over early voting hours, changing the hours that early voting sites must operate from a mandatory eight hours per day (other than weekends), to a discretionary range of six to twelve hours per day.<sup>167</sup> As a result, the change not only eliminates the first week of early voting in Florida, but it also makes possible a reduction in total hours of early voting from a mandatory 96 hours to a minimum of only 48 hours.

In the 2008 election, over 2.6 million votes were cast during Florida's early in-person voting period, accounting for an estimated 31.25% of all ballots cast.<sup>168</sup>

This change will inflict particularly harsh burdens on minority communities, who rely heavily on early voting periods to cast their ballots. During the 2008 general election, African Americans were 22% of voters during the first week of early voting in Florida statewide, despite being only 13% of the Florida electorate. Overall, 54% of Florida's African-American voters in 2008 voted at early-voting sites.<sup>169</sup>

- **Florida's elimination of early voting on the Sunday before Election Day:** Florida also eliminated early voting on the last Sunday before Election Day, a day on which African-American churches in Florida have traditionally conducted a sizeable portion of their election assistance efforts. One such example is the "Soul to the Polls" effort, in which churches encourage their congregants, after fulfilling their spiritual duties at church, to discharge their civic responsibilities, by organizing transportation from Sunday services directly to the election booth.<sup>170</sup> African Americans comprised one-third of the entire statewide turnout on the last Sunday before the 2008 election.<sup>171</sup>

Although not all of Florida's counties currently offer early voting on this last Sunday, those counties that do—Miami-Dade, Duval, Palm Beach, Broward (in 2008)—are urban counties that have among the largest African-American populations in the state.<sup>172</sup>

Florida's law remains subject to review under Section 5 of the Voting Rights Act.



- **Georgia's reduction of the early voting period from 45 days to 21 days:** Reversing its pre-2008 election decision to expand early in-person voting from one week to 45 days before the election, Georgia has returned to a shortened early voting period of only 21 days.

Like the shortening of early voting in Florida, this change will disproportionately affect voters of color. According to a Pew Center on the States survey of voters in three Georgia counties, more than 60% of African Americans who voted in the 2008 general election did so during the early period, as compared to less than half of white voters.<sup>173</sup> As a result, African Americans cast 35% of all early ballots, even though they comprised only 30% of those eligible to vote in the general election.<sup>174</sup>

In addition, African Americans voted early in the 45-day period—a portion of the early voting window that has since been eliminated—casting almost 40% of all the ballots during that time.<sup>175</sup>

- **Ohio's return to 2004 election rules:** Ohio is reversing many of the voting conveniences introduced after the 2004 general election, when the nation watched while Ohioans in many counties waited up to ten hours at the polls.<sup>176</sup>

Among these reversals is a reduction in Ohio's 35-day early voting period.<sup>177</sup> In 2008, approximately 30% of all Ohio voters cast their ballots during the early voting period. As a result, despite record turnout, 2008 did not suffer a reprise of the long waits at the polls witnessed in 2004.<sup>178</sup>

Ohio's newly-shortened voting period signals a return to the ten-hour waits from 2004, particularly in urban areas where minority communities are concentrated, and where the proportion of early voters is as high as 40% in places like Franklin County.<sup>179</sup> The changes to early voting also include a ban on in-person voting on Sundays. As one commentator notes, this particular ban, as in Florida, is “a transparent effort to limit voting by the African American community—whose members often come to vote in groups after church on Sunday.”<sup>180</sup>

For more detailed information about these state initiatives, see Appendix 5.

## (2) Other Restrictions on Early/Absentee Voting

State legislators have also proposed other creative methods to restrict access to these alternative methods of voting:

- **Texas** legislators introduced a bill that will omit early voting locations from official notices of a general or special election.<sup>181</sup>
- As part of **Ohio's** recent overhaul of its voting system, Ohio Secretary of State Jon Husted sought to prohibit counties from mailing unsolicited absentee-ballot applications to voters and including prepaid return postage.<sup>182</sup> These practices were employed by Franklin (Columbus), Cuyahoga (Cleveland), and Hamilton (Cincinnati) counties—the counties with the largest African-American populations by number and percentage—in past elections.<sup>183</sup>
- A **New Jersey** bill would end no-excuse absentee voting.<sup>184</sup>

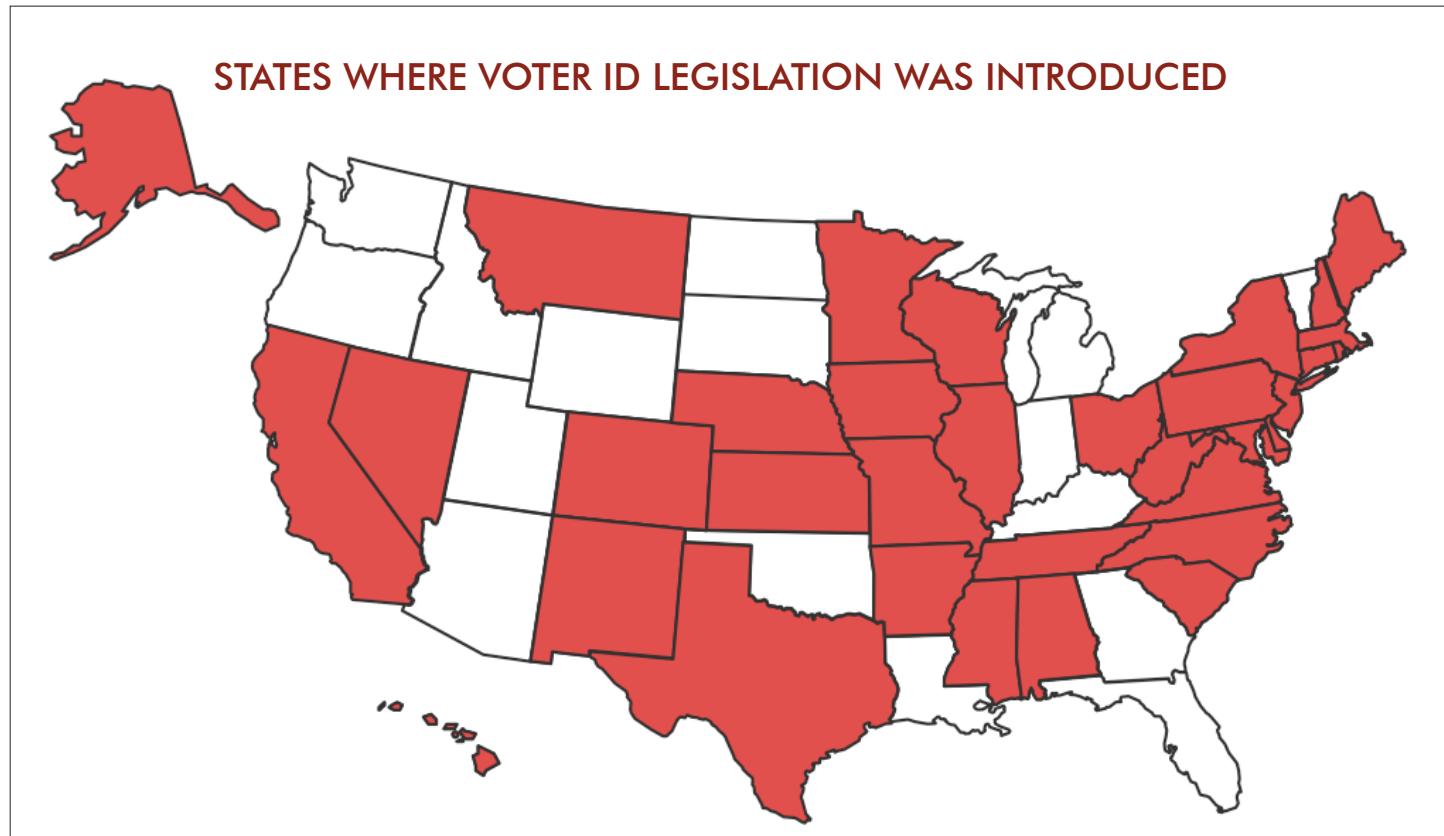
**Early Voting Reductions as a Cost-Savings Measure?** Proponents of early voting restrictions argue that these measures provide needed cost-savings, but the evidence indicates that these efforts will actually increase costs. In North Carolina, for example, the State Election Board found that cuts to early voting will increase expenses because the reduction would require the state to create new election precincts and add voting machines in order to handle the surge of voters now forced to vote on Election Day.<sup>185</sup> At the same time, the cuts would reduce the flexibility early voting allows to allocate equipment and staff.<sup>186</sup>

### (III) Blocking the Vote on Election Day

In addition to limiting opportunities to vote before Election Day, numerous states have added insult to injury by imposing laws that restrict access to the polls on Election Day itself. Deceptive practices are also being used to disseminate false or misleading information about the voting process in order to prevent eligible voters from casting a ballot.

#### (1) Photo Identification Requirements

The push for laws requiring voters to present valid government-issued photo identification at the polls in order to cast a ballot amounts to an effort to create a modern day poll tax and represents the heart of the modern block the vote campaign.



A driver's license, for example, can cost up to \$45.<sup>187</sup> For many Americans, these underlying costs are, as a practical matter, prohibitive. Poll taxes of as little as \$1.50 have been deemed an unconstitutional burden on the right to vote.<sup>188</sup> For impoverished individuals—who are disproportionately people of color—the \$15 that they must spend to obtain a government-issued photo ID “is \$15 that they must subtract from their meager ability to feed, shelter and clothe their families.”<sup>189</sup>

Nevertheless, as the Brennan Center's map on page 32 demonstrates, thirty-four states, in a coordinated effort, introduced photo identification requirements for voting in 2011.<sup>190</sup>

Although requiring or requesting voters to provide some form of voter identification to register or to vote is not an entirely novel imposition,<sup>191</sup> these 2011 initiatives are notable in their coordination, their pervasiveness, and their restrictiveness. These new laws prohibit many common forms of previously acceptable identification like student IDs, social security cards, utility bills, and bank statements.

During 2011, laws requiring a voter to present a valid photo ID in order to cast a vote were passed in eight states: Alabama, Kansas, Mississippi, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin.

The laws in Alabama, South Carolina, and Texas are still awaiting federal approval under Section 5 of the Voting Rights Act. The Department of Justice has requested more information from both South Carolina<sup>192</sup> and Texas.<sup>193</sup>

In Missouri, despite a ruling from the Missouri Supreme Court that such laws violate the state constitution, and the governor's recent veto of a photo ID bill, a constitutional amendment authorizing a photo ID requirement passed the legislature and will be on the November 2012 ballot.<sup>194</sup>

Photo ID laws were also passed in Minnesota, Montana, New Hampshire, and North Carolina, but were ultimately vetoed by each state's governor. A number of other states have photo ID bills that are still pending (*e.g.*, Ohio, Pennsylvania), while voters are initiating voter ID requirements through ballot measures in Massachusetts.<sup>195</sup>

These efforts are highly coordinated. Many of these proposals take their inspiration from model voter photo ID legislation developed by the American Legislative Exchange Council (ALEC), an advocacy group that brings together state legislators and private interests,<sup>196</sup> and enables “a consistent pipeline of special interest legislation [to be] funneled into state capitols.”<sup>197</sup>

The first two photo ID laws were enacted in 2005 in Georgia and Indiana.<sup>198</sup> Recent proposals, while varying slightly in order and language, substantively resemble ALEC's model legislation and generally follow the same format.



**Severe Limitations on Acceptable Forms of ID:** A voter must present a valid photo ID at the polls in order to cast a vote. What constitutes a valid photo ID is usually defined in detail by state statutes, and to a large extent is limited to identification issued by a state or the federal government. Stricter versions require an unexpired ID. For more detailed information on the forms of photo identification permitted under the currently enacted photo ID statutes, see Appendix 3. Of particular note among the currently enacted statutes are:

- **South Carolina** accepts only photo IDs issued by either South Carolina or the United States.<sup>199</sup> According to South Carolina’s own Election Commission, nearly 239,000 of the state’s 2.7 million registered voters (or almost 10%) do not have any form of state-issued photo ID.<sup>200</sup> Because an individual must produce a birth certificate in order to obtain a state-issued ID, voters who never received or have lost or misplaced a birth certificate may simply be unable to obtain even the free state-issued ID.
- Three states—**Tennessee, Texas, and South Carolina**—do not accept any kind of student ID, *even those identification cards issued by the state itself*. This restriction creates a particularly unnecessary obstacle for many college students, especially those attending schools far from their hometown.
- A recent investigation conducted by the League of Young Voters indicated that Texas’s photo ID law will effectively disfranchise hundreds of students at Texas’s historically Black colleges and universities, where many students do not have and cannot obtain a Texas state-issued identification card other than a student ID card. Many of these students do not have the underlying documentation necessary to obtain a state-issued photo ID, cannot afford to pay for those underlying documents, come from out of state and cannot locate those underlying documents, or simply lack transportation to obtain a state-issued photo ID.<sup>201</sup> Remarkably, although Texas will not accept a state-issued student ID for voting, it will accept a concealed handgun license.<sup>202</sup>
- **Provisional Ballots Go Uncounted:** States try to assuage concerns over unfair photo ID laws by arguing that voters who lack such ID may cast a provisional ballot instead. This option, however, offers no consolation because voters must still present a valid photo ID to designated election officials within a prescribed time period (often within just a few days of the election) in order for their provisional ballots to be counted. This is no true alternative to photo ID requirements.

