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STATEMENT OF

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Submitted to:

The U.S. House of Representatives

For the Voting Forum:

Excluded From Democracy: The Impact of Recent Voting Law Changes

On

November 14, 2011

Submitted by Barbara Arnwine, Executive Director
Lawyers' Committee for Civil Rights Under Law
Submitted before the U.S. House of Representatives
For the Voting Forum: Excluded From Democracy:
The Impact of Recent Voting Law Changes

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Introduction

The Lawyers' Committee for Civil Rights Under Law thanks Representative John Conyers for convening this critically important forum to bring much needed attention to the current assault on voting rights. We appreciate this opportunity to comment on the wave of restrictive voting laws that threaten the rights of voters across the country as well as share our thoughts on what we can do to fix the parts of our election system that are broken. We are thrilled to see this forum is one of many steps Congress is taking to address this issue and highlight the importance of protecting the right to fully participate in our democracy for all Americans, particularly the most vulnerable amongst us.

The right to vote and choose our leaders is at the heart of what it means to be American and participate in our democracy. Right now, state legislatures are actively trying to make it harder for certain segments of our citizenry to vote and have their voices heard. By quickly passing laws requiring photo voter identification that are a solution in search of a problem, state lawmakers are actively ignoring the real problems that plague our voting system and threatening the fundamental right to vote for many eligible voters. In addition to requiring photo voter identification, states are drastically reducing early and absentee voting days, attacking election day registration, putting onerous restrictions on groups attempting to register voters, and enacting other restrictive measures.

The Lawyers' Committee for Civil Rights Under Law was established in 1963 as a nonpartisan, nonprofit organization at the request of President John F. Kennedy. Our mission is to involve the private bar in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under law. For over 48 years, the Lawyers' Committee has advanced racial equality by increasing educational opportunities, fair employment and business opportunities, community development, open housing, environmental health and justice, criminal justice and meaningful

participation in the electoral process. Through this work, we have learned a great deal about the challenges confronting our nation as it continues to tackle issues of race and equality of opportunity for all. It is through this lens that the Lawyers' Committee works at the national, state and local levels to eliminate the racial disparities existing in our electoral system and to protect the franchise for all Americans.

As part of our ongoing commitment to equal justice for all, the Lawyers' Committee serves as the legal lead in the Election Protection Coalition's efforts to protect the right to vote. Election Protection is the nation's largest non-partisan voter protection coalition and has become an invaluable resource for traditionally disenfranchised voters. It is a diverse coalition of more than 160 national, state and local grassroots, civil rights, and civic engagement organizations and maximizes the resources and expertise of the groups involved. The work of the Election Protection Legal Committees (EPLCs) involves the entire voter engagement process, including meeting with election officials, supporting non-partisan grassroots organizations, and providing valuable voter education and voter assistance. In addition to the critical programmatic and litigation efforts of our Voting Rights Project, our decade long record of successful coalition work through Election Protection has provided the Lawyers' Committee with the knowledge and experience to counter the ongoing assault on voting rights.

One of the cornerstones of the Election Protection program is 1-866-OUR-VOTE, the nation's largest voter services hotline which, since its inception, has responded to over 500,000 calls from voters across the country, including over 240,000 during the 2008 election cycle. The stories that make up over 100,000 reports in our database paint the most complete picture available of the American voting experience from the perspective of the voter. As we can see, the root institutional problems, which led the public to realize our election administration system is fraught with opportunities for mass disenfranchisement, endure. Over the last four major election cycles, the top problems reported to Election Protection have remained the same:

- 2004 – Registration problems (44%), polling place problems (19%), absentee ballot problems (11%), voting equipment problems (7%)
- 2006 – Polling place and voting equipment problems (53%), registration problems (17%), voter intimidation problems (9%), absentee ballot problems (6%)
- 2008 – Registration problems (34%), polling place problems (26%),

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voting equipment problems (15%), absentee ballot problems (9%)

- 2010 – Polling place problems (29%), registration problems (24%), voting equipment problems (11%), absentee ballot problems (8%)¹

Statistics like these reveal that voter registration challenges continue to be greatest barrier to the ability to vote for most Americans. Noticeably absent in this list are mass reports of voter impersonation fraud which continues to be the primary justification for the rash of restrictive voter laws being proposed and implemented across the country. Instead of creating bipartisan solutions to modernize our cumbersome voter registration system and other solutions to the barriers that block access to the ballot box, state legislatures across the country are erecting further barriers through the enactment of burdensome voter ID requirements, proof of citizenship laws, restrictions on early voting and unnecessary requirements to vote by mail, to name a few. These bills are not responding to a specific problem in the jurisdictions that are passing them, rather they appear to be a nationwide effort to prevent voters from fully participating in the electoral process.