Tennessee, for example, counts a provisional ballot cast by a voter without the requisite photo ID only if the voter provides an acceptable ID to the administrator of elections by the close of business on the second day after the election.<sup>203</sup>



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Rhode Island is less restrictive and will count a provisional ballot if the signature on the ballot matches the signature on the voter's registration, but it is an outlier in this regard.

- **Insufficient Exemptions:** Several states also argue that they provide exemptions for elderly and disabled voters, members of the military who are on active duty, voters who have religious objections to being photographed, or certain other limited classes of voters. These exemptions, unfortunately, are illusory and fall short of an actual remedy.

In **Indiana** and **South Carolina**, for example, even "exempted" individuals are required to cast a provisional ballot that is counted only if the individual provides an affidavit affirming that the exemption applies.

- **Photo IDs that Are Purportedly "Free"—But Actually Cost a Lot of Money:** In all of the currently enacted laws, states purport to provide for some form of free identification, available before Election Day. But the costs of obtaining a valid government-issued photo ID—even the purportedly "free" IDs—can be significant.

Individuals applying for these IDs typically must present certain underlying documentation, often some combination of a birth certificate, passport, social security card, and the like—all of which cost money to obtain. Obtaining a birth certification in Texas, for example, costs \$22,<sup>204</sup> and the underlying costs are similar in other states.

Moreover, as discussed earlier, many elderly African Americans will be entirely incapable of producing the underlying documentation, because they never received such documentation. Even where missing documents can be replaced, the individual will have to pay to replace them.

Requiring voters to present valid photo identification will prevent many voters from casting ballots, including a disproportionate number of voters of color. Indeed, the most rigorous study on voter ID and turnout to date found that stricter voter ID requirements depress participation among all registered voters, and especially among voters of color.<sup>205</sup>

An astonishing 25% of African Americans (over 6.2 million African-American voters) and 16% of Latinos (over 2.96 million Latino voters) do not possess valid photo ID.<sup>206</sup> By comparison, only 8% of whites are without a current government-issued photo ID.<sup>207</sup> Another study found that 19% of African Americans, but only 3% of whites, do not possess a driver's license.<sup>208</sup> In addition, given their higher mobility rates, minorities are less likely to have photo ID showing a current address, even if they have an otherwise valid photo ID.

That voter photo ID requirements will keep a disproportionate number of eligible minority voters from casting a ballot is not merely a prediction. In the 2008 election, the Pew Center on the States reported that in Georgia, which has had a voter photo ID law in place since 2005, 30% of African Americans cited a lack of a photo ID as an important reason for voting absentee (which does not require a photo ID), as compared with 19% of white voters.<sup>209</sup> An Associated Press analysis in South Carolina showed that the proposed voter ID law there would similarly disproportionately affect African-American precincts.<sup>210</sup>

Moreover, due to discriminatory enforcement, these laws place disproportionate burdens on all minority voters, not just those who lack a photo ID. Nationally, 70% of all African-American voters and 65% of all Latino voters were

An astonishing 25% of African Americans (over 6.2 million African-American voters) and 16% of Latinos (over 2.96 million Latino voters) do not possess valid photo ID.

**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].”**

asked to show photo identification at the polls during the 2008 election, as opposed to only 51% of white voters.<sup>211</sup> As a result, eligible African-American voters were forced to cast provisional ballots at a rate four times higher than were white voters. As noted above, provisional ballots are often not counted as frequently as regular ballots.

The racially discriminatory effects of photo ID laws have not been lost on some of the proponents of such laws. 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].”<sup>212</sup>

Proponents of photo ID requirements argue that the burden of producing such ID is minimal, and cite the fact that identification is required in many common transactions in modern life—for example, purchasing alcohol or certain over-the-counter medicines. These comparisons are inapposite for many reasons. Unlike buying Sudafed, or even boarding a plane, the right to vote is a constitutional right, and the most fundamental political right in a democracy. The exercise of that right should never be conditioned on a person’s wealth.

**The Myth that Photo ID is Needed to Prevent Voter Fraud:** Proponents of photo ID laws argue that such measures are necessary to prevent in-person voter fraud.<sup>213</sup> But if voter fraud were the main reason that states have passed legislation requiring photo ID, then those states would allow Election Day registration, since the ID required to vote would be the same ID required to register on any other day. Instead, the risk of voter fraud appears to be little more than an after-the-fact rationalization for discriminatory laws.

Instances of in-person voter fraud are extraordinarily rare. In Ohio, for example, a statewide survey of votes cast in 2002 and 2004 found that out of more than 9,000,000 voters, there were *four instances* of voter fraud.<sup>214</sup> In fact, there are far more reported UFO sightings than reports of impersonation at the polls, with a grand total of nine suspected fraudulent votes that could have been prevented by restrictive photo ID laws since 2000—a period in which over 400 million votes were cast in general elections alone.<sup>215</sup> With in-person electoral fraud occurring at a rate of 0.000002%, an individual is more likely to be struck by lightning than to impersonate another voter at the polls.<sup>216</sup>

This absence of voter impersonation makes sense. Not only is voter fraud an extremely inefficient way to influence the outcome of an election, but federal law already provides a hefty deterrent: for each act of in-person impersonation fraud in a federal election, the perpetrator risks five years in prison and a \$10,000 fine, in addition to any penalties imposed under state law.<sup>217</sup> Noncitizens face possible deportation.

When it comes to the false rationale that photo ID measures also combat fraudulent noncitizen voting, the myth is even more clear: there is no evidence whatsoever that any noncitizen has ever risked the considerable criminal sanctions associated with fraudulent voting, nor would a noncitizen risk the even greater sanction of being deported.<sup>218</sup> It makes no sense that a noncitizen—or, the particular target of the right wing: an undocumented immigrant—would try to purposely cast a fraudulent vote. Indeed, even in the rare recorded instances in which noncitizens have knowingly registered or voted, investigations have shown that these individuals did so only because they mistakenly believed that they were eligible to register or vote.<sup>219</sup>

ALEC founder Paul Weyrich made the point of voter suppression tactics clear when he stated that “our leverage in the elections quite candidly goes up as the voting populace goes down.”<sup>220</sup> The attack on voting rights is not about protecting our democratic process; it is about control and manipulation of the electorate by any means, no matter how discriminatory or based on myths and fears.

## (2) Deceptive Practices

Finally, some of the most clearly intentional and discriminatory block the vote efforts are deceptive practices. Frequently 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.

Although the use of these tactics is not a new phenomenon, experience from the 2010 elections demonstrates that these devices will continue and may even increase by exploitation of the particular vulnerabilities created by the economic downturn.

Historically, deceptive practices have taken the form of fliers with misinformation distributed in a particular neighborhood, but recent efforts have made use of misleading robocalls, and innovative tactics employing email, the Internet, and other new media.

**Recent examples of deceptive uses of robocalls include:**

- **Members of the 2010 campaign to re-elect the former Maryland governor have been indicted for an anonymous robocall targeted at African-American voters.** At the direction of Julius Henson, a political operative employed by the campaign to re-elect former Maryland Governor Robert L. Ehrlich, a Republican, against his Democrat opponent, and the candidate favored by African Americans, Martin O’Malley, robocalls were made on election night to mostly African-American neighborhoods.<sup>221</sup> The robocall, which went out to more than 110,000 voters on November 2, 2010, left the following anonymous message:

Hello. I’m calling to let everyone know that Governor O’Malley and President Obama have been successful. Our goals have been met. The polls were correct, and we took it back. We’re okay. Relax. Everything’s fine. The only thing left is to watch it on TV tonight. Congratulations, and thank you.<sup>222</sup>

As a result of an investigation into these robocalls, the Office of the Maryland State Prosecutor has indicted both Julius Henson and one of the governor’s *de facto* campaign managers on multiple counts of state election law violations, including “attempting to influence a voter’s decision whether to go to the polls to cast a vote through the use of fraud.”<sup>223</sup>

The indictment describes a document outlining an election strategy for the Ehrlich campaign “designed to promote confusion, emotionalism, and frustration among African American Democrats, focused in precincts where high concentrations of AA vote.”<sup>224</sup> The document provided a “Targeting Methodology” that outlined a statewide effort whereby the African-American vote concentrated in 472 precincts was targeted for voter sup-

pression efforts.<sup>225</sup> The document even expressly stated that “[t]he first and most desired outcome . . . is voter suppression.”<sup>226</sup>

- **Kansas voters in 2010 received calls asserting a false proof of home ownership requirement to vote.** In an example of vote suppressors taking advantage of the foreclosure crisis to dissuade certain voters from reaching the polls, Kansas voters in 2010 reported that they received calls that they could vote on November 3, but that they would need to provide proof of home ownership in order to cast a ballot. With lower homeownership rates and higher foreclosure rates, minority voters would be among those voters disproportionately affected by this misinformation.

**Other deceptive tactics:** Various groups have employed other tactics in recent elections to disseminate misleading and confusing information in minority or low-income communities:

- Supporters of Russell Pearce, a Republican state legislator in Arizona, recruited Olivia Cortes, an immigrant from Mexico, to run against Pearce in the November 8, 2011 recall election. Challenged in court by supporters of a third candidate, Jerry Lewis, Ms. Cortes’ candidacy was determined to be a sham, an effort to split the anti-Pearce vote, particularly among Latinos. According to the judge: “Pearce supporters recruited Cortes, a political neophyte, to run in the recall election to siphon Hispanic votes from Lewis to advance Pearce’s recall election bid.”<sup>227</sup>
- For the 2010 midterm election, Tea Party groups in Minnesota emailed supporters telling them to wear buttons or stickers saying “Please ID me.” This effort was in violation of a federal court ruling prohibiting the display of these buttons for fear that some voters might be improperly dissuaded from voting out of concern that they would have to produce identification that they did not have.<sup>228</sup>
- In a more traditional example, in the lead up to the 2010 elections, voters in the Houston area reported that a misleading flier was placed on the windshields of vehicles at a predominantly African-American polling place. The flier claimed to have come from a non-existent group called the “Black Democratic Trust of Texas.” It falsely warned voters that voting a straight Democratic ticket would cancel out their votes.<sup>229</sup>





LDF lawyers at the United States Supreme Court.

#### **IV. The Assault on the Voting Rights Act**

In 2006, Congress reauthorized key provisions of the Voting Rights Act based on substantial evidence of continuing voting discrimination and its prediction that additional discrimination would occur in the future. The recent block the vote efforts described in this report reflect the discrimination that Congress feared was still possible. Nevertheless, we are facing aggressive legal challenges to the Voting Rights Act based on the notion that its protections are no longer needed. In fact, the Voting Rights Act is the very tool needed to protect voters in many places from these block the vote efforts.

In 1965, Congress enacted the VRA to “combat the widespread and persistent discrimination in voting.”<sup>230</sup> The VRA not only gives meaning to the right to vote for all citizens, it also protects this right by providing tangible legal tools to proactively challenge discriminatory voting laws and practices.

The VRA’s core defense in this ongoing struggle to protect voting rights is Section 5. Section 5 applies to certain states and subjurisdictions with the most egregious histories and ongoing records of voting discrimination. All or part of 16 states are covered by Section 5.<sup>231</sup> These jurisdictions, known as “covered jurisdictions,” must submit any proposed changes to their voting and election laws to the federal government for “preclearance” (review) either by the Department of Justice or by a three-judge panel of the federal district court in Washington, D.C. before that proposed change can be implemented. A proposed voting change will be “precleared” only if the covered jurisdiction demonstrates: 1) that the change was not adopted with a discriminatory purpose; and 2) that it will not worsen the position of minority voters in that jurisdiction.<sup>232</sup>

Section 5, along with the other tools provided in the VRA, has proven extremely effective in blocking and deterring racially discriminatory voting practices and in protecting the gains in access to the ballot that we have achieved. In fact, a number of the restrictive measures discussed in this report will not go into effect—despite being passed and signed into law—unless they pass the preclearance process.

Notwithstanding the vital function it plays in strengthening our democracy, the VRA—and Section 5 in particular—is under heavy attack with five constitutional challenges currently before the federal courts:

*Shelby County, Alabama v. Holder*<sup>233</sup>: Shelby County, Alabama filed a lawsuit seeking to invalidate Section 5 of the VRA. On September 21, 2011, a federal district court rejected the challenge, finding that the VRA remains necessary in the modern era to combat modern day discrimination.<sup>234</sup> Shelby County has appealed.

*Arizona v. Holder*<sup>235</sup>: On August 30, 2011, Arizona filed a similar challenge to the preclearance provisions of the VRA. The case is currently before the same district judge who rejected Shelby County's invitation to declare Section 5 unconstitutional.