Discriminatory Impact

The 2008 Presidential Election vividly highlighted the fact that a new electoral majority is emerging with Blacks, Latinos and youth voting in record numbers. Black and Latino voters today make up 20 percent of the vote, and are projected to rise to 45 percent by 2050. That is a critical swing vote in many states. Rest assured that this has not gone unnoticed. It is through this lens that we must consider the utility and impact of recent voter suppression efforts in the states. In addition, we must also examine the motivation behind these laws.

Restrictive voter ID laws only have one true impact, the disenfranchisement of eligible voters—especially the elderly, young voters, minorities, and low-income voters. Despite rhetorical flourishes arguing that photo voter identification laws affect few voters, studies consistently estimate that approximately 10 percent of voting-age citizens in the country—or more than 20 million individuals—lack a government-issued photo ID.²

¹ Lawyers' Committee for Civil Rights Under Law, *2010 Election Protection Report* (2010) available at www.866ourvote.org

² See Comm'n on Fed. Election Reform, *Building Confidence in U.S. Elections* 73 n.22 (2005); Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006) available at

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Research of individual states confirms that a significant portion of the population lacks government-issued photo ID. Specifically, a recent survey found that roughly 13 percent of registered Indiana voters lack an Indiana driver's license or an alternate Indiana-issued photo ID.³ The Georgia Secretary of State estimated that 198,000 registered Georgia voters lack a driver's license or alternate state photo ID.⁴ The Secretary of State of Arizona estimated that 12 percent of the registered voters in that state—or 375,000 individuals—have no driver's license or state non-operator ID.⁵ And the state of Missouri, in its unsuccessful defense of its restrictive photo ID law, found that between 169,000 and 240,000 registered Missouri voters lack a driver's license or alternate state photo ID.⁶

Low-Income Voters

Restrictive voter ID laws disproportionately impact those who can least afford it. A 2006 nationwide survey concluded that voting-age citizens earning less than \$35,000 in annual income were more than twice as likely to lack a government-issued ID as those earning more than \$35,000.⁷

The obligation to either offer free identification or provide additional voter education and poll worker training is also an issue. While many states (Ohio, Wisconsin, Georgia, etc.) have included the ability for voters to obtain “free” voter ID in order to vote, this not a simple process, nor in many instances, are the IDs really free. In fact, in Wisconsin, one must request identification for the purpose of voting in order to get free ID. Therefore, voters who are unaware of this requirement are in effect voters paying a poll tax to vote.⁸

<http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf>; Carter-Ford Commission on Election Reform, *To Assure Pride and Confidence in the Electoral Process: Task Force Reports to Accompany the Report of the National Commission on Election Reform, No. VI: Verification of Identity* (Aug. 2001), available at http://www.tcf.org/Publications/ElectionReform/99_full_report.pdf.

³ Matt A. Barreto, et al., Washington Institute for the Study of Ethnicity and Race, Working Paper, *The Disproportionate Impact of Indiana Voter ID Requirements On The Electorate* available at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf

⁴ See Sonji Jacobs & Megan Clarke, *No ID? Votes Cast Can Become Castoffs*, Atl. J. Const., Nov. 2, 2007, at 1A.

⁵ Report of R. Anthony Sissons at 8, *Gonzalez v. State of Arizona*, No. CV06-1268-PHXROS (D. Ariz.), available at <http://moritzlaw.osu.edu/13electionlaw/litigation/documents/exhibits1924mtnfpreliminjunctioarizona.pdf>.

⁶ *Weinschenk v. Missouri*, 203 S.W.3d at 206.

⁷ Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006) available at <http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf>

⁸ The Capital Times, *Top DOT official Tells staff not to mention free voter ID cards to the public – unless they ask*. (Wednesday, September 7, 2007) available at

Furthermore, the transportation and ancillary costs of obtaining a certified copy one's birth certificate or other supporting documentation in order to obtain the requisite voter ID still remains. States still fail to properly address this fact and the photo ID advocates fail to acknowledge the inherent unfairness and discriminatory impact upon certain voters.