*Florida v. United States*<sup>236</sup>: As an alternative to its preclearance request before a three-judge panel for four voting changes, including three new restrictions discussed in this report, Florida seeks a declaratory judgment that the preclearance obligation (Section 5) of the VRA is unconstitutional.

*Georgia v. Holder*<sup>237</sup>: Like Florida, Georgia seeks a declaration before a three-judge panel that Section 5 of the VRA is unconstitutional as an alternative to preclearance for a set of redistricting plans.

*LaRoque v. Holder*: On April 7, 2010, several prospective candidates and voters from Kinston, North Carolina filed a suit challenging the constitutionality of Section 5 in response to the Attorney General's denial of preclearance for a voting change that would have replaced partisan with nonpartisan elections. The district court dismissed for lack of standing, but the D.C. Circuit reversed on June 6, 2011.<sup>238</sup>



Selma, 1965

## ENCOURAGE THE VOTE: THE CALL TO ACTION

The historic participation by communities of color in the 2008 elections provides a glimpse into the possibility of sustained and meaningful minority voting strength and the promise of political participation that reflects the true and growing diversity within our country. These signs of progress toward a more full exercise of the right to vote are remarkable and provide reason for celebration.

Yet the recent surge of restrictive and exclusionary voting initiatives is poised to derail the complete realization of this promise. The efforts represent yet another chapter in the struggle to expand American voting rights, and the backlash engendered by such efforts.

Our job in defending and advancing the civil rights of African Americans, other people of color, and other vulnerable groups, remains urgent and requires action.

Advocates, voters, and communities cannot stand on the sidelines and accept this contraction of voting rights. Instead, we must push back, employing all available tools and advocacy techniques from litigation and political action, to grassroots organizing.

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Ben Jealous, NAACP President & CEO, addressing members at the U.S. Supreme Court.



Here is what we must do:

### **INFORM YOURSELF: KNOWLEDGE IS POWER!**

Become an expert by learning about restrictive voting initiatives that have been enacted or are under consideration in your state, and about the efforts that are underway to challenge those initiatives.

Also find out what initiatives have not been enacted so that you may recognize misinformation about requirements in your state. As you learn more about voting in your community, below are some essential questions that all voters should equip themselves to answer. If you are not sure of the answers, then find out from your local board of elections well in advance of Election Day. The Board of Elections in your city/county, and your Secretary of State, must have the answers to each of these important questions:

#### **ESSENTIAL QUESTIONS VOTERS MUST BE ABLE TO ANSWER IN ADVANCE OF ELECTION DAY**

1. Am I registered to vote?
  - a. If not, where and when can I register to vote, and what must I bring to register?
  - b. If so, does my voter registration file include my current address? If not, how can I update my address?
2. When is the next election in my city, county, state?
3. When does the voter registration period close for the next election cycle?
4. After I register to vote, how do I verify my registration?
5. If I was convicted of a criminal offense, did I lose my voting rights? If so, how do I apply to have them restored?
6. If I am currently incarcerated awaiting disposition of a criminal charge, am I still eligible to register to vote? If yes, how do I apply for an absentee ballot?
7. Am I eligible for an absentee ballot? If so, how and when do I request one? When can I cast my absentee vote?
8. Does my state require government-issued photo identification or proof of citizenship to register to vote and/or to vote?
  - a. If so, which forms of identification are acceptable?
  - b. If the form of identification I have is not acceptable, where can I obtain an acceptable one?
  - c. What documents do I need to get the required identification?
  - d. Is it free? If not, can I apply for a fee waiver? Note that many offices wait for you to ask for a fee waiver, and will not offer it themselves, even though you may be entitled to one.
9. Does my state offer early voting? If so, what is the early voting period, and where do I cast my early vote?
10. If I am voting in person on Election Day, where is my polling place? What if I moved since I last voted?

## EQUIP YOUR COMMUNITY

As a credible messenger, tell others in your community about the discriminatory aims of these laws. Let them know how imperative access to the ballot is as a tool to effect change in your community, and ultimately, in your city, state, and in our country.

Provide your family, friends, neighbors, and community with the information that they need to ensure that their vote is counted and their voice is heard. Walk them through the questions above, and help them find answers to each of them.



### EACH ONE, BRING ONE

Do not go to the polls alone! Commit to bringing at least one first-time voter or a voter who would otherwise have difficulty voting with you. Start early because assisting a new or lapsed voter may require you to assist and encourage them to register or confirm their registration well in advance of Election Day. Additionally, if you live in a state with a new voter identification law you may need to take steps to ensure that your voting friend is prepared to vote.

Voting is a learned behavior and those who recognize its importance have a duty to pass on knowledge of its power to the next generation.

### VOLUNTEER

We must push back against block the vote efforts by volunteering to, among other things, serve as an NAACP Poll Monitor who helps guide affected voters through the new requirements for registering or voting. You may also volunteer to provide transportation, or other support to help voters meet the new requirements and get to the polls. Sign up to volunteer with the NAACP!

## TAKE ACTION

Contact your state and federal representatives, and the Department of Justice if you live in a jurisdiction covered by Section 5 of the Voting Rights Act, and let them know that you believe “block the vote” laws laws are anti-democratic, discriminatory, and should be relegated to history books, along with Jim Crow laws, literacy tests, and poll taxes.

Urge your elected officials to support important, democracy-expanding policies, such as the following pieces of federal legislation:

- H.R. 3316, the Voter Access Protection Act of 2011, which would prohibit election officials from requiring individuals to provide photo identification as a condition of obtaining or casting a ballot in an election for Federal office or registering to vote in elections for Federal office.



- H.R. 3317, the Same Day Voter Registration Act of 2011, which requires all states to provide for Election Day voter registration. Particularly for states that have implemented voter identification requirements, there is simply no good reason why rules which require advance registration must continue to serve as an impediment to voters on Election Day. Verification of eligibility and identity can be accomplished at one time.
- H.R. 108, the Voting Opportunity and Technology Enhancement Rights Act of 2011, which guarantees early voting throughout the country; allows Election Day registration nationally.
- H.R. 2212, the Democracy Restoration Act, which allows people with felony convictions, once they are out of prison, the opportunity to register and vote in federal elections.

#### SPREAD THE WORD ABOUT THE NATIONAL VOTER REGISTRATION ACT

The National Voter Registration Act (NVRA), also known as the “Motor Voter” law, is a nationwide federal law passed in 1993 to bring voter registration closer to the people. The NVRA requires states to offer voter registration services at all offices that provide public assistance or that provide services to persons with disabilities. Thus, some state agencies, such as departments of motor vehicles, welfare offices and certain other agencies, offer voter registration materials to those who use the services at those offices. You can let your family, friends, and neighbors know about this voter registration facilitation requirement, and let NAACP LDF know if you utilize services at one of the NVRA designated offices and you are not offered an opportunity to vote.

## Conclusion

Democracy in America is contested, as historian Alexander Keysaar has observed. It is characterized by periods of progress and retrenchment. As Keysaar notes, most of the American expansions in voting have occurred following periods of war when the reality of scores of returning service members has stimulated a conversation about the deeper ideals to which we are committed as a nation. Thus, the current block the vote efforts are occurring precisely at a time when history tells us that we should be extending the vote. With your steadfast commitment we can resist the anti-democratic efforts and extend the vote to more Americans. Our “more perfect union” depends upon it.



## APPENDIX 1

<b>Race</b> (% of 2010 population)	<b>Rate of Growth, 2000-2010</b>		<b>Absolute Growth, 2000-2010</b> (in thousands)	
	National Growth Rate	Top States by Growth Rate	Total Growth Nationally	Top States by Absolute Growth
<b>Latino</b> (16.3%)	43.0%	South Carolina (148%) Alabama (145%) Tennessee (134%) Kentucky (122%) Arkansas (114%)	15,172	California (3,047) Texas (2,791) Florida (1,541) Arizona (600) New York (550)
<b>African-American</b> (12.6%)	12.3%	Maine (132%) South Dakota (118%) Vermont (105%) North Dakota (103%) Idaho (80%)	4,271	Florida (664) Georgia (601) Texas (575) North Carolina (300) Maryland (225)
<b>Asian</b> (4.8%)	43.3%	Nevada (117%) North Dakota (92%) Arizona (92%)	4,431	California (1,163) Texas (402) New York (375)
<b>Two or More races</b> (2.9%)	32.0%	South Carolina (100%) North Carolina (100%) Delaware (83%)	2,183	California (208) Texas (164) North Carolina (103)
<b>Non-Hispanic White</b> (63.7%)	1.2%		2,265	
Data Source: U.S. Census Bureau, 2000 Census and 2010 Census				

## APPENDIX 2

2011 Legislation Reducing Opportunities for Voter Registration		
State	Proposed/Enacted Change	Current/Previous Rule
Florida (enacted)	Registrants who move across counties can update registration on Election Day but can only cast a provisional ballot subject to providing identification to the supervisor of election.	Ability to update registration to reflect name and in-state address changes in certain cases available on Election Day.
Maine (enacted)	Deadline for in-person registration is the 3 <sup>rd</sup> business day before election by close of business.	In-person Election Day registration available.
Montana (passed but vetoed)	Late registration ends on 5pm on the Friday before election.	Late registration available on Election Day if election administrator in county where voter resides receives and verifies registration prior to close of polls on Election Day.
New Hampshire (failed to pass)	Elimination of in-person Election Day registration.	In-person Election Day registration available.
North Carolina (pending)	Eliminates in-person, same-day registration during the “one-stop” voting period.	In-person, same-day registration available during the “one-stop” voting period (i.e., early voting period), which extends from 19 to 3 days before Election Day.
Ohio (enacted)	Eliminates the “golden week” by shortening the early voting period such that there is no longer an overlap with the voter registration period.	In-person same day registration available during first seven days of absentee voting before a general election, which overlaps with the period before the voter registration deadline, the so-called “golden week.”
Wisconsin (enacted)	Deadline for late registration is the Friday before election.	Deadline for late registration is the day before the election.

Data Source: State Legislature Bill Databases

## APPENDIX 3

Acceptable Forms of Photo Identification for States Requiring Valid Photo Identification to Vote		
State	Photo IDs Permitted	
Alabama § 17-9-30  Takes effect for 2014 primary if precleared.	<ul style="list-style-type: none"> <li>• Valid AL driver's license or non-driver ID card</li> <li>• Valid State or U.S.-issued photo ID</li> <li>• Valid U.S. passport</li> <li>• Valid AL or U.S.-issued employee photo ID card</li> </ul>	<ul style="list-style-type: none"> <li>• Valid U.S. military photo ID</li> <li>• Valid AL photo voter ID card</li> <li>• Valid Student/staff photo ID issued by AL post-secondary school</li> <li>• Valid Tribal ID card with photo</li> </ul>
Georgia § 21-2-417  In effect	<ul style="list-style-type: none"> <li>• Georgia driver's license, even if expired</li> <li>• ID card issued by GA or federal government</li> <li>• Free voter ID card issued by GA or county</li> </ul>	<ul style="list-style-type: none"> <li>• U.S. passport</li> <li>• Valid government-issued employee photo ID card</li> <li>• Valid U.S. military identification card</li> <li>• Valid tribal photo ID</li> </ul>
Indiana § 3-5-2-40.5  In effect	ID must: 1) include expiration date (except military IDs) and be valid or expired only after the most recent general election; 2) be issued by IN or the federal government; 3) display voter's name and photograph.	
Kansas § 2010 Supp. 25-2908, as amended by H.B. 2067  Takes effect Jan. 1, 2012	<p>Valid if ID contains name and photo and is unexpired (unless the voter is 65 years or older):</p> <ul style="list-style-type: none"> <li>• Driver's license</li> <li>• State or U.S.-issued ID card</li> <li>• Concealed handgun license</li> <li>• U.S. military ID</li> </ul>	
Rhode Island § 17-19-24.2  Photo ID required beginning Jan. 1, 2014	<p>Current document with photo including:</p> <ul style="list-style-type: none"> <li>• RI driver's license</li> <li>• RI voter ID card</li> <li>• U.S. passport</li> <li>• U.S. military photo ID</li> </ul>	<ul style="list-style-type: none"> <li>• Photo ID issued by a U.S. educational institution</li> <li>• Any RI or U.S.-issued photo ID</li> <li>• Government-issued medical card</li> </ul>
South Carolina § 7-13-710  Takes effect immediately if precleared	<ul style="list-style-type: none"> <li>• SC driver's license</li> <li>• Any other photo ID issued by the state's DMV</li> <li>• U.S. passport</li> </ul>	<ul style="list-style-type: none"> <li>• U.S. military photo ID</li> <li>• SC voter registration card with photo</li> </ul>