African Americans and Latino Voters

Hyperbole is unnecessary when speaking about the racial impact of restrictive voter ID laws and other restrictive measures. Numerous studies have shown that minorities disproportionately lack government-issued photo identification. The same 2006 nationwide study of voting-age citizens cited above found that African Americans are more than three times as likely as Caucasians to lack a government-issued photo ID, with *one in four* African Americans owning no such ID.⁹ Information from individual states confirms the racial imbalance. A 2005 study of voting-age citizens in Wisconsin determined that 55% of African American males and 46 percent of Hispanic males—as compared with 16 percent of white males—lack a driver's license (and the corresponding figures for females are 49 percent of African Americans, 59 percent of Latinas, and 17 percent of whites).¹⁰ An examination of registered voters in Georgia similarly found that African Americans and Latinos were roughly twice as likely as whites to lack a driver's license or other state-issued photo ID.¹¹

Furthermore, the detrimental impact upon minority voters is not limited to only the effect of restrictive voter ID laws. Other suppressive initiatives such as those restricting early voting and the ability to register voters are equally discouraging and similarly disproportionate against minority voters. In Florida, during the debate of H.B. 1355, the racial undertones and historical insensitivity was palpable. The voting changes made in H.B. 1355 included 1) a panoply of burdensome and wholly unnecessary restrictions on the ability to conduct voter registration drives, 2) a reduction in the number of days during which early voting will be conducted, and a possible resulting reduction in the number of early voting hours, and 3) a limitation on registered voters' existing

http://host.madison.com/ct/news/local/govt-and-politics/capitol-report/article_335f59fa-d8fe-11e0-8a23-001cc4c03286.html

⁹ *Id.*

¹⁰ John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

¹¹ M. V. Hood III & Charles S. Bullock, III, *Worth a Thousand Words? An Analysis of Georgia's Voter Identification Statute 15* (2007).

opportunity to vote when they move between Florida counties and do not re-register to vote in their new county.

As justification for these changes, state Senator Michael Bennett suggested emphatically that voting and voter registration should be made more difficult under Florida law:

“You say it is inconvenient. Ever read the stories about people in Africa? People in the desert who literally walk 200-300 miles so they could have an opportunity to do what we do? And we want to make it more convenient? How much more convenient do you want to make it? Want to go to their house? ... This is a hard fought privilege. This is something people died for. And you want to make it convenient? ... Why would we make it any easier? I want ‘em to fight for it. I want ‘em to know what it’s like. I want ‘em to have to walk across town to go over and vote. I want ‘em to at least know the date of when they’re supposed to vote. I don’t think so... This is Florida and we should count. We do make it convenient for people to vote but I gotta tell ya I wouldn’t have any problem making it harder... I want the people in the State of Florida to want to vote as bad as that person in Africa who is willing to walk 200 miles for that opportunity he’s never had before in his life. This should not be easy. This should be something you feel with a passion.”¹²

This comment is in stark contrast to the experiences of state Representative Cynthia Stafford stating:

“When I read this bill, I thought about my 86 year old grandmother... I thought about her as I read the provisions in this bill that, in my opinion, create barriers to voting. I thought about my grandma who was born in this country but was not allowed to vote in this country until 1965 because of the color of her skin. When my grandma was finally granted the right to vote in 1965 there were barriers put in place to exercising the right to vote. I submit to you that this bill creates barriers to exercising the right to vote... Are we now criminalizing voter registration efforts? ... Anything that makes it harder for a person to vote or harder for that vote to count is very concerning and alarming.”¹³

¹² FLA. SENATE DEB.: Final Passage, Senator Bennett (May 5, 2011, 35:40-38:24).

¹³ FLA. HOUSE DEB.: 3rd Reading, Rep. Stafford (April 21, 2011, 37:35-40:09).

Elderly voters

Restrictive voter ID requirements also disproportionately affect older voters. Specifically, 18 percent of citizens nationwide who are above the age of 65 lacks a current, government-issued photo ID.¹⁴ A study in Wisconsin likewise determined that roughly 23 percent of voting-age citizens over 65 lacked a driver's license or other state-issued photo ID.¹⁵ In Georgia, similarly, 25 percent of registered voters over 65 own no driver's license or Georgia ID card.¹⁶ Again, the disproportionate effects reflect disparities in access to motor vehicles: While 10 percent of all households had no access to a vehicle, 17.5 percent of over-65 households lacked access to a vehicle.¹⁷

Youth and Student Voters

Young people and students are particularly harmed by restrictive voter ID requirements. An examination of Federal Highway Administration data concerning citizens aged 18 to 23 found that the share of persons without a driver's license ranged from 32.5 percent for 18-year-olds to 18 percent for 23-year-olds.¹⁸ When age and race are considered together, the disparities predictably become more pronounced. In Wisconsin, an astounding 78 percent of African American males (as compared with 36 percent of white 17 males) aged 18-24 lack a driver's license, and 66 percent of African American females (as compared with 25 percent of white females) aged 18-24 lack a driver's license.¹⁹ Further, even if a young voter is attending college, their student ID will not work.