## APPENDIX 3

### Acceptable Forms of Photo Identification for States Requiring Valid Photo Identification to Vote

State	Photo IDs Permitted	
Tennessee § 2-7-112  Takes effect January 1, 2012	<ul style="list-style-type: none"> <li>• TN driver's license</li> <li>• Valid TN-issued non-driver ID card</li> <li>• Valid state or U.S.-issued employee photo</li> <li>• ID card</li> </ul>	<ul style="list-style-type: none"> <li>• Valid U.S. passport</li> <li>• Valid U.S. military photo ID</li> <li>• Valid state or U.S.-issued photo ID; except student ID card issued by institute of higher learning</li> </ul>
Texas Election Code §§ 63.001 et seq.  Takes effect immediately if precleared	Valid if includes photo and, with the exception of certificate of citizenship, is unexpired or expired 60 days or less before election:	
	<ul style="list-style-type: none"> <li>• A driver's license, election ID certificate, or personal ID card issued by the Department of Public Safety</li> <li>• U.S. military ID card</li> </ul>	<ul style="list-style-type: none"> <li>• U.S. citizenship certificate</li> <li>• U.S. passport</li> <li>• Concealed handgun license</li> </ul>
Wisconsin § 6.79(2)(a)  Voters are not required to show until the Feb. 2012 spring primary election.	Valid if includes photo and name that conforms to poll list:	
	<ul style="list-style-type: none"> <li>• WI driver's license or ID Card</li> <li>• WI student ID card, with issue date, signature, and expiration date indicating card expires no less than 2 years after election</li> </ul>	<ul style="list-style-type: none"> <li>• ID card issued by a U.S. uniformed service</li> <li>• U.S. Passport</li> <li>• Certificate of U.S. Naturalization issued not earlier than 2 years before Election Day</li> <li>• Unexpired ID card receipt</li> <li>• WI Tribal ID card</li> </ul>
Data Source: National Conference of State Legislatures, Voter ID: State Requirements		

## APPENDIX 4

Felon Disfranchisement at Different Stages of Incarceration/Post-Incarceration by State							
State	None	In Prison	On Probation	On Parole	Partial Post-Sentence	All Post-Sentence	Permanent
Alabama		X	X	X	X (certain offenses)		X (certain offenses)
Alaska		X	X	X			
Arizona		X	X	X	X (second time felons)		
Arkansas		X	X	X			
California		X		X			
Colorado		X		X			
Connecticut		X		X			
Delaware		X	X	X	X (certain violent offenses, 5 years)		
District of Columbia		X					
Florida		X	X	X		X	
Georgia		X	X	X			
Hawaii		X					
Idaho		X	X	X			
Illinois		X					
Indiana		X					
Iowa		X	X	X		X	
Kansas		X	X	X			
Kentucky		X	X	X		X	
Louisiana		X	X	X			
Maine	X	X					
Maryland		X	X	X			
Massachusetts		X					
Michigan		X					
Minnesota		X	X	X			
Mississippi		X (21 felonies)	X (21 felonies)	X (21 felonies)	X (21 felonies)		
Missouri		X	X	X			
Montana		X	X	X			

## APPENDIX 4

Felon Disfranchisement at Different Stages of Incarceration/Post-Incarceration by State							
State	None	In Prison	On Probation	On Parole	Partial Post-Sentence	All Post-Sentence	Permanent
Nebraska		X	X	X	X (treason, 2 years)		
Nevada		X	X	X	X (except first-time nonviolent)		
New Hampshire		X					
New Jersey		X	X	X			
New Mexico		X	X	X			
New York		X					
North Carolina		X	X	X			
North Dakota		X					
Ohio		X					
Oklahoma		X	X	X			
Oregon		X					
Pennsylvania		X					
Rhode Island		X					
South Carolina		X	X	X			
South Dakota		X					
Tennessee		X	X	X	X (certain offenses)		
Texas		X	X	X			
Utah		X					
Vermont	X						
Virginia		X	X	X		X	
Washington		X	X	X			
West Virginia		X	X	X			
Wisconsin		X	X	X			
Wyoming		X	X	X	X (certain offenses, 5 years)		

## APPENDIX 5

2011 Legislation Shortening Early/Absentee Voting Periods		
State	Proposed/Enacted Change	Current/Previous Rule
Florida (enacted)	Early voting days reduced to 8 days.	14-day early voting period.
Georgia (enacted)	Early voting period reduced to 21 days.	45-day early voting period.
Maine (enacted)	Bans absentee voting in the two business days before an election.	Absentee ballots are counted as long as the municipal clerk receives them by 8:00pm on Election Day.
Maryland (unfavorable ways and means)	Would have repealed all early voting.	For the 2012 Presidential Primary and General Elections, early voting begins the second Saturday before a primary or general election through the Thursday before the elections.
Nevada (pending)	Would eliminate early voting.	Early voting begins the third Saturday preceding a primary or general election and extends through the Friday before Election Day, Sundays and holidays excepted.
New Mexico (pending)	Would eliminate one week of early voting, beginning the early period on the second Saturday before an election.	Early voting begins on the third Saturday before an election and ends the Saturday immediately preceding Election Day.
North Carolina (pending)	Would eliminate Sunday voting and one week of early voting, beginning the early period on the second Thursday before an election.	Early voting begins the third Thursday before an election and ends the last Saturday before Election Day, including Sunday.
Ohio (enacted)	Early voting period reduced to 21 days if voting by mail and 16 days if voting in person; in-person voting on Sundays is also banned.	35-day early voting period to vote by mail or in-person, including Sundays.
Tennessee (enacted)	Reduces this early voting period by two days, ending the voting period 7 days before Election day.	Early voting period when a presidential primary is held or an election is held at the same time as a presidential preference primary begins 20 days and ends 5 days before Election Day.
West Virginia (enacted)	Reduces the early voting period by one week, beginning the early period on the 13th day before Election Day, but allowing Saturday voting for all elections..	Early voting period runs from the 20th to the 3rd day before Election Day, including Saturdays for any election held on a Tuesday.

## (ENDNOTES)

<sup>1</sup> See 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>.

<sup>2</sup> See WENDY R. WEISER & LAWRENCE NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012 1 (2011), available at [http://brennan.3cdn.net/9c0a034a4b3c68a2af\\_9hm6bj6d0.pdf](http://brennan.3cdn.net/9c0a034a4b3c68a2af_9hm6bj6d0.pdf).

<sup>3</sup> See JUSTIN LEVITT, BRENNAN CENTER FOR JUSTICE, FAST FACTS ON THE IMPACT OF PHOTO ID: THE DATA 2 (2008), available at [http://www.brennancenter.org/page/-/Democracy/\\_%20ID-related%20stats.pdf](http://www.brennancenter.org/page/-/Democracy/_%20ID-related%20stats.pdf). The number of voting age citizens is calculated using 2010 Census data available at: [http://www.census.gov/rdo/data/voting\\_age\\_population\\_by\\_citizenship\\_and\\_race\\_cvap.html](http://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html) (last visited Oct. 1, 2011).

<sup>4</sup> *Id.*

<sup>5</sup> President Lyndon Baines Johnson's Special Message to the Congress: The American Promise, 1 PUB PAPERS 1 (Mar. 15, 1965).

<sup>6</sup> See generally Debo P. Adegbile, *Voting Rights in Louisiana: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 413, 416-19 (2008) (describing history of voting rights discrimination in Louisiana).

<sup>7</sup> See RYAN P. HAYGOOD, JENIGH GARRETT & DALE HO, POLITICAL PARTICIPATION GROUP, NAACP LDF, FREE THE VOTE: UNLOCKING DEMOCRACY IN THE CELLS AND ON THE STREETS 2 (2010), available at <http://naacpldf.org/files/publications/Free%20the%20Vote.pdf>.

<sup>8</sup> See, e.g., *Louisiana v. United States*, 380 U.S. 145 (1965) (striking down Louisiana's Grandfather Clause); *Smith v. Allwright*, 321 U.S. 649 (1944) (condemning Democratic Party's practice of all-white primaries, which completely excluded African Americans from the political process); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966) (declaring poll taxes an unconstitutional violation of the equal protection clause).

<sup>9</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).

<sup>10</sup> *Id.* at 328.

<sup>11</sup> See, e.g., *Notice of Preclearance Activity, Notice Date: 10/11/2011*, DEPT' OF JUSTICE CIVIL RIGHTS DIVISION, <http://www.justice.gov/crt/about/vot/notices/vnote101111.php> (last visited Oct. 31, 2011) (Attorney General's rejection of redistricting of East Feliciana police jury, Submission Number: 2011-2055 (LA), Oct. 3, 2011; Attorney General's rejection of redistricting of Amite election commissions and board of supervisors, Submission Number: 2011-1660 (MA), Oct. 4, 2011).

<sup>12</sup> See, e.g., *Notice of Preclearance Activity, Notice Date: 09/26/2011*, DEPT' OF JUSTICE CIVIL RIGHTS DIVISION, <http://www.justice.gov/crt/about/vot/notices/vnote092611.php> (last visited Oct. 31, 2011) (Attorney General's Request for more information on proposed voting qualifications/eligibility, Submission Number: 2011-2775 (TX), Sept. 23, 2011).

<sup>13</sup> See generally Adegbile, *Voting Rights in Louisiana*, *supra* note 6.

<sup>14</sup> See *Shelby County, Ala. v. Holder*, No. 10-0651, 2011 WL 4375001 (D.D.C. Sept. 21, 2011); Complaint, *Arizona v. Holder*, No. 1:2011cv01559 (D.D.C. filed Aug. 30, 2011); First Amended Complaint, *Florida v. United States*, No. 1:11-cv-01428-CKK-MG-ESH (D.D.C. filed Oct. 11, 2011); Complaint, *Georgia v. Holder*, No. 1:11-cv-01788-RBW-DST-BAH (D.D.C. filed Oct. 6, 2011); *LaRoque v. Holder*, 650 F.3d 777 (D.C. Cir. 2011) (North Carolina).

<sup>15</sup> MARK HUGO LOPEZ & PAUL TAYLOR, PEW RESEARCH CENTER, DISSECTING THE 2008 ELECTORATE: MOST DIVERSE IN U.S. HISTORY 1 (2009), available at <http://pewresearch.org/assets/pdf/dissecting-2008-electorate.pdf>.

<sup>16</sup> See U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010 5-17 (2010), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

<sup>17</sup> See Sam Roberts, *Minorities in U.S. Set To Become Majority by 2042*, N.Y. TIMES, Aug. 14, 2008, <http://www.nytimes.com/2008/08/14/world/americas/14iht-census.1.15284537.html>; see also JAMES H. JOHNSON, JR. & JOHN D. KASARDA, FRANK HAWKINS KENAN INSTITUTE OF PRIVATE ENTERPRISE, SIX DISRUPTIVE DEMOGRAPHIC TRENDS: WHAT CENSUS 2010 WILL REVEAL 2-7 (2011), available at [http://www.kenan-flagler.unc.edu/ki/documents/UNC\\_KenanInstitute\\_2010Census.pdf](http://www.kenan-flagler.unc.edu/ki/documents/UNC_KenanInstitute_2010Census.pdf).

<sup>18</sup> LOPEZ & TAYLOR, PEW RESEARCH CENTER, DISSECTING THE 2008 ELECTORATE: MOST DIVERSE IN U.S. HISTORY, *supra* note 15, at 1.

<sup>19</sup> *Id.*

<sup>20</sup> Compare THOM FILE & SARAH CRISSEY, U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2008: POPULATION CHARACTERISTICS 4 (2010), available at <http://www.census.gov/prod/2010pubs/p20-562.pdf>, with KELLY HOLDER, U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004: POPULATION CHARACTERISTICS 4 (2006), available at <http://www.census.gov/prod/2006pubs/p20-556.pdf>.

<sup>21</sup> LOPEZ & TAYLOR, PEW RESEARCH CENTER, DISSECTING THE 2008 ELECTORATE, *supra* note 15, at ii.

<sup>22</sup> See *supra* note 16.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Compare Michael McDonald, 2010 Election Turnout Rates, UNITED STATES ELECTIONS PROJECT (Jan. 28, 2011), [http://elections.gmu.edu/Turnout\\_2010G.html](http://elections.gmu.edu/Turnout_2010G.html), with Michael McDonald, 2006 General Election Turnout Rates, UNITED STATES ELECTIONS PROJECT (Dec. 23, 2009), [http://elections.gmu.edu/Turnout\\_2006G.html](http://elections.gmu.edu/Turnout_2006G.html).

<sup>26</sup> Kevin Chappell, *Racial and Ethnic Minority Voter Turnout Increased in Several Key States*, EBONYJET ONLINE (Nov. 5, 2010, 9:14 AM), <http://www.ebonyjet.com/washingtoninsights/index.php/2010/11/05/racial-and-ethnic-minority-voter-turnout-increased-in-several-key-states/>.

<sup>27</sup> THE CENTER FOR INFORMATION & RESEARCH ON CIVIC LEARNING & ENGAGEMENT, THE YOUTH VOTE IN 2010: FINAL ESTIMATES BASED ON CENSUS DATA 2, 4 (2011), available at <http://www.civicyouth.org/wp-content/uploads/2011/04/The-CPS-youth-vote-2010-FS-FINAL1.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN, *supra* note 16, at 4.

<sup>30</sup> *Id.* at 4-5.

<sup>31</sup> *Id.* at 4.

<sup>32</sup> Compare U.S. Census Bureau, 2010 Census Data, State & County QuickFacts Database, available at [http://quickfacts.census.gov/qfd/download\\_data.html](http://quickfacts.census.gov/qfd/download_data.html), with U.S. Census Bureau, Census 2000 Summary File 1 (SF1) 100-Percent Data, available at [http://factfinder.census.gov/servlet/Dataset MainPageServlet?\\_lang=en&\\_ts=333732096049&\\_ds\\_name=DEC\\_2000\\_SF1\\_U&\\_program=](http://factfinder.census.gov/servlet/Dataset MainPageServlet?_lang=en&_ts=333732096049&_ds_name=DEC_2000_SF1_U&_program=).

<sup>33</sup> U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN, *supra* note 16, at 4.

<sup>34</sup> SHARON R. ENNIS, MERARYS RIOS-VARGAS & NORA G. ALBERT, U.S. CENSUS BUREAU, THE HISPANIC POPULATION: 2010 6 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf>.

<sup>35</sup> U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN, *supra* note 16, at 4.

<sup>36</sup> *Id.*

<sup>37</sup> See Sam Roberts, *Minorities in U.S. Set To Become Majority by 2042*, N.Y. TIMES, Aug. 14, 2008, <http://www.nytimes.com/2008/08/14/world/americas/14iht-census.1.15284537.html>. The original Census press release is now only available on archive. Press Release, U.S. Census Bureau, *An Older and More Diverse Nation by Midcentury* (Aug. 14, 2008), available at <http://www.census.gov/newsroom/releases/archives/population/cb08-123.html>.

<sup>38</sup> U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN, *supra* note 16, at 18-19.

<sup>39</sup> Letter from League of Women Voters of Florida, Brennan Center for Justice, Democracia USA & Lawyers' Committee for Civil Rights Under Law to Chris Herren, Chief, Voting Section, Civil Rights Division, U.S. Dep't of Justice (July 15, 2011), available at <http://www.lwvccfl.com/pdfs/2011-LWV-Letter-Dept-Justice.pdf>.

<sup>40</sup> See U.S. Census Bureau, *Voting and Registration in the Election of November 2008 – Detailed Tables*, Table 14 (Method of Registration by Selected Characteristics: November 2008), available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

<sup>41</sup> See Marc Kovac, *Capital News: Obama campaign jumping into election reform fight*, HUDSON HUB TIMES, Aug. 31, 2011, <http://www.hudsonhubtimes.com/news/article/5088790>.

<sup>42</sup> See *New State Voting Laws: Barriers to the Ballot?: Hearings Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. On the Judiciary*, 112th Cong. (Sept. 8, 2011) [hereinafter *Barriers to the Ballot Hearings*] (statement of Ryan P. Haygood, Director, Political Participation Group, NAACP LDF), available at [http://naacpldf.org/files/case\\_issue/Final%20Voting%20Barriers%20Testimony2C%20September%2012C%202011%20\\_400\\_\\_2.pdf](http://naacpldf.org/files/case_issue/Final%20Voting%20Barriers%20Testimony2C%20September%2012C%202011%20_400__2.pdf).

<sup>43</sup> See PAUL TAYLOR, ET AL., *Pew Research Center, American Mobility: Who Moves? Who Stays Put? Where's Home* 22 (2008), available at <http://pewsocialtrends.org/files/2010/10/Movers-and-Stayers.pdf>.

<sup>44</sup> WENDY WEISER & MARGARET CHEN, BRENNAN CENTER FOR JUSTICE, RECENT VOTER SUPPRESSION INCIDENTS 2 (2008), available at [http://brennan.3cdn.net/e827230204c5668706\\_p0m6b54jk.pdf](http://brennan.3cdn.net/e827230204c5668706_p0m6b54jk.pdf).

<sup>45</sup> See Letter from NAACP LDF to Chris Herren, Chief, Voting Section, Civil Rights Division, U.S. Dep't of Justice (June 17, 2011), available at [http://naacpldf.org/files/case\\_issue/2011-06-17%20LDF%20joint%20statement%20to%20AG%20regarding%20Florida%20election%20laws%20.PDF](http://naacpldf.org/files/case_issue/2011-06-17%20LDF%20joint%20statement%20to%20AG%20regarding%20Florida%20election%20laws%20.PDF).

<sup>46</sup> See BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION 3 (2006), available at [http://www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf).

<sup>47</sup> See WEISER & NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012, *supra* note ii, at 1.

<sup>48</sup> U.S. Census Bureau, *Voting and Registration in the Election of November 2008 – Detailed Tables*, Table 4b (Reported Voting and Registration of the Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2008), available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

<sup>49</sup> *Id.*

<sup>50</sup> See *infra* Appendix 1.

<sup>51</sup> See Maria da Silva, *Why Aren't Voters Registering*, BRENNAN CENTER FOR JUSTICE BLOG (Oct. 26, 2010), [http://www.brennancenter.org/blog/archives/why\\_arent\\_voters\\_registering/](http://www.brennancenter.org/blog/archives/why_arent_voters_registering/).

<sup>52</sup> See WEISER & NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012, *supra* note ii, at 19.

<sup>53</sup> *League of Women Voters of Florida v. Cobb*, 447 F. Supp. 2d 1314, 1333 (S.D. Fla. 2006).

<sup>54</sup> U.S. Census Bureau, *Voting and Registration in the Election of November 2008 – Detailed Tables*, Table 14 *supra* note 40.

<sup>55</sup> See Letter from League of Women Voters of Florida, Brennan Center for Justice, Democracia USA & Lawyers' Committee for Civil Rights Under Law to Chris Herren, Chief, Voting Section, Civil Rights Division, U.S. Dep't of Justice (July 15, 2011), available at <http://www.lwvccfl.com/pdfs/2011-LWV-Letter-Dept-Justice.pdf>.

<sup>56</sup> U.S. Census Bureau, *Voting and Registration in the Election of November 2004 – Detailed Tables*, Table 14 (Method of Registration by Selected Characteristics: November 2004), available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html>.

<sup>57</sup> U.S. Census Bureau, *Voting and Registration in the Election of November 2008 – Detailed Tables*, Table 14, *supra* note 50.

<sup>58</sup> See *Barriers to the Ballot Hearings*, *supra* note 42 (testimony of Justin Levitt, Professor of Law, Loyola Law School), available at <http://judiciary.senate.gov/pdf/11-9-8LevittTestimony.pdf>.

<sup>59</sup> See WEISER & NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012, *supra* note 2, at 1 n.1.

<sup>60</sup> *Barriers to the Ballot Hearings*, *supra* note 40 (testimony of Justin Levitt).

<sup>61</sup> 2011 Fla. Sess. Law Serv. Ch. 2011-40 (West); H.B. 1355, 2011 Reg. Sess. (Fla. 2011). The law must first be approved under the Voting Rights Act before going into effect in the five Florida counties covered by Section 5, and is the subject of litigation pending before a federal district court. Note that Florida law has a limited exception for the registration of “family members,” exempting from the definition of third party voter registration agency, “a person who seeks only to register to vote or collect voter registration applications from that person’s spouse, child, or parent.” Fla. Stat. § 97.021(36)(a).

<sup>62</sup> 2011 Fla. Sess. Law Serv. Ch. 2011-40 (West).

<sup>63</sup> See *New Florida election law stirs up controversy*, DAYTONA BEACH NEWS-JOURNAL, Oct. 23, 2011, available at <http://www.news-journalonline.com/news/local/southeast-volusia/2011/10/23/new-florida-election-law-stirs-up-controversy.html>.

<sup>64</sup> Letter from League of Women Voters of Florida, Brennan Center for Justice, Democracia USA & Lawyers’ Committee for Civil Rights Under Law to Chris Herren, Chief, Voting Section, Civil Rights Division, U.S. Dep’t of Justice (July 15, 2011), available at <http://www.lwvccfl.com/pdfs/2011-LWV-Letter-Dept-Justice.pdf>.

<sup>65</sup> See, e.g., Press Release, League of Women Voters of Florida, Announcement Regarding Cessation of Voter Registration in the State of Florida (May 7, 2011), available at <http://www.lwvcolliercounty.org/pdfs/cessation.pdf>; cf. Press Release, NAACP LDF, LDF Moves to Intervene on Behalf of Florida NAACP and African-American Voters in Florida Voting Rights Case (Sept. 7, 2011), available at <http://naacpldf.org/press-release/ldf-moves-intervene-behalf-florida-naACP-and-african-american-voters-florida-voting-ri>.

<sup>66</sup> See WEISER & NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012, *supra* note 2, at 1 n.1.

<sup>67</sup> H.B. 1570, 2011 Reg. Sess. (Tex. 2011) (amending TEX. ELEC. CODE ANN. §§ 12.006, 13.031, 13.047), available at <http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/HB01570F.pdf#navpanes=0>.

<sup>68</sup> H.B. 2194, 2011 Reg. Sess. (Tex. 2011) (amending TEX. ELEC. CODE ANN. § 12.006), available at <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB2194>.

<sup>69</sup> H.B. 1270, 2011 Reg. Sess. (Tex. 2011), available at <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB1270>.

<sup>70</sup> H.B. 1269, 2011 Reg. Sess. (Tex. 2011), available at <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB1269>.

<sup>71</sup> S.B. 2012, 2011 Reg. Sess. (Miss. 2011), available at <http://billstatus.ls.state.ms.us/documents/2011/pdf/SB/2001-2099/SB2012IN.pdf>.

<sup>72</sup> H.B. 1482, 97th Gen. Assemb., Reg. Sess. (Ill. 2011), available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1482&GAID=11&DocTypeID=HB&LegId=58247&SessionID=84&GA=97>.

<sup>73</sup> See U.S. Census Bureau, *Voting and Registration in the Election of November 2008 – Detailed Tables*, Table 14, *supra* note 40.

<sup>74</sup> Press Release, NAACP Legal Defense Fund, Project Vote and NAACP Legal Defense Fund Put Secretary of State Tom Schedler on Notice of Voting Rights Violations (Jan. 12, 2011), available at <http://naacpldf.org/press-release/louisiana-defaulting-federal-obligation-register-low-income-residents>.

<sup>75</sup> Press Release, Project Vote, Voting Rights Groups Sue for Neglecting Voting Rights of Low-Income Residents (June 6, 2011), available at <http://projectvote.org/newsreleases/657-voting-rights-groups-sue-georgia-for-neglecting-voting-rights-of-low-income-residents.html>.

<sup>76</sup> Press Release, Project Vote, Michigan Failing to Offer Voter Registration to Public Assistance Clients (Aug. 22, 2011), available at <http://projectvote.org/newsreleases/754-michigan-failing-to-offer-voter-registration-to-public-assistance-clients.html>.

<sup>77</sup> Letter from Demos, Project Vote, and the NAACP, to Hope Andrade, Secretary State of Texas (Feb. 10, 2011), available at <http://www.demos.org/publication.cfm?currentpublicationID=113C6CB2-3FF4-6C82-5DCD0D72167EDBA8>.

<sup>78</sup> DEMOS, VOTERS WIN WITH SAME DAY REGISTRATION 1 (2010), available at [http://www.demos.org/pubs/voterswin\\_feb032010.pdf](http://www.demos.org/pubs/voterswin_feb032010.pdf).

<sup>78a</sup> See DEMOS, VOTERS WIN WITH SAME DAY REGISTRATION 1, 2010 MIDTERM ELECTIONS FACT SHEET 1 (MAY 2010), available at [http://www.demos.org/sites/default/files/publications/Voters\\_Win\\_2010\\_demos.pdf](http://www.demos.org/sites/default/files/publications/Voters_Win_2010_demos.pdf).

<sup>79</sup> See PAUL TAYLOR, ET AL., PEW RESEARCH CENTER, AMERICAN MOBILITY: WHO MOVES? WHO STAYS PUT? WHERE'S HOME 22 (2008), available at <http://pewsocialtrends.org/files/2010/10/Movers-and-Stayers.pdf>.

<sup>80</sup> *Id.*

<sup>81</sup> Press Release, U.S. Census Bureau, Census Bureau Reports Housing is Top Reason People Moved Between 2009 and 2010 (May 23, 2011), available at [http://www.census.gov/newsroom/releases/archives/mobility\\_of\\_the\\_population/cb11-91.html](http://www.census.gov/newsroom/releases/archives/mobility_of_the_population/cb11-91.html).

<sup>82</sup> See DEBBIE GRUENSTEIN BOCIAN, WEI LI & KEITH S. ERNST, CENTER FOR RESPONSIBLE LENDING, FORECLOSURES BY RACE AND ETHNICITY: THE DEMOGRAPHICS OF A CRISIS 2 (2010), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf> (finding that African-American and Latino families were disproportionately affected by the foreclosure crisis relative to their share of mortgage originations, as nearly 8% of both African Americans and Latinos have lost their homes to foreclosures, compared to 4.5% of whites).

<sup>83</sup> See Shirley Allen, Florida Has Nation's Highest Foreclosure Rate, LOANRATEUPDATE.COM (Feb. 18, 2011), <http://loanrateupdate.com/mortgages/florida-has-nation%E2%80%99s-highest-foreclosure-rate>.