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¹⁴ Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006) available at <http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf>.

¹⁵ John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

¹⁶ *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005)

¹⁷ U.S. Census Bureau, *Tenure by Vehicles Available by Age of Householder* (2000), available at http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=D&-ds_name=D&-_lang=en&-mt_name=DEC_2000_SF3_U_H045.

¹⁸ Spencer Overton, *Voter Identification*, 105 Mich. L. Rev. 631, 659 (2007).

¹⁹ John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

Impact Story from Past Election

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Studies and statistics provide the context for the discussion about the discriminatory impact of the wave of restrictive voter laws, but personal stories always help to more fully illustrate their negative impact. The story of a group of nuns in Indiana is one of those stories that continue to crystallize the negative impact of these laws. On May 6, 2008, as Indianans headed to the polls for the first time since the Supreme Court decided *Crawford*, Election Protection was on the ground assisting voters who had questions or problems at the polls. Early that morning, Election Protection volunteer and Lawyers' Committee board member, John Borkowski, a partner at the law firm of Hogan and Hartson, LLP, walked into a polling place on the campus of St. Mary's College in his hometown of South Bend. Students from the college were being turned away because they only had a student ID from the private college and not a government issued photo identification with an expiration date. The students were devastated. While talking to Sister Julie McGuire, one of the poll workers, John discovered that it was not just the students that were the victims of this misguided policy, but many of the nuns who lived in the convent that housed the polling place. John talked to a number of retired nuns, between 70-90 years old who either did not have ID or only had an expired license. These nuns no longer drove and had no need for current, government issued photo identification. They lived in the convent, among a community of their sisters. John discovered many of the sisters who were ineligible did not attempt to come to the polls. And that is the true scope of this tragedy. Most of the citizen voices made silent because they do not have this type of ID, as many as 21 million eligible voters across the country, will not show up because they know they will be turned away. Hence, we cannot simply say that voter ID does not impact voter turnout.

That night, John summed it up best, referring to the voter ID law he said it "definitely had the effect of preventing many people who were highly motivated to participate in this primary election from exercising their right to vote. It seems very ironic to me that a law intended to prevent voter fraud prevented members of a single community, essentially a family, who have lived together for years, from accepting the votes of their own sisters."

Consider the case of Willie Blair of Sumter, South Carolina. Mr. Blair has used the name Willie Blair all his life and while it is the name on his Social Security card, Mr. Blair's birth certificate reads "Willie Le McCoy." The difference had never been a problem... until Mr. Blair tried to obtain a photo ID. Mr. Blair, 61, is illiterate and has had to enlist the help of his cousin to navigate him through a bureaucratic

nightmare: Mr. Blair needs a photo ID to get a copy of the birth certificate he needs... in order to get a photo ID. His options are limited, as he doesn't have proof of residency—he lives with an aunt in a trailer that is under her name. He has no bank account—he has no ID to open one with, nor income to deposit. Mr. Blair has had to track down copies of his children's birth certificates to help prove his identity. He has also had to get the Social Security Administration to change the name it had for him in its files... All so he can exercise a most basic right in our democracy: voting. As of October 19th, 2011, Mr. Blair has been unable to obtain a photo ID.²⁰

Financial Costs of Restrictive Voter Laws

In addition to the discriminatory impact, the financial burden unnecessarily placed upon state budgets is astounding. In this climate of economic crisis and cost containment, some states have somehow found the money to restrict voting rights, yet still cannot find money for public education or health care. Data reveals that states have found that implementing these laws increase their spending on elections by as much as 50 percent.²¹ With the passage of Georgia's ID law, the Secretary of State of Georgia had to send letters out to citizens suspected of not having the identification instructing them how to obtain ID, advertise in print and on-air media, and mail out information packets and reminders. Missouri estimates that a new voter ID would cost the state over \$20 million to implement over the next three years. The Institute for Southern Studies estimated it could cost North Carolina \$14 million or more over three years to educate its 6 million voters about that state's proposed voter ID law.²² Furthermore, in Wisconsin which has become a battleground state on issues such as voting and the right to collectively bargain, the state's own Legislative Fiscal Bureau's analysis of its restrictive voter ID bill estimated that its recently passed ID law would cost over \$2.7 million dollars in lost revenue to supply free identification cards, \$61,680 in new systems for

²⁰ Fessler, Pam. "Opponents Say S.C.'s Voting Law Unfair For The Poor." *All Things Considered*. NPR. 19 Oct. 2011. Web. 10 Nov. 2011. <<http://www.npr.org/2011/10/19/141508278/opponents-say-s-c-s-voting-law-unfair-for-the-poor>>.