<sup>84</sup> States with the Highest Foreclosure Rates, CNBC.COM, [http://www.cnbc.com/id/29655038/States\\_With\\_the\\_Highest\\_Foreclosure\\_Rates?slide=2](http://www.cnbc.com/id/29655038/States_With_the_Highest_Foreclosure_Rates?slide=2) (last visited Sept. 23, 2011).

<sup>85</sup> Wisconsin has moved the deadline for late registrants to register to the Friday before an election from the day before an election. A.B. 7, 2011-2012 Leg. (Wis. 2011), available at <http://legis.wisconsin.gov/2011/data/AB-7.pdf>.

<sup>86</sup> H.B. 223, 2011 Sess. (N.H. 2011).

<sup>87</sup> H.B. 180, 2011 Leg. (Mont. 2011), available at <http://data.otpmt.gov/bills/2011/billhtml/HB0180.htm>.

<sup>88</sup> See Matt Dixon, *With Presidential Election Looming, Florida Election Law Rewrite Moves Forward*, FLORIDA TIMES-UNION, Apr. 25, 2011, <http://jacksonville.com/news/metro/2011-04-25/story/presidential-election-looming-florida-election-law-rewrite-moves-forward>.

<sup>89</sup> Letter from NAACP LDF to Chris Herren (June 17, 2011), *supra* note 45.

<sup>90</sup> See THE PEW CENTER ON THE STATES, PROVISIONAL BALLOTS: AN IMPERFECT SOLUTION 6 (2009), available at [http://www.pewcenteronthestates.org/uploadedFiles/ELEC\\_ProvBallot\\_Brief\\_0709.pdf](http://www.pewcenteronthestates.org/uploadedFiles/ELEC_ProvBallot_Brief_0709.pdf). We note that, although some of these ballots were rejected because voters were not properly registered, the Pew Center on the States points out that "it is probable that at some point between registering to vote and casting a ballot, many experienced a voter or administrative error due to an outdated, inefficient registration system." *Id.* at 4. Fifty thousand provisional ballots were rejected in 2008 because voters who voted at the wrong precinct "may have been provided with incorrect precinct information in advance or redirected to the wrong precinct on Election Day due to administrative errors in the registration system," while 27,000 "were disallowed because of various errors . . . some [of which] were the result of administrative problems at the polls." *Id.*

<sup>91</sup> See Letter from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, to Robert A. Butterworth, Attorney General, State of Florida (Aug. 14, 1998), available at [http://www.justice.gov/crt/about/vot/sec\\_5/ltr/l\\_081498.php](http://www.justice.gov/crt/about/vot/sec_5/ltr/l_081498.php).

<sup>92</sup> See L.D. 1376, 125th Legislature, 1st Reg. Sess. (Me. 2011), available at [http://www.mainelegislature.org/legis/bills/bills\\_125th/billtexts/HP101501.asp](http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/HP101501.asp); see also Tom Bell, *Bill to End Same-Day Registration Approved*, THE PORTLAND PRESS HERALD, June 11, 2011, at A1.

<sup>93</sup> Rebekah Metzler, *Bill to require voter photo ID delayed for year; And a recently passed bill to end same-day voter registration likely will face a people's veto campaign*, THE PORTLAND PRESS HERALD, June 18, 2011, at B1.

<sup>94</sup> Eric Russell, *Mainers vote to continue Election Day registration*, BANGOR DAILY NEWS, Nov. 9, 2011, <http://bangordailynews.com/2011/11/08/politics/early-results-indicate-election-day-voter-registration-restored/>.

<sup>95</sup> S.B. 657, 2011-2012 Gen. Assemb., (N.C. 2011), available at <http://www.ncga.state.nc.us/Sessions/2011/Bills/Senate/HTML/S657v0.html>.

<sup>96</sup> See DEMOS, VOTERS WIN WITH SAME DAY REGISTRATION, *supra* note 78, at 2.

<sup>97</sup> Paul Carlsen et al., *One-Stop to Victory? North Carolina's New Reform & Barack Obama's Victory in the 2008 General Election* 10-11 (Paper prepared for the 2011 Conference of the Midwest Political Science Association, Mar. 17, 2011), available at conference.mpsanet.org/papers/archive.aspx/2011/103737; U.S. Census Bureau, *Voting and Registration in the Election of November 2008 - Detailed Tables*, Table 4b, *supra* note 48.

<sup>98</sup> Carlsen, *supra* note 93, at 10.

<sup>99</sup> H.B. 194, 129th Gen. Assemb. (Ohio 2011).

<sup>100</sup> See Marc Kovac, *Capital News: Obama campaign jumping into election reform fight*, HUDSON HUB TIMES, Aug. 31, 2011, <http://www.hudsonhubtimes.com/news/article/5088790>.

<sup>101</sup> See Ian Urbina, *Voter ID Battle Shifts to Proof of Citizenship*, N.Y. TIMES, May, 12, 2008, at A1.

<sup>102</sup> See BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF, *supra* note 46, at 3.

<sup>103</sup> FILE & CRISSEY, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2008, *supra* note 20, at 4.

<sup>104</sup> See BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF, *supra* note 46, at 2.

<sup>105</sup> See Matt A. Barreto & Stephen A. Nuño, *Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters* 17-18 (Paper prepared for the 2007 American Political Association Annual Conference, Sept. 1, 2007), available at [http://faculty.washington.edu/mbarreto/research/Voter\\_ID\\_APSC.pdf](http://faculty.washington.edu/mbarreto/research/Voter_ID_APSC.pdf).

<sup>106</sup> See *Barriers to the Ballot Hearings*, *supra* note 42 (statement of Ryan P. Haygood)

<sup>107</sup> BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF, *supra* note 46, at 2.

<sup>108</sup> *Barriers to the Ballot Hearings*, *supra* note 42 (statement of Ryan P. Haygood).

<sup>109</sup> See Texas Vital Statistics – Birth Certificates, TEXAS DEPT' OF STATE HEALTH SERVS., [http://www.dshs.state.tx.us/vs/reqproc/certified\\_copy.shtm](http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtm) (last visited Oct. 30, 2011).

<sup>110</sup> Passport Fees, TRAVEL.STATE.GOV, [http://travel.state.gov/passport/fees/fees\\_837.html](http://travel.state.gov/passport/fees/fees_837.html) (last visited Sept. 23, 2011).

<sup>111</sup> N-564, *Application for Replacement Naturalization/Citizenship Document*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/m.5af9bb95919f35e66f614176543f6d1a/?vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnextoid=a910cac09aa5d010VgnVCM10000048f3d6a1RCRD> (last visited Sept. 23, 2011).

<sup>112</sup> See Ami Cholia, *Lack Of Transportation Affects Our Nation's Poor the Most*, AltTransport (Oct. 19, 2010, 7:38 PM), <http://altransport.com/2010/10/lack-of-transportation-affects-our-nations-poor-the-most/>.

<sup>113</sup> See *Gonzalez v. Arizona*, 624 F.3d 1162 (9th Cir. 2010), reh'g en banc granted, Nos. 08-17094, 08-17115, 2011 WL 1651242 (Apr. 27, 2011).

<sup>114</sup> S.B. 256, 2011 Gen. Assemb., Reg. Sess. (Ala. 2011), available at <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles/SB256-int.pdf>.

<sup>115</sup> S.B. 11-018, 68th Gen. Assemb., 1st Reg. Sess. (Colo. 2011), available at [http://www.leg.state.co.us/clics/clics2011a/csl.nsf/fsbillcont3/BAED7B3078F4007E8725781500271318?open&file=018\\_01.pdf](http://www.leg.state.co.us/clics/clics2011a/csl.nsf/fsbillcont3/BAED7B3078F4007E8725781500271318?open&file=018_01.pdf).

<sup>116</sup> H.B. 5231, Sess. Year 2011 (Conn. 2011), available at [http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=HB05231&which\\_year=2011](http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05231&which_year=2011).

<sup>117</sup> H.B. 2067, 2011 Sess. (Kan. 2011), available at [http://www.kslegislature.org/li/b2011\\_12/year1/measures/hb2067/](http://www.kslegislature.org/li/b2011_12/year1/measures/hb2067/).

<sup>118</sup> S.P. 241, 125th Leg., 1st Reg. Sess. (Me. 2011), available at [http://www.mainelegislature.org/legis/bills/display\\_ps.asp?snr=125&paper=SP0241&PID=1456](http://www.mainelegislature.org/legis/bills/display_ps.asp?snr=125&paper=SP0241&PID=1456).

<sup>119</sup> H.B. 194, 187th Gen. Court (Mass. 2011), available at <http://www.ma legislature.gov/Bills/187/House/H00194>.

<sup>120</sup> H.B. 515-FN, 2011 Sess. (N.H. 2011), available at [http://www.gencourt.state.nh.us/bill\\_status/bill\\_status.aspx?lsr=326&sy=2011&sortoption=&txtsessionyear=2011&txtbillnumber=hb515&q=1](http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=326&sy=2011&sortoption=&txtsessionyear=2011&txtbillnumber=hb515&q=1).

<sup>121</sup> S.B. 178, 76th Sess. (Nev. 2011), available at <http://www.leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=428>.

<sup>122</sup> H.B. 2804, 76th Leg. Assemb. (Or. 2011), available at <http://www.leg.state.or.us/11reg/measures/hb2800.dir/hb2804.intro.html>.

<sup>123</sup> S.B. 304, Sess. 119 (S.C. 2011), available at [http://www.scstatehouse.gov/cgi-bin/web\\_bh10.exe?bill1=304&session=119&summary=T](http://www.scstatehouse.gov/cgi-bin/web_bh10.exe?bill1=304&session=119&summary=T).

<sup>124</sup> 2011 Tenn. Pub. Ch. 235, available at <http://state.tn.us/sos/acts/107/pub/pc0235.pdf>.

<sup>125</sup> H.B. 1338, 82d Leg. Sess. (Tex. 2011), available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB1338>.

<sup>126</sup> Alabama's law must be approved by the U.S Department of Justice or a federal court before it can go into effect.

<sup>127</sup> See *Shame! 96-Year-Old Woman: Voting Now More Difficult Than During Jim Crow*, NewsONE FOR BLACK AMERICA, Oct. 10, 2011, <http://newsone.com/nation/newsonestaff1/voting-now-more-difficult-than-during-jim-crow/>.

<sup>128</sup> See JUSTIN LEVITT, BRENNAN CENTER FOR JUSTICE, THE TRUTH ABOUT VOTER FRAUD 18 (2007), available at <http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>.

<sup>129</sup> A.B. 7, 2011-2012 Leg. (Wis. 2011), available at <http://legis.wisconsin.gov/2011/data/AB-7.pdf>.

<sup>130</sup> States with the Highest Foreclosure Rates, CNBC.COM, [http://www.cnbc.com/id/29655038/States\\_With\\_the\\_Highest\\_Foreclosure\\_Rates?slide=2](http://www.cnbc.com/id/29655038/States_With_the_Highest_Foreclosure_Rates?slide=2) (last visited Sept. 23, 2011).

<sup>131</sup> See JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 76 (2006).

<sup>132</sup> HAYGOOD, GARRETT & HO, POLITICAL PARTICIPATION GROUP, NAACP LDF, FREE THE VOTE, *supra* note 7, at 3.

<sup>133</sup> See ELIZABETH HULL, THE DISENFRANCHISEMENT OF EX-FELONS 9 (2006).

<sup>134</sup> See Ryan P. Haygood, *Juneteenth: Free At Last?*, THE BLACK COMMENTATOR, June 10, 2004, available at [http://www.blackcommentator.com/94/94\\_juneteenth.html](http://www.blackcommentator.com/94/94_juneteenth.html).

<sup>135</sup> HAYGOOD, GARRETT & HO, POLITICAL PARTICIPATION GROUP, NAACP LDF, FREE THE VOTE, *supra* note 7, at 2.

<sup>136</sup> See Haygood, *Juneteenth: Free At Last?*, *supra* note 134; Marc Mauer, *Felon: Disenfranchisement: A Policy Whose Time Has Passed?*, 31 HUM. RTS. 16, 17 (2004).

<sup>137</sup> SENTENCING PROJECT, FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 1 (Mar. 2011), available at [http://sentencingproject.org/doc/publications/fd\\_bs\\_fdlawsinusMar11.pdf](http://sentencingproject.org/doc/publications/fd_bs_fdlawsinusMar11.pdf).

<sup>138</sup> *Id.*

<sup>139</sup> See Haygood, *Juneteenth: Free At Last?*, *supra* note 134.

<sup>140</sup> Letter from the Sentencing Project to Senator Richard Durbin, Chairman of the U.S. Subcommittee on the Constitution, Civil Rights and Human Rights, and Senator Lindsey Graham, Ranking Member of the Subcommittee on the Constitution, Civil Rights and Human Rights (Sept. 8, 2011), available at [http://sentencingproject.org/doc/publications/Subcommittee\\_hearing\\_letter\\_9-8-11.pdf](http://sentencingproject.org/doc/publications/Subcommittee_hearing_letter_9-8-11.pdf).

<sup>141</sup> Peter Wallsten, *In Florida, Republicans make it harder for freed felons to vote*, WASH. POST, Mar. 10, 2011, at A04.

<sup>142</sup> FLA. R. OF EXEC. CLEMENCY 9(A) (2011), available at [https://fpc.state.fl.us/PDFs/clemency\\_rules.pdf](https://fpc.state.fl.us/PDFs/clemency_rules.pdf).

<sup>143</sup> See *id.*; see also, Ericka Wood, *Turning Back the Clock in Florida*, BRENNAN CENTER FOR JUSTICE BLOG (Mar. 11, 2011), [http://www.brennancenter.org/blog/archives/turning\\_back\\_the\\_clock\\_in\\_florida/](http://www.brennancenter.org/blog/archives/turning_back_the_clock_in_florida/).

<sup>144</sup> See, e.g., WEISER & NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012, *supra* note 2, at 35.

<sup>145</sup> Iowa Exec. Ord. 70 (2011), available at [https://governor.iowa.gov/wp-content/uploads/2011/01/Exec\\_Order\\_70.pdf](https://governor.iowa.gov/wp-content/uploads/2011/01/Exec_Order_70.pdf).

<sup>146</sup> Iowa: Governor Reinstates Voting Ban, THE SENTENCING PROJECT NEWS – DISENFRANCHISEMENT NEWS (Jan. 20, 2011), [http://www.sentencingproject.org/detail/news.cfm?news\\_id=1058](http://www.sentencingproject.org/detail/news.cfm?news_id=1058).

<sup>147</sup> *Id.*

<sup>148</sup> Dar Danielson, *Branstad: pay fines, restitution to get voting rights back*, RADIOIOWA, Jan. 18, 2011, <http://www.radioiowa.com/2011/01/18/branstad-will-put-in-new-plan-for-restoring-felon-voting-rights/> (quoting Governor Branstad).

<sup>149</sup> *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

<sup>150</sup> Stephanie Fawkes-Lee & Marty Ryan, *Guest Column: Ex-Felons saddled with debt forfeit voting rights*, DES MOINES REGISTER, Jan. 19, 2011, available at <http://www.brennancenter.org/page/-/Democracy/Des%20Moines%20Register%20Guest%20Column%201.19.2011.pdf>.

<sup>151</sup> Bill Status for SB 243, Ala. Leg. Info. Sys. Online, <http://alisondb.legislature.state.al.us/acas/ACASLoginMac.asp?SESSION=1058> (follow “bills” hyperlink; then follow “status” hyperlink; then search “SB243”) (last visited Oct. 12, 2011) (“died in the basket”); House Bill 385: History by Legislative and Calendar Date, Md. Gen. Assemb., <http://senate.state.md.us/2011rs/billfile/HB0385.htm> (last visited Oct. 12, 2011) (pending); Bill Information, S.C. Bill Info. [http://www.scstatehouse.gov/php/web\\_bh10.php](http://www.scstatehouse.gov/php/web_bh10.php) (search “3168”) (last visited Oct. 12, 2011); Bill Information, Wash. St. Leg., <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1030#documents> (last visited Oct. 12, 2011) (pending); Bill Status, W. Va. Leg., [http://www.legis.state.wv.us/bill\\_status/bills\\_history.cfm?year=2011&sessiontype=RS](http://www.legis.state.wv.us/bill_status/bills_history.cfm?year=2011&sessiontype=RS) (search “Bill Quick Search” for “2089”) (last visited Oct. 12, 2011) (pending).

<sup>152</sup> See Lee Rowland, *A Missed Opportunity in Nevada*, BRENNAN CENTER FOR JUSTICE BLOG (June 17, 2011), [http://www.brennancenter.org/blog/archives/a\\_missed\\_opportunity\\_in\\_nevada/](http://www.brennancenter.org/blog/archives/a_missed_opportunity_in_nevada/).

<sup>153</sup> See *Oversight Hearing on Voter Suppression: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. On the Judiciary*, 110th Cong. 110-100 (Feb. 26, 2008) (testimony of Kristen Clarke, Co-Director, Political Participation Group, NAACP LDF), available at <http://judiciary.house.gov/hearings/printers/110th/40923.PDF>.

<sup>154</sup> See *Voter Registration: Assessing Current Problems: Hearing Before the S. Comm. on Rules and Admin.*, 111th Cong. (Mar. 11, 2009) (testimony of Kristen Clarke, Co-Director, Political Participation Group, NAACP LDF), available at [http://naacpldf.org/files/case\\_issue/testimony\\_kristen\\_clarke\\_hearing\\_voter\\_registration.pdf](http://naacpldf.org/files/case_issue/testimony_kristen_clarke_hearing_voter_registration.pdf).

<sup>155</sup> Steve Bousquet, *12,165 now on Florida’s “no match” vote list*, ST. PETERSBURG TIMES, Oct. 28, 2008, <http://www.tampabay.com/news/politics/state/article877094.ece>.

<sup>156</sup> WEISER & CHEN, BRENNAN CENTER FOR JUSTICE, RECENT VOTER SUPPRESSION INCIDENTS, *supra* note 44, at 2.

<sup>157</sup> See Press Release, Project Vote, Mississippi Voters Threatened by Illegal Purge, if New Bill Passes Legislature (Feb. 26, 2008), available at <http://www.projectvote.org/newsreleases/247-mississippi-voters-threatened-by-illegal-purge-if-new-bill-passes-legislature.html>.

<sup>158</sup> See R. MICHAEL ALVAREZ, STEPHEN ANSOLABEHHERE, ET AL., CALTECH/MIT VOTING TECHNOLOGY PROJECT, 2008 SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS: FINAL REPORT 42 (2009), available at <http://www.vote.caltech.edu/drupal/files/report/Final%20report20090218.pdf>.

<sup>159</sup> See, e.g., Letter from NAACP LDF to Chris Herren (June 17, 2011), *supra* note 41; see also WEISER & NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012, *supra* note ii, at 24; John Lewis, Op-Ed, *A Poll Tax by Another Name*, N.Y. TIMES, Aug. 27, 2011, at A19.

<sup>160</sup> L.D. 1376, 125th Leg., 1st Reg. Sess. (Me. 2011) (banning in-person absentee voting during the two business days before an election), available at <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1015&item=1&snum=125>; see Eric Russell, *Petition drive launched to repeal law that bans Election Day voter registration*, BANGOR DAILY NEWS, July 8, 2011, <http://bangordailynews.com/2011/07/08/politics/petition-drive-launched-to-repeal-law-that-bans-election-day-voter-registration/>.

<sup>161</sup> H.B. 850, 2011 Reg. Sess. (Md. 2011), available at <http://mlis.state.md.us/2011rs/bills/hb/hb0850f.pdf>.

<sup>162</sup> A.B. 311, 76th Sess. (Nev. 2011), available at <http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB311.pdf>.

<sup>163</sup> H.B. 352, 2011 Reg. Sess. (N.M. 2011), available at <http://www.nmlegis.gov/Sessions/11%20Regular/bills/house/HB0352.pdf>.

<sup>164</sup> S.B. 657, 2011-2012 Gen. Assemb., (N.C. 2011), available at <http://www.ncga.state.nc.us/Sessions/2011/Bills/Senate/HTML/S657v0.html>.

<sup>165</sup> 2011 Tenn. Pub. Ch. 412; . 2011 Tenn. Pub. Ch. 381; 2011 Tenn. Pub. Ch. 115.

<sup>166</sup> S.B. 581, 2011 Reg. Sess. (W.Va. 2011), available at [http://www.legis.state.wv.us/bill\\_status/bills\\_history.cfm?year=2011&sessiontype=RS](http://www.legis.state.wv.us/bill_status/bills_history.cfm?year=2011&sessiontype=RS).

<sup>167</sup> 2011 Fla. Sess. Law Serv. Ch. 2011-40 (West); H.B. 1355, 2011 Reg. Sess. (Fla. 2011).

<sup>168</sup> Early vote totals are calculated using data from the Florida Division of Election, County Absentee and Early Voting Reports, available at <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>. Data for total participation in the 2008 elections can be found at Florida Division of Elections, Election Results: November 4, 2008 General Election, available at [http://enight.dos.state.fl.us/Index.asp?ElectionDate=11/4/2008&DATA\\_MODE=](http://enight.dos.state.fl.us/Index.asp?ElectionDate=11/4/2008&DATA_MODE=).

<sup>169</sup> See Letter from NAACP LDF to Chris Herren (June 17, 2011), *supra* note 45.

<sup>170</sup> See *supra* note 42 (statement of Ryan P. Haygood); accord Justin Levitt, *A Devil in the Details of Florida's Early Voting Law*, ELECTION LAW BLOG (May 23, 2011, 3:24pm), <http://electionlawblog.org/?p=18296>; Laura Leslie, *Why Ban Sunday Voting?*, WRAL.com, June 16, 2011, <http://www.wrals.com/news/state/nccapitol/blogpost/9737378/>; Frank Cerabino, *Early Voting Change Might Reduce Black Participation*, PALM BEACH POST, July 6, 2011, <http://www.palmbeachpost.com/news/cerabino-early-voting-change-might-reduce-black-participation-1587638.html>.

<sup>171</sup> See Editorial, *Voting Law's Sunday's Punch*, OCALA.COM, June 17, 2011, <http://www.ocala.com/article/20110617/opinion/110619758>.

<sup>172</sup> Levitt, *A Devil in the Details of Florida's Early Voting Law*. *supra* note 170.

<sup>173</sup> CHARLES S. BULLOCK, III, M.V. HOOD III & GARY J. SMITH, PEW CENTER ON THE STATES, A SURVEY OF GEORGIA VOTERS IN THE 2008 GENERAL ELECTION 7 (2009), available at [http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/MVW/GA\\_voters.pdf?n=2979](http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/MVW/GA_voters.pdf?n=2979).

<sup>174</sup> *Id.* at 2-3.

<sup>175</sup> *Id.*

<sup>176</sup> See Robert Vitale, *Banned voting options popular: 234,000 absentee or early ballots that new law ends were cast in count in '08*, COLUMBUS DISPATCH, July 24, 2011, <http://www.dispatchpolitics.com/content/stories/2011/07/24/banned-voting-options-popular.html>

<sup>177</sup> *See id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> Daniel Takaji, *Guest Post: Blocking the Vote in Ohio*, INNOVATION OHIO (June 22, 2011), <http://innovationohio.org/blog/guest-post-blocking-the-vote-in-ohio>; see also Editorial, *Toledo Rally Aims to Spread Opposition to Election Bills*, TOLEDO BLADE, July 15, 2011, <http://beta.toledoblade.com/local/2011/07/15/Toledo-rally-aims-to-spread-opposition-to-election-bills.html>.

<sup>181</sup> H.B. 185, 82d Leg., Reg. Sess. (Tex. 2011), available at <http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/HB00185H.pdf#navpanes=0>.

<sup>182</sup> See John Celock, *Brennan Center: Millions of Voters Impacted by New Photo I.D., Citizenship And Registration Laws*, HUFFINGTON POST, Oct. 4, 2011, [http://www.huffingtonpost.com/2011/10/03/report-5-million-voters-i\\_n\\_992530.html](http://www.huffingtonpost.com/2011/10/03/report-5-million-voters-i_n_992530.html).

<sup>183</sup> OHIO DEPT OF DEV., OHIO AFRICAN AMERICANS 1 (2011), available at <http://www.development.ohio.gov/research/files/p0008.pdf>.

<sup>184</sup> S.B. 1596, 214th Leg. (N.J. 2011), available at [http://www.njleg.state.nj.us/2010/Bills/S2000/1596\\_I1.pdf](http://www.njleg.state.nj.us/2010/Bills/S2000/1596_I1.pdf).

<sup>185</sup> Jim Morrill, *Shorter early voting costlier*, CHARLOTTE OBSERVER, May 19, 2011, <http://www.charlotteobserver.com/2011/05/19/2307261/shorter-early-voting-costlier.html>; Lewis, *A Poll Tax by Another Name*, *supra* note 159.

<sup>186</sup> See Morrill, *Shorter early voting costlier*, *supra* note 185.

<sup>187</sup> See, e.g., *WA State Licensing: Diver licensing fees*, WASH. STATE DEPT' OF LICENSING, <http://www.dol.wa.gov/driverslicense/fees.html> (last visited Oct. 12, 2011).

<sup>188</sup> See *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

<sup>189</sup> See WEISER & NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012, *supra* note 2, at 35 n.285.

<sup>190</sup> See *Voter ID: State Requirements*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=16602#2011> (last visited Oct. 9, 2011).

<sup>191</sup> See *id.* A number of states merely request that a voter present photo identification, allowing voters who lack photo identification to cast ballots if they attest to their own identity: Florida, Hawaii, Idaho, Louisiana, Michigan, and South Dakota. A larger number of states currently require or request only a non-photo identification to vote: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Missouri, Montana, North Dakota, Ohio, Oklahoma, Utah, Virginia, and Washington.