²¹ Agraharkar, V., Weiser, W., and Skaggs, A. (2011) *The Costs of Voter ID Laws: What the Courts Say*. Brennan Center for Justice at NYU School of Law. Available at http://brennan.3cdn.net/2f0860fb73fd559359_zzm6bhnlld.pdf.

²² Chris Kromm, "Voter ID Laws Carry Hefty Price Tag for Cash Strapped States," Institute for Southern Studies, January 27, 2011.

the Department of Transportation to issue free IDs, and \$2.1 million in public education and training costs.²³

Efficacy of Restrictive Voter Laws

Proponents of restrictive voting requirements have failed to produce any credible evidence of a massive conspiracy to impersonate eligible voters at the polling place—the only type of election misconduct that photo ID actually guards against. There are no shadow bands of ineligible voters roving from polling place to polling place to affect election results. Moreover, the justification for restrictions on early voting or voter registration campaigns is similarly evasive.

Regarding voter impersonation fraud, the prospects of affecting election outcomes are quite low. Such a scheme would require coordinating an army of individual impersonators in order to generate enough votes to sway an election, and each impersonator ostensibly would have to:

- ✓ Take steps to ensure an accurate forging of the voter's signature;
- ✓ Travel to the appropriate polling precinct site for the particular voter;
- ✓ Make sure the voter has not voted absentee or requested an absentee ballot;
- ✓ Have accurate knowledge that the voter has not been removed from the rolls or moved and re-registered at a different location;
- ✓ Wait in line, that can often be in excess of three hours, at the polling place to cast a ballot in that voter's name;
- ✓ Know that the registered voter has not already voted that day and does not plan to before the polls close; and
- ✓ Risk detection by a hard working poll worker who may know the registered voter personally.

²³ *Id.*, page 3

Felony Disenfranchisement and Noncompliance with International Treaty Obligations

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As we discuss the voter suppression tactics in the states, we must also highlight arguably the worst of them all – felony disenfranchisement laws. Sadly, the United States stands out in terms of the breadth, depth, and severity of these practices. In the United States, nearly two million African Americans – or 8.25 percent of the African American population – are disenfranchised, a rate *three* times the national average.²⁴

Because each state has established its own felony disenfranchisement laws they vary widely across the country. Thirty-five states go so far as to prohibit voting by individuals who are not incarcerated but are on parole; 30 deny voting rights to persons on felony probation;²⁵ 10 states restrict the voting rights of certain individuals who have entirely completed their sentence; and in two of these states, all individuals with felony convictions must obtain clemency from the governor before they can vote again.²⁶ Only two states do not disenfranchise individuals with felony convictions while incarcerated, notable exceptions to the rule.²⁷ At present, states with greater nonwhite prison populations are more likely to ban convicted persons from voting than states with proportionally fewer nonwhites in the criminal justice system.²⁸ Furthermore, African Americans are not only disproportionately disenfranchised, but are also less likely to have their voting rights restored.²⁹

²⁴ Jeff Manza & Christopher Uggen, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* 253 (Oxford University Press 2006).

²⁵ Probation is a sentence ordered by a judge, usually instead of, but sometimes in addition to, serving time in jail. Parole is the conditional release of a prison inmate after serving part (if not all) of his or her sentence.

²⁶ Two states deny the right to vote to all ex-felons who have completed their sentences. Nine others disenfranchise certain categories of ex-offenders and/or permit application for restoration of rights for specified offenses after a waiting period (e.g., five years in Delaware and Wyoming, and two years in Nebraska). The Sentencing Project, *Felony Disenfranchisement Laws in the United States* (2008), http://sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf.

²⁷ Rare outliers, Maine and Vermont comprise the two states that do not deny those with felony convictions the right to vote. The Sentencing Project, *Felony Disenfranchisement Laws in the United States* (2008), available at http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinus.pdf

²⁸ Angela Behrens, Christopher Uggen, & Jeff Manza, *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 *AJS* 559, 596 (Nov. 2003). See also, Jeff Manza and Christopher Uggen, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* 67 (Oxford University Press, 2006) (Chapter 2, *The Racial Origins of Felon Disenfranchisement*, co-written with Angela Behrens) (where African Americans make up a larger proportion of a state's prison population, the state is significantly more likely to adopt or extend felon disenfranchisement).

²⁹ *Id.* at 592.

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The right to vote and the right to be free from discrimination have long been recognized in the international system. Ratified by the U.S. in 1992, the International Covenant on Civil and Political Rights (ICCPR) requires the United States “to respect and to ensure” that all persons have a wide range of civil and political rights.³⁰ The treaty states:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³¹

Thus, the ICCPR not only prohibits state sponsored discrimination, but creates an affirmative obligation to ensure “effective protection against discrimination.”

Equally, ratified by the United States in 1994, CERD also prohibits racial discrimination and requires that state parties “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.”³² In ratifying the treaty each state commits, among other steps, to “ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.”³³

These international obligations are ignored through neglect by Congress and this Administration. In recent years, the Lawyers’ Committee has been actively involved in monitoring and writing shadow reports in response to reports written by the United States that are required by ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) as well as advocate for full compliance with these treaty obligations.

The U.S. is obligated to fulfill its obligations under the treaties it has ratified, yet the continuation and even retrenchment in states such as Florida and other shows that the U.S. still has much to do in order to meet its treaty obligations under ICCPR and CERD. As indicated earlier, while voter suppression advocates focus upon the eradication of phantom impersonation squads, they

³⁰ International Covenant on Civil and Political Rights art. 2.1, *available at* <http://www2.ohchr.org/english/law/ccpr.htm>.

³¹ *Id.* at art. 26.

³² *Id.* at art. 26

³³ *Id.* at art. 26

fail to address the real problems with our electoral system that are perpetuating the ongoing disenfranchisement of millions of Americans. While the Lawyers' Committee calls upon Congress and the states to address these voter suppression laws, so too does the larger international community. Notably, when the CERD Committee released its Concluding Observations, it stated,

“The Committee remains concerned about the disparate impact that existing felon disenfranchisement laws have on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, who are disproportionately represented at every stage of the criminal justice system. The Committee notes with particular concern that in some states, individuals remain disenfranchised even after the completion of their sentences. (Article 5 (c))”³⁴

Role of Section 5 of the Voting Rights Act

While legislative advocacy in the states is preferred, legal recourse is often necessary. Despite the almost unanimous reauthorization of the Voting Rights Act in 2006, Section 5 remains under attack and many states have become brazen in their efforts to undermine its effectiveness. The obligations under Section 5 of the Voting Rights Act require certain covered states and jurisdictions to preclear any voting change. Unfortunately, some states continue to boldly challenge these requirements. In South Carolina, the Lawyers' Committee joined allies such as the ACLU and other voting rights groups asking the Department of Justice to deny preclearance to the photo identification laws passed by the State. The new law limits the type of ID eligible voters can present in order to vote to only photo ID and among other things this creates a discriminatory impact upon African American voters in the State. We are glad to see the DOJ has requested that the State provide more information regarding the impact of the law on minority populations. We will continue to monitor the situation.

Similarly, the Lawyers' Committee has intervened in the lawsuit to defend the constitutionality of Section 5 against a challenge by Shelby County (a largely white suburb of Birmingham, Alabama). Shelby County filed suit in federal court in Washington, DC asking that Section 5 of the Voting Rights Act be declared unconstitutional. *Shelby County, Alabama v. Holder*, No. 1:10-cv-00651 (D.D.C.).

³⁴ Convention on the Elimination of Racial Discrimination Concluding Observations, pg. 9, #27 (February 2008)

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Similarly, in its declaratory judgment action seeking preclearance of the suppressive provisions described above, Florida has also challenged the constitutionality of Section 5. *State of Florida v. United States*, No. 1:11-cv-01428 (D.D.C.). Before it sought judicial review, the Lawyers' Committee joined with the League of Women Voters of Florida, Democracia USA, and the Brennan Center for Justice to oppose preclearance of three of provisions of a new Florida law, H.B. 1355 (2011), which dramatically impact the State's voter registration and voting processes. We believe that the State's recent decision to withdrawn four portions of their Section 5 administrative submission so close to the Department of Justice's (DOJ) 60-day deadline amounts to an admission that it has not been able to prove that these provisions are non-discriminatory.