<sup>192</sup> See Matt Loeb, *Feds Put Hold on S.C. Voter ID Law*, NATIONAL JOURNAL, Aug. 31, 2011, <http://www.nationaljournal.com/hotline/campaign-law-watch/feds-put-hold-on-s-c-voter-id-law-20110831>.

<sup>193</sup> See Julian Aguilar, *Texas Secretary of State Responds to Feds on Voter ID*, TEX. TRIB., Oct. 5, 2011, <http://www.texastribune.org/texas-politics/voter-id/texas-sos-responds-feds-voter-id/>.

<sup>194</sup> Jason Hancock, *Photo IDs for voters revived Amendment is heading to ballot next year*. Ballot issue will include early voting period, too, St. LOUIS POST-DISPATCH, May 10, 2011, at A1.

<sup>195</sup> See *Voter ID: State Requirements*, NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 190.

<sup>196</sup> See Editorial, *The Republican Threat to Voting*, N.Y. TIMES, Apr. 26, 2011, at A26; See 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>.

<sup>197</sup> See, e.g., AMERICAN ASS’N FOR JUSTICE, ALEC: GHOSTWRITING THE LAW FOR CORPORATE AMERICA 3 (2010), available at [http://www.justice.org/cps/rde/xbcr/justice/ALEC\\_Report.pdf](http://www.justice.org/cps/rde/xbcr/justice/ALEC_Report.pdf).

<sup>198</sup> The Indiana requirement was challenged as an undue burden on the right to vote, but the United States Supreme Court upheld the law in a 2008 decision, *Crawford v. Marion County Board of Elections*, 553 U.S. 181 (2008).

<sup>199</sup> Act of May 18, 2011, 2011 S.C. Acts 27, sec. 5 (to be codified at S.C. CODE ANN. § 7-13-710).

<sup>200</sup> See Associated Press, SC Submits Voter ID Law Response, WIS NEWS 10, Oct. 26, 2011, available at <http://www.wistv.com/story/15881001/voter-id-ads-overlook-absentee-option>.

<sup>201</sup> See *supra* note 38 (statement of Ryan P. Haygood).

<sup>202</sup> Act of May 27, 2011, 2011 Tex. Sess. Law Serv. Ch. 123, sec. 14 (to be codified at TEX. ELEC. CODE ANN. § 63.0101); H.B. 2067, Reg. Sess. 2011 (Kan. 2011).

<sup>203</sup> Act of May 30, 2011, 2011 Tenn. Leg. Serv. Ch. 323, sec. 8 (to be codified at TENN. CODE ANN. § 2-7-112(e)).

<sup>204</sup> *Texas Vital Statistics – Birth Certificates*, TEXAS DEPT’ OF STATE HEALTH SERVS., [http://www.dshs.state.tx.us/vs/reqproc/certified\\_copy.shtml](http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtml) (last visited Oct. 30, 2011).

<sup>205</sup> See R. Michael Alvarez et al., *The Effect of Voter Identification Laws on Turnout 20-22* (Cal. Inst. of Tech. Soc. Science Working Paper No. 1267R, Jan. 1 2008), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1084598](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1084598).

<sup>206</sup> See JUSTIN LEVITT, BRENNAN CENTER FOR JUSTICE, FAST FACTS ON THE IMPACT OF PHOTO ID: THE DATA 2 (2008), available at [http://www.brennancenter.org/page/-/Democracy/\\_%20ID-related%20stats.pdf](http://www.brennancenter.org/page/-/Democracy/_%20ID-related%20stats.pdf). The number of voting age citizens is calculated using 2010 Census data available at: [http://www.census.gov/rdo/data/voting\\_age\\_population\\_by\\_citizenship\\_and\\_race\\_cvap.html](http://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html) (last visited Oct. 1, 2011).

<sup>207</sup> *Id.*

<sup>208</sup> See Charles Stewart III, *What More Can We Learn from SC?*, ELECTION UPDATES, (Aug. 30, 2011, 10:32 AM), <http://electionupdates.caltech.edu/?p=4185> (citing ALVAREZ, ANSOLABEHHERE, ET AL., CALTECH/MIT VOTING TECHNOLOGY PROJECT, 2008 SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS, *supra* note 158).

<sup>209</sup> BULLOCK, HOOD & SMITH, PEW CENTER ON THE STATES, A SURVEY OF GEORGIA VOTERS IN THE 2008 GENERAL ELECTION, *supra* note 173, at 7.

<sup>210</sup> See Jim Davenport, *SC voter ID law hits some black precincts harder*, ASSOCIATED PRESS, Oct. 19, 2011, available at <http://www.google.com/hostednews/ap/article/ALeqM5j7vwY6tfxVrOQYQDzs5BJa10gTTw?docId=5847b73dea70432d8e6fb085b2921de>.

<sup>211</sup> See ALVAREZ, ANSOLABEHHERE, ET AL., CALTECH/MIT VOTING TECHNOLOGY PROJECT, 2008 SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS, *supra* note 158, at 42-43.

<sup>212</sup> Joan McCarter, *South Carolina GOP operative admits suppressing black vote is goal of voter ID law*, DAILY KOS (Oct. 19, 2011, 11:27 AM), [http://www.dailykos.com/story/2011/10/19/1028056/-South-Carolina-GOP-operative-admits-suppressing-black-vote-is-goal-of-voter%C2%A0ID-law?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+dailykos%2Findex%28Daily+Kos%29](http://www.dailykos.com/story/2011/10/19/1028056/-South-Carolina-GOP-operative-admits-suppressing-black-vote-is-goal-of-voter%C2%A0ID-law?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+dailykos%2Findex%28Daily+Kos%29).

<sup>213</sup> See, e.g., Lizette Alvarez, *Republican Legislators Push to Tighten Voting Rules*, N.Y. TIMES, May 28, 2011, at A1; Kris W. Kobach, Op-Ed, *The Case for Voter ID*, WALL ST. J., May 23, 2011, at A21; Fredreka Schouten, *State Voter ID Laws on the Rise*, USA TODAY, June 19, 2011, available at [http://www.usatoday.com/NEWS/usaledition/2011-06-20-Voting-requirementsART\\_ST\\_U.htm](http://www.usatoday.com/NEWS/usaledition/2011-06-20-Voting-requirementsART_ST_U.htm); see also Steve Bousquet, *Gov. Rick Scott signs controversial election bill into law*, MIAMI HERALD, May 19, 2011, <http://www.miamiherald.com/2011/05/19/2224624/gov-rick-scott-signs-controversial.html>.

<sup>214</sup> THE COALITION ON HOMELESSNESS & HOUSING IN OHIO AND THE LEAGUE OF WOMEN VOTERS OF OHIO, A JOINT REPORT ON ELECTION REFORM ACTIVITIES IN OHIO 2 (2005), available at <http://www.cohhio.org/alerts/Election%20Reform%20Report.pdf>.

<sup>215</sup> See Justin Levitt, *The Real Victims of Election ID Laws*, POLITICO.COM, June 14, 2011, available at <http://www.politico.com/news/stories/0611/56939.html>.

<sup>216</sup> LEVITT, THE TRUTH ABOUT VOTER FRAUD, *supra* note 124, at 4.

<sup>217</sup> See 18 U.S.C. § 1973i.

<sup>218</sup> See MEXICAN AMERICAN LEGAL DEFENSE & EDUCATIONAL FUND, THE MYTH OF WIDESPREAD NON-CITIZEN VOTING: A RESPONSE TO THE HERITAGE FOUNDATION 26 (2008), available at [http://maldef.org/truthinimmigration/Rebuttal\\_to\\_Heritage\\_Foundation.pdf](http://maldef.org/truthinimmigration/Rebuttal_to_Heritage_Foundation.pdf); see also LEVITT, THE TRUTH ABOUT VOTER FRAUD, *supra* note 124, at 18-19.

<sup>219</sup> LEVITT, THE TRUTH ABOUT VOTER FRAUD, *supra* note 124, at 18.

<sup>220</sup> Berman, *The GOP War on Voting*, ROLLING STONE, *supra* note i.

<sup>221</sup> Aaron C. Davis, *Republican ‘doctrine’ on suppressing black vote is key to Md. Case, and maybe to 2012*, WASH. POST, June 17, 2011, [http://www.washingtonpost.com/local/dc-politics/republican-doctrine-on-suppressing-black-vote-is-key-to-md-case-and-maybe-to-2012/2011/06/17/AGKPaSZH\\_story.html](http://www.washingtonpost.com/local/dc-politics/republican-doctrine-on-suppressing-black-vote-is-key-to-md-case-and-maybe-to-2012/2011/06/17/AGKPaSZH_story.html).

<sup>222</sup> Indictment at 6-7, para. 30, *State v. Schurick* (Md. Cir. Ct. June 16, 2011).

<sup>223</sup> Press Release, Office of the State Prosecutor, State of Maryland, Paul E. Schurick, Senior Official with Ehrlich For Maryland Committee And Julius Henson, Owner Of Politics Today, Inc., Charged Criminally (June 16, 2011), available at <http://www.ospmd.org/DynaContent/PressReleases/Hensonindictment.pdf>; see also John Wagner, *Ehrlich aide faces robo-call charges*, WASH. POST, June 17, 2011, at A01.

<sup>224</sup> Indictment at 2. Para. 7,

<sup>225</sup> *Id.* at 2, 11. Para. 7, 51,

<sup>226</sup> *Id.* at 2, para. 7.

<sup>227</sup> Marc Lacey, *Judge Finds Manipulation in Recall Vote in Arizona*, N.Y. TIMES, Oct. 9, 2011, at A14.

<sup>228</sup> See Ian Urbina, *Reports of Intimidation and Electronic Problems Surface at Polls Across the U.S.*, N.Y. Times, Nov. 12, 2010, at P8.

<sup>229</sup> See *id.*

<sup>230</sup> See *supra* note 9 at 328.

<sup>231</sup> See *Section 5 Covered Jurisdictions*, U.S. Dep’t of Justice, Civil rights Div., [http://www.usdoj.gov/crt/voting/sec\\_5/covered.php](http://www.usdoj.gov/crt/voting/sec_5/covered.php) (last visited Nov. 15, 2011). Virginia is listed by the Department of Justice’s Civil Rights Division as a “state covered as a whole.” It must be noted, however, that several political subdivisions have “bailed out” from Section 5 coverage pursuant to Section 4 of the VRA and are no longer covered.

<sup>232</sup> 28 C.F.R. § 51.10 (2009).

<sup>233</sup> *Shelby County, Ala. v. Holder*, No. 10-0651, 2011 WL 4375001 (D.D.C. Sept. 21, 2011).

<sup>234</sup> *Id.*

<sup>235</sup> Complaint, *Arizona v. Holder*, No. 1:2011cv01559 (D.D.C. filed Aug. 30, 2011).

<sup>236</sup> First Amended Complaint, *Florida v. United States*, No. 1:11-cv-01428-CKK-MG-ESH (D.D.C. filed Oct. 11, 2011).

<sup>237</sup> Complaint, *Georgia v. Holder*, No. 1:11-cv-01788-RBW-DST-BAH (D.D.C. filed Oct. 6, 2011).

<sup>238</sup> *LaRoque v. Holder*, 650 F.3d 777 (D.C. Cir. 2011) (North Carolina).

# STAND FOR FREEDOM

**Our voting rights are under attack by the most aggressive effort our nation has seen in over a century. Sign the Stand For Freedom Pledge today and protect the right to vote in your community.**

I Stand for Freedom because voter suppression is un-American no matter what form it takes.

I Stand for Freedom because voter suppression laws disproportionately affect the 18% of young people and seniors, and the 25% of African Americans who lack a state issued ID.

I Stand for Freedom because cuts to early voting significantly impact the voting rights of working class Americans.

I Stand for Freedom to defend the spirit of the Declaration of Independence, the US Constitution and Voting Rights Act

I Stand for Freedom to honor my fellow Americans who died in multiple wars, and the Civil Rights movement, to ensure every American can vote.

I Stand for Freedom because: an attack on young people's voting rights undermines the future of our democracy; an attack on working people's voting rights undermines the essence of our democracy; and an attack on people of color's voting rights undermines the very spirit of our democracy.

I Stand for Freedom because a robust, diverse and engaged electorate is the foundation of our democracy.

In Standing for Freedom, I am joining thousands upon thousands of Americans throughout our great nation.

Together, we call on:

The United States Department of Justice to fully enforce the Voting Rights Act;

The United States Congress to pass legislation advancing all Americans' right to vote and making it easier for working people to cast their ballot;

The legislatures and governors in every state to repeal every voter suppression measure and pass and implement measures to increase voter participation;

The United Nations to investigate and condemn voter suppression tactics in the United States; and

All individuals and organizations that currently fund these voter suppression initiatives to end their un-American tactics, and embrace the American ideals of Freedom, Opportunity and Democracy for all.

**Together, we commit to speak out, organize, and follow through in order to protect the voting rights of every American in every state.**

Standing for Freedom.