Litigation in the States

In Ohio, as a result of complaints received by Election Protection in November 2004, the Lawyers' Committee, on behalf of the League of Women Voters of Ohio and individual plaintiffs, filed a lawsuit in 2005 against then Governor Bob Taft and Secretary of State J. Kenneth Blackwell. (The case concluded as *League of Women Voters of Ohio v. Brunner*.) The complaint detailed the challenges that voters faced in exercising their right to vote and casting a meaningful ballot. The lawsuit resulted in an agreement that sought to ensure that the problems of 2004 would remain in the past. However, with continual voter suppression efforts in Ohio, including the recent passage of H.B. 194, we remain concerned that new laws may threaten to revive the very problems that this state is on its way to addressing and overcoming.

The Lawyers' Committee has joined with Demos, Project Vote, ACLU and the NAACP to enforce the requirement that state public assistance agencies provide voter registration opportunities. There has been litigation in Ohio³⁵, Missouri³⁶, Indiana³⁷, New Mexico³⁸ and Georgia.³⁹ As a result of this litigation, hundreds of thousands of voters have been offered and have taken advantage of the opportunity to register to vote. For example, in Indiana, the State reported in a submission to the federal Election Assistance Commission, which preceded suit being filed in July 2009, that only 105 voter registration applications, on average each month, were being

³⁵ *Harkless v. Brunner*, 1:06-cv-2284 (N.D. Ohio)

³⁶ *Acorn v. Scott*, 2:08-cv-04084 (W.D. Mo.)

³⁷ *NAACP v. Gargano*, 1:09-cv-0849 (S.D. Ind.)

³⁸ *Valdez v. Herrera*, 1:09-cv-668 (D.N.M.)

³⁹ *NAACP v. Kemp*, 1:11-cv-1849 (N.D. Ga.)

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submitted at public assistance offices; the State's most recent monthly report, pursuant to the settlement, indicates that this figure has grown to almost 4,000 a month.

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Recommendations to Combat ACTUAL Voter Fraud

In 2008 this nation witnessed an historic election with record-breaking turnout across the country. Sadly, these challenges in the states are part of the larger voter suppression effort that we have seen increase exponentially since the last Presidential Election. As stated throughout, voter impersonation fraud is not the primary problem with our nation's electoral system. Instead of correcting abuses, restrictive voter laws are erecting barriers to the ballot box and disenfranchising voters, particularly minority, low-income, elderly, students and voters with disabilities. Furthermore, states continue to ignore the ongoing voter disenfranchisement that occurs through felony disenfranchisement laws, voter intimidation tactics, and other restrictions to the ballot box.

Antiquated Voter Registration System

Our antiquated and cumbersome voter registration system is the single largest cause of problems for voters. In 2008, a third of all problems reported to Election Protection were a result of registration. According to the U.S. Census, only 71 percent of voting age citizens were registered to vote during that historic election. Additionally, according to an MIT study, four million to five million registered voters did not participate because they encountered problems with their voter registration or failed to receive absentee ballots⁴⁰.

The current registration system was created prior to the Civil War. It is inefficient, sets election officials up for failure by diverting resources and energy from other critical tasks, causing confusion at the polls and infecting every aspect of the voting process. It is far past time that we take advantage of advances in technology to modernize our system of registration in order to save money, ensure all voters are able to participate in our democracy, and improve voter confidence.

⁴⁰ Ansolabehere, Stephen. Cooperative Congressional Election Study, 2008: Common Content. Release 1, February 2, 2009.

Deceptive Practices

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A continuing problem in elections is the use of “voter deception” tactics by individuals and/or groups with the intention of providing false information about elections. Voter deception includes the provision of false information regarding: the time, place and manner of an election, the qualifications for or restrictions on voter eligibility, the political party affiliation of any candidate, and/or the false endorsement by a person or organization of a candidate running for office. These can take the form of flyers left at homes or on cars, postings on Facebook or websites, voicemails/robocalls, text messages, and mailings, either with false information about the election and/or attempting to confirm voter registration (i.e. “caging”).

Examples of deceptive practices from past elections are numerous. In 2008, in Philadelphia, fliers distributed and posted in a West Philadelphia neighborhood claimed that any violation as simple as an unpaid parking ticket would render people ineligible to vote and subject to arrest at the polls. In southern Virginia and at George Mason University in the northern part of the state, official-looking fliers “informed” voters that, because of projected high turnout, voters should wait and vote on November 5, the day after the election. The same technology that allows efficient, rapid dissemination of accurate information also opens opportunities for mass mischief. In 2008, false e-mails, text and Facebook messages “directed” college students to vote on the Wednesday after polls closed. Official websites and email lists were breached in Missouri and Virginia, spreading misinformation.

In 2010, African-American neighborhoods of Houston, a group called the “Black Democratic Trust of Texas” distributed flyers falsely warning that a straight-ticket vote for a specific political party would not count and that a vote just for one candidate would count for the entire party ticket. In Maryland, a political consultant paid for robocalls on election night to thousands of African-American households discouraging voting by stating that the presumed preferred candidate of choice had prevailed already and that the voters need only watch the TV returns that night.

Modernizing Voter Registration

Modernizing the registration system will not only improve the foundation of our democracy, it will allow communities to reinvest these resources in critical functions like keeping more teachers in the classroom and more police officers on the street, both badly needed jobs right now. Rather than pursuing restrictive voter laws, we urge state legislators to modernize our election system and implement new reforms that expand the franchise for voters from all walks of life. New voters and long time voters are already at risk of

disenfranchisement because of the challenges with the voter registration system. Modernizing voter registration will make this essential government service far more efficient and far less expensive versus expending unnecessary dollars to enact restrictive voter ID and other laws that limit or block access to full participation on our electoral process.

Automatically registering voters when they turn 18 or become naturalized citizens will create a secure and accurate voter rolls. All questions about a voter's registration status or the accuracy of the voting rolls will be eliminated. Making registration permanent, so it moves when the voter moves will ensure our system of elections keeps pace with modern society. Adding a system of Election Day correction will ensure that no voter is disenfranchised due to clerical errors. The technology exists to make this happen. It's time to get election officials out of the data entry business and give them the time they need to effectively administer elections.

Combating Deceptive Practices

Congress should immediately pass a law that provides counties and states with the tools necessary to stop dirty tricks and voter intimidation. Current law is clearly deficient in protecting voters' rights against these onerous practices. There needs to be a clear civil action to provide additional an addition deterrent and give more resources for enforcement officials to go after perpetrators of voter deception. Of course, once the false information has been disseminated, the damage has been done. A mechanism must be put in place to ensure the government quickly and widely publicizes corrective information so voters are not fooled by this activity.

Increasing rather than decreasing Early Vote Opportunity

In 2008, nearly 8 million Americans voted early in Florida, Georgia and Ohio. An estimated 1 to 2 million voted on days eliminated by recent legislation cutting back on early voting.

Full Compliance with Treaty Obligations Regarding Felony Disenfranchisement

Furthermore, we urge the federal government and the states to follow the recommendations of the CERD Committee and "adopt all appropriate measures to ensure that the denial of voting rights is used only with regard to persons convicted of the most serious crimes, and that the right to vote is in

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any case automatically restored after the completion of the criminal sentence.”⁴¹ These are real solutions to actual problems.

Conclusion

The 2010 elections reinforced what we have known since November 2000: our system of election administration needs reform and efforts to deny minority voters full access to the franchise persist. Those who fought to break the hold of disenfranchisement and make the gains of the civil rights movement a reality put their lives and livelihoods on the line to see that election laws would be agents for progress and not instruments of oppression. It is the fruits of those labors that are at stake today. The erection of new barriers to the ballot is exactly the opposite of what is needed to ensure the protection of all eligible voters throughout the electoral process. The well-funded and coordinated assault on the right to voter particularly upon communities of color is alarming and serves to heighten our need for vigilance on the national, state and local levels.⁴² As the eminent historian C. Vann Woodward wrote in his definitive work *The Strange Career of Jim Crow*:

“The South’s adoption of extreme racism was due not so much to a conversion as it was to a relaxation of the opposition. All the elements of fear, jealousy, proscription, hatred, and fanaticism had long been present, as they are present in various degrees of intensity in any society. What enabled them to rise to dominance was not so much cleverness or ingenuity as it was a general weakening and discrediting of the numerous forces that had hitherto kept them in check.”

The Lawyers’ Committee will continue to aggressively protect the right to vote for ALL voters and work to ensure the enforcement of our nation’s voting rights laws. We urge voter ID advocates to do the same and not selectively disregard and undermine the very rights that so many have fought and died for.

⁴¹ Convention on the Elimination of Racial Discrimination Concluding Observations, pg. 9, #27 (February 2008)

⁴² Van Ostern, Tobin. —Conservative Corporate Advocacy Group ALEC Behind Voter Disenfranchisement Efforts. | *Campus Progress Blog*, 8 March 2011. Web. 9 March 2011. [http://www.campusprogress.org/articles/conservative_corporate_advocacy_group_alec_behind_voter_disenfranchise/].